International Journal of Innovative Research in Engineering and Management (IJIREM)
ISSN: 2350-0557, Volume-9, Special Issue-7, July-2022
Innovative Projects 2022
Organized by Presidency University, Bangalore, India

Behavioral Economics: Decision-Making and Human Behavior

Neha Saxena
Assistant Professor,
Department of Law, Presidency University, Bangalore, India,
Email Id-nehasinha@presidencyuniversity.in

The rational choice theory, a theory of decision-making, has been helpful to the economics profession for at least 60 years in theorising about how individuals make clearly economic judgements. But during the last 30 years or more, the rational choice theory has come under fire. This assault has mostly been empirical. In other words, it has been founded on experimental data showing that individuals do not act as the rational choice theory would suggest. Examples will be provided soon.Daniel Kahneman and Amos Tversky are two prominent figures in the experimental literature who have criticised rational choice theory. As was already mentioned, Kahneman received the Economics Nobel Prize in 2002. The corpus of work that was influenced by Kahneman and Tversky is known as behavioural economics, and the legal analysis that takes these conclusions into account is known as behavioural law and economics[1]–[3].

What are some behavioural economics examples? Although there are numerous more, let's focus on two that are very important to the law. First, tests using the ultimatum bargaining game produced this. There are two participants in that game, and neither of them is aware of the other's identity. They communicate in secret. They must share a modest amount of moneylet's say $20in the game. Player 1 and Player 2 are the names of the two players. Player 1 proposes to Player 2 how the $20 should be split, and Player 2 may either agree or reject the suggestion, in which point the experimenter actually delivers the two players the amounts suggested by Player 1. If neither player accepts the proposal, however, they get nothing.According to rational choice theory, Player 1 will use her status as the proposer to take an unfairly large piece of the $20say, $15leaving $5 for Player 2 in order to benefit herself. Player 1 may also believe that Player 2 will accept $5 as opposed to nothing. Player 2 may even believe that Player 1 is being conceited, but $5 is still better than nothing.

In experiments, this game has been played in more than 140 nations and among groups with wildly divergent incomes, ages, educational levels, and other characteristics, as well as in affluent and impoverished nations. The modal most frequent result is a split of the bets equally, giving each participant $10. The fact that in many nations, if Player 1 attempts to take more than 70% of the stakes more than $14 in our $20 example, Player 2 refuses the offer and neither of them receives anything is also intriguing[4]–[6].The fact that strangers seldom take advantage of one another in the ultimatum bargaining game gives us some encouragement. Instead, treating the other person fairlyin fact, treating them precisely as one treats oneselfappears to be the norm. Does this realization have any legal ramifications? When we discuss the issue of contract law with various types of advantage-taking in negotiation in Chapters 8 and 9, we go back to this subject.

The hindsight bias is a second illustration of a behavioural economics discovery. This relates to the idea that events that actually occur seem to have been far more probable in retrospect ex post than they were in anticipation ex ante. In light of this, if you had asked someone in spring 2010 what the likelihood was that Spain would win the 2010 World Cup in South Africa, they may have said, 10 percent. They will, however, claim that it was far more likelysay, 40%if you question them after Spain really won the cup. Exists a legal implication here? Take into account anything from How can we get someone to take the

proper precautions to avoid hurting someone else? As we shall see, one method to do this is to hold the potential offender accountable for any harm a victim sustains if the offender failed to exercise reasonable care. Here's the issue: what could seem like a smart precaution before an accident happens may look to have been foolish in retrospect. In other words, if an accident occurs, the bias in hindsight may lead us to believe that the event was more likely than we would have first believed.The observed behaviour in the ultimatum bargaining game or hindsight bias cannot be explained by the rational choice theory. The main finding of behavioural economics is that people make foreseeable mistakes in reasoning, judgement, and decision-making. They are, to use a phrase from Dan Ariely's book on the subject, predictably irrational.Depending on which theory more precisely predicts how the legislation will affect behaviour, economic analysis should employ either rational choice theory or behavioural theory.

