

# The Behavioral Economics of Behavioral Law & Economics

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## ABSTRACT

Behavioral Law & Economics (BLE) has loudly proclaimed its victory over traditional law & economics methodologies. Nowhere has this proclamation been so loud or self-certain as with respect to claims about consumer financial decision-making. Drawing on a set of casual observations styled as empirical proof, BLE scholars have called for a variety of regulatory interventions that are claimed to be necessary to protect consumers. But examining two detailed case studies here, one involving credit card usage by consumers and the other involving claims about consumer behavior in response to cash discounts and credit card surcharges, it is shown that these claims are simply incredible, in the sense that it is literally difficult to believe that unbiased scholars would find those studies to be even slightly persuasive. Possible explanations for this disconnect between the weakness of the underlying science and the widespread social acceptance of the theories by BLE scholars are discussed.

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*Keywords:* Credit cards, surcharging, behavioral law & economics

*JEL Codes:* D11, D12, D18, D91

## 1 Introduction

Behavioral law and economics has declared victory in its intellectual battle with traditional law and economics. If you don't believe me, you can just ask them: Professor Russell Korobkin was already asking in 2011 "What Comes After Victory for Behavioral Law and Economics?" (Korobkin, 2011) In the pages of the esteemed *Harvard Law Review* Professor Ryan Bibb and Richard

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# Behavioral Law And Economics

**Richard A. Posner, American Institute  
for Economic Research**



## **Behavioral Law And Economics:**

**Behavioral Law and Economics** Eyal Zamir, Doron Teichman, 2018-06-05 This book offers a state of the art overview of behavioral law and economics surveying the entire body of psychological research that lies at the basis of behavioral analysis of law and critically evaluating the core methodological questions It discusses the fundamental normative questions stemming from the psychological findings on bounded rationality and explores their implications for setting the law's goals and designing the means to attain them *Behavioral Economics and the Law* Christine Jolls, 2011 Behavioral Economics and the Law begins with the early evolution of behavioral economics both outside and within legal policy analysis and then describes the central role of behavioral economics in such analysis today The behavioral law and economics of today is rooted in more traditional law and economics so it is useful to start with an understanding of the field's jumping off point Behavioral law and economics has sought to bring the insights of behavioral economics to bear on many topics within the field of law and economics Behavioral Economics and the Law describes a number of the central attributes and applications of behavioral law and economics to date It does not embrace every area in which behavioral economics has become influential in legal policy in America and beyond but it does seek to give a representative sample of the burgeoning modern field of behavioral law and economics Section 1 begins with the early development and refinement of one of the pivotal insights of behavioral economics that people frequently exhibit an endowment effect both outside and within the field of behavioral law and economics Section 2 offers a general overview of the features of human decision making that have informed modern behavioral law and economics Section 3 provides a general typology of legal responses to bounded rationality bounded willpower and bounded self interest Sections 4 through 6 move from the general to the concrete offering a range of illustrative applications of behavioral law and economics in the domains of bounded rationality bounded willpower and bounded self interest respectively **Behavioral Law and Economics** Christine Jolls, 2010 Behavioral economics has been a growing force in many fields of applied economics including public economics labor economics health economics and law and economics This paper describes and assesses the current state of behavioral law and economics Law and economics had a critical though underrecognized early point of contact with behavioral economics through the foundational debate in both fields over the Coase theorem and the endowment effect In law and economics today both the endowment effect and other features of behavioral economics feature prominently and have been applied in many important legal domains The paper concludes with reference to a new emphasis in behavioral law and economics on "debiasing through law" using existing or proposed legal structures in an attempt to reduce people's departures from the traditional economic assumption of unbounded rationality *Research Handbook on Behavioral Law and Economics* Joshua C. Teitelbaum, Kathryn Zeiler, 2018-03-30 The field of behavioral economics has contributed greatly to our understanding of human decision making by refining neoclassical assumptions and developing models that account for psychological cognitive and emotional forces

The field's insights have important implications for law. This Research Handbook offers a variety of perspectives from renowned experts on a wide ranging set of topics including punishment, finance, tort law, happiness and the application of experimental literatures to law. It also includes analyses of conceptual foundations, cautions, limitations and proposals for ways forward.

