

2008

Do Norms Still Matter? The Corrosive Effects of Globalization on the Vitality of Norms

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Patrick J. Keenan, Do Norms Still Matter? The Corrosive Effects of Globalization on the Vitality of Norms, 41 *Vanderbilt Law Review* 327 (2021)

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Do Norms Still Matter? The Corrosive Effects of Globalization on the Vitality of Norms

*Patrick J. Keenan**

ABSTRACT

Why does the process of globalization undermine the power of social norms to regulate behavior? Norms are the social regularities that shape individual behavior and help to create vibrant—or dysfunctional—communities. Most theories of norms do not account for the many ways that globalization affects the foundations of norms. This Article fills the gap by developing a more robust theory of the informal regulation of behavior that considers the ways that the process of globalization can interfere with the creation of norms and erode their power.

Drawing on behavioral economics, sociology, and criminology, the theory proposed in this Article contains three claims. First, because individuals in a globalizing community typically suffer from significant disruptions in relationships, the community's ability to regulate itself is eroded. In vibrant communities, residents are willing to intervene in the lives of

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their neighbors by, for example, scolding children who misbehave in public or teenagers who deface buildings. But in a globalizing community, the conditions that give rise to this willingness to intervene are eroded by the process of globalization. Second, globalization can distort the process of creating and enforcing social norms by allowing individuals to, in effect, immunize themselves from the sanctions typically employed to enforce norms. For example, differences in social status affect the ways that observers judge illicit behavior, and the ways that they condemn, condone, or ignore that behavior.

Third, globalization also makes it possible for individuals to engage in what the Author calls reputational segmentation. In this process, people who wish to engage in an activity that carries social sanctions do so in a place where they are immune to the real effects of those sanctions. For instance, Western tourists who travels to the developing world to engage in illicit sexual activity, often with children, may suffer social sanctions in the destination community, but those sanctions do not follow those tourists back to their countries of origin. And because the quality of the person's life is affected almost entirely by his reputation in his country of origin, the ability to engage in reputational segmentation allows him to escape the consequences of his actions. The Author's theory differs from other work on norms and globalization because it considers both the role of individuals and the incentives that shape their actions, as well as the role of communities in the enforcement of norms. With some notable exceptions, most scholarship that considers the power of norms looks at the incentives that guide an individual's decision to comply with or deviate from social norms. But as communities confront globalization, they evolve in ways that inevitably affect the power and content of norms. The give and take between individuals and communities is therefore central to the way that globalization affects norms.

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I. INTRODUCTION

Even in this age of globalization, when borders and distances seem to matter less and less, crime and the control of crime remain local phenomena. No matter how complicated the crime, virtually all illicit activity is driven by local players, operating in a particular place. Consider human trafficking, perhaps the most paradigmatic crime of globalization. It often involves moving people from one side of the world to another, using international criminal networks linked by the latest communications technology.¹ But victims of trafficking enter this nefarious supply chain in a particular place, where local social dynamics and pressures shape their options, constrain their choices, and facilitate or confound the work of smugglers. Regardless of how far they travel, they end up in a particular place, where they are victimized according to other local dynamics.² Similarly,

1. See, e.g., MOISÉS NAÍM, *ILLCIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY* 86–108 (2005) (describing the organization of networks that smuggle or traffic people throughout the world).

2. See, e.g., HUMAN RIGHTS WATCH, *A MODERN FORM OF SLAVERY: TRAFFICKING OF BURMESE WOMEN AND GIRLS INTO BROTHELS IN THAILAND* (1993) (describing the varied experiences of young women and girls trafficked from and to different regions).

attempts to control human trafficking—so far, largely ineffectual—must have a local focus, even if they are coordinated with broader efforts. Most theories of globalization and crime look at the transnational component: the many ways that globalization has made it easier to move people, money, ideas, and objects from one place to another, and the ways that crime control measures can affect these processes.³ This focus on movement, the middle of the supply chain, is certainly important, but too often it comes at the expense of consideration of the ends of the supply chain—the local social factors that make illicit activity more or less likely in a particular place. Equally important, this approach implies that criminal activity is the inevitable result of globalization. Approaches to globalization that focus on the global middle of the supply chain rather than on the local ends and assume that increases in criminal activity are an inevitable cost of globalization fail to capture the experience and needs of those most profoundly affected by globalization: people in local communities whose lives are changing in ways large and small.

A recent editorial in *The Independent*, an independent newspaper in Gambia, provides a vivid illustration of why this issue is important. At issue was a statute designed to combat sex tourism or the practice of foreign tourists traveling to Gambia to engage in sex with prostitutes, including children.⁴ The editorial began by noting that “development comes with many things—bad or good.”⁵ It then argued that most Gambians did not wish to give up the economic benefits that come from a vibrant, profitable tourist economy, but that the presence of foreign sex tourists and the emergence of other social changes stemming from this tourism were damaging the country.⁶ The goal was to develop a statute that would filter out the unwanted effects of globalization while permitting the benefits to continue.⁷ Beyond expressing this fundamental desire, the editorial was noteworthy for other reasons. It did not argue that the harms stemming from globalization are attributable solely to the actions of foreigners, corporations, or some other external force.⁸ Instead, the consequences of globalization—positive or negative—are the result of

3. See, e.g., NAİM, *supra* note 1, at 100–03 (describing the means by which traffickers move people).

4. Editorial, *Can We Arrest Development Challenges?*, INDEPENDENT (Gam.), Nov. 25, 2005.

5. *Id.*

6. *Id.*

7. See *id.* (“With the enactment of Sex Offences act, we believe tourists would not go scot-free with such crimes in The Gambia.”).

8. See *id.* (“With all the arrests they are making, our security forces unfortunately have not been mindful of this. Perhaps, they are conniving with operators of video clubs.”).

the interaction of local and global forces.⁹ Perhaps most important, the editorial focused attention on many of the most vexing questions of globalization: what is it about globalization that undermines the vitality of social norms which, in most places, moderate behavior?¹⁰ How does a community, subject to the many pressures and changes brought about by globalization, set and enforce norms to regulate conduct within the community?¹¹

This Article begins to develop a theory of the informal regulation of behavior that accounts for both individual behavior and community action, as well as the effect of globalization on both dimensions. Consideration of the forces that guide an *actor's* behavior is important, but equally important are the forces that guide the behavior of *observers*. Norms are not freestanding rules that operate of their own force; they are the manifestations of the accumulated responses of observers to what they witness and the reactions of actors to these responses. Norms exist because observers do things that thereby communicate to actors—via varied and diffuse means, to be sure—what is appropriate, acceptable, worthy of praise, or deserving of criticism.¹² Any discussion of norms must focus on observers, not just on actors. Further, the reactions of observers to what they experience are shaped by decisional biases that affect all people and communities. For example, when faced with the same behavior, observers react differently to low- and high-status individuals. The important task is to understand the factors that allow local communities to enjoy the benefits of globalization while preserving their ability to protect themselves against the possible negative consequences of it. Finally, the reactions of observers are constrained in new ways by the realities of globalization, including, for example, the ease with which individuals can exit a community in which they have engaged in norms-violating behavior.

The Article draws on research from behavioral economics, sociology, and criminology to address these questions. The approach has three main elements. First, the Article argues that because globalizing communities are typically characterized by significant population turnover, their ability to regulate themselves is eroded. For example, there is evidence that in effective communities, residents are willing to intervene in the lives of their neighbors by,

9. See *id.* (arguing not for isolating the country from globalization but enacting laws to combat the negative side effects so as not to allow The Gambia to become a haven for illicit activity).

10. See *id.* (discussing foreigners who come to The Gambia to engage in illegal sex activities).

11. See *id.* (advocating for the passage of the Sex Offenses Act to stop such behavior).

12. See *id.* (discussing how elders of past generations would not have allowed minors to look at pornographic videos, but that this has become difficult because of the internet and globalization).

for example, scolding children who misbehave in public or teenagers who deface buildings.¹³ But in a globalizing community, the conditions that give rise to this willingness to intervene—and a number of other hallmarks of healthy communities—are eroded by the process of globalization. Although the consequences of diminished participation in community self-regulation are varied, the result is that social norms are more difficult to enforce and less effective. Next, the Article argues that globalization can distort the process of creating and enforcing social norms by allowing individuals to, in effect, immunize themselves from the sanctions typically employed to enforce norms. For example, there is substantial evidence that differences in social status affect the ways that observers judge illicit behavior, and the ways that they condemn, condone, or ignore that behavior.¹⁴ Finally, the Article argues that globalization also makes it possible for individuals to engage in what the Author calls reputational segmentation. As part of this process, people who wish to engage in an activity that carries social sanctions do so in a place where they are immune to the real effects of those sanctions. For example, Western tourists who travel to the developing world to engage in illicit sexual activity, often with children, may suffer social sanctions in the destination community, but those sanctions do not follow the person back to their country of origin. And because the quality of the person's life is affected almost entirely by his reputation in his country of origin, the ability to engage in reputational segmentation allows him to escape the consequences of his actions.

The approach used in the Article brings together globalization and norms literature but avoids the false choices that can limit the usefulness of both areas. The Article considers the role of individuals and the incentives that shape their actions, and the role of the local communities in the enforcement of norms. With some notable exceptions, most scholarship that considers the power of norms looks at the incentives that guide an individual's decision to comply with or deviate from social norms.¹⁵ But as communities confront globalization, they evolve in ways that inevitably affect the power and content of norms. The give and take between individuals and communities is therefore central to the way that globalization affects norms. Some norms scholars do consider the ways that norms affect communities, to be sure, but their approach often pits individuals against the community, asking, for example, how the collective is harmed by the actions of a small number of individuals, or how respect for individual rights can interfere with a community's ability

13. See *infra* Part IV.A.1.

14. See *infra* Part IV.D.

15. See *infra* Part II.

to set its own standards.¹⁶ Perhaps it is true for a relatively homogenous, established community, but in a rapidly globalizing community there is no reason that the expression of individual behaviors should ineluctably harm the community.

As with norms literature, contemporary globalization literature is helpful as far as it goes, but its usefulness is limited because it asks narrow questions and arrives at similarly narrow answers. Most of the literature on globalization asks whether globalization is good or bad: do incomes rise or fall?¹⁷ Are indigenous cultures empowered or eroded? The answers are almost always dictated by the premises. Those who would privilege civil, political, or cultural rights over economic development almost always discount the benefits of rising income, if they acknowledge it at all. Those who view economic development as the foundation of social development see social or cultural transformations as a small price to pay for increasing prosperity. Underlying this difference is an important and frequently unexamined difference in approach. Those who highlight the economic benefits of globalization take as their unit of concern the individual.¹⁸ Even if they base their arguments on aggregate data, they focus on the ways that globalization affects individuals by conveying benefits typically associated with individuals: higher income, more options regarding where to live or work, and more personal freedom, to name a few. Those on the other side take as their unit of analysis the collective. They focus on the ways that globalization affects communities, and the evidence that stirs their concern includes things like the disappearance of local languages, the spread of Western consumer culture, and the like. In the end, the literature fails to capture the experience of people in the developing world who live their lives as individuals and as members of a community. Much of the debate calls to mind an old joke: "Do you walk to school or carry your lunch?"¹⁹ As the joke reminds us, two very different phenomena can act on the same entity at the same time; it is certainly the case that economic and social effects of

16. See generally Tracey L. Meares & Dan M. Kahan, *When Rights are Wrong: The Paradox of Unwanted Rights*, in URGENT TIMES: POLICING AND RIGHTS IN INNER-CITY COMMUNITIES 3 (Joshua Cohen & Joel Rogers eds., 1999) (discussing individual rights trumping that of the community in the context of searches of public housing in Chicago being found unconstitutional even though the vast majority of residents supported them).

17. See *infra* Part II.

18. See generally Stanley Fischer, *Globalization and its Challenges*, 93 AM. ECON. REV. 1, 3–8 (2003) (describing the arguments on both sides of the globalization debate).

19. Philip J. Cook & Jens Ludwig, *Fact-Free Gun Policy?*, 151 U. PA. L. REV. 1329, 1329 (2003) (arguing that it is a fallacy to assume that because there is strong evidence that one factor is important to a decision, a second factor cannot also be important).

globalization can and do occur at the same time. And the Author argues that choosing one ought not mean foregoing the other.

The Article proceeds in three Parts. In Part II, the Author critiques the contemporary globalization literature. In Part III, the Author develops a detailed description of the processes of globalization as they affect communities. Despite the attention paid to globalization, most scholars rely on surprisingly thin accounts of what actually happens when a community undergoes the process of globalization. In order to avoid generalities, to the extent possible, the Article focuses on Vietnam's experience and attempts to understand the actual dynamics of globalization and how they affected, and were affected by, social dynamics, economic opportunities, and a range of other issues. The Author's goal is to illustrate the effects of globalization on a community so that we can better understand why current theories do not fit and why this matters. Part IV is the heart of the Article: it considers evidence supporting the Author's argument that individual behavior need not inevitably lead to community harm, and the dynamic processes that encourage and constrain the development of norms.

The current period of globalization is not, of course, the first time that societies have undergone rapid transformation. Beginning in earnest after the Industrial Revolution, scholars began to attempt to explain the social changes caused by industrialization and urbanization. This literature, which traces its roots most prominently to the work of Emile Durkheim, addresses questions similar to those that the Author poses, albeit in a much different context. It identifies several factors to explain increases in some types of criminal activity that appeared to accompany the Industrial Revolution and the period of rapid urbanization that accompanied it.²⁰ This literature provides a number of useful insights but fails to answer the full range of questions that contemporary globalization has made particularly salient. In its most simple form, this approach argues that as individuals move from small towns to big cities, they interact less frequently, which inhibits or prevents the formation of the social norms that suppress illicit behavior.²¹ The result is *anomie*—normlessness—that produces increases in antisocial

20. The Author notes at the outset, with only slight exaggeration, that attempting to present a short summary of the arguments of Durkheim and those he influenced is a bit like attempting to present a short summary of the Bible. For much fuller interpretations and critiques of Durkheim's work, see DONALD BLACK, *THE BEHAVIOR OF LAW* (1976); Anthony Giddens, *Classical Social Theory and the Origins of Modern Sociology*, 81 AM. J. SOC. 703 (1976); Robert K. Merton, *Durkheim's Division of Labor in Society*, 9 SOC. F. 27 (1994); and Edward A. Tiryakian, *Revisiting Sociology's First Classic: "The Division of Labor in Society" and its Actuality*, 9 SOC. F. 3 (1994).

21. See, e.g., BLACK, *supra* note 20, at 40–48 (“And in the midst of strangers, law reaches its highest level.”).

behavior.²² Again, this work is useful but not sufficient. The unit of analysis remains the actor, not the observer. It, too, does not give full attention to the incentives that observers have to invest in the creation of norms. In addition, recent research in behavioral economics on the ways that individuals respond to incentives provides a much fuller explanation of why observers act as they do; this evolving explanation is critical to understanding the ways that globalization affects the vitality of norms.²³ Without understanding what observers do and why they do it, it is impossible to arrive at a robust theory to explain the ways that globalization affects informal social control.

