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WE ARE ALL ENTREPRENEURS NOW

*David E. Pozen**

A funny thing happened to the entrepreneur in legal, business, and social science scholarship. She strayed from her capitalist roots, took on more and more functions that have little to do with starting or running a business, and became wildly popular in the process. Nowadays, “social entrepreneurs” tackle civic problems through innovative methods, “policy entrepreneurs” promote new forms of government action, “norm entrepreneurs” seek to change the way society thinks or behaves, and “moral entrepreneurs” try to alter the boundaries of duty or compassion. “Ethnification entrepreneurs,” “polarization entrepreneurs,” and other newfangled spinoffs pursue more discrete objectives. Entrepreneurial rhetoric has never been so trendy or so plastic. This Article documents the proliferation of entrepreneurs in the American academic idiom, and it offers some reflections on the causes and consequences of this trend.

INTRODUCTION

Everyone, it seems, is an entrepreneur these days. People who tackle civic problems through innovative methods are “social entrepreneurs.” Those who promote new forms of legislation or government action are “policy entrepreneurs.” Those who seek to change the way society thinks or feels about an issue are “norm entrepreneurs.” Those who try to alter the boundaries of altruism or deviance are “moral entrepreneurs.” Martin Luther King, Jr., it turns out, was a social, policy, norm, and moral entrepreneur all at the same time.¹ And then, of course, there are the capitalist

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1. See, e.g., RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 44 (1999) (identifying Martin Luther King, Jr. as an exemplary “moral entrepreneur”); CASS R. SUNSTEIN, *FREE MARKETS AND SOCIAL JUSTICE* 48 (1997) (identifying Dr. King as an exemplary “norm entrepreneur”); Susan R. Jones, *Dr. Martin Luther King, Jr.’s Legacy: An Economic Justice Imperative*, 19

entrepreneurs, starting for-profit ventures and transforming economic markets as usual. Capitalist entrepreneurship no longer ends at the founding, though: once those ventures become settled concerns, employees may become “intrapreneurs” by pioneering an initiative or subsidiary within the existing corporate structure.

This Article documents the proliferation of entrepreneurs in the American academic idiom over the past few decades, and it offers some reflections on the significance of this trend. While the terms are distinct—each with its own etymology, its own set of meanings and applications, and its own interpretive community—the Article suggests that considering them as a group can be illuminating. For it turns out that the “new entrepreneurs,” as I will call them, share many features both in theory and in development.

Part I is descriptive: it traces the intellectual history of these concepts and offers a critical synthesis of the literature on each. Part II is diagnostic: it explores possible reasons why the concepts and their associated terms have taken hold. Part III is evaluative: it unpacks the terms’ implicit market metaphor, identifying its defects but ultimately defending entrepreneurship’s linguistic migration. The basic contribution of this Article is to provide the first integrated account of the new entrepreneurs. With Parts II and III, I hope also to provide some insight into this phenomenon and to give a sense of what is at stake.

I. ENTREPRENEURS THEN AND NOW

To be able to evaluate the rise of the new entrepreneurs, it is useful to contextualize these terms in light of their lexical progenitor. This Part sketches the history of entrepreneurship first as an economic concept and then as an extra-economic concept. An enormous body of commentary addresses each of these forms of entrepreneurship, and I cannot begin to do justice to it in this space. This overview is meant only to familiarize readers with the basic background and to provide a descriptive foundation for the diagnoses and critiques that follow.

Although capitalist entrepreneurship has often been ignored in the work of classical and neoclassical economists, as Section A explains, it has played a central role in Austrian, Schumpeterian, and institutionalist schools of economic theory. Section B shows

WASH. U. J.L. & POL’Y 39, 60 (2005) (identifying Dr. King as an exemplary “social entrepreneur”); Simon Maxwell, *Policy Entrepreneurship, in* OVERSEAS DEV. INST., RESEARCH AND POLICY IN DEVELOPMENT: DOES EVIDENCE MATTER? MEETING SERIES 55, 55 (2004), available at http://www.odi.org.uk/Rapid/Publications/Documents/Monograph_all_web.pdf (identifying Dr. King as an exemplary “policy entrepreneur”).

how the concepts of social entrepreneurship, policy entrepreneurship, norm entrepreneurship, and moral entrepreneurship have all gained currency with impressive speed over the past thirty-odd years. This has not been a collective phenomenon: exponents of these concepts have developed them with hardly any reference to the economic literature or to each other. And yet, the etiologies of the new entrepreneurial buzzwords share certain structural similarities.

A. *Capitalist Entrepreneurs in Economic Theory*

Theories of entrepreneurship have a long and rich history in Western economic thought. Numerous influential economists have proffered definitions of entrepreneurship as an aspect of their broader positive or normative projects, in which they identify core traits of the entrepreneur and explain his or her role in a market economy. There is a “disjointed nature” to this body of work,² some have pointed out, because entrepreneurship has been from the start an extremely capacious concept, and commentators have invoked it for a variety of ends. Theories of entrepreneurship abound, but we have no completely satisfying synthetic account of the practice, and we probably never will.

Modern dictionary definitions of entrepreneurship tend to emphasize three interrelated functions. First, the entrepreneur *initiates and organizes* a business venture, identifying an opportunity and assembling the necessary tools, skills, and personnel to pursue it. Second, the entrepreneur *manages* the venture, overseeing its efforts to attract customers and generate revenues, at least for an initial period. And third, the entrepreneur *assumes the risk* of the venture, generally by investing his or her own capital and reputation and by forsaking a guaranteed income.³ Implicit in this last function is a tradeoff between the promise of economic gain and the potential for economic loss—a tradeoff that is dramatically exemplified in real life. The majority of new businesses in the United States will fail within their first several

2. MICHAEL MINTROM, POLICY ENTREPRENEURS AND SCHOOL CHOICE 71 (2000); *see also* Dan Johansson, *Economics Without Entrepreneurship or Institutions: A Vocabulary Analysis of Graduate Textbooks*, 1 ECON. J. WATCH 515, 517 (2004), available at <http://www.econjournalwatch.org/pdf/JohanssonPractice1December2004.pdf> (“[T]here is no universally accepted definition of the entrepreneur or of the entrepreneurial function.”).

3. *See, e.g.*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 597 (4th ed. 2000) (emphasizing these three functions); MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 417 (11th ed. 2003) (same); THE NEW OXFORD AMERICAN DICTIONARY 565 (2d ed. 2005) (same).

years,⁴ but some succeed spectacularly, and many of America's wealthiest individuals made their fortunes as entrepreneurs.

Linked to the functional characteristics of the entrepreneur is a set of personal traits that also plays an important role in defining the term. Entrepreneurs, in the American imagination, are leaders, innovators, pioneers, problem solvers, and risk takers; they are diligent, persistent, charismatic, dynamic, imaginative, and resourceful, the *bricoleurs* of the capitalist marketplace. The term's connotations are not wholly positive, however. Entrepreneurs can be greedy, cunning, opportunistic, and self-interested, possessed of a kind of Nietzschean will to power that may lead to domination and destruction as well as to value creation.⁵

The etymology of "entrepreneur" is tightly bound up with the history of economic theorizing about capitalism. The term derives from the French *entreprendre*, which translates roughly as to undertake or to embark upon.⁶ It came into being in the early fifteenth century and crossed the Channel around 1475 but did not

4. See ARNOLD C. COOPER ET AL., SURVIVAL AND FAILURE: A LONGITUDINAL STUDY 2 (1989) (indicating that 67% of businesses fail within their first four years); U.S. GEN. ACCOUNTING OFFICE, SMALL BUSINESS EFFORTS TO FACILITATE EQUITY CAPITAL FORMATION 19 (2000), available at <http://www.gao.gov/archive/2000/gg00190.pdf> (summarizing evidence that approximately 80% of new businesses fail within five to seven years of formation); THOMAS ZIMMERER & NORMAN M. SCARBOROUGH, ESSENTIALS OF ENTREPRENEURSHIP AND SMALL BUSINESS MANAGEMENT 10 (3d ed. 2002) (asserting that 24% of small businesses fail within two years and 63% fail within six years); Amy E. Knaup, *Survival and Longevity in the Business Employment Dynamics Data*, MONTHLY LAB. REV., May 2005, at 50, 51 (stating that 34% of new businesses fail within their first two years and 56% fail within four years).

5. Reflecting these two sides to the entrepreneurial profile, my thesaurus tells me that entrepreneurs are explorers, heroes, knights, organizers, pioneers, producers, romantics, undertakers, venturers, and voyagers; and yet entrepreneurs are also synonymous with charlatans, gamblers, madcaps, mercenaries, opportunists, pirates, rogues, speculators, swashbucklers, and wheeler dealers. ROGET'S NEW MILLENNIUM THESAURUS, <http://thesaurus.reference.com/browse/entrepreneur> (last visited Jan. 30, 2008). The "dark side" of entrepreneurship can also be seen in critical commentary that distinguishes between other-regarding public servants and narrowly self-interested entrepreneurs. For a recent example from the legal literature, see John H. Beisner et al., *Class Action "Cops": Public Servants or Private Entrepreneurs?*, 57 STAN. L. REV. 1441 (2005). See also C. Mirjam van Praag, *Some Classic Views on Entrepreneurship*, 147 DE ECONOMIST 311, 311-12 (1999) ("Historically, philosophers of science did not hold entrepreneurs in high esteem. . . . [T]he pecuniary return (gain) to entrepreneurship, was perceived as robbery ever since Aristotle had introduced the persistent idea of economic activity as a 'Zero-sum game,' i.e. one man's gain is another man's loss.").

6. 5 THE OXFORD ENGLISH DICTIONARY 307 (2d ed. 1989).

stick.⁷ It was not until the mid-1750s, in an essay published posthumously, that the Irish economist Richard Cantillon introduced the term into mainstream economic discourse.⁸ Cantillon divided economic actors into two broad camps, those who receive assured incomes and those who do not. The latter, Cantillon explained, are the entrepreneurs, and he gave as an example the merchants who bought goods from country farmers at a fixed price to sell to city dwellers at a price that could not be known in advance.⁹ Cantillon's key contribution to the theory of entrepreneurship was to invest it with some substantive economic content and to identify risk bearing as a constitutive element.¹⁰

The next major thinker to explore entrepreneurship, and the one most often credited with elevating the concept to prominence in economic theory, was the French economist Jean-Baptiste Say. Say went beyond Cantillon's focus on uncertainty of income to develop an account of the entrepreneur who "shifts economic resources out of an area of lower and into an area of higher productivity and greater yield."¹¹ In his pursuit of profit, according to Say, the entrepreneur figures out how to satisfy a greater number of human needs and wants. Entrepreneurship therefore involves not only the reallocation of existing economic resources but also the generation of new resources; it is a positive-sum, not a zero-sum, game. Being an entrepreneur—or a "master-agent," as Say sometimes described it¹²—"requires a combination of moral qualities, that are not often found together," such as "[j]udgment, perseverance, and a

7. *Id.* For more on the premodern and eighteenth-century development of the French antecedent, see ROBERT F. HÉBERT & ALBERT N. LINK, *THE ENTREPRENEUR: MAINSTREAM VIEWS AND RADICAL CRITIQUES* 17–18, 45–46 (2d ed. 1988).

8. RICHARD CANTILLON, *ESSAI SUR LA NATURE DU COMMERCE EN GÉNÉRAL* 388 (Henry Higgs ed. & trans., Frank Cass & Co. Ltd. 1959) (1755). After Cantillon's death in 1734, a group of eighteenth-century economists also living in France—led by François Quesnay and dubbed by historians "The Physiocrats"—continued to develop his ideas on entrepreneurship. See HÉBERT & LINK, *supra* note 7, at 29–35; Robert L. Formaini, *The Engine of Capitalist Process: Entrepreneurs in Economic Theory*, *ECON. & FIN. REV.*, Oct. 2001, at 2, 3–4, available at <http://www.dallasfed.org/research/efr/2001/efr0104a.pdf>.

9. MINTROM, *supra* note 2, at 72.

10. See HÉBERT & LINK, *supra* note 7, at 17–28; van Praag, *supra* note 5, at 313–14.

11. This is management theorist Peter Drucker's oft-quoted paraphrase of Say. PETER F. DRUCKER, *INNOVATION AND ENTREPRENEURSHIP* 21 (1985).

12. See, e.g., JEAN-BAPTISTE SAY, *A TREATISE ON POLITICAL ECONOMY, OR THE PRODUCTION, DISTRIBUTION, AND CONSUMPTION OF WEALTH* 329 (C.R. Prinsep trans., Sentry Press 1964) (1803).

knowledge of the world, as well as of business.”¹³ Say’s work was instrumental in identifying the entrepreneur as both a maker of markets and a creator of economic value, and in painting a picture of the entrepreneur as a rare, exceptionally talented and motivated individual. To this day, Say’s basic insights on entrepreneurship continue to frame much of the academic and popular discussion on the subject.

Economic theory, however, has not always assigned a place of prominence to the entrepreneur, and for the most part it still does not.¹⁴ From Adam Smith and David Ricardo on, a venerable line of classical and neoclassical economists have developed market models that assign little to no special significance to the entrepreneur. Entrepreneurs are largely absent from the economic theory of Smith—he never uses the term—who elided the distinction between creators of businesses and owners of businesses and whose depiction of an “invisible hand” leading to market equilibrium drew attention away from the entrepreneur’s self-consciously generative role.¹⁵ Neoclassical economists such as Alfred Marshall and A.C. Pigou, writing at the turn of the twentieth century, and Milton Friedman and George Stigler, writing in the mid-to-late twentieth century, have likewise tended to trivialize entrepreneurship in their formal models of a steady-state economy.¹⁶ They have done this, William

13. *Id.* at 330.

14. On the persistent absence of entrepreneurship from leading graduate economics textbooks, see Johansson, *supra* note 2, at 521–30.

15. See ADAM SMITH, 1 AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 456 (R.H. Campbell et al. eds., Liberty Classics 1981) (1776). For an argument that Smith did not neglect the entrepreneur and in fact anticipated Jean-Baptiste Say on this subject, see Peter Hans Matthews & Andreas Ortmann, *An Austrian (Mis)Reads Adam Smith: A Critique of Rothbard as Intellectual Historian*, 14 REV. POL. ECON. 379, 382–83 (2002). Jeremy Bentham and John Stuart Mill are two important exceptions to the claim that British classical economists failed to interrogate the idea of entrepreneurship, but neither made a lasting contribution to this field. See HÉBERT & LINK, *supra* note 7, at 50–56.

16. See MINTROM, *supra* note 2, at 76–79 (summarizing the neoclassical model and discussing Alfred Marshall in particular); William J. Baumol, *Entrepreneurship in Economic Theory*, 58 AM. ECON. REV. 64, 66 (1968) (“The references [to entrepreneurship in standard economics texts] are scanty and more often they are totally absent. The theoretical firm is entrepreneurless—the Prince of Denmark has been expunged from the discussion of *Hamlet*.”); Sherwin Rosen, *Austrian and Neoclassical Economics: Any Gains from Trade?*, J. ECON. PERSP., Fall 1997, at 139, 148–49 (“The fact is that there is no role for entrepreneurs when economic conditions are ‘given,’ when the list of goods to be traded is cut and dried, when consumers and producers are clearly identified, and when resource availabilities are known.”). Of the early neoclassical economists, Alfred Marshall may have assigned the most substantial role to

Baumol observes, partly because innovation is an entirely heterogeneous output that does not lend itself to formal mathematical description and, more basically, because in the neoclassical world of perfect information, perfect competition, negligible transaction costs, and homogeneous goods, entrepreneurs would have nothing to offer; the concept of entrepreneurship would not even make much sense.¹⁷

The real world is a rather messy place, though, and the absence of entrepreneurship certainly looks like a phenomenological lacuna in the neoclassical view. As neoclassical theory has grown more sophisticated throughout recent decades—spurred by econometric and behavioral evidence to recognize the importance of norms and institutions and the possibilities for imperfect competition, incomplete information, temporary disequilibria, and irrational decision making—there are signs that it has begun to reacquaint itself with the entrepreneur.¹⁸ Still, it remains deeply ironic that the academic discipline most focused on the capitalist process has so marginalized the entrepreneur, while lawyers, sociologists, and political scientists cannot stop talking about her.

From a very different critical vantage point than that of Adam Smith and his ilk, Karl Marx and Max Weber also devoted little attention to entrepreneurs in their famous theories of capitalism. Like Smith (and perhaps as a result of Smith), Marx does not draw a clear distinction between capitalists and entrepreneurs. Capitalists make up a “society of producers,”¹⁹ laborers are “personal materials of commodity production,”²⁰ and all “third classes of persons” are “unproductive consumers.”²¹ Because capitalist production follows its own internal laws, there is no room in Marx’s view for path-breaking entrepreneurship. As sociologist Adrien

entrepreneurs. See HÉBERT & LINK, *supra* note 7, at 74–77; van Praag, *supra* note 5, at 316–19.

17. William J. Baumol, Return of the Invisible Men: The Microeconomic Value Theory of Inventors and Entrepreneurs 2–3, Paper Presented at the American Economic Association Annual Meeting (Jan. 7, 2006), available at http://www.aeaweb.org/annual_mtg_papers/2006/0107_1015_0301.pdf.

18. For some recent attempts to introduce the entrepreneur into a neoclassic framework, see MARK CASSON, *THE ENTREPRENEUR: AN ECONOMIC THEORY* (1982); Milo Bianchi & Magnus Henrekson, *Is Neoclassical Economics Still Entrepreneurless?*, 58 *KYKLOS* 353 (2005); Ying Lowrey, U.S. Small Bus. Admin., *The Entrepreneur and Entrepreneurship: A Neoclassical Approach* (Jan. 5, 2003) (working paper, <http://www.sba.gov/advo/stats/wkp03yl.pdf>).

19. 3 KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* 293 (Samuel Moore & Edward Aveling trans., Charles Kerr & Co. 1994) (1906).

20. *Id.* at 44.

21. *Id.* at 384.

Taymans has written, in Marx's entrepreneur "[w]e do not find . . . the thrilling responsibility of carrying out new methods, of revealing latent, hitherto untried, possibilities of economic action. We see only the displacing of masses of capital and surplus-value; no interplay of human actions, but only shifts in proportions."²² We see only parasitic extortion, that is, without any compensating potential for value-creating innovation. For Marx, the bourgeois entrepreneur seeks to preserve the economic and sociopolitical status quo, not to transform it—although in so doing, of course, he unwittingly facilitates social revolution and the eventual demise of capitalism.

