

The Market for Social Norms

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This article presents a semirigorous model in which a new norm arises out of the workings of a market for norms. Change is triggered by a shift in either cost-benefit conditions or group composition. Because individuals are heterogeneous in important respects, they respond differently to these triggering events. The first persons to supply new norms generally are individuals who have either superior technical knowledge of cost-benefit conditions, superior social knowledge of group dynamics, or special endowments that provide them with unusually high tangible benefits from norm reform. Members of the social audience observe the competing efforts of these norm suppliers and reward the most meritorious ones by conferring on them either esteem or, according to an alternative conception, new exchange opportunities. Under optimal conditions, members of the audience—key participants in the demand side of the market for norms—do not free-ride because they incur no net costs when conferring their rewards.

My title seems an oxymoron. Conventionally conceived, markets generate goods and services, not informal rules of conduct. Nonetheless, my thesis is that the basic tools of microeconomics can illuminate social phenomena that traditionally have not been subjects of economic inquiry. Economists have developed analytic tools of unmatched power for dealing with the consequences of differences among individuals (and firms).

This is the unabridged version of the presidential address presented to the American Law and Economics Association meeting in New York City on May 6, 2000. Another version appears as a chapter in *Social Norms* (Michael Hechter & Karl-Dieter Opp eds.), a collection of essays published by the Russell Sage Foundation Press (2001). The author benefitted from comments provided by Ian Ayres, James Bowers, Dan Kahan, Richard McAdams, Susan Koniak, Eric Posner, Carol Rose, Lynn Stout, and two anonymous reviewers.

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Consider the conventional graph portraying a market for widgets. Because suppliers vary in skills and other endowments, the supply curve slopes upward to the right. Because consumers vary in wealth, preferences, and other attributes, the demand curve slopes downward and intersects the supply curve. What generates widgets? The actions not of everyone, but of only the inframarginal individuals: the suppliers who face relatively low costs and the consumers willing to bid particularly high for the commodity.

I suggest that a new social norm arises through a process much like the market for widgets.¹ A norm is not the product of “diffuse social forces,” as a sociologists might put it, but rather of the purposive actions of discrete individuals, especially those who are particularly suited to providing the new rule and those who are particularly eager to have it adopted.² To be fruitful, the analogy between markets and norm making must surmount some major difficulties. While money is the medium through which consumers compensate the suppliers of widgets, what currency might supporters of a social change use to reward the avant garde who lead the way? I address this question, and a host of others, in the pages that follow.

Because law is intimately intertwined with custom, policy makers would benefit greatly from an understanding of how social norms arise. Nevertheless, scholars influenced by the law-and-economics approach traditionally have paid scant attention to the topic. For example, in a classic article that helped launch the field of law and economics, Harold Demsetz (1967) depicted how members of a tribe of Labradorian Indians had privatized their hunting territories in order to exploit new opportunities to sell fur pelts to Europeans. Demsetz offered no explanation, however, of how the Labradorians had succeeded in altering their ways.

1. There is a large literature, much of it by sociologists, on the diffusion of new ideas and practices. See Rogers (1983) for a review of the field. Although the scholars who contributed to this literature developed many of the terms that I employ (*change agent*, *opinion leader*, and so on), they seldom envisage norm creation as a process involving interaction between a supply side and a demand side. But compare Chong (1991, pp. 141–64) (developing a supply-and-demand model of collective action) and Coleman (1990, pp. 241–99) (moving toward a similar conception).

2. Sociologists traditionally have employed a methodological wholism that views aggregations such as cultures and social classes as operative agents in the generation of norms. Many legal scholars who have examined cultural evolution have declined to focus on the incentives and decisions of discrete individuals. See, for example, Cover (1983). Economists, by contrast, are noted for their methodological individualism.

In effect, he relegated the inner workings of the tribe to a black box. By the mid-1990s, however, dozens of law-and-economics scholars had begun contributing to a boomlet of interest in norms. In this article, I build on the contributions of Richard McAdams, Eric Posner, and others of the “new norms scholars” whose writings are relevant to the question of norm creation.³

Although the new norms scholars differ on many points, they generally share a common conception of norms and a common methodological approach. They regard a social norm as a rule governing an individual’s behavior that third parties other than state agents diffusely enforce by means of social sanctions.⁴ A person who violates a norm risks becoming the target of punishments such as negative gossip and ostracism. Conversely, someone who honors a norm may reap informal rewards such as enhanced esteem and greater future opportunities for beneficial exchanges. A person who has *internalized* a norm as a result of socialization enforces the norm against himself, perhaps by feeling guilt after violating it or a warm glow after complying with it (especially if the norm is burdensome to honor).⁵ A norm can exist even if no one has internalized it, however, so long as third parties provide an adequate level of informal enforcement.⁶

An understanding of social norms can illuminate an issue at the core of both political theory and public economics. According to the view classically associated with Thomas Hobbes, people are unable to coordinate with one another without significant assistance from a coercive central authority. According to this Hobbesian conception, the basic problem is that public order is a public good. Each individual seemingly has

3. For a concise overview of the new norms scholarship, see McAdams (1997).

4. This article focuses on norms that constrain actions of single individuals. No attention is given to norms that bear on the conduct of organizations of individuals—for instance, customary international law and the norms governing the internal labor markets of corporations. On these complex issues, see, for example, Goldsmith and Posner (1999) and Rock and Wachter (1996). The dynamics of organizational behavior of course may differ from the dynamics of individual behavior. See, for example, McAdams (1995, p. 1014), which marshals evidence that a team of individuals is more likely than a single individual to defect in iterated prisoner’s dilemma games.

5. For a hypothesis that might lead to a neurobiological account of the internalization process, see Damasio (1994, pp. 173–80).

6. In my view, these patterns of external sanctions are the best evidence of the existence of a norm (Ellickson, 1991, pp. 128–30). But compare Cooter (1996, pp. 1661–66), which views internalization as a necessary condition for the existence of a norm.

an incentive to free-ride on the efforts of anyone who volunteers to serve as a member of the social police.⁷ According to the standard theory of public goods, only a Leviathan able to tax and regulate can succeed in countering this free-rider tendency. Echoes of this Hobbesian view surface in the work of the new norms scholars associated with the “New Chicago School” (Lessig, 1998).⁸ Recognizing the centrality of norms, they advocate intentional governmental interventions to manipulate the norm-making process. By contrast, some Burkean and libertarian theorists insist that a social group commonly can succeed in using informal methods to deter crime and provide other sorts of public goods.⁹ According to this alternative perspective, social traditions winnowed through natural selection tend to be wiser than the ratiocinated policies of the most brilliant policy makers.¹⁰ All commentators, whether they aim to shrink or expand the role of the state, can benefit from a better understanding of how norms arise, persist, and change.

What follows is a modest step toward this end. Section 1 presents some stylized assumptions about individuals and their motivations. Section 2 explores the supply side of the norms market, in particular the role of change agents, such as norm entrepreneurs and opinion leaders, who either act in new ways or provide new patterns of social sanctions. Turning to the demand side of the market, section 3 stresses the roles of members of the social audience, the most detached evaluators of others’ social behaviors. In brief, members of the audience can compensate worthy suppliers of new norms by conferring esteem (or, in the alternative, trading opportunities) upon them. Section 4 analyzes two events that may trigger a change in norms: an alteration in the economic conditions that a stably constituted social group faces, or an external event that reconfigures who belongs to a group. After either sort of event, the model suggests how a cascade toward a new norm might occur. Section 5 investigates social failures—that is, potential defects in the market for norms. Section 6 explores the comparative advantages that an organization, particularly the state, may have when it participates in the norm-making process.

7. A classic analysis is Olson (1965).

8. Representative contributions are Kahan (1997), Lessig (1998), and Sunstein (1996b).

9. See, for example, Morriss (1998).

10. See Clark (1989, p. 1729 n. 58), which associates Cicero, Burke, and Hayek with this view.

I develop the theory at an intermediate level of rigor. Although the market analogy is strained in some respects, it does reveal how individuals have varying incentives to participate in norm making. Given prevailing academic norms, my inclusion of various simplifying assumptions is likely to offend humanists, and my failure to include a formal mathematical model is likely to disappoint some theorists. But, as the theory itself explains, a would-be change agent has to expect to take some heat.

1. Norm Makers' Roles and Attributes

1.1. Roles: Actors, Enforcers, and Members of the Audience

In the model, an individual may belong to one or more social groups, which may vary in size. An individual qualifies as a member of a group if he is situated in a way that enables him (1) to learn about what the other members do when they interact (that is, to obtain historical information), and (2) to bestow punishments and rewards on other members by means of gossip, ostracism, adjustment of exchange relationships, and other self-help methods.

At various times each member assumes three distinct roles within the group: as an *actor*, as an *enforcer*, and as a *member of the audience*. A person is an *actor* when engaging in behavior unrelated to norm enforcement—for example, lighting a cigar, driving a car, or giving a lecture on mathematics. This sort of *primary behavior* may affect the welfare of the group's other members for better or worse. Smoke from a cigar at a dinner party, for instance, may be injurious to other guests. In the model, the demand for norms springs primarily from the desires of the members of a group to have informal rules designed to make an actor take into account the external costs and benefits of primary behavior (Coleman, 1990, pp. 249–57).¹¹

11. Norms appear in as many varieties as legal rules do (Ellickson, 1991, pp. 132–36, 184–264). This article focuses mainly on *substantive norms*, the informal rules that govern the primary behavior of actors. *Procedural*, *remedial*, and *controller-selecting* (jurisdictional) *norms* govern how enforcers carry out the process of informal sanctioning. Particularly intriguing are the *constitutive norms* that govern the obligations of members of a group to communicate with one another and to engage in ritual activities. Members may especially esteem persons adept at supplying their group with an ideology, that is, an account that justifies its system of norms and thereby enhances group solidarity (McAdams, 1995, pp. 1059–62).

An *enforcer* is on the front line of the system of informal social control. Enforcers observe what actors do and respond by meting out calibrated social rewards and punishments. These social sanctions can range from (usually) minor ones such as making a facial gesture or a responsive comment, to weightier ones such as a gift or a punch in the nose. A host who chastises a guest who smokes at a dinner party is acting as an enforcer, as is a student who openly compliments a mathematics professor after a guest lecture, as is a parent who grounds a teenager for using drugs.

Although further tiers of participants may well exist in an actual system of norms, for simplicity the model adds only one more, the *members of the audience*. Each member of the audience observes what both actors and enforcers do, but can respond only by conferring esteem or opprobrium (negative esteem) on enforcers.¹² (As will be explained, in this instance and others, devotees of Eric Posner's signaling theory of norms are invited to substitute *future exchange opportunities* for *esteem*.)¹³ In the illustrative situations presented in the prior paragraph, the audiences would consist of, at minimum, the other dinner guests, the other attendees at the lecture, and the parent's friends and neighbors. In brief, norms arise when enforcers, to please their audiences, administer informal sanctions to influence the behavior of actors. A central task is to explain why rational and self-interested actors might choose to participate in all three roles.

1.2. Assumed Homogeneous Attributes of Individuals

To keep the analysis tractable, the model makes some simplifying assumptions about a person's knowledge, desires, and capabilities. In some respects individuals are assumed to be homogeneous.

Perfect historical knowledge. As noted, all members of a group are assumed to know, either by direct observation or receipt of gossip, what all members previously have done in their various roles.

Power to levy social sanctions. Each member is assumed to be capable of rendering rewards and punishments. An enforcer may choose among an unlimited panoply of sanctions, including material and violent ones.

12. Someone who confers esteem or opprobrium directly upon an actor is playing the role of an enforcer, not audience member.

13. See text accompanying notes 41–42.

A member of the audience, however, can confer only esteem (positive or negative). As explained in section 3, a member incurs no net personal costs when rendering an esteem sanction.

Utilitarian bias. A model of norm change presupposes an understanding of participants' objectives. These determine not only who contributes to norm reform but also what events provoke reformers to act. Because human affairs are complex and conflict-ridden, a simplifying heuristic about participants' objectives can help reveal processes of norm change that otherwise would remain obscure. To that end, I reductively assume that each member of a social group, *when acting in the role of a member of the audience*, has a *utilitarian bias*—that is, a selfless preference for norm changes that satisfy the criteria of Kaldor-Hicks efficiency.¹⁴ This means that each member of the audience would favor a norm change if the members who would be beneficiaries of the change would gain enough to be potentially able to compensate the members who would lose from the change. So long as members of the group would gain in the aggregate, no audience member would object to an emerging norm on the ground that it would disadvantage him or others. Audience members, in other words, would not insist on Pareto superiority. According to the assumption of a utilitarian bias, a new antismoking norm, for example, would win unanimous support from the audience if it would be cost-effective for the group in the aggregate, even though it might be detrimental to individuals who smoked.¹⁵

14. By forcing an actor to take externalities into account, an enforcer may reduce the deadweight losses (unexploited gains from trade) that a group's members incur. A new norm, however, is likely to entail different transaction costs than the one it replaces. An audience with a utilitarian bias therefore would esteem only enforcers who had supplied norms that would serve to minimize the sum of deadweight losses and transaction costs that all members would incur. For evidence that individuals are inclined to don public-spirited hats under conducive circumstances, see Lewinsohn-Zamir (1998) and sources cited therein. See also Margolis (1982), which hypothesizes that an individual has preferences for group outcomes that are distinct from the individual's preferences for personal outcomes.

