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The Myth of Discovery

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1. INTRODUCTION

Economists are increasingly concluding that their simplifying assumptions about preferences are too simple. In particular, the idea that preferences might be constructed rather than fixed is being explored. In this companion piece to my more detailed consideration of this subject, I argue that what makes the assumption of fixed preferences possible is a myth, the myth of discovery—that preferences exist to be discovered. Once we acknowledge that preferences are as much made as found, and that the raw materials from which they are made are scarcely stable, the assumption of fixed preferences becomes far less tenable. My exposition proceeds through a discussion of a recent book arguing that choice is not all it is cracked up to be, Barry Schwartz's *The Paradox of Choice*.[1]

2. (HOW) CAN TOO MUCH CHOICE BE BAD?

In *The Paradox of Choice*, Barry Schwartz argues that more choice can be bad. Schwartz's narrative reads as though he arrived at this view from his own experience. When Schwartz was in college, he found it easy to buy jeans. He would go to the store, pick out a pair of jeans in his size, and buy them. Recently, he went to buy jeans. The salesperson at the store offered him "slim-fit, easy fit, relaxed fit, baggy, extra baggy . . ., stonewashed, acid-washed, distressed . . ., button-fly, zipper-fly . . ., faded or regular?"[2] He was forced to attend to intricacies and permutations he had never imagined. Perhaps worse still,

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1. BARRY SCHWARTZ, THE PARADOX OF CHOICE: WHY MORE IS LESS 2 (2004)

2. *Id.*

he was filled with doubt as to what he wanted. And it is not as though when he got home with his more carefully chosen jeans he realized what he had been missing in college. The whole experience was a big waste of time from start to finish.

There are many reasons why Schwartz's story might not have a message that is generally applicable. Though these increments do not matter to him, they may matter to other people. After all, I know people who say they "eat to live," and are quite indifferent about the taste of food. (I will admit that I do not know many such people. Okay, one.) Schwartz may be idiosyncratic in not caring about various kinds of differences. Or he may simply have gotten the wrong jeans. The perfect pair of jeans for him may exist, but his impatience (and, maybe, his general obliviousness) prevented him from finding them (and might have prevented him from appreciating the difference between the pair he acquired and the pair he could have acquired). How many people are like Schwartz, or at least enough like him in this respect that his conclusion follows in any meaningful sense? Are enough people happier with the multi-jean selection than the single-jean selection that the waste of time by Schwartz and his ilk (including the cost of not having the books he would otherwise have been able to write had he not been choosing jeans) is a worthwhile price to pay?

A response one might make to this line of argument—and that many commentators have made[3]—is that an objection to more choice is ridiculous. People can just limit the choices available to them by adopting some sort of decision rule. Moreover, market mechanisms exist to help people choose. Consider, for instance, the Michelin restaurant guide, Consumer Reports, or even the ratings on Amazon.com. And, even if Schwartz is right, what follows? [4] That we should limit others' choices because

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[3] . *See, e.g.*, Ronald Bailey, *Multitudes in the Valley of Decision*, REASON ONLINE, Jan. 28, 2004, http://www.reason.com/news/show/34754.html; Charles Paul Freund, *Option Overload*, REASON ONLINE, Apr. 2004, http://www. reason.com/news/show/29084.html; Virginia Postrel, *I'm Pro-Choice*, FORBES, Mar. 28, 2005. *But see* Kevin Cheng, *Choosing to Give Choices*, OK/CANCEL, June 3, 2005, http://www.ok-cancel.com/archives/article/2005/06/choosing-to-give-choices.html (discussing the pros and cons of limiting choice in user interface design for computer software and websites).

[4] . And indeed, one commentator suggests that some objections

Schwartz finds choosing unpleasant and not worthwhile?

Certainly, Schwartz would not advocate any such thing, except perhaps in very limited spheres with a strong public interest.[5] Indeed, his main policy prescription, if what he recommends warrants that label, is one that economists would not have difficulties with: that individuals need to develop a strategy to deal with the multitude of choices around them, and with

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made to Schwartz's position may instead be to what might be thought to follow. *See* Posting of Michael to 2Blowhards, http://www.2blowhards.com/archives/00207 1.html (June 16, 2005) (arguing that objections to Schwartz's view are motivated by an implicit and illicit move to the policy considerations thought to flow from it).