Max Weber touched on entrepreneurship at various points in his writings, but never in much depth.²³ Perhaps Weber's most original contribution to this area was to highlight the deep ambivalence that societies often feel toward the entrepreneur. In *The Protestant Ethic*, Weber observed the emergence in Western society of a "new type' of entrepreneur," more intent on making money and on transforming his surroundings than were his entrepreneurial predecessors.²⁴ Although entrepreneurial success demands "energy and clarity of vision," "vigor," and "certain outstanding 'ethical' qualities,"²⁵ according to Weber, many will resent and resist the entrepreneur's efforts. "Suspicion, occasionally hatred, most of all moral indignation"—all "threaten to overwhelm the pioneer."²⁶ Writing some years later, in *Economy and Society*, Weber further fleshed out his sympathetic conception of the entrepreneur, portraying him as an outsider from the bureaucracy who must draw on his imagination to provide the "directing mind" and "moving spirit" behind a new endeavor.²⁷

After the early interventions of scholars such as Richard Cantillon and Jean-Baptiste Say, it was the great Austrian economist Joseph Schumpeter who made the most profound contribution to the theory of entrepreneurship and to the public's appreciation of the concept. Schumpeter built on Say in developing the idea of the entrepreneur as innovator, forcing major structural

22. Adrien C. Taymans, *Marx's Theory of the Entrepreneur*, 11 AM. J. ECON. & SOC. 75, 89 (1951).

23. See MAX WEBER, *ESSAYS IN ECONOMIC SOCIOLOGY* 273–74 (Richard Swedberg ed., 1999).

24. MAX WEBER, *THE PROTESTANT ETHIC AND THE "SPIRIT" OF CAPITALISM AND OTHER WRITINGS* 22–23 (Peter Baehr & Gordon C. Wells eds. & trans., Penguin 2002) (1905).

25. *Id.* at 22.

26. *Id.*

27. 3 MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* 1403 (Guenther Roth & Claus Wittich eds., Ephraim Fischhoff et al. trans., Bedminster Press 1968) (1914).

changes across markets and industries in a process of “creative destruction” vital for sustaining a dynamic economy and long-run economic growth.²⁸ “[T]he function of entrepreneurs,” Schumpeter maintained, “is to reform or revolutionize the pattern of production” by exploiting a new technology, developing a new source of supply, reorganizing an industry, or the like.²⁹ For Schumpeter, the economy did not tend naturally toward stability and growth through the workings of an invisible hand, but rather was propelled forward in sudden leaps by the endogenous innovations of key entrepreneurs. His was a story not of harmonious stasis but of evolution through punctuated equilibria. Yet while Schumpeter wrote with great admiration about “the entrepreneurial type,”³⁰ motivated primarily not by profit but by the “desire to found a private dynasty, the will to conquer in a competitive battle, and the joy of creating,”³¹ like Weber he recognized that societies often resist the changes that entrepreneurs induce, sometimes violently.³² (Like Marx, Schumpeter thought capitalism unlikely to survive.)³³ As his paradoxical label “creative destruction” captured so sharply, Schumpeter too saw the fundamental public ambivalence that will attach to entrepreneurship on account of its destabilizing power.

Writing around the same time as Schumpeter, the American economist Frank Knight conceptualized the entrepreneur’s contribution in very different and nearly as influential terms. Whereas Schumpeter largely excluded the assumption of risk and the duties of ownership from his account of entrepreneurship, Knight drew on Cantillon in emphasizing the entrepreneur’s role as a bearer of market uncertainty, as a manager as well as a creator. Knight famously distinguished between risk, which is related to recurring events and is insurable, and uncertainty, which derives

28. See JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 81–86 (2d ed. 1947); see also Robert M. Solow, *Heavy Thinker*, NEW REPUBLIC, May 21, 2007, at 48, 49 (asserting that Schumpeter “realized before anyone else that [creative destruction] was the main source of economic growth” and characterizing Schumpeter as “the progenitor of a torrent of modern research that analyzes the dynamics of profit-driven innovation”).

29. SCHUMPETER, *supra* note 28, at 132.

30. *Id.*

31. DAVID C. MCCLELLAND, THE ACHIEVING SOCIETY 11 (1967) (quoting Schumpeter).

32. See SCHUMPETER, *supra* note 28, at 132 (“To undertake such new things is difficult and constitutes a distinct economic function, first, because they lie outside of the routine tasks which everybody understands and, secondly, because the environment resists in many ways that vary, according to social conditions, from simple refusal either to finance or to buy a new thing, to physical attack on the man who tries to produce it.”).

33. *Id.* at 61.

from unique events and cannot, Knight claimed, be estimated with any precision.³⁴ In an economy characterized by changing consumer tastes and purchasing power, Knight argued, adventurous entrepreneurs are needed to create, own, and control business enterprises, guaranteeing wages to their employees in return for the potential of monetary gain. In an economy riven with uncertainty, that is, entrepreneurs must address “the primary problem or function [of] deciding what to do and how to do it.”³⁵ Entrepreneurship, for Knight, was a kind of profession and a public service as well as a disposition and a skill set.

Cantillon, Say, Schumpeter, and Knight—these names make up the canon of entrepreneurial scholarship. Within the last half-century, so many commentators have written about entrepreneurship from so many perspectives that it is difficult even to characterize the state of the literature.³⁶ A vast crop of empirical studies have attempted to analyze the relationship between entrepreneurial activities, government policies relevant thereto, and economic performance, generally corroborating the commonsense insight that entrepreneurship can facilitate growth.³⁷ On the theory side, arguably the two most important critical strands have been anchored by Israel Kirzner and William Baumol. An Austrian-school economist informed by the work of Friedrich von Hayek and Ludwig von Mises, Kirzner has posited that the defining feature of the entrepreneur is not risk taking, innovation, or leadership, but “alertness” to profit opportunities.³⁸ The Kirznerian entrepreneur is not a transformative force so much as an arbitrageur who

34. See generally FRANK H. KNIGHT, *RISK, UNCERTAINTY, AND PROFIT* (1921).

35. *Id.* at 268; see also Charles R.T. O’Kelley, *The Entrepreneur and the Theory of the Modern Corporation*, 31 J. CORP. L. 753, 766–72 (2006) (explicating and defending Knight’s theory of entrepreneurship); van Praag, *supra* note 5, at 322–24 (summarizing Knight’s theory in contradistinction to Schumpeter’s).

36. The most ambitious attempt to do so of which I am aware is HÉBERT & LINK, *supra* note 7, at 101–60.

37. See, e.g., ANDRÉ VAN STEL, *EMPIRICAL ANALYSIS OF ENTREPRENEURSHIP AND ECONOMIC GROWTH* 1 (2006) (“The importance of entrepreneurship for achieving economic growth in contemporary economies is widely recognized, both by policy makers and economists.”). For recent contributions that summarize much of the existing research, see DAVID B. AUDRETSCH ET AL., *ENTREPRENEURSHIP AND ECONOMIC GROWTH* (2006); *ENTREPRENEURSHIP, INNOVATION, AND THE GROWTH MECHANISM OF THE FREE-ENTERPRISE ECONOMIES* (Eytan Sheshinski et al. eds., 2007). There are also scores of recent tracts on how to succeed as an entrepreneur, a genre that does not concern me here.

38. ISRAEL M. KIRZNER, *COMPETITION AND ENTREPRENEURSHIP* 68 (1973); see also HÉBERT & LINK, *supra* note 7, at 132–34 (summarizing Kirzner’s views on alertness). See generally KIRZNER, *supra*; ISRAEL M. KIRZNER, *PERCEPTION, OPPORTUNITY AND PROFIT: STUDIES IN THE THEORY OF ENTREPRENEURSHIP* (1979).

capitalizes on market inefficiencies to earn a profit and move the market closer to equilibrium (rather than to Schumpeterian disequilibrium).³⁹ Further refining this notion are Harvey Leibenstein, who has argued that pervasive market imperfections create endless opportunities for entrepreneurial input-completing activity,⁴⁰ and Mark Casson, who has argued from within the neoclassical framework—with the assumption of full information now relaxed—that entrepreneurs can be defined by their special access or insights into market data, which enables them to make “judgmental decisions” about the coordination of scarce resources.⁴¹ Drawing on both Schumpeter and Kirzner, William Baumol has advanced our understanding of entrepreneurship on many levels but perhaps most basically by broadening Schumpeter’s notion of innovation. For Baumol, the entrepreneur is “any member of the economy whose activities are in some manner novel, and entail the use of imagination, boldness, ingenuity, leadership, persistence, and determination in the pursuit of wealth, power, and position, though not necessarily in that order.”⁴²

To sum up: although economic theory has been sporadic in its concern for entrepreneurship, a significant and rapidly growing body of scholarship has interrogated the subject conceptually and empirically. Many have linked entrepreneurship to economic growth and to a characteristic menu of personality traits. Some theorists of the entrepreneur, such as Cantillon and Knight, have emphasized her role in taking on economic risk; others such as Kirzner and Say her role in making and perfecting markets; others such as Baumol and Schumpeter her role in generating innovation and economic value. These theories intersect at many points, clash at others, and do not form a unified whole. But they provide a

39. Mark Casson characterizes Kirzner as supplementing Schumpeter by providing an account of the “low-level” entrepreneurship” carried on routinely by small firms, whereas Schumpeter was focused on the much rarer “high-level” kind of entrepreneurship” that transforms entire industries and societies. Mark Casson, *Entrepreneurship*, in THE CONCISE ENCYCLOPEDIA OF ECONOMICS, <http://www.econlib.org/library/Enc/Entrepreneurship.html> (last visited Feb. 1, 2008).

40. See generally HARVEY LEIBENSTEIN, GENERAL X-EFFICIENCY THEORY AND ECONOMIC DEVELOPMENT (1978).

41. CASSON, *supra* note 18, at 23.

42. WILLIAM J. BAUMOL, ENTREPRENEURSHIP, MANAGEMENT, AND THE STRUCTURE OF PAYOFFS 7–8 (1993). Other influential recent efforts to define entrepreneurship include DRUCKER, *supra* note 11 (emphasizing the exploitation of change as an opportunity), and Howard H. Stevenson, *A Perspective on Entrepreneurship*, in THE ENTREPRENEURIAL VENTURE 7 (William A. Sahlman et al. eds., 2d ed. 1999) (emphasizing the mobilization of existing resources in novel ways).

reasonably rigorous backdrop against which to evaluate the new forms of “entrepreneurship” that have taken root in the world beyond economics.

B. The New Entrepreneurs

In recent years, four main variants on the traditional concept of entrepreneurship have emerged: social entrepreneurship, policy entrepreneurship, norm entrepreneurship, and moral entrepreneurship. This Section provides a brief sketch of each term, in declining order of prominence.⁴³

1. Social Entrepreneurship

Like its capitalist doppelgänger, social entrepreneurship has been defined many different ways, not all consonant with each other. As a recent article in the *Stanford Social Innovation Review*—a leading journal in the field founded in 2003—observed, “the definition of social entrepreneurship today is anything but clear. As a result, [the term] has become so inclusive that it now has an immense tent into which all manner of socially beneficial activities fit.”⁴⁴ There have been, by my lights, five main variants on the term, three of which remain in common usage.

First, and most basically, some call a social entrepreneur anyone who starts a nonprofit organization. This definition may have the virtue of being clear and parsimonious, but at the price of banality. Few commentators now embrace such a minimalist conception.

Second, some identify social entrepreneurship with the public-minded activities of for-profit corporations (activities that may also be profit minded at the same time). A firm that uses

43. I know of no precise way to gauge the relative prominence of these terms. In ranking social entrepreneurship as the most significant lexical innovation and moral entrepreneurship as the least, I am relying on objective indicia such as number of references in Google and in academic databases, as well as my subjective experience of their usage. “Social entrepreneur,” for example, received 372,000 hits in a Google search conducted on February 1, 2008, while “moral entrepreneur” received only 3570.

44. Roger L. Martin & Sally Osberg, *Social Entrepreneurship: The Case for Definition*, STAN. SOC. INNOVATION REV., Spring 2007, at 29, 30; see also *id.* at 39 (expressing concern that “indiscriminate use of the term [social entrepreneurship] may undermine its significance”); Alan Finder, *A Subject for Those Who Want to Make a Difference*, N.Y. TIMES, Aug. 17, 2005, at B9 (observing that “[t]here is not even agreement on precisely how to define the field” of social entrepreneurship); J. Gregory Dees, *The Meaning of “Social Entrepreneurship”* 1 (May 30, 2001), http://www.caseatduke.org/documents/dees_sedef.pdf (“Though the concept of ‘social entrepreneurship’ is gaining popularity, it means different things to different people.”).

environmentally friendly production methods even though they cost more or that donates money to a local charity would, by this definition, be engaging in social entrepreneurship. However, this set of activities is now typically classified under “corporate social responsibility,” and as interest in that topic has grown, it has increasingly been seen as a separate domain,⁴⁵ leaving social entrepreneurship consigned to the nonprofit sector.⁴⁶ Social entrepreneurs may earn income to support their good works, but they may not do good works to support their earning of income.

Third—and now we are onto the definitions with extensive followings—some associate social entrepreneurship with the efforts of nonprofit organizations to start profit-making ventures or otherwise adopt strategies from the for-profit world. Thus, Martha Minow describes social entrepreneurship as “a new buzzword to characterize efforts by philanthropists to bring market-style ideas or business accountability methods to philanthropic investment”;⁴⁷ Thomas Kelley equates it with “profit-making, entrepreneurial charity,” whereby a “growing number of nonprofit charities are adopting the culture and practices of commercial ventures”;⁴⁸

45. See generally Clive Crook, *The Good Company*, ECONOMIST, Jan. 22, 2005, at S3 (providing a “survey of corporate social responsibility” that documents the explosive growth of interest in and support for the concept).

46. I should note that many in the social entrepreneurship community, most significantly the Ashoka organization, strongly dislike the phrase “nonprofit sector” and prefer to use “citizen sector” or “social sector” instead. See, e.g., Ashoka: Innovators for the Public, Why “Citizen Sector”?, <http://www.ashoka.org/citizensector> (last visited Feb. 1, 2008). Their logic, as I understand it, is that “nonprofit” implies an aversion to profit making that is descriptively false and normatively undesirable, and it defines the sector in negative terms, by reference to what it is not (namely, the for-profit world). “Citizen sector,” by contrast, is both a much more capacious formulation and one that carries more positive resonances.

I am quite sympathetic to this argument, but I continue to use “nonprofit sector” here because of its familiarity and because it better captures the centrality of mission in determining whether or not an organization will be eligible for tax-exempt status—a signal distinction in this area. See *infra* notes 196–198 and accompanying text (discussing the tax privileges afforded by the U.S. government to organizations that do not distribute residual earnings to owners).

47. MARTHA MINOW, PARTNERS, NOT RIVALS: PRIVATIZATION AND THE PUBLIC GOOD 11–12 (2002). Professor Minow goes on to provide illustrations of “nonprofit innovators seek[ing] alliances with new philanthropists on particular initiatives and in the use of business methods to address social needs.” *Id.* at 12–17.

48. Thomas Kelley, *Rediscovering Vulgar Charity: A Historical Analysis of America’s Tangled Nonprofit Law*, 73 FORDHAM L. REV. 2437, 2463–64 (2005). Professor Kelley also notes the connection between social entrepreneurship and “venture philanthropy,” another ascendant buzzword “used to describe private

Nicholas Kristof writes about social entrepreneurs who “resemble traditional do-gooders in their yearning to make the world a better place, but sound like chief executives when they talk about metrics to assess cost-effectiveness” and in many cases “generate income to finance expansion”;⁴⁹ a law review note links social entrepreneurship with the need for social service organizations to “profit or perish”;⁵⁰ and a *New York Times* article on the subject bears the title, *How To Save the World? Treat It Like a Business*.⁵¹ These commentators envision a nonprofit organization adopting business best practices and a business mindset, and maybe also starting a for-profit offshoot, to become more efficient, effective, and sustainable in the pursuit of its traditional objectives. Old mission, new methods. An excellent example is a homeless shelter that starts a business to train and employ its residents and then uses some of the receipts to finance the shelter.

Fourth, some take social entrepreneurship to be essentially the same phenomenon as capitalist entrepreneurship, except with a social, as opposed to a profit-based, motive. J. Gregory Dees, Director of the Center for the Advancement of Social Entrepreneurship at Duke University and author of a benchmark paper on the meaning of social entrepreneurship,⁵² is a leading advocate of this view. Drawing explicitly on the work of entrepreneurial theorists such as Say and Schumpeter, Dees argues that social entrepreneurs “are one species in the genus entrepreneur”: the species with a “social mission.”⁵³ In pursuit of

grant-making foundations’ sharp turn in recent years toward the theory and practice of the for-profit world.” *Id.* at 2464.

49. Nicholas D. Kristof, *Do-Gooders with Spreadsheets*, N.Y. TIMES, Jan. 30, 2007, at A21.

50. Heather Gottry, Note, *Profit or Perish: Non-Profit Social Service Organizations & Social Entrepreneurship*, 6 GEO. J. ON POVERTY L. & POL’Y 249 (1999).

51. Emily Eakin, *How to Save the World? Treat It Like a Business*, N.Y. TIMES, Dec. 20, 2003, at B7.

52. Dees, *supra* note 44. It bears noting that Dees’s paper, first posted online in 1998 and widely regarded as a “seminal” contribution to the field, *see, e.g.*, Martin & Osberg, *supra* note 44, at 35, (i) is five pages long, (ii) contains no citations, and (iii) has never been published in an academic journal. These features do not necessarily carry any broader implications, but I think they help illuminate two significant features of the burgeoning literature on social entrepreneurship: that its most important medium is the Internet (which makes the content cheaper and more accessible), and that, by the standards of legal and social-science scholarship, its theorizing is often remarkably thin (which also makes the content cheaper and more accessible, in the sense that more readers will be able to engage with it at a lesser investment of time and mental energy).

