

Social Norms and Social Practices

Philosophy & Social Criticism | John Lawless | jclaw1@ilstu.edu

accepted manuscript; final paper available [here](#)

Philosophers and social scientists deploy the concept of *social norms* in order to acknowledge that individuals are embedded within complex relationships which inform and structure their choices and actions. However, prevailing theories of social norms frequently maintain individualist commitments at their foundations, defining social norms in terms of individuals' attitudes and preferences, and so (in effect) affording individuals' attitudes and preferences conceptual priority over social norms.¹ In this paper, I argue that this treatment of social norms is unsustainable. Taking Cristina Bicchieri's theory as an exemplar of the individualist approach, I argue, first, that this approach bears important structural similarities with the command theory of law (according to which we best understand law as the general commands that a sovereign addresses to their subjects); and second, that H.L.A. Hart's arguments against the command theory of law, suitably recast, reveal the problems with this approach to social norms. I then draw on the lessons of Hart's critique to develop and defend an alternative approach. In particular, I argue that we should conceive of social norms as the norms

¹ Philosophical accounts of social norms typically attempt to answer at least one of three questions: First, what *are* social norms? Second, how do social norms develop within a community? And third, how can we determine which social norms *specifically* operate within a particular context? As Cedric Paternotte and Jonathan Grose observe, the second question has enjoyed substantial attention in recent years, particularly from those interested in demonstrating or challenging the power of various game theoretic models to explain the development of social norms. Paternotte and Grose, "Social Norms and Game Theory: Harmony or Discord?," 552. Cristina Bicchieri devotes substantial attention to the third question. In this paper, however, I focus exclusively on the first, conceptual question.

internal to a “socially-sanctioned representational practice.” Roughly, a representational practice expresses a normative representation of the constituent elements of a social world (for example, of people, their relationships, and their actions). A representational practice is socially-sanctioned when (and to the extent that) people cooperate with the representations it expresses, and refuse to cooperate with competing representations. I call this *the representational theory of social norms*, and I argue that it constitutes a suitably non-individualist approach to social norms by locating individuals within already existing practices, which structure their social landscape even before they form their own beliefs and preferences.

The paper has six parts. In Section 1, I introduce the individualist approach to social norms (with a specific focus on Bicchieri’s articulation), and I identify the structural similarities between this approach and the command theory of law. In Sections 2 and 3, I introduce Hart’s two main arguments against the command theory of law, and recast them as arguments against Bicchieri’s theory of social norms. In Section 4, I advance the representational theory of social norms as a viable alternative. Finally, in Section 5 I highlight an important practical difference between Bicchieri’s theory of social norms and the representational theory, arguing that reliance on Bicchieri’s theory obscures the complex relationship between social norms and power. I conclude in Section 6.

1. The Individualist Approach to Social Norms

On one common approach to social norms, a social norm requiring conformity with some rule R exists within a society only if, within that society, people generally approve of conformity with R, and disapprove of deviance; and only if this pattern of approval and disapproval plays some role in explaining people’s interactions with one another.² Proponents of this approach typically allow that

² As Jon Elster puts the thought: “For norms to be *social*, they must be (a) shared by other people and (b) partly sustained by their approval and disapproval.” Elster, *The Cement of Society: A Study of Social Order*, 99. Prominent versions of this

people's subjective attitudes of approval and disapproval might play myriad explanatory roles. For example, people might express their disapproval of non-conformity to R through various sanctions, and this might induce general conformity to the norm. On the other hand, knowledge of other people's disapproval of deviance might induce "feelings of embarrassment, anxiety, guilt and shame"³ in those who violate R. Even in the absence of sanctions, these feelings might sustain general conformity to the rule.⁴ Either way, individual attitudes explain conformity to R.

Of course, this is a very broad approach, and particular theorists develop it in distinctive ways. Some approaches are "normatively reductive," in that they attempt to characterize approval of conformity to a rule in essentially non-normative terms (for example, as a desire that others conform, or as a disposition to sanction those who do not conform).⁵ Others deny that we can characterize social norms in non-normative terms.⁶ Moreover, there is disagreement about how, exactly, social norms must manifest in people's choices and relationships. On one typical approach, a social norm requiring conformity to a rule exists within a society only if its members generally conform to the rule in their actions.⁷ In contrast, Brennan, Eriksson, Goodin, and Southwood argue that conformity is not necessary; a social norm can exist within a society as long as its members generally approve of conformity (and disapprove of non-conformity), and generally know that others approve of

approach can be found in Pettit, "Virtus Normativa: Rational Choice Perspectives"; Elster, *The Cement of Society: A Study of Social Order*; Bicchieri, *Grammar*; Brennan et al., *Explaining Norms*; Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*.

³ Elster, *The Cement of Society: A Study of Social Order*, 99.

⁴ Compare Bicchieri, *Grammar*, 15.

⁵ Compare Pettit, "Virtus Normativa: Rational Choice Perspectives," 729.

⁶ On this distinction, see Brennan et al., *Explaining Norms*, 4.

⁷ See, for example, Pettit, "Virtus Normativa: Rational Choice Perspectives," 728–30.

conformity (and disapprove of non-conformity).⁸ But they point out that this does not preclude widespread, but secret, non-conformity with the norm's requirements.⁹ Even here, however, widespread disapproval of deviance will play an explanatory role: Specifically, it will explain people's efforts to hide violations of the norm from public view. For our purposes, we can set these variations aside. On all of these approaches, social norms are social facts that depend on individual attitudes of approval and disapproval. In this respect, this approach is methodologically individualist.¹⁰

Bicchieri offers a particularly sophisticated version of this individualist approach to social norms. In order to characterize Bicchieri's theory of social norms, we need access to four foundational concepts. First, *empirical expectations* are beliefs about what other people will do. For example, my belief that motorists will stop at red lights is an empirical expectation. Second, *normative expectations* are beliefs about other people's normative judgments.¹¹ My belief that other drivers think that it is wrong to drive

⁸ Brennan et al., *Explaining Norms*, 29, 36.

⁹ Brennan et al., 20, 31.

¹⁰ Brennan et al., 4.

¹¹ In her 2017 book *Norms in the Wild*, Bicchieri characterizes normative expectations in irreducibly normative terms: They are beliefs about other people's beliefs about what *ought* to be done. Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 13. In contrast, in her earlier book *The Grammar of Society* (2005), Bicchieri simply writes that normative expectations involve a belief about what others *expect* us to do. It is not clear whether this is a normatively reductive or non-reductive formulation, since expectations can be either non-normative – that is, predictions about what will happen – or normative – that is, assumptions about what ought to happen. However, Bicchieri adds that normative expectations might include beliefs about what others would prefer us to do, coupled with our own predictions that others might sanction our failure to do conform to their expectations and preferences. (Bicchieri, *Grammar*, 11.) This suggests that Bicchieri's earlier account of social norms is at least compatible with normative reduction. I take normatively reductive approaches to social norms to face significant problems; on this point, see Gilbert, "Social Rules: Some Problems for Hart's Account, and an Alternative Proposal," 153; Brennan et al., *Explaining Norms*. As a result, I

through red lights is a normative expectation. Third, people form *conditional preferences* on the basis of both empirical and normative expectations. These are preferences for specific options *conditional on* one's beliefs about other people's choices or other people's normative judgments. In the United States, I prefer to drive on the right-hand side of the road in part because I have an empirical expectation that other people will drive on the right, too; by conforming to others' practices, I keep myself safe. If people were suddenly to start driving on the left, I would follow suit. This preference is thus conditional on my empirical expectations. Say, though, that I found myself in a situation where I could run a red light safely (and without getting into trouble with the law). Still, I might prefer to wait for the light to turn green if I prefer to defer to other drivers' judgments that running red lights is wrong. Such a preference would be conditional on my normative expectations. Finally, a *reference network* is the set of people about whose choices and normative judgments I form the expectations that then feature in my own conditional preferences.¹² In the examples we have encountered so far, my reference network includes other drivers in my community, because my preferences are conditional on their choices and normative judgments.

regard Bicchieri's more recent formulation of her framework as an improvement over her earlier formulation. However, I do not explore these problems in the main text. My arguments against the individualist approach to social norms target reductive and non-reductive versions alike.