> The discussion here [on another blog the poster refers to] seems to be set up as an either/or: you're either for more consumer choice, or you're a statist asshole who wants to Stalinize everyone else's life . . .
>
> But why can't we take another tack entirely? Why not recognize that some if not many people—OK, maybe not you specifically—sometimes do find it more than a little bewildering to be living in such consumer cornucopia conditions? Why shouldn't stopping at this point for a few seconds not be legit? Why not just discuss what we (or many other people) find contempo [sic] life to be like without instantly advancing to the policy-decision stage?
>
> I think there's lots of value in pausing over the "what it's like" part of the discussion before roaring ahead into the "what must be done" part. . . . If the free market is about being able to participate as you want—well, when you're feeling blurry and confused (ie., [sic] overwhelmed by huge amounts of choice), how do you figure out what you want?

Id. One objection certainly fits this characterization. *See* Bailey, *supra* note 3.

> One suspects that [Schwartz's] unspoken [view] is that sound public policy consists of the government restricting options and forcing Americans to do what people like Professor Schwartz think is good for them. Such choice-restricting policies have included Prohibition, the drug war, wage-price controls, publicly financed education, bankrupt Social Security and Medicare systems, and the soon-to-be-launched war on obesity, among others.

Id.

[5] . Retirement savings plans might be an example. *See generally* Olivia S. Mitchell & Stephen Utkus, *Lessons from Behavioral Finance for Retirement Plan Design*, *in* PENSION DESIGN AND STRUCTURE: NEW LESSONS FROM BEHAVIORAL FINANCE. (Olivia S. Mitchell & Stephen P. Utkus, eds., 2004). *See also* George Loewenstein, *Costs and Benefits of Health and Retirement Related Choice*, *in* SOCIAL SECURITY AND MEDICARE: INDIVIDUAL VS. COLLECTIVE RISK AND RESPONSIBILITY. (Sheila Burke et al., eds., 2000). Also, consider the work of Richard Thaler, Daniel Kahneman, Terence Odean, Cass Sunstein, and others on the extent to which people trade too much, make bad

information "overload" more broadly.[6] Schwartz argues that "satisficing," choosing something "good enough," is a far better idea than "maximizing," holding out for the best possible thing. Interestingly, psychologists Ketalaar & Clore argue that the feeling of falling in love has precisely this intention—to make people choose something "good enough" rather than endlessly seeking perfection.[7]

Schwartz differs with his critics in being far more sympathetic to the choice-impaired. His critics may think that people who do not develop strategies for dealing with too many choices have only themselves to blame. They also may very well believe that the market will take care of the problem, creating a new niche for those who can reduce information flow to manageable sizes. Yes, there may be a transition period as the market develops the necessary expertise—but, in the long run, the problem will be properly solved. We will have the advantages of more choice without the disadvantages. Schwartz presumably would not rule out that in the long run, and maybe even in the moderate run, the winnowing-down market niche may be filled. He would disagree with the economists, though, as to how soon it would be filled, and the costs along the way, and how successful the fillers will be.

The main thrust of Schwartz's argument is empirical. He cites experimental evidence to support the proposition that more choice causes less happiness and more anxiety,[8] and sometimes, fewer purchases, as people give

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choices, have greater difficulties in the face of more options, etc. Literature under the general rubric of "libertarian paternalism" or "the new paternalism" also argues that attempts to influence and perhaps limit choice may be a good thing, using reasoning that Schwartz might very well find congenial. *See, e.g.*, Richard H. Thaler & Cass R. Sunstein, *Libertarian Paternalism*, 93 AMER. ECON. REV. 175 (2003). *See generally* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE (2008). *But see* Claire A Hill, *Anti-Anti-Anti Paternalism*, 2 N.Y.U. J.L. & LIBERTY 444 (2007) (appraising and critiquing the libertarian/new paternalists' arguments).

6 . Consider in this regard some headings from the last part of The Paradox of Choice: "1. Choose When to Choose," "3. Satisfice More and Maximize Less," "7. Regret Less," "10. Curtail Social Comparison," and "11. Learn to Love Constraints." SCHWARTZ, *supra* note 1, at 221–36.

