The Political Economy of Rule Evasion and Policy Reform

Jim Leitzel

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Today’s policy reforms are built upon the ashes of yesterday’s policy failures. Widespread disobedience, people choosing not to abide by the letter or the spirit of the rules, is a major source of policy failure. Massive evasion of rules creates conditions conducive to policy reform. Disobedience, therefore, can be a source of improved policies, and rule breakers can unintentionally serve as public benefactors. Evasion-included policy reform is both common and important, prevalent in areas as disparate as traffic regulations and systemic change in formerly socialist countries.

The Political Economy of Rule Evasion and Policy Reform develops the logic underlying the connections between breaking the rules and making the rules. Approaching policy issues from the point of view of rule circumvention provides a perspective that illuminates a wide variety of phenomena:

• implicit tolerance of extensive illegal behavior, treadmills of reform, delays of major policy changes
• the complexity of rules
• potential for perverse outcomes from policy reforms
• corruption of enforcers
• trade-offs between a rule-based and a discretionary policy.

This ground-breaking new book is written in a clear, readable style and is replete with a wide variety of examples, including case studies on zero tolerance policies, the demise of the Soviet Union, and the ongoing transformation of firearm regulations in Britain and the US. The Political Economy of Rule Evasion and Policy Reform provides social scientists, legal scholars, and policy professionals with an improved understanding of public policy formation and evolution.

Jim Leitzel is Senior Lecturer in Public Policy Studies at the University of Chicago.
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The Political Economy of Rule Evasion and Policy Reform

Jim Leitzel
To Bob Conrad, Phil Cook, Richard Taub, and Vladimir Treml, mentors, scholars, and gentlemen all.
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Acknowledgments

Time has not been the constraint. The ideas broached in the following pages have had years to age like fine wine or to rot like, er, mackerel. And many are those who have tried to nose the ideas towards a more satisfying bouquet. Yours may not have been pleasant or gratifying toil, but it will not be thankless. Thank you.

The debts that I have accumulated in preparing this manuscript have gone well beyond repayment prospects (though not repayment intentions) with respect to Michael Alexeev, Phil Cook, Clifford Gaddy, Mike Meurer, Will Pyle, Erik Weisman, and Christopher Young. These generous individuals, all mentioned repeatedly below, deserve immediate recognition for the extent of their help and my obligation.

Significant chunks of the manuscript have received the attention of Michael Alexeev and Jeff Stake, Hoosiers with hearts of gold (or is that redundant?) My gratitude to you both. Now it would not be amiss to bring up a general point, one that applies with particular force to Professors Alexeev and Stake. There are many specific ideas in the pages that follow that were drawn, with various degrees of directness, from comments or conversations with others. My memory of the source of all these ideas is not always, shall we say, infallible, and I am particularly apt to over-credit my own contribution (at least for the good ideas). The issue that has presented itself, then, is to judge when an idea merits a separate citation in the text, along the lines of, say, “I owe this point to Maynard Keynes.” The problem is a familiar one, that of where to draw the line. The complication is that once any separate citations are made, it might give the appearance that ideas not so credited are somehow not drawn from Maynard or others. This would be a deceptive appearance. My compromise has been to provide only a handful of such specific citations, and to combine those with this rather wordy and yet not entirely effective apologia.

Much of this book has dribbled out in various publications and working-papers-that-will-never-be-publications, and many a good person has commented on the dribblings. My thanks to you all, with a special fillip of gratitude for those whose contributions will remain anonymous due to my oversight (as opposed to those whose anonymity is due to an understandable desire to distance themselves from the final product). Those who remain anonymous because I do not know their identities include the reviewers of the manuscript for Routledge, who made many constructive suggestions on the first few chapters.
Those who were helpful from the very early stages of this project include William Ascher, Phil Cook, David Hoaas, and Patrick Larkey. More-than-able research assistance was provided, years apart and years ago, by Janet Johnson and Nese Nasif. Sheldon Lyke read an early complete draft, and much improved the manuscript both in substance and in style. Apologies, Sheldon, for still reverting to the passive voice all too frequently. I will reform, if I ever learn what the passive voice actually is.

The genesis for this book can be traced to an article, “Breaking the Rules and Making the Rules: Evasion, Avoidance, and Policy Reform,” published in Policy Sciences 29: 247–69, 1996. Parts of this article appear, in revised form, in Chapters 1, 2, and 4 with kind permission of Kluwer Academic Publishers. Comments on that original article were provided by Bill Ascher, Charlie Clotfelter, Phil Cook, David Hoaas, Mike Meurer, Will Pyle, Barrie Richardson, Erik Weisman, and Chris Young.

An early version of Chapter 4 was presented at the Midwest Economic Association meetings, Chicago, in April, 2000. I would like to thank Gerhard Glomm and other session participants for helpful comments.

The section on Race and Policing in Chapter 5 is a slightly revised version of my article “Race and Policing,” which appeared in Society 38(3): 38–42, March/April 2001. I would like to thank Transaction Publishers and Society’s Editorial Director Irving Louis Horowitz for permission to reprint the article. Mike Alexeev, Phil Cook, Kelly Daley, Cliff Gaddy, Mike Meurer, and Erik Weisman all provided comments on early versions of the article.

The quotation that starts off the “Costs of Corruption” subsection of Chapter 6 is Copyright © 1995 Under the Frog by Tibor Fischer. Reprinted by permission of The New Press and Tibor Fischer.

Parts of Chapters 6 and 7 draw heavily on my article “Corruption and Organized Crime in the Russian Transition,” published in Institutional Change in Transition Economies, Michael Cuddy and Reuben Getter, eds, Aldershot, Hampshire: Ashgate Publishers, forthcoming. Thanks to Ashgate Publishers for permission to reprint that article. Earlier versions were presented in seminars at Duke University, North Carolina State University, Indiana University, the University of Oxford, and at a conference at the National University of Ireland, Galway. I would like to thank conference and seminar participants, as well as Michael Alexeev, Clifford Gaddy, Will Pyle, Alan Resley, Erik Weisman, and Chris Young, for their attempts to educate me on corruption and the Russian transition. I would also like to thank the Galway conference organizers, Michael Cuddy and Ruvin Gekker, for arranging a fine academic program that they supplemented with unsurpassed hospitality.

Parts of Chapter 8 closely follow material that appeared in my article “Evasion and Public Policy: British and US Firearm Regulation,” Policy Studies 19: 141–57, June 1998. Also, a couple paragraphs from that article are used in revised form in the Introduction. I would like to thank Policy Studies (www.tandf.co.uk) for permission to reprint. I presented an earlier version of Chapter 8 at a seminar at the University of Glasgow, and am grateful for comments from the discussant,
Professor Geoff Webb, as well as Phil Cook. Thanks to Phil more broadly for recruiting me into the world of gun control policy, and for consistently offering detailed comments on my often quirky (read: incoherent) drafts. Tom Judge and Susan Groce kindly arranged for me to present a version of this article at Sheffield, and entertained me lavishly, too.

Chapter 8 and the book more generally received their initial impetus during 1996–7, when I spent a year as an Atlantic Fellow in Public Policy at the University of Essex in Colchester, England. The Department of Economics at Essex provided an extremely congenial and intellectually stimulating environment, and the staff and students there were exceptionally welcoming to me. Those who were instrumental in making that year so enriching include Fabienne Brooks, Sarah Keeton, Byung-Yeon Kim, Sajal Lahiri, William Plowden, Elena Quercioli, and the Friday night soccer group. I think back with great fondness on the spirit and acumen within the Essex economics department and among the Atlantic Fellows.

Dr Elspeth Findlay provided amazingly painstaking and helpful comments on early and poorly printed versions of Chapters 2 and 3. I am both grateful for the comments and touched by her commitment to a task for which “tedious” is a profoundly understated description. To the extent that the later versions of those chapters make any sense at all and are readable by humans, much of the credit goes to Elspeth. I am still confused by a marginal note from Dr Findlay, one that appeared next to numerous passages in the draft manuscript: “This is Jim-speak.” Elspeth, is that a commendation or a criticism?

For Chapter 3, on zero tolerance, I benefitted from the comments of Michael Alexeev, Eugene Bardach, Jonathan Caulkins, Phil Cook, Elspeth Findlay, Clifford Gaddy, Sheldon Lyke, Will Pyle, Erik Weisman, and Joselyn Zivin. Thanks to you all. A version of Chapter 3 was presented at George Mason University. I would like to thank Peter Boettke, Bridget Butkevich, and seminar participants for their constructive suggestions.

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Following my year in England, I had the opportunity to teach at the New Economic School in Moscow, Russia. The New Economic School (NES; www.nes.ru/english/index.htm) is a phenomenal institution that provides a two-year masters’ program in economics to outstanding students from Russia and other parts of the former Soviet Union. I feel privileged to have been associated with NES, which has played a vital role in the renaissance of the economics discipline in Russia. My thanks to Barry Ickes, Gur Ofer, and Valery Makarov, both for inviting me to NES and for their years of effort in envisioning and building up this inestimable economics establishment. The students and staff at NES taught me much about the Russian transition while providing a safe and pleasant harbor from the sometimes stormy seas of transitional Moscow. Oxana Budjko greatly eased my own transition to Moscow, while preventing me from excessively
shirking my duties. Stuart Shaw and Linda Ryan kept my spirits up, only in part by encouraging me to shirk my duties. Alexander Vasin, Elena Panova, and Mark Levin tutored me on tax evasion and corruption and contributed to the collegial atmosphere at NES. Leonid Polishchuk shared his deep understanding of the Russian economy and the occasional pizza, and succeeded me as Academic Coordinator at NES. Chris Young loaned me a jacket that helped me get through the Moscow winter. Others who aided me considerably in Moscow include Ludmilla Alexeeva, Eric Livny, Joel McDonald, and Vitaliy Yermakov.

