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**FOURTEENTH ANNUAL
LLOYD K. GARRISON LECTURE
ON ENVIRONMENTAL LAW**

**Global Climate Change:
A Civic Republican Moment for
Achieving Broader Changes in
Environmental Behavior**

HOPE M. BABCOCK*

April 17, 2008

Good afternoon. I want to start by thanking you for inviting me to join the distinguished parade of speakers who have preceded me at this podium. I am unbelievably honored and pleased to be here. Lloyd Garrison whose eloquence and skillful lawyering in cases like *Scenic Hudson* not only preserved important natural resources like Storm King Mountain and the Hudson River, but also helped launch the environmental movement we know today and its legion of lawyers, many of whom sit in this audience or will soon join their ranks.

Although the topic I want to address this afternoon, how to induce each of us to be better environmental citizens, is largely

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outside the scope of our environmental laws, it nonetheless deserves our attention, especially as many of us will gather in a few days to celebrate Earth Day. The problem confronting us is that we are nearing the end of achieving future gains in pollution abatement from traditional sources and the pollution that remains is largely caused by individual behavior. This is true even though polls show that people consistently rate protecting the environment among their highest priorities, say they are willing to pay more to protect environmental resources, and indeed, faithfully contribute to environmental causes. Most efforts to control individual human sources of pollution have failed or not been tried because of the monumental task and cost of regulating personal behavior, the intrusiveness of doing so, and the inhibiting fear of political backlash should regulation be attempted.

This lecture is my first step down a much longer road trying to unravel this puzzle.¹ At the end of the road, I hope to understand why, given the strength of the abstract environmental protection norm, individuals behave in environmentally destructive ways, and what, if anything, can be done to change that behavior. The larger project will look at various ways of changing personal behavior.² But for this talk, I am going to focus on only one of those ways: modifying social and personal norms. I am also going to look at only one circumstance in which norm change may occur, during an environmental crisis accompanied by heightened public activity, what some scholars, like Dan Farber and Michael Vandenberg, refer to as a “republican moment.”³ They believe

1. This lecture draws heavily on the work of Michael Vandenberg on norms and individual behavior, found in, *From Smokestack to SUV: The Individual as Regulated Entity in the New Era of Environmental Law*, 57 *VAND. L. REV.* 515 (2004) [hereinafter *From Smokestack to SUV*]; *The Social Meaning of Environmental Command and Control*, 20 *VA. ENVTL. L.J.* 191 (2001); *Beyond Elegance: A Testable Typology of Social Norms in Corporate Environmental Compliance*, 22 *STAN. ENVTL. L.J.* 55 (2003) [hereinafter *Beyond Elegance*]; *Order Without Social Norms: How Personal Norm Activation Can Protect the Environment*, 99 *Nw. U. L. REV.* 1101 (2005); *The Carbon Neutral Individual*, 82 *N.Y.U. L. REV.* 1673 (2007) [hereinafter *The Carbon Neutral Individual*].

2. Since giving this lecture, the larger piece has been written and accepted for publication. See Hope M. Babcock, *Assuming Personal Responsibility for Improving the Environment: Moving Toward a New Environmental Norm*, 33 *HARV. ENVTL. L. REV.* (forthcoming 2008) [hereinafter *Assuming Personal Responsibility*]. A second essay will complete the trilogy. See Hope M. Babcock, *Civic Republicanism Provides Theoretical Support for Making Individuals More Environmentally Responsible*, 23 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* (forthcoming 2009).

3. See Daniel A. Farber, *Politics and Procedure in Environmental Law*, 8 *J.L. ECON. & ORG.* 59, 66 (1992) (arguing the 1970 Earth Day had the appearance of a “republican moment” in which twenty million people participated in various public

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such a moment occurred in response to the environmental disasters of the late 1960s and early 1970s, which briefly resulted in widespread public support for a variety of legislative and regulatory initiatives and spawned the emergence of what I call the environmental citizen.

My thesis is that such a moment is happening again today, and the generative crisis is global climate change. The challenge for this generation is how to capture and broaden the momentum created by climate change to enlarge the abstract environmental protection norm to specifically include individual responsibility and thus perhaps change personal environmental behavior.

To develop this idea, I start with some of the empirical support for the contention that unregulated individual behavior is a significant source of environmental pollution. Since my thesis is that the villains behind this behavior are the wrong norms, I briefly discuss how norms are formed and their effect on personal behavior as well as some barriers to their formation and to behavioral changes. I then turn my attention to this idea of a republican moment and whether the growing sense of public crisis about global climate change might be just such a moment. While I believe it is, that is not the end of the story. The moment must be seized if a new norm of individual environmental responsibility is to materialize and a reawakened environmental citizen who takes greater responsibility for her personal behavior is to emerge. I conclude by discussing how that might be done.

