Corporate Decision Making and the Rules of the New Global Economy

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the slides are intended as a complement for the oral presentation and are incomplete without it

about me:

Professor of Business Law at Oxford Law Faculty and ESCP Business School

Visiting Professor UCLA and Columbia :

Member American Law Institute, - VP ECGI – editor OBLB Oxford Business Law Blog

Experience as a business lawyer (Willkie Farr, NY – Freshfields Paris: M&A, PE, IPOs) and expert, mediator / arbitrator

Research in law & finance, law & psychology - fields of corporate governance, corporate control, commercial contracts, negociation

Education: MiM Essec, Juris Doctor Columbia Law School, Doctorate in Law Paris Sorbonne univ., MSC Experimental Psychology Oxford

Married, 2 children (Oberon 9 and Electra 10)

… downtime: piano, singing – creative writing

About ECGI

Leading Research with Global Impact.

ECGI (The European Corporate Governance Institute) is an international non-profit membership organisation that provides a platform for debate and dialogue among academics, policymakers, and business leaders, with a focus on major corporate governance, ESG, and stewardship issues.

We bring together the best minds in academia from around the world to address critical business and policy challenges.

Harnessing research, ECGI can shape ideas, influence practice, and formulate policies which benefit society.

In 2023, The Financial Times reported that ECGI scholars *"produce some of the most widely read research on sustainability".*

oblb
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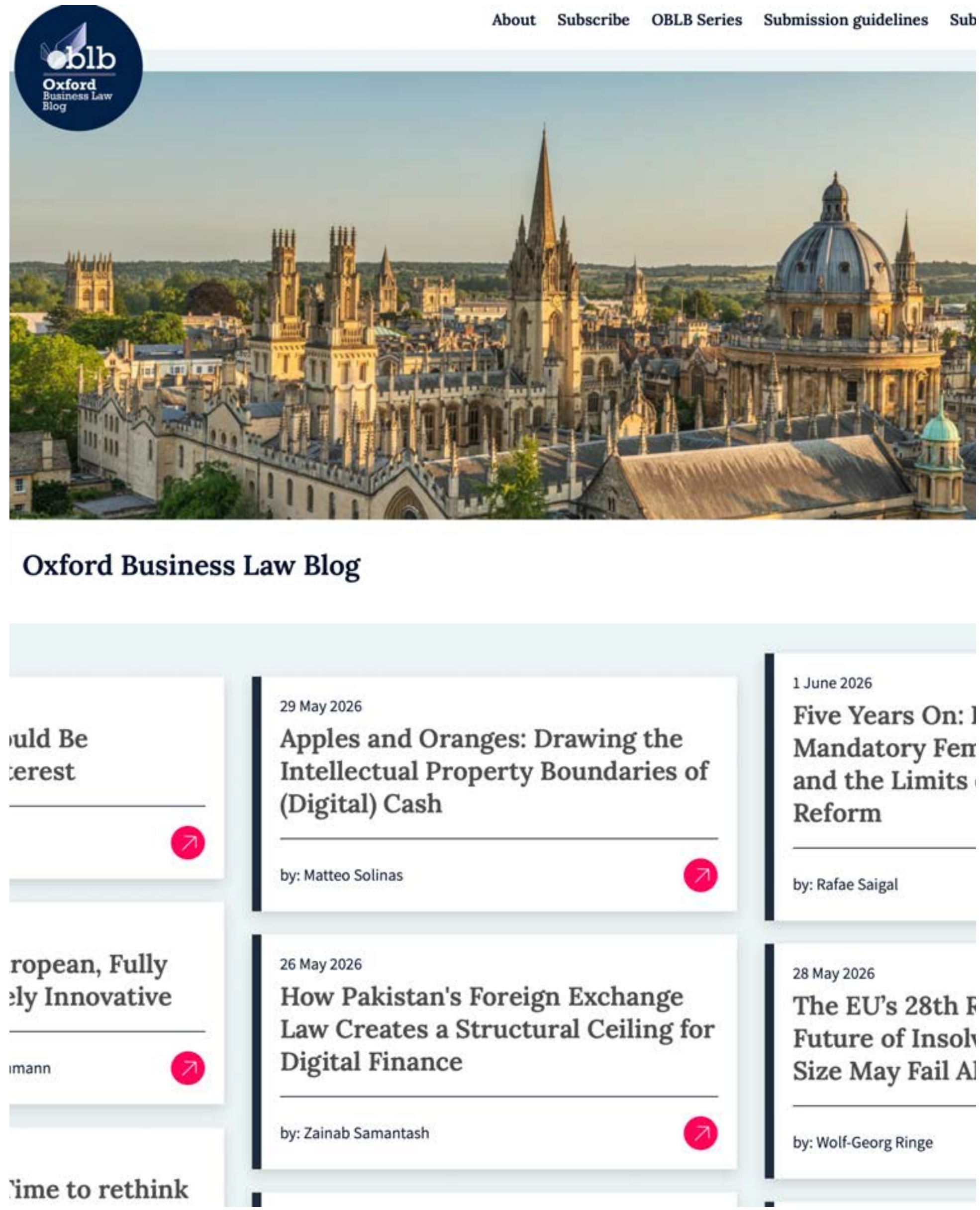
Business Law
Blog



Course overview
Corporate Decision Making and the Rules of the New Global Economy

- How corporate decision-making is shaped by the evolving architecture of the global economy.
- How boards and corporate actors operate under conditions of legal diversity, geopolitical fragmentation, regulatory competition, and technological disruption.
- Interdisciplinary approach, combining legal analysis, economic reasoning, and behavioral insights.
- Emphasis on applicability in cross-border contexts

& hybrid economies.

Our Class Dynamics

- Interactive lectures utilizing a structured Socratic method.
- Role-play simulations and applied problem-solving.
- Case studies and comparative discussions drawing upon the diverse jurisdictional experiences of the participants.

- *Active participation is expected and will significantly enhance the value of the seminar.*

Foundations: Corporate Decision-Making in a Fragmenting World

- Business & Law in Cross Border-Settings


Does law matter for managers?
Does business matter for laywers?

- Legal issues may requires as much as 25% of a CEO’s time
- Research shows that businesses generate higher tangible results (e.g., stock market valuations) when they employ lawyers as board members / top business officers have legal knowledge
- In 2000, 24% of US companies had lawyer directors; in 2009, this figure increased to 43%

Robert C. Bird/David Orozco, *Finding the right corporate legal strategy,* MIT Sloan Management

Taking into account the legal environment

while

making business decisions

Taking into account the business environment

while

making legal decisions

How we approach legal rules in

Micro

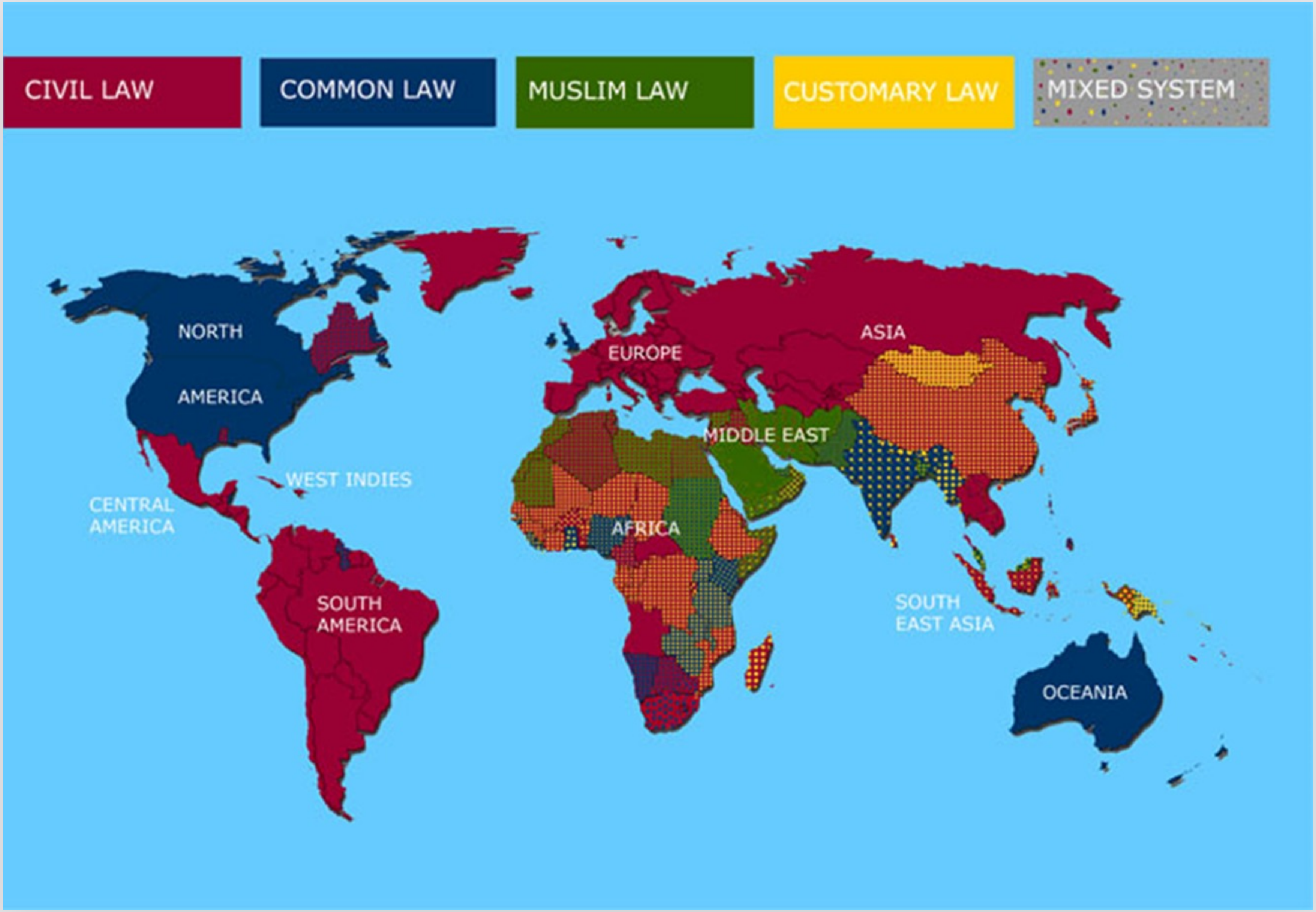
Macro

Variety of LEGAL SYSTEMS

- When engaging in international trade or business, necessity to bridge the gap between different legal traditions and systems

