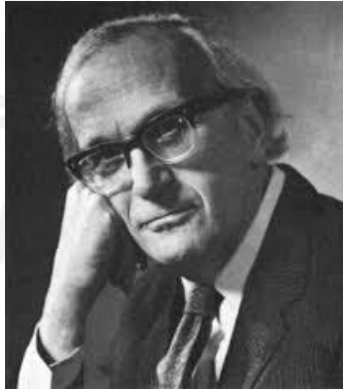


Experimental Jurisprudence?

The internal point of view in the lab



Herbert Lionel Adolphus Hart; * 18.07.1907; † 19.02.1992

Legal Philosophy vs. Social Science?

- status quo: Antagonism
 - Legal Philosophy: Normativism
 - Social Science: Empiricism
- Social Science „useless“, methods „questionable, indeed blinding“
- Somewhat modern (and surprising) view
 - Both abstract
 - Both (somewhat) culturally independent



Classical legal positivism

- No „metaphysical nonsense“
- Law as a sanction-based command
- Legal compliance
 - habitual obedience to a sovereign
 - Hierarchical relationship
- „Bad-Man“ Hypothesis



Internal Point of View

- Law distinct from power, habit and morality
- Law as a sozial norm
 - horizontal, shared standards
 - Criticism of others
 - acceptance of criticism
 - normative language
 - „puzzled and ignorant men“
- Primacy of Law as guidance, not as sanction



„descriptive sociology“?

- Methodological thesis: ordinary language philosophy
- Rule-Following thesis
 - “a practical attitude of acceptance” (Shapiro 2006)
 - “Point of View Internalised in the Brain of the Believers” (Pattaro 2005)
 - “wish or preference” (MacCormick 1981)
 - “psychological fact” (Hill 1990)
- Behaviorism



A descriptive interpretation

- Limits of the methodological thesis
 - Recourse to intuitions
 - No general legal theory
 - Internal understanding not necessarily correct
 - Internal point of view is not fixed
- Growing literature on non-deterrent legal regulation
- Contra Schauer 2015



Behavioral economics

- Lab experiments
 - High causal control
 - abstract
 - integratable
- Challenge to reductive legal theories
- Behavioral dispositions
- Prosocial vs selfinterested choices:
 - Example: public good game



cooperation

- Intermediate levels of cooperation
- Gradual decline
- “conditional cooperators”
- → so far only converging behavior / imitation



Sanctions

- Sanctions
 - Retribution
 - Symbolic / non-deterrent sanctions
- Communication
 - Problem-oriented
 - Combination with sanctions
- → enforcing independent moral norms?



(Second-Order) Expectations

- Expectations
 - Empirical: guilt aversion (mixed evidence)
 - Normative
- Social Norms
 - Krupka-Weber
 - framing
- Methodologically problematic – norms and expectations are hard to manipulate



Social-Norm-Followers

- Rule-Following Task
- Games against computers
- Social norms drive expectations
- Coordination given norm-heterogeneity
- Behavior influences norms
- Hard to explain with independent norm



Back to Hart

- Hart's agnosticism for the motivations
 - „mere wish to do as others do“
 - „long-term self-interest“; „traditional attitudes“
- Hart's silence on the legal dimension
 - How is law internalized
 - How does law interact with social norms?



legal institutions

- Centralizes (non-deterrent) sanctions
 - Ineffective alone
 - Coordination device
 - Voting
 - Sanctions fail if they can not communicate norms
- Empty obligations / authoritarian norms
- Signaling



X-Jur: Motivation

- Drawbacks of experimental economics
 - Neutrality: Law trades in meaningful concepts
 - Transparency
- Towards X-Jur
 - Keep choices
 - Relax some behavioral econ axioms
 - Add features of jurisprudential interest



Law and information search

- Can we find „puzzled and ignorant men“?
- How does law influence „puzzled and ignorant men“?



