



An Introduction to the Psychology of International Law

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Abstract: *Cognitive studies and behavioural economics have been successful in domestic legal concerns and are increasingly utilized in public policy and regulation, their implication in public international law scholarship has not been systematically explored. We hope to fill two voids in the literature with this research: (1) the lack of behavioural insights in international law and economics; (2) the absence of international dimensions in behavioural law and economics; and (3) the avoidance of the importance of international norms by international political psychology. This piece provides a broad overview of the many psychological perspectives used throughout the research contributions and the challenges anticipated by those pursuing this line of inquiry. Despite these caveats, behavioural studies have yielded numerous insights that could greatly advance our comprehension of international law.*

Key Words: International Law, Psychology, Behavioral Insights

Introduction

More and more social science theories and approaches are being integrated into the study of Public International Law (PIL) on various topics, including the design of treaties, societal norms, informal legal systems, interpretation of treaties, substantive legal standards, and international legal theory. Although their success when applied to domestic legal issues and their growing use in public policy and regulation, cognitive research and behavioural economics have not been systematically explored concerning public international law (PIL) (Levitt et al., 2021). However, international political psychology has used behavioural ideas, mostly in security decision-making and without addressing international standards (Krook & True, 2010).

We expect our research will help correct the underestimation of international standards in

International law, economics/political economy, and the political psychology of international relations (Delcourt, 2016). It's time to tie all these loose ends together and better understand how international law operates. "International Relations as a social science approach can make International Lawyers better lawyers," Anne-Marie Slaughter argued in a different setting back in the 1990s (Slaughter, 2001). We agree without discounting doctrinal work as essential to grasping international law's interests and incentives. Even though the law's inward focus is still crucial, psychological insights improve it.

This introductory section provides an overview of the key psychological approaches used in the contributing essays to this symposium and the anticipated challenges of this research program. Therefore, it is recommended that readers who are not familiar with the behavioural literature first read the introduction and then read the various contributions.

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A Study of Human Preferences, Heuristics, and Biases

Since the 1970s, groundbreaking experimental research in psychology has seriously challenged the coherent choice pattern used in economic and institutional theory. This study challenges the standard anticipated utility model in economics and international relations by demonstrating that agents are limited in their rationality and consistently have preferences (both positive and negative) that affect others around them. Able to think critically, they may make choices that deviate from the "perfect rationality" of probability calculations. In addition, the rationalist premise of "descriptive invariance" is violated by the impact of context and framing on decision-making (Nagatsu, [2015](#)).

These deviations from rational choice assumptions bring the 'psychology of international law' closer to how players behave. Much of this collection, though not all of it, is based on experimental or survey research. It is used to observe the cognition and genuine preferences of (individual or collective) actors in controlled conditions, thus conferring high internal validity to their findings. International law has important consequences since many experiments indicate consistent deviations from rationality assumptions. Careful consideration must be given to their external validity or the extent to which their findings may be extrapolated to settings outside the laboratory (McDermott, [2011](#)).

There are three types of deviations from the rational choice assumption of maximizing one's utility; limited willpower, limited self-interest, and bounded rationality are the three categories used to classify exoduses from convincing decision suppositions of self-interested efficacy intensification (Osmani, [2019](#)). Due to its lack of empirical support and apparent relevance to PIL, we skip over limited willpower and instead focus on limited self-interest. Rational choice game theory is often used in social preference experiments, in particular variants of the "ultimatum game," in which a nominator gives a receiver an offer of how to divide a given sum of money that may be accepted or rejected. If the intended receiver declines, neither party benefits. The *HOMO ECONOMICUS* model assumes that both parties will make the minimum possible monetary offer and accept it. However, this result is not found in experiments; instead, actors usually make and accept offers with a wider range of probabilities; this is blamed on worries about equity (Gaudet et al., [2021](#)). Subjects consistently divide resources to reflect fairness concerns rather than maximizing personal benefit, regardless of the

game style or study design, contradicting rationalist ideas of narrow self-interest.

