

CHAPTER ONE

FRANCO'S CHOICE

We should expect the best and the worst from mankind, as
from the weather.

—*Marquis De Vauvenargues*

On a quiet August evening in 2002, Franco Gonzales stood on the corner of Seventh Street and Grand Avenue in downtown Los Angeles, waiting for the bus. Los Angeles is a city of suburban commuters, and by nine p.m. the corner of Seventh and Grand was deserted. Suddenly an armored truck drove by. Its rear door swung open mysteriously, and a plastic bag fell out to land at Gonzales' feet. Inside the bag was \$203,000 in cash.

Franco Gonzales took the money home. Gonzales, a plump, boyish man in his early twenties who worked as a dishwasher in a restaurant, spent the rest of the night agonizing over what to do. He wanted to keep the money for himself and for his mother, who lived in a farming village in Mexico. But Gonzales' mother had taught him that stealing was wrong. He worried that keeping the money would be dishonest. He also worried about what would happen if the police somehow learned that Gonzales, who was working in the United States without legal documentation, had acquired sudden wealth. Finally, it

does not seem implausible that Gonzales, raised a Catholic, worried about his immortal soul.

By the time the sun rose, Gonzales had made his decision. He called 911 to report his find and asked the police to return the money to its rightful owner.¹

ENTER HOMO ECONOMICUS

When I first studied economics in the late 1970s, my instructors taught me that people generally do not behave like Franco Gonzales. Rather (my professors told me), most people act like members of the species *homo economicus*: they act selfishly and rationally. “Economic Man” does not worry about morality, ethics, or other people. He worries only about himself, calculatingly and opportunistically pursuing the course of action that brings him the greatest material advantage.

My professors and I both knew, of course, that *homo sapiens* does not always act like *homo economicus*. Franco Gonzales certainly did not. Although his decision to return the money might have been inspired by a number of subjective motives one could describe as “selfish” (e.g., a desire to avoid guilt or obsessive worry, or the hope of earning praise or eternal salvation), by returning the cash he had made himself poorer by \$203,000. From an objective perspective, he had acted unselfishly. Nevertheless, my professors insisted, individuals like Franco Gonzales were the exceptions that proved the rule. Most people, most of the time, tried to maximize their own wealth. Self-sacrificing behavior was rare, unpredictable, and unworthy of serious study.

As an undergraduate student studying the exchange of goods and services in anonymous markets, the *homo economicus* approach struck me as a fairly plausible description of real behavior. These days, however, the assumption

that people are fundamentally self-interested has spread well beyond economics. In political science, Ph.D. dissertations analyze politicians and bureaucrats as rational, self-interested actors. Public policy departments and business schools incorporate economic theory into their basic curricula and serve up the *homo economicus* account as standard fare. In the nation's law schools, students are routinely instructed in "law and economics," an approach that treats law as a kind of pricing system that requires people to pay damages for negligence or breach of contract in order to increase the "price" of bad behavior.

Today we see the results of this intellectual evolution. Over the past quarter-century, the precepts of economics have been drilled into the heads of millions of undergraduate and graduate students. A generation weaned on the idea of rational selfishness has graduated from our nation's universities and moved into leadership positions in the worlds of law, business, government, and higher education. They have brought with them an unquestioned belief in the power of material "incentives" that undergirds almost every policy discussion. Are people cheating on their taxes? Increase the penalty for tax fraud. Are CEOs taking dangerous risks with their firms? "Incentivize" them with deferred stock grants. Are America's children failing to learn their ABCs? Tie teachers' salaries to their students' test scores.

SIGNS OF CONSCIENCE

Largely missing from all this talk of "incentives" and "accountability" is any serious discussion of the possibility that we might encourage or discourage particular behaviors by appealing not to selfishness, but instead to the force of conscience. Many modern experts would snicker at the very idea.

Conscience is viewed as the province of religious leaders and populist politicians, not lawyers, businessmen, or regulators.

