An Economic and Behavioural Analysis of Doorstep Contracts: Surprise, Reciprocation, and Consistency

August 15, 2011

by

Sven Hoeppner
EMLE Student-ID: 1734
address: Gravensteinstraße 43, 13127 Berlin
fon: +49 - (0)30 - 38203225
e-mail: sven.hoeppner@gmail.com
Declaration of Authorship

I hereby declare and confirm that this thesis is entirely the result of my own work except where otherwise indicated. I acknowledge the supervision and guidance I have received from Dr. Alan Miller at Haifa University. This thesis is not used as part of any other examination and has not yet been published.

Sven Hoeppner,
15\textsuperscript{th} of August 2011

---

Additional Thesis Information

<table>
<thead>
<tr>
<th>Word Count</th>
<th>Altogether</th>
</tr>
</thead>
<tbody>
<tr>
<td>Word Count Section A:</td>
<td>721</td>
</tr>
<tr>
<td>Word Count Section B:</td>
<td>620</td>
</tr>
<tr>
<td>Word Count Section C:</td>
<td>5,229</td>
</tr>
<tr>
<td>Word Count Section D:</td>
<td>7,848</td>
</tr>
<tr>
<td>Word Count Section E:</td>
<td>879</td>
</tr>
<tr>
<td>Word Count Section F:</td>
<td>484</td>
</tr>
<tr>
<td>Word Count Appendices:</td>
<td>108</td>
</tr>
<tr>
<td>Word Count Total:</td>
<td>15,889</td>
</tr>
</tbody>
</table>
# Table of Contents

A. Introduction ........................................ 1  
B. Legal Rationale of Doorstep Sales .................... 3  
C. Economic Assessment of Cooling-off Periods ........... 4  
   I. Situational and Temporary Monopolies .......................... 5  
   II. Asymmetric Information ............................................ 7  
   III. Non-rational Consumer Choice ................................. 10  
   IV. Adverse Effects: Moral Hazard, Risk-shifting, & Transaction Costs ...... 13  
   V. Unintended Consequence: Perverse Incentive to Elicit Compliance ......... 16  
D. Choice Architecture of Cooling-off Periods in Doorstep Transactions ........ 17  
   I. Decision Structure of Cooling-off Regimes in Doorstep Transactions ....... 17  
   II. Stage One: Surprise .................................................. 19  
   III. Stage Two: Reciprocation & Consistency .......................... 21  
      1. The Impact of Reciprocation ...................................... 21  
         a) Benefactor-Before-Beggar Technique .......................... 23  
         b) Door-In-The-Face Technique .................................. 26  
      2. The Impact of Consistency and Commitment ...................... 30  
         a) Foot-In-The-Door Technique .................................. 31  
         b) Lowball Technique .............................................. 32  
   IV. Stage Three: Status-Quo Bias ................................. 33  
E. Implications: Changing the Default ................. 35  
F. Résumé .................................................. 36
An Economic and Behavioural Analysis of Doorstep Contracts: Surprise, Reciprocation, and Consistency

Sven Hoeppner*

15th of August 2011

Abstract
Cooling-off periods are universally employed in doorstep selling regimes. Paired with a right for consumers to withdraw from the contract, this legal instrument is supposed to protect consumers against superior skilled and knowledgeable sellers thus restoring the balance of interests. According to prior literature, cooling-off periods also serve an economic function by moderating the abuse of market power, by mitigating problems of hidden characteristics, and by promoting consumer choice. If their drawbacks – mainly the creation of consumer moral hazard and shifting of risk to the seller – can be contained, cooling-off periods are hence supposed to yield efficiency gains. By thinking out of this box, the present paper showcases that cooling-off periods also establish the perverse incentive for the seller to increase consumer compliance to a level which outlasts the cooling-off period. I argue that inevitably occurring psychological factors and transaction costs from the cooling-off regime amplify each other, thus creating a hard-lock status-quo bias. Consequently, I propose to change the default inherent in current cooling-off regimes from presumed consent to presumed withdrawal.

A. Introduction

Suppose you took a day off and enjoying a peaceful day at home. Suddenly, your doorbell rings. Somewhat puzzled, because you expect nobody, you open your door just to find a smart-looking and charming woman in front of it. She introduces herself as Marie and courteously apologises for the disturbance. She is in this area by accident but is

* Sven Hoeppner holds a Juridical Degree (German First Legal State Exam from the City of Berlin) and a Master in Business and Economics from Humboldt University Berlin. He is research fellow at the Chair of German, European and International Private and Business Law and New Institutional Economics under Prof. Christian Kirchner, Humboldt University Berlin, School of Law and School of Business and Economics. I am deeply indebted to Ben Depoorter, Wulf Kaal, Christian Kirchner, Thomas Ulen, and Gari Walkowitz for providing critical feedback on earlier drafts of this paper.
very happy that you are at home because she has an amazing offer which she wants to propose to you. Since so many people get hurt in their kitchens while preparing family dinners, she set out to sell very good Japanese kitchen knives which make the work in the kitchen so much safer. All she asks for are 15, probably only 10 minutes of your time to show you what she has to offer. What would you do?

Chances are that people let salespersons such as charming Marie enter. Moreover, chances are that people subsequently buy products "at the doorstep". In general, a doorstep transaction - often also called off-premises contract - is a sales or service contract concluded away from business premises with the simultaneous physical presence of the trader and the consumer\(^1\). Nowadays the Internet is one of the most empowering tools consumers have ever had. But although the internet provides a wealth of information regarding products and prices and gives easy access to many more retailers than consumers could ever have reached before, doorstep transactions happen, in fact, very often. The direct selling industry is surprisingly large, huge even. The European Direct Selling Association (SELDIA) reports that direct selling - which should not be mixed up with direct marketing or distance selling - in the forms of person-to-person and person-to-party has grown rapidly since 2007 and, as of 2009/2010, the industry created more than € 10.7 billion revenue in the EU\(^2\). For the US, the Direct Selling Association (DSA) calculated about nearly double the amount, specifically a sales value of € 19.83 billion, during the same time\(^3\). On a global level, direct selling accounts for an impressive € 82.25 billion in 2009\(^4\).

Given the extent of the direct selling sector and its intimate relation to consumers, it is not very remarkable that regulators virtually everywhere adopted regulatory instruments to balance the interests communicated by both market sides. A hallmark of such consumer protection laws are cooling-off periods. These mechanism aims to protect consumers by constituting a right to withdraw from the contract within a certain time. Conventional legal wisdom appreciates the use of cooling-off periods and economic theory on the topic suggests that such a mechanism can lead to welfare gains, as long as it is implemented appropriately.

Since the European Consumer Acquis is reviewed since 2004 and the European Commission strives to combine the fragmented acts of European Consumer Protection Law into one coherent legal framework\(^5\), the question recurs whether or not the common cooling-off regime indeed serves the interest of the consumer. To answer this ques-

---


3 DSA Fact Sheet 2009; reported sales volume equaling $ 28.33 billion; exchange rate of U.S. Dollar towards Euro averaging 0.70001 in 2009.

4 Statistics by the World Federation of Direct Selling Associations (WFDSA) available at www.wfdsa.org (last visit on June 27, 2011); reported sales volume equaling $ 117.5 billion; exchange rate of U.S. Dollar towards Euro averaging 0.70001 in 2009.

tion, this paper will quickly re-visit the legal rationale of cooling-off periods in doorstep transactions (Section B) and review and also add to the economic theory behind this regulatory instrument (Section C). This review will carve-out an unintended consequence of cooling-off periods not yet discussed: sellers have an incentive to generate a level of consumer compliance which penetrates the cooling-off period as long as this is relatively cheaper than adjusting the other economic variables discussed. By building on well established concepts of social psychology, Section D will illustrate why and how such levels of compliance can be induced. Afterwards, an appropriately mild regulatory response in the shape of slight modification is proposed in Section E before Section F concludes this paper.

B. Legal Rationale of Doorstep Sales

Legal approaches to solve specific or potential conflicts of individual interaction usually start with an analysis of the interests related to any legal problem and aim at balancing these conflicting interests in order to establish a fair or just solution. The relevant interests are shaped by the addressees of the respective rules. Within the context of consumer law, the consumers of certain goods and the suppliers of these goods – producers and traders – hence define the interests at stake.

Regarding not only specific features of consumer law but this legal area in general, consumers are usually perceived as in an inferior position relative to their counterparts. Lawyers tend to consider consumers as being less skilled, as being less informed, as being economically fragile, and, as a result, as being quasi helpless. From this common legal perspective, consumers are indeed poor fellows with hardly any bargaining power. In contrast, advanced knowledge, professional trading skills, and economic power are characteristics often attributed to suppliers\(^6\). They are perceived as the profiteers of unregulated consumer-supplier-relationships.

The imbalance resulting from weak consumers on the one hand and strong suppliers on the other hand gives rise to the concern that consumers are consequently exploited. Hence, regulatory instruments of consumer law – reaching across legal categories – are usually supposed to protect consumers by promoting their interests and, while doing so, to mend the disparity in bargaining power between both sides. Despite the overarching imperative of achieving the internal market, already since the advent of the Single European Act (SEA) in 1987 and the introduction of Article 100a (now Article 95) into the EC Treaty, the Commission’s proposals on the approximation of laws affecting the internal market must be based on a high level of consumer protection. Consumer law seeks to achieve this protection against the abusive, inequitable, and unconscionable practices of suppliers by, amongst other things, improving substantive law and in particular legal provisions governing contracts, liability rules, and competition\(^7\).

\(^{6}\) Bourgoignie (1992); Weatherill (2005).
\(^{7}\) Bourgoignie (1992).
One specific tool used in consumer law is the use of cooling-off periods. Nearly universally, direct sales are generally accompanied by cooling-off periods. For doorstep transactions in particular, the implementation of cooling-off periods in national laws of the EU member states was initially stipulated by Directive 85/577/EEC. In an attempt to build a comprehensive framework of consumer protection law, the European Commission currently tries to unify the fragmented regulatory acts governing European consumer law – the Consumer Acquis – into a new comprehensive Consumer Rights Directive. With regard to doorstep transactions, the important part of this overhaul is provided by Artt. 8 et seq. Consumer Rights Directive. Main aspect is a strengthened, homogenous, EU-wide cooling-off period of 14 days which comes, as usual, with a right of withdrawal\(^8\). Moreover, by virtue of the new directive, solicited face-to-face off-premises transactions are no longer excluded from applying the cooling-off regime\(^9\).

The new proposal holds on to the current cooling-off regime for doorstep transactions by making use of the very arguments that permeate traditional legal literature of consumer law since its development. These arguments depict cooling-off periods as instruments to strengthen the bargaining position of consumers. This is necessary because consumers are unprepared for the surprising initiatives of the trader\(^10\). Moreover, the “Consumer Watchdog”\(^11\) is apprehensive of sellers’ tendency to engage in pressure selling and of intimidated consumer choice\(^12\). Cooling-off periods are supposed to counter these concerns.

### C. Economic Assessment of Cooling-off Periods

From an economic perspective, promoting consumer interests is only necessary if potential market failures give rise to the concern that the market outcome is not efficient, i.e. market failures distort the functioning of market forces. Rekaiti and Van den Bergh provided a seminal analysis on the topic\(^13\). Basically, cooling-off periods can be a suitable remedy to cure market inefficiencies in case the interaction of market forces fails to generate an efficient market equilibrium.

Allocative efficiency is certainly one the most fundamental economic concepts. It describes a theoretical state of nature in which scarce resources in a particular market have moved to those economic agents who value them most. In other words, all possible gains from trade between the two market sides have been realised\(^14\). For the competitive paradigm to hold, certain conditions have to be met. Three of these benchmark assump-
tions — concerning market structure and consumer choice — are of particular interest here. For one, the market is assumed to be competitive, i.e. there is such a low degree of market concentration that the impact of individual agents, especially sellers, on the market price is negligible. Market agents are price-takers treating the market price as pre-determined\textsuperscript{15}. For another, consumers are considered to be completely and perfectly informed. They possess all the relevant information about the objectively feasible action set: the alternatives available for choice as well as the corresponding outcome of each alternative\textsuperscript{16}. The final condition requires that consumers can be assumed to behave rationally. In order to maximise a well-ordered function — in case of consumers: utility — economic agents choose that alternative from the objectively feasible action set which satisfies their stable over time preferences in the most efficient way possible\textsuperscript{17}. When there is reason to believe that one of these core assumptions does not hold and that instead corresponding market failures emerge, cooling-off periods are supposed to be an adequate tool to redress the resulting inefficiencies.

