
21. Expressive law and social norms¹

Janice Nadler

INTRODUCTION

One of the central goals of law, of course, is to regulate behavior. Laws might be designed to encourage or discourage various activities, like assisting someone in danger, consuming less sugar or tobacco, or reducing fossil fuel use. Legal regulation can achieve its aims directly through rewards and punishments, or it can do so indirectly by changing *attitudes* about the regulated behavior. When legal regulation succeeds in influencing attitudes about the underlying morality of a targeted behavior, law can maximize its efficacy and efficiency. By shifting moral attitudes, law diminishes the need for the state to enforce sanctions or even to monitor the activity in question. Legal regulation that taxes or subsidizes behavior might not only change the frequency of the behavior in the short term, but also normalize or demonize it in the long term. “Sin taxes,” for example, impose taxes on the consumption of potentially harmful goods and services such as sugar, tobacco, alcohol, and gambling. These taxes sometimes aim to raise revenue, and sometimes also aim to reduce the frequency of the targeted behaviors. Over the long term, sin taxes might not only discourage the targeted behavior, but also discredit it so that individuals increasingly disapprove of the targeted behavior. On the other hand, law can encourage and signal approval for desirable behavior. For example, to encourage breastfeeding, the law could mandate accommodations that normalize the behavior as a natural and non-shameful activity. In fact, the Affordable Care Act (2011) requires employers to permit nursing parent employees to take breaks to express breastmilk in a designated room (Bilz & Nadler, 2014).

In this chapter, we examine the conditions under which legal regulation might shift underlying attitudes. Sometimes legal regulation appears to have influenced moral attitudes, and in other instances they have not. The power of law to shift moral attitudes depends on several factors, including the significance of the targeted belief to an individual’s cultural identity, the existence of underlying dissensus about the issue in question, and the extent to which law intends to modify the underlying meaning of the conduct in question, rather than merely changing the behavior itself.

SHAPING BEHAVIOR AND SHAPING ATTITUDES

It is important to distinguish between the ability of law to shape behavior through simple reward and punishment, and its ability to use less direct, more sophisticated techniques to shape not only behavior, but also moral attitudes. The dominant view, both in law and among

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regular people, is the consequentialist view – that law shapes behavior simply and directly, through incentives (Miller, 2001; Wuthnow, 1991). And it is uncontroversial that sometimes individuals will refrain from unlawful behavior because the expected cost (comprised of the severity and probability of punishment) exceeds the expected benefits. Undoubtedly, laws are sometimes effective because they are backed by the threat of punitive enforcement. Indeed, standard economic analysis assumes that the influence of law on human behavior begins and ends with behavioral responses to rewards and punishments (Nadler, 2017).

But it is not clear how much deterrence theory explains, because in the real world this theory is far from perfectly predictive. One reason for failures of deterrence is that sometimes people are not aware of law, and so cannot be motivated by an explicit cost–benefit tradeoff (Darley et al., 2001). In fact, most people do not have independent knowledge of most criminal law rules, but instead assume that the law corresponds to their preexisting moral intuitions. Arguably, much of the time and for most purposes, people are ignorant of the law, in part because it is so voluminous and complex. Nevertheless, there is no doubt that when people are in fact aware of the law (and even sometimes indirectly when they are not), deterrence is one way that law influences behavior.

Interestingly, people implicitly understand the difference between punishing to deter and punishing to enforce moral principles. While individuals explicitly support utilitarian objectives such as reducing criminal conduct through deterrence, they consistently opt for retributive penalties when presented with a specific case (Carlsmith, 2008). This evidence suggests that people are intuitive retributivists, making judgments based on intuitions about just deserts, though these intuitive judgments can sometimes be overridden by more reasoned considerations (see Carlsmith & Darley, 2008 for a review). At the same time, the reasoning process itself may be oriented toward retribution: when an array of different information is made available, participants are more likely to choose to obtain information about moral severity and other retributive factors, rather than information relevant to utilitarian aims (Carlsmith, 2006; Carlsmith et al., 2002).