Moreover, consistent evidence suggests that people take collective action to provide local public goods even in the absence of an external authority enforcer (Villeval, [2020](#)), leading to results that are "better than rational" (Stoelhorst, [2017](#)). These results materialize in contexts where significant temptations of short-term self-interest are met with the support of reciprocity, reputation, and trust (Slomp, [2018](#)). These experiments highlight some of the factors that may be missing from rational theories, including (1) strict reciprocity; (2) the difference between (perceived) just and unjust punishments; (3) altruism, hostility, and egalitarian preferences; (4) the role of trust and communication; (5) the intent of other players; (6) the "type" of the actor. These considerations are 'almost certainly valid in all sectors in which voluntary acquiescence counts,' it has been argued (Pigou, [2016](#)).

The essence of bounded rationality is the understanding that human intellect is limited, especially when applied to oneself. When deciding, the human brain uses shortcuts that deviate from the expected utility theory. The articles employed in this study use a wide range of cognitive and heuristic biases that arise in real-world decision-making (Blumenthal-Barby & Krieger, [2014](#)).

In this respect, prospect theory provides maybe the single most significant psychological discovery (Dhami & al-Nowaihi, [2007](#)). The Coase theorem, which expresses and depends on the concept of perfect rationality, is called into doubt by prospect theory. Without transaction costs, Coasean economics suggests that initial allocations of resources or rights are not necessarily binding (ALLEN, [2014](#)). From whatever vantage point, it is clear that entitlements will be assigned efficiently through negotiating with the party that places the highest value on them. The Coase theorem is a staple of classical legal economics because it eliminates the impact of bias in economic analysis. The principle of parsimony in rational choice relies on this very fact. Experiments have revealed, however, that actors' actions, particularly their willingness to leave with their entitlement, are heavily influenced by their beginning entitlements. The rule of thumb in international relations is that for every \$10 you acquire (or anything else of worth; in the context of diplomacy, this may be land, assets, or other resources of emblematic or political significance), you lose \$10. Losses and benefits of comparable magnitude are not treated equally by individuals in the actual world (Schmitz, [1995](#)). For instance, they prioritize risk aversion above profit maximization when allocating

resources. Such reasoning underpins several concepts connected to prospect theory, including loss hatred, donation, and enclosing effects. These occurrences can potentially obstruct consent and cooperation under domestic and international law.

Experiments in cognitive psychology consistently provide evidence for other psychological snags in reason. For instance, the availability bias says that "people tend to think that risks are worse when they can quickly think of an example" (Ling, 2020). Information availability may have far-reaching cognitive impacts on judgment. When evaluating the skill of other players making decisions under uncertainty, it can be difficult to disentangle the outcome of a decision from the quality of the decision itself due to a phenomenon known as "outcome bias," the tendency to overestimate the initial probability of an event once awareness of its occurrence has been gained (Andreis, 2020). Compared to the utility-maximizing option, which always selects red, participants are likelier to pick red when asked to select the colour wrapped around a hexagonal die with four red sides and two white sides. One term for this phenomenon is "probability matching." It refers to the observed propensity of players to make decisions that correspond with the comparative incidence of occurrences rather than making utility-maximizing decisions that would assume the occurrence of the most favourable outcomes. Individuals generally choose inaction or the status quo when a decision has positives and negatives, opportunities and threats. In a similar vein, individuals tend to take more ownership of the results of their actions than the results of their inactions (a phenomenon known as "omission bias") (Zamir & Ritov, 2012). As a result, many parents would choose not to immunize their kids, even though the risk of dying from the illness is far lower than the risk of dying from the vaccination (Savulescu et al., 2021).

Studying cognitive fallacies, including availability bias, hindsight bias, probability matching, status quo, and omission, has enlightened us on the nature and operation of both domestic and international legal systems. The publications cited in this article, which we will briefly outline in the next section, will provide examples and point the way for further study by showing one or more applications.