Over a decade ago, former Environmental Protection Agency Administrator William Ruckelshaus stated that “the most significant threats to our environment now seem to lie, not with major industrial sites, but in the habits of ordinary Americans: we like to drive big powerful cars, use a lot of electricity, generate a lot of waste, enjoy cheap food, live in grassy suburbs, and collectively send pollution in massive amounts to often distant waterways and airsheds.”⁴ Unfortunately that is still true. We contribute to the planet’s pollutant loadings every time we elect to drive instead of walk, fertilize our lawns, spray pesticides on outdoor plants, pour

events, including 10,000 elementary and high schools, 200 colleges, and 2,000 communities); Michael P. Vandenberg, *The Social Meaning of Environmental Command and Control*, 20 VA. ENVTL. L.J. 191, 212 (2001) (identifying the public’s response to the environmental crises of the late-1960s and early-1970s as a “republican moment”).

4. William D. Ruckelshaus, *Stopping the Pendulum*, ENVTL. F. 25, 26-27 (Nov./Dec. 1995), *quoted in* Michael P. Vandenberg, *The Social Meaning of Environmental Command and Control*, 20 VA. ENVTL. L.J. 191, 197 n.32 (2001).

household chemicals down the kitchen sink, and engage in a myriad of other everyday activities. Although each one of these behaviors contributes only a small amount of pollution to the environment, when aggregated across the population, the total amounts are staggering. The result is that, although industrial sources continue to be a major cause of pollution, individuals are now the largest remaining source of many pollutants of concern.

For example, common household products and toiletries like shaving cream, deodorants, soap, shampoo, toothpaste, mouthwash, detergents, and soft drinks compose nearly fifteen percent of the mercury found in domestic wastewater – an amount equaling mercury discharges to wastewater from all large industrial facilities combined.⁵ We also release mercury into the environment each time we dispose of used batteries, florescent light bulbs, thermometers, cell phones, and computers in the garbage or along the side of a road. Individuals discharge “fifty times more benzene than all large industrial facilities combined and five times more formaldehyde.”⁶ In 1997, EPA estimated home and garden pesticide use accounted for eleven percent of total pesticide use. Ninety-five percent of urban carbon monoxide emissions come from tailpipes and minor sources, while lawn and garden equipment produce sixty-two percent of the carbon monoxide from non-road sources.⁷ According to EPA, motor vehicles, consumer products, and other small, non-industrial sources now contribute seventy-six percent of all air toxics.

The individual polluter’s proportionate share of the total pollutant load is getting larger as a result of population growth and individual consumer choices, even as regulatory controls continue to reduce emissions from large industrial sources. For example, the percentage of total emissions of nitrogen oxide and volatile organic compounds remains relatively stable because substantial reductions in per-vehicle tailpipe emissions from mobile sources are being offset by the increasing popularity of larger, more polluting pick-up trucks and SUVs. More cars on the road and urban sprawl have resulted in vehicle miles traveled more than doubling since 1970.

5. Unless otherwise noted, the statistics in this and the next two paragraphs come from Michael P. Vandenbergh, *From Smokestack to SUV: The Individual as Regulated Entity in the New Era of Environmental Law*, 57 VAND. L. REV. 515 (2004).

6. Benzene is found in solvents and gasoline and formaldehyde in fungicides and herbicides.

7. Michael P. Vandenberg & Anne C. Steinemann, *The Carbon-Neutral Individual*, 82 N.Y.U. L. REV. 1673, 1677 (2007).

The risks arising from individual polluting behavior are often equal to or greater than those arising from industrial sources because the releases occur near the user and other members of her household. Levels of pollutants in the air inside homes significantly exceed levels in the ambient air, making indoor air pollution a leading human exposure pathway for many toxics. Releases of toxic chemicals by individuals also happen in places where they are more likely to expose sensitive subpopulations because children, the elderly, and sick “are more likely to breathe indoor air or the air inside a motor vehicle than to breath air contaminated by air toxics released from a distant factory.”⁸

