

# BEHAVIORAL ECONOMICS WORKING AS A TOOL FOR INSTITUTIONAL OPTIMIZATION

*Antonio Sepulveda*

*Carina de Castro Quirino*

*Carlos Bolonha*

*Matheus Meott Silvestre*

**Abstract:** The research intends to build a justification for applying the theoretical tools offered by behavioral economics into public institutions. The behavior of agents embedded in particular institutional context can be critical for the development of the components of this system. Therefore, the institutional improvement is directly linked to the rationality of process agents and their behavior and the effects of their decisions. The use of behavioral economics is a possible instrument for institutional improvement. As cognitive science compose standards of fallibility decision of the agents, institutions can influence behavior and impound any harmful effects caused.

## INTRODUCTION

This article discusses the possibility of further education institutions by incorporating the knowledge derived from the cognitive sciences, especially from studies undertaken by behavioral economics.

The findings and results arising from these fields of knowledge are still greeted with some suspicion, and gradually are demystified and introduced new elements, especially in the area of state regulation.

The American experience and the guidelines studied by the Organisation for Economic Cooperation and Development (OECD) have contributed greatly to public institutions of other countries to glimpse the seizure of behavioral economics, mainly for regulatory practices.

This theoretical framework is justified by the possibility to equip the discoveries by behavioral economics in recent decades for the institutional. By analyzing the process of decision-making rationality of agents, cognitive sciences allow the best parameters of formulation for the toughening of public institutions. In which the institutions more and more improved, consequently, achievement of the core activities of these institutions can be produced with greater efficiency, adapting to the public interest which are intended to satisfy.

The object is embodied on the impact of behavioral economics as institutional improvement tool. The goal is to demonstrate that the insights of behavioral economics help in the development of institutional capacities and analysis of systemic effects. This is because, at the institutional level - or at any of the levels worked <sup>1</sup> -, systemic effects must be controlled and regulated so that the conduct of the institution (both internally and in external environment) can be more efficient and effective in achieving results; both the maintenance of its institutional objectives as in the production of appropriate public policies.

Behavioural economics suggests that there are certain standards of verifiable decision on a particular group of individuals, conditioned by heuristics and biases. The context of individual decision making can and should be investigated in advance in order to assess the need for institutional internal self-regulation response.

The main objective of the study is to state that the agent's behavior in current times, is a major factor for achieving an increase in the degree of institutionality able to attribute to them a matching efficiency with minimum standards required in sopesamento of cost / benefit, be it social or political.

## **1. INSTITUTIONAL DESIGN AND CONSTITUTIONAL COMMITMENT**

First, it is necessary to make a theoretical framework: as Cass Sunstein <sup>2</sup> the study also undertaken is restricted to government institutions only.

The government engages strongly with the achievement of policy commitments. Among a multitude of public needs, it is common to observe, especially in new democracies that have a poorly organized civil society and public reason still incipient, government decisions that distort the collective interest, leaving to represent the views and will that form.<sup>3</sup>

The normative and principled compass of government institutions is, in fact, the set of rules and constitutional principles. Constitutions are important because they shape what is possible for a society is economic growth, peace with its neighbors and civic harmony.

One of the main academic interest in constitutional design is to develop an understanding of how (and if) the Constitution affects the well-being of citizens. No doubt, the Constitutions structure governments and influence the performance of these - for better or

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<sup>1</sup> BUCCI, Maria Paula Dallari. **Fundamentos para uma Teoria Jurídica das Políticas Públicas**. São Paulo: Saraiva, 2012, p.43.

<sup>2</sup> SUNSTEIN, Cass. **Nudges.gov: Behavioral Economics and Regulation**. Disponível em <http://ssrn.com/abstract=2220022>. Acesso em 03 de março de 2014.

<sup>3</sup> GARGARELLA, Roberto. **As teorias da justiça depois de Rawls: um breve manual de filosofia política**. São Paulo: Martins Fontes, 2008, p. 237.

for worse, for good or ill - in economic stability and development, thus directly affecting the social welfare.

