Addictive Law

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Law, broadly defined to include group-directed rulemaking and coercion, has plainly grown over time. There are many explanations for this growth, and the evolution from self-help to law. This Article develops the idea that an important contributor to the growth of law has been the fact that law begets law, and it seeks to combine this new explanation with both traditional and more intuitive explanations for law's expansion. That law brings on more law in an addictive way means that a society finds itself with laws, rather than personal interactions, in ways that it would have wished to avoid had it known earlier in time that law's spectacular growth was in the making. The growth of law is thus much more than a product of specialization or wealth effects. For a variety of reasons, people prefer to avoid personal confrontation and to outsource their means of social control. This Article suggests that much of this addictive growth is inefficient and otherwise undesirable. The addiction might be controlled by rewarding some kinds of personal involvement in order to overcome the inclination to outsource.

Introduction

This Article begins with the observation that the amount of law, as well as its reach, has increased over time. "Law" might refer to the number of cases or statutes, the number of lawyers, the time and effort spent abiding by legal rules, or the number of paid law-enforcement officials (though in per capita terms this has sometimes decreased, perhaps because of the availability of new

* I owe thanks to participants in the conference held at Berkeley, in honor of Bob Cooter, on the ability of law to change preferences. As is usually the case, I benefited greatly from the challenging reactions of my colleagues to a much earlier version of this Article at a faculty workshop at The University of Chicago Law School. Finally, Claire Horrell, Julian Gale, and Ariel Porat changed my thinking about many things in this Article. With respect to all these sources, it is easy to see that criticism is indeed a gift. More comments are welcome at slevmore@uchicago.edu.

labor-saving technologies). If one adds agencies to the picture, or focuses on state law as well as federal and local law, it is plain that law is everywhere and rarely in decline. But "law" is more than just legal rules and their enforcers. It is at least part of the bargains reached in its shadow; it is the steps taken because of its threats or moral influence; it is the resolution of disputes by appeals to third parties who have power that is supported by formal law. For the purpose of this Article, I hope readers will simply have observed, or will believe, that law is a growth industry, and an increasing feature of most societies.[1] If we define law broadly as group-directed rulemaking and enforcement, its quantifiable influence — even in such things as the number of law school rules and administrators, or the number of arguments or people that can get involved when an employee is fired or a developer tries to build — is clearly growing. On the other hand, if we expand its definition to include casting out from communities, public shaming, and conforming to religious rituals or affinity-group practices, it may still be true that there is more law, but the ratio of law to private solutions may not have increased in dramatic fashion. In fact, depending on its definition, law has grown in some areas and declined in others; the power to define is the power to make law look like something that is growing uncontrollably or an enterprise that is growth-neutral. Law is a characteristic of groups, and all groups are not the same. Some improve on past arrangements by adding details to them, while a very few find areas for contraction. Whether law begins with a rule, like "thou shall not kill," or a standard, such as "thou shall kill only when it is necessary," tweaking

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1 In the U.S., we might point to the continuing annual promulgation of (at a minimum) two thousand new federal regulations, the 500% increase in cases filed in the Supreme Court since 1950, or the nearly 6,000% increase in cases filed before the federal courts of appeals. *Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register (Updated September 3, 2019)*, Congressional Research Service: Informing Legislative Debate since 1914 (2019); *The Justices' Caseload*, Sup. Ct. U.S. (2019), https://mn.gov/law-library-stat/archive/urlarchive/a151712-1.pdf; *Caseloads: U.S. Courts of Appeals, 1892-2017*, FJC: Fed. Jud. Ctr. (last visited Nov. 17, 2019), https://www.fjc.gov/history/courts/caseloads-us-courts-appeals-1892-2017. Outside the United States, international law has grown "in significance and volume in recent decades," with the proliferation of investment treaties, rise of international regulation (both binding and nonbinding), and increasing compliance with international human rights law and norms. Shima Baradaran et al., *Does International Law Matter?*, 97 Minn. L. Rev. 743 (2013). This Article is written from an American perspective, but I am counting on most readers to agree rather quickly that law has also grown, or even become addictive, in the jurisdictions with which they are most familiar.

the law to account for exceptions and newly observed circumstances seems to characterize most modern legal systems, and especially democracies that respond to interest groups. The U.S. Internal Revenue Code is just one example of the move from brevity, or catchy phrases, to lengthy complexity. But the purpose of this Article is not to count the number of pages, successes, or failures of legal interventions and expected improvements, but rather to explore the modern inclination to outsource dispute resolution to formal legal systems or to tools that can be described as lawmaking, which is to say group-directed rulemaking and enforcement. Law grows as individuals outsource their dispute resolution to the state or to institutions backed by the state. There are many reasons for this outsourcing; it may be because individuals prefer to rely on the well-developed enforcement powers of the state, because they trust the wisdom of the crowd expressed through elected officials, or simply because outsourcing is a kind of consumption that becomes more affordable as wealth increases. One way or the other, this Article requires the reader to agree with the observation that law is a growth industry. Anyone in doubt can consult a non-lawyer citizen.

