

<b>Syllabus</b>
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**Behavioral Law and Economics**  
**An introduction**

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**Seminar Description**

Behavioral economics tries to increase the explanatory power of economics by using insights from the field of psychology. These findings are then brought to the legal level to explain both the effects and content of laws. In addition, behavioral concepts help in determining how the law might be used to achieve particular goals and in assessing whether the law is achieving its stated ends.

This seminar will begin with a broad overview of the problem of irrationality in economic behavior in order to introduce its application and consequences to legal issues. Topics will include biases and heuristics, the main goal of BLE, its criticisms, and applied situations like obesity fighting, environmental law and others.

### **Expectations of Students and Grading:**

Students don't need to have an extensive economics or psychology background.

The class requires active and regular participation and preparation for daily discussions. This includes attending each class on time, listening, contributing in class and preparing to answer questions by reading and preparing the required bibliography.

Grades will be based exclusively on class participation and a writing assignment involving:

1. the review of an appointed paper; or
2. the application of BLE to solve a particular problem,

to be emailed to me before November 15th.

No exam will be given.

### **Course Materials:**

Most of the readings for the seminar can be downloaded and the rest will be provided and emailed in advanced.

## Program

### Session 1: Predictable irrationality?

- (1) Camerer, Colin and George Loewenstein. 2003. Behavioral Economics: Past, Present, Future. In *Advances in Behavioral Economics*, ed. Colin Camerer, George Loewenstein and Matthew Rabin. Princeton: Princeton University Press.  
[https://www.researchgate.net/publication/228359684\\_Behavioral\\_Economics\\_Past\\_Present\\_Future](https://www.researchgate.net/publication/228359684_Behavioral_Economics_Past_Present_Future)
- (2) Rabin, Matthew. 1998. Psychology and Economics. *Journal of Economic Literature* 36:11-46.  
<http://webpace.pugetsound.edu/facultypages/gmilam/courses/econ291/readings/Rabin98.pdf>
- (3) Dan Ariely. 2008. *Predictably Irrational*. Harper Collins.  
[https://www.academia.edu/29645841/Dan\\_Ariely\\_Predictably\\_Irrational\\_Revision\\_and\\_E\\_b](https://www.academia.edu/29645841/Dan_Ariely_Predictably_Irrational_Revision_and_E_b)
- (4) Richard A. Posner. 1998. Behavioral Economics and the Law. *Stanford Review*, Vol. 50.  
[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2879&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2879&context=journal_articles)

### Session 2: What is Behavioral Law and Economics?

- (1) Saraiva, Rute. 2011. Análise económico-comportamental do Direito: uma introdução, *in* Fernando Araújo, Paulo Otero, João Taborda da Gama (org.) *Estudos em Homenagem do Professor Doutor J. L. Saldanha Sanches*, Vol. I, Coimbra Editora.

- (2) Jolls, Christine. 2007. Behavioral Law and Economics, NBER Working Paper 12879. [http://www.nber.org/papers/w12879.pdf?new\\_window=1](http://www.nber.org/papers/w12879.pdf?new_window=1)
- (3) Jolls, Christine and Cass R. Sunstein. 2006. Debiasing Through Law, Journal of Legal Studies, 35:199-241. <https://www.nber.org/papers/w11738>
- (4) Mitchell, Gregory. 2002. Why Law and Economics' Perfect Rationality Should Not Be Traded for Behavioral Law and Economics' Equal Incompetence, Georgetown Law Journal, Vol. 91. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=306562](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=306562)
- (5) Arlen, Jennifer. 1998. Comment: The Future of Behavioral Economic Analysis of Law. Vanderbilt Law Review 51:1765-1788, ou University of Southern California, Law School, Working Paper n.º 98-14. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=140489](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=140489)

### **Session 3: Libertarian and Asymmetric Paternalism**

- (1) Sunstein, Cass R. and Richard H. Thaler. 2003. Libertarian Paternalism Is Not an Oxymoron, University of Chicago Law Review, 70:1159-1202. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=405940](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=405940)
- (2) Thaler, Richard H., Sunstein, Cass R. and Balz, John P. 2010. Choice Architecture. <http://ssrn.com/abstract=1583509>
- (3) Mitchell, Gregory. 2005. Libertarian Paternalism Is an Oxymoron. Northwestern University Law Review, Vol. 99, No. 3. <http://ssrn.com/abstract=615562>
- (4) Camerer, Colin, Samuel Issacharoff, George Loewenstein, Ted O'Donoghue and Matthew Rabin. 2003. Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism." University of Pennsylvania Law Review 151: 1211-1254. <http://www.hss.caltech.edu/~camerer/paternPLR.pdf>