7 . Timothy Ketelaar, & Gerald Clore, *Emotions and Reason: Proximate Effects and Ultimate Functions, in* PERSONALITY, EMOTION, AND COGNITIVE SCIENCE 355 (G. Matthews ed., 1997).

8 . One might think, to the contrary, that having more choices make people happy. But some evidence suggests otherwise. More money gives people more choices. But some research demonstrates that individuals who unexpectedly get wealth (e.g., by winning the lottery)

in to paralysis.[9] Somebody sympathetic to Schwartz's argument might think that it is a good thing that Schwartz relies on the empirics. How can anybody possibly argue *as a matter of theory* that more choice sometimes is not good?[10]

In fact, such an argument follows from the increasing recognition that preferences are not as neoclassical economists have hypothesized them to be. Neoclassical economists use (believe in?) the rational choice model. The rational choice model assumes and requires that preferences are stable, determinate, coherent and invariant to mode of elicitation.[11] The appropriate rhetoric is therefore one of discovery: when people make choices, they are "revealing" their preferences. More colloquially, as to any object x, a person knows how she ranks it relative to some other objects y and z and she is consistent in her ranking. A banana? Better than an apple but worse than an orange. And confronted with a choice

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quickly return to their pre-winning level of happiness. *See, e.g.*, Timothy D. Wilson et al., *Making Sense: The Causes of Emotional Evanescence*, *in* THE PSYCHOLOGY OF ECONOMIC DECISIONS: RATIONALITY AND WELL BEING 209 (Isabelle Brocas & Juan D. Carrillo eds., 2003).

[9] . Anecdotal evidence abounds for the phenomena Schwartz is describing. *See, e.g.*, Ellen Warren, *Choose or Lose: Too Many Options at the Big Box Stores? Indecisive Shopping Online? We're Here to Help*, CHI. TRIB., July 28, 2005, at 4.

> "Don't go in there!" the paint store man warned me as I headed for a large alcove labeled "Custom Color Center" at J.C. Licht Co. in Oak Park.
>
> This after I told him I was getting freaked out by too many choices.
>
> Was he ever right. I should have never even started looking at all those paint chips. Did you know that there are at least 175 different shades of white paint? And that's from just one manufacturer. I counted them.
>
> . . .
>
> And the bottom line: I have five different rooms in five different shades of white. And you know what? You couldn't tell the difference with a microscope.

Id.

[10] . Note that this formulation glosses over well-known ways within the traditional neoclassical account in which less choice can sometimes be beneficial, such as a strategy of pre-commitment. But the neoclassical account assumes that more choice should be good except when, under particular circumstances, it is not. My argument disputes the worldview embedded in this assumption.

[11] . *See* Matthew Rabin, *Psychology and Economics*, 36 J. ECON LIT. 11 (1998) [hereinafter Rabin, *Psychology*]; GARY BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR 5 (1976).

between the banana and the orange, she will always take the orange.[12] And as between the orange and the apple, she will always take the orange.[13] But scholars outside the field of economics, and increasing numbers of economists, believe that *preferences are constructed as they are elicited*.[14] Preferences are as much created as discovered.

What does it mean to say that preferences are constructed? How are preferences constructed? What determines someone's preferences? At this point, no detailed account has been formulated, much less one that commands a consensus.[15] Clearly, there is no formula by which preferences can reliably be influenced, as was conjured up in the 1960's era critiques of Madison Avenue (and corporate America more broadly).[16] In such critiques,

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[12] . While the model speaks as though it does not formally take into account getting sick of something you have had a lot of, economists are of course sensible enough to acknowledge that after the fifth banana, you might choose an apple, and have a formal term for this phenomenon, declining marginal utility.

[13] . A series of well-known experiments has demonstrated violations of this principle. *See* Eldar Shafir et al., *Reason-Based Choice*, *in* CHOICES, VALUES AND FRAMES 597 (Daniel Kahneman & Amos Tversky eds., 2000) (discussing one important such experiment); Claire A. Hill, *The Rationality of Preference Construction (and the Irrationality of Rational Choice)*, 9 MINN. J.L. SCI. & TECH. 689, 700 (2008).

[14] . Hill, *supra* note 13, at 704 n.52 (discussing some of the literature on the topic).