15. See Dau-Schmidt (1990, pp. 19–22) (arguing that norm shapers can pursue only Kaldor-Hicks efficiency) and Ellickson (1991, pp. 170–74) (inducing a hypothesis that norms tend to advance Kaldor-Hicks efficiency). See also Coleman (1990, pp. 260–65) (assessing the problem) and Sunstein (1996b, pp. 955–56) (analyzing situations where some gain and some lose).

If a reductive assumption is to be made about human motivation, why should it be utilitarianism? The choice has a number of things to commend it. First, anthropologists and other investigators commonly have induced from field studies that human groups indeed tend to make cost-effective improvements in rules (Ellickson, 1991, pp. 184–264; see also Sober and Wilson, 1998). Second, a number of evolutionary game theorists predict, at least in the contexts they model, a drift toward more efficient norms (Bendor and Swistak, unpublished; Kandori, Mailath, and Rob, 1993).

Third, in the long run, pursuit of utilitarian outcomes need not aggravate distributive injustices, a central concern of skeptics of utilitarianism.¹⁶ Because of the transaction costs of securing unanimity, a group can increase its aggregate wealth if it can force selected members to bear isolated losses for the good of the whole. If, conversely, every member had the power to veto a change, a group would either have to forgo many reforms that would satisfy Kaldor-Hicks criteria, or incur the onerous administrative costs involved in compensating the myriad potential losers from reforms. Given this unappealing choice, a rational person should see that it is generally in his long-run interest to entitle his group to follow Kaldor-Hicks (as opposed to Paretian) criteria in norm making—that is, to refrain from compensating losers from an efficient change.¹⁷ Over the long haul the member gains from this utilitarian ethic so long as his share of the transaction-cost savings that it generates is sufficient to offset the losses he incurs when reforms do disserve his interests. In sum, in a group in which the fabric of social interactions is thick, a rational member should be able to see the advantage of having a utilitarian bias when appraising a proposed norm change.

That said, I should reemphasize that I assume a utilitarian bias only to have a simplifying heuristic. In reality, most individuals no doubt pursue

16. Many norms that appear to have a distributive thrust (Lessig, 1995, pp. 1004–07) are reconcilable with utilitarian ethics. For example, norms that support selective giving of alms to the poor create an informal social-insurance system that can enhance efficiency in an environment where people are risk-averse. See Binmore (1998, pp. 285–98), a model that supports sharing by preliterate hunters, and Ridley (1996, pp. 85–102), which describes the universal hunter-gatherer custom of sharing meat after successful pursuit of large game.

17. The seminal analysis is Michelman (1967). But compare Libecap (1989, pp. 4–28), which assumes that losers from a socially beneficial change in rules invariably would seek compensation before consenting to it.

messy amalgams of objectives. Moreover, to assume as I do that audience members apply Kaldor-Hicks criteria is to assume that they transcend self-interest when performing in that role. This is optimistic, to put it gently. It is necessary, however, to stipulate *some* substantive objective that members seek in order to predict how they will act. One of the model's central results is that the audience tends to get what it wants, whatever that happens to be. If audience members were to prefer norms consistent with Rawlsian justice, congruent with their religion, or causing them to be poorer, they would be able to use esteem rewards to induce norm suppliers to serve these alternative ends.

1.3. Assumed Heterogeneous Attributes of Individuals

On the other hand, in order to unlock the black box concealing the process of norm change, individuals are assumed to differ along several dimensions other than those just listed. As a result some members of a group have sharper incentives to lead the process of norm change.

Variable endowments. Individuals are assumed to differ in endowments such as physique, wealth, and human capital.¹⁸ As a result, they may obtain different levels of *tangible benefits* when a new norm is adopted. For example, a person suffering from emphysema receives more benefits than most when an antismoking norm is put into effect.

Variable discount rates. Some group members are more future-oriented than others.

Variable technical intelligence. Although members observe everything (have perfect historical knowledge), they differ in their abilities to assess the costs and benefits that an act or enforcement effort generates for group members in the aggregate. For example, some individuals know more than others about the dangers of secondhand smoke or about the topic of a lecture on mathematics.

Variable social intelligence. Apart from differences in technical intelligence, individuals vary in their abilities to forecast group social dynamics.

18. I have declined to allow for variations in tastes as such. But compare Bernheim (1994, p. 844), which views nonconformists as people with extreme preferences.

Some are as astute as Thomas Schelling and know when existing social conditions are ripe for a cascade to a new norm (Schelling, 1960, 1978). Others are deficient in social intelligence and have a relatively poor sense of how one person's decision can influence another's.

Variable leadership skills. People vary in their ease of organizing and inspiring those around them.¹⁹ As a result of these variations, as well as differences in technical and social intelligence, some individuals can work for social innovations more effortlessly than others can. These low-cost suppliers can be expected to be disproportionately successful in the market for norms.

2. The Supply Side of The Market for Norms: Change Agents

A traditional sociological designation for an individual who promotes a change in norms is *moral entrepreneur*.²⁰ In 1996 Cass Sunstein devised the notion of a *norm entrepreneur* (Sunstein, 1996b, p. 909), a phrase that many legal scholars since have embraced (e.g., E. Posner, 2000).²¹ In this section, I aspire to develop a richer vocabulary that distinguishes among a variety of specialists who supply new norms.

A new norm wins acceptance only when most actors conform to it and enforcers routinely levy sanctions to support it. Therefore both actors and enforcers are involved in the supply of norms. Actors participate when they adopt new patterns of primary behavior. An example is a smoker who tests the limits of propriety at a dinner party. Enforcers serve as suppliers when they react in new ways to the behaviors of actors. An example is a dinner guest who creatively responds to smoking by another

19. Scholars from many disciplines have striven to develop theories of leadership. See, for example, Gardner (1995) in psychology, Gouldner (1950) in sociology, Hermlin (1998) in economics, and Schneider, Teske, and Mintrom (1995) in political science.

20. See, for example, H. Becker (1963, pp. 147–48); see also R. Posner (1998, pp. 1638, 1664–68).

21. Jolls, Sunstein, and Thaler (1998, pp. 1519–22) introduce the notion of an *availability entrepreneur* who seizes upon a recent event (such as toxic wastes at Love Canal) to mobilize support for a cause (such as enactment of Superfund legislation dealing with toxic wastes).

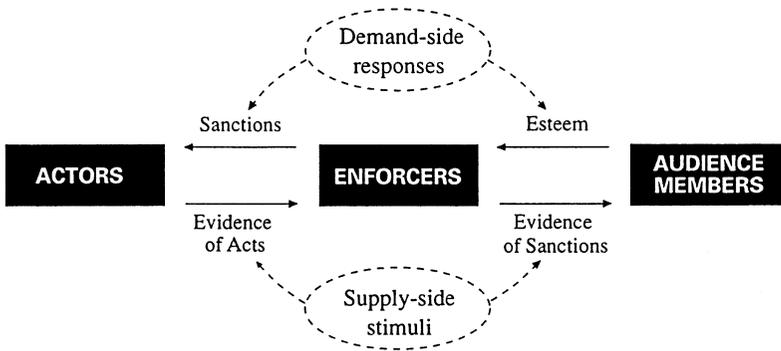


Figure 1. The market for norms.

guest, perhaps either by lauding the smoker's courage or, conversely, by throwing a glassful of wine to extinguish the smoker's cigarette. Those on the demand side of the market for norms then react to these stimuli.

Figure 1 depicts the operation of both the supply and demand sides of the market for norms. The supply side is indicated by the solid arrows pointing to the right; these identify flows of evidence of behavior on the part of both actors and enforcers.²² The demand side of the market is indicated by the solid arrows in Figure 1 that point to the left; these indicate the responses of enforcers and members of the audience to the social evidence they receive from norm suppliers. (In this model, it must be stressed, an enforcer's behavior simultaneously expresses demand to actors and supplies a norm to audience members.)²³

I refer to an actor or enforcer who is relatively early in supplying a new norm as a *change agent*. According to the rational-actor perspective, a change agent offers a new norm because he anticipates that over time he will receive a flow of benefits that will outweigh (in present value terms) the various costs he will incur while acting in that role. A change agent moves earlier than others because his expected net benefits from his course of conduct are unusually large. This may be so either because his

22. If a fourth tier—or any further tier—of participants were added to the model, the arrows connecting that tier would be characterized in the same fashion.

23. To illustrate: a dinner guest who has upbraided another for smoking has both expressed demand to that smoker and also supplied a norm for the other guests at the dinner table to appraise.

expected costs are uncommonly low, his expected benefits uncommonly high, or both.²⁴

Change agents tend to have attributes that make them relatively low-cost suppliers of new norms. In general, they possess superior technical intelligence, social intelligence, and leadership skills. These attributes reduce the opportunity costs they incur when they work for norm reform.

Change agents also tend to face favorable conditions on the benefit side of the ledger. Successful promoters of a new norm receive two distinguishable sorts of benefits. First, each garners a personal share of the *tangible benefits* that the new norm creates for the group. As illustrated below, change agents tend to have special personal endowments conducive to their receipt of above-normal tangible benefits. Second, as a special reward for helping bring about social reform, change agents receive *esteem* and other social rewards when group members widely accept a new norm. Individuals embedded in social subnetworks consisting of persons prone to esteem them are prime candidates to become change agents.

These factors help explain the prominence of black religious leaders in the civil rights movement. Because they were black, they had much to gain from dismantling racial segregation. Because they were religious leaders, they were ideally positioned to receive early esteem from members of their immediate social groups (that is, members of their congregations), and relatively immune to social opprobrium, economic retaliation, and physical violence on the part of racist whites.

A change agent also is likely to have either a relatively low, or an extraordinarily high, discount rate. The stigma and other personal costs of attempting to change a norm generally are incurred early, whereas the esteem and tangible benefits generally cannot be reaped until the norm has won the day. Therefore, the more future-oriented a person is, the more rational it is to pursue social reform. At the other extreme, an individual who is utterly present-oriented has no fear of reputational sanctions that might be levied to deter deviance from accepted practice.

In an effort to clarify the dynamics of norm change (but at the admitted risk of a surfeit of jargon), I distinguish among three subcategories of change agents: self-motivated leaders, norm entrepreneurs, and opinion

24. I ignore special psychological attributes and developmental histories that change agents are likely to possess. On that front, see, for example, Sulloway (1996), which asserts that later-born children tend to challenge the status quo more than firstborns do.

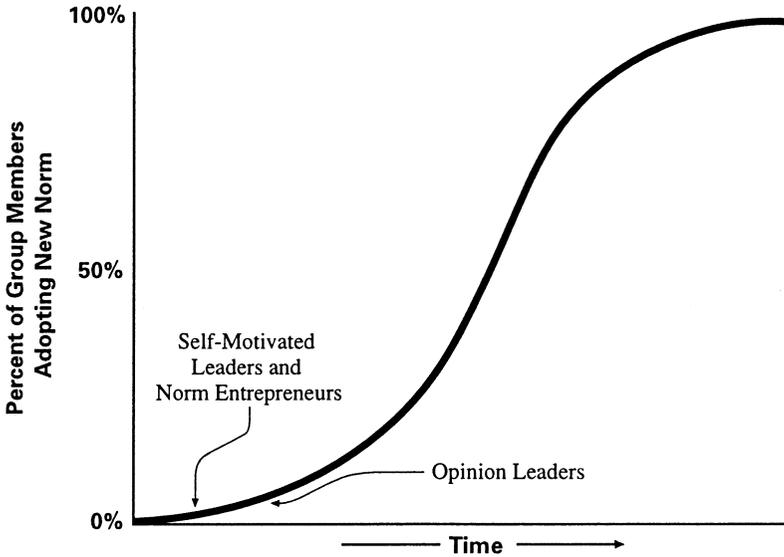


Figure 2. The involvement of change agents in the supply of a new norm.

leaders.²⁵ Although all three types respond relatively early to a shift in cost-benefit opportunities, they lead for different reasons. Figure 2 depicts in a general way the chronological sequence in which a series of successful change agents participate in supplying a new norm.²⁶

2.1. Self-Motivated Leaders

A self-motivated leader moves early to change a norm because, on account of his special endowments (and perhaps unusually low discount rates), he anticipates receiving an unusually high level of net tangible benefits from challenging the existing norm.²⁷ Indeed, these net tangible benefits are sufficiently large to motivate him to favor change even in the

25. For a sampling of others' efforts to distinguish among change agents, see Lionberger (1960, pp. 52–66), which distinguishes among “innovators,” “communicators,” and “influentials”; and Rogers (1983, pp. 241–346), which distinguishes among contributors according to both timing (“innovators,” “early adopters,” etc.) and function (“opinion leaders,” “change agents,” etc.).