The problem of theoretical developments outlined in recent decades in the United States, as noted by Jenna Bednar has been the empirical correlation between Constitutions and social outcomes are variable; any constitutional form - democratic or authoritarian, presidential or parliamentary - can experience problems depending on the social, cultural and economic<sup>4</sup>. To understand how and why the Constitutions are effective, we need to deepen the study of the constitutional order and consider how the components of the Constitution interact to shape the social welfare<sup>5</sup>.

We can illustrate one argument that Jenna Bednar criticize with a passage from Robert Dahl <sup>6</sup>, in alluding to a policy developed by John Stuart Mill to judge what would be a good form of government, namely, the degree of promotion of virtue and intelligence of the people<sup>7</sup>.

Dahl says that there is some difficulty in understanding this criterion, given the opening of the concepts of virtue and intelligence, making it vague. And even if this were not, Dahl argues that the concepts of desirable qualities are elastic, given the plurality of goals, desires and values of each individual<sup>8</sup>. In this line, the ideal economic order to allow for a good government is one that maximizes the freedom of the individual and allows every citizen is free to achieve any economic resources that are necessary for the maintenance of their interests - or, as he says, for a "Good Life". The logic of his thought is markedly utilitarian, and defines the behavior of a particular individual can not transgress the "economic freedom" of another individual<sup>9</sup>.

For the economic order to reach a satisfactory degree of efficiency, Dahl points out that the construction of a regulatory framework of standards in which economic institutions (eminently private nature become necessary, in his view the only ones that could actually decentralizing power concentrated in State) could operate<sup>10</sup>.

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<sup>4</sup> BEDNAR, Jenna. **The robust federation - principles of design**. Cambridge University Press, 2012, p. 22.

<sup>5</sup> BEDNAR, Jenna. Constitutional Systems Theory: A Research. **Tulsa Law Review**, n.325, 2012.

<sup>6</sup> DAHL, Robert. **A preface to economic democracy**. University of California Press, 1985, p. 85-87.

<sup>7</sup> "The most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institutions is how far they tend to foster in the members of the community the various desirable qualities, moral and intellectual..." DAHL, *apud* MILL. **Op. cit.**, p. 87.

<sup>8</sup> DAHL, Robert. **Op.cit.**, p.88.

<sup>9</sup> DAHL, Robert. **Op.cit.**, p. 88.

<sup>10</sup> DAHL, Robert. **Op.cit.**, p. 90. "In brief, we would search for an economic order that would decentralize many significant decisions among relatively autonomous economic enterprises, which would operate within limits set

Such logic concatenation brought by Dahl demonstrates, however, that there is a certain ideal spot to be achieved without the existence of an empirical concern with what would be concepts as used by the author to defend their ideas, such as "efficiency", "economic freedom ". Despite the vagueness of Mills, Dahl also uses deliberately open concepts and evaluatively mutable.

What should be highlighted is that this approach to break down the constitutional elements is not new. And yet one can say more: it also does not originate only in the theory of law. The outlook is fostered by the construction of interdisciplinarity of cognitive sciences, especially the microeconomics, used by several North American theorists, notably by Adrian Vermeule.

The contribution of Adrian Vermeule is in its formalist position to discuss how institutional components can intersect and create a constitutional system<sup>11</sup>.

This perspective part of a methodological approach that needs to be detailed. The Vermeule contribution is grounded in the abandonment to what is termed as "positive political theory," or "positive political theory - PPT". Vermeule rescues the theoretical ancestor of positive political theory, which is microeconomics. As microeconomics, begins by the agent behavior analysis and hence theoretically builds the institutional results. The choices players make are guided by interdependent purposes: what an individual chooses to do depends on what hopes that other agents do. These decisions are often made with limited information, or about the preferences of other agents or the consequences of their actions<sup>12</sup>. In this view, the social welfare would be a product of the aggregation of individual decisions according to some aggregation rule, and the satisfaction of the individual with the result produced is based on a distribution rule, or the way in which the conception of the good social is shared between citizens<sup>13</sup>.

