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# ACT LOCALLY, AFFECT GLOBALLY: HOW CHANGING SOCIAL NORMS TO INFLUENCE THE PRIVATE SECTOR SHOWS A PATH TO USING LOCAL GOVERNMENT TO CONTROL ENVIRONMENTAL HARMS

VICTOR B. FLATT\*

**Abstract:** There has been comparatively little exploration of the importance of local government in addressing large-scale environmental harms, in spite of much activity at the local level dealing with climate change. This Article posits that local governments can affect large-scale environmental harms because they can influence the private sector through targeted *social norm* creation that cannot be accomplished easily at other levels of government. The Article notes that efforts to induce the private sector to take actions without enforcement capability have been problematic, but that connections to private sector decisionmakers and influencing of their internal norms—which can occur more easily at the local level—can create action not just locally, but wherever corporations operate.

## INTRODUCTION

The title of the *Boston College Environmental Affairs Law Review* Symposium, *The Greening of the Corporation*, of which this Article is a part, makes a statement and asks a question. The statement is that corporations and the private sector generally have been taking steps to help the environment outside the traditional regulatory system; the question—why? Though the answer is clearly multifaceted, much seems to be related to changing social norms in their various incarnations: public

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demand, advertising, shame. While most people pay some homage to the power of social norms, these norms are rarely thought of as a policy implementation tool. I believe, however, that the nature of local governments' relationship to social norms means that local governments can in fact be vehicles for the use of such norms as policy tools. Scholars have long ignored the possibilities that local—that is, *sub-state*—governments can make significant contributions to environmental protection, or indeed, be significant in policy at all.<sup>1</sup> There are obviously many reasons for this oversight, including the fact that localities are not necessarily sovereign entities with a full panoply of sovereign powers. There is no *uniform* type or model of local governance,<sup>2</sup> and the environmental arena since 1970 has been dominated by federal legislation that makes the states significant partners in the administration of the law, but generally sidelines local government.<sup>3</sup> Thus, there is little systematic analysis of what particular structural factors would favor the use of local governance in controlling environmental harms.<sup>4</sup>

The recent efforts to affect the environment by local governments, particularly in the area of climate change, however, suggest that there is more possibility of power at the local level than first meets the eye. Because at the local government level there is personal contact between government actors and the regulated parties, local government may be able to effectively advance environmental protection with what has come to be called public-private partnerships, or cooperative environ-

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<sup>1</sup> See Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542, 2545 (2006) ("The primary form of American political decentralization is regional rather than municipal, states—not cities . . ."); Kathleen M. Sullivan, *From States' Rights Blues to Blue States' Rights: Federalism After the Rehnquist Court*, 75 FORDHAM L. REV. 799, 809–10 (2006) (commenting that, typically, discussion of *local* control means control at the state level).

<sup>2</sup> See Schragger, *supra* note 1, at 2546.

<sup>3</sup> One notable exception to this legislative model is the granting of local oversight of Publicly Owned Treatment Works (POTWs). 40 C.F.R., § 501 (2007). The federal statutes also generally preserve common law, which might be characterized as local, since it may be successfully invoked by municipalities. See, e.g., Clean Air Act, 42 U.S.C. § 7412(d)(7) (2000).

<sup>4</sup> Kirstin Engel and David Adelman have recognized the importance of local government as one of many players to address complex, multifaceted environmental problems, but have not fully explored whether local government is particularly good at a particular role. See Kirstin Engel & David Adelman, *Adaptive Federalism: Lessons from the Study of Complex Adaptive Systems 2* (2007) (unpublished manuscript, on file with author). Their analysis concerning the importance of multitiered governance is indeed persuasive; in this Article, however, I focus more on why local government may be appropriate for large-scale environmental concerns and ways to enhance local government's effect.

mentalism with business.<sup>5</sup> It is the thesis of this Article that, while separately public-private partnerships and local government action as ways to control environmental harm may not be effective methods, together they in fact do create a legitimate and powerful tool for environmental protection by using local government to create social norms which effectively influence the private sector.

This Article will first explore the role and powers of local government in environmental regulation, including how local government can be affected by state government.<sup>6</sup> Second, it will examine the use of public-private partnerships, business cooperation, and voluntary efforts as models for environmental control.<sup>7</sup> The Article will also explore the literature surrounding the power of social norms to bring about policy change.<sup>8</sup> Finally, this Article will demonstrate how local government can use its power to influence social norms in a manner that realizes the potential of public-private partnerships, while not succumbing to their weakness.<sup>9</sup>

#### I. LOCAL GOVERNMENT REGULATION OF ENVIRONMENTAL HARMS: A RENAISSANCE?

Most local governments have the power to protect general health and safety through the traditional police power, and historically local governments were the first-line of defense against environmental harm.<sup>10</sup> Through the concepts of public nuisance and later zoning, the most obvious environmental harms of the past, whether they were raw sewage or choking smoke, were dealt with by local government.<sup>11</sup> The role of local government, however, began to wane as environmental harms themselves changed or came to be seen differently.<sup>12</sup> The paradigmatic modern environmental harm is anything but local. It is generally a transboundary harm caused by products or processes in a national or international market, whose profits are far removed from its harms. Such problems are logically seen as requiring regulation from a jurisdic-

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<sup>5</sup> Professor Schragger might characterize this influence as the *real* power of mayors as opposed to *formal* or legal power. See Schragger, *supra* note 1, at 2546.

<sup>6</sup> See *infra* Part I.

<sup>7</sup> See *infra* Part II.

<sup>8</sup> See *infra* Part III.

<sup>9</sup> See *infra* Parts IV–VI.

<sup>10</sup> See ROBERT L. GLICKSMAN ET AL., ENVIRONMENTAL PROTECTION LAW AND POLICY 65 (5th ed. 2007); CRAIG N. JOHNSTON, WILLIAM F. FUNK & VICTOR B. FLATT, LEGAL PROTECTION OF THE ENVIRONMENT 3 (2d ed. 2007).

<sup>11</sup> See JOHNSTON, FUNK & FLATT, *supra* note 10, at 3.

<sup>12</sup> See *id.* at 5.

tion that can control all causal aspects of the harm: the purchase of raw materials, the manufacturing process, and the transport of the pollutants caused by the process, or the transport of the product itself. The economic theory of environmental harm envisions a sovereign that has power and reach to successfully *price* and, therefore, control the externalities of environmental harm.<sup>13</sup> The far-flung aspects of environmental harm were so important that a new kind of cooperative federalism was spawned, which moved beyond the traditional reliance on states to deal with such issues in favor of a state-federal mix of controls.<sup>14</sup>

Though examples of local government regulation of environmental harm still exist, our current conception of environmental law is very difficult to accomplish at the local level. The powers of local governments are limited. General police power may be sufficient for local governments to control pollution within their borders, but in some places, even the use of the police power can be preempted by the state.<sup>15</sup> As opposed to state-federal joint regulation, in which states are often free to create more stringent health and safety regulations than a federal floor,<sup>16</sup> in some states, local governments are explicitly preempted from taking actions that are different or inconsistent with state regulators' actions.<sup>17</sup> States also can actively preempt local actions with which they do not agree.<sup>18</sup> Witness the strong reaction to the *Kelo v. City of New London* takings case, in which several state laws were passed to preempt local government from exercising its takings power in a traditional manner.<sup>19</sup> The truth is that if particular states are slow or recalcitrant about regulating polluting entities directly, there is no reason to expect these states to allow their sub-jurisdictions to do so.

This result is exacerbated by the politicization of environmental control, wherein environmental positions may be perceived as Democ-

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<sup>13</sup> *Id.* at 24.

