

Letter to the Editor

Dear Editor,

I appreciate the critique of my article “The Informal Norms of HIV Prevention: The Emergence and Erosion of the Condom Code”¹ by Jonathan Hardman in his essay, “The Law and Economics of Grindr: A Response to Carson,”² both of which appear in this journal. I write to clarify some of the confusions found in Hardman’s critique. For a longer reply, I invite readers to view my SSRN page.³

Mainly, Hardman confuses collective action problems with specific factors that influence collective action problems. That someone might respond to an adverse selection problem by increasing their use of condoms does not mean they do not also face the burden of externalities, free riding, and collective action. These problems are distinct, they are not mutually exclusive, and they each influence decisions on different margins, perhaps simultaneously. Thus, Hardman’s argument does not invalidate my argument and its focus on preventative externalities and collective action problems influencing gay men during the HIV epidemic in the United States. Nor does it invalidate the role an informal norm like the condom code played in fostering preventative sexual behavior.

Hardman also underappreciates the framework of collective action developed in my article. This framework assumes rational actors and discusses multiple conditions under which people face collective action problems, e.g., prevention externalities and high transactions costs. The original framework anticipates and is consistent with Hardman’s analysis. For example, Hardman focuses on an information asymmetry problem called adverse selection, and how that might influence decisions to wear condoms. The original framework, however, explicitly accounts for the role of information and how it influences the presence of externalities. If people had accurate information regarding a person’s HIV status, there would be fewer externalities and less of a problem with free riding and collective action. As a result, there would also be less value in an institutional response to internalize prevention externalities, which in this case is the informal norm related to the condom code. This is why the section on Grindr is important; it validates the original framework by showing the conditions hold, but in an opposite direction. With the advent of digital and

online communities for dating and hook-ups, informal norms regarding condom usage are less useful because the transactions costs of serosorting are lower. Such interactions were not available during the 1980s and early 1990s, which meant externalities were likely to persist. Thus, the condom code was more relevant before the early 1990s. Relatedly, the section on anti-retroviral therapies argues that these medical advances encouraged substitution away from condom usage, which partly explains the erosion of the condom code.

Hardman argues that the condom code does not meet the qualifications of an informal norm, rather that it is merely descriptive of behavior. This is a potentially valid critique, but Hardman fails to recognize that it is consistent with the original argument. In my article I follow the definition of informal norms found in *Explaining Norms*, by Brennan, Eriksson, Goodin, and Southwood. They argue that an informal norm is a primary rule with few if any secondary rules; the rule is enforced but in a decentralized way; and that the normative principle corresponds to the normative attitudes of the people for which the rule applies. Hardman’s point aligns with the third condition. What gay men in the 1980s and early 1990s valued, e.g., safer sexual behaviors, and how they behaved to encourage those behaviors, e.g., the promotion of condoms, is descriptive but it constitutes an important part of the informal norm.

Finally, my article does not claim informal norms solve collective action problems, contrary to Hardman’s claims. My article explicitly uses language like *resolve* and *partially resolve* to indicate the condom code improves the collective action problem people faced, not that it completely solves that problem. Solving collective action problems is only appropriate in highly constrained analytical, theoretical, or experimental settings, where a person’s choices are clearly defined, where the costs and benefits of each choice are measured, and where the magnitude of the externalities are known. If that is the scenario we face, we can establish a set of optimal rewards or punishments to solve the collective action problem. This was not the goal of my article, nor does it follow from its description of the problems related to collective action problem, condom usage, and HIV prevention.

There are fruitful avenues to continue analyzing these issues following my original article, Hardman’s

comment, and this reply. A study that describes the transactions costs people face when engaged in HIV prevention and how that links with HIV prevention and related health outcomes would be particularly useful. A study on adverse selection problems in sexual interactions — and whether that influences HIV prevention — would also be relevant.

Sincerely,
Byron Carson

References

1. B. Carson, “The Informal Norms of HIV Prevention: The Emergence and Erosion of the Condom Code,” *Journal of Law Medicine & Ethics* 45, no. 4 (2018): 518-530.
2. J. Hardman, “The Law and Economics of Grindr: A Response to Carson,” *Journal of Law, Medicine & Ethics* 47, no. 3 (2017): 445-453.
3. See <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3651365> (last visited August 18, 2020).