Global consumption has achieved a historically high level with as many goods and services being consumed since 1950 as all previous generations combined.⁹ According to Gro Harlem Brundtland, former Prime Minister of Norway and former Chair of the United Nation’s World Commission on the Environment and Development, “[i]t is simply impossible for the world as a whole to sustain a Western level of consumption for all. In fact, if seven billion people were to consume as much energy and resources as we do in the West today, we would need ten worlds, not one to satisfy all our needs.” Douglas Kysar sees the “competitive consumer” as continually trading in perfectly good products for the most recent model with the most up-to-the-minute features because she wants to own something relatively few others can obtain, “an observable symbol that signifies success under prevailing social norms.” According to a *Washington Post* columnist, this need to be conspicuous affects even the “green consumer” – “consuming” until you’re squeaky green. It feels so good. It looks so good. It feels so good to look so good, which is why conspicuousness is key.”¹⁰

Most of the activities discussed above reflect personal lifestyle choices beyond the scope of our environmental laws. Even if there were laws that reached these activities, enforcement would be a serious problem. Efforts to detect and ultimately enforce against environmentally harmful individual activities, many of which occur in and around the home, would be costly for the government to

8. Michael P. Vandenberg, *Order Without Social Norms: How Personal Norm Activation Can Protect the Environment*, 99 Nw. U. L. REV. 1101, 1153 (2005).

9. Unless otherwise indicated, the statistics and quotations in this paragraph come from Douglas A. Kysar, *Law, Environment, and Vision*, 97 Nw. U. L. REV. 675 (2003).

10. Monica Hesse, *Greed in the Name of Green, to Worshipers of Consumption: Spending Won't Save the Earth*, WASH. POST, Mar. 5, 2008, at C01.

carry out and would trigger enormous political resistance because of the interference with individual liberty and invasion of privacy. The questionable personal behavior may, in fact, be perfectly legal (driving a Hummer) or generally tolerated (littering). It is unlikely that Congress will amend environmental laws to reach individual actions because trying to legislate personal behavior would generate enormous ill will and be politically suicidal. This means that changes in individual environmental behavior must come about through other means.

The prospect of changing personal environmental behavior through informal means is also daunting because of the many barriers that lie in the way. One barrier is the persistence of a “myth” that incorrectly attributes the causes of environmental problems solely to industrial point sources. According to Vandenberg, the regulatory command and control system reflected in our major environmental laws has contributed to the persistence of this myth by indirectly conveying “a second social meaning”¹¹ – that industrial polluters are the source of environmental problems, while individuals are part of the solution. These laws target industrial and manufacturing sources by imposing regulatory requirements and penalties on them while individuals share enforcement responsibility for breaches of those laws under citizen suit provisions.

Another reason for the persistence of this myth may be a form of cognitive dissonance, the inability to hold two contradictory views of oneself at the same time. When we are subject to inconsistent thoughts or there are discrepancies between our thoughts and actions, if we cannot resolve these contradictions easily, we are inclined to wall away or side-step information that makes us feel bad, particularly if feeling bad has to do with our own behavior. Cognitive dissonance makes it extremely difficult for us to believe that we support protection of the environment at the same time that we are contributing to its degradation. When good environmental behavior requires some effort or costs money, it is easier to avoid any inquiry into the effects of our behavior and to blame industry or even the government for the problem.

Lior Strahilevitz illustrates the phenomenon of cognitive dissonance by pointing to the norm of solo commuting. That norm is so firmly engraved in the mind of the driving public that while drivers recognize congestion is a problem, they view solo commut-

11. See, e.g., Vandenberg, *supra* note 4, at 191.

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ing as an individual choice with individual consequences.¹² The solo commuting norm persists even though most of us recognize that if everyone behaved as we do, traffic would be even more impossible than it is today. We can observe that traffic is moving better in HOV lanes and know that all we have to do to share in that benefit would be to pick up additional drivers, but still we drive alone. In this regard, carpooling is similar to many environmental goods where there is a “discrepancy between expressed citizen preferences that support carpooling and actual commuter behavior.”

We also are inclined to process information in ways that do not necessarily increase our knowledge about a particular situation, especially one that may be harmful. According to Daniel Shuman, people consistently “overestimate their knowledge about a decision; evaluate information and attribute causality in very different ways based upon the framing of the information; [and] . . . make stereotypical decisions and select information to support them based on conclusions reached before receiving data about those decisions.”¹³ Further, we all prefer choices that are presented in “black-and-white over shades of gray,” which leads us “to hold over-simplified beliefs and to hold them with excessive confidence.” Given that environmental issues are frequently in shades of gray, this cognitive problem could explain why it has taken so long for Americans to absorb the complexity and “grayness” of global warming. The fact that people are also inclined “to anchor their decisions stereotypically based upon their earlier conclusions, and use information gained thereafter selectively to support those decisions” makes it harder to persuade them to let go of our earlier impressions about who is responsible for causing environmental harms.