Yet before dismissing conscience, it is worth stopping to recognize that, for most of us, ethical and moral concerns are an omnipresent theme of our everyday lives. If you doubt this, simply consider your own train of thought on a typical day. Your interior monologue is likely to include scores, if not hundreds, of normative judgments. (“That driver is a jerk; it’s thoughtless of my neighbor to leave her empty garbage cans out; that cashier was a nice guy; I really ought to call my Aunt Martha.”) Our language similarly reveals our preoccupation with moral assessments. Just as the Inuit are said to have many nouns for snow, English has a multitude of words to describe unselfish, conscience-driven behavior, including:

virtuous	kind
fair	agreeable
honest	ethical
trustworthy	decent
upright	praiseworthy
faithful	altruistic
thoughtful	humane
loyal	charitable
selfless	principled
conscientious	cooperative
generous	considerate
caring	compassionate

Most tellingly, another simple English word often used to describe unselfish behavior is “good.”

Where there is so much smoke, there are pretty high odds of finding fire. This book argues it is time to take the idea of conscience—meaning an internal force that inspires unself-

ish, prosocial behavior—far more seriously. Although Franco Gonzales' story was unusual enough to be reported in the national press (a small fortune doesn't fall at someone's feet every day), the remarkable tale of the honest dishwasher is, in many ways, not all that remarkable. Civic life in the United States is filled with similar, if more modest, acts of courtesy, consideration, and forbearance. People return misplaced wallets and jewelry to lost-and-found departments. Pedestrians give directions to strangers. Cashiers correct customers who have mistakenly overpaid them. Beefy young men stand patiently in line behind frail senior citizens. Drivers wait for red lights to turn green, even when the police are nowhere in sight.

Unselfish, prosocial behavior is so deeply woven into the warp and woof of Western life that it often goes unnoticed. We rarely stop to think about how the strangers around us routinely behave as if our own comfort and welfare were, if not necessarily at the top of their "to-do" list, still worth consideration. We take for granted the innumerable small, unselfish acts that bind us together in civil society, just as we take for granted the gravitational force that keeps us from floating out into space.

But sometimes gravity produces results dramatic enough to make one ponder. When an apple fell on Newton's head, he stopped to think. When a young dishwasher goes out of his way to return \$203,000 in cash to an anonymous owner, we also should stop to think.

THE PUZZLE OF PROSOCIAL BEHAVIOR

I first became interested in unselfish prosocial behavior through my research on corporations and corporate law.²

Many readers may find this odd: the business world is often described as a place where the selfish pursuit of material gain goes unchecked. After studying corporations for nearly two decades, however, I became convinced that the *homo economicus* model did a surprisingly poor job of predicting the behavior that I observed inside them. Far from pursuing their own interests in a cutthroat manner, people in corporations often cooperated and sacrificed for collective goals, much like bees in a beehive. Personal ambition was confined to channels that served the corporate collective. And while corporate managers and employees might, like bees, deal ruthlessly with outsiders, teamwork was usually the norm inside the firm. What's more, it was a norm that seemed to promote business success. Corporations characterized by a high degree of internal trust, honesty, and cooperation usually thrived. Those torn apart by infighting and opportunism often failed.

Once the phenomenon of unselfish cooperation captured my attention in the corporate environment, I began to notice cooperation in the outside world as well. My daily interactions with strangers in Los Angeles—hardly a city known for its morals or public spirit—were, if not entirely free of stress and conflict, still characterized by a notable degree of cooperation and mutual consideration. Yawning commuters waited patiently in line at the coffee shop for their morning lattes rather than trying to push or bribe their way to the front of the line. Visiting tourists tipped waiters in restaurants and hotels they would never visit again. Morning newspapers sat in driveways well into the evening without being stolen. People donated time, money, even blood.

