Rational Choice Theory vs. Heuristics Approach

Oryginal title: "Rational Choice Theory vs. Heuristics Approach: What are the Consequences for Disclosure Laws?"

I just finished reading Heuristics and the Law (2006) edited by Gerd Gigerenzer and Christoph Engel. It’s an interesting collection of essays by legal scholars, psychologists, and economists, exploring the conceptual and practical power of the heuristics approach in law. Given my own research interest, I was particularly intrigued by Chris Guthrie’s contribution with the title “Law, Information, and Choice: Capitalizing on Heuristic Habits of Thought.”

In the article, Chris starts with the observation that American law has a long-standing tradition to foster individual autonomy and choice by mandating the disclosure of information. Disclosure rules can be found in many areas of law, ranging from corporate law or product liability to gaming laws, etc. The underlying rational choice approach, according to Guthrie’s analysis, assumes that individuals will use all available information to “identify and evaluate all available options, assess and weight all of the salient attributes of each option, and then select the option they evaluate most favorably.” (id., p. 427). Guthrie contrasts these assumptions with (empirical) insights from heuristic-based approaches (“fast and frugal heuristics program” and “heuristics-and-biases program”), which suggest that individuals often make sound decisions by using limited information, and concludes that lawmakers should heed the lessons of these theories in order to foster autonomy and choice. More specifically, the author argues that lawmakers should not aim for full disclosure of information as rational choice theory would recommend, but should require limited disclosure by identifying the specific pieces of information to be disclosed, requiring the information to be presented in a manner designed to attract user’s attention and inform understanding, and by imposing limitations on the amount of disclosed information.

Clearly, Chris Guthrie’s empirical arguments support some of the observations I have made – inspired by my Doktorvater Prof. Dr. Jean Nicolas Druey - in the context of my information quality research on the one hand and earlier discussions of the information overload problem on the other hand. However, I’m not sure whether I agree with all of Guthrie’s conclusions, particularly once we move from an analog/offline to a digitally networked environment. The author himself acknowledges in the final paragraph – but leaves unanswered - the problem that information phenomena are highly context-specific and that information processing has an inherent subjective component to it. These characteristics have been identified as among the key challenges faced by the legal system aimed at regulating information (i.e. what we call information law on this side of the Atlantic), which by it’s own nature seeks to make general and abstract statements (“norms”) about informational phenomena. Against this backdrop, it is questionable as to what extent the “content-presentation-amount” program suggested by Guthrie might balance this fundamental tension between the characteristics of informational phenomena and information law.

Besides context-dependency and individuality of information processes, I’m for yet two other reasons not convinced that the author’s basic observation - according to which individuals make decisions based on limited information (although full information, in theory, would be available) - justifies the normative conclusion that lawmakers should limit the amount of information to be disclosed when drafting laws.

- First, there are people who follow - at least in certain situations and sometimes because it’s required by professional ethics or even by duty of care standards - the “text-book”-style decision-making procedure as envisioned by the rational choice theory. These individuals, I would argue, might be worse off under a regime that is based on the approach that “less information is more information”. In short, I would argue that less information is not always more information.

- Second, the aggregation of large amounts of information becomes much more efficient and effective once we operate in a digitally networked environment. Indeed, some of the “mathematical” work that is involved in preparing decisions under the rational choice theory is increasingly done by services - ranging from peer-based recommendation systems (“wisdom of the crowds”) to more hierarchical expert systems - that are in the business of collecting and comparing information for their users. Here, I would argue that the quality of the information based on which decisions can be made is likely do decrease if lawmakers impose qualitative
and quantitative limits on the disclosure of information by the respective senders.

In any event, Chris Guthrie’s arguments deserve close attention and further consideration, although one might disagree with some of the conclusions.

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