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The Letter Versus The Spirit of The Law

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**Abstract**

Recent literature has detailed the growing importance and prevalence of social norms and fairness in American society. In this paper, we propose *The Letter Versus The Spirit of The Law Model* as a medium for understanding the relationship between the law, social norms, and fairness in society. With the five tenets of this model, we highlight various scenarios in which the letter of the law or spirit of the law may be breached. We hypothesize that it may be unfair to violate the spirit of the law, even if the letter of the law has not been violated. Throughout our presented studies, we tackle this hypothesis, and more, as we define and analyze the letter and the spirit of the law.

### **The Letter Versus The Spirit of the Law**

You are hungry and choose to dine at your favorite restaurant. You parallel park across the street from the restaurant, but rather than crossing the street at a crosswalk, you decide to “jaywalk,” taking the direct route from your car to the restaurant. As you prepare to enter the restaurant, you hear a siren and are approached from behind. A policeman taps you on your shoulder and informs you that jaywalking is a crime, punishable by a fine and mark on your criminal record. You stare blankly in disbelief, crying out that you meant no harm and that the punishment is not fair. Alas, the policeman states that you clearly violated the letter of the law, hands you a ticket, and disappears. You shake your head – the letter of the law? There may be a law against “jaywalking,” but there were no other cars on the street and you have witnessed thousands of other individuals commit this “crime” over the course of your life. How can this be fair?

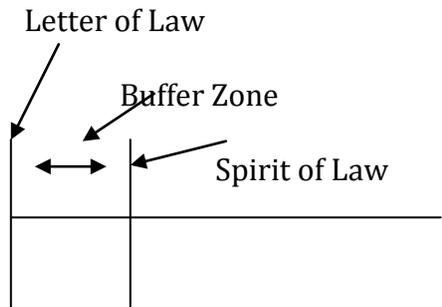
In the present analysis, we introduce *The Letter Versus The Spirit of the Law Model* to understand people’s perceptions of fairness when being penalized for breaking the letter of the law. We draw upon the literature on social norms to construct the theoretical framework of the model and harness a decision-making methodology to instantiate the tenets of this model. We conjecture that people may think it is unfair to violate the spirit of the law but not the letter of the law, approving punishment for such an offense. While this model contributes broadly to our psychological understanding of the law, it simultaneously makes a significant contribution to the field of behavioral law and economics (Jolls, Sunstein, & Thaler, 2000), where the study of social norms and the law is becoming increasingly more important (Ellickson, 1998).

### **Defining The Spirit of The Law: A Social Norm Perspective**

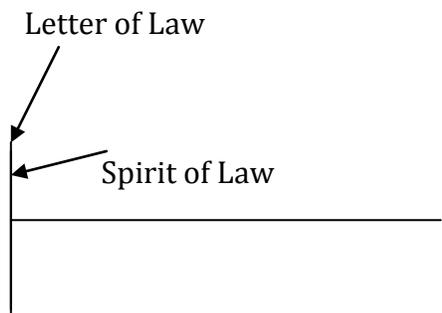
The *letter of the law* can be defined as any formal code, rule, regulation, or principle that must be followed according to governmental mandates or policies. In short, it is the law as it is written. In the United States, such letters of the law range from “stop at a stop sign” to “do not murder another person.” All these laws are in place to serve, maintain, and protect the public welfare in various ways. What is more complicated, however, and not codified is the *spirit of the law*, which we define as a social and moral consensus of the interpretation of the letter of the law. Because social norms generally reflect social and moral consensus, we turn to the literature on social norms and the law to further expand on the spirit of the law.

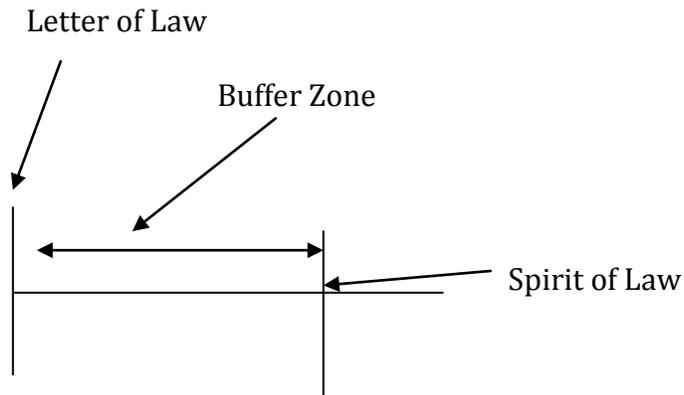
We will begin this discussion with a question – how does one decide in which manner to act, dress, eat, or do any other daily task? One answer is through social norms, or as Bicchieri views them, “the grammar of society.” Bicchieri (2006) defines social norms as “the language a society speaks, the embodiment of its values and collective desires, the secure guide in the uncertain lands we all traverse, the common practices that hold human groups together” (p. ix, Bicchieri, 2006). In this sense, social norms act like roadside guardrails on life’s highway, guiding human behavior through various circumstances. These same social norms also guide our behavior when following or not following the letter of the law (Brennan & Buchanan, 1985; Coglianese, 1997; Coleman, 1990; Posner, 2002). It is these very social norms that embody what we mean by the *spirit of the law*, which, conceptually, is distinctly different from the *letter of the law*, as defined above.

We can perhaps best understand the distinction between the letter and the spirit of the law through our proposed model displayed in Figure 1.