Design

Dilemma		
Option	Player	Receiver
A	60	10
B	50	50

50%		
Option	Player	Receiver
A	60	X
B	50	X

Option:
unveil X

50%

50%

Treatment:
„Even though you can make
any decision you want, you
are asked to choose A/B.“

Dilemma		
Option	Player	Receiver
A	60	10
B	50	50

Kein Dilemma		
Option	Player	Receiver
A	60	50
B	50	10



Hypotheses

1. Replication: hidden information leads to less prosociality
2. **Less information search when combined with authoritative norms**



Methods

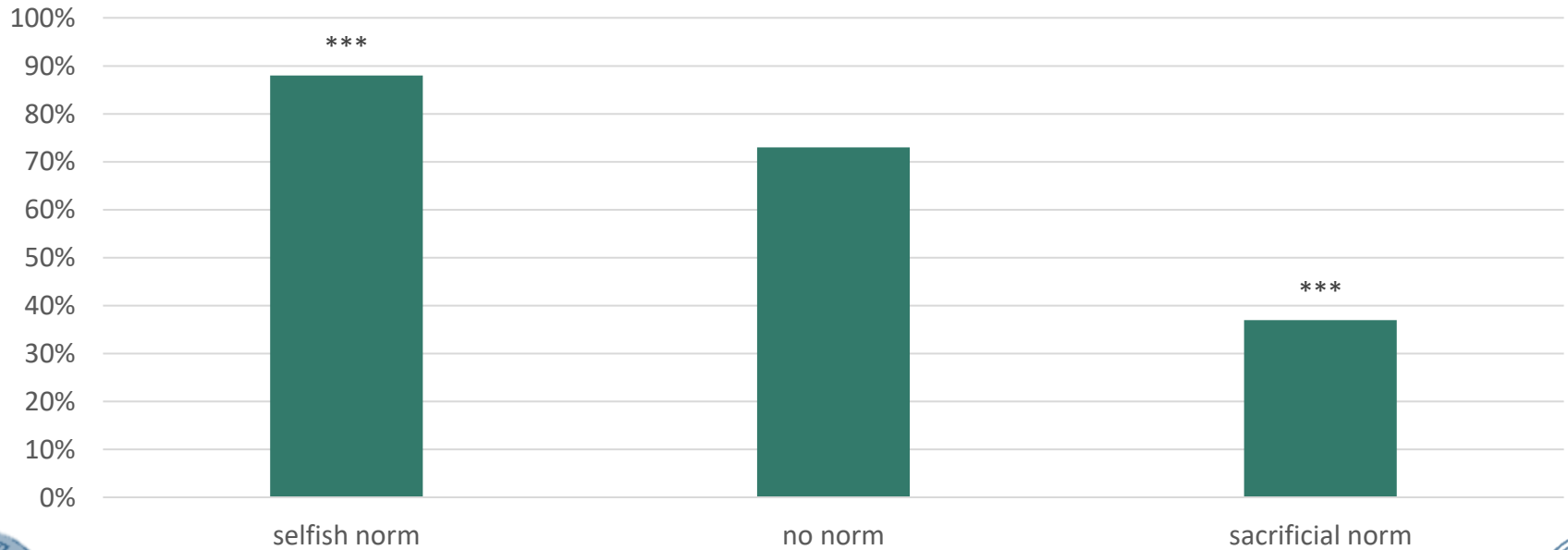
- Mturk

No Norm	258
Sacrificial Norm (B)	266
Selfish Norm (A)	260

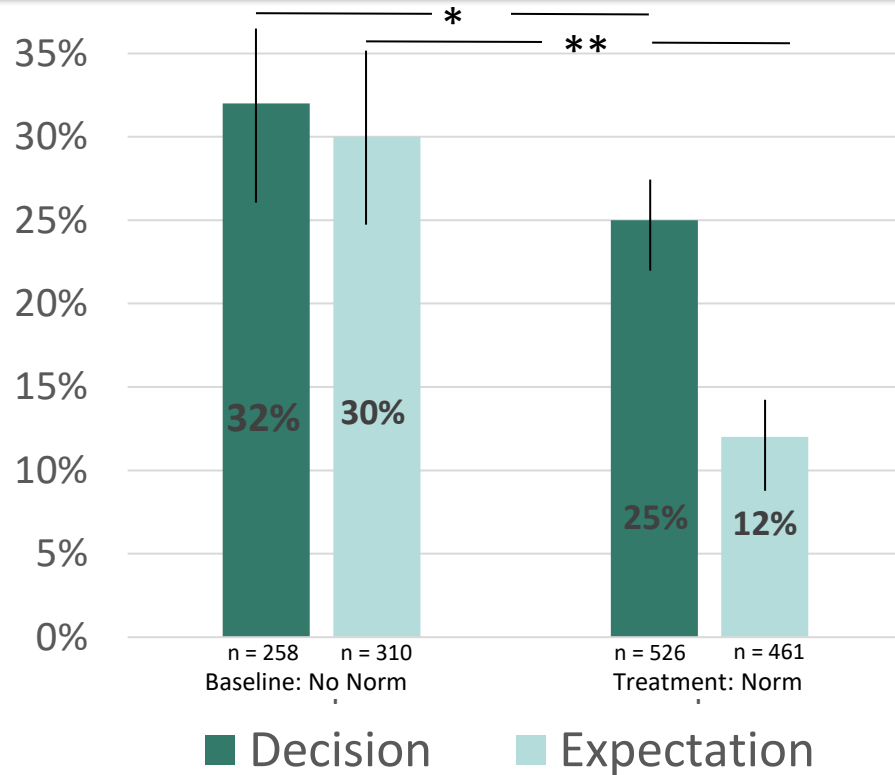


results

Selfish choices



results



* p < 0.05
** p < 0.01
*** p < 0.001



Reputational effects of law

- Framing
- Posner 2000:
 - Signaling theory
 - Legal authorities may frame specific actions as signals of a cooperative type.



Design: Stage 1 - Vignette

- “A small city is surrounded by a large green park through which many commuters travel daily. Biking through the park saves time on the way to work. Due to the hilly terrain and sharp turns, bikers in the park often reach speeds at which they endanger each other and pedestrians.”