Law and Legal Institutions

A lawyer who picks up an economics publication will be considerably less able to grasp it than an economist who does. Because of this, it is simple to persuade a lawyer that he is ignorant in economics. It's tougher to persuade him to study economics! On the other hand, it might be challenging to persuade economists that any component of social life is not fundamentally unrelated to economics. Sometimes, economists ask what attorneys really study in terms of the law: Is there a philosophy of law? Is it a rundown of well-known cases? Is it a list of regulations?The two major legal traditions that originated in Europe and have since spread throughout much of the world will be compared and contrasted, the structure of the federal and state court systems in the United States will be discussed, how a legal dispute is brought up and decided in a system like that of the United States will be covered, and how the development of judicial rules will be covered.

The Civil Law and the Common Law Traditions

Legislative bodies pass legislation that judges then interpret and put into practise. Judges may choose from a variety of interpretations if legislation is intentionally or unintentionally confusing. Sometimes the decision of an interpretation takes precedence over the passage of the legislation, in which case the court rather than the legislature creates the law. In every system of law with independent courts, judges interpret the law to transform it become the last word.Judges also use various methods to enact laws. In much of mediaeval Europe, the monarch could make decrees that were binding, and the king's courts had comparable authority. However, the king's courts were not permitted to declare any order as law. One tradition in legal philosophy holds that the English king's courts were to look at everyday life and find the law as it already existed. The English king's courts had the authority to pick and choose which social conventions to uphold. These obligatory social rules were believed to be laws of nature, dictated by reason and need.

Future courts were expected to follow the precedent set by the English king's court when it determined a rule of law.An established interpretation in civil law is similar to a precedent in common law. The law evolved gradually as precedent was followed flexibly rather than slavishly. The king's courts found several significant laws over a long period of time, particularly in the fields of crimes, property, contracts, and accidents or torts.These conclusions are referred to be common law since it is claimed that they are based on widespread customs. In English-speaking nations, common law still holds sway except where it has been replaced by legislation.France's legal history is distinct from that of the other nations in Europe: The common law of France was abolished during the French Revolution because the revolutionaries believed the judges to be just as corrupt and useless as the monarch. As a result, they assassinated the king and put an end to his laws. To fill the gap, a thorough collection of laws was necessary, outlining what constitutes property, how a contract is created, and who is responsible for paying accident-related expenses. Napoleon provided them by hiring lawyers to draught the laws known as the Code Napoleon, which was enacted in 1804. The Corpus Juris Civilis the Body of the Civil Law, which was assembled and revised in A.D. 528-534 at the order of the Roman emperor Justinian, served as the example for the academics who authored it. Thus, rather of relying on the more direct legacy

drawn from mediaeval times, the French revolutionaries went to ancient sources and pure reason for legislation[6]–[8].

The Code Napoleon was widely disseminated by Napoleon's forces and persisted long after his troops had left Europe. Similar to how they did with domestic law, the Europeans influenced international law for a very long time after the colonial empires vanished. The majority of Western Europe, Central and South America, the regions of Asia that were colonised by European nations other than Britain, and even certain areas of the common law world, such Louisiana, Québec, and Puerto Rico, are dominated by the civil law tradition, as it is known. The English common law tradition, which also holds sway in Ireland, the United States, Canada, Australia, New Zealand, and the regions of Africa and Asia that Britain colonised, including India, is still in use today.Aside from these two wonderful customs, each nation's own past imprints its own characteristics on the law. Japan, for instance, which was never colonised, freely adopted a code that strongly borrows from the German civil code while also maintaining its uniquely Japanese characteristics. Islamic law replaced or coexisted with European colonial law in parts of the Middle East. The civil law heritage was distorted by communism in Eastern Europe for its own ends, and post-Communist governments are currently working to restore it.Regarding the justification of judge-made laws, there are substantial differences between the common law and civil law traditions. Common law judges often use precedent, societal norms, or broader standards of reason implied by public policy to support their legal conclusions. Judges of civil law often defend their interpretation of a code by citing its intent, which academics peel out in extensive commentary.