In positive political theory, the study of these aggregation and distribution rules is known as institutional analysis: the rules are institutions that determine the action of an agent of the consequences. Therefore, we think of institutions as an incentive authoring environment. Different institutions will conduct different individual behavior and therefore will accrue different collective results<sup>14</sup>.

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by a system of markets, and such democratically imposed laws, rules, and regulations as we may believe are necessary to achieve our goals.”

<sup>11</sup> Este pensamento é bastante desenvolvido em seu livro *The system of the constitution*, de 2011.

<sup>12</sup> Uma das referências em microeconomia é a obra de MAS-COLELL, Andreu; WHINSTON, Michael. **Microeconomic theory**. Oxford University Press, 1995.

<sup>13</sup> MAS-COLELL, Andreu; WHINSTON, Michael. **Op.cit.**, p. 117-121.

<sup>14</sup> VERMEULE, Adrian. **Op.cit.**, p. 15-16.

To understand the effect of specific components of a constitution and its performance, the American theoreticians make institutional cuts and analyze the effects of variation and correlation between the analyzed data. This analysis is important mainly to highlight behaviors, institutional capacity and the effects.

## 1.2. SISTEMIC FEATURES

Vermeule constitutionalism builds a vision from the bottom up: individuals interact with each other, and their interactions converge in a common institution said first level.<sup>15</sup> In turn, several institutions coexist, and the convergence of their strength generates a constitutional order<sup>16</sup>. Two elements are worth mentioning in Vermeule analysis: (i) the theory of the second best, and (ii) the irreducibility.

### 1.2.1. The “second best”

The corollary of Vermeule is the fallacy of the approach<sup>17</sup>: if you can not reach the optimal arrangement of institutions (first best), one might think that the best strategy is to define the institutional arrangement to be the closest to ideal. If a component is limited, if not absent, then it could incite another component to behave in an unexpected way.

Vermeule proposes an approach to systems theory calling it "fragmentation"<sup>18</sup>. The author points out that if there are those who diagnoses the ills of democracy in the United States component-to-component, is naturally inclined to try to improve the functioning of democracy in any way possible<sup>19</sup>. Improvements to Vermeule, include increasing the number of elective positions, reducing the number of elections regulations that encourage party organizations (or not), or through expansion of judicial elections. Each of these adjustments may have effects that spill over to other system components.

The fragmented approach implicitly scans a linear model, where the sum of the parts is exactly equal to the whole. In a linear model, the marginal improve a component necessarily improve its entirety. In a complex system, wherein the components are interdependent, the effects of aggregation may be non-linear; Incremental improvements could make the whole lot better than the marginal range for the component. But they can also make it worse<sup>20</sup>. While

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<sup>15</sup> VERMEULE, Adrian. **Op.cit.**,p. 3.

<sup>16</sup> VERMEULE, Adrian. **Op.cit.**, p. 3.

<sup>17</sup> VERMEULE, Adrian. **Op.cit.**,p. 30.

<sup>18</sup> VERMEULE, Adrian. **Op.cit.**, p. 6-7

<sup>19</sup> VERMEULE, Adrian. **Op.cit.**,p. 55.

<sup>20</sup> VERMEULE, Adrian. **Op.cit.**,p. 55.

the problem is appreciated within the economy, it is perhaps especially a problem in the political or legal systems because of the dependence of institutions.

Institutional arrangements are subject to instability: the political and legal systems may be particularly prone to discontinuities that would create big jumps in the institutional space between the first and second best institutional arrangements. This observation leads to two important implications: (i) as a system, the Constitution must be assessed as a whole; (ii) an institutional structure is suddenly rendered ineffective, can have massive repercussions throughout the system. For this reason, scholars need to study the resilience of constitutional systems, or, in other words, the elastic force with which constitutional systems can receive inflows without breaking its structure, improving itself without succumbing or suffer disruption. Studies on resilience should include experiments "knock-out": what happens to the rest of the system if a component has become ineffective? As Jenna Bednar, experiments "knock-out" are common to ecological and unusual studies in constitutional studies<sup>21</sup>.