**Figure 1:**

In this case, the left-most vertical line represents the letter of the law, whereas the spirit of the law is located at some distance away from the letter of the law toward the right side of Figure 1. Because the spirit of the law is constructed by social norms, and social norms are inherently linked to legitimacy (Horne, 2009; Tyler, 2006), it is important to note that the horizontal distance between the letter and spirit of the law – the *buffer zone* – varies in size depending on the social norms for the pertinent law. For example, take two contrasting laws: capital murder and jaywalking (see Figures 2 and 3 below).

**Figure 2: Murder**

**Figure 3: Jaywalking**

Social norms would arguably consider a law against murder to be absolutely legitimate, important, and inviolable, whereas social norms regarding jaywalking would be less legitimate, less important, and more readily violable. Consequently, in the case of murder, the *buffer zone* would be virtually, if not completely, non-existent, whereas the *buffer zone* would be very large in the case of jaywalking. Thus, because social norms differ depending on each particular law, the severity of the action being prohibited, the context, the culture, etcetera, so too will the buffer zone between the letter and spirit. However, it is important to note that even in cases where the letter and spirit are perfectly aligned, as in capital murder, the letter and the spirit are nevertheless conceptually distinct.

### **Social Norms and Fairness**

While social norms are influential in determining the distance between the letter and the spirit of the law, namely the buffer zone, the extant literature on social norms and fairness (e.g., Amir, Ariely, & Mazar, 2008; Bazerman, Loewenstein, & White, 1992; Bicchieri & Chavez, 2010; Blount, 1995; Fehr & Fischbacher, 2004; Garcia & Miller, 2007) also suggests that social norms shape our interpretation of fairness. More specifically, this

literature suggests that the perception of fairness depends on whether or not a social norm has been violated. Thus, to the extent that social norms are violated (i.e. receiving a speeding ticket for driving 1 mile over the speed limit), societal perception of fairness will differ.

An example of this link between social norms and fairness can be found in cheating behavior and self-concept maintenance theory. According to the notion of self-concept maintenance, “people are often torn between two competing motivations: gaining from cheating versus maintaining a positive self-concept as honest (Aronson 1969; Harris, Mussen, & Rutherford 1976)” (p.634, Amir, Ariely, & Mazar, 2008). Essentially, individuals try to find the right balance between right and wrong, pushing the boundaries of the law as far as possible without going too far. According to Amir, Ariely, and Mazar (2008), most people like to cheat a little, a finding that further helps to explain our concept of a buffer zone.

In a study by Amir, Ariely, and Mazar (2008) where three groups were paid for correct answers on a test, one group had no ability to cheat, one group had some ability to cheat with a low probability of getting caught, and the last group had a great ability to cheat with a very low probability of getting caught. While results showed that those in the cheating conditions reported higher scores, it appeared that the amount of relative cheating was low, indicating that people think it is fair to cheat just a little but it is unfair to cheat too much (Amir, Ariely, & Mazar 2008). This concept of cheating “just a little” nicely illustrates the buffer zone, as individuals want to push the boundaries of implicit rule (no cheating), gaining every possible advantage without going so far as to violate terms of social and moral acceptability. Thus, while cheating is technically unfair, illegal, or both, the

social norm appears to be that it is fair to cheat “just a little.” It is unfair, however, to violate this social norm and cheat a lot.

Social norms that are initially unknown can still shape perceptions of fairness once further contextual information is provided. For instance, in plea bargaining research, Tor, Gazal-Ayal, and Garcia (2010) asked people to choose between (option a) accepting a 6-month sentence plea bargain or (option b) risking a 2-year jail conviction at trial. What varied, however, was that half of the participants were additionally told that the majority of others were offered a shorter 3-month plea bargain, whereas the other half of the participants were told that the majority of others were offered a longer 9-month plea bargain. Results showed that people tended to reject the plea bargain as unfair when they were told that a majority of others received shorter 3-month plea bargains versus the longer 9-month option. While this finding demonstrates that people are more willing to put themselves at greater risk for conviction at trial because of comparative information, it also shows that when a social norm is violated – in this case, the social norm of not giving someone the “short end of the stick” – it is perceived as unfair. Again, outcomes that violate social norms are seen as being unfair.

Social norms that are tied to the larger social context can also be violated and thus an outcome can be perceived as unfair (Garcia & Miller, 2007). For instance, if one is a school administrator deciding the type of music to be played at high school prom, one can easily flip a coin if half the students want “techno” music and half the students want “hip-hop” music. After all, a coin toss is procedurally fair (Blount, 1995; Bolton, Brandts, & Ockenfels, 2005). However, if music preference cleaves along ethnic lines, such that one ethnic group wants “techno” and the other ethnic group wants “hip-hop,” then the coin toss

is rejected as being unfair (Garcia & Miller, 2007). After all, in this latter case, the social norm of treating two different social category groups equally would be violated if a third party were to flip a coin (Garcia & Miller, 2007; Garcia & Ybarra, 2007), rendering the outcome unfair. Similar effects are found in research on ultimatum games. Social norms regarding the tolerance for inequality vary from culture to culture (Henrich, Boyd, Bowles, Camerer, Fehr, E., et al., 2001), and thus uneven ultimatum offers are differentially rejected as unfair when these culture-specific social norms are violated.