<sup>14</sup> *Id.* at 9–10.

<sup>15</sup> Paulette Wolfson & Ceil Price, *Watch Out for the City: Local Governments Can Enforce*, 36 ST. B. TEX. ENVTL. L.J. 65, 65 (2006).

<sup>16</sup> JOHNSTON, FUNK & FLATT, *supra* note 10, at 9–10.

<sup>17</sup> In Texas, local government regulation of the environment cannot be inconsistent with state law, state regulations, or rules and orders of the Texas Commission on Environmental Quality. TEX. HEALTH & SAFETY CODE ANN. § 382.113 (Vernon 2001).

<sup>18</sup> See Wolfson & Price, *supra* note 15, at 65. In Texas, the power of a local government to criminally prosecute environmental harms was taken away by the state after much lobbying by private corporations in Harris County. See 30 TEX. ADMIN. CODE §§ 70.201–206 (2006).

<sup>19</sup> Marcilynn A. Burke, *Much Ado About Nothing: Kelo v. City of New London, Babbitt v. Sweet Home, and Other Tales from the Supreme Court*, 75 U. CIN. L. REV. 663, 666–67 (2006); see *Kelo v. City of New London*, 545 U.S. 469 (2005).

ratric rather than Republican.<sup>20</sup> States with Republican majorities that are powerful in rural areas, may reflexively reject additional environmental regulations from large cities, which tend to be more Democratic.<sup>21</sup> Thus, disputes can arise in local government over differences in politics as much as substance.

The main drawback to using local government for environmental regulation to protect the citizens of that locality, however, is that most modern pollution migrates extensively, and the local government cannot enforce its laws beyond its boundaries. Certain toxic pollution is an important exception to this result, and in this arena we have seen some action from local government.<sup>22</sup> For the most part though, modern environmental problems are too geographically dispersed to be addressed by local government through traditional sovereign powers.<sup>23</sup>

This geographical limitation makes the local government foray into climate change all the more perplexing, since climate change is truly global in dimension.<sup>24</sup> Certainly, no local government can hope to reduce harm to its own citizens from climate change solely through its own regulation. Yet there is unprecedented activity at the local level.<sup>25</sup>

In their article exploring the phenomenon of local governments engaging climate change problems, Professors Engel and Saleska propose that public choice analysis might explain why politicians pursue a particular agenda, and the authors suggest that local actions may foreshadow or spur national action.<sup>26</sup> The phenomenon of local activities spurring action by larger entities can be explained by many economic theories, such as the private sector's desire for uniform regulations, a particular kind of regulation that works better on a larger scale, such as tradable permits, or seeking protection from a *race-to-the-bottom* phenomenon.<sup>27</sup> These justifications are certainly logical explanations that can be supported by economic theory, but there may be another important factor that has not been fully explored or exploited: the power

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<sup>20</sup> See, e.g., GLICKSMAN ET AL., *supra* note 10, at 69.

<sup>21</sup> Samuel Issacharoff, *Judging Politics, the Elusive Quest for Judicial Review of Political Fairness*, 71 TEX. L. REV. 1643, 1683 (1993) (discussing voting rights and noting that large cities tend more towards the Democratic Party).

<sup>22</sup> There are, however, attempts to limit local government action as much as possible. See Dina Cappiello, *Bills Filed to Block White's Clean Air Campaign*, HOUSTON CHRON., Mar. 10, 2007, at A1.

<sup>23</sup> See Kirsten H. Engel & Scott R. Saleska, *Subglobal Regulation of the Global Commons: The Case of Climate Change*, 32 ECOLOGY L.Q. 183, 187 (2005).

<sup>24</sup> See *id.*

<sup>25</sup> *Id.* at 184–86.

<sup>26</sup> *Id.* at 189.

<sup>27</sup> *Id.* at 223–24.

of norm creation at the local level. Leading by example could have impacts on the creation of norms that affect behavior.

Currently, norm creation in environmental policy has been best appreciated with respect to altering the behavior of individual actors.<sup>28</sup> In turn, the impact of affecting individual behavior can also interact with other factors to support action on a larger scale. As public opinion changes in response to local actions, publicity over an issue can bolster the possibilities of it being taken up on a national scale.

Norm creation also can be used in a less dispersed and more effective way. If norm creation were used at the local government level to specifically target influential, private-sector decisionmakers in a focused way, this tactic might be the powerful bullet to control some environmental harms, particularly climate change. Based on the assumption that norm creation as a policy control device can be more powerful the closer a party is to the community in which he or she seeks acceptance,<sup>29</sup> local government and its leaders have power not available to state and national governments to target particularly large sources of environmental degradation in the private sector, and convince them to make changes not only within the localities' boundaries, but also globally. Indeed, local government may be the only entity that can truly use public-private partnerships for effective environmental regulation.

## II. PUBLIC-PRIVATE PARTNERSHIPS AND ENVIRONMENTAL PROTECTION BY ENGAGING WITH THE PRIVATE SECTOR

In the 1980s, and accelerating into the 1990s, there were debates and discussions about the role that the private sector could and should play in controlling environmental harms and the shape this role should take. Although they take different forms, one of the most common is the use of a *cooperative* or semi-voluntary enforcement scheme for private sources of pollution.<sup>30</sup> One example of this solution is the creation of many audit shield laws that protect a party from enforcement for an environmental problem if that problem is quickly corrected.<sup>31</sup> The development of many of these proposals was motivated by a concern in the business community that environmental regulation up to that time

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<sup>28</sup> Michael P. Vandenberg, *Order Without Social Norms: How Personal Norm Activation Can Protect the Environment*, 99 Nw. U. L. REV. 1101, 1101-03 (2005).

<sup>29</sup> See Richard A. Posner, *The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1690 (1998).

<sup>30</sup> See CLIFFORD RECHTSCHAFFEN & DAVID L. MARKELL, *REINVENTING ENVIRONMENTAL ENFORCEMENT AND THE STATE/FEDERAL RELATIONSHIP* 70 (2003).

<sup>31</sup> See *id.*

had been overly punitive, and the related position that helping entities comply would actually do more for the environment than punishing only a few.<sup>32</sup>

The Clinton administration embraced of this concept to a limited extent, and the concept formed the backbone of the George W. Bush administration's environmental policy in both Texas, when he was governor, and nationally, while president.<sup>33</sup> In particular, the Bush administration has pioneered so-called *voluntary compliance* programs and voluntary initiatives, particularly for climate change.<sup>34</sup>

Such voluntary compliance ideas reject the notion that all decisionmakers use rational choice in a formal sense when deciding whether to comply with a law; voluntary compliance may encompass some rational choice ideas, but must also assume the theory of norm creation, particularly the idea that people would feel a powerful personal reason to comply with law.<sup>35</sup> Though government embrace of voluntary environmental compliance rarely used terms such as *rational choice theory*, it may have been no coincidence that ideas of cooperative environmentalism flourished at the time that social norm literature was burgeoning.<sup>36</sup>

The other strand of support for more cooperative work with the private sector stems from the realization that many multinational companies control vast amounts of resources that are not subject to any one jurisdiction.<sup>37</sup> It has long been assumed that such behemoths do not necessarily submit to the legal and policy choices of any one jurisdiction.<sup>38</sup> Thus, in a globalized economy, which has global environmental and other concerns, we would have to find some way to get the private sector to engage in environmental protection without the force of traditional nation-state law.

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<sup>32</sup> See *id.* at 68.

<sup>33</sup> Matthew D. Zinn, *Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits*, 21 STAN. ENVTL. L.J. 81, 82–83 (2002); *Business Group Readies Voluntary Initiative on Climate Change*, INSIDE EPA, Nov. 15, 2002, at 2 [hereinafter *Business Group Readies*].