¹² It is worth noting that the concept of *the reference network* is a relatively recent addition to Bicchieri's theory of social norms, and plays no explicit role in her earlier account in *The Grammar of Society*. See Bicchieri, *Grammar*, 11. However, the addition does not significantly alter Bicchieri's account. The general insight animating Bicchieri's approach to social norms simply is that people care about other people's expectations, and so we sometimes are willing to defer to those expectations even when they conflict with our own normative judgments. In both *The Grammar of Society* and *Norms in the Wild*, a social norm N exists within a population P only if a sufficiently large subset of P prefers to defer to the normative beliefs of another (possibly overlapping) sufficiently large subset of P. In *Norms in the Wild*, the term "reference network" simply picks out this latter subset.

Deploying these concepts, Bicchieri defines social norms:

A social norm is a rule of behavior such that individuals prefer to conform to it on condition that they believe that (a) most people in their reference network conform to it (empirical expectation), and (b) that most people in their reference network believe they ought to conform to it (normative expectation).¹³

To see Bicchieri's conception of social norms in action, let's consider one of her examples.

A new mother in Sierra Leone may become convinced that feeding colostrum to the newborn is a healthy practice, that drinking water is dangerous because the local water is polluted, and that only some foods are best suited for babies. However, if her mother-in-law does not agree with these novelties, or if the elder women in the village who are the keepers of group traditions are not on board, the new mother will not be adequately motivated to change her behavior. What other women in her situation do and what her mother-in-law expects her to do matter to a new mother's choice, despite all of the new information she may have about nursing, food, and healthy choices.¹⁴

Here, mothers have empirical expectations (for example, about how mothers in the local community will care for their newborns and infants) and normative expectations (for example, about what their mothers-in-law or elder women believe are good maternal practices), and mothers' choices about how

¹³ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 35. On this definition, a social norm requiring conformity to some rule R can exist within a community even if people generally do *not*, in fact, approve of conformity to R and disapprove of deviance from R. All that is necessary is that people generally *expect* the members of the reference network to approve of conformity and to disapprove of non-conformity; and this is possible even if these expectations are unfounded. I see this as a strength of Bicchieri's account, but Brennan and co-authors argue that it is a weakness; see Brennan et al., *Explaining Norms*, 33–35. None of my arguments against the individualist approach to social norms depend on our approach to this issue, so I set it aside.

¹⁴ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 52–53. This example highlights another distinctive feature of Bicchieri's approach to social norms: The reference network need not be co-extensive with the entire society. In this example, it is the normative judgments of the mother-in-law and the elders that matter to the daughter-in-law's preferences. This is a strength of Bicchieri's approach relative to other versions of the individualist approach, as it reflects the fact that some people's normative judgments might matter more than others on particular matters or in particular contexts. (On this point, see van Wietmarschen, "Stratified Social Norms," 2023, 13–14.) However, as we shall see in Section 2, this strength actually helps to reveal a fundamental weakness in the individualist approach to social norms.

to raise their own children depend in part on both their empirical and normative expectations. On Bicchieri's framework, if people generally share this combination of empirical expectations, normative expectations, and conditional preferences, then a social norm prohibits feeding colostrum to newborns within this community.

But there is another component of Bicchieri's conception of social norms that does not directly appear in her general definition: namely, the role that "normative influence" plays in maintaining compliance with a social norm. On Bicchieri's framework, social norms differ from what she calls "descriptive norms," which are self-sustaining in the sense that they do not depend on "the force of law or social enforcement."¹⁵ For example, a descriptive norm might provide a solution to a coordination problem; as long as all parties have an interest in coordinating with one another, they will prefer to comply with the descriptive norm, even in the absence of any sanctioning mechanism inducing compliance.¹⁶ In contrast, people reprimand those who deviate from a social norm, and these reprimands help to keep people in line.¹⁷ Consider once more the mother who prefers not to breastfeed immediately after childbirth because she expects both that other mothers will not do so (empirical expectation), and that elder women (including her own mother-in-law) would disapprove of breastfeeding after childbirth (normative expectation). At one point, Bicchieri treats this as equivalent to a case in which a mother chooses not to breastfeed her child in order to avoid "the wrath of her mother-in-law, the scorn of other women, and the accusation that she was risking the life of her child."¹⁸ Bicchieri thus equivocates at times between, on the one hand, a preference to defer to someone's normative expectations; and on the other hand, a preference to avoid expressions of their

¹⁵ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 25.

¹⁶ Bicchieri, 25.

¹⁷ Bicchieri, 35.

¹⁸ Bicchieri, 40–41.

disapproval or anger. This equivocation plays an essential role in connecting Bicchieri's definition of social norms in terms of preferences conditional on people's empirical and normative expectations, and her characterization of social norms as sustained through the "normative influence" of reprimands.

Bicchieri's conception of social norms is subtle and powerful. In particular, it enables us to understand why changing people's subjective normative judgments will not necessarily change their behavior. If, in addition to their own normative judgments, they prefer to defer to other people's normative judgments, then even successful attempts to change their own judgments may not result in any change in their behavior. Any adequate theory of social norms should preserve this explanatory power.

Nonetheless, I will argue that Bicchieri's framework is inadequate as a general theory of social norms by showing that it shares important flaws with the command theory of law, as H.L.A. Hart characterized it. According to this theory, a command is "an expression by one person of the desire that another person should do or abstain from some action, accompanied by a threat of punishment which is likely to follow disobedience."¹⁹ A law is a command that satisfies two criteria. First, laws are *general* commands – effectively, that is, rules. Second, laws are commands issued by *the sovereign*. Someone is sovereign within a community only if the members of that community share a "habit" of obeying their (and no one else's) commands. The command theory of law and Bicchieri's theory of social norms share important structural similarities: The reference network within Bicchieri's framework – that is, the range of people to whose normative judgments others prefer to defer – plays a role analogous to role of the sovereign in the command theory of law; and the conditional preferences among members of the community to defer to the judgments of the members of the

¹⁹ Hart, "Positivism and the Separation of Law and Morals," 602.

reference networks are analogous to the “habit of obedience” in the command theory of law. It is in virtue of these conditional preferences that the reference network *is* the reference network in Bicchieri’s framework, just as it is in virtue of the community’s habit of obedience that the sovereign is the sovereign in the command theory of law.

In the next two sections, I draw on these analogies to transform Hart’s arguments against the command theory of law into critiques of Bicchieri’s theory of social norms, before developing an alternative approach in Section 4.

2. Social Authority

In his first argument against the command theory of law,²⁰ Hart emphasizes that sovereigns – that is, the people whose general commands enjoy the status of law – are themselves either occupants of legally defined roles (like *monarch*) or legally defined bodies (like parliaments). This means that the laws that define sovereigns’ roles must precede the sovereign’s commands. This is particularly clear when the sovereign is, say, a parliament. In order for the parliament to serve as sovereign within the command theory of law, the parliament must itself count as a corporate person, whose commands are readily identifiable. And in order for a legislative body to exist as a corporate person, there must be standards in place for determining (first) who counts as a member of the legislative body, and (second) how the legislative body issues commands. After all, the legislative body does not issue a command whenever an individual member utters a statement with the grammatical form of a general instruction – *do this* or *don’t do that*. As Hart put the point, “nothing which legislators do makes law unless they comply with fundamental accepted rules specifying the essential lawmaking procedures.”²¹ Moreover, Hart argues, in order to identify those standards defining membership in a legislative body and

²⁰ Hart, 603–4.

²¹ Hart, 603.

specifying which utterances count as the commands of the legislative body, we obviously cannot appeal to the commands of the legislative body itself. That would trap us in a vicious circle. This means that there must be laws defining the legislative body's membership and operations which are not themselves the general commands of the legislative body. The command theory of law, Hart concludes, is "suited only to a monarch sufficiently long-lived for a 'habit' to grow up."²² But in paradigm cases, even *monarch* is a legally-defined role that specific people occupy because they satisfy certain legally-defined conditions – for example, because they are the heirs to the previous monarch, who now has passed away. In order to identify which individual counts as the monarch in these cases, we must appeal to the rules of succession, which must precede the current monarch's commands. The general point simply is that paradigm cases of legal authority exist within law, and not outside of it, and so that in these paradigm cases, some legal rules must precede the exercise of sovereign authority.

