

# **AN EMPIRICAL ANALYSIS OF THE RELATIONSHIP BETWEEN LAW, MORALITY, AND PERSONAL CONDUCT: IMPLICATIONS FOR THEORY AND POLICY\***

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Scholars have long engaged in an intellectual struggle to define the relationship between law and morality, a task that is especially complex when examining criminalization. To date, however, the so-called Hart–Devlin debate on the social control of morals through criminal law has been largely theoretical. This study empirically examines the link between perceptions of morality and corresponding views on criminalization on 11 low-consensus deviant behaviors, including drug offenses, victimless sex offenses, and criminal traffic offenses. Moreover, it examines the relationship between perceptions of law and morality on personal conduct that violates both social norms and criminal law. The analyses find strong support for an empirical link between conceptualizations of that which is perceived as immoral and that which is perceived as warranting criminal sanction for drug and traffic offense, but not for consensual sexual conduct. The analyses also support the proposition that morality appears to be a stronger mediator of deviant behavior than the law.

Scholars have long engaged in an intellectual struggle to define the relationship between law and morality (Aristotle, c. 350 B.C.E./2003; Devlin, 1965; Hart, 1963; Hume, 1739/1978; Kant, 1785/1996; Plato, c. 360 B.C.E./2008; Rawls, 1972; Rousseau, 1762/1979). Morality has also been an integral part of the study of

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psychology since its early roots (Freud, 1930/2005; Gilligan, 1982; Kohlberg, 1964, 1981, 1984; Piaget, 1932/1965). In spite of the pervasiveness of morality as a topic of research in the humanities and social sciences, criminal justice has largely neglected morality as a variable even though it plays a role in both Social Control Theory and Social Learning Theory (Akers, 1985; Hirschi, 1969). Empirical tests of these theories have demonstrated that moral belief systems are related to one's propensity to engage in criminal behaviors (e.g., Akers & Cochran, 1985; Antonaccio & Tittle, 2008; Bachman, Paternoster, & Ward, 1992; Evans, Cullen, Burton, Dunaway, & Benson, 1997; Krohn & Massey, 1980; Matsueda, 1989; Wikström & Treiber, 2007). "Yet, in spite of such evidence, the effect of (lack of) morality in explaining criminal behavior has not been widely explored, nor has its import relative to other variables been fully determined" (Antonaccio & Tittle, 2008, p. 481). Moreover, in addition to its role in criminological theory, the connection between law, morality, and specific aspects of the criminal justice system have only recently begun to be explored (Carrier, 2007; Lambert, Pasupuleti, & Jiang, 2008; Lee & Rasinski, 2006; Rogers, Smoak, & Liu, 2006; Simpson, 2005). The present study helps to fill this void in the literature by investigating the link between law and morality as they affect several concrete criminal behaviors that have previously been identified as low-consensus deviance (see Winslow & Gay, 1993).

## REVIEW OF THE LITERATURE

### *An Overview of the Links Between Law and Morality*

Since the mid-1960s, the ongoing debate regarding the link between criminal law and morality has often been referred to as the "Hart-Devlin Debate" (Lee, 1986; Strong, 1997), stemming from the writings of Professor H.L.A. Hart and Lord Patrick Devlin. Although arguments about the link between law and morality have ancient roots (cf. Aristotle, c. 350 B.C.E./2003; Plato, c. 360 B.C.E./2008), the specific debate between Hart and Devlin took shape following the issuance of the Wolfenden Report (1957), a study commissioned by Great Britain's Parliament to examine whether to decriminalize England's sodomy laws (Strong, 1997; Summers, 2005). While Hart and Devlin disputed the decriminalization recommendations in the

Wolfenden Report, their disagreement ran much deeper than holding differing opinions on the legalization of sodomy. They fundamentally disagreed about the legitimacy of the criminal law being used to enforce morality in the absence of palpable harm.

While Devlin's position at first appears to be a legal moralist one, that point is open to debate (see Murphy, 1995). Regardless of the label applied to it, though, it is clear that Devlin asserted that no society could exist without a shared, public morality (Devlin, 1962). This conceptualization that society is held together by shared moral beliefs extends beyond jurisprudential scholars; Emile Durkheim (1893/1964) posited this view, as did Plato in *The Republic*. But beyond his views on shared morality, Devlin argued that the criminal law should be used as a mechanism for the enforcement of this public morality. Devlin's beliefs on the propriety of using law in this manner were deeply rooted in the philosophy of Plato who believed "the State exists to promote virtue among its citizens" (Devlin, 1965, p. 89). For Devlin, the state was not only philosophically justified in exercising the criminal sanction to protect society from moral decay, but it had a moral responsibility to do so.

