IDENTIFYING THE 'PEOPLE' IN 'WHAT WILL PEOPLE SAY': INCORPORATING SOCIAL IDENTITY WITHIN LAW AND NORMS DISCOURSE

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ABSTRACT

Others, with their attitude and behavior, profoundly impact how we perceive, understand, and interpret the law. Motivations for adhering to these social influences is roughly divided into two categories by legal scholars - informational reasons to agree and normative pressures to comply with the social influence. While alluding to how these motivations vary depending on the 'context/perception' of individual, the legal discourse so far has not tried to incorporate aspects of the individual's psychological context within the discussion. The article begins this, long overdue, process by incorporating individual's social identity within the discussion. Simply put, it tries to ask – who are these 'others' that influences us and why do they matter?

Incorporating social identity has an immediate and profound impact on how the two motivations for adhering to social influences operate in real world. First, individuals not only are likely to believe but 'need to' believe members from within their identity group are 'right' (and those outside to their group 'wrong') for self-esteem maintenance. Expressive powers of law, therefore, will vary considerably depending on how it portrays behaviors of those within my group. Second, whose positive opinion we crave for is deeply rooted in our social identity. This has direct consequence on how individual respond to a law when offenders are likely to be part of one's identity (such as men responding to the #metoo movement or white Americans responding to All Lives Matter). The discussion also helps identify the limits of reputational tools like shaming for enforcing laws.

Finally, the article highlights an important epistemological lacuna in the law and norms discourse by incorporating social identity within it. Individuals, when influenced by those they identify with, have both informational and normative reasons to adhere to these influences. The article argues that while either of the two motivations can ex-post rationalize the phenomenon, neither capture the true motivations underlying adherence through

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identification. The motivational dichotomy is not as evident as the discourse presumes and there is a need to revisit the framework we use to understand social influences.

1. INTRODUCTION

It matters to us what others think. Legal scholarship recognizes how powerfully motivating this influence can be. In fact, many explanations on why law can successfully change behavior is dependent on the law channeling our concern about what others think. Expressive function of law, for example, depends on us caring about what is 'expected behavior' in different contexts. Public shame, though controversial, has long been considered as a tool to incentivize legal compliance. There has, however, always been very strong variance in how successful these interventions have been in changing behaviors and attitudes. Smoking related regulations, in the United States, were able to effectively channel the expressive powers of law while gun related regulations have shown to have an opposite influence on behavior and attitudes.[2] Shaming to improve compliance has also had mixed results. Some shaming strategies have resulted in backlash and increased deviance while, in other contexts, it has been an effective deterrent.[3] The article aims to understand these deviations and enrich the law and norms discourse by anchoring the discussion within the psychological concept of social identity. Simply put, it tries to ask – who are these 'others' and why do they matter to the individual?

When it comes to understanding what motivates behavioral adherence to different social influences, there are multiple explanations forwarded within the law and norms discipline. (The Law and Economics scholarly discussion was clubbed together into 'law and norms' literature.)[4] Much of that discussion can be summarized into two types of motivations – informational and normative. [5] When individuals use the behavior of others as proxy for missing information and choose to replicate the observed behavior, it is defined as informational influence.[6] When individuals confirm to certain informal codes of conduct for

[2] Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42(1) L. & SOC. ENQUIRY, 60-75 (2017).
[3] Brian Netter, *Avoiding the Shameful Backlash: Social Repercussions for the Increased Use of Alternative Sanctions*, 96 J. CRIM. L. & CRIMINOLOGY 187 (2006).
[4] Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. OF LEGAL STUDIES 537, 552 (1998)
[5] CASS SUNSTIEN, CONFORMITY: THE POWER OF SOCIAL INFLUENCE (2019) (hereinafter SUNSTIEN); Dan Kahan, *Social Influence, Social Meaning and Deterrence*, 83 VA. L. REV. 349, 395 (1997) (hereinafter Kahan); Robert B. Cialdini & Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 ANN. REV. PSYCH. 591, 622 (2005).
[6] Dan Kahan, *Social Meaning and the Economic Analysis of Crime*, 27 J. OF LEGAL STUD. 609, 622 (1998).

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fear of reputational repercussions and in order to be liked by our peers, it will be considered as normative social influence.[7] Based on this typology, multiple legal design and policy suggestions have been recommended and adopted. Within the compliance literature, the broken window theory focuses on the informational influence of small crimes going unpunished.[8] Expressive function of law also depends on law conveying the 'socially desirable' course of action and then harnessing social influence (normative and informational) to ensure compliance with the law by playing an informational role in updating beliefs.[9] This dichotomous understanding of social influence is, therefore, presently an active part of both academic and legal policy discourse. A brief overview of the existing literature explaining why individuals adhere to social influences is provided in the part II.

Though all explanations recognize, implicitly or explicitly, the role that an individual's perceptions and past experiences have on how they receive different social influences none capture these perceptions within their explanations. Individuals receive all social influences through their existing social and psychological framework which they use to navigate in the world. Dan Kahan, in one of the earliest articles discussing the role of 'social influence' on legal compliance, rightly defined social influence as "*individuals' perceptions about each other values, beliefs and behaviors affect their own conduct."*[10] Other scholars recognize, at least implicitly, the role that pre-existing perceptions of individuals play.[11] Yet their analysis of the social interaction provides a static explanation without incorporating this perception within the framework of these explanation.

In Part III, the article incorporates one such aspect of our perceptions into the analysis of social influence – how our existing social identity impacts our response to different social

[7] Robert B. Cialdini & Noah J. Goldstein, *Social Influence: Compliance and Conformity*, 55 ANN. REV. PSYCH. 591, 622 (2005).
[8] GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 151–56 (1996); Dan Kahan, *Social Influence, Social Meaning and Deterrence*, 83 VA. L. REV. 349, 395 (1997).
[9] RICHARD H. MCADAMS, 'LEGISLATION AS INFORMATION', THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS (2015) (explaining how the law creates compliance through its expressive power to coordinate behaviors and inform beliefs).
[10] Kahan, *supra* note 5.
[11] SUNSTIEN, *supra* note 6, at 27; ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 123-137 (Harvard University Press, 1991); Richard McAdams *'assume(s) that – independent of and prior to any norm – individuals have some evaluative opinions about others'*. See: Ellickson, *infra* note 27; McAdams, *infra* note 28.

communications (Social identity is defined in psychology as the aspect of an individual's self-concept which is derived the individual's relationship with other individuals and memberships into groups.).[12] This paradigm enriches existing explanations in two ways. First, it forces us to expand our understanding of individual motivations from static, one-shot assessments to more closely resemble the psychological process through which individuals receive social communications. It expands the law and norms understanding of self-esteem to incorporate within it a positive social identity.[13] This has a profound impact on the nature of *informational* social influence – 'I' now need to believe 'we' are right and normatively superior. Therefore, what is a credible source of information, what is legitimate information and how we respond to different influences is impacted by our social identity including information communicated by and bout laws. Second, it forces us to re-consider reputational and other social sanctions within the context of social identity. The article uses the case of 'shame' to explain how social identity impacts its operation in influencing individuals depending on who shames, when, how and why. Social identity paradigm, therefore, impacts both informational and normative influences.

More importantly though, as the Article argues in Part IV by providing the characteristics of 'social influence through identification', the law and norms literature does not adequately capture influence through identification within any of the existing explanations. In fact, when an individual accepts an influence through identification, it exhibits characteristics of all three prevalent explanations within the law and norms literature. Individuals believe in the legitimacy of the source of information (informational reasons to agree) but also care about staying assimilated within their collective identity (pressures, both psychological and social). Meanwhile, acceptance of the influence through identification also resembles internalization, as described by Robert Cooter, but it is much more an internalization of the identity and the role rather than internalization of an obligation. This highlights an important epistemological lacuna in the approach to social influence within the law and norms discipline. The literature utilizes a static approach to rationalize an inherently living, dynamic, socio-psychological process which individuals utilize to comprehend the world. There are serious policy and legal

[12]Michael Hogg & Kipling Williams, *From I to we: Social identity and the collective self*, 4(1) GROUP DYNAMICS: THEORY, RESEARCH, & PRACTICE, 81–97 (2001).
[13] J.C. Turner and K.H. Reynolds, *The Social Identity Perspective in Intergroup Relations: Theories, Themes, and Controversies*, BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY: INTERGROUP PROCESSES 133–152 (Brown, S. L.; Gaertner eds., 2001).

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design implications of incorporating influence through identification within our understanding of social influence which are discussed in the section.