What else explains this growth of law? I begin with the familiar idea of law as a product of the evolution from small units to larger communities, and then this Article introduces a novel and supplementary theory, namely that we have become addicted to law. This addiction is observed in the outsourcing of conflict resolution to group decisionmakers, usually in the form of professional lawmakers and enforcers of law. The addiction comes with both costs and benefits. I suggest that it is likely that law has grown, and will continue to grow, too far, and in its last Part, this Article discusses means of reducing our addiction. As the word "addiction" suggests, law's growth is probably not good news.

Economists might be attracted to the simplest of explanations. When the consumption of a good increases over time, the cost of its production has often decreased, demand for it has increased, or both. This is how we easily explain the remarkable and regular increase in something like the number of smartphones over recent years. But the cost of law seems to have increased rather than decreased. One can point to spending on the federal judiciary or, once we include group decision-making, spending on university administrators.[2] Public shaming may have modified individual and corporate behavior at

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2 Federal funding for the judiciary was $44 million in 1960 and $7.49 billion in 2019. This is almost a 19x increase in federal spending, after adjusting for inflation. *Funding/Budget – Annual Report 2019*, U.S. Cts., (2020), https://www.uscourts.gov/statistics-reports/fundingbudget-annual-report-2019; *The Budget of The United States Government For The Fiscal Year Ending June 30*

relatively low cost, but it does not appear to have decreased the amount or cost of more formal law. Law is a service-intensive good and not easily amenable to technological change, with the exception of monitoring by police and other law enforcement officials, whose work can be done by cameras and computers if allowed by courts and legislatures.[3] We need to understand why demand for law — including that involving judges, agencies, arbitrators, and formal committees to whom authority is assigned and recognized by courts and legislators — has regularly increased. In any event, good innovations usually reach some optimal size or number. Even the number of smartphones is leveling off, despite reduced cost. There is no shortage of examples of innovations that became wildly popular, but eventually matured into steady usage that might be optimal or limited for various reasons. Often, substitutes are developed and demand levels off or declines. For example, trains were a good invention, but their number, earnings, and employment figures have not continued to grow over time, as automobiles and airplanes gained market share. And if the appropriate comparison is to services rather than physical goods, formal education is an example of something we value but do not want to see maximized; one or two doctorates per person is probably enough. In contrast, there are things like medical care and food consumption that have not yet declined. Much as we might have too many visits to doctors and too many pieces of chocolate, we might have a regrettable amount of law.

I. Law's Origin and Growth

A superior and familiar explanation for the growth of law takes us back to its origins. The conventional story is that hunter-gatherers started developing agriculture, and this allowed denser populations.[4] Once people were able to live together in optimal units, for learning and innovation as well as self-defense, they had time beyond what they needed for survival activities. They developed art and other means of expressing themselves and connecting to one another, though interactions probably also enhanced their chances of

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1960, U.S. Gov't Printing Off. (1959), https://fraser.stlouisfed.org/title/budget-united-states-government-54/fiscal-year-ending-june-30-1960-19013.

3 This is not the place to claim that the cost of law has risen so much because interest groups have used artificial intelligence and other advances less than they might have. *See, e.g.*, Frank Fagan & Saul Levmore, *The Impact of Artificial Intelligence on Rules, Standards, and Judicial Discretion*, 93 S. Cal. L. Rev. 1 (2019).

4 *See, e.g.*, Jean-Pierre Bocquet-Appel, *When the World's Population Took Off: The Springboard of the Neolithic Demographic Transition*, 333 Sci. 560 (2011).

survival and procreation. Over time, they developed superior methods of fishing, hunting, and building, and they also expanded languages and other means of passing on their innovations and cooperative activities. While other animals communicate and learn as well, humans, with their large brains and other attributes, probably developed genetic material that favored progress through observation and communication.[5] In time, standards of living rose and humans thrived in various climates, occasionally crossing boundaries and picking up new skills and methods, experiencing just occasional setbacks. Humans formed cities and, in groups, they learned and advanced even more.

As these groups lived together, they competed with each other but also thrived by developing mechanisms that reduced violence and enabled coordination. Among other things, they created property rights, rules prohibiting theft and murder, and so forth.[6] These rules were often enforced by third parties, such as tribal elders or spiritual leaders, whose authority eventually took the form of courts and formal law-enforcement officials. The rules reduced the resources spent on defense, and both individuals and communities were able to count on enjoying the fruits of their labor. There are twists to this story and other theories about the development of property rights, the emergence of art and other forms of expression, but this is not an article about physical and cultural evolution. The point is that law may grow because we increasingly live together in order to gain communication and intergenerational advantages. Both farming and crowded enclaves increased the need for property rights, common defense (public goods), schools (economies of scale) and more. Meanwhile, over-grazing, pollution, and other negative and positive externalities further contributed to the generation of a greater reliance on law. From this perspective, law is a corollary of crowding and development, and there is no reason to expect it to level off, any more than there is reason to expect cities to stop multiplying and growing.[7]

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5 Michael Muthukrishna et al., *The Cultural Brain Hypothesis: How Culture Drives Brain Expansion, Sociality, and Life History*, 14 PLOS Computational Biology 1 (2018); Nicholas A. Christakis & James H. Fowler, Connected: The Surprising Power of Social Networks and How they Shape Our Lives (2009).

