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Cheap Sentiment

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CHEAP SENTIMENT

CLAIRE A. HILL*

INTRODUCTION

Consider a person who bemoans the lack of organs available for transplantation but strongly disapproves of any sort of compensation or other financial inducement being paid for organs.¹ Consider also a person who strongly disapproves of the use of “cheap” labor but who buys products made using it.² Finally, consider a person who objects to surge pricing by alternative transportation services such as Uber, including in non-emergency situations, and then bemoans the difficulty of getting places in bad weather or during peak weekend or holiday times.³ These are all examples of what I call “cheap

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* Professor and James L. Krusemark Chair in Law, University of Minnesota Law School, and founder and director, Institute for Law and Rationality. I wish to acknowledge extremely helpful comments from and conversations with the participants at the Altruism, Community and Markets conference at the American Enterprise Institute, June Carbone, Tyler Cowen, Scott Dewey, Eric Hillemann, Kim Krawiec, Matt Hutson, Brett McDonnell, Shu-Yi Oei, Nate Oman, Chris Roberts, Francis Shen, and Paul Vaaler, and extraordinary research assistance from Scott Dewey.

1. The survey evidence on people’s views about organ donation and sale and blood donation and sale is voluminous. Among the topics studied are attitudes towards payment for organs and blood, differences based on people’s age, race, or experiences with those giving or receiving organs or blood, whether people would donate (sell?) more if they had financial incentives, whether payment leads to lower-quality organs and blood being obtained (as per a debate begun in seminal work by Richard Titmuss, see RICHARD TITMUSS, *THE GIFT RELATIONSHIP* (Ann Oakley & John Ashton eds., 1997)), and whether valuable incentives other than cash payments might be effective. Regarding public attitudes concerning organ donation and transplantation and related financial incentives, see, e.g., Klaus Hoeyer et al., *Public Attitudes to Financial Incentive Models for Organs: A Literature Review Suggests that it is Time to Shift the Focus from “Financial Incentives” to “Reciprocity,”* 26 *TRANSPLANT INT’L* 350 (2013); TNS OPINION & SOCIAL, *EUROBAROMETER 72.3: ORGAN DONATION AND TRANSPLANTATION* (2010), http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_333a_en.pdf [<https://perma.cc/NY97-QZ7B>]; U.S. DEPT. OF HEALTH & HUMAN SERVICES, DIVISION OF TRANSPLANTATION, *2012 NATIONAL SURVEY OF ORGAN DONATION ATTITUDES AND BEHAVIORS* (2013), <https://www.organdonor.gov/dtcp/nationalsurveyorgandonation.pdf> [<https://perma.cc/E5WA-UTNV>]. Regarding blood donation, see, e.g., Joan Costa-Font et al., *Not all Incentives Wash out the Warm Glow: The Case of Blood Donation Revisited* (Ctr. for Econ. Performance, Discussion Paper No. 1157, 2012), <http://cep.lse.ac.uk/pubs/download/dp1157.pdf> [<https://perma.cc/89VT-B7W4>]; TNS OPINION & SOCIAL, *EUROBAROMETER 72.3: BLOOD DONATION AND BLOOD TRANSFUSIONS* (2010), http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_333b_en.pdf [<https://perma.cc/GW7L-UXEB>].

2. See, e.g., Gethin Chamberlain, *Admit It. You Love Cheap Clothes. And You Don’t Care About Child Slave Labour*, *THE GUARDIAN* (July 27, 2013), <https://www.theguardian.com/world/2013/jul/28/india-sweated-labour> [<https://perma.cc/5LWN-8LL3>].

3. See, e.g., Neil Irwin, *Why Surge Prices Make Us So Mad: What Springsteen, Home Depot, and a Nobel Winner Know*, *N.Y. TIMES* (Oct. 14, 2017), https://www.nytimes.com/2017/10/14/upshot/why-surge-prices-make-us-so-mad-what-springsteen-home-depot-and-a-nobel-winner-know.html?_r=0

sentiment”—having a belief that is in some sense self-serving, perhaps even priding oneself on that belief, but not acknowledging or accepting the consequences of policy based on the belief.⁴

What individuals believe and do is beyond the scope of this paper, but one result of individual belief and action—that it can strongly affect policy—is not. Cheap sentiment is importantly a social pathology: people look to their communities to validate their beliefs of what is moral and what they are entitled to. Policymakers may themselves have cheap sentiment, or they may just formulate their policies in response to constituents and members of the society who do.

This article argues that cheap sentiment can be an impediment to sound policymaking in many different spheres. Cheap sentiment can lead market approaches and solutions to be dismissed notwithstanding significant costs of doing so. This is not to say that market approaches and solutions should always be chosen. For instance, policymakers would presumably appropriately reject a plan to pay a country whose citizens have bad health, short lives, and very little money a great deal of money to accept a pollutant-emitting factory.⁵ But market approaches and solutions should not be rejected for reasons that do not acknowledge or properly take into account the costs of doing so.⁶

[<https://perma.cc/GU5Q-PUTE>]; Tim Sullivan, *What Economists Don't Get about Uber's Surge Pricing*, HARV. BUS. REV. (Dec. 17, 2014), <https://hbr.org/2014/12/what-economists-dont-get-about-ubers-surge-pricing> [<https://perma.cc/2A3U-WP9U>].

4. The intuition at its extreme is well-captured in the lyrics from the Tom Lehrer song, “Wernher von Braun”: “‘Once the rockets are up, who cares where they come down? That’s not my department!’ Says Wernher von Braun.” TOM LEHRER, *Wernher von Braun, on THAT WAS THE YEAR THAT WAS* (Reprise/Warner Bros. Records 1965). The song is based on the life of Wernher von Braun, a German scientist who developed rockets for the Germans in the Second World War, came to the U.S. after World War II, and eventually began building missiles for the U.S. Army. *Biography of Wernher von Braun*, MARSHALL HISTORY, <https://www.nasa.gov/centers/marshall/history/vonbraun/bio.html> [<https://perma.cc/ZH68-Z3ME>] (last visited Dec. 18, 2017).