[15] . Even the economists' model could address the question of how preferences are determined. Thinking preferences are fixed does not exclude being interested in how they come to be as they are. But instead, economists hypothesize a black box (*de gustibus non est disputandum*). There may be some evolutionary determinants, and there are, colloquially, some canonically preferred things (money and power, most notably). Mostly, however, the issue is deemed to be outside the realm of proper economic inquiry; it is therefore typically not addressed.

[16] . *See, e.g.*, DAVID BOLLIER, CITIZEN ACTION AND OTHER BIG IDEAS: A HISTORY OF RALPH NADER AND THE MODERN CONSUMER MOVEMENT (1991), *available at* http://www.nader.org/history/bollier_chapter_2.html. Bollier's book approvingly describes a group, the Center for the Study of Commercialism,

> dedicated to fighting not just individual acts and policies of irresponsible businesses but the very culture of "mass commercialism run amok." Michael F. Jacobson, founder and executive director of Center for Science in the Public Interest, decided it was time to confront the "buy till you die" ethic that now invades every nook and cranny of American life and corrodes our cultural life.

Id. The group's mission is "to combat Madison Avenue's advertising

advertisers (and manufacturers) were characterized as evil folk who created demand for products, services, or a lifestyle that most people previously did not want, could not afford and would not—or maybe should not—make them happy even if they could afford it. To say that preferences are in significant measure created rather than discovered is not to ascribe to anyone the power to create them.

Not that it needs to be said, but Schwartz is of course not signing on to this type of criticism, nor is he signing on to an alternate advertisers (and manufacturers)-are-evil criticism: that people really *do* want the things the advertisers are trying to sell them but that the advertisers are evil for depicting the things so attractively because people *should not* want them—say, because they cannot afford them or should be less focused on acquisition and more on other-regarding pursuits (and the manufacturers are evil for making the things in the first place). Interestingly, a related argument has made inroads against smoking. Ads directed to minority communities arguing that to smoke is to be a dupe to the majority community's manufacturers and advertisers have had some success, as have ads, directed to young people, arguing that to smoke is to be a dupe to corporate America.[17]

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barrage (3,000 messages a day) and to encourage a simpler lifestyle, moderate consumption and civic involvement." *Id.* According to the founder of the group, and Professor Ronald K. L. Collins of Catholic University Law School: "[t]oday's marketers promote artificial and obsessional wants, urge ceaseless spending, foster a disposable society, and inject commercialism into every facet of our lives . . . . All of this treads on our moral and civic tradition like a bulldozer in a flower garden." *Id.*

A search on Amazon.com for books with "Madison Avenue" in the title yields *The Messiah of Madison Avenue*, by Patrick Cunningham. The site's description of the book begins with the following: "Tracer Wolf is the hottest name on Madison Avenue. Flashy, dynamic, brilliant, and totally amoral." Amazon.com, http://www.amazon.com/Messiah-Madison-Avenue-Patrick-Cunningham/dp/0595317448/ref=sr_1_1?ie=UTF8&s=books&qid=1208729065&sr=1-1 (last visited, Apr. 20, 2008).

[17] . *See* Carrie McLaren, *How Tobacco Company "Anti-Smoking" Ads Appeal to Teens*, STAY FREE!, Summer 2000, http://www.stayfreemagazine. org/archives/17/tobacco-anti-smoking.html ("The underlying message of the campaign is that, far from symbolizing freedom and adulthood, tobacco use is a form of obedience—obedience to tobacco companies."); Social Marketing Institute, *Success Stories: Florida "Truth" Campaign*, http://www.social-

3. SOME THINGS WE CAN SAY ABOUT PREFERENCE CONSTRUCTION

What can we say affirmatively about preference construction? In a companion piece, I discuss the matter in detail. Here, I stress only three features of my account. First, people often make choices based on something other than the inherent attributes of what they choose and do not choose. People often choose things based on what "sort of things the things are"—this perfume is the sort of thing glamorous people wear, eating a low-fat diet and exercising is the sort of thing people who live a healthy lifestyle do, donating to this charity is the sort of thing civic-minded people do, etc. Thus, even if one's preferences for glamour, a healthy lifestyle and civic mindedness are fixed, what one will choose is not fixed at all. Considerable effort is spent by private and public parties to change our views on the specifics of these matters. Consider in this regard the following example. Type into Google the search terms "car" and "male menopause" and see what comes up. One typical search result follows:

> [A] wife realised something was badly wrong when the headlights of her husband's car hit the kitchen wall at knee-level instead of waist-level one evening. He had sold the Volvo and bought a red, open-topped sports car. (Apparently over 80% of such cars are sold to sad sacks who believe this throbbing mechanical extension makes them look young and virile not old and desperate.)[18]

How did these types of cars come to connote youth and virility? Might it have been otherwise? Might it come to be otherwise, especially if environmental concerns come more to the forefront?