My growing suspicion that the *homo economicus* model missed the essence of much of modern life spurred me to find out more. I began to research the social science and life

science literature to see what I could learn about the causes and consequences of prosocial behavior. There was a surprisingly large amount to learn.

THE EMERGING SCIENCE OF UNSELFISH PROSOCIAL BEHAVIOR

In June 2005, the science journal *Nature* reported the results of a remarkable study.³ Human subjects were divided into pairs and each pair was asked to play a “trust game.” In the trust game, one member of each pair was designated the “investor” and given some money. The investor was then asked to make a choice: she could either keep all of the money for herself, or give some or all of it to her partner in the game, designated the “trustee.” If the investor decided to share any portion of her money with the trustee, the shared amount was tripled by the researchers. The trustee then faced his own decision: he could either keep the tripled funds for himself, or return all or some portion to the investor. The subjects played the trust game anonymously, using written forms to record their decisions, and they were told they would play the game only once.

If two members of the species *homo economicus* were asked to play a trust game this way, the investor would never choose to share with the trustee, because any investor foolish enough to share would discover that the trustee would keep all the tripled money. The subjects in the *Nature* study didn't, however, behave like *homo economicus*. Typically, the investor shared between two-thirds and three-quarters of her funds, and the trustee typically repaid the investor's generosity by returning slightly more money than the investor had initially chosen to share.⁴

This finding, alone, was not novel. The trust game was designed many years ago by social scientists who wanted to study, under laboratory conditions, whether people always act selfishly. Virtually all trust game studies have concluded people do not. Investors frequently share, and trustees frequently return the favor. This finding has been replicated in countless carefully controlled experiments around the world.

But in the 2005 *Nature* study, the researchers did something more. They divided their test subjects into two groups. One group inhaled a nasal spray containing the hormone oxytocin before they played the trust game with each other. (Oxytocin is associated with mate bonding and maternal care in mammals; women experience a rush of oxytocin when breastfeeding.) The other group inhaled a placebo. When the behavior of the two groups was compared, the researchers found that while investors in both groups typically shared at least some of their funds with trustees, investors who had inhaled oxytocin *shared more*.

The *Nature* study illustrates a dramatic change in the way contemporary experts study human behavior. Anthropologists and psychologists are no longer content to develop their theories of human nature from introspection or case studies, in the style of a Sigmund Freud or Margaret Mead. They now put their ideas to the test through surveys, statistical analyses of large demographic databases, and carefully controlled experiments using human subjects. In the fields of medicine and biology, scientists study behavior and emotion—including prosocial behavior and emotion—the same way they study heart disease and cancer, using blood analyses, tissue samples, and brain imaging technology. Evolutionary ecologists and psychologists mathematically model the conditions under which organisms can evolve a capacity for unselfish

cooperation. Field biologists test the models against the actual behavior of different species.

The result is a large and rapidly growing body of data on when, how, and why people (and sometimes other species) act unselfishly. From this data a revolutionary new science is emerging. The new science—the science of unselfish prosocial behavior—is a bit like meteorology. Like meteorologists who study weather, scientists who investigate prosociality are studying a complex phenomenon. Like meteorologists, they make imperfect predictions. Sometimes it rains when it was forecast to shine, and sometimes people ruthlessly pursue their own gain at others' expense when the evidence suggests they should act unselfishly. But just as meteorologists can make ballpark predictions about tomorrow's weather, we can forecast with rough accuracy when people are likely to make purely selfish choices, and when they are not. Indeed, we can do more. Meteorologists can predict the weather, but they usually can't change it. But by manipulating certain variables, social scientists can encourage—or discourage—unselfishness toward others in a laboratory setting.

This possibility should interest anyone who lives among, cares about, or deals with other human beings. But it should especially interest those who study and care about law, regulation, public policy, and business management. Each of these fields deals with the central problem of getting people to “conscientiously” follow rules—to work hard and honestly, to pay taxes instead of cheating, to keep commitments, to respect others' rights and property, and to refrain from violence, theft, and mayhem.

