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DIFFICULT CHOICES: TO AGONIZE OR NOT TO AGONIZE?

by

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DIFFICULT CHOICES: TO AGONIZE OR NOT TO AGONIZE?

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Abstract

What makes a choice difficult, beyond being complex or difficult to calculate? Characterizing difficult choices as posing a special challenge to the agent, and as typically involving consequences of significant moment as well as clashes of values, the article proceeds to compare the way difficult choices are handled by rational choice theory and by the theory that preceded it, Kurt Lewin's "conflict theory." The argument is put forward that within rational choice theory no choice is in principle difficult: if the object is to maximize some value, the difficulty can be at most calculative. Several prototypes of choices that challenge this argument are surveyed and discussed (picking, multidimensionality, "big decisions" and dilemmas); special attention is given to difficult choices faced by doctors and layers. The last section discusses a number of devices people employ in their attempt to cope with difficult choices: escape, "reduction" to non-difficult choices, and second-order strategies.

1. "Agony of Doubt"

"What a difficult choice," a friend smilingly comments as she faces the well-endowed dessert counter at a party. Having heard the traffic report on the radio in the morning, I may find it difficult to choose which route to take, as I learn that all routes to my destination are likely to be congested. A relative tells me that the formal act of signing the final papers committing his aging parent to an institution was one of the most difficult choices he experienced. Reflecting upon the legal and medical professions, the comment is sometimes heard that in choosing either of them one must be prepared to face many difficult choices in one's professional career; so, too, with regard to being a politician or a statesman.

In the summer of 2006, Israel went to war against the Hezbollah in Lebanon. The Israeli cabinet, led by the Prime Minister, took the decision to go to war within a few hours after a border skirmish in which three soldiers were killed and, in addition, two soldiers were kidnapped by Hezbollah. Some two months later, after the war ended with ambiguous results, pressure mounted on the Israeli government to appoint a commission of inquiry into the conduct of the war. Prime Minister Olmert agonized for about two weeks before finally reaching the decision which format of commission, from a menu of several options, he was going to approve.

In what follows, I shall be concerned to explore what makes choices difficult above-and-beyond the difficulty of expected-value calculation. I shall consider a choice difficult to the extent that it poses a special, non-calculative challenge to the choosing agent, either in virtue of certain characteristics of the choice itself or of the agent facing it. From the point of view of the psychologist, the description of Mr. Olmert's behavior clearly indicates that the choice to appoint a state commission of inquiry (rather than, say, a judicial commission) was to the prime minister more difficult than the choice to go to war. The longer it takes to reach the decision, says the psychologist's formula, the more difficult the choice reveals itself to be.

Let us try to make sense of Olmert's choices, in light of the psychologist's formula relating the difficulty of the choice directly to the time it takes. One possible conclusion from applying the psychologist's formula here is that the intuitively suggestive link between the difficulty of the choice and the momentousness of the outcome should be questioned: even though the choice to go to war was clearly the more momentous one, the choice of the format of inquiry appears to have been the more difficult one. Another possible conclusion is that a choice whose outcome is likely directly to affect the agent's own life and career is more difficult than a choice whose outcome is likely directly to affect the lives of many people other than the agent's – even when the effect on the lives of the many might be momentous.

Yet another way to react to the attempt to apply the psychologist's formula to Olmert's case is to say that Olmert's case shows the formula to be wrong: some difficult choices are made quickly. Rather than the speed of the choice attesting to its non-difficulty, it may attest to some other feature of the choice situation or, sometimes, to the perversity of the agent making the choice. We may recognize that the decision about the format of inquiry took longer for the prime minister to make than the decision about going to war, but reject the notion that the former is, as such, a more difficult decision than the latter.

Consider in this connection the well-known phenomenon, popularly referred to as one of Parkinson's laws, that the time spent by committees over a decision is inversely related to the cost of the project to be decided on. Ordinary committee members tend to have particular views and to feel strongly about issues they are familiar with, at the same time as they feel alienated from important, expensive and unfamiliar items. Overwhelmed, people feel uncomfortable discussing big items: they tend to rely on experts' advice and they want the vote over quickly. A parliamentary committee is likely for example to spend much more time over a proposal for new parking arrangements than over a proposal for a multi-million dollar nuclear facility.[1]

We may at this point want to go beyond the simplistic positive formula relating the difficulty of the choice with the time spent on it, and to ask normative questions. Harking back to the depiction of difficult choices as choices which pose a special challenge to the choosing person, is it acceptable to us that the choice to go to war is less difficult than the choice of a format of inquiry? Can it be right? Or does the time difference in reaching the decisions possibly reflect more about the personality of the choosing agent than about the nature of the choices involved?

A preliminary distinction suggests itself: *a difficult choice v. a choice difficult for agent A*. The distinction is between choices that are difficult, in-and-of themselves, and choices that particular agents have difficulties coping with (while others may not). In dealing with the first sort, the focus is on an analysis of types of choice situations; in dealing with the second the focus is on an analysis of personality types and – possibly – of personality disorders.

[1] Parkinson theorized that when the costs go way beyond the incomes of those deciding they switch off, but when the amounts are closer to those they are used to in their own lives they are more willing to debate.

Clearly, the two classes of choices are not, as a matter of empirical fact, co-extensive: not everyone has difficulty dealing with difficult choices, and not every choice that someone finds difficult merits being considered a difficult choice per se. At the same time, these two classes cannot be disjoint. We would like to be ale to assert that certain choices are intrinsically difficult and that people facing them do, and should, agonize over them.

