Framing Democracy

a behavioral approach to democratic theory

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Acknowledgments

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Introduction

BEHAVIORAL LAW AND ECONOMICS grew out of the larger disciplines of economics and legal theory as a result of a desire to incorporate insights from empirical psychology into theorizing about markets and the law.[1] These subdisciplines reject the rational actor model of human decision making (often referred to as *homo economicus*[2]) and replace it with a picture of humans as boundedly rational, where the bounds of our rationality are drawn by heuristics that, under certain specifiable conditions, result in biases in our choices. These two disciplines have generated important insights into how certain facts about human decision making affect our behavior both in markets and in legal settings. In this book I argue that, just as in economics and law, normative democratic theory must begin to pay attention to the picture of human choice described by empirical psychology. Thus, I develop a behavioral approach to normative democratic theory.[3]

There are of course important differences between economics, law, and democratic theory. Unlike democratic theory, economics and (to a lesser degree) law have important descriptive components. That is, both

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[1] For a broad statement of this approach to law, see the work of Sunstein, Jolls, and Thaler (Sunstein 1997; Jolls, Sunstein, et al. 1998; Jolls 2006). For compilations of articles on this topic, see Sunstein (2000a), Parisi and Smith (2005), and the Vanderbilt Law Review Symposium on the subject (Hurd et al. 1998). For skepticism about this approach, see Posner (1998), Rostain (2000), and Mitchell (2002a, 2002b).

For a popular and accessible introduction to behavioral economics, see Ariely (2009). For more technical descriptions, see Camerer (1999, 2003) and Camerer, Loewenstein, and Rabin (2003). For a critical perspective on behavioral economics, see the work of Gerd Gigerenzer (2008) and Nathan Berg (Berg and Gigerenzer 2010).

[2] For a helpful discussion of this term, see Thaler (2000a).

[3] I should note that the behavioral approach I propose here is, despite some superficial similarities, importantly distinct from forms of behaviorism. In general, behaviorism was a movement in psychology and philosophy characterized by an aversion to the use of psychological or mental states in scientific (Skinner 1953) or philosophical inquiry (Quine 1960). A behaviorist was thus someone who greatly preferred behavioral evidence to autobiographical reports regarding internal states (Sellars 1963). The behavioral approach developed here shares an emphasis on the methodological importance of behavior, but it has no particular skepticism about internal mental states. The behavioral sciences to which I make reference object to the use of empirically unsupported hypotheses about human behavior, but they commonly rely on first-person reports regarding mental states (Tversky and Kahneman 1982). As a result, the behavioral approach developed here should not be confused with behaviorism. In what follows I will use the terms "behavioral approach to democratic theory" and "behavioral democratic theory" roughly interchangeably.

attempt to accurately describe human decision making in certain contexts. Thus, for law and economics, incorporating insights from psychology was important simply to enable them to provide a more accurate description of economic and legal decision making. It would be wrong, however, to claim that either economics or law is focused exclusively on descriptions. To the contrary, many economists and legal theorists are concerned with improving our institutions, policies, and decisions. This normative orientation is clear in the case of behavioral law and economics, where efforts to debias decision making have moved to the forefront of theoretical debates.[4]

Still, it should be noted that democratic theory is, when compared with other theoretical enterprises, a distinctively normative affair (I will not here concern myself with merely descriptive accounts of democracy). As a result, the motivation to develop a behavioral approach to democratic theory cannot be premised merely on a desire to provide a more accurate description of democratic decisions. Descriptions of this sort are quite alien to democratic theorists, especially those of a philosophical bent. Instead, looking to psychology and other social sciences for insight into human behavior must be understood as being geared toward achieving democratic theory's normative goals. Behavioral democratic theory must be interested in bounded rationality as means to arrive at a better understanding of the moral consequences of democratic government.[5]

This, however, is where things get complicated. The notion of a unified enterprise of "democratic theory" is but a useful conceit. In truth, there is no one democratic theory but rather a huge proliferation of theories of democracy. As a result, understanding the moral implications of a behavioral approach to democratic theory will require us to consider a wide range of theories of democracy and show how the rejection of the rational actor model affects each of them. Further, the implications of adopting a picture of humans as boundedly rational depend heavily on which bounds we consider. There is currently much controversy regarding how best to understand the heuristics that characterize human decisions and regarding which ones ought to count as biases. As a result, the

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[4] See Jolls and Sunstein's "Debiasing through Law" (2006).