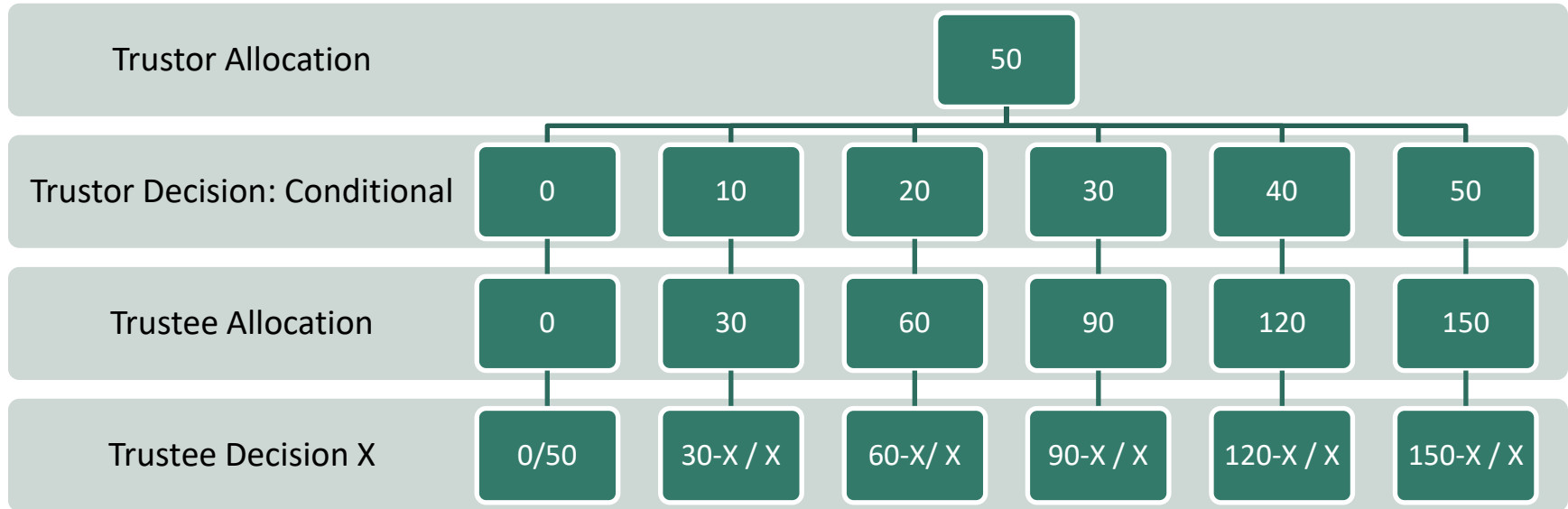


Design: Stage 1 - Vignette

- 4 scenarios: Park, Trash, Mail, Lawn
- 6 treatments: Baseline +
 - Law: For this reason, city council passed a law ...
 - NegN: ... is generally frowned upon and most citizens avoid it...
 - PosN: ... is generally accepted and most citizens do it...
- Willingness 5 point scale
- Personal and Social Norms (Krupka-Weber)



Design: Stage 2 – Trust game



Methods

- M-Turk

	Lawn	Mail	Park	Trash	N
Baseline	53	54	51	47	205
Law	55	58	46	51	210
NegN	48	51	49	46	194
PosN	48	38	53	51	190
LawNegN	44	49	60	49	202
LawPosN	49	53	44	58	204
N	297	303	303	302	1205

