

Comment: Robert Hockett

Choice Architectures: An Appreciation and a Provisional Suggestion

I.

I have long been intrigued, and occasionally maddened, by certain idiomatic crazes or fads that seem constantly to break out and spread through American society. Advertisers now hawk “solutions,” for example, rather than goods and services. And of course, it has been decades by this point that we have been bringing past conversations up into the present by saying “I’m like...,” not “I said....”

A recent development along these lines that I find especially amusing is the now oft-heard expression, “a thing.” Each of “Benghazi” and “the 47 percent,” for example, for a time was said to have become “a thing.” Likewise Hillary Clinton’s emails and Donald Trump’s “Tweets.” Pretty much every new entrant to the Grand Guignol theater of public consciousness and conversation these days is a “thing” in the requisite sense. By this criterion, I suppose that “a thing” is itself now a thing—perhaps a sort of recursive, reflexive, or self-referential thing.

II.

In the academy, behavioralism seems to have become “a thing” by the late 1970s or early 1980s at latest, notwithstanding the fact that discoveries such as the Allais and Ellsberg “paradoxes,” then Herbert Simonian “bounded

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rationality,”¹ evidenced certain systematic departures from orthodox models of choice behavior much earlier.

In my own case, I think behavioralism became something of “a thing” with the reading of two authors during the late 1990s: first, a man who later became one of my dissertation advisors, Bob Shiller at Yale; and second, the man on whose vast and still growing body of work I am to comment today—the phenomenal Cass Sunstein.

Bob first got me to thinking about the work of Dick Thaler in particular—especially what I call “endowment psychology” (not to mention Cornell coffee mugs),² which I thought a helpful way of explaining my own long-standing intuition that what is now coming to be called “predistribution” might prove more politically stable than redistribution as a means of redressing distributive injustice.³ This in turn harmonized well with what had drawn me to Bob as a mentor in the first place, for my aim was to develop means of financially engineering justice-improving redistributive schemes, the ultimate upshot of which is a book now forthcoming from Yale University Press.⁴

Cass came into the picture for me with what I suppose was then merely his eight-hundredth book—*Free Markets and Social Justice*, published in 1998. I virtually devoured this rich, rich collection of previously published essays and articles, and learned much from it. But what I think stuck with me most was Cass’s emphasis on the endogeneity of preferences, as well as his patient tracing of normatively interesting consequences therefrom.

Now of course, I’d been aware of preference-endogeneity as an objection to certain attempts at theorizing justice, thanks to Amartya’s celebrated “tame housewife” objection, and Jerry Cohen’s cognate “Tiny Tim” objection, to certain assumptions that figured centrally in liberal accounts of justice.⁵ (John Roemer and Jerry were, like Bob Shiller, very patient mentors.) And I’d been aware of Gary Becker’s work on tastes in micro theory. But it

1. See Allais (1953), Ellsberg (1961), and Simon (1991). It should be noted that Ellsberg’s paradox effectively appears earlier in Keynes (1921, 75–76, n. 2).

2. See, for example, Hockett (2005, 2006, 2007, 2008a).

3. See sources cited in Hockett (2005, 2006, 2007, 2008a).

4. See Hockett (2017, forthcoming).

5. See Cohen (1989) and Sen (1995).

was Cass and his reflections that most aided me in thinking comprehensively, in both a broadly transdisciplinary and a more systematically programmatic manner, about preference-endogeneity and its implications. So my remarks here will be one part encomium, one part elaboration, and one part halfway provocative suggestion for further work—perhaps in the direction of what I’ll call a sort of “behavioral macro” or “liberal collectivism.”⁶

III.

Let me begin, then, by noting a certain family resemblance between classical liberalism in political theory and the classical choice model in welfare-economic theory. If we take Rawlsian justice theory as emblematic of liberalism in the modern era, then in liberalism we find a political ideal that is essentially indifferent to the origins or nature of preferences and is concerned instead with what Rawlsians call “the basic structure” in which preference-satisfactions or “lifeplans” are pursued or executed.⁷ This concern finds partial—though, as I shall claim, misleading—programmatic expression in the Rawlsian doctrine’s commitment to what Rawls called “the priority of the right over the good.”⁸

Analogously, in classical welfare theory, we find preferences to be likewise bracketed—placed outside of—the field of disciplinary inquiry. They are, that is to say, treated as exogenous—no more subject to rational critique than Rawlsian life plans are subject to normative political critique. Discussion and disputation accordingly center on the formal properties of the social welfare function or functional that aggregates preferences. The social welfare function aggregation rule, pursuant to the dominant research program, accordingly plays a role here analogous to “basic structure” in normative liberal political theory à la Rawls.⁹