6 The development of rules against violence is addressed in Richard Wrangham, The Goodness Paradox: The Strange Relationship Between Virtue and Violence in Human Evolution (2019). *See also* Carol M. Rose, *Possession as the Origin of Property*, 52 U. Chi. L. Rev. 73 (1985).

7 On city growth, the UN World Urbanization Prospects Report predicts an increase of 2.5 billion in the world's urban population by 2050, along with a 30% increase in the number of megacities home to 10 million or more individuals. *World Urbanization Prospects: The 2018 Revision*, United Nations: Dep't Econ. & Soc. Aff. (2018).

II. Outsourcing to Institutions

I wish to offer another, perhaps parallel, explanation for the emergence and growth of law. Along the way, it will become apparent that law changes preferences about law itself. The argument here is that people come to rely on law, broadly (and at times conveniently) but intuitively defined, believing that it will solve most problems. Law grows because people become addicted to it, and law itself alters their preferences in ways that are as likely to be inefficient as they are to be efficient and in sync with a society's wishes. To some degree, an increase in law is surely efficient, as when it reduces violence. But there can be too much law, just as there can be too much of many things we like in smaller amounts and then cannot resist overindulging.[8] Few people want to outsource everything to law and most of us recognize the attraction and efficiency of self-help. It is more efficient to put one's children to bed, rather than to have the government create a bureaucracy designed to come in and take over the task. Families do not outsource that activity, except on occasion to babysitters or neighbors, and governments step in only when a family is extremely dysfunctional. We do outsource education to governments or private entities, which may or may not be efficient, but the point is that every society has pockets in which there is too much law. Critically, once there is outsourcing or even overindulging, it is rare to return to an earlier level.[9] This pattern may be the product of specialization; once we engage in less childcare and less dispute resolution on our own, we may be efficiently inclined to do even less of these activities over time. Outsourcing without group coordination may be attractive as well; a family might outsource education, house maintenance, or even marital disputes to a third party, who is an expert or helps reduce interpersonal conflicts, but this is not an outsourcing to law, as defined here. A related alternative is that law, like education and home-maintenance, is a luxury good; people may find disputes unpleasant and outsource them as their wealth or risk-taking capacity permits.

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8 The idea that we might have too much law is hardly new. *See, e.g.*, Philip K. Howard, Life Without Lawyers: Liberating Americans From Too Much Law (2009); Douglas Husak, Overcriminalization: The Limits of the Criminal Law (2008). There is also disagreement, as in Mila Sohoni, *The Idea of "Too Much Law"*, 80 Fordham L. Rev. 1585 (2012) (arguing that claims of too much law suffer from methodological problems).

9 One could point to the relative infrequency of federal repeals. Jordan M. Ragusa & Nathaniel A. Birkhead, *Parties, Preferences, and Congressional Organization: Explaining Repeals in Congress from 1877 to 2012*, 68 Pol. Res. Q. 745 (2015). I hesitate to put much weight in this measure because a repeal often shifts us from one legal regime to another.

The specialization claim is set aside here because it seems more likely that a society, whether through markets or political forces, would settle at a desirable level of outsourcing rather than find itself spiraling towards a corner solution. And the idea that law is simply a luxury good can also be set aside, or regarded as of secondary importance. In contemporary thinking, wealth is seen as a way to gain power and legal advantages rather than as a path to more effective dispute resolution.

A. The Addiction Model

If you tell me at an early time period, T1, that I will prefer to be a vegetarian in T2, or that I will at that future time like spicier food more than I do now, in T1, I would not resist and say that I wish I could stop these transformations because I recognize that preferences can change and that variety can indeed be the spice of life. Experience may change or "improve" my tastes. I might also be convinced that I can alter my preferences again in T2, or resist the change from my T1 self. But if you tell me in T1 that I will likely gamble or take drugs for most of my waking hours in T2, and that statistics show that the ability to reverse this transformation in T2 and beyond is rare, then in T1 I will take steps to prevent the emergence of that future self. It seems that preference changes caused by law fall in the first category. For instance, law might impose taxes, tort liability, and worker protection laws that make me prefer a different kind of home, means of transportation, or type of business activity in T2 than I preferred in T1. Even if I am aware of these possibilities in T1, I am unlikely to take steps to prevent the change, for these are not addictions. I might wager against these changes, and knowledge of them might change my voting inclinations, but I would not often — even in the presence of loss aversion — want to deny my future T2-self the capacity to fulfill its altered preferences. To be sure, new laws found in T2 might create interest groups, like lawyers or unions, that will work hard to maintain gains that law has provided. The same groups might then succeed in expanding their gains over time. But inasmuch as this second step takes us beyond loss aversion, it is hard to see how the growth in law can be explained by interest groups alone, as groups will organize to prevent law's expansion even as others work to expand it.