<sup>34</sup> Zinn, *supra* note 33, at 82–83; *Business Group Readies*, *supra* note 33, at 2.

<sup>35</sup> See Michael P. Vandenbergh, *Beyond Elegance: A Testable Typology of Social Norms in Corporate Environmental Compliance*, 22 STAN. ENVTL. L.J. 55, 77 (2003).

<sup>36</sup> The standard theory is that cooperative environmental enforcement is a “conservative, pro-business, idea” in a political sense, and, as such, might seem far from the academic world of the power of social norms. To the extent that both embrace the importance of law abiding behavior, however, they share a common provenance.

<sup>37</sup> See James R. Silkenat, *Regulating Global Companies*, 28 STAN. L. REV. 381, 381 (1976) (reviewing GLOBAL COMPANIES: THE POLITICAL ECONOMY OF WORLD BUSINESS (George W. Ball ed., 1975)).

<sup>38</sup> See *id.* at 382.



The record of engaging the private sector on environmental protection other than as a regulated entity shows mixed success at best.<sup>39</sup> There has been positive review, particularly from the private sector, of President Bill Clinton's engagement with logging interests in the Pacific Northwest and the increased use of habitat conservation plans with a No Surprises Policy under the Endangered Species Act.<sup>40</sup> The use of private-party-generated environmental plans under Project XL, also under the Clinton administration, however, was not heavily utilized, indicating limited applicability.<sup>41</sup> Of the two projects, the one most subscribed to by the private sector was the one in which enforcement would be greatly diminished at the point of the voluntary agreement.<sup>42</sup>

The record for pure voluntary compliance or compliance without enforcement oversight from any level of government is abysmal. For instance, the California Regional Clean Air Incentives Market (RECLAIM) program, for the trading of nitrogen oxides between stationary and mobile sources, was well behind in its touted environmental benefits ten years into the program and was plagued by serious compliance problems.<sup>43</sup> Likewise, the national Voluntary Emissions Trading Scheme started by the Bush administration for climate change has not been well-subscribed or particularly effective since its inception.<sup>44</sup> If

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<sup>39</sup> RECHTSCHAFFEN & MARKELL, *supra* note 31, at 242–43.

<sup>40</sup> Robert B. Keiter, *Public Lands and Law Reform*, 2005 UTAH L. REV. 1127, 1206–07; Graham M. Lyons, *Habitat Conservation Plans: Restoring the Promise of Conservation*, 23 ENVIRONMENTAL L. & POL'Y J. 83, 93 (1999).

<sup>41</sup> Rena I. Steinzor, *Reinventing Environmental Regulation: The Dangerous Journey from Command to Self-Control*, 22 HARV. ENVTL. L. REV. 103, 124–25 (1998). Project XL stands for “excellence and leadership” and allows state and local governments, businesses, and federal facilities to work with the U.S. Environmental Protection Agency (EPA) in issuing regulatory programs, policies, or procedural flexibilities in order to more effectively achieve environmental and public health protection. EPA, What is Project XL?, <http://www.epa.gov/projectxl/file2.htm> (last visited May 1, 2008).

<sup>42</sup> See Lyons, *supra* note 40, at 93; Steinzor, *supra* note 41, at 124–25.

<sup>43</sup> *Trading Foes Hail EPA Region IX Report Criticizing RECLAIM Program*, INSIDE EPA, Nov. 22, 2002, at 7. RECLAIM stands for The Regional Clean Air Incentives Market program and was adopted by the South Coast Air Quality Management District in 1993. EPA's Evaluation of the RECLAIM Program in the South Coast Air Quality Management District, Region 9: Air, US EPA, <http://www.epa.gov/region09/air/reclaim/index.html> (last visited May 1, 2008). The program sets emissions caps and reduction standards for nitrogen oxides (NO<sub>x</sub>) and sulfur oxides (SO<sub>x</sub>) in the South Coast Air Basin. See *id.*

<sup>44</sup> See Victor B. Flatt, *The Enron Story and Environmental Policy*, 33 ENVTL. L. REP. (Envl. Law Inst.) 10,485, 10,492 (2003); Press Release, White House, President Announces Clear Skies & Global Climate Change Initiatives (Feb. 14, 2002), <http://www.whitehouse.gov/news/releases/2002/02/20020214-5.html>. The initiative calls for voluntary cuts in greenhouse gas (GHG) emissions per unit of economic activity with the “commitment to reduce our greenhouse gas intensity by 18 percent by the year 2012,” which is “the equivalent of taking 70 million cars off the road.” *Id.*

government does not create incentives for the private sector to comply, voluntary good behavior is unlikely.<sup>45</sup>

From these examples, it seems that public-private programs may only be successful in combination with the threat of enforcement or regulation, or some other incentive to comply.<sup>46</sup>

This conclusion does not bode well for the idea that the private sector can be trusted to accomplish environmental policy initiatives without oversight. As noted above, some corporate actors, due to their size and power, are not subject to any oversight with respect to actions associated with truly global environmental problems, like climate change. How then can the private sector be engaged in environmental protection without a threat of punishment? I believe that the answer is to be found in one particular kind of social norm creation.

### III. THE POWER OF SOCIAL NORMS

As noted above, theories of cooperative or voluntary-based enforcement must assume to some extent that people and entities comply with the law not just out of self-interest, but because of some other outside imperative.<sup>47</sup> The scholarship surrounding the importance of social norms in controlling behavior burgeoned in the 1990s, with many scholars explaining the impacts that social norms have on legal compliance or their roles as independent ways to achieve policy goals.<sup>48</sup> These results have been explained by two basic theories: people care about the esteem of others, and they seek to avoid internalized norms, such as shame, which occur when others know of their bad deeds.<sup>49</sup> This research demonstrates the importance of social norms to society's functioning.<sup>50</sup> In addition, biological research seeking to explain altruistic behavior in human societies has concluded that the roots of internal human morality are evident in all social primates and are, thus, necessary for their species' functioning.<sup>51</sup>

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<sup>45</sup> See Brigham Daniels, *Emerging Commons and Tragic Institutions*, 37 ENVTL. L. 515, 529 (2007).

<sup>46</sup> See *id.*

<sup>47</sup> Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051, 1127 (2000).

<sup>48</sup> See, e.g., Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 914–21 (1996).

<sup>49</sup> *Id.* at 914–16.

<sup>50</sup> See *id.* at 914–21.

<sup>51</sup> Nicholas Wade, *An Evolutionary Theory of Right and Wrong*, N.Y. TIMES, Oct. 31, 2006, at F1.

Though explained in differing manners, both lines of research support the basic idea that has intuitively driven all human societies—people do not like to be law breakers. Research also shows that this simple idea is subject to many complications and exceptions. For instance, to feel moral shame about law breaking, people must feel that they have done something wrong.<sup>52</sup> This notion may be particularly problematic in an environmental context. When dealing with a commons, cheating often results in incremental harm, and the overall harm is only noted when many engage in the activity.<sup>53</sup> The commons analysis suggests that purely voluntary compliance with environmental requirements with no other incentives is itself a commons problem, and so cheating and noncompliance may be rampant.<sup>54</sup> Commons users attempt to *free ride*, and this tendency decreases the effectiveness of commons control.<sup>55</sup> In fact, with a commons issue, competing *fairness* norms suggest that people will be even less likely to take voluntary *good* action because of the perception that others will be riding on their coattails.<sup>56</sup> As stated more prosaically by Professor Carol Rose, no one wants to be a “sucker.”<sup>57</sup>

Additionally, corporate structure wreaks havoc with the power of norms, as individual power must be squared with corporate incentives. In an examination of players in corporate governance, Professor Renee Jones has noted that social norms alone seem unable to curb corporate behavior, primarily because of the complexity of competing norms and responsibility.<sup>58</sup> In the environmental context, Professor Rena Steinzor thoroughly analyzed many of the new cooperative enforcement mechanisms in her groundbreaking 1999 article on enforcement, explicitly acknowledging that the mechanisms must to some degree depend on the role of moral suasion.<sup>59</sup> She noted that moral suasion as it affects individual people seems not to work as well in the corporate en-

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<sup>52</sup> See Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. LEGAL STUD. 537, 539–40 (1998).

