Evaluating Norms: An Empirical Analysis of the Relationship between Norm-Content, Operator, and Charitable Behavior

Brian Sheppard[*] and Fiery Cushman[**]

I. NORMS: CONVENTIONAL ASSUMPTIONS AND EXPERIMENTAL CHALLENGES 58
- A. *Motivation Crowding* 63
- B. *Anchoring* 64

II. CONCEPTUAL ANALYSES OF NORMS 66
- A. *Norm-Content* 67
- B. *Operators and Norm Species* 68

III. EXPERIMENTAL METHODS 71
- A. *The Dictator Game* 71
- B. *Operationalizing Norm-Content and Norm-Operators* 74
- C. *Further Details* 78
- D. *Hypotheses* 79

IV. RESULTS 80
- A. *Mandatory/Moral Norms Led to Lower Levels of Giving Than Did Aspirational/Moral Norms* 81
- B. *Bright-Line Norm-Content Affected Giving under Mandatory Operators but Not Aspirational Operators* 81

V. FROM PSYCHOLOGY TO POLICY 83
- A. *Results and Psychology* 83

---

[*] Associate Professor, Seton Hall University School of Law. Brian would especially like to thank the Mind, Brain, Behavior Interfaculty Initiative at Harvard University for their generous funding of this project. He would also like to thank the following people for their valuable assistance: Daniel Coquillette; Lewis Sargentich; David Wilkins; John Leubsdorf; Cass Sunstein; Christine Jolls; Richard Zeckhauser; Bert Huang; Christopher Taggart; Felix Wu; John Coates; Carol Steiker; Bruce Mann; Mark Roe; Kenneth Mack; Catherine Sharkey; Ken Carson; Derek Aylward; and Jamie Sheppard.

[**] Fellow, Mind, Brain, Behavior Interfaculty Initiative, Harvard University.

B. *Implications for Norm Function* ... 84
C. *Implications for Legislation* ... 86
D. *Applications* ... 87
APPENDIX I: FIGURES ... 93
APPENDIX II: GAME INSTRUCTIONS ... 95

Imagine that you are trying to prevent a child from stealing cookies. Should you tell the child, "It's wrong to steal—good children don't do that!"? Or, "One more cookie and there's no TV for a month!"? Which of these directives or, more broadly, norms, will be best at keeping the kid's fingers out of the jar? It is not an easy question to answer, but the implications of that answer are important.

The design of effective norms is a critical task for all legislators, whether the concern is cookie conservation or nuclear proliferation. A legislator must try to determine which norm will bring about the best results. Here, we are most concerned with the question of how to maximize total charitable giving. Our inspiration was the energetic debate concerning the best way to increase pro bono work by American lawyers.[1] Those engaging the question largely agree that norms can serve as an effective tool for increasing pro bono work, but there remains disagreement about which type of norm is best. Consequently, we explored the design of effective norms from several complementary angles: historical analysis, conceptual analysis, the analysis of relevant psychological research, and our own empirical testing. By integrating empirical research we hope not only to contribute to the broader literature on designing effective norms, but also to present a case study that will be valuable to those who seek to increase charitable behavior among lawyers. We also hope that our study will serve as a useful basic model for further experimentation by legal scholars.

This Article specifically focuses on two dimensions of norms: first, the use of bright-line rules versus moral standards and, second, the use of aspirational versus mandatory operators.

---

1. *See generally* DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS 37 (2005) (discussing objections to mandatory pro bono service); Samuel Bagenstos, *Mandatory Pro Bono and Private Attorneys General*, 101 NW. U. L. REV. 1459 (2007) (responding to the proponents of mandatory pro bono service and discussing its costs); Donald Patrick Harris, *Let's Make Lawyers Happy: Advocating Mandatory Pro Bono*, 19 N. ILL. U. L. REV. 287, 287–89 (1999) (discussing the debate regarding mandatory pro bono and advocating its adoption); Reed Elizabeth Loder, *Tending to the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459, 475–79 (2001) (discussing research results on motivation); Judith L. Maute, *Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Expectations*, 77 TUL. L. REV. 91, 155–61 (2002) (proposing a requirement for annual pro bono service reporting).

Rules set forth specific, concrete directives such as "appellants must file their briefs within eighteen days." It is common that a rule will employ numerical minimums or maximums, and in such cases the norm is said to set forth a "bright-line." Standards, by contrast, set forth evaluative, discretionary directives such as, "Users must take reasonable precautions." We shall refer to rules and standards as two alternative types of *norm-content*.

The second dimension we explore is the choice of *norm operator*. Consider the difference between, "You ought not to eat cookies," and, "You must not eat cookies." The content of the desired action (not eating cookies) is identical in both cases, but the type of norm varies. The use of "ought" indicates an aspirational standard suggested as an ideal. The use of "must," by contrast, indicates a mandatory demand. As we will discuss below, mandatory norms are often accompanied by the stipulation of punishments (e.g., "If you eat cookies, there will be coal your stocking.").

Whether we know it from trial and error or common sense, certain operator/norm-content combinations seem more appropriate in particular contexts. The penal code, for example, often uses mandatory rules to criminalize conduct that is both socially undesirable and easily defined, such as the possession of a controlled substance.[2] Other times, strict enforcement is still required, but delineating the undesirable conduct is difficult. Such circumstances often give rise to mandatory standards, as opposed to rules—for instance, the "reasonable person" standard of care required for negligent homicide.[3] In contrast to legal institutions, private organizations often employ aspirational norm-content, perhaps due to the difficulty in executing enforcement and sanctioning mechanisms. For example, churches sometimes have clearly defined aspirational rules for charitable giving, such as the traditional 10 percent tithe. Or, a private club's dress code might rely on an aspirational standard like "members should dress appropriately."

Our intuitions about the fit between a norm combination and a context can be very strong indeed. One danger of relying on intuition,

---

2. *See, e.g.*, 21 U.S.C. § 841(b)(1)(D) (2006) ("In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III (other than gamma hydroxybutyric acid), or 30 milligrams of flunitrazepam, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years . . . .").

3. *See, e.g.*, Wakefield v. State, 447 So. 2d 1325, 1326 (Ala. Crim. App. 1983) ("[Criminally negligent homicide] involves inadvertent risk creation coupled with the actor's failure to perceive [the risk] which 'constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.' ").

however, is that seemingly fitting norms can bring about surprising and undesirable behavioral results.[4] In fact, as we review below, there is a psychological literature suggesting counterintuitive relationships between norm and behavior. This Article draws from the existing research on competing norm types and also contributes to that literature a new study of norm compliance among students of Harvard Law School.

In Section I, we consider conventional wisdom about norms through the lens of a historical case of shifting norm types: the standards of professional responsibility developed by the American Bar Association ("ABA"). We also consider empirical studies that challenge the deterrence hypothesis. In Section II, we examine the character of rules versus standards and aspirational versus mandatory operators in greater detail. In Section III, we present our research design and offer general hypotheses. In Section IV, we discuss additional methodological details that may be of interest to a legal readership. In Section V, we present our experimental results. Finally, in Section VI, we address the policy implications of our work.

I. NORMS: CONVENTIONAL ASSUMPTIONS AND EXPERIMENTAL CHALLENGES

Although there is occasionally debate about which combination of norm-operator and norm-content would be best for regulating a particular conduct, sanction-backed, mandatory rules are often presumed to be the best. Such norms benefit from the conventional wisdom that people are more inclined to behave the way you want them to when you tell them exactly what they have to do while threatening them with punishment for noncompliance. This assumption has been called the "deterrence hypothesis."[5] Put differently, the idea is that the introduction of a sanction-backed, specific mandate will produce a reduction of the undesirable behavior.

---

4. There are other dangers as well. For example, with respect to the choice between rules and standards, economists have set forth frameworks to guide legislators in making the optimal decision. These frameworks call for far more than mere reliance on a hunch. Even the most streamlined model requires that legislators make several careful inquires, such as weighing the cost of promulgating a rule against the cost of judicial enforcement multiplied by the expected number of accidents, the latter of which calls for evaluation of the number of parties affected, the care they will take in light of the cost of available precautions, the chance of accident, and the expected harm from accident. *See* Eric A. Posner, *Standards, Rules, and Social Norms*, 21 HARV. J.L. & PUB. POL'Y 101, 101–02 (1997) (discussing Louis Kaplow's model in *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 624–29 (1992)).

5. *See* Uri Gneezy & Aldo Rustichini, *A Fine is a Price*, 29 J. LEGAL STUD. 1, 3 (2000) ("[T]he deterrence hypothesis is based on the assumption that the introduction of a penalty will produce a reduction of the behavior.").

A paradigmatic instance of this conventional wisdom in action is the history of American lawyer conduct regulation. The ABA has been the most important drafter of American lawyer conduct rules for the last one hundred years. During that span, its codes of ethics have smoothly shifted away from aspirational, moral, and unenforced standards of conduct and toward bright-line mandatory rules that are enforced with the threat of punishment. The first code, the *1908 Canons of Ethics*, largely utilized aspirational norm operators and moral standard norm-content. In particular, the code's provisions used hortatory language that was not apt for enforcement—such as "should"[6] or "ought,"[7] as opposed to mandatory language like "must" or "forbids." The *Canons* made their aspirational nature clearest where they stated, "[T]he following canons of ethics are adopted by the American Bar Association as a general guide." They also made ample use of moral standard norm-content, incorporating standards of "fairness"[8] and even "moral law."[9]

The *Canons* and their aspirational/moral norm combinations lasted nearly unchanged for several decades. However, in 1970 the ABA passed the *Model Code of Professional Responsibility*, which introduced bright-line rules called "Disciplinary Rules." These "Rules" represented a new tactic for regulating lawyer conduct: they functioned as ready enforcement mechanisms because they clearly established minimum compulsory conduct. Moreover, they threatened more than professional reputational harm; instead, the "Rules" were an obvious trigger for court-imposed penalties.[10]

The old *Canons* were abandoned in large part because they "failed to give guidance to young lawyers beyond the language of the

6. *See, e.g.*, CANONS OF PROF'L ETHICS, Canon 22 (1908) ("The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.").

7. *See, e.g.*, *id.* Canon 16 ("A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation."); *id.* Canon 4 (A lawyer "ought not to ask to be excused for any trivial reason.").

8. *See, e.g.*, *id.* Canon 18 ("A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause.").

9. *See, e.g.*, *id.* Canon 32 ("Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law.").

10. "Thus, whereas the Canons and the Ethical Considerations represented fraternal understandings that memorialized a shared group discourse, the [Disciplinary Rules] functioned as a statute defining the legal contours of a vocation whose practitioners were connected primarily by having been licensed to practice law." Geoffrey C. Hazard, Jr., *The Future of Legal Ethics*, 100 YALE L.J. 1239, 1251 (1991).

Canons themselves" and, relatedly, because "[t]hey were not cast in language designed for disciplinary enforcement[,] and many abounded with quaint expressions of the past."[11] The aspirational/moral norms therein could not be expected to "facilitate more effective disciplinary action and . . . increase significantly the level of voluntary compliance."[12] This conclusion must have been based on sheer common sense and conventional wisdom, as there is no indication that empirical research was performed on the issue of whether mandatory/bright-line norms would bring about increased compliance.[13] Since then, little research has been done.[14]

Although the *Model Code* did not entirely dispense with the aspirational moral guidelines—it included, for instance, a broad outline of the profession's ethical aims designated as "Ethical Considerations"—the last vestiges of the *Canons* would soon be nearly undetectable. The movement that led to the introduction of Disciplinary Rules would gain momentum. Only thirteen years later, the ABA issued an even more rule-based standard of conduct, *The Model Rules of Professional Conduct*, which, among other things, placed greater emphasis on the sanction-backed rules and replaced the "Ethical Considerations" with "Comments." Notably, these Comments bore even less of a resemblance to the *Canons* than did the "Ethical Considerations"; they operated primarily as commentary or background information for the "Rules" and did not set forth the profession's ideals. Today, the mandatory, rule-based format

---

11. MODEL CODE OF PROF'L RESPONSIBILITY Preface (1983).

12. Walter P. Armstrong, Jr., *A Century of Legal Ethics*, 64 A.B.A. J. 1063, 1069 (1978) (quoting ABA President Lewis Powell's 1965 address).

13. Interview by Olavi Maru with John F. Sutton, Jr. in Houston, Tex. (Dec. 20, 1976) (transcript on file with the American Bar Foundation Program on Oral History) ("It appeared that they felt they were between the devil and the deep blue sea: they wanted to do something significant in rethinking the entire area of lawyers' ethics without being bogged down in expensive empirical research. That kind of thinking led them to decide that they needed someone, who had both the professional viewpoint and the practitioner's viewpoint, to devote substantial time to the project. They wanted a code that would work as a teaching instrument and that also would be practical as a basis of discipline for the practicing lawyer. They realized, I think, that the old canons did not serve either purpose very well.").

