

# MORAL CONFLICT AND THE FORCE OF LAW THE CONTINUING RELEVANCE OF BERNARD MANDEVILLE

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ABSTRACT. Bernard Mandeville's *The Fable of the Bees, or, Private Vices, Publick Benefits* scandalized early-18<sup>th</sup> century England. Mandeville's work began as an attack on self-appointed moral authority but expanded into a treatise of social evolution and cooperation that influenced Adam Smith and other moral philosophers. In this paper, I review Mandeville's ideas on morality and social welfare before expanding them to analyze the interaction of heterogeneous morals and legal restriction. I demonstrate how laws which are imperfectly correlated with morals can reduce social welfare, support a rent-seeking class and still persist—even if they are supported by a minority moral belief.

## 1. INTRODUCTION

Let us discuss what is godly, what is ungodly, what is beautiful, what is ugly, what is just, what is unjust.

—Attributed to Socrates (470–399 BCE)

Economists generally prefer to work with positive rather than normative issues.<sup>1</sup> Positive issues are theoretically and empirically tractable; normative issues can lead to interminable arguments over opinion, aesthetic or morality.

Economists therefore analyze moral (normative) activities through a positive lens with a (lack of) focus which disturbs those of us who take the “social” in social science seriously.<sup>2</sup> Moral issues are important: Many voters in the recent US Presidential election wanted to impose their morals on others or prevent this imposition. The question was not “Which candidate can execute our common beliefs?” but “Which candidate can execute *my* beliefs?”

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<sup>1</sup>For evidence and criticism see, e.g., (Skedinger and Johansson, 2004). Positive: What situation exists. Normative: Whether a situation is desirable or not. Moral is a subset of normative.

<sup>2</sup>Sigmund et al. (2002) point out that “real people are a crossbreed of *H. economicus* and *H. emoticus*”—the resulting complexity leads to the most unpredictable, yet important deviations of actual behavior from theoretical prediction.

While economists may ignore morality as irrelevant for maximizing social welfare (given the efficiency of self-interest) or as a normative issue whose subjectivity is beyond quantification, the “man-on-the-street” has other ideas (Andreozzi, 2004). This matters because the politicians and priests who claim to represent the Street regularly use morality as an excuse to ignore economists’ advice on moral topics (illegal drugs, prostitution, etc.).

In a pure *laissez-faire* world, the strong survive and the weak perish. Activities have no moral dimension (“All’s fair in love and war.”) and efficiency is merely a question of what works. Few are willing to live under this sort of system (without a guarantee that they would be the strongest!) and thus social cooperation and moral behavior emerge (Axelrod and Hamilton, 1981). Common morals can increase cooperation and strengthen public goods, but they can also be manipulated by moral enforcers for personal gain and public harm (See Altman (2002)).

But what is the “common” morality? While people can agree on the *definition* of moral, they often cannot agree on the *designation* of moral. As an analytical benchmark, I use a benefit-cost concept of “socially beneficial.” The normative argument that I will then make is that some immoral (moral) activities should be legal (illegal). My justification is not only that the benefit is greater than the cost, but that the opportunity cost of enforcement against illegal, yet socially beneficial, activities is harmful.<sup>3</sup>

My analysis relies heavily on the perspective of a great Social Observer, Dr. Bernard Mandeville, who was an early critic of moral power. Mandeville exposed the false hope of utopian behavior and explained how the immoral reality can be socially beneficial. Moral philosophers/economists like Smith, Malthus, Ricardo and Marx followed in Mandeville’s wake until the marginal revolution and mathematical economics pushed normative analysis aside in favor of deductive analytical methods. Most recent work with moral content has used positive benefit-cost analysis without asking normative questions of why or how moral preferences interact (Becker, 1968; Akerlof, 1970; Becker and Stigler, 1974; Shleifer and Vishny, 1993;

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<sup>3</sup>If there is “too much” enforcement activity against a [socially-beneficial] activity when socially-costly activities exist and the total amount of enforcement is constrained, then the opportunity cost is positive (i.e., bad). There is “too much” enforcement because the amount of enforcement is chosen with the assumption that the activity is harmful when it actually is not (Becker et al., 2004).

Mauro, 1995; Mocan, 2004). In this paper, I examine how some actors' moral preferences can lead to normative laws that conflict with other actors and reduce total social welfare. This political-economic result has the interesting property of receiving support from those whom it harms; they are blinded by moral rhetoric.

## 2. MANDEVILLE AND MORALS

Vast Numbers throng'd the fruitful Hive;  
 Yet those vast Numbers made 'em thrive;  
 Millions endeavoring to supply  
 Each other's Lust and Vanity;  
 —Mandeville (1732, p. 3)<sup>4</sup>

### 2.1. Who Was Mandeville?

Mandeville put his unconventional point of view in such vigorous, downright, and uncompromising terms that he literally frightened a large proportion of his readers into misunderstanding him.  
 —Kaye (1924, p. xxxix)

Bernard Mandeville was a “really great psychologist” and “the father of social science, of a new *way* of thinking about human relations” who wrote about human institutions, their emergence and evolution (p. 126 in Hayek, 1966; Hundert, 1994; Weinstein, 1987, p. 15). In the early 18<sup>th</sup> century, Mandeville attacked the self-appointed guardians of public morality as hypocrites more likely to destroy society than save it. In *The Fable of the Bees, or, Private Vices, Publick Benefits*, Mandeville argued that vices (vanity, gluttony, lust, lying, cheating, etc.) produced direct benefits to the hive, as bees competed and innovated to provide immoral goods, and indirect benefits, as the “wages of vice” were spent on all other goods (a multiplier).<sup>5</sup> This prosperity continues until the bees, who have moral beliefs but were ignoring them, suddenly begin to live a moral life, leading the hive into a death-spiral of falling demand leading to falling production and so on.<sup>6</sup> Note that the bees adhere to their *own* morals—laws did not change. In Section 3, I examine when one must obey *others'* morals (because law does play a part) and

<sup>4</sup>Quotations are taken F. B. Kaye's two-volume critical edition of *The Fable of the Bees, or, Private Vices, Publick Benefits* (Kaye, 1924); page numbers, which Kaye preserved [in brackets], are the same as those in Mandeville (1732) and from Volume I unless indicated.

<sup>5</sup>Vice did not include violence, rape, murder, or even breaking windows. These were prevented by the upright police. You might say that Mandeville was interested in Christ's morals, not Moses'. He did not deny that vice was wicked, but held it necessary for prosperity (Kaye, 1924, p. 1).