Contemporary experts often assume the best way to get people to follow rules is to use material incentives and disincentives, much like the circus trainer who relies on sugar

cubes and a whip to make an animal perform a trick. Yet by assuming only incentives matter, they may be missing an essential ingredient in the recipe for changing human behavior. This essential ingredient is conscience.

A NOTE ON LANGUAGE

Conscience, unfortunately, is a vague and unscientific term. As a result, although I will use the word “conscience” in this book, I will also frequently employ the more exacting phrase “unselfish prosocial behavior.” Only an academic could love such a label, but each word in this three-word phrase is important.

The two modifiers, “unselfish” and “prosocial,” emphasize that we are indeed discussing behavior with both of two important characteristics. First, it does not materially benefit oneself (is not “selfish”). Second, it does benefit others, including especially the broader society (it is “prosocial,” not “asocial” or “antisocial”). Both modifiers are important, because not all prosocial behavior is unselfish. A surgeon who removes a patient’s infected appendix may be motivated only by a selfish desire to be paid, but she has acted prosocially by relieving her patient’s suffering. Similarly, not all unselfish acts are prosocial. Suicide bombings, while unselfish, would be judged by most people as harmful to society.

The third word in our three-word phrase, “behavior,” is even more important. This is because it highlights that we are indeed referring to behavior, and not to emotions. We are talking about *acts*, not *feelings*. This distinction is crucial, because in discussing the ideas in this book with friends and colleagues, I have found the conversation often begins with confusion and misunderstanding due to limits of the English

language. The problem is not that English lacks words for unselfish prosociality—as noted earlier, it has many. The problem is that none of the words distinguish clearly between *behavior* and *emotion*. For example, if I describe Grandma Sally as “charitable,” it is not clear whether I am describing Grandma Sally’s actions (an actual gift of money) or her attitude (a sincere desire to give money, if only she had any).

This makes it easy to confuse the claim that people often act unselfishly to benefit others with a claim that people often experience unselfish *feelings*. The confusion can lead us to discount the incidence and importance of unselfish behavior, because while altruistic acts are common, it is easy to suspect altruistic feelings may be rare. One can imagine any number of subjectively “selfish” concerns that might have spurred Franco Gonzales to return the \$203,000 that fell at his feet. Perhaps he wanted to avoid the pang of guilt; perhaps he wanted to experience the warm glow of feeling virtuous; perhaps he simply wanted to avoid the fires of Hell.

Alternatively, Gonzales’ decision may have been prompted by a peculiar type of mental error. Objectively, it was extremely unlikely anyone could have traced the lost \$203,000 to Gonzales if he used a modicum of care and foresight in storing and spending it. Nevertheless, Gonzales may have worried, irrationally, that discovery and punishment were somehow inevitable. H. L. Mencken described conscience as this type of irrational fear when he defined it as “the inner voice that tells us someone is watching.”

Emotions like pride, guilt, and irrational worry feel subjectively “selfish.” But the *behavior* they inspire is not. However egoistic her motive, the person who sacrifices time or wealth to help or to avoid hurting someone else has acted, objectively, unselfishly. Franco Gonzales made a sacrifice when he

decided to return the cash to its anonymous rightful owner. One does not need to believe in unselfish emotions to believe in, and value, this sort of unselfish behavior.

Indeed, from the perspective of an employer trying to prevent employee theft, a government agency trying to encourage taxpayers not to cheat, or an environmental activist trying to convince citizens to recycle their garbage, motivation is beside the point. It doesn't really matter whether selfish feelings prompt people not to steal, cheat, or litter. What matters is they *don't* steal, cheat, or litter—even when they would be materially better off if they did.

