



**Do Good Laws Make Good Citizens?
An Economic Analysis of Internalizing Legal
Values**

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by

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Abstract: How important is the internalization of values by citizens to the effectiveness of the state? Civic acts by citizens help the state to overcome potentially crippling agency problems. Law influences the behavior of citizens through expression, deterrence, and internalization. Distinguishing these effects shows the importance of each, and also shows why the state can express and deter more easily than it can induce citizens to internalize values. In a rational, self-interested theory of the internalization of values, people change their preferences to increase their opportunities for cooperation with others. Since officials have remote relationships with citizens in modern states, the state lacks the information needed to reward virtuous citizens. Instead of promoting civic virtue directly, the state must rely on families, friends, and colleagues to encourage civic virtue. To achieve this goal, the state must first align law with the social norms that facilitate private cooperation.

Do Good Laws Make Good Citizens?
An Economic Analysis of Internalizing Legal Values

"...for legislators make the citizens good by forming habits in them, and this is the wish for every legislator, and those who do not effect it miss their mark, and it is in this that a good constitution differs from a bad one." –Aristotle.¹

"There's no disputing tastes." –Becker and Stigler.²

The German sociologist Max Weber believed that modern state administration embodies instrumental rationality, defined as the pursuit of explicit ends through efficient means.³ When we peer over the sheer wall of an enormous dam or look up at a battleship bristling with sailors, the power of state bureaucracy awes us much like it awed Weber. In contrast, another famous writer in German, Franz Kafka, described state bureaucracy as a labyrinth where condemned citizens wander without hope of escape.⁴ Kafka apparently believed that government bureaucracy embodies irrationality, defined as the pursuit of contradictory ends by inefficient means. When the state constructs unneeded dams to enrich cement manufacturers and dispatches battleships to perform

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¹ (Aristotle).

² (Stigler and Becker 1977).

³ Weber writes:

"The decisive reason for the advance of bureaucratic organization has always been its purely technical superiority over any other form of organization. The fully developed bureaucratic mechanism compares with other organizations exactly as does the machine with the non-mechanical modes of production. "

Weber describes how a perfect bureaucracy operates:

"Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs--these are raised to the optimum point in the strictly bureaucratic administration...Bureaucratization offers above all the optimum possibility for carrying through the principle of specializing administrative functions according to purely objective considerations."

(Weber 1974) at page 214.

⁴ Kafka writes: "We [state officials] are humble subordinates who can scarcely find our way through a legal document and have nothing to do with your case except to stand guard over you for ten hours a day and draw our pay for it." (1956) at pages 9-10.

tasks requiring a rowboat, the irrationality of state bureaucracy appalls us much like it appalled Kafka.

What determines whether state administration is rational and efficient, or irrational and inefficient? State organizations are replete with agency problems that preclude effective motivation of people by formal means alone. Perhaps effective formal institutions depend on the flourishing of complementary informal institutions. With these thoughts in mind, political scientists have examined civic culture,⁵ economists have examined social capital,⁶ and legal scholars have examined social norms⁷. While this research reveals many ways those informal institutions complement formal institutions, these studies also leave many puzzling questions unanswered. One such question is whether effective formal institutions require people to internalize particular values. Moral skeptics hold that the state can function effectively without its citizens internalizing any particular values. In this view, rationally self-interested citizens are governable. In contrast, moral believers hold that an effective state requires its citizens to internalize particular values. In this view, morality must temper self-interest in many citizens to make them governable.

In the past, the balance of opinion clearly favored believers and disfavored skeptics. According to James Gordley, few pre-moderns questioned the belief that the health of the state reflects the virtue of its citizens.⁸ Behind this scholarly tradition stands common sense opinion, which Gerald Lynch recently articulated:

"What society wants from its members, in any case, is not intelligent calculation of the costs and benefits of abiding by its basic norms, but more or less unthinking obedience to them. To the extent that people are specifically comparing the costs and benefits to them of breaking criminal laws, the battle is already lost; many of them must conclude, in particular situations, that the calculus favors law-breaking...For society to function, most people

⁵ (Almond and Verba; Barry); (Putnam, Leonardi, and Nanetti Vol. 1, no. 3 (July 1988); 1993; 1999).

⁶ (Knack and Keefer 1997); get other cites including Becker.

⁷ For a recent introduction, see the symposia on social norms in (Symposium on Social Norms and the Law 1996) and also cite symposium on social norms in JLS 1998**.

⁸ Private communication between Professor Gordley and me. **Insert cite. He offers Machiavelli as a possible exception.

have to obey the law for reasons of conscience and conviction, and not out of fear of punishment."⁹

Against the weight of traditional scholarship and common sense stands the economic analysis of law. Some economists proclaim moral skepticism and almost all economists practice it in their research. Economic models based on rationally self-interested actors implicitly assume moral skepticism. The great success of these models proves the fruitfulness of skepticism about human motivation in analyzing law and government.¹⁰

Purely self-interested models, however, apparently fail to explain significant activities of people. To illustrate, the people in laboratory games conducted by economists and social psychologists persistently cooperate more than predicted by rational self-interest.¹¹ For example, people share payoffs with others when doing so has no reward. A crucial failure of self-interested theories of politics concerns voting in elections. Journalists chide citizens for low rates of participation in elections, whereas economists find participation rates inexplicably high. According to one calculation, the probability of casting a decisive vote in a typical U.S. general election approximately equals 10^{-8} .¹² Under any reasonable assumptions, the probability that a particular voter will be decisive in a general election is so small that purely self-interested citizens would not bother to vote at current rates. As with voting, self-interested motives probably cannot explain the decisions of independent judges.

To encompass these facts, economics can postulate a "taste" for fairness, voting, or judging. Or perhaps economists can postulate a general taste for self-expression that encompasses particular tastes for fairness, voting, and judging. To explain an unexplained behavior by reference to an unexplained taste,

⁹ (Lynch 1997).

¹⁰ (Landes 1993)

¹¹ (Bazerman and Neale 1995; Burrows 1990; presented at EALE annual meeting, Rome, 1990; Cook; Hoffman 1997; and al. 1994; Hoffman and Spitzer 1985; Rabin 1993; Sugden 1984; Hoffman and et al. 1997).