One useful, though imperfect, definition of addiction is that it is something that an individual or society would work hard at T1 to avoid its emergence at T2. If we think of this work as a cost, then addiction can be thought of as an inefficiency to be avoided. It can be efficient to expend resources at T1 in order to avoid an activity, such as an increase in lawmaking, at T2. The definition is imperfect because, as is often the case, we have no foolproof way

of comparing the preferences or utility at T1 with those at T2. I might spend significant resources at T1 to avoid an addiction to drugs at T2, but I cannot really assess the utility I will get from drugs in T2. There is an unavoidable circularity in trying to push inefficiency and addiction along a single spectrum, but for present purposes I suspect that most readers will be comfortable with the idea that drugs and even cigarettes are things that would be rejected at T1 if the user were convinced of their hazards and of his inability to shake them off at T2. In contrast, the individual might be happy to do physical exercise or to listen to music at T1 with the knowledge that it will be impossible to shake off or even to decrease the consumption of these activities at T2. The claim here is that law, or at least a constant growth in the amount of outsourcing to law, is more like drugs than it is like music. It is in this imperfect sense that outsourcing to law can be regarded as inefficient.

The addiction idea can be illustrated with simple examples of interactions among neighbors, and the growth of tort law and then police enforcement. The argument is then easily applied to environmental and many other areas of law. In all these examples, neither interest-group politics nor the likelihood that consumption increases with income explains law's remarkable growth. Addiction is a better description.

B. Outsourcing in Practice

Imagine a case where several families are disturbed by a very loud neighbor. Two hundred years ago, gossip might have played a useful role in quieting down a noisemaker during the evening hours. Alternatively, one neighbor might have spoken to the head of the noisy, nearby household and suggested that the noise was disturbing children who were asleep. In a delicate case, a delegation of neighbors might have formed to increase the courage of the intervening parties. A few unskilled neighbors might have screamed or threatened to convey the same message, but such communications would have been known to increase the chance of retaliation or feuding. When this kind of group is successful, we can think of it as an interest group, but free-riding is an ever-present danger and the formation as well as the failure of interest groups is a familiar puzzle; some minority groups are well organized and politically successful, while others are not. Before insisting that this example is suitable to demonstrate the growth of law, it must be conceded that in some such examples, confrontation is now less expensive than it was in the past. It is now easy to engage in social media and we have seen the rise of movements, most notably MeToo, that take advantage of new technologies. Some of these innovations lead to confrontations with the violator, but even when they do not, they might serve to deter antisocial behavior. If these

innovations encourage legal authorities to take action, then they are part of the claim or observation about the growth of law. In any event, it seems unlikely that these forms of shaming, or self-help, reduce the use of law. In some cases, they might be substitutes, but in a mobile society it is unlikely that these substitutes are more powerful than self-help movements, like gossip, shunning, and excommunication, were in the past.

The cooperatively owned apartment building in which I live, constructed in 1917 in the Hyde Park section of Chicago, has always been home to twenty families, and no person or group has ever used violence to redirect offensive behavior or otherwise solve coordination problems. Nor is there an example of brilliant bargaining as anticipated by Coase; no neighbor has paid another to end a loud party.[10] It is likely that social conventions controlled noise; there were musical instruments and at times more parties than there are today, but few noisy electronic instruments or televisions. The walls are thick, but there might well have been a norm not to practice piano or to refrain from tuba playing late in the evening. By 1970, a collective-action problem developed, perhaps because parents became more permissive or inattentive. A few noisy and loud parties, with visible drugs and sexual activity, were hosted by teenagers. This brought about additions to the building cooperative's bylaws. Unsupervised parties in storage rooms were forbidden, for instance, and displeased residents began taking their complaints to the cooperative's elected governing board, which fortified the organization's rules. By the time my family moved in, in 2000, we could not purchase the shares associated with our unit without first agreeing to rules about noise, exclusion of pets from the backyard and from the front elevator, restrictions on children's parties, as well as grilling and large-scale activities in the yard. I will not claim that these numerous rules were inefficient, and indeed I have some confidence in the wisdom of the crowd — in this case a majority vote of elected directors. Instead, what I find remarkable is the growing inclination to avoid one-on-one discussions and requests, both to avoid conflict and to free-ride on the work of others. Over time, and to this day, the preferred means of dispute resolution has been to appeal to an elected board and to rely on unpaid board members. These board members, in turn, spend considerable time in meetings in order to address individual problems as they arise and to fashion solutions in ways that do not appear to gang up on a single person. Rules have been developed in ways that have appeared fair because they apply equally to all residents. These rules are legally binding in the sense that repeat offenders can be fined through a mechanism that in theory could eventually be enforced by law and may even result in the forfeiture of rights in the event of nonpayment. If the rules are

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10 R. H. Coase, *The Problem of Social Cost*, 3 J.L. & Econ. 1 (1960).

inefficient, it is because no one seems to consider the value of the time spent by the regulators or the difficulty of taking intense preferences into account while enacting rules that on the surface treat all residents equally.[11] Law, as defined here to include the building's lawmaking board, is preferred over individual confrontation as well as market solutions. There is no doubt that most of this was previously accomplished privately; if it was done publicly, it was not with rules (or private lawmaking), but simply through conversation or perhaps shaming and evolved social norms. Over time, new as well as old norms have been codified or outsourced to rulemaking by elected officials, who have some contractual power to impose (monetary) assessments on violators. Presumably, a neighbor could have gone to court and brought a tort law claim, but this would have been costly and perhaps embarrassing for the upscale building as a whole; it might even have reduced property values. It is interesting that the change might have come from both directions. One who is offended has reason to go to the elected authorities, but the one who offends might prefer to be regulated by an impersonal majority vote of a committee, rather than through a personal confrontation, which can make future relationships difficult.[12]

In the much more downscale middle-class neighborhood I lived in as a child in the borough of Queens in New York City, there was certainly no elected board and indeed no legal mechanism for a block or neighborhood to vote on behavioral norms or penalties for their violation. Self-help was common; people used stern words, and often crossed property lines to disable annoying lights, to leave a threatening note, or to cut disturbing tree branches. Face-to-face discussions were common. Adults felt free to reprimand neighbors' children, and I can recall just a single occasion on which a neighbor threatened to call the police, and that was when my brother was repeatedly riding his bicycle over me while I was secured, helplessly (but willingly), on the ground.