The article concludes, in Part V, by highlighting the need to revisit the initial frameworks used for explaining social influence within the law and norms discourse. Source of influence (influencing agent), our relationship with them, the content of communication and our pre-existing value systems all impact the process through which individuals accept any influence. Once accepted, it could very well be rationalized into informational and normative influences. But the process of accepting a social influence and the factors that contribute to it are what aid in understanding the phenomenon of social influence. A unified framework centered around the processes through which individuals accept different social influences can also help root the discussion within the context of the individuals instead of using selected contexts merely as anecdotal evidence for the explanation in question. In the process, the framework will also improve predictability of any policy assertions emanating from applying such a framework for legal design and implementation. After all, given that the concept under study is 'social influence', mooring it within the socio-psychological context of the individual is clearly an exercise worth exploring. The Article concludes with some suggestions on how the socio-psychological framework of social influence might be the way forward.

2. SOCIAL INFLUENCE WITHIN LAW AND ECONOMICS: LAW AND NORMS DISCOURSE

Informal social rules, unlike their legal counterparts, are not easily discernable or clearly stated.[14] They can be observed in the uniformity of behavior around us, our expectations about the repercussions of behaving a certain way or actual repercussions about these results.[15] Social influences, for the purposes of this article, refers to how individuals' perceptions of each other's values, beliefs, and behavior affect their conduct including decisions about law such as compliance, reporting etc.[16] The definition is intentionally large to incorporate various

[14] Ellickson, *supra* note 4 (Ellickson termed it as 'terminological wrangling'); See: Mans Svensson, *Norms in Law and Society: Towards a Socio-Legal Concept of Norms,* SOCIAL & LEGAL NORMS (Matthias Baier ed., 2013).
[15] ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 123-137 (Harvard University Press, 1991).
[16] Kahan, *supra* note 5; ROBERT CIALDINI, INFLUENCE: THEORY & PRACTISE (3rd ed., 2007); Robert Hass, *Sociology of Social Influence*, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 348-354 (2015); SUNSTEIN, *supra* note 5, at 11-34.

concepts such as social norms, informal rules, codes of conduct within it. The scope of the discussion is focused on what motivates individuals to adhere to influences not backed by formal sanctions and the role that our identity plays in it rather than a structural analysis of these influences itself. The multiple explanations within law and norms that focus on why individuals may be motivated to follow rules (formal and informal) without active enforcement by the state are briefly discussed in this section.

Informational explanations argue that individuals utilize the behavior of those around as a proxy for missing information for different purposes – to identify a superior preference, for coordination, cooperation etc. A long queue outside a restaurant or many good reviews for it on a website can indicate good quality food.[17] A clean area can suggest that, perhaps, littering involves high costs (social or legal) and should be avoided.[18] Economists such as Kaushik Basu and legal academics like Richard McAdams have argued that law, in fact, can be and is used as informational proxy for what will others do. Richard McAdams presumes that seat-belt regulation for infants conveys to parents that others consider it to be a safer when kids are harnessed in moving vehicles as well as that it will be considered as 'bad parenting' and result in judgment from others if we fail to comply with it.[19] Dan Kahan used informational social influence to argue that run-down neighborhood can communicate to those living there that the cost of non-compliance is not too high.[20] Consider the role informational role of social influence to be 'what people do'.[21]

Others, such as Eric Posner and Engert, provide normative reasons why individuals may adhere to social influences.[22] Within these explanations, reputational sanctions are considered as motivations to adhere to social norms which may appear costly in the short run to signal to other individuals in the group that they are 'good-cooperators' and recover through long term

[17] Sushil Bikhchandani, David Hirshleifer & Ivo Welch, *Learning from the Behavior of Others: Conformity, Fads, and Informational Cascades*, 12 J. ECON. PERSP. 151 (1998).
[18] Yvonne A. W. de Kort, L. Teddy McCalley, Cees J. H. Midden, *Persuasive Trash Cans: Activation of Littering Norms Design*, 40(6) ENV'T. & BUS. 870 (2008); Robert Cialdini, R.R. Reno and C.A. Kallgren, *A focus theory of normative conduct: Recycling the concept of norms to reduce littering in public places*, 58(6) J. OF PERSONALITY & SOC. PSYCH. 1015, 1026 (1990); Jerry M. Burger & Martin Shelton, *Changing everyday health behaviors through descriptive norm manipulations*, 6(2) SOC. INFLUENCE 69, 77 (2011).
[19] McAdams, *supra* note 11, at 360
[20] Kahan, *supra* note 6.
[21]Robert Cialdini, *A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior*, 24 ADV. IN EXPERIMENTAL SOC. PSYCH. 201-234 (Mark P. Zanna ed., 1991); CHRISTINA BICCHIERI, THE GRAMMAR OF SOCIETY 1-54 (Cambridge University Press, 2005).
[22]Andreas Engert, *Norms, Rationality, Communication: A Reputation Theory of Social Norms*, 92(2) ARCHIV FÜR RECHTS-UND SOZIALPHILOSOPHIE (2006).

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gains. Richard McAdams provides a psychological desire of earning 'esteem' and the ability of others to withhold/reward esteem to us as a normative explanation as to why individuals may adhere to social norms.[23] Legal scholars have frequently aimed to utilize the ability of others to 'shame' us to adhere to certain behaviors to improve enforcement to different laws.[24]

Robert Cooter, perhaps, had an explanation most grounded in psychology when he also incorporated the role of *internalization* in motivating adherence to informal rules.[25] He used the psychological cost of guilt when not complying with an internalized norm to explain the subjective cost of non-adherence. Additionally, he argued that internalization of norms manifested through 'self-righteousness' which ensured that the individual with an internalized norm shamed/censored other individuals who were not adhering to the social norms.[26] Self-restraint (to avoid guilt) and self-righteousness (restraining others) explain individual motivation to adhere to and ensure adherence to the social norms. Others who may not have internalized the norm may still continue to adhere for reasons of being shamed by these individuals. His framework of norms is one of the few that explicitly incorporates psychological cost to the collective identity. It recognizes that being denounced by group one is a member and excluded from it have costs for the individual. In fact, he also (although passingly) mentions how the fear of denouncement/exclusion cannot be an active deterrent for an individual not integrated within a group. Though he assumes rather than explores more deeply this social identity of the individual since he states – *'most people intrinsically value esteem and disdain, so a group can reward and punish its members by modulating esteem and disdain'.*[27]

Robert Ellickson incorporated each of the three explanations within a theory of, what he referred to as, social control.[28] He separated the types of '*social control*' on the basis of the person enforcing the norm.[29] First party control referred to individuals refraining themselves

[23] Richard McAdams, *The Origin, Development and Regulations of Norms*, 96(2) MICHIGAN L. REV. 338.
[24]Dan M. Kahan and Eric Posner (1999), *Shaming White-Collar criminals: A proposal for reform in federal sentencing guidelines*, 42 (S1) J. L. & ECON. 365-91 (1991); Robert Cooter and Ariel Porat, *Should Courts deduct non legal sanctions from damages*, 30 J. OF LEGAL STUD. 401-422 (2001); Harris N., *Shame in Criminological Theory*, ENCYC. OF CRIMINOLOGY & CRIM. JUST. (G. Bruinsma & D. Weisburd eds., Springer, 2014).
[25] Robert Cooter, *Normative Failure Theory of Law*, 82(5) CORNELL L. REV. 947, 956 (Cooter defines internalization of obligation as a game theoretic commitment).
[26] *Id.* at 962.
[27] Cooter, *supra* note 25, at 969.
[28] ELLICKSON, *supra* note 15, at 122-136.
[29] ELLICKSON, *supra* note 15, at 131.

based on their own personal ethics and, therefore, resembles more closely Cooter's individual following a rule to avoid feelings of guilt. Second party actors were those who are wronged and seek remedies. All of the remaining normative pressures as well as more formal sanctions he clubs into one segment referred to as third party sanctions. Within his framework, individuals adhere to social influences as a consequence of one or more of these three types of sanctions.

Even those not following the psychological explanation of *'internalization'* do recognize that influences do not operate within social vacuum. There is adequate reference to the fact that 'others' is not a monolithic concept and that the individual's perception about others and their own identities may have an impact on how we perceive different influences. As previously mentioned, Dan Kahan's definition of social influence itself incorporates '*individual's perceptions about others'*.[30] Richard McAdams *'assume(s) that – independent of and prior to any norm – individuals have some evaluative opinions about others'.*[31] Even within the signaling function of adhering to social influence, the authors recognize that there can be an *'intrinsic* value of status' as when a wealthy person wears clothes or jewelry that look ordinary but are in fact very expensive.[32] Robert Ellickson's Theory of Social Control was based on studying and understanding social interactions between members of *'close-knit, non-hierarchical group'*[33] and is, therefore, rests on the psychological and sociological ties of the individuals.[34]

Strong variances in the capacity of the law and norms literature to predict (and not only ex-post explain observed phenomenon) individual response to social influences has also pointed to the fact that individuals don't comprehend others as a cluster of individuals but within social clusters.[35] The expressive function of laws could, perhaps, explain to an extent why anti-smoking regulations were so successful in reducing smoking in the United States.[36] However,

[30] Kahan, *supra* note 6.
[31] McAdams, *supra* note 23, at 358.
[32] Gertrud M. Fremling & Richard A. Posner, *Status Signaling and the Law, With Particular Application to Sexual Harassment*, 147(5) UNIV. PENN. L. REV. 1069, 1075 (1999).
[33] ELLICKSON, *supra* note 15, at 167
[34] ELLICKSON, *supra* note 15, at 126.
[35] Janice Nadler, *Expressive Law, Social Norms, and Social Groups*, 42(1) L. & SOC. ENQUIRY, 60-75 (2017).
[36] Lawrence Lessig, *The Regulation of Social Meaning*, 62 UNIV. OF CHI. L. REV. 943 (1995).