¹² See discussion in (Hasen 1996). Using a different method of calculation, (Romer 1996) concludes at page 200 that the probability of a tie in a U.S. presidential election in which 50 million people vote is approximately 10^{-4} . For a comparison of self-interested and civic-minded theories of voter participation, see Chapter 2 of (2000). A more careful strategic theory of voting developed by Pessendorfer** provides a clever but ultimately unconvincing solution to this puzzle. See Pessendorfer **.

however, is rather like asserting that opium makes people drowsy because of its “dormative power.” This purported explanation contributes nothing without a theory of tastes. Postulating different tastes among people merely postpones explaining why some people have such desires and others do not.

In the past, economists made little effort to explain tastes, and some economists such as Becker and Stigler praised this reluctance as a methodological virtue linked to scientific rigor.¹³ Economic theory is only beginning a sustained inquiry into the question, “Where do preferences come from?”¹⁴ Rational choice theory lacks a method to investigate the internalization of values in general or civic morality in particular. If the fundamental mechanisms for acquiring preferences are rational, then economics can comprehend the internalization of values. In this paper I extend the core concepts of economics to explain the internalization of values. I follow the modern trend in economic theory of emphasizing limits on the decision maker’s information. Specifically, I emphasize limits on the decision maker’s self-knowledge. The key concept, which I have introduced elsewhere, is “Pareto self-improvement.”¹⁵ This concept provides a guide to internalization by a rational decision-maker with limited self-knowledge.

Before constructing a new building in Rome, the builder must sift through the detritus from centuries of human occupation and activity. Similarly, old debates can easily retard building a new theory of internalization. I will try to avoid engaging in old debates as much as possible. One old debate that I will completely avoid is whether or not citizens who internalize civic morality are ultimately self-interested. I leave to philosophers, especial Kantians, the question, “What is the difference between an unselfish desire to treat others fairly and a selfish desire to satisfy a taste for treating others fairly?” Instead of joining the philosophers in debating whether altruistic desires are really selfish, social

¹³ (Stigler and Becker 1977).

¹⁴ (Frank 1987; Benson 1998; Bowles 1998; Hechter 1994; McManus 1978; Peleg and Yaari 1973; ; Stigler and Becker 1977; Sugden 1990; Ullmann-Margalit 1990; Yaari 1977; von Weizsacker 1971; Dixit and Norman 1980; Dixit and Norman 1979; Dixit and Norman 1978; 1985; Hammond 1976; 1996; Elster 1997; 1986; Pollak 1976). Also see the Norms and Preferences Network at <http://www.umass.edu/preferen/>.

scientists should recognize that this question is unimportant for most of their purposes.¹⁶ Instead, social scientists should describe the distribution of internalized values among people, and the causes and effects of this distribution.

My concern in this paper is with the way law affects internalized values. I begin by distinguishing three ways that law affects behavior: deterrence, expression, and internalization. This distinction helps me to isolate how law can cause citizens to internalize values. After sketching the mechanisms, I then return to the relative importance of internalization as compared to deterrence and expression as means for law to influence behavior. This analysis helps to specify how the internalization of values affects the ability of law to deter wrongdoing and motivate civic acts.

Three Models of Law's Effect on Behavior

I distinguish three different ways that law influences behavior. Instead of focusing on discouraging wrongdoing, I will focus on encouraging right-doing. I have in mind voluntary civic acts such as participating in government, helping officials to enforce laws, encouraging honest administration, cleaning the local park, helping the needy, following the rules, and treating others fairly. To distinguish three ways that law influences right-doing, I will explain three graphs that I developed elsewhere.¹⁷

Voluntary civic acts often cost money, time, effort, opportunities, inconvenience, or risk. The vertical axis in Figure 1 represents the amount a person would be willing to pay to do a particular civic act, and the horizontal axis represents the proportion of citizens willing to pay the price. According to the graph, a small number of people are willing to pay a lot and a large number of people are willing to pay a little. Roughly 80% of the citizens will pay something

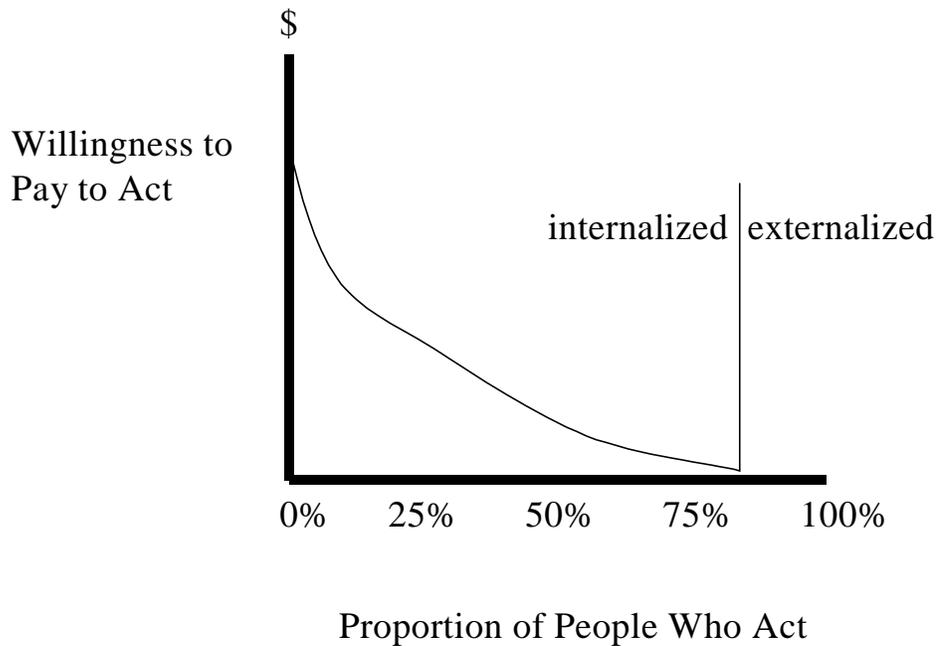
¹⁵ (Cooter 1998b; Cooter 1998a).

¹⁶ There is, I believe, a difference detectable by behavioral theories between a person who thinks of himself as acting fairly for selfish reasons and a person who thinks of himself as acting fairly for intrinsic reasons. The difference concerns the conditions under which the person's motives will change. To illustrate, arguments appealing to selfishness are more likely to change the behavior of an egoist than a moralists. This fact, in turn, may affect the stability of the behavior in question. The effect of argument on stability, however, is not the usual focus of behavioral theories.