### 1.2.2. Irreducibility

Theorists of complex systems accept that this may have properties that are distinct from its components. Vermeule warning that one should not be tempted to infer that, because of a system that has particular characteristics - transparency or democratic responsiveness - each component of the system will have this feature<sup>22</sup>.

An interesting offshoot of the irreducibility of the concept is that it affects how you think, not only on individual components but on individual agents and boards within any institution. Vermeule argues that no individual can be intrinsically valuable<sup>23</sup>. The value of any public official depends on the others in the group<sup>24</sup>. The determination of the appropriateness and effectiveness of any public official requires consideration of the group as a whole<sup>25</sup>. Strategies for recruitment and selection can not be based on individual characteristics alone, but how those characteristics fit within the more complete system, is a collection of individuals or institutions. Systems emphasize the relational context of the agents.

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<sup>21</sup> Essa observação é feita por Jenna Bednar, em "Constitutional Systems Theory: A Research Agenda Motivated by Vermeule, The System of the Constitution, and Epstein, Design for Liberty". **Tulsa Law Review**, n. 48, 325 2012.

<sup>22</sup> VERMEULE, Adrian. **Op.cit.**, p. 27.

<sup>23</sup> VERMEULE, Adrian. **Op.cit.**, p. 111-12.

<sup>24</sup> VERMEULE, Adrian. **Op.cit.**, p. 110-11.

<sup>25</sup> VERMEULE, Adrian. **Op.cit.**, p. 132.

Selection effects are an interesting asset that Vermeule uses to illustrate the interdependence of the constitutional components of the system<sup>26</sup>. Vermeule also develops an interesting thesis about the way the constitutional rules generate a selection mechanism that can change the set of candidates for public office<sup>27</sup>. He introduces this theory as a screening mechanism, which acts as a filter on the full range of potential candidates<sup>28</sup>. The effects of irreducibility and other second-order theory is most interesting when it generates no obvious conclusions. It focuses mainly on the effect of compensation rules<sup>29</sup>.

Vermeule bet on an internal self-regulation system of accountability in government institutions<sup>30</sup>. The question in his book, is the unreliability of the electoral accountability system (external nature, is one in which citizens do not fall under the possible consequences of public acts committed by the elected political agent and regardless, assigns vote). Vermeule points out another possibility for accountability, it would be an internal self-regulation system of accountability in institutions<sup>31</sup>.

### 1.3. RESPONSABILITY AND THE PUBLIC AGENT

The emphasis of the theoretical analysis of Vermeule in internal self-regulation systems demonstrates the strong tendency to consider the agent as a central figure in building the institutional design and therefore the constitutional system components. The seminal idea of this centrality, however, can be found in the analyzes undertaken by Russell Hardin, to explain the institutional development and the achievement of your goals may fail mainly because of the conduct and decision making of agents in the institutional system<sup>32</sup>.

Hardin, including associated institutional morality as directly tied to individual values. This is because, in general, can be said of an institution, as a whole, that their morality is reasonably well defined by its purpose and objectives. In this sense, the institutional morality would atavistically consequentialist, as has the focus on results generated. It may not be utilitarian, however, because your goal may be to achieve equality, justice, or autonomy, not necessarily welfare support. Once the institutional morality is defined, it can be inferred or deduced the morality of individual office holders in the institution as derived from the purpose of the institution. Or, it can be said, the rules and procedures that guide the actions of

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<sup>26</sup> VERMEULE, Adrian. **Op.cit.**, p. 131-33.

<sup>27</sup> VERMEULE, Adrian. **Op.cit.**, p. 123-31.

<sup>28</sup> VERMEULE, Adrian. **Op.cit.**, p. 114-16,123

<sup>29</sup> VERMEULE, Adrian. **Op.cit.**, p. 124-25.

<sup>30</sup> VERMEULE, Adrian. **Op.cit.**, p. 123-31.

<sup>31</sup> A expressão usada por Vermeule é “internal regulation or self-regulation”.