**Behavioral Law and Economics** Joshua D. Wright, Douglas H. Ginsberg, 2012 [Advanced Introduction to Behavioral Law and Economics](#) Cass R. Sunstein, 2023-12-11 This highly informative Advanced Introduction explores the diverse and far reaching legal implications of some of the key findings of behavioral economics. This Advanced Introduction provides a much needed assessment and analysis of the law as a critical domain for the use of behavioral economics and investigates how techniques including nudging, mandates and taxes can be used to enhance the effectiveness and improve the implementation of the law.

**Behavioral Law and Economics** Cass R. Sunstein, 2000-03-28 This exciting volume marks the birth of a new field, one which attempts to study law with reference to an accurate understanding of human behavior. It reports new findings in cognitive psychology which show that people are frequently both unselfish and over optimistic, that people have limited willpower and limited self control and that people are boundedly rational in the sense that they have limited information processing powers and frequently rely on mental short cuts and rules of thumb. Understanding this behavior has large scale implications for the analysis of law in areas including environmental protection, taxation, constitutional law, voting behavior, punitive damages for civil rights violations, labor negotiations and corporate finance. With a better knowledge of human behavior it is possible to predict the actual effects of law, to see how law can promote society's goals and to reassess the questions of what law should be doing.

**Behavioral Law and Economics - Introduction** Eyal Zamir, 2018 In the past few decades economic analysis of law has been challenged by a growing body of experimental and empirical studies that attest to prevalent and systematic deviations from the assumptions of economic rationality. While the findings on bounded rationality and heuristics and biases were initially perceived as antithetical to standard economic and legal economic analysis, over time they have been largely integrated into mainstream economic analysis, including economic analysis of law. Moreover, the impact of behavioral insights has long since transcended purely economic analysis of law. In recent years the behavioral movement has become one of the most influential developments in legal scholarship in general. This is the introduction of the book *Behavioral Law and Economics* OUP 2018. The book offers a state of the art overview of the field. It surveys the entire body of psychological research underpinning behavioral analysis of law and critically evaluates the core methodological questions of this area of research. The book then discusses the fundamental normative questions stemming from the psychological findings on bounded rationality and explores their implications for establishing the aims of legislation and the means of attaining them. This is followed by a systematic and critical examination of the contributions of behavioral studies to all major fields of law: property, contracts, consumer protection, torts, corporate securities, regulation, antitrust, administrative, constitutional, international, criminal and evidence law, as well as to the behavior of key players in the

legal arena litigants and judicial decision makers *The Oxford Handbook of Behavioral Economics and the Law* Eyal Zamir, Doron Teichman, 2014 The Oxford Handbook of Behavioral Economics and Law brings together leading scholars of law psychology and economics to provide an up to date and comprehensive analysis of this field of research including its strengths and limitations as well as a forecast of its future development Its twenty nine chapters are organized into four parts

BEHAVIORAL LAW AND ECONOMICS. ZAMIR & TEICHMAN., **Introduction to Behavioral Law and Economics**

Claire A. Hill, University of Minnesota. Law School, 2011 *The Behavioral Economics of Behavioral Law & Economics* Todd J. Zywicki, 2019 Behavioral Law Economics BLE has loudly proclaimed its victory over traditional law economics methodologies Nowhere has this proclamation been so loud or self certain as with respect to claims about consumer financial decision making Drawing on a set of casual observations styled as empirical proof BLE scholars have called for a variety of regulatory interventions that are claimed to be necessary to protect consumers But examining two detailed case studies here one involving credit card usage by consumers and the other involving claims about consumer behavior in response to cash discounts and credit card surcharges it is shown that these claims are simply incredible in the sense that it is literally difficult to believe that unbiased scholars would find those studies to be even slightly persuasive Possible explanations for this disconnect between the weakness of the underlying science and the widespread social acceptance of the theories by BLE scholars are discussed *Behavioral Law and Economics* Richard A. Posner, American Institute for Economic Research, 2002

