Addictive Law

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I. Introduction

This paper begins with the observation that the amount of law, as well as its reach, has increased over time. "Law" might refer to the number of cases or statutes, the number of lawyers even in per capita terms, the time and effort spent abiding by legal rules, or the number of paid law-enforcement officials (though in per capita terms this has sometimes decreased, perhaps because of the availability of new labor-saving technologies). If one adds agencies to the picture, or focuses on state law as well as federal and local law, it is plain that law is everywhere and rarely in decline. For the purpose of this paper, I hope readers will simply have observed, or will believe, that law is a growth industry and an increasing feature of most societies. If we define law more expansively, to include things like the number of law school rules and administrators or the number of arguments or people that can get involved when an employee is fired or a developer tries to build, it is even more obvious that group-directed rule-making and enforcement, or "law," is a growth industry. This is often a good thing, but this paper is not about counting the successes and failures of legal intervention. It is instead about explaining the growth of law, or more precisely the outsourcing of many problems and disputes to some sort of legal system.

What explains the growth of law? It is unlikely that law is a kind of conventional good for which more is always better. There are many explanations for its growth over time. I begin with a quick description of the most sophisticated explanation, and then turn to a new explanation that is the subject, and I hope the contribution, of this paper. As the title of this paper suggests, it is probably not good news.

Economists might be attracted to the simplest of explanations. When the consumption of a good increases over time, the cost of its production has often decreased, demand for it has for some other reason increased, or both. This is how we would explain the remarkable and regular increase in something like the number of smart-phones over recent years. But the cost of law has plainly increased rather than decreased, likely because it is a service-intensive good, not easily amenable to technological change, with the exception of monitoring by police and other law enforcement officials whose work can be done by cameras and computers, if allowed by courts and legislatures – whose own work has not yet been moved to artificial intelligence or other devices. We need to understand why demand for law has

regularly increased. In any event, good innovations usually reach some optimal size or number. Even smart-phones are leveling off, despite reduced cost. There is no shortage of examples of innovations that became wildly popular, but that eventually matured into a steady state that might be optimal, or limited for various reasons. In most cases, substitutes were developed, and increased demand and production eventually turned to declines. Trains were a good invention, but their number, earnings, and employment figures have not continued to grow over time. And if the appropriate comparison is to services rather than physical goods, formal education is an example of something we value but do not want to see maximized; one or two doctorates per person is probably enough. It is easy to imagine that we have, or will soon have, too many national holidays, too many unions, too many visits to doctors, excessive consumption of drugs – and more law than is optimal.

II. Law's origin and growth

A superior and familiar explanation for the growth of law takes us back to its origins. The conventional story is that hunter-gatherers started developing agriculture and this allowed denser populations. As people were able to live together in optimal units, for learning and innovation, they had time beyond what they needed for survival activities. They developed art and other means of expressing themselves and connecting to one another, though interactions probably also enhanced their chances of survival and procreation. Over time, they developed superior methods of fishing, hunting, and building, and they also expanded languages and other means of passing on their innovations and cooperative activities. Other animals also communicate and learn, but humans, with their bigger brains, probably developed genetic material that favored learning through observations and communication. In time, standards of living rose, and humans thrived in various climates, occasionally crossing boundaries and picking up new skills and methods, with just occasional setbacks. Humans formed cities, and in groups they learned and advanced even more.

As these groups lived together they competed but also thrived by developing mechanisms that reduced violence. Among other things, they created property rights, rules against stealing and murder, and so forth. These rules were often enforced by third parties, like tribal elders or spiritual leaders, and eventually took the form of courts and formal law-enforcement officials. The rules reduced the resources spent on defense, or at least private defense aimed at protecting the fruits of one's labor. There are twists to this story, and other theories about property rights and the emergence of art and other form of expression, but this is not a paper about physical and cultural evolution. The point is that law may grow because we increasingly live

together in order to gain communication and inter-generational advantages. Both farming and crowded enclaves increased the need for property rights, schools (public goods), and more. Meanwhile, over-grazing, pollution, and other negative and positive externalities also generated a greater reliance on law. From this perspective, law is a function of crowding and development, and there is no reason to expect it to level off, any more than there is reason to expect cities to stop multiplying and growing.