14. *See, e.g.*, Tanina Rostain, *Ethics Lost: Limitations of Current Approaches to Lawyer Regulation*, 71 S. CAL. L. REV. 1273, 1334 (1998) ("While there is little in-depth empirical work on compliance counseling, a handful of qualitative studies have provided detailed accounts of the ways in which lawyers' professional ideals play out in practice."); W. Bradley Wendel, *Public Values and Professional Responsibility*, 75 NOTRE DAME L. REV. 1, 17 (1999) ("Very little empirical work has been done on the moral decision making of lawyers . . . ."); *cf.* Fred. C. Zacharias, *Federalizing Legal Ethics*, 73 TEX. L. REV. 335, 406 (1994) (calling for extensive empirical research to be done for betterment of professional responsibility codes).

prevails.[15] Unsurprisingly, some have called the widespread adoption of mandatory, sanction-backed, bright-line norms the "legalization" of lawyer conduct regulation.[16]

It is particularly noteworthy, then, that an important area of lawyer conduct has been somewhat immune to this legalization trend: pro bono work. The latest iteration of the *Model Rules* contains Model Rule 6.1, which merely directs that every lawyer "should aspire to render at least (50) hours of pro bono publico legal services per year."[17] This aspirational/bright-line norm is a bit old fashioned by today's standards. Yet even Model Rule 6.1 has drifted toward legalization, just at a slower pace. Originally, it contained no bright-line norm-content,[18] but a 1993 amendment introduced the fifty-hour aspirational minimum.[19]

---

15. To be sure, this picture of a smooth, unidirectional shift is a bit oversimplified: many among those who drafted the 1908 CANONS OF PROF'L ETHICS expressed their desire that the CANONS be utilized as standards for punishment. *See* Memorandum by the ABA Comm. to Draft Canons of Prof'l Ethics (Mar. 23, 1908) (on file with the Harvard Law School Library) (compiling the responses to the Committee's proposed Canons). And since the 1980s, there have been attempts in various bars to incorporate aspirational and sometimes unenforceable lawyer creeds into lawyer regulation. Many point to an address given by Chief Justice Burger in 1984 as an impetus for the recent dialectical movement to return to aspirational norms. *See* Chief Justice Warren Burger, Annual Report on the State of the Judiciary to the ABA (Feb. 13, 1984), *in* 52 U.S.L.W. 2471, 2471 (1984) (decrying minimum standards). Even so, it cannot be ignored that there has, in the heartland of lawyer regulation, been a clear shift from aspiration to mandate and from moral to bright-line criteria.

16. *See, e.g.,* Steven K. Berenson, *Education Law: What Should Law School Student Conduct Codes Do*?, 38 AKRON L. REV. 803 (2005) (discussing the regulatory nature of the ABA Model Code of Professional Responsibility); Colin Croft, *Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community,* 67 N.Y.U. L. REV. 1256, 1311 (1992) ("The change to legalization and rule-domination of legal professional norms - first, and most pointedly with the shift from the Canons to the Model Code, and then from Model Code to the Model Rules - indicates a willingness to abandon the idea of expanding legal professional standards beyond a minimum standard of conduct."); Hazard, *supra* note 10, at 1249 ("What were fraternal norms issuing from an autonomous professional society have now been transformed into a body of judicially enforced regulations."); Trina Jones, *Inadvertent Disclosure of Privileged Information and the Law of Mistake*, 48 EMORY L.J. 1255, 1291 n.90 (1999) ("In an attempt to establish more extensive control over the profession, in 1970 the ABA adopted the Model Code of Professional Responsibility and with it the process of legalizing and codifying professional norms began with a vengeance."); Charles Wolfram, *Toward a History of the Legalization of American Legal Ethics—II the Modern Era,* 15 GEO. J. LEGAL ETHICS 205, 206 (2002) ("The grounds for discipline have been elaborated upon and extended in lawyer codes that are now explicitly designed for all-encompassing and coercive regulation . . . ."); Fred C. Zacharias & Bruce A. Green, *Reconceptualizing Advocacy Ethics*, 74 GEO. WASH. L. REV. 1, 27 n.162 (2005) ("The conceptualization of the professional regulation of lawyers as forming part of a larger 'law governing lawyers' is a relatively modern phenomenon.").

17. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2002).

18. *Id.* R. 6.1 (1983) ("A lawyer should render public interest legal service.").

19. *Id.* R. 6.1 (1993) ("A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.").

Now, it appears that Model Rule 6.1 could become entirely legalized. There is active debate about whether mandatory/bright-line norms ought to be employed in order to prompt lawyers to provide more annual hours of pro bono work.[20] Some law schools, taking a first step toward mandatory service, have conditioned graduation upon the completion of a minimum number of pro bono hours.[21]

Pro bono work is an important public service, so the decision to change or maintain the prevailing rubric should be as informed as possible; reliance on the conventional wisdom of the deterrence hypothesis is not enough. We hope that our empirical research will provide valuable insights for this debate.

Previous work in this vein has pitted rules against standards.[22] It has given rise to a lively discussion about the relative costs and benefits of bright-line and evaluative norm-content. That work is

---

20. *See, e.g.*, Margaret Colgate Love, *The Revised ABA Model Rules of Professional Conduct: Summary of the Work of Ethics 2000*, 15 GEO. J. LEGAL ETHICS 441, 474 & n.58 (2002) (discussing ABA's Ethics 2000 Commission debate over whether mandatory pro bono service requirements ought to be utilized) ("In considering whether to make pro bono mandatory, the Commission was concerned about reports that pro bono service by lawyers in large firms has declined in recent years. The Commission also noted that the need for pro bono service is greater than ever, given the withdrawal of most government support for legal service organizations, and that the current system of providing needed pro bono service on a voluntary basis does not seem to be working very effectively. In the end, however, it concluded that instituting a mandatory pro bono requirement enforceable through the disciplinary process was not an effective way of ameliorating this situation." And later, "[d]uring the debate over this rule, proponents of mandatory pro bono service focused on the difficulty many citizens have in finding a way to pay for the legal services they need, and justified mandatory pro bono service in terms of the proper functioning of the legal system. Those who favored keeping the pro bono requirement voluntary were also concerned about the provision of legal services to persons of limited means. However, they feared that imposing pro bono work on unwilling practitioners would foster an atmosphere of opposition and resentment that would be inconsistent with the ABA's goal of increasing pro bono participation. They also argued that a lawyer's pro bono efforts are demeaned by a mandatory rule and pointed to enforcement problems."). *See generally* David L. Shapiro, *The Enigma of the Lawyer's Duty To Serve*, 55 N.Y.U. L. REV. 735, 735–39 (1980) (discussing the ABA's efforts toward making pro bono work mandatory and advocating against such a requirement).

21. Harvard Law School is an exemplar of this movement. *See* Harvard Law School, Office of Clinical and Pro Bono Programs, http://www.law.harvard.edu/academics/probono/faq/?template=second (last visited Nov. 14, 2009) (setting forth policy).

22. *See* Yuval Feldman & Alon Harel, Social Norms and Ambiguity of Legal Norms: An Experimental Analysis of the Rule v. Standard Dilemma 4 (July 5, 2006) (unpublished manuscript, *available at* http://ssrn.com/abstract=914164) (undertaking empirical analysis in which legal norms are divided into rules and standards but noting, "[i]n [the social norms] literature, legal norms are perceived as a single, homogeneous unified category. In particular, that literature has not given attention to the degree of specificity of legal norms, implying that the interaction between social norms and legal rules is indistinguishable from the interaction between social norms and legal standards. Similarly, the law and economics literature on the optimal specificity of legal norms is deficient in that it has concentrated on economic considerations, but failed to account for the behavioral factors examined in this paper." (citations omitted)).

valuable, but it does not tell the whole story because it assumes that the norm-content will be paired with mandatory operators. Thus, it ignores the possibility of applying aspirational norms—an important option, as our ABA example demonstrates. As discussed below, our isolation of aspirational and mandatory operators, as well as rules and standards, provides insight into behaviors that defy the deterrence hypothesis.

A. Motivation Crowding

Studying both norm-content and operator allows the isolation of an important psychological phenomenon: motivation crowding. This behavioral effect challenges conventional wisdom because it captures instances in which people do not behave in a manner consistent with the deterrence hypothesis.

Nearly forty years ago, R.M. Titmuss hypothesized that offering a reward for blood donation would undermine the social value that serves to motivate donors, thereby bringing about a net reduction in blood donation.[23] The data bear out his prediction: When donors volunteer blood they appear to experience an intrinsic reward from complying with a moral norm. This intrinsic reward motivates their generous behavior. But when donors are paid for blood, they reconceptualize the reward in monetary terms, which thereby inhibits their intrinsic motivation. Thus, individuals are less likely to donate blood when they get paid an amount less than their intrinsic motivation. The existence of an incentive scheme "crowds out" intrinsic moral motivations which, ultimately, would have been more potent.

Similar crowding-out effects have been documented with penalties (as opposed to rewards). One of the most famous experiments analyzed Israeli daycare centers and found that the introduction of a penalty actually increased the frequency of the penalized conduct.[24] Parents would sometimes arrive late to collect their children at the daycare centers, forcing a teacher to stay after closing time. In response, a small monetary fine for late parents was introduced. The deterrence hypothesis predicts that, when negative consequences are introduced in connection with a behavior, the frequency of that behavior should decline. The researchers found, however, that after the introduction of the fine, the number of late-

---

23. RICHARD M. TITMUSS, THE GIFT RELATIONSHIP: FROM HUMAN BLOOD TO SOCIAL POLICY 245–46 (1970).

24. Uri Gneezy & Aldo Rustichini, *A Fine is a Price*, 29 J. LEGAL STUD. 1, 3 (2000).

coming parents increased significantly. In short, the parents acted as if the fine were nothing more than the low price for showing up late. The researchers concluded that the results challenge the value of the deterrence hypothesis as a predictive theory.[25]

Crowding out complicates the deterrence hypothesis. It suggests that, in order to bring about an overall increase in a desired behavior, monetary incentives in norms must exceed intrinsic motivation. In other words, such interventions must at least be powerful enough to cover the spread created by the crowding out of antecedent intrinsic motivation. Thus, the idea is not that subjects will never act as money maximizers but that the conversion of subjects into money maximizers comes with a cost that must be overcome. Academics have considered the implications of crowding out for pro bono policy,[26] but they have not yet undertaken a behavioral analysis such as we present here.

B. Anchoring

Another psychological phenomenon that deserves consideration is the tendency to "anchor" self-generated responses on external cues. Anchoring should be a concern in virtually any setting in which numerical values are encountered.[27] Because the bright-line norms used in our experiment utilize numerical values, they provide an opportunity to learn more about how different normative operators affect anchoring.

Anchoring is the assimilation in one's judgment of a numeric estimate to a previously considered standard.[28] In the seminal anchoring experiment, participants were first asked to guess whether the percentage of African nations in the UN was greater than or less than a randomly selected number.[29] Then, participants were asked to

---

25. *Id.* at 1.

26. *See, e.g.*, Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459, 476 (2001) (discussing "field studies involving public goods analogous to law [that] examine the effects of external factors on altruistic motivation" including the work of Titmuss).

27. *See* Jennifer K. Robbennolt & Christina A. Studebaker, *Anchoring in the Courtroom: The Effects of Caps on Punitive Damages*, 23 LAW & HUM. BEHAV. 353, 355 (1999) ("Anchoring effects have been demonstrated in a variety of applied contexts, e.g., gambling, real estate prices, estimating chances of nuclear war, and estimating confidence intervals." (citations omitted)).

28. Thomas Mussweiler & Fritz Strack, *The Semantics of Anchoring*, 86 ORG. BEHAV. & HUM. DECISION PROCESSES 234, 234 (2001).

29. *See* Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124, 1128 (1974).

provide their best estimate of the exact percentage.[30] The researchers observed that subjects' estimates were biased toward the random numbers used in their initial comparisons.[31] Thus, the median estimate of participants receiving a random anchor of "10" was 25 percent, whereas for those receiving a random anchor of "65" it was 45 percent.[32]

Given that people will anchor responses on completely random numbers, it is unsurprising that anchoring also occurs with relevant, non-random numbers. For example, scientists Birte Englich and Thomas Mussweiler conducted a simulation in which subjects (either law students or actual judges) were asked to assume the role of a judge and sentence defendants.[33] They found that their subjects changed sentencing decisions significantly based upon the recommendation of a prosecutor or, in a separate simulation, a known legal novice.[34] "Judges who considered a high demand of 34 months gave final sentences that were almost 8 months longer than judges who considered a low demand of 12 months . . . for the identical crime."[35] Similarly, separate research shows that in personal injury cases, the numerical request for compensation exerts a gravitational pull on the eventual reward.[36]

Like motivation crowding, anchoring can cause subjects to behave in a manner that is inconsistent with conventional assumptions about how people will behave under norms: anchored subjects can be drawn to a figure within a norm against their own interest. As mentioned, higher initial offers in negotiation can cause offerees to become anchored to that initial number, leading them to settle at higher final amounts.[37] While this finding does not itself

---

30. *Id.*

31. *Id.*

32. *Id.*

33. Birte Englich & Thomas Mussweiler, *Sentencing Under Uncertainty: Anchoring Effects in the Courtroom*, 31 J. APPLIED SOC. PSYCHOL. 1535, 1538–39, 1542, 1545 (2001).

34. *Id.* at 1547.

35. Thomas Mussweiler, Birte Englich & Fritz Strack, *Anchoring Effect*, *in* COGNITIVE ILLUSIONS: A HANDBOOK ON FALLACIES AND BIASES IN THINKING, JUDGEMENT AND MEMORY 183 (Rüdiger F. Pohl ed., 2004).

36. Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts,* 10 APPLIED COGNITIVE PSYCHOL. 519, 538 (1996); Mollie W. Marti & Roselle L. Wissler, *Be Careful What You Ask For: The Effect of Anchors on Personal Injury Damages Awards*, 6 J. EXPERIMENTAL PSYCHOL. APPLIED 91, 99 (2000); *see also* Reid Hastie, David A. Schkade & John W. Payne, *Juror Judgment in Civil Cases: Effects of Plaintiff's Requests and Plaintiff's Identity on Punitive Damage Awards*, 23 LAW & HUM. BEHAV. 445, 467 (1999) (finding a similar effect in punitive damages).