Since leaving NES I have continued to stay active in Russia, most particularly through the auspices of the Economics Education and Research Consortium (EERC; www.eerc.ru), ably and admirably administered from Moscow by Eric Livny. Like the New Economic School, EERC has been in the forefront of the advance of economics in Russia. Judy Thornton, Rick Ericson, and other members of the EERC family have helped to make EERC research workshops intellectually stimulating and fun. The EERC staff, both in Washington and in Moscow, have ensured that things have run smoothly; Yulia Nikitina was particularly helpful during our magical trip to Kizhi. I would advise everyone to visit Kizhi!

Richard Taub has been supportive beyond measure in Chicago, and this has greatly contributed both to my sanity (such as it is) and to the completion of this book. Many thanks for all the help, Richard. Lee Price has helped make the public policy concentration work for students and for me. The encouragement of many other people also has been very significant for me at various times in recent years. In particular, I would like to recognize Bob Conrad, Phil Cook, Barry Ickes, Gur Ofer, Andrei Shleifer, Judy Thornton, and Vladimir Treml. In Chicago, Kelly Daley, Gauhar Tarmuhambeteva (plus Alex and Elizabeth), and Joselyn Zivin have been indispensable. Sunday night LC members Sheldon Lyke and Margrethe Krontoft (Krontfort) have helped me get through many a week (with the assistance of Teresa), while Hilary Caldwell, Phoebe Rice, and Helen Thompson have tolerated, with admirable good cheer, my favorite Hyde Park and Chicago dining establishments at times other than Sunday night. Ari Adut, Betty Farrell, Heather MacIndoe, Devin Pendas, Gustav Peebles, Richard Taub, Dorothy Tsatsos, and Erik Grimmer-Solem have helped make Chicago a fun place to work. Old friends like Julius Scott (an original Sunday night LC member), Jeff and Cheryl Samuels, Chris and Eleni Scheidt, Mike and Nina Alexeev, Cliff and Kerstin Gaddy, Lydia Faulkner, Janice Hall, Carol Nahra, Nick and Teresa Malyshov, Mike and Miyuki Meurer, Barry Ickes, Jim Baer, Fallaw and Wanda Sowell, Geoff Renshaw, Sarah Caress, Randy and Leslie Beard, Chris Young, and Alan Resley have done all that old friends do, and more. My family, too, has been steady and reassuring, though Leitzels aren’t good at talking about things like that (or is it just me?).

Routledge may disagree with my initial claim that time has not been a constraint. Alan Jarvis, Rob Langham, and Terry Clague have been patient and supportive. Thanks to them, and to Routledge generally; after my earlier book on Russian reform, Routledge can now be classified as a recidivist. Incidentally, the title of this book went through many iterations, and the decision pressed up
against the time constraint that I claim was otherwise inoperative. And though the chosen title starts with the word “The,” keep in mind that the titles of all books written by economists after 1776 implicitly begin with “An Inquiry Into.”

The ideas presented in this book have been repeatedly filtered through my students at the University of Chicago, and have emerged with many of their impurities removed. Any value that experts and scholars in economics, law, and social science might find in this volume has only developed as a side effect of trying to reach students. Though this is not a textbook, or at least a standard one, in some sense students have been the primary audience during the writing of the book.

Thanks in advance to potential reviewers of this book for not referring to, or even structuring their review around, that unfortunate mackerel comment at the beginning of these Acknowledgments. The length of these Acknowledgments, incidentally, might give the impression that I don’t intend to write any more books. Once again, a deceptive impression, though undoubtedly by now a happy deception for the reader. I have more books planned, oh yes I do, while recognizing the contingencies that can thwart even “best laid schemes.” Should my plans come to fruition, however, those books, very interesting books at that, one day will exist. I only mention it here as an inducement to potential journal editors, colleagues, and funders, to keep in mind that in assisting me in my endeavors, your name could appear in this place in a future book! If that is not enticement enough, let me observe that particularly valuable services in the past have been met with – brace yourselves – a free copy of the final product, though slightly tainted by the autograph of the author. Even the dedication of forthcoming books is unsettled, and could be yours, oh gentle future Muse. It is not exactly the moon, but it is a promise a shade more credible – ah, since it is late, I am feeling generous, and you are a friend, I will throw in the moon, too.
Introduction

A traffic-light tale

In Bogota, Colombia, cars stopping at red lights late at night became favored targets for robbery and carjacking. As a result, nocturnal drivers refused to brake for lights, preferring the possibility of a spectacular accident to that of being the victim of violent crime.

The Bogota city traffic department responded to these developments by legalizing the behavior of drivers: between 11 PM and 2 AM, red lights were eliminated, and replaced with flashing yellow signals. Note that this change was not undertaken to limit the amount of time wasted by drivers and passengers sitting at red signals when intersections were uncrowded, the more common rationale for employing flashing yellow traffic signals during off-peak hours. The fact that robbers were about indicates that these were not deserted intersections, and the switch to flashing yellow as a time-saving device, if desirable, could have taken place any time, prior to the spate of carjackings. Traffic safety, not time savings, led to the elimination of red lights in Bogota at night. The expressed hope was that the flashing yellow lights would capture the attention of drivers, and induce them to proceed more carefully through intersections – more carefully, that is, than when drivers had made up their minds that they would fail to heed red lights.

How does a weakening of the official regulatory regime – flashing yellow lights instead of standard red and green signals – lead to fewer accidents? Drivers who ignore red lights would seem unlikely to attend to flashing yellow lights. But not all drivers are accustomed to the informal ways of driving in Bogota at night. Inexperienced motorists are apt to take green lights at face value, and proceed through intersections, with potentially fatal consequences, given that other drivers are ignoring red lights. For these less savvy motorists, a flashing yellow light induces more caution than a green signal. The change to flashing yellow lights makes the driving norm (of not stopping at intersections at night) clear to everyone. Further, the policy reform identifies the precise time period during which the “no stopping” norm is in effect. The Bogota authorities were right to believe that replacing standard traffic signals with the less restraining flashing yellow lights could nevertheless increase coordination at intersections and improve traffic safety.
How far the consequences of evasion! People who evade laws against robbery induce others to evade traffic laws. To improve traffic safety, the authorities change the rules of the road and institutionalize the de facto situation. The response of the authorities is quite sensible, indeed it can make virtually every participant (except, perhaps, for the thieves at the crossroads) better off than they were under the old, evaded rule. But this improved policy engendered by rule evasion doesn’t mean that all is for the best. Another alternative – cracking down on robbers and carjackers comes to mind – might lead to even better outcomes.2

We are all experts concerning some of the consequences of evasion. Private behavior continually takes account of the fact that laws are broken. We are careful where we walk at night, or avoid going out alone, knowing that others might commit crimes. We look before crossing an intersection, even when we have the legal right-of-way. We lock our doors. We run red lights if we fear carjackers. And if we perceive an increase in rule breaking by others – more carjackings, perhaps – we will amend our behavior to take the changed environment into account.

As with the “rules” that govern our private behavior, so with public policies: we choose them taking into account the propensity of humans to disobey structures. While disobedience can be controlled, through vigilant enforcement and stern punishment awaiting malefactors, it can rarely be eliminated. Public policies reflect the inevitability of rule evasion, in Colombia and elsewhere.

The channels through which rule circumvention exerts its impact on public policies are not always as obvious as they are with private policies such as looking both ways before crossing a street. But the influence on public policies of the potential for rule evasion is omnipresent. Driving under the influence of alcohol is illegal, not because of a direct public interest in the driver’s blood alcohol content – our concern is with safe driving, as opposed to the characteristics of the driver – but rather because a high blood alcohol content makes it more likely that a driver will be reckless, drive too fast, or break other driving rules. Sales of cigarettes from vending machines are regulated to control one obvious channel for evasion of rules against minors purchasing cigarettes. The government withholds taxes, in advance of the date when their payment is required, to promote compliance with tax laws.3 Substantial resources are dedicated to attempting to reduce illegal drug use, but simultaneously needle exchange programs are sponsored publicly to help prevent HIV and hepatitis transmission among drug users. As these examples demonstrate, real world policies, public or private, differ from those regulations that would be appropriate in an alien world populated by individuals who consistently complied with rules.

Unintentional civil disobedience

“Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once?”4 The question was Thoreau’s, who answered that, if the injustice of the law “is of such a nature that it requires you to be the agent of injustice to another,
then, I say, break the law." Open violation of a law, coupled with a willingness to bear the legal consequences, sends a strong signal to the body politic of the depth of belief that a rule is unjust and needs changing. So the notion that laws and policies respond to rule breaking is far from a novel insight. Acts of civil disobedience are undertaken precisely with the intent of changing the rules.

Most disobedience, such as running red lights, could hardly be termed “civil.” Rules are violated or circumvented without any intention of initiating new policies or legislation – few robbers are motivated by the desire to see theft legalized, for example. Nevertheless, widespread circumvention of a rule will likely lead to an amendment, either in the rule or in its enforcement. The likelihood of amendment remains, even if reform is neither intended nor desired by the rule breakers.