5. Consider, in this regard, the furor over Lawrence Summers’ letter, which he described as satire, arguing that pollution-spewing factories should be located in low-income countries. *Furor on Memo at World Bank*, N.Y. TIMES (Feb. 7, 1992), <http://www.nytimes.com/1992/02/07/business/furor-on-memo-at-world-bank.html> [<https://perma.cc/LW9X-GED7>] (“‘A given amount of health-impairing pollution should be done in the country with the lowest cost, which will be the country with the lowest wages,’ said the memo, which was obtained from a critic of the World Bank’s environmental record. ‘I think the economic logic behind dumping a load of toxic waste in the lowest-wage country is impeccable and we should face up to that.’”). See also *Toxic Memo*, HARV. MAG. (May 1, 2001), <https://harvardmagazine.com/2001/05/toxic-memo.html> [<https://perma.cc/QFF3-WB7Q>]. The furor over the memo is considered to have adversely affected Summers’ ability to get a top job in government. A. Siegel, *Larry Summers to Bring a Foul Smell to World Bank?*, DAILY KOS (Jan. 20, 2012), <https://www.dailykos.com/stories/2012/1/20/1056789/> [<https://perma.cc/ZH9U-W3MT>].

6. Cheap sentiment also can lead to undue faith in market approaches and solutions, an intuition aptly captured by the famous economists’ joke in which a senior economist and a junior economist are walking down the street, the junior economist alerts the senior economist to a \$20 bill on the floor, and the senior economist refuses to stoop down, on grounds that if the bill had been on the floor, someone else would have picked it up. Such a view might be used to justify not outlawing racial discrimination in employment on grounds that employers would surely hire the most productive workers, especially if they could get some of them more cheaply, and that this effect would soon eliminate discrimination, since the

There is of course an enormous amount of scholarship on what people believe, why they believe it, and how to change people's beliefs.⁷ The focus of this article is most similar to that of the literature addressing inconsistencies between a person's beliefs or between a person's beliefs and their actions.⁸ As discussed in Part I, the labels used to describe these inconsistencies are hypocrisy and cognitive dissonance. But this article also coins a new term, cheap sentiment. Cheap sentiment involves a particular inconsistency, one which is societal rather than personal: having a belief while being unwilling to acknowledge or bear (one's share of) the belief's broader societal consequences. The literature mentioned above focuses on what could be called traditional morality, paradigmatically hypocrisy. By contrast, cheap sentiment includes people's senses of entitlement to a particular status quo, something that does not implicate traditional morality.

This article frames the phenomenon of cheap sentiment in terms that should resonate in psychology, as a pathology applicable not just in contexts traditionally thought to be charged, and in economics, as a cost that should be taken into account, and that could potentially be reduced by due consideration of the consequences of the policies that instantiate it. This framing is intended to cast light on the costs cheap sentiment imposes, and serve as a needed counterweight to its undue force.

I

WHAT IS CHEAP SENTIMENT?

A. Cheap Sentiment Compared With Cognitive Dissonance and Hypocrisy

Cheap sentiment is related to cognitive dissonance, a concept originally from psychology, but used in other disciplines as well, including, notably for purposes

'\$20 wouldn't stay on the floor' for long. See generally Kevin M. Murphy, *How Gary Becker Saw the Scourge of Discrimination*, CHI. BOOTH REV. (June 15, 2015), <http://review.chicagobooth.edu/magazine/winter-2014/how-gary-becker-saw-the-scourge-of-discrimination> [<https://perma.cc/79WK-FHYC>] (discussing Becker's view that market forces would not eliminate discrimination).

7. For works that discuss trying to change people's behavior, see, e.g., FINDING SOLUTIONS TO SOCIAL PROBLEMS: BEHAVIORAL STRATEGIES FOR CHANGE (Mark A. Mattaini & Bruce A. Thyer eds., 1996); RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS (2009); Nicola J. Roberts et al., *Behavioral Interventions Associated with Smoking Cessation in the Treatment of Tobacco Use*, 6 HEALTH SERV. INSIGHTS 79 (2013); Robert A. C. Ruiter et al., *Applying Social Psychology to Understanding Social Problems*, in SOCIAL PSYCHOLOGY OF SOCIAL PROBLEMS: THE INTERGROUP CONTEXT (Agnieszka Golec de Zavala & Aleksandra Cichocka eds., 2012).

8. See, e.g., Matthew Rabin, *Cognitive Dissonance and Social Change*, 23 J. ECON. BEHAV. & ORG. 177 (1994). See also Mitesh Kataria & Tobias Regner, *Honestly, Why Are You Donating Money to Charity? An Experimental Study about Self-Awareness in Status-Seeking Behavior*, 79 THEORY & DECISION 493 (2015) (presenting results of an experiment in which people demonstrated their lack of self-awareness of their status-seeking behavior).

of this essay, economics.⁹ The concept was introduced by Leon Festinger in 1957; its seminal exposition is in a book called *When Prophecy Fails: A Social and Psychological Study of a Modern Group That Predicted the Destruction of the World*.¹⁰ The book explores how members of a group adjusted when the world did not end the day their group had predicted it would: rather than concluding that they had been mistaken, they doubled down on the belief, making further predictions for the date of the end of the world and increasing their proselytizing.¹¹

A recent paper defines cognitive dissonance as “the idea that people find having inconsistent beliefs or making inconsistent choices to be uncomfortable, and take action to avoid this inconsistency or ‘dissonance.’”¹² Another paper defines cognitive dissonance as “the desire of an individual to perceive himself or herself as a moral person,” such that the “individual is motivated to reduce dissonance to alleviate this threat to self-concept and self-integrity.”¹³

The resolutions people use to resolve discomfort can involve changing actions or beliefs, or rationalization, trying to account for the inconsistency; alternatively, people may be able to ignore the dissonance.¹⁴

Cheap sentiment also involves inconsistent beliefs or actions, but the beliefs or actions may or may not cause psychological discomfort. If they do not, there is no reason to suppose that they would cause changes to actions or beliefs. People may ignore the inconsistency, continuing to hold the inconsistent beliefs or acting contrary to their beliefs. Alternatively, especially if called to explain or

9. See, e.g., Rabin, *supra* note 8.

10. LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE 2–4 (1957); LEON FESTINGER ET AL., WHEN PROPHECY FAILS: A SOCIAL AND PSYCHOLOGICAL STUDY OF A MODERN GROUP THAT PREDICTED THE DESTRUCTION OF THE WORLD (1957) [hereinafter PROPHECY]. See also Leon Festinger & James M. Carlsmith, *Cognitive Consequences of Forced Compliance*, 58 J. ABNORMAL & SOC. PSYCHOL. 203 (1959); Leon Festinger, *Cognitive Dissonance*, 207 SCI. AM. 93 (1962) [hereinafter *Cognitive Dissonance*] for further discussions of cognitive dissonance. More recent work includes Frenk van Harveld et al., *The ABC of Ambivalence: Affective, Behavioral and Cognitive Consequences of Attitudinal Conflict*, 52 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 285 (2015) (discussing the concept of ambivalence as distinct from cognitive dissonance: “an important difference between [ambivalence and dissonance] lies in the fact that dissonance is usually the result of a behavioral commitment that is in conflict with a preexisting attitude. Ambivalence is also defined by conflict, but within one’s attitude and often not related to any behavioral commitment.”).

