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Abstract

In a democratic society, law is an important means to express, manipulate, and enforce moral codes. Demonstrating empirically that law can achieve moral goals is difficult. Nevertheless, public interest groups spend considerable energy and resources to change the law with the goal of changing not only morally-laden behaviors, but also morally-laden cognitions and emotions. Additionally, even when there is little reason to believe that a change in law will lead to changes in behavior or attitudes, groups see the law as a form of moral capital that they wish to own, to make a statement about society. Examples include gay sodomy laws, abortion laws, and Prohibition. In this Chapter, we explore the possible mechanisms by which law can influence attitudes and behavior. To this end, we consider informational and group influence of law on attitudes, as well as the effects of salience, coordination, and social meaning on behavior, and the behavioral backlash that can result from a mismatch between law and community attitudes. Finally, we describe two lines of psychological research—symbolic politics and group identity—that can help explain how people use the law, or the legal system, to effect expressive goals.

1 Introduction

To the chagrin of some (Holmes, 1897), law trades in morals. At a minimum, the law prescribes and proscribes morally-laden behaviors, but it also unabashedly attempts to shape moral attitudes and beliefs. When the law forbids murder, we know that this is because the law has decided that murder is evil, and wishes all citizens to agree with that assessment. When the law demands “good Samaritanism” in certain circumstances, we understand it to reflect a judgment that failing to aid those in distress is not just (perhaps) wasteful or inefficient, but is morally wrong. The ambition of antidiscrimination laws is not just to change the behaviors of employers, landlords and school administrators, but to change both cognitions about and emotions towards stereotyped groups (Allport, 1954). Sometimes, the law engages in moral regulation even where it cannot plausibly be aiming to change behaviors, attitudes or emotions; the law simply expresses moral commitments shared (often very controversially) by the polity at large. For example, citizens who fight to preserve or abolish sodomy laws are unlikely to believe that such laws actually change the number of people who engage in gay sex or believe that it is immoral; instead, they understand that anti-sodomy laws “say something” about the kind of community they live in. Laws can also be described as motivated by less moral-sounding commitments (such as to maximize efficiency, allocate costs and benefits, avoid moral hazards and the like—for the classic treatise, see Posner, 1998), but this fact does not undercut—and perhaps simply rephrases—the point that laws, at least in a democracy, are very important ways for societies to express, manipulate and enforce moral codes.

People certainly behave as though laws can achieve moral goals; this is why they are willing to invest time, money and energy trying to change them. But showing empirically that their investments are worthwhile is surprisingly tricky. Usually, this is because of the classic chicken-

and-egg difficulty of showing causation. Do people discriminate less against women and racial minorities because Title VII of the Civil Rights Act of 1968 penalizes that behavior? Or were activists successful in getting Title VII passed because society had already begun to substantially change its attitudes, and employers had independently become more willing to hire employees from protected classes? Do people pick up after their dogs—and believe they *ought* to pick up after their dogs—because city ordinances require them to (Sunstein, 1996), or did “poop scooping” city ordinances get passed in recent years because community norms had already shifted about what it means to be a responsible pet owner in the city? Of course, we do not wish to suggest a false dichotomy here—it is possible, even likely, that the forces operating between law and morality are bi-directional. Still, it is worth thinking about whether, and when, the causation will run as an initial matter in one direction versus the other.

Skeptics believe that usually, the law simply reflects the moral commitments and political compromises that society has already hashed out independent of the law (Friedman, 2005; Rosenberg, 1991), and the law is for the most part impotent to change moral behaviors and attitudes generally. To illustrate their point they frequently point to the NAACP’s campaign to promote racial integration. Early last century, the NAACP made a conscious decision to use the law—more specifically, the courts—to abolish the practice of segregation (Williams, 1998). Once legally-mandated segregation in public facilities (schools, common carriers, and the like) was banned, the assumption was that voluntary, private integration in unregulated spaces would follow. But as Gerald Rosenberg (1991) famously argued in *The Hollow Hope*, though segregation has been officially abolished, integration has never been achieved. Half a century after *Brown v. Board of Education* (1954), public schools and city neighborhoods are, if anything, more segregated by race than ever (Bell, 2004; Kozol, 1991). Some are now

convinced that legal intervention was not only a waste of resources, but perhaps has even backfired, breeding resentment by whites and disaffection by blacks (Bell, 2004; Steele, 1991).

Yet the skeptics have not won over the activists. People continue to believe the law is a tool that can achieve moral goals, as shown by their persistent efforts to change the law with the ambition not only of changing specific, narrow behaviors, or even of changing broader behaviors linked to the ones being regulated, but of changing attitudes and beliefs. If people and groups are willing to expend their limited resources to change laws, and if people are rational, then it is natural to think that they are spending wisely. Democratically-passed laws, after all, have been around for a long time. If they didn't "work," then presumably attentive citizens and lobbying groups would shift strategies and resources away from the law and towards other means of achieving their goals. But other than this raw, "people are doing it therefore it must be rational" argument, what is the empirical evidence that laws do, in fact, change morality?

The first step to answering this question is to clarify what we mean by "morality." Simply put, a law changes "morality" when it (a) changes a person's behavior or attitudes, by (b) changing how the person believes they and others "ought" to behave or think. The classic example is the control of crime. When we criminally punish a particular behavior, we expect less of it. For example, consider "insider trading" on the stock market, which different countries forbid to greater or lesser degrees, and some do not forbid at all (Beny, 2007). If banning insider trading reduced exactly the kinds of insider trading encompassed by the statute and no more, we could not confidently say that the law had effectively changed people's perceptions of the morality of insider trading. But what if a ban on some forms of insider trading reduced not only the forbidden forms, but also unregulated forms? The federal laws in the United States, for instance, do not forbid insider trading by individuals who just happen to overhear secret

information—what if insider trading by these lucky bystanders also decreased? What if the law reduced insider trading even where the trader was certain she would not get caught? What if after the law was passed, people suddenly believed that insider trading causes concrete harms? Or suddenly thought that insider trading is simply unfair or evil, whether or not it causes any harm? If a ban on insider trading did any of these things, we would argue that the law had successfully changed the perceived morality of the behavior.