Many are the ways to get around rules. Some actions directly contravene the rules, as murder most foul; at other times, the circumvention is more subtle: “Thou shalt not kill; but need’st not strive/Officiously to keep alive.” “Evasion” is the term applied to direct violations of rules, while “avoidance” is reserved for actions that technically do not violate the rules, but that run counter to the spirit of the laws. Although evasion is illegal and avoidance is legal, widespread circumventions of either type tend to pave the way for policy reforms. Rule circumvention that engenders policy reform, such as ignoring red lights at night in Bogota, might be termed “unintentional” civil disobedience. That is, the disobedience is intentional but the precipitated policy changes are not intended by the rule breakers. And the induced reform might – but only might – make for better social outcomes: in a curious twist of Adam Smith’s invisible hand, law breakers can improve society, even if serving the social good is the furthest thing from their minds. Unintentional civil disobedience need not be uncivil in its effects.

**Evasion and change**

Whether or not a specific rule violation leads to improvements in society, a policy that is widely disobeyed is, in some sense, a failure. Focusing on the lessons learned from failure is a common technique of inquiry, whether in civil engineering, medicine, or policy analysis.

Policy failure occasioned by widespread rule evasion is marked by two attributes that are fundamental to reform. First, this type of failure tends to become general knowledge. It doesn’t take long in a new environment to learn if red light running is widespread. Likewise, it doesn’t take long to determine if corruption of government officials is widespread, even though acts of corruption are not committed as publicly as red light running. Significant rule breaking tends to receive media attention. But even without media coverage, widespread evasion often carries its own publicity, generating as common knowledge the notion that the circumvented policy has indeed failed. And among those who learn of the failure of the current policy will be the policy makers themselves. In the language of economics, the widespread evasion makes it clear to policy makers that the current rule
and its enforcement regime are not “incentive compatible,” i.e. many people apparently find it in their interest to violate or circumvent the rule.

The second feature of evasion-based policy failure that helps sow the ground for the succeeding policy is the more-or-less automatic creation of incentives to enact a policy reform. Often, these incentives exist because a policy alternative involving a full or partial legitimation of the existing evasion will naturally suggest itself – as in the case of the Bogota traffic signals. Some incentive to change an obviously failed policy would emerge in any case, of course, even if a partial legalization is undesirable. But the fact that there are many people who are breaking the current rules, and hence are at some risk of incurring sanctions, provides a built-in constituency for liberalization – and a constituency whose existence is itself widely known. These two attributes of evasion-induced policy failure, publicity and the generation of incentives to reform, typically are shared by both intentional and unintentional civil disobedience.

Evasion, then, can spark reform. Despite the rather positive, progressive connotation surrounding the word “reform” (which survives despite the frequency of failed reforms), change need not be for the better. A reform can be worse than the status quo, even when evasion has caused the current policy to be widely regarded as untenable. The world is complex and interconnected, whereas rule circumvention provides but a partial guide to beneficial alterations in policy. For a reform to be successful, modification in the malfunctioning, circumvented policy might also necessitate changes in complementary rules: changes which will not be made obvious by the evasion-induced failure of the prior policy. In cases where the policy reform involves a partial liberalization, as in the Bogota traffic signal example, the remaining constraints might prove to be unsustainable. Will frightened drivers at 3 AM in Bogota, after the official time-period for flashing yellows, suddenly be willing to stop at red lights, and will novice drivers approaching a 3 AM green light rely on the law-abiding behavior of the other motorists?

Exit and policy reform

In his renowned 1970 book Exit, Voice, and Loyalty, economist Albert O. Hirschman examined two options – “exit” and “voice” – that are available when a customer is faced with deteriorating quality in a store or product that he or she has been patronizing. Exit involves switching to an alternative supplier. If enough customers exit, the owners of the store will face financial pressure to improve the store’s performance, even if those exiting have given no thought to inducing such an improvement. Alternatively, voice consists of lobbying efforts by customers to prod the store owners into recapturing the previous standards – efforts that typically are engaged in while those doing the prodding remain as customers. Hirschman discusses those situations in which either exit, voice, or some combination are likely to succeed in restoring quality.

In the context of policy, evasion and avoidance are forms of “exit” – though the rules from which they provide exit can be either low or high quality. As with
Hirschman’s exit, unintentional civil disobedience indirectly creates an incentive for policy reform, even though invoking such a reform did not motivate the disobedience.

In Exit, Voice and Loyalty, Hirschman highlighted the extent to which the existence of exit can incapacitate the operation of voice. Why invest in the effort needed to make voice effective in raising quality at the original firm, if you can simply exit to a now superior alternative? Further, it might be those who are most dissatisfied (or those who might be most effective at mobilizing voice) who exit, undermining the opportunity to generate an effective collective voice. Revisiting these issues in a later book, A Propensity to Self-Subversion, Hirschman emphasized the opposite possibility, the prospect that extensive exit could help to empower voice. An important example of this phenomenon concerns the fall of the Berlin Wall, where exit (via emigration) amplified the potency of the political demands of those citizens who remained in East Germany.  

Similarly, exit via rule evasion can either spur a policy reform, or retard change. One aspect of rule breaking that determines which of these two cases applies is the frequency of the evasion. Small-scale rule evasion (“exit” from the rule) often helps to solidify the rule, to pose a barrier to reform. In this case, those who find obeying the rule to be most onerous choose not to obey. As long as they can evade the rule with limited consequence for themselves or for society at large, and as long as there are not too many such evaders, there will be little impetus to alter the policy.

Widespread rule evasion, however, is likely to generate a policy reform. As noted above, widespread evasion tends to makes it clear that the existing policy is a failure, while providing incentives to alter the policy. Certainly the massive emigration from East Germany in 1989 made the failure of the existing emigration controls (and more generally of the East German regime) obvious. Simultaneously, a policy alternative – eliminate the Wall – that fairly obviously represented an improvement (for the vast majority of those affected) over the status quo presented itself. Such preferred alternatives tend to be available when the status quo involves widespread evasion. If almost everyone is evading the existing policy anyway, a legitimation (or partial legitimation) of the evasion would at least seem not to make matters worse, whether in the case of the Berlin Wall or the Bogota traffic signals.

Common knowledge that an existing policy is not working, and the availability of seemingly superior alternative policies, help to forge widespread evasion into a spur to reform. But a second dimension (beyond the extent of evasion) that influences the relationship between evasion and reform concerns the specific incentives facing policy makers. Those responsible for making or enforcing policy may not be susceptible to the usual impulses to reform, if their personal well-being is tied to the current policy. Highly placed East German officials were not enthusiastic supporters of breaching the Wall.

Corrupt incomes derived from existing policies are one avenue through which rule makers find their well-being tied to the status quo, at least if policy reforms will reduce the opportunities for such illicit earnings. Corruption is itself a form
of rule evasion. But widespread corruption does not have the same reform-generating capacity as other types of evasion, because the rule makers (or enforcers) typically benefit from the corrupt environment. (Partly for this reason, anti-corruption campaigns often involve an increase in the legitimate earnings of officials.) Evasion involving the rule makers directly is less effective than widespread evasion of other rules at generating policy reforms – and corruption has been endemic in many countries for decades or even centuries.

Rule circumvention and policy impotence

Yet another Hirschman book, *The Rhetoric of Reaction: Perversity, Futility, Jeopardy*, examines standard arguments arrayed against “progressive” reforms. The futility argument consists of the claim that a proposed reform will be useless: the underlying phenomenon is too deep-rooted in society to be altered by a mere change in policy. For instance, it is commonly perceived that the US attempt to prohibit sales of alcoholic beverages was futile, that people would manage to find a way around any such ban. The “perversity” argument, on the other hand, necessitates that society be mutable but marked by contrariness. According to perversity-style reasoning, a policy aimed at a specific goal eventually will result in movement away from the goal. In the case of alcohol control, it might be argued that by a “forbidden fruit” effect or by negating the previously applied taxes, Prohibition perversely resulted in more drinking, not less.

As the Prohibition example suggests, disobedience in a policy context connects “exit” with the anti-reform arguments identified by Hirschman. The typical impact of rule avoidance and evasion is to weaken a policy’s desired effect. The greater the extent that a ban on cocaine, or handguns, is evaded, the less effective is the policy, at least with respect to the presumptive end of reducing the availability of the banned commodity. At times, this weakening can be so severe that a rule ultimately has no effect (Hirschman’s futility), or perhaps, through a series of responses, even has the opposite effect of that intended (Hirschman’s perversity). The circumstances in which enforced rules have no effect, or worse, a perverse effect, are rather limited, however – indeed, if such circumstances were common, we might term a policy “perverse” if it worked in the desired direction!

The path ahead

The first six chapters address various aspects of the general issues surrounding rules, evasion, avoidance, corruption, and policy reform. They are followed by two case studies, one concerning the Russian transition to capitalism and a second dealing with gun control policies in the US and Britain.

On the heels of Chapter 1’s discussion of rules, Chapter 2 deals with illegal forms of circumvention – evasion – and the consequences of evasion for policy reform. The examination of legal forms of circumvention – avoidance – is postponed until Chapter 4, though there is substantial overlap between the implications of evasion and avoidance for reform. Chapter 3 follows up the “evasion” analysis by looking
at zero tolerance policies, which attempt to eliminate evasion. The interplay between preventive, *ex ante* controls and punitive, *ex post* controls, and how that interplay is related to policy circumvention, is the subject of Chapter 5. The enforcement regime that accompanies a policy is itself a policy, and it too may be subject to circumvention. Who guards the guardians? The possibility that rule makers and enforcers might themselves be less than angelic is another factor that helps to determine whether a policy is socially desirable, or if reform is likely. Chapter 6, therefore, is devoted to corruption.

These discussions of the roles of evasion, avoidance, and corruption in making or changing policy are then applied to the two case studies. The first, the Russian transition to capitalism, identifies rule evasion as the main culprit in the collapse of the Soviet Union. The gun control case study highlights avoidance and evasion in a currently contentious policy area, the ongoing transformation of firearm regulation.