As I mentioned in Section 1, *the reference network* in Bicchieri's theory plays a role analogous to the role of *the sovereign* in the command theory of law. In the command theory of law, it is the sovereign's expressions of their will that direct legal subjects; in Bicchieri's theory of social norms, people's preference are conditioned on their beliefs about the reference network's normative judgments. But just as the sovereign occupies a role that must be defined by laws which are conceptually prior to the sovereign's commands, so *the reference network* must itself defined by social norms that Bicchieri's framework cannot capture. To see this, consider again one of Bicchieri's central examples: Mothers within some communities prefer to defer to their mother-in-law's judgments about proper childcare.²³ But why? Particular mothers might have highly individualized reasons of their own for interacting in diverse ways with their mothers-in-law, but if their convergent behavior results from

²² Hart, 603.

²³ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 40–41.

a social norm operating in the background, then their reasons almost certainly will relate to the roles that mothers-in-law occupy, and to the specific kinds of authority that these roles afford to mothers-in-law. This raises two questions. First, who counts as a mother-in-law? Second, on what matters are mothers-in-law's normative judgments authoritative? In order to answer these questions, we must appeal to background rules that define family structures, and that distribute specific kinds of authority to the occupants of specific roles (like *mother-in-law*) within those structures. But where do *these* rules come from? And in particular, can we deploy Bicchieri's theory of social norms to define the distribution of authority within a community?

Bicchieri does not herself address this question explicitly. She does deploy the concept of "social roles" in her broader discussion of social norms, and explicitly locates some of these roles within culturally variable family structures.²⁴ However, she introduces this concept primarily in order to discuss the ways in which an individual's understanding of the roles that the partners to an interaction occupy will affect their interpretation of the interaction and their sense of what is appropriate. (For instance, when one person hands money to another, the knowledge that the former employs the latter might incline us to interpret the transfer as a payment for labor, rather than a gift.²⁵) Bicchieri does not address questions about how people come to occupy particular roles, or how the occupants of a role come to enjoy authority in particular domains. She focuses exclusively on the psychology of social roles, rather than their social ontology. (Indeed, her discussion of social roles occurs in a chapter entitled "Habits of the Mind.") If we aspire to understand how social norms might define these roles, we will need to look beyond Bicchieri's explicit discussion.

²⁴ See Bicchieri, *Grammar*, 92.

²⁵ Bicchieri, 82.

Unfortunately, if we rely on Bicchieri's theory of social norms to illuminate the norms that distribute authority within family structures, we will find ourselves trapped in an infinite regress. On this approach, the rules that define family structures within a particular community count as social norms only if people within the community prefer to locate themselves within specific kinds of family structures because (in part):²⁶

- they expect the members of some reference network – one whose authority is *not* internal to, and so dependent on, a particular family structure – to approve of participation in these structures (normative expectation); and
- they prefer to defer to the normative judgments of the members of this reference network with respect to family structure (conditional preference).

But who enjoys membership in this second reference network? We could pick another determinate group – say, *the elders*. But this simply pushes the problem back a level: Do the members of the community have only individualized reasons to defer to elders' normative judgments about family structure, or do they share a common reason based on elders' practical authority within the community? If the latter, then we will once again face two questions: Who counts as an elder? And on which subjects do elders enjoy authority? In order to answer these questions, we will need to introduce *further* social norms – and again, if we are to understand these further norms in Bicchieri's terms, then we will need further reference networks.

One way out of this regress would be to deny that the members of a reference network must occupy normatively defined roles in order for their (expected) normative judgments to bear on other people's conditional preferences. After all, Bicchieri's theory of social norms simply aspires to capture the fact that, for various reasons, people care about one another's normative expectations; and a

²⁶ I have set empirical expectations to the side, because they are not relevant to the argument that I advance here.

reference network just is the set of people about whose normative expectations another (possibly overlapping) set of people happens to care.²⁷ Even if the occupants of particular roles (like *mother-in-law*) acquire their authority over the occupants of other roles (like *daughter-in-law*) from background social structures which precede any particular agent's authority, we might nonetheless doubt that the members of a reference network necessarily must acquire their authority from background social structures. People might simply care loosely about the opinions of "the people who are around," that is, the members of their local communities. But the point still stands: If people care about the normative judgments of other people, social norms generally play a role in determining *whose* normative judgments actually matter, and whose do not;²⁸ who *counts* as a member of the community, and who does not.²⁹ The social norms associated with various forms of oppression (like racism, sexism, nationalism, ableism, heteronormativity, classism, and so on) obviously play a significant role in determining whose opinions socially matter, and whose do not, within particular communities. So while it may be true that we need not locate all reference networks within strictly defined roles, it nonetheless is also true that the set of people whose normative judgments matter socially typically

²⁷ Another way to put this point would be to say that our critique of Bicchieri makes too much of the concept of the reference network, which does not appear in Bicchieri's earlier definition of social norms in *The Grammar of Society*. See Bicchieri, *Grammar*, 11. But see also n. xii for some reasons to think that the introduction of the concept of the reference network does not constitute a substantive change in Bicchieri's theory.

²⁸ Compare van Wietmarschen, "Stratified Social Norms," 2023, 13.

²⁹ Bicchieri herself observes this point, writing that the members of a person's reference network "may be spread around and not be physically present. The Pakistani man who killed his 'dishonored' daughter in Milan, where he had lived for twenty years, was only concerned with the strict honor code of the relatives and friends in his Pakistani village. That was his reference network, not his Italian co-workers or neighbors." Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 14.

depends on background social norms, and these norms cannot depend for their existence on people's preferences to defer to others' normative judgments.

Another way out of the regress would be to suggest that it bottoms out in bare exercises of coercive power. Some people's normative judgments matter (the thought goes) simply because they are in a position to enforce others' deference to these judgments, and (the thought continues) force needs no prior authorization. If someone is willing and able to inflict violence upon me if I do not defer to their judgments about right and wrong, then it will not matter to me whether their use of violence is authorized. I will be inclined to defer to their judgments simply in order to protect myself from harm. On this line of thinking, then, some set of people might constitute a reference network simply because they enjoy a monopoly on violence, and not because social norms dictate that their normative judgments matter. The trouble with this approach is that, in general, coercive power is itself socially structured. Those who enjoy persistent (rather than fleeting) coercive power over others typically do not only enjoy individualistic traits, like intelligence or physical strength, that enable them to overpower others. They also depend on at least tacit, and perhaps explicit, authorization to exercise coercive power – or to call on others to exercise coercive power – against others in particular ways. In general, the power to coerce is itself a power that depends on the existence of social norms that authorize some people to direct coercive power against others.

To be sure, not all of our preferences to defer to other people's normative beliefs are guided by social norms. A host of idiosyncratic phenomena – a whim, a crush, a hope to benefit in someone's will, fear of a bully's left hook, and so on – might give us reasons to defer to other people's normative judgments. But precisely because these kinds of reasons are so individualized, they are not the kinds of things that can generate social norms. Individualized preferences to defer to someone else's normative beliefs may have significant effects on people's actions, but if we are interested in explaining systematic social patterns, then we should focus our attention on socially-structured preferences to

defer to other people's normative judgments – like, for example, mothers' preferences (in some contexts) to defer to their mother-in-law's normative beliefs about how to raise a child. And these preferences depend on background social norms that Bicchieri's theory – and the individualist approach to social norms generally – is ill-equipped to handle.

3. Obligating and Empowering Norms

Hart's second argument against the command theory of law emphasizes an important variety in law. Some laws – especially criminal laws – plausibly can be understood on the model of commands.

But, Hart writes:

...other legal rules are presented to society in quite different ways and have quite different functions. They provide facilities more or less elaborate for individuals to create structures of rights and duties for the conduct of life within the coercive framework of the law. Such are the rules enabling individuals to make contracts, wills, and trusts, and generally to mould their legal relations with others... [T]hese rules provide facilities for the realization of wishes and choices. They do not say (like commands) "do this whether you wish it or not," but rather "if you wish to do this, here is the way to do it"³⁰ Under these rules we exercise powers, make claims, and assert rights.

Consider, for instance, the power to invite others into one's home. By exercising this power, one person makes it the case that another person can enter their home without trespassing. But we cannot plausibly characterize the law that affords someone this power as a command addressed to the empowered person. The law does not say to them "do this" or "don't do that." Rather, it makes available to them a new action that they could not perform outside of the legal structures of private property.