<sup>32</sup> HARDIN, Russell. **Morality within the Limits of Reason**. Chicago: University of Chicago Press, 1988.

the individual positions are determined by the functional relationship of their actions with the general objectives of the institution<sup>33</sup>.

In addition to Hardin, a failed institution to fulfill its purposes by the occurrence of two situations: (i) evil design of the institution for that purpose and (ii) failure of certain agents within the institution. Hardin is more concerned with the institutional project and therefore focuses its efforts in dissecting the first class of problem. However, it is interesting the second institutional failure reason Hardin points out, given that self-regulation is necessary of the potential conflict between the dictates of individual morality and institutional, through the creation of incentives, positive or negative, to control individual failure or a selection project or training procedures to reduce the incidence of such failure<sup>34</sup>.

There are very interesting theoretical tools for exploring human behavior and decision-making with limited information. Overcome any paradigm of the ideal conditions for decision-making, economic behaviorism enabled the development of new scientific perspectives for the understanding of the individual in its institutional dynamics.

## 2. THE ECONOMIC ANALYSIS OF LAW AND DECISION MAKING

The behavior of agents embedded in particular institutional system is crucial to the development of the components of this system.

To maintain alignment of theoretical frameworks, whereas Vermeule systems analysis is structured in microeconomics, it is recommended to work the perspective of decision-making cognition of agents from the perspective of economic analysis of law<sup>35</sup>.

Despite the institutional perspective effectively trigger the Economic Analysis of Law renewed discussion, we cannot rule out the importance of behaviorism or economic behaviorism, as it seeks to lend a better reading of the Economic Analysis of Law premises through the incorporation of empirical analysis of evidence about human behavior. Of course, this approach carries a great potential to improve the predictive power of the Economic Analysis of Law, and the success it has obtained shows its promising future<sup>36</sup>.

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<sup>33</sup> RAWLS, John. Two concepts of rules. **Philosophical Review**, 64, p. 3-32, 1955 e HARDIN, Russell. **Morality within the Limits of Reason**. Chicago: University of Chicago Press, 1988, pp. 100-105.

<sup>34</sup> HARDIN, Russell. "Institutional morality" in GOODIN, Robert (Org.) **The theory of institutional design**. Press Syndicate of the University of Cambridge. New York: Cambridge University Press, 1996, p. 127.

<sup>35</sup> COLEMAN, Jules; MURPHY, Jeffrie. **Philosophy of Law – an introduction to jurisprudence**. Westview Press: Colorado, 1990, p.181.

<sup>36</sup> JOLLS, Christine; SUNSTEIN, Cass; THALER, Richard. A behavioral approach to law and economics. **Stanford Law Review**, 1998. POSNER, Richard. **Fronteiras da teoria do direito**. São Paulo: WMF Martins Fontes, 2011, p.319.

Thus, behaviorism or behavioral economics in the economy is one of the most significant theories developed in the economic area of the last thirty years. This theoretical field combines arising from influences of economics and psychology, in order to produce a body of evidence that the theory of rational choice, neoclassical, could not discern in making judicial decision. These starting points of rational decision theory are taken as individual cognitive inclinations, which can trigger systematic failures in the act in self-interest by intrinsic defects to the mechanisms of decision-making. Empirical research on these individual cognitive inclinations have been the first contributions of economic behaviorism to microeconomics.

Arising close to the heels of the economic behaviorism, behavioral economics in the economic analysis of law has been a movement that explores the legal and political implications of these cognitive inclinations. The academy has widespread production of empirical analysis, documenting the behavior and is largely responsible for the basis of the behavioralists in the public services regulatory policies, inside and outside the Obama administration.

Despite its extremely broad scope, covering almost all areas of law and human behavior, the regulatory agenda brought by behavioralists the economic analysis of law reflects a common philosophical source: libertarian paternalism<sup>37</sup>. This term, coined by Richard Thaler & Sunstein Cass, intended to describe legal interventions that: (i) increase the economic welfare of the individual, freeing it from the limitations of their cognitive inclinations; and (2) change the individual's behavior without retaliating your choices. In other words, the promise of behavioralists would encourage state intervention, whereas it would promote the economic well-being through the alignment of individual cognitive inclinations.

