

Laws may be ineffective if they don't reflect social norms, scholar says

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Economist Matthew Jackson says laws against dueling were ineffective because they went against deep-rooted social norms, which also discouraged others from intervening to stop the bloodletting.

Social norms, those unwritten rules of acceptable behavior, can change over time, such as Americans' attitudes toward gay marriage and marijuana legalization.

But sometimes the norms clash with formal laws, and the result is counterproductive for everyone involved, say economists Matthew O. Jackson of Stanford and Daron Acemoglu of the Massachusetts Institute of Technology. History illuminates how norms and laws may differ, they noted.

Dueling, for example, was outlawed in France in 1626, yet the practice continued long afterward. In fact, even though the government tried to vigorously enforce the ban, duels took place at high rates – estimates suggest that more than 10,000 duels resulting in more than 4,000 deaths took place in the last 30 years of King Louis XIV's reign, which ended in 1715.

Jackson, the William D. Eberle Professor of Economics, says the laws against dueling were ineffective because they went against a deep-rooted norm, which also discouraged others from intervening to stop the bloodletting.

While laws that conflict with norms are likely to go unenforced, laws that influence behavior can change norms over time, he said. The gradual banning of smoking in public places in the United States is an example – diners now expect a smoke-free experience.

Tax evasion is another example – 30 percent of taxes were evaded in Greece in 2011, compared to only 7 percent in the United Kingdom. Tax evasion may be perceived as normal in Greece, whereas in the U.K., it is not.

Whistleblowing matters

Norms play a role in business affairs, too. Consider a business coordinating with other companies as part of a supply chain to bring products to market. If the government levies a value-added tax those

business must pay along the way, it would be a mismatch of norms to have one business paying the tax while competing with a dishonest company that illegally evades it.

As a result, law-breaking companies will more often engage in illegal activities when they are matched with other law-breakers – and they will do so at high rates, Jackson and Acemoglu wrote in a recent research paper.

But whistleblowing can help. "Private whistleblowing can be central to the enforcement of laws. This implies that a society in which laws conflict with [social norms](#) will be unable to leverage private enforcement and will have less effective laws," the researchers wrote.

As in the case of dueling, laws in strong conflict with existing norms tend to backfire, Jackson said. "The abrupt tightening of laws causes significant lawlessness."

How does a society encourage more whistleblowing? "It is very hard to de-stigmatize whistleblowing, as it often means reporting on a community of which someone is a member," Jackson said.

"Encouraging whistleblowing can thus involve shifting a person's perceived allegiance from the narrow community in which some people might be breaking laws in ways that are harmful, to the broader community who are harmed by the actions," he said.

'Broken windows theory' questioned

A law cannot be understood in isolation from the many other laws that affect the same population, Jackson said.

"For example, tough immigration laws can make many companies who

may hire immigrants into 'outlaws,' which then affects their attitudes toward abiding by other laws or regulations, for instance, on worker safety," he said.

As such, the research offers a different perspective than the "broken windows theory" of law enforcement that was introduced in the 1980s. That view claimed that the high incidence of serious crimes in inner cities was a result of permissive attitudes toward smaller crimes like graffiti, vandalism and subway fare evasion. As a result, New York City adopted a tougher policing strategy in the ensuing decades.

But, Jackson said, "Badly designed – excessively tight – laws for one type of behavior – small-scale drug crime in inner cities – can make laws against other types of behavior completely ineffective." The problem is that those overly strict laws make "criminals" of too many people, thus discouraging citizens from becoming whistleblowers willing to call police.

A more effective strategy would be to "decriminalize some behaviors that have small externalities or costs to society," he said.

Changing norms

Jackson said that norms are often so ingrained that people do not even notice the extent to which they shape behavior: "They make our behaviors seem natural."

Norms become self-reinforcing, since it is much easier to live in a society where people's behaviors are predictable and people understand what is expected of them, he said.

The downside is that such conformity can make even very bad norms difficult to change, Jackson said.

He suggests two possible ways to successfully change norms: dramatic and highly visible efforts to change behaviors spearheaded by leaders like Gandhi or Martin Luther King, or gradual changes in laws over long periods of time, such as smoking regulations in America.

More information: Acemoglu, Daron and Jackson, Matthew O., "Social Norms and the Enforcement of Laws" (August 2014). Stanford Law and Economics Olin Working Paper No. 466. Available at SSRN: ssrn.com/abstract=2443427 or dx.doi.org/10.2139/ssrn.2443427

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