#### **Session 4: Applied BLE: Fighting Obesity, Academic Fraud and Environmental Problems**

- (1) Saraiva, Rute. 2012. O Direito do ambiente e a Behavioral Law and Economics, Estudos em Comemoração do Quinto Aniversário do Instituto Superior de Ciências Jurídicas e Sociais de Cabo Verde, Cidade da Praia.
- (2) Jeffrey J. Rachlinski. 2000. The Psychology of Global Climate Change, University of Illinois Law Review. <http://env.chass.utoronto.ca/env200y/ESSAY2001/globwarm.pdf>
- (3) Shogren, Jason F. and Laura O. Taylor. 2008. On Behavioral-Environmental Economics, Review of Environmental Economics and Policy. <http://www.uwyo.edu/shogren/decisionkursshogrentaylorfinalreep2008.pdf>
- (4) Saraiva, Rute. 2013. A abordagem comportamental do Direito e da Economia das catástrofes naturais, in Actas do Colóquio, Catástrofes Naturais: Uma realidade multidimensional, Instituto de Ciências Jurídico-Políticas, Lisboa.
- (5) Paul Slovic. 2008. Thinking and Deciding Rationally About Catastrophic Losses of Human Lives, The Wharton School. [http://opim.wharton.upenn.edu/risk/tie3/abstracts/Slovic\\_Thinking.pdf](http://opim.wharton.upenn.edu/risk/tie3/abstracts/Slovic_Thinking.pdf)
- (6) Saraiva, Rute. 2010. Uma Questão de Peso: Análise Jurídico-Económica da Obesidade, Estudos em Homenagem ao Professor Doutor Paulo de Pitta e Cunha, Almedina.
- (7) Marlow, Michael L. and Sherzod Abdukadirov 2012. Can Behavioral Economics Combat Obesity?, Regulation, Health and Medicine. <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2012/8/v35n2-2.pdf>
- (8) Saraiva, Rute. 2012. Fraude Académica em Hogwarts. Lições de análise económico-comportamental para muggles de todas as idades, Revista do Instituto de Direito Brasileiro, n.º 4. [http://www.idb-fdul.com/uploaded/files/2012\\_04\\_2301\\_2361.pdf](http://www.idb-fdul.com/uploaded/files/2012_04_2301_2361.pdf)

## Optional Readings

- Christine Jolls, Cass Sunstein & Richard Thaler (2000). *A Behavioral Approach to Law and Economics*. In *Behavioral Law & Economics*, ed. Cass Sunstein, 13-58. Cambridge: Cambridge University Press. [http://www.law.harvard.edu/programs/olin\\_center/papers/pdf/236.pdf](http://www.law.harvard.edu/programs/olin_center/papers/pdf/236.pdf)
- Joshua D. Wright & Douglas H. Ginsburg (2012). *Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty*, Northwestern University Law Review, Vol. 106, No. 3; George Mason Law & Economics Research Paper No. 12-63. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2147940](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2147940)
- Gregory Mitchell (2002). *Taking Behavioralism Too Seriously? The Unwarranted Pessimism of the New Behavioral Analysis of Law*, 43 Wm. & Mary L. Rev. 1907. <http://scholarship.law.wm.edu/wmlr/vol43/iss5/4>
- Jeffrey J. Rachlinski (ed.) (2009). *Behavioral Law and Economics*, Edward Elgar, Cheltenham.
- Jeffrey J. Rachlinski & Forest Jourden (2003). *The Uncertain Psychological Case for Paternalism*, Northwestern University Law Review 1165, n.º 97.
- Francesco Parisi & Vernon L. Smith (eds.) (2005). *The Law and Economics of Irrational Behavior: An Introduction*, F. Parisi & V. Smith, The Law & Economics of Irrational Behavior, Stanford University Press. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=586649&rec=1&srcabs=306562&alg=1&pos=1](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=586649&rec=1&srcabs=306562&alg=1&pos=1)
- Russell B. Korobkin (2001). *Multi-Disciplinary Approach to Legal Scholarship: Economics, Behavioral Economics, and Evolutionary Psychology*, Jurimetrics, Vol. 51.
- Russell B. Korobkin (2003). *The Endowment Effect and Legal Analysis*, Northwestern University Law Review, Vol. 97.
- Russell B. Korobkin (2004a). *A 'Traditional' and 'Behavioral' Law-and-Economics Analysis of Williams v. Walker-Thomas Furniture Company*, University of Hawaii Law Review, Vol. 26.
- Russell B. Korobkin (2004b). *The Problems with Heuristics for Law*, UCLA School of Law, Law & Econ Research Paper n.º 4-1.
- Russell B. Korobkin (2005). *Possibility and Plausibility in Law and Economics*, Florida State University Law Review, Vol. 32.
- Russell B. Korobkin (2009). *Libertarian Welfarism*, UCLA School of Law, Law-Econ Research Paper n.º 09-09.
- Russell B. Korobkin & Thomas S. Ulen (2000). *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, California Law Review, Vol. 88.
- Jeremy A. Blumenthal (2002). *Law and Social Science in the Twenty-First Century*, Southern California Interdisciplinary Law Journal, Vol. 12.
- Javier Estrada (2001). *Behavioural Law and Economics*, IESE Business School, Barcelona. <http://web.iese.edu/jestrada/PDF/Research/Others/L&BE.pdf>
- Kjell Arne Brekke & Olof Johansson-Stenman (2008). *The Behavioural Economics of Climate Change*, University of Gothenburg. School of Business, Economics and Law, Working Paper in Economics n.º 305.
- Thomas A. Lambert (2004). *Two Mistakes Behavioralists Make: A Response to Professors Feigenson et al. and Professor Slovic*, Missouri Law Review, Vol. 69. <http://law.missouri.edu/lawreview/files/2012/11/Lambert.pdf>
- Nathan Berg (2003). *Normative Behavioral Economics*, School of Social Sciences, University of Texas at Dallas, Richardson, TX.