Bicchieri's theory of social norms, like the command theory of law, is best-suited to the analysis of norms that require conformity to a rule. Call these *prescriptive norms*.³¹ But many social norms do not

³⁰ Hart, "Positivism and the Separation of Law and Morals," 604.

³¹ And Bicchieri's approach is not unique in this respect. Brennan and co-authors argue that social norms "are partly constituted by *normative principles*... Normative principles are *general requirements*. They are *requirements* inasmuch as they require things of agents; they describe what agents *must* and *mustn't* do..." Brennan et al., *Explaining Norms*, 3. Or

require conformity to a rule. Rather, they afford people structures for interaction, empowering people to make social moves that they could not perform outside of those structures. Consider, for instance, the act of saving someone a spot in line. (To be sure, in many contexts, it is forbidden to save someone's spot in line. In others, it may not be clear whether it is permissible to save someone's spot in line. I focus here on those contexts in which it is permitted.) When I save your spot in line, I participate with you in a loosely defined ritual: You ask me if I can save your spot; I agree to do so; I stand in your spot in line, advancing as the line advances; when you return, I surrender to you your spot in line. When I successfully save your spot in line, I do not do so because members of some reference network approve or disapprove of my doing so. Rather, I choose to do so voluntarily. No social norm compels me to save your spot in line, but a complex collection of social norms empowers me to do so, and specifies what I must do in order to exercise this power. A vast portion of our social norms work like this, serving not to require or forbid particular choices, but to create the very landscape on which we act, to define essentially social actions and to empower people to perform them through participation in familiar rituals. Call these *empowering norms*. Bicchieri's theory of social norms, which emphasizes acting in ways that will win approval from the members of a reference network, and refraining from acting in ways that would provoke their disapproval, is not well-equipped to characterize empowering norms.³²

compare Elster: "The simplest social norms are of the type 'Do X', or 'Don't do X'. More complex norms say, 'If you do Y, then do X', or 'If others do Y, then do X'. Still more complex norms might say, 'Do X if it would be good if everyone did X'." Elster, *The Cement of Society: A Study of Social Order*, 98.

³² I do not mean to overemphasize the fact that empowering norms do not in themselves attach a sanction to non-performance. The difference between prescriptive norms and empowering norms is *not* simply that people reprimand those who violate a prescriptive norm, but do not reprimand those who fail to perform an action that they have been empowered to perform. If this were the difference, then empowering norms would seem quite similar to descriptive

The command theory of law, and Bicchieri's theory of social norms, also leave us ill-equipped to illuminate cases of *disablement*. There are cases in which legal and social norms prevent some action, not by forbidding its performance, but simply by failing to empower people to perform the action. Consider an example from the legal domain: If we want to know why six-year-olds do not sign more legally-binding contracts with one another, we will find that it is not because legal norms forbid children to do so, but because legal norms do not empower them to do so. When two six-year-old children sign a contract, they are not necessarily subject to a penalty expressing a normative judgment that their actions were wrong. The contract simply is not valid.

While this legal disablement of children to make valid contracts seems entirely appropriate, many of the social norms that sustain oppressive power dynamics are similarly disabling. For example, Quill Kukla argues that sexist communities do not reliably recognize women's standing to issue orders to specific people, or with respect to certain issues, or in certain spaces. This is not necessarily because women in a sexist society expect that others would reprimand them for issuing orders. In some contexts, it is because the social norms that define women's relationships with others do not empower them to issue orders at all. Instead, utterances that people *would* recognize as orders if spoken by a (white, cis) man instead function more like requests when spoken by a woman. And requests, Kukla

norms, as Bicchieri characterizes them – that is, practices that emerges due to a convergence of people's interests, and so that persist even though participants do not reprimand those who deviate from the practice. But the real difference between prescriptive and empowering norms is that empowering norms enable people to perform actions that they *could not* otherwise have performed, because they are possible only within complex normative structures. Saving someone a spot in line is not possible outside of the contexts in which social norms define the activity of forming a line, and empower some people to save others' spots in the line. In other words, empowering norms *create* new actions, while descriptive norms and prescriptive social norms simply give people reasons to select particular options from the menu of options already available to them.

emphasizes, are not simply “weak orders.” They have distinct normative consequences for the addressee: “Orders are designed to impute obligations to follow them. It is in the nature of a request, however, that acknowledging its legitimacy leaves the one requested free to grant or refuse the request. Granting a request is never obligatory; it is essentially a favor.”³³ When a woman in a managerial position issues instructions to an employee in her office, then, the employee might not reprimand her for violating a social norm forbidding her to boss him around. Rather, he simply might take himself to enjoy the discretion to decide whether he will do as directed (and to expect gratitude if he does), because the sexist norms operative within this workspace empower women to make requests, but not to issue orders. To be sure, there are difficult questions in the philosophy of language about whether women in managerial positions *really* issue orders that their employees refuse to recognize, or whether they only manage to make requests. I do not aspire to address these questions here. For our purposes, all that matters is that the social structures within the workplace affect women’s abilities to direct the people under their supervision, not by prohibiting them from issuing orders, but simply by failing to enable them to do so in a way that others reliably will recognize. If we wish to know why women in sexist communities do not issue orders more frequently than they do, then, Bicchieri’s theory of social norms would have us looking in the wrong places.

This bears directly on the distribution of the standing to exercise what Bicchieri calls “normative influence” on other people’s choices and actions. Recall from Section 1 that Bicchieri distinguishes social norms from descriptive norms by arguing that normative influence helps to sustain social norms, while descriptive norms are sustained by a convergence of people’s interests. And on Bicchieri’s approach, people paradigmatically exercise normative influence by reprimanding those who violate social norms. But social norms can *disable* some people from reprimanding others effectively.

³³ Kukla, “Discursive Injustice,” 446.

Consider Marilyn Frye’s analysis of sexist responses to women’s anger. Frye focuses specifically on *resentment*, through which (Frye argues) individuals address those that they judge to have wronged them. In a sexist society, Frye argues, people reliably dismiss women’s anger. Instead of attending to the alleged wrong – say, by offering an apology, justification, or excuse – they focus on the women themselves, representing angry women as overly emotional, crazy, violent, unfeminine, bitchy. As a result, women frequently find themselves effectively unable to reprimand those who wrong them.³⁴ On Bicchieri’s account, we might explain this phenomenon by hypothesizing that in a sexist society, people rely on stereotypes to represent angry women as irrational.³⁵ But this misses Frye’s point: that within a sexist society, women’s anger seems irrational because sexism does not empower women to use anger as a way to address those who have wronged them. On the landscape that sexist social norms define, women who express anger have made an unintelligible social move, and so must be crazy, hysterical, out of control. The stereotype that angry women are irrational thus is not simply a groundless inductive generalization, but depends on a more fundamental normative structure that fails to empower women to reprimand those who have wronged them.

Could we sidestep these challenges for Bicchieri’s account by analyzing empowering norms into more fundamental prescriptive norms? On this approach, social norms that enable one person to perform a particular action really will be constituted by a bundle of norms *requiring* particular actions from others. Consider, then, a norm that empowers an authority A to command a subject S :

R_1 : A has the authority to command S to ϕ .

The strategy on offer recommends that we translate R_1 into a different kind of norm – something like:

³⁴ Frye, “A Note on Anger.”

³⁵ Bicchieri, *Grammar*, 89.

R_2 : If A commands S to ϕ , then S must ϕ .³⁶

Call this *the translation approach* to empowering norms. If this kind of translation is possible for all empowering norms, and if Bicchieri's theory of social norms is capable of handling prescriptive norms like R_2 , then we might expect that Bicchieri's theory of social norms will be capable of making sense of empowering norms like R_1 .³⁷ But this approach faces several problems.

Hart addresses a similar proposal to translate power-conferring laws into complex coercive orders, and his discussion suggests the first problem with the translation approach to empowering norms. He argues that to represent laws imposing duties as more fundamental than laws that confer powers is to make the perspective of those subject to duties more fundamental than the perspective of those possessed of legal powers. And to privilege the former perspective, Hart argues, would be arbitrary, and would yield only a partial picture of the legal system:

If we look at all law simply from the point of view of the persons on whom its duties are imposed, and reduce all other aspects of it to the status of more or less elaborate conditions in which duties fall on them, we treat as something merely subordinate, elements which are at least as characteristic of law and as valuable to society as duty. Rules conferring private powers must, if they are to be understood, be looked at from the point of view of those who exercise them.³⁸

³⁶ In a development of Bicchieri's framework, Han van Wietmarschen argues that command hierarchies can depend on a rule with the content " S obeys A ." See van Wietmarschen, "Stratified Social Norms," 2023, 11. I assume that we can take this to be equivalent to " S obey's A 's commands," which I take in turn to be equivalent to R_2 .

