

Sven Hoeppepner

List of Publications & Research Projects

English Articles

- 2020 "Contracts as Reference Points: A Replication",
International Review of Law and Economics, forthcoming 2020,
(with: Svenja Hippel)

Abstract:

Hart and Moore (2008) propose that varying degrees of flexibility in contracts induce reference points and aspiration levels for parties' shares of a transaction's total surplus. As a consequence, a trade-off between adaptational flexibility and the prevention of distributional conflicts emerges. Fehr et al. (2011) test this important theory in an experiment and largely confirm the theoretical predictions. We replicate this theory test. We find some evidence for reference point effects, but our data exhibit much more heterogeneity. We conclude that the theory requires more testing. Moreover, we call for future research to identify and disentangle multiple effects that cause reference point effects.

- 2019 "A Note on Replication Analysis",
International Review of Law and Economics, 59, 98-102

Abstract:

How do experimental and non-experimental studies increase the joint knowledge base of a discipline? How does empirical replication extend beyond reproduction? I use Mitts and Thorley (2018)'s replication of "Trial by Skype: The Causal Impact of Remote Adjudication" as case study to discuss how the experimental replication recipe can be adapted to accommodate non-experimental work. I also demonstrate the use of Bayesian model comparison to compare original and replication results with the aim to assess joint credibility of results, thereby emphasizing the importance of this comparison for the replication exercise as a whole.

- "Biased Judgments of Fairness in Bargaining: A Lab Replication",
International Review of Law and Economics, 58, 63-74
(with: Svenja Hippel)

Abstract:

In an influential paper, Babcock, Loewenstein, Issacharoff, and Camerer (1995) uncover evidence that knowledge about one's role in a settlement bargaining situation increases the frequency of bargaining impasse. The authors argue that role knowledge triggers self-serving interpretations of the case-related information that is the foundation of settlement bargaining. Self-servingly biased perception subsequently impedes successful settlement bargaining. We replicate the experiment in the computer laboratory. Our results are largely in line with the original findings. When participants know their bargaining role before studying the case materials rather than afterwards, settlement frequency decreases. This treatment effect is substantially smaller than in the original study. Given the new data, a Bayesian replication analysis reallocates the large share of credibility to a null model. We argue that this result is driven by the much smaller effect size that we observe in the highly controlled environment of the laboratory. Moreover, we extend the original analysis by estimating causal mediation effects of self-serving bias measures on the observed relationship between role-knowledge and settlement outcomes and find that self-servingly weighing legal arguments completely mediates the negative effect of role-knowledge on settlement frequency. In conclusion, we evaluate our replication as successful.

- 2018 "Compliance Externalities and the Role Model Effect on Law Abidance: Field and Survey-experimental Evidence",
Journal of Legal Studies, 15(3), 539-562, DOI: 10.1111/jels.12185
(with: Marco Fabbri)

Abstract:

Recent theories of compliance predict that, apart from canonical utilitarian considerations, individual decisions to respect or break the law account for virtuous motives and willingness to promote the social good. We test whether empirical evidence resonates with these theories by collecting in a natural setting data on cyclists' decision to run a red traffic light. We consider different situations where non-compliance is costly but without risk and material deterrence incentives from legal sanctions

remain constant. The only difference between the situations lies in who is observing the cyclists' decision at the traffic light at the intersection of a footpath with the cycle track. We find that about 60% of cyclists ignore the red traffic light when there is the opportunity to do so. This frequency does not change substantially when adult bystanders are observing at the pedestrian traffic light. Interestingly, the violation frequency drops to about 10% when children are present. Robustness checks rule out the suggestion that this change is driven by concerns for children's unpredictable actions or by the simultaneous presence of other adult bystanders. In a vignette study, we disentangle the cyclists' motives. Results confirm the "role-model effect" on compliance. The majority of participants self-report that willingness to educate and be a good example is the most important reason for their decision to abide by the law, hence supporting the empirical observation that promoting the social good can be an important determinant of compliance decisions.

- 2017 "The Moral Hazard Effect of Liquidated Damages: An Experiment on Contract Remedies",
Journal of Institutional and Theoretical Economics, 173(1), 84-105,
DOI: 10.1628/093245616X14785139251341
(with: Ben Depoorter and Lars Freund)

Abstract:

Recent evidence suggests that liquidated damages clauses provide efficiency advantages by crowding out contracting parties' deontological concerns about efficient breach. In this paper we highlight an important downside to damage stipulations by parties. Based on findings obtained in a controlled laboratory experiment, we suggest that express damage stipulations trigger negative reciprocity and moral hazard, reducing performance by contract promisors. Such negative effects are absent when damages are exogenously imposed. Moreover, our results indicate that when stipulating damages, contract parties attain less cooperative surplus than when they are subject to an exogenously imposed remedy. Principals, not agents, bear this loss.