<sup>53</sup> See Engel & Saleska, *supra* note 24, at 187.

<sup>54</sup> See Carol M. Rose, *Rethinking Environmental Controls: Management Strategies for Common Resources*, 1991 DUKE L.J. 1, 4–5 [hereinafter Rose, *Rethinking*].

<sup>55</sup> Daniels, *supra* note 45, at 526.

<sup>56</sup> See Rose, *Rethinking*, *supra* note 54, at 4.

<sup>57</sup> *Id.*

<sup>58</sup> Renee M. Jones, *Law, Norms, and the Breakdown of the Board: Promoting Accountability in Corporate Governance*, 92 IOWA L. REV. 105, 108 (2006).

<sup>59</sup> See Steinzor, *supra* note 41, at 158–64.

vironment, most likely because of the enormous pressure for short-term profits.<sup>60</sup>

Thus, for several reasons, environmental programs that are purely voluntary, with no other incentives, seem unable to depend on social norms alone to create compliance. Nevertheless, the research on social norms does suggest that education on how individual or corporate actions affect the environment could change behavior, at least at the individual level.<sup>61</sup> Certainly, education may be enough to overcome the fairness or free rider problem, because of the internalization of a norm and the creation of other perceived benefits. For instance, a recent survey indicates that most people buy a Prius car, not for any direct economic benefit, but because it sends a signal that they are good and environmentally conscious.<sup>62</sup> Clearly, internalizing that perception can be very powerful.

But what about the concerns with corporate governance? Can the power of social norms over individuals affect the actions of corporations? Where is the environmental norm-creating opportunity to affect corporate action?

#### IV. HOW LOCAL GOVERNMENT CAN CREATE THE SOCIAL NORMS NECESSARY TO AFFECT CORPORATE BEHAVIOR

Aside from the experiments with voluntary compliance discussed above, government powers, such as the state and federal government, have used traditional incentives to enforce corporate behavior. Enforcement incentives are generally compensatory or punitive in nature. If you do not comply with the law, you may be charged some amount of money. Economists can apply a cost-benefit analysis to this situation to determine whether it makes sense to break the law.<sup>63</sup> As such, enforcement penalties that do not capture the benefit of the violation to the violator may be considered ineffective and problematic.<sup>64</sup> Also, individuals can be criminally charged in extreme cases.<sup>65</sup> This sanction, involving the loss of freedom for individuals, may be far stronger than any

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<sup>60</sup> *See id.*

<sup>61</sup> *See supra* notes 47–60 and accompanying text.

<sup>62</sup> Micheline Maynard, *Toyota Hybrid Makes a Statement, and That Sells*, N.Y. TIMES, July 4, 2007, at A1.

<sup>63</sup> Korobkin & Ulen, *supra* note 47, at 1064–66.

<sup>64</sup> *See* Zinn, *supra* note 33, at 96.

<sup>65</sup> What Is an Environmental Crime?, Criminal Enforcement, Compliance and Enforcement, US EPA, [http://www.epa.gov/compliance/criminal/investigations/environmental\\_crime.html](http://www.epa.gov/compliance/criminal/investigations/environmental_crime.html) (last visited May 1, 2008).

monetary sanction, and some evidence suggests that this credible threat may compel much legal compliance.<sup>66</sup>

In the environmental arena, such a threat is rarely used, but the possibility may make it effective in corporate contexts. Certainly, Professor Jones seems to believe that corporate control requires “external accountability mechanisms.”<sup>67</sup> Traditional penalties, however, only work because of their effects on individual behavior. It is a person who goes to prison, not a corporation. Moreover, it is people who are hurt by the loss of money and income, not a disembodied legal entity. Though we think of civil and punitive penalties as deterrent-based or hard enforcement, they depend no less on human reaction to incentives than do social norms. Thus, if corporate behavior can be affected by altering the incentives for individuals in this traditional manner, it should also be affected by altering incentives related to social norms. It may simply be that we have not discovered the proper vehicle.

One vehicle that might be plausible is the importance of reputation to decisionmakers within companies. The reputation can be a corporate reputation or an individual reputation. The issue of corporate reputation has been examined in some circumstances, and most commentators note that the importance of corporate reputation is related to money—for instance, being perceived as *green* may increase market share.<sup>68</sup> This attention to market share is usually the kind of *reputation* incentive many point to as the best way to get the private sector to protect the environment.<sup>69</sup> Reputation incentive has led to certification standards and advertising, and has been growing.<sup>70</sup>

In the last two years, many private entities have been changing positions or processes that could help reduce climate change.<sup>71</sup> Some ap-

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<sup>66</sup> See Robert W. Adler & Charles Lord, *Environmental Crimes: Raising the Stakes*, 59 GEO. WASH. L. REV. 781, 787 (1991). But see David C. Fortney, Note, *Thinking Outside the “Black Box”*: Tailored Enforcement in Environmental Criminal Law, 81 TEX. L. REV. 1609, 1628–29 (2003).

<sup>67</sup> Jones, *supra* note 58, at 108.

<sup>68</sup> See James Salzman et al., *Regulatory Traffic Jams*, 2 WYO. L. REV. 253, 260 (2002).

<sup>69</sup> See *id.*

<sup>70</sup> Katherine Renshaw, *Sounding Alarms: Does Informational Regulation Help or Hinder Environmentalism?*, 14 N.Y.U. ENVTL. L.J. 654, 659–60 (2006).

<sup>71</sup> See, e.g., Michael Barbaro, *Home Depot to Display an Environmental Label*, N.Y. TIMES, Apr. 17, 2007, at C1; Micheline Maynard & Nick Bunkley, *Detroit Decides to Help Shape, Not Resist, Regulation of Emissions*, N.Y. TIMES, Apr. 7, 2007, at C1; Anne Thompson, *Studios Go Green, Scene by Scene*, VARIETY, Apr. 30, 2007, at 6; see also About Shell, Livio Accattatis, Shell Energise™ Programme, <http://www.shell.com> (search for “Livio Accattatis Shell Energise”) (last visited May 1, 2008) (Livio Accattatis, a principal consultant on Energise, a Shell initiative geared toward reduction of carbon dioxide emissions, has already cut emissions by 620,000 metric tonnes a year from eight Shell manufacturing plants).

appear to do so because of the likelihood of regulation,<sup>72</sup> but other actions are clearly designed to appeal directly to consumers in the hope of helping the companies' bottom lines.<sup>73</sup> Even changes in anticipation of regulation may be seen as a way of preemptively appealing to the marketplace in advance of being forced to act.<sup>74</sup>

Though less predictable in its application and outcome, the alteration of private actions to appeal to market forces in the hopes of increasing profit is not really different from alteration of private actions in response to traditional enforcement. Both can be explained by economic incentives and traditional rational actor theory. Such action can also presumably be shaped by government forces in some ways. Some action is also explained by social norm theory. As detailed in many of the papers in this Symposium, by both regulating an area of the law and educating the public about consequences, government action may create social norms that induce private actors to respond to marketplace pressures.