53. Dees, *supra* note 44, at 2. More recently, Dees has lamented that “[t]oo

this mission, social entrepreneurs serve as “change agents”—another new buzzword—by addressing social problems in novel and sustained ways and thereby creating “social value.”⁵⁴ Many commentators who have embraced this definition of social entrepreneurship invoke Say’s notion of the entrepreneur as “shift[ing] economic resources out of an area of lower and into an area of higher productivity and greater yield.”⁵⁵ (To be precise, this is management guru Peter Drucker’s paraphrase; although virtually everyone attributes the quotation to Say, he never, so far as I can tell, actually said or wrote it.) Say’s notion is attractive here because it can be adapted to the nonprofit context if one simply takes “productivity” and “yield” to encompass more than economic gain.

Finally, some commentators have adopted this last definition but with an additional wrinkle: to qualify as social entrepreneurship the activity must not only be entrepreneurial and social in nature, but also groundbreaking in scale and effect. The most important proponent of this view, and the most important player in the world of social entrepreneurship, is an organization called Ashoka: Innovators for the Public.⁵⁶ Ashoka’s social entrepreneurs must “find what is not working and solve the problem by changing the system, spreading the solution, and persuading entire societies to take new leaps.”⁵⁷ This requirement has the corollary implication

often . . . [people] identify social entrepreneurship with nonprofits generating earned income,” when really “social entrepreneurship is about innovation and impact, not income. This view is well grounded in entrepreneurship theory . . .” J. Gregory Dees, Duke Univ. Fuqua Sch. of Bus. Ctr. for the Advancement of Soc. Entrepreneurship, *Social Entrepreneurship Is About Innovation and Impact, Not Income*, <http://www.fuqua.duke.edu/centers/case/articles/1004/corner.htm> (last visited Feb. 1, 2008). Other writers advancing this view include PETER C. BRINCKERHOFF, *SOCIAL ENTREPRENEURSHIP: THE ART OF MISSION-BASED VENTURE DEVELOPMENT* 1–2 (2000) (positing a related definition, though with greater emphasis on risk-taking and “stewardship”), and Martin & Osberg, *supra* note 44, at 34–35 (“We believe that the critical distinction between entrepreneurship and social entrepreneurship lies in the value proposition itself. . . . What distinguishes social entrepreneurship is the primacy of social benefit . . .”). Martin and Osberg contrast social entrepreneurship with social service provision and social activism, the former of which, they argue, is insufficiently innovative or ambitious to merit the entrepreneurial label, and the latter of which is insufficiently direct in its approach to effecting change. *Id.* at 38–39.

54. Dees, *supra* note 44, at 4.

55. DRUCKER, *supra* note 11, at 21.

56. Full disclosure: I did volunteer work for Ashoka throughout college and still consider several members of its staff to be mentors and friends.

57. Ashoka: Innovators for the Public, *What Is a Social Entrepreneur?*, http://www.ashoka.org/social_entrepreneur (last visited Feb. 1, 2008).

that social entrepreneurs will often be “possessed by their ideas,”⁵⁸ exhibiting an all-encompassing commitment to the cause. They will be, in journalist David Bornstein’s adaptation of the Ashoka creed, “*transformative forces*: people . . . who are relentless in the pursuit of their visions, people who simply will not take ‘no’ for an answer, who will not give up until they have spread their ideas as far as they possibly can.”⁵⁹ In a similar vein, the Schwab Foundation for Social Entrepreneurship describes the social entrepreneur as “[a] pragmatic visionary who achieves large scale, systemic and sustainable social change” through “unwavering belief,” “driving passion,” and “dogged determination.”⁶⁰ The archetypal social entrepreneur for Ashoka and Schwab, often invoked in their literature, is Grameen Bank founder Muhammad Yunus, who conceived of an ingenious plan for providing microcredit to the rural poor in Bangladesh and then worked tirelessly for decades to refine the scheme and spread it to additional countries.⁶¹ A PowerPoint slide used by Schwab captures with delightful succinctness this vision of the social entrepreneur as a saintly yet pragmatic visionary. It reads, “Mother Theresa + Richard Branson = Muhammad Yunus.”⁶²

While some commentators had used “social entrepreneur” before he did,⁶³ it appears to have been Bill Drayton, the founder of

58. *Id.*

59. DAVID BORNSTEIN, *HOW TO CHANGE THE WORLD: SOCIAL ENTREPRENEURS AND THE POWER OF NEW IDEAS* 1 (2004).

60. Schwab Foundation for Social Entrepreneurship, *What Is Social Entrepreneurship?*, <http://www.schwabfound.org/whatis.htm> (last visited Feb. 1, 2008).

61. *See, e.g.*, MAXIMILIAN MARTIN, *SCHWAB FOUND. FOR SOC. ENTREPRENEURSHIP, THE PROMISE OF SOCIAL ENTREPRENEURSHIP* 7 (2004), <http://www.schwabfound.org/docs/web/Martin%202004%20CASIN%2017062004%20final.pdf>.

62. *Id.* at 12.

63. A JSTOR search reveals the term first being used in a form similar to its modern sense in Robert S. Redmount, *Values, Concepts, and the Assessment of Personal Deviancy*, 1961 *DUKE L.J.* 355, 358. The Canadian sociologist Raymond Breton tried to give the term some analytic rigor in Raymond Breton, *Institutional Completeness of Ethnic Communities and the Personal Relations of Immigrants*, 70 *AM. J. SOC.* 193, 204 (1964), and Albert Breton & Raymond Breton, *An Economic Theory of Social Movements*, 59 *AM. ECON. REV.* 198, 201–03 (1969). After one more appearance in the 1960s and two in the 1970s, the term then disappeared until 1991, when articles devoted entirely to the subject began to appear. *See, e.g.*, Sandra A. Waddock & James E. Post, *Social Entrepreneurs and Catalytic Change*, 51 *PUB. ADMIN. REV.* 393 (1991). In another sign of how recently social entrepreneurship has emerged as a mainstream concept, the most exhaustive attempt yet to “chronicle the conceptual history of the entrepreneur”—published in 1988—contains no

Ashoka, who both coined the phrase in its modern incarnation and who has done the most to popularize it.⁶⁴ A relentless advocate for his cause, Drayton has served as a meta-social entrepreneur for the concept and practice of social entrepreneurship. Since 1980, Ashoka has identified the most promising social entrepreneurs throughout the world, recognized them with the title of Ashoka Fellow, and worked to support their projects and to foster public awareness of and enthusiasm for social entrepreneurship.⁶⁵ As Bornstein has chronicled,⁶⁶ the story of Ashoka's phenomenal growth is intimately linked with the story of social entrepreneurship's emergence as a slogan, mentality, and structuring principle for aspiring do-gooders the world over.

Thousands of students now study and even take degrees in social entrepreneurship, a vast network of organizations funds and supports social entrepreneurs, and journalists and academics use the phrase casually, without explanation. One particularly prominent devotee is President George W. Bush, who routinely invokes the phrase in speeches promoting faith-based charitable initiatives.⁶⁷ Drawing on the work of Ashoka and Bornstein, PBS

mention whatsoever of its social variant. HÉBERT & LINK, *supra* note 7, at xiii.

64. The popular press routinely attributes the term to Drayton, as does Ashoka itself. *See, e.g.*, SUSAN DAVIS, ASHOKA: INNOVATORS FOR THE PUB., SOCIAL ENTREPRENEURSHIP: TOWARDS AN ENTREPRENEURIAL CULTURE FOR SOCIAL AND ECONOMIC DEVELOPMENT 6 (2002), available at <http://www.ashoka.org/files/yespaper.pdf>; Susan J. Cunningham, *The Serial Fixer*, FORBES ASIA, Mar. 12, 2007, available at <http://members.forbes.com/global/2007/0312/048.html>; Clare Goff, *The Steady Rise of the "Citizen Sector,"* FIN. TIMES (London), Mar. 1, 2006, available at <http://www.ft.com/cms/s/0/9aef1816-a8c7-11da-aeeb-0000779e2340.html>; Caroline Hsu, *Entrepreneur for Social Change*, U.S. NEWS & WORLD REP., Oct. 31, 2005, at 63, available at http://ashoka.org/files/USNewsOct05_final_0.pdf; Fintan O'Toole, *Ideas That Can Change the World*, IRISH TIMES, Apr. 3, 2007, at 16, available at <http://ashoka.org/files/Ireland%20Press4-3-07.pdf>.

65. Ashoka: Innovators for the Public, About Us, <http://www.ashoka.org/about> (last visited Feb. 1, 2008).

66. BORNSTEIN, *supra* note 59, at 11–19, 61–67, 178–82, 256–63.

67. *See* President George W. Bush, President Highlights Faith-Based Initiative at Leadership Conference (Mar. 1, 2005), <http://www.whitehouse.gov/news/releases/2005/03/print/20050301-4.html> ("That's one of my favorite words, think about it: social entrepreneurship."). President Bush tends to employ the phrase in a very loose fashion. A representative example: "Our government must serve as a spawning ground for social entrepreneurs, many of whom have heard the call to help a neighbor in need through their religion. We ought to welcome faith-based programs into our society, not fear them." President George W. Bush, Remarks at the Grace Episcopal Church Youth Entertainment Academy (Mar. 14, 2001), <http://www.whitehouse.gov/news/releases/2001/03/text/20010314-2.html>; *see also* Bush on the Creation of a White House Office Tied to Religion, N.Y. TIMES, Jan. 30, 2001, at A18; Richard W. Stevenson, *In*

recently aired a multipart television series presenting fourteen Ashoka Fellows as “The New Heroes” of our time.⁶⁸ Yet perhaps more than any other single utterance or event, it was Yunus’s receipt of the 2006 Nobel Peace Prize that provided the watershed moment in social entrepreneurship’s intellectual and etymological ascent to legitimacy. When the world’s most potent symbolic award was given to its most noted social entrepreneur, it both crystallized and valorized the emergence of social entrepreneurship as a major—and mainstream—force in modern society.⁶⁹

2. *Policy Entrepreneurship*

The concept of policy entrepreneurship has received more sustained academic scrutiny than the concept of social entrepreneurship, but it too has resisted settled definition. Leading scholars of policy entrepreneurship have observed that “[t]here is no consensus on the boundaries of the phenomenon and no synthesis of its origins, motivations, or impact on government and citizens.”⁷⁰ Throughout the literature, “the term ‘entrepreneur’ and the concept of ‘entrepreneurship’ have been applied to diverse actors who engage in very different activities and perform very different functions in the political system.”⁷¹ Oftentimes, especially in the legal literature,

Order, President Eases Limits on U.S. Aid to Religious Groups, N.Y. TIMES, Dec. 13, 2002, at A1. Bush even used the phrase in his 2007 State of the Union Address, in saluting the founder of the Baby Einstein Company. President George W. Bush, State of the Union Address (Jan. 23, 2007), <http://www.whitehouse.gov/news/releases/2007/01/20070123-2.html>. Curiously, I have not seen any mainstream media outlet pick up on the President’s penchant for this phrase.

68. See PBS, *The New Heroes*, <http://www.pbs.org/opb/thenewheroes> (last visited Feb. 1, 2008).

69. Yunus did not actually use the phrase “social entrepreneurship” in his acceptance speech, but he did repeatedly reference the idea of a “social business,” as distinct from a profit-maximizing business. Muhammad Yunus, Nobel Lecture (Dec. 10, 2006), http://nobelprize.org/nobel_prizes/peace/laureates/2006/yunus-lecture-en.html.

70. Thomas R. Oliver & Pamela Paul-Shaheen, *Translating Ideas into Actions: Entrepreneurial Leadership in State Health Care Reforms*, 22 J. HEALTH POL. POL’Y & L. 721, 743 (1997).

71. *Id.* Oliver and Paul-Shaheen review this literature and develop their own conception of policy entrepreneurship, focusing on the entrepreneur’s technical and strategic skills. *Id.* at 743–80. Other notable attempts to provide a rigorous, synthetic definition of policy entrepreneurship include MINTROM, *supra* note 2, at ch. 5; and Nancy C. Roberts & Paula J. King, *Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process*, 1 J. PUB. ADMIN. RES. & THEORY 147 (1991). Mintrom claims in his 2000 study that “while the term ‘policy entrepreneur’ will be familiar to most political scientists and policy scholars, until now no effort has been made to construct a theory of

the phrase “policy entrepreneur” is invoked without any explanation or references, presumably on the belief that the concept is either self-explanatory or so well known as to make citation pedantic. Not infrequently, authors will use “policy” interchangeably with “public,” “political,” “bureaucratic,” “administrative,” or some other variant.⁷²

The basic shared understanding of policy entrepreneurs is that they are “political actors who promote policy ideas” in the hope of effecting change.⁷³ On my reading, definitions of policy entrepreneurship tend to contain four additional glosses.

First, many definitions stress innovation. The policy entrepreneur works to “introduce, translate, and implement innovative ideas into public sector practice”⁷⁴ or to “establish[] new goals, procedures, organizations, or programs in the public sector.”⁷⁵ Policy entrepreneurs are in this sense active rather than reactive, “recognized for ‘stimulating more than . . . responding’ to outside political forces.”⁷⁶ Innovation need not entail invention, however. Many, if not most, policy entrepreneurs do not come up with new ideas so much as they develop new ways to package, market, and apply old ideas.⁷⁷

policy entrepreneurship.” MINTROM, *supra* note 2, at 4.

72. See MINTROM, *supra* note 2, at 70 (“Typically, the terms public entrepreneur, political entrepreneur, and policy entrepreneur are treated as interchangeable.”); Roberts & King, *supra* note 71, at 151 (observing and critiquing this conflation of terms). Roberts and King are exceptional for separating out these concepts. In their typology, policy entrepreneurs are the subset of public entrepreneurs “who work from outside the formal governmental system” to inspire its reform. *Id.* at 152.

73. Note, *When Do Policy Innovations Spread? Lessons for Advocates of Lesson-Drawing*, 119 HARV. L. REV. 1467, 1481 (2006).

74. Roberts & King, *supra* note 71, at 152.

75. Oliver & Paul-Shaheen, *supra* note 70, at 744 (providing numerous citations for works that share this conceptual framework); see also Andrew P. Morriss et al., *Between a Hard Rock and a Hard Place: Politics, Midnight Regulations and Mining*, 55 ADMIN. L. REV. 551, 568 n.88 (2003) (defining a policy entrepreneur as “one who creates new public policies”).

76. ROGER H. DAVIDSON & WALTER J. OLESZEK, CONGRESS AND ITS MEMBERS 259 (7th ed. 2000) (quoting DAVID E. PRICE, WHO MAKES THE LAWS? CREATIVITY AND POWER IN SENATE COMMITTEES 297 (1972)).

77. See Thomas R. Oliver, *Ideas, Entrepreneurship, and the Politics of Health Care Reform*, 3 STAN. L. & POL’Y REV. 160, 170 (1991); Sheldon D. Pollack, *A New Dynamics of Tax Policy?*, 12 AM. J. TAX POL’Y 61, 74 (1995). Following Joseph Schumpeter, many economists likewise draw a distinction between innovation and invention in describing capitalist entrepreneurship. See, e.g., Solow, *supra* note 28, at 49 (“Anyone can invent a new product or a new technique of production. The entrepreneur is the one who first sees its economic viability, bucks the odds, fights or worms his way into the market, and eventually wins or loses.”).

Second, policy entrepreneurs attempt to mobilize support for their idea so as to improve its chances of being translated into action. This mobilization may involve aggressive fundraising and lobbying,⁷⁸ strategic use of the media,⁷⁹ appeals to widely shared values,⁸⁰ or efforts to reframe the public debate.⁸¹ Frequently, it will involve not only advocacy but also what political scientist John Kingdon calls “brokerage,” in which the entrepreneurs negotiate among diverse participants and facilitate the “coupling” of problems, solutions, and political allies.⁸²

Third, policy entrepreneurs pursue their goals with unusual diligence. They are characterized by an “all-out effort”⁸³ and a “singular focus”;⁸⁴ they “push, push, and push for their proposals or for their conception of problems.”⁸⁵ In addition to their time, energy, and reputation, some policy entrepreneurs will invest their own financial resources to advance their cause. Ralph Nader offers a prominent recent example.⁸⁶

78. See Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 28–32 (2001) (describing policy entrepreneurs’ efforts to solicit funds and mobilize resources in the context of an emergent social movement).

79. See KAY LEHMAN SCHLOZMAN & JOHN T. TIERNEY, ORGANIZED INTERESTS AND AMERICAN DEMOCRACY 84 (1986) (describing policy entrepreneurs’ “adroit use of the media”).

80. See *id.* (characterizing policy entrepreneurs as “mobiliz[ing] public support by appealing to widely shared values such as a concern about health, safety, or environmental preservation and by making opponents seem self-serving and careless of the public interest”); John S. Baker, Jr., *United States v. Morrison and Other Arguments Against Federal “Hate Crime” Legislation*, 80 B.U. L. REV. 1191, 1199 (2000) (“Policy entrepreneurs must achieve by emotional appeals what appeals to narrow self-interest cannot. Thus the rationale for a new policy must be presented in dramatic terms and evoke powerful symbols in the public’s mind—‘clean air,’ ‘pure water,’ ‘Americanism,’ ‘sinister plots,’ ‘tax cheats,’ ‘confiscatory taxes,’ and so on.”).

81. See BRYAN D. JONES, RECONCEIVING DECISION-MAKING IN DEMOCRATIC POLITICS: ATTENTION, CHOICE, AND PUBLIC POLICY 26 (1994) (“[T]he function of the policy entrepreneur is to frame an issue so as to move it over the threshold of attention of policymaking institutions.”).

82. JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES 182–83 (2d ed. 1995).

83. Cynthia L. Cates & Wayne V. McIntosh, *Retail Jurisprudence: The Judge as Entrepreneur in the Marketplace of Ideas*, 11 J.L. & POL. 709, 713 (1995).

84. Thomas R. Oliver, *Policy Entrepreneurship in the Social Transformation of American Medicine: The Rise of Managed Care and Managed Competition*, 29 J. HEALTH POL. POL’Y & L. 701, 714 (2004).