¹⁷ (Cooter 1998b; Cooter 1997a).

to do their civic duty, whereas roughly 20% will pay nothing. Thus I say that roughly 80% of the population has internalized their civic duty (although not to the same extent), and roughly 20% of the population externalizes their civic duty. To illustrate concretely, imagine a state in which 80% of the citizens are willing to expend some time and effort in order to vote, but not everyone is willing to expend the same amount, and 20% of the citizens are unwilling to expend anything.

Figure 1: Willingness to Pay



The theory of consumer demand elucidates Figure 1. For some goods such as pizzas or gasoline, a fall in price causes most consumers to buy more of the good. For other goods, such as houses and dentures, most consumers buy only one good at most, so a fall in price causes more people to buy the good. Figure 1 resembles a demand curve for goods of the second type.

Another distinction concerns the difference between derived demand and final demand. The demand for seed corn, chromium, and sulfuric acid by

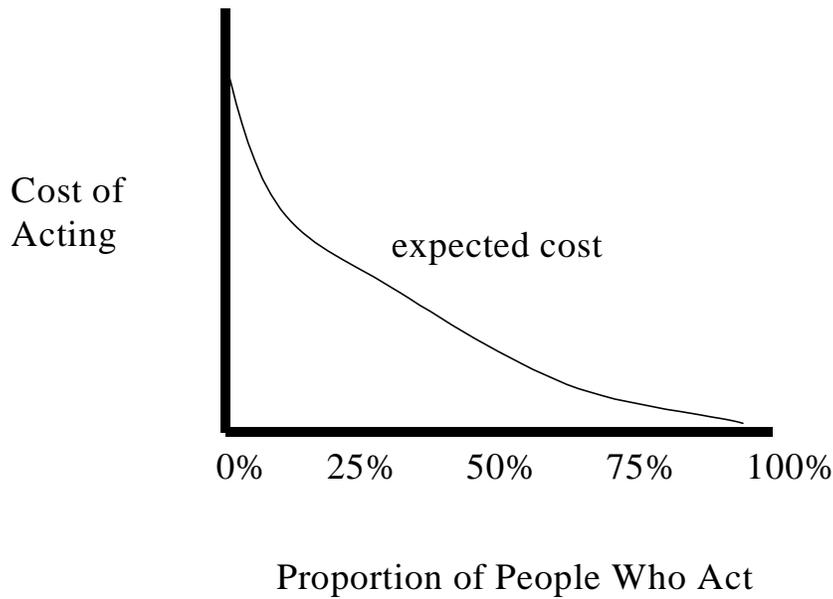
producers derives from the demand by consumers for the goods produced by using seed corn, chromium, and sulfuric acid. In contrast, households demand food, automobiles, and newspapers for final consumption. The preferences of consumers determine final demand, whereas final demand ultimately determines derived demand. Similarly, the curve in Figure 1 represents the intrinsic value of civic acts to the actor, which depends on the preferences of citizens. In contrast, civic acts can have instrumental value for people without any preference to do their civic duty. To illustrate, the instrumental value of civic acts often depends on the advantage gained from having the reputation of being a good citizen.

Having graphed the price that citizens are willing to pay to do their civic duty, now I turn to the cost that they have to pay. As noted, civic duties such as participating in government, helping officials to enforce laws, encouraging honest administration, cleaning the local park, helping the needy, and following the rules often impose a cost in the form of money, foregone opportunity, inconvenience, effort, or risk. With many civic acts, the cost depends partly on how many people join in doing the act. To illustrate, elsewhere I have discussed at length the fact that the risk imposed on an individual who helps an official enforce a law often decreases with the number of other citizens who also help enforce the law.¹⁸ Whenever increasing returns to scale characterize the performance of civic duties, the cost to an individual who performs his civic duty decreases with the number of other people who do their civic duty.

In general, costs can increase or decrease with the number of people who do their civic duty. I will analyze the case where costs born by each actor decrease as more actors do their civic duty. In such circumstances, the expected cost curve slopes down, as in Figure 2.

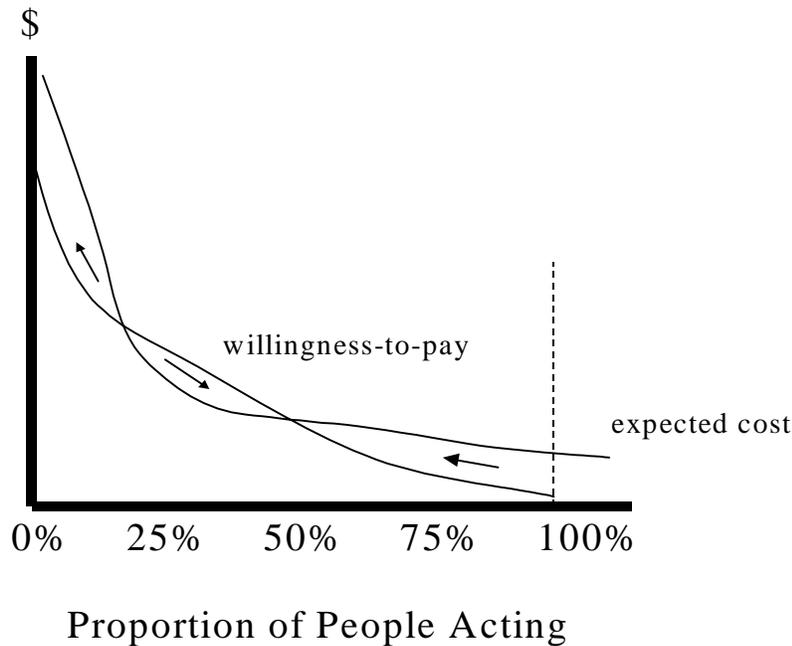
¹⁸ Especially see (Norms 1996; Cooter 1997b).

Figure 2: Cost



The curves for expected cost and willingness-to-pay can assume various shapes, depending on historical details and institutional accidents. I want to combine the two curves in a single figure. To reduce the number of graphs, I have drawn shapes for the curves in Figure 3 that captures the most interesting possibilities. Where the two curves intersect, the cost of doing the civic act equals the price people are willing to pay, so the system is in equilibrium. To illustrate, an equilibrium occurs in Figure 3 at roughly 20% and 50%. (Later I explain that a “corner” equilibrium also occurs at 0%.)