We admit that this definition is broad, and includes what might not, upon closer inspection, look like moral beliefs. For example, perhaps a law banning a narrow behavior has spill-over effects to unregulated behavior because individuals are nervous about getting caught up in a dragnet, or because they don't know that only the narrow behavior is banned. Or maybe the passage of a law makes a citizen aware of a harm that he simply hadn't considered (or hadn't considered important) before. In these cases, we could say that the citizen did not change his moral beliefs; he just changed his cost-benefit analyses and improved his understanding. These points are important to keep in mind, but we believe they go to the mechanics of *how* the law changes perceptions of morality, rather than challenging *that* they do. Writing outside the field of psychology, for example, Timur Kuran (1998), Lawrence Lessig (1995), and Dan Kahan (1997; 2003) have persuasively argued that the law can achieve moral change exactly through such an initially-amoral process. People's moral sensibilities are shaped in large part not only by what they see others doing, but by why they think others are doing it (Kahan, 2003). When people see fellow citizens hiring blacks (Kuran, 1998), wearing motorcycle helmets (Lessig, 1995), or refraining from loitering on the streets at night (Kahan, 1997), they will assume others are behaving as they do not because the law requires it, but because it is simply the sort of thing good, right-thinking citizens do. This phenomenon, of course, is familiar to social psychologists

as a combined process of pluralistic ignorance (Prentice & Miller, 1993), the actor-observer effect (Gilbert & Malone, 1995), and social influence (Asch, 1955; Cialdini, Kallgren & Reno, 1991): the cognitive processes of actors are opaque but their behavior is apparent, and so people assume that the obvious explanation (people behave the way they do because that is the kind of people they are) governs, and they shape their own behavior and beliefs accordingly.

It is useful to distinguish between the law's ability to shape behavior through simple reward and punishment (the skeptical view), and its ability to use indirect, subtle, and sophisticated techniques to shape not only behaviors, but also normative commitments. This is because the dominant view, both in the legal world and in the public as a whole, is the simpler, skeptical one (Miller, 1999; Miller & Ratner, 1996, 1998; Wuthnow, 1991). The skeptics do not believe laws have no bite—they just believe the law cannot, or at any rate should not, sink its teeth into the hearts and minds of the public in the way Kuran, Lessig and Kahan describe. Consider, for instance, criminal punishment. Though tricky to execute and not without controversy in the details, research shows that increasing penalties—by criminalizing particular behaviors or by increasing the certainty of severity of punishment—results in reductions in those behaviors (Grogger, 1991; Levitt, 2004). On the surface, laypeople endorse this consequentialist approach, saying that the purpose of punishment is to reduce socially dysfunctional behavior, and so punishment should be distributed in a way that has the biggest deterrence “bang” for the punishment “buck.” So, for instance, people state that they support (or oppose) the death penalty because and to the extent that it reduces murder; they state that they support (or oppose) longer prison sentences because and to the extent that it prevents lawbreakers from committing additional crimes. However, considerable evidence now shows that despite this “deterrence” lingo, when they actually are asked to impose punishments, people do so in a way that responds

instead to moral intuitions such as retribution or other ethical principles (Carlsmith, Darley & Robinson, 2002; Darley, 2001; Darley, Carlsmith & Robinson, 2000; Ellsworth & Gross, 1994; Finkel, 1995; Vidmar, 2001; Warr, Meier & Erickson, 1983). Instead of the simple, cost-benefit model of criminal law that they outwardly describe, people implicitly or at least quietly hold a far more nuanced, and morally-driven model.

This same phenomenon occurs in other areas of the law as well, though this isn't as well studied outside of criminal punishment. The competing perspectives are partly, though not perfectly, described by the "public choice" versus the "public interest" views of the law. The public choice model is the analogue to the consequentialist view of criminal punishment, and to the legal skepticism we outlined above. Public choice theory (Farber & Frickey, 1991), developed in the fields of economics and political science, describes the battle over law as a fight among private interests over scarce resources. To the public choice theorist, the territory of the law is owned by those who are in the business of capturing "rents" for themselves. That is, interested groups use the law to grab as much social wealth for themselves or their fellow group members as they can. Thus, drug companies seek (or oppose) regulations in order to maximize profits; unions fight for minimum wage laws and mandatory limits on work hours as a way to control competition from groups (such as immigrants) who might otherwise undercut union members by accepting less favorable working conditions at nonunion shops; prison guard lobbies seek tougher criminal penalties to protect and expand their own jobs. In the public choice world, interest groups don't fight over regulations because they disagree about the moral norms the regulated behaviors embody, but because the regulations result in concrete, measurable harms or benefits to their interests.

The public interest model, in contrast, is the domain of the morally-driven legal tactician. In the public interest world, law makers and interest groups are motivated not (only) by self-interest, but by what they think is good, right or just. True enough, they don't always accomplish their goals, even when, like the NAACP, they manage to change the law on the books exactly according to plan. Nevertheless, morally-driven tacticians seek to change the law because they *might* change not only morally-laden behaviors, but also moral cognitions and emotions. Moreover, they sometimes seek to change the law even when they know there is virtually no chance they could change behaviors or attitudes at all—instead, they might see the law as a form of moral capital that they simply wish to own, in order to make a statement about the type of society they live in.

Examples of this are legion. We have already mentioned those who are for and against gay sodomy laws. Pro-life groups seek to change abortion laws to protect innocents, yes, but also to express a commitment to their view of life as beginning at conception, and arguably, to defend traditional families and gender roles (Luker, 1984). Prohibition activists (largely rural and Protestant) sought to eliminate drinking, but also to express contempt for the values and lifestyles embodied by urban elites and Catholic immigrants (Gusfield, 1986). From outside the U.S., there is the example of sexual harassment laws in Israel. In Israel, the law forbids sexual harassment not just by employers of employees, but by any citizen of any other citizen, anywhere (Rimalt, 2008). The unlikelihood that such a law could be effectively enforced does not diminish its import—clearly, those who pushed for (and those who opposed) its passage understood that the stakes were not about behavior directly, but about the moral status of women as autonomous beings, and what their proper “place” in Israeli society is.

One purpose of this chapter is to argue that the skeptical, consequentialist view of the law is wrong, and that in fact law does have the capacity to shape perceptions of morality, often in subtle and complicated ways. But we also aim to tease out when it can do so, and how. The first thing to acknowledge, though, is that it cannot always do so at all. In this chapter, we are talking largely about the law cutting against people's established sense of morality. When it is instead merely codifying the public consensus on morality, then obviously there is no debate to be had. And perceptions of morality *are* broadly shared; moreover, the bulk of laws broadly reflect them. For instance, people mostly agree about the rank ordering of the moral seriousness of various criminal offenses. (Darley, Tyler & Bilz, 2003; Darley, et al. 2000; Finkel & Smith, 1993; Harlow, Darley & Robinson, 1995; Robinson & Darley, 1995; Rossi, Berk & Campbell, 1997; Sanderson, Zanna & Darley, 2000). There is also broad agreement about the severity of various civil violations (though this consensus collapses if we ask people to generate monetary fines or length of prison sentences on an unbounded scale) (Sunstein, Kahneman & Schkade, 1998).