37. JEFFREY Z. RUBIN & BERT R. BROWN, THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION 266–69 (1975).

challenge the deterrence hypothesis, we can imagine situations in which the introduction of a bright-line restriction could cause anchoring and, contrary to legislative design, bring about an increase in the average amount of undesirable conduct. For example, consider a state that has decided to enact a law imposing the very first cap on contingency fees, forbidding fees above 30 percent. The state enacted the law because it believed that lawyers generally are paid too much and that this measure was a quick way to reduce overall fees. The state reasoned that contingency fees above 30 percent would be reduced to comply with the law and that all other fees (under 30 percent) would simply remain the same because they were already legal. Under this reasoning, the net result should be a total reduction in fees. We can further imagine, however, that before the law was enacted, a typical lawyer's client believed it was appropriate to pay no more 20 percent for a contingency fee. After learning of the new law, that client might change her mind about the appropriate fee and agree to pay 25 percent. If this anchoring phenomenon were widespread, the state's introduction of the 30 percent maximum could lead to a total increase in fees, despite and counter to the law's underlying rationale.

Our experiment affords an opportunity to test the effect of anchoring on charitable behavior. As discussed below, we utilize a numerical minimum in our bright-line conditions, directing that subjects give at least a certain number of dollars to a charity. Accordingly, we may see anchoring effects in our results. If there is any anchoring effect, we should be able to isolate it in the case of aspirational rules. These norms utilize bright-line, quantifiable minimums of charitable giving (described below) and therefore provide a numerical cue that could lead to assimilation. The norms do not, however, use that numerical cue as a trigger for a sanction. Therefore, a greater concentration of giving at or near the minimums under those conditions is likely to be largely the result of a relevant anchoring effect. Like the study of the effect of recommended sentences on subsequent judicial determinations, we can use our aspirational rules to determine whether anchoring occurs in this context.

II. CONCEPTUAL ANALYSES OF NORMS

This Section examines in greater detail the distinction between bright-line and moral norm-content, as well as the distinction between aspirational and mandatory norm operators. We explore their distinct capacities to influence deliberation and choice, which is a focus of past conceptual analyses of norms and normative language. This discussion lays the groundwork for the experimental hypotheses discussed below.

Moreover, the conceptual analysis in this Section should make it easier for others fruitfully to modify or extend the parameters of our experiment.

A. Norm-Content

Norms can be characterized by the content they include. In short, rules have well-drawn content. They provide the person applying the rule with a very good idea of the intended state of affairs that is supposed to result from its compliance. Standards contain content that narrows the options of the applying person to some degree. But, in the end, standards invite her to use discretion to fashion the specific instantiation of the directive's content for that case.[38]

When judges need only compare behavior to specified rules, they can act in a somewhat mechanical fashion because they are required to conduct only minimal evaluation. For instance, consider the directive, "Park patrons must speak at a level below seventy-five decibels." Assuming the decibel level is known, its bright-line norm-content makes a high proportion of determinations under the rule the result of a simple, almost mechanical process.[39] We can imagine

38. *See* Kathleen M. Sullivan, *The Supreme Court 1991 Term: Foreword: The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 58–59 (1992) (defining a rule as a directive that "binds a decisionmaker to respond in a determinate way to the presence of delimited triggering facts. Rules aim to confine the decisionmaker to facts, leaving irreducibly arbitrary and subjective value choices to be worked out elsewhere . . . . A legal directive is 'standard'-like when it tends to collapse decisionmaking back into the direct application of the background principle or policy to a fact situation. Standards . . . [give] the decisionmaker more discretion than do rules. Standards allow the decisionmaker to take into account all relevant factors or the totality of the circumstances. Thus, the application of a standard in one case ties the decisionmaker's hand in the next case less than does a rule – the more facts one may take into account, the more likely that some of them will be different the next time." (citations omitted)); *see also* FREDERICK SCHAUER, PLAYING BY THE RULES: A PHILOSOPHICAL EXAMINATION OF RULE-BASED DECISION-MAKING IN LAW AND IN LIFE 104 n.35 (1991) (arguing that even if rules are more specific than standards, rules are not necessarily more likely to be followed); Pierre Schlag, *Rules and Standards*, 33 UCLA L. REV. 379, 382–83 (1985) (describing a rule as a directive with "a hard empirical trigger and a hard determinate response" and a standard as one with "a soft evaluative trigger and a soft modulated response").

39. *See, e.g.*, Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 559–60 (1992) ("For example, a rule may entail an advance determination of what conduct is permissible, leaving only factual issues for the adjudicator. (A rule might prohibit 'driving in excess of 55 miles per hour on expressways.') A standard may entail leaving both specification of what conduct is permissible and factual issues for the adjudicator. (A standard might prohibit 'driving at an excessive speed on expressways.')"); Spencer Overton, *Rules, Standards, and* Bush v. Gore*: Form and the Law of Democracy*, 37 HARV. C.R.-C.L. L. REV. 65, 73–75 (2002) ("Clear rules force decisionmakers to act in a certain way in response to certain facts, and thus promote uniform, consistent, efficient, fair, and neutral decisions. Actors are able to understand and comply with bright-line rules, and thus are able to act in predictable, productive ways.").

similarly mechanical cases for laws such as voting age requirements or speed limits. In our empirical study presented below, we used such a quantitative "bright-line" as a paradigmatic example of rule-like norm-content.

Standards, on the other hand, require substantial evaluation, typically inviting consideration of the abstract principles motivating the norm. Consider, for instance, the directive, "Park patrons must speak at a polite, reasonable level." The application of this standard requires considerable discretion. While all standards use evaluative content, only some use moral content. For example, the standard, "Park patrons must not speak loudly," is a subjective but non-moral standard. We encounter moral content frequently, however; it is marked by words such as "good," "charitable," "malicious," and of course "moral." Because moral terms are so clearly evaluative, they are the paradigmatic example of a standard. Accordingly, we have chosen to use a standard with moral content in our experiment.

B. Operators and Norm Species

Norms can be categorized according to the operator that they use. Here, we focus on the distinction between mandatory norms (e.g., "must") and aspirational norms (e.g., "ought to"). Legal philosophers have asserted that mandatory norms work, in a sense, by short-circuiting the deliberation of those subject to them in favor of their directive. Joseph Raz, for example, explains that "it must be admitted that for the most part the presence of a [mandatory norm] is decisive . . . . The whole purpose of having [mandatory norms] is to achieve this simplification."[40]

Oftentimes, mandatory norms are paired with sanctions. By "sanction" we mean "a penalty attached to the breach of a norm typically, though not always, meant to discourage breaches of that

---

40. JOSEPH RAZ, PRACTICAL REASON AND NORMS 79 (Oxford Univ. Press 1999) (1975). Raz explains that the authoritative nature of mandatory norms comes from their power to exclude from our deliberation many of our own reasons in favor or against pursuing a particular action. *Id.*

> The fact that [mandatory norms] are exclusionary reasons enables them to achieve this purpose . . . . [Mandatory norms] have a relative independence from the reasons which justify them. In order to know that the norm is valid we must know that there are reasons which justify it. But we need not know what these reasons are in order to apply the norm correctly to the majority of cases.

Id.

norm."[41] Whether it is conceptually necessary that a mandatory norm attach to some mechanism for punishing noncompliant subjects has been debated, especially in the context of analytic legal philosophy. For example, many legal theorists have maintained that, as a conceptual matter, law must be backed by sanctions.[42] Our experiment sidesteps this debate by using both mandatory language and a formal sanction to create unambiguously mandatory norms.

Aspirational norms are recognized as a distinct type in practical philosophy. "[R]easons [that] exhibit what we might refer to as an aspirational character . . . count in favor of the actions they recommend in a way that leaves the deliberating agent with some discretion to ignore or to discount their claims."[43] Thus, whereas mandatory norms are designed largely to *circumvent* a subject's personal practical reasoning, aspirational norms are designed to *participate* in a subject's reasoning.

A unique function of aspirations is that they provide reasons in favor of supererogatory conduct. Supererogation is the notion that certain actions can be morally superior but not compulsory.[44] This idea presents a problem for practical reasoning theorists, some of whom struggle to explain how the best possible course of action is not simply compulsory.[45] But practical experience shows that people truly adhere to the principle of supererogation in their deliberation: for example, almost no one believes that charitable giving is always required, but

---

41. Ekow N. Yankah, The Force of Law: The Role of Coercion in Legal Norms 21 (Mar. 1, 2007) (unpublished manuscript, *available at* http://works.bepress.com/ekow_yankah/1). *But see* Hans Oberdiek, *The Role of Sanctions and Coercion in Understanding Law and Legal Systems*, 21 AM. J. JURIS. 71, 75 (1976) (asserting that sanctions are always meant to deter).

42. Early legal positivists, such as John Austin and Jeremy Bentham, viewed law as general commands—mandatory norms—given by a sovereign to a population with a habit of obedience to the sovereign, coupled with the threat of sanctions for noncompliance. *See* JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED 21 (Wilfred E. Rumble ed., Cambridge Univ. Press 1995) (1832) ("Every law or rule . . . is a command."). Even in the twentieth century, some highly regarded legal philosophers, such as Hans Kelsen, held this view. *See* HANS KELSEN, PURE THEORY OF LAW 33 (Max Knight trans., Univ. of Cal. Press 1967) (1934); *see also* JOSEPH RAZ, THE CONCEPT OF A LEGAL SYSTEM: AN INTRODUCTION TO THE THEORY OF LEGAL SYSTEM 152–53 (2d ed. 1980) (arguing that legal norms directed at high-ranking officials may exist without sanctions, but duty-imposing norms not directed at officials must be backed by sanctions).

43. R. Jay Wallace, The Deontic Structure of Morality 3–4 (unpublished manuscript, *available at* http://philosophy.berkeley.edu/people/files/21).

44. *See* DAVID HEYD, SUPEREROGATION: ITS STATUS IN ETHICAL THEORY 1 (1982) ("[S]upererogatory acts are . . . those acts which a person does over and above his religious or moral duty . . . .").

45. *See* JOSHUA GERT, BRUTE RATIONALITY: NORMATIVITY AND HUMAN ACTION 106–08 (2004) ("How can all the relevant reasons unambiguously favor [an] action, and yet not make it rationally required?").

many would agree that, in at least some scenarios, it is the right thing to do on the balance of reasons.[46] Thus, the content of an aspirational norm can serve as an information provider, indicating which conduct is supererogatory.

The key to the aspirational operator is that it must be weaker than a mandate but stronger than a permission. Recently, linguists have recognized this phenomenon. They call terms that exhibit this character "weak necessity modals"[47]: the operator is meant to reflect the user's preferences for potential states of affairs or modalities. Aspirational language, under this view, employs words that reflect weaker preferences than mandatory/deontic language. Some linguists identify terms such as "ought" and "should" as weak necessity modals.[48] Accordingly, in the experiment presented below we adopted a weak necessity modal ("ought") as an aspirational operator.

While we expressed some reservation about toothless mandatory norms, we have the inverse concern with respect to aspirational norms. An aspirational norm with a formal punishment for noncompliance is arguably a mandatory norm and certainly would

---

46. Joseph Raz suggested that a certain, specific type of permission, an "exclusionary permission," has a second-order power, making supererogation an understandable deliberative phenomenon. RAZ, *supra* note 40, at 96.

47. *See* Kai von Fintel & Sabine Iatridou, *How to Say Ought in Foreign: The Composition of Weak Necessity Modals*, *in* TIME AND MODALITY 115 (Jacqueline Gueron & Jacqueline Lecarme eds., 2008). According to von Fintel and Iatridou, the sentence "you ought to do the dishes" can be distinguished from the sentence "you must do the dishes" because:

> [The former] means not that among the favored worlds, most are worlds where you do the dishes. Rather, it means that among the favored worlds, all the very best ones are worlds where you do the dishes. That is, the ought-claim makes a further distinction as to how good particular worlds among the favored world are. So, the central idea we would want to capture in a semantics for ought is this: ought p says that among the favored worlds, p-worlds are better than non-p-worlds . . . . And in the [directive] case, ought might be sensitive to less coercive sets of rules and principles in addition to the laws and regulations that strong necessity modals would be interpreted with respect to.

Id. at 118–19.

48. Until recently, it has been a tradition in deontic logic to conflate "ought" with "must." In other words, the operator "ought" was associated with mandatory norms. Recently, however, some in the field have recognized that "ought" is popularly equated with weak necessity, as we do here. *See* Paul McNamara, *Making Room for Going Beyond the Call*, 105 MIND 415, 415–50 (1996) (arguing that there is a middle ground between obligatory and permissible actions). There is much detailed research remaining to be done on the fine distinctions between different modal expressions. "Consider for example the fact that ought to and have to somehow differ in strength in their deontic use: You ought to call your mother, but of course you don't have to." Kai von Fintel, *Modality and Language*, *in* THE ENCYCLOPEDIA OF PHILOSOPHY app. at 20, 22 (Donald M. Borchert ed., 2d ed. 2006).

cause confusion.[49] Thus, we will not attach a formal[50] sanction mechanism to those norms that employ weak necessity modals.

III. EXPERIMENTAL METHODS

The primary focus of our experiment is to provide a quantitative measure of the degree of effectiveness[51] of various norm combinations. Specifically, we tested how different norm combinations served to motivate charitable giving to a legal services organization. We provided subjects with a sum of $10 and then allowed them to decide how much to donate. This Section begins by contextualizing our experiment within existing research on other-regarding behavior and then details our specific experimental methods and hypotheses.