But as usually in economics, each solution presents a trade-off between certain merits and certain drawbacks — benefits and costs — both of which have to be balanced carefully. On the cost side, cooling-off periods in doorstep sales might cause two adverse effects in particular. First, they facilitate opportunistic behaviour by consumers. Second, cooling-off periods eventually increase uncertainty until the transaction is completed\textsuperscript{18}. If the adverse effects exceed the benefits of partially curing market failures, may be in fact be welfare reducing. Resolving the trade-off by sidestepping the disadvantages as much as possible while preserving the advantages is one of many challenges for good policing. For the remainder of this section, I will consider this trade-off in more detail and discuss arguments in favour of as well as against this regulatory instrument.

I. Situational and Temporary Monopolies

One concern to deal with in doorstep transactions is market power. When the degree of concentration on the side of sellers in the market exceeds the competitive level, each of them has at least a non-negligible impact on the price. This market power results in ability to raise prices above the competitive level where price otherwise equals marginal costs and leads — in the absence of perfect price discrimination — to an efficiency

\textsuperscript{15} Varian (2006, Ch. 22).

\textsuperscript{16} Frank (2008, Ch. 11). Note that complete and perfect information are not identical. Complete information refers to a state of knowledge about the previous structure of a given game and the objective functions of each player. Perfect information describes a state of knowledge about the other players’ actions during the course of a given game. See Baird, Gertner and Picker (2003) and Rasmusen (2007).

\textsuperscript{17} Becker (1976, p. 153); Frank (2008, Ch. 3). Specifically on the rationality assumption, see Kahneman (1994); Kirchner (1994); Selten (1994).

\textsuperscript{18} If the principal has to fulfil his primary contractual obligations — usually paying some amount of money — only after the cooling-off period has expired, implementing cooling-off periods also generate costs of delay equal to the time value of money. In the context of doorstep transactions, I assume that the price for the product is paid immediately. Hence the costs deferred payments do not play a role. For further discussion of the costs of delay see Rekaiti and Van den Bergh (2000).
loss. However, markets for consumer products such as cosmetics, kitchen utensils, and home improvement products which are most often sold at the doorstep are generally characterised by a large number of sellers. The presence of many sellers gives rise to the presumption that individual sellers can hardly influence the price because consumers would make their purchase elsewhere if an individual price exceeds the competitive level.

The special twist in doorstep sales is that seller market power is likely to emerge temporarily. This does not involve the typical understanding of the monopoly concept rooted in traditional economics according to which a typical monopoly is large, likely spanning an entire industry, and illegal or at least thoroughly regulated. In most cases of direct selling at the doorstep, in contrast, consumers will have, in theory, plenty alternative sources of supply. The industry per se might be highly competitive in fact. The monopoly concept employed here, however, is detached from traditional market structures and merely describes the ability to significantly raise prices above the competitive level. Lele identifies two dimensions of any monopoly: (1) space and (2) time. He defines monopolies as “an ownable space for a useful period of time”. Such monopolies are situational and, due to their nature, temporary.

With regard to direct selling at the doorstep to either a single consumer or a group of consumers, the two dimensions of situational monopoly are impressively obvious. First, the ownable space is determined by spatial limited place of the consumers or wherever the sales person approaches him. It is highly tangible. From the moment of ringing the door bell until the consumer makes his decision the sales person enjoys a geographically exclusive area of practice. A different kind of situational monopoly space is product uniqueness. Then, the particularities of the marketing and selling techniques used by sales persons come into play. For instance, unknown products may be claimed to have special characteristics, to perform extraordinary functions, or to be unavailable in common retail outlets. Moreover, persuasive sales persons might generate the mere perception of uniqueness. Rekaiti and Van der Bergh hence emphasise that consumers might be convinced that it will be far more costly for them to seek out alternative suppliers. Second, the time dimension, i.e. the monopoly period, may last only a couple of minutes. However, this is still very comfortable because, in any case, the consumer has to make a decision whether or not to conclude a contract in the monopolistic environment. During this period, competitors are unable or at least severely limited to compete within the monopoly space. The naturally intimate frame

19 Varian (2006, Ch. 24).
20 For an overview of which products are most often sold at the doorstep, compare SELDIA Annual Report 2009/2010.
21 Lele (2007, Ch. 2).
22 Lele (2007, p. 45).
23 Lele (2007) also identifies cases in which the monopoly space is intangible. The monopoly space is then fundamentally based on psychology and emotion. Instead of being manifested in some physical location or in some set of presumed characteristics. It exists only in the mind of consumers. Examples would be custom and tradition as well as intense emotional involvement.
of a doorstep transaction closes out competitors.

If the theoretical framework about situational monopolies is to be taken seriously, sellers should be able to increase prices to supra-competitive levels because of their situational and temporary market power. In line with this prediction, Eisenberg presented cases of doorstep sales which involved more than twice as high a price than was usual for comparable products in conventional retail stores\(^{26}\). It is not conceivable that such prices are to be justified by higher corresponding costs of selling goods on a doorstep basis. Even though these single cases cannot establish systematic empirical evidence, they at least illustrate the idea that sales persons in doorstep transactions significantly profit from situational market power.

The merit of cooling-off periods employed after doorstep transactions is that their use renders this situational monopoly – using the terminology of industrial organisation – contestable\(^{27}\). The consumer can use the time of cooling-off to compare the bargain and to shop for better offers. In this sense, a cooling-off period limits the monopoly space by facilitating access to the consumer which reduces the disadvantage of competing sellers and makes entry into the market less costly – even possible in the first place. By decreasing barriers to entry, a cooling-off period establishes the threat of potential competition which may serve to discipline direct sellers with situational monopoly power to some extent.

II. Asymmetric Information

Reasonable consumer decisions at the doorstep require a sufficient level of information about the transaction. Note that this is a necessary but not an sufficient condition. As Simon noted, “a wealth of information creates a poverty of attention and a need to allocate that attention efficiently among the overabundance of information sources that might consume it”\(^{28}\). Therefore, humans often possess the relevant information but yet systematically fail to make decisions in line with rational choice predictions\(^{29}\).

Putting this line of thought aside for a moment\(^{30}\), buyers and sellers in a welfare optimising competitive market are, by assumption, perfectly and completely informed about product attributes, i.e. the quality of products being sold, about existing available alternatives, and the consequences of each hypothetical transaction. However, knowledge is usually highly dispersed\(^{31}\). Relaxing the core assumption of complete and perfect information to a necessary level of incompleteness and imperfectness due to informational fragmentation is innocuous if information can be obtained very easily or even costless.

\(^{26}\) Eisenberg (1982, p. 779).
\(^{27}\) Baumol (1982); Baumol et al. (1986); Tirole (1994, Ch. 8).
\(^{28}\) Simon (1971, p. 41).
\(^{29}\) As a starter compare Andreassen (1987); Loewenstein and Schkade (1999); Simonson and Tversky (1992); Thaler (1980); Tversky and Kahneman (1974; 1981).
\(^{30}\) I will return to this problem in Section C.III. and Section D. specifically.
\(^{31}\) Hayek (1945).
Prices would simply adjust to reflect transactional differences. Unfortunately information costs render the acquisition of complete and perfect information either too expensive or – insofar as the future is concerned – simply impossible. Contracts are necessarily incomplete\textsuperscript{32}.

This gives rise to the concern that buyers and sellers do not have the same information but that, instead, serious information asymmetries exist such that one agent has more or better information than the other\textsuperscript{33}. In the principal-agent-framework, the party with informational disadvantage is the principal while the other is the agent\textsuperscript{34}. The pre-contractual mode of asymmetric information, i.e. hidden characteristics, is particularly relevant for consumer contracts. Hidden characteristics exist whenever the party in informational deficit lacks information while negotiating\textsuperscript{35}. Without measures like e.g. self-selection mechanisms (signalling, screening)\textsuperscript{36} or appropriate institutional design which successfully handle the hidden characteristics problem, the response to pre-contractual information asymmetries is adverse selection, i.e. a process during which inferior alternatives crowd-out superior ones\textsuperscript{37}. As first demonstrated by Akerlof, adverse selection may cause significant problems with the efficient functioning of a market\textsuperscript{38}. In the limit, the adverse selection problem can be so severe that all but the worst characteristics disappear from the market\textsuperscript{39}.

Informational deficits on the side of consumers in the form of hidden characteristics are particularly prevalent when the seller offers goods with experience or credence (trust) dimensions. These dimensions are not or at least very difficult to observe ex ante. While experience characteristics can be evaluated upon consumption or use\textsuperscript{40}, even after the purchase and the consumption of the good or the service credence dimensions cannot or only very costly be ascertained\textsuperscript{41}. In the latter case, when experts do not sell the credence good themselves, consumers may still turn to outside experts. However, within the doorstep transaction the seller tends to appear as the expert and consumers have no time to call in a third party expert. Related to the argument of situational market power, Wolinsky shows indeed that in a market for credence goods experts tend to privately set a price which is too high and that such informational asymmetries may lead to welfare costs\textsuperscript{42}.

Undoubtedly, goods like e.g. cosmetics and personal care products, kitchen utensils, nutrition supplements, and dietary products which are most often sold at the doorstep

\textsuperscript{32} Furubotn and Richter (2005).
\textsuperscript{33} Varian (2006, Ch. 37).
\textsuperscript{34} Furubotn and Richter (2005, Ch. 5).
\textsuperscript{35} Campbell (2006, Ch. 1); Furubotn and Richter (2005, Ch. 5).
\textsuperscript{36} Compare Spence (1976); Stiglitz (1975); Kreps (1990).
\textsuperscript{37} Campbell (2006, Ch. 1); Varian (2006, Ch. 37).
\textsuperscript{38} Akerlof (1970).
\textsuperscript{39} Birchler and Butler (2007, Ch. 13).
\textsuperscript{40} Nelson (1970).
\textsuperscript{42} Wolinsky (1995).
certainly exhibit experience and credence dimensions\textsuperscript{43}. In fact, it is the experience dimensions that make selling at the doorstep attractive because it creates the possibility for the seller to demonstrate and for the consumer to test the product. Although Rekaiti and Van den Bergh emphasise the importance of cooling-off periods especially in the context of distance selling\textsuperscript{44}, it is a vital instrument to overcome adverse selection also with regard to doorstep sales. Sure, the uncertainty about experience dimensions is bigger in distance selling transactions as opposed to doorstep sales since testing and presentation of the product is not possible. But the opportunity of testing is relatively limited and the interpersonal social nature of the doorstep transaction may lead the consumer to not gather information sufficiently. Anticipating vending techniques which aim at talking prospect buyers into the purchase of the product may even increase informational uncertainty of consumers. If asymmetric information prevents an informed consumer choice, i.e. if the consumer cannot differentiate product dimensions which match his preferences from those which do not, ceteris paribus, adverse selection kicks in. The uncertainty is reflected in consumers’ willingness to pay: the price that the consumers are willing to pay for a product with average characteristics is less than the price that the sellers of products with superior characteristics are willing to accept. In a competitive environment, these sellers have to reduce production costs in turn which probably translates into inferior product characteristics. If sellers anticipate this play, their lower expectations initiate a race to the bottom such that inferior product dimensions crowd out superior product dimensions.

The driver of adverse selection is uncertainty about certain dimensions of the transaction. It is dangerous to trade with a better informed party. The information deficits underlying the problem of adverse selection can be tackled by using information technologies. Cooling-off periods can, in fact, be seen as an indirect mechanism for information revelation. Prior to the contract, the opportunity for testing experience dimensions is very limited but a cooling-off period extends this scope. It enables a discovery process for experience dimensions. This indirect discovery process facilitates to leave the contract incomplete and, thereby, to save contracting costs.