The Articles, Collectively and Individually

Despite some noteworthy initiatives, international law still underutilizes behavioural economics and cognitive and social psychology. This research seeks to pave the road toward filling this void by providing various complimentary views, from description to explanation

to prescription, theory to experiment, and from general to specific. Individually, the articles are fine, but taken as a whole; they show how far behavioural insights may take the study of international law. They cover many topics, but each may serve as a foundation for further study and a source of valuable firsthand experience.

Anne van Aaken explained that new approaches to studying international legal theory use behavioural insights and experimental techniques (van Aaken, 2019). She uses these ideas in her paper in the context of *grosso modo* socio-legal international philosophy. Rationalism and constructivism are essential background paradigms with many variants emphasized in MODO. Both instances rely heavily on unproven presumptions about the motivations and actions of the actors. There is a shortage of experimental data to back up the behavioural assumptions made by both theories. Van Aaken used public interest game data to illustrate the emergence and maintenance of social order in decentralized systems like international law. To that end, this article explores the assumptions of rational and constructive approaches to international law theory. It reflects empirical insights into state preferences, strategic interactions, reciprocity, sanctions, communication and trust, consent, and legality. The characteristics of the rule of law and mutual aid are based on how they behave.

To bridge the gap between behavioural, legal theory and its consequences for international lawmaking and efficacy, Doron Teichman and Eyal Zamir place special focus on international "nudges," or "low-cost, choice-preserving, behaviorally-informed approaches to regulatory problems" (Teichman & Zamir, 2019). The authors argue for using alerts in international law and relations by outlining the potential outcomes of failing to adhere to multilateral treaties' withdrawal/access provisions. They recommend using the "alarm" function to conduct searches in advance, establish objectives and deadlines, and provide numerous examples to illustrate the importance of doing so (Teichman & Zamir, 2018).

Aiming to strike a balance between the power of international law and that of political leaders ("elite signalling"), Anton Streznev, Pete A. Simmons, and Matthew D. Kim have published An Empirical Approach (Strezhnev et al., 2019). Because of international refugee law's high stakes and political nature, the United States, India, and Australia are utilized as case studies. Surprisingly, they discover that popular opinion is compatible with international law duties even while political leadership opposes these

responsibilities. These findings may have consequences for the normative significance of international law during times of 'reversion,' albeit not without major cautions, especially considering that certain political affiliations may arise elsewhere (Levin et al., 2012).

Focusing on the decision-making process at the individual level, including that of military commanders, legal advisers, and post-mortem investigators, Tomer Brody and Inbar Levy analyzes targeting and other operational choices in the framework of international humanitarian law (Peat, 2019). When such choices are made at the moment, ex-ante, and amidst high levels of ambiguity, how well do they align with later assessments provided by investigators? Investigators in this field must evaluate the legality of a military decision using just the facts known at the time without considering the consequences. The authors demonstrate through investigational research that military investigators are vulnerable to "hindsight bias" and "outcome bias", depending on the context when exposed to knowledge about outcomes. They also suggest that experienced researchers, especially those with direct fieldwork, are less likely to fall victim to these biases. As discussed in the article's conclusion, this can substantially impact investigation procedures in this field.

Moshe Hirsch further analyzes connecting people's self-perceptions with social roles (Hirsch, 2019). He does this by contrasting states' international legal obligations with groups' deeply ingrained social norms, drawing on cutting-edge concepts from cognitive sociology to show how social cognitive biases contribute to widespread non-compliance with international treaties outlawing racial discrimination. Many researchers show that positive favouritism for in-group individuals (rather than hatred) is the driving force behind the discriminatory treatment of out-group members when group identification is high. The literature on cognitive sociology emphasizes that our perception and interpretation of reality (including the behaviour of persons of different racial groups) are influenced by our sociocultural backgrounds. Hirsch delves into several worldwide legal approaches to reducing racial discrimination in institutions and policies. According to socio-cognitive studies, new international legal duties alone are unlikely to eliminate racial prejudice dramatically. It will need a mix of legal and social approaches to deal with this crucial responsibility.