A. The Dictator Game

This basic experimental design mirrors a widely used methodology in the field of behavioral economics called the "Dictator Game." Put simply, our subjects dictated the amount of the charitable gift. We hope that our use of this paradigm can be an instructive case-study for those who want to use experimental methods to inform legal decisionmaking.[52] To that end, in this Section we discuss certain

---

49. *See* NEV. R. PROF'L CONDUCT § 6.1(b) (2006) ("The professional responsibility to provide pro bono services . . . is aspirational rather than mandatory . . . . Accordingly, the failure to render pro bono services will not subject a member to discipline."); Christine Chinkin, *Normative Development in the International Legal System*, *in* COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM 21, 30 (Dinah Shelton ed., 2000) [hereinafter COMMITMENT AND COMPLIANCE] (categorizing instruments that "are based solely upon voluntary adherence" as "soft law"); Xiaorong Li, *License To Coerce: Violence Against Women, State Responsibility, and Legal Failures in China's Family-Planning Program*, 8 YALE J.L. & FEMINISM 145, 182 (1996) ("Because no sanctions attached, member states' obligations under the U.N. Charter and UDHR embody only aspirational norms . . . .").

50. That said, we do not rule out the possibility that subjects might feel as though they would suffer some sort of informal punishment for failing to heed the norms, even the aspirational ones. For instance, some might worry that failing to give any money to charity would cause them embarrassment if this fact were to become known. We would not expect this possibility to alter the relative performance of each norm species, however, because these informal sanctions would be the same for both the aspirational and mandatory norms. Moreover, as discussed below, our anonymity reduces the role that these informal sanctions might play.

51. By effectiveness, we mean the numerical measure of the quality of the state of affairs brought about by the employment of the norm combination. The quality of the state of affairs is dictated by the interests of the promulgator. Here, what the promulgator wants is rather straightforward: greater overall giving, a high proportion of people who give everything, a low proportion of people who don't give at all, and the like.

52. This approach is growing more popular, especially in the New Legal Realism movement. *See* Victoria Nourse & Gregory Shaffer, *Varieties of New Legal Realism: Can A New World Order Prompt A New Legal Theory?*, 95 CORNELL L. REV. 61 (2009) (discussing the rise in use of

features of our experimental methodology, and related methodologies, in greater detail. The Dictator Game in its basic form is very simple. The first player, the Allocator, is given control over a fixed sum of money or some other severable resource. She is then instructed to allocate the money between herself and a designated other player, the Recipient. The Recipient has no say about the appropriate division and must accept the result. The experimental question is, "How much will the Allocator give?"

The Dictator Game was originally devised as a comparison to a more complicated experimental game, "The Ultimatum Game," which has become one of the most commonly utilized experimental frameworks in behavioral economics and the social sciences.[53] The Ultimatum Game is identical to the Dictator Game except that the Recipient can influence whether the allocation is acceptable. If she accepts, then the Allocator and Recipient get their respective shares. If she rejects, then neither player gets anything. The Ultimatum Game was devised to establish whether human beings' behavior fits the *homo economicus* model, which posits that human beings are rational and self-interested.[54]

The operating assumptions of the Ultimatum Game are that selfish behavior is exhibited by low offers from the first party (and that altruistic behavior is exhibited by high offers), and that irrational or fairness-based behavior is exhibited whenever the second party rejects an offer. This is because, under the *homo economicus* view of rational and self-interested individuals, both parties should understand that any offer above zero should be accepted because it represents "free money." Accordingly, those holding this view predict that the first party will offer the smallest possible portion and that the second party will accept it. The experiment rarely plays out in that

---

behavioral experimentation and reliance upon work in psychology as a means to challenge neoclassical law and economics).

53. "The Ultimatum Game is quickly catching up with the Prisoner's Dilemma as a prime-showpiece of apparently irrational behavior. In the past two decades, it has inspired dozens of theoretical and experimental investigations." Marin A. Nowak et al., *Fairness Versus Reason in the Ultimatum Game*, 289 SCIENCE 1773, 1773 (2000).

54. Joseph Heinrich et al., *In Search of Homo Economicus: Behavioral Experiments in 15 Small-Scale Societies*, 91 AM. ECON. REV. 73, 73–77 (2001) (relying on Ultimatum Game experiments to suggest revisions to *homo economicus* model).

It bears mention that, given our goals, we have the luxury of not having to associate behaviors with very specific internal states of mind. While our hypothesis is informed by what we suppose a norm species will do to deliberation, our results analyze behavioral effect and apparent psychological phenomena. We are agnostic about whether human behavior exhibits true altruism or reason.

fashion and therefore presents a challenge to the assumption of rational, self-interested behavior.[55]

The problem with the Ultimatum Game for our purposes, however, is that it does not suitably isolate the reasons for the Allocator's behavior. The Allocator who gives an offer above the smallest severable amount may be motivated by her interest in the Recipient's well-being, but she may also be afraid that the Recipient would reject the offer. By eliminating Recipient approval, the Dictator Game arguably tells us the answer, which is that "both factors matter[] . . . [o]ffers in the dictator game are lower than in ultimatum games, but (in most variations) are still positive."[56]

This aspect of the Dictator Game is critical for our experiment because it suggests an intrinsic motive for generous behavior. We expect that there will be a spread of allocations within the population of subjects;[57] this expectation makes it possible to isolate the effects of our norm-operators and norm-content. Our experiment therefore adds to the Dictator Game by subjecting players to different combinations of norm-operator and norm-content.[58]

Although less significant, we also made the recipient a charity. This reduced the likelihood that a subject would keep all the money to herself. In fact, we expect an even wider spectrum of giving than under the basic game precisely because we have made the recipient of the allocation a charity, which tends to increase giving and the spread of allocations.[59]

Lastly, in the mandatory-operator conditions of our experiment, we implemented a critical but necessary departure from the standard Dictator Game structure: third-party enforcement of

55. *See, e.g.*, James Andreoni et al., *What Do Bargainer's Preferences Look Like? Experiments With a Convex Ultimatum Game*, 93 AM. ECON. REV. 672, 672 (2003) (finding that half of subjects were maximizers and half had a preference for fairness); Colin Camerer & Richard Thaler, *Anomalies: Ultimatums, Dictators, and Manners*, 9 J. ECON. PERSP. 209, 210 (1995) (finding that offers of less than 20 percent of the sum of money are often rejected); Heinrich, *supra* note 54, at 74 (describing "systematic deviations from the canonical model"); Nowak, *supra* note 53, at 1773 (noting that half of responders reject offers of less than 30 percent); Richard H. Thaler, *Anomalies: The Ultimatum Game*, 2 J. ECON. PERSP. 195, 197 (1988) (noting that non-rational results in the Ultimatum Game imply non-monetary aspects of the participant's utility function).

56. *See* Camerer, *supra* note 55, at 213 (citing Robert Forsythe et al., *Fairness in Simple Bargaining Experiments*, 6 GAMES & ECON. BEHAV. 347–69 (1994); Daniel Kahneman et al., *Fairness and the Assumptions of Economics*, 59 J. BUS. 285, 285–300 (1986)).

57. This is especially true because we have made the recipient of the allocation a charity, which tends to increase giving and the spread of allocations. *See* Catherine C. Eckel & Philip J. Grossman, *Altruism in Anonymous Dictator Games*, 16 GAMES & ECON. BEHAV. 181, 181–90 (1996) (finding that donations increase when the recipient is generally agreed to be "deserving").

58. See *supra* Section IV for a lengthy discussion of the particulars of these combinations.

59. *Id*.

norms via sanctioning. We turn next to methodological issues surrounding this sanction mechanism.

B. Operationalizing Norm-Content and Norm-Operators

The history of ABA ethics regulation reflects the conventional wisdom that mandatory rules with bright-line content will be more effective than aspirational rules with moral content. But does this view receive empirical support?

We investigated this question experimentally by offering students at Harvard Law School the opportunity to donate up to $10 to a pro bono legal services fund under exposure to several different norm types. Specifically, we allocated $10 to each student and then offered them the opportunity to give any amount they wished ($0 to $10) to "an out-of-state charitable organization that provides free or reduced fee legal services to the indigent," while keeping the remainder for themselves. Subjects were paid immediately in cash, and the money they chose to donate was paid in full to Rhode Island Legal Services.

Before making her decision, each subject was exposed to a norm, and our experimental manipulation was to alter norm combination. We varied norms both according to operator (aspirational versus mandatory) and content (moral versus bright-line) in each possible combination. Because we employed two different bright-line minimums, there are a total of six different experimental conditions. Each subject experienced only one condition, and we compared patterns of giving between subjects. Approximately 35 subjects were tested in each condition, totaling 213 subjects overall. Subjects in the aspirational norm condition were told that they "ought" to give money to the charitable organization. Subjects in the mandatory norm condition were told that they were "required" to give money to the charitable organization, and that this requirement was subject to enforcement under an audit procedure.[60]

We attached a sanction mechanism to the mandatory operator. For ethical reasons, and following previous research, we chose not to use sanctions that would leave players worse off at the end of the

---

60. Specifically, the instructions read as follows:

> A monitor in charge of providing payment will audit 1/10 of the submissions to determine whether they comply with this condition. If the audit results in a finding that a division does not comply, the student that submitted the division will be told immediately in private and will not be given any money. Otherwise, students will be paid the full amount that they decide to keep immediately at the end of the experiment.

experiment than at the beginning—in effect, taking money out of their pockets. Accordingly, players were sanctioned by forfeiting their stake in the $10 allocated at the beginning of the experiment if they were "caught" giving less than the bright-line standard.

Our sanction mechanism was a probabilistic audit. Each allocation under a mandatory norm operator had a 10 percent chance of being audited. Two goals motivated a probabilistic enforcement mechanism. First, we wished to mirror the "real world," where enforcement is rarely guaranteed. Second, we wished to introduce a meaningful temptation to cheat. The results show that we succeeded in this regard: 18.9 percent were non-compliant under bright-line content.[61] With a one-in-ten probability of being audited, subjects actually profited on average by choosing to cheat. Here, again, we paralleled real-world cases where expected utility favors illegal conduct; tax evasion is a familiar example.[62]

For our moral norm-content, we drew inspiration from the 1908 *Canons*, quoted in part below:

> The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.[63] . . . When rendering . . . improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress

61. It is impossible to predict the percentage of people who will be noncompliant to a norm to which they are subject. Anecdotally, it would seem that the number is far less than 50 percent. One area in which there has been much study of this is in the realm of the federal income tax. While no one has been able to determine with precision the percentage of noncompliant taxpayers, the I.R.S. conducted a three-year study called the National Research Program and found that the difference between taxes owed and taxes actually paid represented nearly one-fifth of all taxes collected by the I.R.S. Stephen J. Dubner & Steven D. Levitt, *Filing in the Tax Gap*, N.Y. TIMES, Apr. 2, 2006, Magazine, at 26. Although less trustworthy, survey results are largely consistent: they indicate that approximately 13 percent admit to cheating. RoperASW Poll (2003), *available at* www.bankrate.com/brm/itax/news/20030415b1.asp?print=on. Approximately 21 percent do not believe that it is morally wrong not to report all income on their taxes. PEW RESEARCH CTR., A BAROMETER OF MODERN MORALS: SEX, DRUGS AND THE 1040, at 1 (2006), http://pewresearch.org/pubs/307/a-barometer-of-modern-morals. We find similar proportions in fraudulent billing. *See* Darlene Ricker, *Greed, Ignorance and Overbilling*, A.B.A. J., Aug. 1994, at 62, 63 (citing a study revealing that approximately 5–10 percent of audits of law firm billing found actual fraud). Thus, there is little reason to think that our numbers are not representative of real-world noncompliance.

62. James Alm, *Tax Evasion*, *in* THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY (Joseph J. Cordes et al. eds., 2d ed. 2005) ("Despite these measurement difficulties, it appears that tax evasion is a widespread and growing problem in the United States. The most reliable estimates project the amount of the federal 'tax gap'-or the amount of federal income taxes due but not collected-at $127 billion for 1992 and suggest an annual growth rate of roughly 10 percent since 1973 (Internal Revenue Service 1996). More recent IRS estimates put the 2002 tax gap at $311 billion. State and local governments also report problems with noncompliance and evasion.").

63. CANONS OF PROF'L ETHICS pmbl. (1908).

> upon the client and his undertaking exact compliance with the *strictest principles of moral law*.[64]

This is not a perfect fit, of course. We are testing students who may eventually serve the public as lawyers, but they are not doing so yet. Thus, our moral norm text read:

> When you were granted admission to this law school, you were given the privilege of receiving a superlative legal education and the opportunity to become a public leader. These benefits, however, come with the expectation that you will conduct yourself professionally in a way that reflects a respect for justice, honesty, and fairness.
>
> Accordingly, when you apportion this money between yourself and the charitable organization, you [ought / are required] to do so in compliance with the strictest moral principles.

Our language attempted to capture the spirit of the *Canons*, especially insofar as we emphasized the particular privileges and responsibilities incumbent upon Harvard Law School students. Indeed, such moralizing preambles are frequently paired with norms that have moral norm-content, whether the ABA's code of ethics,[65] education legislation in many states,[66] the transitional Iraqi Constitution,[67] or the American Medical Association's code of ethics.[68]

---

64. *Id.* Canon 32 (emphasis added).

65. *See id.* pmbl. ("In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.").

66. *See* John Dinan, *The Meaning of State Constitutional Education Clauses: Evidence from the Constitutional Convention Debates*, 70 ALB. L. REV. 927, 939–42 (2006) (discussing usage of prefatory clauses of this sort in several states' aspirational education legislation).

67. *See* Feisal Amin al-Istrabadi, *Reviving Constitutionalism in Iraq: Key Provisions of the Transitional Administrative Law*, 50 N.Y.L. SCH. L. REV. 269, 271–72 (2005) ("Generally speaking, the TAL [Law of Administration for the State of Iraq for the Transitional Period] is a very liberal, forward-looking document. It is in many respects an exhortatory document, rather than a descriptive one, as the current situation in Iraq is far from the idyllic place described in the TAL. This fact is clear even from the Preamble, one of the last sections written. The Preamble is aspirational in its rejection of violence, its reassertion of the sovereignty of the people of Iraq, its determination to commit Iraq to adherence to international law, and its attempt to reclaim Iraq's rightful place amongst the family of civilized nations.").