But what about those times when there is dissensus within the population about what morality requires? Worse, what about those times that most of the population believes *x*, and the law would like them to believe *y*? Examples of broad dissensus are not hard to generate; we've already discussed three (abortion, gay marriage, the death penalty.) But neither is it hard to generate examples of broad consensus on a position that the state would like to change: drunk driving was not always considered to be immoral (Grasmick, Bursik & Arneklev, 1993); school busing was opposed by 83% of whites when it was first implemented (Kelley, 1974); smoking only recently acquired the kind of public condemnation that leads—and has lead—to widespread regulation (Rozin, 1999). If it has enough legitimacy in other areas, and the proposed shift in morality does not strike the population as patently outrageous, the legal regime might be able to

easily “cash out” some of that legitimacy to get the public on board for its idiosyncratic views (Darley, et al., 2003; Hollander, 1958; Gibson, 2007; Tyler, 2006). But if the legal system does not have adequate legitimacy in a particular jurisdiction (Bilz, 2007), or the issue in question is, for the people involved, what Linda Skitka calls a “morally mandated” one (meaning, as we discuss in more detail later, a very strong, emotionally-fraught issue that is experienced not as opinion but as fact—for many people, examples of this would be abortion or capital punishment (Skitka, 2002; Skitka, Bauman & Sargis, 2005; Mullen & Skitka, 2006)), then the law may be relatively helpless to effect a shift in the perceived morality of the regulated behavior.

This chapter takes aim at the area in between these two extremes. When activists attempt to use to law to change morals, they seek to do one or more of three interrelated, but conceptually distinct, things: change cognitions, change behaviors, or simply stick a flag in the dirt—that is, stake a claim that the law endorses *their* view of morality, irrespective of any hope they will win over the other side, or even the uncommitted. We take each in turn.

2 How Does Law Shape Morally-Laden Cognitions?

The extent to which moral beliefs are shaped by law is a question that has received scant empirical attention. Early theories of moral development posited that young children begin by believing in the absolute and intrinsic truth of rules, and then later develop a more sophisticated view in which rules are to be respected because everyone has mutually consented to them (Piaget, 1932/1997). Building on Piaget, Lawrence Kohlberg (1981) proposed a theory of moral development that identified a sequence of six stages, divided into three levels: pre-conventional, conventional, and post-conventional. At the pre-conventional level, moral judgment is motivated largely by avoidance of punishment. At the conventional level, individuals develop an

understanding that rules are necessary to maintain social order, and are motivated by what they think people expect of them. In the second stage of this conventional level of moral reasoning, the individual moves beyond understanding the rules as merely what is expected by her own local community, and toward a more general social system, involving a conventional concern with law and rules more generally. Thus, at this stage individuals perceive an obligation to uphold the law to avoid the social disorder that would follow in the wake of others disobeying (Kohlberg, 1981; Tapp & Kohlberg, 1971). The post-conventional level of moral development is marked by moving beyond the uniform application of laws and rules, and is rooted instead in recognition of more universal ethical principles from which laws derive.

It is noteworthy that the influence of law on morality was seen as characteristic of a less well-developed level of moral reasoning, with perhaps the implication that law directly influences morality mainly among children and morally underdeveloped adults. More recent developmental studies have uncovered a more complex picture, showing that even very young children are able to distinguish between social conventions (e.g., don't undress in public) and moral rules (e.g., don't hit) (Turiel, 1983). Indeed, even elementary school children readily make distinctions between unjust and just laws, and recognize the acceptability of violating unjust laws (Helwig & Jasiobedzka, 2001). Thus, the influence of law on moral development is likely to involve more than a simple reflexive attitudinal shift in response to rules. Our focus in this section is to identify potential mechanisms by which law might influence morally-laden attitudes and beliefs.

2.1 Informational Influence: Law as a Persuasive Source for Morality

The moral norms each of us comes to accept are shaped and sustained by a variety of sources: family, schooling, peers, workplaces, and media, among others. Because of the diverse nature of society, the law is perhaps a particularly powerful source for shaping and sustaining moral norms, because unlike the sources just listed, law is a common denominator for all citizens. In this sense, the law might be an especially persuasive source for the development and reinforcement of moral norms (Robinson & Darley 2007). Especially under conditions of uncertainty, people look for information in their environment that provides credible cues for the judgment at hand. Dating as far back as Sherif's (1935) seminal study on the autokinetic effect, research shows that people resolve ambiguity by seeking information about social consensus, leading not only to conformity but also to genuine acceptance of the group's information.

The informational influence of law is likely to be a heuristic process, sometimes labeled "System 1" to denote a process that is fast, intuitive, and effortless (in contrast to System 2, which is slower, effortful, and more deliberate (Kahneman & Frederick, 2002; Kahneman, 2003)). Moral judgments are often governed by System 1—that is, they are heuristic—although after the fact, people are sometimes able to justify those judgments in a deductive, calculative fashion (Haidt, 2001; Sunstein, 2005; Hauser, 2006). When we process information heuristically, we rely on characteristics of the message source to make a quick judgment about the persuasiveness of the information. The likelihood that we will come to accept heuristically-processed information as true depends, among other things, on the expertise of the information source, as well as our perception of whether other people perceive the information as credible (Chaiken, 1987; Cialdini, 1987; Cooper, Bennett & Sukel, 1996; Cooper & Neuhaus, 2000).

The law's persuasive power over moral judgment depends on its being seen as legitimate, authoritative, expert, and trustworthy—the very kind of source characteristics that increase the

persuasive power of any heuristically-processed information (Petty & Wegener, 1998). The more the law is perceived as possessing these characteristics, the more individuals will be persuaded that the law's prohibitions and dictates describe desirable moral norms. On this view, the law persuades not because people consciously reason about the moral plausibility of particular legal rules, since most people do not possess the time or motivation to contemplate in detail the moral status of, say, insider trading, or obscenity, or conspiracy. Rather, to the extent that law successfully influences or reinforces moral judgment, it does so in a way more comparable to why kids who like Michael Jordan buy Nike shoes, or why people buy the brand of toothpaste recommended by 4 out of 5 dentists surveyed (Feldman & MacCoun, 2005).

Unfortunately, the empirical evidence supporting the claim that law is a persuasive informational source that directly influences attitudes is thin. In perhaps the simplest model of the influence of law on behavior, an individual learns of the content of law, and as a direct result, molds her moral beliefs in accordance with it. In an early study, Walker & Argyle (1964), surveyed people a few months after the British government abolished the crime of attempted suicide. They found no relationship between attitudes about the moral propriety of attempted suicide and the perceived legality of attempted suicide—that is, knowledge that the legislature has decriminalized attempted suicide did not appear to make it seem more morally permissible. In a follow-up study, they found similar results (Walker & Argyle, 1964). After describing a person performing a behavior (e.g., littering, carelessly injuring another person by throwing a brick, being drunk in public), participants were informed that the act in question was a criminal offense (or was not). The legal status of each item apparently had no effect on moral attitudes toward the behavior.