[5] Although some might construe the evidence I consider as providing reasons to reject democracy altogether (in favor of some nondemocratic alternative), I choose here to investigate whether empirical research can help us to understand and evaluate different theories of democracy. One of the interesting things about political philosophy in the past seventy-five years is that the greatest controversy is no longer between democratic and nondemocratic forms of government but rather between different conceptions of democracy itself. One can find within the scope of democratic theories conceptions of democracy that run the gamut from meritocratic to oligarchic, from conservative to liberal, and from capitalist to socialist. As a result, I will restrict my focus to political theories that are, at least nominally, democratic.

case for behavioral democratic theory is complicated both by the number of democratic theories and by disagreements regarding the nature of the biases that characterize human decision making.

In response to these two complications, I will narrow my focus. First, in response to the variety of extant theories of democracy, I choose to focus my attention on judgment-based theories—those that construe votes as judgments about the common good (or collective interest), rather than as individual preferences over electoral outcomes. The key difference between judgments and preferences is that judgments can be either correct or incorrect (e.g., true or false), whereas preferences are simply reports (usually taken to be veridical) about individual attitudes.[6] Thus, I will spend much of my time dealing with theories of democracy that construe democracy as an attempt to get at the truth about political matters, rather than as the interaction of brute preferences. Further, in order to organize these judgment-based theories into a manageable set, I propose a taxonomy of democratic theories that ranks them in accordance with the amount that they demand from the judgment of citizens. Preference-based theories of democracy will factor into this ranking (at the minimalist end of my ranking), but they will play a relatively minor role in the overall analysis.

Second, in response to the range of different cognitive biases that may be relevant to our understanding of democracy, I choose to focus on only one: framing effects. Very generally, a framing effect occurs when different but equivalent formulations of a problem result in substantively different decisions being made. Thus, our susceptibility to framing effects reveals that our decisions are not invariant across equivalent formulations of the same problem.[7] Although some of what I say about framing effects will apply to a more expansive appraisal of behavioral democratic theory, I will limit my conclusions here to the phenomenon of framing.[8] In order to make a convincing case for the relevance of empirical psychology to the normative study of democracy, I think it is important to be cautious. In the future I hope to generate a more expansive account of behavioral democratic theory, but in the present work I opt to take a more restricted approach. I will thus limit myself to a consideration of the well-documented failures of human decision making to live up to the rational choice principle of invariance; my aim here is to show how the

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[6] For more on this issue, see Brennan and Pettit (1990), as well as the work of David Estlund (1990, 1994, 1995, 2008). Also, see my elaboration of the notion of judgment in section 1.5.1.

[7] I expand on this understanding of framing effects in sections 1.1.2 and 1.2.

[8] In particular, the analysis presented here may generalize to epistemic concerns regarding group polarization (Sunstein 2009a) and overconfidence bias (Griffin and Tversky 2002). However, I shall not argue for these claims here.

social scientific literature on framing effects should inform our understanding of democracy. More specifically, I will show how various theories of democracy ought to respond to framing effects. In what follows, I provide an outline of the contents of each chapter.

Chapter 1: Framing Effects. The first order of business is to introduce the phenomenon of framing. More specifically, I need to show why the fact that human decisions are not invariant over equivalent formulations of the same decision problem ought to be of any concern for political theory. In order to do this, I distinguish between two different kinds of framing effects (equivalency and emphasis), and I give reasons for thinking that emphasis framing effects will be common in politics. Further, I explain why our susceptibility to framing effects counts as a potential fetter to the reliability of democratic decisions. In very general terms, the fact that decisions are responsive to frames diminishes their ability to be responsive to good reasons. To the extent that the reliability of our decisions is dependent on our ability to be swayed by good reasons, then framing effects will negatively affect our ability to make correct decisions.