Whether the task of providing a list of necessary and sufficient conditions for this sort of cases makes sense, remains an open question. But it seems that we all recognize some of their characteristic and salient features. Irrespective of whether they are complex or difficult to calculate, difficult choices typically involve consequences of significant moment either to the life of the person making the choice or to the lives of others; also, they typically have a moral dimension that might involve a clash of values. A person taking a difficult choice lightly and making it quickly is amiss: we feel justified in being judgmental of such a person. Having said that we note, however, that the longer time spent over the choice is not a characterizing feature of difficult choices; rather, it is a symptom thereof.

Taking our time over a difficult choice and agonizing over it is not always an option. There are cases in which the speed with which the decision has to be made is in the nature of the decision itself. Under the heading "A Man Down, a Train Arriving, and a Stranger Makes a Choice," Cara Buckley of the New York Times (January 3, 2007) tells the story of the 50-year-old Wesley Autrey, who was waiting for the downtown local at 137th Street and Broadway in Manhattan. He saw a man stumbling to the platform edge and falling to the tracks, between the two rails. "The headlights of the No. 1 train appeared. 'I had to make a split-second decision,' Mr. Autrey said. So he made one, and leapt."

The question whether brave Mr. Autrey made a difficult choice in a split second or acted from instinct must remain moot. But consider a story in which an excruciatingly difficult choice was squarely faced and made under the severest time limitation – a story which, in Israel, is as well known as it is traumatic. On February 21, 1973, a Libyan Arab Airliner on a regularly scheduled flight from Tripoli to Cairo left Tripoli, but lost its course over northern Egypt, entering Israeli airspace of Sinai at 13:54. After failed attempts at communication by Israeli F-4s, the plane changed course and started to descend. Suddenly, it turned back toward the west and increased altitude, as if trying to escape. Warning shots were fired. By now, the Israelis have assessed the risk that the plane was on a terrorist mission as high, and they decided it must not escape. The plane was shot down at 14:08, resulting in the loss of 108 out of 113 people on board.

The incident lasted fourteen minutes, from start to finish. In the duration, the entire top echelon of the Israeli air force was involved; moreover, it was later revealed that the Libyan plane had been shot down with the personal authorization of the Israeli Chief of Staff. The risk of shooting down a passenger-carrying civilian plane was recognized and assessed, but the risk of an air-borne terrorist attack was assessed as higher.

In subsequent debriefings and interviews, some of the officers involed described this as one of the most difficult choices they ever had to make in their lives. This is surely

an extreme case of a difficult choice in the sense of a difficult-to-calculate one under conditions of acute uncertainty and constraints of time, to which are added the further elements of momentousness and the moral dimension of the life-or-death aspect of the decision. And in the event, it was a case in which expected-utility calculation was applied and did prevail.

Cases of severe time limitation notwithstanding, taking our time over a difficult choice and agonizing over it is no guarantee that the choice will be correct, whatever meaning we wish to assign to 'correct' here; it is no guarantee that we shall not regret the choice later, either. But it seems that we have a strong sense, albeit vague in its details, that the process of agonizing – in the classical sense of "agony of doubt" – over a difficult choice is normatively indispensable.

What such a process consists of goes beyond a calculative exercise of possible outcomes and their payoffs. It involves the activation of empathic imagination: an attempt to envision each of the possible outcomes, to see oneself – and others – in each of them and to go through all of their implications, including their emotional ones. (Think of the example, brought at the outset, of the decision to commit an aging parent to a home.) A difficult choice seems to entail that we owe such a process to ourselves and sometimes to others as well, and that going through it increases the chances that the decision we finally make will be correct, and will have left us more mature and better able to learn from our own experience and from our own mistakes.

2. Rational Choice and Difficult Choices

Rational choice theorists do not concern themselves with reaction time, nor indeed with any other aspect of the phenomenology of decision-making. Within rational choice theory there is no room for the question "What makes a choice difficult for A" (beyond the possible computational burden). But there must be room within rational choice theory for the question "What makes a choice difficult." How, then, does it deal with this question?

As a first approximation, it seems fair to say that within rational choice theory, no choice is *in principle* difficult. The chooser's object is to maximize some value, say (expected) utility – and the rest is calculative, practical detail. Of course, some information may be missing or uncertain, probabilities may be unknown, and the actual calculation may at times be complex and arduous – think, for example, of choices concerning insurance, or pension plans. But otherwise, no difficulty is in principle involved.

Yet, certain types of choice situations do present a principled, as distinct from practical, challenge to the rational choice approach. I shall now proceed to survey a list of categories illustrating various prototypes of such choices within the framework of rational choice theory.

A. Picking

- Which can of Coke shall I select?
- Being a hungry ass, which of the two identical bales of hay shall I take?