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- Richard H. Thaler & Cass R. Sunstein (2009). *Nudge*, Academia do Livro.
- Robert A. Prentice (2003). *Chicago Man, K.T Man and the Future of Behavioural Law and Economics*, Vanderbilt Law Review. Vol. 56, 1671.
- José Eduardo Carvalho (2009). *Neuroeconomia. Ensaio sobre a Sociobiologia do Comportamento*, Edições Sílabo, Lisboa.
- Cass R. Sunstein (1999). *Behavioral Law and Economics: A Progress Report*, American Law and Economics Review, Vol. I, n.º 1, 121.
- Cass R. Sunstein (2002). *Risk and Reason: Safety, Law and the Environment*, Cambridge University Press, Setembro.
- Edward L. Glaser (2006). *Paternalism and Psychology*, University of Chicago Law Review, n.º 73.
- Cass R. Sunstein (1997). *Behavioral Analysis of Law*, Chicago University, Working Paper in Law & Economics n.º 46, Chicago, 14.
- Victor Ricciardi e Helen K. Simon (2000). *What is Behavioral Finance?*, Business, Education & Technology Journal, Vol. 2, n.º 2.
- Thomas A. Lambert (2010). *Behavioral Law and Economics and the Conflicting Quirks Problem: A “Realist” Critique*, <http://truthonthemarkets.com/free-to-choose-symposium>
- David D. Friedman (2010). *Behavioral Economics: Intriguing Research Project, with Reservations*, em <http://truthonthemarkets.com/free-to-choose-symposium>
- David D. Friedman (s.d.). *Economics and Evolutionary Psychology*, [http://www.davidfriedman.com/Academic/econ\\_and\\_evol\\_psych/economics\\_and\\_evol\\_psych.html](http://www.davidfriedman.com/Academic/econ_and_evol_psych/economics_and_evol_psych.html)
- Henry G. Manne (2010). *Behavioral Overreach*, <http://truthonthemarkets.com/free-to-choose-symposium>
- Larry Ribstein (2010). *Free to Lose?*, <http://truthonthemarkets.com/free-to-choose-symposium>
- Thomas A. Lambert (2004). *Two Mistakes Behavioralists Make: A Response to Professors Feigenson et al. and Professor Slovic*, Missouri Law Review, Vol. 69.
- Dan Ariely (2012). *The Honest Truth About Dishonesty: How We Lie to Everyone -Especially Ourselves*, Harper.
- Dan Ariely (2011). *O Lado Bom da Irracionalidade*, Lua de Papel.
- Jeffrey J. Rachlinski (2006). *Cognitive Errors, Individual Differences, and Paternalism*, University of Chicago Law Review, n.º 73, 207.
- Cass R. Sunstein (2005). *Irreversible or Catastrophic*, The Law School, The University of Chicago, Public Law and Legal Theory Working Paper n.º 88, Abril ou AEI-Brookings Joint Center Working Paper n.º 05-04, Março.
- Avishalom Tor (2008). *The Methodology of the Behavioral Analysis of Law*, Haifa Law Review, Vol. 4, 323.
- Douglas Glen Whitman & Mario J. Rizzo (2007). *Paternalist Slopes*, New York University Law and Economics Research Paper n.º 07-08.
- Todd Henderson (2010). *Project Behavior: What the Battle is Really About*, <http://truthonthemarkets.com/free-to-choose-symposium>
- Douglas Ginsburg e Joshua Wright (2010). *A Taxonomy of Behavioral Law and Economics Skepticism*, <http://truthonthemarkets.com/free-to-choose-symposium>
- Jonathan Klick & Gregory Mitchell (2006). *Government Regulation of Irrationality: Moral and Cognitive Hazards*, Minnesota Law Review, Vol. 90.
- Geoffrey A. Manne (2010). *Interesting doesn't necessarily mean policy relevant*, <http://truthonthemarkets.com/free-to-choose-symposium>