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they do not capture why a similar response was not generated to a law on seat belt in Turkey.[37] Or in fact to anti-smoking regulations in other parts of the world. In fact, even within the United States, anti-gun legislations have the opposite impact on expression and increase sales in certain communities around the time new legislations curbing gun rights are passed.[38] Why are some laws able to utilize fully their expressive function, others only partially while some, in fact, communicate the opposite message to the individuals.

It is clear, therefore, that not all social influences are equal for an individual and most explanations so far do not focus adequately on how the individual's socio-psychological perceptions may have an impact on how they receive any social communication. They fail to capture adequately the individual's context and its impact on social influence. In the next section, the article incorporates a social identity paradigm to these existing explanations in order to address this lacuna. It allows us to more realistically understand how an individual with pre-existing social affiliations and evaluations about other individuals and groups navigates between different influences.

3. UNDERSTANDING WHAT MOTIVATES A 'SOCIAL-SELF': HOW A SOCIAL IDENTITY PARADIGM COULD ENRICH LAW AND NORMS LITERATURE

An individual's self-concept consists of two categories – the individual-self and the collective self. Collective self is the self-definition derived from membership to social groups and individuated self is derived through personal characteristics.[39] The concept of the collective self is further textured by addition of the concept of relational self.[40] An individual's relational self is shaped by their interpersonal relationship by those around them. [41] The relational and collective self together constitute an individual's social identity. It, therefore, consists of aspects of our self-concept which are dependent on and assimilated with others (interpersonal

[37] Özlem Şimşekoğlu & Timo Lajunen, *Social psychology of seat belt use: A comparison of theory of planned behavior and health belief model*, 11(3) TRANSP. RSCH. PART F: TRAFFIC PSYCH. & BEHAV. 181-191 (2008).
[38] Gregor Aisch and Josh Keller, *What drives gun sales: Terrorism, Politics and Calls for Restriction*, N.Y. TIMES, (Jun. 13, 2016).
[39] See: Sabine Trept & Laura S. Loy, *Social Identity Theory and Social Categorization Theory*, THE INTERNATIONAL ENCYCLOPEDIA OF MEDIA EFFECTS (Wiley Press, 2017). (It provides a concise review of literature on the concept.
[40] MA Hogg, D. Abrams & MB Brewer, *Social identity: The role of self in group processes and intergroup relations*, 20(5) GROUP PROCESSES & INTERGROUP RELATIONS 570-581 (2017).
[41] R.F. Baumeister & M.R. Leary (1995). The need to belong: Desire for interpersonal attachments as a fundamental human motivation, 117 PSYCH. BULLETIN 497–529 (1995).

relationships) and memberships to social groups (collective). [42] Social identity represents that aspect of our self-concept which is derived from our relationship with other individuals and membership to groups.[43]

Our concept of self-concept, as a result, comprises of different levels of inclusiveness. We are simultaneously distinct individuals, member of our family, our ethnic group, all the way up to human with each of these levels having an influence on our self-evaluation. There are two important impacts that social identity has on our motivations which are discussed in this section. First, our social identity incorporates collective group evaluation into our self-esteem evaluation. Therefore, individuals derive positive self-evaluation from an improved evaluation of their collective identity.[44] Second, positive self-evaluation is relative and dependent on social comparisons both at group level and individual level.[45] In this section, we consider how these two factors enrich existing law and norms explanations for social influence.

3.1. An esteem motivated explanation for why I need to believe we are in the right: Social identity and its impact on *informational* reasons to agree

There is an important effect of incorporating an identity or a group within our self-concept to our self-esteem. If self-concept is how we see ourselves then self-esteem is defined, in psychology, as the means by which we evaluate our self-concept.[46] By extension, if a social identity is part of our self-concept then the group's failures, successes and reputation has an impact on our individual self-evaluation.[47] This is defined as the self-esteem hypothesis of social identity. Individuals genuinely feel a sense of guilt, for example, for acts done by their

[42] M.B. Brewer, W. Gardner, *Who is this "we"? Levels of collective identity and self-representations*, 71 J. OF PERSON. & SOC. PSYCH. 83-93 (1996); C. Sedikides, M.B. Brewer, *Individual, relational, and collective self: partners, opponents, or strangers* in INDIVIDUAL SELF, RELATIONAL SELF, COLLECTIVE SELF 1-4 (Psychology Press, 2001).

[43]Russell Spears, *Social Influence and Group Identity*, 72 ANN. REV. PSYCHOL. 367–90 (2021).

[44] M.A. Hogg & D. Abrams, *Social motivation, self-esteem and social identity* in SOCIAL IDENTITY THEORY: CONSTRUCTIVE AND CRITICAL ADVANCES 28-47 (D. Abrams & M. A. Hogg eds., Harvester Wheatsheaf Press, 1990).

[45]Delphine Martinot & Sandrine Redersdoff, *The variable impact of upward and downward social comparisons on self-esteem: when the level of analysis matters*, SOCIAL COMPARISON & SOCIAL PSYCHOLOGY (Surge Gulmond ed., Cambridge University Press, 2006).

[46] ELIOT. R. SMITH, HEATHER CLAYPOOL & DIANE M. MACKIE, *THE SELF* IN SOCIAL PSYCHOLOGY 95 (4th ed., Psychology Press, 2007).

[47]Richard Y. Bourghis & André Gagnon, *Social Orientations in the Minimal Group Paradigm*, BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY 89 (Rupert Brown and Sam Gaertner eds., 2003).

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country of citizenship or a sense of pride when their favored football team wins a match.[48] Since the relative status of the ingroup has an impact on our self-esteem, it results in self-esteem motivated in-group biases.[49] Individuals do so by perceiving information in a light that is more flattering to their identity.[50] We can maintain a positive social identity both by appreciating our own group or degrading other group through social comparison.[51]

Self-esteem when conceptualized in this collective sense can help more accurately describe the true nature of *informational* social influence. It has two direct consequences on how individuals are going to process different social communications. First, since we consider those we identify with as more credible, we are more easily going to be persuaded by them as our minds are going to consider them as legitimate *informational* sources. Second, we are more easily going to be influenced by information that views more positively my social identity as it has a direct and positive consequence on our self-esteem. Accepting that those we identify with had a wrong opinion/belief has a real psychological cost for us. Therefore, we are not only likely to believe that our reference group is right, but we need to believe it is right. Informational social influence when embedded within a social identity paradigm is discussed in this section.

3.1.1. Expressive function of law and its ability to signal the 'desirable behavior': Choosing between multiples sources of information

Information function of law to the extent that it rests on the ability of the law to communicate 'socially desirable behavior/social attitude' will be directly impacted by the social identity of the individual.[52] For law to fulfill this function, it should impact our belief on what is socially approved, appropriate behavior i.e., adherence to behavior will protect us from social judgment. However, if we are to embed this social communication within a social identity

[48]D.M. Mackie, L.A. Silver & E.R. Smith, *Intergroup Emotions: Emotion as an Intergroup Phenomenon,* STUDIES IN EMOTION & SOCIAL INTERACTION: THE SOCIAL LIFE OF EMOTIONS 227–245 (Cambridge University Press, 2004).

[49]S.E. Martiny & M. Rubin, *Towards a clearer understanding of social identity theory's self-esteem hypothesis* in UNDERSTANDING PEACE AND CONFLICT THROUGH SOCIAL IDENTITY THEORY: CONTEMPORARY GLOBAL PERSPECTIVES 19-32 (S. McKeown, R. Haji, & N. Ferguson eds., Springer, 2016).

[50] *Id.*

[51] N.R. Branscombe & D.L. Wann, *Collective self-esteem consequences of outgroup derogation when a valued social identity is on trial,* 24 EUR. J. OF SOC. PSYCH. 641-657 (1994).