11. PROPHECY, *supra* note 10, at 213–15.

12. Daniel F. Stone & Daniel H. Wood, *Cognitive Dissonance, Motivated Reasoning, and Confirmation Bias: Applications in Industrial Organization*, in HANDBOOK OF BEHAVIORAL INDUSTRIAL ORGANIZATION (Carol Tremblay et al. eds., forthcoming May 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2834072 [<https://perma.cc/Y2HJ-GAJB>]. The term is sufficiently a part of everyday language that it appears in the Merriam Webster dictionary, which defines cognitive dissonance as “psychological conflict resulting from incongruous beliefs and attitudes held simultaneously.” *Cognitive Dissonance*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/cognitive%20dissonance> [<https://perma.cc/3PTA-K2SX>] (last visited Dec. 18, 2017).

13. Valerie Fointiat, “I Know What I Have to Do, But . . .”: When Hypocrisy Leads to Behavioral Change, 32 SOC. BEHAV. & PERSONALITY 741, 742 (2004).

14. See *Cognitive Dissonance*, *supra* note 10, at 93.

justify her view, a person might use rationalization.¹⁵ A person's recourse to rationalization may or may not indicate that she experiences discomfort from the inconsistency.

It may not be easy to determine whether an explanation is indeed a rationalization. For instance, a person who does not pay her taxes might state that she does not approve of what the government spends tax money on. This might, or might not, be a rationalization. Is the person who bemoans the lack of organs available for transplantation, but rejects changing rules against compensation for organs because people should be willing to donate organs, rationalizing? Maybe, but maybe not. There are many possible "expensive" rationales for such a belief. A person might believe that the consequences of the organ shortage are less problematic than the results of paying in some manner for organs—such as encouraging unscrupulous doctors, coercing poor people for whom the compensation will be too tempting, and other problems associated with commodification and monetizing body parts¹⁶—and be willing, for herself and others, to accept the consequences. We cannot know whether the person would continue holding the belief if she or a loved one needed an organ and none were available except via some sort of financial inducement.

A presumably less controversial case of rationalization is when a person is rejected from a well-paying interesting job to which he applied or a prestigious university to which he sought admission and claims that "he didn't want to work/go there anyway."¹⁷ Even absent agreement that particular explanations are rationalizations, it seems uncontroversial to assert that people do sometimes rationalize, whether to themselves or others, to resolve inconsistencies in their beliefs or their beliefs and their actions.

15. Neel Burton, *Self-Deception I: Rationalization-Human Beings Are Not Rational, but Rationalizing Animals*, PSYCHOL. TODAY (Sept. 6, 2017), <https://www.psychologytoday.com/blog/hide-and-peek/201203/self-deception-i-rationalization> [<https://perma.cc/HW39-V7KS>]; *Rationalization, CHANGING MINDS*, <http://changingminds.org/explanations/behaviors/coping/rationalization.html> [<https://perma.cc/YAQ8-7SMG>] (last visited Dec. 18, 2017).

16. See generally RENE ALMELING, SEX CELLS: THE MEDICAL MARKET FOR EGGS AND SPERM (2011) (discussing "what exactly happens when people are paid for parts of their bodies"); MICHELE GOODWIN, BLACK MARKETS: THE SUPPLY AND DEMAND OF BODY PARTS (2006) (critiquing present systems of organ procurement and allocation); Kimberly D. Krawiec, *Lessons from Law About Incomplete Commodification in the Egg Market*, 33 J. APPLIED PHIL. 160 (2016) (discussing difficulty of reconciling market realities with nonmarket ideals in the context of egg donation). In this regard, consider Titmuss's argument that paying for blood might lead the blood supply to be of lower-quality; those motivated purely by the prospect of helping others might have higher quality blood than people motivated by the cash payout, such that the former would be discouraged, but the latter would be encouraged, to donate (sell) blood for money. See TITMUSS, *supra* note 1. However, empirical evidence on the point is mixed. See, e.g., Nicola Lacetera & Mario Macis, *Moral Nimby-ism? Understanding Societal Support for Monetary Compensation to Plasma Donors in Canada*, 81 LAW & CONTEMP. PROBS., no. 3, 2018, at 83; Claudia Niza et al., *Incentivizing Blood Donation: Systematic Review and Meta-Analysis to Test Titmuss' Hypotheses*, 32 HEALTH PSYCHOL. 941 (2013).

17. Burton, *supra* note 15; *Rationalization, supra* note 15.

Another related concept is hypocrisy,¹⁸ which has been described as a special case of cognitive dissonance.¹⁹ But hypocrisy, like cheap sentiment, does not necessarily cause psychological discomfort. A person might, for instance, be able to ignore the extent to which they are saying one thing and doing another. Indeed, the canonical examples of hypocrisy do not cause discomfort precisely for this reason; scholarship often focuses on how to get people to acknowledge their hypocrisy and conform their actions and beliefs.²⁰

People can have cognitive dissonance about all sorts of things they think about or do. Recall that in Festinger's seminal example, the dissonance resulted from the need by people thinking the world would end a certain day to account for the fact that the world did not end that day.²¹ Cognitive dissonance is in an important respect individual. Hypocrisy, too, is importantly individual—the person says one thing and does another. People can have idiosyncratic beliefs that cause them discomfort, or conflict with one another, without it being a matter that relates to the broader society.²²

18. The relevant literature for my purposes includes C. Daniel Batson et al., *In a Very Different Voice: Unmasking Moral Hypocrisy*, 72 J. PERSONALITY & SOC. PSYCHOL. 1335 (1997); C. Daniel Batson et al., *Moral Hypocrisy: Appearing Moral to Oneself Without Being So*, 77 J. PERSONALITY & SOC. PSYCHOL. 525 (1999) [hereinafter *Moral Hypocrisy*]; Cécile Sénémeaud et al., *Being Hypocritical Disturbs Some People More than Others: How Individual Differences in Preference for Consistency Moderate the Behavioral Effects of the Induced-Hypocrisy Paradigm*, 9 J. SOC. INFLUENCE 133 (2014). Yet another related concept is that of self-discrepancy, developed by Tory Higgins. See, e.g., E. Tory Higgins, *Self-Discrepancy: A Theory Relating Self and Affect*, 94 PSYCH. REV. 319 (1987). Self-discrepancy theory provides evidence for the existence of different types of discomfort people experience from, roughly speaking, discrepancies between how they view themselves and how they feel they should, or ideally would, be.

