

**Symposium: New and Critical Approaches to Law and Economics (Part I)**  
**Keynote**

**THREE EFFECTS OF SOCIAL NORMS ON LAW: EXPRESSION, DETERRENCE, AND  
INTERNALIZATION**

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The German sociologist Max Weber believed that modern state administration embodies instrumental rationality, defined as the pursuit of explicit ends through efficient means. [\[FN1\]](#) \*2 When we peer over the sheer wall of an enormous dam or look up at a battleship bristling with sailors, the power of state bureaucracy awes us much like it awed Weber. In contrast, another famous German writer, Franz Kafka, described state administration as a labyrinth where condemned citizens wander without hope of escape. [\[FN2\]](#) Kafka apparently believed that bureaucratic government embodies irrationality, defined as the pursuit of contradictory ends by inefficient means. When the state constructs unneeded dams to enrich cement manufacturers and dispatches battleships to perform tasks requiring a rowboat, the irrationality of state bureaucracy appalls us much like it appalled Kafka.

What determines whether state law is rational and efficient, or irrational and inefficient? State organizations suffer from agency problems that preclude effective motivation of people by formal means alone. Perhaps effective formal institutions depend on flourishing informal institutions. With these thoughts in mind, political scientists have examined civic culture, [\[FN3\]](#) economists have examined social capital, [\[FN4\]](#) and legal scholars have examined social norms. [\[FN5\]](#) At stake in research on informal institutions is a vision of the proper role of the state in modern society. With the collapse of communism and retreat of socialism, most people have lost faith in centralized planning as a method for making commodities. Centralized planning, however, is a way of making \*3 laws as well as commodities. Skepticism toward one should extend to the other. Research on norms might provide ideas needed to revitalize decentralized lawmaking.

To clarify this debate, I will distinguish three effects of social norms on law: expression, internalization, and deterrence. These three effects relate to three functions of a law: pronouncing the obligation, justifying it, and sanctioning wrongdoers. I analyze the powerful synergies created by aligning law with morality, which make social control effective.

I begin with some examples that I will use throughout the paper.

Example 1: divorce lawyers--Five lawyers in a town handle most divorces. Four of the lawyers typically induce their clients to settle out of court, whereas the fifth lawyer typically litigates. Most lawyers in the town shun the litigious lawyer. [\[FN6\]](#)

Who will make more money, the four "respectable" lawyers or the "disrespectable" lawyer? I will use Example 1 to illustrate the effect of non-legal sanctions on competition for income and prestige.

Example 2: hostile takeovers--Lawyers in established firms initially refuse to organize hostile takeovers. After one firm breaks ranks and organizes hostile takeovers, almost all law firms begin to organize hostile takeovers. [\[FN7\]](#)

When do social norms collapse? I will use Example 2 to illustrate instability in social norms.

Example 3: liability--The defendant's negligence caused a loss of \$100 to the plaintiff without harming anyone else. The court holds the defendant liable for \$100. Upon learning of the court's decision, citizens boycott the defendant's business and cause a loss of \$25.

Should the court have anticipated the social sanction and reduced the judgment to \$75? I will use Example 3 to discuss the effect of non-legal sanctions on legal sanctions.

Example 4: smoking--Smoking, which was common in an airport terminal, disappears after the authorities post signs prohibiting it. No police or other officials enforce the ban.

\*4 How can law change behavior without deterring anyone? I will use Example 4 to illustrate the expressive power of law.

Example 5: pooper-scooper--When authorities post signs requiring owners to clean up after their dogs, sidewalks become cleaner, although the mess from dogs does not disappear completely. No police or other officials enforce the obligation on dog owners.

I will use Example 5 to illustrate an imperfection in the expressive power of law to change behavior.

Example 6: tax compliance--Most citizens in a nation comply with income tax laws, even though the probability of prosecution for evasion is extremely low.

Why do Americans and Swiss pay income taxes more scrupulously than Belgians or French? I will use Example 6 to illustrate internalized social norms.

### I What Are Social Norms?

When constructing a new building in Rome, the builder confronts the detritus from centuries of human occupation. Similarly, when constructing a theory of norms, a scholar confronts the detritus from centuries of philosophical debate. Unlike philosophy, social science makes models and predictions. I approach social norms from the viewpoint of social science, so exact definitions are unimportant to this paper. I will, however, use some philosophical concepts to clarify my subject. An old tradition in Anglo-American jurisprudence, called the "imperative theory of law," asserts that a law is an obligation backed by a state sanction. [FN8] According to this tradition, the law consists of statements such as, "You ought not to drive over seventy miles per hour, or else you can be fined \$500," or "You ought to take reasonable care toward your neighbors, or else you will be liable for the harm that you cause them."