<sup>6</sup>Malthus and Keynes examined these themes in their analyses of “general gluts” and the Great Depression, respectively.

how this power leads to not only a transfer from one group to another (eg, smokers to non-smokers) but also creates rents for those enforcing the law.<sup>7</sup> But first, let's review Mandeville's place in this analysis.

**2.2. What Did Mandeville Say?** I review four paradoxes in *The Fable of the Bees*: the *benefits* of vice, the *efficiency* of chaos, the *hypocrisy* of moral authority, and the *fiction* of God-given power. In each case, Mandeville argued that the paradox was an illusion and belief in the illusion hindered the optimal outcome: Vice benefits society, chaos leads to cooperation, and authority disrupts through hypocrisy and arbitrary power.

**2.2.1. *The Benefits of Vice.***

The very Name of the Appetite, tho' the most necessary for the Continuance of Mankind, is become odious, and the proper Epithets commonly joined to Lust are *Filthy* and *Abominable*.

—Mandeville (1732, p. 150)

Mandeville claims that the vices of vanity and pride lead to public virtue.<sup>8</sup> He attacked the simple division of behavior into moral or immoral and argued that “immoral” vices such as vanity or lust would have disappeared long ago if they did not have some benefits (Weinstein, 1987, pp. 17–18).<sup>9</sup>

Real immoral activity is too costly from a social perspective.<sup>10</sup> Thus, murder is far more immoral than prostitution, which may only be a vice.<sup>11</sup> Some cases depend on the society—filth in Mandeville's London was not immoral but would be today since the social costs are now greater than the social benefit.<sup>12</sup>

<sup>7</sup>Rent is the return on a unique asset that cannot be competed away. In this case, the asset is a right to stop someone's activity.

<sup>8</sup>Scholars cannot agree about Mandeville's moral beliefs, except that he did not think it is a good idea to take sides on a moral issue (Goldsmith, 1985).

<sup>9</sup>Mandeville argued, with tongue-in-cheek, for publicly-funded “Stews” (brothels) which would protect noble women's honor (Mandeville, 1732, p. 134). Altman (2002) examines the mirror image of Mandeville's premise—how the decline in women's honor in Thailand has lessened the demand for prostitutes.

<sup>10</sup>As Cook (1975, p. 25) points out “no genuinely beneficial social act can ever be considered contrary to religion or morality.” A sufficient condition for an act to be moral is that it is socially beneficial. This assertion addresses neither legality nor individual moral belief. In section 3.2.2, I define socially beneficial and argue that illegal acts which some hold to be immoral are beneficial—thus moral.

<sup>11</sup>Sinful, evil, immoral, illegal, and illicit activities appear in this paper. Immoral and evil activities are mutually exclusive, sinful activities. Evil is more sinful and almost always a crime; immoral is less sinful and often a vice, legal or not. Illegal and illicit are synonyms. Note that immoral and moral often refer to the same activity but from someone else's perspective. Apologies in advance if there is any confusion.

<sup>12</sup>The line separating behavior regulated by laws (constraint) or not (freedom) should be drawn where social benefit is just positive (Defined in Section 3.2.2). Social Benefit will include all

Vices are to be punished as soon as they grow into crimes, says Mandeville (p. 10). The only vice to be encouraged is useful (i.e., that which the non-rigoristic world would not call vice at all). Harmful vice is crime, and to be discouraged. In other words, the real thesis of the book is not that all evil is a public benefit, but that a certain useful proportion of it (called vice) is such a benefit.

—Kaye (1924, p. lx)

Mandeville *does* condemn vice but holds that tolerance is better than a ban, which would cause greater harm (Mandeville, 1732, p. 95). Consider the case where two vices (e.g. prodigality or avarice) offset each other and create a net benefit, e.g.,  $-1 * -1 = 1$  (Mandeville, 1732, pp. 83, 104). If one of these vicious activities were banned, the resulting imbalance would increase social cost.<sup>13</sup>

Preventing an activity that is actually socially beneficial raises costs (through evasion), reduces social goods (through restraint), and creates opportunity costs (enforcement diverts effort from worse problems). This is without even considering additional transfers and waste which could result from fines and imprisonment of centers. Vice can motivate work too (Mandeville, 1732, p. 201). In *The Fable of the Bees*, moral behavior destroyed the hive by reducing the scope and pace of activity. Let's examine that argument.

### 2.2.2. *Chaos, Coordination and Competition.*

His main contention became simply that in the complex order of society the results of men's actions were very different from what they had intended, and that the individuals, in pursuing their own ends, whether selfish or altruistic, produced useful results for others which they did not anticipate or perhaps even know; and, finally, that the whole order of society, and even all that we call culture, was the result of individual strivings which had no such end in view, but which were channelled to serve such ends by institutions, practices, and rules which also had never been deliberately invented but had grown up from survival of what proved successful.

—Hayek (1966, p. 129)

In Mandeville's time beehives were a popular symbol of order of the Kingdom—the King (naturalists did not realize that the queen bee was in fact female) organized

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affected parties, so that honor killings, for example, would be illegal if the targeted woman wants to live more than her male relatives want to kill her—without respect to power.

<sup>13</sup>Smith (1759) held that the proud man would behave virtuously under the discipline of his impartial alter ego. The weakness in Smith's position is that misperception can lead a man astray from socially acceptable behavior—if he even wants to behave. Mandeville's argument is stronger in that his actors need only be selfish.

the lesser bees to create prosperity.<sup>14</sup> Mandeville attacked this simple mechanical view of invention, order and balance: The “clever politicians” who managed *his* hive were not people but social forces (Goldsmith, 1985; Weinstein, 1987; Hundert, 1994).<sup>15</sup>

Morals can strengthen social cooperation in a balance of freedom and external-ity (Axelrod and Hamilton, 1981; Fehr and Fischbacher, 2002). One moral standard can reduce the damage when the costs of moral heterogeneity are too high (e.g., as marriage customs reduce mate stealing). Beware, however, of unlimited cooperation—competition plays a useful and sometimes critical role while random or deviant views can benefit all of society (Ormerod, 1998; Griffin and West, 2002; Surowiecki, 2004). Forced moral homogeneity can inhibit happiness in the same way that usury laws blocked commerce in the West until the 18<sup>th</sup> century (Heilbroner, 1999).<sup>16</sup> Mandeville observed that the Roman Catholic church is stronger for Protestant competition. The rest of society receives similar benefits from diversity and competition:

Hence we may learn, how the shortsighted Wisdom, of perhaps well-meaning People, may rob us of a Felicity, that would flow spontaneously from the Nature of every large Society, if none were to divert or interrupt the Stream.

—Mandeville (1732, II, p. 427)

Even if a moral standard exists, those who would impose it can cause great harm.