26. Figure 2 mimics the structure of a graph appearing in Rogers (1983, p. 11).

27. My taxonomy of change agents can be applied to both actors and enforcers. For instance, a norm entrepreneur can pioneer either a new pattern of primary behavior or a new pattern of sanctioning.

absence of potential esteem rewards. Hence the adjective *self-motivated*.²⁸ To illustrate: A charismatic person faces lower costs of working for social change. A lessening of smoke especially benefits persons with emphysema or other lung disease. Therefore a charismatic person suffering from emphysema would be an ideal candidate to become a self-motivated leader of an antismoking campaign.

Self-motivated leaders commonly spark changes in the network norms that facilitate communication and coordination. For example, in 1833 Augustine Taylor invented in Chicago the balloon-frame method of wood construction, a system more lightweight and flexible than the traditional post-and-beam system. Other builders rapidly switched to the balloon frame and it remains the dominant system of light construction in the United States (Davis, Easterlin, and Parker, 1972, p. 621).²⁹ The self-motivated change agents in this instance were Taylor (the actor), and the head of the St. Mary's Roman Catholic Church (the enforcer), who snubbed traditional mores and permitted Taylor to proceed with his unorthodox design. Both parties likely possessed superior technical intelligence and anticipated unusually large tangible benefits, given the nature of their current and future building projects.

When a new norm suddenly becomes manifestly advantageous for a group, many self-motivated individuals with unexceptional leadership abilities may supply it simultaneously. When this happens, historians will have difficulty attributing the new norm to particular change agents. For instance, dueling fast became extinct in the South once the Civil War had shattered the social networks of the Southern aristocracy. Although antidualing societies had been active in the South before the war (Picker, 1997, p. 1285, n. 88), esteem rewards apparently were not needed to motivate the rejection of dueling after Appomattox.

A technical innovation may diffuse across space from its place of invention as neighbors copy the best practices of those around them. A momentous historical example is the slow diffusion of agriculture outward from its birthplace in the Fertile Crescent 10,000 years ago (Diamond, 1997,

28. Compare the notion of a *passive leader*, developed in Kuran (1998, p. 654).

29. Business customs, such as this one, are shaped not only by informal exchanges but also by explicit contracts.

pp. 180–91).³⁰ The earliest inventors and copiers in this instance are likely to have had endowments that gave them special tangible benefits from engaging in farming. Many millennia later, Griliches (1957) found that the American farmers who pioneered the planting of hybrid corn tended to be the ones who would profit most from that innovation. In the late 1970s in China, the rapid repudiation of Maoist communal agriculture was partly triggered by a successful (and illegal) return to family farming by residents of the village of Xiaogang (Eckholm, 1998). Although these villagers later were esteemed in China for having helped provoke Deng to adopt legal reforms, their original motivation likely was their relatively high levels of tangible benefits from privatizing their fields.

2.2. Norm Entrepreneurs

For the remaining two types of change agents—norm entrepreneurs and opinion leaders—external rewards provide an essential carrot. Although leaders of both types are likely to garner some tangible benefits from a norm change, they also need esteem to cover their full costs of supplying a new norm. *Norm entrepreneurs* are specialists who campaign to change particular norms, whereas *opinion leaders* are generalists. Ward Connerly, Martin Luther King, Jr., Catharine MacKinnon, Joseph McCarthy, and Carry Nation are norm entrepreneurs. Jimmy Carter, Walter Cronkite, Doris Kearns Goodwin, and Billy Graham are opinion leaders. Both types tend to be endowed with personal attributes, such as charisma and skill in communication, that reduce their costs of serving in these capacities.

What special traits distinguish a successful norm entrepreneur in particular? A norm entrepreneur tends to possess a relatively high level of technical knowledge relevant to the norms within his specialty. This knowledge enables the entrepreneur to respond early to a change in cost-benefit conditions. Entrepreneurs who favor antismoking norms tend to know much about lung diseases. Joseph McCarthy ascended when he appeared to have inside information about communist infiltration of government, and then foundered when it seemed that much of his specific information was bogus.

30. See also Picker (1997), which presents a model in which actors are influenced by events in their “information neighborhoods.”

2.3. Opinion Leaders

Unlike a self-motivated leader and a norm entrepreneur, an opinion leader is not at the forefront of norm change but instead is located one position back from the front (see Figure 2).³¹ An opinion leader evaluates the initiatives of these other change agents (the true catalysts) and then decides which of their causes to endorse. Opinion leaders therefore play a pivotal role in determining whether change agents succeed in triggering a cascade toward a new norm (Rogers, 1983, pp. 27–28 and 281–88).³²

A successful opinion leader tends to have two exceptional characteristics. The first is an usually high level of social intelligence, which helps the opinion leader anticipate better than most which social innovations will end up attracting bandwagon support. An adept opinion leader, for example, may be aware that many have been disguising their true opinions about the merits of current norms (Sunstein, 1996b, pp. 929–30). Opinion leaders involved in the Velvet Revolutions in Eastern Europe, for instance, best sensed that support for communism was less genuine than it seemed. Second, an opinion leader is likely to be a person to whom other members of the group are unusually prone to defer in order to avoid being socially out of step.³³ An opinion leader may have earned this trust through prior accomplishments in the arena of norm enforcement and change. A village elder is a generic example. The costs of supplying a new norm fall when someone expects to be followed.

A norm entrepreneur who commands little trust is wise to recruit to his crusade an opinion leader whom the audience regards as more credible. Thus, in 1786–87 James Madison, the political entrepreneur spearheading the nascent movement to replace the Articles of Confederation, recognized

31. *Opinion leader* apparently derives from Berelson, Lazarsfeld, and McPhee (1954, pp. 109–14). These authors define the phrase more broadly than I do. Compare Bikhchandani, Hirschleifer, and Welch (1992, pp. 1002–03), which stresses the role of opinion leaders in triggering changes in social practices, and McAdams (1997, p. 416).

32. See text accompanying notes 53–64.

33. See also Clark (1989, p. 1730 nn. 59–60), which discusses the possibility that humans have an evolved biological instinct to conform to the behavior of others, particularly persons of high status.

the monumental advantage of enlisting George Washington in the cause.³⁴

3. The Demand Side of the Market for Norms: The Role of a Social Audience

Individuals indicate their demand for various norms by levying informal rewards (or punishments) to indicate their approval (or disapproval) of what norm suppliers are doing. I refer to persons who provide early support to suppliers of a new norm as *appreciative observers*. Enforcers function as appreciative observers when they reward actors who are engaging in new forms of primary behavior. Members of the audience function as appreciative observers when they confer esteem on innovative enforcers. These relationships are portrayed by the leftward pointing solid arrows in Figure 1. Note that the same individuals can be, and commonly are, involved on both the supply and demand sides when a norm changes. An activist for gay rights is likely to provide encouragement to allies in the same cause. Nevertheless, the supply and demand sides are conceptually distinct. For example, a gay person who remains in the closet might choose to participate on only the demand side of social change.

3.1. The Special Attributes of Appreciative Observers

As the previous section explained, the change agents who supply new norms tend to possess either special endowments or special information. This also is true of their counterparts on the demand side, the appreciative observers who are early supporters of a social change.

Some appreciative observers, like the hypothetical gay person in the closet, have attributes that make them anticipate special benefits from the adoption of a new norm. They can be expected to be among the first enforcers to reward those who are supplying it. Other appreciative observers, apart from their prospective personal tangible benefits, have unusually good technical intelligence about the cost-benefit tradeoffs that

34. See Wills (1984, pp. 147–58), which describes Madison’s recruitment efforts. Washington was not only the paramount opinion leader of the post-Revolutionary era, but also, because of his wide-ranging experiences, something of a technical expert in the field of governmental structure.

competing norms pose.³⁵ They can be expected to be among the first enforcers and audience members to recognize when the supplier of a cost-effective new norm is doing something worthy of group reward. For instance, in the late 1950s, the observers most aware of the high costs of Jim Crow policies to African Americans would likely be among the first to esteem the civil rights activists astir at the time. Finally, persons with an extraordinary level of social intelligence (like the opinion leaders on the supply side) tend to be key providers of positive reinforcement to proponents of a new norm. For example, once enough technically knowledgeable observers had begun to support the demise of Jim Crow policies in the South, the most socially aware members of the Southern audience would be among the first both to realize that the old regime was doomed and to join the bandwagon of rewarding the change agents who were hastening its end.

3.2. How Costlessly Conferred Rewards Can Induce Costly Sanctioning: Partial Solutions to the Second-Order Collective-Action Problem

It is easy to understand why an actor would choose to conform to a norm that is systematically enforced. If it is gauche to smoke at a dinner party, lighting a cigar would damage the cigar smoker's reputation. But it is harder to understand why an onlooker rationally would make the effort to administer punishments on wrongdoers and rewards on rightdoers.³⁶ Why would a host care to enforce an antismoking norm? One reason, possibly, would be tangible benefits: if secondhand smoke is either carcinogenic or unpleasant, the host obtains environmental benefits by suppressing it. But the host's enforcement also would help the other guests and to that extent would be a public good. Much norm enforcement, say against acts such as littering or giving birth out of wedlock, generates mainly public benefits, not benefits to the enforcer personally. When the private costs of enforcement seem to exceed the tangible benefits, what might motivate an enforcer to act as a member of the social

35. Their role in many respects is similar to that of a writer of newspaper editorials, a critic in the arts, or a peer reviewer in academic life.

36. It is frequently argued that norms tend to be undersupplied because enforcers are unable to capture all the benefits of enforcement activity. See, for example, Katz (1996, pp. 1749–50) and E. Posner (1998, pp. 792–95).

police instead of as a free-rider? Although many legal scholars intuitively reject the Hobbesian view that order is never possible without a central authority, they have struggled to come up with a plausible explanation of how people ever are able to solve this second-order collective-action problem.

In the late 1990s, however, two of the new norms scholars—Richard McAdams and Eric Posner—independently proposed rival theories that suggest how members of an audience could, in some contexts, costlessly confer rewards to spur enforcers to function as informal police officers.³⁷

3.2.1. Richard McAdams's esteem theory of norms. McAdams (1997, pp. 355–75) postulates that an individual values the esteem of others for its own sake.³⁸ Just as eating a tasty dessert is a source of pleasure, so is receiving kudos. Esteem sanctions, either positive or negative, therefore can influence the behavior of a change agent.

McAdams's more provocative idea is that an individual incurs no net costs when conferring esteem on another.³⁹ This assumption of zero esteeming-costs is plausible in some contexts. The historical information needed to accord esteem tends to be readily at hand. A dinner guest with adequate technical and social knowledge instantaneously can evaluate the propriety of a host's enforcement actions against a smoker. In many contexts conferring esteem also is virtually effortless. To smile or to frown, to salute or to snub, to praise or to rebuke—all require little more effort than taking a breath.

To be sure, conferring negative esteem can be costly if the target can retaliate in some way. McAdams (1995, pp. 1024–25) notes, however, that a member actually may reap offsetting benefits by participating as a member of the social police. For instance, an audience member who had internalized norms governing performance in that role might feel a warm

37. *Audience* is my term, not McAdams's or Posner's.

38. See also McAdams (1995) and compare Smith ([1759] 1982, p. 116). See also Ridley (1996, pp. 109–14), which describes debate among anthropologists over whether a hunter-gatherer gives food to others to obtain esteem or reciprocal gifts.

39. Apparently a number of scholars hatched this idea independently. Besides McAdams, see Pettit (1990, pp. 738–42) and Sober and Wilson (1998, pp. 144–46, 151, 166–68). Compare Cooter (1996, pp. 1668–69), which asserts that enforcers can cheaply engage in negative gossip and ostracism.

glow after performing well in this capacity.⁴⁰ Indeed, appreciative members of live audiences at entertainment events appear to enjoy conferring applause. Any benefits derived from esteeming would reduce, and perhaps outweigh, an audience member’s conceivable costs.

