

Experimental Legal Philosophy: bibliography

LAW AND MORALITY

Donelson, R., & Hannikainen, I. (forthcoming). Fuller and the folk: The inner morality of law revisited. In T. Lombrozo, J. Knobe, & S. Nichols (Eds.), *Oxford studies in experimental philosophy* (Vol. 3). Oxford: Oxford University Press.

Goodwin, G. P., & Darley, J. M. (2010). The perceived objectivity of ethical beliefs: Psychological findings and implications for public policy. *Review of Philosophy and Psychology*, 1(2), 161-188.

Hannikainen, I. R., Cabral, G., Machery, E., & Struchiner, N. (2017). A deterministic worldview promotes approval of state paternalism. *Journal of Experimental Social Psychology*, 70, 251-259.

Levine, S., Mikhail, J., & Leslie, A. M. (2018). Presumed innocent? How tacit assumptions of intentional structure shape moral judgment. *Journal of Experimental Psychology: General*, 147(11), 1728.

Mikhail, J. (2009). Moral grammar and intuitive jurisprudence: A formal model of unconscious moral and legal knowledge. *Psychology of learning and motivation*, 50, 27-100.

Tomasello, M. (n.d.). The moral psychology of obligation. *Behavioral and Brain Sciences*, 1-33. doi:10.1017/S0140525X19001742

MEANING AND INTERPRETATION

Kobick, J., & Knobe, J. (2009). Interpreting intent: How research on folk judgments of intentionality can inform statutory analysis. *Brook. L. Rev.*, 75, 409.

Solan, L. M. (1998). Can the legal system use experts on meaning. *Tenn. L. Rev.*, 66, 1167.

Solan, L. M. (2016). Can corpus linguistics help make originalism scientific. *Yale L&J*, 126, 57.

Solan, L. M., & Gales, T. (2017). Corpus linguistics as a tool in legal interpretation. *BYU L. Rev.*, 1311.

Tobia, K. P. (2018). Testing original public meaning. Are dictionaries and corpus linguistics reliable measures of meaning? Manuscript retrieved from <https://ssrn.com/abstract=3266082> or <http://dx.doi.org/10.2139/ssrn.3266082>

LEGAL DECISION MAKING, BIASES AND MOTIVATED REASONING

- Costa, L. L. F., Esteves, A. B. D., Kreimer, R., Struchiner, N., & Hannikainen, I. R.. Gender stereotypes underlie child custody decisions. *European Journal of Social Psychology*.
- Devine, D. J., Clayton, L. D., Dunford, B. B., Seying, R., & Pryce, J. (2001). Jury decision making: 45 years of empirical research on deliberating groups. *Psychology, public policy, and law*, 7(3), 622.
- Dhimi, M. K. (2003). Psychological models of professional decision making. *Psychological Science*, 14(2), 175-180.
- Engel, C. (2007). Institutions for intuitive man. *MPI Collective Goods Preprint*, (2007/12).
- Franck, S. D., Van Aaken, A., Freda, J., Guthrie, C., & Rachlinski, J. J. (2016). Inside the arbitrator's mind. *Emory LJ*, 66, 1115.
- Girgenzer, G., & Engel, C. (Eds.). (2006) *Heuristics and the law*. Cambridge, MA: MIT Press.
- Guthrie, C., Rachlinski, J. J., & Wistrich, A. J. (2002). Judging by heuristic-cognitive illusions in judicial decision making. *Judicature*, 86, 44.
- Guthrie, C., Rachlinski, J. J., & Wistrich, A. J. (2007). Blinking on the bench: How judges decide cases. *Cornell L. Rev.*, 93, 1.
- Guthrie, C., Wistrich, A. J., & Rachlinski, J. J. (2007). Judicial intuition. Manuscript retrieved from https://law.vanderbilt.edu/files/archive/Judicial_Intuition.pdf
- Guthrie, C., Rachlinski, J. J., & Wistrich, A. J. (2009). The "hidden judiciary": An empirical examination of executive branch justice. *Duke Law Journal*, 1477-1530.
- Harley, E. M. (2007). Hindsight bias in legal decision making. *Social Cognition*, 25(1), 48-63.
- Helm, R. K., Wistrich, A. J., & Rachlinski, J. J. (2016). Are arbitrators human?. *Journal of Empirical Legal Studies*, 13(4), 666-692.
- Kahan, D. M. (2015). Laws of cognition and the cognition of law. *Cognition*, 135, 56-60.
- Kahan, D. M., Hoffman, D., Evans, D., Devans, N., Lucci, E., & Cheng, K. (2015). Ideology or situation sense: An experimental investigation of motivated reasoning and professional judgment. *U. Pa. L. Rev.*, 164, 349.