### 2.2.3. *The Rulers are Hypocrites.*

[It is] highest degree of arrogance [for the Prince] to erect his own judgment into the supreme standard of right and wrong. It is to fancy himself the only wise and worthy man in the Commonwealth, and that his fellow citizens should accommodate themselves to him, and not he to them.

—Smith (1759, p. 343)

<sup>14</sup>The irony of this analogy today is that European honeybees are quickly overcome by more aggressive “Africanized” bees. This is because European bees have been bred for “decorous” behavior. Stretching this analogy to the limit, I claim that their homogeneous morality has left them vulnerable to invasion by their heterogeneous neighbors. This entomological fact is a stylized warning to those who would make moral proclamations.

<sup>15</sup>Landreth (1975) argues “Here [Where Mandeville says ‘all of them by cunning management are made to act as one’] Mandeville leaves no doubt that the conflict he sees between private vices and public benefits can be resolved only by government intervention.” This superficial reading appears to support government intervention but is wrong.

<sup>16</sup>Heilbroner argues that the industrial revolution would not have happened if attitudes have not changed. The fact that Mandeville was Dutch and that the Dutch are famously tolerant may explain both their robust commerce and his attacks on moral authority.

Only slightly less distasteful is the hypocrisy of rulers who would tell men to do one thing while doing another themselves.<sup>17</sup> Mandeville ridiculed classic moralists such as Seneca who were too rich to notice the cost of upright morals (Mandeville, 1732, p. 162). Contemporary political scientists Jeffries and Hahn draw a parallel to lawmakers; powerful Self makes laws to confirm its virtue while condemning Other to criminal status (Jeffries and Hahn, 2003).<sup>18</sup> Mandeville points out a similar weakness in the authority of the Archbishop of Canterbury and Aldermen in scarlet robes (“this awing of the Multitude by a distinguish’d manner of living, is only a Cloke and Pretense, under which great Men would shelter their Vanity, and indulge every Appetite about them without Reproach” (Mandeville, 1732, p. 178)). Without the force of law and arms behind them, their fancy clothes would not protect them for long.

The obvious defense of the rhetoric-action gap is that moral authorities like their vices and recognize the social benefits of vice spillovers (altruistic). Looking deeper, we see that they have an incentive to be lenient—if they stop the vice, they can lose their job.<sup>19</sup> Why they have their job in the first place is another question.

2.2.4. *Authority from Where?* Regulation of vice can keep its provision within efficient bounds, but there is an incentive to claim one’s essential role as a moral authority where none is needed—the less-essential the role, the greater the rents to authority. How are moral authorities get their power?

Moral authority is as old as morality itself. Shortly after God gave the Ten Commandments to Moses, He sent a second message about Moses’ brother Aaron:

And it shall be upon Aaron’s forehead, that Aaron may bear the iniquity of the holy things, which the children of Israel shall hallow in all their holy gifts; and it shall be always upon his forehead, that they may be accepted before the LORD. [...] And thou shalt put them upon Aaron thy brother, and his sons with him; and shalt anoint them, and consecrate them, and sanctify them, that they may minister unto me in the priest’s office. [...] [I]t shall be a

<sup>17</sup>Although he points out that the poor sympathize with the inconveniences of the rich—much like celebrity watchers today.

<sup>18</sup>Jeffries and Hahn (2003) wonder at what revolution would occur if the law were applied equally to all (or, as they suggest, randomly to all lawbreakers).

<sup>19</sup>I refer to, but do not analyze the long-run process of declaring activities legal or not. Rent-seekers exploit this endogeneity, but I merely examine the rent-seeking under the *status quo*. Altman (2002) describes the endogeneity of power and morals: Those who have power support morals that respect power; those who support morals get power from them (e.g., patriarchs prefer that women live a chaste and cloistered life, both moral and powerless.)

statute for ever unto him and his seed after him.

—Exodus 28: 38–43

It's hard to challenge God's representative (or descendants) as he watches over your moral life and keeps it within "reasonable" limits. The limits are not on the authority, however, who might seek rents. In 1708, Jonathan Swift wrote "Religious Societies, although begun with excellent Intention, and by Persons of true Piety, are said, I know not whether truly or no, to have dwindled into facetious Clubs, and grown a Trade to enrich little knavish Informers of the meanest Rank, such as common Constables, and broken Shopkeepers" (Cook, 1975, quoted on p. 26). His distrust of moral authorities was not only from observing the same events as Swift, but from his work as a "psychoanalyst."

Politicians and law givers are in a particularly strong position to exploit fear since by threatening sanctions, they persuade men to law-abiding behavior; they can also call into play the fear of the unknown that is instinctive to man. To support obedience to the law, they institute systems of punishment and rewards so that conformity to socially acceptable patterns of behavior can be achieved. [...] Mandeville employs a thoroughly Machiavellian theory of conspiracy in which the priesthood, by claims to special knowledge of the workings of divinity, aid and abet the law givers in their political tasks. He adds to the Florentine theory a more sophisticated understanding of how the fear of the unknown operates among primitive societies where everything that man cannot explain is ascribed to divine operation.

—Jack (1989, pp. 46-7)

Now we know how authority is created and maintained, but how does the rent-collection mechanism work? It's just a matter of "doing your job." Immoral activities support and subsidize the police who tolerate it in turn as a cash cow and/or source of job security.<sup>20</sup> Mandeville describes how Police and Madams keep the sex (rents) flowing to (from) Johns:

...yet notwithstanding the good Rules and strict Discipline that are observ'd in these Markets of Love [brothels], the Schout [Sheriff] and his Officers are always vexing, mulcting, and upon the least Complaint removing the miserable Keepers of them: Which Policy is of two great uses; first it gives an opportunity to a large parcel of Officers, the Magistrates make use of on many Occasions, and which they could not be without, to squeeze a Living out of the immoderate Gains accruing from the worst of Employments, and at the same time punish those necessary Profligates the Bawds and

<sup>20</sup>Any increase in crime, either by definition or volume, increases the demand for police.

Panders, which, tho' they abominate, they desire yet not wholly to destroy. Secondly, as on several accounts it might be dangerous to let the Multitude into the Secret, that those houses and the Trade that is drove in them are conniv'd at, so by this means appearing unblamable, the wary Magistrates preserve themselves in the good Opinion of the weaker sort of People, who imagine that the Government is always endeavoring, tho' unable, to suppress what it actually tolerates: Whereas if they had a mind to route them out, their Power in the Administration of Justice is so sovereign and extensive, and that they know so well how to have it executed, that one Week, nay one Night, may send them all a packing.  
—Mandeville (1732, pp. 97–98)

Mandeville favored a *laissez-faire* moral atmosphere—he distrusted authority, believed in freedom of choice, thought morals were beyond the scope of social regulation, and trusted the outcome of many individual decisions. In the next section, I show that a minority moral authority can restrict choice to a suboptimal *status quo* to extract rents. To do this, I define individual moral preferences, show how these can conflict with the law, and then use a simple model to demonstrate how the minority preference can exist and persist.