\*5 Following this tradition, a social norm is an obligation backed by a social sanction. By "obligation" I mean a statement about what people ought to do, such as pay taxes and clean up after their dogs. By a social sanction, I mean punishment imposed, not by state officials, but by ordinary people, such as shunning a litigious lawyer or refusing to deal with a law firm that organizes hostile takeovers.

In general, legal systems have primary rules that regulate the behavior of citizens and secondary rules that specify the process for making, amending, or extinguishing primary laws. To illustrate secondary rules, the U.S. Constitution specifies that a bill becomes law when it receives a majority vote in both houses of Congress and the signature of the President. Similarly, many private organizations have charters that specify how to make rules. To illustrate private secondary rules, the charter of a corporation may empower its board of directors to impose rules on employees, or the bylaws of a church may empower its deacons to impose rules on members. In contrast, the Americans with Disabilities Act (ADA) contains primary rules which specify how citizens must treat disabled people.

The least formal social norms, however, lack secondary rules. To demonstrate, no definite process exists to create, amend, or extinguish a rule of etiquette or a principle of morality. The least formal social norms are the polar opposite of state laws, which are the most formal norms. In order to draw the sharpest contrast between law and social norms, I will focus on the least formal social norms. The sharp contrast between formal state law and informal social norms helps to explain the relative advantages and disadvantages of law and morality as a means of social control.

When no definite process exists to create a norm, people often disagree about a norm's existence, especially in times of social change. For example, are Americans still obligated to hold the fork in the right hand when eating, or is the European practice of holding the fork in the left hand now acceptable in America? The controversy over what norms exist, however, is mild compared to the controversy over what norms ought to exist. This paper is not about what norms exist or ought to exist. The controversy in this paper concerns, not our obligations, but their consequences. Instead of engaging in controversy over what \*6 people ought to do, I focus on how beliefs about what people ought to do effect what they actually do.

## II Demand, Supply, and Equilibrium

Before turning to the three effects of social norms on law, I must first explain how to analyze social norms in terms of demand, supply, and equilibrium. [FN9] Obeying a norm often costs something in terms of money, time, effort, unpleasantness, or risk. To illustrate, complying with tax law costs money, cleaning up after a dog is unpleasant, shunning someone can be risky, and forbearing from smoking may require effort. A person who has internalized a norm is willing to sacrifice something to obey it. The vertical axis in Figure 1 represents the amount a person is willing to pay to obey a social norm, and the horizontal axis represents the proportion of citizens willing to pay the price. According to the graph, a small number of people are willing to pay a lot and a large number of people are willing to pay a little. Roughly 80% of the citizens will pay something to obey the norm, whereas roughly 20% will pay nothing.

Figure 1: Willingness to Pay  
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\*7 In economics, a person who is willing to pay to consume a good has a "taste" for the good. Similarly, a person who internalizes a social norm has a "taste" for obeying the norm. This language, which misleads some people and offends others, prompts many useful insights by connecting social norms to demand curves. Figure 1 indicates that roughly 80% of the population has a taste for obeying the norm. To illustrate concretely, 80% of the population may be willing to endure some unpleasantness to clean up after their dogs. These people presumably believe that they ought to clean up after their dogs and this belief provides sufficient reason to pay a price for doing so.

Besides consumers, merchants buy goods for resale and manufacturers buy goods for use in production. Unlike consumers, merchants and manufacturers need not have a taste for the goods they buy. While consumption is intrinsically valuable, resale and production are instrumentally valuable. Consequently, the purchase of goods for consumption is called "final demand," and the purchase of goods for resale or use in production is called "derived demand." Figure 1 depicts a situation where most people intrinsically value obeying a norm, whereas 20% of the people place no intrinsic value on obeying a norm. The 20% only obey the norm in so far as doing so has instrumental value, which depends on the resulting advantages and disadvantages such as avoiding censure or attracting preferential treatment. To illustrate concretely, 20% of the population may be unwilling to endure unpleasantness to clean up after their dogs unless they gain an offsetting advantage. Later I will represent instrumental value on a graph.

Unlike the norm depicted in Figure 1, the only value that most people place on obeying some norms is instrumental. For example, most lawyers view participating or not participating in hostile takeovers as purely instrumental. In so far as participating makes more money for them, they will participate. Conversely, they will not participate if it loses money for them because established firms refuse to deal with them. To represent people who place little intrinsic value on the norm, the willingness-to-pay curve in Figure 1 would have to shift down.

Having graphed the price that citizens are willing to pay to obey a norm, now I turn to the cost that they actually have to pay. Obeying a norm often imposes direct costs in money, foregone opportunity, inconvenience, or effort. In addition, obeying \*8 a norm often has instrumental value, such as obtaining praise, esteem, promotion, and preferential dealings. Obeying a norm also conveys the benefit of avoiding a social sanction. To demonstrate, a person who cleans up after his dog may have to endure unpleasantness, but may also avoid censure.