Looking beyond criminal law, we can view the struggle for legal dominance as a conflict among private interests vying for limited resources (Farber & Frickey, 1991). In this public choice framework of law making, interested parties strive to accumulate as much social, political, and economic power and resources for themselves and their group as possible. Consequently, pharmaceutical companies seek or oppose regulations to maximize their own profit; prison guard lobbies seek new criminal offenses and tougher criminal penalties to protect and expand their own jobs. The public choice framework posits interest groups which fight over legal regulation because of the concrete consequences to their material interests (Bilz & Nadler, 2009).

But we can alternatively conceptualize law making as a battle to control what is good, right, or just. Under this model, those who are seeking to control law are morally driven tacticians who seek to change the law not only to change morally laden behavior, but also to change moral attitudes and emotions (Bilz & Nadler, 2009). In some cases, the struggle over legal change revolves almost entirely around changing moral commitments. Thus, for example, those who sought to preserve or abolish sodomy laws understood that the presence or absence of such laws was unlikely to change sexual behavior, and perhaps even unlikely to change attitudes about which sexual practices were immoral; but they also understood sodomy laws as making a statement about the kind of community they live in (Bilz & Nadler, 2009). Groups concerned with abortion laws likewise understand these laws as making a statement about

society and the role of members of groups within society. But unlike sodomy laws, state and local laws restricting abortion very much do change behavior by severely limiting the ability of people – especially people without financial resources to travel and be absent from work and family – to obtain abortions and forcing them instead to give birth. Aside from changing behavior, an important goal of abortion restrictions is to express a commitment to their view that human life begins at conception. Attitudes about traditional gender roles for women as wives and mothers are in tension with notions of gender equality based on rights. The legal regulation and prohibition of abortion arguably serves the function of defending traditional family and gender roles (Luker, 1984).

Sometimes, when there is dissensus in the population about what morality requires, law can step in to tip the scales in a particular direction. For example, drunk driving was not always viewed as immoral, but social norms and moral attitudes around this issue have changed dramatically (Grasmick et al., 1993). Enactment of laws prohibiting drunk driving were possible, of course, in part because of increased public awareness of the widespread and serious harm caused by the conduct, and efforts by groups, especially Mothers Against Drunk Driving, to raise public awareness and lobby lawmakers (Albrecht & Nadler, 2022). A similar dialectical process can be seen with the regulation of tobacco use, which only recently acquired the kind of public disapproval that led to widespread regulation (Rozin, 1999). Over the course of the twentieth century, the iterative process of three processes building and influencing one another unfolded over time. Specifically, new scientific evidence of health risks, public awareness and concern, and government regulation of tobacco each influenced the other two processes, leading to the current public health outcome of lower tobacco rates in the United States, lower incidences of negative health outcomes, many sources and types of regulation, and general public acceptance of most regulation much of the time.

If law possesses sufficient legitimacy as a general matter (Nadler, 2005), the legal regime might sometimes “cash out” some of that legitimacy to get the public on board with new ideas promoting public health and safety. But there are obviously limits to the ability of law to promote attitude and behavior change, especially when the cultural identity of one’s ingroup is threatened by legal regulation of issues with which the group identifies. Much resistance to gun safety regulation can be tied to group identity, as can strong anti-vaccine stances (Nadler, 2017). When the issue in question is one about which an individual has a strong moral conviction, the law might be relatively powerless to effect a shift in the perceived morality or desirability of the regulated behavior.

At the same time, when we consider the vast array of conduct that the law regulates, there is a great deal of consensus. Consider traditional criminal offenses (homicide, robbery, kidnapping, burglary, theft, fraud, and so forth) – there is broad agreement about the kind of conduct we deem unacceptable because it constitutes an attack not only on the individual victim but also on society’s embodied ethical life (Kleinfeld, 2015). This consensus has been demonstrated empirically in studies that reveal striking consensus about the rank ordering of moral seriousness of a variety of criminal offenses (Darley et al., 2003, 2001; Finkel & Smith, 1993; Robinson et al., 2010; Robinson & Darley, 1995).

In sum, there are discrete issues for which law can serve as an important tool for interest groups to stake their claim. There are many criminal offenses that regulate conduct that people largely agree is undesirable. And there are some domains that are newly moralized issues that groups seek to have law regulate (smoking, drunk driving, distracted driving) or deregulate (sodomy, gay marriage, physician-assisted suicide), as well as issues that most individuals

have no strong opinion about. How much power does law have, as a general matter, to influence attitudes about the wide variety of issues that are not extremely salient and politically divisive? In the next section we consider the mechanisms by which law's influence extends beyond individual cost–benefit calculations.