The common law system is founded more on precedent than the civil law system because common law judges depend comparatively more on previous court judgements while civil law judges rely relatively more on the wording of legislation. The training of attorneys is impacted by the variation in rationalisation patterns. The civil law technique involves reading the code and arguing from commentaries on it, while the common law method involves reading cases and arguing straight from them.To the depth and complexity of reality, all such generalisations about the differences between the two religions, however, seem oversimplified. For instance, despite the fact that the United States is purportedly a common law nation, American states have attempted to achieve more consistency in business law by passing the Uniform business Code. Making decisions about conflicts covered by the Uniform Commercial Code in America is quite similar to making decisions about disputes covered by the French Civil Code.The American Law Institute, a group created in the 1920s, also convenes on a regular basis to update the law as it is developing in the different states. These restatements, like the Restatement Second of Contracts and the Restatement Second of Torts, serve a similar purpose to the codes that are regarded to be typical of the nations with civil law systems. Scholars of comparative law passionately dispute whether the distinctions between civil and common law are only superficial.

The laws are implemented differently in the two traditions, in addition to common and civil law having distinct historical backgrounds. In common law nations, the judge is not permitted to lead a course of inquiry or create an argument on behalf of either side of a dispute. Instead, the attorneys for each side present their own cases. The judge serves as more or less a neutral referee in this adversarial process, enforcing the standards of evidence and procedure on the attorneys. The guiding concept of the adversarial system is that after a spirited discussion between the two sides, the truth will be revealed.In contrast, the civil law judge actively participates in formulating arguments and asking questions. The judge's job throughout this inquisitorial procedure is to unearth the truth. Instead of building a case from scratch, the attorneys often have to answer to the court. The inquisitorial system is based on the idea that the court has a direct stake in determining the truth in relation to personal disputes and crimes.

The employment of juries is another distinction between the two systems. The employment of juries is more prevalent in common law jurisdictions. Although both parties may sometimes forgo this privilege and allow the judge to determine the matter, in America each side to a dispute often has the right to a jury trial. Since 1966, almost all civil trials in England have been conducted without a jury2, although they are still often employed in criminal proceedings. Notice how the word civil was used differently in

the line above. In France, however, the jury is no longer used in court cases other than those involving the most heinous offences, including murder. In comparison to certain common law nations, continental Europe has made greater progress towards the elimination of juries. The judge is intended to make legal decisions in a common law trial before a jury, while the jury is expected to make factual decisions.Every legal system has a hierarchy of laws. The constitution supersedes legislation, which in turn supersede regulations made by the executive or other government bodies. In nations with common law, legislation is more important than common law.Taking precedence refers to the situation when the higher law wins out in a dispute. Courts must determine if laws clash since they are the primary interpreters of the law. We have discussed how judges indirectly create law by reading laws or codes. When there is a disagreement between two laws, courts may also throw out the lower-level statute.

In nations with a common law system, Constitutions must inevitably be broad and ambiguous, making their interpretation particularly difficult. The ability to examine legislation for legality provides courts the theoretical authority to annul legislation passed by the legislature. Because it pits judges against the nation's elected officials, this authority has the potential to be deadly. The amount to which this authority is used differs significantly across nations. There are minimal restrictions on the federal courts' authority to invalidate legislation that, in their judgement, violate the Constitution in the United States. Courts have interpreted the Constitution to create some of the most important laws in American history, such as Brown v. Board of Education in 1954, which put a stop to regulations requiring racial segregation in schools. In certain nations, like Great Britain, courts lack the authority to examine laws for constitutionality and never declare legislation to be unconstitutional. There is no required relationship between the breadth of constitutional review, which is essential to the authority and stature of courts, and whether or not the nation has a common law or civil law legal system.