People suffer from an “alarmist bias,” on the one hand, and an “optimistic bias,” on the other, both of which affect how we perceive our own role as a contributor to environmental problems.¹⁴ The alarmist bias makes frightening information more salient. Since there appears to be nothing alarming about engaging in every day activities like house cleaning or gardening, it seems un-

12. See, e.g., Lior Jacob Strahilevitz, *How Changes in Property Regimes Influence Social Norms: Commodifying California’s Carpool Lanes*, 75 IND. L.J. 1231, 1236 (2000) (the thoughts and quotations in this paragraph are drawn from Strahilevitz’s article).

13. Daniel W. Shuman, *The Psychology of Deterrence in Tort Law*, 42 U. KAN. L. REV. 115, 129 (1993).

14. See *From Smokestack to SUV*, *supra* note 1.

likely that those activities could actually be harmful. At the same time, an optimistic bias leads us to overestimate the earth's capacity to absorb environmental harm, which means we may underestimate the risk to the environment of using harmful substances in our houses or on our lawns. Additionally, the steep discount rate that most people have leads them to under-value the benefits of behavioral changes that will not occur until some time in the future. This may dissuade them from investing in energy efficient, less polluting cars, lighting, and heating equipment.

There are many other reasons why people engage in poor environmental practices. For example, personal habits, like leaving lights on in an empty room, are hard to break. According to Vandenberg, habits save mental effort and time by shortcutting decisional processes.¹⁵ Because habits are so handy, they continue to control our behavior even when the costs of maintaining them are high. Habits become even harder to overcome if the new behavior is inconvenient, costly, or requires significant effort to engage in.

Because the amount of pollution from an individual is small compared to the pollution from an industrial source, and its impact is neither readily apparent nor necessarily immediate, it is hard to convince any one individual that changing her behavior will make a difference. Pity the poor director of the Office of Environmental Quality for Dallas who, after noting that one in four vehicles in Texas is a gas guzzling pickup truck, said, "How do I reach an individual citizen and tell them: Everybody makes a difference."¹⁶

Although there may be "generalized benefits to the collective," there are no visible immediate benefits to the person who behaves in an environmentally responsible manner.¹⁷ Therefore, the rational individual can free-ride on the good behavior of others and still get the benefit of their behavior. Alternatively, the same rational individual can as easily reason that if she behaves consistently with the collective good, her individual behavior will have no effect unless others also participate.

None of us is very good at restraining ourselves, which is at the heart of any request that we lower our rate of consumption.

15. See, e.g., *From Smokestack to SUV*, *supra* note 1 (discussing the topic of habits).

16. Felicity Barringer, *In Many Communities, It's Not Easy Going Green*, N. Y. TIMES, Feb. 7, 2008, at A14.

17. See, e.g., Ann E. Carlson, *Recycling Norms*, 89 CAL. L. REV. 1231 (2001).

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While we may be able to exercise self-restraint on small matters (giving up chocolate for Lent), to achieve something as large and challenging as global warming, zero discharge of pollution, or biodiversity protection “takes a village,” a committed community of supporters. America’s love affair with cars and the power of the “norm of solo commuting” illustrate how hard it is to change personal behavior based on a theory of self-restraint.

The fact that we misapprehend our role as a causative factor in environmental degradation leads us to resist changing our behavior, especially when behavior change is costly or inconvenient and an immediate personal benefit from improved behavior may not be readily apparent. People are also unwilling to change their behavior, if they do not believe the reason behind the suggested behavioral change or they question the legitimacy of the underlying norm or the institution recommending the change. Additionally, if the new good behavior, like recycling or driving to a hazardous waste disposal site to dispose of your toxic household cleansers, is not observed by others, then one of the most important reasons why people behave well, the positive regard of neighbors and friends, is missing.

Last, it may be difficult to figure out what the correct behavior is.¹⁸ Often, there are no simple answers to environmental problems. Sometimes the answers spawn new problems. For example, two recent scientific studies independently concluded that biofuels cause more greenhouse gas emissions than conventional fuels when the full emissions costs of producing them are accounted for.¹⁹ So what should the good environmental citizen who is concerned about climate change do? When uncertainty is coupled with the inertia created by myths, cognitive dissonance, habit, and other barriers to changing personal environmental behavior, it is not difficult to see why people do not easily abandon their prior “bad” behavior.

How can norms, mere social or personal rules that do not depend on the government for their issuance or enforcement, help

18. See, e.g., Barringer, *supra* note 16, at A14; Michael Specter, *Big Foot: In Measuring Carbon Emissions, it's Easy to Confuse Morality With Science*, THE NEW YORKER, Feb. 25, 2008, at 44, 48.