A later study, however, did suggest an informational influence of law on attitudes. Berkowitz & Walker (1967) also asked about various unseemly behaviors (e.g., public drunkenness, borrowing money for betting, failing to stop a suicide). Participants provided ratings of the moral propriety of each behavior at two different times. In between the first and second rating, participants in one condition were informed of the legal status of each behavior (“now legal” or “now illegal”). In another condition they were informed of peer opinions about each behavior (over 80% of their peers strongly agreed/disagreed that the behavior is immoral). In a third condition, participants were simply asked to reconsider their initial judgment. Contrary to the earlier studies, moral attitudes at Time 2 changed in accordance with the law, and even more strongly in accordance with peer opinion. Because peer opinion had a stronger effect than mere legality, maybe people perceived that the legal rules at least partially reflected the opinions of respected peers, which in turn influenced participants’ moral beliefs. (Because this study was conducted well before modern mediational analysis had been developed, we can only make educated guesses about this.) That is, the law might be perceived as reflecting dominant perceptions, so that a change in the law signals a change in popular opinion about what is immoral or moral (a topic to which we return in the next section).

Going by these two studies, the early evidence regarding whether moral attitudes follow legal pronouncements is mixed, but suggestive. While valuable, these studies do raise a number of methodological questions. First, though Walker & Argyle (1964) found no relationship between the law and attitudes, the sample sizes were small and the experimental technique was fairly low-impact. Consequently, it is probably a mistake to read a great deal into the null results they found. Second, the direct questioning of student subjects by experimenters raises concerns about social desirability concerns and demand characteristics. Participants who expressed greater

moral disapproval at Time 2 than Time 1 did so only after being told by the experimenter that the behavior in question is “now illegal.” Thus, they might have been expressing the level of disapproval they thought others in general, or the experimenter in particular, would want them to express. A related limitation on these early studies is that they elicited ratings based on carefully thought out judgments that were arrived at after the opportunity to engage in conscious, effortful reasoning. The responses might not accurately reflect important effects of more emotionally generated intuitions (Lerner, 2003).

Outside of the laboratory, the idea that law can influence attitudes was a primary motivation for the legal desegregation of schools and housing in the mid-twentieth century. The contact hypothesis posits that intergroup prejudice can be reduced when members of different groups work interactively toward a cooperative goal, sanctioned by an authority, under conditions of equal status (Allport, 1954). Thus, desegregation efforts focused on bringing blacks and whites together as a step toward reducing racism; indeed, at many critical points the law mandated integration. The hope was they by exposing people to members of the outgroup, they would receive new and accurate information about those members, and then make more accurate inferences about the group as a whole, thereby reducing stereotyping and prejudice (Allport, 1954). Evidence in favor of the contact hypothesis includes the fact that the percentage of whites supporting integration of schools increased from 32% in 1942 to 96% in 1995 (Schneider, 2004).

Of course, the causal story is undoubtedly complex, and it is not clear how much of the change in attitudes toward integration was caused by law, as opposed to a larger shift in attitudes either caused or reflected by the civil rights movement—this is the reason experimental data would be so helpful. Still, there is some general evidence that contact reduces prejudice under some circumstances, such as when individuals from different groups have an opportunity to

discover commonalities and thus perceive increased similarity (Brewer & Miller, 1984). Short term effects of school desegregation on attitudes initially were not promising, with studies in the 1970s showing that the attitudes of both white and black students were actually more prejudiced following integration (Schneider, 2004). However, the political atmosphere surrounding segregation has simmered down considerably since the 1970s, and more recent evidence has been more hopeful, showing, for example, that whites who have more contact with blacks as children are less prejudiced as adults. Also, contact seems to reduce prejudice between Catholics and Protestants in Northern Ireland (Hewstone, Cairns, Voci, Hamberger & Niens, 2006). A recent meta-analysis of over 500 studies showed that intergroup contact typically does reduce intergroup prejudice (Pettigrew & Tropp, 2006).

In sum, evidence strongly, even if imperfectly, suggests that policy makers can use the law as a tool to shape the moral cognitions of its citizens, by altering their informational environment.

2.2 Law as a Representation of Group Attitudes

People do not process information in a vacuum; rather, they process information in the social world, always mindful at some level of the wider context of group membership. In this sense, moral norms are not products of individuals, but rather are more appropriately regarded as social products, formed and maintained by the perceived expectations of the various groups to which an individual belongs (Terry & Hogg, 2001). Each of us belongs to many different social groups and categories. Our attitudes and judgments are influenced by the groups and categories with which we identify (Spears, Postmes, Lea & Watt, 2001).

Most people can identify with the citizenry of their nation, state or locality. Because people have a strong desire to affiliate and belong (Baumeister & Leary, 1995), it is plausible that they seek to conform their attitudes to those of their fellow citizens. If people believe that legal codes generally map onto the community's moral norms—and in democratic political systems, this is generally so—then law might inform moral beliefs because people are motivated to seek the approval and esteem of others (McAdams, 1997). But this only works if the law is seen as generally in tune with community sentiments. To the extent that it is perceived as out-of-tune, it loses moral credibility and becomes less relevant as a “guide to good conduct” (Robinson & Darley, 2007).

When the law generally comports with community sentiments, newly introduced regulation can serve as a powerful signal for the specific attitudes of other group members. But it can also serve to subvert false consensus. Moreover, as long as attitudes do not depart too far from community norms, new laws can even generate a new consensus. For example, consider the passage of a law prohibiting sexual harassment in the workplace. Such a law might be assumed to accurately reflect the attitude of fellow citizens, because it was passed by a democratically elected legislature. Because of the motivation to belong and affiliate, individuals might directly adopt the attitude suggested by the new legislation—that sexual harassment in the workplace is morally wrong. Note that this kind of attitude alignment can take place even in a context where an individual previously and privately suspected that some, or even many, fellow group members held attitudes in opposition to the new law; indeed, such an attitude alignment could occur even in an environment where many individuals in fact *did* previously oppose such a law.

However, the law can also serve to adjust attitudes in a more indirect way. For example, suppose that prior to the new anti-sexual harassment legislation, several individuals in a particular workplace regularly shared sexually-themed jokes and materials out in the open. Some workers responded genuinely favorably; others only seemed to do so, out of courtesy or embarrassment. All workers might misperceive the favorable reaction of others as widespread approval of the sexually-charged behavior, and through a process of pluralistic ignorance (Prentice & Miller 1993), such behavior would become entrenched (Geisinger, 2005). What happens in this workplace after the sexual harassment law is passed? Workers who, before the law, openly displayed sexually-themed materials, will now prudently keep them hidden; thus, these workers' behaviors directly change. But the absence of such open displays will also make it appear to everyone that such materials in fact *should*, as a normative matter, remain private. For the majority of the workers—most of whom, by presumption, were not displaying sexually-charged materials, but not objecting to them, either—what is most salient is that such items are not being displayed, not that the law forbids it (Kuran, 1998). As a result, over time, the majority of workers may begin to see a work environment free of such sexually-harassing materials as normative, not because the law says so, but because their co-workers behave so. Again with time, these workers might begin to change their attitudes from condoning, to neutral, and perhaps even to condemning. In fact, given the change in their co-workers attitudes (and maybe their consequently increased willingness to object to those displays that may pop up from time to time), even those workers who would have previously engaged in sexually-harassing displays might change their attitudes about the propriety of such behavior.