MECHANISMS OF ATTITUDE CHANGE

Law sometimes makes explicit the moral implications of the prohibited act. Thus, the criminal law traditionally grades an unintentional killing committed with a “depraved heart” or an “abandoned and malignant heart” as murder, but other unintentional killings as merely manslaughter (Nadler & McDonnell, 2012). Conversely, Good Samaritan laws – which are part of the criminal code of at least ten US states – are designed to shape beliefs about the moral duty to rescue and impose criminal liability on individuals who can safely assist another person in danger but fail to do so. The law can leverage any of several mechanisms to change moral attitudes. It can leverage the law's general reputation for doing justice, either because its content is consonant with popular morality, or because legal agents promote cooperation by enacting principles of procedural justice (see Chapter 3 by Tyler in this *Handbook*). The law can also make the target behavior salient or convenient, without regard to moral attitudes about the conduct in question or fear of punishment. It can use physical architecture to change behavior by making the targeted behavior either more convenient (e.g., recycling) or less convenient (e.g., smoking). Legislation can change the social meaning of a behavior, rendering what was formerly considered to be either moral or amoral to be now morally problematic (e.g., discrimination) or vice versa (e.g., homosexuality).

Law can sometimes change behavior by offering the path of least resistance. If a law makes desirable behavior convenient – like recycling – people can be persuaded to do more of it. If, on the other hand, law makes a less desirable behavior less convenient – like smoking – people can be persuaded to do less of it. Initially, these changes are behavioral in nature rather than attitudinal. Conventional law and economics can explain changes in people's willingness to engage in the regulated behavior through costs and benefits. But along the way law can sometimes induce changes in attitudes, as illustrated by classic demonstrations of cognitive dissonance. For example, people who are asked to make a choice between two closely ranked products later increase their liking of their chosen item and decrease their liking of the forgone item (Brehm, 1956). For attitude change to follow, it is important for people to perceive their behavior as a product of their own choice (Cooper & Fazio, 1984). If the regulatory “nudge” is too forceful then people will perceive their behavioral changes as forced by legal incentives rather than stemming from free will and will be less likely to change their underlying attitudes about the behavior in question (Kuran, 1995).

The key point here is that law is not merely an external force operating on discrete activities. Law permeates social life to such an extent that our norms, values, and understandings cannot be readily separated from the demands of law (Sarat & Kearns, 1993). In contrast to the instrumental view that law operates on autonomous individuals by providing a set of incentives, the social norms view holds that a person's attitude and behavior regarding any number of demands of law – whether it be driving, paying taxes, using drugs, or anything else – is a product of the interaction of law, social influence, and motivational goals that are shaped by group life. To illustrate this argument, this chapter focuses on examples from the legal regula-

tion of risk. Before doing so, we briefly review standard conceptions of the coercive power of law and explain why it is worthwhile to look beyond the standard account.

LEGAL COERCION BEYOND PUNISHMENT

Coercive power is without a doubt an important part of how law functions, even though sanctions work imperfectly in practice. Note that the coercive power of law manifests not just in criminal punishment, but also in almost any activity law governs (Schauer, 2015). Thus, if a person wants to write a will, form a corporation, or enter a contract, law dictates that she does these activities in one way rather than another. If she fails to act in a manner prescribed by law, she faces the sanction of nullity – no valid will, corporation, or contract exists (Schauer, 2015). In addition, people are forced to refrain from doing certain things they would prefer to do to avoid civil liability or administrative sanctions. Thus, a manager who prefers to fire an employee because she is pregnant, a food manufacturer who wishes to make a prohibited health claim on a package, and a publisher who wants to engage in predatory pricing are all coerced by law to refrain from these acts. In this way, the coercive power of law is widespread, extending beyond criminal punishment and into ordinary, everyday transactions and interactions (Ewick & Silbey, 1998; Valverde, 2012).