Approaching policy issues from the point of view of rule circumvention provides a perspective that illuminates a wide variety of phenomena: zero tolerance policies (and their opposite, the implicit tolerance of extensive illegal behavior), treadmills of reform, delays of major policy changes, the complexity of rules, and the trade-offs between a rule-based and a discretionary policy. Old stories, such as Soviet collapse or the US Savings and Loan crisis, can be approached in new and, I think, elucidating ways, when rule circumvention is the focus of concentration. Policy reforms can come about for a variety of reasons, but unintentional civil disobedience is a common and important one. This book examines the interplay between rule making and rule breaking, though it stops well short of developing a comprehensive theory of unintentional civil disobedience. The goal is much more modest: to shed some light on a pervasive policy concern, the nature of rules and their transformation in a fallen world, where avoidance and evasion are expected, and sometimes condoned.
1 Rules and their circumvention

Of Man’s first disobedience, and the fruit . . .

(Milton, *Paradise Lost*)

An old platitude

Rules are made to be broken. Having achieved cliché status, this piece of ancient wisdom is more enunciated than examined. But the logic underlying the adage is far from straightforward. First, because “rules are made to be broken” is itself a type of rule, a self-referential paradox presents itself: is the rule that “rules are made to be broken” made to be broken? But even leaving aside this conundrum, the saying is perplexing. Try explaining it to an eight-year-old. Why make a rule in the first place if it is to be broken? Were the great law givers of antiquity engaged in acts of futility? Should Moses, upon descending Sinai and beholding the incongruence of his laws with human behavior, have smashed those initial tablets and just left it at that?

In general, of course, the answer is “no.” The existence of rules influences social outcomes, even if those rules are commonly broken. Moses’ second ascent of Mount Sinai was well worth the effort, despite the regularity with which the Ten Commandments have since been violated. Rule breaking does not typically render the existence of a rule meaningless, though the contrary claim – that opportunities for disobedience will completely undermine the desired impact of a rule – is frequently made by those who oppose a proposed restriction.

While opponents of a policy might argue against it on grounds of evasion, supporters sometimes invoke the potential for evasion and avoidance to make a case for strict enforcement of the measure. Much of the attention paid to rule circumvention is perfunctory, however, whether on the part of supporters or opponents – simply one standard element in the rhetoric of public debate. And it is understandable that rule evasion tends to be somewhat undervalued. To devote primary attention to rule circumvention would be purposely to sideline the majority of activity, because it probably is the case that most people obey most rules most of the time, even in many instances when it would seem that they have little incentive to do so.¹ The influence of evasion and avoidance, however,
cannot be measured solely by the extent to which these responses are actually evoked. Just as extensive circumvention does not imply that a rule is meaningless, limited circumvention does not imply that evasion is not an overarching policy issue. Policy making takes place in the shadow of avoidance and evasion, notwithstanding high levels of compliance. Few of us embezzle funds, at least on a significant scale, but accounting procedures to keep track of cash flows are useful nonetheless. Such procedures are, in actuality, a large part of the reason why so few of us embezzle, just as the lack of detail in accounting or inventory procedures explains why work-provided pens and photocopiers are not infrequently diverted to the private uses of those same employees who wouldn’t think of embezzling funds more directly or on a grander scale.

On rules

Rules are made to be broken, but what actually constitutes a rule? Nations have rules, corporations have rules, schools have rules, bureaucracies have rules (the infamous rigidity of which lends meaning to the term “bureaucratic”), families have rules, individuals have rules, and individuals voluntarily enter into contracts that specify still more rules. The rules that I want to explore are primarily those of governments: laws, regulations, or, more generally, public policies. One important component of the rules examined here is that they have the capacity to be enforced, at least to some extent. Other types of rules, such as rules of thumb (“don’t put your thumb too close to the nail you are hammering”) or guides to good living (“eat, drink, and be merry”) are not the present objects of study, valuable as they may be. Indeed, most of the issues that I want to address can usefully be thought about in the rather unglamorous setting of traffic rules, as exemplified by the Bogota intersection tale.

The potentially enforceable rules have the general form “In circumstances from the set A, an action from the set B is required.” Given that circumstances from A actually arise, an action from the set B is then in compliance with the rule or contract, while an action from the set ‘not B’ is then a breaching action, or an evasion of the rule. The enforcement regime associated with a rule specifies what happens in the event that non-compliance is detected and proven, and this will generally depend on the particular breaching action chosen: murder is punished more severely than assault. Of course, many rules are written in a form that specifies not the actions to be taken, the compliance actions, but rather the breaching actions: “Thou shalt not kill.” But such a formulation can be encompassed within the general form described above, since the set of compliance actions (those actions that involve no killing) is the “complement” of the set of breaching actions (all actions that involve killing), and hence the compliance actions can be ascertained given the description of breaching actions.

The distinction drawn here between a rule and its enforcement regime is not necessarily so sharp in practice. Perhaps the general form of a rule should read, “In circumstances from the set A, taking an action from the set B will result in no potential fine or other punishment, while actions from ‘not B’ will be punished
by...” The rule that says that, under most (and spelled-out) circumstances, you must drive no faster than the posted speed limit, could alternatively be stated in a package with the enforcement regime, along the lines of “If you are driving a car more than 10 but less than 25 miles per hour over the speed limit you will be fined $250; if you fail to pay this fine, you will be jailed for 6 months; if you abscond to avoid jail, you will be jailed for 3 years when found...” And, of course, you won’t really be fined $250 if you speed, but rather only if you are caught, which has some probability that is typically fairly small. (In other words, the enforcement regime itself consists of two components, the surveillance strategy by police or regulators and the sanctions imposed on those who are ascertained to be violators.) Even if you are caught, the police officer might give you a warning instead of a ticket, or perhaps mercy can be purchased for some monetary consideration, either directly from the officer or later from a lawyer or a judge. And in making judgments about whether to obey a rule, perceptions of the probability of punishment for various types of non-compliance and what the extent of the punishment will be are clearly relevant. But in terms of describing a rule, the separation of the rule from its enforcement regime is both analytically convenient and generally consistent with our common, everyday understanding of rules.

The application of rules involves some obvious difficulties. The first is the determination of which rule to apply: are circumstances actually in the set A? This determination must be made both by the individual decision maker at the moment of decision, as well as by enforcement and adjudicatory authorities after the fact. (The decision maker may be more interested not in his or her personal view of the circumstances, but rather with the view that the enforcement authorities are likely to take.) Once the circumstances have been adjudicated, there remains the question of whether the action chosen was actually a compliance action, i.e. in set B, or a breaching action. Again, both decision makers and enforcers have to resolve these issues, and they may well not see eye-to-eye. But imagine that they do...

**A perfect rule**

As in other sciences, so in politics, it is impossible that all things should be precisely set down in writing; for enactments must be universal, but actions are concerned with particulars.

(Aristotle)

Imagine everyone getting together and agreeing to a contract that will precisely specify their actions for the next year. Of course, there are many elements outside the control of these people, like the weather or natural disasters, and they cannot be sure when they write the contract what circumstances will actually come about. But assume for now that while they cannot know in advance what circumstances will arise, our contractors will at least be able to specify all of the possibilities, all the potential “states of the world” that have some possibility of occurring, at all moments during the next year. While taxing our imaginations, let’s assume that
the “law makers” (i.e. the contractors, the people themselves) understand each other’s preferences, so they needn’t fear revealing any private information during the contract negotiation, and let’s also assume that the contract negotiation itself is a smooth and costless process. Further, there will be no room for later disputes as to what circumstances actually occurred and what actions were actually taken: these will be perfectly clear to all.

What would be the result of this frictionless negotiation among such far-seeing creatures? They needn’t leave anything to chance, in the sense that they can perfectly specify exactly what every person should do under any and all circumstances, even if they cannot control what circumstances will occur. The contract can tell driver $\alpha$ that when approaching a certain intersection at a certain time on a certain day and under certain weather conditions, if there is another vehicle approaching the intersection from driver $\alpha$’s right, then $\alpha$ should stop and wait for the intersection to clear, unless the brakes have failed on the truck behind $\alpha$, in which case $\alpha$ should honk his horn and keep going, while the other car should stop. The resulting contract, then, will be composed of a plethora of rules. For each rule in the contract, the set of circumstances $A$ to which it applies consists of only a single circumstance or a unique “state”; further, for each state $A$, the action that complies with the rule in circumstance $A$ is also perfectly specified, so that for each individual and for each circumstance, the set of compliance actions $B$ consists of a single well-specified action.6

The law givers, then, can specify the best actions for everyone in all possible circumstances, and subsequently go out and perform as required by the contract. There will be no room for avoidance, as in any circumstance there will be only one well-specified, compliance action. Evasion is another story, however, the rather large fly in this otherwise pleasant ointment. In the absence of enforcement, the people won’t have any incentive actually to take the actions specified in the contract, to implement the plan that they themselves agreed was socially optimal. Driver $\alpha$ might note that if he honks his horn and doesn’t slow down, the driver approaching from the right will have little choice but to stop – even if there is no truck with faulty brakes behind $\alpha$. Bank employee $\beta$ might notice that instead of putting a cash deposit in the drawer, he could just as easily and more gainfully put it in his pocket. Entrepreneur $\gamma$ might note that there is money to be made from selling the narcotic that the social contract decided should be banned under all circumstances, where the profitable opportunity presents itself thanks to customer $\delta$’s eagerness to make a purchase in defiance of the ban. And so on.7

An implication of this parable is that a rule cannot be determined to be either good or bad unless the enforcement regime is also specified. In a world of far-sighted, infallible angels who would be guaranteed to obey agreements strictly, optimal policy would amount to simply signing the detailed contingent contract as envisioned above. But human beings might be tempted to disobey, as Hobbes noted in the seventeenth century, “because the bonds of words are too weak to bridle mens ambition, avarice, anger and other Passions, without the feare of some coercive Power.”8 For humans, then, the optimal angelic contract is not available...
in itself, but rather, an enforcement mechanism and the resources necessary to maintain it also must be included. And it is only in rare cases that the enforcement will be sufficient to prevent all violations; some contract violators might remain undeterred even by harsh sanctions, and some violations will occur by mistake, when fallible humans, as opposed to infallible seraphs, are choosing actions. Nor can it be taken for granted that the enforcers will themselves be unerring angels, needing no supervision of their own activities. Given such impediments, perfect compliance cannot be achieved, and should not be sought. The law givers will recognize that even were it feasible to enforce so strictly and honestly that there would be no breaching of the contract, it would generally be too costly to do so. The additional resources needed to decrease rule evasion further and further would eventually become better spent in some other way, such as on more vacations, shoes, and movies.