Depending on the private sector to alter its behavior to accommodate changing public desires does not work for everything. In some cases there may not be a *reputation* market, in which case there would be no monetary incentive for environmental compliance. Examples include polluting entities that do not have advertising budgets, do not sell a product, or whose products are otherwise regulated. Also, social norms of the general public only positively affect corporate action to the extent the public really understands the complexity of the corporate action.<sup>75</sup> Saying a corporation is *green* may or may not translate into environmental benefits. Changing the social norms of the decision-makers themselves addresses these issues.

This outcome suggests a focus on the other *reputation* incentive—that is *personal reputation*. How do those people whose opinions you care about—your spouse, your religious leader, your colleagues, your parents, your children, your friends—feel about your actions? Personal reputation, and the need for connections with others, is a powerful mo-

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<sup>72</sup> See Maynard & Bunkley, *supra* note 71, at C1.

<sup>73</sup> See Steinzor, *supra* note 41, at 165; Barbaro, *supra* note 71, at C1; Maynard & Bunkley, *supra* note 71, at C1; Livio Press Ad, [http://www.shell.com/static/aboutshell-en/downloads/about\\_shell/what\\_we\\_do/corporate\\_advertising/climate\\_change/livio/livio\\_accattatis\\_energise.pdf](http://www.shell.com/static/aboutshell-en/downloads/about_shell/what_we_do/corporate_advertising/climate_change/livio/livio_accattatis_energise.pdf).

<sup>74</sup> See Maynard & Bunkley, *supra* note 71, at C1.

<sup>75</sup> Renshaw, *supra* note 70, at 665.

tivator in controlling negative behavior.<sup>76</sup> Thus, the incentive associated with this personal reputation may be powerful.

Every person has a community and this community exerts power. Social scientists have noted the power that social influence can have on personal action.<sup>77</sup> This influence has exerted itself in the environmental movement, from societal norm creation surrounding littering and recycling, to pressure in some social strata to drive gas-efficient cars.<sup>78</sup> However, we rarely think of using this power beyond individuals. Can a multinational corporation feel shame and peer pressure? The answer to that is obviously “no,” but the people who run and make decisions for these corporations can. These leaders also have friends and are invested in every manner of human emotion and interaction. It is this *personal connection* to the rich and powerful theory that drives both the concepts of charitable fundraising and lobbying.<sup>79</sup> A person is more likely to give to a charity if she knows or has a connection with the person who is asking.<sup>80</sup> Likewise, spending on legislative lobbying nears two billion dollars in the belief that actual connections with people who have power can be used to induce the powerful to take action.<sup>81</sup>

But to tap this reputation or human interaction incentive, one must have actual connections with people, and so, it is generally at the local level where social norms are exerted most powerfully.<sup>82</sup> As stated by Judge Posner, “[N]orms are more effective when people are under the observation of their peers.”<sup>83</sup> Proximity enhances the effectiveness of social control as it facilitates observation of, and by, the community.<sup>84</sup> Moreover, local connection assists in controlling free rider problems, thereby bolstering the perception of fairness when engaging in good

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<sup>76</sup> See Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 355–57 (1997); Eduardo M. Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889, 1919–21 (2005).

<sup>77</sup> Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 356 (1997).

<sup>78</sup> See Maynard, *supra* note 62, at A1.

<sup>79</sup> See Robert H. Jerry II, *A Primer for the First-Time Law Dean Candidate*, 49 J. LEGAL EDUC. 564, 589 (1999); Meredith A. Capps, Note, “Gouging the Government”: Why a Federal Contingency Fee Lobbying Prohibition Is Consistent with First Amendment Freedoms, 58 VAND. L. REV. 1885, 1886 (2005).

<sup>80</sup> See Jerry, *supra* note 79, at 589.

<sup>81</sup> See Capps, *supra* note 79, at 1886.

<sup>82</sup> See RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 74–75 (1999); Tiana S. Mykkeltvedt, Note, *Common Benefit and Class Actions: Eliminating Artificial Barriers to Attorney Fee Awards*, 36 GA. L. REV. 1149, 1151–52 (2002).

<sup>83</sup> POSNER, *supra* note 82, at 75.

<sup>84</sup> See Daniel J. Solove, *A Taxonomy of Privacy*, 154 U. PA. L. REV. 477, 493 (2006).

works.<sup>85</sup> Even in very large cities, the circles of private and public power may be relatively small and overlapping, and those that hold the reins of local power are likely part of this interconnected web. For example, New York City's current mayor, Michael R. Bloomberg, was a business and philanthropic powerhouse before he assumed the mayoralty.<sup>86</sup>

Because we are talking about a relatively small geographic area, many interactions and connections occur between the public and private sector. Even the largest cities tend to have only one major opera house that local business and municipal leaders may attend on the same opening night. The same is true for museums, fundraisers, programs, and even restaurants, stores, and friends. These decisionmakers may be global travelers, but they also exist in some kind of local culture which teaches them to like and value certain things and to interact with others in a certain manner.

At a national level, at least in most developed countries, the leaders of the most important private sector players and the leaders of the country are not always in the same geographic area, and national leaders may be more protected from interactions with the public. Proximity is critical to connection and influence.<sup>87</sup> Some might even be turned away from the desired social norm by hearing a message from someone they do not respect in government, rather than from a personal acquaintance.<sup>88</sup>

Municipalities often depend more directly on services and philanthropy from the private sector, so the leaders of municipalities have more reason to keep and maintain prior connections with people from the private sector. Moreover, local government legislation and regulation often occurs at the face-to-face level.<sup>89</sup> In fact, Professor Richard C. Schragger has postulated that the primary power of mayors lies in political connection—the power to influence—not in inherent power.<sup>90</sup> Personal connections also fuel the use of local government power, as in

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<sup>85</sup> Daniels, *supra* note 45, at 526–27.

<sup>86</sup> NYC.gov, Office of the Mayor, Biography, <http://www.nyc.gov> (follow “Biography” hyperlink under “Office of the Mayor”) (last visited May 1, 2008).

<sup>87</sup> See, e.g., Randall Stross, *It's Not Who You Know. It's Where You Are*, N.Y. TIMES, Oct. 22, 2006, § 3, at 3.

<sup>88</sup> The issue of climate change legislation at the national level has already come to be associated with *personalities*, as many people resist the message because of the messenger. Take for example, Al Gore. See, e.g., Steven Milloy, *Al Gore's Inconvenient Electric Bill*, FOX NEWS.COM, Mar. 12, 2007, <http://foxnews.com/story/0,2933,257958,00.html>.

<sup>89</sup> Carol M. Rose, *What Federalism Tells Us About Takings Jurisprudence*, 54 UCLA L. REV. 1681, 1688 (2007) [hereinafter Rose, *Federalism*].

<sup>90</sup> See Schragger, *supra* note 1, at 2546.



zoning, to benefit particular interests.<sup>91</sup> Though this reality would usually be perceived as a negative, the writing about the problem illustrates the personal interconnections of government leaders and members of the private sector at the local level.<sup>92</sup>

Judge Posner notes that social norms have waned in modern times because of the dispersal of people and their communities, but his observation recognizes the importance of the community to norm creation.<sup>93</sup> Every person has a community, and for most it is geographic in nature. In modern times, the need for local connection may be even stronger than in the past, as people seek face-to-face contact in an increasingly isolating world.<sup>94</sup>

Though not stated in the context of the importance of local community to social norms, Professor Rena Steinzor identified the power of local norms to influence the behavior of corporate actors when she noted the existence of particularly enlightened corporate leaders, who understood and implemented desired environmental outcomes.<sup>95</sup> This paradigmatic enlightened corporate chieftain is exactly the outcome we should seek by targeting social norms.

