

The relevance of social norms within the context of regulatory impact assessment



A brief talk about the following:

- 1) What are social norms?
 - 2) What are the main inducers of conformity to a social norm?
 - 3) What are the adaptive advantages of social norms?
 - 4) How do social norms shape legal systems?
 - 5) When do social norms embrace law? (and how it works)
 - 6) When do social norms beat the law? (and why)
 - 7) Some conclusions
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What are social norms?

- *Informal* norms (not created by institutions with the power to enact norms)
 - *Not supported by formal sanctions* – sanctions are purely social (censure, isolation, ostracism)
 - *Conformity is conditional on expectations* about other people's behavior and beliefs (the agent *prefers* to comply with the norm on the basis of having certain expectations)
 - *Indirect inducers of action*: the direct motives of conduct are the beliefs that support the norm (according to other people's expectations)
 - *Equilibrium, i.e.*, a situation that involves several individuals or groups in which each one's action is a best reply to everyone else's action (stable mutual adjustment). Everyone anticipates everyone else's behavior and all these anticipations turn out to be correct.
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What are the main inducers of conformity to a social norm?

- Fear of negative consequences (resentment, hate, grudge, ostracism from the community of subjects whose expectations were not fulfilled)
- Shame
- Desire to please, group membership, building a good reputation (reputational incentives)
- Acceptance of other's expectations as reasonable – mainly when there are no personal relationships sustaining the desire to please

The decision to conform doesn't have to be conscious. Upholding a norm is not a matter of conscious cost/benefit calculations; people tend to repeat observed behavior they have seen to work well.

What are the adaptive advantages of social norms?

The set of self-fulfilling prophecies that derives and constitutes the system of social norms is good for every individual as well as for the community as a whole:

- Every individual knows what to do and knows that others will probably behave in the same way
- For those who are already members of the community, the fact that there is a solution to a coordination problem is paramount (that's the advantage that allows the norm to survive)
- For outsiders, the norm works as an informational signal combined with social pressure for compliance (the agent becomes aware of *what to do* and that *he has to do it*)

Social norms are not static. Their strength resides in their capacity to adapt to ever changing contexts.

How do social norms shape legal systems?

- Social norms are shaped by laws;
- Social norms constrain the effectiveness of laws.

How are social norms shaped by laws?

Moderate laws which are aligned with dominant social norms are usually well accepted and become effective; being effective they manage to change social norms thus significantly increasing their amplitude

Why do social norms curtail the effectiveness of laws?

Laws often go unenforced because they conflict with prevailing social norms (for example, brideprice payments and early marriages are customs seen as norms that are not easily breakable through law). This makes private agents unwilling to enforce the law or to cooperate with enforcement. **So, introducing laws that are in too strong a conflict with the prevailing norms may backfire and increase lawbreaking.**

When do social norms embrace law? (and how it works)

How can law have a say, or at least influence, the evolution of social norms? **Through its expressive function, legal norms (and public policies as a whole) can pull custom in their direction** (*by expressing a meaning that is generally taken as good, by making a statement instead of controlling behavior directly*).

For that to happen, **law has to align with pre-existing values** (when people believe that it is intrinsically valuable for the relevant "statement" to be made). In this case, social norms accept law and the norm becomes effective even in the absence of direct incentives because of a significant reduction in the costs of private enforcement:

- **first-party enforcement** - since individuals dislike disobeying the law, the (psychological) cost of performing a given action increases if that action becomes illegal. **Individuals are induced to refrain from that action.**
 - **second and third-party enforcement** - once a given behavior becomes illegal, the subjects whose rights are protected by the law (second parties) and the community at large (third parties) may engage in private enforcement of the newly created legal rights by means of reprobation or possible reprisal.
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When social norms beat the law ...and why

The legitimacy of law is undermined when the content of the law departs from social norms. In the case of legal intervention, this happens when the goals the legislature pursues or the means designed to achieve such goals are not aligned with current social norms. As a consequence, individuals face legal rules clashing with their sense of justice or fairness, stemming principally from the social norms they follow. Then, the command of social norms counteracts the law, offsetting it.

According to the traditional economic model, a penalty (such as a fine) represents a price for an action or omission. Typical cost-benefit analysis says the penalty increases the price of the unwanted action or omission, and, therefore, moves subjects towards desired behavior. By this standard, absent initial alignment between legal rules and social values, legislators may ensure compliance with law through the creation of external incentives (i.e., sanctions).

However, human behavior is affected by factors beyond mere extrinsic incentives (intrinsic motivation for behavior may come from individual values, group ethics, social norms, etc.), which means that reaction to unjust laws and countervailing norms may undermine the effect of legal incentives.

The public's perceptions of a law's legitimacy affect people's compliance with the law.

Consequences:

- When the law departs from current social values, the **expressive and reaction effects will play opposite roles.**
 - A new law that is contrary to current social values or more restrictive than what people would support **triggers opposition** (non-compliance, open protest, civil disobedience, etc).
 - **Negative social reactions to a new law weaken and undermine the effects** of legal intervention through an opinion formation process (individual negative reactions reinforce other individuals' dislike of the law forming a cascade that is contrary to the new law)
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Some conclusions:

- 1) The question of the true determinants of behavior in response to legal rules is in urgent need of theoretical analysis to explain the huge variety of results of legal norms and public policies in general.
- 2) One thing that should be presupposed in such analysis is the essential role that social norms have in the final outcome of legal innovation – social norms are part of the intrinsic motivation of individuals (as opposed to extrinsic motivators, as legal sanctions).
- 3) Another important component of intrinsic motivation is the preference individuals have for obeying to the law. People vary in the degree of their willingness to follow norms, but, at least within a similar cultural background, people have an intuition to follow them.
- 4) When legal norms align with preexisting social values, these two intrinsic motivators act in the same direction and lead to strong internalization.

- 5) Conversely, when the law departs from current social values, individuals are pushed in opposite directions. For instance, the generalized social norm may allow sharing and downloading of music from the internet, thus encouraging individuals to engage in such activity and the legal sanction that discourages them.
- 6) If intrinsic motivation exerts a stronger pull on individual behavior than extrinsic incentives and the two incentives encourage clashing behavior, we might observe more unintended results of legal intervention (the countervailing effect of social norms).
- 7) Also, in the long run, negative social reactions to a new law weaken and undermine the effects of legal intervention through an opinion formation process (individual negative reactions reinforce other individuals' dislike of the law forming a cascade that is contrary to the new law).



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