Figure 3: Equilibria



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

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

system depicted in Figure 3. I will use these facts to analysis to distinguish three ways that law influences behavior: expression, deterrence, and internalization.

Expression As Cheap Talk

What determines whether the system depicted in Figure 3 settles into an equilibrium at 0% or 50%? If everyone believes that less than 20% of the citizens will do the act in question, then their belief will prove correct and the system will converge to the equilibrium at 0%. Conversely, if everyone believes that more than 20% of the citizens will do the act in question, then their belief will prove correct and the system will converge to the equilibrium at 50%. So the system has characteristics of a self-fulfilling prophesy.

Given this fact, the law might play a crucial role in determining the outcome by influencing peoples' beliefs about what others will do. To illustrate, recall that the act represented in the figures is doing a civic duty. The state presumably wants citizens to do their civic duty. If the state is careful about its pronouncements, so that most citizens believe them, then the state might cause the system to converge to the equilibrium at 50% merely by making the appropriate pronouncement.

In general, a credible state can influence the choice of multiple equilibria among citizens by pronouncing the law. Legal expression, consequently, can cause large changes in behavior, such as the jump from 0% to 50% in Figure 3. Predicting large jumps in behavior, however, requires global information about the curves in Figure 3. The need for so much information makes the expressive use of law hazardous. These ideas, which I have developed elsewhere,¹⁹ could revive older theories of expressive law by providing them with an analytical basis.²⁰

To predict the success or failure of pronouncements, a theory of expressive law must draw on the economic analysis of "cheap talk."²¹ The distinction between cheap and expensive talk, which has not yet worked its way

¹⁹ (Cooter 1998a)

²⁰ (Adler 1999; Feinburg; 1990; Sunstein 1996; Pildes 1997; Cooter 1998a; Hampton 1992; Kahan 1997a; Kahan 1997b).

into the economic analysis of law, turns on the difference between incentives and expectations. Expensive talk such as contracting, extorting, or shouting “fire” in a theater changes material incentives, especially by creating legal obligations or triggering legal sanctions. Cheap talk, in contrast, does not change material incentives. Instead, under certain circumstances, cheap talk changes expectations.

How can cheap talk change expectations? Cheap talk changes expectations when it is believable. If it is in my best interest to reveal my true plans to you, then you should believe my pronouncements about my plans. Stated more formally, cheap talk is credible under the following condition: For all x , if I plan to do x , then I want you to believe that I will do x .²² Under this condition, cheap talk is credible, even though it leaves material incentives unchanged.

To illustrate, assume that I want to meet you in New York City. If I plan to go to the Empire State Building, then I want you to believe that I plan to go there. Conversely, if I plan to go Grand Central Station, then I want you to believe that I plan to go there. The worst result occurs when I plan to go to the Empire State Building and you believe that I plan to go to Grand Central Station, or vice versa. Since I want you to believe that I will do what I am planning to do, my talk with you about my plans is credible.

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

Figure 4: Credible Cheap Talk

	your belief about what I plan to do
--	--

²¹ (Farrell and Rabin 1996; Farrell 1995; Farrell 1987)

²² (Farrell and Rabin 1996) call this condition “self-signaling”.

		x	y
my plan	x	+	-
	y	-	+

The conditions for credible cheap talk apply to everyone, including government officials. If government officials plan to do something, and the payoff to officials is highest when citizens have correct beliefs about official plans, then the official pronouncement is credible. The expressive function of law works best when state officials have incentives to report their plans accurately.

Credible talk complements the ideal of public reason as elucidated by John Rawls in Political Liberalism.²³ The ideal of public reason concerns the conditions of political discourse in a liberal democracy. In a liberal democracy, officials ideally give the true reasons for public policies. Candor promotes public debate and makes democratic deliberation meaningful. If the incentives of officials have the form depicted in Figure 4, then officials have reason to disclose the truth and citizens have reason to believe what officials say. So arranging incentives of officials to make cheap talk credible promotes the ideal of public reason.

Economists have devoted much effort to designing “incentive compatible mechanisms” for the supply of public goods.²⁴ To my knowledge, however, no research focuses on mechanisms to induce public officials to disclose their true plans.²⁵ The theory of cheap talk provides the foundation for designing mechanisms to induce public officials to disclose their true plans. Such mechanisms can enable legal expression to change behavior.

Now I relate the conditions of effective cheap talk to the equilibria in Figure 3. Recall that this figure depicts the relationship between the willingness of citizens to do civic acts and their costs. Assume that society is stuck at the inferior equilibrium where 0% of the citizens do civic acts. How can politics and law move society to the superior equilibrium where 50% of the citizens do their

²³ (1993).

²⁴ cite Emons and Wilson**

civic duty. Officials might try to provoke this change by explaining the shape of the curves to the citizens and urging them to behave differently. If a civic “pep talk” caused at least 20% of the citizens to change and do their duty, then the system will ascend to the superior equilibrium where 50% do their duty.

A good political leader has the power to change society by cheap talk. To illustrate by Figure 3, assume the leader asks 20% of the citizens to do their civic duty and promises them that their example will cause 30% more of the citizens to follow their example. The accuracy of the leader’s prediction and the goodness of the results will strengthen his influence. In general, leadership enables officials to influence behavior by cheap talk, which saves the transaction costs of expensive talk.

Rearranging the payoffs in Figure 4 can change the coordination game into a game of perfect deceit, where I always want you to believe the opposite from my true plans.²⁶ Or rearranging the payoffs can produce a game of imperfect deceit, where I where I sometimes want you to believe the opposite from my true plans.²⁷ In either of these cases, cheap talk is ineffective, so credible communication requires commitments or sanctions by officials.

Compared to cheap talk, expensive talk wastes transaction costs. The state that creates incentives for effective cheap talk between officials and citizens saves resources.

²⁵ The general problem is that credible cheap talk requires a coordination game, whereas the “game” played by most officials who interact with the public does not have this character. So the general problem is to convert other kinds of games into coordination games for public officials.