19. Elizabeth Rosenthal, *Studies Call Biofuels a Greenhouse Threat*, N.Y. TIMES, Feb. 8, 2008, at A9 (Prominent among those costs is land clearing for the production of fuel crops as well as the emissions released during the process of converting plants into fuel from refining and transportation).

surmount the barriers to “good” environmental behavior?²⁰ After all, norms are only informal obligations that tell us how we *should* behave to conform to some community standard of proper behavior.

We have internalized some norms as obligations or as a result of repeated, personal contacts with family, friends, neighbors, schools or religious organizations. Giving money to charities, tipping at restaurants where you have no expectation of returning, and scooping your dog’s poop are all examples of internal norms that most of us have. These personal interactions become a mutual expectation of how we are going to act that constrains our behavior, even when we know that others will not reward our good behavior. Internal norms are generally enforced through a sense of guilt, anxiety, or loss of self esteem.

There are also external norms. They are different from internal norms because they embody general expectations about appropriate public behavior and are, therefore, responsive to external forms of enforcement like gossip, labeling, shaming or shunning. When our behavior comports with an internal norm, we feel proud and experience a sense of increased self esteem. When we comply with an external norm our standing in our community, among our friends and family is enhanced; we earn their esteem and praise. According to Ann Carlson, violating an internal or external norm creates a cost that can “tip” the cost-benefit balance of an action in favor of conforming to the norm.²¹

Norms are thus a private, decentralized, and inexpensive way of controlling social behavior through personal guilt, community observation, and sanctions like shaming. Norms can also supplement government action. They work particularly well for small, insignificant violations or in cases where it is too hard to prove guilt – like pouring waste oil down a drain or throwing a bottle out

20. In developing this part of the paper on norms, what they are, how they emerge and change, and how they are enforced, in addition to Michael Vandenberg’s article noted earlier, I have drawn on the work of Richard A. Posner, *Creating and Enforcing Norms, with Special Reference to Sanctions*, 19 INT’L REV. L. & ECON. 369 (1999); Saul Levmore, *Norms and Supplements*, 86 VA. L. REV. 1989 (2000); Robert D. Cooter, *Three Effects of Social Norms on Law: Expression, Deterrence, and Internalization*, 79 OR. L. REV. 1 (2000); Alex Geisinger, *A Group Identity Theory of Social Norms and Its Implications*, 78 TUL. L. REV. 605 (2004); Geoffrey P. Miller, *Norms and Interests*, 32 HOFSTRA L. REV. 637 (2003); Geoffrey P. Miller, *Norm Enforcement in the Public Sphere: The Case of Handicapped Parking*, 71 Geo. Wash. L. Rev. 895 (2003); Ann E. Carlson, *supra* note 17; Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996).

21. Carlson, *supra* note 17, at 1294.

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a car window. Norms work because they and the expected sanctions for their violation, like a look of disapproval, are generally understood.

This is not to say that norms always function well as ways of controlling social behavior – they do not, especially in circumstances where the harms caused by the norm violator are externalized to others. In that situation, the effort and cost of conforming to the norm will probably exceed the benefit from behaving properly, making it unlikely that behavior will change. Additionally, if there are external constraints on your choice of behavior, such as the cost of alternative behavior or the effort involved in implementing the new behavior, you may deploy some of the cognitive devices I mentioned before to neutralize guilt, such as blaming others for the problem or redefining the problem so that the particular norm is not invoked. Any ambiguity about the specific behavior required to conform to the norm will reduce any feeling of personal guilt for not complying and will also leave external norm enforcers uncertain about whether they should shame or ostracize the bad actor. Further, to the extent norms are created and sustained by social sanctions, it may be difficult to find ways to use those sanctions in situations where the norm violator acts in private or in non-repeat circumstances, for example solo commuting in an HOV lane.

Nonetheless, abstract norms, like environmental protection, do influence our behavior when we are aware of the consequences our actions will have for others, and when we accept personal responsibility for those actions. According to Vandenberg, when those two factors are present, a concrete norm that relates to, or implements, an abstract norm and tells us how to act will be activated.²² Our compliance with a norm also increases if we are confident about the information telling us our behavior is bad and in situations where we believe the norm will be enforced by others, like our family, community, or even the government.

Thus, providing information that ties our behavior (turning off lights) to avoiding environmental harm (air pollution from coal-fired power plants) appears to be an essential part of activating positive, concrete environmental norms (conserve energy). In situations where the relevant community agrees on how to conform to a concrete norm, a level of expectation about proper behavior is created to which we almost unthinkingly conform, like

22. *Beyond Elegance*, *supra* note 1, at 73.

saying thank you when someone does something for you. We have no doubt whether a particular behavior is good or bad in those circumstances; we have internalized that lesson, and motivators of personal behavior like guilt, lack of self esteem, or community sanction come into play to enforce the concrete norm.