68. *See* AMA CODE OF MED. ETHICS, Principles of Med. Ethics pmbl. (2001) ("The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.").

For the bright-line norm-content, we specified an exact standard of charitable[69] giving: for some subjects, at least $3 out of $10; and for other subjects, at least $7 out of $10. Specifically, subjects were instructed: "When you apportion this money between yourself and the charitable organization, you [ought / are required] to give a minimum[70] of [$3 / $7] to the charitable organization." The preceding paragraph from the moral norm-content condition ("When you were granted admission . . . respect for justice, honesty and fairness") was entirely omitted in the bright-line norm-content condition for two reasons. First, inclusion of moral terminology would make the effect of bright-line content muddy. Second, such preambles are not typically used in connection with bright-line mandatory norms.

Our choice of $3 and $7 bright-line standards reflects a deliberate attempt to provide subjects with bright-line amounts both above and below an even $5 split between the subject and the charitable organization. Preliminary pilot testing for moral norm-content revealed a $5/$5 split of funds to be a popular choice, and the average amount given was $6.33.[71] A bright-line amount of $7 thus tests whether bright-line rules can outperform moral rules when they demand a higher level of giving, while a bright-line amount of $3 tests whether bright-line rules underperform moral rules when they demand a lower level of giving.

In summary, we tested six experimental conditions, which we paraphrase below:

> (1) Aspirational operator / moral content: You ought to give according to the strictest moral standards.
>
> (2) Aspirational operator / $3 bright-line content: You ought to give $3.

---

69. In this paper, we will describe all giving to Rhode Island Legal Services as "charitable" regardless of whether the student was subject to a mandatory or aspirational norm. We realize, of course, that there are interesting questions about whether giving money to a charity because one would be punished otherwise qualifies as "charitable," "altruistic," "prosocial," "pro bono," etc. *See, e.g.*, Charles W. Wolfram et al., *An Informal Discussion on Legal Ethics*, 2 J. INST. STUD. LEG. ETHICS 427, 429 (1999) (Remarks of Burnele V. Powell, stating: "First of all, I want to be very clear that I don't think there is any such thing as mandatory pro bono. If it's mandatory, it's not pro bono."). Such questions are not our focus here, however. Except where otherwise noted, our approach is like the I.R.S.'s: for the sake of simplicity we call "charitable" the behavior of giving to a charitable organization regardless of the actual motivation for that behavior.

70. These are set forth as minimums both to mimic real-world regulation of charity—naturally, organizations and governments do not ordinarily seek to cap charitable acts—and so as to give the deterrence hypothesis the best chance of success with the mandatory norms.

71. The pilot used the same language and instructions as the subsequent experiment.

(3) Aspirational operator / $7 bright-line content: You ought to give $7.

(4) Mandatory operator / moral content: You are required to give according to the strictest moral standards, and you could be punished for noncompliance.

(5) Mandatory operator / $3 bright-line content: You are required to give $3, and you could be punished for non-compliance.

(6) Mandatory operator / $7 bright-line content: You are required to give $7, and you could be punished for non-compliance.

C. Further Details

In interpersonal games of this sort, experimenters are typically concerned about whether the stakes are high enough that the players behave in a fashion that resembles their behavior in the real world. With de minimis stakes, the risk exists that the players will not care enough to behave in a thoughtful fashion. It is generally accepted that in Ultimatum Games, $10 is sufficient, and most experiments have used that amount or less.[72] The same is true for Dictator Games.[73]

We conducted our test on 213 students at Harvard Law School. While it might be optimal to test working lawyers, it is harder to assemble such a group without introducing a considerable bias and a high cost. Law students are already assembled and can be selected randomly from within that assembly. Game types were provided to the students in each class randomly but in approximately equal proportion. Students were asked not to participate if they had already played or had discussed strategies for the experiment. We further

---

72. Elizabeth Hoffman et al., *On Expectations and the Monetary Stakes in Ultimatum Games*, 25 INT'L J. GAME THEORY 289, 289–301 (1996) (stating that the amount bargained in ultimatum games is "typically not more than $10," but cautioning that in certain, but not all, contexts, $100 stakes produce different results); William Robert Nelson, Jr., *Incorporating Fairness into Game Theory and Economics: Comment*, 91 AM. ECON. REV. 1180, 1181 (2001) ("Player one [in the ultimatum game] is told to propose the division of a sum of money (M), often ten dollars . . . . In the many ultimatum games that have been run with stakes in the $10 range, the modal offer is one-half.").

73. *See, e.g.*, Daniel Read, *Monetary Incentives, What Are They Good For?*, 12 J. ECON. METHODOLOGY 265, 269 (2005) ("As in dictator games even when the stakes are pretty large ($100) people offer the same proportion of that stake as when they are small, or even hypothetical." (citations omitted)).

asked if they had heard about the experiment (even if they hadn't discussed strategy), in order to determine whether to discard those results. No one running the experiment knew any of the subjects tested, and the subjects were never asked to give their names to the experimenters. The subjects were asked to fold up their responses (so that others could not see them) and not to look at other players during the game. They were paid on a one-on-one basis anonymously and outside of the classroom in which the experiment was conducted. Every effort was taken to have payment take place out of sight from others.

We chose to have students allocate money to a pro bono legal service organization with the hope that they would experience at least some intrinsic motivation toward charity. This manipulation on the basic Dictator Game has previously been used in research.[74] To reduce potential bias by the Allocators, we did not name a specific charitable organization to our subjects;[75] the legal world is small, and it is possible that students might have had some personal experiences, positive or negative, with the charity chosen. Accordingly, we stated, "The [money not apportioned to oneself] will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent."

D. Hypotheses

We now turn to our hypotheses. The received view, as we understand it, is that mandatory operators and bright-line content should induce higher levels of giving, while aspirational operators and moral content should induce lower levels of giving.[76]

Based on past psychological research, however, we hypothesized that the introduction of an incentive-based intervention under the norm would crowd out many subjects' intrinsic motivation to be charitable. That is, we predicted that aspirational operators would reveal subjects' intrinsic motivation for generosity, while mandatory operators would crowd out that intrinsic motivation. Thus, we hypothesized that moral content would elicit lower levels of giving in the mandatory condition than in the aspirational condition.

---

74. *See* Eckel & Grossman, *supra* note 57, at 181–91 (making Recipient of the experiment a local chapter of the American Red Cross).

75. As to the particular charity, we chose to keep it relevant to the pro bono work theme. Accordingly, we wanted it to be a charity that provided free or reduced rate legal services to the indigent—the bread and butter of pro bono work. We chose Rhode Island Legal Services.

76. *See* Gneezy & Rustichini, *supra* note 5, at 3 (finding that mandatory fines helped clarify and change actors' vision of the world in which they live).

However, we also hypothesized an important role for bright-line norm-content in determining the behavioral effect of crowding out. Specifically, crowding out should reduce giving only when subjects' intrinsic charitable motivations exceed the extrinsic motivation of the mandatory norm. Indeed, some studies have attempted to show that crowding out only becomes noticeable when the intervention is not powerful enough[77] and that there remains considerable support for the economic assumption that incentives are generally effective.[78] Thus, we predicted that mandatory operators paired with $3 bright-line content will reduce charitable giving relative to aspirational operators. By contrast, mandatory operators paired with a $7 bright-line content should not reduce charitable giving relative to aspirational operators. In fact, a mandatory rule set above the level of intrinsic motivation may successfully yield more generous gifts. At $7, the acceptable minimum donation would exceed the average gift in the pilot experiment by sixty-seven cents.

Lastly, we predicted that subjects would exhibit an anchoring effect in our aspirational bright-line norms.[79] In particular, we expected that our subjects would be drawn toward the aspirational bright-line minimum amount in making their divisions, just as the sentencing decisions of judges gravitated toward recommended sentences in Englich and Mussweiler's experiment.[80]

IV. RESULTS

Our results yield two general findings: (A) mandatory norms featuring moral content led to lower levels of giving than did aspirational norms with moral content, and (B) bright-line norm-content affected the level of giving under mandatory operators but not under aspirational operators.

---

77. *See* Bruno S. Frey & Reto Jegen, *Motivation Crowding Theory*, 15 J. ECON. SURVEYS 589, 607 (2001) (noting that intrinsic motivations will "not always prevail over the traditional relative price effect").

78. *See, e.g.*, Robert Gibbons, *Incentives and Careers in Organizations*, *in* 2 ADVANCES IN ECONOMIC THEORY AND ECONOMETRICS 1, 16–26 (David Kreps & Ken Wallis eds., Seventh World Congress 1997) (examining the effects of incentive pay on work performance); Canice Prendergast, *The Provision of Incentives in Firms*, 37 J. ECON. LIT. 7, 7 (1999) (remarking that "[i]ncentives are the essence of economics").

79. In making this prediction, we are of course implicitly asserting that anchoring will not be so pronounced that it will nullify significant differences in giving between equivalent bright-line aspirational and mandatory norms.

80. *See* discussion *supra* Part I.B.

A. Mandatory/Moral Norms Led to Lower Levels of Giving Than Did Aspirational/Moral Norms

Based on previous research into the crowding out of intrinsic motivations by extrinsic reward and punishment, we predicted that mandatory operators paired with moral norm-content would lead to lower levels of giving than would aspirational operators paired with moral norm-content. Our experiment confirmed this prediction.

The mean level of giving under the aspirational operator was $6.17, whereas it was only $4.56 under the mandatory operator. This predicted effect was statistically significant ($t(70) = 1.8$, $p < .05$, one-tailed).

Inspection of individual responses revealed that, whenever moral norm-content was used, subjects were highly likely to give $0, $5, or $10. In fact, 75 percent of subjects gave one of those three amounts, while only 25 percent gave $1, $2, $3, $4, $6, $7, $8, or $9. Additionally, the higher rate of giving under aspirational operators versus mandatory operators was driven principally by a higher proportion of subjects giving exactly $10, and a lower proportion of subjects giving exactly $0. Under an aspirational operator, 44 percent of subjects gave all $10 and only 11 percent gave nothing, while under a mandatory operator 25 percent of subjects gave all $10 and 28 percent gave nothing. The ratio of $10-to-$0 giving between these two conditions differed with statistical significance (Pearson $\chi^2(1, N=39) = 4.5$, $p < .05$, two-tailed).

B. Bright-Line Norm-Content Affected Giving under Mandatory Operators but Not Aspirational Operators

How successful is bright-line norm-content at inducing giving at specified levels? Our results indicated that the answer depends on the type of operator used: mandatory operators rendered bright-line standards relatively more effective than aspirational operators.

We hypothesized that crowding out would lead to higher levels of giving under an aspirational operator with $3 bright-line content relative to a mandatory operator with $3 bright-line content. Although the mean level of giving with $3 bright-line content was higher under an aspirational operator (mean = $6.05) than under a mandatory operator (mean = $5.03), this difference was not statistically significant ($t(69) = 1.2$, $p > .10$, one-tailed).

When a bright-line norm-content of $7 was used, there was no evidence of an advantage for an aspirational operator. In fact, as hypothesized, the mean level of giving was higher under a mandatory

operator ($6.85) than under an aspirational operator ($6.25). This difference was slight, however, and it was not statistically significant ($t(68) = 0.6$, $p > .50$).

Nevertheless, reliable differences between the two operators emerged when we looked at the trends across the norm-content conditions under each operator. At the most general level, we can ask whether the mean level of giving systematically varied between the three levels of norm-content we used: moral norms, $3 bright-line norms, and $7 bright-line norms. We tested the specific hypothesis that giving would be lowest at a $3 bright line, intermediate with moral content (consistent with the findings of our pilot study), and highest at a $7 bright line. We tested the specific hypothesis that giving would be lowest with moral content, intermediate with a $3 bright line, and highest at a $7 bright line. Analysis of variance ("ANOVA") revealed no significant differences in the mean level of giving between the three norm-content conditions within the aspirational norm-operator condition ($F(2,106) = .024$, ns). The mean level of giving stayed steadily within the range $6.05 to $6.25 regardless of the suggested bright-line amount.[81] Thus, contrary to our predictions, there was no significant anchoring effect under the aspirational norms. For mandatory norms, by contrast, ANOVA revealed that the mean level of giving differed significantly between the three norm-contents ($F(2,101) = 3.42$, $p < .05$). Giving was the lowest for moral norm-content, intermediate at the $3 bright-line amount, and highest at the $7 bright-line amount.[82]

More specifically, we can ask whether bright-line standards induce giving at the *precise* value of the bright-line norm. We found that the mandatory operator produced larger numbers of subjects who gave exactly the minimum specified, whether $3 or $7, compared to the aspirational operator. Subjects were more than three times as likely to give the bright-line amount specified under the mandatory operator (29 percent of subjects) than under the aspirational operator (8 percent of subjects), and the difference in proportions was significant (Pearson $\chi^2(1, N=140) = 10.5$, $p < .001$, two-tailed). Notably, the aspirational operators appeared more likely to produce subjects who gave $5, an amount that attracts intrinsic fairness motivations, than the applicable bright-line amount. Under bright lines, subjects were twice as likely to give $5 with the aspirational operator (18

81. This amount was also consistent with our aspirational/moral pilot amount of $6.33.

82. As mentioned, we cannot be sure of the degree to which an anchoring effect was present under the mandatory norms because we cannot isolate the conscious motivation to avoid punishment from the unconscious assimilation of the anchor.

percent of subjects) than with the mandatory operator (7 percent of subjects), and the difference in proportions was marginally significant (Pearson $\chi^2(1, N=141) = 3.5$, $p < .07$, two-tailed).