²⁶ Here is the form of a game of perfect deceit, where I want you to believe the opposite from my true plans:

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

²⁷ Here is the form of a game of imperfect deceit, where I prefer for you to believe the same thing regardless of what I plan to do.

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

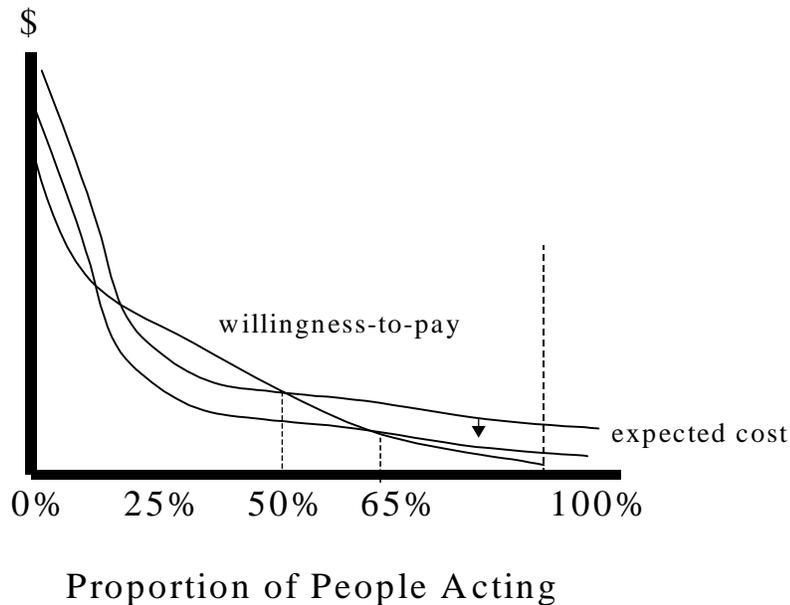
Deterrence

Now I turn to the second way that law influences behavior. The imperative theory in British jurisprudence defines a law as an obligation backed by a sanction.²⁸ A sanction attaches a punishment to doing what the law prohibits. Instead of focusing on deterring wrongdoing, however, this paper focuses on voluntary performance of civic duties. A reward for rightdoing corresponds to a sanction for wrongdoing. Attaching a reward for rightdoing lowers its expected cost. To depict this change graphically, Figure 5 shows a downward shift in the expected cost curve. As a consequence of this shift, the tipping point at 20% moves down approximately to 15%. Thus the system will converge to 0% from any point below 15%. Similarly, the stable equilibrium at 50% moves up approximately to 65%. Thus the system will converge to 65% from any point above 15%.

Consider the consequences of this change. If the system is initially at the equilibrium at 50%, the shift in the cost curve causes the system to move to 65%. This is a small change. Alternatively, if the system is initially at the equilibrium at 0%, then the system requires a shock of 15% to trigger convergence to the equilibrium at 50%. This is a large jump in behavior. Thus deterrence of wrongdoing or reward of rightdoing has one of two possible effects on the targeted behavior: either a small change for certain or a higher probability of a large jump. When economics to deterrence, small changes are the usual subject of the analysis, whereas jumps in behavior are more difficult to predict and identify.

²⁸ (1980) reviews this tradition.

Figure 5: Reward

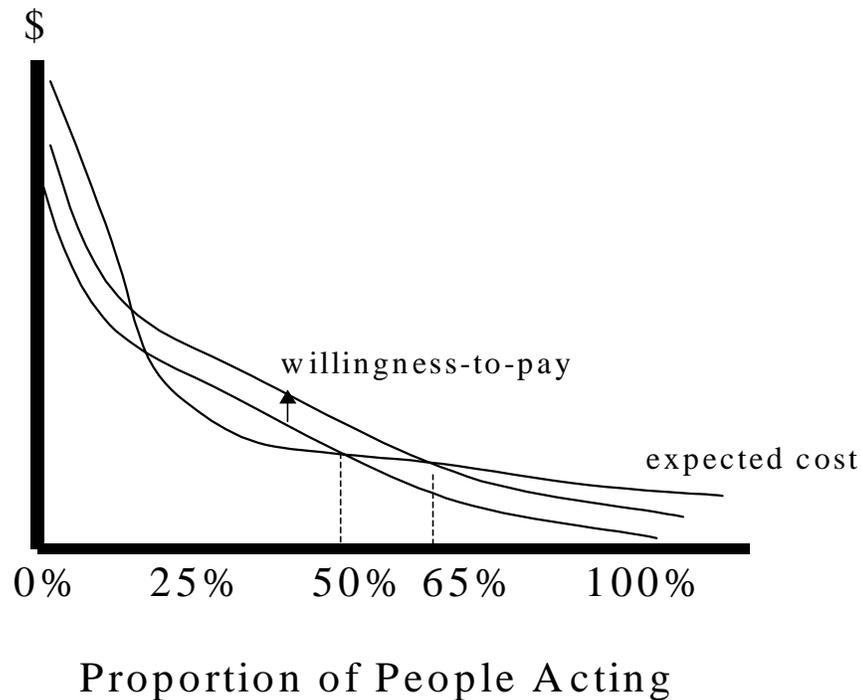


Earlier I discussed the fact that predicting jumps in behavior requires global information about the curves in Figure 3. Conversely, predicting small changes in behavior caused by deterrence requires local information about the curves in Figure 3. In general, the marginal effect of deterrence is easier to predict than jumps in behavior. As a consequence of this fact, lawmakers are especially prone to mistakes when attempting to use rewards and punishment to trigger large jumps in behavior.

Internalization

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

Figure 6: Internalization



The consequences of this change in values are the same as the consequences of the change in costs discussed in the preceding section. If the system is initially at the equilibrium at 50%, the change in individual values causes the system to move to 65%, which is a small change. Alternatively, if the system is initially at the equilibrium at 0%, then the system requires a shock of 15% to trigger a large jump in behavior that converges to the equilibrium at 50%. As with deterrence, internalization of values has one of two possible effects on the targeted behavior: either a small change for certain or a higher probability of a large jump.

I constructed Figure 5 and Figure 6 so that internalization and deterrence cause the same numerical change in the equilibria. I made the numbers the same to emphasize that shifting the willingness-to-pay curve corresponds formally to shifting the expected cost curve. Values and costs act in the same way to determine jointly the aggregate level of activity. From this perspective, the moral skeptic makes the same mistake as the Marxist who advocates the

labor theory of value.²⁹ The mistake in both cases is asserting that the cost curve alone determines the level of an activity.³⁰ In reality, internalized values matter to civic acts and market prices.