- 2016 "Ex ante Vs Ex post Governance: A Behavioral Perspective",
Review of Law and Economics, 12(2), 227-260,
DOI: 10.1515/rle-2015-0003
(with: Christian Kirchner)

Abstract:

Problems resulting from the delegation of competencies from one actor to another are at the heart of any governance discussion. While the conventional agency view strongly emphasizes that such problems can be solved ex post by monitoring and control strategies, the contract view proposes to tackle said problems ex ante through alignment of the agent's incentives to those of the principal by, for instance, incentive contracts. In this paper, we introduce a behavioral perspective to this discussion. We will spotlight that the ex post strategies are behaviorally dysfunctional. The effect of self-serving and hindsight tendencies can hardly be overcome. Ex ante strategies, in contrast, suffer from problems of incentive design. However, proper incentive design can account for behavioral decision patterns. On this ground we argue that incentive contracting appears to be superior to monitoring approaches to solve the principal-agent conflict. To address behavioral problems in governance systems, we propose a counterintuitive shift of rule-making competencies: from public to private ordering for monitoring strategies and from private to public ordering for incentive contracting.

- 2014 "The Unintended Consequence of Doorstep Consumer Protection: Surprise, Reciprocation, and Consistency",
European Journal of Law and Economics, 38(2), 247-276,
DOI: 10.1007/s10657-012-9336-1

Abstract:

Cooling-off periods are universally employed in doorstep selling regimes. Paired with a right for consumers to withdraw from the contract, this legal instrument seeks to protect consumers against superior skilled and knowledgeable sellers thus restoring the balance of interests. According to prior literature, cooling-off periods also serve an economic function by moderating the abuse of market power, by mitigating problems of hidden characteristics, and by promoting consumer choice. If their drawbacks—mainly the creation of consumer moral hazard and shifting of risk to the seller—can be contained, cooling-off periods are hence supposed to yield efficiency gains. By thinking out of this box, the present paper showcases that cooling-off periods also establish the perverse incentive for the seller to increase consumer compliance to a level which outlasts the cooling-off period. I argue that inevitably occurring psychological factors and transaction costs from the cooling-off regime amplify each other, thus creating a hard-lock status-quo bias. Based on behavioural insights and transaction cost theory, I predict that an inefficiently high number of consumers will enter into a doorstep contract and that, at the same time, the number of cancelled contracts will be inefficiently low. Consequently, I propose to change the default inherent in current cooling-off regimes from presumed consent to presumed withdrawal in order to debias consumers' withdrawal decision.

German Articles

- 2012 "Europäischer vs. US-amerikanischer Wettbewerb der Gesellschaftsrechte: Abschied vom alten Delaware Verbundprodukt" (eng.: "European vs. US-american Regulatory Competition of Corporate Law: Parting with the Delaware Product Bundle"), *Die Aktiengesellschaft*, 13-14, 469-477
(with: Christian Kirchner, Richard Painter, and Wulf A. Kaal)

Abstract:

This paper examines the problem of transferring the US-American competition of corporate laws to Europe. We find that the crucial obstacle lies in bundling both products "regulatory corporate law" and "judicial development of corporate law". For a European competition of corporate laws to attain more traction, we propose splitting the traditional Delaware product bundle, that is, disconnecting the judicial development of corporate law. Instead of the judiciary, we argue that arbitrators be assigned the competency to further develop corporate law.

Contributions to Books

- 2014 "Experimental Law and Economics", *Encyclopedia of Law and Economics*, Jürgen Backhaus (ed.), New York: Springer, DOI: 10.1007/978-1-4614-7883-6_172-1

Abstract:

Experimental law and economics is the newest methodological development in law and economics research. Yet a lot of researchers – old and young – are not familiar with the foundations of the method. This may lead to skepticism. In this entry, I elaborate on the purpose of experiments and introduce building blocks of the method that tend to distinguish experimental law and economics from experimental methods in other disciplines. Moreover, I shortly discuss concerns about the external validity of the results obtained in a laboratory experiment. Finally, I introduce and invalidate the most common criticisms against experiments that most often are advanced by scholars unfamiliar with the method and the discipline. As knowledge about the method's foundations is further spread, experimental law and economics will substantially contribute advancing the research frontier of the economic theory of law.

- "Distance Selling and Doorstep Contracts", *Encyclopedia of Law and Economics*, Jürgen Backhaus (ed.), New York: Springer, DOI: 10.1007/978-1-4614-7883-6_537-1

Abstract:

Distance-selling and off-premises contracts are two major ways in which consumers and sellers interact. Law and economics research has established that these interactions potentially suffer from market power of sellers, from both ex-ante and ex-post information asymmetries, and from consumer bounded rationality. The most promising tool analyzed and advocated by law and economics scholars is a cooling-off period coupled with a right of the consumer to withdraw from the contract. This entry surveys law and economics research on these concerns. Interestingly, relevant questions to this line of research remain, which have been brought to attention mainly by insights from behavioral economics. To exemplify and inspire further research along these lines, this entry discusses potentially perverse incentives created by withdrawal rights and the impact of fairness concerns on the consumer choice to withdraw.