Before moving on, two short clarifications are in order. First, the Article draws on the work of Durkheim and other social theorists who analyzed the social changes that accompanied the rise of modern cities. The Article has deliberately returned to first principles, relying on Durkheim's own work and that of a handful of other social theorists who interpret it. Durkheim's work provides important insights about contemporary phenomena, with the knowledge that much has changed since Durkheim and his contemporaries wrote. Not only are the factual contexts different, but scholarly understanding of human behavior, economic processes, and myriad other phenomena are also different. Although Durkheim's work necessarily reflects then-prevailing understandings of individual behavior, social forces, and the like, it is nonetheless useful. Second, although the Article draws mainly on a handful of the foundational works in the field, the Durkheimian approach, broadly defined, remains a fruitful source of insight for criminology, sociology, and many other disciplines.²⁴

Contemporary globalization raises a host of new challenges, but many of the core issues have been considered before. Emile Durkheim and his many scholarly progeny attempted to explain the relationship between the growth of cities and apparent changes in the patterns of criminal activity.²⁵ Although it does not fully address the issues that the Article raises, in many ways this work sheds more light on contemporary globalization than the contemporary globalization literature. In the remainder of Part I, the Article

22. *Id.*

23. *See supra* note 20.

24. *See* Calvin Morrill, John Hagan, Bernard E. Harcourt, & Tracey Meares, *Seeing Crime and Punishment Through a Sociological Lens: Contributions, Practices, and the Future*, 2005 U. CHI. LEGAL F. 289 (2005) (discussing the many ways that the Durkheimian approach contributes to (and occasionally confounds) understanding of contemporary criminology).

25. *See, e.g.*, ANTHONY GIDDENS, CAPITALISM AND MODERN SOCIAL THEORY: AN ANALYSIS OF THE WRITINGS OF MARX, DURKHEIM AND MAX WEBER 65 (1971) (arguing that the goal of Durkheim's work was to understand the shift from agrarian to urban, industrial society).

sketches out the basics of Durkheim's theory and then focuses on three insights that are important to the Author's theory.

In *The Division of Labor in Society* in 1893²⁶ and continuing in subsequent works,²⁷ Emile Durkheim attempted to identify the ways that social change affects individual behavior, particularly with regard to illicit or criminal behavior. His aim was to explain social changes associated with the Industrial Revolution.²⁸ Durkheim argued that the shift from the village-based societies to urbanized societies would produce an increase in the variation of individual behavior, including an increase in deviant or criminal behavior.²⁹ He argued that as societies became more urban, human interaction would cease to be based on what he called mechanical solidarity, or cohesion growing out of shared experiences and rituals, and would instead become based on organic solidarity, which occurs when labor specialization forces people to cooperate to meet their needs.³⁰ This basic idea—that increases in community complexity transform the ways that individuals interact and are associated with increases in deviant behavior—helped to spark a welter of theories and hypotheses.³¹ The Durkheimian approach is useful because it connects individual actions and societal forces to explain how societies evolve, and considers the effect of this evolution on illicit activity. Although there are too many divisions within this body of work to identify a single, convincing theory, it nonetheless provides important insights along the way.

Durkheim's first important contribution is to determine why urbanization (or other increases in societal complexity) might contribute to increases in deviant behavior.³² The basic model considers the social implications of a transition from village life to urban life. In this model, village life is characterized by frequent interaction among all people, limited social influences on individuals, and relative consensus about social expectations and appropriate behaviors.³³ Urban life is characterized by relative anonymity, labor specialization, and a reduction in consensus about social norms.³⁴ In

26. EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (Free Press ed. 1964) (1893).

27. *E.g.*, EMILE DURKHEIM, *SUICIDE* (Free Press ed. 1963) (1897).

28. *E.g.*, GIDDENS, *supra* note 25.

29. DURKHEIM, *supra* note 26, at 70–132

30. *Id.*

31. *Id.*

32. In *The Division of Labor in Society*, Durkheim argued that as societies become more complex, the variability of individual behavior increases. *Id.* at 283–84. Durkheim believed that the extremes of behavior would inevitably be considered deviant, thus his prediction that as societies become more complex, deviant behavior will increase.

33. *Id.*

34. *Id.*

village society, it is the "homogeneity of experience" that produces "normative consensus,"³⁵ while in urban society, individual concerns predominate because individuals are "left with no essential characteristics in common except those they get from their intrinsic quality of human nature."³⁶ Thus, in urbanized societies, it is the absence of a shared history and the decrease in the number of opportunities for repeated interaction with the same people that reduces consensus about norms.³⁷ From this shared starting point³⁸ there are several paths that might lead to an increase in deviant behavior. The first, and most basic, is that the reduction in consensus reduces the cost of violating norms, and reduces the likelihood of suffering the cost in the first place.³⁹ The "sanctions of public sentiment" maintain the traditional power of norms.⁴⁰ Because there is less consensus about norms, and because enforcement is less likely, individuals, released from the pull of social norms, engage in a broader range of behavior, some of which invariably ends up being labeled as "criminal."⁴¹ Another causal path holds that the development of society itself creates in people desires or tastes that they previously did not hold, but does not provide sufficient avenues for satisfying those tastes.⁴² Both factors contribute to an increase in deviant activity.⁴³ The decreased

35. Jack P. Gibbs, *A Formal Restatement of Durkheim's "Division of Labor" Theory*, 21 SOC. THEORY 103, 111 (2003).

36. EMILE DURKHEIM, PROFESSIONAL ETHICS AND CIVIC MORALS 112 (Bryan S. Turner ed., Cornelia Brookfield trans., Routledge 1957) (1900). See also Bruce DiCristina, *Durkheim's Theory of Homicide and the Confusion of the Empirical Literature*, 8 THEORETICAL CRIMINOLOGY 57, 64–67 (2004) ("Durkheim argued that as societies advance, sentiments related to collective things gradually give way to those related to the individual (humanity).").

37. Although it likely goes without saying, there is no consensus in the literature on this point. See, e.g., Steven F. Messner, *Societal Development, Social Equality, and Homicide: A Cross-National Test of a Durkheimian Model*, 61 SOC. FORCES 225, 226–27 (1982) (noting that empirical tests of the development/crime hypothesis test different theoretical models drawn from the same sources).

38. See, e.g., Peter A. Corning, *Durkheim and Spencer*, 33 BRIT. J. SOC. 359, 364–65 (1982) (noting that with increased societal complexity, "the collective conscience become[s] progressively weakened as a binding force for the social order.").

39. Stephen D. Webb, *Crime and the Division of Labor: Testing a Durkheimian Model*, 78 AM. J. SOC. 643, 644 (1972).

40. *Id.*

41. This abbreviated description omits a number of important and contested ideas having to do with whether behavior labeled deviant is simply behavior at the bounds of the observed range, and the utility and consequences of the creation of categories in the first place. For a thoughtful treatment of these matters, see Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 348–54 (1998).

42. See, e.g., Corning, *supra* note 38, at 364 (arguing that Durkheim believed that it was social complexity "that creates economic wants, not the other way around").

43. *Id.* at 366.

normative consensus weakens the forces that regulate individual behavior, while the development of society increases individual desires.⁴⁴ The problem, therefore, is the weak fit between the “normative infrastructure”⁴⁵ and the forces that it must regulate.

A second and closely related insight is the concept of *anomie*, which in its most general form is usually described as “a condition characterized by the relative absence or confusion of values in a society or group.”⁴⁶ There are a range of theories to explain the causes and consequences of *anomie*. To some, *anomie* is a condition that afflicts individuals who live in a society that lacks consensus about norms.⁴⁷ Under this view, because there is no societal consensus about the content of norms, individuals are left without the social rules that make interaction with others meaningful, predictable, and efficient.⁴⁸ Others argue that *anomie* arises not because individuals lack knowledge of the content of norms, but because norms are not enforced.⁴⁹ Thus, when norms are not enforced, the result is analogous to the legal defense of desuetude, which permits an individual to avoid the legal consequences of violating a statute that has not been enforced for an extended period of time.⁵⁰ Under this view, the consequences of normative desuetude are that individuals feel unmoored.⁵¹ Rather than being free from the consequences of an unwanted law, individuals are left without the comforting guidance of social norms.⁵² The final version of *anomie* takes a more explicitly economic form. Here, individuals suffer from *anomie* because of a “dissociation between culturally defined

44. *Id.*

45. *Id.* at 364 (quoting Edward Tiryakian, *Emile Durkheim*, in A HISTORY OF SOCIOLOGICAL ANALYSIS 187 (Tom Bottomore & Robert Nisbet eds., 1978)).

46. GEORGE A. THEODORSON & ACHILLES G. THEODORSON, A MODERN DICTIONARY OF SOCIOLOGY 12 (1969).

47. Stephen R. Marks, *Durkheim's Theory of Anomie*, 80 AM. J. SOC. 329, 333 (1974).

48. See, e.g., *id.* (describing *anomie* as “the situation in which . . . normative boundaries are thrown awry,” depriving people of guidance about the rules of social interaction and aspirations). *But see* David McCloskey, *On Durkheim, Anomie, and the Modern Crisis*, 81 AM. J. SOC. 1481, 1483 (1976) (arguing that “Marks is sadly mistaken if he . . . presumed consensus concerning *anomie*.”).

49. See Robert L. Hamblin & Paul V. Crosbie, *Anomie and Deviance*, in BEHAVIORAL THEORY IN SOCIOLOGY: ESSAYS IN HONOR OF GEORGE C. HOMANS 361, 363–64 (Robert L. Hamblin & John H. Kunkel eds., 1977) (stating that *anomie* cannot simply be defined as “the absence of verbal rules in a social system,” since “[m]any social systems have ‘rules on the books’ that are not enforced in any way.”).

50. See generally 4 WAYNE LAFAVE ET AL., CRIMINAL PROCEDURE 213 (3d ed. 2007) (describing desuetude as a doctrine “whereunder a statute is abrogated by reason of its long and continued nonuse”).

51. See *id.* (stating a statute falls into desuetude only when a custom of its nonobservance can be deduced).

52. See *id.* (stating desuetude occurs when there is a custom of nonobservance; thus, there would no longer a social norm guiding the conduct the statute covered).

aspirations and socially structured means” to satisfy those aspirations.⁵³ This can happen because the factors that affect the creation of desires—such as the influence of others, images from advertisements, and the like—outstrip the social or economic structures that would permit the satisfaction of the desires.⁵⁴

The final cluster of insights relates to the approach of the model rather than any specific arguments. The Durkheimian model attempts to identify the ways that individual behavior shapes society and that social forces shape individual behavior. This concept incorporates ideas that are found most clearly in the work of Georg Simmel.⁵⁵ Simmel identified several keys to society, three of which are important here. First, he argued that one key was individual reciprocity—the ways that interactions between two individuals can be seen as a series of actions and reactions, which cumulatively produce a relationship.⁵⁶ Second, he argued that the accretion of these relationships create society.⁵⁷ Finally, he argued that, just as individuals react to each other, so too do individuals and society react to each other.⁵⁸ This concept, even in the simplified form presented here, is left out of most contemporary accounts of globalization. It is critical to recognize the dynamic aspect of globalization—the ways that individual behavior changes in the face of changing incentives and constraints, and the ways that individual decisions and actions can alter the norms that regulate conduct.⁵⁹

The Durkheimian model’s second methodological advance is that it explicitly attempts to reflect and explain reality. Broadly speaking,

53. Robert K. Merton, *Social Structure and Anomie*, 3 AM. SOC. REV. 672, 674 (1938). Merton argues that *anomie* results from a disjunction between desires and means to satisfy those desires. He contrasts that to a society in “effective equilibrium,” which occurs when individuals derive “satisfactions from the achievement of the goals and satisfactions emerging directly from the institutionally canalized modes of striving to attain these ends.” *Id.*

54. *Id.*

55. See Georg Simmel, *How is Society Possible?*, 16 AM. J. SOC. 372, 384–87 (1910). The Article draws on Simmel’s work for the point that individuals shape society and society shapes individuals. Simmel’s argument goes beyond this and addresses the ways that individual psychological processes form a conception of the self and the ways that those conceptions are both public and private, among many other ideas.

56. *Id.*

57. *Id.*

58. *Id.*

59. To be fair, some theories of globalization mention a related concept, which some call glocalization. Thomas Friedman, for example, writes of the need for some cultures to develop “the ability to ‘glocalize,’” which he defines as “the ability of a culture, when it encounters other strong cultures, to absorb influences that naturally fit into and can enrich that culture, to resist those things that are truly alien and to compartmentalize those things that, while different, can nevertheless be enjoyed and celebrated as different.” THOMAS FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* 295 (2000).

many earlier social theorists had started their analysis by comparing individuals to a conception about what they ought to believe or do.⁶⁰ Although the new sociological model did not abandon the normative framework, it attempted to engage with contemporary events or recent history in ways that earlier scholarship had not.⁶¹ This is, of course, perhaps the single most important factor in the emergence of sociology as a distinct scholarly discipline. Durkheim, Simmel, and their scholarly successors stand in contrast to those who, using a variety of epistemological methods, constructed an ideal to which human activities or institutions could be compared.⁶² That is not to say that it is empirical; there is no analysis of data in the ways that contemporary scholars have come to expect. Nonetheless, the research looks not merely to an imagined ideal but to the real world in order to find both the important questions and likely answers.⁶³ To see the importance of this insight, contrast it to contemporary globalization scholarship. Despite containing an abundance of data, too much contemporary scholarship ignores the complex reality of globalization. Complicated processes are evaluated in a one-dimensional way, with the focus either on economic benefits or social harms, with little consideration of the other. And, perhaps most important, this one-dimensional evaluation fails to consider what should be obvious: namely that people live their lives and measure utility in a multitude of intersecting dimensions, none of which should be completely ignored or emphasized to the exclusion of all others.

II. THE INADEQUACY OF CURRENT THEORIES OF GLOBALIZATION

Most of the globalization literature begins from one of two perspectives. Much of it takes as its starting point the developed world and considers institutions that originated in the West, or that mainly affect the West. Other scholars attempt to disclaim this

60. See, e.g., Georg Simmel, *The Problem of Sociology*, 6 ANNALS AM. ACAD. POL. AND SOC. SCI. 52 (1895) (arguing that "sociology as a special science . . . restricts itself entirely to the realm of phenomena and their immediate psychological explanation").

61. There is a small irony here. The specific empirical claim that sparked Durkheim's interest was that crime rates rose during the Industrial Revolution. More recent evaluation of the evidence available to Durkheim and his contemporaries suggests that this factual claim was likely false. See Lynn McDonald, *Theory and Evidence of Rising Crime in the Nineteenth Century*, 33 BRIT. J. SOC. 404, 413-14 (1982) (contending that crime rates were falling despite popular opinion).