### 3. ECONOMICS OF MORALS

3.1. **Personal Morals, or *De Gustibus Non Est Disputandum*.** Moral and legal acts were equivalent when Moses (apparently) walked the Earth.<sup>21</sup> All members of the society accepted “thou shall not kill” so a law prohibiting it was uncontroversial. Over time, laws address issues outside the moral consensus until moral’s late 17<sup>th</sup> century meaning was “founded on opinion, sentiment or belief and not on meticulous facts or reasoning” (Oxford English Dictionary Online, etymology of “moral”).<sup>22</sup>

Laws, of course, will not stop activities that people *believe* to be moral, just as they will not start activities that people *believe* to be immoral. Let us depart from

<sup>21</sup>Entry 5a for Moral (adj.): “When applied to laws often contrasted with ‘positive’ or ‘instituted’ laws, the obligation of which depends solely on the fact that they have been imposed by a rightful authority (cf. NATURAL LAW n.). In early use chiefly applied to those parts of the Mosaic Law which enunciate moral rather than ceremonial or juridical precepts and principles.” (Oxford English Dictionary Online, New Edition: draft entry Dec 2002)

<sup>22</sup>This divergence in use did not reduce the power of “sin” or “immoral” in people’s minds, however—the long association of “moral” and “law” creates an awe for law which diverts our critical eye from legal acts (e.g., “legal” torture in Iraq). This law is obviously useful in negotiation (See Section 3.3)

Mandeville to a society with heterogeneous moral preferences.<sup>23</sup> The more heterogeneous people are, the greater the benefit of a laissez-faire (“no law”) policy.<sup>24</sup> Regulation, on the other hand, increases the possibility for abuse of power and rent seeking by those with legal authority over moral issues—a possibility which increases with moral heterogeneity.<sup>25</sup> A society with amoral laws would be optimal but need overcome significant cultural and political barriers.<sup>26</sup> In simple analytical terms, fewer constraints give more people their optimal choice and results in greater social good. On the flip side, more constraints create more power to control others’ optimal choice. See Figure 1 for a visual presentation of the potential for conflict over heterogeneous morals.

Suppose we have  $k$  goods in an amoral world (the consumption set  $X$  is  $k \times 1$ ) and fewer goods ( $\kappa < k$ ,  $\chi$  is  $\kappa \times 1$ ) in a moral-only world (i.e.,  $\chi \subset X$ ) and aggregate utility (Mandeville spoke of an economy, but they are strongly correlated) whose magnitude is a function of the diversity of goods.<sup>27</sup> If the immoral actions allowed in the amoral world are indeed without externalities (e.g., drinking alcohol responsibly), then banning them reduces the aggregate utility of  $i$  individuals, i.e.,

$$U_X = \sum_i u_i(x_1 \dots x_k) \geq U_\chi = \sum_i u_i(x_1 \dots x_\kappa).$$

<sup>23</sup>Although it seems Mandeville thought morals were heterogeneous (“there is no such thing as *summum bonum*. All such principles of conduct and honor are chimeras (Mandeville, 1732, p. 216)). The inevitable differences between men render it impossible that any definite agreement should ever be reached as to what is really desirable” (Kaye, 1924, p. lvi)), in *The Fable of the Bees*, he points out the danger of *imposing* a homogenous standard among bees who shared it. Kaye concludes that “he [Mandeville] faced the current belief that the laws of right and wrong must be ‘eternal and immutable’ with the observation that, in point of fact, they are temporary and variable” (Kaye, 1924, pp. lvii-lviii). It seems that Mandeville gave his critics the benefit of their bias (all men shared the same morals), before showing that, even so, the suppression of vice was harmful to society.

<sup>24</sup>Coca growers do not think cocaine is a problem; the black market is a family business; prostitutes just “go to work” without fear when paid-sex is legal (Shah, 2004).

<sup>25</sup>Mauro (1995) uses ethnolinguistic fractionalization (the amount of ethnic and cultural heterogeneity) as an instrument for corruption. Smith (1759, p. 478) weighs in as well: “It must be said, that when the approbation with which our neighbor regards the conduct of a third person coincides with our own, we approve of his approbation, and consider it as, in some measure, morally good; and that, on the contrary, when it does not coincide with our own sentiments, we disapprove of it, and consider it as, in some measure, morally evil. [...] And if it does so in this one case, I would ask, why not in every other?”

<sup>26</sup>By amoral, we might mean socially beneficial (see Section 3.2.2).

<sup>27</sup>Even with homogeneous preferences, the existence of any ranking which does not place all immoral goods below all moral goods is sufficient for social welfare to increase monotonically with freedom of choice. Or, invoke L’Hôpital’s Rule: “ $U(\text{more choices}) \geq U(\text{fewer choices})$ .”

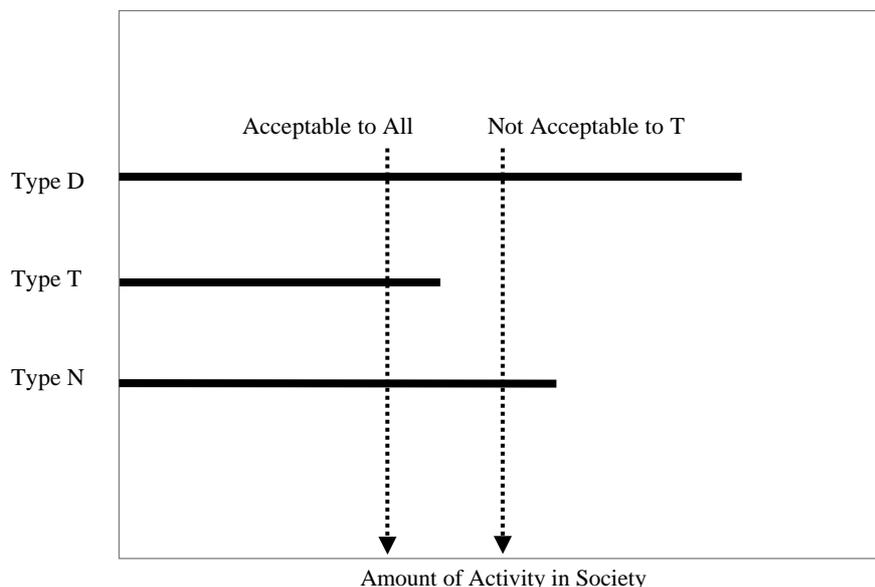


FIGURE 1. An illustration of how heterogeneous morals can leave one or more people (types) upset with the *status quo* level of an activity. The horizontal bars indicate levels of activity compatible with each type's moral preference. When there is a low level of social activity, all types are content. With equal populations of each type, D, T and N, an increase of activity to the right-arrow upsets Type T ("Tough") who may try to ban the activity.