- Lubell, M., Engel, C., Glimcher, P. W., Hastie, R., Rachlinski, J. J., Rockenbach, B., ... & Singer, W. (2008). Institutional design capitalizing on the intuitive nature of decision making. In C. Engel, & W. Singer (Eds.) *Better than conscious? Decision making, the human mind, and implications for institutions* (pp. 413-432). Cambridge, MA: MIT Press.
- Patry, M. W. (2008). Attractive but guilty: Deliberation and the physical attractiveness bias. *Psychological Reports*, 102(3), 727-733.
- Prentice, R. A., & Koehler, J. J. (2002). A normality bias in legal decision making. *Cornell L. Rev.*, 88, 583.
- Rachlinski, J. J., Johnson, S. L., Wistrich, A. J., & Guthrie, C. (2008). Does unconscious racial bias affect trial judges. *Notre Dame L. Rev.*, 84, 1195.
- Rachlinski, J. J. (2000). Heuristics and biases in the courts: ignorance or adaptation. *Or. L. Rev.*, 79, 61.
- Rachlinski, J. J. (2002). Misunderstanding ability, misallocating responsibility. *Brook. L. Rev.*, 68, 1055.
- Rachlinski, J., & Guthrie, C. (2004, May). Heuristics and biases among experts. In *American Law & Economics Association Annual Meetings* (p. 45). bepress.
- Rachlinski, J. J. (2010). Processing pleadings and the psychology of prejudgments. *DePaul L. Rev.*, 60, 413.
- Rachlinski, J. J. (2011). The psychological foundations of behavioral law and economics. *U. Ill. L. Rev.*, 1675.
- Rachlinski, J. J., Guthrie, C., & Wistrich, A. J. (2011). Probable cause, probability, and hindsight. *Journal of Empirical Legal Studies*, 8, 72-98.
- Rachlinski, J. J., Wistrich, A. J., & Guthrie, C. (2012). Altering attention in adjudication. *UCLA L. Rev.*, 60, 1586.
- Rachlinski, J. J. (2012). Judicial psychology. *Rechtstreeks*, 2, 15-34.
- Rachlinski, J. J., & Wistrich, A. J. (2017). Judging the judiciary by the numbers: Empirical research on judges. *Annual Review of Law and Social Science*, 13, 203-229.
- Solan, L., Rosenblatt, T., & Osherson, D. (2008). False consensus bias in contract interpretation. *Colum. L. Rev.*, 108, 1268.
- Tobia, K. P. (2018). How people judge what is reasonable. *Ala. L. Rev.*, 70, 293.
- Wistrich, A. J., & Rachlinski, J. J. (2012). How lawyers' intuitions prolong litigation. *S. Cal. L. Rev.*, 86, 571.

Wistrich, A. J., Rachlinski, J. J., & Guthrie, C. (2014). Heart versus head: Do judges follow the law or follow their feelings. *Tex. L. Rev.*, *93*, 855.

Wistrich, A. J., & Rachlinski, J. J. (2017). Implicit bias in judicial decision making how it affects judgment and what judges can do about it. *American Bar Association, Enhancing Justice*, Cornell Legal Studies Research Paper No. 17-16. Retrieved from <http://dx.doi.org/10.2139/ssrn.2934295>.