LEGITIMACY AND CREDIBILITY

Because coercive use of law is expensive, sometimes unjust, and often ineffective, it is worth asking whether and how law can influence behavior apart from, or in conjunction with, direct coercion. One possibility is that the legitimacy of law and legal authorities produces a feeling of obligation to obey. Thus, if people accept law as a legitimate source of guidance for conduct, then people might voluntarily comply independently of threatened sanctions. There is a great deal of evidence that the legitimacy of various legal authorities depends on the fairness of the procedures that those authorities employ (Tyler, 2006; see also Chapter 3 by Tyler in this *Handbook*). Turning from procedures to substantive outcomes, there is some indication that if individuals perceive the legal system as producing unjust results, their compliance decreases because their motivation to defer is weakened (Mullen & Nadler, 2008; Nadler, 2005; Robinson et al., 2010). Taken together, these studies suggest that coercion is not the only mechanism by which law influences behavior. Rather, qualities of the law itself, including the extent to which it is perceived as furthering justice or reflecting community values, influence the extent to which people feel bound by law in general.

Lack of perceived legitimacy can come about for several reasons. Widespread corruption can lead to diminished respect for law. For example, one study examined the rate of parking violations committed by United Nations diplomats living in New York City, who were immune from penalties for parking tickets before 2002 (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 political and legal system, allowing it to influence their behavior even when they lived in a country with relatively low levels of corruption.

In the current context of American politics, many right-wing supporters of Donald Trump falsely believe that there is widespread corruption in the federal government, and that the government has been captured by socialists, and racial and sexual minorities. As a result of this suspicion of and hostility toward government, they view law – especially law that they identify as emanating from policies of the federal government – as holding little sway. Instead, members of this group engage in behavioral backlash against law in the form of, for example, protesting and resisting mask and vaccine mandates during the Covid-19 pandemic.

Perceptions of government corruption or illegitimacy are not the only cause of behavioral backlashes against law. Specific instances of failures of legal justice can increase individuals' willingness to flout the law in a general sense. Some experimental evidence supports this Flouting Thesis (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 was punished led to a higher likelihood of participants following the law as a mock juror in a subsequent, unrelated trial; conversely, learning that the accomplice was not punished led to widespread flouting of the judge's instructions in the subsequent mock trial (Nadler, 2005).

Fortunately, most people do not have strong moral attitudes about most legal rules and decisions; a perusal of a typical court docket reveals cases involving bankruptcy actions, contract disputes, product liability claims, workers compensation suits, and the like – issues that would not capture the attention of most people. Still, the legal system is called upon to deal with problems that represent hot-button topics for some individuals. When an individual holds a strong moral conviction about an issue, they have a strong attitude that they view as tied to their core moral values as a person (Skitka et al., 2021). Having that core value threatened often results in anger, as well as devaluing the procedures and the outcomes associated with the threat (Mullen & Skitka, 2006). Violations of moral convictions can sometimes lead to moral spillovers, where an individual who learns about an outcome that threatens her core moral values then engages in subsequent deviant behavior (Mullen & Nadler, 2008). In one study, participants who were strongly in favor of the right to abortion 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). For law to serve as a credible guide to issues involving morality, risk, and the everyday rules that enable institutions to function, it must be seen as mostly enacting justice. Erosion of law's legitimacy denudes it of its ability to influence moral commitments.

COORDINATION AND INFORMATION

Sanctions, legitimacy, and perceptions of law's credibility and propensity to do justice are all mechanisms by which law might influence behavior. At the same time, law functions in ways other than through coercion and legitimacy. Richard McAdams (2015) argues that two of these functions are important and yet overlooked – coordination and information. These are both instances of expressive law: the claim that law influences attitudes and behavior by what it expresses.

Coordination

The coordination function of law operates through expectations. When law highlights a behavioral choice in a coordination setting, it changes expectations about how others will behave (McAdams, 2015). Thus, a law that announces “Yield” for east–west drivers at a four-way intersection empowers north–south drivers to continue through the intersection without yielding or slowing. Knowing this, east–west drivers who might think about failing to follow the Yield sign then demur. Law’s expression gives each driver an expectation of what another driver will do, which allows each to avoid colliding. There are many aspects of traffic rules – for example, the center line, a Yield sign, a traffic light – that provide drivers with a focal point, enabling people to coordinate behavior and avoid harmful outcomes. In this way, law’s power is sometimes suggestive in addition to being coercive. By making a particular outcome salient, the law focuses individuals’ attention on one way to coordinate, and behavior follows.