The Institutions of the Federal and the State Court Systems in the United States

The judicial systems in the United States are set up in three layers, whether at the state or federal level. With a very wide base of numerous courts, a level of intermediate courts with fewer courts, and a single court at the summit of the pyramid, these levels together form a hierarchical pyramid. The trial courts of universal jurisdiction are at the lowest level. These entry-level courts are the ones that first hear a variety of civil and criminal cases. Trial courts with broad jurisdiction are courts of record; as a result, the government records and retains copies of the proceedings. These courts are often set up along county borders in state systems. over instance, there are 102 counties in the State of Illinois, and each one has a Circuit Court that acts as the trial court with wide jurisdiction over the county. In various states, these trial courts go by different names: They are referred to as Superior Courts in California and Supreme Courts in New York State. Each civil and criminal case is typically heard by a single judge, with the possibility of a jury trial.A federal district court, which serves as the trial court with broad jurisdiction for the federal judiciary, is located in each of the 94 judicial districts that make up the federal system. Federal district courts are present in every state of the Union, with nearly half having only one. There is a district court specific to the District of Columbia. Up to four district courts may exist in bigger states, where there are more cases involving federal issues. These courts are often arranged according to the state's geographical regions.The Southern, the Northern, the Eastern, and the Western districts make up New York.

There are three federal districts in Illinois the Northern, Central, and Southern. Congress has reacted to the increase in federal litigation activity by appointing additional judges within each district rather than by establishing new districts. The Southern District of New York, which encompasses the majority of New York City, is one of the busiest neighborhoods. In the district, there were 44 district judges as of 2010 along with 15 magistrate judges.4 The Northern District of Illinois has 32 district judges and 14 magistrate judges, making it another active jurisdiction. In the federal districts, a single judge usually hears each case, although sometimes a three-judge panel does.The federal court system also has a number of specialised tribunals. For instance, there are specialised tax courts, and administrative law judges sit on federal administrative organisations like the Federal Communications Commission to hear

arguments on cases that are brought before such bodies. Additionally, as we'll see in a moment, the federal system has a specific appeal tribunal that handles disputes involving intellectual property.

In both the state and federal systems, the trial courts are appellate courts or courts of appeal. There is often just one court of appeals in state court systems. But between the trial courts of general jurisdiction and the highest court the court of last resort, around one-third of the states and the federal system have intermediate appellate courts. For instance, Illinois has five intermediate appellate districts and little over 50 justices overall. Where these courts exist, parties from the trial court may appeal as of right, which implies that the parties may always request appellate review of a lower court's decision as long as they are ready to bear the associated fees. In the federal system, the right to appeal also exists, at least from district courts to intermediate courts of appeal.

If any party decides to appeal the decision of an intermediate appellate court, however, things can be different even if both parties may have the right to appeal the decision of the trial courts of universal jurisdiction. The highest appellate court normally has a discretionary power of review in both the state and federal judiciaries. This implies that, subject to certain restrictions, the Supreme Court of Illinois, the Supreme Court of the United States, and all other courts of last resort may choose which cases they will hear. Some matters are brought before the US Supreme Court directly, without the use of the justices' discretion, such as conflicts between two states. Additionally, the highest court in several states is required to review death sentences. As a result, the majority of their docket is under the supervision of the US Supreme Court and the state's top courts.The Court of Appeals for the Circuit is the name of an intermediate court of appeal in the federal judiciary; there are thirteen of these circuits, The First Circuit is located in New England, the Seventh Circuit includes Indiana, Illinois, and Wisconsin, and the Ninth Circuit includes the West Coast, certain mountain states, Alaska, and Hawaii. There are eleven of these courts of appeal. In addition to having its own district court, the District of Columbia also has its own circuit. Every other circuit has many states.

As a matter of right, the federal district court may file an appeal with the court of appealsconvene for a decision in a very noteworthy case. In such situation, the court is referred to as being in bank or sitting en banc. When many judges hear a case, the decision is made by majority vote.

The United States Court of Appeals for the Federal Circuit is a specialized intermediate appellate court within the federal system that only hears cases involving intellectual property. In 1982, Congress created that court. This is the only Court of Appeals in the United States whose jurisdiction is determined by subject matter rather than by location. The U.S. Court of Claims' appellate jurisdiction as well as the U.S. Court of Customs and Patent Appeals' authority were transferred to the U.S. Court of Appeals for the Federal Circuit.The Federal Circuit is comprised of 15 judges.The highest court in the federal judiciary is the Supreme Court of the United States. The Chief Justice of the United States and eight Associate Justices make up the court's nine members. Each case is decided by the whole court, not a panel.