As a result, this book will describe an act as unselfishly prosocial whenever it requires the actor to sacrifice time, money, or some other valuable resource to help, or to avoid harming, others. This conception of unselfishness clearly encompasses acts of “active” altruism, as when an individual donates money to charity, or rushes into a burning building to rescue someone from the flames. But it also includes an often-overlooked form of unselfishness we might dub “passive” altruism. Passive altruism, which perhaps most closely resembles what laymen call “ethics,” occurs when someone refrains from breaking rules or taking advantage of others even though it would be personally profitable to do so. Common examples of passive altruism include the taxpayer who declines to cheat on her tax return; the shopper who refrains from stealing small items when the cashier's back is turned; and the driver who obeys the speed limit when the police are nowhere in sight. Although such passively prosocial behaviors are less eye-catching than someone risking her life to save a stranger, they are essential to economic growth and civilized life.

Thus I will use the phrase “unselfish prosocial behavior” to capture both active and passive forms of altruistic action. I

will also sometimes employ another term from social science, “other-regarding behavior,” to describe actions that evidence concern for someone or something beyond one’s own material interests. Finally, for variety’s sake, I will also sometimes use commonplace terms like “cooperation,” “altruism,” “conscience,” and even “morality.” Each of these words carries baggage. For example, “cooperation” implies deliberation and intent. Yet many forms of cooperative behavior seem unconscious and automatic. (A bank robber in Ohio was recently arrested after he waited patiently in line, wearing a ski mask, to rob the teller.)⁵ “Altruism” also causes confusion, because as just noted, we tend to associate it mostly with affirmative acts of generosity, even though passive altruism may be more common and important. Finally, many people associate the idea of “morality” primarily with a belief in a particular religious text or with cultural proscriptions on dress and behavior, especially sexual behavior. Indeed, “morality” is sometimes pressed into service to justify actions most people consider strikingly harmful to others, like stoning adulterers. This book uses the word “morality” in an ecumenical sense, to refer to acts that reflect concern for the rights and welfare of those around us. Used this way, the word “morality” embodies notions of honesty and consideration, of “doing the right thing” rather than simply pursuing one’s own material interests.

WHY STUDY CONSCIENCE?

A principal theme of this book is that conscience—that is, unselfish prosocial behavior—is a very real, very common, very powerful, and very important phenomenon. We are a far nicer species than we often assume we are. It is easy enough

to doubt this when reading newspaper stories of mass rape in Darfur, piracy in the Gulf of Aden, or looting in New Orleans in the wake of Hurricane Katrina. But why are such stories reported in the newspapers? They are reported because they are news, and they are news because they are rare. Rape, piracy, and looting are the exceptions, not the norm, in human interaction.

That thought should comfort us. Many people find the ideas of rampant crime, political corruption, war, famine, and genocide highly distressing. (The fact that we find such thoughts distressing is itself evidence of our altruistic inclinations—why should we be concerned if terrible things are happening to others, as long as they are not happening to us?) It can be depressing to believe people are capable of selfishness and evil. In contrast, we can find solace in the idea of conscience. People are indeed capable of doing evil—but they are also capable of, and surprisingly often inclined toward, doing good.

But in addition to offering spiritual consolation in troubled times, the idea that most people have a conscience is of tremendous practical importance. The emerging scientific evidence has begun to shed light on exactly why, and when, people act in a prosocial fashion. We are beginning to understand the sorts of circumstances that encourage people to “follow their conscience,” and the sorts of circumstances that instead encourage asocial or antisocial action. This means we do not always need to rely on crude material rewards and punishments to encourage prosocial behavior. We can enlist as well the power of conscience: the cheapest and most effective police force one could hope for.

That possibility should be of obvious interest to anyone who studies, makes, or enforces the law. Law, after all, is mostly about promoting unselfish prosocial behavior: persuading

people to pay taxes they would rather not pay, to perform contracts they would prefer to break, and to obey traffic rules they would rather ignore. As a result, law and conscience are deeply intertwined. Although many experts view law only as a system of material incentives and disincentives, the scientific evidence teaches that the relationship between law and behavior is more complex. Law can reward and punish, but it can do more as well. If we can gain a better understanding of the ways in which law can activate—or disengage—the force of conscience, we can not only understand the law better, we can use it more effectively.