[52]RICHARD MCADAMS, *Legislation as Information*, THE EXPRESSIVE POWERS OF LAW 136-168 (Harvard University Press, 2019).

paradigm, it requires us to ask a few more questions. The first question one needs to ask is - within the individual's perception, how representative is the law of their social identity.

There have been multiple studies highlighting conditional compliance with law which was directly related to our belief that others within our social group were following the laws as well. Corruption studies suggest a stronger co-relation in our expectations of what 'everyone' else is doing and likelihood of actually partaking in corrupt activity ourselves, independent of the law criminalizing corruption.[53] The 'everyone' was a subjective experience of peers around and the acceptance of corrupt activities within this group.[54] The contagion effect has also been explored in reference to crimes in New York city – people are more likely to commit crime when people around them commit crimes.[55] Tax compliance, as well, improves if we are informed of 'others' within our social network honestly declaring tax.[56] It is clear that the law, by its own virtue, does not provide information about the 'socially accepted behavior' but instead relies on the behaviors of those within our social groups for the same. Partially, this phenomenon can be explained by the *informational* social influence of non-compliance as provided by Dan Kahan. Individuals use behaviors of others as proxy for missing information about enforcement, cost (social and legal) of committing a crime etc.[57] However as later research and the present discussion on social identity highlights, whose behavior we use as informational proxy varies largely on the basis of who we identify with.[58]

Incorporating social identity without our understanding of individual motivation adds another explanation as to why we are more likely to interpret behavior of people we identify as the socially appropriate behavior and not the legally prescribed behavior, if the two are different. Viewing our group as morally superior and well-intentioned contributes to a positive self-evaluation.[59] So not only are we likely to only be informed about 'appropriate behaviors' by looking around us at those we identify with but are psychologically motivated to ignore

[53] Nils C. Köbis, Jan-Willem van Prooijen, Francesca Righetti & Paul A. M. Van Lange, *Who Doesn't? The Impact of Descriptive Norms on Corruption*, 10(6) PLOS ONE (2015).
[54] Bin Dong, Uwe Dulleck & Benno Torgler, *Conditional Corruption*, 33(3) J. OF ECON. PSYCH. 609-627.
[55] Edward L. Glaeser, Bruce Sacerdote & Jose A. Scheinkman, *Crime and social interactions*, 111(2) QUART. J. OF ECON. 507-548 (1996).
[56] B.S. Frey & B. Torgler, *Tax morale and Conditional Cooperation*, 35 J. OF COMPAR. ECON. 136-159 (2007).
[57] Kahan, *supra* note 6.
[58]Shubhangi Roy, *Theory of Social Proof and Legal Compliance: A Socio-Cognitive Explanation for Regulatory (Non) Compliance*, 22 GER. L. REV. 238-255.
[59] Martiny & Rubin, *supra* note 49.

ISSN 2582-2667

evidence that contradicts/condemn the behavior of those we identify with including contrary legal information. Robert Cialdini calls it '*basking in the reflected glory of the group*'.[60] Conceptually, it comes from the same space as picking a fight with another in defending our favorite football team. We need to believe that between two types of behaviors/influences, the one by those we identify with is the superior behavior. Therefore, the normative superiority of a legally prescribed behavior can emanate either from our collective identity which incorporates within it our relationship with the state and considers 'abiding by the law' as a collective identity (a concept discussed in greater detail in Part 4) or from witnessing those we identify with endorsing the legally prescribed behavior.[61]

3.1.2. When law and social movements make certain identities more salient: Identity threat and its impact on attitude towards law

The second question with regards to the informational social influence of law is – does the content of law necessarily impede our positive social identity and other members of our collective groups in anyway. If the law censors a behavior that implicates many within my in-group as law-breaking individuals, then my cognitive response is more likely to question the legitimacy of the law or creatively interpret the law rather than shame others within my group for not following the law. It is a psychological self-maintenance goal in times of threat.[62] We respond to any identity threat to reputation, status of our group with reactive ingroup affirmation. It is a psychological defense mechanism to protect one's self-esteem. The more our self-esteem is entrenched into our collective identity and greater the social status of the group, the stronger the defensiveness to any communication that undermines this status.[63]

[60] Robert Cialdini & Richard J. Borden, *Basking in Reflected Glory: Three (Football) fields of study*, 34(3) J. OF PERSONALITY & SOC. PSYCH. 366-375 (1976).
[61] MCADAMS, *supra* note 52, at 165-168.
[62] A. Lüders, E. Jonas E., Fritsche I. & Agroskin D, *Between the Lines of Us and Them: Identity Threat, Anxious Uncertainty, and Reactive In-Group Affirmation: How Can Antisocial Outcomes be Prevented?*, UNDERSTANDING PEACE AND CONFLICT THROUGH SOCIAL IDENTITY THEORY 33-53 (S. McKeown, R. Haji, N. Ferguson eds., Springer Publishing, 2016); Julie D. Smurda, Michele A. Wittig and Gokalp Gocke, *Effects of Threat to a Valued Social Identity on Implicit Self-Esteem and Discrimination*, 9(2) GROUP PROCESSES & INTERGROUP PROCESS 181-197 (2006).
[63] Daan Scheepers & Naomi Ellemers, *When the pressure is up: The assessment of social identity threat in low and high-status groups*, 41(2) J. OF EXPERIMENTAL SOC. PSYCH. 192-200 (2005).

Clearly then, we have a personal motivation for questioning the moral legitimacy of the law to maintain a positive self-evaluation. Janice Nadler drew a connection between the potency of expressive function of law and how legitimate individuals perceive interference by government is within that sphere of one's life.[64] However, incorporating social identity within our understanding may point to a slightly different explanation. We are much more likely to question legitimacy when a law negatively impedes an important collective identity. Backlashes to socio-legal movements, a well observed phenomenon, are often a result of the psychological need to be maintain a positive self-evaluation when one's social identity is being criticized/threatened. Within the American legal landscape, there has been an on-going discussion on the impact that a progressive abortion rights judgment like Roe v. Wade had in entrenching strong identity driven ideological disagreements that have probably done more harm than good to the choice movement.[65] Responses to any stricter regulations on guns by increased gun purchases is another example of the phenomenon where laws that threaten strong social identities entrench people more strongly within these identities.[66] It is so because accepting that our identified normative stance is flawed or wrong has a cost to our self-esteem and a sense of shame similar to the ones described within the law and economics explanations for failure of adherence to social norms. (However, positive social identity comes from not only considering one's group to be superior to the other but also being better (if not the best) member of our own group)[67] There is considerable research in psychology that connects individuals feeling of shame and pride to activities and opinions of in-group members.[68]

This is particularly the case when movements are aligned around identities creating salient group identities. Most individuals have multiple social identities. Individuals can be parents,

[64] Nadler, *supra* note 35.
[65] See: William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 520 (2001); Cass R. Sunstein, *Three Civil Rights Fallacies*, 79 CAL L. REV. 751 (1991).
[66] Aisch & Keller, *supra* note 38.
[67]David De Cramer &Tom R. Tyler, *A Matter of Intragroup Status: The Importance of Respect for the Viability of Groups* in STATUS AND GROUP: VOLUME 7 1-21 (Melissa C. Thomas Hunt ed., Emarald Publishing, 2005); Bernd Simon and Stefan Stürmer, *Respect for Group Members: Intragroup Determinants of Collective Identification and Group-Serving Behavior*. 29 (2) PERSONALITY & SOC. PSYCH. BULLETIN 183-193 (2003).
[68] Rupert Brown, Roberto Gonzalez, Hanna Zagefka, Jorge Manzi & Sabina Cehajic, *Nuestra culpa: Collective guilt and shame as predictors of reparation for historical wrongdoing*, 92 J. OF PERSONALITY & SOC. PSYCH. 75–90 (2008); N.R. Branscombe, B. Doosje & C. McGarty, *Antecedents and consequences of collective guilt*, FROM PREJUDICE TO INTERGROUP EMOTIONS: DIFFERENTIATED REACTIONS TO SOCIAL GROUPS 49-66 (D.M. Mackie and E.R. Smith eds., Psychology Press, 2002); J.A. Allpress, F.K. Barlow, R. Brown, W.R. Louis, *Atoning for colonial injustices: Group-based shame and guilt motivate support for reparation*, 4 INT. J. OF CONFLICT & VIOLENCE 75–88 (2010); B. Lickel, T. Schmader, M. Curtis M. & M. ScarnieR, D.R. Ames, *Vicarious shame and guilt*, 8 GROUP PROCESSES AND INTERGROUP RELATIONS 145–157 (2005).