In sum, the literature on social norms and fairness all converge on one important point: Individuals are upset when social norms are violated, as breaking social norms is unfair. Thus, because the spirit of the law embodies the social norms that guide behavior around the letter of the law, we can infer that people consider it unfair to break, not necessarily the letter of the law, but rather the spirit of the law.

### **A Model of The Letter Versus The Spirit of the Law**

Based on the social norms and law literature (e.g. Bicchieri, 2008; Posner, 2002) as well as the social norms and fairness literature (e.g. Amir, Ariely, & Mazar, 2008; Garcia & Miller, 2007) we are thus able to propose the following tenets of our model. From the social norms and law literature, we build the case that the spirit of the law is distinct from the letter in that the letter is what the law states while the spirit is a social and moral consensus of the interpretation of the law. Because the spirit is based on social norms, the distance between the letter and spirit can vary depending on social norms in effect for that particular crime, or infraction. From the fairness and social norms literature, we posit that when one breaks a social norm it is unfair – thus, there is no fair manner in which one can break the spirit of the law. An additional meaningful implication is that violations of the

spirit of the law are so important that people deem an action or outcome as unfair when only the spirit of the law, but technically *not* the letter of the law, is broken.

We present the following tenets of *The Letter Versus The Spirit of the Law Model*:

1. The letter of the law is a distinct entity from the spirit of the law.
2. The letter of the law is what the law states; the spirit of the law is a social and moral consensus of the interpretation of the letter.
3.
  - a. People think it is unfair when enforcement occurs between the letter of the law and the spirit of the law.
  - b. People think it is fair when enforcement occurs within a certain proximity of the spirit of the law.
  - c. People think it is unfair when enforcement begins too far beyond the spirit of the law.
4. People think it is unfair to violate the spirit of the law regardless of action relative to letter of the law.
5. The spirit of the law is violated when behavior violates social norms with regard to social and moral acceptability.

### **Overview**

To further build converging support for the proposed tenets of our model, we performed a series of studies, using a decision-making methodology. In using between- and within-subject design studies and college student and working adult participant samples, we aim to test our hypotheses based on different aspects of the letter and spirit of the law. Studies 1-3 probe tenets 1-3 by exploring the relationship between fairness and violations of the letter of the law versus the spirit of the law. Study 3 further tests the relationship between social norms and the letter and spirit of the law in conjunction with the importance of fairness in society. Probing for tenets 4-5, Study 4 examines fairness and the

violation of the spirit of the law but not the letter of the law as well as the socially and morally acceptable underpinning of such violations.

### **Study 1: The Letter Versus The Spirit of the Law**

Study 1 aims to provide support for the first tenet – that the letter of the law is different from the spirit of the law. Depending on the situation and type of infraction, the letter and spirit of the law may or may not be statistically significantly different entities, but they are always conceptually distinct. Nevertheless, to test this tenet we focus on the context of fishing. Regarding catch-per-day fishing limits, drawing from the work on cheating (Amir, Ariely, & Mazar, 2008), we presuppose that the social norm is that it is fine to go beyond the catch-per-day limit by just a tiny bit. Thus, in this case, we predict that the spirit of the law will be significantly different from the letter of the law.

## **Method**

### **Participants**

A total of 108 undergraduates and alumni (61 females, 51 alumni) of the University of Michigan volunteered to participate in an online study. E-mail addresses were randomly selected from the University of Michigan directory. The response rate was approximately 30%.

### **Procedure**

In this between-subject design study, the participants read a scenario about the legality of fishing in Wyoming and were subsequently asked a question pertaining to the letter or the spirit of the law. In the *letter of the law condition*, respondents read: You are trout fishing at Hebegeen Lake in Wyoming. **You are legally allowed to catch 5 trout per**

**day.** According to the law, how many fish should you be able to catch before receiving a ticket? Enter a number (5 or above) below.” In the *spirit of the law condition*, participants read the identical scenario but were asked, “How many fish do you believe it would be fair to catch before receiving a ticket? Enter a number (5 or above) below.”

### Results and Discussion

Because we used an open value question, we first analyzed the data to remove any outliers beyond 3-standard deviations from the mean. This resulted in two participants being dropped from the analyses; however, their exclusion did not change the significance or direction of the effect. In the *letter of the law condition*, we found a mean consistent with the legal limit of 5 fish ( $M=5.08, SD=.27$ ) suggesting, as expected, that participants were correctly able to identify the letter of the law, which was that five fish could be caught each day. In the *spirit of the law condition*, participants posted a significantly higher value than the letter of the law, ( $M=5.75, SD=1.44, F(1,103)=11.2, p<0.01$ ); a one-sample t-test also reveals that this condition is significantly different from the first condition– the letter of the law ( $t(51)=3.76, p<.001$ ). This significance supports our hypothesis that there is a distinction between the letter of the law and spirit of the law. Essentially, the participants in this study displayed their desire for a “fudge factor” between the literal law and where the law should be enforced. Still, it is crucial to note that the letter and spirit need not be significantly different. In fact, as posited earlier they may be located in the exact same location (i.e. capital murder). Nevertheless, even in the case of murder, one simply must remain cognizant of the fact that the letter and spirit are distinct entities.