These questions exemplify cases in which we are strictly indifferent with regard to the alternatives before us because our preferences over the alternatives are completely symmetrical. To the extent that we take choosing to be choosing for a reason, and choosing for a reason to presuppose preferences, it looks like we have to conclude that in such cases choosing is precluded. As Leibniz put it in his Theodicy, “In things which are absolutely indifferent there can be no choice ... since choice must have some reason or principle.” (Leibniz 1951, pp. 148-9)

Leibniz believed that in the absence of sufficient reason, choice is precluded. Algazel, Dante, Montaigne, Spinoza and other philosophers who had occasion to discuss the issue we nowadays refer to as the problem of Buridan's ass, also denied the possibility of picking (Ullmann-Margalit and Morgenbesser, notes 3 and 14 and accompanying text). "I entirely grant," says Spinoza, "that if a man were placed in such a state of equilibrium [like the ass of Buridanus] he would perish of hunger and thirst, supposing he perceived nothing but hunger and thirst, and the food and drink which were equidistant from him. If you ask me whether such a man would not be thought as ass rather than a man, I reply that I do not know." (Spinoza 1937, p. 102) That is to say, where there is no preference there can be no choice and where there is no choice there must be inaction and therefore the agent – whether man or ass – is destined to starve to death.

Several philosophers down the ages maintained that, whether or not choice without preference is a theoretical possibility, it is not a practical possibility: real indifference between alternatives, they believe, never occurs and hence no picking situations exist in practice. "Nothing is presented to us," says Montaigne, "wherein there is not some difference, how light so ever it be; and that either to the sight, or to the feeling, there is ever some choice, which tempts and draws us to it, though imperceptible and not to be distinguished." (Montaigne 1965, p. 333)

The psychologist Kurt Lewin developed a "field theory" to deal with psychological conflict. (Lewin 1935, 1951) Conceptualizing difficult choices as choices under conflict, his theory was the reigning dogma for decision making in the decades before the rise of rational choice theory. Generations of psychology students, as well as students in other fields interested in questions of choice and decision, grew up on Lewin's conflict theory and its conceptual tools and vocabulary.

One instance of psychological conflict, according to Lewin, is the case of "plus-plus" conflict, where the person stands midway between two "positive valences." Using as an example the choice confronting a man trying to decide between two television programs that he expects to be equally enjoyable, Lewin posits that in fact the simple plus-plus conflict will resolve within a short time: "The equilibrium of the forces is unstable, since any slight change in the relative attractiveness of the two regions will drive the person off the exact center and toward one or the other of the goals… So, for example, the TV viewer who has selected Channel 2 over Channel 4 is unlikely to be driven back toward Channel 4 if the program lives up to his positive expectations." (Levinger 1957, pp. 331-2)

Notably, as a psychologist Lewin was also interested in the corresponding negative case, namely the minus-minus case. From his point of view, this case is not entirely symmetrical to the positive one. Here a person is envisaged standing between two

negative valences of equal strength – a case of "Buridan's ass between two skunks." (The phrase was coined by the eminently quotable Kenneth Boulding.) Lewin sees this conflict as unstable since the person will tend to dissolve the equilibrium of forces by moving out of the conflict zone altogether – an option not regularly considered within rational choice theory. When faced rather than avoided, however, a minus-minus conflict leads to less rapid resolution than the plus-plus one, since an approach to either of the regions leads to stronger forces driving the person in the opposite direction. Where barriers exist which prevent exit, the equilibrium will be stable and the conflict unresolved. Still, "if the negative valences in the minus-minus conflict situation are sufficiently strong, the person will turn against the barriers in his attempts to escape." (*ibid*., p. 333)

Rational choice theory uses the preference relation as its major building block. Being a partial ordering, the relation 'person P prefers alternative *a* over alternative *b*' requires complementation. The equivalence relation of indifference is therefore a necessary component in the system. Moreover, the phenomenon of multiple equilibria brings the notion of picking – i.e. choice without preference – to the fore, and does not let rational choice theorists ignore the existence of picking situations or remain indifferent to indifference. It is noteworthy however, that for non-psychologically oriented rational choice theorists, the difference between a "plus-plus" case (i.e. indifference between two good alternatives) and a "minus-minus" case (i.e. indifference between two bad alternatives) makes no difference: they are indifferent to it.

Rational choice theory does not accept Leibniz's (et al.) view that picking locks the agent into an impasse, nor does it have any use for Lewin's theory of plus-plus or minus-minus conflict. At the same time, beyond counseling one to minimize the sum of decision costs and error costs by just picking, it does not itself have much of insight to offer on the issue of how to deal with picking situations. While picking thus presents a principled difficulty of sorts to rational choice theory, it should not be concluded however that cases of picking count as cases of difficult choices within that theory. After all, picking situations do not typically involve consequences of significant moment, nor do they typically involve a clash of values or require inordinate amounts of time to handle. On the contrary, to the extent that one may generalize about them, the generalization will likely be that picking cases typically involve "small decisions" of the can-of-coke variety.[2]

B. Big Decisions

- Shall I marry Ann?
- Shall I quit my job as a high-tech executive and become a Buddhist monk?

These questions exemplify big decisions. As a first approximation, I characterize a big decision as personal and transformative: a decision taken at a major crossroad of one's life and likely to transform one's future self in a significant way. Decisions such as whether to marry, to migrate, or to leave the corporate world in order to become an artist, might be examples.[3]

[2] For more on the smallness of picking see Ullmann-Margalit and Morgenbesser 1977, esp. pp. 783-5, and Ullmann-Margalit 2006, pp. 157-8.
[3] For more on big decisions see Ullmann-Margalit 2006.

Big decisions in the sense here meant are points of no return. In making a big decision, one is embarking upon a road that is one way only, leaving burning bridges behind. Also constitutive of the concept of big decision is the aspect of awareness: the person facing it is conscious of its being such and is open-eyed about it. A big decision thus involves alternatives that are likely to change one's beliefs and desires (or utilities) and are perceived as such by the person making the decision, in real time. Inasmuch as one's beliefs and desires shape the "rational core" of the rational decision maker, we may say that a person making a big decision emerges from it as a different person.