ISSN 2582-2667

professionals, members of our family, religious groups, community as well as citizens simultaneously. All of which constitute part of the individual's social self. The rules and roles associated with each identity are different and may, in fact, even be at conflict with one another. In case of conflict, there are two factors that impact which identity will take precedence – salience of identity for the given context and the prominence of the identity for the individual.[69] Identity salience refers to the probability that a given identity will be invoked in a social situation or a social situation would be defined in a way that there is opportunity to invoke the personality.[70] Salience is, therefore, linked to the context and framing of the social interaction. Identity prominence, on the other hand, is linked to the subjective value that the individual places on their role within an identity.[71] An abortion rights issue framed around the rights of women may have found more women supporting the issue but when framed as a religious issue then the Christian identity of many women gains more salience. Therefore, how the law is framed, and policy discussed can change the 'normative' beliefs of the individual based on which social identity they are viewing the issue from.[72]

Once a law, social movement, policy discussion (or rhetoric) manages to make an identity salient or if the identity is a prominent identity for the individual and create an identifiable out-group, it triggers social comparison with an objective of positive group appraisal. This has a few consequences on how we receive any information. First, we are more likely to perceive information in a way that heightens the differences between 'us' and 'them'. This implies that we tend to process information in a way that it increases differences between the in-group and the out-group.[73] After all, distinctiveness and exclusion is a precondition to an inclusive idea of identity. Second, we view those in our in-group more favorably that the out-group members.[74] In fact, our normative leanings are influenced by this categorization where we are more likely to see the behavior of those within our group as the more 'appropriate' behavior. Additionally, we also have better recall of unfavorable outgroup behavior rather that those from

[69] Sheldon Stryker, Richard T. Serpe, *Identity Salience and Psychological Centrality: Equivalent, Overlapping, or Complimentary Concepts?*, 57 SOC. PSYCH. QUART. 57:16–35 (1994).
[70] Laurie H. Ervin and Sheldon Stryker, *Theorizing the Relationship between Self-Esteem and Identity*, EXTENDING SELF-ESTEEM THEORY & RESEARCH: SOCIOLOGICAL & PSYCHOLOGICAL CURRENTS 29, 34-35 (T. Owens, S. Stryker and N. Goodman eds., Cambridge, 2001).
[71] *Id.* at 35.

[73] Peter Collero, *Social Identity Theory*, BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (John Wiley & Sons, 2015).
[74] Miles Hewstone, Mark Rubin & Hazel Willis, *Intergroup bias*, 53 ANN. REV. OF PSYCH. 575–604 (2002).

our in-group.[75] Together this culminates into a situation where we are more likely to remember what distinguishes us from those we do not identify with, information which create stronger links with those we identify with as well as interpret information in a way that it bolsters the image of our in-group individuals over the out-group individuals.

Political discourse in the recent times around the world makes a strong argument for the prominent role that our social identities play in informing our normative stance on different issues. There have been studies linking an American's 'national identity' to their stricter stance of immigration laws.[76] Similar studies have been carried out within conflict studies to the understand the role of social and cultural identities in conflict situations such as Israel-Palestine, ethnic groups in Rwanda etc.[77] If a situation makes an identity salient and then threatens it, individuals are more likely to double down – both behaviorally and in their attitudes. They are more likely to opt into behaviors that are more closely associate to the in-group prototype, even if in other circumstances they would not have observed these behaviors as rigorously. Similarly, they will try to exhibit stronger cohesion between their in-group opinions even if ordinarily we are much more comfortable with a diverse representation of in-group attitudes.

The above discussion highlights a few contributions that incorporating social identities can make to enrich our existing understanding of social influences. First, individuals that one identifies with prescribe the 'socially desirable' behavior for the individual and not the law. The law can aid the individual in identifying this behavior only if they are receiving informational evidence of compliance from the groups they identify with. Second, all information including information communicated by the law will be processed by the individual in a way that it leads to positive group evaluation and, therefore, positive self-evaluation. Therefore, our information on what people do (perception about the world) and what we should do (normative beliefs) are impacted by who we identify with. In the next section, the considers how social identity impacts normative pressures to comply with law.

[75] J.W. Howard, J. W. & M. Rothbart, *Social categorization and memory for ingroup and outgroup behavior*, 38 J. OF PERSONALITY & SOC. PSYCH. 301–310 (1980).
[76] Maurice Magnum & Ray Block Jr, *Social Identity Theory and Public Opinion towards Immigration*, 7(3) SOC. SCI. 41 (2018).
[77]Herbert Kelman, *Nationalism, patriotism, and national identity: Social-psychological dimensions*, PATRIOTISM: IN THE LIVES OF INDIVIDUALS & NATIONS 165–189 (D. Bar-Tal & E. Staub eds., Nelson-Hall Publishers, 1997).

ISSN 2582-2667

3.2. Understanding the nature of reputation, shame and social sanction for the social self: Social identity and its impact on normative *pressures to comply*

Law and Economics rightly recognizes that an individual cares about the judgment of others about themselves.[78] In fact, some have argued that it puts too much faith in the human desire for social status.[79] It is understandable though why legal scholars find the concept convenient to accommodate within legal understanding. Shame is equivalent to the 'punishment' for not adhering to a particular social norm and improved reputation a 'reward'. Some scholars like Eric Posner[80], Andreas Engert[81], Lisa Bernstein[82] have provided a functional explanation for why individuals care about reputation – it helps in the long term. Be it in trade, future social interactions etc. Others such as Robert Cooter[83] and Richard McAdams have considered positive self-evaluation as a goal in itself.[84] None deny that individuals are willing to incur relative costs for earning the 'reputation' and it matters to us what others think of us. However, in absence of anchoring this discussion within psychology of a social self, reputation driven explanations fail to understand the nature and potency of this motivational influence.

The last section considered how social comparisons with other groups and devaluing members of this group can have a positive effect on our self-evaluation. Social comparison is an inherent mechanism that we use for self-evaluation even within the group with other individuals.[85] Once we have identified with an in-group and come to believe in the superiority of the in-group beliefs, individual's do not stop comparing and evaluating. Positive social identity comes from not only considering one's group to be superior to the other but also being better (if not the best) member of our own group and enjoying an adequately satisfying social status with people

[78] Cooter and Porat, *supra* n. 21.; Uri Gneezy & Aldo Rustichini, *A Fine is a Price*, XXIX (2:2) J. OF LEGAL STUDIES 1-17 (2001).
[79] See: *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116(7) HARV. L. REV. 2186-207 (2003); Brian Netter, *Avoiding the Shameful Backlash: Social Repercussions for the Increased Use of Alternative Sanctions*, 96 J. CRIM. L. & CRIMINOLOGY 187 (2006).
[80] Eric Posner, *Symbols, Signals and Social Norms in Politics and the Law*, XXVII J. OF LEGAL STUD. 765-98 (1998).
[81] Engert, *supra* note 22.
[82] Lisa Bernstein, *Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, XXI (1) J. OF LEGAL STUD. 115-57 (1992).
[83] Cooter, *supra* note 25, at 969.
[84] McAdams, *supra* note 23.
[85] Turner & Reynolds, *supra* note 13.

we identify with.[86] To this extent, much of the law and norms discussion on self-esteem, reputation and shame can find its place within groups and individuals we identify with. But this identification is an essential precondition to most of the discourse and its application. Social status and our desire for it is not independent of the context. We recognize what is 'socially desirable behavior' and aim to emanate the same based on what our perceived expectations are about the group characteristics and not necessarily a universal standard.[87]

Consider, for example, the potency of shame and the impact of social identity on it. One of the most frequent conclusions within the law and norms discussion has been that shame is a potent instrument in getting people to adhere to different rules and should be employed as such. Be it a recommendation to deal with white collar crimes[88], incorporating its cost in criminal sentences[89], re-thinking sentencing policies[90] etc. Advertising the list of defaulters and public apologies in local newspapers[91] are among the punishments prescribed to weaponize 'shame' for stronger legal compliance.[92] Psychologically, shame is the emotion felt when individuals believe that a particular act tarnishes their image in front of individuals whose opinion matters to their self-evaluation.[93] Shame is an emotion rooted in the individual's social identity and can be rooted in the individual's fear about condemnation of others.[94] But, as the discussion so far has illustrated, 'others' in social psychology as well as in real life do not translate to a sum of all individuals in a society. Therefore, being shamed by the parents and being shamed by one's social circle has very different impact on a teenager. Similarly, to be shamed by a judge (the

[86] Jin Wook Chang, Rosalind M. Chow & Anita W. Woolley, *Effects of inter-group status on the pursuit of intra-group status*, 139 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 1-17 (2017); Bertjan Doosje, Naomi Ellemers & Russell Spears, *Perceived Intragroup Variability as a Function of Group Status and Identification*, 31(5) J. EXP. SOC. PSYCH. 410-36 (1995).

[87] Hee Young Kim and Batia M. Wiesenfeld, 'Who Represents Our Group? The Effects of Prototype Content on Perceived Status Dispersion and Social Undermining' 43(6) PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 814-827 (2017).