➢ Most nations today follow one of two major legal traditions:

  - Common law (UK, USA, Australia, Canada, India, Singapore)
  - Civil law (France Code civil 1804, Germany BGB 1900)
  - Mixed systems (Scotland, South Africa, Quebec, Louisiana) ; Islamic law
  - Islamic law (originates from the Quran and Prophet Muhammad's teachings – Iran, Saudi Arabia, Afghanistan)


CIVIL LAW
COMMON LAW
MUSLIM LAW
CUSTOMARY LAW
MIXED SYSTEM
NORTH
AMERICA
EUROPE
ASIA
MIDDLE EAST
WEST INDIES
CENTRAL AMERICA
AFRICA
SOUTH AMERICA
SOUTH EAST ASIA
OCEANIA

Features of the common law vs civil law systems?

Features of the Civil Law System?

- Civil law is based on the separation of the powers between the legislator and the judges
- Civil law systems would generally be more rigid than common law systems
  - Main principles: fundamental role of the law and the 'codes', secondary role of the judicial decisions
  - Advantages/disadvantages
  - Note on the case law in domestic public law in
  - Civil law countries

Features of the Common Law?

- Common law (case law) – **principle of precedent** + guidance for future similar disputes

- Equity (general principles, no rigid rules, complementary to the law)

Examples of maxims of equity:

"*Equity follows the law*"

"*He who comes to equity must come with clean hands*"

"*Equity regards substance rather than rules*"

- Procedure: role of jury

Common law vs Civil law: distinction?

- Beyond the traditional approach (focus on formal creation of the law)
- Differences / Similarities revisited
  - Think about the people in the law (e.g., who are the judge)
  - Procedure
  - Role of cases
  - More generally the “legal culture (law in action vs in the book)

CODE CIVIL (1)

ANNOTÉ

DES DISPOSITIONS ET DÉCISIONS DE LA LÉGISLATION ET DE LA JURISPRUDENCE,

Avec renvoi, pour l'indication des matières, aux principaux Recueils de Jurisprudence,

PAR J.-B. SIREY,

AVOCAT AUX CONSEILS DU ROI ET A LA COUR DE CASSATION.

PRIX : 18 fr. au Bureau, et 23 fr. franc de port.

A PARIS,

Au Bureau d'Administration du RECUEIL GÉNÉRAL DES LOIS ET DES ARRÊTS, rue d'Enfer Saint-Michel, n°. 19, vis-à-vis la grille du Luxembourg; et Cour de Harlay, n°. 21, vis-à-vis la Place Dauphine et le Pont-Neuf.

(1) Conforme à l'édition officielle de 1817.

1817.

5. Il est défendu aux juges de prononcer par voie de disposition générale et réglementaire sur les causes qui leur sont soumises.

3. — *Le déni de justice par une Cour d'appel qui renvoie, mal à propos, à l'autorité administrative, et par suite au Conseil d'Etat, peut-il être réprimé par un decret de S. M. qui annulle l'arrêt?*

18 août 1809. — Déc. — (S..10.2.567.)

4. *S'il y a pourvoi devant la Cour de cassation contre un arrêt de Cour d'appel qui ait commis un déni de justice, en renvoyant mal à propos devant l'autorité administrative, la Cour de cassation doit statuer sur le pourvoi, et non renvoyer au Conseil d'Etat.*

Commune de Brest C. Lemayer de la Villeneuve. — 5 et 12 novembre 1811. — Avis du Conseil d'Etat, app. — (S..12.2.142.—D..10.2.60.)

5. — *La cour d'appel qui, dans les motifs de son arrêt, considère comme nul un jugement de première instance soumis à sa censure, et qui dans son dispositif prononce comme si ce jugement n'existait pas, est censée par cela seul l'avoir annullé; en conséquence, l'arrêt d'appel ne peut être réputé renfermer de ce chef un déni de justice.*

Praire. C. Milliard et Rubins. — 5 avril 1810. — C. C. — Rejet. — Lyon. — (S..11.1.1.)

6. — *Lorsque, sur l'allégation d'un faux commis dans les registres de l'état civil, par la supposition du décès d'une personne encore vivante, le juge civil a sursis à prononcer sur une cause dont il était saisi; qu'il a renvoyé devant le tribunal criminel pour décider si la pièce prétendue fausse est réellement telle; et que les délais pour se pourvoir contre les jugemens civils sont expirés, le juge criminel ne peut se dispenser de connaître du faux prétendu.*

Douhaut. C. Champignèle de Lusignan. — 29 therm. an 10. — C. C. — Régl. de juges. — (S..2.1.361.—D..1.510.)

7. — *En cas de déni de justice par un tribunal inférieur, qui s'est mal à propos dessaisi d'une affaire disposée à recevoir une décision définitive, le tribunal supérieur non-seulement peut, mais encore doit juger le fond, à peine de cassation.*

Clément. C. Aubery. — 27 août 1805. — Cassation. — Orange. — (S..6.2.740.)

8. — *Lorsque le sens de la loi est positif et certain, les juges ne peuvent se dispenser de l'appliquer telle qu'elle est. — Il n'appartient pas aux tribunaux de juger la loi et de la modifier, ou restreindre par aucune considération quelque puissante qu'elle soit.*

Halsselgren. C. Rougemont de Lovemberg. — 25 mai 1814. — Cassation. — Paris. — (S..14.1.282.—D..12.1.305.)

9. — *L'indépendance des juges est-elle assurée par cela seul que, nommés à vie, ils sont inamovibles? Ne faut-il pas aussi qu'ils ne soient en même temps revêtus d'aucune fonction amovible?*

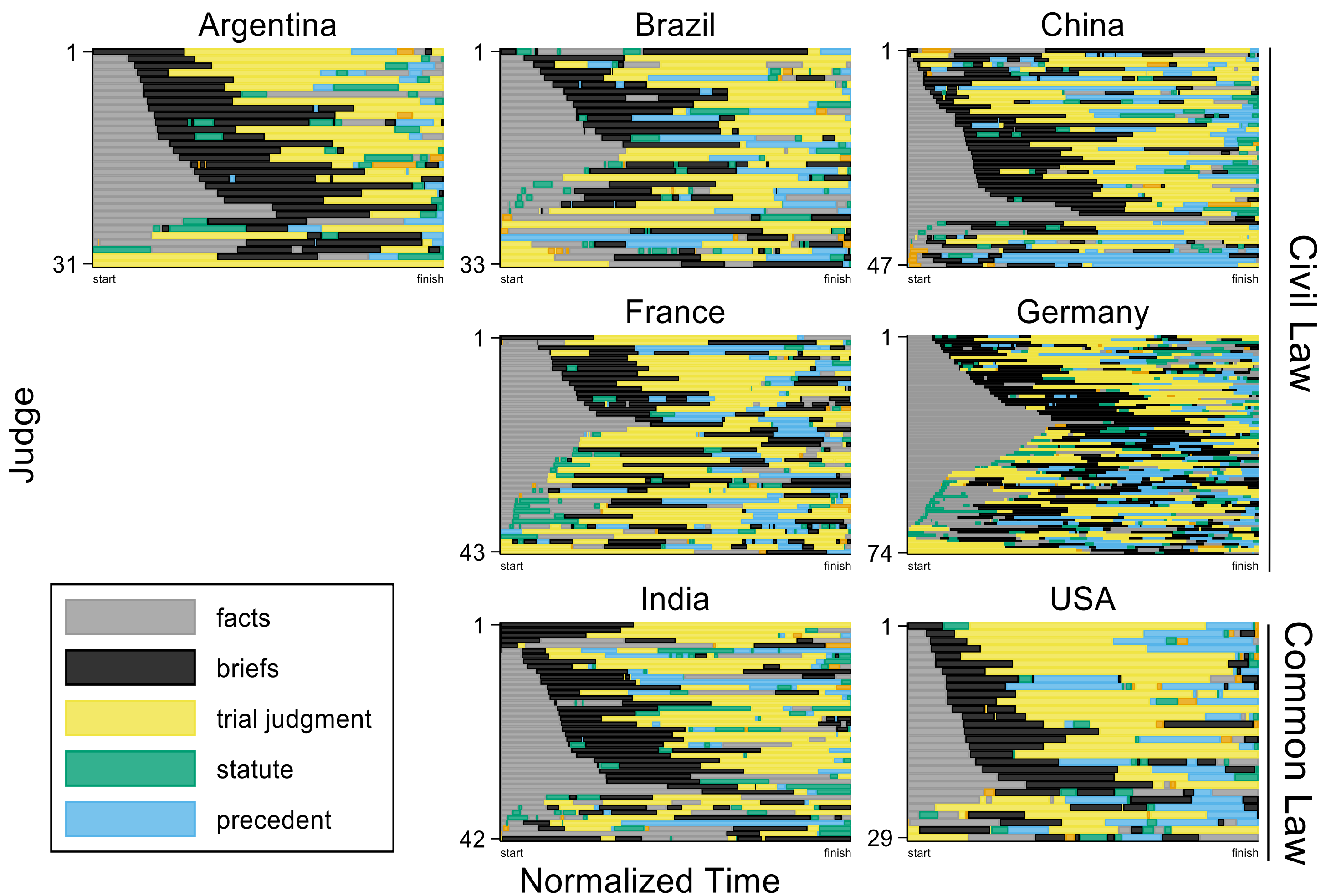
Rapport de M. Flaugergues à la chambre des députés. — 17 décembre 1814. — (S..15.2.89.)