Transforming the sets of one's core beliefs and desires, a big decision brings about a personality shift that alters the person's cognitive and evaluative systems. There is no continuity in his personality identity and hence there is a problem about his being consistent in his choices. While New Person’s new sets of beliefs and desires may well be internally consistent, inconsistency now exists between New Person’s system of beliefs and desires, taken as a whole, and Old Person’s system taken as a whole.

So the notion of the big decision as here expounded poses another difficulty to rational choice theory. Given that the rationality of decision-making and of choice is predicated on the continuity of personality identity over time,[4] big decisions raise the problem of how to assess their rationality, involving as they do choices that straddle two discontinuous personalities. Note however that the problem as posed relates to the theoretical, not to the practical, aspect of big decisions qua rational choices. It does not question the decision maker's actual ability to make a choice, or his subsequent ability to assess himself as happy or unhappy with his choice. (I say more on the practical aspect of coping with big decisions at the end.)

In addition to the difficulty they pose for rational choice theory, big decisions often count as cases of difficult choices within that theory. Relevant considerations here are, first, that big decisions by definition involve consequences of significant moment to the decision maker's own life and, second, that they obviously demand from the decision maker to take one's time over them in more than a calculative sense.

Big decisions as so far described are self-affecting personal decisions. One may also consider big decisions that are other-regarding, such that have a transformative effect upon the lives of others. Other-regarding big decisions are typically taken in virtue of one's official position or institutional role; for example, a statesman's (e.g. Olmert's) decision to go to war – or indeed to stop a war. Truman's decision to use the atom bomb over Hiroshima is a dramatic case in point exemplifying big decisions of this sort, one that may be considered paradigmatic of difficult choices. Or consider the headline proclaiming not long ago in the *Los Angeles Times*, "Pope Benedict Faces

[4] The best known philosophical discussion of the connection between rationality and the idea of stability of personal identity over time is Parfit 1986, chapter XIV. However, he speaks of personal identity whereas for the purposes of the present discussion it is preferable to speak of personality identity. (For more on this distinction, see Margalit 2004, p. 46 ff)

'Difficult Choice' In Determining Whether to Recommend Condoms as HIV Prevention Method".[5]

Note however that to the extent that we consider these choices difficult, we do so because we recognize that these choices involve consequences of significant moment for the lives of a huge number of people, and because they have an urgent moral dimension to them. These choices, agonizingly difficult as they may be, do not pose a theoretical difficulty to rational choice theory as such. Unlike the self-regarding big decisions discussed earlier, they do not involve points of discontinuity in the personality identity of the persons making them.

C. Multi-dimensional choices

- Shall I spend my week's vacation in Paris or in Venice?
- Shall I go on a ski vacation or buy a new laptop computer?

These questions exemplify multi-dimensional choices. The problem with these choices arises if and when the alternatives they present cannot be put on a single scale and cannot be compared along a single dimension. For example, when deciding which apartment to buy, is a spare bedroom more important than a shorter commute to work? Are better schools in the area more important than a sun balcony or lack of noise from the street?

When many considerations have to be taken into account and somehow properly weighted, the choice is difficult. The difficulty increases the more dimensions there are and the higher the stakes. Multi-dimensional choices bring home to us the importance of finding out what we really care about. They force us to focus on what our "true" priorities, or preferences, are.

Faced with such a choice we may sometimes realize that the notion that all we have to do is to discover our pre-existing preferences is a myth: deliberation may not be enough and we may have to make up our preferences by fiat – or look for *force majeure*. Raz observes that not only does one care about which option to choose even when the options are incommensurable, but one can indeed agonize over incommensurable options, if the reasons on either side are deep and important. (Raz 1986, p. 332) In choice situations in which the alternatives are not commensurate, it is not an easy or a straightforward matter to follow rational choice theory's exhortation to maximize value.

Multi-dimensional choices are difficult choices in theory, and often in practice too. On the level of theory, one complication is that they sometimes invite systematically intransitive choices. “Intransitivity often occurs when a subject forces choices between inherently incompatible alternatives. The idea is that each alternative invokes 'responses' on several different 'attribute' scales and that, although each scale itself may be transitive, their amalgamation need not be.” (Luce and Raiffa 1967, p, 25) This phenomenon takes place on the level of individual choice as well with regard to

[5] Peter Boulay, *Los Angeles Times* (opinion piece), Nov. 6, 2006. The article explains: "Pope Benedict XVI faces a difficult choice: preserving the Roman Catholic Church's traditional ban on contraception or shifting to a relative 'yes-sometimes' policy that gives us an effective weapon against AIDS but opens up church policy on contraception, abortion and infallibility to new challenges."

group choice[6]. Cycles of intransitive choices, whether vicious or not, have been amply documented, classified, studied and analyzed. Indeed the observation - sometimes referred to as Condorcet's paradox – that the requirement of transitivity is inconsistent with the majority-vote rule was made already in the 18th century. Moreover, such cycles can occur where the context "is transparent and the decision maker is reflective" (Bar-Hillel and Margalit, p. 119), where the violation of the consistency requirement is not attributable to factors such as cognitive limitations, emotional interferences, taste-change over time, etc.