The question of which side of the road to drive on is not laden with moral implications. Remarkably, law can work as a coordination device not only when people are indifferent, but also when they have preferences that strongly clash (McAdams & Nadler, 2008). Legal disputes often involve failures of coordination, particularly when parties mutually regard one particular outcome as the worst result but disagree on which outcome is the best result. Two people might contest ownership of a piece of property but might both regard violence as an outcome that is worse than giving into the other’s claim of right. Individuals in a workplace might have widely differing views about the acceptability of sexually charged banter, but each may view the worst outcome as conflict that results if each person fails to defer to another’s conduct or preference. Law can increase the frequency of normative behavior by simply announcing which behaviors are preferred and which are not. The legal announcement makes salient the desired conduct, and at the same time provides a reliable indicator about what others are likely to do (McAdams, 2015; McAdams & Nadler, 2008).

The form of the legal announcement might be an outright prohibition but need not be. Law can shape behavior through restrictions and regulations on the conditions under which a behavior is permitted. Consider, for example, how convenient it was for Americans to smoke cigarettes in the 1950s, when smoking was permitted and common in workplaces, social gatherings in homes, stores, restaurants, cars, buses, trains, and airplanes. Contrast this with our current environment where smoking is closely regulated and restricted. As a result, there are only a few types of places and times where one can reliably find people smoking, at least in the United States – for example, outside the lobby doors of urban office buildings during business hours. Along with other factors described later, these regulations have undoubtedly contributed to a reduction in smoking, partly because it is currently much less convenient to do so.

Information

Law’s information function operates through appraisal. If a new law requires the use of seatbelts, that legal requirement tells individuals what legislators collectively know about the risk of not wearing a seatbelt. Curvy mountain roads have places with single dashed lines where passing another vehicle is permitted, and places with double yellow lines where passing is not permitted. Here, law is expressing that bureaucrats have determined that in the places with a double yellow line, passing is too dangerous. In these examples, law’s expression provides basic information. Rules and regulations promulgated by legislators and regulators reflect the

factual beliefs and moral values of the political actors who created them. Sometimes, individuals who learn about a new rule update their beliefs about the desirability of the conduct regulated. Under this conception, law provides information, which in turn changes beliefs, which in turn changes behavior (McAdams, 2015).

Until this point we have focused on individuals, but it is important to recognize that we do not adopt a set of beliefs and goals in a social vacuum. For one thing, people think, feel, and act as group members. Cognition, emotion, and motivation are shaped by attention to relevant others in the social context (Markus & Kitayama, 1991). Groups with which we identify help us make sense of new situations. We experience greater empathy with and pay more attention to the emotional experiences of those in our group compared to those outside of it (Brown et al., 2006). Expression and experience of emotion are influenced by anticipated reactions of others. To complicate matters even more, our knowledge and attitudes are influenced by processes that often operate outside of conscious awareness. Social norms are but a single instance of various kinds of social influence we experience throughout social life.

The information function of law not only tells individuals what legislators and regulators think; it also informs individuals about what most others think about the regulated behavior in question, thereby raising the specter of others thinking less of us for violating the regulation (McAdams, 2000). In this sense law is merely one source of information for the moral norms each of us comes to accept. Social norms are shaped and sustained by a wide array of sources, including family members, schooling, peers, co-workers and workplaces, traditional media, and social media. There is, of course, a great deal of diversity in society, which potentially makes law a candidate for being a powerful source for shaping and sustaining norms because law serves as a common denominator. Especially under conditions of uncertainty, individuals are motivated to search out credible cues in their environment for making judgments. Information about social consensus tends to be especially persuasive, and individuals seek to resolve ambiguity in their environment by understanding the consensus of the group, leading not only to conformity but also genuine acceptance of the information gleaned from group consensus (Asch, 1955; Hovland et al., 1957).