Sur l'article 5.

1. — *Les tribunaux de police ne peuvent faire des défenses à des particuliers qui ne sont point en cause.*

Mercier. — 6 juillet 1809. — Cassation. — Riom. — (S..9.1.424.—D..7.2.159.)

Fig. 1: Document View Paths



For each judge aligned on vertical axis, the graph plots the documents live on the screen from start to finish. Orange indicates instruction views.

Common law vs Civil law: distinction?

- Differences... less than thought
- Similarities … more than thought
- What explains the stickiness of the traditional perspective?
  - Statu quo
  - Confirmation bias
  - Saliency
  - Endowment effect

Methodological Take-Away

- Under the "obvious", room for surprises and thought-giving
- Empirical approach: what can be observed?
  - Comp. analytical philosophy
- Levels of observation
  - Positive law / doctrine (i.e., law in the books)
  - How the law is applied (i.e., law in action)
  - How people think and talk about the law (i.e., anthropology of the law)

Economic, Behavioral & Legal Perspective Law

Interdisciplinary approach

- ✓ Economics
- ✓ Sociology
- ✓ Institutions
- ✓ Psychology

Comparative or/and jurisdiction-blind (anatomy)

Beyond common law vs civil law systems?

importance of: ownership concentration, family control, state involvement, and capital-market development

Common framework and 'rules of the game'?

CONSTITUENCY?	**RELEVANT RULES?**
Anyone dealing with corp	• Prohibition on fraud
Investors	• Disclosure & Accounting rules • Corporate governance
Consumers	• Consumer protection & Data protection • Competition law
Workforce	• Health and safety • Discrimination law & Human rights
Society at large	• Environmental law • Anti money laundering / terrorism financing • Tax evasion - Bribery & corruption

Common feature: remedial law vs criminal law

- A common feature: remedial law vs criminal law
- Same set of facts may trigger liability for breach of both remedial and criminal law
- Remedial law and criminal law pursue different purposes: therefore, procedures and penalties are differ

MINI CASE STUDY

- Facts:

  Andrew takes his girlfriend Betty out for dinner at **the restaurant The Beau Rivage that you own**. They both develop food poisoning. They are convinced that this was caused by the insanitary condition of the restaurant.

  - What are possible consequences? Who can start an action (Criminal and / OR remedial) against your restaurant?

  - What needs to be demonstrated and by Whom in order to prevail?

Criminal proceedings

- *State* v *The Beau Rivage*
- Selling impure food—criminal offence pursuant to the Food Safety Act 1990
- Interest of public safety to control and punish such behaviour
- **Prosecutor** (speaking in the name of state) has to prove *beyond all reasonable doubt* that the food poisoning was caused by the condition of the food
- The Beau Rivage may be fined—a sum of money payable to the state. **The money does not go to the victims of the crime.**

Remedial proceedings

- *Andrew* v *The Beau Rivage*
  - Andrew can sue the restaurant for **breach of contract**
  - Andrew who bought the meal will be able to reclaim the cost of the meal

- *Betty* v *The Beau Rivage*
  - Betty had no contract with the restaurant
  - She can sue **in tort claiming negligence** or breach of the Consumer Protection Act 1987

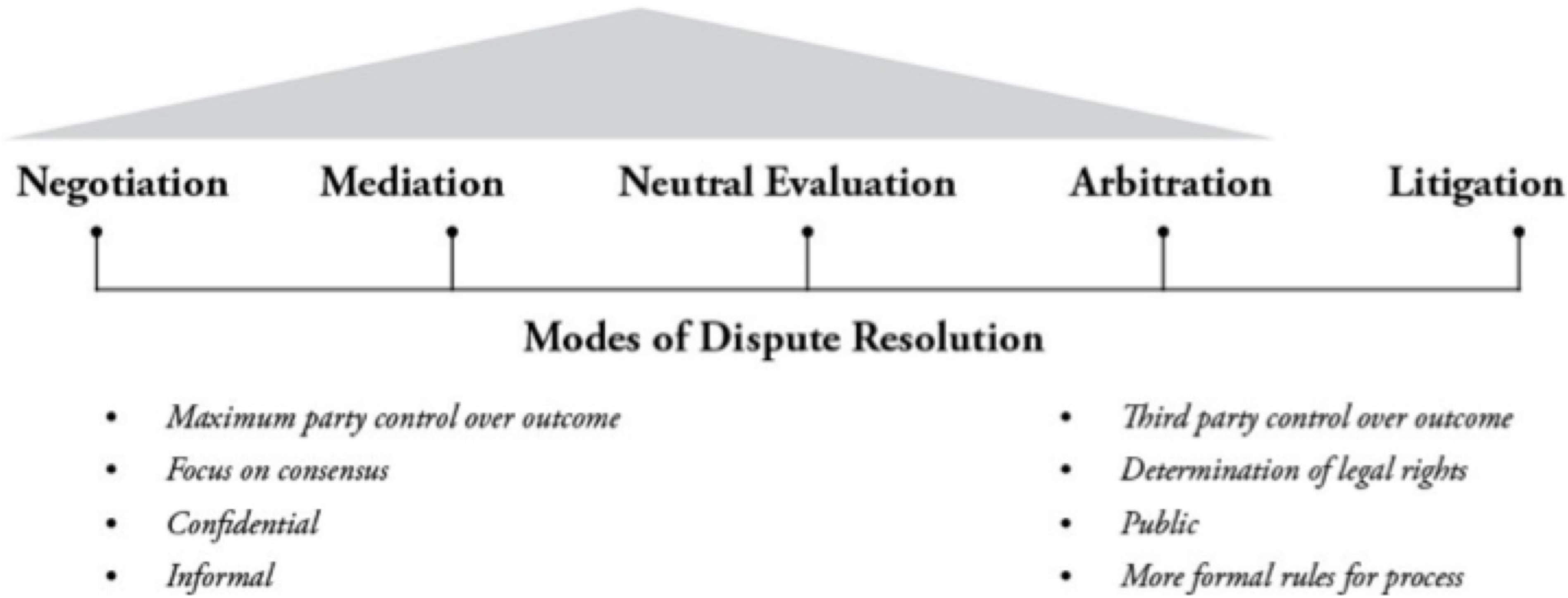
- Andrew and Betty will sue the restaurant in the county court
- Burden / Std of proof: they will have to prove that *on the balance of probabilities* the restaurant caused the damage
  - means that it is more likely than not that the restaurant was responsible for the food poisoning
  - lower standard of proof than that required in criminal proceedings.

- If Andrew and Betty win the restaurant will have to compensate them for their pain and suffering and all economic loss resulting from it, including medical costs and loss of earnings

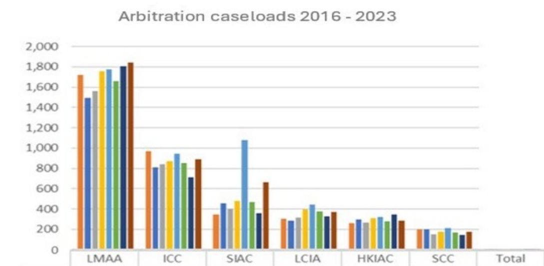
- To avoid **reputation damages**, the restaurant might want to settle before the trial (case lawyering / ***cause*** lawyering)

Litigaton and Alternative dispute resolution (ADR)

How to solve conflicts?



- **Arbitration**
  - **Compared to litigation:** more flexible nature and near-global enforceability of arbitration awards under the 1958 UNCITRAL Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention”)



	LMAA	ICC	SIAC	LCIA	HKIAC	SCC	Total
2016	1,720	966	343	303	262	199	3,793
2017	1496	810	452	285	297	200	3540
2018	1561	842	402	317	265	152	3539
2019	1756	869	479	395	308	175	3982
2020	1775	946	1080	444	318	213	4776
2021	1657	853	469	377	277	165	3798
2022	1807	710	357	327	344	143	3688
2023	1845	890	663	368	281	175	4222

- **Mediation (assisted negotiation)**
  - **Compared to litigation & arbitration:** more flexible nature, settlement by parties (time, cost - fairness in arms-length negotiations)
  - Enforceability issues (Singapore Convention, 2016)

Agenda
Foundations: Corporate Decision-Making in a Fragmenting World

- Business Law in Cross-Border Settings
- Corporate Decision-Making: Interdisciplinary Approach

EXPERIMENT

- Two players
- One is assigned the role of **divider –** *first name comes first in the alphabetic order*
- The other is assigned the role of **chooser -** *first name comes second in the alphabetic order*
- The divider is presented with a sum of money (e.g. 10 pounds)
  - Divider proposes a split of the money (ie. offer a sum) – *entire figure only: 0; 1; 2 etc*
  - The chooser can either accept of reject the offer – *NO BARGAINING ALLOWED*
  - Outcome
    - If the chooser **accepts** the proposed split, then the parties receive their share of money in accordance with it
    - If the chooser **rejects** the proposed split, then neither party gets anything.