In these brief explanatory statements about the behavioral law and economics, it can be seen that (i) the cognitive sciences have data and methods that can - and should - be relevant in the analysis of rational decision and (ii) the contribution of socio-cultural environment and the fallibility of human conduct as denominators necessary for the production of knowledge and method are significant factors.

The behavioral law and economics enabled the opening of the application of the behavioral economics contributions as improvement tool of the institutions.

Behavioral economics is a relatively new discipline, resulting from the merger by the Economics, theoretical developments and empirical findings in psychology, neuroscience and other social sciences. Its researchers start from a critique of the traditional economic approach, based on the concept of "homo economicus" which is described as a rational

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<sup>37</sup> SUNSTEIN, Cass; THALER, Richard. Libertarian Paternalism is Not an Oxymoron. **Chicago Law Review**, 2003.

decision maker, thoughtful, focused on self-interest and unlimited ability to process information. Traditional Economy considers that the market or the development process itself are able to solve decision errors from bounded rationality.

In contrast to this traditional vision, behavioral economics suggests that the reality is different: The people decide based on habits, personal experience and simplified rules of thumb. Accept only satisfactory solutions, seek speed in decision-making, has difficulty in balancing short and long term interests and are strongly influenced by emotional factors. Behavioral economists seek to understand and model the individual decisions and markets from this alternative view about people. psychological, emotional, conscious and unconscious influences that affect human beings in their choices, are tentatively incorporated into the models.

Behavioural Economics proposes to understand and model the decisions of the most realistic way of agents. The experimental method is the most used tool by behavioral economists in their empirical research on these deviations from the rational action.

### **3. BEHAVIORAL ECONOMICS AND CASS SUNSTEIN**

Cass Sunstein in his book *Simpler: the future of government*<sup>38</sup>, describes his experience as Director of the White House Office of Information and Regulatory Affairs, in the period between 2009 and 2102. At the time, reports the incorporation of the behavioral economics contributions in the policies developed in their bodies.

In the United States, regulatory efforts have been directly guided by the insights of behavioral economics and has played a distinctive role in many areas. The interesting tools to be examined are the disclosure (disclosure), warnings, rules and standard rules (defaults) can be found in various areas, including in the fuel sector, energy efficiency, environmental protection, health and obesity. As a result, the behavioral data has become an important point of reference for the formulation of regulatory policies<sup>39</sup>.

Sunstein said that the results of empirical research carried out on the basis of behavioral analysis, have a great impact on regulation, legislation, production and public policy around the world, and the increasing global interest in low cost in the implementation of regulation It makes the impact of such measures grow in the coming decades. In these circumstances, it is particularly important to have a sense of what is known about human

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<sup>38</sup> SUNSTEIN, Cass. **Simpler: The future of government**. Simon & Schuster, 2013.

<sup>39</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 15

behavior, which is not known, and as emerging understandings can inform sensible and better regulatory reform policies<sup>40</sup>.

Behavioral economists have emphasized that, in important contexts, people make mistakes<sup>41</sup>. If an important feature of a situation, an activity or a product lacks importance, people can ignore, possibly to your advantage and possibly to their detriment. Individuals procrastinate and sometimes suffer as a result<sup>42</sup>. They may be overly optimistic and so make poor choices and even dangerous<sup>43</sup>. Individuals commit "affective forecasting errors": they predict that the activities or their results have certain beneficial or adverse effects on their own welfare, but these predictions may well not be confirmed<sup>44</sup>.

It is important to point out that free markets offer significant protection against such errors<sup>45</sup>. For example, companies offer countless services to help people combat self-control problems<sup>46</sup>. The market itself creates strong incentives to respond to these and other behavioral problems, and with new technologies, the answers will become increasingly useful, frequent and inventive. But in free markets, some sellers try to exploit human error, and the forces of competition can reward rather than punish such exploitation.