On the practical level, some evidence suggests that people are in fact more casual and cavalier in the way they handle their difficult multi-dimensional choices than in the way they handle their less difficult ones.[7] In a series of studies reported recently in *Science* (Dijksterhuis et al. 2006), researchers found that people who spend a lot of time consciously weighing the pros and cons of a decision with many considerations often do not choose wisely. The researchers conclude that the best strategy is to gather all of the relevant information and then put the decision out of mind for a while. Their advice for anyone who is struggling to make a difficult decision: Stop thinking about it. When the time comes to decide, go with what feels right.

According to the psychologist Ap Dijksterhuis, who led the research, the unconscious appears to do a better job of weighing the factors of a multi-dimensional decision and arriving at a sound conclusion than the conscious mind. In an ordinary, conscious decision-making process, people can pay attention to only a limited amount of information at once. They focus on just a few factors and are thus in danger of losing the bigger picture. Also, people often tend to weigh some factors too heavily, and discount others that may be important. For difficult choices, then, "once you have done a certain amount of thinking to gather relevant information, further thinking is counterproductive. Instead, busy yourself with other tasks, and let your unconscious work on the problem."[8]

D. Dilemmas

- If I work, I shall have no free time; and if I am idle, I shall have no money. What shall I do?
- If I abort the fetus, a life will be lost; if I do not abort the fetus, my life will be ruined. What shall I do?

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[6] Note however that, "The attempt to distinguish between group choice and individual choice is complicated by the fact that some choices cannot be crisply classified into one or the other." (Bar-Hillel and Margalit 1988, p. 121) Consider such cases as: a benevolent dictator who makes a decision on behalf of a group; a group of experts (doctors, say) who is making a decision on behalf of an individual; an individual who bases his or her decision on the (pair-wise) choices others would have made – say, based on consumer-guidance publications; and more. An analogy also exists between the attempts of a group to integrate the rankings given by each of its members into an overall group ranking, and the attempt of an individual to integrate the rankings on each of a number of dimensions into an overall ranking of the alternatives. (*Ibid*., p. 125)

[7] Regarding the ways people handle their difficult financial decisions, for example their retirement plans, see Sunstein and Thaler 2003.

[8] Gareth Cook, "Thought for thinkers: 'Follow your gut'," *Boston Globe*, February 17, 2006. The above summary of Dijksterhuis et al.'s research owes to this report by Cook.

These questions exemplify classical dilemmas. Meant to capture the situation of "Damned if I do and damned if I don't", these cases present a person with a situation in which she is obliged to choose one of two options (the two "horns of the dilemma"). Each option leads to a state of affairs that is undesirable to her; hence the problem. A classical dilemma is traditionally portrayed as answerable with a counter-dilemma in which both options lead to states of affairs that are desirable to the agent; the problem, or difficulty, being that the agent cannot choose both, and so whatever she does she ends up having to give up something that she is reluctant to give up. The counter-dilemma in our first case is "If I work, I earn money; and if I am idle, I enjoy myself."[9]

On a closer look, the multi-dimensional cases can also be presented as dilemmas of this sort. On the one hand, I can focus on the upside of each option that my budget allows (I will enjoy the advantages of a laptop computer or I will enjoy the vacation). On the other hand, however, I can focus on the downside of having to give up the other option, given that my budget allows me to purchase only one (I will not have a laptop computer or I will not have a vacation).

This means that the dilemma, along with its counter-dilemma, is perhaps merely a clever rhetorical way of presenting multi-dimensional choices. If so, then the difficulty inherent in the multi-dimensional choices is not in principle different from the difficulty inherent in dilemmas. The main non-principled difference between the two types of cases is that the options in a dilemma are meant to be exclusive and exhaustive – I cannot avoid doing one or the other and I cannot do both – whereas in ordinary multi-dimensional choices this is not usually the case.

Returning to Lewin's depiction of choice in terms of conflict theory, we note that what he refers to as "plus-plus conflict" is to him a conceptual simplification of a dilemma. He takes the usual choice situation to be such that attaining one goal entails sacrificing the other: although neither TV programs may be particularly good, tuning in on one does mean missing the other. Since almost any choice between attractive goals has also a few negative features, Lewin subsumes the plus-plus conflict under his more general and complex case of "double plus-minus conflict."[10]

We may still ask whether it is the upside or the downside version (the "half-empty cup" or the "half-full cup") of this kind of choice situations that is more difficult. Noting that the difference between the versions boils down to a framing issue, the answer to this question would seem to depend on the personality of the choosing agent and on the psychological biases she is prone to, rather than on the choice situation as such. In other words, the agent may experience one version of this dilemma as more difficult, in the sense of more taunting or agonizing, than the other version, but this does not reflect on the choice situation itself. It is likely that the degree to which the agent is prone to regret might have some effect on the degree to which she experiences the upside version of the problem as more, or less, difficult

[9] The classical sophist dilemma is "If I say what is just, men will hate me; and if I say what is unjust, the gods will hate me" – the counter-dilemma being "If I say what is just, the gods will love me; and if I say what is unjust, men will love me."

[10] In the typical plus-minus case, according to Lewin, the person "vacillates around a point where the plus forces are strong enough to hold him but not strong enough to overcome the growing minus forces." (Levinger 1957, pp. 333-4)

than its downside version; Kahneman and Tversky's Prospect Theory (1979) is of particular relevance here.