Now, as is well known, Rawlsian liberalism came under sustained scrutiny and critique during the 1970s and after. One grounds for criticism was the account’s implausibly denuded conception of the choosing liberal self behind the Rawlsian (or should we say Harsanyi) ¹⁰ veil of ignorance. The

6. See, for example, Hockett (2013a).

7. See generally Rawls (1971).

8. Rawls (1971).

9. For more on this link, see Hockett (2008b, 2009).

10. See Harsanyi (1953, 1955).

“unsituated self,” as Michael Sandel later canonically dubbed it,¹¹ became something of an albatross for liberal justice theory, both for reasons of normative attractiveness (cf. Cohen 1897; Sen 1995) and for reasons of theoretic intelligibility (cf. Sandel (1982) and others).¹² So-called communitarians and, more broadly, communicative action theorists, actuated by critiques of this general form, in consequence steadily wrought a manner of “contextualizing” revolution in justice theory—a revolution whose best-known exponents at present are probably Jürgen Habermas, Axel Honneth, and Rainer Forst.¹³

Against this backdrop, I think, one helpful way of viewing the behavioralist revolution in normative economics and economic analysis of law—particularly as systematized, interpreted, and further developed by Cass—is as a thoroughly and programmatically-minded choice-theoretic analog to the “communitarian” revolt against liberal justice theory. Situating the Rawlsian unsituated self is, perhaps, best and most thoroughly done by first comprehensively endogenizing the classical choice-theoretic chooser.

This is, in part, precisely what Cass’s thoroughly cataloging, systematizing, and further advancing of behavioralist learning does. For what are careful attention to choice-inertia, framing, salience-attending, loss-aversion, social influences, heuristics, implicit probability assumptions, and so forth if not ways of thoroughly endogenizing preferences and, therefore, more fully situating actual choosing selves? And if, with Cass and his co-authors, we can do this both comprehensively and with an eye to normative significance, then we stand to develop both better positive and better normative microeconomic, welfare economic, and justice theory. Pretty exciting stuff!

IV.

But now here is what I think might be most exhilarating of all in Cass’s recent work: His achievements, although they began as theoretic advances, have rapidly opened the door to more practical, “applied” advances as well.

11. See Sandel (1982).

12. My colleague Steve Shiffrin often says that “children are the Achilles Heel of liberalism.” This seems to me nicely to capture both preference-endogeneity and intelligibility objections in a single slogan.

13. See, for example, Habermas (1996), Forst (2002), and Honneth (2014).

By attending to the whole of the “choice architecture,” as Cass dubs it, which the many forms of preference-shaping he studies jointly constitute, we soon spot a novel way to skirt a particularly vexed clash of values in modern Western and, especially, US intellectual and political history.

I allude to the clash between what Rawls would call “liberalism and perfectionism,” and what Cass and Thaler call “libertarianism and paternalism.”¹⁴ In effect, Cass and Thaler note, we can, by carefully studying and incrementally improving choice architecture, both improve aggregate welfare—something like what Rawls would call “the good”¹⁵—and avoid any serious, non de minimus affront to individual freedom—what Rawls would call respect for “the priority of liberty.”¹⁶

We can, in other words, act on a sort of commonsense, nonperfectionist and nondogmatic view of the collective good while still allowing for individual opt-outs by those who, upon consideration, still prefer to choose as they would have done under an earlier architecture. In this way, we get to have a bit of our cake while eating it, too, sidestepping irresolvable conflicts over totalizing visions of “the Good,” rather as Cass recommended long ago, in a different context, under the rubric of what he called “incompletely theorized agreements.”

We encourage or facilitate the making of choices that most would think wise, in other words, without outright coercing them. This is an achievement on par, in my view, with Lock’s classic work on toleration and Mill’s on liberty many decades ago. And it is apt to be rather more effective, in my humble opinion, than Rawls’s late 1990s offering of a “political, not metaphysical” account of liberal justice.¹⁷

All right, so there’s the encomium. Now for a brief closing suggestion that might be a little—but I think only a little—provocative. I want to suggest that we might also encourage some socially beneficial choices without outright coercing them through means additional to Cass’s style of

14. See Thaler and Sunstein (2008).

15. Though Rawls himself of course tends not to aggregate, since he *brackets* “the good.” (A possible exception comes in the form of “the good of the worst-off,” whose lot Rawls’s “difference principle” aims to optimize. If the “worst-off” embraces a class rather than a person—Rawls doesn’t tell us which—then of course there is aggregation at least with respect to the good of this class.)