Here, the real work of the law is not just in reshaping the behavior of the handful of workers engaging in sexually-charged displays, though it does do that. Important, the law also

works (*if* it works—we concede the obvious that it will not always succeed, and discuss such outcomes at greater length below) by shaping beliefs about the propriety of such displays.

Rather than (just) working directly to change behaviors and attitudes, the law is able to work via more subtle psychological processes, to shape perceptions of morality—even for those citizens who would not take the state of the law alone as authoritative guidance for their moral beliefs.

3 How Does Law Shape Morally-Laden Behaviors?

3.1 The Rational Choice Model: Deterrence

It is uncontroversial that law sometimes influences morally relevant behavior.

Consequentialist theories of punishment rely on the assumption that if the expected cost of a behavior (comprised of the severity and probability of punishment) exceeds its expected benefit, then people will refrain from that behavior. For example, increasing the number of police officers demonstrably deters crime (Becker, 1968; Levitt, 2004). Indeed, people tend to assume that other people's (especially criminals') behavior is deterred by law, even though at the same time they assume that their own behavior stems from their own internal sense of right and wrong (Sanderson & Darley, 2002).

In the real world, however, deterrence theories are far from perfectly predictive. Some studies show that the effect of deterrence on behavior is weak, especially compared to other factors such as the legitimacy of legal authorities (Tyler 1990; 2006), or even on the social meaning of the punishment (Gneezy & Rustichini, 2000; Kahan, 1996). In one cleverly designed study, the imposition of sanctions actually *increased* the frequency of the prohibited behavior—exactly the opposite of what deterrence theories would predict. Gneezy & Rustichini (2000) conducted an experiment at a series of day care centers, in which parents sometimes arrived

late to pick up their children. In half of the day care centers, the researchers sent a letter to parents, informing them that they would now have to pay a small monetary fine for picking their children up late. (The other half served as a control.) After imposing the fine, there was a steady *increase* in late pickups, but no change in the control condition. Why? Perhaps the fine changed parents' perception of the social relationship between themselves and the center's employees. Prior to the announcement of the fine policy, parents might have perceived a social obligation to arrive on time; after the implementation of the policy, the fine might have been perceived as a price for a now legitimate activity.

One important explanation for the failure of deterrence is that sometimes people aren't aware of the law, and so by definition cannot be motivated by an explicit cost-benefit tradeoff (Darley, et al., 2001; MacCoun, Liccardo, Pacula, Chriqui, Harris & Reuter, 2008). Indeed, most people do not have independent knowledge of most criminal law rules, but instead assume that the law maps onto their pre-existing moral beliefs (Darley, et al., 2001). Arguably, much of the time and for most purposes, people are ignorant of the law, in part because law is so voluminous and complex. For example, the U.S. Tax Code is estimated to include more than 50,000 pages (The Economist, Sept 23, 2004). Law cannot directly influence individual behavior if the individuals in question are not aware of its content. Nevertheless, there is no doubt that when people are aware of the law (and sometimes, indirectly, even when they are not), deterrence is one effective way for the law to control behavior. But are there others?

3.2 Beyond Rational Choice: Salience and Coordination

In this section we focus on mechanisms by which the law can encourage behavior which, as a societal matter, ought to be encouraged, and conversely discourage behavior that ought to be

discouraged. Such mechanisms do not have to involve any opinion on the part of the individual actor about the moral status of the behavior, or even on a fear of punishment.

One simple mechanism by which law can influence behavior is to make that behavior salient or convenient. Thus, traffic regulations remind people to drive on the right side of the road (in the U.S.). Whether as a matter of habit, respect for the traffic laws, social imitation, or fear of crashing (Andenaes, 1952), people drive on the right, stop at stop signs, and the like. By signaling a particular behavior, law can also help people coordinate to avoid a mutually disastrous outcome (McAdams & Nadler, 2005; McAdams & Nadler, forthcoming). For example, the rule mandating driving on the right makes actually doing so not only salient and convenient, it also provides an extremely reliable signal for what others are likely to do, thereby allowing each individual driver to drive on the same side as everyone else.

In the above example, the question of which side of the road to drive on is not particularly laden with moral implications, in part because people should not have a strong preference, all else being equal, between driving on the left or the right. (A failure to drive on the legally-specified side, though, can take on a moral dimension once the rule has been set.) Remarkably, law can work as a coordination device not only when people's preferences coincide or when they were previously indifferent, but even when preferences strongly clash (McAdams & Nadler, forthcoming). Recognition of the need for coordination is pervasive in legal disputes: when the parties mutually regard some outcome as the worst result, the dispute might be resolved despite genuine conflict about what is the best result. Two people who contest ownership of a piece of property may each regard violence as the worst outcome, worse even than giving in to the other's claim. A smoker and a non-smoker may each regard a profane shouting match as the worst outcome of their conflict over smoking. Two groups of union members may disagree over

whether to strike, but jointly regard the worst outcome as internal disunity that weakens their power against management. Male and female co-workers who disagree about the acceptability of sexual banter and touching in the workplace may each rank the worst outcome as the conflict that results if both fail to defer to the other's demand. Simply by making a statement about which behaviors are preferred and which are not, law can increase the frequency of desirable behavior or decrease the frequency of undesirable behavior, through simple salience or by providing a reliable indicator of what others are likely to do (McAdams & Nadler, forthcoming).

The criminal law makes statements through outright prohibitions, but note that law's signals need not take this form. Law can also shape behavior through time, place, and manner restrictions (Sunstein, 1996). Consider, for example, how convenient it was for Americans to smoke cigarettes in the 1950s, when it was permitted and common to do so in offices, homes, stores, cars, buses, and airplanes. Contrast this to our current environment where smoking is closely regulated and restricted. As a result, there are only a few places and times where one can reliably find people smoking, at least in the U.S. (e.g., outside the doors of urban office buildings during business hours). Along with other factors that we discuss below, these regulations have undoubtedly contributed to a reduction in smoking, partly because it is currently substantially less convenient to smoke.

3.3 Beyond Rational Choice: Social Meaning

In addition to straightforward considerations of salience, coordination, and convenience, the legal regulation of behaviors like smoking can also influence their social meaning (Lessig, 1995; McAdams, 1995; Sunstein, 1996). Consider, for instance, the Civil Rights Act of 1964, and how it changed the social meaning of refraining from engaging in discrimination (Lessig,

1995; McAdams, 1995). This wide-ranging law prohibited, among other things, race discrimination in hiring and in public accommodations. As a general theoretical matter, and in a strict economic sense, employers and business owners are better off without discrimination. Without discrimination, employers have access to a larger labor pool, leading to lower wages and a more qualified work force; so long as whites do not shift their preferences away from businesses that do not discriminate, employers are unambiguously better off (Lessig, 1995). The problem, however, was that business leaders would not voluntarily integrate, because of what it meant to willingly serve or hire blacks: such behavior signaled that the business was either especially greedy or had a special (and stigmatized) affection for blacks. But by prohibiting race discrimination, the social meaning of hiring black employees and serving black customers changed, or at least became ambiguous: businesses that refrained from discrimination could plausibly be perceived as doing so because only because of the law. Changing the social meaning of serving and employing blacks thus reduced the social costs of doing so. In the first order, law changed morally-laden behavior, by reducing the frequency of discriminatory acts. But in the second order, the non-discriminatory behavior itself, rather than the law, became salient, and over time, customers and business owners began to see such behavior as normative, and to change their own attitudes about discrimination—even though they might not have consciously conformed their attitudes to the dictates of law.