³⁷ Bicchieri's concept of scripts might involve a translation approach to empowering norms. Bicchieri characterizes scripts as sets of expectations about how people will and should behave in a particular context: "Once a situation is categorized as being of a certain type, a script is activated that will involve players' interlocking roles, a shared understanding of what is supposed to happen, and even prescriptions for unexpected occurrences." (Bicchieri, *Grammar*, 94.) I take a script, so defined, to potentially include rules like R_2 , and so potentially to empower those working within the script to engage in particular kinds of interaction.

³⁸ Hart, *The Concept of Law*, 41.

Similarly, it is arbitrary to insist that prescriptive social norms are more fundamental than are the norms that confer normative powers onto people. To do so would be to privilege the perspective of those subject to other people's normative powers, and not those possessed of normative powers. Indeed, Joel Feinberg argues that rights against others are constituted by powers to make claims against others, and that these claims ground (and so are conceptually prior to) the duties that they entail.³⁹ If Feinberg is right, then to reduce empowering norms to prescriptive norms is not simply arbitrary, but actually gets some things backwards.

And further problems plague the translation approach to empowering norms. For example, the exercise of any normative power can have myriad consequences on other people's obligations, and these consequences typically travel in bundles. An empowering norm like R_1 typically entails, not simply R_2 , but other rules as well – like, for instance:

R_3 : If A commands S to ϕ and S disobeys, then third parties must help to enforce S 's obligation to ϕ if A calls on them to do so.

If empowering norms like R_1 really just are constituted by bundles of prescriptive norms like R_2 and R_3 , then there is nothing that ties R_2 and R_3 together. They simply are distinct requirements that happen to manifest simultaneously. In reality, though, these two requirements manifest simultaneously *because* another norm, R_1 , confers on the commanding agent authority over the commanded subject, and this authority grounds both R_2 and R_3 . Taking a norm like R_1 to have conceptual priority over R_2 and R_3 helps to explain and to provide systematic unity to the latter – a unity this is missing if we take norms requiring particular actions to have conceptual priority over empowering norms.

A third problem with the translation approach to empowering norms is that it will not always be possible to translate empowering norms into complex prescriptive norms without remainder. For

³⁹ Feinberg, "The Nature and Value of Rights."

example, it is not possible to determine whether a rule like R_2 applies in a particular context unless it is accompanied by a separate norm of the form R_1 . In order to determine whether R_2 applies in a particular situation, we must be able to determine whether A has commanded S to ϕ . And how we go about doing this will depend on what we mean by *command*. On the one hand, we might take *command* to be the kind of action that someone can perform only if background norms empower them to do so. On this approach, to address someone in the imperative mood is not necessarily to command them to do anything. If a serf instructs the king to till the field, they do not thereby command the king to till the field, because they lack the authority to do so. If this is what we mean by *command*, then we never can determine whether rule R_2 applies unless we also know that A has the authority to command S to ϕ , because we without this knowledge, we never will be able to determine whether any of A 's utterances count as commands. We could attempt to avoid this problem by conceptualizing *command* as an action that someone can perform with or without prior empowerment by a norm like R_1 . On this approach, we might treat R_2 as equivalent to:

R_2' : If A says " $\phi!$ " to S , then S must ϕ .

The trouble with this new translation is that there may be myriad ways in which A could command S to ϕ , not all of which need involve A saying " $\phi!$ " to S . For example, A might say to S : "Would you mind ϕ -ing?" Even though this utterance has the grammatical form of a question, in certain contexts, it might be clear that it counts as a command.⁴⁰ In other contexts, A might be able to command S to ϕ simply with a gesture, or a moment of meaningful eye contact. Conversely, there might be contexts in which A says " $\phi!$ " to S without thereby commanding S to ϕ . Perhaps A only offers S advice, or tells a joke, or is being sarcastic, or is making a request. In order to accommodate these observations,

⁴⁰ Kukla, "Discursive Injustice," 440.

the translation approach would have to assemble a comprehensive list L of all and only the ways in which A might command S to ϕ , and insist that R_1 can be reformulated as:

R_2 ": If A performs any of the actions in L , then S must ϕ .

But it simply is not plausible that a social norm could refer to a complete list of all of the ways in which A might command S to ϕ . It is much more plausible to begin with the assumption that A has the authority to command S to ϕ , and to say that A , S , and other relevant parties must exercise some judgment in order to determine in particular cases whether A has exercised that power. For these reasons, then, we should be wary of embracing the translation approach to empowering norms.

Bicchieri's approach to social norms, then, leaves us ill-equipped to illuminate empowering norms. The problem is that the individualist approach focuses exclusively on patterns of approval and disapproval for choices that are already available to people. If social norms also play a role in creating the social landscape on which people interact, empowering people to perform new actions that would not otherwise have been available to them, then we will need to look beyond the individualist approach to social norms.

4. The Representational Theory of Social Norms

By now, it may be clear that Hart's two arguments against the command theory of law are not really independent of one another. Rather, they illuminate distinct aspects of a single point: Legal authority is always internal to law itself. In order for someone to *be* sovereign, they must occupy a legally-defined role; within this legally-defined role, the law empowers them to perform actions like *legislating* or *punishing*. The law, then, comes first – not the individual who occupies the sovereign's role. An adequate theory of law must preserve this conceptual priority of law over individual legal authorities.

By reorienting Hart's arguments, we see that the same point applies to social norms, so that an adequate theory of social norms must preserve the conceptual priority of these norms over the

individuals living within a normatively structured community. In particular, a reference network must enjoy its authority in virtue of social norms operating in the background, which empower them to exercise normative influence over other people's choices. On Bicchieri's account, however, the relationship between the individuals subject to social norms and the members of the reference network is conceptually prior to all social norms. This generates the problems that we encountered in Sections 2 and 3.⁴¹ But how can we preserve the conceptual priority of social norms over individuals?

(a) *The representational theory.*⁴² I argue that we best understand social norms as those norms internal to a *socially-sanctioned representational practice*. A representational practice simply is a practice of representing something – an object, a relationship, an action, a person – in a specific way. The relevant representations are not individuals' *subjective* representations of things in their beliefs or other attitudes, which they might keep to themselves. Rather, they are the representations that people express in their words and actions. So, for example, to reprimand someone for ϕ -ing is in part to represent their ϕ -ing as wrong. It is not simply to express a dislike for ϕ -ing, or to impose costs on those who ϕ . Rather, it involves the expression of an essentially normative negative characterization of ϕ -ing. It also involves

⁴¹ Interestingly, Hart's own account of social rules may be vulnerable to this argument. See Gilbert, "Social Rules: Some Problems for Hart's Account, and an Alternative Proposal," 157.

⁴² The account that I develop in this section owes much to Robert Brandom's practice-based theory of normativity. See Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment*. However, Brandom's framework addresses different kinds of questions than does the representational theory of social norms. In particular, Brandom aspires to address apparent paradoxes in the nature of normativity as such; in contrast, the theory of social norms that I develop in the main text serves primarily to address political questions about the distribution of power within a community. The account of social norms that I develop does not depend on the viability of Brandom's general theory of normativity, though I am sympathetic to it.

a normative representation of the relationship between the speaker and the addressee; namely, it represents the speaker as possessed of the authority to reprimand the addressee.

A representational practice is *socially-sanctioned* when we can expect people to cooperate with the representations that the practice expresses, and to refuse to cooperate with competing representations. Cooperation can involve explicit verbal affirmations of the relevant representations, but it need not. Someone might cooperate with a representational practice simply by acting in ways that are consistent with the normative standards implicit in the representations expressed. If I reprimand you for ϕ -ing, and you apologize, you cooperate with my representations of ϕ -ing as wrong, and of myself as possessed of the standing to reprimand you for ϕ -ing. If you instead respond by attempting to justify your having ϕ -ed, you do not cooperate with my representation of ϕ -ing as wrong, but you do cooperate with my representation of myself as possessed of the standing to reprimand you with respect to actions adjacent to ϕ -ing. If you neither apologize, nor offer any justification for your actions, you refuse to cooperate with my representation of myself as possessed of the standing to reprimand you for ϕ -ing. Again, all of this operates at the level of expression: My representation of ϕ -ing as wrong need not reflect my own subjective normative judgments, nor need your response reflect yours.