A stark example of the power of social norms to affect business culture can be seen in an examination of the *Big Five* energy companies.<sup>96</sup> Two, BP and Royal Dutch Shell, are based in Europe though they have significant operations and many employees in the United States, notably near Houston, Texas.<sup>97</sup> The other big three, ExxonMobil, Chevron, and ConocoPhillips, are based in the United States, with many decisionmakers based in Texas.<sup>98</sup> These companies are the very definition of large,

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<sup>91</sup> See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 112 (1990).

<sup>92</sup> Rose, *Federalism*, *supra* note 89, at 1688.

<sup>93</sup> See POSNER, *supra* note 82, at 75–76.

<sup>94</sup> See Glenn Rifkin, *Making a Profit and a Difference*, N.Y. TIMES, Oct. 5, 2006, at C5.

<sup>95</sup> Steinzor, *supra* note 41, at 163.

<sup>96</sup> The *Big Five* are ExxonMobil, Royal Dutch Shell, BP, Chevron, and ConocoPhillips. Rice University, ‘*Big Five*’ Oil Companies Limit Exploration, SCIENCE DAILY, Nov. 13, 2007, <http://www.sciencedaily.com/releases/2007/11/071112140720.htm>.

<sup>97</sup> See Shell, Shell in the U.S.: A Century of Innovation and Investment (Jan. 2007), [http://www.shell.com/static/us-en/downloads/about\\_shell/about\\_us\\_brochure.pdf](http://www.shell.com/static/us-en/downloads/about_shell/about_us_brochure.pdf) [hereinafter Shell in the U.S.]; About Shell, The History of Shell, 1980s to the New Century, [http://www.shell.com/home/content/aboutshell-en/who\\_we\\_are/our\\_history/1980s\\_to\\_new\\_century/1980s\\_to\\_new\\_century\\_22112006.html](http://www.shell.com/home/content/aboutshell-en/who_we_are/our_history/1980s_to_new_century/1980s_to_new_century_22112006.html) (last visited May 1, 2008) [hereinafter Shell, 1980s]; BP Global, About BP, Where We Operate, <http://www.bp.com> (follow “About BP” hyperlink; then follow “Where we operate” hyperlink) (last visited May 1, 2008).

<sup>98</sup> See Chevron, Contact Us, <http://www.chevron.com/contact> (last visited May 1, 2008); ConocoPhillips, Who We Are, [http://www.conocophillips.com/about/who\\_we\\_are/index.htm](http://www.conocophillips.com/about/who_we_are/index.htm) (last visited May 1, 2008); ExxonMobil, Business Headquarters, <http://www.exxonmobil.com>

multinational corporate players. They are valuable—ExxonMobil vies for the highest valued company by stock price in the world<sup>99</sup>—control enormous assets, operate globally, and their decisions have large effects on the environment. Nothing impacts environmental issues more than energy exploration, extraction, and utilization.

Moreover, for purposes of comparisons between them, these companies effectively deal with the same fungible product—petroleum products—and with many of the same players—national governments, small businesses, and a similar employee pool. The public face of these companies with respect to the issue of climate change, however, could not be more different. The European-based companies are famously known for embracing the science of climate change and the need to act on it,<sup>100</sup> whereas the American companies, particularly ExxonMobil, have fought regulation on climate change and even funded climate change skeptics.<sup>101</sup> Recent corporate reporting periods show that the European-based companies also spend more on renewable fuel research, with ExxonMobil and ConocoPhillips spending the least amount.<sup>102</sup>

These differences cannot be attributed to anticipated gains from publicity or anticipated regulation; otherwise, since these are large, multinational companies with similar economic inputs, their reactions should be remarkably similar. The only obvious difference between the companies is the culture of those who make policy decisions for them. The difference is so obvious that we sometimes neglect to explore it further. It is easy to say that BP and Shell are different because they are European, and Europe has a different view of energy and environmental issues.<sup>103</sup> But what is it about being based in Europe that would make them different if not for different cultural and social norms? Remember, most of their employees are in the United States, and many are in Texas, where ExxonMobil is headquartered.<sup>104</sup> What

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[www.exxonmobil.com/Siteflow/SuppInfo/Contacts/SF\\_CT\\_BusHeadquarters.asp](http://www.exxonmobil.com/Siteflow/SuppInfo/Contacts/SF_CT_BusHeadquarters.asp) (last visited May 1, 2008).

<sup>99</sup> See Danielle Sessa, *Exxon Passes GE to Become World's Biggest Company*, BLOOMBERG.COM, Feb. 18, 2005, <http://www.bloomberg.com/apps/news?pid=10000103&sid=aFHCp9i0LE9U>.

<sup>100</sup> Salzman et al., *supra* note 68, at 260 n.23; Livio Press Ad, *supra* note 73.

<sup>101</sup> Heather Timmons, *British Science Group Says Exxon Misrepresents Climate Issues*, N.Y. TIMES, Sept. 21, 2006, at C2.

<sup>102</sup> Daniel J. Weiss & Anne Wingate, *Money Guzzlers: Big Oil Prepares to Announce Profits*, CENTER FOR AM. PROGRESS, July 23, 2007, [http://www.americanprogress.org/issues/2007/07/money\\_guzzlers.html](http://www.americanprogress.org/issues/2007/07/money_guzzlers.html).

<sup>103</sup> William Underhill, *When Is Big Too Big?*, NEWSWEEK INT'L, Dec. 18, 2006, at 32.

<sup>104</sup> See Shell in the U.S., *supra* note 97; Shell, 1980s, *supra* note 97; BP Global, *supra* note 97; ExxonMobil, *supra* note 98.

is different is the location of their Chief Executive Officers and those that have the authority to make decisions.

Lest we think this geographic disparity is associated only with national cultures, we can see similar differences within the United States as well. When Kohlberg Kravis Roberts & Co., the private equity firm, sought to execute the largest private buyout in history of TXU Energy, the different environmental philosophies between New York City and Texas—specifically the control of greenhouse gases (GHGs) in power plant construction—became the main issue in the deal.<sup>105</sup>

These examples suggest that changing the opinions of a few individuals could drastically change environmental outcomes around the world. Some use this theory to justify the importance of zoos and aquariums to educate those in charge of environmental outcomes.<sup>106</sup> This theory has motivated Ceres, a coalition of environmentalists and investors, to seek to educate corporate directors about the science of climate change and its peril.<sup>107</sup> Ceres tries to inculcate its values in the corporate executives.<sup>108</sup> The discussion in this Article suggests that the power of local norms should be even stronger than mere education.

Of course, not all localities are created equal with respect to how much influence they can have over the private sector's effect on the environment. The decisionmakers of the most powerful companies in the world, those that influence environmental effects, may live in diverse places, but not in every city in the world. In fact, some types of private sector activities may be very concentrated in particular places. We think of *high tech* as associated with Silicon Valley, Seattle, and a few other locations in this country—such as *Silicon Alley* in New York, Route 128 in Boston, and Austin, Texas. Large financial organizations may have high concentrations in New York City, London, and Tokyo, and secondarily in another tier of cities. People often associate insurance with London, and energy with Houston. But, noting the diffuse nature of environmental harms, it may be that efforts in many places,

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<sup>105</sup> See Posting of Victor Flatt to University of Houston Law Center Faculty Blog, Saving the Environment One Transaction at a Time, <http://www.uhlawblog.com> (Apr. 2, 2007); see also *TXU Agrees to Go Private*, PLATTS.COM, Feb. 26, 2007, <http://www.topplants.platts.com/Electric%20Power/Resources/News%20Features/txu/index.xml> (noting the details of the deal).