V. FROM PSYCHOLOGY TO POLICY

In this final Section, we elaborate on the psychological aspects of our findings, connect those findings to the essential functions of our normative components, discuss the general implications of our results for policymakers, and provide relevant, analogous real-world scenarios.

A. Results and Psychology

To summarize the results from our study, our subjects appeared to have some intrinsic motivation to give a portion of their $10 allocation to an anonymous legal charity, and the norm combination appeared either to leave this intact or to eradicate it.

The use of an aspirational operator ("you *ought* to give") left subjects' basic intrinsic motivation intact. However, the level of giving under the aspirational operator was essentially unchanged no matter which norm-content was employed—an ambiguous moral standard or any of the two clear bright-line rules. Thus, in this study, aspirational operators could be used to tap into intrinsic charitable motivations, but they did not successfully change those motivations by anchoring or otherwise. It appears that once subjects were told that they ought to give, they relied almost entirely on their own sense of *how much* they ought to give. Exploring the contexts in which anchoring has a large effect on legal decisionmaking (such as the sentencing study described above) versus a small or no effect on legal decisionmaking (such as the present study) is an important area for further research.

The use of a mandatory operator ("you are required to give . . .") and a sanctioning mechanism (". . . or you may be punished") appeared to negate subjects' intrinsic motivation to give. This finding is consistent with the psychological theory of crowding out—the extrinsic motivation provided by a sanctioning mechanism crowds out the intrinsic motivation provided by one's own moral sense. Notably, using a mandatory operator led to a significant reduction in charitable giving even with *moral* norm-content. That is, subjects failed to rely on their own intrinsic moral standard simply because a mandatory operator was used, and despite the fact that the precise content of the mandate was to adopt a "strict moral standard"! Thus, in this study,

the simple switch from an aspirational operator to a mandatory operator paired with sanctioning eroded levels of charitable giving.

Yet, while the use of a mandatory operator and sanctioning mechanism can be detrimental to charitable giving when paired with certain norm-content, it can match or even outperform the use of an aspirational operator. For instance, using $7 bright-line norm-content and a mandatory operator performed no worse—and tended to perform better—than an aspirational operator. And, although we conducted all testing with a one-in-ten probability of sanctioning, we presumed that rates of compliance under the mandatory condition would increase along with an increase in the probability of sanctioning.

B. Implications for Norm Function

Our findings provide insight into the functions of aspirational norms and moral standards. Some authors have contended that aspirational norms serve as information providers whose content demarcates the specific line of supererogatory conduct.[83] Our results challenge this description insofar as it implies that such norms actually succeed in convincing subjects about the correct placement of the line of supererogation. Specifically, once the decision was made in our study to employ an aspirational norm, the subsequent choice of what norm-content to include made little difference to the resultant amount of charitable giving. In other words, there is no indication that subjects accept this norm-content as a demarcation of the line of supererogatory conduct.

From this perspective, it is fair to ask whether aspirational norms have any effect on behavior. Had we provided our subjects with $10 and used *no* normative language, would the mean level of giving

---

83. *See, e.g.*, Gregory Scott Crespi, *Redefining the Fiduciary Duties of Corporate Directors in Accordance with the Team Production Model of Corporate Governance*, 36 CREIGHTON L. REV. 623, 640 (2002) ("As a practical matter, therefore, the existing fiduciary duty of care standard provides directors only with an aspirational norm, an exhortatory statement of good practice, rather than subjecting them to an enforceable legal duty."); Martin S. Flaherty, *Rights, Reality, and Utopia*, 72 FORDHAM L. REV. 1789, 1791 (2003) ("By establishing both obligatory and aspirational norms through recognized systems of consent, international human rights law almost by definition marks the current 'limits of practicable political possibility' beyond which a realistic utopia should extend its reach." (citation omitted)); Steven A. Hetcher, *The Emergence of Website Privacy Norms*, 7 MICH. TELECOMM. & TECH. L. REV. 97, 104 n.31 (2000) ("An 'aspirational norm' is the linguistic expression of a putative norm, that is, an expression regarding a practice that the speaker would like to see come into existence."); Lewis Kornhauser, *The Path of the Law Today: A World Apart? An Essay on the Autonomy of the Law*, 78 B.U. L. REV. 747, 751 (1998) ("An aspirational legal norm characterizes the 'correct' or 'desired' behavior while an operative legal norm characterizes the behavior to which legal sanctions will attach.").

have matched the $6.05-to-$6.25 range observed in the three aspirational norm conditions? Our data cannot answer this question, and it remains an important topic for further study. However, we will hazard some tentative predictions. Surely if we had handed out $10 to law students without a word about giving to a pro bono charity, hardly a cent would have ended up in the coffers of a legal services organization. In our experiment, some form of contextual cue was presumably necessary to activate an intrinsic motivation for charity. Whether the specific use of aspirational language was necessary remains untested.

The insignificance of our aspirational norm-content also connects to an additional and unexpected finding: aspirational norms appear to provide some insulation from anchoring effects. Of course further study is necessary,[84] but our findings support the notion that aspirational norms might be able to serve as a means of bringing numerical values and directives to the fore without causing those subject to them to become anchored.

Turning to moral standards, our results show that when a subject's intrinsic charitable motivation is minimal—whether as a result of crowding out or otherwise—moral norm-content (as opposed to a bright-line norm-content) does little to prevent her from exercising her selfish impulses. A persuasive explanation is that the inherent vagueness of a standard renders it an ineffective check on an individual's impulses, allowing her to exercise nearly unfettered and (in this case) self-motivated discretion. Bright-line content, on the other hand—and as designed here—appears to be an effective check or short-circuit on the deliberation; it makes it more likely that an individual will stop deliberating about what to give and will jump to the conclusion that the imposed minimum is an appropriate division. Indeed, it is interesting that the mandatory bright-line minimum exhibited a symmetric influence on giving, making division at a level both greater than and less than the minimum more infrequent than under aspirational norms.

---

84. Further study might reveal why there is tension between our findings and those in Englich and Mussweiler's sentencing study, for example. *See* Englich & Mussweiler, *supra* note 33, at 1547–49 (finding that anchoring has a "strong influence" on judges' sentencing decisions, even when the judges are highly experienced, and the recommendation has little informative value because it comes from a legal novice).

C. Implications for Legislation

What are the implications of these empirical results for the design of effective norms? It is helpful to view the process of norm enactment in sequence:

1. When considering whether to enact a mandatory norm to regulate charitable behavior, first assess intrinsic motivation.
2. If average charitable giving is already satisfactory, then an aspirational rubric ought to be sufficient and could be superior to a mandatory rubric.
3. If average charitable giving is not already satisfactory, and the goal is to increase overall charitable behavior above levels of intrinsic motivation, then a mandatory norm ought to be employed.

As to the first step, our study shows that particular norm species have unique relationships with intrinsic motivation when the motivation in question is to make a charitable donation. Because aspirational norms leave intrinsic motivation intact, while mandatory norms minimize it, choosing the best norm species should be informed by a determination of whether the currently present level of intrinsic motivation is satisfactory. This determination helps when assessing the strength of the group's social norms, an important inquiry when deciding the degree to which more formal sanction mechanisms are appropriate.[85]

Once that level is determined, the legislator must evaluate whether more giving is desired. If an aspirational rubric is in place and the present amount of giving is undesirable, it likely would not be worthwhile for the legislator to tinker with the content of the aspirational norm.[86] Our study indicated that the particular content, whether moral or at a particular bright-line amount, did not bring about statistically significant differences. Instead, under such circumstances the legislator ought to consider adopting a mandatory norm.

However, mandatory norms should not be enacted without caution. If the level set for minimum giving is below that of intrinsic motivation or if moral norm-content is employed, legislators risk

---

85. *See, e.g.,* ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 167 (1991) (discussing the prominence of informal norms and sanctions among the close-knit group of Shasta County, California cattle ranchers, and stating "members of a close-knit group develop and maintain norms whose content serves to maximize the aggregate welfare that members obtain in their workaday affairs with one another" (emphasis omitted)).

86. Of course if the amount of giving is desirable, no further work is necessary.

bringing about less charitable giving than would have resulted from intrinsic motivation alone. Thus, minimums should be set aggressively.

We recognize that setting high mandatory minimums presents serious challenges to legislators. A legislature might face great difficulty in enacting a norm that deems much of the prior conduct of its constituency to be worthy of punishment. Enforcement mechanisms under a mandatory rubric can be costly, and enacting very high minimums can lead to high rates of noncompliance, making enforcement more difficult and expensive.[87] We leave it to legislators to determine whether the benefits of increased giving outweigh these costs.

D. Applications

We return finally to the scenarios where our findings are most applicable: the ABA's regulation of pro bono work. In addition to the facial similarity between our experimental norms and those employed by the ABA, there are parallels between the background social norms of our subjects and those of the members of the American bar. For one, the majority of our subjects intend to become American lawyers. In addition, within state bars and bar associations, lawyers often form groups with a strong sense of collective identity, like our student subjects here. And to a greater degree than in many other normative systems (and due in part, no doubt, to the fact that they must pass an ethics test in order to enter their profession), lawyers are aware of the norms that govern their conduct, just as our subjects were keenly aware of the norms governing them in our game.[88]

---

87. A vivid example comes from the setting of speed limits. A U.S. Department of Transportation study concluded that, when speed limits were lowered, not only did noncompliance increase, automobile accidents went up as well. *See* FED. HIGHWAY ADMIN., U.S. DEP'T. OF TRANSP., REPORT NO. FHWA-RD-92-084, EFFECTS OF RAISING & LOWERING SPEED LIMITS (1992), *available at* http://www.ibiblio.org/rdu/sl-irrel/index.html (finding that "[l]owering speed limits below the 50th percentile does not reduce accidents, but does significantly increase driver violations of the speed limit").

88. Of course there are some differences as well. One difference between our experiment and pro bono lawyering is that our subjects likely felt that they were parting with something that they did not yet possess whereas lawyers might feel that providing pro bono service parts them from their own precious free time. Studies have shown that people tend to have a bias toward the status quo: they are less willing to part with something in their possession than to give up the same thing if they have not yet possessed it. *See* Jack L. Knetsch, *The Endowment Effect and Evidence of Nonreversible Indifference Curves*, 79 AM. ECON. REV. 1277, 1277–84 (1989) (finding that 89 percent of subjects given a mug would not later trade it for a chocolate bar and that 90 percent of subjects given the chocolate bar would not later trade it for the mug). While this is certainly a noteworthy qualification of our results, we hasten to add that we are unaware of any reason why this bias would affect the relative performance of our variables in the

At the outset, our results suggest that the ABA's enactment of a different bright-line minimum under its aspirational rubric will not likely lead to a significant improvement in overall giving. Indeed, there are indications that the pro bono rate has not grown since the aspirational fifty-hour minimum was adopted.[89] Perhaps this is a contributing factor to the current dissatisfaction with Model Rule 6.1.

Our results further indicate that enactment of a mandatory pro bono regime can be expected to increase overall pro bono giving, but only if the minimum approaches or exceeds current giving levels. In 2005, the ABA undertook an extensive survey of pro bono hours and found that "[a]ttorneys surveyed, on average, reported providing approximately 39 hours of free pro bono service to persons of limited means or organizations serving the poor."[90] Further, "46% of the lawyers surveyed met the ABA's aspirational goal of providing at least 50 hours of free pro bono services."[91] Assuming that these numbers are accurate today, if the ABA changed Model Rule 6.1's operator from aspirational to mandatory, the current fifty-hour bright-line minimum could be sufficiently aggressive to increase the average amount of pro bono service given.[92] For this bright-line minimum to be effective, however, our results suggest that the ABA must install a sanction and enforcement mechanism. Of course, our study is only a crude approximation of the ABA rule, and further research is necessary.

The issues raised here also apply beyond the specific case of pro bono regulation. For instance, contingency fee regulation has similarly

---

pro bono context. Furthermore, studies have shown that repeat players are less likely to exhibit the bias, so it might not be a considerable issue for experienced lawyers. *See* John A. List, *Neoclassical Theory Versus Prospect Theory: Evidence from the Marketplace*, 72 ECONOMETRICA 615, 616 (2004) ("More recent field experimental evidence supports the notion that the endowment effect can be attenuated with market experience." (citation omitted)). Moreover, it is not clear that lawyers would conceptualize pro bono service as an out-of-pocket loss. For example, many lawyers pursue pro bono work in lieu of billable work, meaning that it does not alter their free time but rather their total annual billable hours. This might mean a smaller bonus or a smaller total annual income at the end of the year for the lawyer, but under those circumstances, pro bono service would seem more like giving up money not yet possessed than giving up something of value already in the lawyer's possession.

89. *See* Christopher J. Piazzola, *Ethical Versus Procedural Approaches to Civility: Why Ethics 2000 Should Have Adopted a Civility Rule*, 74 U. COLO. L. REV. 1197, 1231 (2003) (stating that pro bono hours have fallen since Model Rule 6.1 was adopted in 1993, but noting that rates for lawyers at large law firms have been steady and even increased in recent years).

90. AM. BAR ASS'N, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 4 (2005), *available at* http://www.abanet.org/legalservices/probono/report.pdf.

91. *Id.* at 5.