[88] Dan Kahan & Eric A. Posner, *Shaming White-Collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42(S1) J. OF L. & ECON. 365-92 (1996).

[89] Cooter and Porat, *supra* note 78.

[90] Kahan and Posner, *supra* note 88.

[91] See, e.g., Jan Hoffman, Crime and Punishment: Shame Gains Popularity, N.Y. TIMES (I997)

[92] Dan Kahan, *What do alternative sanctions mean?*, 63(2) UNI. CHI. L. REV. 591 (1996).

[93] Ferguson T.J., *Mapping shame and its functions in relationships*, 10(4) CHILD MALTREATMENT, 377–386 (2005); Margaret E. Kemeny, Tara L. Gruenewald and Sally S. Dickerson, *Shame as the Emotional Response to Threat to the Social Self: Implications for Behavior, Physiology, and Health*, 15(2) PSYCHOLOGICAL INQUIRY, 153-160, https://www.jstor.org/stable/pdf/20447221.pdf?refreqid=excelsior%3A2625268201ede6f7018d4dbe1b95ec5a.

[94] Welten, S. C. M., Zeelenberg, M., & Breugelmans, S. M., *Vicarious shame*, 26 COGNITION AND EMOTION, 836–846. (2012); De Hooge, I. E., Zeelenberg, M., & Breugelmans, S. M, *A functionalist account of shame-induced behavior,* 25 COGNITION AND EMOTION, 939–946 (2011).

ISSN 2582-2667

law) and forced to publish an apology in a newspaper will have differing influence based on the prominent social identity of the individuals.

To channelize the social sanctions such as 'shame', it is important to ask who the individual cares to be not shamed by. A recent sociological survey of individuals convicted of honor killing in Germany concluded with the following summary – "*The benefits of restoring honor by means of the offence and thereby getting recognition from the social group had a higher value than the risk of being arrested and possibly being economically disadvantaged as a result."*[95] The offence being murder of a family member (often sister or daughter) and punishment being harsh prison sentences. The convicted individual's identity as member of their ethnic group is valued higher by them than their individualist concerns (like liberty) as well as their membership to German residency. Perceived fear of being shamed is a potent motivation in this case but its potency rests with the community which shames. Without identifying the right group to administer the shaming, shame cannot be weaponized to influence behavior. If an individual's social image and identity is not rooted strongly to that of a 'good, law-abiding citizen' then being shamed by a legal institution will be not have the same effect.(the discussion within law and social identity has been relatively uni-directional in trying to understand how law, in its constitutive function, helps define multiple social identities.)[96]

In fact, even when there is a potential of using shaming accurately where the social image of the individual can be tarnished in front of those who do matter to the individual it is important to understand how an individual responds to being shamed. Simply labelling a wrong-doer as deviant and rejecting isolates the individual from the legal and social system.[97] Being judged by others or having a negative social identity has two consequences for an individual psychologically. They feel a sense of rejection and inferiority. Both harm an individual's self-concept and motivate them to avoid feeling shame. To this extent, shaming could have a deterrent effect as people will avoid being shamed. However, once they are shamed and there

[95] Kizilhan JI, *The Impact of Culture and Belief in So-Called Honour Killings: A Comparative Study between Honour Murders and other Perpetrators of Violence in Germany'*, 7(1) JOURNAL OF FORENSIC INVESTIGATION, (2019)

[96]Eric J. Mitnick, *Law, Cognition, and Identity*, 67 LA. L. REV. (2007) (for some interactions between law and other sources of socialization).

[97] Nathan Harris & Shad Maruna, *Shame, shaming and restorative justice*, HANDBOOK OF RESTORATIVE JUSTICE (Dennis Sullivan and Larry Lift, eds.).

is a sense of rejection from this social group, the individuals will need to disassociate their self-concept form this identity to be able to protect their self-concept.[98] Labelling by those we identify with also has a self-fulfilling impact on an individual's self-concept. Consider how being labelled the 'trouble-maker' in school impacts a teenager.[99]

There is another impact that social identity may have on the efficacy of public shaming. Public shaming, by its very name, requires a level of publicity. If one is frequently hearing that those we identify with are indulging in certain activities, we are much more likely to believe that it is an acceptable behavior within our group. It brings back the discussion to the informational influence of others' behavior on an individual's perception about the behavior. Therefore, offences where members of distinct social group are more likely to be the violators, publicizing multiple offences can create a sense of solidarity with those violating the law rather than condemnation for them among member who share the same identity. This is so because when we feel an integral social identity is threatened, the psychological response is to become more entrenched within that identity and defend it more strongly as a mechanism for self-maintenance.[100] After all, the collective reputation of the group will have a direct impact on our own self-evaluation. Consider, for example, the immediate instincts of many men to criticize the #metoo movement or of white Americans to defend the police as a response to Black Lives Matter.[101] Similar explanations can provide, at least a partial explanation, to the rise of identity-based populism in many other countries.[102]

The above discussion clearly indicates that shame is not a purely individualist emotion and is impacted by the social identity of the individual. From a policy point of view, it provides a few

[98] G. MacDonald & M.R. Leary, *Why does social exclusion hurt? The relationship between social and physical pain*, 131 PSYCHOLOGICAL BULLETIN 202–223 (2005).
[99] John Braithwaite, *Restorative justice* in THE OXFORD HANDBOOK OF CRIME AND PUNISHMENT 323-344 (Michael Tonry ed., Oxford University Press, 1998).
[100] Nyla R. Branscombe & Daniel L. Wann, *Collective self-esteem consequences of outgroup derogation when a valued social identity is on trial*, 24(6) EUR. J. OF SOC. PSYCH. 641-657.
[101] J.T. Jost, J. Glaser, A.W. Kruglanski & F.J. Sulloway, *Political conservatism as motivated social cognition*, 129(3) PSYCH. BULLETIN 339-375 (2003); Samantha Klar, *Turn and face the strange Ch-Ch-Changes: How an evolving America activates identity politics*, 82(1) J. OF POL. e1-e6 (2020); Amy Drew, Scott Sleek and Anna Mikulak, *When the majority becomes the minority*, 29 OBSERVER (Association for Psychological Science, 2016) https://www.psychologicalscience.org/observer/when-the-majority-becomes-the-minority.
[102] Julian Aichholzer & Martina Zandonella, *Psychological bases of support for radical right parties*, 96 PERSONALITY AND INDIVIDUAL DIFFERENCES 185-190 (2016); Anna Maria Bluic, John Betts, Matteo Vergani, Muhammad Iqbal & Kevin Dunn, *Collective identity changes in Far-Right Online Communities: The Role of Offline Inter-group Conflict*, 21(8) NEW MEDIA & SOCIETY 1770-1786 (2019).

ISSN 2582-2667

important take-aways. First, in order to use shame as an effective deterrent instrument, the social identity of the individual should be considered when deciding who will shame the individual. Second, the frequency and nature of shaming needs to be adequately reconciliatory so as not to trigger an identity threat response in the individual. Though the section focuses purely on a negative social pressure to comply, similar connections can be drawn between one's social identity and desire to be well-respected among those who they identify with.

So far, the article has focused on how incorporating social identity informs the understanding social influence and why individuals adhere to them. The next part describes briefly how identities are created and how the ambiguity in identity definition itself creates

4. SOCIAL INFLUENCE THROUGH IDENTIFICATION: HOW SOCIAL IDENTITY PARADIGM CAN EXPAND THE LAW AND NORMS DISCOURSE

So far, the article has deliberately steered clear of defining what an identity implies. The last section discusses examples about right wing nationalism. But what does being an American mean? Who is a threat to the American identity? Are there a set of rules that define who can or can't be one? Does it come with a list of behavioral codes of conduct that can be referred to when in doubt? Most probably, the answer to these questions will widely vary depending on who we ask, which year in the history and where we ask these questions (in fact, researchers in political science have attempted to answer this question with surveys at different times and found that the answer, in fact, varies quite a lot.)[103] Many may not even have clear responses. Ask someone on the road if they would identify themselves as American and the answer will be much clearer. This section discusses what individuals understand of identity, the nature of identities and its impact on how they receive social influence. It brings together the discussion so far and highlights how the existing framework within law and norms literature may not be adequate to capture social influences through identification.

The socio-cognitive process through which individuals primarily categorize people into groups, identify with certain group, construe themselves and others as a group and manifest

[103]Deborah J. Schildkraut, *Boundaries of American Identity: Evolving Understandings of 'Us'*, 17 ANN. REV. POLIT. SCI. 441-60 (2014).

group behavior is called social categorization.[104] Categorization is an essential tool through which our mind comprehends different stimuli, both social and non-social stimuli.[105] Social categorization is, often, an automatic and cognitive response of the brain.[106] For example, in experiments individuals identified another person's gender[107] or race[108] within a second of being presented with the stimulus. This was true even if the discussion had nothing to do with the gender or race. The categorization was automatic.