McAdams’s conception of the demand side for norms suggests a scenario for a group with a utilitarian bias. Members of the audience survey the behaviors that various norm suppliers are offering. Audience members then costlessly confer positive esteem on enforcers who are serving the aggregate welfare of the members of the group, and negative esteem on other enforcers. Because enforcers value receiving esteem, they are induced to supply efficient norms. Some historical episodes indicate that this scenario is not far-fetched. Diffusely situated observers did confer esteem to reward change agents who had incurred high risks during the civil rights movement in the South (Chong, 1991, pp. 100–01, 191–92).

3.2.2. Eric Posner’s signaling theory of norms. In an article (1998) and book (2000) Eric Posner has developed a more limited, but potentially more testable, theory of norms. Drawing on the work of Michael Spence (1974), Posner views norms as conventions that govern the behaviors that a person employs to signal that he is a “good type” to deal with. By wearing the “right” clothes, for instance, an actor advertizes that he is likely to be a good person to hire or marry. Transported into the present model, Posner’s analysis suggests that an enforcer would be tempted to function as a member of the social police in situations where that service would signal his general trustworthiness to the members of the audience. To an audience with a utilitarian bias, the more efficient the norm that an enforcer supplies, the more favorable the signal. Audience members later would reward a meritorious enforcer by entering into additional cooperative exchanges with him. To illustrate, the host of a dinner party signals

40. Social psychologists find that most people believe that rewards should be apportioned according to the merit of individuals—so-called “equity theory.” See Binmore (1998, pp. 277–78). If equity theory is sound, an audience member, in order to maintain his self-conception as a moral person, would have to esteem others who have been conferring public goods. Some scholars have explored how socialization or evolutionary processes might generate internalized norms that would induce a meritorious enforcer to reward himself after he had served the public weal. See, for example, Bowles and Gintis (unpublished), a model in which an enforcer obtains utility simply by enforcing a norm. See also the sources cited in note 14.

that he is a “good type” by enforcing a norm against smoking; a week later, an appreciative attendee invites the host to serve as a trustee for a trust, an exchange that will benefit the attendee because he now is more confident than before that the host is a “good type.”

Posner’s theory is similar to McAdams’s in important respects. First, both theories anticipate a strong correlation between social rewards and an enforcer’s net private costs. Posner asserts that the favorability of an audience’s response to a signal increases with the cost of the signal to the signaler. An audience that confers esteem similarly is likely to correlate its aggregate reward with the size of an enforcer’s sacrifice. Superheroes win more plaudits than ordinary heroes do.

Second and more important, under both theories *members of a social audience at no net cost can provide valuable carrots to the enforcers who create norms*. McAdams views esteem as costlessly conveyed. When a signal results in additional exchanges, as Posner anticipates, the members of an audience similarly incur no net costs. A consensual trade normally generates gains for all involved. In this context, audience members benefit from receiving and responding to signals because they are able to make more discerning choices among trading partners.⁴¹

In sum, under ideal conditions both theories anticipate that audience members would have no incentive to free-ride on the efforts of others to reward an enforcer who had supplied a public good. In developing my model, I adopt only this common denominator of the two theories and have no need to endorse either of them as such.⁴² Throughout this article I consistently refer to audience rewards as “esteem,” but only to keep the exposition compact. Whenever “esteem” appears, a reader who prefers Posner’s theory to McAdams’s is invited to mentally substitute “enhanced opportunities for cooperative interactions” and to ponder whether the analysis still holds.

41. This statement assumes that signals in fact convey valuable information, which under Spence’s theory they do only when there are separating (as opposed to pooling) equilibria. It also assumes that most transactions take place in markets where the elasticities of supply and demand enable both producers and consumers to garner some surplus.

42. Indeed, I regard both theories as highly reductive, as a beginning theory has to be.

3.2.3. *Differences between McAdams's and Posner's theories.* The two theories also vary in important respects. First, Posner's theory promises to be more testable than McAdams's.⁴³ In most contexts, it is easier to observe an exchange transaction than a conferral of esteem.

Second, Posner's theory is more compatible with traditional economic analysis. In his conception, audience members act prosocially in order to obtain the tangible benefits of better future trades, not because they are innately public-spirited, have internalized norms of public-regardingness, or can esteem at zero cost.

Third, the two theories have different implications about the timing of a meritorious enforcer's rewards from an audience. McAdams seems to envisage an immediate conferral of esteem. Posner, by contrast, foresees rewards as delayed until subsequent periods of play, when mutually favorable transactions are executed. Posner's theory therefore more strongly implies that a person with a high discount rate or a person in end game would perform unreliably in the role of enforcer. For instance, Posner's theory suggests that the contemporary jury is an ill-advised legal institution, at least if the major function of a jury is to bring contemporary social norms to bear in a legal proceeding. In an urban setting today, jurors are strangers with scant prospects of further interaction once the group has disbanded. Posner's theory predicts jurors therefore have weak incentives to signal that they are good types by enforcing prevailing norms. If jurors in fact perform well, they either must bring internalized norms of civic duty into the jury room or (as McAdams supposes) must hunger for esteem from fellow jurors.

Fourth, as section 5.2 explains, an audience must appropriately aggregate its total rewards to get enforcers' incentives right. Both McAdams's and Posner's theories suggest difficulties of proper aggregation, but of different sorts.⁴⁴

4. How Norms Change

The model rests on the reductive assumption that members of a group have a utilitarian bias. An upshot of this assumption is that norms can

43. See also E. Posner (1998, pp. 786 n. 32, 797–98).

44. See text accompanying note 71.

be expected to evolve when underlying supply and demand conditions change. What kinds of events might provoke shifts in economic conditions? What sorts of change agents and appreciative observers are likely to respond first when an old norm is under stress? This section explores these questions first in general terms and then in the context of a particular example: the rise of norms against smoking.

4.1. Events That Can Trigger a Change in Norms

4.1.1. An exogenous shock creates new economic conditions within a stable group. In a social group with static membership, a new trading opportunity, technology, or environmental event may alter cost-benefit conditions.⁴⁵ As mentioned at the outset, Demsetz (1967) has described the response of a tribe of Labradorian Indians to the arrival of Europeans eager to exchange goods for pelts. In earlier times, the tribe's norms had supported communal hunting rights within its forests, a system that creates few incentives for an individual hunter to conserve the stock of game. Once the European traders came on the scene the tribe shifted to a system of exclusive hunting territories.⁴⁶ This system is more efficient when game is scarce, because the sole owner of a territory inhabited by non-migratory wild animals has a much sharper incentive than a communal owner does to avoid overhunting.⁴⁷

New scientific or technical information similarly can alter social practices.⁴⁸ Rain dancing is apt to become less common after members of a tribe have encountered the science of meteorology. In the 1940s, pediatricians routinely prescribed tonsillectomies; they later dropped this

45. An economic change can affect the costs and benefits associated not only with primary behavior but also with the operation of the system of social control itself. Advent of the Internet, for example, might enhance an enforcer's capacity to obtain social information and an audience member's capacity to confer esteem.

46. But compare E. Posner (1996a, pp. 1712–13), which asserts that the Labradorian Indians may have taken two centuries to adjust their land tenure norms.

47. In a related vein, economic historians partly attribute the enclosure (parcelization) of medieval open fields to improvements in farm technologies and to increased demand for labor and wool. See sources cited in Ellickson (1993, pp. 1388–92). Most enclosures cannot be characterized as pure instances of norm change, however, because they were backed by governmental force.

48. Because norms themselves can affect the rate of innovation, in a more ambitious model technological change would be endogenous. But any model must keep some variables independent. For a succinct analysis of this methodological point, see Basu, Jones and Schlicht (1987, p. 3).

norm after wholesale use of the procedure was shown to be inadvisable.⁴⁹ In the 1950s in the U.S., the increasing military threat posed by the Soviet Union helped support the rise of norms against associating with communists (E. Posner, 1998, p. 775).

An environmental shock also can alter endowments and hence cost-benefit conditions. A drought, for example, may give rise to norms supporting conservation of water. The devastation of a war or natural disaster is apt to trigger norms of mutual support in part because people who have lost wealth see more benefit in having an informal system of social insurance. Relatedly, a stable group that migrates may vary its norms as it confronts changing environmental conditions. High-seas whalers, for example, efficiently adapted their informal rules of capture to the characteristics of the species of whales present in a fishery (Ellickson, 1991, pp. 191–206).

4.1.2. A group adds or loses members. Because individuals vary in their endowments, a change in group composition can alter internal cost-benefit conditions.⁵⁰ New blood is likely to be a source of new informal arrangements. A university can reinvigorate a fading academic department by hiring a cluster of established but youthful scholars; because their time horizons are longer, these young scholars have more to gain from the emergence of norms of scholarly output that would enhance the department's reputation. The subtraction of certain members from a group similarly may affect what norms are cost-justified in the aggregate.⁵¹ The exclusion of children from an apartment building, for example, would lessen the costs of a norm against noise making because fewer children would have to bear the burden of suppressing their high spirits.

A war or natural disaster may shatter the outer boundaries of a group and change its norms as a result. Defeat in the Civil War ended the

49. See also Bikhchandani, Hirschleifer, and Welch (1992, pp. 1011–12), which puts the tonsillectomy example to somewhat different use.

50. I treat a change in group composition as an exogenous event. In reality, concerns about norms may affect the make-up of groups. See Sunstein (1996b, pp. 919–20), which discusses how disgruntled persons may use the power of exit to form their own norm communities.

51. In an influential empirical study of commercial practices, Lisa Bernstein (1996) found that merchants apply “end-game norms” when they do not foresee the possibility of further interactions, but apply more cooperative “relationship-preserving norms” to resolve midgame disputes.

insulation and cohesion of the Southern aristocracy, thereby decimating the aristocrats' gains from the constitutive ritual of dueling. The events of World War II helped break down ethnic and (to a lesser degree) racial barriers in American life. Conversely, the destruction of a group's unifying forces may lead to a balkanization of norms. Indeed, the passing of Tito weakened pan-Slavic nationalism in Yugoslavia and enabled more parochial ethnic groups to reassert their norms.

A government may provide the exogenous shock that alters group composition. Before the 1960s, Southern whites and blacks were socially (if not necessarily physically) segregated. In that environment, whites were likely not only to tolerate racist jokes, but even to encourage that form of humor in order to enhance the status of whites as a group (McAdams, 1995). The Civil Rights Acts of the 1960s helped bring about significant integration of workplaces and schools in the South, with the result that many whites there began to belong to reference groups that included significant numbers of blacks. Blacks now had leverage to administer informal sanctions and confer esteem. After these changes in social structure, whites became far less likely to engage in racist humor.

Innovations in transportation and communication technologies make new concatenations of human interactions possible. In general, these tend to widen social relations and erode parochial norms. The expansion of trade, for example, fosters cooperation by expanding the compass of merchants' reputational stakes.⁵² On the other hand, innovations such as web pages, e-mail, and cheap long-distance flights can enable geographically scattered persons with common narrow interests to maintain a group that previously could not have been sustained. For instance, these new technologies may help both a university to unite its alumni and an international terrorist group to knit together its sympathizers.

4.2. The Process of Norm Change: Responses of Change Agents and Appreciative Observers

Either sort of exogenous shock—a shift in internal cost-benefit conditions or an alteration of group membership—can spur a group to change

52. See Bernstein (1992, pp. 140, 143–44), which reports how advances in communications can broaden the domain in which a person has reputational stakes, and Hirschman (1982), which describes the seventeenth-century view that commerce is a civilizing agent.

its informal rules. But groups do not act as such, individuals do. As previously discussed, individuals possess different attributes that incline them to play specialized roles in the process of norm change.

4.2.1. Norm cascades: in general. Recent commentators on the dynamics of norm change have borrowed from game theory, evolutionary biology, and the economics of information. According to the new norms scholars, in the paradigm case an upstart norm starts slowly, gains momentum, and culminates in a triumphant rush. Various authors refer to a tipping point being passed (Cooter, 1998; McAdams, 1997, pp. 365–72), to an equilibrium changing not gradually but in punctuated fashion (Roe, 1996, pp. 663–65), or to a cascade being triggered (Sunstein, 1996b, p. 909).⁵³

The literature on cascades suggests why people follow leaders. Works in this genre distinguish between two relevant phenomena: informational cascades and reputational cascades. According to the foundational article, “An informational cascade occurs when it is optimal for an individual, having observed the actions of those ahead of him, to follow the behavior of the preceding individual without regard to his own information” (Bikhchandani, Hirschleifer, and Welch, 1992, p. 994).⁵⁴ One goes along with the crowd on the ground that the crowd is probably right. A person joins a reputational cascade, by contrast, to avoid the social disapproval that may be visited on those who are out of step (Kuran, 1998; Kuran and Sunstein, 1999, pp. 685–87). One goes along with the crowd to be with the crowd, even if one knows that the crowd is wrong.