19. *Teaching Tip Sheet: Cognitive Dissonance*, AM. PSYCHOL. ASS'N, <http://www.apa.org/pi/aids/resources/education/dissonance.aspx> [<https://perma.cc/C4FL-KWWL>] (last visited Dec. 18, 2017) (“Hypocrisy is a special case of cognitive dissonance, produced when a person freely chooses to promote a behavior that they do not themselves practice.”).

20. See Batson et al., *Moral Hypocrisy*, *supra* note 18. See also Elliot Aronson et al., *Overcoming Denial and Increasing the Intention to Use Condoms through the Induction of Hypocrisy*, 81 AM. J. PUB. HEALTH 1636 (1991) (providing evidence that hypocrisy induction was effective at overcoming teen denial of AIDS danger); Fointiat, *supra* note 13; Jeff Stone & Nicholas C. Fernandez, *To Practice What We Preach: The Use of Hypocrisy and Cognitive Dissonance to Motivate Behavior Change*, 2 SOC. & PERSONALITY PSYCHOL. COMPASS 1024 (2008) (reviewing literature on hypocrisy motivating behavior change); Jeff Stone & Elizabeth Focella, *Hypocrisy, Dissonance and the Self-Regulation Processes that Improve Health*, 10 SELF & IDENTITY 295 (2011) (discussing how hypocrisy represents a powerful strategy for engaging the self-regulation processes that improve health). *But see* ROBERT KURZBAN, *WHY EVERYONE (ELSE) IS A HYPOCRITE: EVOLUTION AND THE MODULAR MIND* (2012) (arguing for an evolutionary explanation of hypocrisy, and even arguing that hypocrisy is a good thing).

21. PROPHECY, *supra* note 10.

22. That is not to say that cognitive dissonance and hypocrisy don't often relate to broader societal concerns. A congressional representative who defended Ken Starr's role investigating Bill Clinton notwithstanding Starr's contributions to Republican Party candidates, critiquing what he described as a strategy by Clinton and allies to “demonize” Starr and others who got in their way, strongly criticized the bias of the Mueller team, noting that they had donated to Democrats. See Jeremy Stahl, *This Congressman Wins the Prize for the Most Odious Attack on Bob Mueller*, SLATE (Dec. 15, 2017), <https://slate.com/news-and-politics/2017/12/this-congressman-wins-the-prize-for-the-most-odious-attack-on-bob-mueller.html> [<https://perma.cc/E9RN-23FW>].

By contrast, this article uses the term cheap sentiment to refer to matters where the cheapness—the cost not being paid—is societal. The person gets the benefit of holding their belief, but the cost is external. If the person acts, or presses for action to be taken, in furtherance of the belief, the cost may even be externalized—society bears the cost.

What kinds of benefits are people getting from their cheap sentiment? In what sense is the sentiment self-interested? In most cases, the belief is part of people's "self-concept and self-integrity."²³ People have a stake in thinking of themselves in a certain way. The claim here is not that this is mistaken or dishonest or constitutes self-deception.²⁴ Rather, it is that being able to think of themselves in that way constitutes a benefit. With the benefit comes a cost; again, cheap sentiment is about wanting the benefit while not being in principle willing to bear the cost. This mindset is of social concern insofar as cheap sentiment motivates policy.

While the beliefs at issue relate to people's self-concept and self-integrity, they are importantly social, relating to beliefs held or stated by others. An explanation or justification for an inconsistency will serve its purpose only if the relevant community accepts it as such. Norms develop as to what explanations and justifications pass muster. A perhaps fanciful example: when I was in my teens, most of my peers were anti-fur coat, but at the same time were willing to buy cheap used fur coats at vintage stores. Our explanation, when confronted, was that our purchase did not cause the animal to be killed—the animal had already been killed, for the person willing to pay full price for the coat. At a certain point, that explanation stopped being acceptable among my peers, and we stopped buying the coats. Returning for a moment to the surge pricing examples, the reaction of outrage, both in the emergency and non-emergency situations, clearly passes muster in some communities—if it did not, there would not be much of a push to change policy to outlaw or limit surge pricing.

In his article on cognitive dissonance, economist Matt Rabin makes a related point. Rabin characterizes a phenomenon similar to cheap sentiment as cognitive dissonance: the situation in which a person thinks of herself as moral but does not behave as morality requires. He characterizes such a situation as involving dissonance—that is, discomfort.²⁵ Rabin states that:

23. Fointiat, *supra* note 13, at 742.

24. The role of self-deception in hypocrisy is discussed in, e.g., *Moral Hypocrisy*, *supra* note 18. On self-deception and rationalization see, e.g., Robert Audi, *Self-Deception, Rationalization, and Reasons for Acting*, in *PERSPECTIVES ON SELF-DECEPTION* (Brian P. McLaughlin & Amélie Oksenberg Rorty eds., 1988); William von Hippel & Robert Trivers, *The Evolution and Psychology of Self-Deception*, 34 *BEHAV. & BRAIN SCI.* 1 (2011); David H. Sanford, *Self-Deception as Rationalization*, in *PERSPECTIVES ON SELF-DECEPTION* (Brian P. McLaughlin & Amélie Oksenberg Rorty eds., 1988); Robert Trivers, *The Elements of a Scientific Theory of Self-Deception*, 907 *ANNALS N.Y. ACAD. SCI.* 114 (2000).

25. In the context of cheap sentiment, I take no position as to what morality requires, nor do I take a position as to whether people experience discomfort.

[C]hanges in beliefs by some individuals towards the “true” morality are likely to increase the cost to other people of having beliefs far away from the “true” morality. People find it harder to convince themselves that an activity is ethical if nobody else believes it is ethical. If everybody else decides that torturing animals for fur is wrong, then it becomes harder for an individual to convince himself that there is nothing wrong with wearing fur. Conversely, if everybody ignores the suffering caused to the animals, then it becomes easier for each person to ignore the true nature of his actions.