Sergio Puig expresses concern that psychological biases may occur in international adjudication when international norms are implemented (Puig, 2016). The

study is focused on a single instance of (international) judicial decision-making. However, research has found that judicial decision-making in both domestic law and international arbitration frequently deviates from a rational standard. If such effects are confirmed, "debiasing" methods can be used. They lend themselves well to experimental and empirical investigation. International investment law specialist Puig demonstrates the pernicious impact of "affiliation effects" on the judgments of arbitrators selected by the parties involved and argues that "blind" appointments may be an effective way to overcome any apparent bias against the parties that made the nominations. Decision-makers are susceptible to "fixing effects" in international tax disputes; as a result, final bid or pendulum arbitration is advised (each side declares their last offer, and the arbitrator's role is to select one of the two choices). Puig provides a compelling argument that psychological considerations were integral to the evolution of international law.

The Behavioral Research Agenda's Challenges

Articles in this research explore various international law topics and approaches. But what they have in common is a commitment to analyzing relevant behaviour empirically (and experimentally, where possible and appropriate) for international law (Wallace, 2013). There are methodological similarities between the two that must be acknowledged.

The first problem shared by the papers, which influences the selection of research topics and techniques, is the appropriate level of analysis. Whose actions have caused this problem? Under international law, is it the state as a "black box" or particular persons like judges, lawmakers, military commanders, trade negotiators, etc., who are held accountable for the acts and choices of the state? Do we care about 'elite' decision-makers, specialized professionals, or the average person? Alternatively, do you think it's best left to smaller groups of people to make decisions, given that many actions related to international law are settled by consensus at the group level and that group psychology is repeatedly distinct from the decisions made by individuals? We hold that the psychology of international law is applicable at all levels of study. In international law, many choices are taken solely by people or small decision-making groups; this is what the phrase "state action" suggests. While rational choice and public choice have extensively studied domestic political processes and the interplay between national and international politics ("two-tiered games"), behavioural international political economy is still in its early stages and has been labelled "infancy" by some

(Iberahim & Tantikulanan, 2020). Therefore, the two-level game concept may be used with either behavioural or logical assumptions (Bellamy & Weale, 2015). The latter requires additional investigation, which is certainly difficult.

The second difficulty stems from the fundamentally experimental nature of behavioural research. Evidence from these and other studies suggests that experimental psychology and its methodologies may be useful in studying international legal theory, law, and international relations (Broude, 2015). Some of the findings from the lab are intuitively appealing and have been verified by field studies (for instance, in the public sphere). The finding of Rudolf Virchow and Ignaz Semmelweis that handwashing may help prevent illness and alters human behaviour is not well known, even though people frequently wash their hands (although badly and for the wrong reasons). Possibility of strong internal validity and capacity to isolate causative factors achieved in experiments by examination of decision-making under controlled settings; nevertheless, experiments may have external validity concerns for numerous reasons, some of which are addressed below. Nonetheless, when combined with other research strategies, experiments may be a highly effective additional tool for learning about decision-making in a controlled setting, focusing on the lowest or appropriate decision-making component.

In most studies, the unit of study is the person; therefore, extrapolating those findings to state actors (such as treaty negotiators, diplomats, or state officials) or international courts poses no significant methodological challenges. The analysis difficulty arises again when trying to apply experimental discoveries to the state, and the same criticisms that were levelled against rational choice theory also apply. To solve this problem, academics either assign unusual preferences, beliefs, and decision-making processes to certain states or focus on people and determine how to get them to make decisions collectively (Heavey et al., 2009). It's early days for the movement to open up the state and apply experimental findings to national political processes, and there will be significant obstacles along the way (Köhler et al., 2019). Furthermore, pre-Behavioral Revolution era assumptions are reflected in purely rationalist theories of state action (van Aaken, 2018). Instead of asking experimental researchers to explain how they extrapolated from findings on individuals and groups, they should ask why they assumed states to be rational. Nonetheless, experimental research must

unquestionably complement other inquiry techniques, such as empirical investigations like field experiments.