Still, their facetious rhetorical aspect notwithstanding, some dilemmas seem to have an irreducible element of *gravitas*. The example of the abortion dilemma above may be a case in point; this may also be true for President Truman's atomic dilemma. As a further example we may consider the dilemma faced by Lillian Hellman and others who were summoned to testify before the House Committee on Un-American Activities in the 1950's.[11] In this sort of cases, there is a very real sense in which the person who has to make the choice is damned whatever he or she does. I suppose the serious dilemmas I am concerned to delineate are correctly depicted by saying that they have a tragic element to them. They involve a situation of a moral trial where the decisionmaker becomes a courageous hero facing hostile, relentless fate. With no possibility of redemption, the best one can hope for in these situations is the retention of one's human dignity.

These choices are truly difficult ones. One cannot take them lightly, descriptively speaking or normatively speaking. Moreover, such options force the choosing persons to come to terms with and to articulate their own priorities in domains where people normally do not have priorities and where they had rather evade articulating them. Perhaps the most difficult aspect of such a dilemma is the fact that, while making the choice one is aware that one will have to bear responsibility for it and go on living with its consequences.

At the extreme, there are horror dilemmas, real or fictional, like "Sophie's Choice." No right or good or optimal choice exists in such situations, not even a tolerable or acceptable choice. Whichever choice one makes, one is going to feel guilt and remorse (rather than regret) for the rest of one's life. The responsibility for having condemned one's child to death, for example, is not something a normal person can be expected to live with. In the original story, the choice Sophie is forced to make is part of an evil setup of torture and abuse. This may indeed be a characteristic feature of such dilemmas: that in a serious sense the choice situations they present are embedded in a larger, manmade scheme of abuse.

3. Doctors Decisions, Judges' Decisions, and "Hard Cases"

Consider the case of a doctor who faces a terminally ill patient and has to determine a course of treatment. Suppose radiation and chemotherapy may somewhat prolong the patient's life but they have bad side effects, which reduce the patient's quality of life for the duration; also, these treatments are expensive. Alternatively, painkillers and other drugs may improve the patient's quality of life but hasten the end. With some further elaboration of details, this looks like a classical case of a multi-dimensional choice. Is it a prototypical case of a difficult choice?

Whatever the answer, with the help of the Hippocratic Oath the medical profession has taken care to eliminate the multi-dimensionality from such decision situations. Presumably for rule-consequentialist related reasons, it has taken an institutional

[11] A valuable discussion of difficult choices in Schick 1997 uses Lillian's Hellman's case as a leading example.

meta-decision to disregard all dimensions of medical decisions of this kind except one, namely, the prolongation of life. Doctors are supposed to use all the information whey can obtain and the best of the technology available to them, in order to postpone the cessation of their patient's life. They are not supposed to maximize more than just this variable. In practice, of course, matters might get complicated for a variety of reasons, and doctors often agonize over their decisions concerning courses of treatment. But in principle these decisions are explicitly meant not to constitute cases of difficult choices.

Switching to the legal arena, we note that at the end of a criminal trial, the trial judge (or jury) has to come up with a verdict of guilt or innocence. Is this a situation of making a choice between two options? And, if so, might this be a prototypical case of a difficult choice?

In the somewhat trivial sense in which the situation calls for the judge to make up her mind, we might say that she has to choose. When seen from the point of view of the law, however, this is not strictly a decision-making situation and therefore it is not a case of a difficult choice – however much anguish the judge may experience. It is, rather, a situation in which the judge is called upon to draw the right conclusion from the totality of facts found and evidence entered in the case before her. The judge, in this case, is much like a scientist who labors to draw the right conclusion from the facts that he has collected and from the experiments that he has conducted: they both draw conclusions, neither is making a choice.

But even if they are both engaged in the business of drawing conclusions, there is also an important difference between the respective tasks of the judge and the scientist. Crudely put, what constrains the scientist in drawing his conclusion is nothing but logic, whereas the judge is constrained by the law – by legislation and precedent. In other words, the judge has to determine what conclusion the law dictates, given the body of evidence; she has to find out how the law applies to the circumstances in hand. Rather than making a choice as to what is just, she has to determine what follows. In principle, the rules governing the institution of criminal justice are meant to ensure that there is a right answer, and the role of the judge is to find it. Coming up with the right answer might be a difficult matter, but this is a different story from the difficulty of making a decision.

Similarly, in non-criminal and other cases, judges sometimes have to balance competing rights and come up with the answer as to which is weightier. They may for example recognize that the state has a compelling interest in providing public education for young children at the same time as they recognize the right of parents to direct the upbringing and education of their children (*Pierce v. Society of Sisters*, 1925). The process of striking the correct balance may be difficult, time-consuming and even anguishing. But legal fiction has it that, ultimately, judges find it; they do not make it up.

A somewhat different twist on this situation occurs with respect to what some legal theorists call *hard cases*. A "hard case" refers to a situation when no settled rule dictates a decision either way: when a particular lawsuit cannot be brought under a clear rule of law. In such cases, the judge has discretion to decide either way. The contested question among legal theorists is whether, faced with a hard case, the judge

is to invent new rights retrospectively (as argued by legal positivists), or the judge's duty is to discover the preexisting rights of the parties and thereby discover which party has the right to win the case (as argued by Ronald Dworkin 1978, pp. 81-130). Dworkin's example is the *Spartan Steel* case from 1973. "The defendant's employees had broken an electrical cable belonging to a power company that supplied power to the plaintiff, and the plaintiff's factory was shut down while the cable was repaired. The court had to decide whether to allow the plaintiff recovery for economic loss following negligent damage to someone else's property."