More importantly however, the parties do not know whether the other side is honest and reliable or whether it may act opportunistically. Mechanisms which mitigate the consequences of hidden characteristics hence have to establish trust in the relationship between principal and agent. Trust can be generated, if agents can make credible promises. Although the agent’s actions can be made credible in several ways, with regard to doorstep transactions without repeated play and reputation the most promising alternative is implementing self-selection mechanisms. Since consumers in doorstep transactions will hardly be able to sort the informed sellers by screening, i.e. to make offers that differ in one more dimensions in order to create incentive compatibility conditions referred to as self-selection constraints\textsuperscript{45} or truth-telling constraints\textsuperscript{46}, sellers can

\textsuperscript{43} Compare SELDIA Annual Report 2009/2010.
\textsuperscript{44} Rekaiti and Van den Bergh (2000).
\textsuperscript{45} Varian (1992, Ch. 25).
\textsuperscript{46} Furubotn and Richter (2005, Ch. 5).
credibly reveal information by signaling. In order to realise gains from trade, sellers of products with superior characteristics generally have an incentive to reveal information anyway. However, they may as well act opportunistically ex ante and overstate these characteristics. Hence, special signaling devices become important. Spence distinguishes two qualitatively different types of signaling devices: (1) contingent contracts and (2) exogenously costly signals\(^{47}\) – the latter of which is not of utmost importance in doorstep transactions. Contingent contracts involve a menu of options for the agent that are created by virtue of the principal’s subsequent ability to observe the initially uncertain characteristics and to transact with the agent at this later point. Contingent contracts will therefore transmit information provided that agents and principals are in contact for a sufficient amount of time and that principals are able to observe the initially unknown characteristics. A contingent contract mechanism thus implicitly requires sellers to reveal the hidden dimensions of their product. Anticipating the threat of appropriate penalties, principals will report truthfully so that, in the limit, no penalties have to be paid.

Very much like warranties and guarantees which fulfill both a signaling and an incentive function in a contingent contract\(^{48}\), cooling-off periods in doorstep transactions can be seen as implicit contingency clauses. They establish a period of time, in which the relationship between principals and agents is not yet in a post-contractual state. To the extent the consumer is not satisfied with the product quality he can easily withdraw from the contract. Rational choice economics then predicts that if the product sold at the doorstep falls short of consumer expectations to an extent that exceeds anticipated further transaction costs, the consumer will withdraw from the contract and return the product. This renders the contract conditional upon non-withdrawal up to a specific point in time. Seller behaviour which overstates product dimensions which cannot be observed ex ante can then be retaliated. In the presence of cooling-off regimes, cheating increases withdrawal costs. Sellers are naturally induced to disclose information about the quality of the product or services offered through the price mechanism and hence corresponding information signals are credible. This informative role of a cooling-off period naturally depends on its duration and the underlying unobservable product characteristics.

III. Non-rational Consumer Choice

Standard economic theory builds upon rational decision making by its agents. When this rationality assumption is in question, the efficient functioning of market institutions cannot be inferred. To be sure, there are many contexts in which the hypothesis of perfect rationality certainly works well\(^{49}\). Notwithstanding these cases, even if having sufficient information relevant to their choice or if being able to acquire it without diff-

---

47 Spence (1976).
49 Compare Levine (2011); Smith (1982).
difficulty, humans instead of economic agents often systematically fail to make sensible use of information and hence act not perfectly rational in the sense of rational choice economics. These systematic deviations from rational choice predictions – or heuristics as they are often called – are a source of bias. But they are still a critical element in problem solving. I want to emphasise here that, although many do, it is misleading and at least axiomatic to speak of “errors” in decision making or “irrationality”. Often, the source of observed deviations is a mismatch between the decision process used and the decision environment such that ecological rationality is at stake. Human reasoning, decision making and behaviour are ecologically rational when they are adapted to the environment in which humans act. This idea is reflected by findings in social and cognitive psychology. According to Dual Process Theory humans think in two systems. One system is intuitive and automatic (System I). The other is reflective and rational (System II). Whenever the environment triggers automatic instead of reflective thinking but the choice problem at hand requires the use of the latter, a decision inconsistent with rational choice predictions is likely to occur. In fact, this is quite natural and not an error or an anomaly.

Taking the possibility of such phenomena into account, the question here is whether or not imperfect rationality is important enough to ultimately warrant the implementation of a cooling-off period. In their general discussion, Rekaiti and Van der Bergh contemplate the importance of cooling-off periods for inter-temporal choices, i.e. decisions about trade-offs between benefits and costs are dislocated over time. In general, when people consider tradeoffs between two future moments, they give stronger relative weight to the earlier moment as it gets closer. Although problems of intertemporal choice are prevalent in consumer contracts such as e.g. mortgages, loans, insurance even health club memberships, the typical doorstep transaction hardly involves products or services which give rise to the concern of time-inconsistent preference ordering.

Rekaiti and Van der Bergh further argue that due to a reduced risk perception, consumers often simply buy the product offered instead of refusing to buy from the doorstep salesperson and shop around for better products or lower prices. The authors attribute this alleged reduced risk perception to high pressure marketing techniques – what Eisenberg calls “unfair persuasion” – employed by some sellers. But some amount of risk is necessary to in order to trigger deliberation and to make a reflective decision. Cooling-off periods then may function to counter unconscious buying and mindless decision-making. A cooling-off period allows risk perception to adjust

---

50 See e.g. Bergh and Gigerenzer (2010).
51 Gigerenzer et al. (1999); Smith (2003); Smith (2007).
52 For reviews see Chaiken and Trope (1999); Evans and Frankish (2009).
54 Frederick et al. (2004); Loewenstein and Thaler (1989); O’Donoghue and Rabin (2004).
56 Also compare Art. 20 (1), (2) Consumer Rights Directive.
59 Compare Thaler and Sunstein (2009, Ch. 2).
and enables the consumer to reconsider his short-term choice vis-à-vis his long-term preferences.

Apart from such externally induced unconscious decision making, there is another aspect of consumer choice which is worth elaborating in the context of cooling-off periods for doorstep transactions: adaptation. A reasonable choice requires that economic agents not only predict which alternative will be more satisfying at the moment but also how the experience of each would evolve over time if chosen. The quality of the decision depends crucially on the accuracy if this prediction. For the most part, individuals estimate the attractiveness of a good or activity by trying it and seeing how it affects us. On the basis of the resulting initial impressions, they then make the purchase decision. These short-run effects are the most vivid and readily available sources of information at the moment of decision. Thus, availability may bias the choice (availability heuristic). These disparities – usually referred to as “hot-cold-empathy gap” and “projection bias” – create problems of self-control.

Naturally such a static perspective between hot and cold states largely ignores effects of dynamic adaptation processes. But not accounting for how adaptation to experience over time will work out or making wrong affective forecasts altogether only distorts individual decision making, if this adaptation is more complete or quicker in some areas than others. Research on the determinants of life satisfaction indeed implies that affective forecasts are highly variable across different categories. Van Boven and Gilovich have found that after the initial rush of satisfaction, people tend to adapt much more quickly to the consumption of goods than to the consumption of experiences. Testing this idea in an experimental context, Nicolao, Irwin, and Goodman randomly assigned participants to spend several dollars on either a material or experiential purchase, tracking participants’ happiness with their purchase over a two week period - incidentally the common interval of cooling-off periods in doorstep transactions. Over the course of the two weeks, participants exhibited slower adaptation to experiential purchases than to material purchases. One reason why this happens is that people adapt most quickly to that which doesn’t change. This is especially relevant for doorstep sales where goods rather than experiences are sold. But, as psychologists know, when people make predictions about the hedonic consequences of future events these affective forecasts are often wrong. Thus, if individuals choose among potential alternatives in accordance with how they react to them initially, the logical implication is that they will overinvest too heavily in consumption alternatives whose attractiveness decays quickly compared to experience alternatives whose attractiveness declines slower, or even grows, over time.

---

60 Compare Loewenstein and Schkade (1999).
63 Loewenstein et al. (2003).
64 Van Boven and Gilovich (2003).
65 Nicolao et al. (2009). In order to achieve a higher happiness level, (Dunn et al., 2011) consequently suggest spending money to specifically buy more experiences and fewer material goods.
66 For reviews see Gilbert and Wilson (2007; 2009).
67 Frank (2008, Ch. 8).
During a proper cooling-off period, however, individuals can become aware about their specific adaptation pattern, ignorance of which might have caused initial mis-evaluation. By finally withdrawing from the contract inefficient over-investment can cheaply be undone.

IV. Adverse Effects: Moral Hazard, Risk-shifting, & Transaction Costs

The discussion so far indicates that, amongst other benefits, cooling-off periods appear to solve problems of asymmetric information. However, this holds true only for ex ante information asymmetries where the consumer has an informational deficit. But implementing cooling-off periods causes new information asymmetries ex post, i.e. after contract conclusion. Between contracting at the doorstep and the expiration of the cooling-off period, the seller can hardly monitor the behaviour - specifically, the proper handling of the product - of each and every consumer. The consumer might use the product during the cooling-off period excessively, i.e. beyond adequate usage, and return it to the seller after having claimed non-satisfaction. This is potentially very costly. The use of cooling-off period hence generates problems of hidden action which gives rise to post-contractual opportunism, namely moral hazard. The question that emerges is how this situation can be mitigated or even overcome if monitoring is impossible or too costly. Clearly, some inducement is necessary to align the post-contractual incentives of the parties involved and to internalise the negative externalities which result from opportunistic consumers. Stuart proposes two dimensional rental payments by the consumer which consist of (1) an appropriate amount of money for the time the consumer uses the product and (2) the costs incurred by the seller from that use, namely the negative externality of usage.

Cooling-off regimes might set such incentives also by making the consumer reliable for excessive or even normal usage and deterioration for which he would have to pay compensation. For the scope of this discussion, however, it must suffice to assert that cooling-off regimes have to account for this adverse effect if the full potential of this regulatory instrument is not to be jeopardised.

As also discussed above, cooling-off periods can be seen as implicit clauses in contingent contracts which transmit information and thereby reduce ex ante problems of asymmetric information, namely adverse selection. But contingent contracts have yet another characteristic which is related to the creation of ex-post informational asymmetries: they redistribute risk from one party to another. While without a cooling-off period consumers face risk regarding the product quality, under a cooling-off regime sellers now face the risk of consumers withdrawing from the contract. In this respect, providing all doorstep buyers with a cooling-off period might prove very costly for both sellers and consumers. Even if, as is commonly done, investors (in direct selling firms) are assumed

---

68 Furubotn and Richter (2005, Ch. 4).
70 This approach can e.g. be found in German Civil Law. See Sections 312, 355 I 1, III 1, 346 II 1 Nr. 3 BGB (German Civil Code). The Consumer Rights Directive only accounts for excessive usage in Art. 17.
to be risk-neutral because of the ability to diversify non-systematic, i.e. firm-specific risk\textsuperscript{72}, there are relative uncertainty costs which are not compensated in the case of consumers’ withdrawal from contract. Depending on the corresponding price elasticity of demand, these costs can be partially passed on to consumers and increase the market price. Naturally, this uncertainty costs increase if investors are assumed to be risk averse\textsuperscript{73}.

The effects of both the shift in risk and the cost of moral hazard can be illustrated mathematically\textsuperscript{74}. Suppose a profit maximising direct seller who has situational monopoly power and can therefore set the price $p$ of his product faces both a linear demand function $q(p) = a - bp$ and a linear cost function $C(q) = cq + C_{fix}$. Given his profit function:

$$P(p) = pq(p) - C(q(p))$$

which translates into:

$$P(p) = p(a - bp) - (c(a - bp) + C_{fix}),$$

the seller will set marginal revenue equal to marginal cost and derive equilibrium price $p^*\textsuperscript{75}$:

$$p^* = \frac{1}{2} \left( \frac{a}{b} + c \right).$$

Now consider a similar case with a cooling-off period which imposes some risk on the seller. Suppose only a share $r$, with $0 < r < 1$, of all doorstep transactions is actually finalised and a share $(1 - r)$ of consumers withdraws from the contract within the cooling-off period. This also means that withdrawal does not take place with probability $r$ because consumers stick to the contract but happens with counter probability $(1 - r)$. However, while all transactions are costly to initiate, only share $r$ of transactions yields revenue while share $(1 - r)$ of consumers get back their money paid. Let $p_{co}$ denote the market price under a cooling-off regime. Then the direct seller strives to maximise profit given by:

\textsuperscript{72} Compare e.g. \textsc{back and baruch} (2004).