ULTIMATUM BARGAINING GAME: OUTCOME

- **Economic rational** predicts that the divider will offer the chooser the smallest possible amount above zero and keep the rest.
- The chooser will accept the offer because it is greater than zero, the alternative outcome.
- In practice:
  - Dividers often offer an equal split. ***Why? Is this rational?***
  - Choosers prefer to receive nothing than accepting an offer that is very favourable to the divider. ***Why? Is this rational?***

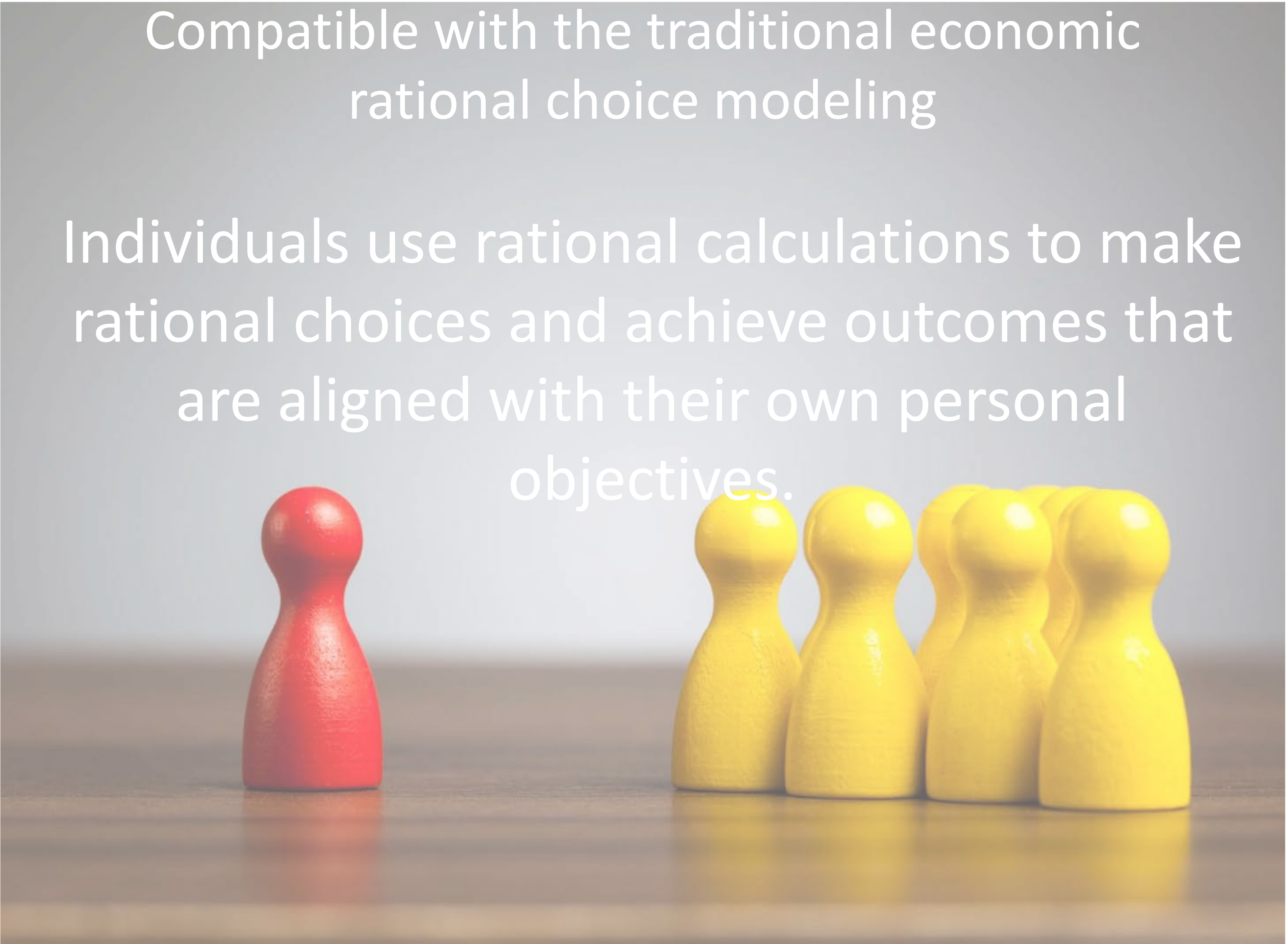
Traditional. Economic & Legal Approach to Behaviour

"All human behavior can be viewed as involving participants who maximize their utility from a stable set of preferences and accumulate an optimal amount of information and other inputs in a variety of markets"

Becker, *The Economic Approach to Human Behaviour* (1976)

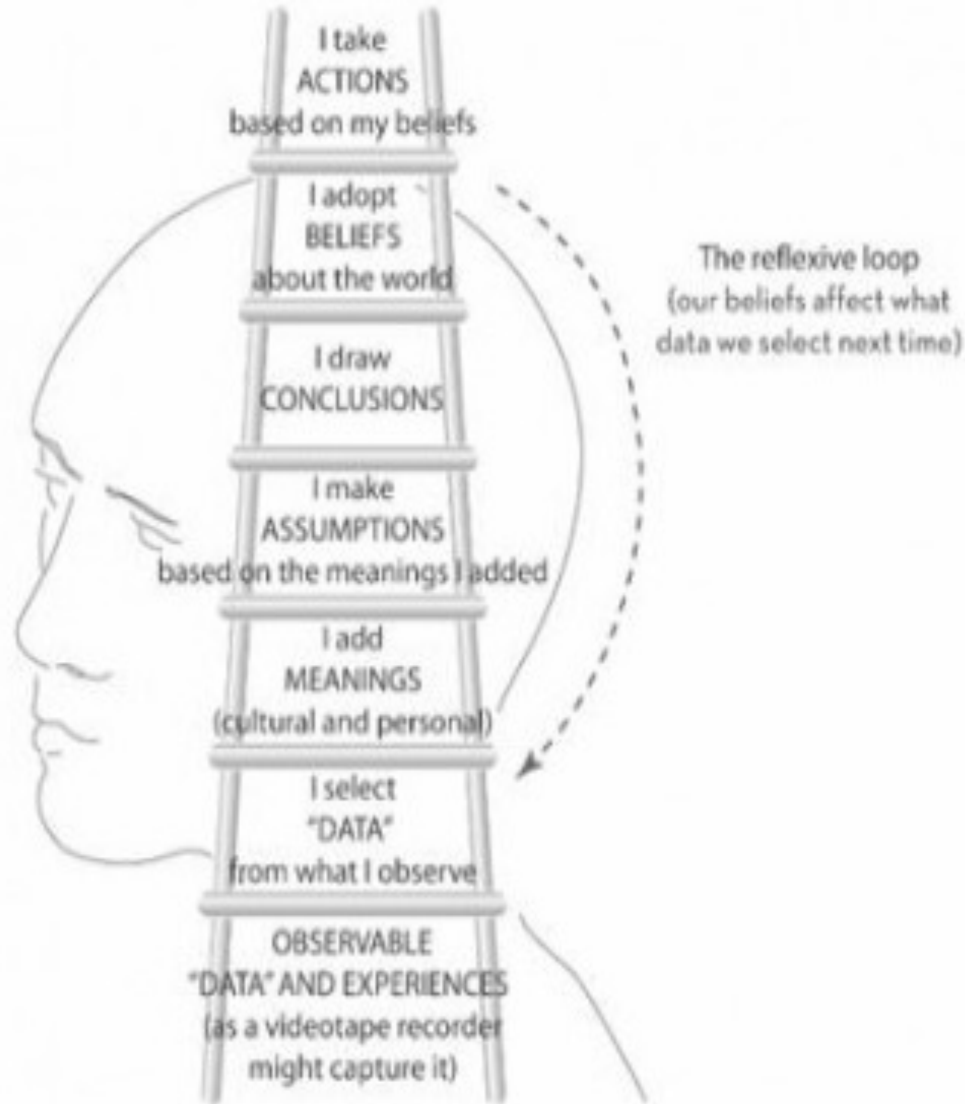
Rational Choice Theory

- Preference: maximisation of expected utility
  - Homo ‘economicus’
  - Neo-classical economics, and economic analysis of law
  - Reaction to incentives
  - Assumptions:
    - Well-defined, complete preferences
    - Stable, transitive preferences

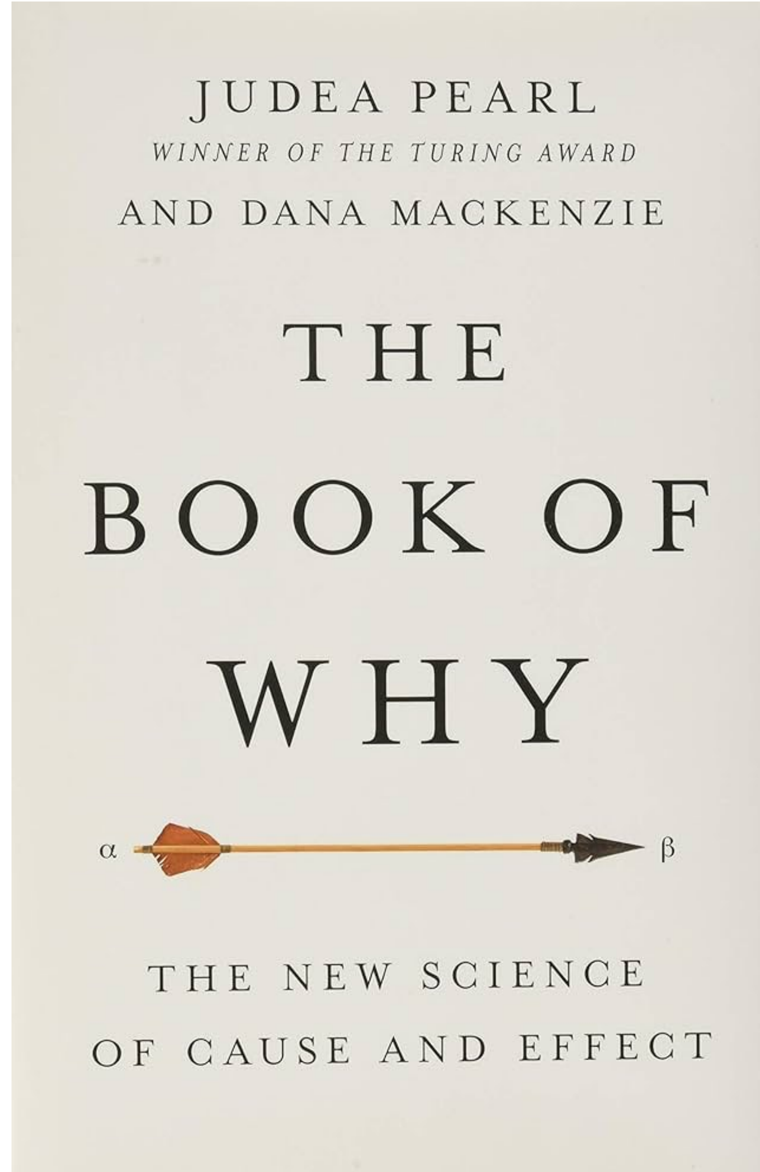

Compatible with the traditional economic rational choice modeling
Individuals use rational calculations to make rational choices and achieve outcomes that are aligned with their own personal objectives.