But the phenomenon of conscience isn't important only to legal experts. Just as conscience helps explain why people follow legal rules, it helps explain why people follow other types of rules as well, such as employers' rules for employees, parents' rules for children, and schools' and universities' rules for students. It may also help explain why people adhere to difficult-to-enforce ethical rules and to the sorts of cultural rules ("social norms") that make communal life bearable, like the rule that one should wait one's turn instead of pushing ahead in a line, and put litter into trashcans instead of dropping it in the public street.

The phenomenon of conscience accordingly should interest anyone who studies or cares about the human condition, whether from an academic perspective (sociologists, psychologists, political scientists, management specialists) or from a more practical stance (teachers, parents, corrections officers, religious leaders, civic organizers, business executives). Twenty-first-century Americans still enjoy a remarkably cooperative, law-abiding culture. Even in large cities, most people obey the law, keep their promises, pay their taxes, and act courteously toward strangers, without ever stopping to think

how unselfish their behavior may be. Lawbreaking, corruption, violence, and deception are the exceptions rather than the rule.

But many believe our cooperative, ethical culture is under siege, and our collective conscience is on the decline.⁶ The news is full of anecdotal evidence: seemingly endless financial scandals at major banks and corporations; widespread claims of political corruption; high-profile incidents of falsified research and academic plagiarism in our nation's most prestigious universities. In his best-selling study *Bowling Alone: The Collapse and Revival of American Community*, sociologist Robert Putnam presents hard data to document this sense of social malaise.⁷ Putnam demonstrates how recent decades have seen dramatic declines in the rates at which Americans participate in politics, in community activities, and in charitable and philanthropic endeavors. Even more alarming, Putnam reports, Americans perceive each other as less honest and less trustworthy. Economically stressed, alienated from our communities, and jaded by the spectacle of scandals in our corporations, universities, and city halls, we are losing our collective moral compass. Increasingly, we are acting more like selfish consumers, and less like conscientious citizens.

That prospect should worry us deeply. Humanity is a long way from conquering the physical world: our species may yet be extinguished by a wayward comet. But most of the pressing policy problems we face today, including terrorism, crime, financial scandals, disease pandemics, and environmental degradation, can be traced to human behavior. As the cartoon character Pogo famously observed, we have met the enemy, and he is us.

How can we best address these problems? Today's experts often automatically assume that the best way to change human

behavior is to harness the force of greed by using material incentives to reward good actions and to punish bad ones. This approach reflects a long tradition in economic theory of accepting, even celebrating, selfishness. Since at least the days of Adam Smith, economists have preached that self-interest is noble and greed is good.

Yet emerging evidence suggests that cultural habits of unselfish prosocial behavior—a phenomenon related to what political scientists sometimes call “social capital”—are powerful engines for social stability and economic growth.⁸ Trust, honesty, and cooperation turn out to be statistically associated not only with personal happiness, but with economic prosperity as well. A healthy, productive society cannot rely solely on carrots and sticks. It must also cultivate conscience, and tap into the human potential to unselfishly help others and, perhaps more important, to ethically refrain from harming them. This is especially true in societies characterized by large and diverse populations, free migration, complex production, and anonymous exchange—in other words, in societies like our own.

A number of social institutions, including schools, churches and community organizations, may play a part in encouraging and supporting unselfish prosocial behavior. But law in particular may play a critical role. This book explores how.

ON THE SCOPE AND STRUCTURE OF THIS BOOK

Although this book focuses on the relationship between conscience and law, I have tried to create a guide to the workings of conscience that can be used by laypersons and experts from other fields as well, such as business management; pub-

lic administration; nonprofit organizations; education; and urban planning and development. The writing style is geared toward nonexperts, and the chapters are structured to allow readers from a variety of backgrounds to pick and choose the chapters and the ideas they find most interesting or useful.