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11 The inefficiency suggested here is related to opportunity-cost thinking. Conflict resolution may be delegated in a way that is grudgingly accepted because it is preferable to outright and unresolved conflict, but it is inefficient in the sense that there are less costly alternatives (like private resolution).

12 These changes in preferences point to the difficulty in assessing the efficiency of change. If people value the ability to avoid confrontation, then these changes (in both directions) are likely efficient. It is simply more difficult to assess at T1 what is efficient because preferences will be different at T2. Nevertheless, the text proceeds with the idea that at T1 people might agree that they would much prefer fewer murders and a lower rate of feuding, but they would be unlikely to say that they would prefer more law and a decrease in the readiness of people to work out their differences without resort to law in T2. If so, the outsourcing of dispute resolution about things like noise and pollution is likely to be inefficient.

Just as the presence of my current building's board has encouraged residents to rely on it to solve their problems, rather than have personal discussions with perceived offenders, so too the presence of law has discouraged personal resolutions of conflicts in the larger society outside of a building or small community. I am told that my old neighborhood's residents now call the police, bring lawsuits, and appeal to an elected City Council member or the Borough President's office from time to time. These forms of dispute resolution (or escalation) were unknown fifty years ago. And even in my present building, residents might in the future resort to a higher, more formal sort of law and sue one another or the building's board of directors. Outside of an apartment building or small neighborhood, the move from private ordering to formal law is a more serious matter. Just as the presence of my building's board of directors has, perhaps unknowingly, encouraged residents to rely on it to solve their neighborly conflicts, so too the presence of law has discouraged personal involvement when witnessing polluting activity, shoplifting, violence, and other harmful behaviors.

C. Potential Explanations for Outsourcing

To be sure, one building and one childhood experience do not add up to solid empirical evidence of the sort that some readers have come to expect. And yet, the argument here does rely on personal observations, along with the logic of collective action and private calculations. The claim is not that all disputes were once solved interpersonally and that none is today. In my own building, there are contemporary examples of face-to-face discussions and requests. The observation is that there has been a dramatic change in the mix of self-help and law. I have asked many people questions about their personal experiences and most of what I have heard corresponds to the claim made here; intervention is unusual while resort to legal authorities, including agreed-upon third parties, is now common. Moreover, note the difficulty of more rigorously obtaining empirical evidence. Surveys come with problems, but they are certainly of no use in gathering evidence about behavior that took place fifty or one hundred years ago. It is relatively easy to gather evidence about the growth of law, but more difficult to measure the decline in what I have called self-help or personal confrontations or bargains. It is possible that people are simply more easily offended, so that personal confrontation and law have both grown over time — but that is not my impression, nor that of most people I have questioned, regardless of social class or neighborhood.

There are many reasons for this outsourcing to elected officials with direct or indirect legal power. Consider the simple situation where a nearby table in a restaurant is offensively loud, or a fellow passenger on a train begins

to smoke a cigarette. In the first case, very few people would ask the noisy group to be more considerate. Most would say nothing, and some would ask the server if it were possible to change tables or ask the group to quiet down. One reason is that the disturbed party fears an unpleasant confrontation or even some kind of retaliation. Still, the restaurant manager might want to hear about the objection, because the business could lose customers if the place is perceived as unruly. Note that people are much more likely to ask if a sound system could be turned down, for there is no fear of retaliation. In both cases, there is a collective-action problem of two kinds. A single patron might hope that someone else will complain, and thus avoid the effort or embarrassment of speaking out. In addition, he or she might not know how to assess the group's preferences, or even the relative value of noise to the noisemakers, as compared to his or her own taste for quiet conversation made impossible by the rowdy patrons at the nearby table.

D. The Costs and Benefits of Outsourcing

Common practices in restaurants should not be taken as evidence of inefficiency. A restaurant is unlikely to suffer from a lack of information about noise levels. Put differently, the restaurant's employees can assess the noise levels without any assistance from patrons, and they are at least as likely as any one patron to assess the sentiments of the many silent patrons. Some people like lively places. A restaurant manager might ask for information about food quality or service, but even here the manager can observe the preferences of many patrons better than can any single patron. When a patron is asked for feedback it may simply be to make the patron feel valued. The same is not true for noise in a building or in a neighborhood. There is no central authority or observer to decide when to intervene. Outsourcing brings on more rules and then, quite naturally, more rule-makers.