Do hard cases present difficult choices? Whether judges have, as a matter of fact, more difficulty in deciding hard cases than in other cases is an empirical question about which I am not aware that relevant data exists. I can however see an argument for thinking that a hard case constitutes, conceptually, a more difficult choice than an ordinary judicial decision. The argument is that, in principle, hard cases present the judges with a two-tier decisional problem. First, the judge has to do a search: she has to go through the procedure of looking for a suitable rule of law under which the case might be brought. Only after the search ends in failure and the judge determines that no such rule of law exists can she proceed to the next stage of either generating or unearthing the right solution to the problem. The question remains moot whether or not such *more difficult* choices indeed constitute *difficult* choices, as distinct from merely more complex or demanding ones.

4. Ways of Coping

A. Escape and Reduction

A major tenet of liberal ethics holds that the good life is a freely chosen one, in which people develop their unique capacities as part of a plan of life. Central to autonomous personhood is the thesis that people ought to be free to choose their own projects, personal relationships, and ways of life. Liberal thinkers like Joseph Raz and Amy Gutman, and free-market economists like Milton Friedman, extol the virtues of the large menu of options of ways of life, from which people should be free to choose their own. The liberal conception of human beings, then, rests on a web of intimate and intricate connections between the notions of rationality, autonomy, and freedom to choose.

There is another side to this coin, however. It is that people often find choosing, as such, difficult. People often dislike making decisions and are reluctant to face them; sometimes they will give much to avoid having to choose altogether. The picture that naturally emerges from rational choice theory, of people as decision-making animals constantly making choices to maximize interest, does not accurately capture the human condition.

Walter Kaufman (1973) speaks of *decidophobia*, conceptualizing it as the fear of autonomy. Erich Fromm speaks of the Escape from Freedom: "Can freedom become a burden, too heavy for man to bear, something he tries to escape from?" (Fromm 1969, p. 4) He outlined three major escape mechanisms that people might use to alleviate from themselves the burden of freedom and choice: authoritarianism, destructiveness and automaton conformity. Fromm's analysis of the mechanism of authoritarianism,

in terms of a person allowing oneself to be controlled by another, became especially well known and influential.

While Fromm related his analysis in particular to the appeal of fascism, its current relevance is largely to the born-again phenomenon within the world's leading religions. A major aspect in the life of the born-again is the surrender of their personal autonomy to the rabbi, to the mullah, or to whoever is their religious authority. The desire to remove the freedom of choice by submitting that freedom to someone else came to be recognized as the contradictory complement to humanity's longing for freedom and self-governance.

People resort to a variety of devices in their attempt to cope with what, to them, are difficult choices. If they do not escape, they may contrive to transform a difficult choice to a non-difficult, or less difficult, one. The reduction of multi-dimensionality to a single dimension of choice is a paramount method, one manifestation of which is the case of the medical profession discussed above. A critique sometimes voiced of the discipline of economics says that economists teach their students to ignore all aspects of the complexity of economic decisions and focus solely on the maximization of profit. (For example, see Rubinstein 2006)

If not the reduction of the number of dimensions a choice involves, sometimes the reduction of the number of alternatives from which to choose is the adopted method. In the daily life of observant Jews the number of alternatives from which to choose – whether in food, form of dress, which newspaper to read, whom to marry, what educational institution to send one's child to and so on – is drastically shrunk in comparison with the number of alternatives faced by non-observant individuals. The reason, above-and-beyond the voluntary submission of the observant person to the authority of the rabbis, is the multiplicity of prohibitions applying to practically every choice situation.

B. Second-Order Decisions

Ordinary people and social institutions are often reluctant to make on-the-spot decisions. They want to reduce the burdens of making choices in an attempt to minimize the difficulty associated with choice. They are reluctant to calculate the costs and benefits of alternative courses of action in particular cases; moreover, they are aware of their own shortcomings and they know that they may err. Individuals, as well as institutions, may therefore resort to second-order strategies for reducing the burdens of, and risk of error in, first-order decisions. In other words, they adopt simplifying strategies well before on-the-spot decisions must be made, attempting to minimize the sum of the costs of choice and the costs of error. Some of these strategies have the effect of giving over one's first-order, on-the-spot choices to an automatic device that proceeds to make the relevant choice without one's intervention.

The costs of choice are the costs of coming to closure on some action or set of actions. They are of diverse kinds: time, money, unpopularity, anxiety, boredom, agitation, anticipated ex-post regret or remorse, feelings of responsibility for harm done to self or others, injury to self-perception, guilt, or shame. The costs of error relate to achieving suboptimal outcomes, whatever the criteria for deciding what is optimal. These costs are assessed by examining the number, the magnitude, and the kinds of

possible mistakes. The anticipated costs constitute an important motivation for the adoption of "second-order decisions," meaning decisions about an appropriate strategy for avoiding decisions or for reducing the difficulties associated with making them. Sometimes, second-order strategies are a response to motivational difficulties rather than to cognitive problems; people try, for example, to counteract their own tendencies toward impulsiveness, myopia, and unrealistic optimism. (Weinstein 1987)

A second-order decision is made when people choose one from among several possible strategies: when they adopt a firm rule or a softer presumption; when they create standards and follow routines; when they delegate authority to others; when they take small reversible steps; when they pick rather than choose.[12]