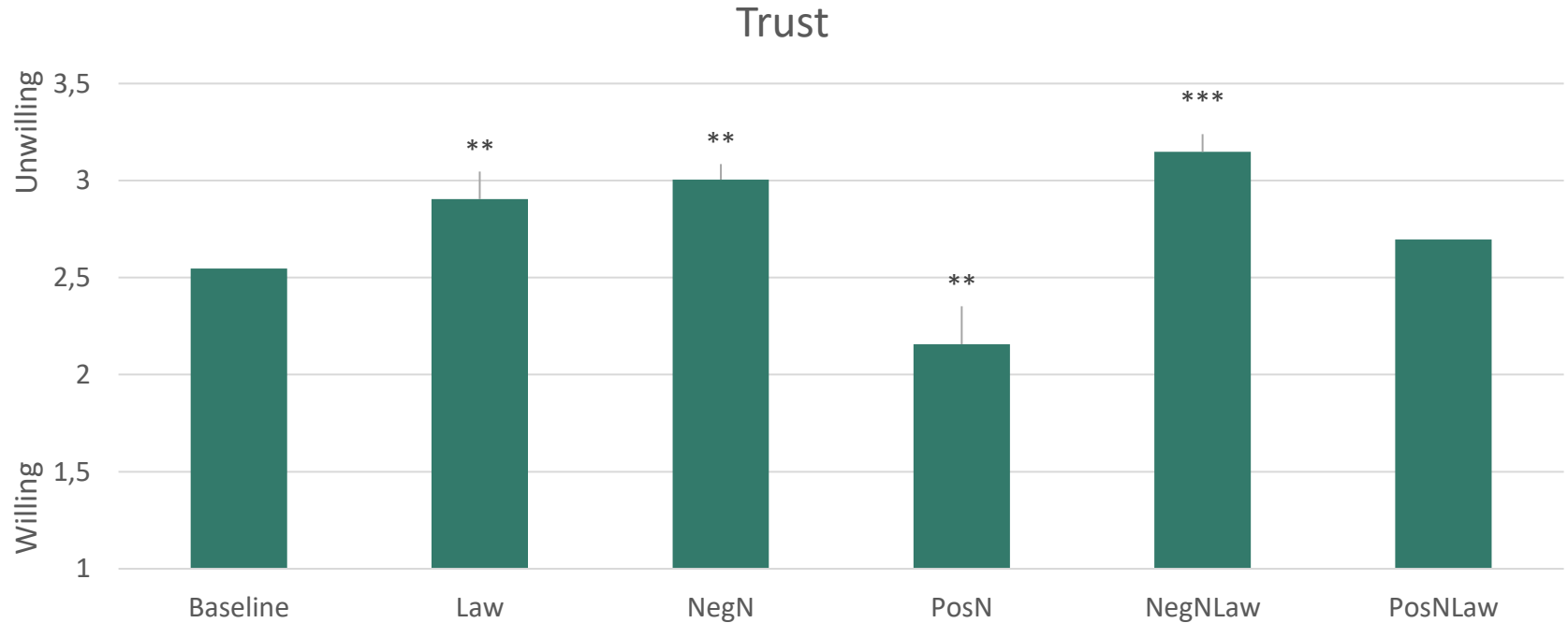


Hypotheses

- Willingness & Social Norms
 - NegN; Law; NegNLaw decrease (1)
 - PosN increases (2)
 - PosNLaw has no effect (2)
- Trust
 - Difference in Willingness leads to less trust (1)
 - Difference in Willingness is irrelevant in (2)



