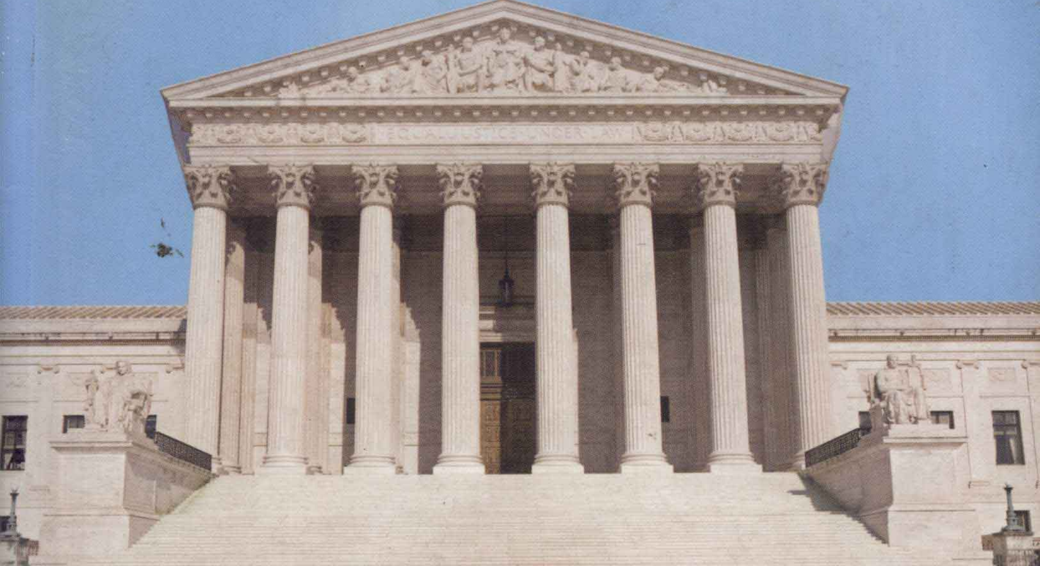
CULTIVATING CONSCIENCE

How Good Laws Make Good People

Lynn Stout



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Readers should note that much of the material in chapter 3 is drawn from an earlier work, a chapter that I wrote for the book *Moral Markets: The Critical Role of Values in the Economy* (ed. Paul J. Zak, Princeton University Press, 2008).

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PART ONE

CHAPTER ONE

FRANCO'S CHOICE

> We should expect the best and the worst from mankind, as from the weather.
>
> —*Marquis De Vauvenargues*

On a quiet August evening in 2002, Franco Gonzales stood on the corner of Seventh Street and Grand Avenue in downtown Los Angeles, waiting for the bus. Los Angeles is a city of suburban commuters, and by nine p.m. the corner of Seventh and Grand was deserted. Suddenly an armored truck drove by. Its rear door swung open mysteriously, and a plastic bag fell out to land at Gonzales' feet. Inside the bag was $203,000 in cash.

Franco Gonzales took the money home. Gonzales, a plump, boyish man in his early twenties who worked as a dishwasher in a restaurant, spent the rest of the night agonizing over what to do. He wanted to keep the money for himself and for his mother, who lived in a farming village in Mexico. But Gonzales' mother had taught him that stealing was wrong. He worried that keeping the money would be dishonest. He also worried about what would happen if the police somehow learned that Gonzales, who was working in the United States without legal documentation, had acquired sudden wealth. Finally, it does not seem implausible that Gonzales, raised a Catholic, worried about his immortal soul.

By the time the sun rose, Gonzales had made his decision. He called 911 to report his find and asked the police to return the money to its rightful owner.[1]

ENTER HOMO ECONOMICUS

When I first studied economics in the late 1970s, my instructors taught me that people generally do not behave like Franco Gonzales. Rather (my professors told me), most people act like members of the species *homo economicus*: they act selfishly and rationally. "Economic Man" does not worry about morality, ethics, or other people. He worries only about himself, calculatingly and opportunistically pursuing the course of action that brings him the greatest material advantage.

My professors and I both knew, of course, that *homo sapiens* does not always act like *homo economicus*. Franco Gonzales certainly did not. Although his decision to return the money might have been inspired by a number of subjective motives one could describe as "selfish" (e.g., a desire to avoid guilt or obsessive worry, or the hope of earning praise or eternal salvation), by returning the cash he had made himself poorer by $203,000. From an objective perspective, he had acted unselfishly. Nevertheless, my professors insisted, individuals like Franco Gonzales were the exceptions that proved the rule. Most people, most of the time, tried to maximize their own wealth. Self-sacrificing behavior was rare, unpredictable, and unworthy of serious study.