62. See generally Paul Fauconnet, *The Pedagogical Work of Emile Durkheim*, 28 AM. J. SOC. 529, 535 (1923) (arguing that Durkheim "felt a genuine repulsion for all arbitrary constructions. . . . Reflection on a given fact, on an observable reality . . . was necessary to him").

63. *Id.*

purpose and argue from the perspective of protectors of a naive native culture that requires and deserves protection and preservation at all costs. Left out is consideration of globalization from the perspective of people in the developing world, who are concerned with both their economic well-being and the social and cultural consequences of globalization. For people in the developing world, what these theories lack is not supporting data—indeed, writings about globalization overflow with it—or complexity, but perspective. Recall the editorial from Gambia that argued for an approach to globalization that would permit the country to benefit from full engagement with the global economy while allowing communities to preserve their distinctive character.⁶⁴ This is an issue of deep importance, but cannot be answered by pointing to data about increases in per capita income or recounting stories about the exploitation of local workers by transnational corporations. Those who favor globalization focus on economic growth and pay little attention to the social changes that often accompany growth. Those who argue against it do not give sufficient weight to the issue of economic growth and the desire of poor people to escape poverty. Both approaches seem to agree that economic growth is often linked to negative social consequences, at least in the short term. However, there is much disagreement about the extent to which this happens and about whether the other side's evidence supports its assertions. Nevertheless, the linkage between the benefits of economic growth and the attending social harms is common. Neither theory considers a globalization that might encourage economic growth while not imperiling local social structures or cultures.

Part of the problem may be that the theories, while using the same language, do not really address the same issues. Those who argue in favor of globalization do so primarily because of its economic benefits. What they really argue for is economic development. Globalization, in the form of free trade and market economies, merely describes their view of the most effective way to achieve development. Those who argue against globalization take as their point of concern the social and cultural transformations that often accompany globalization. Their story is one of forced modernization—a world in which stable, content local communities are forced to accept social practices that are distasteful or even offensive. More important, neither theory provides an account of *how* globalization happens. The sex tourism example demonstrates the importance of this issue. Myriad activities cross borders—everything from religious observances to modes of dress to market structures—but not all of them take hold in their new location. Why do some activities become entrenched when others do not? This is a complex question, and one

64. See *supra* note 4 and accompanying text.

that will likely never be satisfactorily answered. But scholars should at least consider the more limited issue of what makes a location vulnerable to the establishment of unwanted activities.

In this Part, the Article lays out the conventional arguments in the globalization debate and draws lessons from them. The Article starts by describing the debates over the definition of globalization. In many ways, this issue has consumed the scholarly attention that might otherwise have gone to refining the theory. This is true in part because globalization (if not its component parts) is relatively new, and defining it is the natural first step. But it is also true because, for many scholars, the definition of globalization does the work of a theory. Next, the conventional arguments for and against globalization are considered. Because determining whether globalization is good or bad depends in part on what the goals are—increasing incomes, empowering poor people, expanding markets—the Article also discusses the benchmarks used to measure whether globalization is good or bad.

A. *Defining Globalization*

A workable definition of globalization is an important component of a coherent theory, but there are almost as many ways to define globalization as there are theories. Some argue that globalization is primarily an economic phenomenon, with some inevitable but benign social or cultural consequences.⁶⁵ Others argue that globalization amounts to the imposition of the Washington Consensus—a set of economic and political prescriptions favored by the U.S. and many countries in Europe—on countries in the developing world.⁶⁶ Other scholars focus on the network effects of globalization—the development of transnational networks, usually based on economic exchange, that transcend national borders.⁶⁷ This position sometimes includes the argument that the global economy has become so powerful that the sovereignty of states, particularly poor states, has been largely eroded. The battle over the definition is, at its core, about whether the focus should be on economic, social, or cultural issues, or some combination of the three.

Most definitions of globalization start with the ideas of connection and exchange. Joseph Stiglitz, former chief economist at the World Bank, defines globalization as the increase in exchange between countries and peoples, due mostly to a radical reduction in the costs of transportation and communication.⁶⁸ And there can be no

65. See *infra* notes 72–73 and accompanying text.

66. See *infra* notes 74–79 and accompanying text.

67. See *infra* notes 69–71 and accompanying text.

68. See JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 9 (2002) (defining globalization as “the closer integration of countries and peoples of the world

real doubt that an increase in exchange between people of different countries has occurred. The amount of transnational trade has increased significantly in the last thirty years.⁶⁹ The volume of international travel has also increased significantly over the same period.⁷⁰ But beyond these basics, there is little agreement on how to define globalization.

What unites these definitions is that globalization is seen as an organic process working primarily through markets. To these scholars, the term globalization describes the results of myriad decisions made by people around the world—decisions about where to invest, which job to take, what products to buy, whom to marry, or whether to emigrate. These decisions are the product of individual choice; they are constrained by economic or social realities, to be sure, but the product of choice nonetheless. One approach considers the increase in connections among economies and firms. This happens through “integration of national economies into the international economy through trade, direct foreign investment (by corporations and multi-nationals), short-term capital flows, international flows of workers and humanity generally, and flows of technology.”⁷¹ Of course, those who favor this view do not ignore the social or cultural aspects of globalization, but for them, the “cultural, social and political consequences (and preconditions) . . . are neither part of its definition nor a focus of our attention.”⁷²

Another set of definitions looks at the macro-economic policies sometimes associated with globalization as part of a hegemonic agenda pushed by the West in general and the U.S. in particular.⁷³ One strand in this set of definitions focuses on the Washington Consensus. The term was coined to describe policies designed to address problems in Latin American economies.⁷⁴ Initially, the

which has been brought about by the enormous reduction of costs of transportation and communication, the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders”). Indeed, the Author has used this definition in his own previous work. See Patrick J. Keenan, *The New Deterrence: Crime and Policy in the Age of Globalization*, 91 IOWA L. REV. 505, 510 (2006).

69. In just the past ten years, the period for which the most reliable data is available, international travel has expanded enormously. Measured by the number of arriving passengers, tourism to East Asia, Latin America, and the Caribbean increased by almost 52 million people per year. WORLD BANK, WORLD DEVELOPMENT INDICATORS 2007, available at <http://go.worldbank.org/3JU2HA60D0> [hereinafter WORLD DEVELOPMENT INDICATORS 2007].

70. *Id.*

71. JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION 3 (2004).

72. MARTIN WOLF, WHY GLOBALIZATION WORKS 19 (2004).

73. See, e.g., RICHARD FALK, PREDATORY GLOBALIZATION: A CRITIQUE (1999) (arguing that globalization and the structure of global economic relations are the product of intentional actions on the part of Western governments).

74. STIGLITZ, *supra* note 68, at 53.

Washington Consensus described three policy reforms—"fiscal austerity, privatization, and market liberalization"—that were aimed at correcting budget deficits and other macro-economic problems in Latin America.⁷⁵ As advocates of these policies attempted to implement them in countries with different economic problems, the results were increasingly, and predictably, poor.⁷⁶ Since then, the term has come to describe a process: Western governments, often working through international institutions, impose economic reforms that damage the environment, impoverish local people, and enrich corporations.⁷⁷ Even the war in Iraq is sometimes linked to the Washington Consensus.⁷⁸ A variety of motives are ascribed to the West: ensuring profits for corporations, protecting oil supplies, expanding American influence, and many more. What these definitions have in common is the view that globalization is a set of values and policies imposed by developed countries on developing countries.

B. Weighing Globalization

Despite using a range of methodologies and analytical models, most theories end up taking one of two positions. Either globalization is good because it increases incomes and thereby improves the lives of most people (even if there are bumps in the road along the way) or globalization is bad because it permits corporations to exploit poor people without providing them any real benefits (even if some people make money along the way).

At the core of the pro-globalization argument is David Ricardo's theory of comparative advantage.⁷⁹ He argued that a country should produce for export those products that it could produce more cheaply, relative to its trading partners, than other products.⁸⁰ From this insight, economists and others favor the free flow of goods, capital, and labor, and argue that globalization is the process by which these

75. *Id.*

76. *Id.* at 54.

77. For a comprehensive review of the reforms associated with the Washington Consensus, see Moises Naim, *Fads and Fashion in Economic Reform: Washington Consensus or Washington Confusion* (Oct. 26, 1999) (working paper prepared for the IMF Conference on Second Generation Reforms), available at <http://www.imf.org/external/pubs/ft/seminar/1999/reforms/Naim.HTM>.

78. See, e.g., David Held, *Toward a New Consensus: Answering the Dangers of Globalization*, 27 HARV. INT'L REV. 14, 15-16 (2005) (arguing that the principles underlying the Washington economic consensus produced the policies that led to the war in Iraq).

79. DAVID RICARDO, *ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* (3rd ed. 1821).

80. *Id.* at 131-61.

benefits can be spread.⁸¹ In his recent book *Why Globalization Works*, Martin Wolf puts the issue this way: “Who imagines that the welfare of Americans would be improved if their economy was fragmented among its fifty states, each with prohibitive barriers to movement of goods, services, capital and people from the others?”⁸² Defenders of globalization typically make a two-step argument. First, freer trade improves economic growth; second, economic growth improves the lives of poor people, even if it also enriches corporations.⁸³ One reason for this is the assumption that most countries “have somewhat similar income distributions regardless of their political and economic cast.”⁸⁴ This means that increasing the income of the poorest people in the country depends largely on increasing incomes across the board—to “grow the pie” rather than slice it in a novel way.⁸⁵ Most of the claims made by pro-globalization scholars come from this basic premise. The lives of women are improved because incomes go up. The lives of children are improved (and child labor is reduced) because incomes go up. Other problems, most notably environmental degradation, are not caused by globalization but by some other mechanism, and would be less harmful if incomes rose.⁸⁶

Some of those who defend economic globalization explicitly disclaim any focus on the “cultural, social and political consequences.”⁸⁷ This disclaimer, although not universal, highlights the primary weakness of the pro-globalization group. Economic development happens to people, not economies. With development come changes, and communities are often ill-equipped to adapt to the changes, at least in the short term. Related to this point is another weakness of the pro-globalization group. Those who focus on economic growth sometimes argue that, “[i]n the very long run . . . the

81. See, e.g., David Dollar & Aart Kraay, *Spreading the Wealth*, 91 FOREIGN AFF. 120, 121 (2002) (arguing that “increased participation in international trade and investment” is strongly linked to faster growth, and that “higher growth rates in globalizing developing countries have translated into higher incomes for the poor.”).

82. WOLF, *supra* note 72, at 3.

83. See, e.g., Fischer, *supra* note 18, at 3 (arguing that “the surest route to sustained poverty reduction is economic growth,” and that “the evidence strongly supports the conclusion that growth requires . . . an orientation toward integration into the global economy.”).

84. BHAGWATI, *supra* note 71, at 54.

85. *Id.*

86. To be sure, some economists who generally favor economic integration have noted the mixed economic consequences of the process. See, e.g., Paul Krugman & Anthony J. Venables, *Globalization and the Inequality of Nations*, 110 Q.J. ECON. 857, 876 (1995) (arguing that, as economic integration becomes entrenched, the benefits flowing to poor countries may be reduced).

87. WOLF, *supra* note 72, at 19 (“The economic globalization discussed here has cultural, social and political consequences (and preconditions). But those consequences and preconditions are neither part of its definition nor a focus of our attention.”).

integration of markets for goods, services and factors of production . . . is almost certainly irreversible.”⁸⁸ But people do not live their lives “in the very long run.” People must adapt to changes as they occur. And for some people, the long-term benefits of globalization that will largely accrue to others might seem like a small reward for the short-term costs that they must pay themselves.

Those who argue against globalization do so for a number of reasons. Many focus on poverty. They argue that governments in poor countries have been driven to radically reduce their social safety nets in order to reform their economies to compete in a globalized world.⁸⁹ Another version of this argument is that governments have effectively ceded control of their economic and social policy to corporations or to transnational organizations that are not responsive to the needs of local people.⁹⁰ Variations of this argument devote particular attention to the plight of a segment of society, typically children or women.

Another strand of the anti-globalization literature focuses on the effect of globalization on indigenous culture. Some scholars argue that as goods and capital now move around the globe, so too do cultural attitudes and symbols.⁹¹ Their primary concern is that indigenous cultures—usually described as those from poor countries—are unable to compete with global culture, which is usually taken to mean the symbols of American culture such as modes of dress, taste in music, and the like.⁹² Related to this argument is the concern that indigenous cultures are being appropriated by corporations—that local knowledge is being used to the advantage of corporations without compensation for local people.⁹³

What these theories leave out is any account of globalization that might meet the challenge posed by the Gambian editorial.⁹⁴ How can communities enjoy the benefits of economic, social, and cultural

88. *Id.* at 96.

89. *See, e.g.,* FALK, *supra* note 73, at 3 (arguing that economic changes have forced the governments of poor countries to weaken the “social contract that was forged between state and society”).

90. *See, e.g.,* Jan Nederveen Pieterse, *Globalization, Kitsch and Conflict: Technologies of Work, War and Politics*, 9 REV. INT’L POL. ECON. 1, 2 (2002) (arguing that “[t]he nation state has become one institutional domain among several and state authority is making place for a multi-scalar network of governance structures from the local to the global . . .”).

91. *See, e.g.,* Beng-Huat Chua, *World Cities, Globalisation and the Spread of Consumerism: A View from Singapore*, 35 URB. STUD. 981, 988 (1998) (noting that as Singapore has continued to be integrated into the global economy, “the ‘cultural’ content of American products” has created “anti-Western and anti-American sentiments”).

92. *Id.*

93. *Id.*

94. *See supra* note 4 and accompanying text.

linkages with the wider world without paying for those benefits with higher crime and more illicit activity? In Part III, the Author develops a richer picture of the process and effects of globalization as a first step towards answering this question. Part III closely examines Vietnam's experience of globalization to determine what happened and why. Doing so serves three purposes. First, only by looking closely is it possible to understand what happens during the process. As the Author has argued, definitions and theories are insufficient, especially if they are not informed by experience. Second, and most important, developing a richer picture helps to identify the moving parts in the process of globalization. Recall the Author's argument that the causes and consequences of globalization erode a community's ability to exert social control within its territory.⁹⁵ Understanding *what* happens is therefore central to understanding *why* it happens. The Article presents a more detailed description of globalization that will serve as raw material for the development of a theory that addresses some of the causal mechanisms that influence the social changes accompanying globalization.