Once the necessity for enforcement and its fallibility is taken into account, the optimal contract itself changes: the rules that would be best for angels might be extremely inappropriate for humans who make mistakes or who fall prey to the temptation to disobey strictures in the absence or imperfection of "some coercive Power." The angels might find, for example, that a prohibition on the use of heroin for non-medical purposes is the best rule. The humans might agree, but they might also decide that free needle exchange programs are likewise a good policy, to lower the social costs stemming from circumvention of the heroin ban. Angels would have no need of such a program, but mankind is fallen.

Perfect information concerning future states of the world, combined with complete information over individuals' preferences and their potential actions, is an insufficient basis for determining desirable rules: the enforcement mechanisms must be included. In many areas of social interaction, incidentally, neither the rules nor the enforcement mechanisms need be provided by the state, by the long arm (fin?) of Hobbes's Leviathan. The relevant rules, for instance, can be provided by social norms, and these may even conflict with the formal, state-provided rules. With respect to enforcement, individual consciences and social sanctions can substitute for or complement explicit enforcement machinery. Informal norms and enforcement mechanisms may themselves co-evolve with the formal rules and their enforcement regimes.

The necessity of taking enforcement into account complicates the process of law making; the difficulties are further exacerbated when short-sightedness and ignorance – as well as the costs of composing ever more detailed rules – are coupled with the human penchant to disobey. Rules cannot be completely detailed, and because of the costs of trying to do so, they should not be completely detailed, even if in theory they could be. Future circumstances and compliance actions cannot be perfectly delineated, at least at reasonable cost. The set A of circumstances to which a rule applies, and the set B of compliance actions, generally have many elements. As a result, rules do not actually require the best possible action in a given circumstance. The rules will be drafted, it might be hoped, in such a way that compliance typically will result in fairly good, if not first-best, social outcomes (though there will be many different actions that constitute compliance, some
more socially desirable than others). But in some cases, all of the compliance actions will be ill-advised: the socially best actions will violate the rules, as many of those frustrated with a bureaucracy will testify. Imperfect rules are made to be broken.

It might be thought that the incomplete nature of rules, which was noted by the ancient Greeks, could be avoided by a general rule along the lines of “take the socially efficient action in all circumstances.” But in practice, such a rule would also prove to be incomplete, in that the police and courts (or, within a firm, managers and arbitrators) would be unable to monitor and enforce such a rule at any reasonable cost. A general rule of this type simply moves the incompleteness to the ex post stage, after the relevant actions have been chosen, and probably makes it impossible for individuals to have any confidence that they have chosen a compliance action: whether the chosen action represents compliance with or breach of the rule will have to be determined by a court, and a fallible court at that. Complete rules cannot be purchased on the cheap.

Evasion and avoidance

Evasion and avoidance are alternative ways of circumventing rules. Evasion involves choosing a breaching action, and usually trying to hide either the fact of evasion or the identity of the evader from the enforcement authorities. Avoidance, alternatively, involves choosing a compliance action, so the enforcement authorities are not a direct concern (unless there is some question as to whether the chosen action actually is of the avoidance or the evasive kind). But an avoidance action takes advantage of rule incompleteness, in that the action chosen technically constitutes compliance while presumably running counter to the goals that the legislators had in mind when they crafted the rules.

Though differing with respect to legality, evasion and avoidance are often similar with respect to the forces they bring to bear on public policy. Widespread evasion or widespread avoidance, for instance, both tend to lead to policy reforms. Indeed, public policy is in large measure about designing rules and their enforcement regimes in such a way that there will be widespread compliance, and that such compliance – even when it involves avoidance – will promote desirable outcomes.

This description of the goal of public policy contrasts with some popular notions that suggest that poor social outcomes are due to the nefarious activities of certain classes of evil people: “greedy lawyers are ruining America” is a case in point. Public policy should design the rules and their enforcement regime in such a way that even a self-interested lawyer is “led by an invisible hand to promote an end which was no part of his intention,” where that end is good social outcomes. This is not to say that there is no role for public spiritedness or individual conscience, on the part of lawyers or anyone else. Indeed, in worlds where there is neither public spiritedness nor individual conscience, when all individuals are like Justice Holmes’s “bad man,” interested only in the price exacted for his actions, then the rule making of public policy is asked to do too much. Perhaps only the rule
making of penitentiaries can produce anything like order given such raw material: but is this a desirable social outcome? Under any public policy regime, there will always be a multitude of avoidance actions, and therefore legal actions, that I would hope that no one would ever believe it to be in his or her best interests to choose. But given the modicum of civic virtue requisite for self-government, rules and their enforcement should be designed to make enlightened self-interest consonant with both rule compliance and the social good.14

**Bright lines**

The failure of a general rule such as “Always take the socially best action” to be a useful guide to choice indicates that rule incompleteness derives not only from the costs of drafting more detailed rules, but also from the costs of attempting to enforce what would otherwise be appropriate distinctions. While free speech is generally thought to be a good thing, we can all imagine circumstances in which prohibiting some forms of speech would lead to better social outcomes: surely falsely shouting “fire” in a crowded theater could safely be prohibited, to use Justice Holmes’s famous example. Nevertheless, the First Amendment to the US Constitution says that “Congress shall make no law . . . abridging the freedom of speech.” Why such an absolute prohibition? Why not allow Congress to adopt a few clearly beneficial laws restricting speech?

One reason for absolute prohibitions is that they create “bright lines” – it is pretty clear (or at least relatively clear) what “no law” means, and so the amendment is easily enforceable against Congress. But if the First Amendment made room for some exceptions, for cases of overwhelming necessity, say, or, as Justice Holmes and the Supreme Court have ruled, if there is a “clear and present danger,” then the prohibition becomes much more difficult to enforce, as one person or court’s view of a clear and present danger may well differ from that held by another person or court.15

Again, a similar issue arises in the rules that guide private behavior. A person on a diet might adopt a “no dessert” rule, even though an occasional dessert might be better than none. But any attempt at further discrimination, such as “dessert only allowed if I had a light lunch earlier in the day,” greatly complicates (self-) enforcement. What constitutes a light lunch? Further, once the door is opened to exceptions, it is unclear where it should stop. What if I skipped breakfast? What if I anticipate a significant delay before my next meal? Drug abusers who seriously attempt to reduce their dependence often find that “cold turkey” is an effective strategy, though it would seem to be easier to adopt a less rigorous rule, such as reducing consumption by 50 per cent. But if you can consume 50 per cent of the drugs that you used to consume, why not 60 per cent? And maybe it isn’t that easy to measure your consumption, anyway. A limit of zero makes compliance, and evasion, clear.16

One role played by law and enforcement is to establish bright lines when reality is much more murky. A driver who is proceeding safely but who is stopped at a check point will be arrested and face serious difficulties (in most US states)
if he or she is found to have a blood alcohol content of 0.08; if the breathalyzer test reads 0.07, the driver will be allowed to continue on his or her way. For that matter, an adult who purchases alcohol in the US is within his rights, though if he purchases marijuana or heroin instead, he is committing an illegal act.

Other countries draw the boundaries differently. The Dutch, for example, have attempted to draw a bright line between “soft” drugs (marijuana and hashish) and “hard” drugs such as heroin or cocaine. Small purchases of marijuana are implicitly condoned, while enforcement efforts and harm reduction resources are concentrated against hard drugs. But no matter where the lines are drawn, the unavoidable incompleteness of rules will mean that in some circumstances, appropriate actions (i.e. those that are not socially undesirable, excepting their illegality) will fall on the “illegal” side of the line, and inappropriate actions will fall on the “legal” side. Imperfection is unavoidable, and as Justice Holmes noted: “the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow.”

Rules intended for children are particularly sensitive about adopting bright lines, because children have less ability to make responsible discriminations among circumstances. “Just say no,” “Look both ways before crossing a street,” and “Don’t take candy from a stranger” are all rules that would admit some exceptions, but to start noting the exceptions to children could result in complete emasculation of the strictures. Better to stick with understandable and enforceable rules, unrefined though they may be.

In this, as in many things, “We are but older children, dear,/Who fret to find our bedtime near.” Not only do we try to create bright lines in rules designed to change our own habits, we recognize that even other adults may need to be presented with unambiguous guidelines. The ethical codes that we practice and believe in may not be the ones that we publicly espouse, in part because we fear that the distinctions that we respond to personally cannot be easily expressed, or might be misunderstood and misapplied. Potentially, such hypocrisy is optimal, and it is surely widely practiced.