Second, we have more choices to make than we have time to obtain "complete" (or perhaps even "sufficient") information[19] to make them. For many choices, especially those of comparatively little consequence, having a decision-making strategy makes far more sense than having some pre-existing preference menu that we would

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marketing.org/success/cs-floridatruth.html (last visited Apr. 20, 2008).

[18] . Amanda Craig, Male Menopause, http://www.amandacraig.com/pages/journalism /features/male_menopause.htm (last visited, Apr. 20, 2008).

[19] . It is not at all clear what information would be complete or sufficient for just about any choice. Still, for present purposes, what is meant is clear enough.

have to consult. The strategy can take many forms: make the most or least expensive choice, pick something different each time, pick the thing that takes the least time to acquire, pick the thing that's available at the store where I like the people, pick randomly, etc. It can also be a strategy about strategies: I will spend no more than x amount of time making a relatively unimportant (however defined) decision. Note that the case for preferring a strategy over a pre-existing menu is even stronger than the preceding argument makes it seem: often, there is no pre-determined choice set about which one could make inquiries.[20] In some of the paradigmatic contexts that Schwartz is concerned with—a trip to the supermarket, for instance—assuming the existence of such a choice set works well enough. But in many other important contexts it does not. I discussed this issue in a previous article:

> One example comes from an article in *The New York Times* by Virginia Postrel, a prominent libertarian thinker. A justification for affirmative action, she says, is that people choose not among all possible alternatives but among the "evoked set," which is necessarily a subset of the full set. They are hence more likely to choose a member of the evoked set. After discussing this phenomenon in the context of toothpaste, Postrel extends it to affirmative action. She notes that a previous article in *The New York Times* had given very short shrift to the African-American action movie stars Will Smith and Wesley Snipes. According to Postrel,
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> > The evoked set of action "stars" didn't overlap with the evoked set of "black movie stars." There was no racial hostility at work, just the limits of human minds and the categories they create.[21]

Third, making choices is not a meta-process—some straightforward means to the "end" of making the choice. The process of "obtaining information" is implicitly assumed to be far more tractable than it is. But in many cases, the process is quite complicated. How would one decide whether to donate to charity and if so, which charity to choose? The potential considerations are enormous and hard to assess. It is not just that the choice

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[20] . Claire A. Hill, *Beyond Mistakes: The Next Wave of Behavioral Law and Economics*, 29 QUEEN'S L.J. 563, 581–83 (2004) (discussing the conceit that there are pre-existing choice sets, and some of the consequences the conceit leads to).

[21] . *Id.* (quoting Virginia Postrel, *Economic Scene: The Lessons of the Grocery Shelf Also Have Something to Say About Affirmative Action*, N.Y. TIMES, Jan. 30, 2003, at C2).

set is not pre-determined—the problem is far more profound. There is no mechanical means of proceeding; moreover, it will be necessary to stop before acquiring "complete" information (and at some point that is hard to characterize ex ante—when does one have "enough" information?). When I seek to purchase something fungible, I compare prices for x period of time. My sister compares prices for 10x period of time. How did either of us arrive at our methods for price comparison? Also, after my comparisons, I do not second guess my decision; my sister does. In Schwartz's terminology, I satisfice and she maximizes. This suggests that the process itself is of import and note, and is itself amenable to appraisal. And the appraisal is not just as to how good the process is at helping one "find what one wants." Rather, it is a more ephemeral and hard-to-pin-down assessment, focused on the choice and the process by which the choice was made, and the interaction between the two. There are all sorts of ancillary effects to be taken into account. One is regret, a great concern of Schwartz's. Indeed, in this regard, it has been demonstrated that some people will have regrets if the outcome is bad, regardless of the process by which the outcome came to be. Others might not regret a bad outcome so long as the process was sound. If I buy what I think is the best widget after doing some research but later find out there was a better (on some relevant metric) one available, will I regret my choice? If the process I used was sound (as I assess soundness), I might not regret my choice if I am in the latter category. Moreover, insofar as there is no pre-determined sense that there is a "discovery" potentially to be made at some point, process itself becomes even more important. If Smith will be applying a decision rule to a relatively inconsequential decision (for instance, choosing ketchup at the grocery store), he may be best off if he can use some decision rule that is ready at hand (buy the name brand that's cheapest) rather than having to construct a more tailored one when confronted with an elaborate array of choices. The chance that Smith would be so much happier with the time-intensive choice than with the choice based on the ready-at-hand decision rule that it would warrant his additional time expenditure is small.