85. KINGDON, *supra* note 82, at 181.

86. See Peter H. Schuck, *The Politics of Regulation*, 90 YALE L.J. 702, 719 (1981) (book review) (identifying Nader as the “quintessential policy

Fourth, and perhaps most intriguingly, policy entrepreneurs exhibit strategic timing. Rather than push for their proposals with equal vigor at all times, they may lie in wait until the emergence of what Kingdon famously termed a “policy window”:⁸⁷ a perceived crisis, high-salience event, changing of the political guard, or tipping point in public opinion that opens up new opportunities for reform. A good policy entrepreneur will have laid a foundation in advance, “softening up” the relevant policy communities so that she can react quickly when a window appears to move her issue onto the political agenda and to convince decision makers to adopt her preferred solution.⁸⁸ Successful policy entrepreneurship thus demands “excellent antennae” for reading the sociopolitical landscape and identifying possible pressure points.⁸⁹ Policy entrepreneurs are in this sense reactive rather than active.

Outside of these four constitutive elements, scholars seeking to define policy entrepreneurship appear to disagree on several important dimensions. First, some scholars would reserve the label for political officials,⁹⁰ while others—including the most influential scholars—would also allow nongovernmental actors to be policy entrepreneurs,⁹¹ and still others would allow *only* nongovernmental actors to be so deemed.⁹² Second, some scholars would reserve the label for those who have actually succeeded at effecting political change,⁹³ while others would not impose a success condition. And

entrepreneur”).

87. KINGDON, *supra* note 82, at 165–95. For an earlier articulation of this basic idea, see CHESTER I. BARNARD, *THE FUNCTIONS OF THE EXECUTIVE* 200–11 (1938) (developing a “theory of opportunism” in the political sphere).

88. KINGDON, *supra* note 82, at 127–31.

89. *Id.* at 183; *see also* MINTROM, *supra* note 2, at 124–29 (stressing the importance of “social perceptiveness” and “social connectedness” to successful policy entrepreneurship); William W. Buzbee, *Recognizing the Regulatory Commons: A Theory of Regulatory Gaps*, 89 IOWA L. REV. 1, 54–55 (2003) (synopsizing the “burgeoning literature identifying] circumstances giving rise to ‘political entrepreneurs’”).

90. *See* Oliver & Paul-Shaheen, *supra* note 70, at 743–44 (summarizing previous studies of policy entrepreneurship). For an example of a recent legal article that appears to make this definitional move, *see* Jeffrey J. Rachlinski & Cynthia R. Farina, *Cognitive Psychology and Optimal Government Design*, 87 CORNELL L. REV. 549, 573 n.101 (2002).

91. *See, e.g.*, KINGDON, *supra* note 82 at 204 (“[Policy] entrepreneurs are found at many locations; they might be elected officials, career civil servants, lobbyists, academics, or journalists. No one type of participant dominates the pool of entrepreneurs.”); MINTROM, *supra* note 2, at 57; Oliver & Paul-Shaheen, *supra* note 70, at 744.

92. *See, e.g.*, Roberts & King, *supra* note 71, at 152.

93. *See id.* at 149–51 (indicating that many previous formulations of policy entrepreneurship require “implementation” and “institutionalization” of the

third, some scholars would restrict the definition to those political actors who are motivated by something beyond their narrow self-interest—beyond, say, placating an influential interest group or improving one's odds of reelection—while others would exclude any motivational component.⁹⁴

The development of policy entrepreneurship as a concept and a slogan differs from that of social entrepreneurship in a number of ways. Unlike social entrepreneurship, the idea of policy entrepreneurship is not often traced to a single source like Bill Drayton; it has no comparable founding myth. John Kingdon's classic exposition in *Agendas, Alternatives, and Public Policies* remains the most cited reference,⁹⁵ but he was by no means the first to explore the phenomenon or to coin the phrase. David Price, Jack Walker, and several others beat him to it by over a decade.⁹⁶ Among political scientists, the phrase was in widespread use by the mid-1980s; among lawyers, by the mid-1990s.⁹⁷ By now, almost everyone in these disciplines recognizes policy entrepreneurs as important contributors to the policy process and, therefore, as legitimate objects of study. Social entrepreneurship, by contrast, never really made the migration from business journals to law reviews, appearing in only forty-three legal articles as of February 2008 and

entrepreneur's idea).

94. Compare, e.g., KINGDON, *supra* note 82, at 179 (expressing a willingness to count individuals as policy entrepreneurs regardless of whether they are seeking "material, purposive, or solidary benefits"), with Oliver & Paul-Shaheen, *supra* note 70, at 743–44 (describing prior studies that defined policy entrepreneurs as "political leaders who are able to take actions free from the influence of both economic elites and political constituencies," as governmental analysts who are seeking to "advance policy objectives," and as administrators who wish to blend efficiency with "moral leadership" or to "reorganize and improve governmental services").

95. KINGDON, *supra* note 82. The first edition of Kingdon's book was published in 1984.

96. See, e.g., David E. Price, *Professionals and "Entrepreneurs": Staff Orientations and Policy Making on Three Senate Committees*, 33 J. POL. 316 (1971); Jack L. Walker, *Performance Gaps, Policy Research, and Political Entrepreneurs*, 3 POL'Y STUD. J. 112 (1974); see also Oliver & Paul-Shaheen, *supra* note 70, at 743–44 (citing to additional sources from the 1970s and 1980s).

97. I base this claim on JSTOR and Westlaw database searches. The phrase "policy entrepreneur" appears in only a handful of law review articles in the 1980s, written mostly by professors of political science or government. The first law review article written by a law professor to apply the term in any substantial way was Daniel Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s*, 139 U. PA. L. REV. 1, 93–94 (1990). By the end of the 1990s, more than two hundred law review articles had made use of the term.

analyzed in depth in just one of them.⁹⁸

Moreover, whereas writers seeking to define or understand social entrepreneurship routinely draw on theories of capitalist entrepreneurship, however superficially, writers on policy entrepreneurship as a rule do not.⁹⁹ They may draw on the literatures concerning social change, social movements, political leadership, public choice theory, and so forth, but almost never do they seek to glean insight from Say or Schumpeter. Finally, whereas most commentators have hailed social entrepreneurship as a welcome new development,¹⁰⁰ policy entrepreneurship has received a cooler reaction. The predominant concern, it seems, is that policy entrepreneurship does not necessarily advance proposals with the deepest popular support or normative appeal, but instead introduces an idiosyncratic, undemocratic, and possibly rent-seeking reform vehicle into the system.¹⁰¹ Nevertheless, some have argued that policy entrepreneurship may represent the only real tool we have to break out of the public choice paradigm—the only way to circumvent interest group politics and achieve legislation with widely dispersed benefits and narrowly concentrated costs.¹⁰²

3. *Norm Entrepreneurship*

The story of norm entrepreneurship's rise to academic prominence is in large part the story of two scholars: Cass Sunstein and Harold Koh. Professor Sunstein introduced the term to the

98. The forty-three figure comes from the Westlaw Journals and Law Reviews database. The outlier is Kelley, *supra* note 48, at 2463–66.

99. Michael Mintrom is the exception that proves the rule. Mintrom makes a substantial attempt to use theories of capitalist entrepreneurship to inform his own theory of policy entrepreneurship, MINTROM, *supra* note 2, at 70–112, but he notes that in so doing he is breaking from traditional practice, *id.* at 111, and is, indeed, running the risk of boring his readers. *Id.* at 70–71.

100. Most, but not all. While commentators have by and large shown great enthusiasm for social entrepreneurship, some have expressed apprehensiveness that it might undermine values such as care and compassion, lead to excessive privatization of social service provision, and displace forms of desirable yet “old-style” charity. See, e.g., MINOW, *supra* note 47, at 28–49; Kelley, *supra* note 48, at 2465–66. Some have also challenged social entrepreneurship on conceptual grounds, questioning whether it represents a coherent or useful category of activity. See Finder, *supra* note 44, at B9 (noting that despite social entrepreneurship's rapidly growing role in business school curricula, “[s]ome professors even challenge the idea that it is a legitimate field of inquiry”).

101. See, e.g., Oliver & Paul-Shaheen, *supra* note 70, at 744–45 (noting that “some observers caution that the goals, quality of innovations, or personal ethics of public sector entrepreneurs may be questionable” and discussing the inevitability of “controversies associated with policy entrepreneurship” (citations omitted)).

102. See Shaviro, *supra* note 97, at 93–94.

legal academy in a 1996 article entitled *Social Norms and Social Roles*.¹⁰³ In that paper, Sunstein defined norm entrepreneurs as “people interested in changing social norms,” who, if successful, will produce “norm bandwagons,” whereby small shifts in norms lead to larger shifts, and “norm cascades,” whereby society comes to experience a rapid revision of its prevailing norms.¹⁰⁴ Norm entrepreneurship is possible, Sunstein contends, because “[e]xisting social conditions are often more fragile than might be supposed.”¹⁰⁵ Social norms are typically embedded within a matrix of social roles, social situations, and legal rules, and as a result of collective action problems (e.g., the problems of free riders and “sticky norms”¹⁰⁶), risk aversion, or failure of imagination, these norms may persist even though many people do not actually support them and may even despise them. Norm entrepreneurs “can exploit widespread dissatisfaction with existing norms”—and thereby move society toward a new norm—“by (a) signalling their own commitment to change, (b) creating coalitions, (c) making defiance of the norms seem or be less costly, and (d) making compliance with new norms seem or be more beneficial.”¹⁰⁷ Sunstein gives as examples William Bennett, Jerry Falwell, Louis Farrakhan, Martin Luther King, Jr., Catharine MacKinnon, and Ronald Reagan.¹⁰⁸ He suggests that norm entrepreneurship played an important role in the collapse of the apartheid regime in South Africa and the Communist regime in the Soviet Union, and that this helps explain how these political changes could occur so rapidly and yet so peacefully.¹⁰⁹

Dean Koh’s key advancement on Sunstein’s idea was to take it global. In an important article published two years after Sunstein’s, Koh elaborated a theory of how “transnational norm entrepreneurs” can both catalyze support for new forms of international corrective action and help “bring international law home” by spurring their domestic political system to internalize principles of international law.¹¹⁰ The scope of their ambitions, Koh observes, requires these

103. Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996).

104. *Id.* at 909.

105. *Id.*

106. See generally Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607 (2000).

107. Sunstein, *supra* note 103, at 929.

108. *Id.*

109. *Id.* at 912, 929–30.

110. Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623, 646–55 (1998) [hereinafter Koh, *Bringing International Law Home*]. The seeds of this thesis can be seen in an article Koh published the previous year. Harold Hongju Koh, *Why Do Nations Obey*

entrepreneurs to cultivate an array of allies. Transnational norm entrepreneurs will often seek to enlist “governmental norm sponsors,” and they will join together with administrative agencies, nongovernmental organizations, international organizations, academics, and other actors to form “issue networks” and “epistemic communities” through which to share ideas, plan strategies, and leverage their influence.¹¹¹ Structuring this transnational entrepreneurial activity are various “law-declaring fora”—such as treaty regimes and domestic, regional, and international courts—that provide interpretive communities within which the entrepreneurs can “defin[e], elaborat[e] and test[] the definition of particular norms” and seek to create shared meaning around a new norm.¹¹² A particularly rich area for transnational norm entrepreneurship, and the area of greatest concern to Koh, is international human rights. As Koh details, this field can claim a proud history of norm entrepreneurship, from Lord William Wilberforce and the British Anti-Slavery Society pressing for the end of the slave trade in the late 1700s, to Christian peace activists promoting international criminal courts in the early 1800s, to Aung San Suu Kyi protesting the Burmese junta today.¹¹³

Professor Sunstein and Dean Koh were not, in fact, the first to use the term norm entrepreneur, nor were they last to give it definitional content, but their formulations continue to predominate in the literature (with Sunstein’s more likely to be cited by writers on law and economics or social norms, and Koh’s by scholars of international law). An article in an international relations journal indicates that political scientist John Mueller used the phrase at a conference held in May 1993,¹¹⁴ and Koh explicitly draws on Ethan Nadelmann’s definition of “transnational moral entrepreneurs” as well as on Sunstein’s work.¹¹⁵ Significant refinements on the norm

International Law?, 106 YALE L.J. 2599, 2611–12, 2648 (1997) [hereinafter Koh, *Why Do Nations Obey International Law?*].

111. Koh, *Bringing International Law Home*, *supra* note 110, at 648–49.

112. *Id.* at 649–51.

113. *Id.* at 647–48.

114. Ann Florini, *The Evolution of International Norms*, 40 INT’L STUD. Q. 363, 375 n.12 (1996).

115. Koh, *Bringing International Law Home*, *supra* note 110, at 647. Nadelmann defines transnational moral entrepreneurs as nongovernmental organizations or individuals who “mobilize popular opinion and political support both within their host country and abroad; . . . stimulate and assist in the creation of like-minded organizations in other countries; and . . . play a significant role in elevating their objective beyond its identification with the national interests of their government.” Ethan A. Nadelmann, *Global Prohibition Regimes: The Evolution of Norms in International Society*, 44 INT’L ORG. 479, 482 (1990). These entrepreneurs’ efforts “are often directed toward

entrepreneur concept have been proffered in the years since by Martha Finnemore and Kathryn Sikkink (emphasizing the entrepreneurs' use of means-ends calculations in a process of "strategic social construction"),¹¹⁶ Eric Posner (modeling a "norm entrepreneur game" in which entrepreneurs use signaling and focal points to try to change social norms and tastes),¹¹⁷ and Robert Ellickson (distinguishing norm entrepreneurs from "self-motivated leaders" and "opinion leaders").¹¹⁸ While the norm entrepreneurs invoked in the literature are typically respect-worthy actors pressing for salutary or at least reasonable changes, Richard Posner and others have reminded us that "bad-norm entrepreneurs" also compete in this sphere.¹¹⁹

persuading foreign audiences, especially foreign elites, that a particular [normative] regime reflects a widely shared or even universal moral sense, rather than the particular moral code of one society." *Id.* Nadelmann notes that this notion "conjoins [sociologist Howard] Becker's concept of 'moral entrepreneurs' and [political scientist Samuel] Huntington's notion of a 'transnational organization.'" *Id.* at 482 n.4 (citing HOWARD S. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963); Samuel P. Huntington, *Transnational Organizations in World Politics*, 25 *WORLD POL.* 333 (1973)). It might be of interest to note that Nadelmann himself turned norm entrepreneur a few years after writing that article, leaving academia to found and direct the Drug Policy Alliance, a nonprofit organization devoted to progressive drug reform. Drug Policy Alliance: Ethan Nadelmann, Executive Director, <http://www.drugpolicy.org/about/keystaff/ethannadelma> (last visited Feb. 1, 2008).

116. Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 *INT'L ORG.* 887, 910 (1998). With a different co-author, Sikkink also provided a rich description of the work of transnational norm entrepreneurs in an influential book published around the same time. MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

117. ERIC A. POSNER, *LAW AND SOCIAL NORMS* 29–32 (2000).

118. Robert C. Ellickson, *The Market for Social Norms*, 3 *AM. L. & ECON. REV.* 1, 10–17 (2001). Each of these actors, in Ellickson's typology, is a type of "change agent." Norm entrepreneurs are distinctive because they "are specialists who campaign to change particular norms" (whereas opinion leaders are generalists) and because they are strongly motivated by external rewards such as esteem (whereas self-motivated leaders may move to change a norm even in the absence of potential esteem benefits). *Id.* at 13–16.

119. See Richard A. Posner, *Social Norms and the Law: An Economic Approach*, 87 *AM. ECON. REV.* 365, 367 (1997) (suggesting dueling as an example of a bad norm and "aggressive panhandlers, vandals, drunks, junkies, prostitutes, gang members, loiterers, and other visibly antisocial persons" as examples of bad-norm entrepreneurs); see also Rosa Ehrenreich Brooks, *The New Imperialism: Violence, Norms, and the "Rule of Law,"* 101 *MICH. L. REV.* 2275, 2326–27 (2003) ("Human-rights advocates and scholars who study norms are fond of using the term 'norm entrepreneurs' to describe people such as Gandhi, Nelson Mandela, and Mother Teresa. . . . But if Mandela is a norm

Within the fields of law and, to a lesser extent, political science and international relations, norm entrepreneurship has become a “wildly popular” concept.¹²⁰ Several hundred law review articles have employed the term since the new millennium, with authors applying it to such diverse actors as individuals sharing files on Napster,¹²¹ courts mandating same-sex civil unions,¹²² and Scandinavian countries pushing for liberal reforms in world politics.¹²³ Beyond Sunstein’s and Koh’s fields of behavioral economics and international law, public choice theorists have also found the idea congenial.¹²⁴ As Sunstein has pointed out a number of times, anyone interested in the relationship between law and social norms may have reason to care about norm entrepreneurship.¹²⁵

While norm entrepreneurship has proven a rich source of inquiry, not everyone agrees on its meaning or its descriptive and

entrepreneur, so is Osama bin Laden, and so are the planners of Palestinian suicide bombings. So was Slobodan Milosevic, and so were the Hutu leaders . . . who succeeded in dramatically shifting the normative commitments of several million Rwandan Hutus.” (citation omitted)); Dorothea Kübler, *On the Regulation of Social Norms*, 17 J.L. ECON. & ORG. 449, 455 (2001) (describing “snob norms”); Paul M. Schwartz, *Internet Privacy and the State*, 32 CONN. L. REV. 815, 843 (2000) (criticizing “over-zealous norm entrepreneurs” who tread on others’ personal privacy); Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L.J. 71, 97 (2000) (discussing “polarization entrepreneurs”). Julie Mertus adds the observation that whether or not someone appears a bad-norm or good-norm entrepreneur will often simply be a matter of subjective belief. Julie Mertus, *Considering Nonstate Actors in the New Millennium: Toward Expanded Participation in Norm Generation and Norm Application*, 32 N.Y.U. J. INT’L L. & POL. 537, 560 (2000) (“Those seen as breaching sovereignty norms may be viewed positively as ‘sovereignty-free actors,’ ‘trans-boundary entities,’ and ‘norm entrepreneurs,’ or they may simply be called ‘international law-breakers.’”).

120. John Fabian Witt, *Narrating Bankruptcy/Narrating Risk*, 98 NW. U. L. REV. 303, 306 n.17 (2003); see also Ellickson, *supra* note 118 at 10 (noting that “many legal scholars since [Sunstein] have embraced” the phrase).