The net cost of obeying a norm equals the direct costs minus the instrumental benefit. Figure 2 depicts the net cost of obeying a norm as a function of the proportion of people who obey it. In general, net costs can increase or decrease with the number of people who obey the norm. Figure 2, however, depicts the specific case where costs decrease with the number of people who obey the norm. Costs can decrease because of indivisibilities in capital and network effects, which are the usual causes of increasing returns to scale in production. [FN10] For social norms, however, costs of obeying a norm can also decrease for a sociological reason. People are notoriously susceptible to group pressures, which are variously described as conformity, herd effects, or social solidarity. Group pressures often lower the relative cost of popular acts. To illustrate, as fewer people smoke in airports, non-smokers may

become more aggressive toward smokers, so the relative cost of forbearing from smoking decreases. Similarly, as fewer lawyers participate in hostile takeovers, those who do presumably suffer more from boycotts by established firms. The expected cost curve slopes down where the costs borne by each actor who obeys the norm decrease as more actors obey the norm. Figure 2 illustrates this point.

\*9 Figure 2: Net Cost

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I want to combine the two curves in Figures 1 and 2. To reduce the number of graphs, I have drawn shapes for the curves in Figure 3 that capture the most interesting possibilities. Where the two curves intersect, the cost of doing the civic act equals the price people are willing to pay, so the system is in equilibrium. Intersections of the curves cause equilibria in Figure 3 at roughly 20% and 50%. Later I explain the "corner" equilibrium at 0% where the curves do not intersect.

Figure 3: Equilibria

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\*10 Now, consider the direction of movement when the system is out of equilibrium. If the willingness-to-pay curve is above the expected cost curve, more people are willing to do the act than required to sustain the current cost of doing it, so the cost is decreasing. To illustrate, in the interval between 20% and 50%, the cost is decreasing as indicated by the arrow in Figure 3. Conversely, where the cost curve is above the willingness-to-pay curve, fewer people are willing to do the act than are required to sustain the current cost of doing it, so the cost is increasing. For example, in the interval between 50% and 100%, the cost is increasing as indicated by the arrow. Similarly, in the interval between 0% and 20%, the cost is increasing as indicated by the arrow.

As indicated by the arrows in Figure 3, starting from any point below 20%, the system tends to move to 0%, and starting from any point above 20%, the system tends to move to 50%. Thus, 0% and 50% are the stable equilibria of the system depicted in Figure 3.

### III Expression And Cheap Talk

Having built the analytical foundation, now I turn to the three effects of social norms on law, beginning with the expressive effect. What determines whether the system depicted in Figure 3 settles into the equilibrium at 0% or 50%? If everyone believes that less than 20% of the citizens will obey the norm, then their belief will prove correct and the system will converge to the equilibrium at 0%. Conversely, if everyone believes that more than 20% of the citizens will obey the norm, then their belief will prove correct and the system will converge to the equilibrium at 50%. Thus, the system has characteristics of a self-fulfilling prophecy.

Given this fact, the law, by influencing people's beliefs about what others will do, might play a crucial role in determining the outcome. For example, assume the state wants citizens to obey the social norm. If the state is careful about its pronouncements, so that most citizens believe them, then the state might cause the system to converge to the equilibrium at 50% merely by making the appropriate pronouncement.

Berkeley's dog ordinance illustrates how states, through lawmaking, can influence norms. After the Berkeley town council \*11 enacted an ordinance requiring owners to clean up after their dogs the sidewalks became much cleaner, even though officials never issued citations for breaking the law. The law apparently tipped the balance in favor of informal enforcement. Citizens became more aggressive about complaining to inconsiderate dog owners, and, anticipating this fact, dog owners became more considerate. In terms of Figure 3, enacting the ordinance caused a jump in obedience to the norm from 0% to 50% or more.

Similarly, when signs prohibiting smoking were posted in American airports, compliance with the rule became almost perfect even though officials apparently never enforced it. Proclaiming the rule tipped the balance in favor of informal enforcement by citizens. In other countries, such as France, however, prohibitions against smoking are

often flouted, much like Americans flouted the prohibition on consumption of alcohol in the 1930s. The difference between France and the United States presumably results from different levels of internalization of the social norm restricting smoking.

In general, social interactions can have multiple equilibria whenever the net cost of obeying a norm decreases with the number of obedient people. A credible state can influence the choice of multiple equilibria among citizens by pronouncing the law. The expressive power of the law derives from pre-existing multiple equilibria in the underlying system of social interactions. These ideas, which I have developed elsewhere, [FN11] could revive older theories of expressive law by providing them with an analytical basis. [FN12]

Next I consider how pronouncements by state officials influence citizens. To predict the success or failure of pronouncements, a theory of expressive law needs the concept of "cheap \*12 talk." [FN13] The distinction between cheap and expensive talk, which has not yet worked its way into the economic analysis of law, turns on the difference between incentives and expectations. Expensive talk, such as contracting, disclosing, or distorting, changes the schedule of payoffs attached to different actions. To illustrate, breach of contract triggers damages, inaccurate disclosure risks liability, and extortion provokes criminal punishment.