Fourth, the choice process implicates how we view

ourselves and how others might view us. What do potential contracting partners think when I ask first to discuss the clauses that cover the dissolution of the venture we are proposing to set up? What kind of person am I to consider whether to spend my bonus on a deluxe mattress when people are starving in Ruritania?

What follows? First, that the case for as much choice as possible is decidedly more measured once we acknowledge how people choose, and how they do not choose—that they do not choose by consulting "pre-existing free standing preference menus."[22] What people do in making choices is part discovery (having tried oysters, I now know I like them and may get them again) and part creation (I will be more inclined to get oysters because I like to think of myself as, and to be thought of as, an adventurous eater and I believe oyster-eating will help me achieve this). Given positive and significant information costs, even if all choices were "discoveries" we might be worse off with too many choices. That choices are also creations that could have been otherwise makes the case all the stronger.

None of this is to suggest that any particular regulatory policy prescription follows. That being said, my arguments and Schwartz's views are clearly consistent with an important component of the literature on libertarian or "new" paternalism,[23] which seeks to justify to libertarians regulatory interventions in certain traditionally paternalistic spheres. In my companion article, I argue that even though the justification may ultimately not work, the new paternalists may nevertheless come to the right conclusions. The justification ultimately turns on the assumption that we can determine what people "really want"—that they really want, for instance, to forsake short-term pleasure (for instance, eating a calorie-laden meal) for long-term rewards (health and longer life). We cannot make this determination, but neither can we make the

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[22] . *See* Cass R. Sunstein, *Endogenous Preferences, Environmental Law,* 22 J. LEGAL STUD. 217 (1993); Hill, *supra* note 13, at 705 n.57. There may be sophisticated ways to map strategies onto some form of preference menu. The mapping would yield something unwieldy and very hard to use; even some economists might prefer to concede the point in the face of such a massive assault on much-vaunted methodological parsimony.

[23] . *See, e.g.*, Thaler & Sunstein, *supra* note 5.

determination the neoclassical economists make, that what we really want is what we actually do—in this example, eat the large meal. Because there is no clear way for law to respect what people really want, trying to do so ought not to trump other legitimate aims.[24]

4. CONCLUSION

Barry Schwartz's argument in the Paradox of Choice potentially raises serious difficulties for neoclassical economists. To ordinary mortals, however, it is overwhelmingly intuitive. Fidelity's mutual funds webpage reads: "Browse Fidelity Funds. More than 175 ways to help you build a diversified portfolio."[25] No listing of the funds follows, of course. A graphic underneath illustrates the selection process, breaking down the decision into small, manageable chunks. And a good thing too. Not just for the obvious reason—that Fidelity knows its funds better than you do. Rather, it is because the incremental value of more choice may very well be smaller than the associated benefit, especially when information costs, opportunity costs, and other ancillary costs, such as the potential for regret, are taken into account. Indeed, Schwartz's account underscores that choosing isn't just a simple process of discovery. When we choose, we do many other things as well: we may find out about ourselves, convey information to others, set ourselves up for good or bad feelings down the line (my fund did well—I am savvy or lucky; my fund did badly—I am a financial dolt or unlucky) and potentially, actions based thereon. In sum, a thorough cost/benefit calculation will not always favor more choice.

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[24] . Hill, *supra* note 13, at 731.

[25] . Fidelity.com, Browse Available Mutual Funds, http://personal.fidelity.com/products/funds/content/WhatYouCanBuy/browse_all_funds.shtml.cvsr?refpr=mfrt33 (last visited May 13, 2008).