121. Lior Jacob Strahilevitz, *Charismatic Code, Social Norms, and the Emergence of Cooperation on the File-Swapping Networks*, 89 VA. L. REV. 505, 538–39 (2003).

122. William N. Eskridge, Jr., *No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review*, 75 N.Y.U. L. REV. 1327, 1405–06 (2000).

123. Christine Ingebritsen, *Norm Entrepreneurs: Scandinavia’s Role in World Politics*, 37 COOPERATION & CONFLICT 11 (2002).

124. See Steven Hetcher, *The FTC as Internet Privacy Norm Entrepreneur*, 53 VAND. L. REV. 2041, 2044–46 (2000) (discussing the tendency of public choice theory to model key government actors “as if they were entrepreneurs”).

125. See, e.g., Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2030–31 (1996).

predictive utility. Like social entrepreneurship and policy entrepreneurship, the term is often used very loosely. There is a basic divide among its exponents—a divide that no one seems to have noted—between those who would apply the term only to nongovernmental actors¹²⁶ and those who would apply the term to governmental and nongovernmental actors alike.¹²⁷ More important, some observers have begun to express substantive skepticism. Oona Hathaway, for example, has cautioned that even successful transnational norm entrepreneurship “can take decades to lead to tangible change,”¹²⁸ while Robert Scott has challenged the concept’s social-scientific pretensions with his cutting remark that norm entrepreneurs “used to be known” as “busybodies.”¹²⁹ More sustained skepticism emerged following the publication of Eric Posner’s book *Law and Social Norms*.¹³⁰ Several reviewers questioned whether norm entrepreneurship can submit to productive formal modeling,¹³¹ whether there is any systematic means for understanding why certain people follow certain norm entrepreneurs,¹³² and, indeed, whether the notion of norm entrepreneurship really advances on more traditional ideas such as marketing, trend setting, focal points, and tipping points in explaining where norms come from.¹³³

126. Harold Koh is the leading advocate of this limitation. See Koh, *Bringing International Law Home*, *supra* note 110, at 647–48 (distinguishing between transnational norm entrepreneurs and government norm sponsors).

127. This is the larger camp. See, e.g., POSNER, *supra* note 117, at 32–33 (“Government actors can serve as norm entrepreneurs.”); Hetcher, *supra* note 124, at 2046 (analyzing the Federal Trade Commission as a “website privacy ‘norm entrepreneur’”); Ingebritsen, *supra* note 123, at 13–21 (considering all of Scandinavia as a norm entrepreneur in world politics); Sunstein, *supra* note 103, at 929 (indicating that “political actors, whether public or private” can be norm entrepreneurs); Lee Tien, *Architectural Regulation and the Evolution of Social Norms*, 7 YALE J.L. & TECH. 1, 12–13 (2005) (describing the U.S. government as a norm entrepreneur with regard to the regulation of computer software).

128. Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 2022 (2002).

129. Robert E. Scott, *The Limits of Behavioral Theories of Law and Social Norms*, 86 VA. L. REV. 1603, 1615 (2000).

130. POSNER, *supra* note 117.

131. See, e.g., Daniel Gilman, *Of Fruitcakes and Patriot Games*, 90 GEO. L.J. 2387, 2395 (2002).

132. See, e.g., Kristin Madison, *Government, Signaling, and Social Norms*, 2001 U. ILL. L. REV. 867, 879–80; Richard H. McAdams, *Signaling Discount Rates: Law, Norms, and Economic Methodology*, 110 YALE L.J. 625, 635–36 (2001). Professor Madison suggests that our best hopes here may be sociology and psychology. Madison, *supra*, at 880.

133. See, e.g., Gilman, *supra* note 131, at 2395; Madison, *supra* note 132, at

4. *Moral Entrepreneurship*

The concept of moral entrepreneurship, like that of norm entrepreneurship, owes much of its success to two scholars: in this case, Howard Becker and Richard Posner. Becker, a highly regarded sociologist, launched the term in his 1963 book *Outsiders: Studies in the Sociology of Deviance*.¹³⁴ In that work, Becker deployed the idea of the moral entrepreneur to help explore the relationship between law and morality and to explain how deviant social categories—his primary example of which is the “marihuana user”—become defined and entrenched.¹³⁵ In Becker’s view, there are two “related species” of moral entrepreneur,¹³⁶ the rule creator and the rule enforcer. “The prototype of the rule creator,” Becker explains, “is the crusading reformer”:

He is interested in the content of rules. The existing rules do not satisfy him because there is some evil which profoundly disturbs him. He feels that nothing can be right in the world until rules are made to correct it. He operates with an absolute ethic; what he sees is truly and totally evil with no qualification. Any means is justified to do away with it. The crusader is fervent and righteous, often self-righteous.¹³⁷

Rule creators may be courageous humanitarians, such as the abolitionists who opposed slavery, but they may also prove “meddling busybod[ies],” such as the prohibitionists who opposed alcohol.¹³⁸ Some rule creators will have a single burning passion and will cease their moral entrepreneurship once their initial goals are fulfilled. Others may find they have a taste for moral crusading and will move on to the next cause, becoming serial rule creators.¹³⁹

879–80 & nn.46–48.

134. HOWARD S. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* 147–63 (1963).

135. *See, e.g., id.* at 162 (“Deviance—in the sense I have been using it, of publicly labeled wrongdoing—is always the result of enterprise. Before any act can be viewed as deviant, and before any class of people can be labeled and treated as outsiders for committing the act, someone must have made the rule which defines the act as deviant.”).

136. *Id.* at 147.

137. *Id.* at 147–48.

138. *Id.* at 148.

139. *Id.* at 153. Rule enforcers are fundamentally different: they work not to promulgate new moral standards but to administer those standards once in place. When police agencies were charged with enforcing the Prohibition Laws following the Eighteenth Amendment, Becker says, they served as a rule enforcer for temperance. *Id.* at 155. It is not at all clear to me why rule enforcers deserve to be labeled entrepreneurs, and Becker never attempts to explain or even allude to the entrepreneurial dimension. Subsequent scholars

Richard Posner introduced a somewhat different vision of the moral entrepreneur in his 1997 Holmes Lectures and subsequent book *The Problematics of Moral and Legal Theory*. For Posner (who never cites to Becker), moral entrepreneurs are people with “the power to change our moral intuitions.”¹⁴⁰ They do not do this by rational argument.

Rather, they mix appeals to self-interest with emotional appeals that bypass our rational calculating faculty and stir inarticulable feelings of oneness with or separateness from the people (or it could be land, or animals) that are to constitute, or be ejected from, the community that the moral entrepreneur is trying to create. They teach us to love or hate whom they love or hate.¹⁴¹

Posner contrasts the moral entrepreneur with the “academic moralist,” the moral philosopher who aspires to persuade the masses through reason alone.¹⁴² That aspiration is quixotic and self-serving, Posner asserts, because the tools of reason do not actually change people’s behavior—a contention challenged by numerous reviewers¹⁴³—and the “academic cocoon” does not tend to nurture the

who have applied his concept of moral entrepreneurship seem almost always to have in mind the rule creators. See, e.g., JOSEPH R. GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* 56 (2d ed. 1986); Randy Lippert, *Reply to Tucker*, 17 CAN. J. SOC. 191, 191 (1992); Craig Reinerman, *Moral Entrepreneurs and Political Economy: Historical and Ethnographic Notes on the Construction of the Cocaine Menace*, 3 CONTEMP. CRISES 225 (1979).

140. POSNER, *supra* note 1, at ix. The core of Posner’s discussion of moral entrepreneurs in *The Problematics of Moral and Legal Theory* (the book) is lifted from his article, Richard A. Posner, *The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1664–68 (1998).

141. POSNER, *supra* note 1, at 42.

142. *Id.* at 5, 38–42.

143. See, e.g., Brian E. Butler, *Posner’s Problem with Moral Philosophy*, 7 U. CHI. L. SCH. ROUNDTABLE 325, 327–28 (2000); Michael C. Dorf, *The Paths to Legal Equality: A Reply to Dean Sullivan*, 90 CAL. L. REV. 791, 806–07 (2002); Ryan Fortson, *Problems with Richard Posner’s The Problematics of Moral and Legal Theory*, 27 WM. MITCHELL L. REV. 2345, 2355–56 (2001); Charles Fried, *Philosophy Matters*, 111 HARV. L. REV. 1739, 1741–46 (1998); Frank S. Ravitch, *Can an Old Dog Learn New Tricks? A Nonfoundationalist Analysis of Richard Posner’s The Problematics of Moral and Legal Theory*, 37 TULSA L. REV. 967, 969–70 (2002).

One reviewer got Posner precisely backwards on this point, but for interesting reasons. See Ellis Washington, *Reply to Judge Richard A. Posner on the Inseparability of Law and Morality*, 3 RUTGERS J.L. & RELIGION 1, 87 (2001) (“I resent Posner’s characterization of moral philosophers as ‘moral entrepreneurs.’ This silly name-calling lacks any substantive insight and is used only to insult or belittle.”). This reviewer was so disturbed at the prospect

necessary forms of courage, imagination, or polemical skill. (Catharine MacKinnon is the exception that proves the rule, for she was denied tenure for many years despite her outsized real-world influence.)¹⁴⁴ Posner also offers an account of the external factors that allow for successful moral entrepreneurship. While he generally espouses an adaptationist theory of morality, in which a society's moral norms are seen as being shaped by its material needs, Posner notes that "there is often a lag between a change in material conditions and the adaptation of the moral code to the new conditions."¹⁴⁵ Moral entrepreneurs, "like arbitrageurs in the securities markets," can exploit this discrepancy to persuade society "to adopt a new, more adaptive code."¹⁴⁶

Whereas Becker is most interested in the psychology and sociology of moral entrepreneurship, Posner thus devotes more attention to its logical structure, trying to show which forms of argument can gain traction and at which junctures. Both authors envision the moral entrepreneur as operating with "an absolute ethic," but unlike Becker, Posner seems to make effectiveness a condition precedent of moral entrepreneurship, as when he notes that the "unsuccessful [moral entrepreneurs] are apt to be dismissed as cranks."¹⁴⁷ Posner is also more explicit that moral entrepreneurs need not be virtuous actors: Hitler, he says, was a moral entrepreneur just as surely as Jesus Christ or Abraham Lincoln.¹⁴⁸

Following Becker and Posner, a wide range of scholars have invoked the concept of moral entrepreneurship. The term has had greater currency in sociology than in law, partly because of Howard Becker's comparatively early influence and partly, I suspect, because Cass Sunstein's and Harold Koh's use of "norm entrepreneur," rather than "moral entrepreneur," shifted attention away from the latter idea.¹⁴⁹ The interesting question of how norm

of being called an entrepreneur, it seems, that it left him obtuse to the fact that Posner actually made the opposite characterization—arguing that moral philosophers are especially *unsuited* to be moral entrepreneurs—as well as to the fact that Posner expresses significantly *more* regard for the latter group. The resentment felt by this reviewer illustrates how for some audiences, "entrepreneur" is not a neutral or positively coded label but rather a pejorative. Cf. *supra* note 5 and accompanying text (discussing the less attractive connotations of "entrepreneur").

144. POSNER, *supra* note 1, at 43.

145. *Id.* at 44.

146. *Id.*

147. *Id.*

148. *Id.* at 42, 44.

149. Dean Koh, recall, drew on both Nadelmann's idea of "transnational moral entrepreneurs" and Sunstein's idea of "norm entrepreneurs" to come up with "transnational norm entrepreneurs." See *supra* note 110 and

entrepreneurship relates to moral entrepreneurship has received surprisingly little attention. Given that social morals are a species of social norms¹⁵⁰—a distinctive and particularly important species, perhaps, but still just a species—moral entrepreneurs presumably constitute a subset of norm entrepreneurs, and the two ideas plainly have significant conceptual and functional overlap. Yet I have not seen any writer try to separate out moral entrepreneurship from norm entrepreneurship, much less to explicate their interrelationships, and those few writers who have employed both terms invariably conflate them. The study of moral entrepreneurship has developed almost entirely independent of the study of norm entrepreneurship.

5. *Failed Entrepreneurs*

Not all of the new entrepreneur labels advanced in recent years have had the success of their social, policy, norm, and moral brethren. Although he hit it big with “norm entrepreneur,” Cass Sunstein has failed to attract much of a following for several other spinoffs, including “availability entrepreneur,”¹⁵¹ “fairness entrepreneur,”¹⁵² and “polarization entrepreneur.”¹⁵³ Timur Kuran’s “ethnification entrepreneur”¹⁵⁴ has largely fallen by the wayside. More conventional formulations such as “cultural entrepreneur,” “idea entrepreneur,” and “intellectual entrepreneur” have likewise made little headway in academic, policy, or media debate.

The most significant other semantic variant appears to have been “intrapreneurship,” which is meant to capture the notion that employees can be entrepreneurs within an already existing corporate structure, as by starting a new business unit or developing a new product. For a time in the mid-1980s, intrapreneurship

accompanying text. As of February 2, 2008, Westlaw shows 125 law review articles using “moral entrepreneur,” with the vast majority drawing on Becker, Posner, or Nadelmann. An additional touchstone is Yves Dezalay & Bryant G. Garth, *Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Disputes*, 29 L. & SOC’Y REV. 27 (1995), in which the authors flaunt the term in their title and anticipate Koh’s globalizing move but never actually offer a definition.

150. See Jane Mansbridge, *Starting with Nothing: On the Impossibility of Grounding Norms Solely in Self-Interest*, in ECONOMICS, VALUES, AND ORGANIZATION 151, 163 (Avner Ben-Ner & Louis Putterman eds., 1998).

151. Timur Kuran & Cass R. Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683, 687–88, 713–14, 733–35 (1999).

152. Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1510 (1998).

153. Sunstein, *supra* note 119, at 97.

154. Timur Kuran, *Ethnic Norms and Their Transformation Through Reputational Cascades*, 27 J. LEGAL STUD. 623, 654–55 (1998).

(sometimes called corporate entrepreneurship) was “the rage” among big U.S. corporations and management publications,¹⁵⁵ and a book bearing its title became a bestseller.¹⁵⁶ But within a few years the concept came under attack both as a prescriptive proposition¹⁵⁷ and as a descriptive category. While some business writers continue to use the term, it does not appear to have made any broader impact.¹⁵⁸

II. WHY SO MANY ENTREPRENEURS?

Having summarized the historical origins and current status of the new entrepreneurs, in this Part I try to adduce several factors that may have helped motivate, or at least facilitate, the rise of these terms. I know of no good way to test a causal claim about why these terms have arisen; my hope is that the factors suggested here are plausible and illuminating, even if they are admittedly quite speculative.

A. *Linguistic and Academic Entrepreneurship*

Perhaps the most obvious factor to cite in the rise of the new entrepreneurial buzzwords is the role of key individuals in coining them and promoting their use—what might be termed linguistic or academic entrepreneurship. As we saw in the previous Part, Bill Drayton played this role for social entrepreneurship, Cass Sunstein and Harold Koh for norm entrepreneurship, and Howard Becker and Richard Posner for moral entrepreneurship.¹⁵⁹ These widely respected figures were able to gain an immediate audience for their neologisms and to imbue them with an immediate intellectual legitimacy. Drayton, Sunstein, and Koh, in particular, have returned to the terms again and again in subsequent years in an effort to impress them upon the public consciousness.¹⁶⁰ Policy

155. Steven Prokesch, “*Intrapreneurship*” *Raising Doubts*, N.Y. TIMES, July 28, 1986, at D1; *see also* Eric N. Berg, *Now “Intrapreneurship” Is Hot*, N.Y. TIMES, Apr. 4, 1985, at D1.

156. GIFFORD PINCHOT III, *INTRAPRENEURING: WHY YOU DON’T HAVE TO LEAVE THE CORPORATION TO BECOME AN ENTREPRENEUR* (1985).

157. *See, e.g.*, Prokesch, *supra* note 155, at D1 (“[W]hile only two to three years ago, business publications and management experts were touting intrapreneurship as the way for American corporations to foster innovation and regain their competitive edge, such respected publications as the Harvard Business Review are now running articles on intrapreneurship gone awry.”).

158. The Westlaw Journals and Law Reviews database, for example, shows only eight legal articles ever mentioning the term, and none using it in any significant way.

159. *See supra* Part I.

160. *See, e.g.*, Harold Hongju Koh, *Can the President Be Torturer in Chief?*,

entrepreneurship is the outlier for not having a clear founder. Many associate the term with John Kingdon and David Price, but neither asserted the term as his own. Social entrepreneurship is the outlier for first developing outside university walls and only afterwards, in the late 1990s, becoming a subject of academic scrutiny. From the start, Drayton aimed Ashoka's resources at a global audience, and to this day social entrepreneurship remains the only new buzzword with a broad following among the general public as well as professors.

Other features of the buzzwords themselves can help explain their popularity. First, each term is expansive. Drayton, Sunstein, Koh, Becker, Posner, Kingdon, and other early adopters of the terms did not provide highly rigorous definitions, but instead sketched a core meaning, supplemented by anecdotal illustrations. Thus, Drayton tells us that social entrepreneurs must "find what is not working and solve the problem by changing the system, spreading the solution, and persuading entire societies to take new leaps," and lists Susan B. Anthony, Florence Nightingale, John Muir, and others as historical examples.¹⁶¹ Kingdon explains how policy entrepreneurs can exploit policy windows through persistence, "coupling" skills, and "excellent antennae," and lists Ralph Nader and Senator Pete Domenici, among others.¹⁶² Cass Sunstein tells us that norm entrepreneurs use signaling and coalition-building to make defiance of the old norms "seem or be less costly," and points to figures such as Jerry Falwell and Catharine MacKinnon.¹⁶³ Howard Becker gives a psychological profile of the rule creator and illustrates with a discussion of the Prohibition movement.¹⁶⁴ In all of these cases, the linguistic entrepreneurs defined their targets at such a high level of generality as to sweep in a great range of possible actors and activities. Social entrepreneurship, policy entrepreneurship, and their ilk have become so popular, I am suggesting, in part because no one knows precisely what they mean.

This helps explain why commentators have felt licensed to deploy these concepts so loosely, almost never providing an explicit argument as to why a particular actor or activity merits the label.¹⁶⁵

81 IND. L.J. 1145, 1145–46 (2006); Cass R. Sunstein, *A New Progressivism*, 17 STAN. L. & POL'Y REV. 197, 211 (2006); Ashoka: Innovators for the Public, *The Entrepreneur's Revolution and You* (Aug. 2, 2000), <http://www.ashoka.org/entrepreneurrevolution>.