The Court's term typically ends in June of the following year and its work starts on the first Monday in October. The amount of opinions the Supreme Court issues has drastically decreased since the 1980s, when it's workload expanded dramatically. Less than 10% of the matters that are sent to the justices for examination get a decision. There is a heated debate about whether this number is too high or too low. Some critics have recently called for Congress to create a national court of appeals to sit in between the courts of appeal and the Supreme Court. According to the reasoning, the thirteen circuits' more ordinary appeals would be handled by this National Court for instance, those when there is a split among the circuits, meaning that some courts interpret the law one way and other circuits interpret it another way. According to supporters, this would allow the Supreme Court to focus more of its resources on matters that are really very significant.Finally, there are regulations that outline whether a case belongs in state or federal court.In the administration of a case by an attorney, this is often a topic of enormous strategic consequence. The fundamental guidelines for determining jurisdiction are rather simple. State courts have authority over issues concerning state legislation, civil disputes between inhabitants of that state, and federal law proceedings in which Congress has not granted the federal courts exclusive jurisdiction.

The Nature of a Legal Dispute

When someone alleges, they were wrongfully hurt by another, a legal conflict result. Both the injured party and the victim may be able to settle their differences amicably, although this is not always the case. A cause of action, or legitimate legal claim, may exist on behalf of the one who feels hurt against another individual or group. He files a complaint to make that claim, hence he is referred to as the plaintiff. The plaintiff's complaint must include information on what occurred, why he believes he was damaged, the area of law at issue, any applicable statutes, and the remedies he requests from the court. A lawyer, who normally has considerably more knowledge in these matters than the citizen, is frequently hired by private citizens to assist them in all of this since the complaint and the administration of the succeeding components of the dispute are intricate issues.

The party that is accused of injuring the victim or plaintiff is known as the defendant and is required to respond to the complaint. The response is a brief summary of the arguments the defendant plans to make in detail if the case proceeds to trial rather than a detailed discussion of the issues at hand. As a result, the response can state that, while the asserted facts are accurate, the defendant is not legally liable for the plaintiff's unfortunate circumstances. In a figurative sense, this response form asks, So what? If the real circumstances are discovered, the defendant will be proven to be innocent of any wrongdoing, the response may also claim that the facts as stated in the complaint are untrue.At this moment, the argument could come to an end. For instance, the parties can decide against go further with a trial. They may decide to resolve their issue and come to a mutually agreeable solution, or they could just dump the entire thing. A judge must decide whether there is enough justification to go to trial based on the complaint and the response if the matter is not resolved or dismissed. The court may decide that the defendant has provided a thorough and compelling response to the complaint or that the plaintiff has failed to allege a legally sufficient cause of action. If so, she could dismiss the suit or grant the defendant summary judgement. Typically, she will let the trial to continue. A dismissal or summary judgement may be appealed by the parties.

If the matter goes to trial, a jury may be appointed to decide the facts, or a judge may hear the case without a jury; the latter is known as a bench trial. The jury or judge will decide who wins after each party presents facts and testimony to support its claims.12 To reach this conclusion, the jury or judge will use the preponderance of the evidence test. Therefore, if the plaintiff's arguments are more convincing than the defendant's, the plaintiff will prevail; conversely, if the defendant's arguments are more convincing, the defendant will prevail. According to some, the preponderance-of-the-evidence criterion dictates that the plaintiff wins if her account is 51 percent credible. Notably, this criterion is distinct from the one used in criminal proceedings and is the norm in circumstances when private parties are parties to the litigation. There, the burden of proof is substantially higher than in a preponderance of the evidence case: the prosecution must persuade the jury that the defendant is guilty beyond a reasonable doubt.

Other criteria for winning in private law issues may be set by the courts and have been. In certain countries, for instance, the awarding of punitive damages is subject to a level of clear and compelling evidence.It is impossible to know precisely what that threshold involves, but it is unquestionably more stringent than the criminal law's beyond a reasonable doubt level and less stringent than the preponderance-of-the-evidence requirement.When the jury renders its decision, it clearly states which side has won. The problem has not been resolved, notwithstanding the ruling. On the verdict, the judge must provide a decision. The ruling of the court is based on the judgement, not the verdict. The judge often renders a decision that identically matches the jury result. However, in a few very rare instances, the judge determines that the jury made a grave error and issues a judgement non obstante verdicto or j.n.o.v. judgement despite the verdict, holding the opposite of what the jury found to be true.