And how does that work?

Inference


I take
ACTIONS
based on my beliefs
I adopt
BELIEFS
about the world
I draw
CONCLUSIONS
I make
ASSUMPTIONS
based on the meanings I added
I add
MEANINGS
(cultural and personal)
I select
"DATA"
from what I observe
OBSERVABLE
"DATA" AND EXPERIENCES
(as a videotape recorder
might capture it)
The reflexive loop
(our beliefs affect what
data we select next time)

And how does **inference** work?



Causal inference

- Inference is an abstraction mechanism (Sapiens)
- Causal inference = Bayesian cognitive inference (many labels) vs. Boolean logic
- See *Thinking Fast & Slow*, p. 154 and 166 seq.
- <u>In a nutshell</u>: **human cognition seeks to establish a model for representing the world based on observations, and constantly updates it according to the probability of a hypothesis**

Illustration of inference

A child coughs:
more likely to be lung cancer, influenza, or gastroenteritis?

probability of having p(cough|lung cancer) is high but the probability of having p(lung cancer) is low, so the product of the two is low.

probability of having p(gastroenteritis) is high, but since the probability p(cough|gastroenteritis) is low, the product of the two is also low.

probability p(flu|cough) is high, since the probability p(cough|flu) is high and is multiplied by the probability p(flu), which is also high.

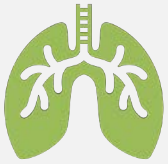
Inference Mechanism is Compatible with Rational Choice Theory Perspective

One and only one answer

Predicated on ….?

Where does bounded rationality and biases may come in?

What is observed (cough, but other symptoms not “noticed” …?)



Base line p(lung cancer) how high or low?

Realistic approach to behaviour

- “Going beyond the straitjacket of strict rational-choice assumptions.” R Korobkin
- Additional parameters to add to standard rational theories to record “anomalies”
- Nota: why necessarily “mistakes”? Quid “adaptation process”?
  - Under risk (probabilistic, analytico-rational belief; ex post verification)

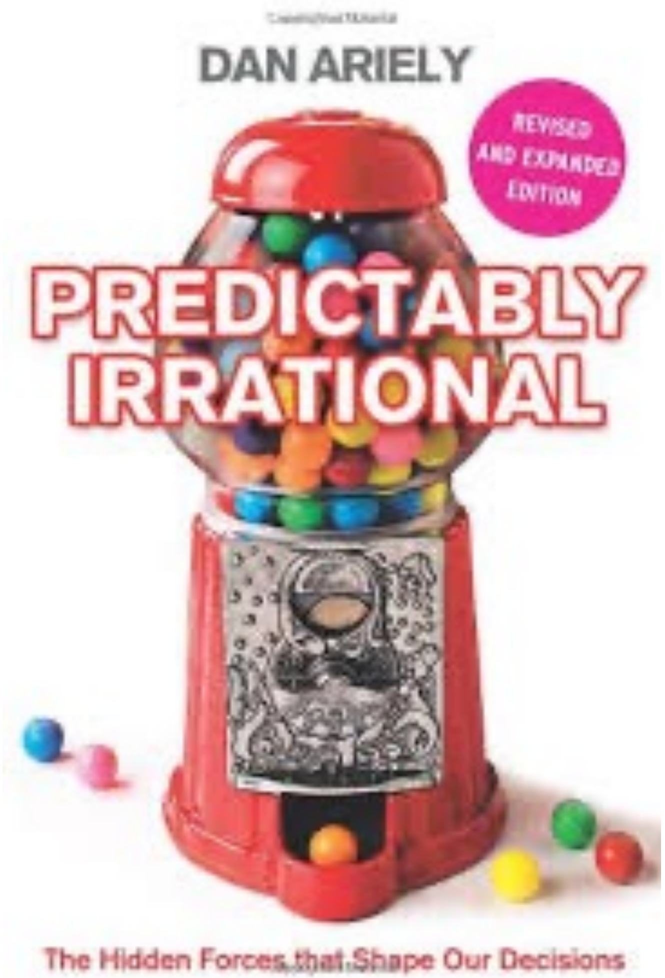
vs

  - Under uncertainty environment (intuitive & experiential tools, e.g., narrative)

Shortcuts and Biases

- **Prediction** (Rachlinski & Wistrich, 2013; Fox & Birke, 2002)
  - Availability heuristics (e.g., risks of terrorist act vs stroke)
  - Confirmation bias
  - Contrast and comparison, aversion for extremes (Guthrie, 2003)
  - Optimistic overconfidence bias
  - Attribution Biases / Framing
- **Valuation** (Tversky & Kahneman, 1981; Guthrie, 2003)
  - Loss aversion, Endowment Effect (Thaler, 1980)
  - Statu Quo
- **Social signals heuristics** (Ross,1995; Arnold and O'Connor, 1999)
  - Expert Recommendations
  - Reactive Devaluation
- **Affects heuristics** (Stark & Frenkel, 2013)
  - Self-image congruence (Kressman, 2006) (*cf. Ultimatum game with Prof. Eidenmueller*)

Predictable Bounded Rationality



Observed discrepancy between
planned behaviour
and actual behaviour

Does not mean unpredictable behaviour
→ *Systematic* deviations

Bounded Rationality Theory (Herbert Simon)

- Not always ‘rational’ in the economic sense: ‘***satisfying***’ choices (rather than optimal choices)
  - Experimental and empirical studies: systematic deviations from assumptions of economic rationality
  - Preferences often do not comply with formal requirements of transitivity, invariance, etc
- Role of fairness, envy, altruism, etc
  - Moral judgments more aligned with “deontological” morality than “consequentialist” welfare economics

Inferences: Why Practice not the Same as Theory?

Which "observed" data

- cough … what bout temperature, yelling all day, etc?
- Automatic vs analytical observation (system 1 or 2)

Meaning of the observed data

- Framing by experience (old/ young lady)
- Predictable bias (over optimism)

Base line p(lung cancer) how high or low?

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THE SENTENCE

TWO OF 1

THE MOST POWERFUL 2

AND EFFECTIVE 3 4

OF ALL HUMAN FEARS 5 6

ARE

THE FEAR OF FAILURE 7 8 9

AND THE FEAR 10

OF SUCCESS 11

Inferences: Why Practice not the Same as Theory?

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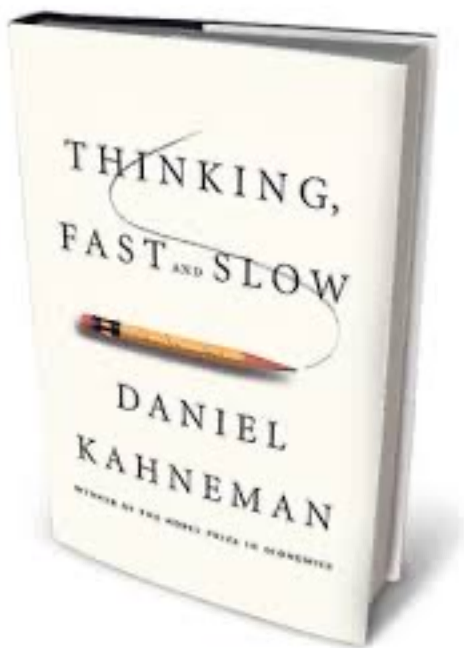
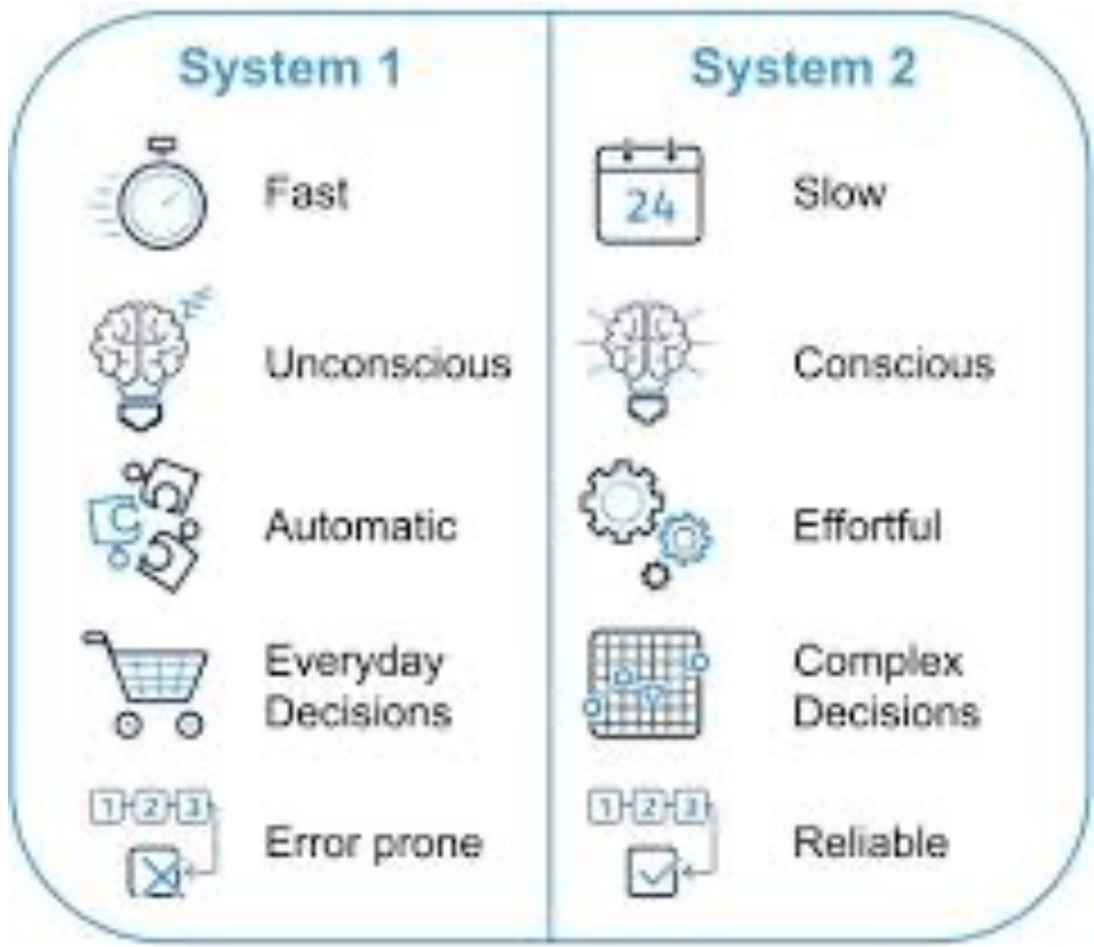
Base line p(lung cancer) how high or low?