III. THE PROCESS OF GLOBALIZATION: A SNAPSHOT OF VIETNAM'S EXPERIENCE

Despite the surfeit of words devoted to defining globalization, it is still difficult to understand what actually happens when a community globalizes. What challenges does it face? What work must the community do to preserve its vitality while adapting to the changes that come with globalization? Is this even possible? To get some traction on these questions, this Part focuses particular attention on the process of globalization in Vietnam. The Author's goal is to use this description of the actual dynamics of globalization to help develop a theory of how globalization affects the enforcement of the law and norms that regulate anti-social behavior. Vietnam is the subject of this inquiry for three primary reasons. First, its experience with globalization, typical of many countries, serves as a good illustration of the process. In Vietnam, as in many other countries, the process of globalization includes several simultaneous (or nearly simultaneous) changes in economic policy, business practices, and social relations.⁹⁶ Thus, it embodies the messy and

95. See *supra* Part I.

96. Although Vietnam's experience is sufficiently similar to that of other countries to serve as a good illustration of the process, it is by no means universal. Vietnam's experience with globalization began when the government opened the country to the global economy, a process described above. But Vietnam did not embrace some of the economic policies as quickly as other countries had, making its experience

muddled nature of the process. Second, Vietnam is beginning to confront many of the challenges of globalization; its experience has not been entirely positive (or negative, for that matter).⁹⁷ Understanding the trade-offs inherent in globalization is critical. Finally, primarily for historical reasons, it is easier to identify a starting point (or, perhaps more accurately, a starting period) for Vietnam's experience with globalization than with most other countries.⁹⁸

A. Economic Changes

Vietnam's experience with globalization began in 1986, when the communist government began a transition to a market economy with its *doi moi* program.⁹⁹ At the start, the changes were principally in the area of economic policy.¹⁰⁰ For example, the economy became much more export-oriented; exports, measured as a share of the gross domestic product, rose from seven in 1986 to sixty-six in 2004.¹⁰¹ In addition, after Vietnam gained access to the European Union market in 1992 and the U.S. embargo was lifted in 1994, there was substantial foreign direct investment in the economy.¹⁰² The changes in economic policy have been profound and have generated substantial popular and scholarly attention.¹⁰³ Encouraging foreign direct investment has had a powerful impact on Vietnam.¹⁰⁴ Between 1988 and 2004, foreign direct investment in Vietnam increased from \$8 million to \$1.6 billion.¹⁰⁵ This investment came with a "high level

somewhat different. Most importantly, after initially encouraging foreign direct investment only to see investors flee after a few years, Vietnam began to slow the pace of legal and economic restructuring. *See, e.g.,* William Pesek, Jr., *Slow is Not a Dirty Word for Vietnam's Economy*, INT'L HERALD TRIB., Mar. 23, 2006, at 17. In addition, Vietnam's history, especially the legacy of the war in the 1960s and its communist government, complicated its transition to a market economy. *See generally* Andrew J. Pierre, *Vietnam's Contradictions*, 79 FOREIGN AFF. 69 (2000).

97. *See supra* note 96.

98. Pesek, *supra* note 96.

99. *Id.*

100. *Id.*

101. WORLD DEVELOPMENT INDICATORS 2007, *supra* note 69.

102. *Id.*

103. *See, e.g.,* Lan Cao, *Reflections on Market Reform in Post-War, Post-Embargo Vietnam*, 22 WHITTIER L. REV. 1029 (2001) (highlighting the effects of changes in Vietnam's economic policy and foreign investment law).

104. *See generally* Nick J. Freeman, *Harnessing Foreign Direct Investment for Economic Development and Poverty Reduction: Lessons from Vietnam*, 9 J. ASIA PAC. ECON. 209, 209 (2004) (noting that foreign direct investment "has been an important part of the economic transition, business liberalization and overall macroeconomic growth story in Vietnam").

105. WORLD DEVELOPMENT INDICATORS 2007, *supra* note 69.

of imported inputs," especially in the industrial sector.¹⁰⁶ Foreign investment thus came with foreign involvement in the economy and processes of production. As with foreign investment, the reduction of trade barriers and partial conversion to an export-oriented economy has increased the amount of economic activity in Vietnam and increased the contacts between Vietnamese businesses and foreign firms.¹⁰⁷ Vietnamese firms now manufacture goods for trade with other countries, which further increases interaction with foreign firms.¹⁰⁸

Another important change came in land policy. Before *doi moi*, land was held collectively, and people worked the land on behalf of their commune.¹⁰⁹ Under *doi moi*, local governments were permitted to allocate land to individual households.¹¹⁰ A new land law in 1993 created land titles and permitted land transactions.¹¹¹ The government still owned the land, but it permitted individuals to hold long usage rights and to sell or mortgage those rights.¹¹²

As these and many other economic changes were occurring, Vietnam also began to experience the kinds of changes in communications and travel that most of the rest of the world experienced. For example, between 1982 and 2004, the number of telephone subscribers (both mobile phones and fixed lines) increased from just over 1 per 1000 people to over 130 per 1000 people.¹¹³ Between 1996 and 2004, the number of internet users increased from approximately 100 to more than 5.8 million.¹¹⁴ From 1992 to 2004, the number of personal computers increased from approximately 10,000 to just over 1 million.¹¹⁵

The economic changes had profound and wide-ranging social effects. One important consequence has been an increase in income inequality. During the rapid economic expansion of the 1990s, poverty and other indicators of well-being changed dramatically, and for the better. For example, poverty decreased, more children went to school, fewer children were malnourished, and more people had access to clean water.¹¹⁶ But even as poverty decreased, income

106. Rhys Jenkins, *Why Has Employment Not Grown More Quickly in Vietnam?*, 9 J. ASIA PAC. ECON. 191, 205 (2004).

107. See Julie Litchfield & Patricia Justino, *Welfare in Vietnam During the 1990s: Poverty, Inequality and Poverty Dynamics*, 9 J. ASIA PAC. ECON. 145, 145–46 (2004) (describing the impact of Vietnam's economic reforms on welfare).

108. *Id.* at 146.

109. Martin Ravallion & Dominique van de Walle, *Land Allocation in Vietnam's Agrarian Transition 2* (World Bank Policy Research, Working Paper No. 2951, 2003).

110. *Id.*

111. *Id.* at 8 n.7.

112. *Id.*

113. WORLD DEVELOPMENT INDICATORS 2007, *supra* note 69.

114. *Id.*

115. *Id.*

116. Litchfield & Justino, *supra* note 107, at 147.

inequality increased.¹¹⁷ While the period of globalization has seen fewer people living in poverty than before,¹¹⁸ the gap between those at the bottom of the economic scale and those at the top has widened. In addition to an increase in inequality, there was also substantial instability in the ranks of the poor. Many people fell into poverty during this period, and many people moved out of poverty.¹¹⁹ In addition, as Vietnam globalized, there were significant population shifts. The percentage of the population living in rural areas decreased from 80% in 1984 to just under 74% in 2004.¹²⁰ Not surprisingly, this meant that there were significantly fewer farmers and more people with service or white-collar jobs.¹²¹ How children spent their time also changed in important ways. Between 1993 and 1998, the percentage of girls enrolled in school increased substantially.¹²² Interestingly, the percentage of school-age girls working also increased substantially during the same period.¹²³

B. Social Changes

Contemporary Vietnam is significantly different from the Vietnam of even twenty years ago. People are less tied to land than they were earlier; there are fewer farmers, more people leave home to seek jobs elsewhere, and economic instability has caused the financial situation of families to change rapidly.¹²⁴ There is an increasing youth culture, with more children being educated—and thus equipped to compete for jobs—and more children, especially girls, working outside the home.¹²⁵ Children spend less time at home and less time under the influence of their parents. They are also exposed to a wider range of social influences. Young people are also exposed to influence through the Internet, which gives them the opportunity to create more links with the world outside their homes. The social worlds for

117. See *id.* at 154 (noting statistical analysis showing that “although everyone benefited from the strong economic performance experienced in Vietnam, some groups did so more than others.”).

118. Interestingly, when comparing poverty levels in 1993 and 1998, researchers found that a large proportion of the population who were initially poor remained poor, or were poor again. *Id.* at 158. This suggests that although economic development benefited many poor people, people who had more resources at the beginning did better.

119. See Jonathan Haughton, *Ten Puzzles and Surprises: Economic and Social Change in Vietnam, 1993–1998*, 42 COMP. ECON. STUD. 67, 84–85 (2000) (noting that “poverty fell remarkably between 1992–93 and 1997–98” but that “[t]he economic boom . . . barely reached” remote areas of the country).

120. WORLD DEVELOPMENT INDICATORS, *supra* note 69.

121. Litchfield & Justino, *supra* note 107, at 161.

122. Haughton, *supra* note 119, at 78.

123. *Id.* at 80–81.

124. See *supra* Part II.A.

125. *Id.*

all people, especially young people, are more defined by choice than constrained by geography. People can choose to create “virtual” friendships with like-minded individuals rather than being forced, by geography and tradition, to engage with their neighbors.

A focus on economic changes can mask the important social changes that accompany them. Consider the rural-to-urban population shift. Most rural residents were farmers. Appearances to the contrary notwithstanding, most farmers are not unsophisticated. They would be better thought of as small business owners who happen to raise crops or animals than as rural residents who are unable to find other work. As small business owners, they face the same incentives and constraints as other small business owners. Their time horizon is long, as their interest in current production must be balanced against stewardship of the land for future productivity. Their main asset—and virtually the only asset that can be passed on to another generation—is land; this fact alone deepens the small business owners’ investment, both social and economic, in the land. The aim here is not to present a naive, romanticized portrait of rural life, but to recognize the ways that economic changes can affect community structures or consider the social implications of the shift in how girls spend their time. The number of hours of work girls performed at home, as opposed to work outside the home, declined substantially.¹²⁶ Thus, it appears that both education and outside work became more valuable, and therefore worthy of investment, as compared with work in the home. Contemporaneous with this change was the apparent disappearance of son preference: the desire for parents to have at least one son.¹²⁷ Based on factors such as the differential rate of contraceptive use in families in which the first child was a son versus those in which the first born was a daughter, researchers concluded that the historical preference for sons disappeared.¹²⁸ While the evidence cannot answer conclusively why this happened, it appears that as real economic opportunities increased, and as people began to perceive that there were economic opportunities in the city or abroad (even if this was untrue), sons became “increasingly likely to move away, rather than stay and look after the old folks.”¹²⁹

Two detailed examples—one showing the dynamics surrounding a place and the other showing the dynamics surrounding an activity—illustrate the complicated nature of globalization. In the early 1980s, Hanoi was surrounded by a string of small villages that

126. Haughton, *supra* note 119, at 80–81.

127. *Id.* at 73–74.

128. *Id.*

129. *Id.* at 74.

produced flowers and vegetables for consumption in the city.¹³⁰ The economic expansion of the 1990s changed that; farmers sold their plots to developers and land brokers who recognized the investment potential of plots near a lake and close to the city.¹³¹ The result was the “wholesale transformation of the area, with the small houses and garden plots of the flower villages replaced by three, four, or five story luxury ‘villas,’ intermixed with restaurants, hotels and karaoke bars.”¹³²

The consequences of this transformation were significant. Residents no longer worked in the community; instead many commuted to Hanoi for jobs.¹³³ Others lost their status as land owners and farmers and became day laborers for new businesses.¹³⁴ Other changes included a rapid turnover in the population of the area and an increase in absentee business owners.¹³⁵

The second example is from Vietnam’s experience with sex tourism, an industry that resulted from the country’s increased openness and encouragement of tourism.¹³⁶ According to Vietnamese officials, the first organized sex tour operation was discovered only in 2005.¹³⁷ The operation involved ten luxury hotels and, according to the police, was set up to service foreign customers.¹³⁸ Although prostitution, including child prostitution, was present in Vietnam long before the process of globalization began to be felt there, it had “long been severely condemned by society.”¹³⁹ Despite this, there is substantial evidence that child prostitution is a growing phenomenon, and that its growth is fueled at least in part by globalization.¹⁴⁰ A number of factors are involved. First, empirical evidence suggests

130. Michael Leaf, *A Tale of Two Villages: Globalization and Peri-Urban Change in China and Vietnam*, 19 CITIES 23, 26–27 (2002).

131. *Id.* at 27.

132. *Id.*

133. *See id.* (“The socio-economic transformation of the village . . . was apparent from the increased commuting into the city by sons and daughters of local residents . . .”).

134. *See id.* at 28 (“Initial discussions of how to utilize the compensation funds for loss of [farmers’] rice-fields indicated a strong preference for improved education and vocational training in order to prepare future generations for non-agricultural livelihoods . . .”).

135. *Id.* at 28–29.

136. The number of international tourist arrivals increased from 1.35 million in 1995 to almost 3 million in 2004. WORLD DEVELOPMENT INDICATORS 2007, *supra* note 69.

137. *Tourism: Sex-Tour Shows Up in Hanoi*, GLOBAL NEWS WIRE, June 13, 2005.

138. *Id.*

139. LE BACH DUONG, INT’L LABOUR ORG., VIET NAM CHILDREN IN PROSTITUTION IN HANOI, HAI PHONG, HO CHI MINH CITY AND CAN THO: A RAPID ASSESSMENT 15 (2002).

140. *See id.* at xiii (“Rapid changes in values and the expansion of the market for children in prostitution and the networking of actors involved in the sex trade have enabled the proliferation of . . . children’s involvement in prostitution.”).

that approximately 70% of child prostitutes became involved by choice.¹⁴¹ To be sure, their reasons varied, and their choices were, in many instances, significantly influenced by family obligations or other constraints.¹⁴² Second, although economic conditions improved for some people during the 1990s, many people lost ground.¹⁴³ This economic pressure made prostitution an increasingly attractive option, even considering the attendant costs.

These two brief examples highlight several important issues. First, and most simply, the Hanoi example shows the way that economic changes can contribute to social changes. Changes to the land laws and increasing economic opportunities appear to have contributed to neighborhood-level population shifts. One of the shifts involves long-time residents with a social investment in the community moving out, to be replaced by newcomers with less social investment. Another involves residents who begin to commute to work, reducing the number of people physically present in the neighborhood at any one time.

Next, the sex tourism example shows one of the difficulties of globalization. A range of phenomena—an increase in access to the Internet, wealthy tourists visiting the country, more time spent working outside the home, and a host of others—help to create new preferences and desires.¹⁴⁴ Indeed, one of the primary factors prompting young people to enter the sex business was “rising expectations,” brought about by increased connection to other parts of the world, that have created “both real and perceived needs among a growing segment of the population.”¹⁴⁵ People, especially young people, become aware of new products, experiences, and ideas that they want but cannot afford if they stay in traditional roles or rely on traditional economic opportunities. As it creates new tastes, globalization also provides new opportunities to satisfy those tastes, often through activities such as sex work.

Thus, child prostitutes commonly cited two reasons for their decision. The first can be called a survival strategy: to earn money to

141. *Id.* at 36.

142. *See id.* at 36–45 (providing excerpts of interviews with Vietnamese children involved in prostitution).

143. *See supra* text accompanying note 118.

144. Statistics from Vietnam help to illustrate this point. In Vietnam, three out of every four jobs created between 1990 and 2000, the most active years of globalization in that country, were in the service sector. Jenkins, *supra* note 106, at 193. These jobs, in fields such as retail trade, transportation, and communications, are the most likely to provide opportunities for interaction with strangers, including other Vietnamese, immigrants and entrepreneurs from other countries, and tourists.