These social effects in belief-formation have an important implication: a greater distaste for cognitive dissonance may lead not to less of an immoral activity, but rather to more of it. While a greater distaste for cognitive dissonance has the direct effect of decreasing the level of immoral activities, an indirect effect works in the opposite direction. Stronger cognitive dissonance will cause each person to believe that such activities are more acceptable; this in turn leads others to believe that the activity is more acceptable . . . [T]his leads to more of the activity.²⁶

Cheap sentiment involves people who benefit from having certain beliefs that, if translated into policy, would result in others, and perhaps at some point, themselves, bearing costs—costs that they themselves are not bearing at the time. Cheap sentiment thus potentially runs afoul of John Rawls’s conception of justice, according to which law should be developed as though its developers were behind a veil of ignorance.²⁷ In this conception, people do not know their class or status in society, their “fortune in distribution of natural assets and abilities,” their “intelligence and strength and the like”²⁸ or many other things. From behind such a veil, they can “evaluate principles solely on the basis of general considerations.”²⁹

But people are of course not behind a veil of ignorance. They know, or they think they know, a great deal about their own attributes and circumstances. The paradigmatic case of cheap sentiment is one where the person can be assured of not bearing any consequent costs. In the 1991 movie *Dances With Wolves*, Lieutenant John Dunbar, a Union officer, “finds himself alone in Indian territory in the 1860s, and eventually ‘finds himself,’ in the 1960s sense of the term, when he adopts a Sioux identity and name, *Dances With Wolves*.”³⁰ A review of the movie by Caryn James astutely noted that, “Viewers enjoy a rousing old adventure and still feel they can save the planet. By assuming the point of view of Dunbar, the good and prescient white man, ‘*Dances With Wolves*’ becomes an appealing hybrid, a western without guilt.”³¹ A (white) person watching the

26. Rabin, *supra* note 8, at 179.

27. JOHN RAWLS, *THEORY OF JUSTICE* (1971).

28. *Id.* at 137.

29. *Id.* at 136–37. Various aspects of Rawls’s theory have been criticized. For a prominent critique of Rawls’s theory see MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (1982). See also C. Edwin Baker, *Sandel on Rawls*, 133 U. PA. L. REV. 895 (1985) (summarizing and critiquing Sandel’s critique of Rawls’s *Theory of Justice*). But my use of Rawls here is largely orthogonal to the arguments in question; I am using his theory simply to articulate, using a different vocabulary, one important respect in which cheap sentiment is objectionable.

30. Caryn James, *Frustrating with Wolves*, N.Y. TIMES (Jan. 13, 1991), <http://www.nytimes.com/1991/01/13/movies/film-view-frustrating-with-wolves.html> [<https://perma.cc/77V6-KSGS>].

31. *Id.*

movie can feel a virtuous identification with the Indians, and imagine that had he existed at the time, he too would have fought the good fight, and espoused pro-Indian laws and policies without having to do anything perilous, or really, anything at all.³²

The costs of cheap sentiment go beyond those mentioned above. Standard economic theory suggests that when people can obtain a benefit without paying the associated cost, they will do so more than they would if they were paying it. A company that does not have to clean up the pollution it creates can be expected to create more pollution than one that does have to clean it up. Similarly, if I can think of myself as being virtuous and other-regarding when I do not have to sacrifice to do so, why would I not do it? The waters may be muddied, such that the esteem and recognition from others that may in part motivate being other-regarding may not be so readily forthcoming. Being other-regarding may become less rewarding, which may lead to less other-regardingness.

B. Examples of Cheap Sentiment

The following are examples of possible cheap sentiment. The person who rejects compensated organ donors may think of herself as being other-regarding, caring very much that there are not enough organs available for transplantation, but also as valuing altruism over (crass) commerce. The person who objects to the practice of paying very little for labor probably thinks of herself as other-regarding as well, caring for others, particularly those less fortunate. She might think herself to be morally superior to those who do not have this view and particularly, to those who arrange for products made with cheap labor to be produced and sold. She might tell herself and others that if the t-shirt company's executive officers were only paid what they were worth, they could pay a fair price for labor and sell t-shirts cheaply, thus justifying her purchase.³³ Benefits of cheap labor to countries going through a "t-shirt phase" and to laborers whose alternatives are worse are not acknowledged.³⁴

32. Cheap sentiment is of course a small subset of what Rawls's theory would criticize. A person certain she is poor wanting a 99% tax rate for rich people would probably not be making her decision behind a veil of ignorance—she wouldn't want to pay 99% if she were rich—but there is no "cheap sentiment." The policy desired by the poor person is simply self-serving.

33. See Chamberlain, *supra* note 2. Searches for "child labor" or "cheap labor" yield many articles with expressions of outrage. There are articles, too, about how many developing countries went through a "t-shirt phase." Finally, and most pertinently to my thesis, there are articles about how the same people who are outraged seem to be buying the cheap t-shirts anyway. See also Elise van Nederveen Meerkerk et al., *Covering the World: Some Conclusions to the Project, in THE ASHGATE COMPANION TO THE HISTORY OF TEXTILE WORKERS, 1650-2000*, at 773 (Lex Heerma van Voss et al. eds., 2010) (discussing "race to the bottom" in global textile industry).

34. See R.A., *Out of Harm's Way: What Next for the World's Poorest Workers?*, THE ECONOMIST (May 22, 2013), <https://www.economist.com/blogs/freeexchange/2013/05/technology> [https://perma.cc/PW6A-QYV7]; Adam Davidson, *Economic Recovery, Made in Bangladesh?*, N.Y. TIMES (May 14, 2003), <http://www.nytimes.com/2013/05/19/magazine/economic-recovery-made-in-bangladesh.html> [https://perma.cc/8WRV-WGRH]. A related example involves the "NIMBY," "not in my back yard," phenomenon. Someone thinking of herself as having a social conscience may think that there should be

Returning to the medical arena, an important context for cheap sentiment is the selection criteria for allocation of organs and other scarce resources. Familiar examples include the extent to which somebody's own "responsibility" for the condition that caused her to need an organ or some medical care she cannot afford should accord her a lesser priority. That the person is "responsible" might yield an assessment that the prior conduct is apt to be repeated, making the expenditure less valuable for that person than for some other person. Other examples are individuals who require vast expenditures on their care,³⁵ including those near the end of their lives. Some people find the prospect of making such an allocation paralyzing, not wishing to be the sort of person who would decide not to treat someone, notwithstanding that absent an express allocation, there is simply not enough money to treat everyone, and there will still be denials of care.³⁶ The benefit to not making the decision is that the person does not have to