CRIMINAL LAW AND PUNISHMENT

Aharoni, E., & Nahmias, E. (2017). Communicative theories of punishment and the impact of apology. In C. W. Surprenant (Ed.), *Rethinking punishment in the era of mass incarceration* (pp. 152-169). New York, NY: Routledge.

Alicke, M. D. (1992). Culpable causation. *Journal of Personality and Social Psychology*, *63*(3), 368-378.

Alicke, M. D., & Davis, T. L. (1989). The role of a posteriori victim information in judgments of blame and sanction. *Journal of Experimental Social Psychology*, *25*(4), 362-377.

Alicke, M. D. (2000). Culpable control and the psychology of blame. *Psychological Bulletin*, *126*(4), 556.

Alicke, M. D., Rose, D., & Bloom, D. (2011). Causation, norm violation, and culpable control. *The Journal of Philosophy*, *108*(12), 670-696.

Carlsmith, K. M., Darley, J. M., & Robinson, P. H. (2002). Why do we punish? Deterrence and just deserts as motives for punishment. *Journal of Personality and Social Psychology*, *83*(2), 284.

Cushman, F. (2008). Crime and punishment: Distinguishing the roles of causal and intentional analyses in moral judgment. *Cognition*, *108*(2), 353-380.

Cushman, F. (2011). Should the law depend on luck? In M. Brockman (Ed.), *Future science: 19 essays from the cutting edge*. Vintage.

Cushman, F. A. (2014). Punishment in humans: From intuitions to institutions. *Philosophy Compass*, 1-16.

Darley, J. M., & Shultz, T. R. (1990). Moral rules: Their content and acquisition. *Annual Review of Psychology*, *41*(1), 525-556.

Darley, J. M., Carlsmith, K. M., & Robinson, P. H. (2000). Incapacitation and just deserts as motives for punishment. *Law and Human Behavior*, *24*(6), 659.

Darley, J. M. (2001). Citizens' sense of justice and the legal system. *Current Directions in Psychological Science*, *10*(1), 10-13.

- Darley, J. M., & Pittman, T. S. (2003). The psychology of compensatory and retributive justice. *Personality and Social Psychology Review*, 7(4), 324-336.
- Darley, J. M. (2009). Morality in the law: The psychological foundations of citizens' desires to punish transgressions. *Annual Review of Law and Social Science*, 5, 1-23.
- Darley, J. M. (2010). Citizens' assignments of punishments for moral transgressions: A case study in the psychology of punishment. *Ohio St. J. Crim. L.*, 8, 101-1017.
- Kneer, M., & Bourgeois-Gironde, S. (2017). Mens rea ascription, expertise and outcome effects: Professional judges surveyed. *Cognition*, 169, 139-146.
- Kneer, M., & Machery, E. (2019). No luck for moral luck. *Cognition*, 182, 331-348.
- Macleod, J. A. (2015). Belief states in criminal law. *Okla. L. Rev.*, 68, 497.
- Mueller, P. A., Solan, L. M., & Darley, J. M. (2012). When does knowledge become intent? Perceiving the minds of wrongdoers. *Journal of Empirical Legal Studies*, 9(4), 859-892.
- Malle, B. F., & Nelson, S. E. (2003). Judging mens rea: The tension between folk concepts and legal concepts of intentionality. *Behavioral Sciences & the Law*, 21(5), 563-580.
- Nadelhoffer, T. (2006). Bad acts, blameworthy agents, and intentional actions: Some problems for juror impartiality. *Philosophical Explorations*, 9(2), 203-219
- Nadelhoffer, T., & Nahmias, E. (2010). Neuroscience, free will, folk intuitions, and the criminal law. *T. Marshall L. Rev.*, 36, 157.
- Nadelhoffer, T., & Sinnott-Armstrong, W. (2012). Neurolaw and neuroprediction: Potential promises and perils. *Philosophy Compass*, 7(9), 631-642.
- Nadelhoffer, T. (Ed.). (2013). *The future of punishment*. New York: Oxford University Press.
- Nadelhoffer, T., Gromet, D., Goodwin, G., Nahmias, E., Sripada, C., & Sinnott-Armstrong, W. (2013). The mind, the brain, and the law. In T. Nadelhoffer, (Ed.), *The future of punishment* (pp. 193-212). New York: Oxford University Press.
- Nadelhoffer, T., Heshmati, S., Kaplan, D., & Nichols, S. (2013). Folk retributivism and the communication confound. *Economics & Philosophy*, 29(2), 235-261.
- Nadelhoffer, T., Heshmati, S., Kaplan, D., & Nichols, S. (2013). Folk retributivism: In theory and action. *Economics and Philosophy*, 29, 235-261.
- Prochownik, K. (2017). Do people with a legal background dually process? The role of causation, intentionality and pragmatic linguistic considerations in judgments of criminal responsibility. In J. Stelmach, B. Brożek & Ł. Kurek (Eds.), *The province of jurisprudence naturalized*. Warsaw: Wolters Kluwer.