Chapter 2: Theories of Democracy. Next, in order to help organize my discussion of the panoply of extant theories of democracy, I propose a taxonomy that orients them along a spectrum of epistemic demandingness. That is, I arrange democratic theories in accordance with how much each theory demands of citizens' judgment in order to secure the goods democracy is taken to offer. In this chapter I allow theories of democracy to specify their own epistemic demands, without challenging their claims regarding how much they actually require from the judgment of citizens. My aim here is exegetical; I postpone my critical analysis of these theories until chapter 4.

Chapter 3: Behavioral Democratic Theory. In this chapter, I argue that a behavioral approach to democratic theory has a number of distinct advantages over other approaches. In particular, I contrast a behavioral approach with three more common ways of treating the decision making of citizens in a democracy. For the sake of simplicity, I use the notion of epistemic competence to stand in for the various cognitive skills and abilities that are required for democracy to function properly.

Unlike the other approaches I consider, a behavioral approach to democratic theory provides us with a way to reconcile normative claims about democracy with troubling empirical evidence regarding the epistemic abilities of citizens. Behavioral democratic theory can do so by assessing the benefits of attaining the standard of competence required by a given theory of democracy and comparing these benefits to the likely

costs of bringing our current epistemic abilities into line with that standard. By construing competence in terms of the relative costs and benefits of achieving and maintaining a competent citizenry, it is possible to propose and evaluate reforms for democratic institutions that are capable of augmenting the epistemic reliability of democratic decision making. In order to do so, however, behavioral democratic theory must rely on descriptions of the state of our epistemic capacities provided by psychology and other social sciences. As a result, a behavioral approach to democratic theory must reject idealized pictures of human decision making and begin to consider how cognitive pathologies such as framing effects ought to affect our understanding of democratic arrangements.

Chapter 4: Behavioral Democratic Theory Applied. In this chapter, I apply the behavioral approach to particular theories of democracy. More specifically, I show how the phenomenon of framing effects is relevant to the normative theories of democracy presented in chapter 2. I hope to generate two results here that will validate the behavioral approach. The first concerns democratic theories at the minimalist end of my spectrum. The second result applies to theories of democracy that place epistemic demands on the judgment of citizens.

First, I attempt to demonstrate that minimalist theories of democracy (those that require little, if anything from the judgment of citizens) can generate only weak moral reasons for endorsing democratic government. Most such theories are unaffected by my concerns regarding framing effects. I here point out, however, just how thin the normative justifications of these theories have to be in order for them to be entitled to ignore concerns like framing. Purely procedural theories of democracy can ignore framing effects only insofar as they deny that we can expect democracies to make good political decisions. This results in a very thin procedural endorsement of democratic government. On closer inspection, however, many forms of pure proceduralism turn out not to be so pure after all. Fairness theories and deep deliberative theories often rely on hidden epistemic claims about the reliability of democratic decisions. As a consequence, however, impure proceduralisms are obliged to give up their status as minimalist theories of democracy.

The second result I hope to generate in this chapter concerns theories closer to the epistemic end of my spectrum. I argue that theories of democracy that place epistemic demands on the judgment of citizens must account for the costs of ensuring that this judgment is accurate. In this way, any theory of democracy that purports to give us epistemic reasons to support democratic institutions should be obliged to account for how this epistemic value is to be secured. As a result, I argue that such theories ought to endorse institutional mechanisms capable of bolstering citizens' judgment.

Chapter 5: Institutional Implications. If the arguments in the previous chapters are successful, then framing effects pose a threat to the epistemic value of democratic government. Further, a behavioral approach to democratic theory requires us to incorporate into our favored normative theory arguments for the feasibility of achieving competence. The big question for the last chapter is: How can an even moderately epistemic theory argue for the epistemic value of democracy if individual decision making is susceptible to framing effects? My answer is to point to a number of plausible institutional reforms that could help to secure the epistemic value of democratic decision making even in the face of framing.

In order to counteract the effects of framing, three broad strategies suggest themselves. First, increasing the number of competing frames for political issues (e.g., by ensuring a diversity of political and media perspectives) holds out the possibility of making us more responsive to reasons than to frames. Second, mechanisms designed to isolate democratic outcomes from flawed democratic decision making (e.g., constitutional review) might allow us to catch mistakes before they undermine the epistemic value of democratic arrangements. Third, public education programs aimed at eliminating framing effects could provide us with a direct means of improving the decision making of democracies.