\textsuperscript{73} Compare e.g. \textsc{Grossman and Stiglitz} (1980).

\textsuperscript{74} Taking only risk, i.e. first order uncertainty, and not ambiguity, i.e. second order uncertainty, into account does not vitiate the basic intuition here. Further modeling ambiguity can simply be done by transforming probability $r$ with a corresponding probability density function. The basic insight would stay the same.

\textsuperscript{75} See Appendix A.I.
\[ P(p_{co}) = rp_{co}q(p_{co}) - C(q(p_{co})), \]
\[ = rp_{co}(a - bp_{co}) - (c(a - bp_{co}) + C_{fix}). \]

Consequently, the seller will now derive equilibrium price \( p^*_co \): \[ p^*_co = \frac{1}{2} \left( \frac{a}{b} + \frac{1}{r}c \right). \]

But since \( 0 < r < 1 \), \( \frac{1}{r} > 1 \). Hence:
\[ \frac{1}{2} \left( \frac{a}{b} + \frac{1}{r}c \right) > \frac{1}{2} \left( \frac{a}{b} + c \right), \]
\[ p^*_co > p^*. \]

A cooling-off period leads to a higher market price because it leads to risk and hence increases relative costs.

Suppose now that, on top of realising only share \( r \) of the revenue due to withdrawing consumers, in case of withdrawal there is an additional costs component \( k \). These costs could reflect e.g. the losses due to post-contractual opportunistic behaviour by consumers, i.e. moral hazard, just as discussed above. The seller’s cost function then slightly changes to \( C(q) = cq + (1 - r)kq + C_{fix} \). Let \( p_{co,mh} \) signify the market price under a cooling-off regime in the presence of moral hazard by consumers. In order to maximise profit:
\[ P(p_{co,mh}) = rp_{co,mh}q(p_{co,mh}) - C(q(p_{co,mh})), \]
\[ = rp_{co,mh}(a - bp_{co,mh}) - (c(a - bp_{co,mh}) + (1 - r)k(a - bp_{co,mh}) + C_{fix}). \]

the seller would finally sell at equilibrium price \( p^*_{co,mh} \):
\[ p^*_{co,mh} = \frac{1}{2} \left( \frac{a}{b} + \frac{1}{r}(c + (1 - r)k) \right). \]

Since \( 0 < r < 1 \), however, it follows that \( (1 - r)k > 0 \). Hence:

\(^{76}\) See Appendix A.II.
\(^{77}\) See Appendix A.III.
The market price increases additionally, if consumer withdrawal from contract is costly for the seller just like in moral hazard cases.

Uncertainty, namely risk, and moral hazard lead to an increase in (relative) marginal cost which partly translates into higher prices. Higher prices, ceteris paribus, lead to welfare losses. Both effects have to be limited as far as possible as they counterbalance efficiency gains from implementing cooling-off periods. As a corollary, the implementation of cooling-off periods also increases transaction costs. If consumers decide to withdraw from the contract they have to reason about the product within the cooling-off period, formulate their decision before its expiration, search for the appropriate reference person and pay the cost of transmission of their declaration. To be sure, these costs might, in fact, not be high. But they also are not negligible.

V. Unintended Consequence: Perverse Incentive to Elicit Compliance

Apart from the trade-off discussed so far between the potential of cooling-off periods to cure market failures and adverse effects of this legal instrument, purposeful solutions to economic problems might cause unintended consequences\(^78\). Specifically, an intervention in a complex system might always create unanticipated and often undesirable outcomes. In general, three groups of unintended consequences exist: (1) positive unexpected benefits (windfalls), (2) negative unexpected detriments occurring in addition to the desired effect of a given policy, and (3) perverse effects contrary to what was originally intended. Of course, such outcomes ideally should be accounted for ex ante - although this is a notoriously difficult task.

Therefore, I am particularly worried about the latter mode of unintended consequences. In short, cooling-off periods establish a perverse incentive for sellers. When consumers can return the good without qualified reasons, sellers might in principle be induced to, as discussed above, truthfully signal the products characteristics, take into account the potential competition after the initial agreement at the doorstep, and account for consumers’ rational reconsideration about the contract within the cooling off period. Sellers might, however, also respond to a cooling-off regime by reinforcing consumers’ compliance with the contract. They are incentivised to manipulate downwards the probability of withdrawing from contract, i.e. to minimise \((1 - r)\) up to a point where marginal gains of manipulating compliance equal marginal costs from behaviour induced by cooling-off periods. Assume, for a moment, that consumers would comply with the contract and would often not make use of their right to withdraw from the contract

\[ \frac{1}{2} \left( \frac{a}{b} + \frac{1}{r} (c + (1 - r)k) \right) > \frac{1}{2} \left( \frac{a}{b} + \frac{1}{r} c \right), \]

\[ p_{co,mh}^* > p_{co}^*. \]

**V. Unintended Consequence: Perverse Incentive to Elicit Compliance**

Apart from the trade-off discussed so far between the potential of cooling-off periods to cure market failures and adverse effects of this legal instrument, purposeful solutions to economic problems might cause unintended consequences\(^78\). Specifically, an intervention in a complex system might always create unanticipated and often undesirable outcomes. In general, three groups of unintended consequences exist: (1) positive unexpected benefits (windfalls), (2) negative unexpected detriments occurring in addition to the desired effect of a given policy, and (3) perverse effects contrary to what was originally intended. Of course, such outcomes ideally should be accounted for ex ante - although this is a notoriously difficult task.

Therefore, I am particularly worried about the latter mode of unintended consequences. In short, cooling-off periods establish a perverse incentive for sellers. When consumers can return the good without qualified reasons, sellers might in principle be induced to, as discussed above, truthfully signal the products characteristics, take into account the potential competition after the initial agreement at the doorstep, and account for consumers’ rational reconsideration about the contract within the cooling off period. Sellers might, however, also respond to a cooling-off regime by reinforcing consumers’ compliance with the contract. They are incentivised to manipulate downwards the probability of withdrawing from contract, i.e. to minimise \((1 - r)\) up to a point where marginal gains of manipulating compliance equal marginal costs from behaviour induced by cooling-off periods. Assume, for a moment, that consumers would comply with the contract and would often not make use of their right to withdraw from the contract.
although it would objectively or rationally be the reasonable choice. This would render cooling-off periods ineffective and consequently open again the door for the market failures discussed above. In the following section, I will turn now to this very problem extensively.

D. Choice Architecture of Cooling-off Periods in Doorstep Transactions

The idea of a perverse incentive to stimulate compliance with doorstep contracts in the face of a relatively cheap option – as established by a cooling-off regime – to withdraw from these contracts raises the question if and, in particular, how doorstep sellers might induce consumers to stick to the agreement. Such behaviour can be created in particular by employing negotiation techniques which exploit psychological forces. The analysis of such mechanisms requires taking a detailed look at both the underlying decision structure and the common decision process of consumers. Thus the focus is on the individual decision making behaviour of consumers and on how it is affected by psychological phenomena.

Since the decision structure in question here is mainly shaped by the legal rules, it is suitable to adopt the framework of choice architecture as recently spotlighted by Thaler and Sunstein\textsuperscript{79}. Lawmakers – whether regulators, judges (public ordering) or private organisations (private ordering) – design decision structures and therefore are, whether they want or not, choice architects and as such need to keep in mind that the users of their creations are confronted everyday with a myriad of choices and cues. Every design which people are exposed to influences the choice they make. Hence the decisions of choice architects, such as regulators and judges, have to reflect a good understanding of human behaviour. Apart from the decision making predicted by economics, one central element of the choice architecture framework is hence to accommodate basic principles of human psychology\textsuperscript{80}.

The goal then is to find inconveniences in the decision process and to discuss alternative, maybe even preferable solutions for the decision problem in question. Such an analysis has to start with a clear description of the relevant decision situation.

I. Decision Structure of Cooling-off Regimes in Doorstep Transactions

A doorstep transaction ranges from a pre-contractual relationship, over the actual contracting situation, to a post-contractual relationship determined essentially by either cancelling the contract or the expiration of the cooling-off period. During this transactional interval the consumer is confronted with a three-staged decision scenario.

His first decision has to be made immediately at the doorstep. The consumer has

\textsuperscript{79} Thaler and Sunstein (2009).

\textsuperscript{80} Thaler and Sunstein (2009, Ch. 5).
to decide whether or not to grant access to his private domain, whether or not to listen to what the sales person has to offer. In fact, this decision is about establishing the situational monopoly space. If the consumer has granted access to the sales person, the transaction unfolds to some form of presentation of the product or service offered. Afterwards, the consumer has to make his second decision, namely whether or not to purchase whatever the salesperson offers. This then is the contracting decision. Finally, the third consumer decision is implemented by the cooling-off regime itself. Before the cooling-off period expires, the consumer has to decide whether or not to withdraw from the contract. If he remains passive, the consumer validates the contract. This decision structure is captured by Figure 1.

On each stage of the decision process, different behavioural phenomena might affect the decision making. I will turn now to look at behavioural patterns that affect this decision structure at each single stage.
II. Stage One: Surprise

On stage one, the salesperson asks a simple favour at the doorstep: being allowed to enter in order to present the consumer with what he has to offer. The consumer merely has to decide whether or not to open the floor for further interaction with the salesperson. For the sake of simplicity, it is assumed that consumer and salesperson do not already know each other, i.e. there are no prior events which have to be considered. The choice of the consumer presents itself as very simple. From an economic perspective, a rational consumer’s choice is only shaped by expected cost of time and the expected benefit of additional information, both resulting from an eventual presentation of the salesperson. Economics would then predict that the consumer grants access to the salesperson, if he estimates the expected marginal benefit from additional information higher than his expected marginal opportunity costs.

From a behavioural perspective, there is hardly any systematic research on such very simple and isolated requests indeed. Assuming no prior relation between the individuals, compliance with the salesperson’s request may, if anything, be affected by surprise on the side the consumer of the appearance of the salesperson and his request. Remember that the menace of (unfair) surprise is also a part of the legal rationale of the current cooling-off regime.

Surprise is the automatic reaction to an inconsistency\(^{81}\). In a schema-theoretic or belief-based conceptualisation of surprise, its main function is to enable processes that help to remove schema-discrepancies, i.e. an incompatibility between a stimulus and previously formed beliefs about the individual environment (schema). From the perspective of Dual Process Theory, in such cases, the stimulus does not correspond with the expectations of the automatic system. Interruption of ongoing activities and involuntary focusing of attention on the surprising event serve the purpose of removing schema-discrepancies\(^{82}\). Note that at this stage we are not elaborating on surprise about the quality of the product or service offered\(^{83}\). The kind of surprise at this early stage is only related to the appearance of the sales person and her request to enter. Prior to any presentation, there is hardly any information on the quality of product or service offered. Does surprise of a simple request affect the subsequent response of the consumer? Unfortunately research on the subject is difficult to find. Only one study of the social psychologists Milgram and Sabini sheds some light on this question\(^{84}\).