It goes without saying that, in many cases, law has developed to solve these problems. There are laws and very occasionally fines for failing to clean up after one's dog — though I have on occasion seen someone (usually another dog lover) ask an "owner" to clean up, much as a stranger might ask someone to adjust a mask, when masks are perceived as important for personal and communal health. Store owners say that it is extremely rare for one shopper to report another's shoplifting, while corporate loss-prevention mechanisms have become commonplace.[13] Closer to home, if I observe a couple yelling at

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13 One older study found that less than one third of shoppers who notice shoplifting report it to the store employees. Donald P. Hartman et al., *Rates of Bystander Observation and Reporting of Contrived Shoplifting Incidents*, 10 Criminology

one another in what appears to be a situation on the verge of physical violence, I can intervene by walking over and asking them: "Is there a problem?" or I might approach the conflict and say: "You might want to know that another observer has called the police." Nevertheless, most people hesitate to intervene, because they fear violence at their own expense. Intervention has a cost, and over time most societies have come to rely on police forces, even though these come with their own, much discussed, problems. Those who want fewer armed police do not usually ask for less law, but rather for more law in other forms. In any event, in the case of potential street violence, the favored interaction is to summon the police and hope that a cool-headed officer will arrive in time. Note, again, that even the offender might prefer a social worker or police officer — albeit an unarmed one — over a passerby's intervention. The official is impersonal and giving in to his or her instructions might save face as compared to backing off when a mere fellow citizen with no legal authority intervenes.

In the event that an assault is already in progress, more of us would intervene, especially if we were joined by a group of friends who could overwhelm the perceived wrongdoer. However, many people would be especially unlikely to risk intervention, and they would, at best, call the police. There is a well-known collective-action problem here because the greater the number of observers, the more likely each is to think that someone else has (in unobserved fashion) contacted law enforcement.[14] Law can encourage one form of intervention or another with "duty to rescue" laws, but the focus here is on outsourcing carrots and sticks, where there is a shortage of old-fashioned personal intervention. Another problem is of the chicken-and-egg variety. People may now be reluctant to intervene because they know that public enforcement can be requested — or perhaps more officers of the law are available precisely because citizens are less likely to intervene. In my childhood neighborhood, where personal involvement was common, the sight of a police officer was quite unusual; I cannot recall seeing police on my street or at my school. Even though the overall number of police is not highly correlated with the crime rate, police are now regularly seen on my street, in my workplace, in the coffee shop I frequent, and in the grocery stores nearby — even though

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247, 257 (1972). I think of this staged result as reflecting a high level of reporting, and perhaps one that reflects an era of involvement along with some outsourcing. In contrast, almost every law student I have asked has observed shoplifting, and not one has reported the shoplifter.

14 The so-called "bystander effect" has been widely accepted in social psychology. John M. Darley & Bibb Latané, *Bystander Intervention in Emergencies: Diffusion of Responsibility*, 8 J. Personality & Soc. Psych. 377 (1968).

crime, and especially murder, is now much less common than it was in my youth in New York. There are other explanations for this change, and for the disinclination to decrease the number of police, social workers, judges, and school guards (including armed and unarmed university guards), but it is plausible that part of the story is the decline in personal involvement.

The larger point is that problems that were once worked out at a personal level, whether interpersonally or with group dynamics, are now outsourced to formally empowered authorities that can be captured by the expression "law." In some settings, this occurs through institutions like companies, universities, or even cooperative associations, with their own delegation of authority that is very much like civil and common law. Indeed, formal law is often used to enforce these institutional practices, or law makes clear that it will defer to them. The good news may be that people have developed these institutions — and that it is efficient for them to be backed up by formal law. If so, this Article explains the addictive quality of law (including institutional rules), but does not quite make the case that it should be restrained. The optimistic argument is that even though people at T1 would say they did not want the law and institutions that would be found at T2, there is not a true and regrettable addiction because people do not know their future selves and, in fact, they will be happier with the future growth of law. In any event, the presence of conventional legal authorities causes people to rely on them and to increase their fear of personal risk. The availability of law causes us to prefer law and this is an important cause of a growing addiction to law. Even if causation runs in the other direction, eventually the presence of law surely causes more people to rely on it and to push for more law — in the form of statutes, safety officers, and courts — which in turn reduces the need for self-involvement.

I have discussed the perceived benefits of outsourcing law, including fewer awkward confrontations and altercations. We have outsourced conflict resolution just as we have outsourced other needs, like food preparation. People have come to prefer law or simply to disfavor personal involvement, just as many people have come to prefer prepared foods and even fast-food over homemade snacks. We have developed a preference for law, much as many people have developed a taste for celebrating events in restaurants rather than in homes. We also relax or study in coffee-shops rather than at home. The very presence of bars and coffee-shops encourages further reliance on these institutions, not just because people learn to prefer them in T1, and certainly not because they can afford more outsourcing (wealthier people could just as well enjoy preparing food in well-equipped kitchens at home), but also because bars and coffee-shops are good at advertising and altering preferences so that young people now meet each other at, or outsource to, Starbucks instead of taking walks. They might say they do this for safety reasons — just as people say

they call the police rather than break up fights themselves because of safety and privacy concerns — but there is more to it. Institutions have changed personal preferences. And people who form or work for legal institutions, much like the owners and workers at Starbucks, encourage their "customers" to become more attached and even addicted to their products.