Thirty years of polling data show that there continues to be a widely supported, powerful abstract norm promoting protection of human health and the environment. There are also other broadly held abstract norms that indirectly influence good environmental behavior.²³ One of these is the “compliance with law norm.” Most of us have internalized this norm and feel a moral commitment to be law-abiding, which functions as a constraint on our behavior and which is reinforced by a sense of shame if the prohibited act occurs. Thus, we do not generally fill wetlands, kill endangered species, or engage in other obvious violations of the law even when we think we may not be caught. A second broadly held abstract norm is the “personal responsibility norm,” summarized in the euphemism “Do no harm to others.” Vandenberg believes this norm can be linked to global warming and lead to reduced individual carbon-emitting behavior.²⁴

Unfortunately, there are also competing abstract norms of equal or greater strength that may inhibit good environmental behavior. For example, the more we adhere to what Vandenberg calls the “autonomy norm,” rather than behaving in an environmentally correct way when faced with possible sanctions, the more we may instead increase our non-compliant behavior. Texas has used the autonomy or individual liberty norm to good effect in its “Don’t Mess with Texas – Real Texans Don’t Litter” anti-littering campaign. The state emphasizes the aspect of litter prevention that involves individual control over the quality of the environment rather than government control over the individual. Similarly, the “privacy norm” might prevent the internalization of a new norm because it might interfere with the use of shame sanctions, which can encourage norm internalization.

The “reciprocity norm” is activated when we believe we are not being treated fairly, that our good behavior is not being rewarded or that the bad behavior of others in not being sanctioned in some way, lessening the impetus to adhere to a norm of good environmental behavior. The “conformity norm” arises when we

23. The non-environmental norms that are discussed in this part of the article come from *Beyond Elegance*, *supra* note 1.

24. *The Carbon Neutral Individual*, *supra* note 1, at 1678.

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use the behavior of others to evaluate our own behavior. That norm stokes our fear of being perceived as a patsy or a dupe if we engage in good environmental behavior, like properly disposing of litter or conserving water, after observing widespread noncompliance with that behavior.

Additionally, while the abstract environmental protection norm is robust, it may be too abstract and not sufficiently fine-tuned or related to specific concrete norms (clean beaches) and desired actions (do not litter) to overcome all the barriers and conflicting norms that lie in the way of environmentally responsible personal behavior. Persuading people to adhere to an abstract environmental protection norm is much more difficult than persuading parents to put their child in a car seat where the benefit to the child is obvious, and there is an immediate connection with the norm of being a good parent and the related action.²⁵

Perhaps a partial solution lies in modifying the abstract environmental protection norm to address individual environmental responsibility. Doing this will tie the supplemental concrete norms more directly to personal behavior and thus increase the likelihood of their implementation by individuals.

However, changing a norm is a difficult and lengthy process involving public acceptance and enforcement of the modified norm. To the extent the abstract environmental protection norm has been implemented in a way that makes companies and manufacturers the principal parties responsible for environmental harm, the challenge is even greater because changing that norm requires the abandonment of preconceived ideas. Steps must also be taken during any change in the current industry-focused environmental protection norm that it not disappear as people substitute themselves for the traditional sources of environmental harm.

One way of creating or modifying norms and influencing perceptions about the acceptability of certain behavior is the enactment of a law, such as requiring the use of seat belts, or issuance of a regulation mandating certain behavior. According to Robert Cooter, it may be enough for a new law or regulation merely to be proposed to create an expectation that new environmental behavior is required, causing “a jump to a new [behavioral] equilibrium,”²⁶ not unlike how complex ecosystems behave in response to

25. See *Beyond Elegance*, *supra* note 1, at 75.

26. Cooter, *supra* note 20, at 21.

some change or disturbance. However, as noted earlier, it is highly unlikely that a new law or rule regulating individual environmental behavior will be proposed, let alone enacted.