III. Outsourcing to legal institutions

But I want to offer another, perhaps parallel, explanation for the emergence and growth of law. Along the way, it will be apparent that law changes preferences about law itself. The argument here is that people come to rely on law, and they come to think it will solve most problems. Law grows because people become addicted to it, and law itself alters their preferences in ways that are as likely to be inefficient as they are to be efficient. To some degree, an increase in law is surely efficient, as when it reduces violence. But there can be too much law, just as there can be too much of many things we like in smaller amounts and then cannot resist overindulging. Few people want to outsource everything to law, and most of us recognize the attraction and efficiency of self-help. It is more efficient to put one's children to bed, rather than to have the government create a bureaucracy designed to come in and take on the task. Families do not outsource that activity, except on occasion to babysitters or neighbors, and a government steps in only when a family is extremely dysfunctional. We do outsource education to government, and that may or may not be efficient, but the point is that every society has pockets in which there is too much law. Critically, once there is outsourcing or even over-indulging, it is rare to go back to what might have once seemed the preferred level. I recognize that this raises the skeptical question of how we know that the old preference was the correct one, but I am setting this question aside to make the point that law changes preferences in a way that, at least ex ante, people would have thought inefficient and undesirable.

If you tell me in an early time period, which I will call T1, that I will prefer to be a vegetarian in T2 (a later time period), or that I will at that future time like spicier foods more than I do now, in T1, I would not resist and say that I wish I could stop these transformations, because I recognize that preferences can change, and that variety can indeed be the spice of life. Moreover, I might be convinced that I can a alter my preferences again in T2. But if you tell me in T1 that I will likely gamble or take drugs for ten hours a day in T2, then in T1 I will take steps to prevent the emergence of that future self. This is especially the case if there is evidence that most

people are unable to revert to their previous behavior, or preferences. Most preference changes caused by law fall in the first category. Thus, law might impose taxes, tort liability, and worker protection laws that make me prefer a different kind of home, means of transportation, or type of business activity in T2 than I preferred in T1, and would have thought in T1 that I would continue to prefer in T2, but then law can change my preferences about these things by T2. Even if I am aware of these possibilities and their causes in T1, I would not take steps to prevent the change. I might wager against these changes, but I would normally not want to deny my future T2-self its capacity to fulfill its preferences. The same is not true for what we call addictions. It might be that these "addictions" are nothing more than a form of loss eversion. New laws found in T2 might have created interest groups, like lawyers or unions, that will work hard to maintain gains that law provided. The same groups might then succeed in expanding their gains over time. But inasmuch as this second step takes us beyond loss aversion, it is hard to see how the growth in law can be explained by interest groups alone, as groups will organize to prevent law's expansion even as others work to expand law.

The addiction idea can be emphasized with simple examples of interactions among neighbors, and the growth of tort law and then police enforcement. The argument is then easily applied to environmental and many other areas of law. In all these examples, interest group politics alone does not explain law's remarkable growth. Addiction is a better description.

Imagine a case where ten families are disturbed by a very loud neighbor. Long ago, in 1800, gossip might have played a useful role in quieting down a noisemaker during the evening hours. Alternatively, one neighbor might have spoken to the head of the noisy, nearby household and suggested that noise was making it hard for children to sleep. In a delicate case, a delegation of neighbors might have formed to increase the courage of the intervening parties. A few unskilled neighbors might have screamed or threatened to convey the same message, but these communications would have been known to increase the chance of retaliation or feuding. When this kind of group is successful, we can think of it as an interest group, but free-riding is an ever-present danger, and the formation as well as the failure of interest groups is a well-known puzzle.