Cascade theory helps reveal how change agents and appreciative observers become so influential. The basic scenario of a successful bandwagon is this: an exogenous change creates new cost-benefit conditions that favor a switch to a new norm. Various change agents, employing advocacy or exemplary acts or enforcements, offer up competing norms to govern the new conditions. The first change agents to supply new norms are self-motivated leaders who will attain net tangible benefits from a shift, and norm entrepreneurs who have the best technical information

53. See also Picker (1997, pp. 1250–51) (illustrating the possibility of rapid norm change).

54. See also Bikhchandani, Hirshleifer, and Welch (1998), which updates the theory.

about the aggregate advantages of possible changes.⁵⁵ Over time members of the audience assess these competing offerings and confer esteem on worthy change agents. Because the first change agents to move are challenging traditional ways, for a time ordinary members of the audience may accord them less esteem than previously. Norm entrepreneurs' early losses tend to be mitigated, however, by their relatively low supply costs (arising from their special knowledge and skill), their social proximity to appreciative observers who soon will be according them *higher* esteem, and their (typically) low discount rates. Opinion leaders—those with the best social intelligence—then play a key role. They notice that the technical experts have been gravitating toward the new norm, a sign that it is one that other audience members eventually will learn to appreciate. Hopping on the bandwagon, the opinion leaders begin to supply the new norm and to esteem the actors who have been pushing it. An ordinary member of the group observes all these moves and for a number of reasons eventually infers that it would be prudent to join the cascade. First, because technical experts are approving the change, it is likely to be good for the group. Second, social experts, those who best understand where the crowd will end up, also are on board, and it is socially risky not to follow them. The mass of ordinary members ultimately conforms to what its respected leaders have been doing. The informational and reputational cascades both crash to completion.

The speed of norm evolution is influenced by the magnitude of the gains from change and the rate at which the members of the group acquire the technical and social knowledge necessary to appreciate that the new norm is more utilitarian than the old one. The entire process may proceed briskly. Sunstein gives as examples the rise of feminism, the abandonment of communism in Eastern Europe and of Apartheid in South Africa, and the collapse of reflexive political correctness on American campuses (1996b, pp. 929–30).

4.2.2. An application: the rise of the norm against smoking. In North America informal pressure against smoking in a social setting increased

55. Although all the characters in this scenario are presented as if they were distinct individuals, a person with the requisite attributes could assume a number of these roles simultaneously.

markedly during the last third of the twentieth century.⁵⁶ My theory suggests the following stylized historical account.⁵⁷

The triggering event is the gradual amassing of new scientific information about health risks associated with first- and secondhand smoke.⁵⁸ Medical researchers and public health officials, who have a superior command of this technical information, soon emerge as the norm entrepreneurs in the antismoking cause. Nonsmokers who suffer from lung diseases join in as self-motivated leaders. These early change agents receive plaudits from appreciative medical experts. Key opinion leaders then increasingly join the cause. Although Edward R. Murrow smoked conspicuously on camera, television executives make sure that successor news anchors do not.⁵⁹ The general public takes its cues from these leaders and starts directing opprobrium at smokers and their suppliers. As the bandwagon grows, social hosts increasingly decline to set out ashtrays for guests. Everett Koop, David Kessler, and the other norm entrepreneurs in the antismoking cause come to be broadly esteemed.⁶⁰

The actual story, of course, is more complex. The norm against public smoking has diffused at different rates within different demographic groups. In the U.S., college graduates are much less likely than high school dropouts to smoke (Kagan and Vogel, 1993, pp. 22, 47 n. 20, 48 n. 25). College graduates are likely to have lower discount rates, somewhat better technical information about the risks of smoking, and a lower likelihood of belonging to an oppositional subculture in which smoking

56. Statistics on declines in the adult smoking population can serve as a rough proxy for the rise of the antismoking norm. The percentage of American adults smoking fell from 42% in 1955 to 26% in 1991 (McAdams, 1997, p. 404 n. 219).

57. Legal scholars have devoted extensive attention to the evolution of norms governing smoking. See, for example, Lessig (1995, pp. 1025–34), McAdams (1997, pp. 404–07), and Rabin and Sugarman (1993).

58. There is broad agreement that the new information about health risks arising from smoking precipitated the decline in the number of smokers. See, for example, Gusfield (1993, pp. 54–60), and Zimring (1993, pp. 96–99). On the history of the diffusion of scientific information about the risks of smoking, see Hanson and Logue (1998, pp. 1181–1223), which asserts, among other things, that consumers still underestimate the risks of addiction to tobacco.

59. See Kagan and Skolnick (1993, p. 79), which describes how “visible elites” in the U.S. dropped smoking.

60. In this instance public officials were prominent among the key change agents. On the role of government in norm change, see text accompanying notes 88–99.

is fashionable *because* mainstream norms have been shifting against it (Gusfield, 1993, p. 66).

A man in France is considerably more likely to smoke than is a man in North America.⁶¹ It is implausible to chalk this up to differences in technical information in the hands of the health experts in the two nations. Legal variations may account for some of the difference. Although France heavily taxes tobacco products and tightly controls their advertizing, it has relatively lax laws on smoking in workplaces and public accommodations (Kagan and Vogel, 1993). But differences in norms may matter as well. Partly because opinion leaders in France have been somewhat slower than their counterparts in North America to quit smoking, the French public seems less supportive of antismoking norms.⁶² But why would French opinion leaders be relatively slow to act? Some observers might be tempted to resort to an ad hoc cultural explanation, such as that smoking serves as a more potent signal of sophistication in France than it does in North America.⁶³ Data on trends in smoking in France, Canada, and the U.S., however, suggest that the direction and pace of norm change actually has been rather similar in the three nations. In each of the three, about 20% fewer members of the total adult male population were smoking in the early 1980s than were in the mid-1960s.⁶⁴ This suggests the main reason that France has more smokers and weaker antismoking norms today is that a larger fraction of its population happened to be smoking when the new information about the dangers of tobacco surfaced. Cultural variations among the three nations may have affected their baseline smoking rates, but not the basic thrust of their social responses to the new medical evidence.

61. In the early- to mid-1980s, about two-thirds of men in Japan smoked, one-half in France did, and one-third in Canada and the United States did (Zimring, 1993, p. 98).

62. See Kagan and Vogel (1993, p. 34) (comparing smoking behavior of elites in France, Canada, and the U.S.).

63. Compare Lessig (1995, p. 1030) (downplaying the impact of new scientific information on smoking norms, on the ground that smoking has a different "social meaning" in Europe than in North America).

64. See Zimring (1993, p. 98) for a graph depicting a drop in France from 72% to 50%; in the U.S., from 53% to 35%; and in Canada, from 54% to 32%.

5. Social Failures: The Limitations of Norms

Up to this point, I have been generally upbeat about the ability of members of a social group to adapt their norms to new conditions. This tone is generally consistent with my prior work (Ellickson, 1991) and the views of Cooter (1996, pp. 1677–78), Demsetz (1967), and the other “optimists” about norms.⁶⁵ But there also are many “pessimists” among the scholars, including Eric Posner (2000, pp. 171–79) and, in important respects, McAdams (1997, pp. 409–24).⁶⁶ The pessimists repeatedly indicate how the norm-making process may fail to serve utilitarian ends. In this section, I suggest that the scholars in these opposing camps may disagree less about the nature of norm making than about the likelihood that government officials can outperform norm makers.

Conventional transaction-cost economics helps lay bare how social processes may fail. In Coase’s (1960) hypothetical world of zero transaction costs, a norm could not be the source of a deadweight loss because, if it were, all affected persons instantly would contract to reform it. Nonutilitarian norms therefore can arise only in contexts where transaction costs are high.⁶⁷ The details of social contexts, such as the number of members involved, thus matter a great deal. Transaction costs are especially likely to impede correction of an inefficient norm when (1) the costs of the norms are mostly deflected to outsiders, (2) a group has difficulty coordinating the aggregate amounts of its rewards to worthy change agents, (3) a group’s esteem awards are likely to be insufficient to overcome various forms of inertia favoring the status quo, and (4) social conditions make a group vulnerable to reputational cascades toward inefficient fashions. I treat these in turn.

65. See also Schwartz, Baker, and Ryan (1984, pp. 330–31), which argues that a convention survives only if it serves a group’s instrumental and symbolic goals. Sober and Wilson (1998, pp. 10–11, 170–73) refer to this perspective, with which they largely agree, as *group functionalist*.

66. See also Basu, Jones, and Schlicht (1987, pp. 8–12), Kraus (1997), and Roe (1996, pp. 651–52).

67. See generally McAdams (1997, pp. 355–75, 393–94) (analyzing how changes in information and enforcement costs would affect the evolution of norms).

5.1. The Slighting of Outsiders' Interests

All the new norms scholars, even the optimists, agree that a closely knit group may generate a norm that injures outsiders more than it helps insiders.⁶⁸ McAdams's (1995, pp. 1033–82) analysis of Southern traditions of racial segregation, for example, indicates how the norms that Southern whites developed to enhance their own status had horrific effects on blacks. A legislature therefore may be wise to enact a statute, such as a Civil Rights Act, that attends to the external costs that a parochial norm has been inflicting. For the same reason, a common-law judge should not elevate a custom of an industry to the status of law in a context where the custom affects the welfare of outsiders who have no practical capacity to bargain.⁶⁹ The customs of the tugboat industry, for example, which may well serve the needs of shippers, cannot be expected to serve the interests of owners of oceanfront improvements that a wayward barge might strike.⁷⁰

5.2. The Difficulty of Coordinating Aggregate Rewards to Worthy Change Agents

To get the incentives of enforcers right, an audience must dispense its rewards in the appropriate total amounts. If all your other neighbors already have praised you for chastising a smoker, perhaps I should refrain from adding yet more praise, so that you do not start devoting too much time to antismoking campaigns. More precisely, in present-value terms, an audience's expected aggregate rewards ideally should equal the value of the social benefits that an enforcer produces. Coordinating total laurels to accomplish that equivalency is a collective-action problem of the highest degree of difficulty.

68. See, for example, Cooter (1996, pp. 1684–85).

69. Cooter (1996, p. 1655) argues, more generally, that the law's willingness to defer to a group's custom should depend on the soundness, from a lawmaker's perspective, of the incentive structures that the group's members face.

70. The tugboat example is drawn from Judge Learned Hand's famous decision in *The T.J. Hooper*, which held that evidence that a firm had complied with industry custom did not conclusively prove that it had not been negligent. On the possibility that maritime customs will disserve outsiders, see Judge Richard Posner's opinion in *Rodi Yachts, Inc. v. National Marine, Inc.*, (p. 888). See also Epstein (1992, p. 4) and Landes and Posner (1987, pp. 132–33), which articulates the more general proposition that custom is apt to be efficient where transaction costs are low but not where transactions costs are high.

Although neither McAdams's nor Eric Posner's theory provides much hope that a group can aggregate its rewards well, McAdams's is somewhat more encouraging. Esteem rewards in practice do seem to be intentionally gradated. Newspapers vary the lengths of obituaries, writers vary the heartiness of congratulatory messages, and live audiences vary the enthusiasm of their applause.⁷¹ Rosa Parks, who challenged the segregation of public facilities in the South, and Joseph Welch, who took on Joseph McCarthy at his height, were seen as particularly heroic and accordingly received especially high levels of esteem.

If rewards take the form of future exchanges, however, as Posner's theory supposes, an enforcer's aggregate rewards invariably will be poorly calibrated to induce behavior that serves the group in the aggregate. Although accomplishing a *great* deed is likely to signal that one is a "good type" better than merely accomplishing a *good* deed, trading partners still have little or no incentive to appropriately aggregate their bestowals on signalers. They act as seekers of gains from trade, not as rewarders of producers of public goods.

Under both McAdams's and Posner's theories, then, audiences are capable only of creating crude aggregate incentives. Whether this crudeness would result in too much norm change, or too little, would depend on the social context.

5.3. Sources of Inertia: Why Custom May "Lag"

For a variety of other reasons, however, aggregate audience rewards to worthy change agents generally are likely to be too low, not too high. As a result, inefficient social norms tend to be weeded out too slowly.