<sup>106</sup> See Shaila Dewan, *Can Man Improve on Nature's Fishbowl?*, N.Y. TIMES, Apr. 8, 2007, § 4, at 12.

<sup>107</sup> Claudia H. Deutsch, *Global Warming Subject for Directors at Big Companies*, N.Y. TIMES, Sept. 21, 2006, at C2.

<sup>108</sup> See *id.*

on many companies large and small, may be useful and feasible, if the basic premise of interconnection is correct.

#### V. HOW DOES AFFECTING SOCIAL NORMS WORK?

How do local governments affect these social norms, and is the process replicable? I believe that connected, charismatic leaders are necessary for local government to affect environmental social norms, which in turn affect the environment itself. Charisma may not be replicable, but connection can be created.

The importance of the charisma and popularity of a leader cannot be overstated. The efforts of a city leader percolate through the community, particularly the business and regulatory community. When the cause is personal as well as political, the reach is even more extensive. A city's charismatic mayor or city councilmembers may be the personal actors with whom many business leaders have social and commercial contacts. They are the equivalent of the priest in the medieval cathedral. They do not directly control all capital or assets, but their influence reaches those who do. Thus, reaching these charismatic leaders can affect the most critical social norms of a community.

Former Mayor Rudy Giuliani claims to have altered New York City society by his powerful vision of what should be in terms of crime and livability. With respect to the environment, Mayor Bill White of Houston has made controlling air toxics a high priority, with pleas to polluters and citizens alike.<sup>109</sup> Although the problem goes on, Mayor White's involvement has changed the dynamic of the debate.<sup>110</sup>

Of course, this shift depends on a leader who is popular and influential with the people in the private sector who have the ability to affect change. These prior connections and trusting relationships are not directly reproducible. It appears, however, that good, old-fashioned engagement and community building can bridge the norm gap from a leader to the community that needs to change. London is a valuable example with respect to climate change.

By 2000, climate change had risen to the top of the agenda of both Prime Minister Tony Blair and, even more vociferously, the Lord Mayor of Greater London, Ken Livingstone.<sup>111</sup> Mayor Livingstone, a socialist

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<sup>109</sup> Bill White, Mayor of Houston, 2005 State of the City Speech, <http://billwhiteforhouston.com/000011.html> (last visited May 1, 2008).

<sup>110</sup> See Posting of Carolyn Feibel to NewsWatch: City Hall, <http://blogs.chron.com/cityhall/archives/2007/11> (Nov. 27, 2007, 17:01 CST).

<sup>111</sup> See John Vidal, *Plane Speaking*, GUARDIAN, Nov. 1, 2006, at P2, available at <http://www.guardian.co.uk/environment/2006/nov/01/travelsenvironmentalimpact.local>

not particularly known for his friendship with the private sector, decided to take an engagement approach with the private sector anyway.<sup>112</sup> In 2001, the City of London, working with other public and private entities, created the London Climate Change Partnership (LCCP or Partnership).<sup>113</sup> The goal was to help the City of London, its environs, and the United Kingdom cope with the effects of climate change as well as reduce the production of GHGs.<sup>114</sup> The Partnership has produced many papers and publicity on ways for the private sector to help with adaptation to and mitigation of climate change in the London area.<sup>115</sup> According to an LCCP spokesperson, initially the Partnership offered incentives to companies, such as energy-efficient materials and sources, to get them involved in discussions about climate change; over time, many of the representatives of these companies were inculcated to the importance of the issue and became some of its standard bearers.<sup>116</sup> They, in turn, went back to their companies and convinced many of the companies' personnel to change the methods to both adapt to the changing climate and reduce their own contributions.<sup>117</sup>

Particular attention has been paid to the financial services sector in London, which, due to its preeminence in financial services worldwide, provides a way to affect actions worldwide.<sup>118</sup> Lloyd's of London, for example, has given advice to its global market to include climate change in capital modeling.<sup>119</sup> Publications from the LCCP, based on recommendations of its business partners, now encourage all companies with substantial assets under their control to manage them to reduce the impacts of climate change.<sup>120</sup>

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lgovernment; Reuters, *Kyoto Greenhouse Gas Goals Face Tough Test in Hague*, CNN.COM, Nov. 9, 2000, <http://archives.cnn.com/2000/NATURE/11/09/hague.preview.reut/index.html>.

<sup>112</sup> See Mayor of London, London Climate Change Partnership, <http://www.london.gov.uk/climatechangepartnership> (last visited May 1, 2008).

<sup>113</sup> See *id.*; Mayor of London, London Climate Change Partnership, London's Warming: The Impacts of Climate Change on London, <http://www.london.gov.uk/climatechangepartnership/impacts.jsp> (last visited May 1, 2008).

<sup>114</sup> See Mayor of London, London Climate Change Partnership, Aims, <http://www.london.gov.uk/climatechangepartnership/aims.jsp> (last visited May 1, 2008).

<sup>115</sup> See Mayor of London, London Climate Change Partnership, Consultation Responses, [http://www.london.gov.uk/climatechangepartnership/con\\_res.jsp](http://www.london.gov.uk/climatechangepartnership/con_res.jsp) (last visited May 1, 2008).

<sup>116</sup> London Vice-Mayor, Presentation to the London Climate Change P'ship (Apr. 12, 2006) (contemporaneous notes by author, on file with author).

<sup>117</sup> *Id.*

<sup>118</sup> See FINANCE SUB-GROUP, LONDON CLIMATE CHANGE P'SHIP, MAYOR OF LONDON, ADAPTING TO CLIMATE CHANGE: BUSINESS AS USUAL? 12-13 (2006), available at <http://www.london.gov.uk/climatechangepartnership/docs/business-as-usual.pdf>.

<sup>119</sup> See *id.* at 14.

<sup>120</sup> See *id.*

The Partnership also established the London Climate Change Agency, which formally involved large businesses such as BP, and advanced the cultural acceptance of the notion that to maintain your reputation among your peers, you had to work to reduce the effect of climate change.<sup>121</sup> Because of London's size and centrality to finance, insurance, and energy, the Partnership's activities have had enormous impact on reducing GHG production in only a few years. The United Kingdom, and London in particular, have been leaders in highlighting the importance of reducing GHGs, and many British companies, such as Virgin Airways, continue to be the ones that introduce innovative programs for GHG reductions, which can be adopted by other industries and countries.<sup>122</sup>

## VI. GENERALIZABLE LESSONS

The LCCP example provides a good primer on harnessing the influence of locality and culture to effectuate specific change. The necessary ingredients include a strong local leader who is willing to both take a stand on the importance of an environmental position and get other powers in the community to agree.

The leader need not be from the private sector directly, though this may help the process. In many U.S. urban areas, the political power base may be separate from the business base. Some of this separation may be related to how political leaders arise, especially in Democratic strongholds—i.e., from grassroots or educational organizations—or the Democratic tilt of localities—due to higher percentages of reliable Democratic voters—coupled with the perceived antipathy of the Democratic Party to businesses. Those urban mayors that have aggressively courted business interests, however, can win their trust, as Ken Livingstone did, in order to start a dialogue.<sup>123</sup>

The next step is for that leader to provide an incentive for the private sector to get involved with the issue. In London and in many U.S. localities, the answer has been energy efficiency, which promises inde-

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<sup>121</sup> Press Release, BP, BP Backs London Climate Change Initiative (June 28, 2005), available at <http://www.bp.com/genericarticle.do?categoryId=97&contentId=7006960>.