In reported cases, those who exploit human errors will be punished by market forces, simply because their competitors are doing so, and profiting from the result. Credit markets provide many examples in the areas of credit cards and mortgages accounts. More generally, some policies will not be well-designed if they are not informed by what we continue to learn about human behavior.

According to Sunstein says, there is still a long way to go to understand about the nature of human error in different contexts. Research is ongoing, and more is being learned every day; some behavioral findings are highly preliminary and need further tests and experiments. There's a lot we do not know. Even at this stage, however, the underlying results have been widely noted, and behavioral economics associated with related areas, have had a significant effect on the policies in several countries, including the United States and the United Kingdom.

These developments, and the relevant conclusions, raise a natural question, which is whether the understanding of human behavior opens more space for some manifestation of

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<sup>40</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 18

<sup>41</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 19

<sup>42</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 27

<sup>43</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 29

<sup>44</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 37

<sup>45</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 46

<sup>46</sup> SUNSTEIN, Cass. **Simpler: The future of government**, p. 51

paternalism. It is known, for example, that people are affected by architectural choices, understood as the social background in which choices are made. This architecture is pervasive and inevitable, and this greatly influences the results. In fact, it can be decisive.

Therefore, should the architects of choice, including those of the public sphere, be allowed to move people's decisions in their preferred directions? This is one of many questions that have no objective answer. Therefore, it should be remembered not objective here a look, even if tangentially, on the theory of justice issues or ethical foundations of this process of analysis of the results and implications of economic behaviorism. What we have, only, it is the setting of a theoretical scenario that has been gradually explored by governments and, given its growing visibility, deserves to win better contour in the country.

## **CONCLUSIONS**

The study aimed to examine the structure of institutions and institutional systems. This view demonstrates deep affinity with the empirical influxes of behavioral economics.

It does not hold logic, on the results collected by behavioral economics, rule out the need to consider the behavioral processes of agents, notably as to their reasoning mechanisms and decision-making.

You can advocate also to consider the possibility of errors agents and check the pattern of behavior in certain groups of interest (or cultural, depends on the aggregation factor that determines for individuals to be analyzed) fits the second perspective best, since there are clear departure from ideal patterns of results and want to work prudently, with the best view you can have, given the conditions in the institutional environment.

Given all that was observed, some conclusions are possible to extract: (i) the improvement of institutions depends on both their ability to manage your tasks efficiently - building its institutional capacity - as the analysis of their products and systemic effects ; (ii) the process of analyzing the results of systemic effects and institutional capacities can be technically analyzed through the prism of internal self-regulation mechanisms of the institution, since the construction of the institutional will is directly linked to rationality and decision mechanisms its agents; (iii) behavioral economics can bring elements able to equip the institution, enabling to check certain decision patterns and possible fallibilities in human rationality.

## **BIBLIOGRAPHY**

BEDNAR, Jenna. Constitutional Systems Theory: A Research. **Tulsa Law Review**, n.325, 2012.

\_\_\_\_\_. **The robust federation - principles of design**. Cambridge University Press, 2012, p. 22.

BUCCI, Maria Paula Dallari. **Fundamentos para uma Teoria Jurídica das Políticas Públicas**. São Paulo: Saraiva, 2012, p.43.

COLEMAN, Jules; MURPHY, Jeffrie. **Philosophy of Law – an introduction to jurisprudence**. Westview Press: Colorado, 1990.

COOTER, Robert. **The strategic constitution**. Princeton, NJ: Princeton University Press, 2002.

DAHL, Robert. **A prefacetoeconomicdemocracy**. University of California Press, 1985.

ELSTER, Jon. **Explaining social behavior: more nuts and bolts for the social sciences**. Cambridge University Press, 2007.

\_\_\_\_\_. **Ulisses liberto: estudos sobre racionalidade, pré-compromisso e restrições**. São Paulo: Editora Unesp, 2009.

GARGARELLA, Roberto. “**Constitucionalismo sin principios/ La Constitución del riesgo**”. Disponível em <http://seminariogargarella.blogspot.com.br>. Acesso em 24 de julho de 2014;

\_\_\_\_\_. **As teorias da justiça depois de Rawls: um breve manual de filosofia política**. São Paulo: Martins Fontes, 2008.