To illustrate this mistake, consider that Holmes urged legal scholars to reason from the viewpoint of a "bad man" without respect for the law or commitment to obeying it. In so far as the bad man obeys the law, he does so for instrumental reasons. For the bad man, law is a constraint and not a guide. Thus the bad man treats law as "external" in the sense of being outside of his own values. Economic models of law typically accept the "bad man" approach and add an additional element to it: rationality. A bad man who is rational decides whether or not to obey the law by calculating his own benefits and costs, including the risk of punishment. The rational bad man breaks the law whenever the gain to him exceeds the risk of punishment. Law and economics scholars typically make the rational bad man into the decision maker in their models, who treats the sanctions from breaking the law as a cost. The bad man does not have a "taste" for obeying the law.

In reality, society includes bad people and good citizens, as well as many citizens who are in between. Figure 6 shows how the effects of a law depend on the distribution of internalized values among citizens. Officials should not proceed by making laws only for bad people, because the response of good people also determines the effects of the laws.

Interaction Effects

Having distinguished expression, deterrence, and internalization, I will explain briefly how they interact when promulgating a law. Promulgating a law often involves proclaiming a new obligation, describing the sanction attached to its violation, and explaining the reason for enacting it. The first row of Table 1 lists these three parts of law. These three parts of a law relate especially (but not uniquely) to the three consequences of a law that I explained. Proclaiming a

²⁹get cite from Schaefer.

legal obligation gives people instructions on what to do, which especially promotes the coordination of behavior. Attaching a sanction to an obligation especially deters its violation. Explaining the law ideally convinces citizens to follow it. In brief, the three aspects of promulgating a law especially aim at expression, deterrence, and internalization, as indicated in the second row of Table 1.

Table 1: Consequences of a Law's Promulgation

law's parts	obligation	sanction	explanation
law's consequences	expression	deterrence	internalization

Most laws have all three parts and thus conjoin all three consequences. To illustrate, consider promulgating a law prohibiting a certain kind of pollutant. The pronouncement of the new obligation may make people expect that others will abate, which may in turn give them a reason to abate. In addition, attaching a sanction to polluting may cause some people to abate, regardless of whether or not they expect other people to abate. Finally, the legal explanation for this new obligation may convince some people to value abating this type of pollution.

Unlike this example, some laws omit some of law's parts as listed in Table 1. To illustrate, legal forms for drafting wills help coordinate behavior without the use of punishment. As another illustration, punishment of solitary crimes such as evading personal income taxes typically deters without coordinating behavior. Finally, declaring Martin Luther King's birthday a national holiday may affect values without resorting to punishment.

Alignment or Internalization?

Internalized morality might cause citizens to support state law in two different ways. First, assume that citizens decide whether to support laws by evaluating them relative to moral standards. Under this assumption, citizens support laws that align with their morality. Consequently, effective laws must align with the morality already internalized by citizens.

³⁰ This conclusion requires a vertical demand curve (perfectly inelastic demand). There is no more reason to think that aggregate levels of civic activity are unresponsive to prices than to think that aggregate levels

To illustrate this mechanism, I will reinterpret Figure 6. Assume that revising a law to align it more closely with morality causes the upward shift in the willingness-to-pay curve. In other words, citizens are more willing to do their civic duty because the state changes the duty in way that increases its moral appeal. The expressive and deterrence effects of this change increase civic acts in the ways that I already explained. In general, a closer alignment of law with morality may cause a small increase in the number of citizens who do their duty or it may cause a jump in the number of citizens who do their duty.

Instead of making the indefensible claim that internalization makes no difference to civic acts, skeptics do better by asserting that internalization makes minimal difference to civic acts. My own view, which I will not defend here, is that aligning law with internalized morality can make a large difference in civic acts. Enlisting the force of pre-existing morality in the service of the state is essential to solving the agency problems of government. I have asserted that law becomes especially effective by alignment with pre-existing morality. In so far as this is true, lawmakers can use morality to make law effective. This possibility does not require special attitudes among citizens towards the law. For example, citizens who do not think that lawmakers have any moral authority, or citizens who do not think that law deserves respect, may still respond to laws that align with morality.

Now I turn to a more problematic concept of the connection between law and internalized values. Assume that some citizens regard lawmakers as moral authorities, or citizens think that law as such deserves respect. For these citizens, obeying law is a requirement of morality. If these sentiments are felt intensely and held broadly by citizens, the fact that lawmakers create a law provides a reason for some citizens to obey it. Instead of law aligning with morality, lawmakers can assume that some people will align their morality with new laws.

An intensive debate about judges illustrates the dispute over internalizing respect for law. In The Concept of Law, H.L.A. Hart points out that many judges

of demand for consumer goods are unresponsive to prices.

view law as a guide whose instructions they strive to understand and follow. These judges value obedience to law and search in law for values to obey. These judges treat law as “internal” in the sense of being part of their own values, not as an external constraint. In developing this line of thought, Dworkin’s influential early work asserted that judges can arrive at the right answer in a hard case by constructing the best synthesis of current legal rules and values.³¹ In contrast, other scholars favor the view that independent judges express their own political vision in deciding hard cases.³² In so far as judges decide cases in light of their own political vision, respect for law does not determine their behavior.

What actually motivates judges? If a judge decides cases strictly based on legal values, then the judge’s political philosophy would not predict his decisions. In fact, social scientists can often predict judicial decisions from the political philosophy of judges.³³ Furthermore, US federal judges behave differently according to various strategic considerations, such as the composition of the panel on which they sit.³⁴ Empirical evidence thus supports the theory that judges respond to values outside the narrow confines of the law. This evidence refutes the claim that independent judges act purely from respect for law. However, the unexplained residual remains large in these statistical studies, thus leaving scope for judges to act from respect for law.