Cheap talk, in contrast, does not change the schedule of payoffs. Instead, under certain circumstances, cheap talk changes expectations. How can cheap talk change expectations without changing the schedule of payoffs? If it is in my best interest to reveal my true plans to you, then you have reason to believe my pronouncements about my plans. Under these circumstances, you should believe what I say, even though my saying it does not affect my legal liabilities or otherwise change my schedule of payoffs. Stated more formally, cheap talk is credible under the following condition: For all  $x$ , if I plan to do  $x$ , then I want you to believe that I will do  $x$ . [FN14]

For instance, assume that I want to meet you in New York City. If I plan to go to the Empire State Building, then I want you to believe that I plan to go there, and I do not want you to believe that I plan to go to Grand Central Station. Conversely, if I plan to go Grand Central Station, then I want you to believe that I plan to go there, and I do not want you to believe that I plan to go to the Empire State Building. Since I want you to believe that I will do what I plan to do, my talk with you about my plans is credible.

Figure 4 depicts abstractly the payoffs in a game where cheap talk is credible. I form a plan to do  $x$  or  $y$ , and you form a belief about what I plan to do. The cells "+" or "-" indicate my payoffs. As reflected by the figure, my payoff is positive when your belief about my plan is correct, and my payoff is negative when your belief about my plan is incorrect. In Figure 4, I want you to know my true plans because my payoff increases when we coordinate our behavior, and my payoff decreases when we fail to coordinate.

**\*13** Figure 4: Credible Cheap Talk

	your belief about what I plan to do	
my plan	x	y
x	+	-
y	-	+

The conditions for credible cheap talk apply to everyone, including government officials. If government officials plan to do something, and the payoff to officials is highest when citizens have correct beliefs about official plans, then the official pronouncement is credible. A good political leader uses cheap talk to change the behavior of citizens. To demonstrate via Figure 3, assume the leader announces plans to increase dramatically the percentage of

citizens who obey the social norm. If at least 20% of the citizens believe that the leader has such a plan that will succeed, then they will begin to obey the norm, which will cause 30% more of the citizens to follow their example, and the system will ascend to the equilibrium where 50% do their duty. The success of the leader's plan will increase his credibility among citizens.

Like this leader, officials in an effective state announce plans that will work and avoid announcing plans that will fail. For example, officials should wait to announce that they plan to eliminate smoking in airports until social conditions are right for the plan to succeed.

Conversely, if politicians manipulate people by announcing unrealistic plans, citizens will believe that the officials are really planning something else. Rearranging the payoffs in Figure 4 can change the coordination game into a game of perfect deceit, where I always want you to believe the opposite from my true plans. [FN15] Or, rearranging the payoffs can produce a game of imperfect deceit, where I sometimes want you to believe the opposite\*14 from my true plans. [FN16] In either of these cases, cheap talk is ineffective.

Compared to cheap talk, expensive talk is formal, legalistic, and clumsy. Consequently, expensive talk has higher transaction costs than cheap talk. The state that creates incentives for effective cheap talk between officials and citizens saves transaction costs. Effective cheap talk uses law expressively. In general, the expressive function of law works best when state officials enjoy credibility.

Credible talk complements the ideal of public reason as elucidated by John Rawls in Political Liberalism. [FN17] The ideal of public reason concerns the conditions of political discourse in a liberal democracy. In a liberal democracy, officials ideally give the true reasons for public policies. Candor promotes public debate and makes democratic deliberation meaningful. If the incentives of officials have the form depicted in Figure 4, then officials have reason to disclose the truth and citizens have reason to believe what officials say. Thus, arranging incentives of officials to make cheap talk credible promotes the ideal of public reason.

Economists have devoted much effort to designing "incentive compatible mechanisms" for the supply of public goods. [FN18] To my knowledge, however, no research focuses on mechanisms to induce public officials to disclose their true plans. [FN19] The theory of cheap talk provides the foundation for designing mechanisms to induce public officials to disclose their true plans. Such mechanisms would create incentives for officials whose form corresponds to Figure 4. Although I have no such mechanisms to \*15 offer in this paper, I will discuss later the relationship between credible talk and the branches of government.