## **Study 2: The Impact of Enforcement Norms**

One of the main goals of law enforcement typically remains constant: to locate an effective method that easily coerces people to abide by the law. According to Tom Tyler, “the purpose of creating laws and empowering legal authorities is to establish and maintain social order by regulation of public behavior” (Tyler 2006). As outlined by Tyler (2006), realization of the goal of a fully compliant society has always been elusive. Numerous varying strategies are used to elicit compliance, including deterrence, which relies heavily upon the importance of incentives and sanctions in determining behavior (Tyler 2006). With our proposed model, we present a case for where enforcement should properly occur in society, thus potentially aiding law enforcement in eliciting better compliance within the spirit of the law.

With this study, we aimed to demonstrate how changes in enforcement norms affect individual’s perceptions of fairness. Because enforcement norms contribute to social norms, showing that enforcement norms can impact the onset of the spirit of the law adds additional credence to our social norm-based account of the spirit of the law. We hypothesized that in a 3-condition survey measuring individual reaction to ticketing in various speed limits, individual perception of fairness would vary depending on the treatment of others in comparatively similar situations. We also hypothesized that regardless of condition, fairness numbers would plateau where the spirit of the law exists, signifying that there is a certain threshold for speeding that may not be broken.

## **Method**

## Participants

A total of 100 undergraduates and alumni (58 females, 72 alumni) of the University of Michigan volunteered to participate in an online study. E-mail addresses were randomly selected from the University of Michigan directory. The response rate was approximately 13%.

## Procedure

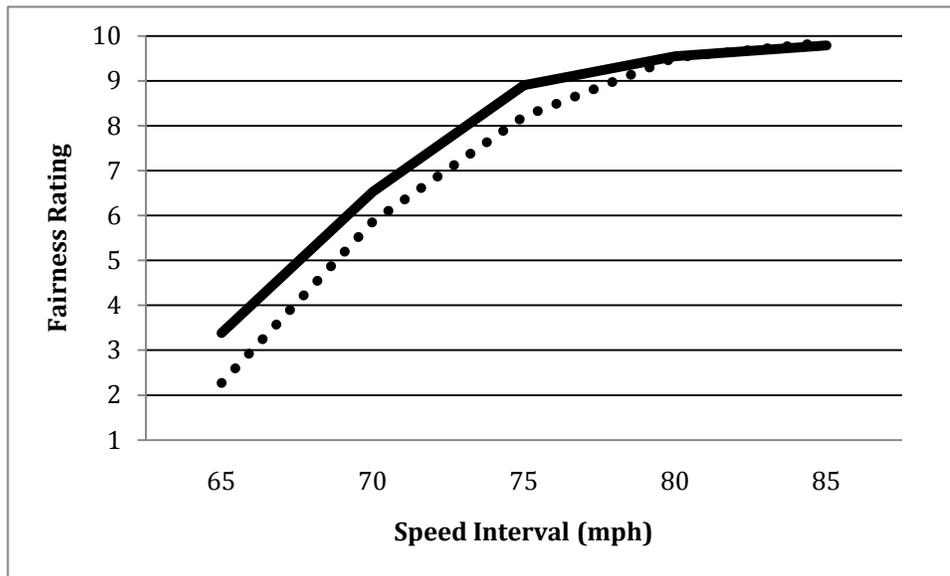
This study used a between-subjects model. Thus, each respondent answered five questions, all along the same 5-speed interval. There were three conditions in this study: a *control*, *majority ticketed*, and *majority not ticketed*. The introduction (in quotations), questions, and intervals were identical for each condition with the only difference bracketed below: “You are traveling in a **60 mph** speed zone. The next several questions all relate to your feelings after receiving a ticket in this zone. [A majority of drivers were ticketed at each interval] [The overall ticketing rate at each interval for the population is unknown] [A majority of drivers WERE NOT ticketed at each interval]. For every question, you will have the choice of rating your feelings on a 1-10 scale: 1=unfair - - -10=fair.” After reading this introduction, respondents were presented with an identical set of 5 questions to which they were instructed to rate the fairness of receiving a ticket, dependent on each situation: “You receive a ticket for going [65], [70], [75], [80], [85] in a 60 mph speed zone.”

At the end of the survey, all respondents were also instructed to answer the following two questions: “Knowing the speed limit is **60 mph** but a majority of drivers drive at least **70 mph** on average, **would you feel inclined to drive over the speed limit?**” and “Knowing the speed limit is **60 mph** and a majority of drivers drive at or below **60 mph** on average, **would you feel inclined to drive over the speed limit?**”

## Results and Discussion

Our study produced strong results that support our hypotheses. First, however, there was no significant difference between the *control condition* and *majority ticketed condition*, which we believe is due to the fact that the default control situation from a societal perspective is that the majority of drivers are ticketed for violations. Thus, we collapsed the *control condition* and *majority ticketed condition* and compared them to the *majority not ticketed condition*. Below is the data ( $m$ =fairness mean), for the *control + majority ticketed condition*: 65 mph ( $M=3.38, SD=2.64$ ), 70 mph ( $M=6.53, SD=2.56$ ), 75 mph ( $M=8.90, SD=1.64$ ), 80 mph ( $M=9.55, SD=1.09$ ), 85 mph ( $M=9.79, SD=0.81$ ). In the *majority not ticketed condition*, we observe a similar pattern of responses. However, this pattern begins with appreciably lower fairness ratings: 65 mph ( $M=2.27, SD=1.81$ ), 70 mph ( $M=5.86, SD=2.54$ ), 75 mph ( $M=8.21, SD=1.70$ ), 80 mph ( $M=9.52, SD=0.95$ ), 85 mph ( $M=9.86, SD=.44$ ).