145. DUONG, *supra* note 139, at xii.

pay for necessities, whether for themselves or their families.¹⁴⁶ The second can be called an improvement strategy: to earn money for goods that the children or their families desired but were not among life's core necessities.¹⁴⁷ The processes of globalization create new needs and provide avenues to satisfy those needs. One problem is an absence of economic opportunities that are norms-consistent or, at the very least, not norms-defying. In Vietnam at least, the evidence suggests that the exposure to new influences helps to create a demand for non-essential material goods that is strong enough to prompt children to enter prostitution.¹⁴⁸

The complicated social role of prostitution highlights another difficulty inherent in globalization. As with any activity, even one that violates widely-held norms, those who engage in it do so because it brings them some benefit. Indeed, some are even pushed to do it, despite its negative associations, for reasons that appear perfectly rational. The challenge of globalization, therefore, is not to arrive at moral judgments about behavior and then attempt to create incentives, through criminal laws or otherwise, to implement those judgments. Instead, the challenge is to identify the choices faced by members of a globalizing community, including the constraints on those choices, and identify the social forces that lead individuals to make decisions that are damaging to the community. One of the primary effects is a version of what economists call an externality: the ways "the behavior of a person . . . may influence the welfare of others."¹⁴⁹ Although externalities may be positive or negative, the Article focuses on negative externalities. Externalities are typically analyzed in connection to property rights,¹⁵⁰ but the concept is useful in a discussion of community well-being as well. For example, when an individual engages in prostitution, even if her decision to do so is rational from her point of view, her behavior causes harm felt by many others. One harm may be immediate—harm to observers offended by the notion of prostitution or endangered by the actions of those associated with it. But another harm is less immediate. As demonstrated below, the harms associated with pervasive misbehavior have a dynamic effect. Such behavior is like a disease that erodes a patient's ability to fight off other illnesses in the future.

146. See *id.* at 36 (stating the results of a survey asking why Vietnamese children became involved in prostitution and including common answers such as "[h]elp family" and "[m]ake quick money").

147. *Id.* at 36–40.

148. See *id.* at 15–16 (noting that "a considerable number" of Vietnamese participated in prostitution "with the sole purpose of achieving material goals").

149. STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW 77 (2004).

150. *Id.* at 77–78 (analyzing externalities in the context of property rights).

IV. THE CORROSIVE EFFECTS OF GLOBALIZATION ON NORMS

Considered in the abstract, the challenge that a globalizing community faces is identical to the challenge faced by any other community: to shape and regulate individual behavior to promote economic activity; to encourage individual expression, innovation, and actualization; and to support family and community life. And globalizing communities have the same basic tools at their disposal: social norms and the law. What is different about globalizing communities is that the process of globalization itself, which creates so many benefits for individuals and communities, can also undermine a community's capacity to respond to challenges. For many globalizing communities, the conditions created by globalization can erode positive social norms, impede the development of new norms, and make the enforcement of norms much more difficult. It should come as no surprise that many globalizing communities face an increase in anti-social activity.¹⁵¹

A. *Community Stability, Disruption, and Illicit Activity*

Across a range of dimensions, some communities are healthier than others. Compared to people in similar communities, those in healthy communities can expect to live longer, suffer fewer illnesses (both physical and mental), earn more money, and experience less crime.¹⁵² People in these communities are also better able to govern their own affairs. Crime is relatively low not because of an increased police presence, or because the people in these communities are not subject to the economic, social, or demographic factors that increase crime in other places. Instead, crime is low because the members of the community are able to set and enforce their own norms better than members of similar communities.¹⁵³ Determining why this is true is the difficult question, and one that does not have any single answer. But there are several related factors that appear to help explain a great deal of the differences among communities. Among them are the degree to which members of the community trust each

151. The Article uses the term "anti-social activity" to describe both criminal activity and norms-violating activity. Norms-violating activity may be also be criminal, but need not be. Further, whether an activity violates norms should be considered from the point of view of the community. Because many communities hold ambiguous or even conflicting norms, there will be instances in which it is difficult or impossible to determine whether an activity violates a local norm.

152. See generally RICHARD G. WILKINSON, *UNHEALTHY SOCIETIES: THE AFFLICTIONS OF INEQUALITY* (1996) (drawing connections between health, income, and crime within communities).

153. See generally Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 *SCI.* 918 (1997) (linking "social cohesion among neighbors" in a given area with crime rates in that same area).

other, whether community members are willing to intervene in the lives of their neighbors or acquaintances, whether the population of the community is stable over time, and the extent of linkages between members of the community through civic organizations or voluntary activities.¹⁵⁴ At their core, all of these factors focus on the extent to which members of a community are connected to their neighbors and others in the community, and the effect that this engagement has on community well-being.

Part IV explores the ways that globalization can disrupt the social forces that make some communities better able than others to exert social control and maintain community vitality. It first introduces a cluster of related concepts—variously called social capital, social cohesion, or community efficacy—that measure the activities and attitudes of members of a community and the effects these measures have on community life. There is no direct measure of social cohesion, social capital, or community efficacy; instead, whether these attributes exist or not is learned through the identification of proxies. After describing the ways that social cohesion¹⁵⁵ is measured and examining some of its effects, Part IV turns to the more difficult issue: explaining why social cohesion matters, particularly with respect to illicit activity and a community's ability to exert social control. Finally, the Author concludes by arguing that the process of globalization is almost perfectly suited to eroding social cohesion and helping to increase illicit activity.

1. Social Cohesion, Social Capital, and Community Efficacy

The goal of social cohesion theory is to identify those factors that make a community capable of responding to challenges effectively.¹⁵⁶ In many ways, this involves considering many of the same questions asked by scholars in the Durkheimian school.¹⁵⁷ The most direct link is to the concept of *anomie*, which describes a state in which individuals do not respond to the pull of social norms because their tastes outstrip their means, or because the norms themselves are

154. See generally *id.* (linking crime rates to measures of community trust and stability); Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social-Disorganization Theory*, 94 AM. J. SOC. 777 (1989) (linking crime rates to "organizational participation").

155. Although social cohesion, social capital, and community efficacy are related concepts, they are not the same (as is discussed more fully below). Despite this, unless noted otherwise, the Article uses the term "social cohesion" as shorthand for the cluster of concepts.

156. See Joseph Chan et al., *Reconsidering Social Cohesion: Developing a Definition and Analytical Framework for Empirical Research*, 75 SOC. INDICATORS RES. 273, 289 (2006) (noting that social cohesion measures, *inter alia*, whether people in a society "trust, help and cooperate with their fellow members of society").

157. See *supra* Part I.

either obscure or under-enforced.¹⁵⁸ Social cohesion theory goes beyond the Durkheimian approach, however, by attempting to specify causal connections and identify the dynamic processes by which individual behavior contributes to social norms.¹⁵⁹

The cluster of social cohesion theories operates on several levels. It describes a “set of attitudes and norms that includes trust, a sense of belonging and the willingness to participate and help.”¹⁶⁰ Incorporated in the theory is a sense that people are attached to their community and its identity.¹⁶¹ It may be this attachment to the community that motivates people to engage in potentially risky behavior like confronting people who are creating a disturbance in public. But it is more than a set of attitudes. The theory necessarily includes the “behavioural manifestations” of those attitudes—members of the community acting on their beliefs.¹⁶² It also operates on two dimensions: relations “between the state and society at large,” and “interactions among different individual and groups in society.”¹⁶³ In Part IV, the Author lays out the elements of social cohesion theory and discusses the differences between social cohesion, social capital, and community efficacy.

Social cohesion is a community-level concept. It describes the “interactions among members of society,” including “interactions among different individuals and groups” and “the relationship between the state and society at large.”¹⁶⁴ In contrast, social capital measures mostly individual-level factors “like the networks maintained by each individual and the personal benefits that flow from them.”¹⁶⁵ Because social capital measures the “quantity and quality of local associational life,”¹⁶⁶ it necessarily includes some consideration of an individual’s ability to work effectively in the larger community. Social cohesion measures the collective effect of social capital on a community.

Finally, also important is the association between social cohesion and what researchers call collective efficacy.¹⁶⁷ Collective efficacy describes a community’s ability to exercise social control.¹⁶⁸ It is

158. *Id.*

159. *Id.*

160. Chan et al., *supra* note 156, at 290.

161. Ade Kearns & Ray Forrest, *Social Cohesion and Multilevel Urban Governance*, 37 URB. STUD. 995, 1001 (2000) (social cohesion depends in part on “notions of belonging [and] place attachment”).

162. Chan et al., *supra* note 156, at 290.

163. *Id.*

164. *Id.*

165. *Id.* at 292.

166. Deepa Narayan & Lant Pritchett, *Cents and Sociability: Household Income and Social Capital in Rural Tanzania*, 47 ECON. DEV. & CULTURAL CHANGE 871, 872 (1999).

167. See Sampson et al., *supra* note 153, at 919 (defining collective efficacy).

168. *Id.*

collective efficacy that permits a community to pursue its goals and enforce its norms and social rules even without the coercive power of the state.¹⁶⁹ Collective efficacy is closely linked to social cohesion; indeed, it is influenced by the same factors that influence the level of social cohesion. But collective efficacy is important for two main reasons. First, it describes the point of social cohesion. Cohesiveness is not an end in itself. Although there are doubtless people who derive pleasure merely from knowing their neighbors, it is not this utility that matters. Instead, it is the consequences of social cohesion that matter; collective efficacy is a way to measure and identify the link between social cohesion (or its absence) and its consequences. Second, collective efficacy highlights the importance of information.¹⁷⁰ Communities cannot effectively exert social control without information about who is coming and going, what people are doing, where the state has invested its enforcement resources, and many other things. Interruptions in the flow of information to a community, and within a community, can cripple its ability to confront challenges.

One essential element is community stability, defined as a low rate of residential turnover.¹⁷¹ Large-scale empirical investigations reveal a consistent result: factors such as “immigration concentration” and “residential stability” help to predict how well a community will be able to exert social control.¹⁷² There are several hypotheses about why this is so. First, residential stability contributes to the formation of networks, allows time for trust to develop, and provides opportunities for participation in civic organizations. Second, it can contribute to a sense of shared values, which permits communities to work effectively for at least two reasons. When members of a community “share common values,” they can “identify and support common aims and objectives.”¹⁷³ The practical effect of this is to reduce wasted energy. Members of a community with common aims do not waste time working against themselves, which allows the community to benefit from the full energies of its members. Further, communities with “a common set of moral principles and codes of behaviour through which they conduct

169. See Sampson & Groves, *supra* note 154, at 777 n.2 (“[S]ocial control should not be equated with social repression but rather with the collective pursuit of shared values that are rewarding and meaningful.”).

170. Robert Sampson, *Neighbourhood and Community*, 11 *NEW ECON.* 106, 109 (2004) (“Collective efficacy theory suggests first of all that information is a tool of neighbourhood governance.”).

171. See Sampson et al., *supra* note 153, at 920 (defining residential stability in one particular study as “the percentage of persons living in the same house as 5 years earlier and the percentage of owner-occupied homes”).

172. *Id.* at 923.

173. Kearns & Forrest, *supra* note 161, at 997.

their relations with one another” agree on the process by which they make decisions.¹⁷⁴

Another factor associated with greater social cohesion is that members of the community trust each other. To contribute to social cohesion, the trust felt by community members “does not require that my neighbour or the local police officer be my friend.”¹⁷⁵ Instead, trust requires only that the neighborhood “rules” be clear and that people not “fear one another.”¹⁷⁶ To help measure the level of trust in the community, researchers attempt to identify the density of “local friendship and acquaintanceship networks.”¹⁷⁷ To supplement this evidence, researchers rely on qualitative data as well, including, for example, surveys asking respondents if they “think that most people would try to take advantage of you if they got a chance, or would they try to be fair.”¹⁷⁸ These measures show the link between cohesion and trust.

Trust is closely linked to another important factor: “the willingness of local residents to intervene for the common good.”¹⁷⁹ This willingness contributes to the creation of social cohesion and also contributes to the good that social cohesion can do. The concept of intervention is broad. It can include anything from “monitoring of spontaneous play groups among children”¹⁸⁰ to supervising teenagers.¹⁸¹ In addition to simple acts like attending to neighbors’ children, it includes acts such as confronting “persons who are exploiting or disturbing public space.”¹⁸² A separate dimension of willingness to intervene includes the willingness to interact with public officials. For example, the “evidence has long shown that more than nine in ten police-citizen encounters derive from citizen calls.”¹⁸³ Members of the community are thus “central[] . . . [to] the engine of crime control.”¹⁸⁴ In addition, there is evidence that “alienation from police authority undermines the ability of the community to aid in their own protection through mutual cooperation.”¹⁸⁵ Thus, a community’s unwillingness to interact with the police (regardless of the reasons why) not only reduces the ability of the law enforcement

174. *Id.*

175. Sampson, *supra* note 171, at 107.

176. Sampson et al., *supra* note 153, at 919.

177. A. Hirschfield & K.J. Bowers, *The Effect of Social Cohesion on Levels of Recorded Crime in Disadvantaged Areas*, 34 URB. STUD. 1275, 1276 (1997).

178. John Brehm & Wendy Rahn, *Individual-Level Evidence for the Causes and Consequences of Social Capital*, 41 AM. J. POL. SCI. 999, 1007 (1997).

179. Sampson et al., *supra* note 153, at 919.

180. *Id.* at 918.

181. Hirschfield & Bowers, *supra* note 177, at 1276.

182. Sampson et al., *supra* note 153, at 918.

183. Sampson, *supra* note 170, at 110.

184. *Id.*

185. *Id.*

officials to control crime, it also undermines the community's own ability to police itself. One proxy used to measure the willingness of citizens to intervene or participate in the community is the rate of participation in community organizations.¹⁸⁶ Communities showing a high rate of participation show higher rates of trust and greater social cohesion.¹⁸⁷ Researchers also measure willingness to intervene by looking at the "demand for formal social control (which, by definition, indicates a lack of informal social control)."¹⁸⁸ In other words, communities that frequently call for formal social control—by asking that the police intervene with their neighbors, rather than talking directly to their neighbors—are less cohesive.

Another important factor that affects those discussed above is income inequality. Even "controlling for poverty and access to firearms," researchers have found that "income inequality is powerfully related to the incidence of homicide and violent crimes via the depletion of social capital."¹⁸⁹ Inequality appears to erode trust and make residents less likely to interact with each other. This reduces social cohesion, which increases the incidence of some crimes.¹⁹⁰ To be sure, "concentrated disadvantage" is an important factor in a community's ability to respond effectively to challenges,¹⁹¹ but inequality appears to be profoundly important as well.