People frequently adopt rules, presumptions, or self-conscious routines in order to guide decisions that they know might be too difficult or costly to make, or might be made incorrectly because of their own motivational problems. I might decide, for example, that I shall turn down all invitations for out-of-town travel in the month of September, or you might adopt a presumption against going to any weddings or funerals unless they involve close family members, or our friend might make up her mind that at dinner parties, she will drink whatever the host is drinking. Bureaucracies and institutions often adopt rules and routines, in the form of "standard operating procedures." They do so from the need to avoid situations in which low-level officials are called upon to apply discretion and make on-the-spot difficult choices. In a way the notion of *casus belli* can be seen in this light as a second-order decision. Suppose the type of provocation that a country considers legitimate cause for war is decided upon and made public ahead of time. Then, if the provocation occurs, going to war is meant to be almost an automatic matter, not requiring an arduous decision-making process. (This could have been the case with Olmert's decision to go to war, but wasn't.)

In cases involving self-control problems, the adoption ahead of time of second-order devices may be particularly important because of the particular difficulty associated with the numerous on-the-spot choices. (Schelling 1984). Thus, a person might adopt a rule: cigarettes only after dinner; no gambling, ever; chocolate cake only on holidays; alcohol only at parties when everyone else is drinking. Or a presumption might work better – for example, a presumption against chocolate cake, with the possibility of rebuttal on special occasions, when celebration is in the air and the cake looks particularly good. Rules, presumptions, and routines of this kind are sometimes chosen self-consciously and as an exercise of will, but often they are, or become, so familiar and simple that they appear to the agent not to be choices at all and hence not to be difficult.

Why might an agent pick rather than choose? When would small steps be best? At the individual level, it can be obvious that when you are in equipoise, you might as well pick; it simply is not worthwhile to go through the process of choosing, with its high cognitive or emotional costs. The result can be picking in both low-stakes (cereal choices) and high-stakes (employment opportunities) settings. Picking can even be

[12] For more on second-order decisions see Sunstein and Ullmann-Margalit, 1999; In particular, for a discussion about when one or another of the available strategies will be chosen, when one or another makes best sense, and how both rational and boundedly-rational persons and institutions might go about making the relevant choices.

said to operate as a kind of delegation, where the object of the delegation is “fate,” and the agent loses the sense of responsibility that might accompany an all-things-considered choice. Thus, some people sort out difficult choices by resorting to a chance device (like flipping a coin)[13].

Anglo-American judges often proceed case-by-case as a way of minimizing the burdens of decision and the consequences of error. If, for example, a court in a case involving an asserted right to physician-assisted suicide is likely to have too little information, and if it attempted to generate a rule that would cover all imaginable situations in which that right might be exercised, the case would take a very long time to decide. Perhaps the burdens of decision would be prohibitive. Such a court may have a great deal of difficulty in reaching closure on broad rules. Small steps are a natural result. Incremental decisions are a good way of responding to the particular problem of bounded rationality created by ignorance of possible adverse effects.

The "right to die" example illustrates the complications encountered by multimember institutions, where there is the need to reach a degree of consensus. Consider, too, a legislature that might find it difficult to specify the appropriate approach to global warming, given the problems posed by disagreement, varying intensity of preference, and aggregation issues. The result may be the strategy of small steps; sometimes the strategy of delegation is chosen.

An institution facing political pressures may have a distinctive reason to adopt a particular kind of second-order decision, one that will deflect responsibility for choice. A monarch is relieved of responsibility for unpopular but indispensable decisions if he can point to a separate institution that is charged with the relevant duty[14]. In modern states, the existence of an independent central bank is often justified on a similar ground. In the United States, the fact that the Federal Reserve Board is unelected is an advantage[15]. There are analogues in business, in workplaces, and even in families.

Sometimes the second-order decisions that individuals or institutions make in order to reduce the burdens of later decisions in particular cases are themselves costly. Special willingness to expend a great deal of effort to generate rules seems to exist when planning and fair notice are important, and when it is anticipated ahead of time that a large number of decisions will be made. (Kaplow 1992)

A person facing a "big decision" in the sense expounded earlier may obviously experience it as a difficult choice. Infrequent and exceptional as such decisions are, big decisions hardly lend themselves to being relieved by the devising of second-order

[13] Flipping a coin may have a different function, though. Consider: “Whenever you’re called on to make up you mind / And you’re hampered by not having any, / The best way to solve the dilemma, you’ll find / Is simply by spinning a penny. / No – not so that chance shall decide the affair / While you’re passively standing there moping / But the moment the penny is up in the air, / You suddenly know what you’re hoping.” (Piet Hein, “A Psychological Tip", *Grooks*, Cogpenhagen: Borgens Forlag, 1982, p. 38. I am indebted to Thomas Schelling for this reference.)

[14] This is an important kind of *enabling constraint*; for more see Holmes 1996.

[15] Independent central banks can be advantageous for a country also for the different, though not entirely unrelated, consideration of "time inconsistency": a central bank worries about making decisions for the greater good in the long run, not about keeping elected politicians in office and popular.

strategies; our own past-experience or the experience of others can offer little help either. One mechanism of coping with the difficulty posed by a big decision is self-deception, namely, pretending that it is an ordinary-size decision (or a series of such). Another way of coping is by subtly framing it in such a way that one of the alternatives up for choice appears to us as compelling and imposed on us by *force majeur*. On the level of theory, we recognize that big decisions test the limits of rational-choice theory; on the practical level, however, we try cope with and to extricate ourselves from them as best we can.

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