³¹Dworkin argues that the great judge, Hercules, will find one right answer to every legal question that is the best synthesis of existing law. In this view, the law includes values as well as rules. Hercules, however, does not draw on his how personal or political values to decide cases. (Dworkin 1977). . Perhaps the values can be found in politically neutral legal principles. (Greenawalt; Wechsler 1959; Macey 1986). Later Dworkin modified his theory to allow some role for personal and political values of the judge. See (Dworkin 1986), where Dworkin argues that the ideal of law demands principled justification for the exercise of force by the state, and the rule of law requires judges to reach decisions that not only are consistent in principle with past legal authorities, but also characterize the relevant authorities in the best moral light.

³²(Posner 1993). Also see Chapter 10 of (1988) and (1996).

Schauer emphasizes that the reputation of modern US judges rests increasingly on the political outcomes of their decisions, so they have the prudential incentives to law-following is all we need to explain about the concept of law. (Schauer 1998b). Also see (Bazerman and Neale 1995; Schauer 1998a).

³³ (Cohen; Edwards 1998; Hanssen 1999; Bergara, Richman, and Spiller 1999; Salzberger and Fenn 1999; Smith and Tiller 1999; Spriggs 1997; De Figueiredo and Tiller 1995; 1993; Revesz 1999b; Revesz 1999a; Schwartz 1997; Smith and Tiller 1997; Revesz 1997).

³⁴ (Edwards 1998; Spriggs 1997; Revesz 1999b; Revesz 1999a; Schwartz 1997; Smith and Tiller 1997; Revesz 1997; Rasmusen 1993).

To illustrate how respect for law among citizens might influence their behavior, I will reinterpret Figure 6 once again. Assume that officials identify a moral obligation and raise it to the level of a legal obligation. For citizens who place no intrinsic value on obeying the law, the enactment of the law does not change their willingness to do their duty. For citizens who intrinsically value obeying the law, however, the enactment of the law increases their willingness to do their duty. The latter effect causes the willingness-to-pay curve to shift up in Figure 6. In a society where some people respect the law as such, enacting a moral obligation into law causes a small increase in the number of citizens who do their duty or else it increases the probability of a jump in the number of citizens who do their duty. By this means, respectful citizens make lawmakers effective.

These two mechanisms for support of law by citizens--alignment of law with morality and respect for law--are interrelated. When citizens reflect upon the state, they often evaluate its performance against standards of justice. If the state performs well relative to these standards, then reflective citizens may conclude that the law deserves respect. Reflective citizens respect the law when its basic structure appears to be just. Once citizens respect the law, they obey it habitually in their daily lives without reflecting on it. Thus a just state achieves stability by generating its own support among reflective citizens.³⁵

Now I wish to go beyond this familiar proposition in political philosophy by developing an economic analysis of how law can cause individuals to internalize values.

Causes of Internalization

Instead of making the indefensible claim that internalization makes no difference to civic acts, skeptics do better by asserting that law and public policy make minimal difference to the values internalized by citizens. To be precise, if law and public policy shift the expected cost curve more easily than the willingness-to-pay curve, then officials can influence citizens more effectively by

³⁵ Rawls uses this line of thought to argue for the stability of states organized according to his principles of justice. See (1971) at page **.

manipulating costs rather than internalized values. In these circumstances, officials should proceed as if “tastes are given”.

While I believe that costs are typically more responsive than internalized values to law and public policy, I also believe that the state affects the values that citizens internalize. Individual values are sufficiently malleable for law and policy to influence them in ways affecting the working of the state. To develop this claim, I must turn to the causes of internalization. Psychologists have studied the non-rational and irrational influences on values.³⁶ Philosophers have long disputed about rational values.³⁷ A small but growing economics literature uses economic models of rationality to explore endogenous preferences³⁸ My approach emphasizes rationality, the benefits of cooperation, and limited information.

To begin I characterize sufficient conditions to create incentives for people to change their preferences. First, assume that a person’s preferences are “translucent,” by which I mean that one person can observe imperfectly another person’s preferences. “Revealed preference theory” in economics concerns the conditions under which a person’s choices reveal his preferences.³⁹ A person who consistently chooses A over B presumably prefers A over B. Revealed preference theory examines rigorously the assumptions and implications of this inference from choices to preferences. In spite of some exceptions and paradoxes, the inference from choices to preferences in social life seems inevitable and imperfect. The preferences of others are neither opaque nor transparent to us. Rather, choices reveal preferences imperfectly, which is why I say that preferences are translucent.

³⁶ ...Also note the literature on the emergence of rational values: (Bazerman and Neale 1995; Kohlberg 1981; 1981a; 1981b; Tyler 1990; Hoffman 1979)..

³⁷ (1988; Diamond; Feinberg; Harris; Ostrom, Walker, and Gardner; Schelling 1992; **Schelling** 1986; **Schelling** 1985; **Schelling** 1984; 1984; Ryan 1993; Thaler and Shefrin 1981; Wiggins; **Winston** 1980; 1989; Cooter and Gordley 1994; Cooter 1991; 1993; Chaloupka 1991; Becker, Grossman, and Murphy 1994; 1986; Posner 1997; Loomes and Sugden 1982; Bratman 1999; 1971).

³⁸ (Frank 1987; Benson 1998; Bowles 1998; Hechter 1994; McManus 1978; Peleg and Yaari 1973; ; Stigler and Becker 1977; Sugden 1990; Ullmann-Margalit 1990; Yaari 1977; von Weizsacker 1971; Dixit and Norman 1980; Dixit and Norman 1979; Dixit and Norman 1978; 1985; Hammond 1976; 1996; Elster 1997; 1986; Pollak 1976)

Second, assume that people have preferences over the preferences of the people with whom they interact. I use “preferences” broadly to encompass tastes, attitudes, dispositions, and character. To illustrate, people care about the character of their business partners, spouses, and elected officials. In cooperative activities people typically prefer partners who are cooperative and honest.

Given the preceding assumptions one (translucent preferences) and two (preferences over partners’ preferences), an actor’s preferences affects his opportunities. To illustrate, if a person’s character is translucent and if most employers want honest business employees, then an honest person will enjoy more employment opportunities on average than a dishonest person. Similarly, if character is translucent and if business people want cooperative partners, then a cooperative person will enjoy more opportunities to form business partnerships than an uncooperative person. The dependence of opportunities on preferences gives a person an incentive to change his preferences. To illustrate, if a dishonest youth wants more opportunities for employment, he might try to become more honest.