Let me give an example by simplifying the experience of the co-op building in which I and Corinne now live. This building, constructed in 1917, has always been home to twenty families, and I do not believe there is an example of anything approaching violence as a means of solving coordination problems. Nor is there an example of brilliant bargaining as anticipated by Coase; no neighbor has paid another to end a

loud party. It is likely that social conventions controlled noise; there were musical instruments and probably more parties than there are today, but few noisy electronic instruments or televisions. The walls are thick, but there might well have been a norm not to practice piano or tuba playing late in the evening. By 1970, something of a collective-action problem developed, perhaps because parents became more permissive or inattentive. A few noisy and loud parties, with visible drugs and sexual activity, were hosted by teenagers. This brought about additions to the building cooperative's bylaws. Unsupervised parties were forbidden in storage rooms, for instance, and displeased residents began taking their complaints to the cooperative's elected governing board, which fortified the organization's rules. By the time my family moved in, around 2000, we could not purchase the shares associated with our unit without first agreeing to rules about noise, exclusion of pets from the backyard and from the front elevator, restrictions on children's parties, as well as grilling and party activities in the yard. I will not claim that these numerous rules were inefficient, and indeed I have some confidence in the wisdom of the crowd – in this case a majority vote of elected directors. Instead, what I find remarkable is the growing inclination to avoid one-on-one discussions and requests, both to avoid conflict and to free-ride on the work of others. Over time, and to this day, the solution has been to resort to an elected board and to rely on unpaid board members who spend considerable time in meetings in order to address individual problems as they arise, and to fashion solutions in ways that do not appear to gang up on a single person. Rules have been fashioned in ways that have appeared fair because they apply across the board to all residents; in any event, they are legally binding. If the rules are inefficient, it is because no one seems to take into account the value of the time spent by the regulators, and also by the difficulty of taking intense preferences into account, while enacting rules that on the surface treat all residents equally. Law is preferred over individual confrontation, and also over market solutions. There is no doubt that most of this was previously accomplished privately; if it was done publicly, it was not with rules (or private lawmaking), but through shaming and evolved social norms. Over time, norms have been codified, or outsourced to rulemaking, by elected officials who have some contractual power to impose (monetary) assessments on violators. Presumably, a neighbor could have gone to court and brought a tort law claim, but this would have been costly and perhaps embarrassing for the upscale building as a whole; it might even have reduced property values. It is interesting that the change might have come from both directions. One who is offended has reason to go to the elected authorities, but the one who offends might prefer to be regulated by an impersonal majority vote rather than through a personal confrontation, which can make future relationships difficult.

In the much more downscale middle-class neighborhood I lived in as a child, there was certainly no elected board, and indeed no legal mechanism for a block or neighborhood to vote on behavioral norms or penalties for their violation. Self-help was common; people screamed and often crossed property lines to throw a garbage can or disable annoying lights. People crossed boundaries to cut disturbing tree branches. Face-to-face discussions were common, but outright threats or violence was unknown. Adults did feel free to reprimand neighbors' children. I can recall just one occasion on which a neighbor threatened to call the police, but that was when my brother was repeatedly riding his bicycle over me while I was tied, helplessly (but willingly), to the ground.

Just as the presence of my current building's board has encouraged residents to rely on it to solve their problems, rather than to have personal discussions with perceived offenders, so too the presence of law has discouraged personal resolutions of perceived problems in the larger society outside of a building or small community. I am told, and I am not surprised by the fact, that my old neighborhood's residents now call the police, bring lawsuits, or appeal to an elected City Council Member or the Borough President's office from time to time. And even in my present building, residents might in the future resort to higher, yet more formal sort of law, and sue one another or the building's board of directors. Outside of an apartment building or small neighborhood, the move from private ordering to formal law is a more serious matter. Just as the presence of my building's board of directors has, perhaps unknowingly, encouraged residents to rely on it to solve their problems, rather than to have personal discussions with perceived offenders, so too the presence of law has discouraged personal involvement when witnessing polluting activity, shoplifting, violence, and other harmful activities.