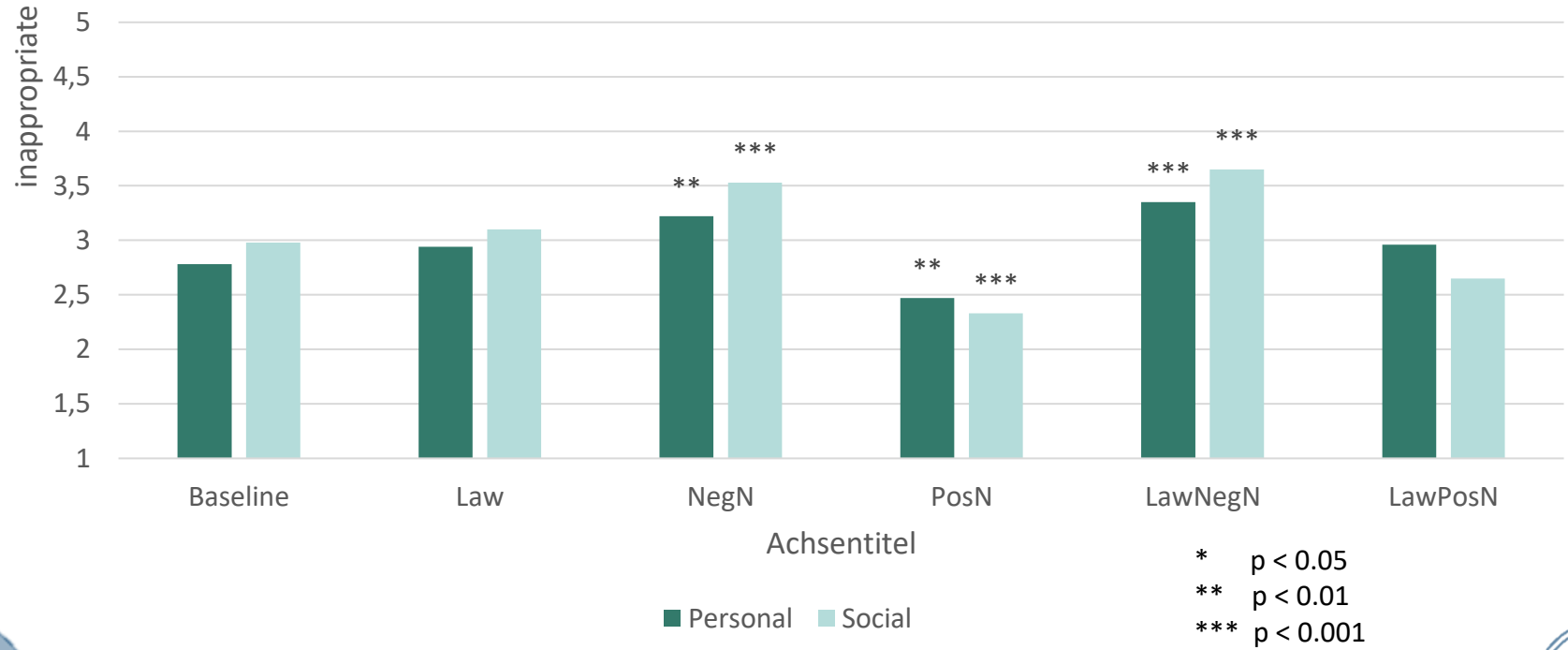
Willingness



* $p < 0.05$
** $p < 0.01$
*** $p < 0.001$

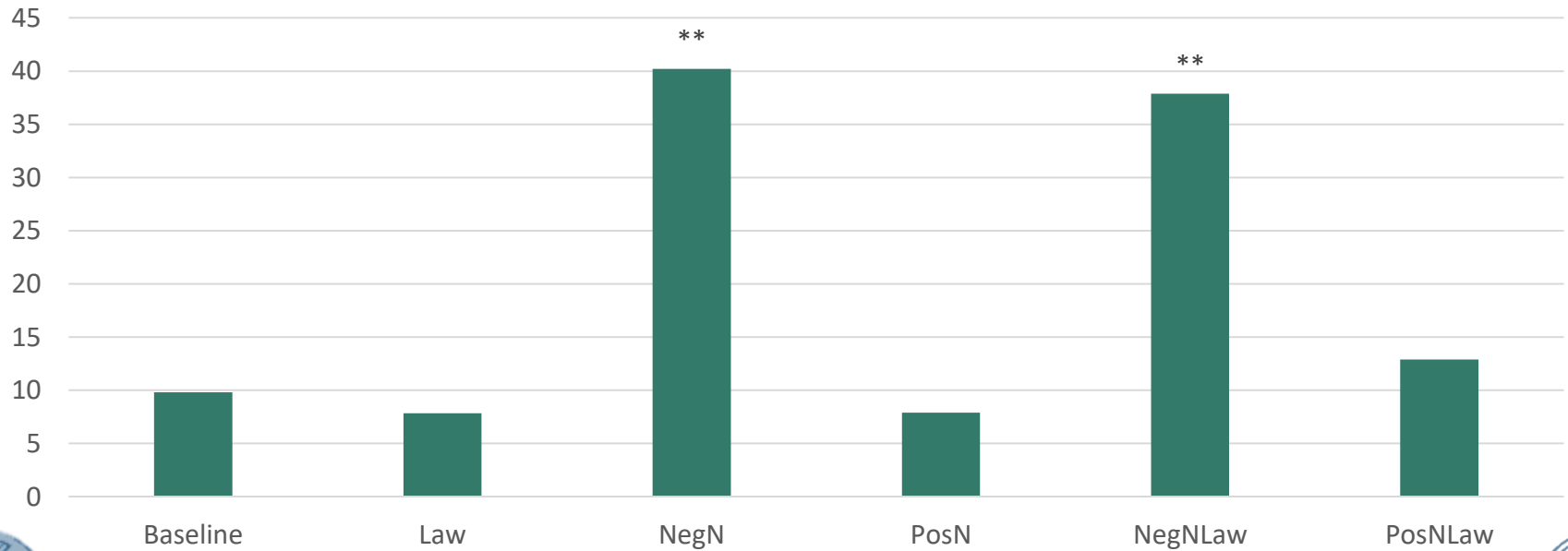


Personal & Social Norms



Trust

Difference Unwilling - Willing



Outlook

- Naturalism in legal philosophy
- Experimental jurisprudence
 - Institutionalism
 - Generalism
- Law from a guidance perspective