In Section 3.2.2, I examine the relationship between moral acts and legal acts (in four combinations) and who benefits when they conflict. At the heart of the analysis will be the rents which accrue to moral authorities, whom I call Enforcers. In simple terms, homogenous morals can lead to rents if people do not behave as they believe (as in *The Fable of the Bees*). If morals are heterogeneous and laws not amoral, then rents accrue to Enforcers (e.g., police) and Preventers opposing the behavior (e.g., priests, advocacy groups).<sup>28</sup>

Rents rise with illegality because those who still pursue the activity must pay more to avoid trouble.<sup>29</sup> Yandle (1983) describes how Baptists and Bootleggers give each other job security—the second gets more business from the first's "prohibition"

<sup>28</sup>If the behavior is not yet illegal, advocates of illegality still collect rents as they lobby to pass a law. The greater the heterogeneity, the greater the opportunity to seek rents.

<sup>29</sup>The cost can be paid occasionally and/or per transaction if the sinner has perfect foresight and information. If not, he'll be (un)lucky.

while the first is tolerated because the second lowers the pressure of “prohibition”.<sup>30</sup> Sunday prices are higher for two reasons—evasion and ignorance. The bootlegger passes on the cost of evading authority. The cost of buyer ignorance (of risk, i.e., a weaker prior) is a rent that increases with the heterogeneity (variance) of the moral environment and is examined in Section 3.3.

### 3.2. Laws of the Majority?

Puritanism: The haunting fear that someone, somewhere, may be happy.  
— H. L. Mencken

Moral reformers are convinced that their cause is just: If Lust is a sin and murder is a sin and sins such as murder are illegal, then so too should Lust be illegal. If the moralists succeed, they can wield the tools of state (taxes, police, prison, etc.) to implement their vision. Blank says “we need to think about community interests as well as individual interests, at times opting for government structures that enforce community priorities that the market may not value” (Blank and McGurn, 2004, p. 9). Smith (1759, p. 128) agrees “Upon every account, therefore, he has an abhorrence at whatever can tend to destroy society, and is willing to make use of every means, which can hinder so hated and so dreadful an event.”

There will be problems, however, if the “model” community does not match the actual one and parts of the machine do not agree (Buchanan, 1978; Becker et al., 2004, p. 365).<sup>31</sup> If the majority imposed their beliefs on the minority, the minority would be constrained at best, enslaved at worst. In addition, a conservative majority could restrict innovation in the belief that eccentricity is dangerous. Reduced activities plus less innovation kills the hive.

Although the law may have majority support at one point, it may not. Law-breakers often support laws that they break: They underestimate the risk of apprehension, do not think the law applies to them (cognitive dissonance), or think that

<sup>30</sup>Baptists prohibit the sale of alcohol on Sunday, a Holy Day. Bootleggers sell alcohol illegally from their boot for more than when facing legal competition.

<sup>31</sup>By Arrow’s Impossibility Theorem, we know that there is no social preference ordering for regulating immoral activities with limited enforcement budgets, leaving the minority potentially vulnerable to the tyranny of a majority bent on enforcing their version of the rules (Dardanoni, 1999). Murder is pretty clear, but how do you regulate “drug abuse” or “driving too fast”?

the law is not useful and will not be enforced (Akerlof and Dickens, 1982; Jeffries and Hahn, 2003).<sup>32</sup>

### 3.2.1. *Legality, Bribes and Power.*

Such a thing, we hear men every day saying, is commonly done,  
and they seem to think this a sufficient apology for what, in itself,  
is the most unjust and unreasonable conduct.

—Smith (1759, p. 305)

“Legal,” and “moral” are often used as synonyms. According to the OED, “legal” and “equitable” only took distinct meanings in the 19<sup>th</sup> century (although Smith (1759) *contrasted* the two concepts).<sup>33</sup> Around the same time, immoral contracts (defined as those *contra bonos mores*, or “against good mores [a root word for moral]”) were considered void.<sup>34</sup> While Mandeville may have been able to swap moral and legal, we cannot do so today without trouble.<sup>35</sup> In this section, I want to define the differences and similarities of legal and moral conduct, using examples and then a more objective economic benefit-cost analogy. There are surely going to be problems with “too much” legal (immoral?) activity (as some will argue for pornography), but these are the mirror image of problems with “too little” illegal (moral?) activity, i.e., excessive regulation. My point is that each case creates opportunities for abuse.<sup>36</sup>

**Legal Activities:** Paying minimum wage, going without a veil, having an abortion, etc.

- Some people believe these are *not* immoral.<sup>37</sup>
- Others believe these activities *are* immoral and should be illegal. Activists demand a “living wage;” conservative Muslims attack uncovered women; and conservative Christians bomb abortion clinics.

<sup>32</sup>If caught, we are more willing to pay a bribe than go to jail, since we would have never passed such a silly law if we were going to be caught by it and it seems better to escape with a bribe than suffer the decreed punishment.

<sup>33</sup>1818 quotation, Oxford English Dictionary Online, 2<sup>nd</sup> Edition 1989, definition 2(d) of “legal.”

<sup>34</sup>1848 quotation, Oxford English Dictionary Online, 2<sup>nd</sup> Edition 1989, definition 1 of “immoral.”

<sup>35</sup>Smith (1759, p. 327) gives another example of “countries where the authority of law is not alone sufficient to give perfect security to every member of the state, all the different branches of the same family commonly choose to live in the neighborhood of one another” to take care of each other under a common moral standard.

<sup>36</sup>As an alternative to legal black and white, consider the duel (one of Mandeville’s favorite topics) as a tool of social discipline (Mandeville, 1732, p. 244). While an action in one place may be normal and harmless, that same action might be offensive in another—leading to a duel. Offensive behavior depends on ad-hoc circumstances and will not be abused, for an enforcer not only risks his life to pass judgement but has no second if his judgement was faulty.

<sup>37</sup>Whether or not they think the activity is moral or amoral is another matter.

**Illegal Activities:** Visiting a prostitute, using illicit drugs, etc.<sup>38</sup>

- Some people believe these are *not* immoral.
- Others believe these activities *are* immoral, feel worse knowing that these activities occur, and want stronger law enforcement.