92. There are, of course, other choices. For example, Florida utilizes an aspirational pro bono hour minimum, but it requires lawyers to report their pro bono hours publicly. *See* R. REGULATING FLA. BAR 4–6.1. Presumably, this tactic is designed to maximize the positive influence that social norms might exert upon charitable giving.

divided legislators on the issue of the best norm combination. As with pro bono work, legislators are concerned that lawyers will not consider the pro-social implications of their negotiations with clients and will take advantage of their superior bargaining leverage[93] to reap potentially great rewards. The leverage imbalance can be the greatest with the needy and unfortunate. In order to bring about more other-regarding behavior in setting those fees, the ABA and others have considered imposing upper limits on the percentage that a lawyer can take. The concern is not a new one; indeed, it is extant in legal ethics codes since at least the 1887 *Code of Ethics of the Alabama State Bar Association*, which took something of an aspirational/moral approach to the issue. The Alabama code pithily stated, "[c]ontingent fees may be contracted for; but they lead to many abuses, and certain compensation is to be preferred."[94] Likewise, the 1908 *Canons* adopted an aspirational/moral approach.[95] Significantly, nineteen states have already set bright-line numerical limits, either flat dollar amounts or percentages, on contingency fees in medical malpractice cases.[96] In an

---

93. There are concerns that the market has failed to drive contingency fees downward because of widespread collusion among plaintiffs' attorneys. *See* Adam Liptak, *In 13 States, a United Push to Limit Fees of Lawyers*, N.Y. TIMES, May 26, 2003, at A10 (discussing criticism that the market for contingency fees is not competitive and asserting that there is a uniform contingency fee rate of 33 percent or 40 depending on the area).

94. CODE OF ETHICS OF THE ALA. STATE BAR ASS'N No. 51 (1887).

95. CANONS OF PROF'L ETHICS, Canon 13 (1908) ("Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.").

96. California (CAL. BUS. & PROF. CODE § 6146 (West 2003)), Connecticut (CONN. GEN. STAT. ANN. §52-251(c) (West 2005)), Delaware (18 DEL. CODE ANN. tit. 18, § 6865 (1999)), Florida (FLA. CONST., art. I, § 26), Illinois (735 ILL. COMP. STAT. ANN. 5/2-1114 (West 2003)), Indiana (IND. CODE ANN. § 34-18-18-1 (LexisNexis 2008)), Maine (ME. REV. STAT. ANN. tit. 24, § 2961 (2000)), Massachusetts (MASS. GEN. LAWS ANN. ch. 231, § 60(I) (West 2000)), Michigan (MICH. CT. R. 8.121(b)), Nevada (NEV. REV. STAT. ANN. § 7.095 (LexisNexis 2008)), New Hampshire (N.H. REV. STAT. ANN. § 507-C:8 (LexisNexis 2009)), New Jersey (N.J. CT. R.1:21-7), New York (N.Y. JUD. LAW § 474-A (McKinney 2005)), Oklahoma (OKLA. STAT. ANN. tit. 5, § 7 (2001), applying even outside of medical malpractice domain), Oregon (OR. REV. STAT. § 31.735 (2007), punitive damages applying even outside of medical malpractice domain), Tennessee (TENN. CODE ANN. § 29-26-120 (2000)), Utah (UTAH CODE ANN. § 78(B)-3-411 (2008)), Wisconsin (WIS. SUP. CT. R. 20:1.5), and Wyoming (WYO. CONTINGENT FEES R. 5). In addition, federal law sets such limits on contingency fees for several types of actions. *See, e.g.*, Federal Tort Claims Act, 28 U.S.C. § 2678 (2006) (20 percent of settlements, 25 percent of judgments); False Claims Act, 31 U.S.C. § 3730(d)(1) (2006) (between 15 percent and 25 percent); 38 U.S.C. 5904(d)(1) (2006) (veterans' benefits, 20%); 42 U.S.C. § 406 (a)(2)(A)(ii) (2006) (Social Security benefits, the lesser of 25 percent or $ 4,000); 20 C.F.R. § 404.1730 (2009) (Social Security disability, 25 percent cap); *cf.* 11 U.S.C. § 326 (2006) (setting maximum fee percentage for bankruptcy trustees based on amounts turned over).

even more progressive act, a handful of states have set numerical limits on contingency fees generally.[97]

The ABA employs a mandatory/moral norm in its regulation of all legal fees, however, including contingency fees. Specifically, it forbids lawyers from "mak[ing] an agreement for, charg[ing], or collect[ing] an unreasonable fee or an unreasonable amount for expenses."[98] It has come under fire for this approach, but on different

---

97. N.J. CT. R. 1:21-7 (setting maximum sliding scale for tort cases only); OKLA. STAT. ANN. tit. 5, § 7 (2001) (capping contingency fees at 50 percent); R. REGULATING FLA. BAR 4-1.5(f)(4)(B)(i) (1993) (stating that charging more than sliding scale is presumptively excessive), *amended by* Amendments to Rules Regulating the Fla. Bar, 644 So. 2d 282, 305 (Fla. 1994), *and* Amendments to Rules Regulating the Fla. Bar, 658 So. 2d 930, 936 (Fla. 1995); 7 N.Y. JUR. 2d *Attorneys at Law* 213 n.21 (1997) (noting that three of the four departments of the New York Appellate Division have established rules setting scales for personal injury and wrongful death cases). While the ABA currently does not set numerical limits on contingency fees, it acknowledges the practice without criticism, stating in the Comment to ABA Rule 1.5 that "applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable . . . ." MODEL RULES OF PROF'L CONDUCT R. 1.5 cmt. (2007).

98. Rule1.5 states, in part:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent . . . .
>
> (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
>
> (d) A lawyer shall not enter into an arrangement for, charge, or collect:
>
> (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
>
> (2) a contingent fee for representing a defendant in a criminal case.

grounds than we assert.[99] The poor performance of mandatory/moral norms in our test gives reason to doubt that the ABA's current position is the most effective. Just as our study helps illuminate the most effective pro bono regulation, further empirical data could aid the ABA in choosing the optimal norm combination for regulating contingency fees.

Our results hopefully can inform other regulating bodies as well. One clue that a regulated domain is analogous to that in our study is the degree to which norm combinations other than mandatory/bright-line norms historically have been employed. Using this as our measuring stick, international law emerges as a candidate. There, "soft law" norms using aspirational operators or moral norm-content are used in greater proportion than in other domains, including most domestic legal systems.[100] International legislators are even willing to consider various norm combinations under circumstances in which the stakes are very high, such as arms control.[101] Because of this willingness to consider different normative approaches, norm choice is a hot topic of discussion in that domain.[102]

---

99. *See, e.g.*, Lester Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees,* 81 WASH. U. L.Q. 653, 653–58 (2003) ("In theory, these yields implicate ethical rules purporting to limit fees to 'reasonable' amounts. In fact, 'reasonable fee' rules are largely a shibboleth. The real role of ethical rules is to inhibit price competition so that tort lawyers can continue to extract substantial rents.").

100. *See, e.g.*, Jacob E. Gersen & Eric A. Posner, *Soft Law: Lessons from Congressional Practice*, 61 STAN. L. REV. 573, 624–25 (2008) (discussing prevalence of soft law in international law).

101. Jack M. Beard, *The Shortcomings of Indeterminacy in Arms Control Regimes: The Case of the Biological Weapons Convention*, 101 AM. J. INT'L L. 271, 274–75 (2007) (citing Richard L. Williamson Jr., *Is International Law Relevant to Arms Control? Hard Law, Soft Law, and Non-law in Multilateral Arms Control: Some Compliance Hypotheses*, 4 CHI. J. INT'L L. 59, 63 n.14 (2003) (further arguing that "[l]ittle in arms control seems to depend on whether one thinks of this category as a subset of soft law or just very mushy hard law"); Abram Chayes & Dinah Shelton, *Multilateral Arms Control: Commentary*, *in* COMMITMENT AND COMPLIANCE, *supra* note 49, at 521, 526 ("Soft law can make an important contribution because it can more quickly respond to changing weapons technologies that create uncertainty about the risks of the future strategic situation and the mechanisms to minimize them."); Barry Kellman, *Protection of Nuclear Materials, in* COMMITMENT AND COMPLIANCE, *supra* note 49, at 486, 494–96 (arguing that soft law makes a better framework than hard law for the regulation of nuclear materials protection).

102. *See, e.g.*, Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 423 (2000) (arguing that soft law can be effective); Pieter van Dijk, *Normative Force and Effectiveness of International Norms*, 30 F.R.G. Y.B. INT'L L. 9, 20 (1987) (examining the relationship between norms and behavior, and considering normative force and effectiveness in an international context); Pierre-Marie Dupuy, *Soft Law and the International Law of the Environment*, 12 MICH. J. INT'L L. 420, 422 (1991) (finding "the general sociological and juridical phenomenon termed 'soft' law" in the field of international environmental law); Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based*

Understanding the psychology of norms can also be valuable to private civic organizations. Civic organizations may likely draw individuals with exceptionally high intrinsic charitable motives, making mandatory norms particularly self-defeating. Moreover, such groups tend to be small and aware of their norms, like the group in our experiment.

Even in normative systems quite unlike the one employed in our experiment, our results and similar behavioral research may provide insight into the optimal regulation of charitable behavior. The Dictator Game captures core features of numerous real-world situations. As in that game, we can almost always give something of value to another party that, no matter how deserving, lacks the power to take the valuable item from our possession.[103] And in many contexts, there are people with much more than they need and others with much less. Legislators who recognize this inequality will often seek to use their power to increase the giving of their subjects. Our hope is that this research will enable them to do so in a more effective manner.

Bargaining in the GATT/WTO, 56 INT'L ORG. 339, 340 (2002) (analyzing the degree and manner of influence decision-making rules have in international organizations).

103. William Robert Nelson, Jr., *Incorporating Fairness into Game Theory and Economics: Comment*, 91 AM. ECON. REV. 1180, 1181–82 (2001) ("The dictator game has only been played with small stakes in experimental settings, but it is constantly played with *very high* and *very very high* stakes outside of the laboratory. Essentially, anyone with any wealth is playing the dictatorship game at all times. There is always a person or cause willing to accept gifts. The income range across the United States provides a range of natural dictator games varying from very high to very very high stakes. The percentage of income given to charity is interpreted similarly to the percentage offered in laboratory dictator games. High percentages given to charity are interpreted as indicating that fairness has a large impact on behavior.").

APPENDIX I: FIGURES

FIGURE 1—MEAN LEVELS OF GIVING:

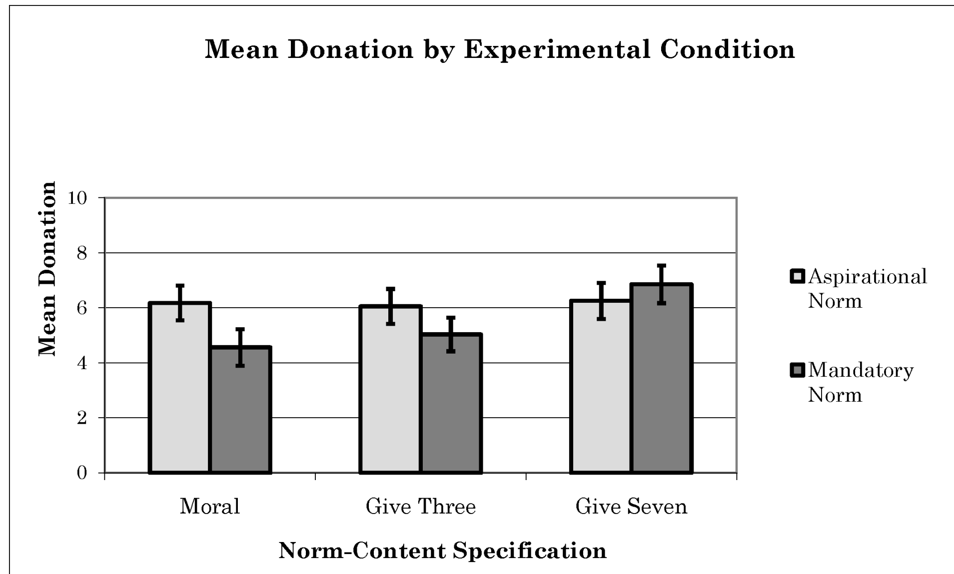
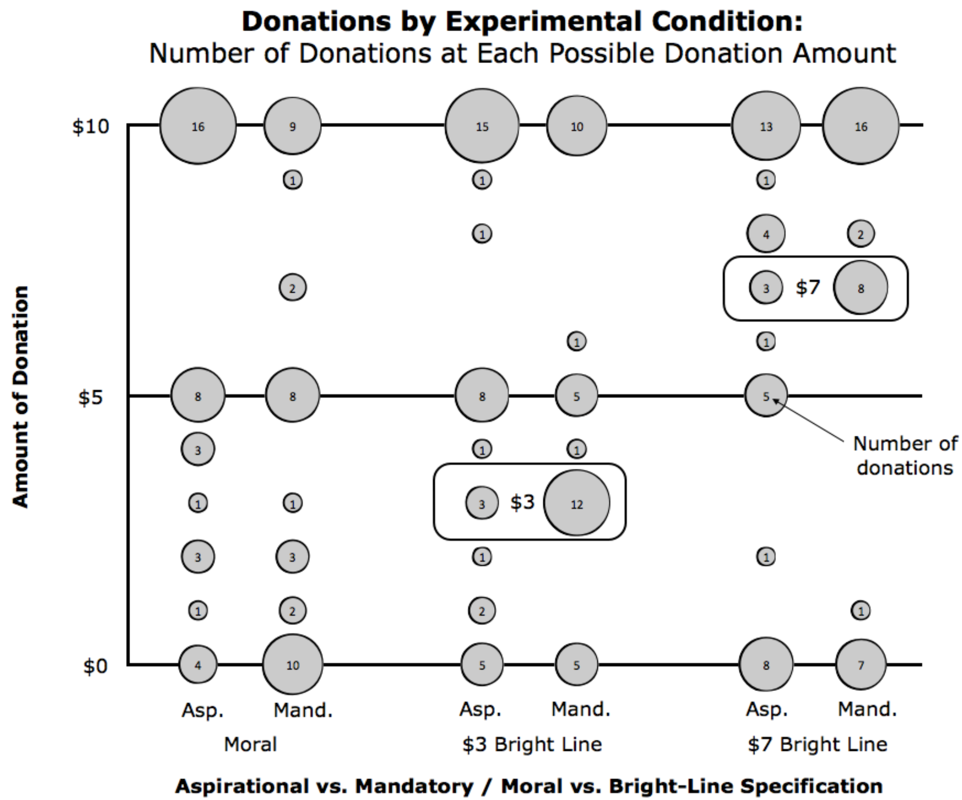


FIGURE 2: HISTOGRAMS



*Note: The bright line variable by which graphs are titled is coded according to the amount to **give**, while the X axis is coded according to the amount **kept**. Also, the two charts on the bottom are for the norm combinations utilizing moral norm-content.*

APPENDIX II: Game Instructions

Please consider this information carefully before deciding whether to participate in this research.