There are many reasons for this outsourcing to elected officials with direct or indirect legal power. Consider first the simpler situation where a nearby table in a restaurant is offensively loud, or a fellow passenger on a train begins to smoke a cigarette. In the first case, very few people would ask the noisy group if they could please reduce the level of noise. Most would say nothing, and some would ask the server if it were not possible to ask the group to quiet down. One reason is that the disturbed party fears an unpleasant confrontation or even some kind of retaliation. The restaurant might want to hear about the objection, because it might lose future business if the place is perceived as unruly. Note that people are much more likely to ask if a sound system could be turned down, for here there is no fear of retaliation. In both cases, there is a collective-action problem of two kinds. A single patron might hope that someone else will complain and, second, he or she might not know how to assess the group's preferences, or even the relative value of noise to the noisemakers,

compared to his or her own taste for quiet conversation, made impossible by the rowdy patrons at the table across the room.

To be sure, one building and one childhood neighborhood, and even our shared experiences in restaurants, do not add up to solid empirical evidence of the sort that some readers have come to expect. And yet, the argument here does rely on personal observations, along with the logic of collective action and private calculations. The claim is not that all disputes were once solved interpersonally and that none is today. In my own building, there are contemporary examples of face-to-face discussions and requests. The observation is that there has been a dramatic change in the mix of self-help and law. I have tried to ask many people questions about their personal experiences, and most of what I hear corresponds to the claim made here; intervention is unusual while resort to legal authorities is common. Moreover, note the difficulty of more rigorously obtaining empirical evidence. We can survey people today, though I am skeptical about survey evidence, but we can no longer survey people about their intuitions or behavior fifty or one hundred years ago. It is easy to gather evidence about the growth of law, but difficult to measure the decline in what I have called self-help, or personal confrontations or bargains. It is possible that people are simply more easily offended, so that personal confrontation and law have both grown over time – but that is not my impression, nor that of most people I have questioned.

Returning to inconsiderate patrons in a restaurant, and assuming it is correct to say that self-help is unusual, and even that it has changed over time, it should not be taken as evidence of an inefficiency. A restaurant is unlikely to suffer from a lack of information about noise levels. Put differently, the restaurant's employees can assess the noise levels without any assistance from patrons, and they are at least as likely as any one patron to assess the sentiments of the many silent patrons. Some people like lively places. A restaurant manager might ask for information about food quality or service, but even here they can observe the preferences of many patrons better than can any single patron. The same is not true for noise in a building or in a neighborhood. There is no central authority or observer to decide when to intervene.

It goes without saying that, in many cases, law has developed to solve these problems. There are laws and very occasional fines for failing to clean up after one's dog – though I have on occasion seen someone ask a dog "owner" to clean up. Closer to home, if I observe a couple screaming at one another in what appears to be a situation on the verge of physical violence, I can intervene by walking over and asking them: "Is there a problem?" or I might approach the screaming and pushing couple and say: "You might want to know that another observer has called the

police." But most people hesitate to intervene; indeed, my own family has, to my disappointment, tried to restrain me from intervening on one or two occasions. Intervention has a cost, and over time most societies have come to rely on police forces, even though these come with their own, much discussed, problems. The favored interaction is to summon the police and hope that a cool-headed officer arrives in time. Note, again, that even the offender might prefer the police officer over a passer-by's intervention. The official is impersonal, and giving in to his or her instructions might save face compared to backing off when a mere fellow citizen (like me) with no legal authority intervenes.

In the event that an assault is already in progress, more of us would intervene, especially if we are joined by a group of friends who can overwhelm the perceived wrongdoer. You may have observed something like this on the ABC television reality show *What Would You Do*? There is a well-known collective-action problem here, even when it comes to do nothing more than calling the police. The greater the number of observers, the more likely each is to think that someone else has (in unobserved fashion) provided assistance. Law can encourage one form of intervention or another with "duty to rescue" laws, but the focus here will be on the use of carrots rather than sticks.