Dual-Process Theory

- Brain Modes of Thinking: System 2 vs System 1 (Stanovich and West, 2000; Kahneman, 2011)

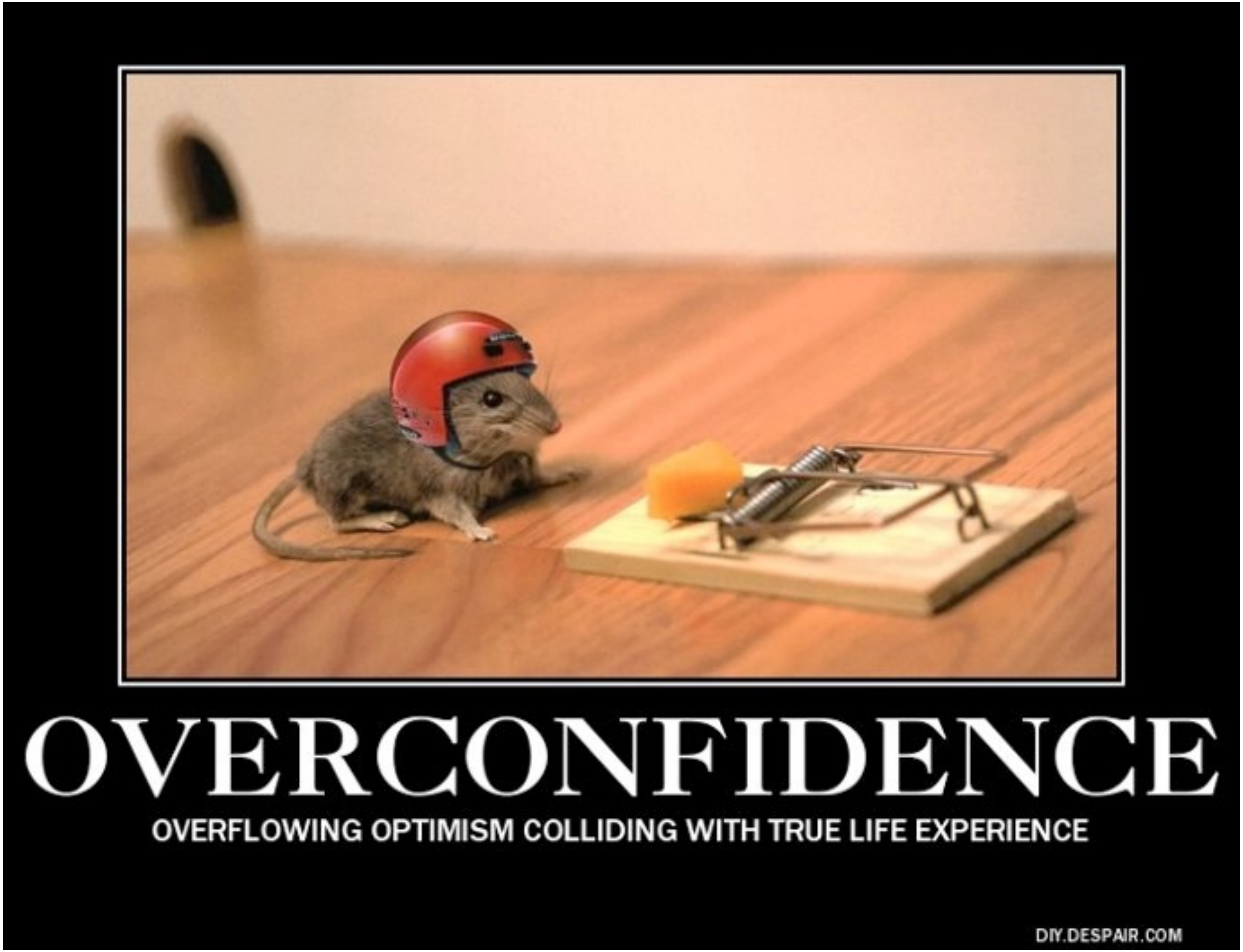




	System 1	System 2
Characteristics	Fast Effortless Unconscious Triggers emotions Associative Looks for patterns Looks for causation Creates stories to explain events	Slow Effortful Conscious Logical Deliberative Can handle abstract concepts
Advantages	Speed of response in a crisis Creativity through associations, so good for expansive thinking Easy completion of routine or repetitive tasks	Allows reflection and consideration of the "bigger picture", options, pros and cons, consequences Can handle logic, maths, statistics Good for reductive thinking
Disadvantages	Jumps to conclusions Unhelpful emotional responses Can make errors that are not detected and corrected, such as wrong assumptions, poor judgements, false causal links	Slow, so requires time Requires effort and energy, which can lead to decision fatigue

Predictions

OPTIMISTIC OVERCONFIDENCE


OVERCONFIDENCE
OVERFLOWING OPTIMISM COLLIDING WITH TRUE LIFE EXPERIENCE
DIY.DESPAIR.COM

What is optimistic overconfidence?

(Weinstein, Optismtic Biases about Personal Risks, 1989; Bauman & Spieglel, Misperception among gay men of the risk of AIDS, 1987)

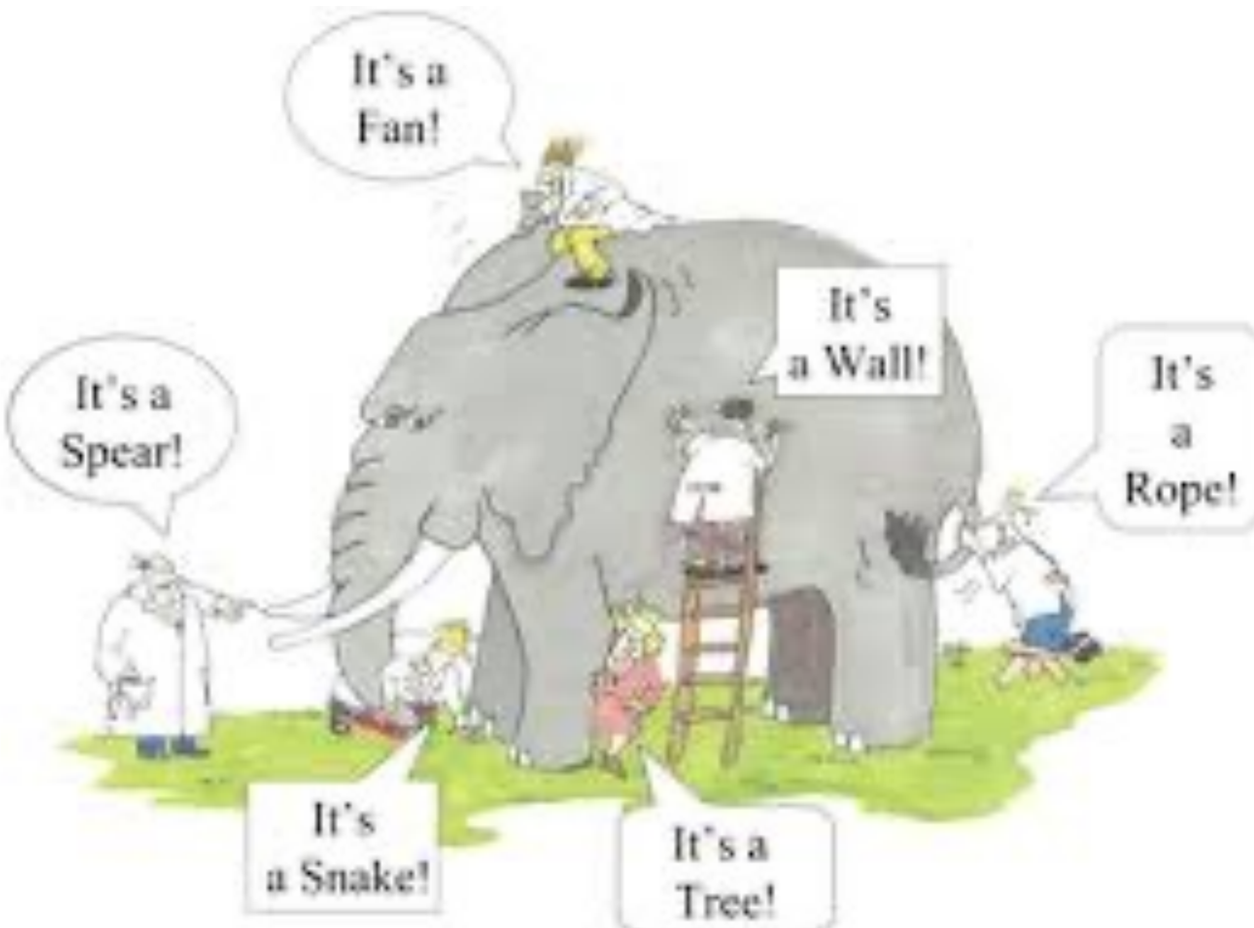
- Tendency to believe that
  - The chances of good things happening are higher than they are in reality
  - Chances of bad things happening are lower than they are in reality
- <u>Explanation</u>: differential attention facts
  - Positive
  - In line with expectations
  - Negative facts

May it impede successful decision making, including settlement?