E. Exceptions that Prove the Rule

There is room to push back on these observations about law and coffee-shops. People may now file more lawsuits against their neighbors, but they also settle many cases and we might reasonably think of settlements as self-help once removed. Settlements often reflect a preference for privacy or a means of lowering legal costs, but formal law is subsidized and easily seen as addictive. The availability of police forces causes people to prefer not to get involved when they observe a fight, and it certainly encourages people to call for help rather than solve things on their own when they are disturbed by noise or pollution. It also causes parents to teach their children to call for help, from a teacher or police officer, rather than to try to be "heroes." Various public-choice reasons make it difficult to reduce police forces and other legal institutions, so that there is no external pushback to self-help. Even where people avoid law, as when students observe cheating but are disinclined to report misbehavior, they rarely engage in private action. And when students do resort to private action, as they do when shaming colleagues who make offensive comments, they also resort to law, by appealing to the Dean of Students — a figure who was unknown one hundred years ago — and demanding more rules, more intervention, and more assistant deans.

These examples emphasize the fact that resorting to law rarely imposes a significant marginal cost on the one who avoids personal involvement. Still, the causal connection between costs and law's growth is unclear. Some kinds of wrongdoing have increased rather than decreased, but the data are at least consistent with the idea that society has outsourced social control from private to public interventions.

III. Law as an Addiction

My focus here is on law's addictive quality. The availability of law encourages a preference for legal assistance and expansion, and the disfavoring of private intervention and self-help. Law may also have brought about related changes, including a preference for greater privacy. Privacy was virtually unknown in small, tight communities, necessarily close because of the absence of

vehicles and other means of transportation. Gossip and even out-casting were the important forms of social control. In contrast, when we do not intervene in a brawl, because of fear or the availability of police, we also feed a taste for privacy; we do not want the storekeeper or teacher to tell the offender that we (broke the norm and) reported the shoplifting or cheating. In a larger system, law often requires the identification of accusers, because it is less confident that accusations are accurate. The teacher knows the student who reports a wrongdoing, and thus might assess its accuracy in several ways. A judge rarely has comparable information, and must choose whether to reward accusers or penalize false accusations. I doubt that most shoppers who observe shoplifting would provide much information when questioned by a store's guard or manager. In this case, the addiction, if it is that, is to noninvolvement, and the outsourcing is really to hired guards, and now to cameras, and then to law.

Returning to noisy neighbors, it is apparent that misbehavior that could often be handled by an individual is now delegated to a group, or to a set of agents. A society can instead develop stronger social norms. Every long-term visitor to Japan observes that neighbors and friends on a commuter train communicate in hushed voices, certainly as compared to their much louder counterparts in the United States. Theirs is a society that is more densely packed. On the other hand, my limited observation is that Japanese neighbors are even less likely to confront noisy neighbors directly than are neighbors in the U.S. I cannot imagine them (or perhaps older Japanese citizens) asking a restaurant employee to quiet down a loud group at another table. They are also less likely to rush to court with complaints about neighbors. In contrast, confrontation in Israel, even among neighbors, is relatively common; it is noteworthy that the growth of law, and even its addictive quality, has come alongside increased wealth. With all due respect to Coase, I suspect that in none of these societies is it common for one neighbor to pay another to reduce the noise level after nine o'clock in the evening. Thus, even wealthy people seem to prefer law to Coasean bargaining — a form of self-help which seems to avoid some of the awkwardness noted earlier. In my own building in Chicago, one person regularly threatened to sue others, but no one in my building offered to pay our difficult neighbors to move elsewhere or to exert more control over their teenagers' parties. The building committee regularly adjusted rules to turn mere displeasures into explicitly prohibited conduct found in the building's written rules. Some of these rules imposed economic costs on these disagreeable neighbors and, eventually, the family departed. I have already suggested that the family seemed to prefer to be disciplined by the board of directors than by face-to-face confrontations, which were quite unpleasant, much as a brawler might actually save face through police

intervention. This possibility is another means by which the presence of law can create a preference for more law.

Private action does present collective-action and moral-hazard problems. If I have a disruptive neighbor, it is costly for me to organize a group to confront or pay the neighbor. And if we pay people to tone it down or to control teenage children, others might make noise they do not really value, in order to be paid for its reduction. It would certainly be counterproductive to pay a brawler or aggressive person at a party to back off, and in some circles this might also amount to an obnoxious display of wealth. I prefer a public-choice explanation of why Coase does not seem to carry the day. Rather than pay our neighbor to be quiet, it is less costly to approach a building committee or to turn to more formal law and ask for a rule and then its enforcement. There remains a collective-action problem among the aggrieved neighbors, but it is likely to be less expensive to turn to the law, as defined here, than it is to pay for quietude. If so, this may be an example of a growing addiction to law that is not inefficient.

IV. Reducing Our Addiction

If the growing attraction, or addictive quality, of law is often inefficient, perhaps because police, courts, and unpaid building committees are costly, then we might find it worthwhile to pay people to engage in self-help of the sort their ancestors regularly engaged in. If it is less costly for an individual to intervene when he sees a brawl than it is to involve the police (assuming we can encourage calls to the police when danger is at hand), and it might be less costly for a store (and its customers) to act on private reports of shoplifting than to hire security guards, then it is puzzling that we do not find stores paying for information and governments paying for reports of impending violence. These payments could overcome the collective-action problem observed in the failure to report shoplifters. A conventional and perhaps sufficient answer is that, when a reward is offered, there is a greater fear of false reports, or even of collusion to gain rewards that can be shared. False reports may also increase racial profiling and other behaviors that a society, and even a single store, wishes to avoid. Parents usually discourage children from informing on one another, and they rarely reward "snitching" or "tattle-taling," perhaps because they fear false reports or they recognize the value of group solidarity as compared with perfect law enforcement.