5.3.1. Cognitive biases in favor of the status quo. An individual tends to regard the prospective loss of a given amount as more momentous than the prospective gain of an equivalent amount.⁷² This loss aversion would incline audience members to withhold esteem from a challenger of the status quo even when they might later find they were pleased that the

71. If esteem is costless to confer, as McAdams supposes, an audience conceivably could provide it in infinite quantities, which would make its receipt valueless. Any esteem theory of norms therefore has to include a conception of how members of an audience budget esteem.

72. See Rabin (1998) for a review of evidence on this point.

norm had been challenged. Other forces, however, may work to soften this effect. For instance, a person might earn the status of an opinion leader by showing skill in helping others overcome their status quo biases.

5.3.2. The costliness of displacing internalized norms. Internalization of a norm reduces a person's receptiveness to new technical information that indicates that the norm has become obsolete. As a result, enforcers and audience members who have internalized an old norm take a longer time to appreciate the deeds of a supplier of a new and better norm.⁷³ When the audience has been socialized to favor the status quo, would-be change agents are more cautious about challenging it.

Southern norms of dueling can serve to illustrate this point. Before the end of the Civil War, an upper-class Southerner male was honor-bound to follow dueling rituals to resolve a dispute over a dignitary slight.⁷⁴ Rich white Southerners, fearing that black slaves might rebel against them, had more need than Northerners to maintain their solidarity. Dueling rituals were constitutive norms that generally served that end.⁷⁵ The freeing of slaves after the South's loss in the Civil War eliminated many of the benefits of maintaining upper-class solidarity. This profound change triggered a norm cascade that quickly obliterated the ritual of dueling (Schwartz, Baker, and Ryan, 1984, p. 349). It is likely, however, that dueling had become obsolete long before but that high transaction costs had prevented members of the Southern elite from coordinating to eliminate the practice (McAdams, 1997, pp. 423–24; Schwartz, Baker, and Ryan, 1984, pp. 328–29). One reason may have been that most members of older generations had internalized dueling norms and therefore resisted the sporadic efforts of reform-minded legislators and members of antidueling societies to extirpate the custom (Hasen, 1996, p. 2150).

73. As McAdams (1995, pp. 394–97) points out, a rapid cascade toward a new norm indicates that the old norm was not effectively internalized. Cascades thus are hard to square with the notion, mentioned in note 6, that internalization is a necessary condition for the existence of a norm.

74. Many of the new norms scholars discuss dueling. Besides the sources cited in this paragraph, see, for example, Lessig (1995, pp. 968–72) and E. Posner (1996a, pp. 1736–40).

75. This resembles the theory developed in Schwartz, Baker, and Ryan (1984). But compare Cohen and Vandello (1998, p. 570), which attributes the white South's enduring "culture of honor" (which excuses self-help violence to remedy an insult) to its origins as a herding society remote from law enforcers.

5.3.3. *The costliness of moving away from a local optimum.* The new norms scholars seem to be most concerned about another potential source of inertia. Game theorists have established that a group may settle on an equilibrium that is less utilitarian than another because it is not in the interest of any person to be the first to move away from it.⁷⁶ In more technical language, a group may become stuck at a local optimum as opposed to the global optimum.⁷⁷ When members of a group are aware that they have a bad norm, they may be able to coordinate a move to a better norm if they can cheaply communicate and contract with one another.⁷⁸ But transaction costs, which presumably grow with group size, can keep a group glued to an inefficient norm.⁷⁹ In particular, if there are too few appreciative observers with the technical knowledge to recognize that the time for change has arrived, change agents may not have adequate esteem incentives to embark on the hard work of triggering a cascade from the status quo.

5.4. Perverse Reputational Cascades (Rat-Race Norms)

To complicate matters further, another body of theory suggests that in some social circumstances norms governing fashions may not only shift too quickly but also produce poor outcomes. The variabilities of the length of skirts and the width of neckties are standard examples. Eric Posner (2000, pp. 174–77) and others who view norms as signals contend that people can succumb to a negative-sum game when they jockey for status. When individuals are unable to coordinate a truce, norms may push them to engage in conspicuous consumption, to undergo cosmetic surgery,

76. Game theorists use *folk theorem* to refer to the proposition that virtually any outcome is a Nash Equilibrium under conditions of repeat play. On the possibility of multiple stable equilibria in the context of norms, see Akerlof (1976) and Kuran (1998, pp. 641–46).

77. This possibility commands a wide consensus. See, for example, Cooter (1996, pp. 1687–88); McAdams (1997, pp. 409–24); E. Posner (1996a, pp. 1711–25), which discusses a variety of reasons why norms may lag behind technological change; and R. Posner (1997, p. 366). For an elegant demonstration of this risk when automatons engage in repeat play, see Picker (1997, p. 1248).

78. On the potentially useful role of a government in coordinating a simultaneous switch to a new norm, see Posner and Rasmusen (1999, pp. 377–78).

79. A global optimum is more efficient than the status quo only if the reduction in deadweight losses attained by getting to the global optimum would exceed the incremental transaction costs incurred in making the move. See note 14.

and to excessively manicure their front lawns. In these instances, change agents pursuing ephemeral personal gains promote a new fashion, and others are prompted to join the bandwagon to avoid being out of step. These sorts of reputational cascades not only consume resources but also may result in fashions that are less efficient than the ones they replace.⁸⁰

5.5. The Debate Between Norm Pessimists and Norm Optimists

Drawing on these potential sources of social failure, pessimistic scholars delight in putting forward examples of norms that support seemingly wasteful practices such as dueling, footbinding, and female circumcision. None of the optimistic scholars appears to deny the possibility of social failure, but they instead stress the presence of corrective forces, such as the market for norms, that tend to spring into action after a social group has gone off track.⁸¹ An optimist might point out that all the wasteful norms listed in the first sentence of this paragraph are either defunct or in decline.⁸²

The debates over the efficiency of prevailing network norms further illuminate the differences between the camps. Pessimistic economists assert the obsolescence of the QWERTY keyboard, which originally was designed in part to prevent typewriter keys from colliding (David, 1985). Optimistic economists, by contrast, claim that QWERTY's disadvantages are slight and that it has survived in the face of powerful corrective pressures (Liebowitz and Margolis, 1990).⁸³ Pessimists may point to the persistence of the English system of weights and measures in the U.S.; optimists, to the widespread inroads of the metric system in scientific laboratories and other venues where its advantages are greatest.

I sense that the differences between the pessimists and optimists are not as profound as they first appear. Optimists should admit that transaction

80. See also Kahan (1997, pp. 352–61) on risks of herd behavior toward tax cheating, juvenile delinquency, and the like; Kraus (1997, p. 403), which draws on Boyd and Richerson's (1985) theory of the evolution of norms; McAdams (1997, pp. 412–24) on this and other varieties of inefficient norms; and Pesendorfer (1995), which develops a model in which cycling of fashions is wasteful.

81. See generally Cooter (1994, pp. 224–26) and McAdams (1997, p. 410) (describing how self-interest, voice, and exit all create pressures toward norm efficiency).

82. On the decline of female circumcision, see Crossette (1998).

83. As an optimist, I point to the rapid evolution of the network norms in the recorded music industry—from 78-RPM records to 33-RPM records, to tapes, to compact discs, to whatever the future will bring.

costs can immunize an inefficient norm from change and that a reputational cascade at times will generate an inefficient norm. For their part, pessimists should admit that corrective social forces such as the market for norms generally tend to erode norms that are suboptimal for a group's insiders. Indeed, the more inefficient a current norm, the greater the incentives of change agents to attack it.⁸⁴

In the end, the key difference between the two camps appears to be that the optimists have less confidence than the pessimists that a government can outperform social forces in reforming inefficient norms. And it is worth reemphasizing that both optimists and pessimists generally applaud a government that uses its laws to counter group norms that are injurious to outsiders.

6. Organizations and Governments as Change Agents

An individual concerned about norms need not act singly, but instead can coordinate on either the supply or demand side through an organization such as a household, private association, or government.⁸⁵ This section analyzes the comparative advantages of these sorts of institutions in the field of norm making.

An organization can exploit scale economies. It also can spread risks, for example, by coordinating a number of early moves simultaneously in order to lower the amount of opprobrium heaped on a first mover. In addition, by shortening lines of communication between the organization's members who are appreciative observers and those who are change agents, it can help assure the change agents that they will receive some esteem from the outset of their campaigns. A norm-change organization with prior successes may earn a reputation as a credible source of technical and social information, strengthening its social power. These advantages,

84. My analysis implies that the sum of a change agent's tangible benefits and esteem rewards would be positively correlated with his contributions to aggregate efficiency. As noted in Cooter (1996, pp. 1649, 1690–94), the notion that change agents disproportionately attack inefficient norms brings to mind the hypothesis, familiar to law-and-economics scholars, that litigants disproportionately challenge inefficient common law rules.

85. See also G. Becker (1996, pp. 225–30), which develops a model in which members of the upper class of a society instigate norm change and compensate those disadvantaged by the change.

taken together, may explain why organizations such as the NAACP, SCLC, and SNCC were central in the fight against norms of racial segregation in the South.⁸⁶

Organizations have disadvantages as well. There is the familiar risk that an agent may pursue personal, not organizational, interests. An individual's incentives when acting through an organization are especially likely to be dulled when the external rewards for successful norm innovation are uniformly spread among all organization members. An organization that pushes new norms therefore is likely to provide internal incentives to reward the agents who have done the most work. These might take the form of promotions, higher compensation, or internal esteem.⁸⁷

6.1. Nongovernmental Organizations as Change Agents

Many nonprofit organizations devote themselves to norm change. In one dramatic instance, sects of Christian missionaries played a central role in triggering the decline of footbinding, a custom that Chinese parents once followed in order to make their daughters more desirable marriage partners. In 1889, 99% of parents in Tingshien were still honoring this practice. The missionaries helped create self-sustaining antifootbinding societies, whose ideas spread so rapidly that footbinding had practically ceased by 1919 (Picker, 1997, pp.1284–85). Two different kinds of nongovernmental organizations were active in the process: the Western missionary organizations and the Chinese antifootbinding societies.

For-profit organizations generally are less involved in the production of public goods such as norms. Nevertheless, a business may influence

86. In his stimulating article on norm evolution, Randal Picker (1997, pp. 1284–85) envisions institutions as having a special role in “seeding” experimental norms. This conclusion, however, flows entirely from the stylized structure of Picker’s computerized tournament, not from any demonstrated advantages of institutions as change agents. In Picker’s tournament, enforcers are unable to invent new norms but instead simply mimic the best strategy that they observe at work in their “information neighborhoods.” Therefore, Picker’s recommendation that institutions have a special role in seeding norms derives solely from his artificial assumption that individuals are incapable of supplying new norms. Compare the same at p. 1235, where Picker agrees that he has not provided a theory of the generation of new norms.

87. Rohacek (1998) analyzes how a private organization that generates public goods can provide material incentives to its activists.

informal rules when it spreads technical or social information through its advertizing. An ad for a nicotine skin-patch helps communicate that smoking is addictive; an ad for Virginia Slims signals that smoking is “in” among young women. Corporate measures also may influence the identity of social groups to which employees belong. A firm may sponsor a softball team and resist organization of a union. Or it may pay for an executive’s fee to join a local country club, a membership that would help bind the executive to local commercial society and its attendant norms.

6.2. Governments as Change Agents

According to the Hobbesian conception, a government exercises its unrivaled power to coerce in order to quell free-riding. This enables it not only to administer punishments that other institutions cannot but also to bestow rewards financed by compulsory taxes. These tools enable a government to provide public goods, including a legal system that enhances social order. Legal scholars traditionally have focused on how specialized government agents produce and enforce legal rules. The new norms scholars reject this legal centralism, however, and emphasize that a state commonly also seeks to influence the norm-making process at work in civil society. At times government agents may do this directly, as various Surgeons General did when they served as norm entrepreneurs in the campaign against smoking. Or a government may act indirectly, perhaps by altering the incentives of private norm-makers.⁸⁸

Kahan (1997), Lessig (1998), Sunstein (1996b), and the other members of the New Chicago School warm to the possibilities of government norm-shaping.⁸⁹ Although cognizant of the risks of totalitarianism (Lessig, 1995, pp. 949–50 n. 19, 1016–19, 1034–44; Sunstein, 1996b, pp. 965–67), they believe that in a pluralistic society government interventions readily can be cabined to prevent excesses. The agenda of the New Chicago School invites a preliminary examination of the comparative advantages of

88. Because my focus is on norm making, I do not discuss the use of governmental powers to supplant norms with law.

89. Members of the school share other common characteristics, notably an appreciation of the practical significance of norms and an interest in behavioral economics, the approach outlined in Jolls, Sunstein, and Thaler (1998).

governments in the norm-making process. It is implausible that government agents inherently possess better technical intelligence than do members of “civil society.”⁹⁰ Rather, the case for state involvement must rest either on the state’s special capabilities as a moral educator, or on its unmatched capacity to exercise force. How plausible are these grounds for government norm-shaping?