Since moral and immoral are in the eyes of the beholder, we arrive at a key point in the analysis—the separation of legal and moral. When a line is drawn determining the point where an activity is illegal, the discrete nature of that definition leads to a discontinuous jump in the importance of behavior around the threshold (see Figure 1).<sup>39</sup> A Preventer can prevent a Doer from doing something under two mutually exclusive scenarios:

- (1) If the activity is *legal*, a Preventer can only stop a Doer with a bribe (e.g., convincing argument, illegal force, payment, etc.).<sup>40</sup> The bribe rises with the Doer’s (Preventer’s) desire to carry out (prevent) the act, i.e.,

$$\frac{\partial \text{bribe}_P}{\partial \text{desire}_{D \text{ or } P}} > 0.$$

- (2) If the activity is *illegal*, the Preventer will be an Enforcer with the power to stop a Doer.<sup>41</sup> Now, the Doer has to pay the bribe which rises with the power of the Enforcer, i.e.,

$$\frac{\partial \text{bribe}_D}{\partial \text{power}_E} > 0.$$

Thus, Illegality reverses the balance of power so that the Preventer/Enforcer can stop a Doer without a bribe and save money. Alternatively, an Enforcer with power can collect bribes to allow the Doer to act (Discussed in Section 3.2.3).<sup>42</sup>

<sup>38</sup>I assume throughout this paper that these activities are at the “reasonable” level. Just as drinking does not mean being drunk, using illegal drugs does not mean going to the emergency room. For a longer defence of reasonable use, see Sullum (2003).

<sup>39</sup>Also note the well-known effect that prohibition creates desire for an activity (Shattuck, 1996).

<sup>40</sup>I assume that bribes are morally neutral throughout this paper. If they were not, the added dimension of analysis would complicate matters without adding much value.

<sup>41</sup>The Enforcer is like a police officer, but could be extended to parents, vigilantes, blackmailers, et al. with more work.

<sup>42</sup>The early meaning of bribery was as “a consideration extorted . . . by an official”—the equivalent of rent-seeking (Oxford English Dictionary Online “bribe” definition 2). “Corruption with theft [i.e., when the bureaucrat takes the bribe and gives away government property, or fails to collect a fine] . . . will be more persistent than corruption without theft” (Shleifer and Vishny, 1993, p604). It encourages the creation of further enforcement opportunities, diminishes social welfare, and can fail to avert socially detrimental behavior if the behavior is socially costly (e.g. pollution) and the bribe is less than the Pigouvian tax.

Preventers can stop an activity in two ways: Pay a bribe if the act is legal or exert power if it is not. The morality of the activity is irrelevant compared to its legality. There is a strong correlation between illegal and immoral activities, but this paper is concerned about activities where the correlation is negative, i.e., where the activity is illegal but not immoral to a Doer. What is the cost of its continued prohibition? That question leads us to some social accounting.

3.2.2. *Socially Beneficial Activities.* An activity is *socially beneficial (costly)* if the bribe a Doer demands to forgo the activity is greater (smaller) than a Preventer will pay. Consider these values to be in an ex-post scenario (i.e., using Compensating Variation), i.e., how much you would be willing to pay (accept) to prevent (refrain from) an activity *after it had happened*.<sup>43</sup>

This does not consider whether the activity is legal, only what it is worth to the parties affected by it.<sup>44</sup> The Preventer can be one or more people whom the activity affects (e.g., a neighborhood polluted by an externality-producing factory). The next step is to compare some socially beneficial/costly situations with their legal status.

	Socially Beneficial	Socially Costly
Legal	Drinking Alcohol	Accidental Pregnancy
Illegal	Using Recreational Drugs	Murder

I draw the reader's attention to the imperfect correlation between legal and beneficial activities. Correlation would be perfect only in the case of few activities and homogenous moral beliefs.<sup>45</sup> Disagreement over moral standards (section 3.2) means that some activities are legal (illegal) which are socially costly (beneficial) to some.<sup>46</sup> This leaves us to the matter of who benefits from an imperfect correlation.

3.2.3. *Law Enforcers or Rent Seekers?*

Power tends to corrupt; absolute power corrupts absolutely.<sup>47</sup>

—Lord Acton

<sup>43</sup>I ignore blackmail, risk and risk aversion (damage is only that which is actually realized).

<sup>44</sup>See Becker et al. (2004) for an analysis which includes additional costs for enforcement.

<sup>45</sup>Hunt (2004) finds that a long-term resident living among other long-term residents is significantly less likely to bribe—results which may reflect a strong correlation in moral beliefs.

<sup>46</sup>I will not cover socially costly, yet legal behavior (e.g., lobbying the government). Jeffries and Hahn (2003, p. 61) captures the feeling: “A large amount of social activity probably could be characterized as efforts to deprive people of their property in a legal rather than an illegal manner.” Controlling this behavior is difficult without the efficiency of centralized power.

<sup>47</sup>“An observation that a persons sense of morality lessens as his or her power increases.” The New Dictionary of Cultural Literacy, Third Edition (2002)

From the previous section, we know that a Preventer and Doer negotiate as bilateral monopolies when an activity is legal.<sup>48</sup> When the activity is illegal, the Preventer becomes an Enforcer with monopoly power. From Coase (1960), we know, with caveats, that a socially efficient outcome is possible for any activity where one party affects another and property rights are clear. Property rights determine the distribution of the gains from that activity between the parties. If the activity is illegal, all property rights (power) go to the Enforcer, who represents society. *However, if the Enforcer and society do not have identical moral preferences, the outcome of the negotiation with the Doer will be inefficient.* If the activity is socially beneficial, then the Enforcer has “too much” power. The enforcer can use her power in several ways (As outlined in Becker and Stigler (1974)):

- (1) To stop the activity without reservations. This is the case of most law enforcement in the developed world and far less in the developing world.<sup>49</sup> We can attribute this to honesty or a high penalty for not doing your job.
- (2) To abuse power and try to collect a bribe (rent) to allow the Doer to continue. If negotiation fails, the Doer must stop (or go to Jail).
- (3) To abuse power and succeed in extracting some/all/more than all of the value of the activity from the Doer as rent.<sup>50</sup>

We will look at the latter two cases with respect to illegal, yet socially beneficial, activities to see just *how* rents are collected. I will address the process of creating or protecting rents in a later paper.<sup>51</sup> Now we can model how power leads to rents and, interestingly, how moral heterogeneity creates additional rents and helps perpetuate the *status quo*.

**3.3. A Model of Rent-Seeking Enforcers.** This is a model with two actors, a Doer and an Enforcer, who negotiate over the Doer’s illegal action. It is short run (the activity is exogenously illegal) and uses smoking marijuana as a concrete

<sup>48</sup>See Mandeville (1732, p. 52) for the amusing example of Decio and Alcander.