## V Deterrence

Having discussed expression, I turn to the deterrence of wrongdoing. As already discussed, the imperative theory defines a law as an obligation backed by a sanction. [FN20] When law aligns with social norms, the law can use state sanctions to supplement social sanctions. For example, fines can supplement the shame associated with being a tax cheater. Supplementing the social sanction with a legal sanction increases the total sanction. An increase in the total sanction from disobeying a norm is equivalent to a decrease in the relative cost of obeying the norm. In terms of the net cost curve in Figure 2, a sanction decreases the net cost of obeying a norm. Assume that state law attaches a legal sanction to supplement a social norm's non-legal sanction. To depict this change graphically, Figure 5 shows a downward shift in the net cost curve.

Figure 5: Deterrence--More Severe Sanction for Disobedience, or Lower Net Cost of Obedience

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\*16 This change has two consequences. First, the tipping point at 20% moves down approximately to 15%, so the system can tip more easily from low to high obedience of the norm. Specifically, if obedience is initially at 0%, then obedience must increase to 15% to jump to a high level of obedience. Before the imposition of the legal sanction, obedience had to increase to 20% to jump to a high level of obedience. Thus, the legal sanction makes legal

expression more likely to cause a jump in behavior.

Second, the stable equilibrium at 50% moves up to approximately 65%, which has two possible consequences. If the system is initially at the equilibrium at 50%, the shift in the cost curve causes the system to move to the new equilibrium at 65%. This is a relatively small change in behavior. In sum, adding state sanctions to social sanctions has one of two possible effects on the targeted behavior: either a small change for certain or a higher probability of a large jump.

Combining state sanctions and social sanctions raises questions about their interaction. Recall the facts in Example 3, where defendant's negligence caused a loss of \$100 to the plaintiff without harming anyone else, and a court decision holding the defendant liable will provoke a citizens' boycott that costs the defendant \$25. While the defendant loses \$25, I assume that the increase in trade to his competitors causes them to gain \$25. Should the court award damages of \$100, or should the court anticipate the social sanction and reduce the judgment to \$75? I will briefly sketch the answer given in a work in progress with Ariel Porat. [\[FN21\]](#)

The goal of deterrence typically requires the injurer to internalize the harm that he caused. In this example, the injurer caused harm of \$100. In the absence of a social sanction, a judgment of \$100 forces the injurer to internalize the harm that he caused. In the presence of a social sanction of \$25 and a legal judgment of \$100, however, the injurer will internalize more than the social cost of the harm that he caused. To internalize exactly the social cost of the harm that he caused, the injurer who faced a social sanction of \$25 should pay a legal judgment of \$75.

The critical assumption for this result is that the defendant's loss of \$25 from the boycott causes an increase in trade of \$25 to his competitors. In other words, the social sanction transfers value. Alternatively, the social sanction might destroy value. For example, the boycott might cause the injurer to lose \$25 without increasing trade for his competitors. Under this assumption, the injurer causes \$100 of harm to others and \$25 to himself, for a total social cost of \$125. To internalize exactly the social cost of the harm that he caused, the injurer who pays a social sanction of \$25 should pay damages of \$100. In general, efficient deterrence requires damages equal to the harm the injurer causes to others minus any value transferred by a social sanction from the injurer to others.

## VI Internalization

So far I have discussed the expressive and deterrence effects of social norms on law. Now I turn to internalization.

To begin, assume that law causes internalization and consider its effects. Whereas deterrence shifts the cost curve, internalization shifts the willingness-to-pay curve. To depict this change graphically, Figure 6 shows an upward shift in willingness to pay to obey the norm. As a consequence of this shift, the tipping point at 20% moves down to approximately 15%. Thus, the system will converge to 0% from any point below 15%. Similarly, when the stable equilibrium at 50% moves up to approximately 65%, the system will converge to 65% from any point above 15%.

Figure 6: Internalization

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\*18 Notice that I chose numbers in Figure 6 so that more internalization has the identical effects as lower net costs in Figure 5. If the system is initially at the equilibrium at 50%, the change in individual values causes the system to move to 65%, which is a small change. Alternatively, if the system is initially at the equilibrium at 0%, then the system requires a shock of 15% to trigger a large jump in behavior that converges to the equilibrium at 65%. As with deterrence, internalization of values has one of two possible effects on the targeted behavior: either a small change for certain or a higher probability of a large jump.

I have explained that economics can comprehend the internalization of values by assuming a "taste" for obeying social norms. Postulating different tastes among people, however, accomplishes little in the absence of an explanation of why some people have such tastes and others do not. Economic theory is only beginning a sustained inquiry into the question, "Where do preferences come from?" [\[FN22\]](#) I will briefly sketch an answer to this

question as applied to social norms, which I have developed elsewhere at greater length. [FN23]

Business, politics, love, and war cause people to form relationships \*19 with each other. These relationships create both opportunities for mutual benefit from cooperation and opportunities for people to exploit each other. People, consequently, care about their partners' trustworthiness. People have more trust in a morally committed person, who will sacrifice to do the right thing. [FN24]

I have explained why people often prefer partners who have internalized morality. To act on this preference, people must observe the moral commitments of others. The moral commitments of strangers are opaque, but, as people get to know each other better, their moral commitments become translucent. Given that moral commitments are translucent and people care about the moral commitments of their partners, moral commitments affect opportunities. To illustrate, if employers have some insight into the traits of employees, and if most employers prefer honest employees, then, on average, an honest person will enjoy more employment opportunities than a dishonest person.