GROUP PROCESSES

In processing information as actors in the social world, individuals are mindful at some level of the wider context of social groups and structures. In this sense, moral norms are not individual beliefs but rather social products, formed and maintained by the perceived expectations of the various groups to which an individual belongs (Terry & Hogg, 1996). Each of us belongs to a variety of groups, such as close family, extended family, the workplace, close friends, acquaintances, school peers or alumni networks, neighborhoods, and recreation groups (such as athletics or book clubs), as well as groups that exist exclusively online and are maintained through social networks. Because we generally have a strong desire to affiliate and belong, it is plausible that we are often motivated to conform our attitudes and beliefs to those of our fellow group members. If we believe that the law (including codes, regulations, judicial decisions, and so forth) generally reflects the community's moral norms – and in democratic political systems, this is largely the case – then law might inform moral beliefs because we are motivated to seek the approval of those with whom we affiliate (McAdams, 1997). But as discussed earlier, this hypothesis depends on law being perceived generally as being in harmony with

community sentiments. To the extent that law or the legal system generally is perceived as out of step with community moral norms, it loses moral credibility and becomes less relevant as a “guide to good conduct” (Robinson & Darley, 2007).

When the law is generally consistent with community sentiments, newly introduced legal measures can serve as a strong indication of the attitudes of other group members. This is especially important for conduct about which there is uncertainty or even misperception about what others really approve of and disapprove of (McAdams, 2000). As individuals and as group members, we often are motivated to see our own behavior and attitudes as reflecting a widespread consensus in society. Sometimes these beliefs are not accurate, reflecting a false perception of consensus (Ross, 1977). On the other hand, people sometimes misperceive consensus in the opposite way, privately thinking that they are the only ones who reject a value or norm without realizing that most others reject it as well because most people act as if they support the value or norm in question (Miller & McFarland, 1991). One example comes from the Jim Crow South, where in the mid-twentieth century some white individuals’ support for state-mandated racial segregation was eroding, but those individuals kept their views private for fear that public support for segregation was very strong (McAdams, 2000). A newly introduced legal measure can serve to subvert both kinds of misperceptions – the belief that most others feel the same, and the belief that a privately held opinion is unpopular – but only to the extent that laws are perceived to reflect broad societal consensus. Democratically enacted legislation provides information about what elected officials perceive to be the attitudes of their constituents, which in turn can help people update their beliefs as to what others approve and disapprove of (McAdams, 2000).

In addition to reflecting the existing attitudes of others, new laws can also create a new consensus. This is because individuals often seek to adjust their beliefs and attitudes to comport with those of others – especially other members of groups with whom they affiliate. A new law that people perceive as reflecting the will of the majority can help persuade group members to adopt the view reflected. Consider the passage of a law prohibiting discrimination based on sexual orientation. Because of the motivation to belong and affiliate, individuals might directly adopt the attitude suggested by the new legislation – that discrimination based on sexual orientation is morally wrong. The perception that a new law reflects the will of the majority is not a foregone conclusion. But during times of rapid attitude change, people may perceive the law as catching up with social change already underway. In such cases, individuals might align their attitude with the new law even if they had previously assumed that some ingroup members held opposite views. Thus an alignment can occur even if many group members previously opposed the law, as the process repeats itself across many different individuals.

LEGAL REGULATION OF RISK

Relatively acontextual and simplified examples such as drivers obeying traffic laws are useful because they clearly illustrate how people obey laws for reasons in addition to the threat of official sanctions. The east–west driver encountering the Yield sign yields in part because the sign makes clear what the north–south driver will do – that is, proceed without yielding. It is useful to extend the morally neutral example of driving to more complicated instances involving the legal regulation of risk. The mechanisms of influence on people’s attitudes and behavior in these instances include informational social influence (what others do), normative social

influence (what others approve of), personal moral values, attitude characteristics (importance, knowledge, elaboration, certainty, extremity, and accessibility of the attitude to the person), and motivational goals (e.g., cultural identity expression). Examples in this domain include the legal regulation of tobacco, guns, genetically modified organisms (GMOs), vaccines, food, seatbelts, helmets, child safety seats, local building permits and inspections, fireworks, drugs, and drunk driving.

The ability of law to regulate risky activities successfully sometimes depends on the perceived moral characteristics of those activities, which in turn sometimes depend on the perceived characteristics of the groups or institutions promoting the regulation in question. In the United States, policy debates about hazardous activities often have strong libertarian overtones, so that the activity in question is framed as a personal choice and therefore not the proper subject of government regulation. Examples include regulation of unpasteurized milk, motorcycle helmet use, seatbelt use, guns, smoking, and efforts to control the spread of disease such as mask wearing and vaccination.