Milgram and Sabini conducted a very simple but nevertheless impressive field experiment in the New York subway. The researchers set out to study the responses to a violation of social norms. The experiment simply involved asking people for their seats although the social norms on the New York subway – as posited by Milgram and Sabini – are that, for one, seats are filled in the order of passengers’ arrival, i.e. on a first-

\(^{81}\) Lorini and Castelfranchi (2007).
\(^{82}\) Meyer et al. (1991).
\(^{83}\) For such surprise the effect is ambiguous: It may yield positive (delight), negative (shock), and neutral (amazement) interpretations. Compare Charlesworth (1969).
\(^{84}\) Milgram and Sabini (1983).
come-first-serve basis, and that, for another, passengers are discouraged to talk to one another despite being squeezed into close proximity. Requesting occupied seats would hence violate both rules of social interaction. By doing so, special attention was paid to not frame the request as demand to give the seat up or question the right to the seat. In fact, Milgram and Sabini deliberately chose a reasonable form of request which is yet quite rare in everyday life – very much like the request of a salesperson at the doorstep to enter and be allowed to demonstrate whatever product or service is offered. It is especially this characteristic which makes the findings of the psychologists interesting for the present study. After having been asked for their seat, subjects could respond by either giving up the seat or refusing to do so.

In their field experiment, the researchers employed four different treatments, two of which are important in the present context. In the first condition, the experimenter approached a random seated subject without prior notice and asked “Excuse me, may I have your seat?”. When all seats were occupied, altogether 56% of the subjects complied with this request. The second condition of relevance here was specifically included because Milgram and Sabini believed that their subjects might have been so startled with the request that they only had an inadequate amount of time to formulate justified denial. Realising that a justification is not required or constructing a reason for non-compliance takes time. Hence, in the first condition “[m]any subjects may have given up their seats simply because they didn’t know how not to.” Therefore, in the second condition subjects were indirectly alerted that their seat will be requested when, in front of the subject, one experimenter asked another one twice “Do you think it would be alright if I asked someone for a seat?” and the latter answered “I don’t know.”. After a break of approximately ten seconds, the experimenter turned to the subject and formulated the exact same request from the other condition: “Excuse me, may I have your seat?”. As predicted by the psychologists, the experimenters only received seats 36.5% of the time - that is 19.5% less. Being prepared to turn down the request reduced compliance significantly. Put differently, using a surprising request apparently boosted compliance with said request by approximately 53.43% compared to an anticipated interaction. Independently of their research purpose, Milgram and Sabini revealed this surprise effect as a windfall. On average, people who are surprised by a request will comply more often simply because are momentarily unsure of themselves and unprepared for the request.

The effects of simple but surprising requests found by Milgram and Sabini play in the cards of doorstep sales persons. If direct seller and consumer have already agreed to an appointment, the sales person is ex ante allowed to enter the consumer’s private domain anyway. If such prior coordination does not take place, however, the surprise is likely to positively influence the access decision of the consumer beyond the dictate of opportunity costs. In these cases, the consumer is more likely to comply with the entry

85 Goffman (1971) elaborates that one does not merely decline a polite request but instead usually provides justification for a negative reply.
86 Milgram and Sabini (1983), text accompanying note 1.
request and therefore more often exposed to the second stage of the doorstep transaction than a purely economic assessment would suggest.

III. Stage Two: Reciprocation & Consistency

After building the situational monopoly space by accessing the consumer’s private domain, any doorstep seller will necessarily engage in some form of presentation of whatever product or service is offered. After all, this is why the direct seller requested entry in the first place. The presentation creates the opportunity to make use of certain negotiation techniques which may be specifically designed to exploit certain forces of cognitive and social psychology in order to elicit further compliance and, eventually, inducing the closure of a contract. That direct sellers make use of such techniques may seem like a bold and precarious presumption. But economic agents are fundamentally assumed to be self-interested\textsuperscript{87} – at least boundedly so\textsuperscript{88}. Moreover, to assume that direct sellers have limited knowledge of such influential psychological forces might commit to a normative fallacy with the risk of flawed deliberation\textsuperscript{89}.

In his research, Cialdini has carved out six major forces of psychology in social interaction\textsuperscript{90}. Two of these forces are of main interests here: (1) reciprocation and (2) the combination of consistency and commitment. Both forces have a tremendous potential of altering consumers decisions at the doorstep. Understanding how these pervasive aspects of human behaviour may be used to elicit certain consumer behaviour first requires taking a closer look on these basic phenomena as well as the resulting sales techniques.

1. The Impact of Reciprocation

Reciprocation is a social norm of exchange\textsuperscript{91}. With regard to socially interactive behaviour, in its positive form it describes the deeply rooted sense to make up for what other persons have provided us with. Thereby, the reciprocity rule creates a perception of future indebtedness to repay the favours received, as is widely illustrated in investment games\textsuperscript{92} and gift-exchange games\textsuperscript{93}. Importantly, reciprocation means a behavior that cannot be justified economically, i.e. in terms of selfish and purely outcome oriented preferences. This is what distinguishes reciprocation from seemingly reciprocal behaviour

\textsuperscript{87} Compare Furubotn and Richter (2005, Ch. 1).
\textsuperscript{88} Jolls et al. (2003).
\textsuperscript{89} Suchanek (2007, p. 31).
\textsuperscript{90} A compilation is provided by Cialdini (2007).
\textsuperscript{91} Gouldner (1960).
\textsuperscript{92} Compare Berg et al. (1995).
\textsuperscript{93} Fehr et al. (1993). Note, however, that reciprocation does not only apply to actions in kind but also appears to be the driver for punishing offers or sanctioning the actions of others which are perceived to act unfair. This is apparent in ultimatum games. See Camerer and Thaler (1995); G"uth et al. (1982); Thaler (1988).
like “reciprocal altruism” which stems from purely rational economic behaviour. A reciprocal altruist is only willing to reciprocate if there are future rewards arising from reciprocal actions. In game theory this kind of reciprocal action may be supported as an equilibrium strategy in infinitely repeated games or in finitely repeated games with incomplete information. But such forms of economic reciprocation are not the subject of the further analysis. There is a large body of evidence which indicates that reciprocity is a powerful determinant of human behavior beyond economic reasoning and that reciprocal behaviour is, in fact, omnipresent. The rule for reciprocation, in fact, appears to be so important for our social behaviour, so pervasive in human culture, that Cialdini considers it as “one of the most potent of the weapons of influence”.

Empirical research on reciprocal behaviour in social psychology can at least be traced back to a study conducted by Regan in 1971. In what might be labelled the first controlled gift-exchange experiment, Regan invited students to join a study on aesthetic evaluation of paintings. In a $3 \times 2$ factorial design which manipulated liking and favour-doing, subjects were grouped with another apparent participant who was, in fact, a research assistant. In some cases, this peer made an unrequested favour to the true subject. During a short break in the experiment, the feigned peer left the room with the consent of the experimenter and returned with two soft drinks of which he offered one to the subject. In the cases of the two control conditions, he did not provide the favour but simply returned empty-handed while either the experimenter offered the soft drink to the two participants or no soft drink was offered at all. After rating another set of paintings, the peer asked for a favour in return. He pretended that he was selling raffle tickets for a new car. If he sold the most tickets, he would win $50 and he could use this money prize. He politely requested from the subject to buy any of these raffle tickets – the more the better – at $0.25 per ticket. Thus, Regan could measure the level of compliance. As predicted, more raffle tickets were sold in the conditions where the apparent peer offered the soft drink to the subject. Interesting, however, is the strength of the effect: compliance was significantly increased on a $\rho = 0.01$ confidence level. These results indicate that people are more likely to comply with a request made by someone who has done them a prior favour than by someone who has not. Even more importantly, although Regan found a not surprising interaction effect between liking and favour-doing in the sense that a favour significantly increased liking, differences in liking had no significant effect on compliance with the later request. Regan remains cautious about the results concerning the liking but concludes that “the favour affects compliance not because it makes the recipient more attracted to the favor-doer [...] but because the recipient feels obligated to reciprocate the favor”.

Since then, gift-exchange experiments have been conducted again and again in the

---

94 Compare Trivers (1971).
95 Falk and Fischbacher (2006).
96 Compare e.g. Kreps et al. (1982).
97 Compare e.g. Fehr and Gächter (2000); Kahneman et al. (1986).
98 Cialdini (2007, Ch. 2, p. 16).
99 Regan (1971).
lab as well as in the field. In another early and well-known study, Kunz and Woolcott sent Christmas greeting cards to a random sample of 578 complete strangers who were divided by four social factors - namely location of receiver, receiver status, card quality, and sender status - into 24 subgroups. Notwithstanding the effect of the different social factors, the season’s greetings were returned by a large number, on average over 20%, of subjects just as expected. Under favourable social conditions, the response rate even spiked to 95.6%. More surprisingly, only six subjects inquired additional information about who send the Christmas cards. Once a Christmas card was received, the automatic system, properly trained by the rule for reciprocation, triggered an impressive card exchange\textsuperscript{100}.

Today, the concept of reciprocation has transcended into economics\textsuperscript{101}. Individuals behave reciprocally if they reward kind actions and punish unkind ones. With regard to labour relationships, for instance, the general finding in the lab is that wages above the market-clearing level are reciprocated with higher effort\textsuperscript{102} – just as hypothesised by Akerlof and Yellen\textsuperscript{103}. Reciprocal motivations also have important implications for the enforcement of contracts. An increase in the set of enforceable contracts may, on the grounds of reciprocation, may allow the achievement of non-negligible efficiency gains\textsuperscript{104}. But some studies also indicate that intentions matter more for reciprocation than the actual outcome\textsuperscript{105}. Therefore, the reciprocity rule may also be exploited and cause inefficient compliance if only, true or not, certain intentions can be conveyed in convincing manner.

\textbf{a) Benefactor-Before-Beggar Technique}

According to Cialdini, reciprocation involves three features which make it particularly apt for exploitation: (1) the rule is overpowering, (2) the rule enforces uninvited debts, and (3) the rule can trigger imbalanced exchanges\textsuperscript{106}. Firstly, reciprocation is an effective tool to gain compliance because of its dominance. The urge for reciprocal behaviour crowds out factors such as liking and familiarity as the studies of Regan as well as Kunz and Woolcott illustrate. For individuals indebted to a favour by virtue of reciprocity, it makes no difference whether or not they like their counterpart or, even, whether or not they know him. Reciprocity dominates factors which normally affect the decision to comply. This implies that individuals strange to or even disliked by whomever they approach can increase the probability that their requests are met by just providing a small favour prior to their requests. In fact, the wide use of all sorts of free samples as a marketing technique supports this idea. To be sure, it is also economically thoughtful

\textsuperscript{100} Kunz and Woolcott (1976).
\textsuperscript{101} Compare e.g. Bolton and Ockenfels (2000); Falk and Fischbacher (2006); Fehr and Schmidt (1999).
\textsuperscript{102} Fehr et al. (1993).
\textsuperscript{103} Akerlof (1982); Akerlof and Yellen (1988; 1990).
\textsuperscript{104} Fehr et al. (1997).
\textsuperscript{105} Brandts and Charness (2003); Charness and Levine (2007); Falk et al. (2003); Falk and Fischbacher (2006).
\textsuperscript{106} Cialdini (2007, Ch. 2).
of any seller to disclose information about whatever product or service he offers in order to eliminate adverse information asymmetries. While the free sample conveys the considerate intention to inform, the icing on the cake is that free samples are also a gift and as such can trigger reciprocation. On top of that, reciprocation appears to be a stronger factor in social behaviour than the drive for consistency which will be discussed later\textsuperscript{107}.

Apart from the dominance of the rule of reciprocity, other persons can, secondly, elicit the sense of future obligation by making an uninvited favour. Reciprocity does not require that reciprocating individuals have asked for what they have received. The soft drink in Regan’s study was offered to the subjects out of nowhere and, still, they strongly repaid this favour. An earlier request prior to the initial favour may even increase compliance but it is certainly not necessary to trigger reciprocal behaviour. The twist here is, as Cialdini emphasises, that although the sense to be obligated to repay the favour constitutes the very essence of the rule of reciprocation, it is the perceived obligation to accept and receive the initial uninvited offer that makes the rule easy to exploit\textsuperscript{108}. In the Regan study, only one out of 78 subjects refused the initial favour. The sense of obligation to accept severely reduces the ability to select whom individuals wish to be indebted to in the future. Instead of the responder, it is the favour-doer who can pro-actively make use of the influential power of reciprocation. Interestingly, all free choices are choices of the favour-doer who chooses the form of the initial favour as well as the form of the reciprocal favour. All the responder is left with are yes-or-no decisions and in each case, a “no” is a tough call because, simply, rejection would be highly asymmetrical or, to put it differently, impolite.