Predictions

ATTRIBUTION BIASES / FRAMING

How we caracterise a given situation / behaviour is influenced by information we have …



What are attribution biases?

(Babcock, Loewenstein, 1997)

- **Attribution**: how people attribute ***causal*** meaning to behaviour.
- Main distinction:
  - – Situational attributes, i.e. external circumstances
    - Emphasised when evaluating our own behaviour (actor-observer bias)
  - – Dispositional attributes, i.e. personnality traits
    - Over-emphasised when evaluating other’s behaviour (correspondence bias or fundamental attribution error)
    - Harm within the control of the doer : creates emotion (e.g. anger,feeling of being disrespected and treated unfairly) against the doer and desire for retaliation

PEANUTS: drawings by Charles Schulz: 1989 United Features Syndicate, Inc. Reprinted by permission of UFS, Inc.

May it impede successful decision making, including settlement?

Valuation of competing options

FRAMING EFFECTS: RISK VS. CERTAINTY

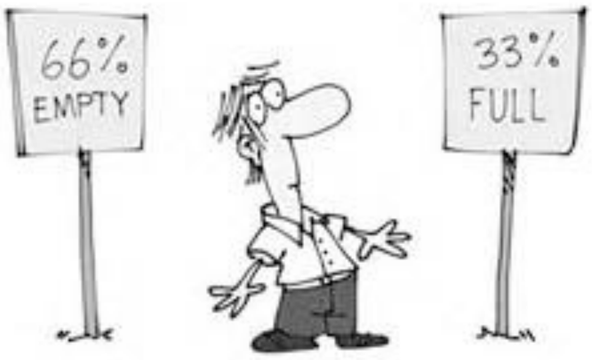

WHICH PLAN DO YOU PREFER?

PLAN A

1/3 chance of saving 600 lives and 2/3 of saving none

PLAN B

2/3 chance of losing all 600 lives and 1/3 of losing none


66%
EMPTY
33%
FULL

What is framing?

- People evaluate and choose between options not merely on the basis of these options tangible features, but also how they compare and how they are presented
- Preference for option framed as a *gain* over same option framed as a *loss*
  - Tversky, Kahneman (1986) paradigmatic experiments

Experiment: Tversky, Kahneman (1986)

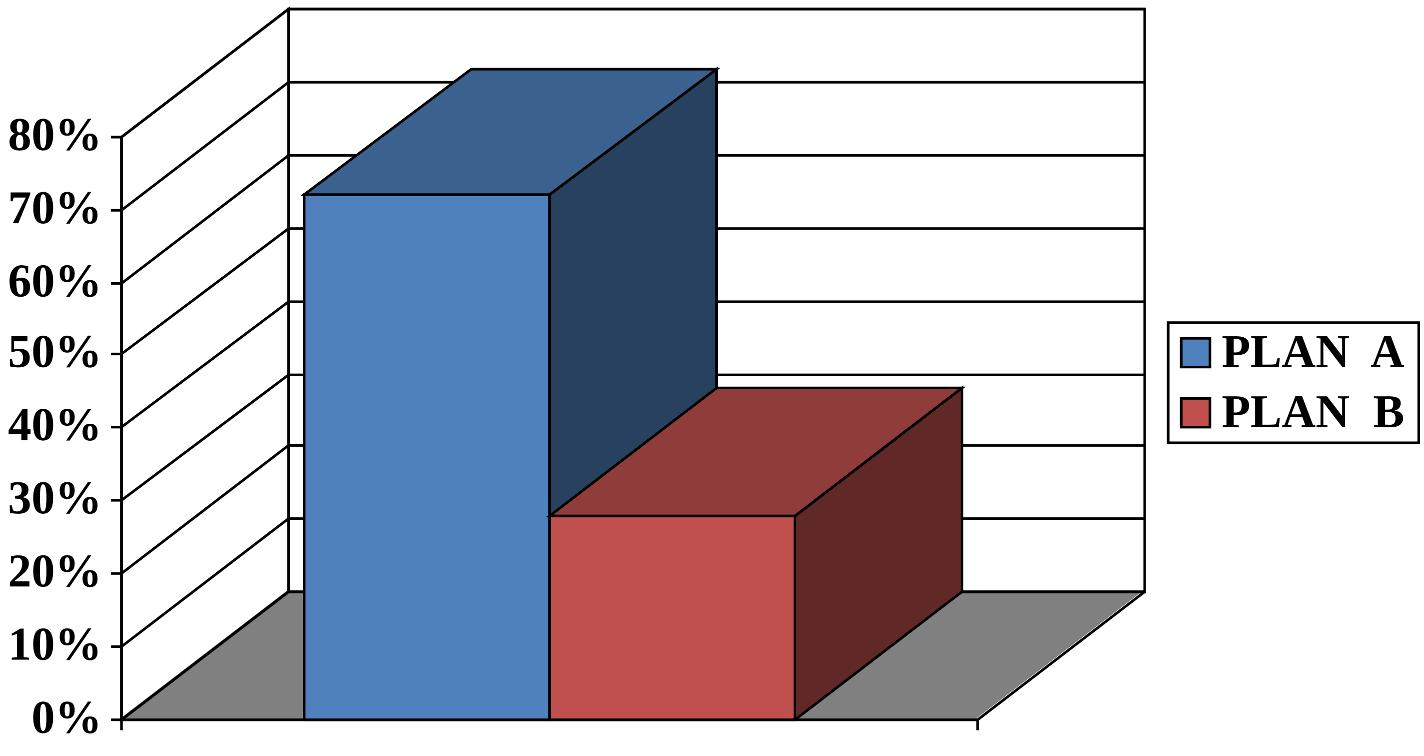
GROUP 1

PLAN A:

If adopted, 200 people will be SAVED

PLAN B:

If adopted, there is a 1/3 PROBABILITY that 600 people will be saved and a 2/3 probability that no one will be saved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PLAN A
PLAN B

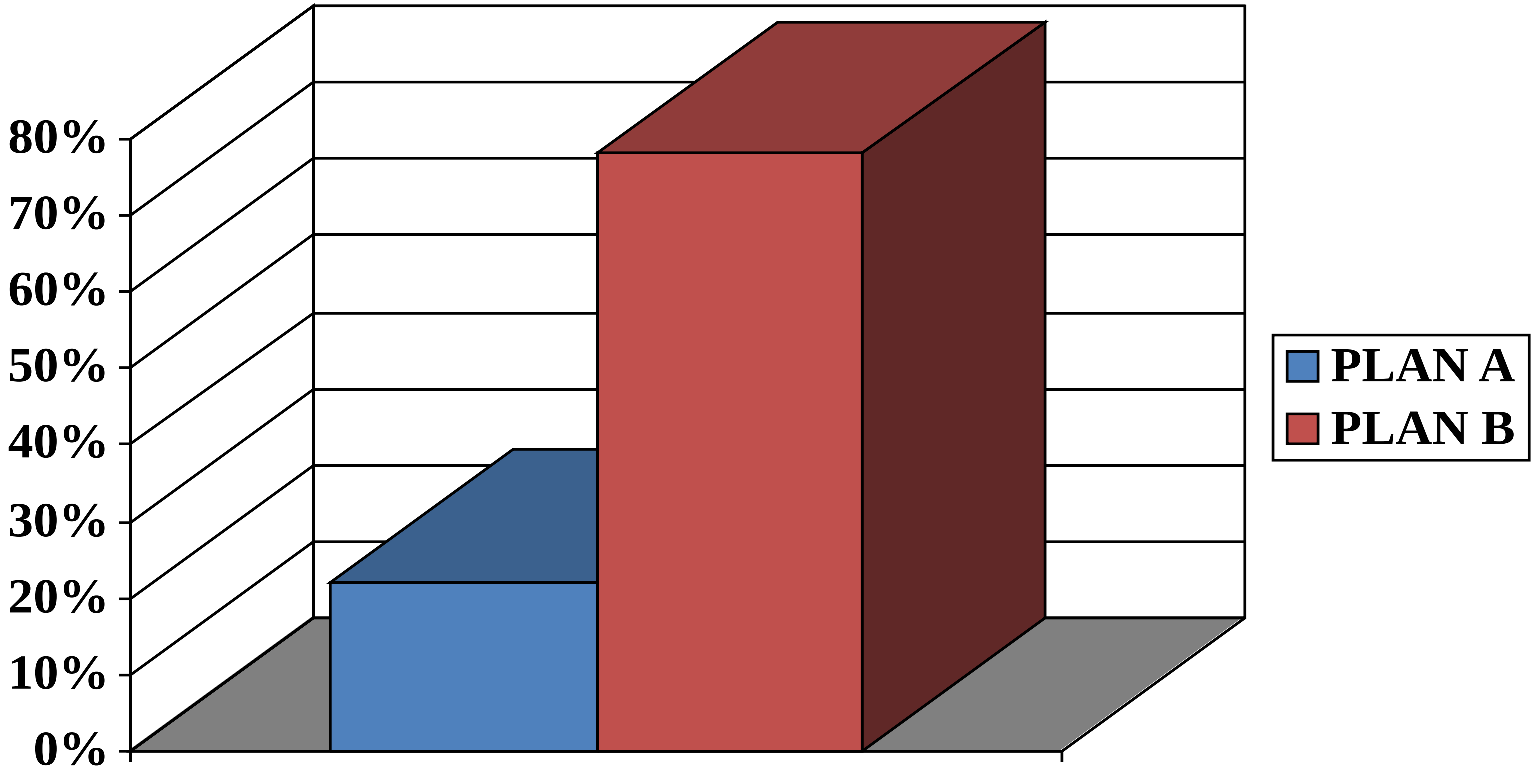
GROUP 2

PLAN A:

If adopted, 400 people will DIE

PLAN B:

If adopted, there is a 1/3 PROBABILITY that nobody will die and a 2/3 probability that 600 will die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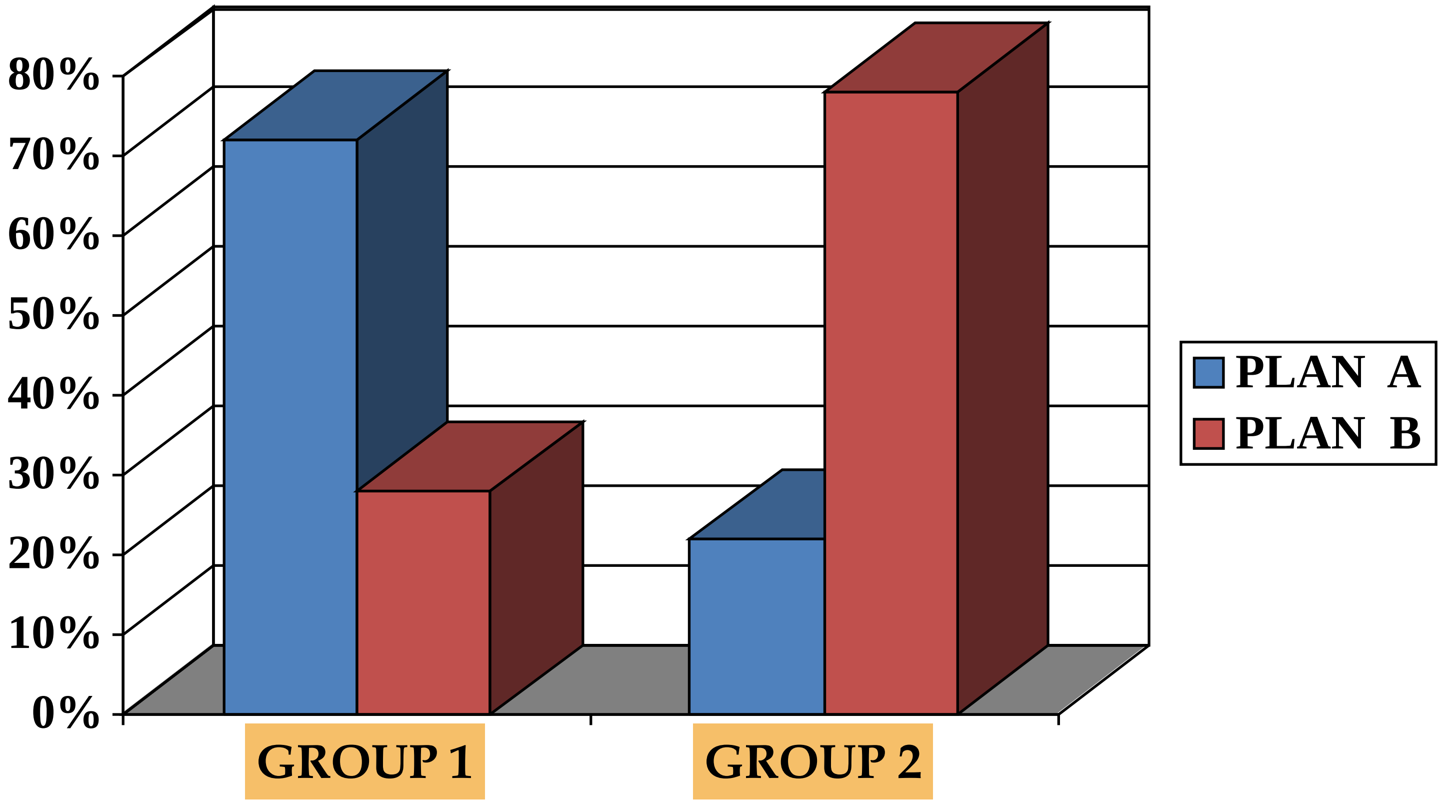
PLAN B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GROUP 1
GROUP 2
PLAN A
PLAN B

May it impede successful decision making, including settlement?

Valuation of competing options

LOSS AVERSION

I will flip a coin:

Head: you **lose 10**

Tail: you win **HOW MUCH?**

How much you need to accept to play?

Twice the potential loss

- Losses are weighted about 2 times as heavily as gains
- The amount required depends on:
  - Wealth level;
  - Stakes involved;
  - Whether the gamble is isolated or repeated;
  - Financial sophistication;
  - Framing.
- Nevertheless, for a one-shot coin flip with modest stakes such as yours, the empirically observed median answer is often in the range of:
  - **$18-25**, with **$20** being a good benchmark.

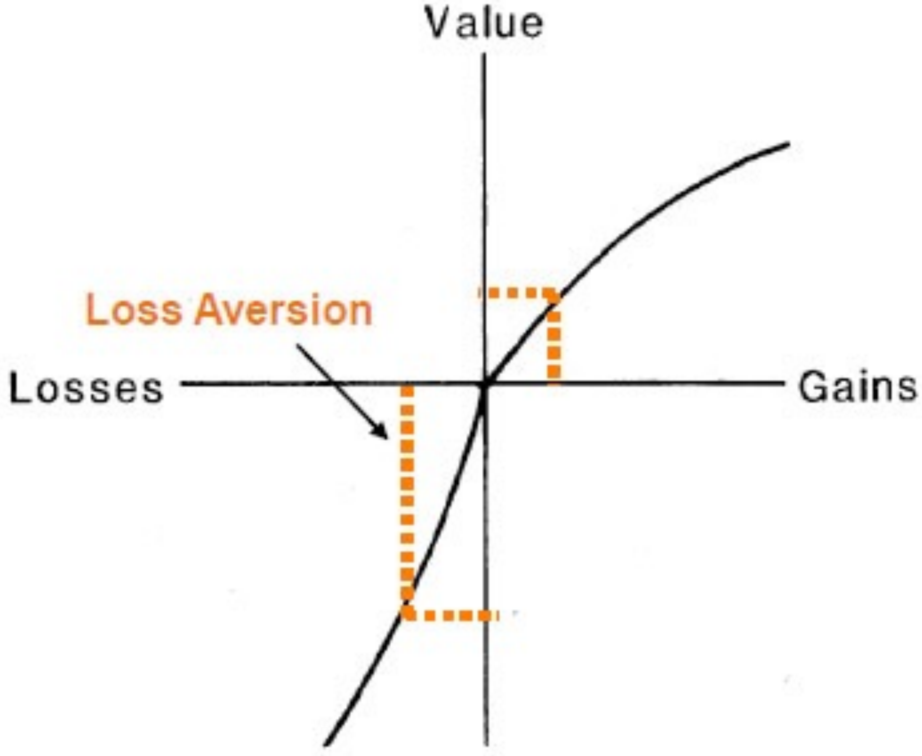
Illustrate the distinction between:

- **Expected value** (accept at $10+),
- **Expected utility** (accept at some amount above $10 depending on risk aversion),
- **Prospect theory** (many people require about $20 because losses are psychologically overweighted).

In business and corporate governance, the implication is important: managers, directors, investors, and regulators may systematically reject positive expected-value projects if the possibility of losses is particularly salient. Much of modern behavioral corporate law begins with that observation.

Prospect Theory

(Kahneman, Tversky, 1979)



Tversky, Kahneman (1986)
paradigmatic experiment n°2

A *certain* $240
preferred to
a 25 % *chance* of receiving $1,000

a 75 % *chance* of losing $1,000 preferred to
a *certain* loss of $750

Transactional work / decision making: In business and corporate governance, the implication is important: managers, directors, investors, and regulators may systematically reject positive expected-value projects if the possibility of losses is particularly salient

Settlement is a gain and going to court as a chance of increased gain → *preference for certain gain*

- vs

Settlement is a cost and going to court as a chance to off set the loss → *preference for an adjudicated solution*

Reference point

- how do we decide whether an outcome is **a gain or a loss?**
- *Is the reference point “10”, “20” or 30” (Oil pricing)*

May it impede successful decision making, including settlement?

Affect heuristics

REACTIVE DEVALUATION

What is reactive devaluation?

- Reactance theory
  - Limitations placed on an individual’s freedom triggers an affective reaction
  - When option becomes **un**available, it is viewed as more attractive
- Inversely: Reactive devaluation
  - A *offered concession* appears less desirable than it appeared before it was offered
  - <u>Reasons</u>
    - Implicit informational signals about the value of the offer to the proposer or to the recipient
      - Fear of private information triggering the concession
      - Aspiration (expectation of further devaluation)