The smoking example provides an interesting case study. Over the latter half of the twentieth century, cigarette smoking moved from being viewed as a matter of personal preference to being an object of danger and disgust (Rozin, 1999). Because the United States has strong cultural roots in individualism, an activity like smoking is considered by many to be off limits as the subject of legal regulation unless it can be demonstrated that it causes harm to people other than the smokers themselves. When such information about harm to others is disseminated, regulating the activity can help decrease the incidence of harmful behavior through a variety of mechanisms. In the case of smoking, legal regulations that worked through incapacitation were quite powerful: when smoking involved leaving the office building, restaurant, bar, or stadium, smokers often decided that the pleasure derived from the cigarette was outweighed by the cost of having to move elsewhere. Other coercive legal mechanisms, such as taxation of tobacco, were also influential in decreasing smoking.

At the same time, the evidence of harm to others that emerged in the latter half of the last century transformed smoking into an activity with moral implications. The large variety of legal regulations and legal activity that accompanied this evidence (place restrictions, taxation, labeling regulations, advertising regulations, sales-to-minors restrictions, Occupational Safety and Health Administration (OSHA) restrictions, Federal Aviation Act restrictions, and tort litigation) might have not only coerced, but also contributed to the development of social norms that discouraged smoking. In the end, it is possible that legal activities (including regulations and litigation), health information about harm to self and others, and social and moral norms about who smokes and who disapproves of smoking all mutually influenced one another over the course of the latter half of the twentieth century, with the result that smoking rates in the United States are now at an all-time low (Ng et al., 2014). The coercive powers of law undoubtedly contributed to this decline. But to stop there when explaining what caused the decline in smoking in the United States would be missing much of what is interesting about how law, information, and norms interact over time.

Risky activities become harder to influence through expressive regulation when those activities reflect commitments based on cultural or political values. Consider gun regulations, which focus on activities considered to be honorable by certain cultural groups. Hunting, for example, is seen by many Americans to function as a sport, a means for feeding family, and the foundation for strengthening the bond within a family. As such, hunting is perceived by many families as “a way of life that we believe in” (Brown, 2015). Laws regulating guns, therefore,

are perceived by some Americans as attacking the fundamental identity and status of their cultural group, and implicitly stating that members of their group are less important than members of other groups. The risk perceptions formed by members of these groups reflect and reinforce their beliefs, so that guns are viewed as normal and venerable rather than dangerous and undesirable (Kahan & Braman, 2003, 2006). At the same time, it is possible that the introduction of new laws, along with increased public concern about risk and widespread harm, can contribute to shifting group boundaries or even the salience of superordinate group identities, which in turn cause certain individuals who identify as “pro-gun” to favor new regulation.

Other examples are more overtly political. Consider the regulation of mask wearing during the Covid-19 pandemic, which became politicized along with more general beliefs about the extent to which the virus was perceived as a major public health threat. Once mask wearing became informed by political beliefs, evidence supporting mask mandates became irrelevant, as individuals were motivated chiefly by a desire to process information in a way that supports the groups which provide them with a sense of belonging and self-worth (Facciani, 2020). At the same time, the iterative nature of influence of public health concerns (including the experience of personal tragedy), public attitudes, and legal regulation leaves room for shifts in opposition to or support for regulation over time.

Cultural and political values work together with risk perceptions to strengthen people’s ties to their ingroups and distinguish their group from other groups. Tobacco use in the early and mid-twentieth century was common across many different subcultures, so that when local, state, and federal government imposed regulation and other burdens such as taxation, there was not resistance based on the suspicion of one’s own group being singled out. While there was certainly resentment on the part of some, there was simultaneous concern, especially given the mounting scientific evidence of serious health risks.

Whereas regulation of smoking helped contribute to enormous changes in attitudes and behavior, the regulation of guns, by contrast, is unlikely to have a direct influence in shaping behavior among people who possess cultural beliefs regarding the desirability of guns. Indeed, looming regulation can cause backlash effects among those who feel that such regulation would threaten their cultural or political values. For example, in recent years, gun sales have spiked immediately following mass shootings. Gun dealers anecdotally report that these sales are driven by anticipation of new restrictions (Feldmann, 2012), and data suggest that it is indeed the fear of new restrictions rather than the fear of impending violence that drives spikes in sales (Aisch & Keller, 2015). Similar behavioral backlashes occurred when the Covid-19 pandemic spurred mask mandates – some anti-maskers not only refused to comply, but sometimes reacted vociferously and even violently to enforcement efforts.