Additionally, we do not hesitate in categorizing even with limited information. In the case of the categorization of people into genders in under a second, individuals cognitively arrived at the decision based largely on hairstyles and length of hair.[109] It was so even when other features were blurred reducing the number of cues available to categorize. To categorize is the defunct response of the brain when presented with a social stimuli, even when presented with limited information.[110] Categories in psychology are fuzzy sets and not checklists.[111] These fuzzy categories are compiled together into a 'prototype'.[112] This prototype may not be representative of an individual person while most members may reflect some/most aspects of this persona including ourselves.[113] Prototypes tend to maximize differences between inter-group members and minimize differences intra-group members (also called as "metacontrast").[114] As a result, a "prototype" may appear more polarized than the tendencies of an average group member. In the previous discussion with regards to identity threats and reactive in-group affirmation, group

[104] Marjorie Rhodes & Andrew Baron, *The Development of Social Categorization*, 1(1) ANN. REV. DEVELOP. PSYCH. 359-386 (2019).
[105] C.B. Mervis & E. Rosch, *Categorization of natural objects*, 32 ANN. REV. PSYCH. 89–115 (1981).
[106] C.N. Macrae & G.V. Bodenhausen, *Social cognition: Thinking categorically about others*, 51 ANN. REV. PSYCH. 93–120 (2000).
[107] D. Martin & C.N. Macrae, *A face with a cue: Exploring the inevitability of person categorization*, 37 EUR. J. OF SOC. PSYCH. 806–816 (2007).
[108] Richeson, J. A. & Trawalter, S, *On the categorization of admired and disliked exemplars of admired and disliked racial groups*, 89 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 517–530 (2005).
[109] Ellickson, *supra* note 15.
[110] N.K. Reimer, K. Schmid, M. Hewstone & A. Al Ramiah, *Self-categorization and social identification: Making sense of us and them* in THEORIES IN SOCIAL PSYCHOLOGY (D. Chadee eds., 2nd ed., Wiley-Blackwell, 2020)
[111] J.C. TURNER, M.A. HOGG, P. OAKES, S. REICHER & M. WETHERELL, REDISCOVERING THE SOCIAL GROUP: A SELF-CATEGORIZATION THEORY (Blackwell Publishing, 1987).
[112] *Id.*
[113] W.F. Chaplin, O.P. John & L.R. Goldberg, *Conceptions of states and traits: Dimensional attributes with ideals as prototypes*, 54(4) J. OF PERSONALITY & SOC. PSYCH. 541–557 (1988).
[114]Hee Young Kim & Batia M. Wiesenfeld, *who represents our group? The effects of Prototype Content on Perceived Status Dispersion and Social Undermining*, 43(6) PERSONALITY & SOC. PSYCH. BULLETIN 814-827 (2017) https://journals.sagepub.com/doi/abs/10.1177/0146167217699581

ISSN 2582-2667

members become to converge towards this group prototype during times of identity threat.[115] Thereby, exhibiting more number of group prototype.

These prototypes are also determined by the context of the interaction. When in South Asia, Indian and Pakistani identities are strongly at odds with another. While in a diaspora population in another city like London, they often identify as sharing a similar cultural identity.[116] Contextual salience, therefore is important for triggering categorization. Around cricket tournaments, for example, the sports rivalry between the two countries brings their national identities back into salience and can result in civil disturbances post cricket matches.[117] Similarly, in a social context when certain identities are threatened, we are more likely to be align closer to our notion of the prototypical group member and align more closely with others who have similar identities.[118]

This is an interesting and important nuance that is ignored within non-psychology discussion on social influence. The categorization into different groups can and, often, does precede an understanding of what being 'part of the group' mean. There is an internalization of the group membership and our role within the group without absolute clarity of the rules of the group membership. Social influence through identification, therefore, operates not through internalization of the content of the norms but internalization of one's identity.[119]

A nuance recognized in law and norms literature to some extent without the theoretical foundation to explain it. Robert Ellickson, for example, described the fuzzy nature of informal rules by recognizing that *'a rule can exist even though the people influenced by the rule are unable to articulate it in an aspirational statement. Children can learn to speak a language correctly without being able to recite any rules of grammar. Adults who daily honour a complex set of norms that govern dress would be startled if asked to layout the main principles that constrain their choice of apparel*.'[120] However, he was confident that primarily observing

[115] M.A. Hogg & J. Adelman, *Uncertainty–Identity Theory: Extreme Groups, Radical Behavior, and Authoritarian Leadership*, 69 J. SOC. ISSUES 436-454 (2013).
[116] Laurent Gayer, *The Volatility of the Other: Identity Formation and Social Interaction in Diasporic Environment*, 1 SOUTH ASIA MULTIDISCIPLINARY ACAD. J. (2007) https://doi.org/10.4000/samaj.36.
[117] *Id.*
[118] Hogg & Adelman, *supra* note 115.
[119] Herbert C. Kelman, *Interests, Relationships, Identities: Three Central Issues for Individuals and Groups in Negotiating Their Social Environment*, 57(1) ANN. REV. PSYCH. 1-26 (2006).
[120] Ellickson, *supra* note 12, at p. 130.

secondary rules (which he defined as social control rules like issuing rewards/punishment) could enable us to identify what these social norms were.[121] Therefore, Robert Ellickson is recognising not only that we adhere to rules which aren't absolutely clear, even to ourselves. But what motivates adherence to these rules is not necessarily our obligation to the rule but the group which enforces the 'secondary' rules of social control. Richard McAdams, as well, acknowledges that individuals internalise vague obligations, rather than exact prescriptions of behaviours.[122] Incorporating the socio-psychological process of social influence can enable us to not only acknowledge this fuzziness of social rules but actually incorporate role and identity internalisation within our analysis.

This form of role internalization falls within the category of 'internalized obligations' as provided by Robert Cooter. It resembles a game theoretic commitment and results in two behavioral responses – self-restraint (adhere to group approved behaviors) and righteousness (to shame other group members who fail to adhere).[123] However, there isn't any precise 'obligation' code as such. It is an internalization of and commitment to the identity.

Our attitudes as members of that group (self-concept) and, even, the nature of the group (collective concept) evolve over time and context. It could be on the basis of the influence of the prototypical leaders. Prototypical leaders are those members of the group who have or publicly portray certain prototypical characteristics that allow the members of the group to turn to them as legitimate sources of information (for all the reasons discussed in the previous sections).[124] Every time politicians begin speeches bringing in their identities as "coming from a middle class family/as a Christian/woman/African American" among others, they are basically trying to highlight their 'prototypical characteristics' to sound more legitimate to the voters.[125]

Our self and collective concept of group may also evolve due to environmental factors. As previously stated, threats and uncertainty can make groups move closer to prototypical (which are inherently more entrenched in group) identities. There have been many studies linking

[121] *Id.*
[122] McAdams, *supra* note 23, at p.140
[123] Cooter, *supra* note 25.
[124] Michael A. Hogg, Dominic Abrams, and Marilynn B. Brewer, *Social identity: The role of self in group processes and intergroup relations*, 20(5) GROUP PROCESSES & INTERGROUP RELATIONS 570–581 (2017).
[125] Klar, *supra* note 71.

ISSN 2582-2667

societal extremism to identity threats as well as rapid changes and uncertainty.[126] As social contexts evolves, identities also re-define themselves to maintain their distinct identities and cohesion within their members.[127] Meanwhile individuals, as well, keep mediating between their identities (collective as well as self) to maintain 'optimum distinctiveness' which satisfies both their needs for assimilation/inclusion and their individual need for distinctiveness.[128] The identity stays internalized while the attitudes and beliefs evolve as the group identity and one's collective self-concept shifts.

A convincing prototypical leader can easily convince us that wanting a wall built at our borders is, in fact, what it means to be truly American or building a temple is what it means to be patriotic Indian. The behavioral response of one who identified with this prototypical leader will be the same as someone who internalized the norm. The identifying individual will reject any attempts at being informed about the strength of this argument (self-restraint in going against group belief) and shame those within their group who fail to agree with the opinion (righteousness). Yet, the process through which the individual accepted this influence was not internalization of the obligation itself but identification with the source of influence. If, in some years, a more convincing prototype of 'white American identity' comes along through one of the many ways presented above, abandoning the belief in the wall at the border will create no ethical quagmire for this individual. Similarly, were the 'White-American' identity to stop being relevant for them then shifting their belief about the wall would be relatively easy. There is a commitment to the 'identity' while the 'obligation' continues to evolve and be defined by the group through various means. The source of influence continues to identification with certain people/group and not internalization of specific rules.