16. Rawls (1971).

17. See Rawls (1996).

choice-architecture reconstruction. Here I allude to work I've been doing in recent years, some with my colleague Saule Omarova, on what I call "private means to public ends." In particular, I have in mind making more thoughtful, deliberate use of certain market-acting roles that government instrumentalities often play in our macroeconomy.

Here's what I mean. I've worked on and off at the Federal Reserve Bank of New York (or "New York Fed") in the past, and I am struck by how few people seem to know anything about what is, by any measure, the most critical function discharged by this remarkable institution each day. I mean the actual implementation of monetary policy, on a literal day-by-day basis, by the New York Fed trading desk in lower Manhattan. By transacting in massive quantities of (mainly) US Treasury securities with private dealer banks each morning, this desk injects money into, or retracts money out of, our banking and broader financial markets each day, thereby determining borrowing costs and, we hope, the pace of activity throughout the broader economy.¹⁸

Now, one way to conceive and then generalize from this literally quotidian quasi-governmental activity is to think of it as something that I call "market-moving." A particularly important variable—what in other work I call a "systemically important price or index," or "SIPI"—is deliberately "moved" by a government instrumentality that acts pursuant to the same modalities as do other, nongovernmental actors in the very same markets. All that differs is the object of the activities in question.

Once we recognize that prevailing interest rates are but one of many publicly cognizable SIPIs out there in our markets, it is easy to imagine why and how we might wish to generalize from the New York Fed's open market operations to something that I call "open market operation plus" in connection with other SIPIs.¹⁹ We might wish to move particularly important commodity prices (e.g., foodstuffs or fuel) during a period of dangerous volatility,²⁰ for example, or prevailing wage rates during a deflationary slump.²¹ Or we might have acted to put downward pressure on secondary credit or mortgage markets during the junk bond and mortgage-backed

18. See, for example, Hockett and Omarova (2014).

19. See Hockett and Omarova (2015).

20. See Hockett (2011).

21. Hockett and Omarova (2014, 2015).

security (MBS) hyperinflations of the late 1980s and early 2000s, respectively, or on health insurance prices right now through a “public option” add-on to “Obamacare.”²²

Once you start thinking about it, broadly welfare-enhancing market-moving strategies of this kind come quite rapidly to mind. But my taxonomy includes other modalities additional to what I call “market-moving.” One such I call “market-making,” in the sense meant by financial market participants. This is partly what Fannie Mae was established to do in 1938—to make a secondary market in mortgage loans so as to lower credit costs in the primary markets and thereby stabilize Depression-era real estate markets and the home construction industry while raising home ownership rates.²³ That was a system that worked wonderfully for nearly 60 years until underregulated private investment banks got into the act and blew everything up.²⁴ The New York Fed’s Maiden Lane funds, specially created for the purpose, acted similarly in connection with MBSs to stem an individually rational but collectively irrational run on MBSs from 2008 into 2012, in what I call a “market-preserving” role that was effectively taken over by the Fed Board itself via the third round of quantitative easing in October 2012.

V.

These are but a few of the many examples that I elaborate elsewhere. I won’t bore you with more of them here; those who are interested can take a look at the works I cite in the footnotes. My object for present purposes is simply to suggest that in some cases, there might be other avenues, additional to Cass’s style of choice architecture, through which to influence preferences in what nearly all would agree to be socially desirable ways, without outright coercing them.

It is true that my “big market actor” strategy might, if used for some conceivable purposes, edge closer to coercion than do Cass’s strategies, inasmuch as it imposes higher costs on contrarians than do Cass’s default-switches from opt-ins to opt-outs. But these seem to me differences of

22. Hockett (2010) and Hockett and Omarova (2014, 2015).

23. See Hockett (2006).

24. Hockett (2006) and also Hockett (2013b).

degree rather than of kind. And because most (if not all) entries on my proposed menu of market actor roles aim to solve what I call “recursive collective action problems” that everyone can plausibly be presumed to wish to solve, rather than systematically to coerce choice,²⁵ it might even be the case that my proposals “impose” no more on individual choosers than do Cass’s.

We have barely begun to explore these proposals’ potentials. I suspect now that once we do, we shall see quickly that they can both complement and supplement the impressive array of entries on Cass’s proposed menu.

VI.

And with that I shall close. To the vanishingly few of you here who might not be familiar with Cass’s vast oeuvre—astonishing, proceeding as it does from one still so young—I’ll say no more at present than please take a look! And to Cass himself, I say one more time: Thank you, and please keep it coming!

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25. See Hockett (2015).

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