Prochownik, K., & Unterhuber, M. (2018). Does the blame blocking effect for assignments of punishment generalize to legal experts? In T.T. Rogers, M. Rau, X. Zhu, & C. W. Kalish (Eds.), *Proceedings of the 40th annual conference of the Cognitive Science Society* (pp. 2285-2290). Austin, TX: Cognitive Science Society.

Weinstein, I. (2002). Don't believe everything you think: Cognitive bias in legal decision making. *Clinical L. Rev.*, 9, 783.

Robinson, P. H., & Darley, J. M. (1995). *Justice, liability, and blame: Community views and the criminal law*. Boulder: Westview Press.

Solan, L. M. (2002). Cognitive foundations of the impulse to blame. *Brook. L. Rev.*, 68, 1003.

Solan, L. M. (2005). Where does blaming come from. *Brook. L. Rev.*, 71, 939.

Solan, L. M. (2009). Blame, praise, and the structure of legal rules. *Brook. L. Rev.*, 75, 517-543.

CAUSATION

Greene, E. J., & Darley, J. M. (1998). Effects of necessary, sufficient, and indirect causation on judgments of criminal liability. *Law and Human Behavior*, 22(4), 429-451.

Hitchcock, C., & Knobe, J. (2009). Cause and norm. *The Journal of Philosophy*, 106(11), 587-612.

Kominsky, J. F., Phillips, J., Gerstenberg, T., Lagnado, D., & Knobe, J. (2015). Causal superseding. *Cognition*, 137, 196-209.

Lagnado, D. A., & Gerstenberg, T. (2017). Causation in legal and moral reasoning. In M R. Waldmann (Ed.), *The Oxford handbook of causal reasoning* (pp. 565-601). Oxford: Oxford University Press.

Macleod, J. A. (2019). Ordinary causation: A study in experimental statutory interpretation. *PsyArXiv*. March, 19.

Solan, L. M., & Darley, J. M. (2001). Causation, contribution, and legal liability: An empirical study. *Law and Contemporary Problems*, 64(4), 265-298.

CONSENT

Sommers, R. (forthcoming). Commonsense consent. *Yale Law Journal*. Retrieved from <http://dx.doi.org/10.2139/ssrn.2761801>

Sommers, R. & Bohns, V. K. (2019). The voluntariness of voluntary consent: Consent searches and the psychology of compliance. *Yale Law Journal*, 128(7). Retrieved from <https://ssrn.com/abstract=3369844>

Wilkinson-Ryan, T. (2014). A psychological account of consent of fine print. *Iowa L. Rev.*, 99, 1745. Retrieved from <https://ssrn.com/abstract=2443825>

OWNERSHIP

Friedman, O., Van de Vondervoort, J. W., Defeyter, M. A., & Neary, K. R. (2013). First possession, history, and young children's ownership judgments. *Child Development*, 84(5), 1519-1525.