**The Proper Scope of Behavioral Law and Economics** Christoph Engel, 2018 Behavioral law and economics applies the conceptual tools of behavioral economics to the analysis of legal problems and legal intervention These models and the experiments to test them assume an institution free state of nature In modern societies the law s subjects never see this state of nature However a rich arrangement of informal and formal institutions creates generalized trust If individuals are sufficiently confident that nothing too bad will happen they are freed up to interact with strangers as if they were in a state of nature This willingness dramatically reduces transaction cost and enables division of labor If generalized trust can be assumed simple economic models are appropriate But they must be behavioral since otherwise individuals would not want to run the risk of interaction *Behavioral Law and Economics* Joshua D. Wright, 2012 **Behavioral Law and Economics, Paternalism, and Consumer Contracts** Joshua D. Wright, 2007 **Biased Trials** Goran Dominioni, 2020-05-01 Goran Dominioni argues that research in behavioral economics psychology and neurosciences can offer novel insights on whether court decisions are accurate non discriminatory and maximize social welfare The author also shows that insights from these areas of research can help to improve trial outcomes if carefully applied to craft trial rules and practices He covers central themes in behavioral law and economics such as implicit racial biases the fundamental attribution error and gender related biases An Assessment of Behavioral Law and Economics Contentions and What We Know Empirically About Credit Card Use by Consumers Thomas A. Durkin, 2016 Behavioral Law and Economics BLE is a specialized component of the legal

literature that purports to base its conclusions on a branch of economic analysis known as behavioral economics. The central claim of BLE is that by applying findings of behavioral economics to the real world it can provide more accurate assumptions about individual behavior and decision making than neoclassical economics and thus better and more effective policy prescriptions where needed. To date however BLE's claims have been almost entirely a priori taking certain suggested biases identified in the laboratory experiments by behavioral economists and claiming that they extend significantly to actual consumer behavior and the need for regulation. Yet it is well accepted that the proper test of the scientific validity of an economic theory is the accuracy of its predictions relative to empirically testable hypotheses not a priori reasoning or hypothetical extensions. This paper focuses on an area where BLE has been particularly active and even influential the analysis of consumer use of credit cards. Comparison of the claims of BLE against hypotheses of the traditional neoclassical model of consumer credit use developed over the past century finds that available empirical evidence uniformly rejects BLE's hypotheses for consumer credit. In short while behavioral considerations are an important component of economic analysis its BLE extension to policy in the consumer credit area has not yet proven to be useful.

Behavioral Law and Economics  
Christoph Engel, 2013 *What Comes After Victory for Behavioral Law and Economics?* Russell B. Korobkin, 2011. The battle to separate the economic analysis of legal rules and institutions from the straightjacket of strict rational choice assumptions has been won by the proponents of behavioral law and economics. With the revealed preferences assumption of neoclassical economics that individual behavior necessarily maximizes subjective expected utility discarded what comes next for the discipline of law and economics. The article argues that theorists should turn their attention to a series of philosophical and methodological problems that surround the measurement of subjective expected utility: 1 the need to recognize and value autonomy for its own sake separate from its ability to enhance utility; 2 the need to advance a theory of subjective utility that takes into account the use of heuristics in the construction of preferences as well as in understanding facts and judging probabilities; and 3 the need to recognize and confront the consequences of individual difference in the extent of bounded rationality.

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## **Table of Contents Behavioral Law And Economics**

1. Understanding the eBook Behavioral Law And Economics
  - The Rise of Digital Reading Behavioral Law And Economics
  - Advantages of eBooks Over Traditional Books
2. Identifying Behavioral Law And Economics
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Behavioral Law And Economics
  - User-Friendly Interface
4. Exploring eBook Recommendations from Behavioral Law And Economics
  - Personalized Recommendations
  - Behavioral Law And Economics User Reviews and Ratings
  - Behavioral Law And Economics and Bestseller Lists
5. Accessing Behavioral Law And Economics Free and Paid eBooks
  - Behavioral Law And Economics Public Domain eBooks
  - Behavioral Law And Economics eBook Subscription Services
  - Behavioral Law And Economics Budget-Friendly Options

6. Navigating Behavioral Law And Economics eBook Formats
  - ePub, PDF, MOBI, and More
  - Behavioral Law And Economics Compatibility with Devices
  - Behavioral Law And Economics Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Behavioral Law And Economics
  - Highlighting and Note-Taking Behavioral Law And Economics
  - Interactive Elements Behavioral Law And Economics
8. Staying Engaged with Behavioral Law And Economics
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Behavioral Law And Economics
9. Balancing eBooks and Physical Books Behavioral Law And Economics
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Behavioral Law And Economics
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Behavioral Law And Economics
  - Setting Reading Goals Behavioral Law And Economics
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Behavioral Law And Economics
  - Fact-Checking eBook Content of Behavioral Law And Economics
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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