Finally, the third characteristic of the reciprocity rule is its ability to trigger, as Cialdini calls it, “unfair” exchanges. This means that gains are higher than costs, that the initial and maybe even uninvited favour is likely smaller than the reciprocal one, and ultimately that reciprocation can be exploited for profit. “The reciprocity rule demands that one sort of action be reciprocated with a similar sort of action. [...] But within the similar-action boundaries, [...] [a] small initial favour can produce a sense of obligation to agree to a substantially larger return favour”\textsuperscript{109}. Cialdini further argues that this is because the internal discomfort of the feeling of indebtedness and the threat of external shame which stems from the active disliking of the social group in case of non-reciprocal behaviour. Together, these two factors produce heavy psychological costs. But the imbalance between initial favour and reciprocal favour may also be explained based on the value function of Kahneman and Tversky’s Prospect Theory\textsuperscript{110}. Just as illustrated in Figure\textsuperscript{2} the decisive features of the value function in Prospect Theory are (1) that it is concave in the gain domain and convex in the loss domain and (2) that the function is much steeper in losses than in gains.

\textsuperscript{107} Cialdini et al. (1975).
\textsuperscript{108} Cialdini (2007, Ch. 2).
\textsuperscript{109} Cialdini (2007, Ch. 2, p. 33).
\textsuperscript{110} Kahneman and Tversky (1979).
An initial favour causes a gain, say of $x_1$, with a value of $V(x_1) > 0$. Due to the nature of the reciprocity rule, the initial favour triggers the sense of indebtedness to a similar favour. This future indebtedness puts individuals into an anticipated loss frame of $x_2$ and since reciprocal actions are supposed to be similar, let $|x_2| = x_1$. The anticipated loss results in a value of $V(x_2) < 0$. According to Kahneman and Tversky, people typically evaluate each item of a collection of events separately and then make decisions on the basis of the sum of the separate values\textsuperscript{111}. In this situation, individuals have a combined negative value from the favour and the future indebtedness since $|V(x_2)| \gg V(x_1)$, or $V(x_1) + V(x_2) \ll 0$. Hence, they might forego more gains to compensate the loss so that $V(x_1) + V(x_2) + V(x_3) = 0$. By using reciprocal actions, thus individuals would compensate the difference between the pleasure of getting the initial favour and the displeasure of the future indebtedness. But since the negative value of the future indebtedness is so much larger than the value of the initially provided favour, individuals

\textsuperscript{111} Tversky and Kahneman (1981).
will reciprocate more than the amount of $x_1$ in order to not suffer a loss. Specifically, the extent of the reciprocated favour $x_3$ can be found with $V(x_3) = |V(x_2)| - V(x_1)$. Reciprocating $x_3 > x_1$ and hence obtaining additional value $V(x_3)$ compensates for the excess displeasure of future indebtedness.

Remember charming Marie and her Japanese kitchen knives. She can make use of the reciprocation rule quite simply. After entering your kitchen she might find all your blunt kitchen knives lying loosely in a drawer. But since she is worried about safety, she could just provide you with a nice new knife block and explain you how to sharpen the knives with a grindstone which she might subsequently also offer for free. Blunt knives are a safety risk indeed. But honestly, your knives are still no match and you should consider buying new ones - for safety’s sake.

b) Door-In-The-Face Technique

So far, it is easy to see that reciprocation allows for what Cialdini refers to as “benefactor-before-beggar” strategy in order to boost compliance\textsuperscript{112}. But the reciprocation also allows for another and more subtle approach. Again, the essence of the social rule for reciprocal behaviour is that a person who interacts in a certain way is entitled to a similar future action in return. Once a material favour is received, the rule generates a sense of future obligation to repay such favour. In addition, Cialdini and his research group found that also concessions – instead of material favours – can trigger reciprocal behaviour and elicit future concessions in return\textsuperscript{113}.

This is not too surprising because a concession implies a favour. But the finding can be used to apply another – highly effective – compliance strategy which Cialdini termed “door-in-the-face”\textsuperscript{114} or “rejection-then-retreat”\textsuperscript{115} technique. This strategy is very simple, maybe even common knowledge. In order to make individuals comply with a certain request, reciprocal concessions can be used by making a preliminary larger request that will most likely be denied (rejection). After the refusal, a smaller request is made (retreat) – compliance of which was desired all-along. If this technique is employed skilfully, the retreat from the large first request will be perceived as concession although it is not. Remember that intentions matter for reciprocation. Hence, the counterpart himself will feel inclined to respond with a reciprocal concession. Importantly, if the smaller second request is structured as a yes-no decision, the only concession that is available right away is compliance.

Take again charming Marie as an example. She might initially offer you a set of 24 different kitchen knives each of which serves of course its own unique and indispensable purpose. Clearly, only few people have need for 24 Japanese kitchen knives and so she expects a rejection. Subsequently, she might emphasise again that it is peoples’ safety

\textsuperscript{112} Cialdini (2007, Ch. 2, p. 24).
\textsuperscript{113} Cialdini et al. (1975).
\textsuperscript{114} Cialdini et al. (1975).
\textsuperscript{115} Cialdini (2009, Ch. 2, p. 37).
- not her commission - that she is most interested in and offer you an all purpose knife instead, of course for a low price relative to quality. Since you can do the majority of kitchen work with it, this universal knife also yields the best safety-cost relation. And for this reason, this is also the one she appreciates and uses most.

That humans will actually indulge to this reciprocal feeling is, again, not certain. How effective is this strategy then, if it is properly used? Cialdini and his research group designed three experiments in order to test whether the technique worked at all and to determine how powerful it was, i.e. whether it works with genuinely sizably second requests\textsuperscript{116}. In order to test the effectiveness, the researchers employed three conditions in experiment one. The first condition involved the smaller request only. The second condition involved the exposure to the large and then to the smaller request. After the description of both, subjects were requested to perform either one. Not implementing the retreat sequence here controlled for the fact, that subjects may perceive the smaller request as less demanding and complied with the smaller request only for this reason and not because of reciprocal concessions. The final condition was the rejection-then-retreat condition. While the extreme request asked participants to perform as counsellors to juvenile delinquents for a period of at least two years, the smaller request asked them to perform as chaperones for a group of juvenile delinquents on a two-hour trip to the zoo. Both requests, the large and the small one, were tough calls for the student subjects because there were no further specifications and no payment involved. The large request turned out to be skillfully chosen because no participant agreed to perform the task. When participants were exposed to the smaller request only, the great majority of them, specifically 83.3%, happily declined and only 16.7% agreed to comply with the request. When both requests were presented before a decision was asked, more participants (25%) agreed to the smaller request, but this difference turned out to be not significant. In line with the prediction, the rejection-then-retreat condition triggered compliance of 50% which was highly significant on a $\rho = 0.011$ confidence level. Hence, making an extreme initial request which is sure to be rejected and then moving to a smaller request significantly increases the probability of a target person’s agreement to the second request.

The key about the retreat from the larger to the smaller request is its appearance as a concession. Supporting this central idea was the main task of the second experiment. A target person who is asked an extreme favour by one individual and a smaller favour by some other individual in a second interaction context should not experience a normative pressure from the reciprocity rule to agree to the smaller request. Again, three conditions were constructed. Firstly, participants were asked to perform a favour by a single requester. Secondly, participants were asked to perform the critical favour by one requester after they had refused to perform a larger favour for a different requester. Finally, in the rejection-then-retreat condition, participants were asked by a single requester to perform the critical favour after they had refused to perform a larger favour for that requester. The large request was the same as in experiment one. The smaller

\textsuperscript{116} Compare for a detailed description of all three experiments Cialdini et al. (1975).
request this time asked participants to guide a group of low-income children – instead of juvenile delinquents – to the zoo. This change was necessary to make the requests unrelated for the condition with independent requesters in order to keep participants unsuspicious. Again, while no conventionally significant ($\rho = 0.111$) difference occurred in the compliance rate of control conditions one and two, 31.5% and 10.5% respectively, the appearance of a concession elicited a compliance rate of 55.5%, a clearly significant difference ($\rho = 0.009$). The researchers concluded that it is indeed the target’s perception of a concession by the requester that is a crucial for producing compliance with the smaller request.

An alternative explanation for these results was still possible. It may have been possible that participants showed significantly higher levels of compliance because in the rejection-then-retreat conditions the requester persisted in making the second request after the first had been refused. Participants may have accepted the second request because of the situational pressure of a tenacious requester or because they wanted to avoid the requester’s perception of them as having a generally antisocial character. It is noteworthy that this concern reflects the legal rational of high pressure selling techniques – one common argument to establish cooling-off periods in the first place. To rule this explanation out, experiment three involved a condition in which subjects were asked to perform an initial favor and then were asked by the same requester to perform a second favor (the critical request) of equivalent size so that there is no perceivable concession. If the persistence of a single requester is the mediator of enhanced compliance, then such a procedure should produce heightened agreement to perform the critical request. Accordingly, the first request was adjusted to the smaller one. Instead of asking participants to perform as counsellors to juvenile delinquents for a period of at least two years, they were asked to perform as chaperones for a group of juvenile delinquents on a two-hour trip to the museum. The second request in the first condition simply changed the destination of the day-trip to the zoo again. Another condition involved again only the second smaller request. The final condition involved the rejection-then-retreat sequence with the original requests. As predicted by the reciprocal concessions model, the rejection-then-retreat technique lead to a significantly ($\rho = 0.091$) higher compliance level of 54.1% versus 33.3% for both of the other conditions. In addition, these findings somewhat argue against an influence of persistence and pressure on compliance. First, the sequence of equivalent requests caused the same compliance as the isolated request only. Second, it is not the case that a persistent requester induces compliance to a second request solely through the act of making a second request. In contrast, in the sequentially equivalent request condition, subjects were pervasively consistent in the nature of their responses to both requests. 22 of the 24 subjects in that group responded similarly to both requests. Persistence and high pressure may hence only lead to a higher quantity of requests complied with. This however, pre-supposes that participants complied. But in the experiment, only seven participants consistently complied whereas fifteen participants consistently declined the request. Further, the effectiveness of the rejection-then-retreat approach is derived from the existence of a social norm for reciprocation. Thus, a requester wishing to use the procedure needs to have little reward
or coercive power. This at least questions the main concern of high pressure selling by which consumers are "shanghaied" and which traditional lawyers frequently put forward.

The experiments illustrate that the door-in-the-face technique works. In experiment one, the level of compliance was nearly tripled compared against the small request only control condition. Even when averaging over all three studies the likelihood of compliance was still doubled through the use of the rejection-then-retreat technique. And these findings are replicated by other researchers\textsuperscript{117}. "Because it works, [this] technique can and will be used purposely by certain people to get their way"\textsuperscript{118}. Two aspects are crucial to successfully employ the technique. First, the initial offer has to be refused. Only if the initial response is a “no”, provided that the request is structured for a yes-no response, the reciprocal concession can yield a “yes”. Second, the move to the second request has to be perceived as a concession because only this triggers reciprocation. Note that this also requires a reasonably high first request. If it the initial request is too exaggerated to be credible, good faith in the requester is lost and the technique may actually backfire\textsuperscript{119}. Carefully balancing the first request, then, is the art that makes this technique truly effective\textsuperscript{120}.

It is noteworthy that although reciprocity is supposed to be the main driver of the effectiveness of the rejection-then-retreat technique, another aspect reinforces its potential. One of these supporting mechanisms is what psychologists know as the perceptual or contextual contrast principle\textsuperscript{121}. It affects the way we see the difference between two things that are presented one after another. In the terminology of Prospect Theory, the contrast principle concerns a change of reference point. The preliminary large request shifts the reference point and the second request seems smaller by comparison.