The larger point is that problems that were once worked out at a personal level, whether interpersonally or with group dynamics, are now outsourced to formally empowered central authorities that can be captured in the expression "law." In some settings, this occurs through institutions like companies, universities, or even cooperative associations, with their own delegation of authority that is very much like civil and common law. Indeed, formal law is often used to enforce these institutional practices, or law makes clear that it will defer to them. The existence of these authorities, including conventional legal authorities like courts and police, in turn causes people to rely on them and to increase their assessment and fear of personal risk. The availability of law causes us to prefer law – and this is an important cause of a growing addiction to law.

There is a benefit to outsourcing to law or law-like authorities. We have outsourced our ability to interact, and especially so in crowded settings, just as we have outsourced other needs, like food preparation. People have come to prefer law or simply to disfavor personal involvement, just as many people have come to prefer prepared foods and even fast-food over homemade snacks. People have developed a preference for law, much as many have developed a taste for celebrating events in restaurants rather than in homes. They relax or study in coffee-shops rather than at home. The very presence of bars and coffee-shops encourages further reliance on

these institutions, not just because people learned to prefer them in T1, but also because bars and coffee-shops are good at advertising and altering preferences so that young people now meet each other in, or outsource to Starbucks, instead of taking walks or excursions in their own cars. They might say they do this for reasons of safety, gender equality, or other reasons – just as people say they call the police rather than break up fights themselves because of safety and privacy concerns – but there is more to it. Institutions have changed their preferences. Legal institutions are often like Starbucks, preferring that customers become more attached and even addicted.

There is room to push back on these observations about law and, or course, coffee-shops. People may file more lawsuits against their neighbors now, but they also settle many cases, and we might think of settlements as self-help, once removed; indeed, many settlements, and especially private settlements, can be understood as reflecting a preference for privacy. But overall, it is fair to say that because law is subsidized and somewhat predictable, it is easy to get addicted to it. The availability of police forces causes people to prefer not to get involved when they observe a fight, and it certainly encourages people to call for help rather than to solve things on their own when they are disturbed by noise or pollution from their neighbors. It also causes parents to teach their children to call for help, from a teacher or police officer, rather than to try to be "heroes." Various public-choice reasons make it difficult to reduce police forces and other elements of law, so that there is no external push back to self-help. Very few students intervene when they see a fellow student cheating on an examination; some will resort to "law" by telling the professor, just as they might (rarely) respond to observed shoplifting by informing the storekeeper. In all these cases, the presence of a central authority encourages yet more reliance on it. It is as if people want the storekeeper to hire security guards, and then to object when the guard springs into action. When our students are offended by insensitive comments made by fellow students, they resort to shaming but they also appeal to the Dean of Students, a figure who was unknown one hundred years ago. And the presence of this authority, or lawmaker, seems to increase the preference for more rules, more intervention, and more assistant deans.

These examples emphasize the fact that law is subsidized or at least pre-paid. It is supported by the government (or student fees) and, with respect to many controversies, it rewards those who bring claims. If law subsidized coffee shops or wedding halls, we would be yet more confident that the interactions these businesses attract would not return to the home turf.