Now, say that you refuse either to apologize or to justify your actions to me. This does not entail that my reprimanding you for ϕ -ing (and so my representations of ϕ -ing as wrong, and of myself as possessed of the standing to reprimand you for ϕ -ing) does not enjoy a social sanction, because you and I do not exist in isolation. We find ourselves in a vast web of relationships, and either of us might call on third parties to cooperate with our competing representations.⁴³ For instance, I might call on

⁴³ Compare Stahl, *Immanent Critique*, 202–3.

others to assent verbally to the claims that it was wrong of you to ϕ , and that I do have the standing to reprimand you. More robustly, I might call on them to echo my reprimands to you, say, by expressing outrage at your ϕ -ing, or by withholding privileges from you until you apologize. In contrast, you might call on others to reprimand *me* for reprimanding *you*, and so to cooperate with your representation of me as lacking any standing to reprimand you for ϕ -ing. Those who answer your call will cooperate with your representation of our relationship, and in doing so, will refuse to cooperate with mine. If either of us can expect cooperation with our representations of your ϕ -ing and of our relationship, then our representational practices enjoy a social sanction.

A representational practice can enjoy *more* or *less* social sanction, depending on the extent both of cooperation with the practice, and of refusal to cooperate with competing representations within a community. *Social sanction* thus is a scalar concept. Moreover, it is scalar both at the individual and at the social level: An individual can cooperate more or less completely (and more or less exclusively) with a particular representational practice; and a greater or lesser number of people can cooperate with the practice. *Hegemonic* social norms enjoy substantial, and substantially exclusive, cooperation from a great many people. But competing representational practices might persist among a minority of people, or in isolated contexts. Thus, multiple normative systems might operate within a single community, often in tension with one another.

I propose that social norms are those norms internal to socially-sanctioned representations. So, to return to Bicchieri's example, if someone reprimands their daughter-in-law for feeding colostrum to a newborn, then they both represent breastfeeding a newborn as bad mothering, and they represent themselves as possessed of the authority to reprimand their daughter-in-law for doing so. If these representations enjoy a social sanction – that is, if others (including, but not limited to, the daughter-in-law) cooperate with these representations, and refuse to cooperate with competing representations – then social norms exist within the community that construe feeding colostrum to a

newborn as bad mothering, and that authorize certain people (say, mothers-in-law) to reprimand mothers who breastfeed shortly after childbirth. The more that people cooperate with these representational practices (and the more exclusively), the greater their social sanction. This is the representational theory of social norms.

Three points are worth emphasizing. First, to participate in a representational practice that represents ϕ -ing as wrong is not necessarily to represent ϕ -ing as wrong *because people participate in the practice*.⁴⁴ Although a social norm forbidding ϕ -ing can exist within a community only if there is within that community a socially sanctioned practice of representing ϕ -ing as forbidden, the practice itself does not necessarily provide the normative grounds for the claim “ ϕ -ing is wrong” as expressed *within* the practice. Participants in the practice might represent ϕ -ing as wrong because God has prohibited ϕ -ing, or because ϕ -ing is inhuman, or because ϕ -ing is above some people’s station, or because they have agreed as a group not to ϕ . In other words, from a point of view internal to these representational practices, the fact that people generally participate in these practices may be normatively irrelevant. From an external point of view, of course, it is only because people cooperate with a representational practice that its norms become socially real for the members of a community. But that need not bear on the content of the representations internal to the practice.

Second, the set of people who cooperate with a representational practice need not be identical with the set of people subject to the norms internal to that practice. That is, if person S ϕ ’s, and if other people cooperate with the representation of S’s ϕ -ing as wrong (say, by reprimanding S for ϕ -

⁴⁴ On this point, the representational theory contrasts with Margaret Gilbert’s account of social norms based on joint commitments. See Gilbert, “Walking Together: A Paradigmatic Social Phenomenon”; Gilbert, “Notes on the Concept of a Social Convention.”

ing), then S is subject to a social norm that prohibits ϕ -ing even if S does not cooperate with this representation. In this respect, the representational theory of social norms that I have described differs from Titus Stahl's account, on which social norms gain their authority within a community from the fact that the members of the community are jointly committed to these norms through their recognition of one another's authority to hold them accountable to these norms.⁴⁵ Stahl may opt for this approach because he aspires to provide a theory of social norms that will not only be apt for deployment in social scientific theories, but also will be apt for deployment in a project of "immanent critique." For this latter project, our theory must focus our attention on norms that are in some sense "valid" for the individual, so it makes some sense to focus on those social norms that people accept.⁴⁶ But for the purposes of identifying those social norms that simply confront people as they attempt to navigate their social world, we get things backwards if we *begin* with individuals' recognition of one another's authority. A social distribution of authority comes first, and people must decide how they will respond to it. They may choose to cooperate with prevailing representational practices, but these representational practices do not gain their power from the individual's decision to cooperate; rather, individuals decide to cooperate with a representational practice because of the power the practice *already* holds within their community. Indeed, even people who unambiguously refuse to cooperate with a representational practice can, in a socially important sense, find themselves subject to the norms internal to that practice in spite of their resistance. To be clear, Stahl's account of social norms may

⁴⁵ Stahl, *Immanent Critique*, 200. Stahl's account is heavily influenced by Margaret Gilbert's, developed in Gilbert, *On Social Facts*.

⁴⁶ Stahl, *Immanent Critique*, 146. At the same time, however, Stahl denies that the recognition in question must be robust or univalent. In particular, he claims that recognition (in the relevant sense) can be coerced. But Stahl does not make clear why coerced recognition of other people's authority should have any normative consequences for an individual. See Stahl, 312 n. 66.

be well-suited to the project of immanent critique. But it is not well-suited for the general characterization of a community's positive, potentially contested social structure.

Third, the representational theory affords us a richer conception of normative enforcement than does Bicchieri's account. The normative enforcement that sustains social norms does not always take the specific form of *reprimand*. Consider Bicchieri's discussion of language. Bicchieri writes that "If I stop using a signal that many others use, as in the case of a widely spoken language, nobody will possibly care, and I will be the only one to pay a price, for I will be ignored."⁴⁷ Here, she represents language primarily as a bundle of descriptive norms (in her sense): People prefer to conform to linguistic conventions because they have an interest in being understood, and conformity to linguistic norms enables others to understand them. But normative enforcement plays a central role in linguistic practices, even if set aside the practices of those who zealously enforce the rules of official grammar. For instance, in many cases, unintelligibility is not simply a consequence of a speaker's failure to conform to linguistic conventions; rather, people *impose* unintelligibility on the speaker's utterance. They do so by claiming that the speaker's words are unintelligible, and expecting others to cooperate with this claim, even if the text conforms to generally recognized rules of grammar and syntax. People frequently enforce gender norms in this way, by representing subversive discourse about gender as unintelligible even when a sympathetic listener could comprehend it quite easily.⁴⁸ This is normative enforcement without reprimand.

Similarly, an allegation that some choice is imprudent can play an important role in normative enforcement. As we saw above, Bicchieri's theory of social norms depends on the idea that, if others believe we ought to conform to some rule, they will reprimand our non-conformity. But she

⁴⁷ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 25.