Clearly one counter argument to the idea that compliance will be increased even in the presence of a cooling-off period could emphasise that the use of the rejection-then-retreat sequence may cause victims of this technique to believe having been manipulated into compliance. Subsequently, they might engage to not live up to their reciprocal promise or to refuse future repeated interaction with the requester. Then, a cooling-off period is needed to establish a possibility to disengage from the reciprocated promise and to avoid compliance. Then, a cooling-off period could be seen as being able to avoid exploiting any drive for reciprocation and the requester would want think twice before making use of the rejection-then-retreat procedure. Unfortunately, research indicates that these victim reactions do usually not occur with increased frequency when the rejection-then-retreat technique is used. Quite the opposite is true. It appears that they actually occur less frequently. Victims of the rejection-then-retreat sequence instead appear to stick to their promises more often\textsuperscript{122}. The effectiveness of the sequence seems to also enforce compliance. On second thought, this is not surprising if an existing

\textsuperscript{117} Compare e.g. Miller et al. (1976).
\textsuperscript{118} Cialdini (2009, Ch. 2, p. 38).
\textsuperscript{119} Schwarzwald et al. (1979).
\textsuperscript{120} Compare Thompson (1990).
\textsuperscript{121} Tormala and Petty (2007).
\textsuperscript{122} Miller et al. (1976).
social norm of reciprocation is internalised\textsuperscript{123}. Reciprocators also demonstrate a higher willingness to engage in repeated interaction with the requester\textsuperscript{124}. The explanations for both of these subsequent effects are (1) the perception of the victim of having greater responsibility to have dictated the final outcome and (2) satisfaction with the outcome of the transaction\textsuperscript{125}.

Altogether, it is astonishing how the deeply rooted sense for reciprocation can be used to reinforce compliance. Making skilful use of both benefactor-then-beggar and door-in-the-face (rejection-then-retreat) techniques is very likely to elicit contracting decision above what would be economically considered rational. Let us now turn to the second force relevant to the doorstep transaction.

2. The Impact of Consistency and Commitment

As is reciprocation, the human drive to appear to others and to actually be consistent – as opposed to contradictory – with what has already been done is equally shaping daily behaviour. Once a choice is made, humans will face personal and interpersonal compulsion to behave consistent with prior commitments. Responses to this drive will come in the shape of justifications of earlier decisions\textsuperscript{126}. Thereby cognitive dissonance is removed\textsuperscript{127}. For instance, people on the racetrack were found that they are much more confident of their horse’s chances of winning after they have placed their bet than immediately before betting\textsuperscript{128}. People also believe more strongly in their already made choices in a lottery game than in the ex ante likelihood of winning\textsuperscript{129}. The same applies to another kind of lottery game, namely voting\textsuperscript{130}. Finally, the drive for consistency can even make people risk physical harm just because they have agreed to help\textsuperscript{131}. Consistency, altogether, triggers overly optimistic, overconfident behaviour\textsuperscript{132}. Note, that this is not only a concept developed to explain black box behaviour. The extent of consistency can well be measured and even be predicted\textsuperscript{133}.

To be sure, a high level of personal consistency on itself cannot be considered a flaw. “Without it our lives would be difficult, erratic, and disjointed”\textsuperscript{134}. Decision makers will feel better about their decision\textsuperscript{135}. Consistency is also vital for organized functioning and

\textsuperscript{123} Compare Cooter (1998; 2000a; 2000b); McAdams (2000). Beware of backlash effects of countervailing norms though. See e.g. Depoorter et al. (2005); Depoorter and Van Nesselt (2005); Parisi and von Wangenheim (2006).

\textsuperscript{124} Cialdini and Ascani (1976).

\textsuperscript{125} Compare Benton et al. (1972); Schindler (1998).

\textsuperscript{126} Compare Eyster (2002).

\textsuperscript{127} Seminal work on cognitive dissonance is provided by Festinger (1957).

\textsuperscript{128} Knox and Inkster (1968).

\textsuperscript{129} Rosenfeld et al. (1986).

\textsuperscript{130} Regan and Kilduff (1988).

\textsuperscript{131} Moriarty (1975).

\textsuperscript{132} Compare Armor and Taylor (2002).

\textsuperscript{133} Compare Cialdini et al. (1995).

\textsuperscript{134} Cialdini (2007, Ch. 3, p. 60).

\textsuperscript{135} Compare Fazio et al. (1992).
health. But whenever the environment does not match with the automatic system, it can also be very easily exploited by those individuals who would benefit from such behaviour just because consistency, similar to reciprocation, is a mindless method of responding.

The act of making a final decision is the critical factor. Once a commitment is made, the need for consistency will induce humans to align their attitudes, beliefs, and subsequent actions with their prior actions. Once commitment is elicited, the stage is set for automatic and ill-considered consistency with that prior commitment. Humans, on average, will convince – maybe it is better to say: fool – themselves that they have made the right choice. Sometimes, a final choice is not even necessary. Already preliminary tendencies which occur prior to a final decision can bias people toward consistent subsequent choices.

a) Foot-In-The-Door Technique

The human drive for consistency can ingeniously be employed to trigger high levels of compliance by making use of progressively escalating commitments, ultimately inducing people to agree to major requests. Research has shown that even trivial initial commitments, e.g. agreeing to be interviewed, can begin a “momentum of compliance” which in turn induces later compliance with significant requests, e.g. organ or bone marrow donations. For charming Marie, then, the strategy obvious: start with a small request to increase potential compliance with a large request at a later time.

Social psychologists Freedman and Fraser termed this approach the “foot-in-the-door” technique. In their field experiment, the researchers asked random participants just to answer a few questions about the kinds of soaps they used. Three days later they requested the same participants to allow a survey team of five or six men to come into their homes for two hours to classify the household products they used. This latter larger request was also brought forward to participants who did not receive the earlier small request. In line with the foot-in-the-door predictions, only 22.2% of participants in the one-contact-only condition, i.e. significantly less participants (\( \rho < 0.02 \)), agreed with the larger request while 52.8% of participants in the foot-in-the-door condition complied with the larger request. Interestingly, it mattered a lot whether participants actually carried out the initial small request and answered the questions. When they only agreed to do so but actually did not need to perform the initial request compliance with the latter request increased non-significantly to 33.3%. A second experiment replicated the

---

136 Compare Sheldon et al. (1997).
137 On mindless choosing compare Thaler and Sunstein (2009, Ch. 2).
138 Cialdini (2009, Ch. 3).
139 Compare e.g. Brñol et al. (2006); Mather et al. (2000); Rusbult et al. (2000).
140 Compare e.g. Brownstein (2003); Brownstein et al. (2004); Russo et al. (2006).
141 A lot of examples are provided by Cialdini (2007; 2009).
142 Carducci et al. (1989); Schwartz (1970).
143 Freedman and Fraser (1966).
main findings.

This illustrates, that even commitments stemming from trivial requests can have a significant enhancing effect on compliance with larger requests because it changes the self-perception\textsuperscript{144}. The subsequent larger request – compliance of which is desired from the outset – does not necessarily have to be similar. They may even be remotely connected to the initial commitment and still consistency plays for the requester. Even getting the target person to just be verbally responsive with the requester can suffice\textsuperscript{145}. To be effective, however, Cialdini points out that commitments require certain conditions to be met\textsuperscript{146}: a commitment should be active\textsuperscript{147}, public\textsuperscript{148}, effortful, and freely chosen\textsuperscript{149} in order to unfold their entire potential. In this respect, during his investigations into sales organisations he also discovered that people there made use of techniques – like e.g. having customers fill out the sales agreement – which build on utilising the force of consistency exactly as a response to cooling-off regulation\textsuperscript{150}.

The foot-in-the door strategy uses initial commitments to prompt consistent behaviour in order to reduce dissonance. Thus, the drive to be and appear to others consistent steadily changes the self-image. This in turn can increase compliance with following requests. Ceteris paribus, the change of self-perception is, first of all, sustained and, second, it is not specific to the situation which led to this change. This is the real beauty of the foot-in-the door technique; it’s extremely cost effective.

Charming Marie will certainly be very happy about the effect of consistency. Any doorstep transaction automatically takes advantage of small commitments which trigger consistent behaviour. As soon as stage two is reached and the doorstep is overcome, consumers already committed to the request to access the private domain. And this request is not only remotely but closely – regarding time and context – connected to requests that will inevitably follow. To trigger compliance with the contract request is much easier right now only because of the structure of the transaction.

b) Lowball Technique

The drive for consistency, which can on principle be put to good use, also enables another compliance tactic which Cialdini describes as the “lowball”\textsuperscript{151}. The lowball strategy exploits another characteristic of consistency driven change of self-perception. Commitments that change the self-perception tend to be automatically justified ex post. The desire to be consistent within the individual system of beliefs will cause people to re-assure themselves that their choice was correct and, thus, commitments generate their

\textsuperscript{144} Burger and Caldwell (2003).
\textsuperscript{145} Howard (1990) hence re-termed the strategy “foot-in-the-mouth” technique.
\textsuperscript{146} Cialdini (2009, Ch. 3).
\textsuperscript{147} Compare Cioffi and Garner (1996).
\textsuperscript{148} Compare Schienker et al. (1994).
\textsuperscript{149} Compare Freedman (1965).
\textsuperscript{150} Cialdini (2007, Ch. 3).
\textsuperscript{151} Cialdini (2009, Ch. 3., p. 84).
own support. They “grow their own legs”\textsuperscript{152}. The important thing about the process of generating additional reasons after initial commitments is that these reasons are new. Thus, even if the original reason for the compliant behavior was taken away, the newly discovered reasons alone might be enough to support the new perceptions that a person has made the right call.

The lowball technique takes advantage of this very aspect. In order to increase compliance with a specific request, a skilful negotiator can offer an inducement for making the choice. After the decision has been made, consistency and change of perception are triggered, and the choice is reinforced by new justifications according to the new self-image. The negotiator can then remove the initial inducement. Alternatively, instead of removing a positive aspect, a skilful negotiator can effectively add a negative aspect\textsuperscript{153}. The decision will probably not be changed because, in addition to newly generated support for the own decision, the sunk cost fallacy might be at work depending on the kind of initial commitment\textsuperscript{154}.

Several studies show, that lowballing is effective and can principally be used for socially beneficial purposes\textsuperscript{155}. Of course then, it might also be employed by salespersons in a more exploitative way. Charming Marie, for instance, might offer you her set of Japanese kitchen knives for a very good price, a price that would render the decision not to buy them goofy. After the purchase decision, she might let you fill out the purchase forms, provide your credit card information, and you might even be comforted to use the knives two days before signing and sending the prepared contract. But after you sent the forms but before the bargain is sealed, Marie might call you and report an error in the pricing list or that her superior has disallowed the deal for this price. Marie is very sorry. The new price would be higher but is, of course, still good in the light of the quality of the knives and with respect to alternatives.

**IV. Stage Three: Status-Quo Bias**

Apart from concerns about high pressure selling which the legal rational of cooling-off periods in doorstep transactions aims for in the first place, the astonishing influence of surprise, consistency, and reciprocity on compliance so far convincingly support the implementation of cooling-off periods. In light of the findings described, excessive conclusion of contracts beyond efficient levels seems very plausible. The demand for a protection mechanism hence appears to be justified. After the customer has likely sealed the deal with charming Marie, thanks to doorstep regimes, cooling-off periods now kick in and consumers can rethink their decisions made. Before the cooling-off period expires, the consumer has ultimately to decide whether or not to withdraw from the already

\textsuperscript{152} Cialdini (2009, Ch. 3., p. 83).
\textsuperscript{153} Cialdini et al. (1978).
\textsuperscript{154} Compare Arkes and Blumer (1985); Arkes and Hutzel (2000); Thaler (1980); Tversky and Kahneman (1981).
\textsuperscript{155} Compare Brownstein and Katzev (1985); Burger and Petty (1981); Cialdini et al. (1978); Joule (1987); Pallak et al. (1980).
closed contract. If he remains passive, however, the consumer automatically validates the contract.\footnote{This is very similar to the commonly used free trial period for journal subscriptions.}

In the face of the mechanisms discussed, instruments such as cooling-off periods have to work effectively if its economic benefits want to be realised. Unfortunately, for some reasons many people will decide for whatever option requires the least effort. Humans have a tendency to be inert to change and stick with their given situation. Samuelson and Zeckhauser showed that individuals decide disproportionately often for the status quo alternative and hence termed this phenomenon “status quo bias”.\footnote{Samuelson and Zeckhauser (1988).} The roots of the status quo bias can be distinguished into economic as well as psychological causes.