<sup>122</sup> See Jay Boehmer, *Virgin Leading Effort to Reduce CO2 Emissions*, BUS. TRAVEL NEWS ONLINE, Oct. 9, 2006, [http://www.btmag.com/businesstravelnews/headlines/frontpage\\_display.jsp?vnu\\_content\\_id=1003221668](http://www.btmag.com/businesstravelnews/headlines/frontpage_display.jsp?vnu_content_id=1003221668).

<sup>123</sup> See, e.g., Aaron Lazenby, *Mile-High E-Government*, PROFIT ONLINE, Aug. 2006, <http://www.oracle.com/profit/features/p36denver.html>.

pendent economic gain.<sup>124</sup> Due to the lack of national leadership on this issue in the United States, many private sector participants would probably like to have a centralized location that can provide information and incentives to reduce energy bills: cities could fill this role. Another economic incentive that can be used by a city is the promise of examining issues that are important to business because of secondary economic impacts, such as zoning strategies, public improvements, or traffic and parking policies. Each of these issues also has a natural connection to environmental concerns.

Once the private sector becomes involved, the social norm creation of this rarefied group begins. There is a chance to educate group members about important issues, such as climate change, which is itself an incentive. For instance, what should every business know about predicted changes due to climate change—such as higher insurance rates—in order to save money on future investments, and what can these businesses do together with that knowledge?

Though considered a dirty word, it is at this point that one may begin to *co-opt* the private sector parties into understanding why it is important to *do the right thing*, and why they will feel a personal reputational incentive to do so. They in turn will further *spread the gospel* to their colleagues, leading to changes in business management and decisionmaking. This result is, of course, the supposed arc of any type of advertising, and in this instance is a more direct and powerful means of connecting a person's decisions to peer judgments about how those decisions are made.

While this strategy might not work to convince the whole world of any particular position—after all, if there were such a magic formula, it would already be used in politics—it is particularly adapted to situations in which many of the problems in behavior actually lie in the lack of knowledge about an issue: a central problem in the environmental context. While you might not be able to convince all businesses to support a repeal of the Second Amendment by showing them examples of people being shot, it might be possible to convince them that climate change is occurring and is affecting their world and the world of others.

Creating a targeted social norm in the private sector that has control over environmental effects will of course supplement, and be supplemented by, a change in social norms in the general community. Here, the impact of community social norms is so obvious that we usu-

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<sup>124</sup> See, e.g., State of New Jersey, Global Warming, What Is NJ Doing About Climate Change, <http://nj.gov/globalwarming/initiatives> (last visited May 1, 2008).

ally do not think about it. Berkeley and Boulder are *green, liberal* cities. Atlanta and Houston are *pro-business*. These labels have power, and also point out how local social norm creation can vary and may be more effective if tailored at the local level. Different approaches can lead to similar, positive outcomes—the benefit and province of local control. Seattle and Houston provide examples related to climate change.

Seattle and Houston have both become involved with climate change issues recently, as have many cities in the country; but, their differing approaches illustrate how locally tailored social norm creation is more effective than a national approach. In Seattle, the approach is centered around the idea of doing what is right, and controlling bad corporate behavior.<sup>125</sup> The centerpiece was the mayor's letter, which Mayor Greg Nickels created to encourage cities to pledge to reduce climate change actions.<sup>126</sup> The program has since expanded to engagement with the private sector and a Seattle Climate Action Plan.<sup>127</sup> The Seattle mayor traded on the culture of the city by connecting the city's tradition of environmentalism to climate change.<sup>128</sup> He also showed a willingness to engage with the business community.<sup>129</sup>

The mayor of the City of Houston has not signed Mayor Nickels' letter.<sup>130</sup> However, the Houston mayor has asked city personnel to inventory GHGs in the city and has supported assisting businesses with reducing climate change impacts through energy efficiency.<sup>131</sup> He proposed that the city begin purchasing large amounts of wind power and gave as a public reason that it was cheaper and more reliable, i.e., better for business, while secondarily touting its benefits to the environment.<sup>132</sup> Moreover, as the leader of the city at the center of the worldwide energy industry, he has directed the city to become a member of

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<sup>125</sup> See Seattle Climate Action Plan Homepage, <http://www.seattle.gov/climate> (last visited May 1, 2008).

<sup>126</sup> See Letter from Greg Nickels, Mayor of Seattle, to U.S. mayors (Mar. 30, 2005), available at [http://www.seattle.gov/mayor/climate/pdf/uscm\\_6-page\\_climate\\_mailing\\_all.pdf](http://www.seattle.gov/mayor/climate/pdf/uscm_6-page_climate_mailing_all.pdf); Seattle Mayor Nickels, US Mayors Climate Protection Agreement, <http://www.seattle.gov/mayor/climate/default.htm#cities> (last visited May 1, 2008).

<sup>127</sup> Seattle.gov, Office of Sustainability and Environment, Climate Protection, [http://www.seattle.gov/environment/climate\\_protection.htm](http://www.seattle.gov/environment/climate_protection.htm) (last visited May 1, 2008).

<sup>128</sup> See *id.*

<sup>129</sup> See *id.*

<sup>130</sup> See Mayors Climate Protection Center, US Conference of Mayors, Cities That Have Signed On, <http://usmayors.org/climateprotection/cities.asp?state=tx> (last visited May 1, 2008).

<sup>131</sup> City of Houston, What We Do, Climate Change, <http://www.houstontx.gov/environment/whatwedo.html#cc1> (last visited May 1, 2008).

<sup>132</sup> See Matt Stiles, *Wind Behind City's New Power Plan*, HOUSTON CHRON., July 13, 2007, at A1.



the International Council of Local Environmental Initiatives (ICLEI) and has met with Mayor Livingstone of London to discuss climate change initiatives.<sup>133</sup> The Houston mayor took his city's pro-business reputation and connected it to climate change.<sup>134</sup>

Both mayors are active on the issue, but their actions are shaped by their community. In Seattle, the mayor appeals to the local norm of environmentalism, while in Houston, the mayor appeals to the business advantages of controlling GHGs.<sup>135</sup> Both were strategies of the City of London, and both seem to be effective.<sup>136</sup>

#### CONCLUSION

The use of persuasion and personal connections to influence the behavior of those who make important decisions in the private sector may seem too fuzzy to make much sense as an environmental policy strategy. From a distance, such ideas can seem part bullying, part debate, part social pressure, part Stockholm Syndrome, and part voodoo. Indeed, the power of social norms in general as a form of policy implementation was not seriously examined until the 1990s, probably because the very nature of social impacts was antithetical to traditional legal doctrine. *Targeted, local social norms* may seem even more disconnected from law. There seems to be an uncomfortable focus on class, money, and connections. We have not typically thought of this tactic as a way to effectuate policy. But, as noted in this Article, the need to actually influence the private sector to protect the environment when they are not forced to do so is an important one. The process of creating such influence is not all foreign. Much of the process relies on education, which has always been part of the environmental movement. Moreover, the power of social norms to influence human behavior is well documented. I hope this Article spurs discussion on influencing social norms as a viable strategy and, through the example of London, shows that it is a strategy that can be broken down into pieces and replicated. It may not work everywhere, but if it works in just a few key cities and places, the difference to the environment could be profound.

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<sup>133</sup> See Press Release, City of Houston, Mayor Bill White Announces City Membership in Group to Help Cut Greenhouse Gases (June 30, 2006), available at <http://www.houstontx.gov/mayor/press/20060630a.html>; State of London Debate (May 12, 2007) (on file with author); Large Cities Climate Summit, Who's Coming, <http://www.nyclimatesummit.com/who.html> (last visited May 1, 2008).

<sup>134</sup> See Stiles, *supra* note 132, at A1.

<sup>135</sup> See *id.*

<sup>136</sup> See *supra* notes 117–126 and accompanying text.