IV. Law as an addiction

My focus here is on law's addictive quality; the availability of law, not to mention the fact that it is subsidized and in a sense pre-paid, encourages a preference for legal intervention and it has brought about the disfavoring of private interventions. It may also have brought about related changes. I have hinted at the idea that the presence of law may have brought about a preference for greater privacy. Privacy was virtually unknown in small, tight communities, necessarily close because of the absence of vehicles and other means of transportation. Gossip and even out-casting were the important forms of social control. In contrast, when we do not intervene in a brawl, because of fear or the availability of police, we also feed a taste for privacy; we do not want the storekeeper or teacher to tell the offender who (broke the norm and) reported the shoplifting or cheating. In a larger system, law often requires the identification of accusers, because it is less confident that accusations are accurate. The teacher knows the student who reports a wrongdoing and has the ability to assess its accuracy in several ways. A judge rarely has comparable information, and must choose whether to reward accusers or penalize false accusations. I doubt that most shoppers who observed shoplifting would provide information to a store's guard when questioned by the guard or the store's manager. In this case, the addiction, if it is that, is to non-involvement, and the outsourcing is really to cameras and then to law.

Returning to noisy neighbors, it is apparent that misbehavior that could often be handled by an individual is now delegated to a group, or a set of agents. A society can instead develop stronger social norms. Every long-term visitor to Japan observes that neighbors and friends on a commuter train communicate in hushed voices, certainly as compared to much louder counterparts in the United States. Theirs is a society that is more densely packed. It also has less wood and other natural materials to draw upon for constructing thicker walls. On the other hand, my limited observation is that Japanese neighbors are even less likely to confront noisy neighbors directly than are neighbors in the U.S. I cannot imagine them asking a restaurant employee to quiet down a loud group at another table. They are also less likely to rush to court with complaints about neighbors. In sharp contrast, confrontation in Israel, even among neighbors, is quite common. In my own building, one person regularly threatened to sue others. With all due respect to my own law school's obsession with Coase, I suspect that in none of these societies is it common for one neighbor to pay another to reduce the noise level after nine o'clock in the evening. No one in my building has offered to pay a difficult neighbor to move elsewhere, though the building committee has at times adjusted rules to turn mere displeasures into things that were explicitly forbidden in the building's written rules. Some of these rules are likely to impose economic costs on disagreeable people, and

almost every cooperative or closed community has stories about residents who were essentially pushed out. I have already suggested that outliers seem to prefer to be disciplined by boards of directors than by face-to-face confrontations, and that a brawler might actually save face through police intervention. This possibility is another way that the presence of law can create a preference for more law.

In the law and economics communities at the University of Chicago, we would insist that our failure to negotiate can be blamed on the collective-action problem. We might also insist that there is a moral hazard; if we pay people to tone it down or to control their teenage children, others might make noise they do not really value, in order to be paid for its reduction. It would certainly be counterproductive to pay a brawler or aggressive person at a party to back off. I prefer a public-choice explanation of why Coase (a Nobel Prize winner who advanced the idea that the assignment of property rights by law matters less than it first seems because people can bargain around these assignments) does not seem to rule the day. Rather than paying our neighbor to be quiet, it is less expensive to go to a building committee or to the law and ask for a rule, and then for its enforcement against what an aggrieved party considers to be excessive noise, unruly behavior, or unattractive windows. There remains a collective-action problem, because it is not costless to seek relief in this manner, and there are many affected neighbors, but it is likely to be less expensive to go to the law than it is to pay for quietude. If so, this may be an example of a growing addiction to law, but not to an inefficient addiction.

If the growing attraction, or addictive quality, of law is inefficient, it can be solved by paying people to engage in self-help of the sort their ancestors regularly engaged in. This solution may be difficult to carry out in practice, but it is worth thinking about because it casts light on restitution law and related doctrines. If it is less costly for an individual to intervene when he sees a brawl than it is to involve the police (assuming we can encourage calls to the police when danger is at hand), and it is less costly for a store to act on private reports of shoplifting than to hire security guards, then it is puzzling that we do not find stores paying for information and governments paying for reports of impending violence. A conventional and perhaps sufficient answer is that, in both settings, when a reward is offered there is a greater fear of false reports, or even of collusion in order to gain rewards that can be shared. False reports may also increase racial profiling and other behavior that a society, and even a store, wishes to avoid. Parents usually discourage children from informing on one another, and they rarely reward “snitching” or “tattle tailing,” perhaps because they fear false reports or they recognize the value of group solidarity rather than perfect law enforcement.