⁴⁸ It is worth considering Marilyn Frye's analysis of responses to women's anger as unintelligible in this light. Frye, "A Note on Anger."

immediately qualifies this claim: If others believe only that we *prudentially* ought to act in some way, then they likely will *not* reprimand our failure to do so, though they might well exhort or advise us to change our ways.⁴⁹ Bicchieri illustrates the point with an example:

My friends may think that I *ought* to diet because being obese threatens my health in many ways. However, none of them would dream of punishing me because of my bad eating habits; they might tell me that I ought to stop, but this would be said out of concern for my wellbeing rather than wanting to put me “back in line.”⁵⁰

Bicchieri can count herself lucky in the company she keeps; many people are perfectly content to reprimand those whose bodies do not conform to fatphobic aesthetic expectations for their decisions about what they will eat. But even among those who recognize that it is inappropriate to reprimand others for their decisions not to diet, it is quite common to deploy a concern for health and wellness as a form of social control, frequently with classed, gendered, and racialized valences.⁵¹ People deploy an oddly moralized language when expressing a concern to manage the size and shape of their *own* bodies – for example, by casting a restricted diet as a penance for indulgence, or a small dessert as a reward for good dieting practice. They celebrate even unhealthy weight loss, sometimes with more exuberance than they can muster for other, more genuinely significant achievements. They speculate freely about other people’s (even total strangers’) diets and health, on the basis of no information beyond what is available from a superficial appraisal of their shape; and these speculations often take on a moral tone, involving the vocabularies of virtue and vice. And when ill health befalls someone whom they judge to be overweight, they are quick to presume that the sick person’s weight played a causal role in the onset of their illness, so that the sick person is responsible their illness: “If only they had taken better care of themselves!” If these representational practices prevail in the spaces in which

⁴⁹ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 35.

⁵⁰ Bicchieri, 35.

⁵¹ Strings, *Fearing the Black Body: The Racial Origins of Fat Phobia*; Bartky, Sandra Lee, *Femininity and Domination*.

we move, then although our friends might never reprimand us for our failures to diet, it will be difficult to hear their exhortations that we give Atkins a try without experiencing pressure to achieve and maintain the normative body. These practices do not reflect only people's mistaken judgments about what is healthy. Rather, the normative body on which these practices depend constitutes an important tool for the maintenance of various forms of racial, gender, and class oppression. Again, we have social enforcement without reprimand, and so a phenomenon that does not fit neatly into Bicchieri's theory of social norms.

Unlike Bicchieri's theory of social norms, the representational theory enables us to recognize the varieties of normative enforcement. To represent a piece of text as unintelligible is to engage in a representational practice. It is to represent the text as failing to conform to the linguistic norms that enable clear communication, and so as failing to achieve clear communication; if others cooperate with this representation, then a socially-sanctioned practice represents the text as unintelligible. Similarly, if socially-sanctioned practices represent people with non-normative bodies as deserving any health problems that may befall them, then apparently friendly advice to consider a diet takes on a more hostile significance than even the speaker might intend. It effectively expresses a kind of threat, communicating to the addressee that, without an intervention, others might (and perhaps already do) represent them as deserving ill-health, and perhaps as *not* deserving medical care that would prevent or attend to any future illness. This kind of threat plays an important role in sustaining the hegemony of the normatively thin body in fatphobic communities. Thus, the representational theory of social norms offers us a richer conception of normative enforcement than does Bicchieri's account.

(b) Social norms and social authority. As we saw in Section 2, a viable theory of social norms must enable us to explain two things. First, who counts as a member of a reference network? And second, on what subjects does this reference network enjoy authority? We answer these questions by locating individuals within social structures (for example, *the family*, constituted by roles like *parent*, *mother*, or

mother-in-law) whose occupants enjoy distinctive responsibilities to and authorities over the occupants of other roles (like *children* or *daughter-in-law*). Bicchieri's account did not equip us to understand the social norms that define these structures. Does the representational theory fare better on this score?

Within the representational theory, participants in socially-sanctioned representational practices represent people as occupants of particular roles within particular relationships, possessed of the responsibilities and obligations constitutive of that role. For example, they might represent two people as *mother to an infant and her mother-in-law*, and in doing so might represent the mother-in-law as possessed of substantial authority to direct the mother's choices about how to raise the infant. These representations afford the mother-in-law specific authorities and responsibilities – including, in Bicchieri's example, the authority to direct some of the daughter-in-law's parenting choices. This will affect the mother-in-law's interactions with the daughter-in-law in ways that neither chooses. Thus, socially-sanctioned representational practices define the unchosen relationships in virtue of which mothers-in-law count as a reference network (in Bicchieri's sense) for daughters-in-law with respect to certain parenting choices.

Moreover, the representational theory of social norms can explain enabling and disabling norms. To see this, let us draw on some resources from the philosophy of language. What constitutes someone's utterance, say, as an order (rather than a request) within a community's social practices? Kukla proposes that we look to people's *uptake* – that is, the ways in which they respond to the utterance. To be sure, one person's response to another's utterance does not unilaterally determine what kind of an action the speaker has performed. In some cases, the addressee makes a mistake: The speaker *did* issue an order, so the addressee gets it wrong when they treat it as a request. Nonetheless, Kukla argues that it is uptake in general that determines the roles that their speech acts play within

their concrete social relations.⁵² Kukla's claim that women in a sexist society frequently fail to issue orders, but instead only make requests, reflects the fact that individuals frequently give women's utterances the kind of uptake appropriate to request, even if they would treat similar utterances as orders when issued by (white cis) men. And uptake necessarily involves the expression of a representation of the speaker's utterance. If I ask you to save my spot in line, you agree to do so, and nobody objects when you invite me to retake my place in line when I return; then my request, your uptake in response to my request, and others' uptake in response to our interaction, all agree in a representation of you as empowered to save my spot in line. And in virtue of this cooperation, you *are* socially empowered to save my spot in line. In contrast, to refuse proper uptake is to engage in a particular form of non-cooperation with someone's representations. Such refusals in themselves constitute a form of normative enforcement. They represent the speaker as having failed to achieve the conditions necessary for the performance of the action they attempted to perform. Say that the speaker asks you to ϕ . To give this utterance the uptake appropriate to a request – for example, to decline to ϕ , or to expect gratitude for ϕ -ing – is in part to represent the utterance as though it does not impose an obligation to ϕ on the addressee. If the members of a sexist community give women's utterances of the form “Would you please ϕ ?” the uptake appropriate to a request, then they participate in a practice of representing these utterances as requests. And if people generally cooperate with one another in this practice – say, by sharing in one another's bewilderment when women in managerial positions express anger when others do not cooperate with their directions – then they participate in a socially-sanctioned representational practice that disables women from issuing orders. And it is from the perspective internal to this practice that women in sexist communities lack the authority to issue orders, but are enabled only to make requests.

⁵² Kukla, “Discursive Injustice.”

As we saw in Sections 2 and 3, Hart’s arguments against the command theory of law demonstrate that the law must precede any distribution of legal authority; and by the same token, that social norms must precede any distribution of social authority to the members of a “reference network” as Bicchieri conceives of it. If people’s approval of conformity to a rule (or disapproval of deviance from the rule) matters socially, and in a way that will give rise to systematic social structures, then that is because prior norms confer social authority on them, and empower them to reprimand others. These social norms must not depend for their existence on individuals’ attitudes of approval or disapproval. The representational theory of social norms preserves the conceptual independence of social norms from individuals’ attitudes and preferences, and as a result, meets each of Hart’s challenges: It explains distributions of social authority, and it illuminates enabling and disabling social norms just as well as it illuminates those social norms that ground obligations and prohibitions.

5. Social Norms and Power

Before we conclude, we should consider one further advantage of the representational theory of social norms: It affords us more expansive insight into the functions that social norms might play within a community than does the individualist approach. Bicchieri distinguishes social norms which enforce “prosociality” (say, by redistributing the burdens of negative externalities) with “maladaptive” social norms, which simply impose costs on ostensibly private choices. Bicchieri offers the example of child marriage:⁵³

Child marriage does not seem to curb any particular, public negative externality. In a society where child marriage is the norm, waiting to marry off one’s daughter will only produce negative consequences for the family and the unmarried girl, not the broader society. Yet witnesses to a contravention in such a society will feel entitled to blame, gossip about, ostracize, or pity the girl. The socially imposed ought is present in these practices, even if it is not borne out of a pro-social necessity.

Why do people enforce a social norm requiring child marriage, even if it does not serve the purpose of mitigating a public externality? Bicchieri hypothesizes:

⁵³ Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*, 30.

I believe that the difference between rules that enforce prosociality and other sorts of shared practices stems from their origins. The latter may have evolved from simpler descriptive norms that, with time, acquired a special symbolic meaning..., whereas the former directly evolved from a collective need to guarantee a measure of social order.