Enforcement difficulties, then, lead some rules to be more coarse than they otherwise would be. A second consequence of limited enforcement is that supplementary rules may be adopted to aid in enforcement of a primary rule. Consider another example from the US Bill of Rights, the Fourth Amendment prohibition against “unreasonable searches and seizures.” How can this rule be enforced? Should police officers who conduct an unreasonable search be punished? Perhaps, but what if in practice the punishment is light or non-existent? Then in apprehending a suspected criminal, the police could essentially conduct a search first, and worry about the niceties of its legality later, after the criminal had been convicted. And even if the offending officer were punished, that might be of little solace to the criminal, or to those innocent victims who are also subject to illegal searches without being charged with a crime.

These thorny issues have led, in the US, to the controversial “exclusionary
rule," based on a 1961 Supreme Court judgment that evidence obtained in illegal searches is not admissible in state criminal trials. (The rule had previously applied to federal law enforcers.) Supporters of the exclusionary rule argue that it improves compliance with the Fourth Amendment – though at the cost of releasing some factually guilty criminals. Simultaneously, the rule greatly complicates criminal litigation, with the admissibility of evidence often becoming a leading issue, partly because of tremendous uncertainty regarding how the rule should be applied in specific cases.20 An unfortunately common response to the exclusionary rule, incidentally, is perjury, where police falsely testify that a suspect “dropped” a prohibited substance in the course of being apprehended, or kept a controlled substance in plain sight during a traffic stop.21 For police, presumably, this represents one of those instances of practicing an ethical code that they would be unwilling to espouse publicly.22

And so enforcement complications can lead to new prohibitions that otherwise would not be in place, or to rules that are coarser or perhaps less restrictive than they otherwise would be. In the case of drug regulation, these responses have been termed “reluctant denial” and “grudging toleration.” A drug is reluctantly prohibited or denied to adults, for example, if its legality would make it too difficult to enforce a clearly desirable ban on its consumption by children. Alternatively, a drug might be grudgingly tolerated if enforcing its prohibition is too costly or an exercise in futility, when the extent of demand and the ease of black market circumvention is taken into account.

Computer-generated child pornography provides another “vice” example where ease of enforcement requires a certain combination of rules. Computer-generated images may involve no actual children in production; nevertheless possession of such images remains (reluctantly?) illegal in the UK, in part because of complications in enforcement. If computer-generated images were legal, police or the courts would have to go through a painstaking (and perhaps highly imperfect) analysis when any child pornography were uncovered, to ensure that it was not of the legal, computer-generated variety. The famous adage of former US Supreme Court Justice Potter Stewart concerning obscenity, “I know it when I see it,” vague as it is, could not be applied to child pornography if the precise production method would first have to be ascertained before illegality could be determined.24

Mandates as well as bans can be driven by enforcement concerns. Violations of child labor laws might be hard to monitor, but school attendance is verifiable. Mandatory school attendance, then, can be an attractive way to promote compliance with laws that limit the working hours of children.25

Good and bad rules

Given that the outcomes associated with a rule depend on the enforcement regime, and that rules are necessarily incomplete, there is little that can be said in general terms about the features that good rules should possess. The dependence of the quality of laws on enforcement suggests that whether a law or policy is desirable depends on the frequency with which it is evaded. Alcohol prohibition
in the US is generally deemed to have been a failure, and reconstituting Prohibition is not on the current US policy agenda, predominantly because of widespread evasion of the earlier prohibition regime. At the same time, there is little political support for repeal of the ban on heroin, in large measure because evasion of the ban, while significant, is not sufficiently widespread, at least among the politically influential. Examples abound in private settings, too. Rules that provide a ticket holder with a particular seat in a theater, for instance, with higher prices charged for better seats, work well in many instances; if evasion is widespread, however, and cannot be controlled at reasonable cost, so that low-priced ticket holders habitually and en masse “invade” the good seats, then a single-price system, where individuals choose whatever seat they want on a first-come first-served basis, will be preferable.26

Opportunities for circumvention not only help to establish whether a law is socially desirable, they can even influence the determination of the law’s legality. Some US states permit casino gambling, while others are more restrictive. Can the government limit broadcast advertising of casinos, if such advertising reaches states with restrictive gambling laws (though the broadcasts themselves originate from states with legal casinos)? One of the tests employed in the US to determine whether a restriction on “commercial speech” meets constitutional muster is whether the restriction directly and materially promotes a substantial governmental interest. But this test depends on opportunities to avoid or evade the stricture. If circumvention is widespread and people therefore are exposed to similar commercial speech, the government interest is subverted; therefore, the restriction will not promote the government interest, and the rule is unconstitutional. On such grounds, the US Supreme Court invalidated a federal restriction on casino advertising in 1999. Native American casinos were exempt from the challenged restriction, as were many other forms of gambling. “Promotional” ads were banned, but other types of casino advertising were permitted. The Court therefore held that the law “and its attendant regulatory regime is so pierced by exemptions and inconsistencies that the Government cannot hope to exonerate it.”27 The issue goes well beyond this one case, and beyond commercial activity: “In the United States, at least, almost any law which a significant number of people would be tempted to disobey on moral grounds would be doubtful – if not clearly invalid – on constitutional grounds as well.”28

Clarity would seem to be a desirable feature in a rule, as the discussion of “bright lines” suggested. With clear rules, decision makers and enforcers can tell whether or not a compliance action has been chosen. (Criminal statutes in the US are unconstitutional under the “vagueness doctrine” if they are so unclear that reasonable people cannot determine what conduct is prohibited, or if the statutes encourage arbitrary enforcement.29) Even here, though, it is easy to imagine circumstances in which there is virtue in murkiness: imprecision might be useful to build political support to get a rule passed; the discretion that a lack of clarity provides for enforcers might promote good outcomes;30 or vague language can intentionally be employed “as a hedge against an uncertain future.”31 Confusing
tax laws can actually increase the collection of tax revenues, and even promote social welfare. Further, the process of clearly demarcating laws may itself be detrimental to the laws; it has been suggested, for instance, that in delineating the scope of the exclusionary rule, “the very specificity of the process makes it look foolish and renders it vulnerable to easy criticism.”

Nevertheless, the more typical case is that good rules involve clarity and bright lines. Suggestive of this tendency are bad outcomes in some areas of the law that currently lack clarity. Consider, for instance, the definition of a terrorist and the appropriate “rules” concerning terrorism. Some former terrorists have staked claims, respected by many, to being legitimate political figures. Can a terrorist be delineated from a patriot or freedom fighter, or is it simply a matter of realpolitik, like Adam Smith’s observation “that both rebels and heretics are those unlucky persons, who, when things have come to a certain degree of violence, have the misfortune to be of the weaker party?” Is there any behavior so beyond the pale that irrespective of the distribution of power, terrorists who engage in that behavior will not be permitted to evolve into statesmen? There are some obvious dimensions upon which distinctions should turn, even though the boundaries will assuredly be fuzzy. The greater the opportunity to effect change through persuasion and peaceful means, for example, the less that a resort to terror should be countenanced. Citizens enjoying full civil rights in a functional democracy, therefore, should face essentially a zero tolerance policy against acts of terror. Those who purposely target children should likewise find little solace, even when there are serious restraints on non-violent dissent, and even from those who are sympathetic with the ends in view. More generally, the deliberate targeting of noncombatants is highly problematic, and has even been offered as a definition of terrorism, if the targeting is done with utter disregard and without provocation. Nevertheless, the current treatment of terrorists does not seem to draw these distinctions, either in international law or in the public mind.

All else equal, then, rules that are inexpensive to draft, comply with, and enforce – simple and clear rules – would seem to have an advantage in guiding behavior into socially desirable channels, as the “Just say no” example suggested. Our personal rules of behavior similarly benefit from high fidelity, from being easy for others to comprehend and respond to. But even a good rule will admit some exceptions in practice, because of the inescapable incompleteness of rules. There will always be “hard cases,” perplexing situations in which it is difficult to determine what rule is appropriate, or how the existing rules should be applied, even with hindsight. Nor is it obvious if a proposed change to an existing rule will improve social outcomes.

A better rule?

In 1988, the Journal of Economic Perspectives solicited suggestions for a policy change that would lead to a clear improvement in US society, in the sense that some individuals would be helped, while no one would be harmed. One reader responded with the following intriguing proposal: why not change the law so that
cars, after stopping at a red light, could make a left turn if the intersection were clear, instead of killing time waiting for the light to change. The proposer understood the reason why such a rule change would not be a good idea: people might not be all that scrupulous about ensuring that the intersection was in fact clear, or there might be too much room for different interpretations of what constitutes a sufficiently clear intersection. The “full stop” first required at a red light would, in practice, also be degraded. In short, a useful bright line – red means stop, green means go – would be dimmed. While such a rule change would be beneficial if it were always obeyed, it could be very costly given opportunities for evasion: killing time, and only time, is the preferred option.

But is that analysis sufficient? After all, the widespread adoption of “right turn on red” laws in the United States in the 1970s proved a success, or at least there is no obvious sentiment for repeal. These laws permit cars to make a right turn when the signal is red, provided that they first come to a full stop and their drivers determine that the intersection (including pedestrian traffic) is clear. In fact, however, right-on-red illustrates well the potential problems. Signs forbidding rights-on-red are often posted at crowded intersections (indeed, right-on-red remains prohibited throughout Manhattan), or at crossings with poor visibility. Cursory observation indicates, however, that these signs are frequently ignored, and that many cars at intersections at which rights-on-red are permissible do not bother first to come to the full stop required in the law. Prior to the rule change, a car approaching an intersection when the signal turned yellow was more likely to rush through the intersection (potentially running a red light) if the car was going straight on than if it was turning right, since a turning car had to slow down in any event. Now, however, a yellow light seems to be treated no differently from a green light by the drivers of many right-turning cars. Some statistical studies go beyond cursory observation, by indicating that the adoption of right-on-red laws leads to increased accidents, particularly those involving pedestrians or bicyclists. The right-on-red law may be justified, but there has been some cost in dimming the previous bright line that red lights mean stop.