As an undergraduate student studying the exchange of goods and services in anonymous markets, the *homo economicus* approach struck me as a fairly plausible description of real behavior. These days, however, the assumption that people are fundamentally self-interested has spread well beyond economics. In political science, Ph.D. dissertations analyze politicians and bureaucrats as rational, self-interested actors. Public policy departments and business schools incorporate economic theory into their basic curricula and serve up the *homo economicus* account as standard fare. In the nation's law schools, students are routinely instructed in "law and economics," an approach that treats law as a kind of pricing system that requires people to pay damages for negligence or breach of contract in order to increase the "price" of bad behavior.

Today we see the results of this intellectual evolution. Over the past quarter-century, the precepts of economics have been drilled into the heads of millions of undergraduate and graduate students. A generation weaned on the idea of rational selfishness has graduated from our nation's universities and moved into leadership positions in the worlds of law, business, government, and higher education. They have brought with them an unquestioned belief in the power of material "incentives" that undergirds almost every policy discussion. Are people cheating on their taxes? Increase the penalty for tax fraud. Are CEOs taking dangerous risks with their firms? "Incentivize" them with deferred stock grants. Are America's children failing to learn their ABCs? Tie teachers' salaries to their students' test scores.

SIGNS OF CONSCIENCE

Largely missing from all this talk of "incentives" and "accountability" is any serious discussion of the possibility that we might encourage or discourage particular behaviors by appealing not to selfishness, but instead to the force of conscience. Many modern experts would snicker at the very idea.

Conscience is viewed as the province of religious leaders and populist politicians, not lawyers, businessmen, or regulators.

Yet before dismissing conscience, it is worth stopping to recognize that, for most of us, ethical and moral concerns are an omnipresent theme of our everyday lives. If you doubt this, simply consider your own train of thought on a typical day. Your interior monologue is likely to include scores, if not hundreds, of normative judgments. ("That driver is a jerk; it's thoughtless of my neighbor to leave her empty garbage cans out; that cashier was a nice guy; I really ought to call my Aunt Martha.") Our language similarly reveals our preoccupation with moral assessments. Just as the Inuit are said to have many nouns for snow, English has a multitude of words to describe unselfish, conscience-driven behavior, including:

virtuous	kind
fair	agreeable
honest	ethical
trustworthy	decent
upright	praiseworthy
faithful	altruistic
thoughtful	humane
loyal	charitable
selfless	principled
conscientious	cooperative
generous	considerate
caring	compassionate

Most tellingly, another simple English word often used to describe unselfish behavior is "good."

Where there is so much smoke, there are pretty high odds of finding fire. This book argues it is time to take the idea of conscience—meaning an internal force that inspires unselfish, prosocial behavior—far more seriously. Although Franco Gonzales' story was unusual enough to be reported in the national press (a small fortune doesn't fall at someone's feet every day), the remarkable tale of the honest dishwasher is, in many ways, not all that remarkable. Civic life in the United States is filled with similar, if more modest, acts of courtesy, consideration, and forbearance. People return misplaced wallets and jewelry to lost-and-found departments. Pedestrians give directions to strangers. Cashiers correct customers who have mistakenly overpaid them. Beefy young men stand patiently in line behind frail senior citizens. Drivers wait for red lights to turn green, even when the police are nowhere in sight.

Unselfish, prosocial behavior is so deeply woven into the warp and woof of Western life that it often goes unnoticed. We rarely stop to think about how the strangers around us routinely behave as if our own comfort and welfare were, if not necessarily at the top of their "to-do" list, still worth consideration. We take for granted the innumerable small, unselfish acts that bind us together in civil society, just as we take for granted the gravitational force that keeps us from floating out into space.

But sometimes gravity produces results dramatic enough to make one ponder. When an apple fell on Newton's head, he stopped to think. When a young dishwasher goes out of his way to return $203,000 in cash to an anonymous owner, we also should stop to think.

THE PUZZLE OF PROSOCIAL BEHAVIOR

I first became interested in unselfish prosocial behavior through my research on corporations and corporate law.[2]

Many readers may find this odd: the business world is often described as a place where the selfish pursuit of material gain goes unchecked. After studying corporations for nearly two decades, however, I became convinced that the *homo economicus* model did a surprisingly poor job of predicting the behavior that I observed inside them. Far from pursuing their own interests in a cutthroat manner, people in corporations often cooperated and sacrificed for collective goals, much like bees in a beehive. Personal ambition was confined to channels that served the corporate collective. And while corporate managers and employees might, like bees, deal ruthlessly with outsiders, teamwork was usually the norm inside the firm. What's more, it was a norm that seemed to promote business success. Corporations characterized by a high degree of internal trust, honesty, and cooperation usually thrived. Those torn apart by infighting and opportunism often failed.