a halfway house or other facility for people who have served their prison sentences, to help such people transition to post-prison life—but not in her back yard. *See generally* Peter D. Kinder, *Not in My Backyard Phenomenon*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Not-in-My-Backyard-Phenomenon> [https://perma.cc/6GY3-EU42] (last visited Dec. 18, 2017) (discussing historical origins of "Nimby" and its common usages). Rationalizations may be given for why some other locale would be more desirable. I recall such an example from my childhood: a liberal community objecting to low-income housing in their community. *See* David M. Herszenhorn, *Neighborhood Report: Forest Hills; At the Forest Hills Co-op, a Reminder of Past Fury*, N.Y. TIMES (Oct. 22, 1995), <http://www.nytimes.com/1995/10/22/nyregion/neighborhood-report-forest-hills-forest-hills-op-reminder-past-fury.html> [https://perma.cc/5A8M-AWHQ]. But one can imagine a principled, albeit societally unfortunate, perspective, which was in fact one of the things said at the time: that the people had clawed their way out of the Lower East Side, then a ghetto, but now the Lower East Side was coming to them—that they were being asked to take on "more than their share" of sacrifice for the society. Is this a rationalization? Reasonable people can differ on this point. School choice is another important context. *See, e.g.*, Dianna Douglas, *Are Private Schools Immoral?: A Conversation with Nikole Hannah-Jones about Race, Education, and Hypocrisy*, THE ATLANTIC (Dec. 14, 2017), <https://www.theatlantic.com/education/archive/2017/12/progressives-are-undermining-public-schools/548084/> [https://perma.cc/UX3V-VFAF] ("White communities want neighborhood schools if their neighborhood school is white," [Hannah-Jones] says. "If their neighborhood school is black, they want choice." Charter schools and magnet schools spring up in place of neighborhood schools, where white students can be in the majority.").

35. An example is the Iowa patient whose cost to their insurer (which is reflected in premiums charged to other people) is \$1 million a month, a cost expected to be payable as long as the (young) patient lives? Michael Hiltzik, *This One Unbelievably Expensive Iowa Patient Makes the Case for Single-Payer Healthcare*, L.A. TIMES (Apr. 24, 2017), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-iowa-20170424-story.html> [https://perma.cc/88LW-4THZ]; Tony Leys, *Iowa Teen's \$1 Million-per-Month Illness No Longer a Secret*, USA TODAY (May 31, 2017), <https://www.usatoday.com/story/news/nation-now/2017/06/01/iowa-teens-1-million-per-month-illness-no-longer-secret/360919001/> [https://perma.cc/HJ2G-RZEL]. The story may, however, be a bit murkier than it was initially presented as being. *See* Jonathan Cohn, *An Iowa Teenager Didn't Wreck His State's Health Care Market. Here's Who Did: A Case Study in Obamacare Success and Failure*, HUFFINGTON POST (Oct. 29, 2017), https://www.huffingtonpost.com/entry/iowa-teenager-obamacare-scapegoat_us_59f4715de4b077d8dfc9dd70?ncid=APPLENEWS00001 [https://perma.cc/59M5-BK2H].

36. The extensive literature on omission vs. commission is relevant here. In the famous trolley problem, people won't take an action that would kill one person even though the result would be to save five others. For two popular accounts of the trolley problem, see Sarah Bakewell, *Clang Went the Trolley: "Would You Kill the Fat Man?" and "The Trolley Problem,"* N.Y. TIMES (Nov. 22, 2013), <http://www.nytimes.com/2013/11/24/books/review/would-you-kill-the-fat-man-and-the-trolley-problem>.

think of herself as the sort of person who decides against giving someone an organ or needed care. If no decision is made, the basis on which people do not get an organ or care may be based more on luck than on any reasoned consideration.³⁷

Other examples of cheap sentiment include views about higher prices for eggs from women who have certain desirable attributes,³⁸ and, more fancifully, the practice of some bars and clubs of giving good-looking people preferential access to their venues.³⁹ Those objecting to giving preferential treatment to individuals based on their appearance might be people who oppose valuing appearance to this extent or in this context or manner. Furthermore, those objecting might not desire to buy or sell eggs or get into selective nightclubs—think in this regard of the colloquial expression “Easy for you to say!”—or might feel disvalued by the

html [<https://perma.cc/NX9Z-69WH>]; Lauren Cassani Davis, *Would You Pull the Trolley Switch? Does It Matter?: The Lifespan of a Thought Experiment*, THE ATLANTIC (Oct. 9, 2015), <https://www.theatlantic.com/technology/archive/2015/10/trolley-problem-history-psychology-morality-driverless-cars/409732/> [<https://perma.cc/W7YT-LXJY>]. There is also extensive literature on the related subject of taboo trade-offs. See generally Linda J. Skitka & Philip E. Tetlock, *Allocating Scarce Resources: A Contingency Model of Distributive Justice*, 28 J. EXPERIMENTAL SOC. PSYCHOL. 491 (1992) (The authors found that “[u]nder scarcity, allocators were much more likely to deny aid to claimants who were responsible for their predicament. Need and efficiency emerged as joint predictors of allocating aid to claimants who were not responsible for their predicament. Politically conservative allocators withheld resources from those personally responsible for their needs regardless of both severity of need and likelihood of effective helping, even when there were sufficient resources to satisfy all claimants, whereas liberals tended to provide resources to all claimants.”); Linda J. Skitka & Philip E. Tetlock, *Of Ants and Grasshoppers: The Political Psychology of Allocating Public Assistance*, in PSYCHOLOGICAL PERSPECTIVES IN JUSTICE: THEORY AND APPLICATIONS 205–33 (Barbara A. Mellers & Jonathan Baron eds., 1993) (examining subjects’ willingness to make distributive decisions where resources are scarce vs. where resources are not scarce: “[L]iberals are motivated to avoid painful trade-offs between important values. Lives-for-money implies a much more painful trade-off than job-opportunities-for-money.”); Linda J. Skitka & Philip E. Tetlock, *Providing Public Assistance: Cognitive and Motivational Processes Underlying Liberal and Conservative Policy Preferences*, 65 J. PERSONALITY & SOC. PSYCHOL. 1205–1223 (1993) (finding evidence “that liberals are not mindlessly egalitarian, but try to avoid socially awkward value trade-offs that require placing monetary values on lives.”); Philip E. Tetlock et al., *Sacred versus Pseudo-Sacred Values: How People Cope with Taboo Trade-Offs*, 107 AM. ECON. REV. 96, 96 (2017) (characterizing our world as one in which the sacred competes “with the demands of the real world” and noting that there are “risks and challenges whenever parties’ moral perceptions are mismatched”).