The interaction between speeding interval and condition was significant ( $F(4, 340) = 2.456, p < .05$ ). This data suggests that the onset of the spirit of the law depends on the relevant enforcement norm, as between conditions there is a significant difference in terms of societal perception of fairness. As you can see in Figure 4 below – the two separate lines jump greatly as they enter the hypothesized proximity of the spirit and begin to plateau once they have passed this zone of the spirit. We believe this suggests that once a certain threshold is breached, punishment, in this case ticketing, becomes fair in a certain zone.

**Figure 4:**

Lastly, when a majority of drivers drive at least 70 mph in a 60 mph speed zone, 93% of respondents (N=101) indicated they too would drive above the speed limit. Meanwhile, when a majority of drivers drive at or below 60 mph in a 60 mph speed zone, only 26% of respondents (N=101) said they would drive above the speed limit. We believe this data further supports the view that social norms strongly impact individual decision-making, as respondents indicated their willingness to speed was largely based on the observable social norm.

### **Study 3a: The Zone of the Spirit**

The purpose of this study was to more closely examine the spirit of the law in conjunction with tenet 3: a – people think it is unfair when enforcement occurs between the letter of the law and spirit of the law, b – people think it is fair when enforcement occurs within a certain proximity of the spirit of the law, and c – people think it is unfair

when enforcement begins too far beyond the spirit of the law. As discussed in the previous study, we believe that it is imperative to view the spirit of the law itself as a “zone”, so to speak, rather than a single line or point on the model, as there is no one set location where social norms occur. However, whereas in the previous study we examined the spirit of the law more broadly, we aim to gain a more specific understanding and representation of the spirit with this study.

We used a simple decision-making scenario about speeding to triangulate the point (i) at which it becomes *fair* to ticket (the onset of the spirit) and the point (ii) at which it is absolutely necessary ticket (the end of the spirit). Thus, 3a can be deduced by the zone between the letter of the law and point (i), 3b the zone between points (i) and (ii), and 3c the zone beyond point (ii). Our predictions are that point (i) will be significantly higher than the letter of the law and that point (ii) will be significantly higher than point (i). As a result, the spirit of the law is defined by the linear distance between points (i) and (ii).

## **Method**

### **Participants**

A total of 93 undergraduates and alumni (51 females, 40 alumni) of the University of Michigan volunteered to participate in an online study. E-mail addresses were randomly selected from the University of Michigan directory. The response rate was approximately 20%.

### **Procedure**

Participants read about potentially speeding in a between-subjects design. In the *fair-to-ticket condition*, participants read, “You are traveling in a 60 mph speed zone. At

what speed (in the given 60 mph speed zone) do you believe it would be fair for you to receive a speeding ticket? (Enter a number 61 or above).” Participants in the *must-ticket condition* read the same scenario but answered a slightly different question, “At what speed (in the given 60 mph speed zone) do you believe it becomes absolutely necessary to receive a speeding ticket?” Thus, the dependent variable being measured was the speed at which the respondents believe enforcement should take place.

### Results and Discussion

Because this study used an open value measure as the dependent variable, we removed outliers that were beyond the conventional 3-standard deviations from the mean. This resulted in one participant being dropped from the analyses; however, his inclusion did not change the significance or the direction of the effect. The results were consistent with our predictions. Participants in the *fair-to-ticket condition* felt that it was fair to ticket them for speeding at a mean of 69.7 miles per hour ( $SD=5.46$ ), a value that is significantly greater than the letter of the law (60 mph,  $t(49)=12.4$ ,  $p<.001$ ). Moreover, as predicted, participants in the *must-ticket condition* felt that it was absolutely necessary to ticket at a mean of 74.3 miles per hour ( $SD= 8.65$ ), significantly higher than the *fair-to-ticket condition* ( $F(1,90)=9.83$ ,  $p<.01$ ). Taken together, these results display the fact that from a societal perspective, there is an optimal zone for enforcement, which occurs between the *fair to ticket condition* and *must-ticket condition* (in this case, between 69.7 mph and 75.1 mph). This corroborates tenet 3a-c by implicating that it is unfair when enforcement occurs too close to the letter (3a), fair when enforcement happens at the point where the spirit is

being violated (3b), and absolutely necessary to ticket at some distance beyond the spirit, otherwise it becomes unfair (3c).

### **Study 3b: The Zone of the Spirit**

To triangulate evidence of Tenet 3 in another way, we measured societal happiness with relation to either receiving or not receiving a speeding ticket within particular speeding intervals. We believed this study would assist in further examining the zone in which the spirit of the law exists. We hypothesized that individuals are unhappy if enforcement occurs between the letter and spirit of the law (tenet 3a), happy when enforcement occurs in the “spirit zone” (tenet 3b), and again unhappy if enforcement occurs too far from the letter of the law (tenet 3c).

## **Method**

### **Participants**

The 79 participants (47 females, 42 alumni) were all current or former University of Michigan students, selected at random from the University of Michigan directory. All participants were e-mailed a link to one of the two surveys, and there was a collective observed response rate of approximately 15%.