Part One (chapters 1, 2, and 3) introduces readers to the idea of conscience and explores how and why it is overlooked in so many contemporary law and policy discussions. This first chapter has explored the basic idea of unselfish prosocial behavior (“conscience”). Chapter 2 investigates why and how conscience has dropped out of sight in most contemporary legal and policy discussions, tracing conscience’s mysterious disappearance to the increasing influence of economic thinking and a growing emphasis on material “incentives” as the best and possibly only way to mold human behavior. Chapter 3 then explores a second and still more curious reason why we have lost sight of conscience: for a variety of reasons, including our psychological biases, the structure of our language and our society, and the way we select and train experts in law, economics, and business, we tend not to “see” conscience, even when it happens under our very noses.

Part Two (chapters 4 through 6) seeks to put the idea of conscience to work by surveying the enormous body of scientific evidence generated in recent decades on how and why people engage in unselfish prosocial behavior. For readers skeptical of whether conscience really exists, chapter 4 introduces the research technique known as “experimental gaming,” and shows how hundreds of carefully designed and carefully controlled experimental games run by researchers around the globe have consistently proven that unselfish prosocial behavior is a real, common, and powerful phenomenon. Chapter 5, perhaps the key chapter in this book, then employs the evi-

dence to develop a rough working model of conscience. In particular, chapter 5 argues that unselfish prosocial behavior follows certain patterns: the vast majority of people are willing to sacrifice to follow ethical rules and help others, but they are only willing to do this when the social conditions are right. The result is a “Jekyll/Hyde syndrome” that causes most people to shift predictably between selfish and unselfish modes of behavior in response to certain social cues. Chapter 5 uses this insight to develop a three-factor model in which conscience is triggered primarily by three particularly powerful social cues: instructions from authority; beliefs about others’ unselfishness; and perceived benefits to others. Each of these three factors, chapter 5 shows, maps onto a fundamental and well-established trait of human nature (obedience, conformity, and empathy). Chapter 6 closes by exploring how the idea of the Jekyll/Hyde syndrome and the three-factor model are supported not only by the experimental gaming evidence, but by developmental psychology and evolutionary theory as well.

Part Three of the book (chapters 7 through 9) is designed to appeal to a legal audience, and could perhaps be skipped by readers with other interests. In particular, chapters 7 through 9 apply the lessons of the three-factor model to our understanding of tort law (which discourages negligent accidents); contract law (which enforces contractual promises); and criminal law (which deters theft, fraud, violence, and mayhem). As readers with a legal background may recognize, the fields of tort, contract, and criminal law exemplify the three basic types of legal rules employed by modern societies (liability rules, property rules, and “inalienability” rules).⁹ Thus, by showing that the three-factor model has useful applications in tort, contract, and criminal law, I demonstrate more broadly that

the model offers insights into virtually all other areas of law as well. I also offer examples of how, by paying attention to conscience and especially the three-factor model, we can not only understand the law better—we can use it more effectively.

The Conclusion returns to the broader question of why contemporary legal and policy experts should be eager to do the extra work needed to incorporate the idea of conscience into their analysis. The answer is simple: we can't afford not to. Growing empirical evidence indicates that cultural habits of unselfish prosocial behavior are essential to both economic growth and psychological well-being. Evidence is also accumulating that unselfish prosocial behavior is on the decline in the United States. Just as environmental scientists have become concerned about many sources of scientific data that point to the possibility of global warming, some social scientists have become concerned about the possibility of "conscience cooling." If Americans are indeed becoming collectively more selfish, unethical, and asocial—concerned only with their own material welfare, and not with the fates of their communities, nation, or future generations—the shift threatens both our happiness and our prosperity. It's time to cultivate conscience. Law can play an important role in that process.