Likewise, the fanciful “right-through-red” proposal would involve costs as well as benefits. The magnitude of these costs and benefits depends on the precise situation. Here, it should be kept in mind that de jure rules often differ markedly from de facto rules, and many drivers at deserted intersections presumably evade the rule against running red lights. (This is speculation, not introspection.) The police and courts might – but only might – show some sympathy to drivers who are caught going through a red light at an empty crossroad after a long wait, despite the interest these authorities have in enforcing traffic laws.

Some de jure aspects of the right-through-red rule currently exist, too. As the gains from the adoption of right-through-red accrue through the reduction in time spent waiting at deserted intersections (assuming carjacking is not part of the equation!), the fact that there are already adaptations (both de jure and de facto) that reduce waiting time lessens the value of fully adopting the reform.
official adaptations are rather common. First, right turns on red, as noted, are often legal. Second, the widespread use of “tripping” devices, whereby cars will not have to wait long at a deserted intersection before their traffic signal turns green, has lessened the time savings that “right-through-red” might offer. Third, some traffic signals are changed to flashing yellow or flashing red during off-peak times, providing the time savings in a way that does not offer the same potential to erode respect for red traffic signals.41 And as cars have become more comfortable, the disutility associated with spending a few more seconds stopped “unnecessarily” at a red light has diminished.42

**Why are rules changed?**

The discussion of the proposed “right-through-red” rule was conducted under the implicit assumption that the point of public policy is to produce desirable social outcomes, and therefore that a rule will be changed when it becomes clear that an alternative to the status quo offers better results. Of course, there might be considerable disagreement over what constitutes a better social outcome, since almost all feasible rule changes will help some individuals and hurt others. For this reason, even under the best of circumstances, the political process which seeks to balance various interests will be contentious, and some desirable reforms will be delayed until the status quo deteriorates so extensively that almost everyone will find a policy change advantageous.

When there are substantial numbers of winners and losers from a policy change, the anticipated distributional consequences are a major determinant of the political saliency of the proposed reform. Many policies, such as trade protection for a minor industry, can be very beneficial for a small number of people, while imposing only a minuscule cost on each of the vast number of people who are not in the favored group. But if the group of “losers” is sufficiently large, the total social costs of the trade barriers will exceed the benefits. With such a small stake in the outcome, however, individual losers will have little incentive to organize and lobby to oppose the protective policy, while the incentive for the winners, of course, is very substantial.43

These standard barriers to desirable collective actions are well-known. Nevertheless, a politician cognizant of these dangers and anxious to choose only socially desirable rules might mistakenly support inefficient policies. Such a politician will still have to gauge the preferences of his or her constituents. Whose voice will be heard? It is unlikely that the inputs into lobbying will evenly reflect the totality of social interests, given the relatively strong incentive for concentrated special interests to express their opinions. The situation may be even more skewed. In addition to a limited motivation on the part of most citizens to acquire policy-relevant information, even when becoming informed is relatively easy, it simply might not be easy. Policies are complex. Diligent research and devoted thought might not provide much of a guide to the effects of a potential policy change; therefore, broad groups of people may not understand their own interests in a policy reform.
Within the political arena, the actual social benefits of a reform, and their
distribution, are less important than the publicly perceived distribution of costs
and benefits. The substantial expenses of acquiring better information for many
citizens provide an opening for motivated individuals, potentially including legis-
lators and regulators, to attempt to mislead the public debate, to sway policies in
ways that favor their special interests.\textsuperscript{44} As a result, socially undesirable rules that
serve to enrich a few at the expense of the many can be adopted and maintained,
even in polities that are responsive to broad citizen preferences.

While special interests and incomplete information complicate the determi-
nation of socially optimal policies, these could be relatively minor wrenches in the
legislative machinery. Other factors may be much more damaging. For example,
it may be that coming to some consensus over what constitutes a “better social
outcome” is irrelevant for many real-world policy changes.\textsuperscript{45} Policy may be driven
by ideology, or by the institutional mechanics of regulatory or legislative bodies,
irrespective of social welfare or efficiency.\textsuperscript{46} Or the lobbying process might be dis-
honest, as when politicians essentially sell policy changes to voters or contributors
in a way that maximizes the politicians’ own chances for re-election, or offers
corrupt earnings in other forms.

While acknowledging that these and other sources of policy reform can be
influential and sometimes even determinative, I generally will focus on the net
social benefits of a potential policy shift, and the distribution of the costs and
benefits, when explaining policy change. Reforms, all else equal, have the best
chance of being implemented when they offer substantial net benefits – i.e. more
desirable social outcomes – and when there are relatively few who are harmed by
the reforms.\textsuperscript{47} The conditions that favor reform can be brought about through
evasion and avoidance of the existing rules, as noted in the introduction and
discussed at more length below. The role of corruption in changing the calculus
of policy reform will also be addressed.

For now, though, note that there is some pressure, however dilute, against
socially wasteful policies (and against inefficient private practices, too). The
passage of time tends to erode the factors that lead to sub-optimal policies.
Misleading claims about the social virtues of the policy become less compelling as
experience accumulates.\textsuperscript{48} Those harmed by a policy (whether or not it is socially
undesirable) will seek ways to mitigate their losses, and emulate such discoveries
made by others. Competitors will emerge for a share of the benefits, reducing
the per capita stake that “winners” have in the continuation of the policy. The
status quo policy has an edge, of course, in that policies that are yet to be adopted
presumably are more uncertain in their effects.\textsuperscript{49} But the outcome associated
with the status quo policy need not itself be static, as self-interested behavior
on the part of the erstwhile losers and would-be beneficiaries leads them to find
novel ways either of avoiding costs, or of sharing in the bounty.\textsuperscript{50} And while even
socially desirable policies are subject to such attenuation, policy makers in
responsive political regimes will be more apt to combat these avoidance responses
when the original policy is socially desirable than when the policy is noticeably
less than optimal.
Information and rule circumvention

Rule evasion and avoidance, which typically dampen the intended effects of a policy, often serve as the catalyst for policy reforms. Wide-scale evasion and avoidance, most particularly, regularly impel either the abandonment of a policy or a sharp increase in enforcement, just as “Man’s first disobedience” led to a decidedly different policy regime in exile from Eden. As noted, civil disobedience is a form of rule evasion that its practitioners engage in precisely to set in motion forces that will change the rule, but even evasion less calculated can induce a similar response.

Whether intended, or desirable, or otherwise, rule evasion regularly dilutes the reliability of standard measures of the results of policy changes. Rule breaking (other than the civilly disobedient variety) tends to be conducted in a less than open manner, and hence is not captured fully in official statistics. Conditions prior to a rule change may therefore be misunderstood, potentially leading to the implementation of inappropriate policies. (What was the actual state of the Soviet economy in late 1991, given that a significant proportion of activity was conducted underground, outside the purview of statisticians and tax collectors?) The rule change then brings its own evasion and avoidance, perhaps equally hidden. Policy analysis is made doubly perplexing by the potential for evasion: not only is the relationship between changes in the formal rules and changes in individual behavior hard to untangle in advance, it also is complex to measure after the fact. Some policy issues remain contentious largely because the extent and effects of evasion are not well understood. Will methadone maintenance programs for heroin addicts lead to lower social costs from drug abuse? The answer, in large measure, depends on details of the methadone program, its implementation (in providing insufficient doses or, alternatively, excessive doses that are diverted to the black market), and how the illegal market in heroin will respond to the new competition. (The short-run and long-run responses could be quite different. By subsidizing methadone, heroin addiction itself might become more desirable – or less undesirable – “attracting” more addicts in the long run.) But the extent and workings of the existing illegal drug market are themselves very imperfectly known, and furthermore they will vary with enforcement efforts against heroin trafficking. Still less understood than the existing black market are the detailed responses by heroin buyers and sellers to a policy change such as enhanced availability of methadone treatment.

The informational erosion accompanying evasive activity implies that relevant empirical evidence tends to be both limited and of questionable reliability. Social scientists use a variety of methodologies in an attempt to overcome the shortage of sound data. Detailed information on some types of illegal behavior can be gathered by ethnographers, but it is bound to be drawn only from a small segment of society, and hence its more general applicability is questionable. Broader measures, such as standard national income accounts, are less likely to directly capture informal activity – though sometimes the influence of illegality or informality can be gleaned from standard statistics. The size of the underground
economy, for example, has been estimated through a comparison of monetary statistics with the extent of the official economy. Despite such efforts of social scientists, however, the potential for large errors in the understanding of the scope or nature of evasive activity remains. Policy experts may not be in any better position than ordinary citizens to understand the true state of affairs. Experts may even have one disadvantage, an inclination to place too much reliance on official statistics, which are likely to be the main source of information that appears “scientific,” but which also tend to neglect informal or illegal activity.

A recognition of the informational shortcomings associated with evasive behavior is not a prescription for despair. Even in the most impenetrable cases, analysts can at least offer broad guidelines of the potential effects of evasive activity, and indicate the likely influence of hidden behavior on policy reforms. In many instances, rule circumvention will not play a large role in the outcome of policies. But for some policies it will be decisive, and analysts can make a contribution by indicating when and how that might be the case. Despair is more likely to occur, after the fact, when evasion and avoidance are not taken into account in formulating a policy and enforcement regime.

