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INTERNATIONAL BOOK ESSAY

Social Norms 2.0: From Private Governance to Co-Evolution

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FLORIAN GRISEL, *The Limits of Private Governance: Norms and Rules in a Mediterranean Fishery*, New York: Hart, 2021. USD 62.44.
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Introduction

Florian Grisel's The Limits of Private Governance: Norms and Rules in a Mediterranean Fishery is a remarkable work in socio-legal scholarship. Centered on the *Prud'homie de pêche* of Marseille, a legally recognized corporation of fishers that has governed access to fishing grounds, regulated techniques, adjudicated disputes, and enforced sanctions since the Middle Ages, the book examines an institution whose authority spanned monarchies, empires, occupations, and republics. Composed of elected representatives drawn from the fishing community, the *Prud'homie* exercised rule-making, adjudicatory, and enforcement powers that closely resemble those of a public authority, even while remaining formally outside the state. Drawing on extensive archival research, historical legal analysis, and ethnographic fieldwork among contemporary fishers, Grisel reconstructs the *Prud'homie*'s institutional life across more than eight centuries.

Rather than presenting the *Prud'homie* as a historical curiosity, Grisel treats it as a vantage point from which to reconsider foundational assumptions in the private governance and social norms literature. What makes this book especially compelling is the way it challenges the autonomy–dependence binary that has structured the field for decades. The "order without law" tradition has emphasized the self-sufficiency of norms among close-knit communities, while the state-dependence thesis has argued that private orders flourish only when the state provides calibrated support. Grisel argues that both frameworks are incomplete. Norms are indispensable but insufficient; states matter but do not determine outcomes. Governance arises instead from evolving, recursive relationships among norms, rules, and political

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institutions. This relational dynamic—not normative autonomy or state intervention—explains both institutional endurance and institutional decline.

This essay proceeds in three steps. First, I summarize Grisel's major contributions, particularly his critique of the core assumptions of private governance theory. Second, I situate his work within the broader trajectory of the private ordering literature—what I call "social norms 1.0"—and draw on my own research to argue that both his book and mine point toward a new theoretical paradigm: social norms 2.0, grounded in the co-evolution of law, social norms, and political authority. I conclude by suggesting that this co-evolutionary framework has the potential to usher in a new era of the study of private governance.

GRISEL'S CONTRIBUTION: THE LIMITS OF PRIVATE GOVERNANCE

Grisel's book reframes how we understand private governance. By tracing the *Prud'homie*'s long history, he shows that neither social norms nor state support alone can explain its endurance. Instead, its trajectory reveals the relational foundations and inherent limits of private governance.

Norms Alone Do Not Govern

Grisel opens by revisiting the central claims of the private governance literature. Building on the work of Robert Ellickson, Elinor Ostrom, and others, this tradition emphasized the capacity of close-knit groups to resolve disputes and sustain cooperation through informal norms, reputational sanctions, and decentralized monitoring. These scholars showed that communities can often achieve efficient outcomes without state law or formal institutions—a powerful corrective to overly legalistic accounts of order.

Yet Grisel demonstrates that the *Prud'homie* does not fit this model. In Marseille, norms were neither universally shared nor self-enforcing. They did not provide clear guidance in the face of new fishing technologies, ecological pressures, or growing commercialization. As he writes: "The normative background shared by the fishers did not provide ready-made answers . . . Without the rule-making activities of the Prud'homie, the fishers were left to discuss their compliance with social norms ad infinitum" (151).

Norms required interpretation, stabilization, and adaptation through institutional means. The *Prud'homie*'s emergence in the fifteenth century thus illustrates a fundamental point: private governance requires organization. Norms do not govern themselves.

Private Orders and Political Authority: a History of Co-Adaptation

Grisel's second major intervention is his critique of the state-dependence thesis. According to this view, private governance succeeds only when the state provides the "right" balance of recognition and restraint. But the *Prud'homie*'s eight-century history contradicts this. The institution survived because it adapted to each political regime. Under the monarchy, it secured royal charters that formalized its jurisdiction; under Napoleonic rule, it became a semi-official administrative body; under republican governments, it negotiated reforms that preserved aspects of its authority.