The third major difficulty or limitation is related to external validity. Is there a way to determine how well findings from well-defined experiments and other forms of empirical behavioural research may be extrapolated to broader settings and applied to real-world problems? It is an issue in international law and an underlying problem in experimental and other forms of scientific psychology. We consequently argue that the standard caveats about methodology, study design, and the consequences of findings (which include their ability to foretell the future, which must be strictly regulated) apply. The problem of external validity is a constant roadblock on the path to greater understanding, but it should not stand in the way of doing behavioural research (Voelkl et al., 2020).

Fourth, a question that arises throughout the articles is whether or not international law has a greater impact on appropriate behaviour than societal norms, practices, beliefs, or other authorities (such as political personalities) (Conrad & Ritter, 2013). Is there any evidence that the 'choice architecture' and 'nudges' included in international law affect the actions of the proper actors? Fifth and relatedly, what is the nature of the behavioural interaction between international law and the home sphere? How does it affect policymakers when the most implementation of international law occurs nationally? What would happen, and who would it affect?

These concerns are raised to varying degrees throughout the pieces. In light of this, we provide three arguments favouring psychological research, as this is not a comprehensive defence. To begin with, this has previously been done in other disciplines that investigate transnational behaviour. Behavioural research, in particular, has been of interest to IR researchers as of late, while those in the subject have long employed political psychology. In addition, behavioural economics theory has integrated law into corporate actors. Second, pre-behavioural revolution beliefs are reflected solely in rationalist state action theories. Instead of insisting that behavioural researchers provide reasons for extrapolating from people to states, the burden of proof should fall on the presumption of state rationality. Third, traditional rationalist theory treats the state as a single entity, despite growing evidence that it is a collection of many significant "free" actors rather than a randomly bouncing billiard ball (Stewart, 2009). This view is exemplified by *Slaughter's* description of international law as a "Lego World" in which individual or collective

players may be studied in isolation or as part of an experiment (van Aaken, [2013](#)).

Most social scientists are interested in doing more than just describing and explaining the world. For a long time, this has been the guiding principle of the rational choice method, which maintains that the truth of its assumptions is less important than the reliability of its predictions (Liedtka, [2018](#)). It is obvious that behavioural insights increase complexity and may be situational. However, if they clarify things better, they might be able to make more accurate predictions. Predicting the impact of default norms on behaviour or the conditions under which people would cooperate in a commons dilemma are two areas where experimental insights are superior to theoretical models.

Conclusion

According to rational choice theory, material concerns and strategic engagement will always be paramount. The tests provide new variables to think about, or more and maybe better instruments to use, which might lead to long-term international collaboration; yet, the psychological realities have been under-appreciated. We are confident that we will be able to demonstrate that a behavioural research program has much to contribute to the topic of *"how international law works"*; (Hafner-Burton et al., [2016](#)) where a mere pragmatist explanation fails to do justice to the

complexity of law's genesis and its impact on key players.

Human behaviour research may bridge rationalist and constructivist perspectives on international law. Despite the rationality of its foundation, constructivist researchers may benefit from the principles hinted at in behavioural economics (Puddephatt & McLuhan, [2019](#)). Constructivists have challenged the rationalist explanation of preference development for some time, and an alternative model that places more emphasis on the social aspect of preferences has been proposed. They have long understood the power of framing, stressed the need for open lines of communication and trust-building institutions, and relied on symbolic and equitable sanctions imposed by impartial third parties. Some behavioural research findings may support the constructivist school of thought and provide additional empirical validation that could improve the school's analytic insights. Rationalists might learn from situations highlighting the value of mutual aid and stipulative cooperation.

Experimental research has hardly begun; robust behavioural research is absent to resolve the most pressing open questions in international law. Additional study is required, particularly in the form of individual trials. But it does provide a richness of concepts that could help our comprehension of international law.

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