The dependence of opportunities on preferences gives a person an incentive to change his preferences. To illustrate, if a dishonest youth wants more opportunities for employment, he might become honest. My theory predicts that people will tend to make moral commitments when doing so causes a sufficiently large increase in their opportunities. How large is "sufficiently large?" I have tried to answer this question elsewhere by focusing on changes that leave the decision-maker better off with respect to his original preferences and his final preferences ("Pareto self-improvement"). [FN25] For purposes of this paper, however, I focus on the consequences of these general ideas for law.

If people tend to make moral commitments to increase their opportunities, then the state has only limited power to cause citizens to internalize values. To induce people to internalize values, the state must reward citizens for having civic virtue. For this purpose, officials bestow honors, awards, and praise, as well as their opposites (dishonor, punishments, and condemnations). To reward people for having civic virtue, however, the state must \*20 infer character from behavior. Inferring character from behavior requires intimate knowledge of the person. Since officials in large states are remote from most citizens, the character of each citizen is relatively opaque to state officials. Consequently, officials lack the information needed to reward people for acquiring civic virtue.

Compared to the state, people in intimate relationships with each other are relatively good at inferring character from behavior. Consequently, the primary influences on character are intimate relationships such as families, friends, and colleagues. Given these facts, the state will have limited success instilling civic virtue in citizens. Instead, the state should prompt family, friends, and colleagues to instill civic virtue in each other. In so far as family, friends, and colleagues prefer relationships with civic-minded people, individuals have an incentive to cultivate civic virtue. The primary way to prompt people to instill civic virtue in each other is by aligning law with morality. When law aligns with morality, individuals who cultivate morality necessarily acquire civic virtue. Consequently, the law enlists the force of internalized morality to achieve the ends of the state.

## VII Interaction Effects

Having distinguished expression, deterrence, and internalization, I will briefly explain how they interact when promulgating a law. Promulgating a law often involves proclaiming a new obligation, describing the sanction attached to its violation, and providing reasons for enacting it. The first row of Table 1 lists these three parts of a law. These parts relate especially (but not uniquely) to the three effects of social norms on law that I explained. Proclaiming a legal obligation gives people instructions on what to do, which principally promotes the coordination of behavior. Attaching a sanction to an obligation specially deters its violation. Explaining the law ideally convinces citizens to follow it. In brief, the three aspects of promulgating a law chiefly aim at expression, deterrence, and internalization, as indicated in the second row of Table 1.

\*21 Table 1: Consequences of a Law's Promulgation



Law's parts obligation sanction explanation

Law's consequences expression deterrence internalization

Laws that have all three parts potentially have all three consequences. To illustrate, consider promulgating a law prohibiting a particular pollutant. The new law's pronouncement may make polluters expect that others will abate. If more abatement increases the social pressure on polluters, then the change in expectations might cause a jump to a new equilibrium (expressive effect). In addition, when the state attaches a sanction to polluting, some polluters will abate to avoid the sanction (deterrence effect). Finally, the legal explanation for this new obligation may convince some people to change their values and prefer to abate (internalization effect).

### Conclusion

Law and social norms have complementary strengths as means of social control. First, informal social norms are vague, general principles. To illustrate, social norms are imprecise about the obligations that smokers owe to non-smokers or the appropriate sanction for a tax cheater. The promulgation of a law often transforms a vague principle with an imprecise sanction into an explicit obligation with a definite sanction. Second, citizens use all available information, including gossip and rumor, when applying informal social sanctions, whereas officials apply sanctions after a trial or hearing that follows prescribed rules of evidence. Third, compared to social norms, law can impose heavier punishments, whose application involves more risk to the enforcer. To illustrate, many people will complain about someone lighting a cigarette in an airport, but few citizens will intervene to prevent an armed robbery. Similarly, the law prohibits private citizens from imprisoning robbers.

Which is better, a vague formulation of an obligation and sanction combined with a subjective determination of wrongdoing and enforcement by public citizens, or an authoritative formulation of an obligation and sanction combined with an objective determination of wrongdoing and enforcement by professionals? Social norms have the advantages of flexibility and low transaction costs, whereas law has the advantage of precision and the \*22 disadvantage of high transaction costs. When social norms fail to control harmful behavior, law should supplement them. I call this approach the "normative failures" theory of law, [FN26] which resembles the market failures theory of regulation. When norms fail on their own, the best system of social control often supplements norms with law. Social norms influence the response of citizens to law through expression, deterrence, and internalization. A better understanding of these effects, including the empirical estimation of their strength in practical situations, can improve social control by overcoming potentially crippling agency problems in the modern state.