There are numerous other examples of legal regulation changing social meaning. We have already discussed the possibility that sexual harassment laws had this function. Seatbelt laws are another. In the absence of regulation, it might be insulting to the driver for a passenger to put on a seatbelt; in the presence of regulation, the act is no longer an insult, but a simple desire to follow the law (Lessig, 1995). Then, the wearing of seatbelts gradually moves from the

domain of the amoral to the domain of the moral, as people's attitudes slowly reflect the belief that wearing seatbelts is the right thing to do.

Consider, though, that sometimes introducing legal regulation will be politically possible only because of a prior change in social meaning. Until 1964, when the U.S. Surgeon General reported health risks associated with smoking, these health risks were generally unknown, or at least uncertain. With the 1964 report, authoritative sources—the Surgeon General, relying on medical science—certified the harmfulness of smoking, thereby creating the necessary cultural support for successful regulation (Lessig, 1995). Toward the end of the 20th century, a variety of harms were identified as caused by smoking, on top of the health risks to the individual smoker. These included the health risks of second-hand smoke, especially with regard to children, as well as pollution and fire risk (Rozin, 1999). These conditions helped bring smoking squarely into the domain of the moral, where before, smoking was merely a question of individual taste or preference (Rozin, 1999). The moralization of smoking laid the groundwork for cultural acceptance of ever-tighter legal regulations, with some jurisdictions banning smoking in bars, in vehicles with children, and in parks. Like surfers waiting for good waves, lawmakers supporting such far-reaching smoking regulations needed to “wait for signs of a rising wave of cultural support” (Kagan & Skolnick, 1993). Prior to the emergence of the right kind of cultural conditions, attempts to implement the relatively strict smoking regulations in place today would very likely have been met with widespread resistance and flouting.

The social meaning process may therefore depend on a number of processes working together, including: a) moral entrepreneurs who strategically shape public sentiment; b) new information that brings the relevant behavior into the domain of the moral for the first time; and c) law in general being perceived as legitimate and worthy of respect, so that the desire to engage

in the relevant behavior is overwhelmed by the motivation to obey the law. In the next section, we consider backlashes that can result when these factors do not align.

3.4 Behavioral Backlashes Against Law

The prospect of widespread resistance to legal mandates raises the question of correspondence between law and moral intuitions, which we briefly discussed in Section 1 above. People are more likely to obey the law when they view the law generally as a legitimate moral authority (Tyler, 1990). In his study of everyday legal violations, Tom Tyler found that a key influence on legal compliance is whether people have an internalized sense of obligation to follow the law (Tyler, 1990). Conversely, it follows that if the law is not viewed as a legitimate moral authority, then compliance may be lower. There is some evidence that exposure to widespread social and political corruption leads to diminished respect for law and lower levels of legal compliance. One study examined the rate of parking violations for United Nations diplomats living in New York City, who until 2002 were immune from penalties for unpaid parking tickets (Fisman & Miguel, 2007). Diplomats from nations with high levels of government corruption were the most likely to accumulate multiple unpaid parking tickets, suggesting that these diplomats had generalized their disrespect for their own legal system, which influenced their behavior even when they lived in a country with relatively low levels of corruption.

Widespread corruption is not the only cause of behavioral backlashes against law. Citizens of the United States are fortunate to live in a political system with a strong adherence to the rule of law, and where corruption is relatively uncommon. Yet even here, particular failures of legal justice could lead to decreased compliance as a general matter, even with respect to laws

unrelated to the original perceived failure. Some experimental evidence supports this “flouting” hypothesis (Nadler, 2005). In one experiment, people expressed strong moral intuitions in favor of punishing an accomplice who passively watched while his friend committed a violent crime. Learning that the accomplice did receive punishment led to a higher likelihood of participants following the law as mock jurors in a subsequent, unrelated trial; conversely, learning the accomplice did not receive punishment led to widespread flouting of the judge’s instructions in the subsequent trial (Nadler, 2005).

Of course, not every legally mandated criminal sentence, decision, or rule will map perfectly onto people’s sense of justice. Fortunately, most people do not have strong moral attitudes about most legal rules and outcomes. Still, the legal system is often called upon to deal with problems that represent hot-button topics for some individuals. When people have a strong attitude that they see as rooted in moral conviction, they have a “moral mandate” (Skitka, 2002). For example, people who have not only a strong attitude about abortion (as shown by its extremity, importance, and certainty; Petty & Krosnick, 1995), but who also see their position on abortion as tied to their core moral values, would have a moral mandate on that issue. When outcomes threaten people’s moral mandates, they respond with anger and devalue the fairness of both the outcome and the procedures used to achieve it (Mullen & Skitka, 2006). Indeed, there is evidence that violations of moral mandates can lead to moral spillovers, leading people to engage in deviant behavior (Mullen & Nadler, 2008). In one study, participants who were strongly pro-choice learned about a legal outcome that either opposed or supported their moral conviction about abortion. Those whose moral conviction was betrayed by the law were more likely to steal a borrowed pen than those whose moral conviction was supported (Mullen & Nadler, 2008).

Perhaps the most widely discussed real world anecdote of a fundamental mismatch between law and moral intuitions is the prohibition of alcohol in the early 20th century. In this case, the law criminalized behavior that many, if not most, thought was morally acceptable, or outside the domain of morality altogether. Because many people continued to drink alcohol during this time, unlawful mechanisms and institutions arose to meet continued demand. Bootlegging and smuggling operations became stronger and increasingly organized, leading them to expand their activities beyond the production and distribution of alcohol (Robinson & Darley, 2007). The magnitude of the mismatch between law and moral intuition hampered the law's attempt to redefine one activity (alcohol consumption) as immoral. But even worse, the attempt nurtured new unlawful activity and corruption in the form of organized crime.

The lesson from the Prohibition era appears to be that the law can backfire if it extends its reach too far into activities that are perceived as morally acceptable. This is especially problematic for the criminal law, which is the most powerful medicine a legal system can employ. (Note that the successful examples we have discussed above—sexual harassment, seatbelts, and employment discrimination—are all civil regulations, not criminal ones.) Some legal scholars have argued that the traditional distinction between crime and tort (civil, non-criminal wrongs) has been increasingly blurred, which will ultimately weaken the ability of criminal law to function efficiently as an instrument for controlling behavior by defining what is immoral (Coffee, 1991). The basic concern is that increasingly, there is an excessive reliance on the criminal law to control behavior that is not widely perceived as inherently morally culpable, leading to diminishing moral credibility for the law as a general matter (Coffee, 1992; Robinson & Darley, 2007). The difference between the ability of civil versus criminal law to change

perceptions of morality—if indeed there is such a difference—is a ripe area for research (*cf.* Kahan, 2000).