The two possibilities that Bicchieri identifies – some social norms arise to mitigate public externalities; others began as descriptive norms, but took on symbolic significance – are not exhaustive, and another possibility deserves our attention: namely, that a social norm arises because its authority within a community benefits some group within the community, even if it only imposes costs on everyone else. In some communities, it is possible that a social norm mandating child marriage serves to sustain certain class relations, or a kind of heteropatriarchy from which *some* people benefit, even if many do not. Those who benefit from the existence of such a norm would have an interest in its persistence, and so would have reason to cooperate with one another in a practice of representing unmarried adolescents or adults as *unmarriageable*. At the same time, those who do *not* benefit from the existence of a norm requiring child marriage might yet have reason to participate in this representational practice if resistance is costly. For example, people might reprimand parents who do not marry off their young children, not because they benefit from the existence of the norm, but because a failure to do so might mark them as odd or impious and this might carry both psychic and material costs. But the engine driving all of this is *some* people's interest in the maintenance of existing heteropatriarchal class relations, which give some people reason to represent those who do not enforce child marriage as impious, and which gives other people reason to fear the accusation of impiety. A social norm mandating child marriage might well persist, then, not merely because of its symbolic significance, but because of its role in preserving an existing distribution of power.

This helps us to recognize the ways in which people might act in transparent bad faith in the enforcement of certain social norms. An employer who deploys moralistic language to reprimand the slothfulness of employees who take full advantage of their break periods might do so, not because he believes that industry is a virtue and sloth a vice, but only because he hopes to wring as much as he

can out of the employees' labor. In some cases, it might not be important to the employer that others believe that he is sincere in these representations. Employees might well be wise to the employer's disingenuousness, or they simply might not care about the employer's subjective moral judgments. And yet some employees might have good reason to cooperate with the employer's representations simply in order to remain in the employer's good graces. Their cooperation will earn the employer's representations a social sanction, and so will create socially-sanctioned perspective on which employees who take full advantage of their breaks *are* slothful – even though no participants in the representational practice subjectively believe this representation to be accurate, and even though no participants believe (or even care) that *others* believe this representation to be accurate. They cooperate with the representation simply in order to preserve their own power, or to survive, or because they are tired of resisting. While Bicchieri is right that people do care about one another's normative judgments, and while this surely plays a substantial role in shaping people's behavior, this is not the only way in which social norms gain a purchase in people's deliberations.

This is relevant, not only to our descriptive characterization of social norms, but to our practical attempts to rewrite the social norms effective in our communities. If some specific social norm – say, a norm forbidding workers to take their full breaks, or a norm requiring child marriage – serves to sustain an existing distribution of power, then we should worry that any isolated intervention targeting that social norm alone will not have the overall effect we seek. We might well undermine that particular norm, but we should not expect this to have any substantial effect on the existing distribution of power. After all, multiple interlocking norms typically support one another in the maintenance of social power structures.⁵⁴ So, for example, in a broadly sexist society, although a norm requiring child marriage might facilitate cisheteropatriarchy, a concerted assault on this norm alone

⁵⁴ Frye, "Oppression."

will not affect the overall distribution of power within the community. Even if this effort succeeds in undermining the social norm, there will be other representational practices that disempower women and girls equally or nearly as well, and we should expect those who originally benefited from the norm requiring child marriage to begin to trade in these alternative representations. If we wish, not only to undermine *current* oppressive norms, but the general structure of oppression itself, we must deal not only with specific norms, but with the general distribution of power within the community.

To be clear, I do not mean to argue that oppressive social norms are nothing more than a mask for underlying distributions of power, and that any attempt to advance social change should address the latter *rather than* the former. After all, social norms play an essential role in *defining* the existing distribution of power, sustained through cooperation among the powerful and their allies. What it means to be, say, white, a man, or an owner of capital emerges from racializing, gendering, and capitalist representational practices. To be an owner of capital, for instance, primarily is to be enabled by background norms (legal and social) to *do* things with the capital one owns, with others' cooperation (including the cooperation of other capitalists, and the cooperation of the state through its regulatory agencies, the courts, and the police). Any effort to change the distribution of power within a community must be an effort to change these social norms. My point simply is that, first, hegemonic representational practices will empower some and disempower others; second, the people these practices empower will have an interest in maintaining them; and third, these people will deploy their power to enforce cooperation with these same representational practices *or other nearby practices*. A program for social change that targets *one* harmful social norm might succeed, but if we do not address the *system* of hegemonic representational practices, then other norms, similarly oppressive, simply will take its place.

6. Conclusion

By reframing Hart's critique of the command theory of law, we now have encountered two significant challenges to Bicchieri's individualistic approach to social norms: It obscures those social norms that distribute authority to "reference networks" within our communities, and it does not make sense of those social norms that empower people to perform specific actions. These problems reflect the fact that Bicchieri's theory attempts to define social norms in terms of individuals' attitudes and preferences, just as the command theory of law attempts to define law in terms of legal subjects' habits. We must instead define law and social norms in ways that transcend individuals' attitudes and preferences. The representational theory of social norms enables us to do just this. It defines social norms, not in terms of individuals' preferences and expectations, but in terms of social practices, which constitute the social context in which individuals form their preferences and expectations. Through their participation in these practices, people represent their community as organized into particular social structures, and locate one another within specific roles internal to these structures. These practices thus establish authorities within a community – roughly, what Bicchieri calls a "reference class" – by affording some people the social power to police others' activities, and so to enforce cooperation with prevailing representational practices. Through this enforcement, people not only help to sustain prosocial and maladaptive practices. They also help to sustain existing distributions of power.

Works Cited

- Bartky, Sandra Lee. *Femininity and Domination: Studies in the Phenomenology of Oppression*. New York: Routledge, n.d.
- Bicchieri, Cristina. *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms*. Oxford: Oxford University Press, 2017.
- . *The Grammar of Society: The Nature and Dynamics of Social Norms*. Cambridge: Cambridge University Press, 2005.
- Brandom, Robert B. *Making It Explicit: Reasoning, Representing, and Discursive Commitment*. Harvard University Press, 1994.
- Brennan, Geoffrey, Lina Eriksson, Robert E. Goodin, and Nicholas Southwood. *Explaining Norms*. Oxford: Oxford University Press, 2013.
- Elster, Jon. *The Cement of Society: A Study of Social Order*. Cambridge: Cambridge University Press, 1989.
- Feinberg, Joel. “The Nature and Value of Rights.” *The Journal of Value Inquiry* 4, no. 4 (1970): 243–60.
- Frye, Marilyn. “A Note on Anger.” In *The Politics of Reality*, 84–94. Berkeley: Crossing Press, 1983.
- . “Oppression.” In *The Politics of Reality*, 1–16. Berkeley: Crossing Press, 1983.
- Gilbert, Margaret. “Notes on the Concept of a Social Convention.” *New Literary History* 1983, no. 14 (51 225AD): 2.
- . *On Social Facts*. Princeton: Princeton University Press, 1992.
- . “Social Rules: Some Problems for Hart’s Account, and an Alternative Proposal.” *Law and Philosophy* 18, no. 2 (1999): 141–71.
- . “Walking Together: A Paradigmatic Social Phenomenon.” *Midwest Studies in Philosophy* XV (n.d.): 1–14.
- Hart, H. L. A. *The Concept of Law*. Edited by Leslie Green. Third. Oxford University Press, 2012.
- Hart, H.L.A. “Positivism and the Separation of Law and Morals.” *Harvard Law Review* 71, no. 4 (1958): 593–629.
- Kukla, Rebecca. “Discursive Injustice.” *Hypatia* 29, no. 2 (2014): 440–57.
- Paternotte, Cedric, and Jonathan Grose. “Social Norms and Game Theory: Harmony or Discord?” *British Journal of the Philosophy of Science* 64 (2013): 551–87.
- Pettit, Philip. “Virtus Normativa: Rational Choice Perspectives.” *Ethics* 100, no. 4 (1990): 725–55.
- Stahl, Titus. *Immanent Critique*. Lanham: Rowman and Littlefield, 2022.
- Strings, Sabrina. *Fearing the Black Body: The Racial Origins of Fat Phobia*. New York: New York University Press, 2019.
- Wietmarschen, Han van. “Stratified Social Norms.” *Economics and Philosophy*, 2023, 1–16.
- . “Stratified Social Norms.” *Economics and Philosophy*, 2023, 1–16.