There is some compensation for the informational dilution that accompanies rule evasion: namely, evasive behavior in essence presents an experiment, an alternative way of arranging society. As long as it is on a small scale, it might be an experiment worth running, though it might be expected that, like the rule violations in copying DNA, most of the “mutations” will not lead to improvements – though this predisposition depends on the quality of the initial rules themselves. Nor are the experiments pure; perhaps the benefits of the alternative way of organizing society will not reveal themselves unless the alternative is legal and widely practiced. At least a common argument arrayed by proponents of social orderings that are widely thought to have proved their undesirability – including US alcohol prohibition and Soviet socialism – is that their preferred alternative was never actually tested, that it was never implemented in a sufficiently pure form. If these advocates are right, their versions of improved societies may not be achievable in the gradual manner that evasion-induced policy response offers. But sometimes the gradualism of evasion works in bringing about beneficial changes: the evasive activity is quickly perceived as being desirable (or at least it is perceived that if the evasive activity were legal the social outcome would dominate that arising from the ineffectual attempt to enforce compliance), is imitated more widely, and is eventually ratified by an official change in the rules.

An example: avoidance and evasion in a price-controlled market

A long-popular demonstration in introductory microeconomics concerns how an effective price ceiling – a legal restriction on the maximum amount that sellers can charge for a good – leads to a shortage of the good, and a loss of economic efficiency. Nevertheless, when the price of an important good rises quickly, policy
makers often call for, and sometimes enact, price controls, even in market economies. Perhaps policy makers never studied (or never understood) introductory microeconomics, and hence are unaware of the consequences of price ceilings, or are hoping to appeal to constituencies who themselves lack microeconomic training (or indoctrination?). Or perhaps the policy makers or their constituents view the distributional impact of a price ceiling – while the economy overall might be harmed, some individuals will benefit – as desirable in itself, and worth the cost of a loss of efficiency. (An extreme version of this possibility might suggest that it is the policy makers themselves who are the main beneficiaries of the price control, perhaps through corrupt means.) Another possibility, however, is that the introductory microeconomics analysis is not a reliable guide to the actual effects of a price ceiling. In practice, the impact of a price ceiling will hinge on a host of factors, many that depend on the nature of the good in question, and others that involve the precise mechanism by which the ceiling is enacted, how it is enforced, and the routes open to evasion and avoidance.

So, consider a new government regulation that establishes a price ceiling for a good, at a level somewhat below the going market price. What will be the impact of the new regulation?

Employing the standard supply–demand framework for a competitive market, the price ceiling, if effectively enforced, will result in a diminution of the quantity sold, and the nominal price will be lowered to the controlled level. Because the control results in excess demand, there remains the issue of which consumers actually receive the good. For many commodities such as gasoline, first-come first-served becomes the allocation rule, leading to queuing. For other goods, alternative rationing methods are more likely. With rent-controlled apartments, for example, existing tenants are generally given the option to continue in their occupancy, and vacancies might be filled through waiting lists. The distribution of ration coupons, with or without permissible resale, is another possibility.

Consider the case with queuing. In the standard analysis, the full price of the good, including the value of time spent waiting in line, will actually be higher than the pre-control price, on average. Thus, to the extent that the intended effect of price controls is to make goods cheaper for the average consumer, the policy will likely have a perverse impact, if queue-rationing develops.\footnote{There generally will be distributional consequences, too – actual consumers are not average consumers. Some buyers will pay a lower effective price for the good, while others will pay more.}

The price control, however, might be evaded or avoided. Evasion basically amounts to illicit, black-market transactions, at prices higher than those allowed by law. Generally such sales are more difficult to arrange than legal sales, because they must be conducted away from the purview of enforcement agents. And there are some simple ways to raise barriers to evasion. For example, the law can make only the seller involved in the black-market transaction guilty of a crime: in other words, it can be illegal to sell the good at a price above the controlled level, but not illegal to buy the good at that price. In such circumstances, sellers will be wary of buyers whom they do not already trust, because of the increased possibility
that the buyer will later testify against the seller. Buyers who do not have a credible threat to go to the enforcement authorities, perhaps because they are involved in illegal activity of their own (they could be illegal immigrants, for instance), will then have an “advantage” in evading the constraint. In any case, price ceilings often stimulate a fair amount of evasion, as was evidenced in both Britain and the US during World War II. Legal minimum prices (price floors) also can be evaded: it has been estimated that as many as one-third of the employees for whom the US minimum wage is binding are paid less than the minimum wage, and in some developing countries noncompliance with minimum wage laws is the rule rather than the exception.

Avoidance of a price ceiling can come in various guises, often connected with changing the nature of the good either to put it outside the jurisdiction of the controls, or to lower the quality (and hence the production costs) of the good to bring it more in conformance with the controlled price. For example, a tie-in sale might be used, whereby the controlled good is sold (or given away “free”) with the purchase of another, non-price-controlled good. One example comes from transitional Russia, which imposed a minimum price on imports to protect the domestic vodka industry: a price floor, as opposed to a price ceiling. To elude the controls, some shopkeepers adopted “buy one, get one free” promotions for foreign-produced vodka. A similar dodge involves marketing a nominally altered product as though it represents a vastly different good, one outside of existing price controls. If such a nominal change were both costless and effective at circumventing the price control, then the control would be meaningless. There are still more methods of avoiding a price control, of course. Auxiliary services that were previously included in the purchase of the good without separate charge, such as assistance provided by an informed and responsive sales staff, might be reduced. Consider some of the dimensions of a gasoline purchase that sellers could alter when faced with price controls: octane, hours of service, acceptance of credit, and even the cleanliness of restrooms could be adjusted in response to price regulation. Not all routes to avoid the control need be minor, either: a substantial change in the character of the good might actually be induced, or the quantity supplied might be significantly reduced.

After witnessing the various forms of evasion and avoidance that arise in response to price controls, policy makers might be tempted to amend the rules or the enforcement regime to combat some of the most prevalent rule-circumvention methods. Perhaps minimum quantity constraints would be added for sellers, or restrictions placed on tie-in sales. Of course, amended rules will induce their own avoidance and evasion responses; there then can be further policy responses, etc. The economist Steven Cheung has described this process with respect to Hong Kong rent controls of the 1920s. At first, landlords could legally raise the rents when new tenants entered an apartment. As a result, some landlords under- or over-repaired their tenements in an effort to get existing tenants to move. Fines were then introduced to discourage this behavior (in effect, changing a legal avoidance response into an illegal evasion). When landlords began to reconstruct apartment dwellings instead (because new or reconstructed buildings
were exempt from the rent controls), another amendment to the law mandated government permission before an existing tenement could be reconstructed.

Evasion and avoidance put a much different light on the standard conclusion that price controls lead to efficiency losses. Many trades that a perfectly enforced control would prevent from occurring – the potential source of efficiency losses from price regulation – actually do take place if the control is evaded. More importantly, the incentive to evade or avoid the control tends to be greatest precisely when the efficiency costs are high, when there is a large private gain from noncompliance. Opportunities for evasion basically imply that bad policies generally are not quite as bad as they look – though in some cases the evasion, even of bad laws, may produce side effects that would reverse this conclusion. Further, the incentive to evade often exists for good policies, too. If a price control is enacted because some third party (i.e. someone other than the buyer and seller) is harmed by high-priced sales, then evasion can lead directly to efficiency losses of its own. But at least those deals that tend to go forward in evasion of the ban are those that offer a relatively large surplus to the transacting parties themselves, so they also tend to be (all else equal) the most socially desirable or the least socially undesirable of the potential circumventions.

Finally, there is also the possibility of avoidance, not of the price control itself, but of the costs of queuing. A market for waiting in line might develop, whereby time-pressed professionals hire retirees or teenagers to purchase the price-controlled good on their behalf. Consumers might begin to “hoard” the good, increasing their quantity purchased per trip, in order to avoid the waiting costs of subsequent trips, or to engage in re-sale, possibly at above-control prices. For these reasons, price ceilings are often teamed with restrictions on the quantity that can be purchased at one time. One familiar example is the time limits that are often imposed for low-priced street parking: some jurisdictions, for instance, do not allow parking for more than an hour, even if the requisite coins are continually fed to the meter. Queue jumping also might develop, in the form of dealing on connections with sellers, or by other means of establishing priority, including coercion. Public parking spaces in crowded downtown areas are frequently “privatized” by large men (“parking jockeys”) who charge market-clearing rates, ostensibly to “watch” parked vehicles. For limited-seating government hearings, firms hire college students and others with relatively low values of time to wait in line for high-priced lawyers and lobbyists who want to attend the hearings, and government insiders, who have access to buildings prior to normal working hours, have been known to jump the queue.

Like the Bogota traffic tale, the example of a price ceiling highlights several features of evasion and avoidance that will be examined in more detail throughout this book. First, evasion can be beneficial for all involved, as might be the case for some black-market trade, particularly if the rule being evaded is ill-advised; such a conclusion, however, need not apply if the illegality of the evasive transaction in itself is harmful, perhaps by undermining respect for the law. Second, there are often many different ways to avoid or evade regulations, even if some effort is made at enforcement, and supplementary rules (e.g. maximum
purchase limitations) might be necessary to control the most direct kinds of circumvention. Third, extensive evasion and avoidance could completely undermine the intended effect of a policy. Fourth, evasion and avoidance of existing regulations can be the spur towards further regulations or altered enforcement, in a cycle of response and counter-response. And finally, the potential for avoidance and evasion complicates the cost–benefit calculus of possible policy changes, rendering first-cut analyses such as the introductory microeconomics approach to price ceilings highly suspect, if not clearly insufficient. Rule breaking matters.


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