Once the phenomenon of unselfish cooperation captured my attention in the corporate environment, I began to notice cooperation in the outside world as well. My daily interactions with strangers in Los Angeles—hardly a city known for its morals or public spirit—were, if not entirely free of stress and conflict, still characterized by a notable degree of cooperation and mutual consideration. Yawning commuters waited patiently in line at the coffee shop for their morning lattes rather than trying to push or bribe their way to the front of the line. Visiting tourists tipped waiters in restaurants and hotels they would never visit again. Morning newspapers sat in driveways well into the evening without being stolen. People donated time, money, even blood.

My growing suspicion that the *homo economicus* model missed the essence of much of modern life spurred me to find out more. I began to research the social science and life science literature to see what I could learn about the causes and consequences of prosocial behavior. There was a surprisingly large amount to learn.

THE EMERGING SCIENCE OF UNSELFISH PROSOCIAL BEHAVIOR

In June 2005, the science journal *Nature* reported the results of a remarkable study.[3] Human subjects were divided into pairs and each pair was asked to play a "trust game." In the trust game, one member of each pair was designated the "investor" and given some money. The investor was then asked to make a choice: she could either keep all of the money for herself, or give some or all of it to her partner in the game, designated the "trustee." If the investor decided to share any portion of her money with the trustee, the shared amount was tripled by the researchers. The trustee then faced his own decision: he could either keep the tripled funds for himself, or return all or some portion to the investor. The subjects played the trust game anonymously, using written forms to record their decisions, and they were told they would play the game only once.

If two members of the species *homo economicus* were asked to play a trust game this way, the investor would never choose to share with the trustee, because any investor foolish enough to share would discover that the trustee would keep all the tripled money. The subjects in the *Nature* study didn't, however, behave like *homo economicus*. Typically, the investor shared between two-thirds and three-quarters of her funds, and the trustee typically repaid the investor's generosity by returning slightly more money than the investor had initially chosen to share.[4]

This finding, alone, was not novel. The trust game was designed many years ago by social scientists who wanted to study, under laboratory conditions, whether people always act selfishly. Virtually all trust game studies have concluded people do not. Investors frequently share, and trustees frequently return the favor. This finding has been replicated in countless carefully controlled experiments around the world.

But in the 2005 *Nature* study, the researchers did something more. They divided their test subjects into two groups. One group inhaled a nasal spray containing the hormone oxytocin before they played the trust game with each other. (Oxytocin is associated with mate bonding and maternal care in mammals; women experience a rush of oxytocin when breastfeeding.) The other group inhaled a placebo. When the behavior of the two groups was compared, the researchers found that while investors in both groups typically shared at least some of their funds with trustees, investors who had inhaled oxytocin *shared more.*

The *Nature* study illustrates a dramatic change in the way contemporary experts study human behavior. Anthropologists and psychologists are no longer content to develop their theories of human nature from introspection or case studies, in the style of a Sigmund Freud or Margaret Mead. They now put their ideas to the test through surveys, statistical analyses of large demographic databases, and carefully controlled experiments using human subjects. In the fields of medicine and biology, scientists study behavior and emotion—including prosocial behavior and emotion—the same way they study heart disease and cancer, using blood analyses, tissue samples, and brain imaging technology. Evolutionary ecologists and psychologists mathematically model the conditions under which organisms can evolve a capacity for unselfish cooperation. Field biologists test the models against the actual behavior of different species.

The result is a large and rapidly growing body of data on when, how, and why people (and sometimes other species) act unselfishly. From this data a revolutionary new science is emerging. The new science—the science of unselfish prosocial behavior—is a bit like meteorology. Like meteorologists who study weather, scientists who investigate prosociality are studying a complex phenomenon. Like meteorologists, they make imperfect predictions. Sometimes it rains when it was forecast to shine, and sometimes people ruthlessly pursue their own gain at others' expense when the evidence suggests they should act unselfishly. But just as meteorologists can make ballpark predictions about tomorrow's weather, we can forecast with rough accuracy when people are likely to make purely selfish choices, and when they are not. Indeed, we can do more. Meteorologists can predict the weather, but they usually can't change it. But by manipulating certain variables, social scientists can encourage—or discourage—unselfishness toward others in a laboratory setting.

This possibility should interest anyone who lives among, cares about, or deals with other human beings. But it should especially interest those who study and care about law, regulation, public policy, and business management. Each of these fields deals with the central problem of getting people to "conscientiously" follow rules—to work hard and honestly, to pay taxes instead of cheating, to keep commitments, to respect others' rights and property, and to refrain from violence, theft, and mayhem.

Contemporary experts often assume the best way to get people to follow rules is to use material incentives and disincentives, much like the circus trainer who relies on sugar