37. On difficulties in broaching the topic from a cost/benefit perspective, see e.g., Aaron E. Carroll, *Forbidden Topic in Health Policy Debate: Cost Effectiveness*, N.Y. TIMES (Dec. 15, 2014), <https://www.nytimes.com/2014/12/16/upshot/forbidden-topic-in-health-policy-debate-cost-effectiveness.html> [<https://perma.cc/6VAH-N8ZL>] (arguing for the use of “quality-adjusted life years” to inform decision-making in this area).

38. See generally Krawiec, *supra* note 16; Sharyn Alfonsi, *Inside Egg Donation: More Money for Blondes?*, ABC NEWS (May 11, 2010), <http://abcnews.go.com/WN/egg-donation-agencies-paid-money-favored-attributes/story?id=10614326> [<https://perma.cc/TPW5-4PNZ>] (reporting that egg donors may be paid more for their donations if they are blond, thin, tall, have a college degree, and high SAT scores; “One employee, Rachel, was told that her eggs were worth more because she’s a blonde. Another, Susan, responded to an ad for Asian donors and was told her degree from Wellesley made her eggs more valuable, to the tune of \$25,000. That’s more than \$15,000 over industry guidelines.”).

39. See, e.g., Guy Birchall, *Are You Hot Enough to Get into this Club?*, NEWS.COM.AU (Sept. 29, 2016), <http://www.news.com.au/lifestyle/beauty/face-body/are-you-hot-enough-to-get-into-this-club/news-story/f5953b513fed3409459404f9418069b> [<https://perma.cc/X7AE-4GNC>].

emphasis on traits they may not have as much of as they want.⁴⁰ These objectors may exhibit cheap sentiment.⁴¹

A final set of examples, admittedly more attenuated, involve differential pricing, including surge pricing. Where is the self-interest here? First, consider the non-emergency cases. Based on their previous experience, people had counted on some level of pricing, and now must get used to a different and worse state of affairs (higher prices). Airline prices used to include baggage and meals; increasingly, they do not.⁴² Fares to get places were the same no matter the time of day; now, they may be higher at peak times.⁴³ Those objecting to the changes may express annoyance at what they see as airlines' ability to get them to pay more,⁴⁴ and not acknowledge the market-based rationales for these changes—why should someone not bringing luggage be charged the same for a plane trip as someone who is bringing luggage?⁴⁵ Surge pricing during emergencies might be objected to on grounds that companies should not increase the prices of necessary items or services during emergencies. People get to avoid reproaching themselves for not having planned ahead. The presumably reduced supply resulting from prohibiting surge pricing in these cases would not be acknowledged.⁴⁶

40. Consider in this regard KURT VONNEGUT, JR., *Harrison Bergeron*, in WELCOME TO THE MONKEY HOUSE (1968). This short story describes a society that decides to equalize all talents. A "Handicapper General" makes sure that nobody is better looking, stronger, or quicker than anyone else.

41. This point should not be carried too far: a person who could not be drafted on grounds of their age or bad health could have a principled and non-cheap view that the draft is a good thing. As with so many other concepts, cheap sentiment is on a continuum, and the same view might be cheap sentiment, or not, depending on other factors.

42. *Unbundling in the Airline Business*, BEYOND COST PLUS (June 2, 2015), <https://www.beyondcostplus.com/blog/unbundling-airline-business> [<https://perma.cc/TLQ6-6N2A>].

43. Another related example is where umbrellas are higher priced during a storm. The self-interest might be in not having to reproach oneself for not planning ahead. Differential pricing generally—charging different people different prices, and unbundling of previously bundled prices—does seem to bother people, even though people are quite inconsistent about it. People are not bothered, for instance, by discounts for students or senior citizens, or extra charges for meals on important holidays. See Irwin, *supra* note 3.

44. Chris Matyszczyk, *Want to See All the Nasty Fees Your Airline Charges? The Government Just Said You Can't*, INC. (Dec. 9, 2017), <https://www.inc.com/chris-matyszczyk/want-to-know-all-annoying-fees-your-airline-charges-government-just-decided-you-shouldnt.html> [<https://perma.cc/JNG2-43M2>].

45. Interestingly a few, exceedingly tentative, steps have been taken towards taking the 'extra weight should mean extra costs' rationale so far as to make people who weigh more pay more for their plane trips. See, e.g., Beth Blair, *Should Obese Passengers Pay More to Fly?*, BBC (Oct. 20, 2016), <http://www.bbc.com/autos/story/20161020-should-obese-passengers-pay-more> [<https://perma.cc/M2DK-WEZ9>]; Alex Davies, *How Long Until All Airlines Charge More for Fat People?*, BUS. INSIDER (Apr. 5, 2013), <http://www.businessinsider.com/will-big-airlines-charge-fat-passengers-extra-2013-4> [<https://perma.cc/WG2Y-KDAS>].

46. A company could decide for reputational reasons not to engage in surge pricing, especially in emergency situations. Home Depot has apparently rejected surge pricing in emergencies, and indeed, has adopted the opposite strategy: "The first thing they did was direct all prices to be frozen in areas likely to be affected by the storm. There is no surge pricing at Home Depot stores after a disaster, in both a longstanding corporate policy and a matter of law in many states. But the company doesn't stop with that. All those logistics people and other staffers are there to ensure that the surge in demand after a

III

TAKING CONSEQUENCES INTO ACCOUNT

This article aims to have the consequences of cheap sentiment better taken into account before instantiating cheap sentiment into policy. What would that entail?

It does not necessarily entail deciding in favor of market-oriented solutions where these may conflict with expressive law or policy. Recall the example above of locating a polluting factory in a country that had high poverty and low life expectancy. Citizens of the country could be paid so much that they might have a much better life for the short time they lived, whereas their alternative would be to continue to live in poverty and die young. The choice would be between a comfortable short life and an uncomfortable, but equally short, life. Banking on a country's continuing impoverished state as a rationale for a business decision seems repugnant. Should we second-guess a decision to not even consider locating the factory in the poor country on grounds that we are engaging in cheap sentiment? Or should strong consensus about what constitutes repugnance be sufficient to outweigh instrumental benefits?