161. Ashoka: Innovators for the Public, *supra* note 57.

162. KINGDON, *supra* note 82, at 179–83.

163. Sunstein, *supra* note 103, at 929.

164. BECKER, *supra* note 134, at 147–55.

165. For examples of such looseness around each of the terms, see *supra* notes 44, 52, 70–72, 126–129, 148 and accompanying text.

It helps explain why more careful scholars disagree so fundamentally about what each concept means—and why these disagreements are rarely identified or discussed. It helps explain how Martin Luther King, Jr. can be a social, policy, norm, and moral entrepreneur at the same time.¹⁶⁶ It helps explain how it is possible that no one has explored the overlap between norm entrepreneurship and moral entrepreneurship.¹⁶⁷ And it helps explain why other attempts at new buzzwords, such as “availability entrepreneur” and “ethnification entrepreneur,” have not been able to gain a following.¹⁶⁸ These failed neologisms are, in virtue of their very titles, too specific: they force the author and reader to make a considered judgment about whether the label really does describe the subject in question. By contrast, the vagueness of the successful new entrepreneurial buzzwords makes them catchier and more universal, and it lowers the cost of adoption because users never have to make a strong affirmative commitment to any specific definitional content. If I call Senator *X* a policy entrepreneur or activist *Y* a moral entrepreneur, I can be confident that most listeners will not feel compelled to interrogate these classifications—and that even if they do, they will have little to go on.

There is also an interdisciplinary dimension to the new entrepreneurs. Writers on social entrepreneurship routinely draw on economic theories of capitalist enterprise and social histories of reform movements to explicate and justify the work of social entrepreneurs. Political scientists writing about policy entrepreneurship have drawn on different strands within their discipline—including public choice theory, institutionalism, and process-focused schools—and thereby made the concept an especially attractive export to the legal academy, where students of regulation, legislation, and governance have gravitated to the term. Cass Sunstein situated his account of norm entrepreneurship within a broader project of exploring the relationship between social norms, behavioral economics, and the law, and Harold Koh connected his account to a broader theory of international relations and transnational legal process. Howard Becker combined psychology, sociology, and law in devising a theory of moral entrepreneurship, and Richard Posner developed his own version in light of moral philosophy and economic analysis.

From the beginning, then, the new entrepreneurial concepts have been linked with a particular field—social entrepreneurship with business, policy entrepreneurship with political science, norm

166. See *supra* note 1 and accompanying text.

167. See *supra* Part I.B.4 (final paragraph).

168. See *supra* Part I.B.5.

entrepreneurship with law, moral entrepreneurship with sociology—yet constructed so as to bridge disciplines, making them accessible to more researchers and opening up new frontiers for original scholarship. The speed and intensity with which the phrases have emerged both reflects and, in turn, facilitates the increasingly interdisciplinary character of social science scholarship. It also reflects the growing ease with which English-speaking commentators use market rhetoric to describe seemingly non-economic areas of human endeavor. While “moral entrepreneurship” may sound paradoxical to some (how can an entrepreneur be moral? how can morals be commodified?) it has proven a magnetic formulation, I suspect, precisely because of this striking juxtaposition. Public choice, behavioral economics, and law and economics scholars have already analyzed so much of our collective lives in economic terms that calling these activities “entrepreneurial” has lost its power to offend; the pervasiveness of the capitalist paradigm has already, as Kingdon might say, “softened up” the audience and disarmed its critical instincts.¹⁶⁹ Far from offending them, the entrepreneurial label will entice many readers with the promise of deepening our understanding of the activities and perhaps even subjecting them to formal analysis.

The new entrepreneurial buzzwords, moreover, jibe well with other broad linguistic and intellectual trends. In the United States and elsewhere, “[t]he idea of participatory democracy has become increasingly trendy” ever since the protest movements of the 1960s, and it has been further stimulated by technological changes such as the advent of the Internet that allow the public to be more politically engaged and to communicate more easily with their representatives.¹⁷⁰ Equally trendy notions of deliberative democracy and communitarianism likewise suggest an active role for the private citizen in publicly articulating and fighting for her own preferred policies, norms, and morals. I do not mean to assert here that the Western world really has come to feature greater amounts of participatory democracy, deliberative democracy, or communitarian activity in the past several decades, although that

169. See *supra* note 88 and accompanying text.

170. Jonathan Macey, *Executive Branch Usurpation of Power: Corporations and Capital Markets*, 115 YALE L.J. 2416, 2425–26 (2006); see also Martin Shapiro, *Administrative Law Unbounded: Reflections on Government and Governance*, 8 IND. J. GLOBAL LEGAL STUD. 369, 369 (2001) (“[N]ow everyone, or at least potentially everyone, is also seen as a participant in the collective decision-making process. Today, elected and nonelected government officers, nongovernmental organizations, political parties, interest groups, policy entrepreneurs, ‘epistemic communities,’ and ‘networks’ are all relevant actors in the decision-making processes that produce government action.”).

may be the case. I am asserting that as ideas such as these have become more salient, it has given commentators a new vocabulary and a new set of intellectual tools with which to explore the relationship of social, policy, norm, and moral entrepreneurship to a well-functioning democratic order. Participatory democracy, deliberative democracy, and communitarianism each imagines a vibrant, ceaselessly contested public sphere within which the new entrepreneurs can prod and persuade their compatriots.

Linguistic entrepreneurship has a straightforward incentive structure. All intellectuals stand to gain a reputational benefit from coining a lasting neologism: Howard Becker will continue to be relevant, and to be cited, so long as “moral entrepreneur” remains in common currency. The example of Becker, Sunstein, and the others suggests that professors may be more likely to succeed as linguistic entrepreneurs when they are themselves already established interdisciplinarians—and therefore well-positioned to forge new methodological and substantive connections and to gain the attention of diverse audiences—and when their new terms can be harmonized with multiple intellectual movements.¹⁷¹

B. *Basking in the Entrepreneurial Glow*

Another factor explaining the emergence of the new entrepreneurs is the desire, among certain groups of users, to capture some of the positive connotations associated with the entrepreneur label. The entrepreneur, as alluded to earlier,

171. More speculatively, I wonder if a consciousness of the “decline” of the public intellectual—a topic probed in depth in RICHARD A. POSNER, *PUBLIC INTELLECTUALS: A STUDY OF DECLINE* (rev. 2d ed. 2003)—has informed the move among academics to see an expanding range of actors as entrepreneurs. Intellectuals in America today, it seems to me, have taken on increasingly entrepreneurial routines in pursuit of an audience. Professors and journalists maintain websites and blogs on which they pitch their own work; scholarly merit is measured by number of Social Science Research Network downloads, see, e.g., Bernard S. Black & Paul L. Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 *IND. L.J.* 83 (2006); and aspiring professors are encouraged to cultivate “the art of winning [the] academic game,” MoneyLaw, <http://money-law.blogspot.com> (last visited Feb. 3, 2008). A thoughtful and accomplished friend of mine recently expressed concern that by not writing enough op-eds and magazine pieces, I was hurting my “brand.” (I had been unaware that I had any brand to hurt.) As more and more would-be public intellectuals have incorporated an entrepreneurial dimension into their own work, perhaps it has made them more receptive to the notion of entrepreneurship operating in the realms of philanthropy, policy, norms, and morals. I wonder, moreover, if the term “intellectual entrepreneur” has not caught on simply because intellectuals as a group are not yet ready to embrace this conception of themselves.

occupies a special place in the American popular understanding of capitalism and of itself.¹⁷² She plays a key role in our narrative of settling the frontier (think, most recently, of Silicon Valley), in our belief in Americans' ingenuity and pioneering spirit (think of Benjamin Franklin), in our notion of America as the land of opportunity (think of Horatio Alger), and in our dual commitments to small government and to economic growth. She has attained a kind of mythic stature. Joseph Campbell, the anthropologist who famously synthesized hero myths across premodern cultures, once called the entrepreneur the "real hero" in American society.¹⁷³ The Small Business Administration lists among its guiding principles the goals of "developing and supporting entrepreneurs" and "empower[ing] the spirit of entrepreneurship within every community to promote and realize the American dream."¹⁷⁴ Bill Gates, Warren Buffett, and other self-made billionaires routinely capture headlines. American dictionaries equate entrepreneurs with explorers, heroes, knights, organizers, pioneers, producers, romantics, undertakers, venturers, and voyagers.¹⁷⁵

The desire to capitalize on entrepreneurship's positive connotations has exerted the strongest influence, by far, among proponents of social entrepreneurship—the only one of the new buzzwords not coined by an academic, the only one whose theorists routinely draw the comparison to capitalist entrepreneurship, and the only one whose users routinely claim the label for themselves, not just for others. Aspiring nonprofit-sector innovators often say they are social entrepreneurs; no one ever professes to be a norm entrepreneur. As many have documented, and as advocates of social entrepreneurship like to point out, "the [nonprofit] world has changed" dramatically in recent years.¹⁷⁶ Social entrepreneurship gurus J. Gregory Dees and Peter Economy make the common case that

[m]ore than ever, nonprofit leaders need to be entrepreneurs.
As a leader in the nonprofit sector knows, the job of running

172. See *supra* text accompanying notes 3–5.

173. See Cyril Morong, *The Creative-Destroyers: Are Entrepreneurs Mythological Heroes?* 2 (July 1992), <http://www.geocities.com/cyrlmorong@sbcglobal.net/ENTREPRENEUR.doc> (quoting a 1991 radio interview with Campbell).

174. U.S. Small Bus. Admin., *Guiding Principles*, <http://www.sba.gov/aboutsba/principles/index.html> (last visited Feb. 3, 2008).

175. See *supra* note 5 (listing synonyms for "entrepreneur").

176. See, e.g., BRINCKERHOFF, *supra* note 53, at 3; Jeffrey Soderborg, *Social Entrepreneurship* (June 2005), <http://www.celcee.edu/publications/digest/Dig05-04.html>.

a nonprofit organization has becoming increasingly complicated. . . . Nonprofit leaders face government funding cuts, rising demands for performance measures by foundations, corporations that want strategic benefits from their philanthropy, new forms of competition from the business sector, and serious questions about the effectiveness and appropriateness of traditional charitable remedies for social problems.¹⁷⁷

Old-style charity is out. Performance metrics, business jargon, “venture philanthropy,” collaboration with for-profit partners, and cost savings are in. In this climate of skepticism about the efficacy and efficiency of traditional charity, those who want to promote a robust vision of the nonprofit sector have an added incentive to appropriate the entrepreneurial label. This dynamic then feeds itself; as more and more nonprofit executives claim to be social entrepreneurs and more and more business writers celebrate the concept, the riskier it becomes for an organization not to present itself thus.¹⁷⁸

President Bush’s affection for social entrepreneurship, or at least for the phrase, fits nicely with this account.¹⁷⁹ As exemplified by his founding of the White House Office of Faith-Based and

177. J. GREGORY DEES ET AL., *ENTERPRISING NONPROFITS: A TOOLKIT FOR SOCIAL ENTREPRENEURS* 1 (2001). In a similar vein, Thomas Kelley writes:

Faced with increasing competition for donations and public funds, and under pressure from philanthropic foundations, a growing number of nonprofit charities are adopting the culture and practices of commercial ventures. Twenty years ago the word “entrepreneur” did not exist in the world of charities. Now nonprofits “identify their market niches, to maximize their comparative advantages, to think of their clients as customers, to devise marketing plans, and to engage in strategic planning.” They worry to an ever-greater extent about measurable outcomes and impact, assessing their performance, and demonstrating their cost-effectiveness.

Kelley, *supra* note 48, at 2463 (quoting Dennis R. Young & Lester M. Salamon, *Commercialization, Social Ventures, and For-Profit Competition*, in *THE STATE OF NONPROFIT AMERICA* 423, 437 (Lester M. Salamon ed., 2002) (citations omitted)).

178. While the rise of “social entrepreneurship” has thus been spurred by do-gooders wishing to claim the entrepreneur mantle, it has also been abetted by more traditional entrepreneurs wishing to claim a social dimension to their work. Mark Casson observes of the United Kingdom that “some of the people [who call themselves] ‘social entrepreneurs’ are actually quite ruthless businessmen who are going after a market in public subsidies.” E-mail from Mark Casson, Professor of Economics, University of Reading, to David Pozen (July 18, 2007) (on file with author). Both of the words in “social entrepreneur,” it seems, may be invoked opportunistically.

179. See *supra* note 67 and accompanying text (discussing President Bush’s frequent use of “social entrepreneur” in public remarks).

Community Initiatives (query: does that make him a social entrepreneur, a policy entrepreneur, a norm entrepreneur, a moral entrepreneur, or all of the above?), Bush has been a strong proponent of devolving social service provision from the government to the nonprofit sector.¹⁸⁰ At the same time, he has often expressed pride in the American entrepreneurial spirit and distaste for its perceived nemesis, government regulation.¹⁸¹ Social entrepreneurship allows Bush to marry these themes. It gives him a phrase with which to valorize the private efforts of charitable leaders, to link these efforts with capitalist enterprise and economic growth, and to implicitly undermine those welfarist efforts that are *not* entrepreneurial in nature: most obviously, governmental efforts. Social entrepreneurship, for Bush, represents both a descriptive vision of how the nonprofit sector achieves new goals and a normative vision of how the country ought to approach its social problems.

It is not only social entrepreneurship that benefits from the connection to capitalist entrepreneurship. As noted in Section I.B above, scholars of policy, norm, and moral entrepreneurship almost never unpack the market metaphor and explain how exactly these activities relate to more traditional entrepreneurship. So why don't these scholars give their protagonists another name—leaders, innovators, transformers, change agents, or what have you—that would not beg the question of whether the descriptor makes any sense in a non-economic context? Consciously or subconsciously, I think part of the reason why Kingdon, Price, Sunstein, Koh, Becker, and Posner chose “entrepreneur,” and why others followed suit, was to capitalize on its stature. This is not to say that they wanted all policy, norm, and moral entrepreneurs to command respect; the authors are clear that some of these actors will be self-serving, if not monstrous. But it is to say that in choosing the entrepreneur label, the authors and their followers tapped into a term that brings with it a rich array of associations, a certain amount of gravitas, and a greater likelihood of attracting attention.

C. *Entrepreneur-Friendly External Developments*

The last major factor driving the rise of the new entrepreneurs that I want to highlight is the most sweeping: changes to society that have made extra-economic entrepreneurship increasingly viable for an increasing number of actors. The argument here is

180. See, e.g., President George W. Bush, President Highlights Faith-Based Initiative at Leadership Conference (Mar. 1, 2005), <http://www.whitehouse.gov/news/releases/2005/03/print/20050301-4.html>.

181. *Id.*

that “social entrepreneurship,” “policy entrepreneurship,” “norm entrepreneurship,” and “moral entrepreneurship” have caught on in part because more of these activities happen than ever before. Linguistic change has to some extent tracked real-world change; the spread of the entrepreneur meme is to some extent epiphenomenal.

It is for another paper to try to substantiate this claim empirically, but a number of well-documented external developments seem to imply an enhanced scope for new forms of entrepreneurial activity. Consider, first, the rise of the nonprofit sector. Over the past several decades, the world has witnessed a “global associational revolution,”¹⁸² in which American nonprofit organizations,¹⁸³ foreign nonprofit organizations,¹⁸⁴ and transnational nonprofit organizations¹⁸⁵ have increased exponentially in number and degree of interconnectedness.¹⁸⁶ In some regions, most notably the former Soviet bloc, independent nonprofit sectors are thriving for the first time.¹⁸⁷ These developments are not only the product of social entrepreneurship, whereby countless pioneering figures have founded new

182. This term was coined by Lester Salamon, the nonprofit scholar who has most assiduously documented the revolution. See Lester M. Salamon, *The Rise of the Nonprofit Sector*, FOREIGN AFF., July/Aug. 1994, at 109, 109 [hereinafter Salamon, *Nonprofit Sector*]; Lester M. Salamon et al., *Civil Society in Comparative Perspective*, in GLOBAL CIVIL SOCIETY: DIMENSIONS OF THE NONPROFIT SECTOR 3, 4 (Lester M. Salamon et al. eds., 1999).

183. See DARRYL K. JONES ET AL., THE TAX LAW OF CHARITIES AND OTHER EXEMPT ORGANIZATIONS: CASES, MATERIALS, QUESTIONS AND ACTIVITIES 6–7 (2003) (indicating that U.S. charitable organizations experienced 300% growth in assets and revenues from 1975 to 1995, as compared to 74% GDP growth in the same period).

184. See Jessica T. Mathews, *Power Shift*, FOREIGN AFF., Jan./Feb. 1997, at 50, 52–54 (providing an overview of foreign nonprofit proliferation); Salamon, *Nonprofit Sector*, *supra* note 182, at 109–12 (same).

185. See DAVID HELD ET AL., GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE 54 fig.1.1 (1999) (reporting that the number of international nongovernmental organizations increased from roughly 100 in 1960 to roughly 5500 in 1996).

186. See, e.g., KECK & SIKKINK, *supra* note 116, at 10–11 (describing the growth of transnational advocacy networks); LESTER M. SALAMON, THE RESILIENT SECTOR: THE STATE OF NONPROFIT AMERICA 71–72 (2003) (same); Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 INT’L ORG. 1 (1992) (describing transnational epistemic communities). See generally LESTER M. SALAMON & HELMUT K. ANHEIER, THE EMERGING SECTOR: AN OVERVIEW (1996) (outlining postwar developments in the global role of the nonprofit sector).

187. See generally GLOBAL CIVIL SOCIETY, *supra* note 182, at chs. 14–18; DANIEL SIEGEL & JENNY YANCEY, THE REBIRTH OF CIVIL SOCIETY: THE DEVELOPMENT OF THE NONPROFIT SECTOR IN EAST CENTRAL EUROPE AND THE ROLE OF WESTERN ASSISTANCE (1992).

organizations; they are vital for nurturing social entrepreneurship as well. Especially in less developed countries, the rise of the nonprofit sector has created an institutional and financial infrastructure, a professional network, a governmental buffer, and a perception of legitimacy that together make it far easier for today's social entrepreneurs to pursue their initiatives than it was for their predecessors.