In a civil case, the court's judgement may be challenged by either the victor or the loser. The loser may appeal for the obvious reason that he believes he should have won; the winner may appeal because he feels he has not gotten all to which he is due.It's interesting to note that the appeal must be based on the fact that the lower court erred on the law pertinent to the case, the general principles it used, and the

legal processes it followed, but not on the facts. The appellant the party making the appeal, for instance, might claim that the judge improperly instructed the jury regarding the applicable law, the facts they could and could not consider, or the improper exclusion of certain evidence or testimony from the jury's consideration[1]–[3].

No fresh facts or evidence will be presented at the appeal level. The appeal court accepts as true the facts that the trial court established. Only the solicitors for the appellant and appellee will be present before the appeal panel. After submitting written briefs to the appeal court, the lawyers will appear before the panel for oral argument. During this time, they may be questioned in-depth about the issues at hand. Amici curiae, or friends of the court, are parties who are not directly involved in the legal dispute but who believe that the legal issue raised affects their interests sufficiently that they would like the court to take their arguments into consideration in addition to those of the appellant and appellee. Additional briefs may be submitted by these parties[9], [10].After taking a break to think about the situation, the appeal panel returns with its conclusion. It's possible for the judges to reach consensus and express simply one viewpoint. A split in the panel, however, might produce dual opinions: a majority view and a minority or opposing opinion. The appeal panel has the option of upholding or overturning the decision of the lower court. Sometimes the panel remands the casethat is, sends it backto the lower court for a specified course of correction, including a revision of the plaintiff's damages.

REFERENCES

[1] D. F. Costa, F. de M. Carvalho, and B. C. de M. Moreira, Behavioral Economics And Behavioral Finance: A Bibliometric Analysis Of The Scientific Fields, *J. Econ. Surv.*, 2019, doi: 10.1111/joes.12262.

[2] R. H. Thaler, Behavioral economics: Past, present, and future, *Rev. Econ. Inst.*, 2018, doi: 10.18601/01245996.v20n38.02.

[3] A. Koch, J. Nafziger, and H. S. Nielsen, Behavioral economics of education, *J. Econ. Behav. Organ.*, 2015, doi: 10.1016/j.jebo.2014.09.005.

[4] R. Muramatsu and A. M. A. F. Bianchi, Behavioral economics of corruption and its implications, *Brazilian J. Polit. Econ.*, 2021, doi: 10.1590/0101-31572021-3104.

[5] S. S. Frid-Nielsen and M. D. Jensen, Maps of Behavioural Economics: Evidence from the Field, *J. Interdiscip. Econ.*, 2021, doi: 10.1177/0260107920925675.

[6] K. J. Waddell, P. D. Shah, S. Adusumalli, and M. S. Patel, Using Behavioral Economics and Technology to Improve Outcomes in Cardio-Oncology, *JACC: CardioOncology*. 2020. doi: 10.1016/j.jaccao.2020.02.006.

[7] O. Oancea, The implications of behavioural economics for pricing in a world of offer optimisation, *J. Revenue Pricing Manag.*, 2021, doi: 10.1057/s41272-021-00348-5.

[8] G. V. Resende Freitas, Narrative economics and behavioral economics: Contributions to the behavioral insights on post-keynesian theory, *Brazilian J. Polit. Econ.*, 2021, doi: 10.1590/0101-31572021-3191.

[9] J. C. Neto, J. A. Filipe, and A. B. Caleiro, Creativity and innovation: A contribution of behavioral economics, *Int. J. Innov. Stud.*, 2019, doi: 10.1016/j.ijis.2019.06.003.

[10] I. Vlaev, D. King, A. Darzi, and P. Dolan, Changing health behaviors using financial incentives: A review from behavioral economics, *BMC Public Health*, 2019, doi: 10.1186/s12889-019-7407-8.