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Grisel captures this dynamic succinctly: "State support becomes a function of the capacity of private orders to govern (and not the other way around)" (137). Private governance succeeded not because the state calibrated its involvement but because the *Prud'homie* forged durable relationships with changing authorities. This insight destabilizes both autonomy-based and state-centric theories.

The Limits of Private Governance

Grisel's analysis of the *Prud'homie*'s decline is among the book's most striking contributions, and it becomes even more persuasive when read alongside his account of its internal organization. For centuries, the *Prud'homie* endured not because its social norms were unusually robust, but because it developed institutional mechanisms that translated those norms into recognizable procedures. Its legitimacy rested on a blend of tradition and organizational form: regular elections, participatory meetings, transparent deliberation, and rule-based decision-making. These practices made the *Prud'homie* both responsive to local fishers and credible to political authorities. Long before modern administrative law, it operated as a quasi-public institution whose internal processes—public hearings, electoral accountability, and structured sanctions—stabilized expectations and coordinated behavior.

Yet these very strengths exposed the institution's limits when the political environment transformed. As European integration reshaped the governance of fisheries, authority shifted from localized administrative arrangements to complex, multilevel institutions operating at national and supranational scales. The *Prud'homie*'s deeply rooted procedures, finely attuned to local knowledge and community expectations, no longer aligned with the scientific, technocratic, and jurisdictionally expansive frameworks that structured EU fisheries management. What had once been a source of resilience—its groundedness in local practice—became a barrier to adaptation.

The *Prud'homie* did not decline because its norms eroded or because the French state overwhelmed it. Its authority became illegible in a new political order. Private governance, Grisel argues, has inherent limits: institutions endure only when their organizational repertoires can evolve alongside shifting political and administrative orders. The *Prud'homie*'s history, therefore, reveals an institution that defies neat categorization as "private" or "public," "informal" or "formal." Its authority emerged from—and ultimately depended on—the evolving interplay between internal organization and external political relationships.

SOCIAL NORMS 2.0: THE CO-EVOLUTION

Grisel's critique of private governance resonates deeply with my own efforts in a radically different time and place to examine private governance amid rapid social changes in *Chinese Small Property: The Co-Evolution of Law and Social Norms* and *The Authoritarian Commons: Neighborhood Democratization in Urban China* (Grisel forthcoming). Together, our works show that the first generation of social norms scholarship—what I call social norms 1.0—provided essential insights but rested on assumptions that do not hold in many real-world settings. When placed in dialogue, the *Prud'homie* in Marseille and homeowners associations (HOAs) and village co-ops in urban China

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reveal strikingly similar dynamics: governance emerges not from normative autonomy or state-calibrated support, but from co-evolution among norms, law, and political institutions.

Social Norms 1.0: Achievements and Blind Spots

The early private-ordering literature demonstrated that communities can often solve collective action problems without formal law, but it did so by portraying normative environments as relatively coherent, bounded, and self-contained. Robert Ellickson's (1991) *Order without Law* famously showed how Shasta County ranchers relied on informal norms of reciprocity and reputation—rather than tort law—to resolve cattle trespass disputes, suggesting that legal rules matter little when social expectations are strong. Elinor Ostrom's (1990) work on irrigation systems and fisheries similarly revealed how communities can construct intricate rule systems—often more adaptive than state regulation—to govern common-pool resources, provided they share stable membership, clear boundaries, and mechanisms for mutual monitoring. Carol Rose's (1986) "The Comedy of the Commons" added a crucial conceptual layer by showing that certain resources—paths, markets, waterways, and other inherently public spaces—can be governed effectively through customary norms that generate positive-sum interactions, rather than the tragic overuse predicted by classical theories. Her work highlighted the generative and inclusive dimensions of customary ordering, reinforcing the view that informal governance can be efficient, stable, and socially embedded.

Lisa Bernstein's studies of diamond dealers (1992) and cotton merchants (2001) likewise documented how merchant communities rely on reputation, repeat play, and extralegal arbitration to enforce contracts more efficiently than courts. Barak Richman (2017) extended this insight to ethnic commercial networks where cultural homogeneity and dense social ties deter opportunism. Lior Strahilevitz (2003) broadened the scope of the literature by analyzing how norms operate in "loose-knit groups," showing that informal governance can extend "off the ranch" and beyond small, close-knit communities. David Skarbek (2014), in turn, demonstrated how prison gangs develop highly structured quasi-legal systems—including constitutions, adjudication, and enforcement—when formal state institutions fail to provide credible order.