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- Richard A. Epstein (2010). *The Dangerous Allure of Behavioral Economics: The Relationship between Physical and Financial Products*, <http://truthonthemarkets.com/free-to-choose-symposium>
- Erin O'Hara (2010). *The Free Market Side of Behavioral Law and Economics*, <http://truthonthemarkets.com/free-to-choose-symposium>
- Anuj C. Desai (2010). *Libertarian Paternalism, Externalities, and the "Spirit of Liberty": How Thaler and Sunstein Are Nudging Us toward an "Overlapping Consensus"*, Univ. of Wisconsin Legal Studies Research Paper No. 1121.
- Douglas A. Kysar (2006). *Are Heuristics a Problem or a Solution?*, in Engel Christoph & Gigerenzer, Gerd (eds), *Heuristics and the Law*, MIT Press, Cambridge, MA, 254.
- Jeffrey J. Rachlinski e Cynthia R. Farina (2002). *Cognitive Psychology and Optimal Government Design*, Cornell Law Review, n.º 87, 554.
- Robert Cooter (2000). *Three Effects of Social Norms on Law: Expression, Deterrence and Internalization*, Oregon Law Review, Vol. 79, n.º 1.
- Robert Cooter (2000). *Treating Yourself Instrumentally: Internalization, Rationality and the Law*, in Francesco Parisi e Vernon L. Smith (eds.) *The Law & Economics of Irrational Behavior*, Stanford University Press.
- Robert E. Scott (2000). *The Limits of Behavioral Theories of Law and Social Norm*, University of Virginia Law School, Law & Economics Working Papers, Research Paper n.º 00-18, 44.
- Colin Camerer e Eric Talley (2004). *Experimental Law and Economics*, in A.M. Polinsky & Steve Shavell, (eds.) *Handbook of Law and Economics*.
- Fernando Araújo (2007). *Teoria Económica do Contrato*, Almedina, Coimbra.
- Gregory Mitchell (2002). *Why Law and Economics' Perfect Rationality Should Not Be Traded for Behavioral Law and Economics' Equal Incompetence*, Georgetown Law Journal, Vol. 91.
- Robert A. Hillman (2000). *The Limits of Behavioral Decision Theory in Legal Analysis: The Case of Liquidated Damages*, Cornell Law Review, n.º 85.
- Samuel Issacharoff (1998). *Can There Be A Behavioral Law and Economics?*, Vanderbilt Law Review 51: 1729-1745.
- Thomas Ulen (1998). *The Growing Pains of Behavioral Law and Economics*, Vanderbilt Law Review 51:1747-1763.
- R. A. Posner (2004). *Frontiers of Legal Theory*, Harvard University Press.
- Claire A. Hill (2010). *The Promise of Behavioral Law and Economics*, <http://truthonthemarkets.com/free-to-choose-symposium>;
- Claire A. Hill (2003). *Beyond Mistakes: The Next Wave of Behavioral Law and Economics*, Queens Law Journal.
- Jeffrey J. Rachlinski (2000). *The 'New' Law and Psychology: A Reply to Critics, Skeptics, and Cautious Supporters*, Cornell Law Review, n.º 85, 742; R. A. Hillman (2000). 738.
- Jack S. Levy (1997). *Prospect Theory, Rational Choice, and International Relations*, International Studies Quarterly, Vol. 41, n.º 1.