### **Procedure**

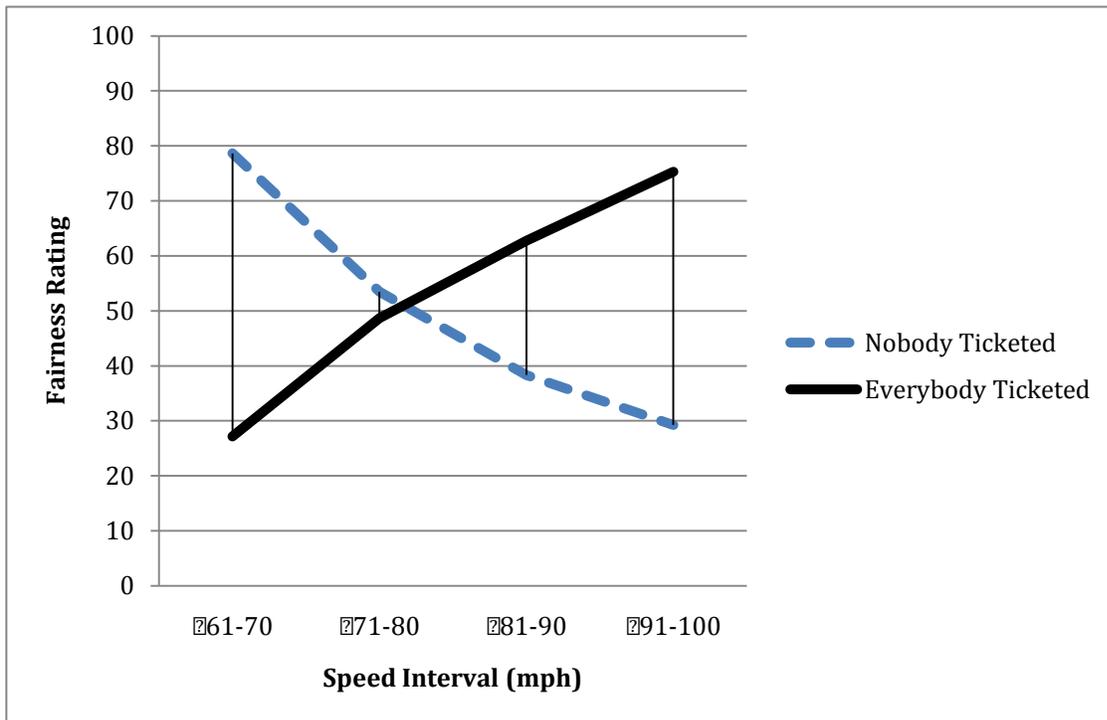
Two separate between subject surveys were conducted producing two conditions – *everybody ticketed* and *nobody ticketed*. Each survey contained a set of four questions which participants were asked to answer. In the *everybody ticketed condition*, participants were asked the following: “Overall, how happy would society be if in a 60 mph speed zone, [everybody] that drives (61-70 mph, 71-80 mph, 81-90 mph, 91-100 mph) is ticketed?”

Answer on a 0-100 scale (0=completely unhappy, 100 = completely happy).” The questions for the *nobody ticketed condition* were nearly identical; with the only difference being the insertion of [nobody] where [everyone] is bracketed. Within each survey, the only variance between questions was the speed interval in question. Both surveys had intervals of 61-70 mph, 71-80 mph, 81-90 mph, and 91-100 mph. Thus, the dependent variable being measured was happiness relative to the interval in question.

### Results and Discussion

The results to both surveys were consistent with the hypothesis of a “spirit zone.” In the *everybody ticketed condition*, the observed means of happiness ratings increased as the speed interval increased: 61-70 mph ( $M=29.33$ ,  $SD=24.72$ ), 71-80 mph ( $M=50.23$ ,  $SD=26.56$ , 31), 81-90 mph ( $M=62.56$ ,  $SD=26.29$ ), 91-100 mph ( $M=75.84$ ,  $SD=22.22$ ). For the *nobody ticketed condition*, the observed means of happiness ratings decreased as the speed interval increased and were significantly different from the *everybody ticketed condition*: 61-70 mph ( $M=78.63$ ,  $SD=18.84$ ,  $p<.0001$ ), 71-80 mph ( $M=54$ ,  $SD=24.57$ ,  $p=.51$ ), 81-90 mph ( $M=38.79$ ,  $SD=24.92$ ,  $p<.0001$ ), 91-100 mph ( $M=29.26$ ,  $SD=22.60$ ,  $p<.0001$ ).

Seen below in Figure 5, the two lines, which connect the responses from the separate conditions (black line = *everybody ticketed condition*, blue dotted line = *nobody ticketed condition*), intersect in the hypothesized spirit zone. Together, the two lines create both a normal U-shaped curve (in the section above the intersection of the two lines) and an upside-down U-shaped curve (in the section below the intersection of the two lines).

**Figure 5:**

One interesting implication of this finding is that it again suggests an optimal zone for enforcement. Essentially, because happiness converges within the proximity of our proposed spirit of the law, this is where enforcement should occur for society to be optimally happy. Where the lines converge is the point at which people are insensitive to whether everyone or no one gets a ticket.

#### **Study 4: Breaking the Spirit, But Not the Letter**

The purpose of this study is to probe several latter tenets of our model. First, while we have shown that it can be considered fair to violate the letter of the law but not the spirit of the law, we also hypothesize that people think it can be unfair to violate the spirit

but not the letter (tenet 4). Second, we hypothesize that the spirit is violated whenever the offense breaks social and moral acceptability norms (tenet 5).

## Method

### Participants

A total of 173 undergraduates and alumni (110 females, 90 alumni) of the University of Michigan volunteered to participate in an online study. E-mail addresses were randomly selected from the University of Michigan directory. The response rate was approximately 20%.