4 The effect of law on moral expression

This is perhaps the most interesting category, and the most puzzling for those convinced the law is valuable only to the extent it can effect instrumental goals. Evidence abounds that people (advocates, policy makers, voters) use the law in ways unconnected to their own material interests, and even in ways that are certain to have no tangible effect on the world—no direct redistribution of resources, no protection of treasured property, no increase or decrease in desirable or abhorrent behaviors, perhaps not even changes in common beliefs. We have already offered several examples, but consider again the gay sodomy cases. As all litigated cases do, these cost enormous sums, calculated in both time and money, to litigate. As such, one would expect a great deal to ride on the outcome. And it does—just not anything that can be measured in changes to behavior, or possibly even to attitudes.

In the past forty years, very few people have been arrested, and fewer still prosecuted, for gay sodomy in the United States. It strains credibility to argue that homosexuals have objected to such laws out of an appreciable fear of being arrested for private, consensual sex with another same-sex adult.¹ Nevertheless, these laws—before being declared unconstitutional by the Supreme Court in 2003 (*Lawrence v. Texas*)—were important, even though never enforced. Their import, however, was symbolic and indirect, and the Court itself understood this:

¹ Indeed, in the United States in the past thirty-five years or so, the only arrests for consensual homosexual sodomy in a secluded location between adults that we could find, were the plaintiff and his partner in the *Bowers v. Hardwick* (1986) case, and the defendants in the *Lawrence v. Texas* (2003) case. Bowers and his partner were arrested but not prosecuted in Georgia in 1984. Lawrence and his partner were arrested and fined about \$200 each in Texas in 1998. Other cases where state sodomy laws had been invoked involved either nonconsensual or public sex, or sex with a minor (Eskridge, 1997).

When homosexual conduct is made criminal by the law of the State, ... [it] demeans the lives of homosexual persons. The stigma this criminal statute imposes, moreover, is not trivial[;] it remains a criminal offense with all that imports for the dignity of the persons charged. The petitioners will bear on their record the history of their criminal convictions.... We are advised that if Texas convicted an adult for private, consensual homosexual conduct under the statute here in question the convicted person would come within the [sexual offender] registration laws of at least four States were he or she to be subject to their jurisdiction. ... Furthermore, the Texas criminal conviction carries with it the other collateral consequences always following a conviction, such as notations on job application forms, to mention but one example (*Lawrence v. Texas*, 2003, pg. 575).

Other examples of this phenomenon abound. “Partial-birth” abortion techniques are used in fewer than two-tenths of one percent of all pregnancy terminations (Finer & Henshaw, 2003), and yet have been the subject of multiple legislative bans and court challenges. The Supreme Court recently decided the latest in a long line of capital punishment cases challenging not the death penalty itself, but the manner in which execution is inflicted (*Baze v. Rees*, 2008). This case, like its predecessors, received massive media coverage and public attention, despite the fact that whatever the Supreme Court decided, the *number* of convicts executed would remain the same—only the particular drug protocol for executing them might differ. The specter of flag-burning gripped the nation in the late 1980’s, and was also the subject of a Supreme Court opinion (*Texas v. Johnson*, 1989), yet the number of actual cases of flags burned in protest has been vanishingly small (indeed, was probably higher than if laws banning the practice had never been passed at all). In any event, it’s very hard to see any measurable collateral effects of either allowing or banning the burning of flags. The list goes on.

Clearly, the legal system is very familiar with hot debates over issues more important for their symbolism than for their concrete, immediate consequences. Psychologists are familiar with the phenomenon, too. Below, we describe two lines of psychological research that have

explored how people use the law, or the legal system, to effect expressive goals: symbolic politics, and group identity. We are engaging in a small leap here by declaring that “expressive” goals are about “morality.” What we mean is that people think that certain laws “ought” or “ought not” exist simply because they express the right (or wrong) values, commitments or affiliations. We believe it makes sense to call this expressive sensibility a moral one.

4.1 Law and symbolic politics

The classic—and outside of psychology, still dominant—view of political commitments is instrumentalist: people support particular candidates, referenda and policies to the extent that they are concretely, materially advantaged by them (Campbell, Converse, Miller & Stokes, 1960; Dahl, 1961; Downs, 1957; The Federalist Papers #10, 1788/2003; Hobbes, 1651/1994). Challenging this view starts with one glaringly large fly in the ointment of self-interested political participation: voting itself. Why do citizens in the United States ever expend the time and effort to go to a polling place to cast their vote (Engelen, 2006)? They face no penalties for failing to do so, and casting a ballot costs them time and effort. Yet political elections are never won by a single vote; even if by chance one was, a citizen could not predict this before expending the resources to go to the polling place. Over the years, various scholars have attempted to resolve this puzzle within the instrumentalist framework (*e.g.* Carling, 1998; Dowding, 2005; Fiorina, 1976).

David O. Sears and his colleagues, though, have extended the problem of voting still further, to political attitudes more generally. For example, Sears found that whites’ support for school busing was not predicted by whether or not they had children susceptible to being bused. However, it *was* predicted by measures of racial intolerance and political conservatism (Sears,

Hensler & Speer, 1979). He also found that support for the Vietnam War was well-predicted by “symbolic” attitudes (such as political affiliation, but also “feeling thermometers” towards the “military” and “antiwar” protesters generally), but was only weakly predicted by “self-interest,” defined as having an immediate family member serving in Vietnam (Lau, Brown & Sears, 1978). Sears followed these studies with several others, all showing that symbolic commitments predicted political attitudes much better than self-interest in the areas of, for example, support for the government’s energy policies during the 1974 energy crisis (Sears, Tyler, Citrin & Kinder, 1978); presidential voting (Sears, Lau, Tyler & Allen, 1980); desire for government-sponsored health insurance (Sears, Lau, Tyler & Allen, 1980); and support for bilingual education (Huddy & Sears, 1990). Other researchers have taken up the torch and shown the same pattern. For example, fear of infection doesn’t explain attitudes towards AIDS sufferers (Herek & Capitanio, 1998), being unemployed doesn’t induce people to support economic safety nets (Schlozman & Verba, 1979), having a child enrolled in public school doesn’t increase a citizen’s support for government expenditures on education (Jennings, 1979), and neither real nor perceived crime rates, nor fear of crime, predict support for gun control (Adams, 1996; Kleck, 1996).