This has certain direct and important consequences on the law and norms discourse, both in theory and its policy implications. In theory, it highlights an epistemological need to look beyond the information and normative dichotomy for an analytical framework of social influence. When an individual accepts a social influence through identification, they have both

[126] *supra* note 115.
[127] W.B. Wann & J.K. Bosson, *Identity negotiation: A theory of self and social interaction* in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 448–471 (O. P. John, R. W. Robins, & L. A. Pervin eds., Guilford Press, 2008) (for a brief overview of the many processes through which individuals negotiate their identity with themselves).
[128] G.J. Leonardelli, C.L. Pickett & M.B. Brewer, *Optimal Distinctiveness Theory: A framework for social identity, social cognition and intergroup context*, 43 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 64-107 (2010)

reasons to agree (informational influence) and desire to protect their self-esteem as well as reputation (normative pressures to comply). Similar to internalized obligations, individuals also experience a psychological discomfort (which Cooter considered as 'guilt') for failing at their self-maintenance goals. Our self-concepts include within it the collective self-concepts, therefore, concepts like self-esteem, guilt and reputation as conceptualized within the existing literature cannot capture collective emotions for acts and behaviors done in the name of our identity. Many studies have shown individuals feel collective emotions of being wronged or feeling guilty for acts done in the name of the country/ethnic group.[129]

From the point of view of policy as well, recognizing influence through identification has strong implications. It can help explain the discrepancies in the expressive function of law witnessed in the real-world. The expressive function of law will vary depending on its interaction with one's identity. First, how integral is (law-abiding) citizenship to any of our identities. If it is integral, then we are both likely to be intrinsically motivated to adhere to the law (consider it an informational source of 'desirable behavior') and extrinsically motivated (because we are likely to be shamed by other members of our identified group for not adhering to the law). On the other hand, if 'law-abiding' isn't an essential prototypical characteristic of any of my social identities then the expressive function, in and of itself, has limited role in creating compliance. This easily explains why in the previously given example of the seat-belt law in Turkey, it was one's perception about the judgment of others on the issue was a stronger predictor of adherence to the law than the law itself. The law, for the individuals surveyed, was not itself a source of information about 'desirable behavior' for those they identify with.[130] It underlines the importance of legal socialization in creating entrenched legal identities for individuals rather than presuming it.[131] Alternatively, utilizing prototypical leaders and making relevant (and favorable) identities salient in the law or during the diffusion of the law can improve voluntary compliance. However, understanding and enquiring about the social

[129]M.A. Ferguson & N.R. Branscombe, *The social psychology of collective guilt* in COLLECTIVE EMOTIONS: PERSPECTIVES FROM PSYCHOLOGY, PHILOSOPHY AND SOCIOLOGY 251–265 (C. von Scheve, & M. Salmela eds., Oxford, UK: Oxford University Press, 2014); Michael J. Wohl, Nyla R. Branscombe & Yechiel Klar, *Collective guilt: Emotional reactions when one's group has done wrong or been wronged*, 17(1) EUR. REV. SOC. PSYCH. 1–37 (2006).

[130] *supra* note 37.

[131] Chantal Augven, *Legal Socialisation: From Compliance to Familiarization Through Permeation*, 1 EUR. J. LEGAL STUD. 265 (2007); Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217–41 (2005); Christoph Engel, *Learning the Law*, 4 J. INST. ECON. 275–97 (2008); UNESCO, STRENGTHENING THE RULE OF LAW THROUGH EDUCATION: A GUIDE FOR POLICYMAKERS (2019).

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identities of individuals in question becomes an essential precondition. At the very least, it can help predict the potency of the expressive function of law more accurately in different contexts. When employed appropriately, it could also help improve it.

It also highlights identification as an additional route of social and attitude change which has not been captured within law and norms discourse so far. Surprisingly though as a policy strategy, it has already been applied considerably in international relations and conflict studies as well as organizational studies.[132] Identification, unlike internalized beliefs and value systems, is more malleable and therefore can help provide the foot in the door to initiate a dialogue that can ultimately lead to long term attitude change. In conflict theory, there have been various studies in the context of how opinions of individuals evolve in conflict areas such as Israel-Palestine, Bosnia, Northern Ireland which credit an identity evolution as the cornerstone of reconciliation.[133] These case studies and workshops provide relatively well-studied process through which long term behavioral and attitude change can be achieved. Incorporating social influence through identification within law and norms discourse can enable greater exploration of this route to social change within domestic social contexts, legal compliance etc.

5. TOWARDS A MORE CONTEXTUALLY ROOTED FRAMEWORK OF SOCIAL INFLUENCE

The discussion so far highlights an important epistemological aspect that any academic exercise aimed at studying social influence on individual's decisions, behaviors and attitude should possess – an ability to visualize multiple social and psychological factors within a singular framework. In absence of creating a comprehensive analytical framework which can

[132]SHELLEY MCKEOWN, REESHMA HAJI & NEIL FERGUSON, UNDERSTANDING PEACE AND CONFLICT THROUGH SOCIAL IDENTITY THEORY: CONTEMPORARY GLOBAL PERSPECTIVE (Springer, 2016) (for application of social identity to understanding political disturbances); H.C. Kelman, *Reconciliation as Identity Change* in FROM CONFLICT RESOLUTION TO RECONCILIATION 111-124 (Yacob Bar Simon Tav eds., Oxford University Press 2004) (for a brief overview of the process through which identification enables reconciliation); Herbert C. Kelman, *The Role of National Identity in Conflict Resolution* in SOCIAL IDENTITY, INTERGROUP CONFLICT, AND CONFLICT REDUCTION (Richard D. Ashmore, Lee Jussim and David Wilder eds., Oxford University Press, 2001) for examples of application to the Israel-Palestine conflict; S. A. HASLAM, D. VAN KNIPPENBERG, M. J. PLATOW, & N. ELLEMERS, SOCIAL IDENTITY AT WORK: DEVELOPING THEORY FOR ORGANIZATIONAL PRACTICE 3–26 (Psychology Press, 2003) (for an application of social identity to organizational psychology); Michael A. Hogg, Daan van Knippenberg & David E. Rast, *The social identity theory of leadership: Theoretical origins, research findings, and conceptual developments*, 23(1) EUR. REV. SOC. PSYCH. 258-304 (2012) (for a review of literature, theoretical and empirical, on social identity driven concept of leadership in organizational context)

[133]Kelman, s*upra* note 132.

incorporate many perspectives, we may rationalize an observed social phenomenon but are unlikely to truly comprehend it.

Consider the claim that this article argues for - social identity impacts an individual's response to different social communications. This claim, no matter how convincingly argued, cannot adequately capture the complexity of the concept without incorporating the social and psychological context within which an individual is presented with a social communication. One may be strongly entrenched within their ethnic community i.e., have a prominent identity which has certain means of greeting older individuals but that will, most likely, create little impact on an individual's decision to shake hands with their colleagues in the workplace. Similarly, surveys reveal that nationalist conservative Indians who identify strongly (by donating considerable money etc.) to conservative, right-wing parties in their home countries while also continue being un-influenced by the political ideology of Republicans in the United States.[134] These are examples where incorporating the individuals' collective self-concept without accounting for the social context in which the social communication is embedded would fail to capture the phenomenon observed. Social context, as the article illustrates, also includes who it is the source of social communication. An individual's relationship with the influencing agent and the characteristics of the agent also play an important role in determining the process through which an individual will accept/reject a social influence.

Similarly, as the article spends a considerable portion arguing, the discussion cannot ignore the psychological context of the individual and his past experiences. The perception that the individual has of the source of the social communication plays a crucial role in how we interpret what they say. As Tom Tyler and others who have worked on the procedural justice arguments for legal compliance have illustrated, our past experiences with police and judiciary inform our opinions on the legitimacy of laws in general.[135] As this article highlights, these experience and opinions need not purely be our own but can also be mediated through our social identities. The content of social communication and its impact on our existing value and identity frameworks will also contribute to how we will process different social communications.

[134](Reena Shah, *Who are the Modi Democrats?*, THE AMERICAN PROSPECT, (Oct. 27, 2020) https://prospect.org/politics/who-are-the-modi-democrats/

[135]TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 L. & SOC'Y REV. 513, 513–48 (2003).

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At the end of the process, the outcome can be rationalized into the two classifications – *informative* and *normative* social influence. We do choose to agree with a social communication either because we agree with it or for extrinsic reasons of reward/sanction when we are adhering to a social influence. But the understanding of the phenomenon lies not in the final outcome of the adherence to a social influence but the socio-psychological process through which an individual receives and makes sense of a social communication. This article is a first step towards incorporating this process-oriented approach to social influence within the law and norm discourse.