My discussion of these issues is only preliminary. The point of this chapter is to sketch the resources that theories of democracy have at their disposal to vindicate their claims about the purported epistemic value of democratic arrangements. I do not attempt here to make the case in favor of the feasibility of epistemic theories of democracy; I merely indicate the kind of work that needs to be done in order to reconcile the normative claims of such theories with the empirical literature on framing effects. Individual theories will have to make different arguments and put forward different institutional proposals in order to show how citizens are to live up to their epistemic obligations (e.g., fairness theories may well be satisfied with a system of judicial review, but theories of democracy that make use of Condorcet's jury theorem seem to require a broad reform of current systems of political communication). My aim in this chapter is not to make the argument for these theories but only to show that behavioral democratic theory can respond to questions about the reliability of democratic decision making. Whether these responses are ultimately satisfying is another matter, one that I cannot address here, but I hope to have shown that democratic theory should no longer remain silent on these questions.

Framing Effects

1.1 THE BEHAVIORAL APPROACH

Recently, the behavioral approach to law (Sunstein and Thaler 2008), economics (Ariely 2009), and other social sciences (Shleifer 2000; Shefrin 2002) has been gaining popularity.[1] This approach is characterized by an attempt to reform existing disciplines (e.g., law, economics, and finance) through the development of a new model of human decision making (H. Simon 1955; Gintis 2004). Traditionally, these disciplines have employed a model of choice borrowed from classical economics.[2] This model construes individuals as maximally rational and seeks to understand human behavior in terms of a set of optimal rules for the solution of decision-making problems. This approach has been criticized on a number of levels (Jolls, Sunstein, et al. 1998), but most important for my purposes, it has long been shown to present an inaccurate description of actual human decisions (Kahneman, Slovic, et al. 1982; Kahneman 2003).

The behavioral approach to law and economics (as well as other disciplines) arose out of an attempt to develop an account of human decision making that more accurately reflects our actual decision-making behavior. In order to do so, this approach incorporates insights from empirical psychology into theorizing about markets and the law. The behavioral subdisciplines of economics and law reject the traditional rational actor model of human decision making and attempt to generate a new, behavioral model of choice. The picture of human decision making that has emerged from these subdisciplines construes human beings as boundedly rational, where the bounds of our rationality are drawn by cognitive heuristics that, under certain specifiable conditions, result in biases in our decision making.[3] So far, the behavioral approach has proved to be highly

[1] The term "behavioral law" is potentially misleading. Originally, most behavioral research in legal theory concerned the law and economics paradigm. As a result, this research was normally understood as "behavioral law and economics." Recently, however, the behavioral approach has been applied to new areas of law and legal scholarship (Sunstein 1993b; Jolls and Sunstein 2006). For the sake of simplicity, I will refer to this literature as behavioral law.

[2] The logical foundations of this approach can be traced back to the early game-theoretical analyses of Von Neumann and Morgenstern (1944).

[3] In these contexts, a heuristic is a simple, easily applied rule for solving decision problems. These shortcuts normally provide a reliable means for solving complex problems but sometimes lead to poor decisions (Gilovich et al. 2002).

productive, generating important insights into how certain facts about the decision making of humans affects our behavior both in markets and in legal settings.[4]

1.1.1 Heuristics and Biases

The behavioral approach to both law and economics has drawn heavily on an empirical literature started by psychologists Daniel Kahneman and Amos Tversky.[5] Since the 1970s, Kahneman and Tversky have studied the effect of risk and uncertainty on human decision making.[6] This psychological research, commonly known as the "heuristics and biases" literature, has become highly influential in economics,[7] law,[8] and political science.[9]

The heuristics and biases literature represents a rejection of the rational actor model of human decision making in that it purports to show that human decisions do not operate on the basis of the rules outlined by rational choice theory. Instead, Kahneman and Tversky have argued that we rely on a small set of relatively efficient, low-information, cognitive shortcuts to solve decision problems. These heuristics do not conform to the requirements of rational choice theory, and thus this literature has helped to explain why, in so many different contexts, actual human decisions fail to be fully rational. In this way, the heuristics and biases

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[4] For an interesting example, see behavioral law and economics' treatment of the endowment effect, the Coase theorem, and environmental law (Sunstein 1993b; Jolls and Sunstein 2006). For a broad overview of how these heuristics and biases impact on public policy, see Trout (2009).