The rise of the nonprofit sector is also relevant for the other new entrepreneurs. As the scholars profiled above have shown, advocacy groups can play a significant role as policy entrepreneurs, norm entrepreneurs, and moral entrepreneurs—be it Ralph Nader's Raiders pushing for consumer safety regulation, Green Peace pushing for expanded environmental consciousness, or evangelical churches pushing for Christian moral principles. Harold Koh's account of transnational norm entrepreneurship, in particular, assigns advocacy groups a central place in moving societies toward new foreign policies and new conceptions of international law.¹⁸⁸

Of course, this global associational revolution is not itself an endogenous phenomenon, but rather is the product of many interrelated social changes. In his study of leading social entrepreneurs, David Bornstein provides the basic list. On the supply side: authoritarian governments have ceded to democracies in some countries, creating new space for civic engagement; greater prosperity has generated funds for more projects and employees; health improvements have allowed people to live longer and to focus on more than just staying alive; educational improvements have given people skills and ideas with which to address social problems; women's movements and civil rights movements have opened up the public sphere to previously marginalized groups; and new technologies have dramatically decreased the costs of learning about, traveling to, and interacting with others around the globe.¹⁸⁹ People today, in short, have more "freedom, time, wealth, health, exposure, social mobility, and confidence to address social problems in bold new ways."¹⁹⁰ At the same time, Bornstein argues, there has been a surge in demand for social entrepreneurship on account of a communications revolution that has heightened awareness of social problems and enabled joint responses, a stagnating public sector in much of the world that has lowered confidence in state solutions, and a nongovernmental organization ("NGO") movement that has given social entrepreneurship unprecedented credibility and

188. See Koh, *Bringing International Law Home*, *supra* note 110, at 647–49.

189. BORNSTEIN, *supra* note 59, at 6–7, 267–68.

190. *Id.* at 7.

whetted people's appetite for more.¹⁹¹

These developments are plainly bound up with the global rise of social entrepreneurship as a practice and ideal; I think they are also relevant for policy, norm, and moral entrepreneurship. At the same time that these developments have empowered more non-state actors to address social problems directly, through new products and services, they have also empowered more actors to address social problems indirectly, through appeals to government officials and public opinion. Moreover, by destabilizing the prevailing social structures, these developments have inevitably called into question the prevailing social norms as well. As Richard Posner notes, "we usually find successful examples of moral entrepreneurship in periods or places of crisis, flux, or transition."¹⁹²

In the United States, these arguments might seem to have less bite, given that we have long possessed one of the world's most vibrant, pluralistic, and well-funded nonprofit sectors.¹⁹³ Yet there are many other features of American life that might suggest—superficially, at least—that this country offers an especially congenial environment for all four of the new forms of entrepreneurship. Our national romance with the capitalist entrepreneur lends a background legitimacy to private efforts to pioneer a new way of doing or thinking about things.¹⁹⁴ The dot-com boom that swept the 1990s and the cult of the CEO that arose in the 1980s have lent today's entrepreneurs an additional cachet.¹⁹⁵ No other tax code is as generous as ours to its nonprofit organizations or, consequently, to its social entrepreneurs.¹⁹⁶ Many nonprofits are

191. *Id.* at 7–10, 267–68.

192. POSNER, *supra* note 1, at 44.

193. See John Simon et al., *The Federal Tax Treatment of Charitable Organizations*, in *THE NONPROFIT SECTOR: A RESEARCH HANDBOOK* 267, 267 (Walter W. Powell & Richard Steinberg eds., 2d ed. 2006) (describing the "extraordinary—probably unique—centrality of the nonprofit sector in American social and economic life"). No country has more nonprofit organizations, employees, or expenditures than the United States, though in four countries, nonprofits command a higher percentage share of total employment. S. Wojciech Sokolowski & Lester M. Salamon, *The United States*, in *GLOBAL CIVIL SOCIETY*, *supra* note 182, at 261, 266 fig.13.4.

194. See *supra* text accompanying notes 172–75 (explaining the entrepreneur's place of pride in the American imagination).

195. See Pagan Kennedy, *The Enlightened M.B.A.*, *N.Y. TIMES*, Nov. 7, 2004, at 4A-13 (linking the emergence of social entrepreneurship with the 1990s having been "a heyday for [capitalist] entrepreneurs"); O'Kelley, *supra* note 35, at 755 ("This most recent [post-1980] era of free market ideological dominance has seen a rekindling of the cult of the entrepreneur primarily in the form of the modern CEO.").

196. See Simon et al., *supra* note 193, at 267.

exempt from income, property, sales, and franchise taxes at all levels of government; contributions to charities may be deductible under state and federal income, gift, and estate taxes; and section 501(c)(3) nonprofits are allowed to issue tax-exempt bonds.¹⁹⁷ These laws are not necessarily good for policy entrepreneurship, given that charities risk losing their preferred tax-status if they engage in substantial political lobbying.¹⁹⁸ But they are good for social, norm, and moral entrepreneurship, presumably, in that they allow nonprofit organizations the funds to do more of it.

Within the political arena, our liberal campaign finance laws, surfeit of interest group lobbyists, and two-party system create strong incentives for policy entrepreneurship. A parliamentary regime or a regime of multi-party proportional representation would not provide as many opportunities for individual politicians to initiate new legislation outside of a broad-based coalition. (Political parties in these regimes may have just as much or even greater scope to innovate, but the individual legislator is more constrained.) Our First Amendment protections insulate most would-be social, policy, norm, and moral entrepreneurs from legal or political reprisal. Compared to the Old World countries of Europe, our relatively heterogeneous, rootless, consumerist culture would appear to be more susceptible to the suasions of new ideas and new values.¹⁹⁹ Our relatively strong embrace of laissez-faire capitalism, meanwhile, might seem consistent with the idea of seeing additional areas of our lives in market terms. Given that the United States possesses such a strong ethic of entrepreneurship and seems to provide so many outlets and supports for its social, policy, norm, and moral applications, it is perhaps unsurprising that it has been American thinkers, to a person, who have spearheaded the study of the new entrepreneurs.

197. Nonprofit organizations also receive many lesser tax privileges. For a thorough discussion of their tax treatment, see generally JAMES J. FISHMAN & STEPHEN SCHWARZ, *NONPROFIT ORGANIZATIONS: CASES AND MATERIALS* pts. 3–4 (3d ed. 2006), and Bazil Facchina et al., *Privileges & Exemptions Enjoyed by Nonprofit Organizations*, 28 U.S.F. L. REV. 85 (1993).

198. See generally Simon et al., *supra* note 193, at 284–88 (reviewing the major nonprofit tax regulations aimed at patrolling the “government border”).

199. On the other hand, to the extent that successful moral entrepreneurship requires not only attractive arguments but also a stirring personal example, the United States’ legal and cultural permissiveness may work against it. Richard Posner has suggested that “[l]iberal democracy makes it difficult for *anyone* to be a moral entrepreneur because by tolerating dissenters it makes it difficult for them to prove their courage and thus cut an inspiring figure.” POSNER, *supra* note 1, at 81.

III. STRETCHING ENTREPRENEURSHIP TO ITS LIMITS

Having documented the rise of the new entrepreneurs and explored some possible causal factors, we are now in a position to circle back to the original, capitalist entrepreneur from whom these recent permutations were derived. In this Part, I move from the descriptive/diagnostic to the evaluative and offer some thoughts on what is gained and lost by calling so many actors “entrepreneurs.” The market metaphor, I will suggest, is misleading on a number of levels but nevertheless captures some distinctive features of the phenomena being described.

A. *But Are They Really Entrepreneurs?*

In what sense are social entrepreneurs, policy entrepreneurs, norm entrepreneurs, and moral entrepreneurs comparable to capitalist entrepreneurs? Although scholars of these subjects rarely address this question head on, the basic answer seems to be that all of these actors serve as “change agents” within their respective market niches.²⁰⁰ Just as a person with an innovative technology can transform, say, the pharmaceutical industry, a person with an innovative argument can transform how society regulates or conceptualizes the provision of pharmaceuticals. While this analogy is coherent at a very general level, it elides several important differences between the activities of the capitalist entrepreneur and the activities of her non-capitalist counterparts.

First, capitalist entrepreneurship is characterized by a greater role for risk. Although economic theorists have disagreed over whether risk-bearing is *the* defining characteristic of the entrepreneur, from as far back as Richard Cantillon they have identified risk-bearing as *a* defining characteristic.²⁰¹ The entrepreneur accepts a lower assured income and, often, the possibility of personal ruin in exchange for the potential to realize above-average future economic gain. In practice, the vast majority of entrepreneurs never fulfill this potential.²⁰² The new

200. See, e.g., MINTROM, *supra* note 2, at 57–59 (describing policy entrepreneurs as “change agents”); Ellickson, *supra* note 118, at 10–17 (same for norm entrepreneurs); J. Cunyon Gordon, *Painting By Numbers: “And, Um, Let’s Have a Black Lawyer Sit at Our Table,”* 71 *FORDHAM L. REV.* 1257, 1289–90 (2003) (same for moral entrepreneurs); Ashoka: Innovators for the Public, *supra* note 58 (same for social entrepreneurs); Dees, *supra* note 44, at 4 (same for social entrepreneurs).

201. See *supra* text accompanying notes 9–10 (summarizing Cantillon’s views); see also MINTROM, *supra* note 2, at 154 (discussing this debate within the canonical economic literature on entrepreneurship).

202. See *supra* note 4 and accompanying text (describing entrepreneurial failure rates in modern America).

entrepreneurs, by contrast, do not generally take on this type or degree of risk. Some of the new entrepreneurs may forsake more lucrative careers and even invest their own financial resources in order to pursue their goals, and all of them may stake their reputations on their efforts. But there is no necessary link between the success of these ventures and the harms or rewards that accrue to the entrepreneur. Many social, policy, norm, and moral entrepreneurs will be nonprofit leaders, government officials, or professional lobbyists; if their cause does not succeed, they will usually still have a job—the exact same job, in fact. The notion of return on investment likewise carries less force in these extra-economic contexts. If the new entrepreneurs do succeed, they and their backers may receive esteem benefits, a warm glow,²⁰³ and other “soft” returns, but there is no mechanism to assure a personalized benefit commensurate with the social value of the achievement.

Some formulations of social, policy, norm, and moral entrepreneurship go further and cut out risk entirely by making success a condition precedent. Hence, some commentators assert that policy entrepreneurship requires “implementation” and “institutionalization” of the policy at issue,²⁰⁴ and Richard Posner suggests that we may be able to identify a moral entrepreneur as such, and not as a “crank,” only after she has changed our beliefs.²⁰⁵ These definitions seem to reject the possibility of identifying an entrepreneur *ex ante*—a strange stipulation given that capitalist entrepreneurship is most obviously identifiable at its moment of genesis, before the venture becomes a settled concern, and only becomes less entrepreneurial as time goes on and success breeds bureaucratization.

Second, capitalist entrepreneurship is essentially an amoral practice, whereas the new entrepreneurs are often driven by an explicit moral goal. All social entrepreneurs want to make the world a better place, some policy entrepreneurs want to enact public-interested legislation, and many norm entrepreneurs (including all moral entrepreneurs) want to change the boundaries of duty or compassion. These actors profess a moral motivation and often pitch their arguments in moral terms. Capitalist entrepreneurship does not make similar claims for itself. If it makes the world a better place, it is because it is in the nature of capitalist markets to

203. I take this phrase from Jim Andreoni, who coined it in explaining why some individuals donate to charity. James Andreoni, *Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving*, 100 *ECON. J.* 464, 464 (1990).

204. See *supra* note 93 and accompanying text.

205. See *supra* note 147 and accompanying text.

reward what serves human needs and wants, not because of purposive moral struggle; it is on account of the invisible hand, not the visible goad. Capitalist entrepreneurs, moreover, do not as a rule make targeted interventions aimed at a specific audience. They will sell their wares to anyone who will pay for them.

Thus, while capitalist entrepreneurs may be seen as the “real heroes” of American society,²⁰⁶ spurring industry upon industry to progress and innovation, they may also be seen as self-serving exploiters, speculators, tricksters, and tyrants. It is true that an increasing number of capitalist entrepreneurs now speak the language of corporate social responsibility, however sincerely.²⁰⁷ But while social, policy, norm, and moral entrepreneurs are necessarily engaged in normative public debates about values, capitalist entrepreneurs can, and often do, remain aloof from such concerns. And while some of the new entrepreneurs may be compromised or even monstrous characters—although more often they are portrayed positively in the literature²⁰⁸—they do not as a group provoke the fundamental ambivalence that attaches to the capitalist entrepreneur on account of her ability to destabilize settled practices and distributional arrangements.²⁰⁹

Third, and relatedly, the new entrepreneurs will in many cases be working to reverse or ameliorate the outcomes of the free (economic) market, whereas capitalist entrepreneurs aim to thrive within that market and, indeed, to generate those very outcomes. I suppose it is possible that social, policy, norm, and moral entrepreneurship could be oriented toward promoting laissez-faire capitalism—such has been the mission of Milton Friedman and the Heritage Foundation²¹⁰—but in practice this has been the exception. Instead, the new entrepreneurs tend to present themselves as correcting for various kinds of market failures: the underprovision of some public good, the maltreatment of some social group, the

206. See *supra* note 173 and accompanying text (quoting Joseph Campbell).

207. See *supra* note 45 and accompanying text.

208. While there is a widespread tendency to valorize the new entrepreneurs, as I noted in Part I, some authors have emphasized that these individuals are also capable of great evil. For a particularly sharp statement of this dualism, see Brooks, *supra* note 119, at 2326–27 (“Human-rights advocates and scholars who study norms are fond of using the term ‘norm entrepreneurs’ to describe people such as Gandhi, Nelson Mandela, and Mother Teresa. . . . But if Mandela is a norm entrepreneur, so is Osama bin Laden . . .”).

209. See *supra* text accompanying notes 23–32 (discussing Max Weber’s and Joseph Schumpeter’s recognition of this ambivalence).

210. For a critical appraisal of Friedman’s career as a “policy entrepreneur,” see Paul Krugman, *Who Was Milton Friedman?*, N.Y. REV. BOOKS, Feb. 15, 2007, at 27.

disparagement of some normative value. Capitalist entrepreneurs are unlikely to address these market failures (if they have not done so already) because there is no money to be made. Norms and morals are difficult to commodify; public goods are underprovided precisely because producers have trouble collecting from customers. The only systematic way in which the capitalist entrepreneur corrects for market failures is in the Kirznerian sense of exploiting inefficiencies for profit, like an arbitrageur.²¹¹

The new entrepreneurs may also advocate for anti-market interventions. Through the transformation of laws or norms, they may seek to channel and constrain the possibilities for free-market enterprise in the hope of achieving non-economic ends. Consider, for example, an NGO that lobbies for a ban on trade with Burma or a feminist who argues for tighter restrictions on the production and distribution of pornography. Each of these actors could be considered a social, policy, norm, and moral entrepreneur. If successful, each would place new limits on the economic marketplace and its business opportunities. These examples simply make explicit what is often left implicit: that there is a basic tension, leading sometimes to confrontation, between the work of capitalist entrepreneurs and the work of the new entrepreneurs. This makes it a little odd to call both groups by the same name.

Fourth, capitalist entrepreneurship has been seen since the time of Jean-Baptiste Say as a positive-sum game,²¹² whereas the new entrepreneurship will often be a zero-sum affair. Economic theorists stress the potential for entrepreneurial innovation to “make” new markets, satisfy a greater number of consumer desires, and stimulate long-run growth—to expand the size of the pie.²¹³ Inasmuch as the market for social entrepreneurship is rational and tends to reward those organizations that generate the greatest social value (however measured), social entrepreneurship may share some of these characteristics.²¹⁴ Positive externalities will be especially likely to result when social entrepreneurs provide public goods or help underprivileged groups gain the means to help themselves.

211. See *supra* text accompanying notes 38–41 (summarizing the views of Kirzner and related theorists).

212. See *supra* text accompanying notes 11–13 (synopsizing Say’s arguments).

213. The long-run growth claim is most associated with Joseph Schumpeter, see *supra* text accompanying notes 28–32, and has by and large been borne out by more recent econometric research. See *supra* note 37 and accompanying text.

214. For a thoughtful overview of the ways in which markets “do not work as well” for social entrepreneurs, see Dees, *supra* note 44, at 3.

Policy, norm, and moral entrepreneurship, on the other hand, often pit one set of political or normative claims against the regnant set, with the result that one side's gain will represent the other side's loss. Think of a consumer safety group advocating stricter automobile crash-test requirements (against the desires of the manufacturers and some future purchasers) or an evangelical religious group advocating for a constitutional ban on same-sex marriage (against the profound desires of many non-evangelicals). Rarely in this world are regulatory or sociocultural changes Pareto-optimal, or even close, which makes policy, norm, and moral entrepreneurship essentially redistributive endeavors. These sorts of tradeoffs are especially endemic in the world of policy entrepreneurship, orbiting as it does around competing political parties. It may be the case that some, perhaps even the majority, of successful policy, norm, and moral entrepreneurship will move society toward positions that are in some sense objectively superior—although there will often be measurement and commensurability problems here that are not present when the sole metric of evaluation is economic efficiency—but there is nothing intrinsic to these pursuits that can assure such an outcome. They may be just as likely to generate rent-seeking as to generate welfare enhancement or moral progress.

Finally, capitalist entrepreneurship is typically associated with a single individual, the maverick founder, whereas the new forms of entrepreneurship are more likely to involve collective efforts. Social entrepreneurship, again, is more similar to capitalist entrepreneurship in this respect than are the others, as an individual can found a nonprofit organization just as easily as she can found a for-profit organization—more easily, perhaps, owing to the reduced capital requirements. But policy, norm, and moral entrepreneurship are at heart acts of lobbying—of changing the preferences or beliefs of some relevant group—and because it requires large amounts of public argument and interpersonal engagement, this lobbying is difficult for one person to do effectively.