Cooter suggests that the government can also assist in the emergence of a new norm through public programs that express norms, like sponsoring beach cleanups or posting “no smoking signs” in public places. These initiatives can be seen as reflecting a public consensus about an undesirable action and can tie an abstract norm (environmental protection) to a concrete norm (clean beaches) and a specific, desirable action (don’t litter), which in turn can lead to reformed behavior. Strahilevitz says the government can additionally help influence norms by recasting an activity that was formerly viewed as an individual choice (smoking) with individual consequences (the smoker’s health) into one that causes harm to others (second hand smoke), activating Vandenberg’s “personal responsibility norm.” However, other scholars, like Alex Geisinger, believe government interference in norm creation and enforcement is counter-productive and, at best, limited because the government is not an “ingroup source.”²⁷

If not the government, then who should play the role of norm modifier? Cass Sunstein suggests that “norm entrepreneurs” – “self-appointed champions of particular values or rules of behavior”²⁸ – can function as a force for change. When a norm entrepreneur starts to change the behavior of others a “‘cascade’ or ‘bandwagon’ effect may occur as people abandon the old norm and come to behave in conformity with the new one.”²⁹ According to Geisinger, this type of cascade can be set off by a sustained information campaign from a trusted source.

However, there must be a sense of urgency about the underlying problem, if a modified abstract norm of environmental protection is to emerge and affect behavior. I submit that global warming, like the burning rivers and polluted air of the 1960s and 1970s, has created the requisite sense of urgency.³⁰ But urgency without action is not enough for a norm to emerge. What is needed is an “outburst of democratic participation and ideological

27. Geisinger, *supra* note 20, at 651.

28. Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 909 (1996).

29. Miller, *supra* note 20, at 639.

30. See Intergovernmental Panel on Climate Change: Third Assessment Report (2001), and Intergovernmental Panel on Climate Change, Fourth Assessment Report (2007), available at <http://www.ipcc.ch>.

politics” potentially transforming “our political order,”³¹ like what occurs during a “republican moment.”

Such an “outburst” seems to be happening as well. For example “possessing an excessive carbon footprint is rapidly becoming the modern equivalent of wearing a scarlet letter.”³² During Lent, the Church of England suggested that parishioners give up carbon rather than chocolate as part of a carbon fast. Wind turbines fuelled the 2008 Super Bowl. Wal-Mart and Yahoo! have launched an initiative called “18 seconds” to encourage people to switch from incandescent light bulbs to more energy efficient compact fluorescent bulbs. Sara Lee is using solar panels at one of its bakeries. Major investment banks, like Citigroup, have issued “carbon principles,” under which they will give greater scrutiny to proposals to build new coal-fired plants.³³ Former Vice President Al Gore won an Oscar for “An Inconvenient Truth” and shared a Nobel Peace Prize for work on global climate change. There are over 125 bills pending in Congress responding to the global climate change crisis,³⁴ and an equally impressive array of comparable state and local initiatives.³⁵ Airlines, businesses, the entire European Community, the 2008 Olympics, even the U.S. House of Representatives are striving to become carbon neutral, heralding

31. Farber, *supra* note 3, at 66 (quoting James Pope, *Republican Moments: The Role of Direct Popular Power in the American Constitutional Order*, 139 UNIV. PENN. L. REV. 287, 291-3 (1990)).

32. Specter, *supra* note 18, at 44. Specter’s article is the source of many of the examples in the text.

33. Steven Mufson, *A Victory Near for Utilities in Kansas Coal Battle*, WASH POST, Feb. 23, 2008, at D2 (noting that Bank of America will “factor in a cost for carbon dioxide emissions when it considers financing for new coal plants. . .”).

34. Trang Do, *Duke Researcher Helps Congress Shape Global Warming Policy*, MEDILL REPORTS, July 25, 2007 <http://news.medill.northwestern.edu/washington/news.aspx?id=41323> (last visited Feb. 26, 2008).

35. For example, seventeen states have adopted “overarching greenhouse emission reduction targets”; 800 mayors representing more than seventy-seven million people in all fifty states have signed the U.S. Conference of Mayors Climate Protection Agreement, committing them to reduce community-wide greenhouse gas emissions by 2012 to 7% below 1990 levels regional agreements; and, several states have entered into various regional agreements, some of which set regional greenhouse gas reduction targets, others of which establish regional cap-and-trade programs, still others together with local governments have established programs to improve power supply energy efficiency and the energy efficiency of consumer products for which there are no federal standards, and others have launched initiatives to reduce greenhouse gas emissions through encouraging mass transportation, constructing bike lanes and pedestrian pathways, compact development proposals, and adoption of smart growth initiatives. See, e.g., Committee on Energy and Commerce Staff White Paper, *Climate Change Legislative Design: Appropriate Roles for Different Levels of Government* 3-7 (Feb. 2008).

the possible emergence of a new concrete norm calling for carbon neutrality.

Global warming thus appears to have catapulted Americans out of a period of apathy about environmental issues into one in which interest in them is extraordinarily high. Newly identified problems like hurricanes, shrinking glaciers, rising temperatures, and threatened polar bears have activated the public almost into a frenzy of concern. However, unless the emerging carbon neutrality norm addresses individual action, Vandenberg's hoped-for "carbon-neutral individual"³⁶ may not appear, let alone the environmentally responsible citizen I want to see materialize.