[5] It should be noted at the outset that the relationship between the behavioral approach and the heuristics and biases research is contingent: this approach seeks to improve on the rational actor model by looking to empirical psychology, and currently the most important research on choice in psychology is the heuristics and biases literature. If this literature is supplanted or discredited by another research project, then the behavioral approach should seek other empirical grounds for its model of choice. Currently, however, the research project started by Kahneman and Tversky is the most promising behavioral model of choice.

[6] Amos Tversky died in 1996. He was professor of behavioral sciences at Stanford University. Daniel Kahneman won the 2002 Bank of Sweden Prize in Economic Sciences for their research. He is currently emeritus professor of psychology and public affairs at Princeton University. Major contributions to this field of research have been compiled in three volumes: *Judgment under Uncertainty* (Kahneman, Slovic, et al. 1982), *Choices, Values, and Frames* (Kahneman and Tversky 2000c), and *Heuristics and Biases* (Gilovich et al. 2002).

[7] See *Quasi Rational Economics* (Thaler 1991) and *Advances in Behavioral Economics* (Camerer, Loewenstein, et al. 2003).

[8] See *Behavioral Law and Economics* (Sunstein 2000a) and *The Law and Economics of Irrational Behavior* (Parisi and Smith 2005).

[9] See *Elements of Reason* (Lupia et al. 2000).

literature presents an alternative model of human decision making: the heuristics specified by this literature can be used as a behavioral model for the study of human decisions. The predictions of this behavioral model differ significantly in many (though not all) situations from those of the rational actor model.[10]

In recent years there has been a huge proliferation of research into behavioral models of human decision making.[11] A large number of individual heuristics and biases have been studied, and there is much controversy regarding the proper way to characterize many of these phenomena.[12] As a result, much of the empirical literature on behavioral models of choice is still under development.[13] Because the literature has become so vast, and so much of it remains controversial, it is not yet possible to speak conclusively about a single, unified, and complete behavioral model of choice. Instead, such a model now exists only in bits and pieces, with varying degrees of controversy and empirical disagreement attached to each. As a result of the current instability of the wider behavioral research program, in what follows, I will focus on just one well-documented aspect of the heuristics and biases literature: the phenomenon of framing effects.

1.1.2 Framing Effects

An influential part of the heuristics and biases project involves the study of how experimental subjects respond to decisions involving risk.[14] Kahneman and Tversky have attempted to provide a general account of the heuristics that determine in which situations individuals will display risk-averse and risk-seeking behavior.[15] As part of this project, they conducted experiments to show how the wording of a decision problem served to influence the responses they received from experimental subjects. The

[10] For a litany of interesting examples, see the work of Richard Thaler (esp. 1991, 1992, 2005).

[11] For accessible introductions to this literature, see Gilovich (1991), Piattelli-Palmarini (1994), Sunstein and Thaler (2008), and Ariely (2009).

[12] For a sustained critique of this literature, see the work of Gerd Gigerenzer (Gigerenzer, Todd, et al. 1999; Gigerenzer and Selten 2001; Gigerenzer and Engel 2006; Gigerenzer 2008; Berg and Gigerezer 2010).

[13] Kahneman and Tversky's prospect theory continues to be the most dominant paradigm in the field (Camerer 2000; Kahneman and Tversky 2000a, 2000d), but other versions (Wakker and Tversky 1993) and alternatives (Loomes and Sugden 1982) also exist.

[14] Also instrumental to the development of research into framing effects was work by sociologists such as William Gamson. See especially Gamson (1992), as well as Gamson and Modigliani (1987, 1989).

[15] See "Choices, Values, and Frames" and "Prospect Theory: An Analysis of Decision under Risk" in Kahneman and Tversky (2000c).