<sup>49</sup>Mocan (2004) reports that  $< \frac{1}{2}$  percent of survey respondents in the developed world were asked for a bribe in the past year while 4-20 percent of those in the developing world were. Vostroknutova (2003) develops a model for high- and low-corruption equilibria.

<sup>50</sup>“More than all” would be when the activity’s benefit is trivial compared to the legal punishment—a common goal in setting punishment which leaves many criminals in jail instead of paying the fine to go free (Rubin, 2004, p. 209).

<sup>51</sup>Again, this is the endogeneity of rents; in the case of pimps and whores, “pimping” refers to the process of creating need for protection in the whore (Hughes and Hughes, 2004). For police enforcement examples, see Vostroknutova (2003); Baicker and Jacobson (2004).

example. I define their objective functions and show how a Doer can interact with two different types of Enforcers (T for “Tough” and N for “Nice”; recall Figure 1). Interestingly, the equilibrium in the negotiation “game” does not depend on type: Each Enforcer type can make a credible threat that requires the Doer to pay the maximum bribe. Let’s see.

The Doer has the utility function,

$$U_d = U(\mathbf{x}_{-s}, x_s, I_d | \alpha_d),$$

where  $U$  is well-behaved,  $\mathbf{x}_{-s}$  is a  $n - 1 \times 1$  vector of consumption goods,  $x_s$  is smoking,  $I_d$  is an (unspecified) function describing the Doer’s sense of place in society, self-respect and identity (Smith, 1759; Akerlof and Kranton, 2000), and  $\alpha_d$  is a parameter characterizing the utility of each activity according to the individual’s moral belief.

If the Doer wants to *do* (consume  $x_s$ ), there are five possible results:

- (1) He does not because  $\alpha_d$  gives insufficient weight to  $x_s$  (trivial).
- (2) He does.  $\alpha_d$  gives sufficient weight to  $x_s$  over  $\mathbf{x}_{-s}$  (which also contains the numeraire good exchanged directly for  $x_s$  and/or the penalty of being caught). Possible outcomes:
  - (a) Nobody sees him.  $U(x_s)$  rises.
  - (b) Someone sees him but smiles.  $U(x_s)$  and  $I_d$  rise.
  - (c) Someone sees him and scowls.  $U(x_s)$  rises and  $I_d$  falls.
  - (d) An Enforcer sees him and she comes over.  $U(x_s)$  rises and  $I_d$  starts to fall. They negotiate.

The Enforcer has a similar utility function,

$$U_e = U(\mathbf{x}, I_e(x_s^d) | \alpha_e).$$

The Doer’s  $x_s^d$  affects  $U_e$  in two ways. First, her identity function  $I_e(x_s^d)$  is decreasing in  $x_s^d$ ; since smoking is illegal, it confronts and lowers her identity as a law enforcer (e.g., no respect, need to work, etc.). Second,  $x_s^d$  upsets her morally via  $\alpha_e$ ; there are two types of Enforcer ( $\{T, N\}$ ), each representing one-third of the total population or one-half of the Enforcer population. Type T is more offended than type N. In Figure 2, I show the utility of the Doer and disutility of type

{T,N} Enforcers from increasing levels of smoking. I show a more realistic view of the situation in Figure 3 (an updated Figure 1) with the Doer’s activity level, the disutility of N and the even larger disutility of T. Note that the level of acceptable activity to T and N is lower than D undertakes. This aligns N with T (unlike before, when N was with D) as far as enforcement is concerned. The minority view now dominates the majority view with a well-placed incentive to Enforcer N (who wants a lower level of activity either as an enforcer of the law or as rent).

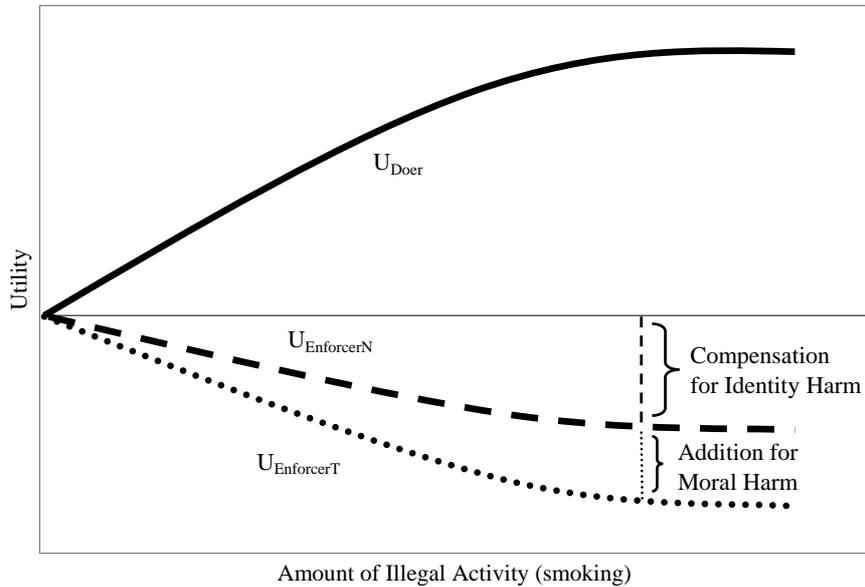


FIGURE 2. The Doer has increasing utility in the activity (solid concave line), while the Enforcer has decreasing utility from the cost of this activity to  $I_e$  (dashed line, “Nice” Enforcer), which will be even stronger with stronger moral preferences in  $\alpha_e$  (dotted line, “Tough” Enforcer). In Figure 3, the impact on  $I_e^T$  is different than on  $I_e^N$ . Assume that moral preferences are either contained in or negligible in the dashed-line case. Doer and Enforcer utilities are not meant to be additive.