Risky activities also become harder to influence through expressive regulation when those activities are seen as falling outside the domain of legitimate government regulation. Consider, for example, the legal regulation of sugar-sweetened beverages (SSBs) in the United States. State and location taxation of sugary drinks in the United States began about one hundred years ago, not so much to discourage consumption, but simply to raise revenue (Dana & Nadler, 2018). In the wake of more recent concern among public health scholars and advocates about the link between sugar and disease, the idea of an excise tax on sugar-sweetened beverages took hold. Health officials had hoped that by taxing SSBs, sugar consumption would decline because higher prices would lead to a decline in SSB purchases. Those promoting efforts to enact taxes on SSBs have sought to gain support by trying to convince the public that reduction in sugar consumption is beneficial for health. In virtually all proposed tax schemes,

the anticipated revenue generated from the tax laws was earmarked to fund health care initiatives to treat the damage caused in part by the SSBs being taxed. This earmarking closely reflected the efforts of several US state governments, which have used tobacco tax revenues to fund anti-tobacco public education campaigns and health services. The proposed laws sought to work through not only deterrence, but also attitude change.

The fate of these proposed tax laws illustrates that people hold other motivations that compete with the motivation to increase their own health. The explicit effort to nudge people into making a healthier choice was met with very strong popular resistance in nearly every instance of proposed taxes on SSBs. Interestingly, the popular backlash seems to have been based substantially on resistance to nanny-statism: the idea that consumers have the right to choose their beverages without paternalistic meddling by the state. In efforts across the country to reduce SSB consumption through law, a substantial portion of the public was disturbed by the idea that their city or state should be in the business of influencing their personal decisions about how much or what to drink. The motivation to increase one's own health was certainly present, but it was overwhelmed by the motivation to maintain one's own status as an autonomous decision maker in the domain of beverage consumption.

Thus, for law to have an opportunity to have informational influence on attitudes and behavior, people must be open to being influenced in this way. In the domain of the legal regulation of risk, people are sometimes strongly resistant to such governmental influence, and this resistance can grow or diminish over time, depending on the subject matter that law addresses. For example, in the face of clear evidence that cigarettes are harmful to not only the smoker, but also those around her, cigarette taxes earmarked for health and tobacco reduction are now basically uncontroversial. However, the health case against SSBs is relatively new, focusing on the direct negative health consequences to the individual consumer. The public health argument for enormous indirect effects of SSBs and sugar-laden foods seems to have limited persuasive power, despite its soundness. As a result, proposals to regulate or tax SSBs have been subject to resistance, so that the ability of law to influence attitudes and behaviors expressively can be diminished or even eliminated by dynamics of influence that block legal change precisely because of the law's anticipated expressive effects. Thus, sometimes efforts to enact expressive law can have ironic effects because people recognize and resent the expressive nature of law, causing them to oppose the enactment of the proposed law. Ironic effects are especially likely when people perceive the government as overstepping its mandate, with calls to rollback "the nanny state" gaining remarkable resonance among individuals whose social and political commitments would otherwise align with efforts to mitigate the harm that regulation seeks to target (Dana & Nadler, 2018).

CONCLUSION

Understanding how law works expressively requires recognizing how law influences and interacts with individual attitudes and behavior and, more broadly, social norms and social movements, and political institutions and their leaders. Law is of course not a monolith – it is composed of rules and standards, sanctions and remedies, procedures, agents, and institutions, among other things. For this reason, examining the expressive effects of law involves describing the consequences of an exceedingly complex system. As a general matter, the law can shape moral behaviors by simply shifting the costs and benefits of the activity being regulated.

However, it is more intriguing, and more valuable to a governing regime, when law alters people's moral response to regulated activities. When law shifts moral attitudes, it can increase the likelihood that individuals refrain from undesirable (or engage in desirable) conduct without the need for direct enforcement. Exclusive reliance on fear of punishment tends to be expensive and oppressive. Fortunately, people are powerfully inclined to refrain from behavior they find morally repugnant and indulge in behaviors they regard as morally neutral (or even beneficial). Within select domains such as those discussed earlier, policy makers can make use of this dynamic to design efficient, workable systems of law; at the same time, and for better or worse, moral entrepreneurs can use the law to achieve their own ends.

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