2. The Consequences of Social Cohesion and its Variants

The broad effects of a lack of social cohesion are well documented. The strongest evidence relates to social cohesion and public health. There is extensive evidence demonstrating that a lack of social cohesion—measured primarily by income inequality—is powerfully and consistently associated with increased individual mortality.¹⁹² Where there is substantial income inequality, health

186. See Sampson & Groves, *supra* note 154, at 799 ("[E]mpirical analysis established that communities characterized by . . . low organizational participation had disproportionately high rates of crime and delinquency.").

187. See Brehm & Rahn, *supra* note 178, at 1017 (highlighting "the presence of social capital in the form of a tight reciprocal relationship between civic engagement and interpersonal trust").

188. Hirschfield & Bowers, *supra* note 177, at 1276.

189. Bruce P. Kennedy et al., *Social Capital, Income Inequality, and Firearm Violent Crime*, 47 SOC. SCI. & MED. 7, 15 (1998).

190. *Id.*

191. Sampson et al., *supra* note 153, at 923.

192. See, e.g., WILKINSON, *supra* note 152; Ichiro Kawachi & Bruce P. Kennedy, *Health and Social Cohesion: Why Care About Income Inequality*, 314 BRIT. MED. J. 1037 (1997); Ichiro Kawachi et al., *Social Capital and Self-Rated Health: A Contextual Analysis*, 89 AM. J. PUB. HEALTH 1187 (1999); Ichiro Kawachi et al., *Social Capital, Income Inequality, and Mortality*, 87 AM. J. PUB. HEALTH 1491 (1997); Kim Lochner et al., *State-Level Income Inequality and Individual Mortality Risk: A Prospective*,

outcomes tend, on average, to be worse.¹⁹³ In “countries with wider income differences,” diseases, infections, and accidents are more common than in countries with higher income but less income inequality.¹⁹⁴ A related factor that makes such a community vulnerable to public health crises has to do with the extent to which behavior that contributes to good or bad health is expressed or suppressed. For example, “[r]isky behavior (from a health perspective), which tends to be suppressed in small, sedentary communities, often occurs in connection with the anonymity afforded by large-scale movement and urbanization.”¹⁹⁵ The structure and norms of other communities encourage the expression of health-promoting behavior, like exercise, refraining from smoking, and the like.¹⁹⁶

B. *Crime and Social Cohesion*

So far, this Part has analyzed social cohesion generally. In this Subpart, the Article examines the specific issue most important to the Author’s theory: the relationship between social cohesion and illicit activity. The Subpart first presents the evidence showing that relatively high levels of social cohesion, or related measures like collective efficacy or social capital, are associated with lower levels of violence, criminal activity (including non-violent crimes), and victimization. Even controlling for income, age, race, and a host of other factors, the evidence shows convincingly that communities with higher levels of social cohesion are likely to be more peaceful than other communities. The Article then turns to the more difficult questions—determining why and how social cohesion is associated with illicit activity.

1. Social Cohesion and Illicit Activity: The Evidence

As social cohesion and related concepts have gained traction in discussions about the causes of criminal activity, there have been a

Multilevel Study, 91 AM. J. PUB. HEALTH 385 (2001) (drawing various connections between social cohesion and public health).

193. See Kawachi & Kennedy, *supra* note 192, at 1037 (“Growing evidence suggests that the distribution of income . . . is a key determinant of population health.”).

194. WILKINSON, *supra* note 152, at 154.

195. Gretchen C. Daily & Paul R. Ehrlich, *Global Change and Human Susceptibility to Disease*, 21 ANN. REV. ENERGY & ENVIRON. 125, 130 (1996).

196. Note that the Author does not argue that the expression of a wider variety of behaviors is in any way inappropriate or normatively undesirable. Such avenues of self-actualization can be positive for communities and essential for individuals. The point is that it is important to recognize this effect, not to argue that the effect is negative.

number of large empirical studies examining the effect of social cohesion on criminal activity. Robert Sampson's study of Chicago is perhaps the leading one.¹⁹⁷ Sampson and his colleagues drew on interviews with over 8,000 residents of Chicago¹⁹⁸ and census data reflecting patterns of crime in neighborhoods home to more than 2.7 million people.¹⁹⁹ They first attempted to measure levels of social cohesion, community involvement in informal social control, and trust.²⁰⁰ They then measured levels of violence in those communities, both by asking interview subjects if they had been victims of a crime and by examining census data.²⁰¹ They found a strong association between "residential stability and disadvantage with multiple measures of violence."²⁰² More importantly, they found that after adjusting for a range of demographic factors, including prior violence, "the combined measure of informal social control and cohesion and trust remained a robust predictor of lower rates of violence."²⁰³ A number of other studies have shown similar results.²⁰⁴

2. Explaining the Link Between Social Cohesion and Levels of Illicit Activity

The link between levels of social cohesion and criminal activity appears solid. This Subpart analyzes why this is true and argues that the conditions of globalization undermine social cohesion and increase illicit activity. What are the mechanisms that transform social cohesion into a reduction in illicit activity?²⁰⁵ How does globalization affect this process?

197. Sampson et al., *supra* note 153, at 918.

198. *Id.* at 919.

199. *See id.* (noting that the study covered "77 established community areas" of which "the average size is almost 40,000 people).

200. *Id.* at 919–20.

201. *Id.* at 920.

202. *Id.* at 923.

203. *Id.*

204. *See, e.g.,* Hirschfield & Bowers, *supra* note 177, at 1292 (stating that empirical results show "that there is a significant relationship between social cohesion levels in disadvantaged areas and levels of certain types of crime"); Kennedy et al., *supra* note 189, at 7 (arguing that indicia of low social capital, such as "[i]ncome inequality, or other indices of relative deprivation, are considered to be stronger predictors of homicide and violent crime than indices of absolute deprivation, such as poverty."); Sampson & Groves, *supra* note 154, at 799 ("[O]ur empirical analyses established that communities characterized by sparse friendship networks, unsupervised teenage peer groups, and low organizational participation had disproportionately high rates of crime and delinquency.").

205. A short caveat is in order at this point. Social cohesion and its related concepts cannot be measured directly; they are measured through proxies like expressions of trust, participation in formal and informal community organizations, and a number of other factors. Social cohesion thus describes an amalgam of social forces that together appear to have an effect on the lives of individuals and the vitality

a. Residential Stability

One of the most powerful predictors of whether a community is likely to be able to effectively exert social control is the stability of its population. Communities in which a large number of residents come and go every year appear to suffer more illicit activity and are less able to control unwanted activity through social norms.²⁰⁶ Consider an example. As part of a pilot project, a group of researchers asked villagers in rural Uganda to identify those regions of the country that were least developed and that were least able to work cohesively on important projects.²⁰⁷ A number of interviewees named the same district—Tororo—and identified similar reasons for its lawlessness and failure to develop economically.²⁰⁸ First, they suggested that the presence of “people from five different ethnic groups whose languages were mutually incomprehensible” kept people from working together.²⁰⁹ Second, they noted the fact that a large number of Tororo residents were recent immigrants.²¹⁰ Finally, they noted that many of the recent arrivals had fled conflict in another part of the country, bringing with them “a diffidence born of their uprooting.”²¹¹ Communities in the Tororo district, given their relatively transient populations, thus appeared to struggle because residents found it difficult to do much of the work necessary to sustain a healthy community: identify shared values and norms, work toward collective goals, encourage residents to make long-term investments in the community, and make useful social contacts across demographic or other barriers.

These factors mirror the findings of a number of large-scale studies of social cohesion and violence. For example, scholars in the United Kingdom examined the link between social cohesion and crime in poor areas of England.²¹² They found that social cohesion can have a profound effect on levels of crime, even in areas in which demographic factors such as poverty might otherwise increase

of communities. But there is no precise, agreed-upon list of the factors that combine to create social cohesion. Establishing causal linkages between any two social phenomena can be difficult, but showing the effects caused by such an amalgam is particularly dicey. For this reason, even though some of the econometric studies upon which the Article relies argue that causation has been proven, the Author claims only that there is a persistent association between the variables measured and the effects observed.

206. See Jennifer Widner & Alexander Mundt, *Researching Social Capital in Africa*, 68 AFR.: J. INT'L AFR. INST. 1, 1 (1998) (stating that areas of Uganda with much recent settlement fared less well than others).

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. See Hirschfield & Bowers, *supra* note 177, at 1275.

crime.²¹³ Their research suggested that “[p]opulation turnover” was a factor that eroded social cohesion and was associated with higher levels of crime.²¹⁴ Communities with a large number of “short-term residents” suffered because those residents were “less likely to establish, or become involved in, either formal or informal arrangements which facilitate social control.”²¹⁵ They also noted that “heterogeneity acts as a barrier to communication,” which can interfere with the ability of a community to identify shared goals and problems.²¹⁶

Another study (of neighborhoods in Chicago) described more fully above, identified similar issues.²¹⁷ There, scholars found that two factors explained much of the effect of population turnover on social cohesion. First, because “the formation of social ties takes time,” it is to be expected that communities with a large number of short-time residents would have fewer and weaker social networks.²¹⁸ Recall that it is through social networks that norms and values are shared and enforced; without a cohesive “norms market,” informal control is difficult.²¹⁹ Second, the financial investment of home ownership—an indicator of both residential stability and a long time horizon—creates “a vested interest in supporting the commonweal of neighborhood life.”²²⁰

b. Participation in Community Life

Critical to the creation of social cohesion is trust, and critical to the creation of trust is interaction among residents of a community. The more people trust their neighbors, the more likely it is that the community will be able to set and enforce productive social norms. The causes and consequences of trust among members of a community cannot, of course, be reduced to a simple formula. But it is possible to identify several important steps in the process. First, interaction among neighbors can encourage trust by providing people

213. See *id.* at 1292. (“It is clear from these results, therefore, that there is a significant relationship between social cohesion levels in disadvantaged areas and levels of certain types of crime.”).

214. *Id.*

215. *Id.* at 1276.

216. *Id.*

217. Sampson et al., *supra* note 153, at 921 (noting that at “the neighborhood level,” after controlling for other factors, “concentrated disadvantage and immigrant concentration would be negatively linked to neighborhood collective efficacy and residential stability would be positively to collective efficacy”).

218. *Id.* at 919.

219. See, e.g., Sampson & Groves, *supra* note 154, at 790 (“[T]he data suggest that communities characterized by extensive friendship networks, high organizational participation, and effective control of teenage peer groups have lower than average rates of burglary.”).

220. Sampson et al., *supra* note 153, at 919.

with important information about other members of the community. Second, once trust is created, it can provide a basis for intervention in community activities, which helps the community set and enforce norms.

The process by which participation can produce trust depends mainly on two factors: the flow of information within the community and the value that members of the community place on future goals versus the value that they place on more immediate concerns. One hallmark of effective communities is that people in them do not ignore violations of community norms.²²¹ But intervention depends in significant part on whether those who would intervene can predict the likely consequences of their actions.²²² Participation in formal and informal community organizations provides people with the opportunity to learn about the character and attributes of other people.²²³ Frequent interaction is not the only way that people can learn about their neighbors, of course, but it can be the most efficient. Frequent interaction “lowers the cost and raises the benefits associated with discovering more about the characteristics, recent behavior, and likely future actions of other members” of the community.²²⁴ Such information is important to community governance. People who are able to predict how their neighbors will act are more likely to initiate interactions, intervene if they see something amiss, and share knowledge and skills.²²⁵

221. See *id.* (“At the neighborhood level, however, the willingness of local residents to intervene for the common good depends in large part on conditions of mutual trust and solidarity among neighbors.”).

222. See *id.* (noting that members of a community are “unlikely to intervene in a neighborhood context in which the rules are unclear and people mistrust or fear one another”).

223. Frances Woolley, *Social Cohesion and Voluntary Action: Making Connections*, in *THE ECONOMIC IMPLICATIONS OF SOCIAL COHESION* 150, 162 (Lars Osberg ed., 2003).

Improved information is the most basic mechanism through which connection can build trust. Meeting others increases knowledge of their character. Because participation provides information about other people’s attributes, good or bad, it increases the reliance that everyone can place on others, without necessarily increasing altruism, concern, or affective ties between people.

224. Samuel Bowles & Herbert Gintis, *Social Capital and Community Governance*, 112 *ECON. J.* F419, F424 (2002).

225. Indeed, there is evidence that people who interact frequently with others in the community are also more likely to benefit from what some call “human capital spillovers,” the process by which skills are transferred through informal means in a community. See Jane Friesen, *Communities and Economic Prosperity: Exploring the Links*, in *THE ECONOMIC IMPLICATIONS OF SOCIAL COHESION*, *supra* note 223, at 183, 184 (“Human capital spillovers refers to the way in which the acquisition of skills by an individual is influenced by the decisions and skills of other members of the community.”). Of course, such spillovers are not inevitably positive. It is possible that people will learn how to be better burglars if they interact frequently enough with burglars.

A number of factors affect the level of participation. One important factor is income inequality. Increases in income inequality appear to reduce opportunities for interaction, which reduces participation and trust. As inequality rises, trust declines; as trust declines, participation in community activities declines.²²⁶ In addition, as inequality declines and interaction becomes less frequent, individuals in the community have less information about their neighbors, with all of the effects discussed above. Another important variable centers on trust and social sanctions. As people become more confident that their neighbors will not ignore norms violations, they may become more willing to forego present benefits for the sake of future benefits.²²⁷

Although trust and participation are related, trust is not a prerequisite of participation. Consider an example from Cape Town, South Africa.²²⁸ In 1995, soon after the end of apartheid and the introduction of majority rule, a branch of the African National Congress began a program to bus black students to formerly all-white neighborhood schools. In Ruyterwacht, a poor white neighborhood in Cape Town, the program created significant problems:

[T]he . . . National Education Crisis Committee began busing three to four thousand black students daily into the neighborhood, ostensibly to attend school. The school itself, however, had no teachers, no desks, no books, and a maximum capacity of 500 students. Students were left in Ruyterwacht with nothing to do until the buses returned to take them home at 4 o'clock.²²⁹

White residents of the community objected to the program.²³⁰ After a series of meetings, they started a community movement that eventually led to the suspension of the program.²³¹ Two observations are important for the purposes of this Article. Before the collective action, the community was not marked by high levels of trust or solidarity, but it was afterwards; the action helped to create trust

226. Kennedy et al., *supra* note 189, at 15 (noting that “rising income inequality was a significant predictor of declining trust in others,” and that “a decline in social trust was predictive of diminished levels of group membership.”).

227. See Bowles & Gintis, *supra* note 224, at F424 (community governance can create “a strong incentive to act in socially beneficial ways now to avoid retaliation in the future”). The relative value that people place on future versus current benefits is, of course, complicated and affected by such things as the individual’s financial investment in the community, the individual’s other goals in life, and even the individual’s personality. But it is nonetheless important to highlight the role that trust plays in the equation.

228. See Courtney Jung, *Breaking the Cycle: Producing Trust out of Thin Air and Resentment*, 2 SOC. MOVEMENT STUD. 147, 147 (2003) (describing the “rise and fall of collective action in a small neighborhood of Cape Town, South Africa”).