### Procedure

In this two-condition, between-subjects design study, participants were instructed to answer a series of questions. Participants were randomly and evenly assigned to one of the two conditions – the *breaking spirit, not letter condition* or the *breaking letter, not spirit condition* - and were presented only those questions related to their condition. Those participants in the *breaking spirit, not letter condition* were presented the following information: “At Toby University, a self-governing jurisdiction, the law for handicapped parking is the following: ‘If the car you are driving has a handicapped license plate – you are permitted to park in a handicapped spot.’ You are handicapped. You are visiting your friend at Toby University. During this visit, you drove your friend’s car, which does not possess a handicapped license plate and parked it in a handicapped parking spot. This area is regularly patrolled by traffic officers. Please answer the following questions by taking into account the information provided above along with your personal views.” The participants in the *breaking letter, not spirit condition* were presented with nearly identical

information – the only difference being that they are not handicapped and their friend’s car possessed a handicapped license plate.

Next, subjects in both conditions were asked an identical set of five yes or no questions: 1. Do you think you should receive a ticket in this situation? 2. Do you think your action was legal? 3. Do you think your action was socially acceptable? 4. Do you think your action was morally acceptable? 5. Do you think your action was fair?

### Results and Discussion

The results were consistent with our prediction that people believe it is unfair to violate the spirit of the law, even if the letter of the law is not violated. A total of 21% of the respondents (N=82) in the *breaking spirit, not letter condition* thought they should receive a ticket, while in the *breaking letter, not spirit condition*, 73% of respondents (N=86) said they should receive a ticket ( $\chi^2=17.162, p<.0001$ ). Moreover, from the perspective of the law, 0% should have received tickets in the *breaking spirit, not letter condition*, yet marginally significantly more (21%) recommended ticketing ( $\chi^2=3.5, p=.06$ ). This finding underscores how violations of the spirit, and not the letter per se, are paramount. On the other hand, 100% of participants should have been issued tickets in the *breaking letter, not spirit condition*, whereas significantly fewer participants (73%) recommended ticketing ( $\chi^2=6.15, p<.05$ ). Again, this signifies the importance of breaking the spirit of the law versus the letter of the law when penalizing individuals.

We observe a parallel finding with respect to the legality of the action. A total of 22% of the respondents (N=86) in the *breaking letter, not spirit condition* thought their action was legal, when according to the letter of the law, this number should have been 0%

because their action was clearly illegal. Meanwhile, in the *breaking spirit, not letter condition*, 76% of the respondents (N=82) correctly answered that their action was legal, when according to the letter of the law, their action should be considered legal 100% of the time (significance between legal  $c^2=17.237$ ,  $p<.0001$ ). This last question additionally underscores the fact that a significant majority of respondents understood what was and was not legal.

With regard to the perceived fairness of their actions, 19% of the *breaking spirit, not letter condition* respondents (N=81) viewed their action as fair, while 80% of the *breaking letter, not spirit condition* respondents (N=86) thought they acted fairly in illegally parking in a handicapped spot ( $c^2=22.223$ ,  $p<.0001$ ). Thus, these findings support tenet 4, as respondents demonstrated both their situational approval of violating the letter, but not the spirit of the law, along with the potential unfairness of violating the spirit, but not the letter of the law.

In response to our exploration of support for tenet 5, the results for the social and moral acceptability and fairness questions were striking: in the *breaking spirit, not letter condition*, 21% of respondents (N=82) believed their action was socially acceptable while 76% of respondents in the *breaking letter, not spirit condition* (N=85) viewed their action as socially acceptable ( $c^2=18.481$ ,  $p<.0001$ ). Similarly, a mere 10% of those in *breaking spirit, not letter* (N=81) thought their action was morally acceptable while in the *breaking letter, not spirit condition*, 86% of respondents (N=86) believed their action was morally acceptable ( $c^2=35.95$ ,  $p=0$ ). The results for both conditions were essentially mirror images of each other. Respondents felt it was socially and morally acceptable to break the letter of the law, creating a scenario that is consistent with tenet 4. Thus, with this study we aimed

to prove that our model is bidirectional – it is a “societal violation” to break the spirit, even if one’s action are within lawful boundaries. “Societal violations” do *not* only occur when the law is breached.

### **General Discussion**

All members of society are entrusted with the duty of following the law, but the present analysis illuminates an important distinction between the *letter* and the *spirit* of the law. According to our *The Letter Versus The Spirit of the Law Model*, the letter and the spirit of the law are discrete entities with the letter being what the law actually states while the spirit is a social and moral consensus of the interpretation of the law. Hence, the spirit is set by social norms, which govern the distance between the letter and the spirit. When the spirit is breached, people feel that it is fair to be penalized for violating the law. Our empirical analysis supports the tenets of the model. Study 1 shows that the letter and the spirit are distinct entities, whose distance from each other varies according the social norms that set the spirit. Study 2 shows that, because the spirit is based on social norms, enforcement norms can likewise impact the distance between the letter and the spirit. Studies 3a and 3b show that according to the spirit of the law, there is an optimal zone for enforcement, which guides individuals’ perceptions of happiness. Finally, Study 4 shows that people may be more concerned with violations of the spirit rather than the letter of the law. Many people feel that others who violate the spirit of the law, even when not technically violating the letter, should be penalized. Moreover, additional results corroborate that violating the spirit of the law may be associated with violating the social

and moral consensus, whereas violations of only the letter do not necessarily have this association.