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[FN1]. Weber writes:

The decisive reason for the advance of bureaucratic organization has always been its purely technical superiority over any other form of organization. The fully developed bureaucratic mechanism compares with other organizations exactly as does the machine with the non-mechanical modes of production. From Max Weber: *Essays in Sociology*, 214 (H.H. Gerth & C. Wright Mills ed. & trans., Galaxy Books 1958) (1946).

Weber describes how a perfect bureaucracy operates:

Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs--these are raised to the optimum point in the strictly bureaucratic administration....

....

Bureaucratization offers above all the optimum possibility for carrying through the principle of specializing administrative functions according to purely objective considerations.

Id. at 214-15. The introduction to this paper draws on Robert D. Cooter, *The Strategic Constitution* (2000).

[FN2]. Kafka writes: "We [state officials] are humble subordinates who can scarcely find our way through a legal document and have nothing to do with your case except to stand guard over you for ten hours a day and draw our pay for it." Franz Kafka, *The Trial* 9-10 (Willa & Edwin Muir trans., Random House 1956) (1925).

[FN3]. See Gabriel A. Almond & Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (1963); Brian M. Barry, *Sociologists, Economists and Democracy* (1970); Robert D. Putnam et al., *Making Democracy Work: Civic Traditions in Modern Italy* (1993).

[FN4]. See Stephen Knack & Philip Keefer, *Does Social Capital Have an Economic Payoff? A Cross-Country Investigation*, 112 *Q. J. Econ.* 1251 (1997).

[FN5]. For a recent introduction, see Symposium: Law, Economics, and Norms, 144 *U. Pa. L. Rev.* 1643 (1996); Symposium: Social Norms, Social Meaning, and the Economic Analysis of Law, 27 *J. Legal Stud.* 537 (1998).

[FN6]. This example is based on interviews that I conducted in a small Michigan town.

[FN7]. This example is discussed at length in Melvin A. Eisenberg, Corporate Law and Social Norms, 99 *Colum. L. Rev.* 1253 (1999).

[FN8]. In its early form in English jurisprudence, the positive theory asserts that law is the command of a sovereign, where a sovereign is someone whom others obey and who does not obey anyone. Generalizing, the "sovereign" becomes the process for making laws stipulated in higher level laws. A law created by following the correct procedures has the right "pedigree." In the modern formulation, a law regulating behavior is an effective obligation with the right pedigree. Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (2d ed. 1980). Similarly, I focus upon effective obligations created by consensus in a community of people.

[FN9]. I have developed this analysis elsewhere. See Robert Cooter, Expressive Law and Economics, 27 *J. Legal Stud.* 585 (1998).

[FN10]. To illustrate indivisibilities, the cost of digging a hole falls dramatically when enough holes must be dug to justify changing from a shovel to mechanized equipment. Network effects in law are discussed especially in Michael Klausner, Corporations, Corporate Law, and Networks of Contracts, 81 *Va. L. Rev.* 757 (1995); Marcel Kahan & Michael Klausner, Standardization and Innovation in Corporate Contracting (or "The Economics of Boilerplate"), 83 *Va. L. Rev.* 713 (1997).

[FN11]. Robert Cooter, Expressive Law and Economics, 27 *J. Legal Stud.* 585 (1998).

[FN12]. See Matthew D. Alder, Expressive Theories of Law: A Skeptical Overview, 148 *U. Pa. L. Rev.* 1363 (2000); Joel Feinberg, Doing & Deserving: Essays in the Theory of Responsibility, 95-118 (1970) (chapter entitled "The Expressive Function of Punishment"); Cass R. Sunstein, Law, Economics, & Norms: On the Expressive Function of Law, 144 *U. Pa. L. Rev.* 2021 (1996); Richard H. Pildes, Why Rights Are Not Trumps: Social Meanings, Expressive Harms, and Constitutionalism, 27 *J. Legal Stud.* 725 (1998); Cooter, *supra* note 11; Jean Hampton, An Expressive Theory of Retribution, in *Retributivism and its Critics* 1 (Wesley Cragg ed., 1992); Dan

M. Kahan, Social Meaning and the Economic Analysis of Crime, 27 J. Legal Stud. 609 (1998); Dan M. Kahan, Social Influence, Social Meaning, and Deterrence, 83 Va. L. Rev. 349 (1997).