229. *Id.*

230. *Id.* at 148.

231. *Id.*

where it had not existed before.²³² The trust created by the activity “did appear to create a more lasting focal point of networks [and] norms” that persisted even after the initial busing program was suspended.²³³ This observation is consistent with the results of other research showing that it is likely easier to generate trust by creating incentives for more participation than it is to increase participation by encouraging people to trust their neighbors.²³⁴

C. Information, Intervention, and the Vitality of Norms

Norms work when people who observe behavior react to that behavior. If an individual sees a group of neighborhood children tormenting a stray dog and does nothing, the children avoid any sanction for their misbehavior and the individual runs the risk of undermining future attempts to correct similar behavior. To be sure, the individual’s reaction to a single incident of misbehavior is unlikely to create or destroy an established norm, but the reactions of many people, over some period of time, can have a profound social effect. Although it has seldom been considered in the context of globalization, there is substantial evidence from the behavioral sciences detailing the conditions under which observers are likely to intervene and when they are not. The Article proceeds to assess the ways that the processes and consequences of globalization undermine the conditions encouraging intervention, thereby minimizing the force and effect of norms.

In most communities, the actions of people are generally encouraged or constrained by an amalgam of forces, of which legal rules are just one. A range of factors influence individual behavior, including “personal ethics . . . , contracts . . . , norms . . . , organization rules . . . , [and] law.”²³⁵ For purposes of this Article, norms are “informal social regularities that individuals feel obligated to follow because of an internalized sense of duty, because of a fear of external non-legal sanctions, or both.”²³⁶ Norms are everywhere; indeed, norms “so thoroughly pervade[]” human activity “that it is difficult to even imagine a *normless* world.”²³⁷ Despite their ubiquity, norms

232. *Id.* at 170 (“[C]ollective action sparked by the combination of communal threat and efficacy can produce trust, even where none has existed before.”).

233. *Id.* at 169.

234. See, e.g., Brehm & Rahn, *supra* note 178, at 1017 (“[I]t is probably easier for a community to generate greater levels of participation (by subsidizing the selective incentives for participation, for instance) than it is for that community to instill more trusting attitudes in others.”).

235. ROBERT ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 127 (1991).

236. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 340 (1997).

237. *Id.* at 359 n.91.

require the right conditions to emerge and thrive. Put most generally, for norms to come into being, the community involved must be aware of, and to some extent agree on, the content of norms; people must know enough about the behavior of others to identify those who violate norms and those who comply; and individuals must have the power and mechanisms to enforce norms.²³⁸

Norms work when residents of a community know of, and come to, similar beliefs about the content and existence of a norm.²³⁹ This condition can arise in a number of ways. First, members of the community may have similar preferences and, acting out of self-interest, independently decide to reward or punish behaviors that benefit or harm them.²⁴⁰ The norm arises because similar preferences give rise to similar reward and punishment decisions, even in the absence of knowledge, agreement, or coordination.²⁴¹ Second, and perhaps obviously, members of a group or community may discuss behaviors and rules and decide that a behavior is desirable or undesirable.²⁴² Finally, a consensus may emerge simply because those who disagree with the norm leave the community.²⁴³ Once the dissenters are gone, the beliefs of those who remain become, almost by default, the community's norms.

The state being described here—something approaching agreement or consensus—about the content of a norm need not arise because everyone in the community actually agrees with the norm. It is, of course, entirely possible for individuals to recognize norms with which they disagree. It is also possible for individuals to comply with, or even embrace, norms with which they disagree. Some people may comply because they suppose that others—the early adopters of the norm—know something that they do not. In other words, they go “along with the crowd on the ground that the crowd is probably right.”²⁴⁴ Others may comply not because they believe that the early adopters know more than they do or are right, but “to avoid the social disapproval that may be visited on those who are out of step.”²⁴⁵ In

238. See, e.g., ELLICKSON, *supra* note 235, at 177 (“[S]ocial conditions within a group” must “provide members with information about norms and violations and also the power and enforcement opportunities needed to establish norms”).

239. See McAdams, *supra* note 236, at 358–59 (describing the creation of norms).

240. See *id.* at 359 (citing Philip Pettit, *Virtus Normativa: Rational Choice Perspectives*, 100 ETHICS 725, 744 (1990)). Building on Pettit, McAdams labels this mechanism “selfish esteem allocation” and uses the term to describe the granting or withholding of esteem based on whether the behavior at issue benefits or harms the observer/enforcer. *Id.*

241. See *id.* (discussing this in the context of a norm for proper house and yard maintenance developing).

242. *Id.* at 360.

243. *Id.*

244. Robert C. Ellickson, *The Market for Social Norms*, 3 AM. L. & ECON. REV. 1, 26 (2001).

245. *Id.*

the end, what matters is that members of the community must know the content of norms. It is not necessary that every single individual be able to articulate the norm in precisely the same way. It is also not necessary that every individual recognize that her preference is, in fact, a norm. But a critical mass of individuals must know the content of the rules and believe that they are, in fact, rules.

The next important condition is that individuals within the community must recognize that if they violate a norm, someone will learn about it.²⁴⁶ If people are certain that there is no chance that their behavior will be discovered, then rewards and sanctions, apart from those that are purely internal, are irrelevant. Information is thus essential to the emergence and vitality of norms. Put another way, members of the community must be part of the same reputation market. The person whose behavior is at issue must be susceptible to the punishments, or must desire the rewards available to those who observe her behavior and would enforce the norm. This might be thought of as a jurisdictional point: I only fear a sovereign who has the power to punish me; if I have immunity from the sovereign's punishment, I will not modify my behavior in response to its laws.

The reactions of those who observe norms-violating behavior are critical to the emergence and vitality of norms. Observers must first have at their disposal an effective sanction, which could take many forms.²⁴⁷ For example, an observer may decide that an appropriate sanction is to withhold esteem by sharing a negative opinion, and its basis, with others in the community.²⁴⁸ Other observers may interpret misbehavior as a signal that the actor is not a worthy partner for future interaction and decide to withhold opportunities for exchange or commerce.²⁴⁹ For this Article's purposes, the precise range of sanctions is not a central concern; the Author's own intuition is that most people use a range of sanctions. Most important is that there are sanctions available to observers.

Just as there are substantive norms—discouraging stealing or encouraging voting, for example—there are norms that regulate the enforcement of the substantive norms.²⁵⁰ These enforcement norms

246. McAdams, *supra* note 236, at 361 (arguing that there must be “an inherent risk that anyone who engages in the behavior at issue will be detected”).

247. See Armin Falk, Ernst Fehr & Urs Fischbacher, *Driving Forces Behind Informal Sanctions*, 73 *ECONOMETRICA* 2017, 2028 (2005) (“The willingness to sanction norm violations and noncooperative behavior is crucial for the maintenance of social order. Such sanctions sustain the viability of a myriad of informal agreements in markets, organizations, families, and neighborhoods.”).

248. McAdams, *supra* note 236, at 342.

249. See ERIC POSNER, *LAW AND SOCIAL NORMS* 11–35 (2000) (discussing a model of cooperation and the production of social norms).

250. “Enforcement norms” are sometimes referred to as “meta-norms,” which describe the social rules that encourage or discourage the imposition of an informal sanction on a person observed to have violated a norm. See Christine Horne & Anna

are an essential component of maintaining the vitality of social norms. There are a range of variables that can affect enforcement norms, and these variables are all, to some degree, affected by the processes of globalization. One important factor with respect to enforcement norms is the cost of sanctioning to the sanctioner²⁵¹: if I see someone doing something wrong, what will happen to me if I confront her or impose some other penalty, such as gossiping about her? A second variable is the extent of cohesion within the community or group.²⁵² The more cohesive the group, the more likely it is that enforcement norms will be strong, and the more likely it is that norm-violating behavior will be punished.

Not surprisingly, the available evidence suggests that as the costs of imposing a sanction increase, the likelihood that a member of the community will impose a sanction decreases.²⁵³ The costs of imposing a sanction may be time or money, but they may also include physical injury, social awkwardness, or the risk of suffering one of these costs.²⁵⁴ Without rules governing this process, people bear the costs of gathering information as well as all the attendant risks. Because one benefit of social norms is that they make the behavior of others more predictable, norms that contribute to predictability can have obvious efficiency pay-offs.²⁵⁵ For example, a norm regulating how staff meetings are run would save the organization from having to decide anew at each meeting how to run the meeting. But predictability also contributes to enforcement norms by reducing the costs associated with imposing a sanction.

While there are a variety of reasons why an observer might impose a sanction, two motivations appear most important. The first is that the observer feels the actor has behaved unfairly.²⁵⁶ For example, people who shirk their duties when others are working or people who seek more than their fair share of a common fund are more likely to face informal sanctions.²⁵⁷ Second, many observers

Cutlip, *Sanctioning Costs and Norm Enforcement: An Experimental Test*, 14 RATIONALITY & SOC'Y 285, 288 (2002) ("Meta-norms are rules about how group members ought to respond to deviance.").

251. See *id.* ("The larger the difference in the reactions towards those who sanction and those who do not, the stronger the meta-norm.").

252. See *id.* at 289 ("Research suggests that, like norms, meta-norms also may be stronger in more cohesive groups.").

253. *Id.* at 300.

254. *Id.* at 287.

255. Daniel C. Feldman, *The Development and Enforcement of Group Norms*, 9 ACAD. MGMT. REV. 47, 48–49 (1984).

256. See Falk, Fehr & Fischbacher, *supra* note 247, at 2024 (considering to what extent fairness and spitefulness drive sanctions).

257. *Id.* at 2024–25.

seem to be driven by a less kind motive—spitefulness.²⁵⁸ Observers who have been disadvantaged sometimes appear willing to impose sanctions on others who have not been similarly disadvantaged.

An observer must not only have a motive to impose a sanction, it is also important that the observer not have any impediments to the imposition of a sanction. The impediment may take the form of an internal belief that the observer is incapable of acting, or the impediment may stem from the relationship between the actor and the observer. For example, a significant difference in status between the observer and the actor appears to operate as an impediment to sanctioning behavior that the actor would, under other circumstances, believe to violate a norm.²⁵⁹

The Vietnam example shows how globalization complicates the equation.²⁶⁰ One of the characteristics of a globalizing community is population turnover, with people from other parts of Vietnam and other parts of the world moving into and out of communities that have been stable. Each newcomer comes with her own understanding of what constitutes appropriate behavior, including an understanding of the proper ways to respond when others express disapproval of her behavior or impose other social sanctions. It should come as no surprise that such a community would have a difficult time enforcing norms (or developing new norms). Uncertainty about enforcement norms represents a potentially significant cost that will make the imposition of sanctions less likely. In stable communities, social cohesion operates as a kind of counterweight to the effect of rising costs. Recall that as the costs to the sanctioner rise, the likelihood that sanctions will be imposed falls.²⁶¹ But in a cohesive community, group cohesion has the effect of increasing the likelihood of imposing sanctions.²⁶² Indeed, in particularly cohesive communities, there is a real risk of *over-enforcement* of norms, even when sanctions are costly by other measures.²⁶³ One reason for this may be that group members value highly the rewards they receive from their fellows for enforcing norms (which create benefits for the entire group).²⁶⁴ Most

258. See *id.* at 2026 (“The results of the previous sections suggest that the fairness motive is the central motive behind informal sanctions, although spiteful sanctions were also surprisingly frequent.”).

259. See, e.g., Yuval Feldman & Robert J. MacCoun, *Some Well-Aged Wines for the “New Norms” Bottles: Implications of Social Psychology for Law and Economics*, in *THE LAW AND ECONOMICS OF IRRATIONAL BEHAVIOR* 369–70 (Francesco Parisi & Vernon L. Smith eds., 2005) (describing the role of social reference standards in norm enforcement and observers’ reactions to behavior).

260. See *supra* Part II.

261. See *supra* note 253 and accompanying text.

262. See Horne & Cutlip, *supra* note 250, at 300 (“As the costs of norm enforcement increase, sanctioning of deviant behavior declines, but meta-norms encouraging such sanctioning grow stronger.”).

263. *Id.* at 301.

264. *Id.*

important for the Author's purposes is that uncertainty about the likely reaction of strangers to the imposition of sanctions, coupled with the low expected value of the rewards that people might receive for imposing sanctions, combine to reduce the likelihood that observers of deviant behavior will impose sanctions.

D. Status, Judgment, Sanctions, and the Power of Norms

Social relationships are a critical variable in the emergence and effectiveness of norms, and status is central to social relationships.²⁶⁵ Status affects the maintenance of norms in two related ways. First, it distorts the process of judgment. Observers come to different conclusions about the appropriateness of a particular action depending on the social status of the actor (and, of course, their own social status).²⁶⁶ Observers who witness people of high status engaging in activity that would otherwise violate a norm are less likely to conclude that the act was, in fact, inappropriate.²⁶⁷ Second, in those instances in which an observer concludes that the actor's behavior was inappropriate, their relative levels of status affect the observer's assessment of the appropriate sanction. To put the point in the language of the criminal process, people of high status are less likely to be convicted of their crimes, and if convicted, are less likely to face the maximum punishment.²⁶⁸ Complicating the matter even further is that the two processes appear to work together, which makes it difficult to distinguish one effect from the other.

Observers react not only to what they see, but also to whom they see doing it. Status affects the processes of approval and disapproval in complicated ways. One initial reason to attend to status differences is that people with high status are typically more visible than others. They receive "more attention for the same level of performance" than people of lower status, and their actions are "taken more seriously" than the actions of low-status people.²⁶⁹ This has a clear effect on the allocation of esteem, but a much less clear effect on the allocation of disesteem. Regarding esteem, those "of higher social status" receive more esteem than those of lower status for the same levels of performance.²⁷⁰

265. The Author analyzed the relationship between status and norms in much greater depth in an earlier work. See Keenan, *supra* note 68, at 545-58.

266. *Id.*

267. *Id.* at 546.

268. *Id.* at 556.

269. Bonnie H. Erickson & T.A. Nosanchuk, *The Allocation of Esteem and Disesteem: A Test of Goode's Theory*, 49 AM. SOC. REV. 648, 658 (1984).

270. *Id.* The allocation of esteem does not follow a simple curve. Esteem does not rise at the same rate that performance does. It is true that small improvements in performance lead to small increases in esteem, but the allocation of esteem is skewed toward people who perform at very high levels. In other words, at the low end of the

For disesteem, other factors appear to be at work. Visibility still plays an important role and can cause those with high visibility to suffer greater disesteem than those with lower visibility. But another force works in the other direction. Misbehavior costs people of high status less because "the interpretation of an act as deviant is more problematic for high status people."²⁷¹ Thus, even though their actions are more likely to be witnessed by observers, they are less likely to face disapproval for the same action that would bring disapproval if done by someone of lower status. Interestingly, the effect is greater with respect to acts that are in a normative grey area—those that may, but do not clearly, violate an established norm.²⁷²

High visibility, a common attribute of those with high status, deserves special attention. There is some evidence that individuation for any reason, as opposed to high status, may be doing most of the work.²⁷³ This makes intuitive sense: just as observers' eyes are drawn to those of high status because of their difference, it is reasonable to expect that their eyes will be drawn to people who are different in other ways, such as race or color, mode of dress, or manner of speech. What matters is that the individual receives attention.²⁷⁴ Thus, even if foreigners are not accorded higher status, their prominence may act as an analog of status, meaning that those who stand out are likely to be treated in the same way as those with high status.