HARDIN, Russell. “Institutional morality” in GOODIN, Robert (Org.) **The theory of institutional design**. Press Syndicate of the Univesity of Cambridge. New York: Cambridge University Press, 1996.

\_\_\_\_\_. **Morality within the Limits of Reason**. Chicago: University of Chicago Press, 1988.

HAURIOU, Maurice. **A Teoria da Instituição e da Fundação – Ensaio de Vitalismo Social**. Trad. de José Ignácio Coelho Mendes Neto. Porto Alegre: Sérgio Fabris Ed., 2009.

JOLLS, Christine; SUNSTEIN, Cass; THALER, Richard. A behavioral approach to law and economics. **Stanford Law Review**, 1998.

KAHNEMAN, Daniel. Maps of bounded rationality: psychology for behavioral economics. **American Economic Review**, 2003.

\_\_\_\_\_. **Thinking, fast and slow**. New York: Farrar Straus Giroux, 2013.

\_\_\_\_\_.FREDERICK, Shane.A Model of Heuristic Judgment.**The Cambridge Handbook of Thinking and Reasoning**.Cambridge University Press, 2005, p. 269-270.

\_\_\_\_\_.TVERSKY, Amos.Choices, values, and frames.**American Psychologist**, Vol 39(4), 1984, 341-350.

MACEDO JUNIOR, Ronaldo Porto. Posner e a análise econômica do direito: da rigidez neoclássica ao pragmatismo frouxo. **InDireito e economia: trinta anos de Brasil**, vol. 1. LIMA, Maria Lucia (org.). São Paulo: Saraiva, 2012, p.270.

MARCH, James; OLSEN, Johan. Neo-institucionalismo: fatores organizacionais na vida política. **Revista Sociologia e Política**, 16(31): 121-142, 2008.

MAS-COLELL, Andreu; WHINSTON, Michael.**Microeconomic theory**.Oxford University Press, 1995.

PERSSON, Torsten; TABELLINI, Guido.**The economic effects of constitutions**. 2003.

PETTIT, Phillip. “Institutional Design and Rational Choice”. In: GOODIN, Robert (Org.) **The Theory of Institutional Design**. Press Syndicate of the Univesity of Cambridge. New York: Cambridge University Press, 1996.

POSNER, Richard. **A economia da justiça**.São Paulo: WMF Martins Fontes, 2010.

\_\_\_\_\_.**Fronteiras da teoria do direito**. São Paulo: WMF Martins Fontes, 2011.

RAWLS, John. Two concepts of rules.**Philosophical Review**, 64, p. 3-32, 1955

SUNSTEIN, Cass. **Nudges.gov: Behavioral Economics and Regulation**. Disponível em <http://ssrn.com/abstract=2220022>. Acesso em 03 de março de 2014.

\_\_\_\_\_.**Simpler: The future of government**. New York: Simon & Schuster, 2013.

SUNSTEIN, Cass. The Storrs Lectures: Behavioral Economics and Paternalism. **Yale Law Journal**, n. 122, 2013.

\_\_\_\_\_. VERMEULE, Adrian. Interpretation and Institutions.**Chicago Public Law and Legal Theory Working Paper Series**, No. 28, 2002.

SUNSTEIN, Cass; THALER, Richard. Libertarian Paternalism is Not an Oxymoron. **Chicago Law Review**, 2003.

THELEN, Kathleen; STEINMO, Sven.Historical institutionalism in comparative politics. In: THELEN, Kathleen; STEINMO, Sven (orgs.). **Structuring Politics: historical institutionalism en comparative analysis**. Cambridge: Cambridge University Press, 1992.

TSEBELIS, George. Veto players: how political institutions work. Princeton University Press, 2002.

TUSHNET, Mark. **The new constitutional order**.Princeton University Press, 2004.

VERMEULE, Adrian. **The system of the Constitution**.Oxford University Press, 2011.