### **Limitations**

As with all empirical approaches, there are limitations. One limitation in this particular analysis is the fact that we rely exclusively on people's evaluations of hypothetical situations. This limitation is inevitable given the fact that we cannot actually penalize participants for violating the letter or the spirit of the law. However, this decision-making methodology nevertheless provides us insight into people's perceptions of fairness and the law. Perhaps Daniel Kahneman (2000) best responds to questions about using such "artificial" scenarios: "The answer is that choice . . . is the fruit fly of decision theory. It is a very simple case, which contains many essential elements of much larger problems. As with the fruit fly, we . . . hope that the principles that govern the simple case will extend in recognizable form to complex situations. (p. xi, Kahneman, 2000)"

Another limitation is that our available data pool restricted our studies – all of our participants were current students or alumni of the University of Michigan. While this sample comprises student and working employee samples, they arguably subscribe and follow a different set of norms compared to people from other parts of the country or the world. However, in the present analysis, we are not suggesting that all people will share the same opinions and follow the same social norms as those in our sample but rather that the distinction and distance between the letter and spirit of the law will similarly be impacted by social norms, whatever these norms might be.

## **Implications and Future Directions**

One of the contributions of this paper is it gives us the language to talk about fairness. The concept of fairness in society is relatively ambiguous, thus, if we can better grasp what it means to be treated “fairly” by a boss or even by law enforcement officials – especially when one is beyond the bounds of the letter of the law – our own actions may become more effective and efficient. In reality, it would appear that anytime one is punished for breaking the letter of the law, that punishment would be fair. The law is in place for a reason and in most situations one would expect that following the law would be unquestionably fair, while breaking the law would be clearly unfair. However, we believe these studies have proven that the letter of the law is not a universal determinant of fairness; rather, people desire a certain margin of error in their behaviors. As explained by Amir, Ariely, and Mazar (2008), we look for ways to take advantage of any system in the most “fair” way possible. There is a tacit understanding in society that laws need to set limits – they must occur somewhere but cannot always be enforced to the letter. Thus, we, as a society, determine what we deem to be “fair,” the place that we think enforcement should occur. We believe this concept of a “fair” location for enforcement is demonstrated by tenet 3.

We also believe this research provides a helpful framework for understanding prejudice in society. In different situations, some social groups may be penalized for breaking the letter of the law while others for breaking the spirit of the law. For example, United States customs workers may treat people from Canada differently, giving them the benefit of the spirit of their policies (i.e. less invasive security checks), than individuals from Africa, who may be treated based on the letter of the law. Our research opens a new

vista for understanding this potential discrimination and prejudice. Another example of this discrimination may be found in a sample of those that get pulled over while driving. Similar to our customs example, those in the in-group may be held to the spirit of the law, given a break if they have violated the letter of the law in an inconsequential manner. On the other hand, outsiders may be pulled over for looking different and thus suspicious – they may be held to the letter of the law, penalized for “unimportant” violations. The language throughout our present analysis allows us to evaluate this prejudice.

Moreover, also feel that our model can predict law-abiding behavior. The model not only helps explain and diagnose a wide range of laws and situations, but it can help predict future developments in people’s actions. For example, with this model, if law enforcement were planning on changing enforcement norms or the location (graphically) of their enforcement, our model can help predict the subsequent societal action and reaction. Hypothetically, if for a less serious offense (i.e. jaywalking), law enforcement decided to begin enforcing the crime right on the letter of the law, we predict that the spirit of the law would not necessarily move immediately as society would “disagree” with this action and deem it unfair. As displayed in Study 2, enforcement norms *can* shift the spirit of the law, however, because the spirit is a moral and social consensus and driven by social norms, it may take more time to evolve into a new spirit after a change in enforcement norms. The only way, in this situation, that the spirit of the law will move closer to or farther away from the letter of the law would be if the social norms surrounding jaywalking changes -- if, for instance, there was a national tragedy related to jaywalking or something of that nature, or if the penalty for jaywalking was increased to the point where it is no longer beneficial to jaywalk due to the potential punishment.

Finally, our analysis gives us a new language to understand other complex situations, those that are not technically illegal but seem wrong (i.e. violating the spirit of the law but not the letter). For example, an angry spouse may break the “spirit” of domestic violence laws by destroying items in their home during an argument, creating an unsafe and dangerous environment, without violating the letter of the law. Thus, even if the angry spouse does not personally threaten or touch the victim, committing technically “legal” violence, society may view the angry spouse as deserving of punishment. Again, *The Letter Versus The Spirit of the Law Model* provides a useful framework for understanding this type of undefined situation, on both a societal and organizational level.

### **Conclusion**

Building on the literature on social norms, fairness, and the law, *The Letter Versus The Spirit of the Law Model* offers great insight into the world of law and behavioral economics. This model not only demonstrates that breaking the spirit of the law is more important than breaking the letter of the law, but that breaking the spirit of the law may be worthy of penalization, even in cases where the letter is not violated. Through the five tenets of the model, we also established that there may be an optimal zone for enforcement to occur and that it is unfair to violate the spirit of the law, as this action breaks social norms. And, at the most basic level, we hope that the language and conceptual distinction this model provides will set the stage for future studies as well as offer a framework for describing those complex situations in which the spirit of the law but not necessarily the letter of the law is violated.



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