Not everyone agrees that symbolic commitments dominate self-interest in explaining political attitudes. The main complaint is that studies on symbolic commitments have been too stingy in their definition of “self-interest” (refusing to include much beyond very direct, tangible, and often financial effects of a policy) and too generous in their operationalization of symbolic commitments (including measures that are confounded with self-interested outcomes) (Crano, 1997; Lehman & Crano, 2002). Nevertheless, at least in psychology, the notion that people’s political commitments are governed more by expressive than self-interested concerns is now the prevailing one (Kinder, 1998). In other words, people often desire that the law should be a

particular way not because of what it does for them, but because of what it says to and about them.

4.2 Law and group identity

Among the stronger predictors of political attitudes are group affiliations: for instance, whites are more likely to oppose busing than blacks (Kelley, 1974); middle class Protestants were more likely to support Prohibition than either lower-class immigrant Catholics or the urban upper-class (Gusfield, 1986); male, rural Protestants are more likely to oppose gun control than female, urban Catholics (Kahan & Braman, 2003). Research on group identity helps explain why: abundant work shows that people form groups on the thinnest bases (Rabbie & Horwitz, 1969; Tajfel & Turner, 1986; Tajfel, Billig, Bundy & Flament, 1971), and immediately begin giving fellow group members preferential treatment—not only at the expense of their own self-interest (Brewer & Kramer, 1986; Kramer & Brewer, 1984), but sometimes even at the expense of group welfare as a whole (Tajfel, Billig, Bundy & Flament, 1971). The need for affiliation with and acceptance by important others is clearly one of the most central and satisfying human motivations (Baumeister, 1998; Baumeister & Leary, 1995; Tajfel & Turner, 1986), and it is a need that is not motivated solely, or perhaps even importantly, by self-interested concerns (Batson, 1994; Baumeister & Leary, 1995; Lind & Tyler, 1988).

People see and use the law as expressions of their group identities in two ways. The first is proactive: they support or oppose particular regulations as a way to express solidarity with their groups. Sometimes these expressions of solidarity are obvious, as with the gay sodomy example cited above; sometimes they are only thinly veiled, as with flag burning (an issue which pits urban elites against the rural and working class) (Taylor, 6/28/2006). Sometimes they take the

particular tools of the social scientist to parse clearly: Joseph Gusfield (1986) spent a career demonstrating that the Prohibition movement was at heart motivated by animosity and cultural conflict between rural Protestants and immigrant Catholics; Kristin Luker (1984) convincingly argued that the movement to regulate abortion was animated by similar conflict between “career women” (that is, women who sought social status and satisfaction outside the home) and women who sought social status and satisfaction in the traditional role of wife and mother. People see legal regulation of behaviors as a way to define the bounds of good citizenship and to condemn those who do not share their worldview. Law is a form of cultural capital that can be captured by opposed groups, not just (or sometimes even at all) to affect material changes in behavior, but to stick a flag in the dirt to mark public territory as their own, culturally and morally speaking (Kahan, 1999).

The second use of the law for group identity is related to the first, but is more passive. Instead of actively trying to shape identity norms or capture social capital for their fellow group members, people also simply assess laws, and their interactions with legal actors, as a way to gauge their own social standing. One dimension of social standing for which people seek evidence is “between groups”—that is, how well regarded is my group relative to other groups (Tajfel & Turner, 1986; Turner, Hogg, Oakes, Reicher & Wetherell, 1987)? The state of the laws themselves can shed considerable light on this question. Laws have the imprimatur—in democracies, at least—of public support. (Whether they do in non-democracies is, of course, a function of how much obvious public support there is for the governing regime.) A homosexual living in Massachusetts or California, where same-sex marriage is legally permitted, should feel more valued as a citizen and member of the community than a homosexual living in, for instance, Oregon, Arkansas, or Michigan (to name just three), where voters passed referenda

explicitly barring such marriages in the 2004 elections. A woman with career ambitions who has access to legal abortion should feel validated in her choice to delay (or forgo) motherhood; a gender-traditionalist, stay-at-home mother whose state makes access to abortion difficult (or impossible) should feel validated in her community's choice to endorse the propriety, even superiority, of conventional gender roles with regard to family.

Another dimension along which people seek to assess their social standing is “within groups”—that is, how well regarded am I as a member of my own social group? People perceive that how they are treated individually within a legal regime conveys some information about how well regarded they are by their group (Lind & Tyler, 1988; Tyler, 1990; Tyler & Lind, 2000). This is because individuals feel entitled to respectful treatment by fellow group members to a degree they do not expect it from outgroup members (Tyler, 1994). The more authoritative and prototypical the fellow group member, the more information they glean from how the authority figure treats them, because more prototypical members have the most reliable information about individuals' standing in the group (Sunshine & Tyler, 2003). So, for instance, if I am treated politely and fairly by a police officer (Sunshine & Tyler, 2003) or favorably by a judge (Bilz, 2006), I take that good treatment to mean that I am a respected and valuable group member. In fact, my treatment by authoritative legal actors can also shed light on how my group is regarded within the collective as a whole: if, for instance, the legal authority figure is a representative outgroup member, I will presume that good treatment by her means that my group is well-regarded by the outgroup, and that poor treatment means the opposite (Bilz, 2006).

In short, people regard the law as a way to assess how well they, their groups, or their values and commitments stand in the community. This function of the law is purely expressive: it

performs this task whether or not the law is concretely effective; that is, whether or not it changes a single behavior, attitude or emotion of the citizens ostensibly being regulated.

5 Conclusion

The idea that the law can be used to shape morality is taken almost as a shibboleth, being repeatedly and reflexively offered as a reason to advocate for legal change, and alternatively, to bemoan the moral meddling of a Big Brother-like state. But given the ubiquity of the assumed power of the law to shape morally-laden cognitions, emotions and behaviors, there is surprisingly little direct evidence for it. In this chapter, we have described the existing evidence, and where there is no direct evidence we have assembled more general psychological evidence to make a strong case that the law in fact can effect moral goals.

Certainly, the law can shape moral behaviors by simply shifting the costs and benefits of the activity being regulated. However, it is both more interesting and more helpful to a governing regime when law changes people's moral response to the regulated activities, making citizens more or less likely to engage in the behavior without the need for direct enforcement. Surely, it would be an expensive and oppressive government that had to rely on the fear of punishment or anticipation of reward before their citizens would comply with the laws. Luckily, in addition to—probably even more than—relying on a straightforward cost-benefit analysis, people are powerfully inclined to refrain from behavior they find morally repugnant, and indulge in behaviors they regard as morally neutral (or even beneficial). Policy makers use this fact to design efficient, workable systems of law, and, in turn, moral entrepreneurs frequently use the law to effect their own ends.

Still, the fact that everyone acts *as if* the law shapes morals should not satisfy social scientists, particularly psychologists, who well know that people are not always accurate in their understanding of how the social world works. So the very last—but most important—ambition of this chapter is to spur more direct research examining how the law affects morality, and to suggest fruitful places where curious students of the psychology of law could start looking.

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