Given the dependence of opportunities on preferences, self-interested people have incentives to change themselves. Changing one’s preferences involves problems of technique and logic. The technical problems concern how to accomplish a desired change in preferences. The plethora of self-help books and psychiatrists testify to the fact that we cannot automatically change ourselves by choosing who we want to be. Instead of investigating these technical problems, I assume the existence of a technology for preference change without explaining it. In other words, I assume that people can choose to change their preferences at some cost.

The logical problems of changing preferences especially concern consistency over time. To illustrate, reconciling the fact of shifting moods and temporary emotions with the rationality requirements of consistent action over

³⁹ get classic cites including (Samuelson 1938). For critical appraisals, see (Russell and Thaler 1985; Sen 1997; Sen 1977; Hausman and McPherson 1994).

time presents a puzzle for moralists and economists. In proceeding from the simple to the complex, microeconomics textbooks first explain the logic of preferences in a timeless world, and then introduce the complications of time later. Similarly, this paper focuses on logical problems of changing preferences in a timeless world, and I postpone considering time-consistency of preferences for another paper.

Assuming that preferences influence opportunities, how would a rational person choose his own preferences? One possibility is to invoke meta-preferences or higher order preferences.⁴⁰ To illustrate, a person's choices might reveal a preference for milk over coke. Behind this choice might lie a preference for health over infirmity. In this example, the first order preference is for milk and the second order preference is for health. Behind our particular preferences lie more general, abstract preferences. At the highest level, perhaps some people order all of their specific choices with respect to a supreme value. Traditional candidates for a supreme value among philosophers include pleasure and happiness, whereas economists typically favor wealth, and political theorists sometimes favor power.

The existence of different orders of preferences provides a potential explanation for how a rational person would choose his own preferences. If a person's lower order preferences determine his opportunities, then he should choose his lower order preferences so that the resulting opportunities maximize his higher order preferences. To illustrate, a eudaemonist would choose honesty over dishonesty provided that honesty increased his happiness. Similarly, an ambitious politician might choose dishonesty over honesty provided that dishonesty increased his power.

In general, higher-order preferences can provide a guide for changing lower-order preferences. Moral philosophers devote much time and energy to understanding rationality in higher order preferences, whereas ordinary people give relatively little thought to this problem. Many people remain uncertain about their higher order preferences. Given uncertainty about them, higher order

⁴⁰ (Lancaster).

preferences are an imperfect guide to choice. To illustrate, many people are unsure about the extent to which they prefer wealth over pleasure, or happiness over success.

Fortunately, people can often make rational choices about their lower order preferences with little guidance from higher order preferences. This is possible when the effect of lower order preferences on opportunities is strong enough. To illustrate, if learning diligence in school promotes happiness and wealth, then a student who remains unsure about the relative importance of happiness and wealth still has a sufficient reason to learn diligence.

This insight can be generalized using an idea that I borrowed from welfare economics, which may prove powerful in analyzing the conditions under which a person will change his lower order preferences. Assume that a person with preferences U_0 enjoys opportunities F_0 , whereas a person with preferences U_1 enjoys opportunities F_1 . A decision maker with preferences U_0 can change to U_1 , thus causes opportunities to change from F_0 to F_1 . Should he make the change? Assume that, regardless of whether the preferences are U_0 or U_1 , the opportunities F_1 yields greater preference satisfaction than F_0 . Consequently, after making the change, the opportunities enjoyed by the decision maker are better than before relative to his new preferences and his old preferences. This fact provides a reason to make the change. A change that is better with respect to the preferences of everyone affected by it is called a "Pareto improvement". By analogy, I call a change in preferences that leaves the decision-maker better off with respect to his original preferences and his final preferences a "Pareto self-improvement."⁴¹

Internalization and Law

I have explained that self-interested people change their preferences to increase their opportunities. Now I will relate this causal mechanism for changing preferences to the law's ability to make citizens internalize values. To induce people to internalize civic values, the state must reward citizens for

⁴¹ I analyze this concept graphically in (Cooter 1998b; Cooter 1998a).

having civic virtue. To reward people for having civic virtue, the state must infer character from behavior. For this purpose, officials have honors, awards, and praise, as well as their opposites (dishonor, punishments, and condemnations). The size of the modern state, however, restricts its ability to identify virtuous citizens. Inferring character from behavior requires intimate knowledge of the person. The officials in large states are remote from most citizens. The character of each citizen is relatively opaque to state officials. Consequently, officials lack the information needed to reward people for acquiring civic virtue. Instead of rewarding or punishing character, state law mostly rewards or punishes acts.

Compared to the state, people in intimate relationships with each other are relatively good at inferring character from behavior. Preferences are relatively transparent among intimates. Consequently, the primary influences on character are intimate relationships such as families, friends, and colleagues. Given these facts, the state should not try to instill civic virtue directly. Instead, the state should prompt family, friends, and colleagues to instill civic virtue in each other. In so far as family, friends, and colleagues prefer relationships with civic-minded people, individuals have an incentive to cultivate civic virtue. Civic acts can become signals for the possession of the moral traits that people seek in partners for cooperative ventures.

The primary way to prompt people to instill civic virtue in each other is by aligning law with morality. When law aligns with morality, individuals who cultivate morality necessarily acquire civic virtue. Consequently, the law enlists the force of internalized morality to achieve the ends of the state.

Conclusion

Law influences the behavior of citizens through expression, deterrence, and internalization. How important is the internalization of values by citizens to the effectiveness of the state? Civic acts by citizens help the state to overcome potentially crippling agency problems. An increase in the willingness of citizens to do civic acts causes a small increase in the number of civic acts or else

increases the probability of a large jump in civic acts. So civic virtue among citizens is important to the effectiveness of modern states.

Self-interested people change their preferences to increase their opportunities. Specifically, self-interested people cultivate virtue in order to improve their opportunities for participating in cooperative activities with others. Behavior generally reveals preferences. In the case of virtue, repeated behavior over time enables people to perceive the character of others. Character is translucent in intimate relationships and opaque in remote relationships. Since officials have remote relationships with citizens in modern states, the state lacks the information needed to reward virtuous citizens. The law must, consequently, reward and punish acts, not the actor's character. Instead of promoting civic virtue directly, the state must rely on families, friends, and colleagues to reward civic virtue. To achieve this goal, the state must first align law with the social norms that facilitate private cooperation.

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