I do not want to overdraw this distinction, for there are solitary policy, norm, and moral entrepreneurs who do just fine, and there are capitalist entrepreneurs who co-found businesses and quickly amass a substantial team around them. At a minimum, however, there is a difference in aesthetics. It is striking how often nongovernmental organizations show up in the literature as paradigmatic examples of norm and moral entrepreneurs.²¹⁵ By

215. See, e.g., BECKER, *supra* note 134, at 154 (characterizing the Women's Christian Temperance Union as a moral entrepreneur); Koh, *Bringing International Law Home*, *supra* note 110, at 647 (citing the British and Foreign

contrast, when certain business writers began to advance the idea of intrapreneurship (also known as corporate entrepreneurship) in the 1980s,²¹⁶ it failed to catch on, I suspect, in part because the idea of collective entrepreneurship struck many people as oxymoronic. It violated their understanding of what it means to be a capitalist entrepreneur.

B. The Stakes

I have no doubt that scholars of capitalist entrepreneurship could find additional flaws in the analogy between their subject and the activities of the so-called social, policy, norm, and moral entrepreneurs. But apart from semantic precision, what is at stake in the use of the entrepreneur label? What does it matter if we call these actors “opinion leaders,” “change agents,” “busybodies,” or “norm entrepreneurs”? Assuming, as I do, that linguistic innovations cannot be justified solely in virtue of their popularity, on what grounds might we applaud or decry the proliferating rhetoric around entrepreneurship?

Let us dispense, first, with an evident concern that I do not think has much force. I described in Part I how the new entrepreneurial terms have been invoked very loosely and defined inconsistently. This is not a good reason to condemn them. The same is true for traditional entrepreneurship—and is perhaps the inevitable fate of any highly capacious concept. Users of the new terms ought to be more explicit and rigorous about their premises. But that is generic advice, and some have already followed it.

The deeper concern about the rise of the new entrepreneurs is whether analogizing their work to the work of capitalist entrepreneurs distorts or enriches the way we think about the behaviors being described. “Rhetoric is not reality,” Margaret Jane Radin reminded us two decades ago in a related context; “discourse is not the world.”²¹⁷ But Professor Radin also made clear that using market rhetoric in inappropriate spheres may lead to shoddy reasoning, do violence to certain non-instrumental values, and transform our relationship to the lived world.²¹⁸ I agree with Radin that our labels matter in each of these senses. Against Radin’s anxieties, however, I want to suggest that the use of the

Anti-Slavery Society as a historic transnational norm entrepreneur). The policy entrepreneur literature references nongovernmental organizations much less frequently.

216. See *supra* Part I.B.5.

217. Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1877 (1987).

218. *Id.* at 1877–87.

entrepreneur label in these contexts carries with it three overarching implications that can breed valuable new insights and illuminate exciting new interconnections. The neologisms discussed in this Article are all problematic, but they are also possessed of a rich, if often untapped, descriptive potential.

The first implication is the same one that disquieted Radin: that more and more spheres of our collective lives can be understood in market terms. As I noted above,²¹⁹ this way of thinking and speaking preceded the rise of the new entrepreneurs, which helps explain how these concepts could be adopted across the social science disciplines so rapidly and without serious dissent. The new entrepreneur concepts imply a specific type of market: not a neoclassical market of perfect information, perfect competition, rational decision making, and stable equilibrium,²²⁰ but one in which a savvy innovator or promoter can coax and cajole her fellow participants to a new equilibrium. The new entrepreneurs, recall, are meant to be “change agents.”²²¹ There is a contingent aspect to this vision of how social policies and norms are constructed, in that the market does not tend toward the “natural” or “best” outcome, but rather is subject to the vicissitudes of opportunistic behavior and episodic change.

This implicit market metaphor carries several risks. Perhaps the most basic risk is that writers and readers will conflate the market for policies or norms with the market for saleable goods and thereby overtax the metaphor—that linguistic imprecision will lead to analytic imprecision. One form this analytic error might take is the violation of Hume’s “is/ought” distinction.²²² It is generally reasonable to assume that, absent illegal behavior, if capitalist entrepreneur *A* brings to market a new product that puts capitalist entrepreneur *B* out of business, then *A*’s product is superior to *B*’s at

219. See *supra* Part II.A (third-to-last paragraph).

220. See *supra* notes 16–18 and accompanying text.

221. See *supra* note 200 and accompanying text.

222. I am referring here to Hume’s famous argument that a prescriptive “ought” proposition cannot be deduced (without explanation) from a merely descriptive “is” proposition. DAVID HUME, A TREATISE OF HUMAN NATURE 469–70 (L.A. Selby-Bigge & P.H. Nidditch eds., Oxford 2d ed. 1978) (1739). It is because of Hume’s is/ought distinction that it is not sufficient to say, in evaluating the desirability of the new entrepreneur labels, that their popularity with commentators is reason enough to preserve them. The labels may have proven popular because they capture something new and illuminating and worth retaining, but they may also have taken hold because of superficial aesthetics, intellectual laziness, deference to highly regarded early users, or sheer novelty. An affirmative argument needs to be made that these are good (or bad) labels. Very few writers, however, have tried to provide such an argument, and none has done so for more than one of the new terms.

creating private economic value. Just because a particular social, policy, norm, or moral entrepreneur carries the day, however, does not likewise imply that her ideas are objectively superior to those of her competitors or that she has created anything of positive social value. The new policy entrepreneur may prevail for any number of reasons unrelated to the public interest, including simply because her views strike the right emotional chord—a kind of populist appeal that most commentators would not accept as grounds for moral or policy judgment. If the individuals being described do not actually see themselves as entrepreneurial actors, the new labels might also be misleading in their phenomenology. Muhammad Yunus probably does see himself as a social entrepreneur, but would Florence Nightingale or John Muir have accepted that characterization?²²³ Ralph Nader might see himself as a policy entrepreneur, but does Senator Domenici (who is, after all, an elected representative) see himself this way?²²⁴

An additional concern is the potential for instrumentalism.²²⁵ Calling individuals like Martin Luther King, Jr., entrepreneurs suggests an equivalence not only in methods but also in motivations between Dr. King and the person who starts a high-tech company in order to strike it rich. Yet only if we define self-interest so broadly as to be tautological are their motivations the same, and there is a risk in calling so many non-capitalists entrepreneurs that we will lose sight of the human capacity for other-regarding action. Cynicism is a related hazard. If enough people follow the *New York Times* in the belief that the way to “save the world” is to “treat it like a business,”²²⁶ we may also lose sight of the reasons why the world ought to be “saved.” Finally, there is the risk of commodification. Proliferating market rhetoric may undermine the idea of public values and a public sphere, of a domain beyond the marketplace, leading us to forget that not everything is, or should be, up for grabs.

None of these risks need materialize, however; commentators can check each other for analytic error and excessive instrumentalism, cynicism, or commodification. Counterpoised

223. I bring up Nightingale and Muir because they are two of the social entrepreneurs identified by Ashoka as classic exemplars of the tradition. See Ashoka: Innovators for the Public, *supra* note 57.

224. See KINGDON, *supra* note 82, at 189 (identifying Nader and Domenici as paradigmatic policy entrepreneurs).

225. For an argument that instrumentalist thinking has had a pervasive influence on contemporary legal thought and that this is having a corrosive effect on the rule of law, see BRIAN Z. TAMANAHA, LAW AS A MEANS TO AN END: THREAT TO THE RULE OF LAW (2006).

226. Eakin, *supra* note 51, at B9 (describing social entrepreneurship).

against these risks, there is something potentially very generative about identifying a “market” for social policies and norms and the role of entrepreneurs therein. As a matter of phenomenology, it is possible that the individuals and groups that comprise the new class of “entrepreneurs” really do see themselves as entrepreneurs. There is a potential circularity here, in that use of the new labels may lead these individuals to this self-conception; but the new labels may also simply clarify what was already their instinctive orientation, even if they had not yet articulated it as such.

More fundamentally, the new labels may offer a more accurate and nuanced way to portray these individuals, presenting them not simply as saints, activists, moralists, or busybodies but as players in a kind of social game. The entrepreneur label suggests that these individuals will share a distinct set of skills and tactics as well as personality traits. It suggests a role not only for persuasion and quid pro quos but also for coalition-building, marketing, tipping points, bandwagon effects, and the like. It adds both a strategic dimension and a social psychological dimension to the account of policy and norm construction. This allows us to find commonalities across different types of public figures—to see how the top-notch lobbyist is in some sense a kindred spirit to the fire-breathing reverend—and to find shared patterns in the evolution of policies and norms. It allows us to model these activities and make falsifiable predictions. In these ways, calling all of these actors “entrepreneurs” can demystify their work.

While it may run the risk of reductionism, the market metaphor thus holds out the promise of *consilience*, of “bring[ing] a diversity of phenomena under a single explanatory scheme.”²²⁷ The entrepreneur label, moreover, warns against complacency and idolatry by reminding us to think critically about those who would speak for the public, for they too are just another breed of salesperson. The label can inject a healthy dose of skepticism about status-based authority that need not be cynical but simply realistic.

Beyond the market metaphor, a second underlying implication of the new entrepreneurs is a certain vision of how social change is achieved. To simplify dramatically, classic theories of social change tend to emphasize, on the one hand, the power of exceptional, visionary individuals and new ideas to move the masses or, on the other hand, the role of material, demographic, and social-structural

227. JULES L. COLEMAN, *THE PRACTICE OF PRINCIPLE: IN DEFENCE OF A PRAGMATIST APPROACH TO LEGAL THEORY* 41 (2001). Professor Coleman explores the value of consilience for explanatory theory and the attendant threat of reductionism in *id.* at 41–53.

forces to compel adaptive change.²²⁸ The new entrepreneurs split the difference. The entrepreneurial paradigm recognizes a role for charisma and innovation, but a role that is disciplined by the structure of the marketplace—by what competitors are offering, what customers are demanding, what the government is taxing or subsidizing. Thus, while the new entrepreneurs must be compelling and creative to persuade relevant groups to adopt their policies or their norms, they must also be strategic in their approach. Policy entrepreneurs, for instance, must wait for a policy window to emerge if they want to maximize their chances of finding a receptive audience. They must have the endogenous capacity to be able to exploit a window, but the window itself is an exogenous phenomenon.

This moves us beyond a Great Man theory of history—beyond the view that there is something “superhuman” involved in social and political change²²⁹—to explain the rational character of successful advocacy and to democratize the account of who can participate effectively.²³⁰ It allows us to see that the pursuit of certain forms of social and political change can be a career, just as starting and running a business can be a career. At the same time, the entrepreneurial conceit can move us beyond a structural theory of change to explain the idiosyncratic, personality-driven features of social movements and social reforms. It recognizes that while all actors must work within the existing market paradigm, the rare exceptional innovator can change the paradigm. Harold Koh was able to convince so many readers that transnational norm entrepreneurs play a central role in the construction of international legal norms because he populated his account with individuals—William Wilberforce, Aung San Suu Kyi, Eleanor Roosevelt—whose influence seems to transcend any materialist or social-structural explanation.²³¹ The new entrepreneurs invite the view, in John Kingdon’s words, that it is “a false dichotomy to some extent between structure and personality when looking at how change happens.”²³²

228. David Bornstein limns this divide in BORNSTEIN, *supra* note 59, at 90–91.

229. KINGDON, *supra* note 82, at 183.

230. This is the inspirational promise behind Ashoka’s slogan, “everyone a changemaker.” See Bill Drayton, Ashoka: Innovators for the Public, *Knowing History, Serving It: Ashoka’s Theory of Change*, <http://www.ashoka.org/node/986> (last visited Feb. 3, 2008) (“Ashoka’s job is to make Everyone a Changemaker. To help create a world where everyone has the freedom, confidence, and skills to turn challenges into solutions.”).

231. Koh, *Bringing International Law Home*, *supra* note 110, at 647–48.

232. KINGDON, *supra* note 82, at 182; see also BORNSTEIN, *supra* note 59, at

It might be objected that the new labels will only muddy the analysis because entrepreneurship, as a conceptual hybrid of the personal and the structural, introduces an element that can never be formally modeled to satisfaction or even rigorously specified. The best rebuttal to this charge is that the perfect should not be the enemy of the good. The same concern holds true for analysis of the capitalist process, which is why neoclassical economics for so long ignored the entrepreneur and depicted firms and households as optimizing automata. That has come to appear as an impoverished approach.²³³ Just because entrepreneurship cannot be reduced to an algorithm does not mean that it does not exist or that it cannot provide a clarifying construct.

The third and final implication I want to highlight is that the use of the entrepreneur label invites a blurring of the traditional categories of public, private, for-profit, and nonprofit. This is related to the first two implications, which recognized the spread of markets across novel domains and the interactions between private initiative and the regulatory environment. As several commentators have noted, this blurring is especially acute in the area of social entrepreneurship.²³⁴ Proponents of social entrepreneurship often encourage nonprofit organizations to earn income, to take a leadership role in providing public goods, and to collaborate with for-profit and governmental entities in new ways. Some believe that for-profit companies can themselves be social entrepreneurs.²³⁵ Yet the other new entrepreneurs also destabilize the traditional categories. Policy entrepreneurship conceptualizes policymaking not just as the province of government officials but also of all the groups that try to influence them. Norm and moral entrepreneurship open the door to a theoretically infinite range of actors, savory and not, to determine questions of value.

There are pitfalls to this blurring. Roles may be confused. Elected officials may see themselves not as representatives of a constituency but as competitors in a game of policy innovation.

90–92 (making a similar point in the context of social entrepreneurship).

233. See *supra* notes 16–18 and accompanying text.

234. For an important discussion of this form of “blurring” in contemporary U.S. civic life, see MINOW, *supra* note 47, at ch. 2 (documenting and diagnosing pervasive “border crossing” between the nonprofit and for-profit sectors, nonprofits and government, for-profits and government, and religious and secular institutions). For a discussion of social entrepreneurship’s blurring function in particular, see Dees, *supra* note 44, at 1. See also *supra* note 100 (discussing the concern that social entrepreneurship may undermine values such as care and compassion and displace valuable forms of “old-style” charity and social service provision).

235. See *supra* text accompanying notes 45–46.

Charities may lose sight of their mission in pursuit of efficiency or profit. Legal distinctions may be confounded.²³⁶ Deeply unattractive line-crossing may occur. Politicians may pander to bigoted voters by developing policies that promote those voters' moral views. Lobbyists may craft noxious legislation to reward their clients. Nonprofit organizations may compromise their mission by engaging inappropriate strategic partners. There is a kind of postmodern sensibility to the idea of "entrepreneurs" acting across so many domains, in its suggestion that everything is the product of social struggle; that no one set of policies or norms can be identified as objectively best; that ideas do not win out in virtue of their abstract merit; that capitalists can be do-gooders and moralists can be capitalists. This raises the specter of trivializing meaningful distinctions and licensing value relativism.

Yet this blurring is already happening in real life, and we need a language that reflects that: the issue here is not whether the border-crossing activities described by social, policy, norm, and moral entrepreneurship *should be* occurring, but whether they *are* occurring (or may be expected to occur) in the ways suggested by the labels. While it is true that rhetoric can shape reality and that identifying new forms of "entrepreneurship" runs the risk of legitimizing, even valorizing, some activity that may be undesirable, these are grounds for careful evaluation and use of the terms, not for their dismissal. Some forms of sectoral blurring, moreover, are desirable—here again, social entrepreneurship is the leading example—and the entrepreneur label can capture this too. The entrepreneur, recall, can be seen as a kind of *bricoleur*,²³⁷ assembling existing materials in unforeseen ways so as to create something new and useful. She creates value in the act of border crossing.

I think it is especially helpful that "social entrepreneurship"—by far the most popular of the new buzzwords—invites us to consider itself in relation to capitalist entrepreneurship. As discussed above,²³⁸ although social entrepreneurs aim to adopt a business mindset, they often work to oppose market outcomes and in this sense operate at tension with capitalist (antisocial?)

236. Thomas Kelley makes this point with respect to the definition of "charity" in U.S. exempt organizations law. *See* Kelley, *supra* note 48, at 2472 ("In recent times, as the trends toward social entrepreneurship and venture philanthropy have accelerated, and as the bounds between for-profit and nonprofit enterprises have blurred, our vague, ill-discussed, ill-defined legal definition of charity has been too amorphous to lend structure to the difficult task of sorting out what is and is not charitable in the eyes of the law." (citation omitted)).

237. *See supra* text accompanying note 5.

238. *See supra* text accompanying notes 212–14.

entrepreneurs. Yet while calling them both “entrepreneurs” might seem to overlook this tension, it captures well the dialectical relationship between these two groups. The key point is that social entrepreneurs aim to rectify the market’s social harms by working *within* the existing capitalist structure. They aim to preserve and (by their lights) to improve the market system, and indeed to emulate some of its best features, rather than to undermine it. The basic narrative of social entrepreneurship, in which a group of public-minded entrepreneurs intervenes to save capitalism from its own worst tendencies, is thus an inversion of Marx’s narrative of entrepreneurship precipitating capitalism’s demise.²³⁹ Social entrepreneurs are reformers, not revolutionaries. Their work is meant to legitimate and improve upon the work of their capitalist counterparts. Calling them anything other than entrepreneurs would make this obscure.

CONCLUSION

This Article proceeded from an observation that the entrepreneur label is now being applied in a variety of novel contexts—an observation that, to my surprise, no previous commentator seems to have made—and from a conviction that something can be gained from evaluating these developments side by side. Part I documented the proliferation of “entrepreneurs” across academia, yielding a historical puzzle: these new terms emerged more or less contemporaneously, and yet without any reference to each other. Part II offered some tentative explanations. Part III offered both a critique and a qualified defense of this rhetorical move. Although the market metaphor is in some ways misleading outside of the capitalist context, I argued, in other respects it can be clarifying. It allows us to see the strategic character, the distinctive vision of social change, and the blurring of sectoral categories embedded in the concepts of social, policy, norm, and moral entrepreneurship. Whatever readers think of these arguments, I hope I have convinced them that this is a puzzle worth pondering—that the appearance of “entrepreneurs” in so many distinct conversations says something meaningful about our society and the intellectuals who aspire to explain it.

It would be futile as well as pedantic to call for fundamental reforms to entrepreneurship’s linguistic migration, and I have no desire to do so. With this analysis I wish only to give future

239. *See supra* text accompanying notes 19–22.

exporters of the term a sense of the tradition within which they are operating, a framework to understand the implicit associations they are conjuring, and some reasons for caution.