Status-quo biased decisions can be economically explained with issues of information, uncertainty, risk aversion, and specific investments. Important in the context of doorstep transactions is the aspect of switching costs. As discussed earlier, implementing cooling-off periods necessarily burdens consumers with increased transaction costs. This alone likely causes a status-quo preference so that a significant number of consumers might not withdraw from a doorstep contract although such withdrawal would be in their interest. The additional transaction costs serve to reinforce the doorstep contract at least to a certain extent.

Among the psychological factors which create inertia to change are loss aversion,\footnote{Kahneman et al. (1991).} regret avoidance,\footnote{Korobkin (1998); Simonson (1992); Zeelenberg et al. (1998).} the sunk cost fallacy,\footnote{See supra footnote 154.} and a lack of attention.\footnote{Thaler and Sunstein (2009) use the catchy phrase “yeah-whatever-heuristic” to describe a lack of attention.} More importantly, the pervasive drive for consistency plays again a major role in the present context. At stage three, already several commitments have been made. And if charming Marie was clever, these commitments were actively and effortful made, can be or were publicly observed, and were freely chosen so that the consumer will take responsibility for them. During the cooling-off period, however, a reason for withdrawing from the contract is discovered. Since this idea is highly conflicting with prior commitments, cognitive dissonance arises. But people do not want to prove themselves wrong and, hence the desire for consistency leads to change of perception in order to reduce dissonance. The purchase is fine. Withdrawal is not necessary. Similarly, reciprocation can play a role at stage three. If charming Marie provided a number of favours or concessions during the prior course of the transaction, the decision not to withdraw despite unwelcome new insights about the product might be perceived as reciprocal concession which compensates the earlier favours provided.

This suggests that consumers will still be inert to withdraw from the contract even if they decide against the product. As time closes in to the end of the cooling-off period, taking action to withdraw from the contract becomes inconvenient and withdrawing will be prolonged until finally the cooling-off period expires and individuals are stuck with
the contract.

E. Implications: Changing the Default

In doorstep transactions, the legal instrument cooling-off period suffers from the defect not to account for very basic aspects of human psychology. But these all too human factors should be incorporated into a behaviourally informed institutional design. It is important to note, that cooling-off regimes are designed as an opt-out regime, a system of presumed consent. Thus, any such regime establishes a default rule – an option that will prevail if the decision maker stays passive and does nothing – to live up to the contract. In the presence of status-quo bias as a result of the forces discussed, a choice architect can expect a large number of people to end up with that very default option\textsuperscript{162}. This tendency is even promoted if the default comes with the implicit or explicit suggestion that it represents the normal, desirable, or recommended course of action. In case of contract law the normal concept is that agreements must be kept – pacta sunt servanda.

The discussion so far revealed two important predictions. First, even when accounting for the positive economic effects of cooling-off periods with regard to seller behaviour, information transmission, and consumer choice, an inefficiently high number of consumers will enter into a doorstep contract because a cooling-off period incentivises sellers to make use of certain selling strategies which exploit psychological forces of social interaction, mainly the rule for reciprocation and the drive for consistency. This, however, does not pose a problem per se if a corresponding number of consumers withdraw from their contracts. But, second, because of the very same psychological forces and transaction costs added by the cooling-off regime itself, a status-quo bias is created and consumers are less likely to withdraw from doorstep contracts. The number of cancelled contracts will be inefficiently low. To support this hypothesis with empirical data is, naturally, difficult. There are hardly good estimates of the rate of withdrawal in these transactions or the reasons for the return of products that do take place. One recent estimate places the rate of return for all consumer goods at around 6\%. However, that investigation includes much higher rates for internet and catalog sales where there is no opportunity for inspection at the time of purchase\textsuperscript{163}. Presumably the rate of return for items which sold at the door would be even lower. Another study estimates the rate of withdrawal to be between 1\% and 9\% depending on the value of the good sold\textsuperscript{164}.

From my point of view, these figures are surprisingly low. But this data does not justify the verdict of inefficiency because there is no unbiased data to illustrate the efficient withdrawal rate. Maybe consumers are indeed so satisfied with their purchases that there is no need to withdraw from doorstep contracts. At least theory suggests though, that these low numbers result from heavily status-quo biased decision making.

\textsuperscript{162} Thaler and Sunstein (2009, Ch. 5).

\textsuperscript{163} Matthews and Persico (2007).

Future experimental research - in the field as well as in the lab - would be highly valuable in providing empirical data for these questions.

Whether they want or not, regulators are choice architects and, as such, they should be expected to set helpful defaults. But current cooling-off regimes clearly are not. Admittedly, working against so deeply rooted social behavioural patterns is not easy. But it is not entirely impossible and an attempt to debias the beneficiaries of cooling-off periods through substantive law can be made165. Note that all effects discussed amplify each other. They work in the same direction, i.e. towards compliance. Instead, the effects should at least off-set each other and, where possible, counter an inefficient trend towards compliance. This can be achieved by putting the transaction costs against the psychological effects. Consumers should incur the transaction costs which are necessarily introduced by cooling-off periods if they want to comply. Then, transaction costs work against surprise, commitment, and reciprocity and do not further amplify their effect. Adjusting the default of cooling-off regimes to an opt-in solution, a system of presumed denial or withdrawal, would put pressure against the tendency to stay with the contract and ease efficient withdrawal. Changing the default can be achieved simply by introducing the requirement to confirm the contract again until the cooling-off period expires. Note that this does not mean implementing mandatory time delays. Rather, until the expiration of the cooling-off period, only the validity of the contract would be pending while mutual promises have already been performed166. The cooling-off period would then not be governed by mechanisms of post-contractual relationships but by mechanisms of pre-contractual relationships. This would make sure that also the seller is not left without sufficient protection of his interests. At the same time, a mere change of default would not jeopardise any of the economic reasons for implementing a cooling-off regime.

F. Résumé

Cooling-off periods are an instrument universally used for unsolicited – and according to the proposed Consumer Rights Directive also solicited – doorstep selling. From a legal perspective, cooling-off periods serve to discipline sellers who would otherwise engage in high pressure selling, to support unprepared, uninformed and surprised consumers, and to ultimately restore the balance between consumers’ and sellers’ interests. Economic theory of cooling-off periods emphasises additional important benefits. For one, situational market power of sellers is contested. For another, the problem of adverse selection is reduced because ex ante information signals are more credible. Finally, some phenomena of non-rational consumer choice are tackled. But the economic arguments reviewed also reveal that cooling-off periods cause certain adverse effects. Apart from

166 A similar concept governs German contract law for minors. There, the validity of the contract generally depends on the consent of the legal representative. Compare Sections 106 et seq. BGB (German Civil Code).

In case of doorstep transactions with cooling-off periods, the legal representative would be the future self.
costs of potential delay – a component usually not relevant in the doorstep context – they increase transaction costs, give rise to consumer moral hazard, and increase uncertainty for sellers. Through thoughtful implementation, cooling-off periods will bring about the benefits but also will contain the costs, hence resulting in welfare gains.

But the cooling-off regime for doorstep transactions may backfire. In contrast to prior legal and economic discussions on the topic, this paper spotlighted that the threat of consumer withdrawal upon the expiration of cooling-off periods also creates an incentive to increase consumer compliance to a level which penetrates cooling-off periods thus rendering this legal instrument partially inoperative. Such compliance can be achieved by using certain sales techniques – like the exemplary sample discussed – which make use of behavioural phenomena in social interaction, most importantly but not only reciprocation and consistency. These findings not only justify the extension to solicited doorstep settings. These behavioural phenomena lock the consumer into a status-quo. This renders the cooling-off regime partly dysfunctional. The somewhat unfortunate insight is that this can hardly be prevented since the phenomena in question are deeply rooted in human social behaviour. What can be changed, however, is the transaction cost component which, up until now, amplifies the influence of reciprocal and consistent behavioural patterns and hence reinforces the status-quo bias. If the default of cooling-off regimes would be changed from a system of presumed consent (opt-out) to a system of presumed withdrawal (opt-in), behavioural phenomena and transaction costs would work in opposite directions, ultimately leading to a less biased withdrawal decision because the transaction cost effect is most certainly smaller than the impact of phenomena of social interaction.

The solution proposed here, of course, is a surprising result and somewhat contradicts legal conventional wisdom. In order to induce a higher amount of approval and support, I should maybe ask to disestablish cooling-off periods altogether, cash-in a resolute rejection by other legal scholars and regulators, and subsequently propose a change of default from an opt-out to an opt-in regime. But in contrast to charming Marie, however, I am certainly not masterful negotiator.
Appendices

A.1: Standard Profit Maximisation

For the given profit function:

\[ P(p) = pq(p) - C(q(p)) \]
\[ = p(a - bp) - (c(a - bp) + C_{fix}) \]

applying the first-order condition yields \( p^* \):

\[ \frac{\partial P(p)}{\partial p} = a - bp - bp + cb \]
\[ 0 = a - bp^* - bp^* + cb \]
\[ 2bp^* = a + cb \]
\[ p^* = \frac{1}{2} \left( \frac{a}{b} + c \right). \]

Assuming concavity of the profit function obviates controlling for the kind of optimum so that \( p^* \) signifies a profit maximum.
A.II: Profit Maximisation Involving Risk

For the given profit function:

\[
P(p_{co}) = r p_{co} q(p_{co}) - C(q(p_{co}))
\]
\[
= r p_{co} (a - b p_{co}) - (c(a - b p_{co}) + C_{fix}).
\]

Applying the first-order condition yields \( p_{co}^* \):

\[
\frac{\partial P(p_{co})}{\partial p_{co}} = r(a - b p_{co}) - r b p_{co} + c b
\]
\[
0 = r(a - b p_{co}^*) - r b p_{co}^* + c b
\]
\[
0 = a - b p_{co}^* - b p_{co}^* + \frac{1}{r} c b
\]
\[
2 b p_{co}^* = a + \frac{1}{r} c b
\]
\[
p_{co}^* = \frac{1}{2} \left( \frac{a}{b} + \frac{1}{r} c \right).
\]

Assuming concavity of the profit function obviates controlling for the kind of optimum so that \( p_{co}^* \) signifies a profit maximum.
A.III: Profit Maximisation Involving both Risk and Cost of Moral Hazard

For the given profit function:

\[
P(p_{co,mh}) = rp_{co,mh}q(p_{co,mh}) - C(q(p_{co,mh})) = rp_{co,mh}(a - bp_{co,mh}) - (c(a - bp_{co,mh}) + (1 - r)k(a - bp_{co,mh}) + C_{fix}).
\]

Applying the first-order condition yields \( p_{co,mh}^* \):

\[
\frac{\partial P(p_{co,mh})}{\partial p_{co,mh}} = r(a - bp_{co,mh}) - rbp_{co,mh} + cb + (1 - r)kb
\]

\[
0 = r(a - bp_{co,mh}^*) - rbp_{co,mh}^* + cb + (1 - r)kb
\]

\[
0 = a - bp_{co,mh}^* - bp_{co,mh}^* + \frac{1}{r}b(c + (1 - r)k)
\]

\[
2bp_{co,mh}^* = a + \frac{1}{r}b(c + (1 - r)k)
\]

\[
p_{co,mh}^* = \frac{1}{2}\left(\frac{a}{b} + \frac{1}{r}(c + (1 - r)k)\right).
\]

Assuming concavity of the profit function obviates controlling for the kind of optimum so that \( p_{co,mh}^* \) signifies a profit maximum.
References


Evans, J. and Frankish, K. (2009), In Two Minds: Dual Processes and Beyond, New York: Oxford University Press.


Gigerenzer, G., Todd, P.M. and the ABC Research Group (1999), Simple Heuristics that Make Us Smart, Oxford: Oxford University Press.


Uncertainty, 1, pp. 7 et seq.


