



הפקולטה למשפטים
FACULTY OF LAW
كلية الحقوق

האוניברסיטה העברית בירושלים
THE HEBREW UNIVERSITY OF JERUSALEM
الجامعة العبرية في القدس



University of St.Gallen

EJIL Symposium

ESIL Sponsored Event

The Psychology of International Law

Anne van Aaken (University of St.Gallen)

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Public international law scholarship opens up ever more to social science in order to answer a broad range of questions relating to treaty design, customary international law, soft law, international organizations, legal interpretation and substantive international norms. Whereas the rational choice approach to international law has been largely accepted in legal scholarship and international relations theory, challenges to the rational choice paradigm by cognitive research and behavioral economics have hitherto not been systematically explored in international law. Nevertheless, behavioral law and economics has been successfully applied to domestic legal issues and is now widely accepted and increasingly used in public policy and regulatory design. Cognitive psychological insights have furthermore been used by international relations (IR) scholarship under the heading of political psychology. However, the latter studies do not take into account international norms and are mostly confined to individual actors and security constellations. The Symposium will build on all those insights and explore the benefits

and challenges of extending the behavioral approach to public international law: the psychology of international law. With a view towards the “unity of knowledge” (E.O. Wilson), it seems time to draw on those different understandings to further refine our knowledge of the functioning and rules of international law. This is fruitful for the design of international institutions and treaties as well as law application and legal procedures in international law.

The rational choice paradigm as used in economics and institutional theory has been thoroughly challenged since the 1970s by psychological experimental research and has considerably changed huge parts of economics. It has showed that in contrast to rational choice assumptions, actors systematically have other-regarding preferences, inequity aversions and fairness preferences, but may also be irrationally spiteful. It experimentally confirmed that individuals are only boundedly rational, that is, that their cognitive abilities sometimes lead to objectively wrong decisions (e.g. in probability calculi), that their decisions depend largely on contexts and framing, that they make fundamental attribution errors, are subject to endowment effects, and more. It was not until the late 1990s that behavioral economics also reached economic analysis of *domestic* law, mainly in the United States; it took longer in Europe. It is used now in the US, the UK and the EU for public policy design, since law not only automatically acts as a “choice architecture” (Sunstein/Thaler, *Nudge*, 2008), but may also act as a debiasing mechanism. At around the same time, economic analysis started to be applied to *international* law in the United States, but this has, with very few exceptions, been hitherto confined to traditional rational choice. There is thus no research on behavioral economics applied to international law. This is even more puzzling since international law and IR scholars have increasingly cooperated, and the “political psychology” approach in IR has a respected tradition. This shows that the above-mentioned phenomena are by no means irrelevant in international relations, let alone international law. Yet IR/IL has mainly been confined to either rational choice or social-constructivist approaches, eschewing psychological insights.

There is thus no systematic behavioral economic analysis of international law as of yet (but a book by Anne van Aaken and Tomer Broude is forthcoming with OUP, building

on their respective articles in the Harvard International Law Journal 2014 and Pennsylvania Law Review 2015), but it is taking off in single issue areas. The aim of the Symposium is threefold. It should make a first step in 1) discussing and drawing together the different lines of social science and psychological research applicable in international law, gathering those people who have done research in this respect already or have current research projects (especially doctoral students and post-docs), 2) it should sketch the methodological foundations, by noting the challenges to transposing insights from individual behavior to corporate actors such as a state as well as discuss the insights for international legal theory, and 3) systematically exploring issue-areas where BEIL can be fruitfully applied, either confirming or even enhancing rational choice approaches to international law or putting them into question (at times also confirming more constructivist approaches). Where suitable, suggestions for debiasing mechanisms will be made; potentially some of them may be mentioned in the Symposium introduction.

We submit that the proof of the pudding is in the eating: the success of this approach will be measured by its applications and the usefulness for the design and interpretation of international law. Since behavioral research adds complexity, it has to show that it generates better insights and is able to explain phenomena which cannot be explained drawing on the rational choice approach alone. To use a coin minted by Einstein: "Everything should be as simple as it can be, but not simpler." We put the burden of proof on the behavioral approach but submit that rational choice is sometimes too simple to explain international law phenomena. Thus, the analysis has to be done cautiously and rigorously, step by step, analyzing different fields of general and special international law, where possible using empirical methods such as experiments or questionnaires. Constructing such a research agenda cannot be done by few people alone: it must be a joint undertaking of many people interested in the field. The Symposium is thus a first step in bringing those people together and attracting others with an interest in that research.

From our experience, the interest of public international lawyers in psychological approaches is usually much higher than in rational choice or economic approaches, especially in Europe. Indeed, the construction of Europe (and even its crisis now) may not well be explicable own rational choice grounds alone; founding fathers were well

aware about the importance of psychology. We thus expect great interest also from European scholars and thus deem EJIL the best outlet for such a discussion.

Program

Date/Time	Time		Referees
Tuesday, 9th January 2018			
Jerusalem, location to be announced	07.30pm	Dinner for participants	
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Wednesday, 10th January 2018			
Hebrew University of Jerusalem, Faculty of Law, Mt. Scopus, Jerusalem	09.30 - 10.15am	Greetings and Symposium Introduction	Anne van Aaken and Tomer Broude
	10.15 - 11.15am	The Contribution of Behavioral Economics to International Legal Theory	Anne van Aaken
	11.15 – 11.30am	Coffee Break	
	11.30 - 12.30pm	Political Psychology and International Law	Rose McDermott (via Skype) and James Davis
	12.30 – 02.00pm	Lunch and campus tour	
	02.00 – 03.00pm	Behavioural Political Economy and the Two-Level-Game	Jan Schnellenbach
	03.00 - 03.15pm	Coffee Break	
	03.15 – 04.15pm	Cognitive Psychology and International Dispute Settlement	Susan Franck
	04.15 – 04.30pm	Coffee Break	

04.30 – 05.30pm International Humanitarian Law
– Framing Effects and Outcome
Bias in Operational
Investigations Tomer Broude
and Inbar Levy

07.30pm Dinner

**Thursday,
11th January 2018**

Hebrew University of
Jerusalem, Faculty of Law,
Mt. Scopus, Jerusalem

09.30 – 10.30am Beyond Rhetoric: International
Law, Obligation, and Public
Opinion Beth Simmons
and Matthew Kim

10.30 – 10.45am Coffee Break

10.45 – 11.45am Fundamental Values, Socio-
Cognitive Biases and Fighting
Discrimination in International
Human Rights Moshe Hirsch

11.45 – 12.00pm Coffee Break

12.00 – 01.00pm ‘Debiasing’ International Law:
International Economic Law Sergio Puig

01.00 – 02.00pm Lunch

02.00 – 03.00pm Open Roundtable on
Methodological Challenges –
the state and the individual and
international behavioural
political economy