Consider the arguments about permitting versus prohibiting needle exchanges for illegal drugs, and for sex education and access to contraceptives for underage and unmarried adults. In both cases, the expressive story is given—the society does not want to encourage, or communicate its encouragement of, more drug use; the society does not want to encourage, or communicate its encouragement of, sex among unmarried teenagers. In both cases, there are serious costs of maintaining this posture. Data suggests that the net effect of having needle exchanges makes taking drugs less dangerous,⁴⁷ and the net effect of less access to sex education and contraception and a focus on abstinence education makes teenaged pregnancy and STDs more likely.⁴⁸ But, proponents of taking the expressive stance say, if society says these types of behaviors are acceptable by providing clean needles or sex education, there will be more of them; if society says the behaviors are unacceptable, they may decline. Who knows? Complicating the issue is that people have different views about the behaviors, such that encouraging the behaviors may seem far worse to some than to others. Addressing the drug/contraception context and other like contexts, the “harm reduction/it's going to happen anyway” argument has much more force to

disaster is matched with a higher supply of the goods people need. As hurricane season approaches, dedicated warehouses are stocked with goods that will be needed if a major storm hits, according to the company's director of corporate communications, Stephen Holmes. And that's why, as soon as Irma passed the Miami area and the major highways were confirmed to be passable, a convoy of 41 tractor-trailers full of generators, plywood, chain saws and similar items trekked from Georgia to South Florida, escorted by the police.” Irwin, *supra* note 3.

47. *Syringe Services Program*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 28, 2017), <https://www.cdc.gov/hiv/risk/ssps.html> [<https://perma.cc/25YF-9XPF>].

48. Kathrin F. Stanger-Hall & David W. Hall, *Abstinence-Only Education and Teen Pregnancy Rates: Why We Need Comprehensive Sex Education in the U.S.*, 6 PLOS ONE 1, 6 (2011).

people who think the behavior is not so bad and that the people who engage in it are sympathetic victims; it will have much less force for people who think the behavior is very bad and that the people who engage in it are fully responsible for their own bad choices.

Taking consequences into account does not mean accepting the status quo as inviolate. Consider the following quote about surge pricing:

Those who object to surge pricing, even those of us who understand it, would rather live in a world where people would do the moral thing—give someone a ride out of the danger zone, without making them pay through the nose. I know we don't live in such a world, but I sure wish we did. And acknowledging that we don't feels like admitting failure. Research has shown that markets don't just force us to confront our selfishness, but often make it even worse.⁴⁹

Does assuming that people will do what their material self-interest requires make that outcome more likely? To increase the availability of organs for transplantation, we may conclude that some well-crafted financial inducements ultimately would yield the best results, but the idea that too much of a market focus might crowd out altruistic donation should be taken seriously.

Compounding the complexity of the issue, even absent an expressive effect, we are not very good at predicting consequences. It is easy enough to predict that, all else equal, the prospect of making money serves as an incentive, and the prospect of going to prison serves as a disincentive. But all else is never equal. Those advocating for an increase in the minimum wage might seem to be engaging in cheap sentiment when they argue that “everyone” should make at least a living wage. It might seem that they are ignoring realities of economics—that if something costs more, less of it will be purchased, including higher-priced labor. But efforts to demonstrate the effects of increasing the minimum wage have not yielded a definitive answer.⁵⁰ People react in complex ways. In particular, assuming that people are principally motivated by narrow material self-interest, as economists have traditionally done, turns out to predict less than the economists had thought, or at least claimed. For instance, economics had not predicted that people are as altruistic as they turn out to be.⁵¹ Also contradicting

49. Sullivan, *supra* note 3.

50. See generally Claire A. Hill, *An Identity Theory of the Short- and Long-Term Investor Debate*, 41 SEATTLE U. L. REV. 475, 479–80 (2018) (“The ‘baggage’ of identity helps explain why evidence pointed to by one side will often not suffice for (or convince) the other side. Consider the debate about the desirability of greatly raising the minimum wage. Differing priors may include different commitments to theory, different views about “factual” matters, such as the availability of opportunities, and different values as to the obligations and privileges of citizenship.”).

51. See Ernst Fehr & Klaus M. Schmidt, *Theories of Fairness and Reciprocity—Evidence and Economic Applications*, in 1 ADVANCES IN ECONOMICS AND ECONOMETRICS, ECONOMETRIC SOCIETY MONOGRAPHS, EIGHTH WORLD CONGRESS 208, 250 (Mathias Dewatripont et al. eds., 2003) (“The self-interest model has been very successful in explaining individual behavior on competitive markets, but it is unambiguously refuted in many situations in which individuals interact strategically. The experimental evidence on, e.g., ultimatum games, dictator games, gift exchange games, and public good games, demonstrates unambiguously that many people are not only maximizing their own material payoffs, but that they are also concerned about social comparisons, fairness, and the desire to reciprocate.”).

some canonical economics expectations, a famous experiment found that parents were more apt to pick up their children late from day care when a fine was instituted; simple economic reasoning would have predicted less lateness, but it turns out that people prefer paying money to feeling guilty.⁵² What follows from this? That there is no way to distinguish in a rigorous principled way between cases where our best estimate of the instrumental costs of a legal prohibition or permission at a particular point in time ought to weigh more heavily than the expressive message sent by having the prohibition or permission. But that does not mean we should not try harder than we presently do to limit the force of cheap sentiment.

IV CONCLUSION

Cheap sentiment is a belief an individual has from which she benefits, without appreciating, acknowledging, or paying the associated costs. Academics write as though people should hold consistent beliefs, but this “should” surely has no force, moral or otherwise, for society generally. Significantly, cheap sentiments are not just individual—they are social, passing muster in the communities in which individuals exist and define themselves. Especially because they are social, they influence policymakers. Cheap sentiment or more precisely, conduct or positions based on cheap sentiment, can thus be condemned for its potential policy effects. Cheap sentiment is a common phenomenon: it arises not only in notoriously charged areas such as transactions involving organs, blood, or other bodily parts or substances, but also in further-flung areas, including some that might initially seem less charged, such as differential pricing.

Policy ought to do the best it can to take consequences into account. Of course, what will happen under different scenarios cannot necessarily be known or agreed upon. But society benefits when we try. This surely is not controversial; my contribution is to identify a pervasive pathology that prevents us from doing better on this front, one that leads to us being too quick not to consider certain possibilities or even ruling them out altogether without giving them due consideration. I hope that by characterizing the phenomenon of cheap sentiment as a pathology, and accommodation to it as problematic and not inevitable, my framing can serve as a needed counterweight.

52. Uri Gneezy & Aldo Rustichini, *A Fine is a Price*, 29 J. LEGAL STUD. 1 (2000). See also Samuel Bowles, *Policies Designed for Self-Interested Citizens May Undermine “The Moral Sentiments”*: Evidence from Economic Experiments, 320 SCIENCE 1605 (2008) (“[I]ncentives that appeal to self-interest may fail when they undermine the moral values that lead people to act altruistically or in other public-spirited ways.”).