Together, these scholars mapped a rich landscape of informal governance, but they did so by focusing on communities whose internal cohesion and relative insulation enabled norms to function as stable, self-contained systems.

It is also important to highlight research that pointed toward the direction of co-evolution. Richard McAdams (2015) and many others have studied the law's various effects on social norms. Dan Kahan (2000) investigates how legal interventions must be calibrated to avoid backlash and to facilitate norm change by working with, rather than against, the prevailing normative environment. Robert Cooter (2000) examines three effects of social norms on law: expression, deterrence, and internalization. Parchomovsky and Siegelman (2004) examine the political economy of community governance and the tensions between communal preferences and state-driven redevelopment efforts. Rick Brooks and Carol Rose's (2013) emphasize how racially motivated restrictive covenants operated at the

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intersection of private norms and public enforcement, illustrating that the boundary between private regulation and state authority is porous and contested. Together, these scholars examine the interactions between law and social norms in different contexts. Their work foreshadowed what I call social norms 2.0, but they did not fully theorize the dynamic, recursive, and institutionally embedded processes that Grisel and I identify—processes in which norms, legal rules, and political authority continually reshape one another.

When Political Authority Matters: France and China in Comparison

Both Grisel's and my research show why the assumption that communities govern primarily through internally generated norms is inadequate. In Marseille, the *Prud'homie*'s authority did not arise from a self-contained normative order but from its ability to forge relationships with successive political regimes over eight centuries. Under the monarchy, it secured royal charters that recognized its jurisdiction; during the Napoleonic era, it adapted to a centralized administrative state by emphasizing its technical expertise in fisheries management; and under the Republic, it negotiated reforms that preserved aspects of its authority. Throughout these shifts, the *Prud'homie*'s legitimacy rested on a dual foundation: the community's recognition of its organizational processes and the state's acknowledgment of its governance capacity. Its internal procedures—elections, open deliberations, and rule-making—allowed it to present itself as a credible quasi-public institution long before the emergence of modern administrative law.

The *Prud'homie*'s decline illustrates this embeddedness in reverse. The institution did not fail because fishers abandoned their norms or because national authorities suppressed it. Rather, its localized rules and practices became ill-suited to a new governance scale. When fisheries regulation shifted to the multilevel European Union, the *Prud'homie*'s context-specific knowledge, informal procedures, and community-based legitimacy did not translate into the technocratic, data-driven, and standardized frameworks of EU governance. Its authority became illegible within this new order. The *Prud'homie*'s history, therefore, shows that private governance succeeds only when it remains aligned with an evolving political environment.

A parallel dynamic unfolds in contemporary China, though within a very different authoritarian context. In my first monograph, *Chinese Small Property*, I examine how a network of private and public actors sustains a market of real estate without legal titles, and how the market has evolved from the 1980s to the 2010s. My second monograph, *The Authoritarian Commons,* shows that successful community self-governance does not arise from society alone. It depends on a strong state capable of building and sustaining the institutional infrastructure for neighborhood governance; a strong society able to mobilize, articulate collective demands, and negotiate with state actors; and a meaningful degree of rule of law that mediates conflicts between the state and homeowners and provides a stable framework within which both sides can bargain. Only when these three conditions align do Chinese homeowners' associations HOAs develop the capacity to govern effectively. Drawing on an in-depth investigation of the nationwide self-governance movement among hundreds of millions of urban homeowners, *The Authoritarian Commons* demonstrates that the prospects of

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community self-governance in China turn not on social norms alone but on the evolving interplay among state capacity, societal mobilization, and legal mediation.

Across Marseille and Chinese cities, a shared insight emerges: governance is a product of co-adaptation between community actors and political institutions. Private orders endure when they align their internal repertoires with the demands of the state, and they decline when political environments shift beyond what their institutional forms can accommodate.