E. Reputational Segmentation

Social controls that use reputational penalties as the primary sanction depend on physical or social proximity: those who observe inappropriate behavior must have access to the reputation of the offender. Without this, sanctions are irrelevant. Put another way, for informal social control to be effective, those who witness misbehavior and those who engage in it must be part of the same

performance scale, a one-step increase in performance might lead to a one-step increase in esteem. At the high end of the performance scale, a one-step increase in performance might lead to a five-step increase in esteem. *Id.*

271. *Id.*

272. See Calvin Morrill et al., *It's Not What You Do, But Who You Are: Informal Social Control, Social Status, and Normative Seriousness in Organizations*, 12 SOC. F. 519, 532–33 (1997).

273. See Kenny K. Chen & Shekhar Misra, *Characteristics of the Opinion Leader: A New Dimension*, 19 J. ADVERTISING 53, 54 (1990) ("[T]he willingness to individuate oneself is the common factor which differentiates one from the rest of the group, and leads one to be judged by others as being more influential.").

274. *Id.* at 54.

norm community.²⁷⁵ To be part of the same norm community does not mean that everyone in the community must be friends, or even personally acquainted. What matters is that members of the community desire the approval of those around them, wish to avoid their disapproval, or wish to be seen as a competent and reliable partner for economic or social interaction. The realities of globalization have made it more difficult to establish and maintain stable norm communities for several reasons. This Subpart focuses on the possibility of reputational segmentation: the possibility that individuals can purposefully create, or at least benefit from, having different reputations in different areas. Reputational segmentation is a strategy that can permit a person to violate the norms of one community without suffering any effects in another community. Put another way, a “social norm of behavior . . . is limited in its ability to control an individual’s behavior by what that person has to lose . . . if he or she deviates from the social norm’s prescriptions.”²⁷⁶

Consider a concrete example. Beginning in the early 1990s, Marvin Hersh regularly traveled to Honduras, and other developing countries, to engage in sex with children.²⁷⁷ Hersh made at least nine trips to Honduras and Thailand, and on each trip he engaged in sexual activity with one or more young boys.²⁷⁸ During this time, Hersh was also a university professor, first at Emory and then at Florida International.²⁷⁹ Despite the frequency with which he engaged in sex tourism, his university colleagues had no idea of his activities.²⁸⁰ In a similar case, Nicholas Bredimus regularly traveled to Thailand to have sex with children.²⁸¹ His work colleagues had no idea of his activities.²⁸² Common to both cases was the ease with which they procured their child victims in the destination communities, and the outrage expressed by their colleagues, friends, and families in the source communities. Before their arrests, there

275. See Cass R. Sunstein, *Social Norms and Social Rules*, 96 COLUM. L. REV. 903, 919–20 (1996) (“The fact that norms are contested within a heterogeneous society can lead to the creation of many diverse norms communities.”).

276. Harold L. Cole et al., *Class Systems and the Enforcement of Social Norms*, 70 J. PUB. ECON. 5, 6 (1998).

277. See *United States v. Hersh*, 297 F.3d 1233, 1236–38 (11th Cir. 2002) (describing Marvin Hersh’s history of traveling to developing nations to have sex with young boys).

278. *Id.*

279. MONIQUE MATTEI FERRARO & EOGHAN CASEY, *INVESTIGATING CHILD EXPLOITATION AND PORNOGRAPHY: THE INTERNET, THE LAW AND FORENSIC SCIENCE* 67–68 (2004).

280. *Id.*

281. Thomas Korosec, *American Sex Tourist: Caught in the Act of Molesting Young Boys in Thailand, Coppell Businessman Nicholas Bredimus Came Up With a Last-Ditch Defense*, DALLAS MORNING NEWS, Feb. 20, 2003, available at <http://www.dallasobserver.com/2003-02-20/news/american-sex-tourist/>.

282. *Id.*

was no evident reputational spillover—both men had successfully segmented their reputations.

Of course, it is important to acknowledge that there is nothing new about the possibility that a criminal could lead a double life—engaging in illicit activity in one location while maintaining a positive reputation in another. But this phenomenon has taken on new importance in the age of globalization. Recall the Vietnam example.²⁸³ Between 1995 and 2004, the number of tourists arriving in Vietnam increased from 1,351,000 to 2,928,000.²⁸⁴ For Cambodia and Thailand, the increases were even more pronounced.²⁸⁵ Even if the possibility of reputational segmentation is not a new phenomenon, it is certainly a new challenge for communities and law enforcement authorities.

Reputational segmentation poses a profound challenge to informal means of social control. Marvin Hersh and Nicholas Bredimus were able to leave behind one norm community for another. Their primary norm community—where they worked, raised their families, and lived most of their lives—did not have the information necessary to exert any control over their illicit activity. In their destination communities, both men's proclivities were well known; indeed, the evidence presented at Bredimus's trial suggested that people lined up outside his room with child prostitutes.²⁸⁶ If their norm communities had been the same as their geographic communities, it would have been much more difficult for them to segment their reputations so completely. The economic, social, and psychological processes that underlie reputational segmentation are complex. Economic and status differences can permit individuals who engage in norm-violating activity to avoid the opprobrium that they would otherwise receive. Psychologists have long recognized that, for most people, there is a "distinction between private and social aspects of the self."²⁸⁷ These two aspects of the self combine to shape individual behavior by supplying reasons for action. For example, the private component of the self might be motivated by a desire to achieve a particular outcome while the social (or public) component might be motivated by a desire to gain the esteem of others or avoid their disapproval.²⁸⁸ In most situations, both components should be engaged: as an individual decides whether a particular action will

283. See *supra* Part II.

284. WORLD DEVELOPMENT INDICATORS 2007, *supra* note 69.

285. *Id.*

286. See *supra* note 281 and accompanying text.

287. CHARLES S. CARVER & MICHAEL F. SCHEIER, ON THE SELF-REGULATION OF BEHAVIOR 105 (1998).

288. See, e.g., ICEK AJZEN & MARTIN FISHBEIN, UNDERSTANDING ATTITUDES AND PREDICTING SOCIAL BEHAVIOR 80–86 (1980) (arguing that behavior is shaped by the interaction of internal and external motivations).

bring personal satisfaction or pleasure, that individual must also decide if engaging in the action will affect the esteem in which she is held by other people. Although the interaction of these two sets of motivations is complicated and likely difficult to pinpoint directly, it is clear that social expectations can moderate personal desires, and vice-versa.²⁸⁹ Put another way, social forces can moderate the behavior of individuals whose private desires, if acted upon, would make them social outliers in their communities.

Globalization changes the calculation.²⁹⁰ Economic and status differences, communications problems, or simple distance can relieve a person from having to fully consider social expectations when making decisions about illicit behavior. Individuals are thus relieved of one of the primary costs of inappropriate behavior. When communities cannot rely on these critical moderating forces on individual behavior, they are left without a vital tool of social control.²⁹¹ Consideration of the psychological issues underlying reputational segmentation is important because it helps explain the connection between individual and group behavior. Individuals respond to their own preferences and to their perceptions of what others want or expect of them. Community life is determined in large part by the effect of individual decisions.

Consider the consequences of having a Hersh or Bredimus in the community. What happens in a community when individuals who violate norms are, in effect, judgment proof? First, when sanctions

289. CARVER & SCHEIER, *supra* note 287, at 110–12.

290. There is an interesting parallel here between contemporary globalization and the perceived effects of the Industrial Revolution. One consequence of the Industrial Revolution was a shift from a local, integrated economy in which people knew those with whom they traded, to a cash-based urban economy. In a classic article, Robert K. Merton, drawing on Georg Simmel, put the issue this way:

[M]oney is highly abstract and impersonal. However acquired, through fraud or institutionally, it can be used to purchase the same goods and services. The anonymity of metropolitan culture, in conjunction with this peculiarity of money, permits wealth, the sources of which may be unknown to the community in which the plutocrat lives, to serve as a symbol of status.

Merton, *supra* note 53, at 675 n.8. In Merton's time, it was the combination of relative anonymity and wealth that deprived onlookers of the information they needed to fairly evaluate those who lived in their midst. *Id.* In the current age of globalization, these factors are compounded by the role of social status and the ease of transport.

291. To be sure, social expectations do not invariably pull individuals toward positive decisions or away from negative decisions. It is entirely possible that, in some circumstances, individuals with personal preferences likely to produce positive externalities will moderate their behavior in ways that reduce the benefits that they would otherwise create. Indeed, there is experimental evidence that test subjects are more likely to provide an answer they know to be wrong if the answer is given in public and the majority of the group gives the same incorrect answer. *See* CARVER & SCHEIER, *supra* note 287, at 115–16 (citing a study that found such conformity to be "positively related to level of public self-consciousness.").

are ineffective, we should expect that eventually they will be imposed less frequently. Sanctions are often costly; members of the community impose them because they anticipate some benefit. If observers know from experience that the benefit will not materialize, they will become less willing to pay the cost. Second, sanctions for norm-violating behavior are often part of the process of putting the behavior in an appropriate social context. Whether and how an offender accounts for his deviant behavior can play an important role in preserving the vitality of substantive social norms and enforcement norms, the meta-norms that regulate when and how people impose sanctions. Third, it is possible to conceive of social norms as society's cure for individual myopia. If individuals are myopic—that is, they seek to satisfy their immediate desires without regard for the negative externalities that their behavior might produce—then norms can provide countervailing incentives. Norms operate as a promise of a future reward (or a threat of a future punishment) for individuals who are willing to postpone, modify, or completely forego their personal desires.

One element of the calculus—the dynamic effect that sanctioning behavior has on future sanctioning behavior—bears special consideration. It comes as no surprise that the effectiveness of sanctions is related to the willingness of “agents . . . to spend resources on punishment.”²⁹² But these effects are not always intuitive. For example, there is evidence suggesting that if punishment is *too* effective, then community members can become less vigilant about enforcing norms, eventually leading to an increase in norm-violating behavior.²⁹³ Members of the community—all potential sanctioners—thus modify the degree of their involvement in the norms regime based on the effect of previous sanctioning behavior. One way to conceive of sanctioning behavior is as a type of investment. Community members engage in costly present behavior in the hope of receiving a future benefit (or preserving a congenial status quo that would otherwise suffer). Considered in this way, it should be no surprise that the imposition of sanctions that prove to be ineffective would affect behavior. Richard Thaler's work on choice helps to illustrate this effect.²⁹⁴ In one experiment, he showed that test subjects felt that the loss of \$9 after having lost \$30 hurt more than a \$9 loss standing alone.²⁹⁵ The effect of a prior loss worked to

292. Steffen Huck & Michael Kosfeld, *The Dynamics of Neighbourhood Watch and Norm Enforcement*, 117 *ECON. J.* 270, 282 (2007).

293. *Id.* at 281.

294. RICHARD H. THALER, *QUASI-RATIONAL ECONOMICS* 58–60 (1991).

295. *Id.* at 58–60. Thaler's findings also show the complexity of the problem. He found that losing \$9 after having lost \$30 hurts more than just losing \$9. But he also found that “a small majority [of test subjects] say that the \$9 [loss] hurts less after the large \$250 (or \$1000) loss than alone.” *Id.* at 58. He hypothesized that a small loss

make individuals more risk averse than they had been previously.²⁹⁶ To understand the importance of this point, consider an example.

Sanctioning behavior not only affects future sanctioning behavior—that is, meta-norms—it also affects the boundaries of substantive norms. Specifically, an offender's response to a sanction helps determine the future vitality of norms. People who engage in norm-violating behavior can undermine substantive norms by appearing to ignore or challenge the norms. However, they can also help to reinforce the power of the norm if they adequately account for their behavior.²⁹⁷ Accounting for inappropriate behavior does not necessarily mean excusing or even explaining it. Instead, what is important is that the offender be seen to engage in some kind of "[r]emedial ritual" to help put the behavior in its appropriate context.²⁹⁸ Indeed, there is some evidence that for many social infractions, "a failure to provide the required remedies" can cause more harm than the initial infraction.²⁹⁹ Although the harm can be personal—no one likes a person who refuses to apologize for misbehavior—it can also be systemic. In this way, individuals who engage in reputational segmentation not only avoid the cost of a social sanction, they also rob the community of the opportunity to reprocess the misbehavior and transform it from an assault on community standards into an example of community effectiveness and power.

The final social consideration regarding reputational segmentation relates to the difference between what is good for the community and what is good for individuals. Social norms, backed up by sanctions, can be a cure for a kind of myopia by requiring individuals to account in some way for the externalities their actions create.³⁰⁰ In economic terms, an externality occurs when the "benefits or costs" of an activity "fall on people not directly involved in the activit[y]."³⁰¹ This can create a problem because if those considering whether to engage in an activity do not pay all the costs associated with the activity (or reap all the benefits), there is a

after an enormous loss hurts less because a "large loss may numb the individual to additional small losses." *Id.* at 60.

296. *Id.* at 67.

297. See Sheldon Ungar, *The Effects of Status and Excuse on Interpersonal Reactions to Deviant Behavior*, 44 SOC. PSYCHOL. Q. 260, 260 (1981) ("Whereas an infraction of another's territory of the self (e.g., one person trips over another) usually causes little harm or concern in itself, a failure to provide the required remedies can jeopardize the moral standing and character of both the offender and the other who expects amends.").

298. *Id.*

299. *Id.* (citing ERVING GOFFMAN, *RELATIONS IN PUBLIC: MICROSTUDIES IN THE PUBLIC ORDER* (1971)).

300. See generally Cole et al., *supra* note 276, at 26.

301. ROBERT H. FRANK, *MICROECONOMICS AND BEHAVIOR* 613 (5th ed. 2003).

chance that the activity will be over- or under-produced.³⁰² For a globalizing community, as with all communities, the behaviors of individuals can create significant externalities. Consider the effect of the conversion of property from a farm to a resort, or the decision of a teenager to quit school to become a prostitute. If the person facing the decision is susceptible to social norms—if her behavior will be affected by her desire for her community's esteem, for example—then she must weigh the potential cost of social sanctions along with all the other costs associated with the activity. But if she is able to engage in reputational segmentation and therefore make herself immune from social sanctions, then she is free to ignore what may be significant costs as she makes her decision. Social norms, and the possibility of sanctions, thus operate as a kind of remedy for myopic behavior, and amount to another tool of social control.

302. MATTHEW BISHOP, *ESSENTIAL ECONOMICS* 95 (2004).