Still, carefully drawn rewards can be useful. Such rewards can be understood as a form of restitution. If I benefit my neighbors by confronting one difficult neighbor and getting her to change her behavior, then perhaps I should be able

to collect a reward from those who benefited. If we insist on tying recovery to wrongfully acquired gains, we can say that one who does not help others through private action is wrongful. There are obvious measurement and collection problems to this approach, and perhaps it is not surprising that I have not heard of such rewards being offered, either ex ante or ex post, in any apartment building. Nor do I know of a university that pays students who report on other students' cheating behavior or sexual assaults. But it is plausible that the government should try rewarding those who help it reduce expenditures on law enforcement. This is not the place to show how such a system might be designed, with an eye on preventing false reports. Indeed, the more difficult it is to design the system, the more convincing is my claim that law is addictive and, like most addictions, difficult to relieve. To be sure, the proposal here is ironic, inasmuch as it suggests yet more law to solve the problem of too much law. But the optimistic claim is that rewards, while themselves costly to fund and to administer, might more than pay for themselves. A little additional law here might lead to much less law overall.

Outsourcing to police and legal institutions, but not to one's employee or student who could report wrongdoing by peers, suggests the more general question of when agents are used and when they are not. Police (or building committees) can be seen as agents who work for principals that in the past monitored, confronted, and disciplined in a more direct fashion. Law is easily understood as solving collective-action problems, but many of these problems could also be solved by rewarding private action. Much as lawyers are paid when they create a common fund, so too each of us could be rewarded for intervening in sensible fashion when neighbors are engaged in domestic abuse.[15] In previous work about sexual assault, I noted that rewards might make reports less credible, so that there might be a case for encouraging timely reports with penalties for non-reporting as a way of saving future victims from assaults by what are likely to be repeat offenders.[16] There is no need to rehash that questionable idea here, for my goal is to draw attention to the fact that we might have too much law because of its addictive quality. One way to fight this addiction is to reward those who could resort to law but are, instead, helpful on their own. Another is to emphasize that law may have grown because of this tendency to outsource, and that this development

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15 Under the common fund doctrine, a litigant (and his attorneys) may recover costs from a fund to which others have a claim if she "creates, discovers, increases or preserves" that fund. *Common Fund Doctrine*, Black's Law Dictionary (11th ed. 2019).

16 Saul Levmore & Martha C. Nussbaum, *Unreported Sexual Assault*, 97 Neb. L. Rev. 607 (2018).

may be inefficient, and something to criticize rather than to celebrate. Just as we fear that more wars occur because of the interest group of professional soldiers who seek promotions or expenditures in their self-interest, so too we should fear that police officers, lawyers, lawmakers, law students, and scholars who seek approval from law journals favor legal solutions rather than private engagement. These interest groups might even work to discourage soft forms of law, like my building's elected board or universities' committees that pass judgment on sexual assault claims — and often limit the ability of students to be represented by counsel. Lawyers have every reason to want more law, even when law's growth is inefficient. These interest groups may play a role in encouraging the addiction to law, rather than self-reliance or (uncompensated) activities that benefit a community. But in this Article I have avoided a public-choice explanation of this kind and have instead drawn attention to the likelihood that the presence of law has encouraged a preference for more law and for less personal involvement. Your preference for more law might benefit me when I truly need legal intervention, but it might instead disadvantage me when I am forced to pay for your preference, and when people develop a preference for professional agents rather than personal involvement in the face of social problems.

Conclusion

Without question, the development of legal systems has made us better off. Law has decreased murder and other horrors, while it has increased cooperative investment and encouraged the efficient use of assets and talents. But law has an addictive quality, as it alters preferences and makes personal involvement and teamwork less enticing. When a neighbor makes noise or pollutes, we begin to prefer fines, lawsuits, or other legal interventions rather than private discussion with the neighbor, and this is so especially when there is a collective-action problem associated with private confrontation. Several neighbors might be disturbed, but no one has sufficient incentive to do anything. Someone might turn to law because a phone call is cheap and self-gratifying, but legal intervention is often a relatively inefficient means of social control. The availability of legal intervention creates preferences that feed back to a support for more law, even when law is the inefficient alternative to other means of coping with negative externalities and other problems. Law creates a preference for more law, even when the expansion is something that rational citizens would have, earlier in time, wished they could avoid, and which they can almost never reverse in the later period when interest groups are ready to protect against losses.

Where money and constitutional wrongs are involved, law has developed a means of coordinating solutions through class actions, common-fund recoveries, and other means. These may facilitate the efficient expansion of law. But the private inclination to appeal to law is often unfortunate and this Article, aimed at developing the addiction idea, has also suggested that law might reverse its excessive influence on preferences for law itself, by allowing recoveries or offering rewards for private solutions to social problems that would otherwise encourage a growing addiction to law.