Still, carefully drawn rewards can be useful. These rewards are a form of restitution. If I benefit my neighbors by confronting one difficult neighbor, and getting her to change her behavior, then perhaps I should be able to collect a reward from those who benefited. There are obvious measurement and collection problems, and perhaps it is not surprising that I have not heard of such rewards being offered, either ex ante or ex post, in any building. Nor do I know of a university that pays students who report on other students' cheating behavior or sex crimes. But it is plausible that the government should try rewarding those who help it reduce expenditures on law enforcement. This is not the place to show how such a system might be designed, with an eye on preventing false reports. Indeed, the more difficult it is to design the system, the more convincing is my claim that law is addictive, and like most addictions, difficult to halt.

Outsourcing to police and legal institutions, but not to one's employee or child who could report wrongdoing by peers, suggests the more general question of when agents are used and when they are not. Police (or building committees) can be seen as agents who work for principals that in the past monitored, confronted, and disciplined in more direct fashion. Police and laws more generally are said to solve a collective-action problem, but this problem could also be solved by rewarding private action. Much as lawyers are paid when they create a common fund, so too each of us could be rewarded when we report crimes or intervene when neighbors are engaged in domestic abuse. In previous work about sexual assault, I argued that rewards might make reports less credible, so that there might be a case for encouraging timely reports with penalties for non-reporting as a way of saving future victims from assaults by what are likely to be repeat offenders. There is no need to rehash that questionable idea here, for my goal is to draw attention to the fact that we might have too much law because of its addictive quality. One way to fight this addiction is to reward those who could resort to law but are, instead, helpful on their own. Another is to emphasize that law may have grown because of this tendency to outsource, and that this development may be inefficient, and something to criticize rather than to celebrate. Just as we fear that more wars occur because of the interest group of professional soldiers who seek promotions or expenditures in their self-interest, so too we should fear that police officers, lawyers, lawmakers, law students, and scholars who seek approval from law journals, favor legal solutions rather than private engagement. Lawyers have every reason to want more law, even when law's growth is inefficient. These interest groups may play a role in encouraging the addiction to law, rather than self-reliance or activity that benefits a community without reward. But in this paper, I have avoided a public-choice explanation of this kind and have instead drawn attention to the likelihood that the presence of law, and especially of subsidized law, has encouraged a preference for more law and for less

personal involvement. Your preference for more law might benefit me when I truly need legal intervention, but it might instead disadvantage me when I am forced to pay for your preference and when people develop a preference not to involve themselves in social problems, but rather to rely on agents.

V. Conclusion

Without question, the development of legal systems has made us better off. Law has decreased murder and other horrors, while it has increased cooperative investment and encouraged the efficient use of assets and talents. But law has an addictive quality, as it alters preferences and makes self-help, personal involvement, and teamwork less enticing. When a neighbor makes noise or pollutes, we begin to prefer lawsuits or other legal interventions rather than private discussion with the neighbor, and this is so especially when there is a collective-action problem associated with private confrontation. Several neighbors might be disturbed, but no one has sufficient incentive to do anything but to turn to law, however inefficient this may be. The availability of legal intervention creates preferences that feed back to a support for more law, even when law is the inefficient alternative to other means of coping with negative externalities and other problems. Law creates a preference for law, even when this is inefficient – which is to say a preference for expansion of law that rational citizens would have, earlier in time, wished they could avoid, and which they can almost never reverse in the later time period when interest groups are ready to protect against losses.

Where money and constitutional wrongs are involved, law has developed a means of coordinating solutions through class actions, common-fund recoveries and other means. These may facilitate the efficient expansion of law. But the private inclination to appeal to law is often inefficient, and I have suggested that law might reverse its excessive influence on preferences for law itself, by allowing recoveries or offering rewards for private solutions to social problems that would otherwise encourage a growing addiction to law.