6.2.1. A government’s comparative advantages in changing norms. A normative statement by a government agent or institution might carry more inherent weight than an equivalent statement by a nongovernmental change agent. Nancy Reagan used to urge teenagers to “Just Say No” to drugs. Is there reason to believe that her views were more influential than an equivalent statement by an equally famous celebrity would have been? Do citizens give any deference to merely hortatory language in a statute? The new norms scholars have begun to investigate this cluster of questions—conventionally dubbed whether law can serve an “expressive function” when it is not backed by sanctions.⁹¹

Cooter (1996, p. 1675) offers a scenario in which he anticipates that a legislature’s embrace of a norm would carry special expressive weight. He supposes that a municipality has enacted a pooper-scooper ordinance that no one expects it to enforce. He argues the ordinance nevertheless might embolden a pedestrian to chastise an irresponsible dog owner, because the pedestrian now could say, “Clean up. It’s the law.”

Members of a group are likely to follow norm makers who they think possess better information than they do. On what dimensions of the pooper-scooper issue might a city resident perceive that members of city council have superior information? It is implausible that citizens would especially respect the *moral intelligence* of city politicians. Indeed,

90. For example, when externalities are not present, tugboat operators and their shippers are better than judges and jurors at determining the safety equipment that a tug should carry. See sources cited in note 70.

91. See, for example, Dau-Schmidt (1990), which primarily discusses how legal expressions can assist internalization of norms; and Sunstein (1996a), which primarily explores the influence of law on the behavior of actors and enforcers. See also E. Posner (1998, pp. 793–97).

opinion polls indicate that the public has a relatively low opinion of public officials' ethics.⁹²

In some contexts, an ordinary person might defer to a government official's hortatory statement on the ground that the official has superior *technical knowledge*. A Surgeon General therefore is better positioned to speak out on the dangers of cigarettes than a First Lady is to speak out on the dangers of drugs. But informational asymmetries hardly are present when the issue at hand is the removal of canine wastes.

Nevertheless, Cooter's scenario is plausible because a city resident is apt to sense that local elected officials possess better *social knowledge* than ordinary citizens do. As McAdams (1997, pp. 397–407) ably explains, a person who knows that a norm enjoys widespread social acceptance is more willing to support it.⁹³ Politicians specialize in discerning public opinion. A democratic legislature is a superior—indeed, on many issues an unsurpassed—forum for revealing the presence or absence of a social consensus. The enactment of a pooper-scooper ordinance therefore strongly signals that there has been a norm cascade in favor of cleaning up after dogs, and this signal may embolden a pedestrian to join the bandwagon. It follows that a law that citizens perceive to be the product of special-interest lobbying (say a ban on ticket-scalping) will *not* influence the evolution of norms because it will not convey credible evidence of an underlying social consensus.

Citizens relatively indifferent toward their standing with most other members of the public are likely to disregard a democratic government's exhortations. For instance, a teenager is apt to be less responsive to Nancy Reagan's opinions about drugs than to a rock star's. A president's spouse caters to the entire national electorate, whereas a rock star caters to anti-establishment youth, a more potent reference group for most teenagers.

92. See "Opinion Pulse" (*The American Enterprise*, 1999), which reports that in 1998 about 20% of Gallup Poll respondents regarded the honesty and ethical standards of elected officials at all levels of government as "high" or "very high"; these ratings were above those for lawyers (14%) but well below those for, say, bankers (30%), policemen (49%), and college instructors (53%). Tyler (1990, pp. 45–46) asserts that people tend to respect the law as such, even when they disagree with the morality that underlies it. Tyler's respondents, however, made highly favorable moral assessments of all six laws featured in his survey instrument (Tyler 1990, p. 44). If Tyler had included several immoral laws his findings might have changed.

93. See also text accompanying note 54 (sources on informational and reputational cascades).

6.2.2. *How a government can use its coercive powers to influence norm making.* A government's basic norm-shaping tools are readily discerned.⁹⁴ First, it can augment the payoffs of private change agents who share its agenda, and lessen the payoffs of those who do not. For instance, a government can use subsidies or tax benefits to financially boost antismoking activists. Conversely, to deter cigarette advertizing, it could impose a ban or a time-place-manner regulation backed by criminal or civil sanctions.⁹⁵ By altering the level of tangible benefits that change agents expect to receive, these sorts of policies influence change agents' willingness to supply new norms.

Second, to speed the rate of norm change, a government can subsidize the provision of favorable technical and social information in order to influence opinion leaders and appreciative observers. Notable instances are the Surgeon General's Reports of 1964 and 1986, which reported, respectively, scientific evidence on the dangers of first- and secondhand smoke (Gusfield, 1993, pp. 54–60, 79).

Third, government can attempt to regulate groups as such.⁹⁶ For example, it can attempt to lessen the efficacy of an existing group, such as a youth gang, whose norm-making activity it generally disfavors. This might involve an attack on the constitutive norms (such as gang symbols) that maintain the solidarity of the group, rewarding informers who divulge group strategies, enforcing legal rights of privacy that impede a group's ability to monitor its members (McAdams, 1997, pp. 424–32), and conditioning other government benefits on nonmembership in the group.⁹⁷ Conversely, a government can strengthen a group whose norms it generally favors, say by funneling subsidies to individuals through the group.

94. For a variety of views on the appropriate scope of state regulation of norms, see McAdams (1997, pp. 351–432), E. Posner (1996a, pp. 1725–36), Posner and Rasmusen (1999, pp. 380–82), and Sunstein (1996b, pp. 948–50).

95. Some commentators urge governmental action to prevent wasteful arms races in signaling behavior. See Pesendorfer (1995, p. 786) (asserting that sumptuary legislation regulating clothing styles may enhance efficiency). But compare E. Posner (2000, p. 176) (skeptically assessing proposals to tax consumption of positional goods).

96. The definitive discussion is E. Posner (1996b); see also Picker (1997, pp. 1265–81, 1285–86).

97. See Kahan (1998, pp. 612–15) (recommending curfews and antiloitering laws that would make it harder for a gang to signal power to teenagers) and Kuran (1998) (discussing production of norms that sustain ethnic groups).

The social influence of a religious institution grows when a government gives grants to its soup kitchens.

Finally, instead of passively accepting the boundaries of existing groups, a government can attempt to alter those boundaries in order to achieve its goals. As noted earlier, the enactment of the Civil Rights Acts of the 1960s lessened the parochialism of Southern whites and changed their norms. A government that engages in ethnic cleansing, by contrast, enhances both the homogeneity of its demographic groups and the parochialism of their norms.

The ethnic cleansing example should serve as a caution to the members of the New Chicago School. Even if informal norm making is vulnerable to the social failures described in Section 5, it does not follow that an activist government would improve matters. Government actions commonly have unanticipated consequences. The Bolsheviks aggressively attempted to inculcate norms of selflessness and ended up dissipating Russia's scarce social capital. As Robert Clark (1989, p. 1732) has noted, a society that relies on norms encounters fewer risks than a society that empowers technocrats to rule by force. The basic point is that a narrow interest group cannot capture the diffuse forces of "civil society" as easily as it can the state.⁹⁸ The most serious atrocities of the Nazis, Bolsheviks, and Balkan ethnic cleansers began only after those groups had attained political power. Although the state does have some special capabilities in norm making, it is also by far the most dangerous participant in that process.⁹⁹

98. Some observers suppose that powerful factions can manipulate social norms in their favor. Marx saw the "ruling class" as able to inculcate a false consciousness in the masses. Some feminist scholars see males as having dominated the norm-making process to the detriment of women. On the possibility of interest-group capture of norms, see McAdams (1997, p. 416) and E. Posner (1996a, p. 1719).

99. Most law-and-economics scholars seem not to share the New Chicago School's relative confidence in the state. See, for example, Bernstein (1996, p. 157) (concluding that merchants' norms are superior to legal rules); Macey (1997, pp. 1137–49); Picker (1997, pp. 1284–88) (favoring government seeding of experimental norms, but not grander governmental interventions); E. Posner (1998, pp. 795–98) (seemingly retreating from a rosier view of state intervention expressed in E. Posner [1996a]); and Roe (1996, pp. 665–66). Compare Tushnet (1998, pp. 587–88) (stating that "culture is rather resistant to conscious manipulation, particularly by law").

7. Conclusion

A new social norm typically emerges not from a collective decision by the members of an informal group but from the purposive decisions of members acting as individuals. The basic tools of microeconomics can help illuminate this process. This article has presented a semirigorous model in which a new norm arises out of the workings of a market for norms. Change is triggered by a shift in either cost-benefit conditions or group composition. Because individuals are heterogeneous in important respects, they respond differently to these triggering events. The first persons to supply new norms generally have either special endowments that provide them with unusually high tangible benefits from norm reform, superior technical knowledge of cost-benefit conditions, or superior social knowledge of group dynamics. Members of the social audience observe the competing efforts of these norm suppliers and reward the most meritorious by conferring on them either esteem or, according to a rival theory, new exchange opportunities. Under ideal conditions, members of the audience—key participants in the demand side of the market for norms—have no incentive to free-ride in rewarding a worthy norm-innovator because they incur no net costs when bestowing their rewards.

The model incorporates numerous simplifying assumptions in order to render complex social phenomena more tractable. Two of the most heroic assumptions are that members of a social audience selflessly prefer utilitarian outcomes and that they can successfully coordinate the aggregate rewards that they confer. Critics are invited to exploit these and other weaknesses. More fundamentally, it is not obvious that modeling norm making as a market process enlightens more than it distorts. I am firmly convinced, however, of the value of a theory that links norm changes with heterogeneities among individuals.

Some (perhaps many) portions of my analysis may seem obvious. The reason is simple. Because we each spend much of our days swimming in social waters, we all have deep intuitive understandings of social phenomena. Common law judges similarly appear to have had a good understanding of microeconomics before the time of Adam Smith. But just as economic theory has served to deepen economic understandings, a more powerful theory of social norms should serve to sharpen social intelligence.

In particular, theory can stimulate valuable empirical work. As Ronald Coase (1960, pp. 18–19) stressed in his foundational article, a better understanding of the human condition ultimately depends on study of actual practices. Despite this advice, law-and-economics scholars, while eager to draw on *others'* studies of norms governing smoking, dueling, footbinding, and so on, themselves rarely undertake primary research on norms. I esteem the few, such as Lisa Bernstein, who have broken the mold, and I urge you to do the same.¹⁰⁰

References

- Akerlof, George. 1976. "The Economics of Caste and of the Rat Race and Other Woeful Tales," 90 *Quarterly Journal of Economics* 599–617.
- Basu, Kaushik, Eric Jones, and Ekkehart Schlicht. 1987. "The Growth and Decay of Custom: The Role of the New Institutional Economics in Economic History," 24 *Explorations in Economic History* 1–21.
- Becker, Gary S. 1996. *Accounting for Tastes*. Cambridge, MA: Harvard University Press.
- Becker, Howard S. 1963. *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press.
- Bendor, Jonathan, and Piotr Swistak. Unpublished. "The Evolution of Norms," Stanford University.
- Berelson, Bernard R., Paul F. Lazarsfeld, and William N. McPhee. 1954. *Voting*. Chicago: University of Chicago Press.
- Bernheim, B. Douglas. 1994. "A Theory of Conformity," 102 *Journal of Political Economy* 841–77.
- Bernstein, Lisa. 1992. "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry," 21 *Journal of Legal Studies* 115–57.
- . 1996. "Merchant Law in a Merchant Court," 144 *University of Pennsylvania Law Review* 1796–1821.
- . 1999. "The Questionable Empirical Basis of Article 2's Incorporation Strategy: A Preliminary Study," 66 *University of Chicago Law Review* 710–80.
- Bikhchandani, Sushil, David Hirshleifer, and Ivo Welch. 1992. "A Theory of Fads, Fashions, Custom, and Cultural Change as Informational Cascades," 100 *Journal of Political Economy* 992–1026.
- . 1998. "Learning from the Behavior of Others: Conformity, Fads, and Informational Cascades," 12 *Journal of Economic Perspectives* 151–70.