[FN13]. Joseph Farrell & Matthew Rabin, Cheap Talk, 10 J. Econ. Persp. 103 (1996); Joseph Farrell, Talk is Cheap, 85 Am. Econ. Rev. 186 (1995); Joseph Farrell, Cheap Talk, Coordination, and Entry, 18 Rand. J. Econ. 34 (1987).

[FN14]. See Farrell & Rabin, supra note 13, at 106 (calling this condition "self-signaling").

[FN15]. Here is the form of a game of perfect deceit, where I want you to believe the opposite from my true plans:

	your belief about what I plan to do	
my plan	x	y
x	-	+
y	+	-

[FN16]. Here is the form of a game of imperfect deceit, where I prefer for you to believe the same thing regardless of what I plan to do:

	your belief about what I plan to do	
my plan	x	y
x	+	-
y	+	-

[FN17]. John Rawls, Political Liberalism (1993).

[FN18]. Winand Emons, The Provision of Environmental Protection Measures Under Incomplete Information: An Introduction to the Theory of Mechanism Design, 14 Int'l Rev. L. & Econ. 479 (1994).

[FN19]. The general problem is that credible cheap talk requires a coordination game, whereas the "game" played by most officials who interact with the public does not have this character. So the general problem is to convert other kinds of games into coordination games for public officials.

[FN20]. Raz, supra note 8 reviews this tradition.

[FN21]. Ariel Porat deserves credit for first posing this provocative question. Our work in progress on this subject is tentatively entitled, "Do Non-legal Sanctions Decrease the Damages Owed to Plaintiffs? Law and Economics in Conflict."

[FN22]. See Robert H. Frank, *If Homo Economicus Could Choose His Own Utility Function, Would He Want One with a Conscience*, 77 *Amer. Econ. Rev.* 593 (1987); Bruce L. Benson, *Endogenous Morality* (1998) (on file with author); Samuel Bowles, *Endogenous Preferences: The Cultural Consequences of Markets and other Economic Institutions*, 36 *J. Econ. Literature* 75 (1998); Michael Hechter, *The Role of Values in Rational Choice Theory*, 6 *Rationality & Soc'y* 318 (1994); M. McManus, *Social Welfare Optimization with Tastes as Variables*, 114 *Weltwirtschaftliches Archiv* 101 (1978); Bezalel Peleg & Menahem E. Yaari, *On the Existence of a Consistent Course of Action when Tastes are Changing*, 40 *Rev. Econ. Stud.* 391 (1973); George Stigler & Gary S. Becker, *De Gustibus Non Est Disputandum*, 67 *Amer. Econ. Rev.* 76 (1977); Robert Sugden, *Contractarianism and Norms*, 100 *Ethics* 768 (1990); Edna Ullmann-Margalit, *Revision of Norms*, 100 *Ethics* 756 (1990); Menahem E. Yaari, *Endogenous Changes in Tastes: A Philosophical Discussion*, in *Decision Theory and Social Ethics: Issues in Social Choice* 59 (Hans W. Gottinger & Werner Leinfellner eds., 1978); Carl Christian von Weizsacker, *Notes on Endogenous Change of Tastes*, 3 *J. Econ. Theory* 345 (1971); Avinash Dixit & Victor Norman, *Advertising and Welfare*, 9 *Bell J. Econ.* 1 (1978); Avinash Dixit & Victor D. Norman, *Advertising and Welfare: Reply*, 10 *Bell J. Econ.* 728 (1979); Peter J. Hammond, *Changing Tastes and Coherent Dynamic Choice*, 43 *Rev. Econ. Stud.* 159 (1976); Jon Elster, *More Than Enough*, 64 *U. Chi. L. Rev.* 749 (1997) (reviewing Gary S. Becker, *Accounting for Tastes* (1996)); Jon Elster, *The Multiple Self* (1986); Robert A. Pollak, *Habit Formation and Long-Run Utility Functions*, *J. Econ. Theory*, Oct. 1976, at 272; Norms and Preferences Network (visited October 8, 2000) <<http://www.umass.edu/preferen/>>.

[FN23]. Robert Cooter, *Do Good Laws Make Good Citizens: An Economic Analysis of Internalized Norms*, 86 *Va. L. Rev.* (forthcoming Nov. 2000).

[FN24]. In this paper I will not discuss the nature of moral commitment. In my opinion, moral commitment has a psychological element of guilt that arises from habit and conditioning. Guilt is the subject of many psychological studies. Moral commitment also has a rational element of belief, which is the subject of many philosophical studies. The extent to which moral commitment is rational, however, has long been the subject of dispute.

[FN25]. I analyze this concept graphically in Robert Cooter, *Self-Control and Self-Improvement for the "Bad Man" of Holmes*, 78 *B.U.L. Rev.* 903 (1998).

[FN26]. Robert Cooter, *Normative Failure Theory of Law*, 82 *Cornell L. Rev.* 947 (1997).

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