- "Endowment Effect", *Encyclopedia of Law and Economics*, Jürgen Backhaus (ed.), New York: Springer, DOI: 10.1007/978-1-4614-7883-6_545-1
(with: Ben Depoorter)

Abstract:

A vast body of experimental studies in psychology and economics finds that individuals tend to value goods more and demand higher prices when they own the goods than they would be willing to pay for the good when they do not already own it. Although research on the endowment effect has been done for more than three decades, its theory, empirical methodology, results, and implications continue to be topics of intense discussion among economists, lawyers and psychologists. In this entry, we review the theoretical framework and empirical evidence on the endowment effect and highlight some implications for law and economics research.

- "Fast Forward: Economic and Legal Realism", *Liber Amicorum in Honor of Christian Kirchner: Law in an Economic Context*, Wulf A. Kaal, Matthias Schmidt, and Andreas Schwartz (eds.), Tübingen: Mohr Siebeck, 879-900

DOI: 10.1007/978-1-4614-7883-6_545-1

(with: Ben Depoorter)

Abstract:

In this Essay we note that many of the methodological objections to law and economics in Europe rest upon outdated assumptions on the neoclassical version of law and economics. Advances in economic theory have long updated the abstract, perfectly rational model of human behavior to include fallibility, emotions and other human traits that lawyers encounter in everyday practice. This Essay invites European legal scholars to revisit the value of law and economics by reviewing and invalidating common methodological objections to law and economics, by providing an overview of cognitive and motivational updates of the neoclassical version of law and economics, and by illustrating implications for legal scholarship in light of the advancements in behavioral science, social norms scholarship, experimental economics, and neuro-economics. We believe that these advances will be intuitively appealing also in areas where the rational choice models have traditionally been met with resistance.

Working Paper & Work in Progress

"Incentives for Breach and Compensatory Damages"

Short Info:

Efficient breach theory recommends expectation damages as remedy for breach of contract, because this incentivizes contract parties to perform when that is efficient and breach when that is efficient. A broad stream of evidence shows, however, that people behave rather pro-socially and, in particular, tend to keep their promises and honor their agreements, which questions the heuristic value of efficient breach theory. I provide an experimental institution test that investigates the effect of compensatory damages and its two features (fine and recovery) on agent's willingness-to-breach. Second movers in a trust game receive a surprising incentive to act non-cooperatively and I elicit their reserve price to do so. Under compensatory damages and fines, agents demand a lower reserve price for non-cooperative play. The recovery procedure reduces the reserve price when the players did not agree to cooperative exchange, but increases the reserve price given agreement. Compensatory damages and the recovery procedure induce more (less) punishment of non-cooperative agents, when there was agreement (no agreement) between the players. These results imply that compensatory damages facilitate efficient breach and, therefore, contribute to overall social welfare generated from contracts.

"Self-serving Choice of Justice Principles"

(with: Svenja Hippel and Heinrich Nax)

Short Info:

*Within the Center for Open Science's SCORE Project (Phase 2) we are aiming to reproduce the results of Rodriguez-Lara & Moreno-Garrido (2012), "Self-interest and Fairness: Self-serving Choices of Justice Principles", *Experimental Economics*, 15, 158-175. The experiment introduces subjective entitlements over the surplus that the dictator distributes between him or her and the recipient. The dictator's distribution choices are then used to elicit preferences over egalitarian, accountability, and libertarian justice principles. The original authors show that the justice principle that best explains dictators choices depends on the parameters of the decision environment and, thus, that dictators employ justice principles in a self-serving manner. The Covid-19 pandemic prohibits us from replicating the study in a computer laboratory. Instead, we sample non-student participants in an online experiment. The study will be conducted in October 2021.*

"Distributional Preferences are Transient: How Payment Protocols Matter"

(with: Heinrich Nax and Philipp Grech)

Short Info:

Evidence from dictator game experiments has been used to elicit distributional preferences, indicating systematic differences between sub-populations like, e.g., female v. male, elite v. non-elite, or doctors v. non-doctors. Between and within studies, however, data collection differs in how participants were paid. These differences in payment protocols produce confound. In this study, we eliminate this confound by comparing behavior under different payment protocols for dictator giving. As a consequence, our results indicate that most systematic differences between subpopulations vanish or reverse.

"Behavior Under Vague Standards: Evidence from the Laboratory"

(with: Laura Lyhs)

Short Info:

Doctrinal lawyers strive to reduce legal uncertainty based on the premise that difficult to predict legal consequences discourage socially desirable activities. Contributions from the economic theory of law suggest that increasing legal uncertainty can be socially beneficial. We test in an innovative laboratory experiment whether increasing the variability of an exogenous choice threshold (legal standard) increases or reduces socially desirable behavior. The results indicate a U-shaped relationship between increases in variability and activity choices: increases in variability first induce lower than optimal choices under an efficient standard (overcompliance), but eventually lead to greater than optimal choices under an efficient

standard (undercompliance). We also find that overcompliance arises only under low degrees of standard variability. Moreover, increasing variability gradually crowds-out compliant choices. Finally, in the experiment minimal variability of the legal standard induces erratic individual behavior beyond socially satisfactory levels such that the standard loses its coordination function.