During a republican moment the public is more open to allowing itself to be educated in ways that will make them better citizens, in this case, how to be better stewards of this planet.³⁷ But, there are well-known problems trying to educate people about environmental harms, some of which are reflected in the examples of cognitive dissonance I discussed earlier. There is also the problem of information overload where "[t]oo much information may overwhelm consumers, or simply cause them to disregard it entirely."³⁸ Further, the complexity of environmental information can create a tendency to simplify the message to make it accessible to the average person, opening the messenger up to criticism for not acknowledging the issue's complexities, or to use alarmist language to catch the public's attention, which quickly wears out and can backfire when the event does not occur. On the other hand, purely "descriptive information" has little chance for success unless the behavior the individual is engaging in is neither in her interest nor driven by deep-rooted habits or, as Lawrence Lessig suggests, the recommended behavioral change is tied to an already popular concept, such as protecting the Chesapeake Bay.³⁹

36. As an example of what such a person might look like, see Dan Nainan, *A Comedian Goes Green but Won't Go Off Color*, N.Y. TIMES, Feb. 26, 2008, at C7 (describing the steps he has taken to reduce his carbon footprint, such as preventing hotel housekeeping from laundering his sheets and towels each day of his stay, unplugging his room phone, air-conditioner, alarm clock and television, not driving and living in a small apartment, and saying "[m]y efforts won't change the world, but maybe it will help my corner of it").

37. See, e.g., Susan Sherry, *Responsible Republicanism: Educating for Citizenship*, U. CHI. L. REV. 131 (1995).

38. Richard B. Stewart, *A New Generation of Environmental Regulation?*, 29 CAP. U. L. REV. 21, 140 (2001).

39. Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943, 1009 (1995).

The conundrum is that other methods for changing individual behavior by themselves, like command and control regulation, economic incentives, or shaming, are either less publicly acceptable or have an even lower likelihood of working than public education.⁴⁰ Therefore, given the current environmental circumstances in which we find ourselves, even with its flaws, public education should be an essential part of any strategy to change norms and personal behavior.

I propose that environmental groups, not the government, should be the educators – Sunstein’s norm entrepreneurs. These groups are already actively involved in educating the public about global warming and have had some success. They are experts not only in the substance of environmental problems, but also in using the media for information dispersal and in local organizing and coalition building.⁴¹ They know how to simplify complex information and how to use environmental crises to incite behavioral change and instill a sense of individual guilt for not taking action to expiate the problem — a tactic they employ to great success to increase membership and donations. The autonomy norm means that information from environmentalists may be more trusted and better received than from the government.

In short, environmental groups can help people understand how their actions can substantially affect the environment, use that understanding to begin the process of expanding the abstract environmental protection norm to include individual actions, identify preferred environmental behavior, and then link that behavior to specific concrete norms.

Yet, it is unlikely that even skilled environmentalists armed with intelligible, trustworthy information will be able to overcome the many barriers to norm change without additional sanctions or incentives, or that changing norms, without more, will be enough to change behavior. Identifying what those additional measures is the goal of the larger project.⁴² Nonetheless, the measures proposed in this talk offer a starting point for changing personal behavior, and efforts to implement them should start soon.

40. See, e.g., *Assuming Personal Responsibility*, *supra* note 2.

41. Many of the statements about how environmental groups function and their skill set are based on the personal knowledge of the author as former General Counsel of the National Audubon Society and Director of its Public Lands and Waters Program, and from Farber, *supra* note 3, at 71.

42. As noted earlier, the larger project in the form of a law review article is now completed. See *Assuming Personal Responsibility*, *supra* note 2.

Time is of the essence – when isn't it when the environment is at stake? Environmental groups should capitalize *now* on growing public concern about global warming. When teaching about climate change, they should include how individuals contribute to the problem and suggest ways to adopt less environmentally harmful behavior. If people can understand that they are a source of greenhouse gases, realize that there are relatively easy, available, and cost efficient alternative behaviors that will lessen their contribution to the problem, and experience the direct and indirect benefits of becoming Vandenberg's carbon neutral individual, then this might create the landscape for modifying the abstract environmental norm to include individual behavior. New behavioral habits may then emerge that could significantly reduce the amount of pollution in the environment.

But, experience teaches that republican moments are short-lived. Once they are gone, the public may well slide back into a period of apathy about the environment until the next environmental republican moment, and by then it may be too late.