Friedman, O., Pesowski, M. L., & Goulding, B. W. (2018). Legal ownership is psychological: Evidence from young children. In J. Peck, S. B. Shu (Eds.), *Psychological ownership and consumer behavior* (pp. 19-31). Springer, Cham.

Nancekivell, S. E., Van de Vondervoort, J. W., & Friedman, O. (2013). Young children's understanding of ownership. *Child Development Perspectives*, 7(4), 243-247.

Nancekivell, S. E., & Friedman, O. (2014). Mine, yours, no one's: Children's understanding of how ownership affects object use. *Developmental Psychology*, 50(7), 1845.

Nancekivell, S., Millar, J., Summers, P., & Friedman, O. (2016). Ownership rights. In J. Sytsma & W. Buckwalter (Eds.), *A companion to experimental philosophy* (pp. 247-256). Oxford: Wiley-Blackwell.

CONTRACTS

Furth-Matzkin, M. & Sommers, R. (forthcoming). Consumer psychology and the problem of fine print fraud. *Stanford Law Review*, 72. Retrieved from <https://ssrn.com/abstract=3378353>

Hoffman, D. A., & Wilkinson-Ryan, T. (2013). The psychology of contract precautions. *U. Chi. L. Rev.*, 80, 395.

Wilkinson-Ryan, T. (2009). Do liquidated damages encourage breach - A psychological experiment. *Mich. L. Rev.*, 108, 633.

Wilkinson-Ryan, T., & Baron, J. (2009). Moral judgment and moral heuristics in breach of contract. *Journal of Empirical Legal Studies*, 6(2), 405-423.

Wilkinson-Ryan, T. (2011). Breaching the mortgage contract: the behavioral economics of strategic default. *Vand. L. Rev.*, 64, 1545.

Wilkinson-Ryan, T. (2012). Transferring trust: Reciprocity norms and assignment of contract. *Journal of Empirical Legal Studies*, 9(3), 511-535.

Wilkinson-Ryan, T. (2012). Legal promise and psychological contract. *Wake Forest L. Rev.*, 47, 843.

Wilkinson-Ryan, T., & Hoffman, D. A. (2015). The common sense of contract formation. *Stan. L. Rev.*, 67, 1269.

Wilkinson-Ryan, T. (2015). Incentives to breach. *American Law and Economics Review*, 17(1), 290-311.

Wilkinson-Ryan, T. (2017). The perverse consequences of disclosing standard terms. *Cornell L. Rev.*, 103, 117.

FAMILY LAW

Wilkinson-Ryan, T., & Small, D. (2008). Negotiating divorce: gender and the behavioral economics of divorce bargaining. *Law & Ineq.*, 26, 109.

Wilkinson-Ryan, T., & Baron, J. (2008). The effect of conflicting moral and legal rules on bargaining behavior: the case of no-fault divorce. *The Journal of Legal Studies*, 37(1), 315-338.

HUMAN RIGHTS

Mikhail, J. (2012). Moral grammar and human rights. Some reflections on cognitive science and enlightenment rationalism In R. Goodman, D. Jinks, & A. K. Woods (Eds.), *Understanding social action, promoting human rights*, (pp. 160-198). Oxford: Oxford University Press. Retrieved from <https://ssrn.com/abstract=1924915>

DISCRIMINATION

Kobick, J. (2010). Discriminatory intent reconsidered: Folk concepts of intentionality and equal protection jurisprudence. *Harv. CR-CLL Rev.*, 45 (2), 517.

Costa, L. L. F., Esteves, A. B. D., Kreimer, R., Struchiner, N., & Hannikainen, I. R.. Gender stereotypes underlie child custody decisions. *European Journal of Social Psychology*, 49(3), 548-559.

Parks, G. S., & Rachlinski, J. J. (2009). Implicit bias, election' 08, and the myth of a post-racial America. *Fla. St. UL Rev.*, 37, 659-716.

Rachlinski, J. J., Johnson, S. L., Wistrich, A. J., & Guthrie, C. (2008). Does unconscious racial bias affect trial judges. *Notre Dame L. Rev.*, 84, 1195-1246.