Purpose of the research:

To examine decision making in economic contexts.

What you will do in this research:

In this study, you will be offered the opportunity to allocate several dollars between yourself and a charitable organization.

Time required:

Participation will take approximately 15 minutes.

Risks:

The risks that this experiment entails are anticipated to be minimal.

Benefits:

At the end of the study, we will provide a thorough explanation of the study and of our hypotheses. We will describe the potential implications of the results of the study both if our hypotheses are supported and if they are disconfirmed. If you wish we will send you a copy of any manuscripts based on the research and a summary of our results.

Compensation:

You will receive up to $10 in this study, depending on your choice of allocation.

Confidentiality:

Your participation in this study will remain confidential, and your identity will not be stored with your data. Your responses will be assigned a code number, and will never be associated with any personal identifying information.

Participation and withdrawal:

Your participation in this study is completely voluntary. Participation in this study will not affect your performance in this class or your relationship with the instructor. You may withdraw at any time without penalty.

Contact:

If you have questions about this study, please contact:

Researcher:
Brian Sheppard
10 Charles River Terrace
Newton, MA 02461
bsheppard@law.harvard.edu
(617) 558-9743

Sponsoring Faculty:
Daniel Coquillette
Harvard Law School—Areeda 130
1563 Massachusetts Avenue
Cambridge, MA 02138
coquille@law.harvard.edu
(617) 496-3642

Whom to contact about your rights in this experiment: Jane Calhoun, Harvard Committee on the Use of Human Subjects in Research, Science Center 123, Cambridge, MA 02138. Phone: 617-495-5459. Email: jcalhoun@fas.harvard.edu

***

Group A:

You have volunteered to take part in a simple experiment. Please read the instructions carefully. If you have any questions, please quietly raise your hand and you will be approached and assisted by a monitor. If at any time you decide that you would not like to take part or if you have already taken part in this particular experiment, please leave your seat and approach a monitor.

During the session, you will participate in a game that gives you the opportunity to earn money. Immediately upon completion of the session, a monitor in another room will pay you your total game earnings, in cash. Earnings are confidential: only you and the monitor will know the amount of money that you make. The monitor will not know your name, and your dealings with him or her will be on a one-on-one basis. Since your decision is private, we ask that you not tell anyone your decision either during or after the experiment.

This experiment is being administered to current law students. If you are not a current law student, please do not take part.

Are you a law student? Yes____No ____

While you may take part if you have merely heard about this experiment from classmates, you are not allowed to participate if you have discussed strategy or students' choices in the experiment.

Have you learned of this particular experiment from a classmate? Yes____ No ____

If so, did you discuss strategy or choice? Yes____ No ____

You have been allotted $10. You are asked to designate below the number of whole dollars that you would like to keep. The remainder will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent.

When you were granted admission to this law school, you were given the privilege of receiving a superlative legal education and the opportunity to become a public leader. These benefits, however, come with the expectation that you will conduct yourself professionally in a way that reflects a respect for justice, honesty, and fairness.

Accordingly, when you apportion this money between yourself and the charitable organization, you ought to do so in compliance with the strictest moral principles.

You will be paid in private the full amount that you decide to keep immediately at the end of the experiment.

Please indicate the portion of the $10 that you apportion to yourself (in whole dollars):

$ ____________

When you have finished, please fold this paper so that the text on this page is not visible. Quietly approach the monitor at the front of the class, who will direct you to the monitor in charge of providing payment. In the event that there is a large group of students taking part, further instructions concerning the payment location will be written on the blackboard. Those instructions will correspond with the letter below.

***

Group B:

You have volunteered to take part in a simple experiment. Please read the instructions carefully. If you have any questions, please quietly raise your hand and you will be approached and assisted by a monitor. If at any time you decide that you would not like to take part or if you have already taken part in this particular experiment, please leave your seat and approach a monitor.

During the session, you will participate in a game that gives you the opportunity to earn money. Immediately upon completion of the session, a monitor in another room will pay you your total game earnings, in cash. Earnings are confidential: only you and the monitor will know the amount of money that you make. The monitor will not know your name, and your dealings with him or her will be on a one-on-one basis. Since your decision is private, we ask that you not tell anyone your decision either during or after the experiment.

This experiment is being administered to current law students. If you are not a current law student, please do not take part.

Are you a law student? Yes___No ____

While you may take part if you have merely heard about this experiment from classmates, you are not allowed to participate if you have discussed strategy or students' choices in the experiment.

Have you learned of this particular experiment from a classmate? Yes_____ No ______

If so, did you discuss strategy or choice? Yes ____ No ____

You have been allotted $10. You are asked to designate below the number of whole dollars that you would like to keep. The remainder will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent.

When you apportion this money between yourself and the charitable organization, you ought to give a minimum of $3 to the charitable organization.

You will be paid in private the full amount that you decide to keep immediately at the end of the experiment.

Please indicate the portion of the $10 that you apportion to yourself (in whole dollars):

$ ____________

When you have finished, please fold this paper so that the text on this page is not visible. Quietly approach the monitor at the front of the class, who will direct you to the monitor in charge of providing payment. In the event that there is a large group of students taking part, further instructions concerning the payment location will be written on the blackboard. Those instructions will correspond with the letter below.

***

Group C:

You have volunteered to take part in a simple experiment. Please read the instructions carefully. If you have any questions, please quietly raise your hand and you will be approached and assisted by a monitor. If at any time you decide that you would not like to take part or if you have already taken part in this particular experiment, please leave your seat and approach a monitor.

During the session, you will participate in a game that gives you the opportunity to earn money. Immediately upon completion of the session, a monitor in another room will pay you your total game earnings, in cash. Earnings are confidential: only you and the monitor will know the amount of money that you make. The monitor will not know your name, and your dealings with him or her will be on a one-on-one basis. Since your decision is private, we ask that you not tell anyone your decision either during or after the experiment.

This experiment is being administered to current law students. If you are not a current law student, please do not take part.

Are you a law student? Yes___No ____

While you may take part if you have merely heard about this experiment from classmates, you are not allowed to participate if you have discussed strategy or students' choices in the experiment.

Have you learned of this particular experiment from a classmate? Yes_____ No ______

If so, did you discuss strategy or choice? Yes ____ No ____

You have been allotted $10. You are asked to designate below the number of whole dollars that you would like to keep. The remainder will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent.

When you apportion this money between yourself and the charitable organization, you ought to give a minimum of $7 to the charitable organization.

You will be paid in private the full amount that you decide to keep immediately at the end of the experiment.

Please indicate the portion of the $10 that you apportion to <u>yourself</u> (in whole dollars):

$ ____________

When you have finished, please fold this paper so that the text on this page is not visible. Quietly approach the monitor at the front of the class, who will direct you to the monitor in charge of providing payment. In the event that there is a large group of students taking part, further instructions concerning the payment location will be written on the blackboard. Those instructions will correspond with the letter below.

***

<u>Group D</u>:

You have volunteered to take part in a simple experiment. Please read the instructions carefully. If you have any questions, please quietly raise your hand and you will be approached and assisted by a monitor. If at any time you decide that you would not like to take part or if you have already taken part in this particular experiment, please leave your seat and approach a monitor.

During the session, you will participate in a game that gives you the opportunity to earn money. Immediately upon completion of the session, a monitor in another room will pay you your total game earnings, in cash. Earnings are confidential: only you and the monitor will know the amount of money that you make. The monitor will not

know your name, and your dealings with him or her will be on a one-on-one basis. Since your decision is private, we ask that you not tell anyone your decision either during or after the experiment.

This experiment is being administered to current law students. If you are not a current law student, please do not take part.

Are you a law student? Yes____No ____

While you may take part if you have merely heard about this experiment from classmates, you are not allowed to participate if you have discussed strategy or students' choices in the experiment.

Have you learned of this particular experiment from a classmate? Yes_____ No ______

If so, did you discuss strategy or choice? Yes ____ No ____

You have been allotted $10. You are asked to designate below the number of whole dollars that you would like to keep. The remainder will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent.

When you were granted admission to this law school, you were given the privilege of receiving a superlative legal education and the opportunity to become a public leader. These benefits, however, come with the expectation that you will conduct yourself professionally in a way that reflects a respect for justice, honesty, and fairness.

Accordingly, when you apportion this money between yourself and the charitable organization, you are required to do so in compliance with the strictest moral principles.

A monitor in charge of providing payment will audit 1/10 of the submissions to determine whether they comply with this condition. If the audit results in a finding that a division does not comply, the student that submitted the division will be told immediately in private and will not be given any money. Otherwise, students will be paid the full amount that they decide to keep immediately at the end of the experiment.

Please indicate the portion of the $10 that you apportion to <u>yourself</u> (in whole dollars):

$ ____________

When you have finished, please fold this paper so that the text on this page is not visible. Quietly approach the monitor at the front of the class, who will direct you to the monitor in charge of providing payment. In the event that there is a large group of students taking part, further instructions concerning the payment location will be written on the blackboard. Those instructions will correspond with the letter below.

***

<u>Group E</u>:

You have volunteered to take part in a simple experiment. Please read the instructions carefully. If you have any questions, please quietly raise your hand and you will be approached and assisted by a monitor. If at any time you decide that you would not like to take part or if you have already taken part in this particular experiment, please leave your seat and approach a monitor.

During the session, you will participate in a game that gives you the opportunity to earn money. Immediately upon completion of the session, a monitor in another room will pay you your total game earnings, in cash. Earnings are confidential: only you and the monitor will know the amount of money that you make. The monitor will not know your name, and your dealings with him or her will be on a one-on-one basis. Since your decision is private, we ask that you not tell anyone your decision either during or after the experiment.

This experiment is being administered to current law students. If you are not a current law student, please do not take part.

Are you a law student? Yes___No ____

While you may take part if you have merely heard about this experiment from classmates, you are not allowed to participate if you have discussed strategy or students' choices in the experiment.

Have you learned of this particular experiment from a classmate? Yes_____ No ______

If so, did you discuss strategy or choice? Yes ____ No _____

You have been allotted $10. You are asked to designate below the number of whole dollars that you would like to keep. The remainder will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent.

When you apportion this money between yourself and the charitable organization, you are required to give a minimum of $3 to the charitable organization.

A monitor in charge of providing payment will audit 1/10 of the submissions to determine whether they comply with this condition. If the audit results in a finding that a division does not comply, the student that submitted the division will be told immediately in private and will not be given any money. Otherwise, students will be paid the full amount that they decide to keep immediately at the end of the experiment.

Please indicate the portion of the $10 that you apportion to <u>yourself</u> (in whole dollars):

$ ____________

When you have finished, please fold this paper so that the text on this page is not visible. Quietly approach the monitor at the front of the class, who will direct you to the monitor in charge of providing payment. In the event that there is a large group of students taking part, further instructions concerning the payment location will be written on the blackboard. Those instructions will correspond with the letter below.

***

Group F:

You have volunteered to take part in a simple experiment. Please read the instructions carefully. If you have any questions, please quietly raise your hand and you will be approached and assisted by a monitor. If at any time you decide that you would not like to take part or if you have already taken part in this particular experiment, please leave your seat and approach a monitor.

During the session, you will participate in a game that gives you the opportunity to earn money. Immediately upon completion of the session, a monitor in another room will pay you your total game earnings, in cash. Earnings are confidential: only you and the monitor will know the amount of money that you make. The monitor will not know your name, and your dealings with him or her will be on a one-on-one basis. Since your decision is private, we ask that you not tell anyone your decision either during or after the experiment.

This experiment is being administered to current law students. If you are not a current law student, please do not take part.

Are you a law student? Yes___No ____

While you may take part if you have merely heard about this experiment from classmates, you are not allowed to participate if you have discussed strategy or students' choices in the experiment.

Have you learned of this particular experiment from a classmate? Yes_____ No ______

If so, did you discuss strategy or choice? Yes ____ No ____

You have been allotted $10. You are asked to designate below the number of whole dollars that you would like to keep. The remainder will be given to an out-of-state charitable organization that provides free or reduced fee legal services to the indigent.

When you apportion this money between yourself and the charitable organization, you are required to give a minimum of $7 to the charitable organization.

A monitor in charge of providing payment will audit 1/10 of the submissions to determine whether they comply with this condition. If

the audit results in a finding that a division does not comply, the student that submitted the division will be told immediately in private and will not be given any money. Otherwise, students will be paid the full amount that they decide to keep immediately at the end of the experiment.

Please indicate the portion of the $10 that you apportion to yourself (in whole dollars):

$ ____________

When you have finished, please fold this paper so that the text on this page is not visible. Quietly approach the monitor at the front of the class, who will direct you to the monitor in charge of providing payment. In the event that there is a large group of students taking part, further instructions concerning the payment location will be written on the blackboard. Those instructions will correspond with the letter below.