In the negotiation, three things can happen (as outlined in Section 3.2.3). In the first case, the disutility from the activity is so large that the Doer can offer no compensation large enough, e.g., Murder—off to Jail. In the second case, the Doer offers inadequate compensation, e.g., poor—off to Jail. I separate this case because I am assuming that the disutility from Jail is greater (but *not* negative infinity)

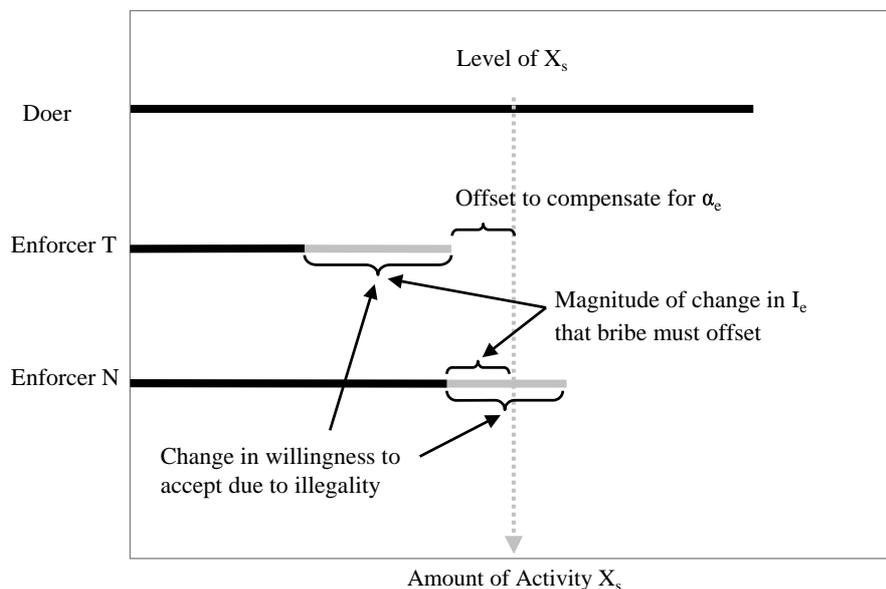


FIGURE 3. For both type N and T, illegality reduces their willingness to accept the activity  $X_s^d$  by the gray portion of the line. Each will demand a bribe to compensate for the harm to  $I_e(x_s^d)$ , but T wants an additional amount to compensate for moral offence (characterized by  $\alpha_e$ ). Whereas Figure 2 assumes that each is willing to accept the same compensation for harm to  $I_e(x_s^d)$ , this figure does not. Although the offset distances for T and N need not transform with the same scale into the bribe amount, a necessary condition for robustness in my model is that the absolute level of bribe demanded by T is greater than N. In the model, N demands more “as if” morally offended in the same degree as T, so this condition holds.

than that lost by paying a bribe and that any Doer who could pay a bribe would.<sup>52</sup> In the last case, the Doer has adequate money (the numeraire) and has to decide how much to offer the Enforcer.

<sup>52</sup>Participants in a departmental seminar suggested that the bribe would be the expected value (i.e.,  $Prob_T \text{Bribe}_T + Prob_N \text{Bribe}_N$ ), but this is unrealistic for two reasons: the existence of a “Going Rate” or bribe amount which all Enforcers ask for and asymmetric negotiating power which slows or prevents Bayesian Nash bargaining. Another strategy is that of a repeated game. The present model is a one-shot game, but if bargaining continued or a long-run relationship could be established, the bribe would match the type. This is the learning-by-doing that the Mafia have mastered and use as a business method.

The problem is that he does not know if she is Tough or Nice.<sup>53</sup> In this situation of adverse selection (i.e., without Common Knowledge<sup>54</sup>), that information would be handy (Harsanyi, 1995). Normally, he could negotiate to a Bayesian Nash Equilibrium where her type would be clear, but she also has the ability to threaten Jail or not negotiate, which means he will have to pay more on average (Riley and Zeckhauser, 1983; Zhao and Kling, 2001). But put all this aside—she can make a credible threat that makes her type irrelevant, i.e.,

“You have to pay the Tough bribe. If I am Tough, then you need to pay Tough. If I am not, the others who are Tough will find out. Their punishment for taking less than the Going Rate will be far worse than letting you go with a smaller bribe. My hands are tied!”

The Tough Enforcers have imposed their will through a Baptist and Bootlegger mechanism. The Baptists (Tough) want their moral law and are willing to solve the coordination problem (defection to lower bribes) by punishing Nice if bribes or incarceration rates are too low (Vostroknutova, 2003; Rubin, 2004, p. 218). Bootleggers (Nice) welcome the oversight and don't mind getting higher bribes.<sup>55</sup> Doers, like drinkers, have to pay the price of this unholy alliance. The tension between bargaining and efficiency defaults to efficient bribes but those are twice socially inefficient: Socially beneficial activity falls (through higher expected costs) and opportunity costs rise.

#### 4. CONCLUSION

My intentions in this paper were two. The first was to document and discuss how heterogeneous moral beliefs can lead to social conflict when they are imposed

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<sup>53</sup>Two further assumptions simplify and strengthen the model: The Doer is risk neutral (With risk aversion, there will be fewer smokers willing to offer larger bribes to avoid jail.) and the Enforcer wants compensation (a bribe) for harm to her Identity and her moral beliefs, not income, which would add an additional, uninteresting complication.

<sup>54</sup>Common Knowledge in game theory assumes that you know that I know what you know. As Mandeville puts it:

Then, I say, that when obscene Words are spoken in the presence of an unexperienced Virgin, she is afraid that some Body will reckon her to understand what they mean, and consequently that she understands this and that and several things, which she desires to be thought ignorant of. The reflecting on this, and that Thoughts are forming to her Disadvantage, brings upon her that Passion which we call Shame.

—Mandeville (1732, p. 55)

<sup>55</sup>In reality, these can be real or imagined: easier busts, social prestige, asset seizures, more hiring, etc.

on others. The second was to show how this imposition can continue—even when a majority would not support it (recall that N and D would tolerate a certain level of legal activity but that T would not; when the activity was illegal, N joined T to punish D)—because those in power can now collect rents from those whose activity is illegal, even while blaming them for their “immorality.”

What are the implications of this model? If it helps explain how authority can lead to tyranny and social loss, then perhaps it will help “modify the *institutions* (legal, political, social, economic) with the objective of matching these more closely with the empirical realities of man’s moral limitations” (Buchanan, 1978, emphasis in original, p. 364).

The question is whether there would be any asylum left for individuality of character; whether public opinion would not be a tyrannical yoke; whether the absolute dependence of each on all, and the surveillance of each by all, would not grind all down into a tame uniformity of thoughts, feelings, and actions . . . No society in which eccentricity is a matter of reproach can be in a wholesome state.

—Heilbroner (1999, quoting from Mill on pp. 131–2)

Mandeville wrote how social good came from vice and a general tolerance to heterogeneous views. Recent moral commentators reiterated our vulnerability to “majority rule” (Buchanan, 1978; Blank and McGurn, 2004). Their warnings of oppression, however, do not come with Mandeville’s robust defence of immoral action—perhaps because they believe a lack of oppression is a sufficient condition for freedom—or, worse, that social outcomes are normative issues beyond economics (Heilbroner, 1999, p. 129). This is a false hope, since it leaves freedom vulnerable to attack from those who claim the moral high ground. Mandeville had no such qualms; he did not shy away from controversy. For this, we can *still* be thankful.

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