Co-evolution as Social Norms 2.0

The deeper framework that unites Grisel's findings with my own is what I describe as co-evolution. Co-evolution recognizes that governance arises from the continual interplay of social norms, legal institutions, and political authority. It rejects the assumption—central to social norms 1.0—that normative and legal orders can be analytically separated. Instead, it emphasizes that norms require institutions; institutions require political relationships; and political authority adapts to the capacities, strategies, and mobilizations of private actors. In both France and China, norms and law do not operate as separate systems but continually shape one another. Private orders endure when they forge effective relationships with public institutions, and they decline when those relationships break down or when political environments outgrow their organizational capacities.

This co-evolutionary approach does not deny the importance of social norms. Rather, it situates them within the broader legal and political structures that give them force. It allows us to explain why the *Prud'homie* thrived for centuries yet faltered in the face of the European Union; why HOAs flourish in Shanghai but remain constrained in Beijing and Shenzhen; why private orders sometimes strengthen state capacity and sometimes contest it; and why governance cannot be reduced to either norms or law alone.

In this sense, co-evolution defines the analytical horizon of social norms 2.0: a framework that foregrounds interaction, embeds normative life in a political context, and treats governance as an emergent product of recursive adaptation rather than as the triumph of either informal norms or formal law. A co-evolutionary approach highlights three interrelated dimensions of governance that the autonomy–dependence framework cannot capture.

First, co-evolution begins from the embeddedness of public and private ordering. Institutions such as the *Prud'homie* or Chinese HOAs do not operate outside or in opposition to the state. Their authority is constituted through their relationships with political institutions—monarchical and republican administrations in Marseille, municipal governments, street offices, and party organs in China. These relationships evolve across political transitions, administrative reforms, and shifts in state capacity.

Second, co-evolution arises from the layering and fragmentation of law and political authority. Real communities seldom inhabit a single legal hierarchy or a unified normative system. Instead, they navigate overlapping statutes, administrative directives, community bylaws, and informal norms. This multiplicity is the terrain on which governance is built. Actors strategically mobilize different layers of authority, reshaping both legal meaning and normative practice.

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Third, co-evolution centers on the interactive strategies of public and private actors. Private actors deploy legal and organizational tools to strengthen their position—invoking statutory rights in Shenzhen, mobilizing residents for elections, or appealing to historical authority in Marseille. The state adapts its approach according to capacity and political priorities: Beijing restricts HOA autonomy; Shanghai constrains it through administrative competence; Shenzhen tolerates and relies on it. Governance emerges from this ongoing negotiation. As Grisel (forthcoming) perceptively notes, these dynamics are not confined to authoritarian settings; similar patterns of co-adaptation between communities and political authorities can also be found in democratic regimes.

Taken together, these components reveal why institutional outcomes cannot be deduced from either informal norms or formal law alone, and why states depend on private actors even as they seek to regulate them. Governance arises from a layered institutional environment, the public–private embeddedness of authority, and the strategic interaction between state and community actors. This dynamic, recursive process is the heart of the co-evolutionary model—and the analytical foundation of social norms 2.0.

CONCLUSION: THE RENAISSANCE OF SOCIAL NORMS

The Limits of Private Governance is an important contribution to socio-legal studies. It offers an elegant historical account, a powerful theoretical critique, and a compelling rethinking of the role of private orders in modern governance. When read alongside my own works, *Chinese Small Property* and *The Authoritarian Commons*, a broader shift becomes visible: away from the autonomy–dependence debate that dominated early social norms literature and toward a relational, dynamic, and institutional vision of governance.

Taken together, our research suggests that the future of social norms scholarship—"social norms 2.0"—must center on co-evolution: the recursive, interactive, and adaptive processes through which law, political authority, and private ordering continually shape and reshape one another. This is not a modest revision to existing models. It is a reframing of the field. It moves us from studying *order without law* or *order through law* to studying order through co-evolution. In doing so, it opens new avenues for comparative research, encourages deeper engagement with historical and political contexts, and promises richer explanations for why institutions endure, change, or collapse.

Florian Grisel's book exemplifies the empirical richness and theoretical clarity that the field needs. It is a privilege to put our books into conversation, and I hope that together they help advance a new agenda for understanding how societies govern themselves.

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