100. See Bernstein (1992, 1996, 1999) and West (1997).

- Binmore, Ken G. 1998. "The Evolution of Fairness Norms," 10 *Rationality and Society* 275–301.
- Boyd, Robert, and Peter J. Richerson. 1985. *Culture and the Evolutionary Process*. Chicago: University of Chicago Press.
- Bowles, Samuel, and Herbert Gintis. Unpublished. "The Evolution of Strong Reciprocity," University of Massachusetts, Amherst.
- Chong, Dennis. 1991. *Collective Action and the Civil Rights Movement*. Chicago: University of Chicago Press.
- Clark, Robert C. 1989. "Contracts, Elites, and Traditions in the Making of Corporate Law," 89 *Columbia Law Review* 1703–47.
- Coase, Ronald H. 1960. "The Problem of Social Cost," 3 *Journal of Law and Economics* 1–44.
- Cohen, Dov, and Joe Vandellos. 1998. "Meanings of Violence," 27 *Journal of Legal Studies* 567–84.
- Coleman, James S. 1990. *Foundations of Social Theory*. Cambridge, MA: Harvard University Press.
- Cooter, Robert D. 1994. "Structural Adjudication and the New Law Merchant: A Model of Decentralized Law," 14 *International Review of Law and Economics* 215–31.
- . 1996. "Decentralized Law for a Complex Economy: The Structural Approach to Adjudicating the New Law Merchant," 144 *University of Pennsylvania Law Review* 1643–96.
- . 1998. "Expressive Law and Economics," 27 *Journal of Legal Studies* 585–608.
- Cover, Robert M. 1983. "The Supreme Court, 1982 Term—Foreword: *Nomos* and Narrative," 97 *Harvard Law Review* 4–68.
- Crossette, Barbara. 1998. "A Uganda Tribe Fights Genital Cutting," *New York Times*, July 16, 1998, A8.
- Damasio, Antonio R. 1994. *Descartes' Error: Emotion, Reason, and the Human Brain*. New York: G.P. Putnam.
- David, Paul A. 1985. "Clio and the Economics of QWERTY," 75 *American Economic Review* 332–37.
- Davis, Lance E., Richard A. Easterlin, and William N. Parker. 1972. *American Economic Growth*. New York: Harper & Row.
- Dau-Schmidt, Kenneth G. 1990. "An Economic Analysis of Criminal Law as a Preference-Shaping Policy," 1990 *Duke Law Journal* 1–38.
- Demsetz, Harold. 1967. "Toward a Theory of Property Rights," 57 *American Economic Review* 347–59.
- Diamond, Jared. 1997. *Guns, Germs, and Steel*. New York: W.W. Norton.
- Eckholm, Erik. 1998. "Village of Small Farmers Marks Own Great Leap," *New York Times*, September 19, A4.

- Ellickson, Robert C. 1991. *Order Without Law*. Cambridge, MA: Harvard University Press.
- . 1993. “Property in Land,” 102 *Yale Law Journal* 1315–1400.
- Epstein, Richard A. 1992. “The Path to *The T.J. Hooper*: The Theory and History of Custom in the Law of Tort,” 21 *Journal of Legal Studies* 1–38.
- Gardner, Howard. 1995. *Leading Minds: An Anatomy of Leadership*. New York: BasicBooks.
- Goldsmith, Jack L., and Eric A. Posner. 1999. “A Theory of Customary International Law,” 66 *University of Chicago Law Review* 1113–77.
- Gouldner, Alvin W., ed. 1950. *Studies in Leadership: Leadership and Democratic Action*. New York: Harper.
- Griliches, Zvi. 1957. “Hybrid Corn: An Exploration in the Economics of Technological Change,” 25 *Econometrica* 501–22.
- Gusfield, Joseph R. 1993. “The Social Symbolism of Smoking and Health,” in Robert L. Rabin and Stephen D. Sugarman, eds., *Smoking Policy: Law, Politics, and Culture*. New York: Oxford University Press.
- Hanson, John D., and Kyle D. Logue. 1998. “The Costs of Cigarettes: The Economic Case for Ex Post Incentive Regulation,” 107 *Yale Law Journal* 1163–1361.
- Hasen, Richard L. 1996. “Voting Without Law,” 144 *University of Pennsylvania Law Review* 2135–79.
- Hermalin, Benjamin E. 1998. “Toward an Economic Theory of Leadership: Leading by Example,” 88 *American Economic Review* 1188–1206.
- Hirschman, Albert O. 1982. “Rival Interpretations of Market Society: Civilizing, Destructive, or Feeble?” 20 *Journal of Economic Literature* 1463–84.
- Jolls, Christine, Cass R. Sunstein, and Richard Thaler. 1998. “A Behavioral Approach to Law and Economics,” 50 *Stanford Law Review* 1471–1550.
- Kagan, Robert A., and Jerome H. Skolnick. 1993. “Banning Smoking: Compliance Without Enforcement,” in Robert L. Rabin and Stephen D. Sugarman, eds., *Smoking Policy: Law, Politics, and Culture*. New York: Oxford University Press.
- Kagan, Robert A., and David Vogel. 1993. “The Politics of Smoking Regulation: Canada, France, the United States,” in Robert L. Rabin and Stephen D. Sugarman, eds., *Smoking Policy: Law, Politics, and Culture*. New York: Oxford University Press.
- Kahan, Dan M. 1997. “Social Influence, Social Meaning, and Deterrence,” 83 *Virginia Law Review* 349–95.
- . 1998. “Social Meaning and the Economic Analysis of Crime,” 27 *Journal of Legal Studies* 609–22.
- Kandori, Michihiro, George J. Mailath, and Rafael Rob. 1993. “Learning, Mutation, and Long Run Equilibria in Games,” 61 *Econometrica* 29–56.
- Katz, Avery. 1996. “Taking Private Ordering Seriously,” 144 *University of Pennsylvania Law Review* 1745–63.

- Kraus, Jody S. 1997. "Legal Design and the Evolution of Commercial Norms," 26 *Journal of Legal Studies* 377–411.
- Kuran, Timur. 1998. "Ethnic Norms and Their Transformation Through Reputational Cascades," 27 *Journal of Legal Studies* 623–59.
- Kuran, Timur, and Cass R. Sunstein. 1999. "Availability Cascades and Risk Regulation," 51 *Stanford Law Review* 683–768.
- Landes, William M., and Richard A. Posner. 1987. *The Economic Structure of Tort Law*. Cambridge, MA: Harvard University Press.
- Lessig, Lawrence. 1995. "The Regulation of Social Meaning," 62 *University of Chicago Law Review* 943–1045.
- . 1998. "The New Chicago School," 27 *Journal of Legal Studies* 661–91.
- Lewinsohn-Zamir, Daphna. 1998. "Consumer Preferences, Citizen Preferences, and the Provision of Public Goods," 108 *Yale Law Journal* 377–405.
- Libecap, Gary D. 1989. *Contracting for Property Rights*. Cambridge: Cambridge University Press.
- Liebowitz, S.J., and Stephen E. Margolis. 1990. "The Fable of the Keys," 33 *Journal of Law and Economics* 1–25.
- Lionberger, Herbert F. 1960. *Adoption of New Ideas and Practices*. Ames: Iowa State University Press.
- Macey, Jonathon R. 1997. "Public and Private Ordering and the Production of Legitimate and Illegitimate Rules," 82 *Cornell Law Review* 1123–49.
- Margolis, Howard. 1982. *Selfishness, Altruism and Rationality*. New York: Cambridge University Press.
- McAdams, Richard H. 1995. "Cooperation and Conflict: The Economics of Group Status Production and Race Discrimination," 108 *Harvard Law Review* 1003–84.
- . 1997. "The Origin, Development, and Regulation of Norms," 96 *Michigan Law Review* 338–433.
- Michelman, Frank I. 1967. "Property, Utility and Fairness: Comments on the Ethical Foundations of 'Just Compensation' Law," 80 *Harvard Law Review* 1165–1258.
- Morriss, Andrew P. 1998. "Miners, Vigilantes and Cattlemen: Overcoming Free Rider Problems in the Private Provision of Law," 33 *Land and Water Law Review* 581–696.
- Olson, Mancur. 1965. *The Logic of Collective Action*. Cambridge, MA: Harvard University Press.
- "Opinion Pulse," 1999. *The American Enterprise*. (March/April) 90.
- Pesendorfer, Wolfgang. 1995. "Design Innovations and Fashion Cycles," 85 *American Economic Review* 771–92.
- Pettit, Philip. 1990. "Virtus Normativa: Rational Choice Perspectives," 100 *Ethics* 725–55.

- Picker, Randal C. 1997. "Simple Games in a Complex World: A Generative Approach to the Adoption of Norms," 64 *University of Chicago Law Review* 1225–88.
- Posner, Eric A. 1996a. "Law, Economics, and Inefficient Norms," 144 *University of Pennsylvania Law Review* 1697–1744.
- . 1996b. "The Regulation of Groups: The Influence of Legal and Non-Legal Sanctions on Collective Action," 63 *University of Chicago Law Review* 133–97.
- . 1998. "Symbols, Signals and Social Norms in Politics and the Law," 27 *Journal of Legal Studies* 765–98.
- . 2000. *Law and Social Norms*. Cambridge, MA: Harvard University Press.
- Posner, Richard A. 1997. "Social Norms and the Law: An Economic Approach," 87 *American Economic Review* 365–69.
- . 1998. "The Problematics of Moral and Legal Theory," 111 *Harvard Law Review* 1637–1717.
- Posner, Richard A., and Eric B. Rasmusen. 1999. "Creating and Enforcing Norms, with Special Reference to Sanctions," 19 *International Review of Law and Economics* 369–82.
- Rabin, Matthew. 1998. "Psychology and Economics," 36 *Journal of Economic Literature* 11–46.
- Rabin, Robert L., and Stephen D. Sugarman, eds. 1993. *Smoking Policy: Law, Politics, and Culture*. New York: Oxford University Press.
- Ridley, Matt. 1996. *The Origins of Virtue*. London: Viking.
- Rock, Edward B., and Michael L. Wachter. 1996. "The Enforceability of Norms and the Employment Relationship," 144 *University of Pennsylvania Law Review* 1913–52.
- Rodi Yachts, Inc. v. National Marine, Inc.*, 984 F. 2d 880 (7th Cir. 1993).
- Roe, Mark J. 1996. "Chaos and Evolution in Law and Economics," 109 *Harvard Law Review* 641–68.
- Rogers, Everett M. 1983. *Diffusion of Innovations*, 3rd ed. New York: Free Press.
- Rohacek, Jerry K. 1998. "Revolutionary Armies, Labor Unions, and Free-Riders: Organization, Power, and In-Kind Benefits," 3 *Independent Review* 229–41.
- Schelling, Thomas C. 1960. *The Strategy of Conflict*. Cambridge, MA: Harvard University Press.
- . 1978. *Micromotives and Macrobehavior*. New York: W.W. Norton.
- Schneider, Mark, Paul Teske, and Michael Mintrom. 1995. *Public Entrepreneurs: Agents for Change in American Government*. Princeton, NJ: Princeton University Press.
- Schwartz, Warren F., Keith Baker, and David Ryan. 1984. "The Duel: Can These Gentlemen Be Acting Efficiently?" 13 *Journal of Legal Studies* 321–55.
- Smith, Adam. [1759] 1982. *The Theory of Moral Sentiments*. D. D. Raphael and A. L. Macfie, eds. New York: Oxford University Press.

- Sober, Elliott, and David Sloan Wilson. 1998. *Unto Others: The Evolution and Psychology of Unselfish Behavior*. Cambridge, MA: Harvard University Press.
- Spence, A. M. 1974. *Market Signaling*. Cambridge, MA: Harvard University Press.
- Sulloway, Frank J. 1996. *Born to Rebel: Birth Order, Family Dynamics and Creative Lives*. New York: Pantheon Books.
- Sunstein, Cass R. 1996a. "On the Expressive Function of Law," 144 *University of Pennsylvania Law Review* 2021–53.
- . 1996b. "Social Norms and Social Roles," 96 *Columbia Law Review* 903–68.
- The T.J. Hooper*, 60 F.2d 737 (2d Cir. 1932).
- Tushnet, Mark. 1998. "'Everything Old Is New Again': Early Reflections on the 'New Chicago School,'" 1998 *Wisconsin Law Review* 579–90.
- Tyler, Tom R. 1990. *Why People Obey the Law*. New Haven: Yale University Press.
- West, Mark D. 1997. "Legal Rules and Social Norms in Japan's Secret World of Sumo," 26 *Journal of Legal Studies* 165–201.
- Wills, Garry. 1984. *Cincinnatus: George Washington and the Enlightenment*. Garden City, NY: Doubleday.
- Zimring, Franklin E. 1993. "Comparing Cigarette Policy and Illicit Drug and Alcohol Control," in Robert L. Rabin and Stephen D. Sugarman, eds., *Smoking Policy: Law, Politics, and Culture*. New York: Oxford University Press.