In contrast, Hart (1963, 1967) argued the classical liberal view on the criminal law. Liberalism's concern for a non-coercive state has its early roots in Aristotelian philosophy, as Aristotle (c. 350 B.C.E./2003) did not believe that being "moral" was a legitimate state concern (see Strong, 1997). But modern liberal thought has been shaped significantly by the writings of the utilitarian philosophers (see Bentham, 1843/1988; Mill, 1859/1956). This position rejects the notion that the criminal law should be used as a mechanism for the enforcement of public morality. Rather, it asserts that the only morally permissible exercise of the criminal sanction is to prevent harm to others (Bentham, 1843/1988; see also Gruen & Panichas, 1997).

Neither Hart nor Devlin's position provides sufficient guidance to formulate good public policy. Meier and Geis (1997), for example, point out that while there can be no doubt that the criminal law is designed to protect against harm – especially harms that en-

danger physical injury and life, or those that involve loss of liberty or property – “it is neither consistent nor comprehensive in affording such protection” (p. 9).

Volumes have been written on what the role of morality in shaping law should be (see, e.g., Feinberg, 1970). In contrast, though, little attention has been paid to what the role of morality in shaping the law actually is, or vice-versa. Indeed, Hart himself (1958) explained that the symbiotic relationship between law and morality is often used as a justification for the legislation of morality by its proponents. In contrast to the volumes of jurisprudential scholarship written on the link between law and morality, the current research examines the bidirectional link between the two variables from an empirical perspective.

*An Overview of the Link Between Law and Human Behavior*

The relationship between law and human behavior is complex and subject to debate (e.g., Black, 1984, 1993, 1994). In spite of this complexity, it is clear that the criminal law continues to be used by society as the *sine qua non* tool of formal social control. Criminal law serves two primary functions: “detering harm-doing and punishing wrongdoing” (Stewart, 2001, p. 47; see also Packer, 1968). It seeks to achieve both ends through the threatened and actual imposition of criminal punishment. Four primary justifications are classically proffered in support of criminal punishment: retribution, deterrence, rehabilitation, and incapacitation (see Seidman, 1984). Deterrence, however, lies at the heart of the criminal law’s social control function in a diversely heterogeneous society (e.g., Andenaes, 1974; Grasmick & Green, 1980; Tittle, 1969).

Punishment serves several goals under the deterrence model, two of which are particularly important to any general theory of social control. First, punishment acts as a tool of external social control by generally deterring the would-be criminal offender from committing the proscribed behaviors out of fear of punishment (Andenaes, 1974; Pratt, Cullen, Blevins, Daigle, & Madensen, 2006). Second, along the lines of classical social control theory as set forth by Edward A. Ross (1901), it helps to create a type of

consensus regarding the immorality of the proscribed act, thereby assisting in the creation of both conscious and unconscious internal social controls (see also Packer, 1968).

Classical deterrence theory has been refined into more contemporary incarnations due to four developments: “the effectiveness of certain situational crime prevention strategies”; “the recognition of the importance of certain nonlegal costs of criminal behavior”; “the integration of deterrence theory with other criminological perspectives, such as social learning and self-control theories”; “and how the imposition of sanctions can actually lower individuals’ perceived estimates of getting caught in the future, known as the resetting effect” (Pratt, Cullen, Blevins, Daigle, & Madensen, 2006, p. 370). For example, tests of Social Learning Theory and Differential Association Theory have demonstrated that peer associations moderate the deterrent effect of law (Akers, 1998; Higgins & Makin, 2004; Pogarsky, 2002).

Whatever the deterrent effect of the criminal law may be, it is clear that the threat of criminal punishment alone is not responsible for most people being law-abiding citizens. Other forms of social control, both internal, such as one’s conscience, and external, such as shame, all play important roles in crime deterrence (e.g., Braithwaite, 1989; Grasmick & Bursik, 1990; Ross, 1901). In other words, while people certainly obey the rules of the state out of fear of the consequences as posited by deterrence theory, many others do so because they “share in the communal benefits of compliance, or because some crimes are just too heinous to imagine ourselves committing” (Netter, 2005, p. 192). But even for crimes that are not considered “heinous” in a normative sense, people abide by the law because they see “themselves as moral beings who want to do the right thing as they perceive it” (Robinson & Darley, 1997, p. 468; see also Tyler, 2006). But “doing the right thing” depends, in large part, on morality vis-à-vis both the perceived moral legitimacy of the law itself and the perceived execution of fair processes (Robinson & Darley, 1997; Tyler, 2006). For these reasons, the relationship between criminal law and human behavior necessarily involves morality and behavior.

*Morality and Human Behavior*

Morality influences behavior insofar as it sets forth the societal expectations for personal conduct. This process of shaping behavior begins early in childhood and continues throughout adolescence (Wilson, 1993). As a typical child grows older, he/she develops a more complex neural system that is better able to regulate instincts (Gilligan, 1982; Kohlberg, 1964, 1981, 1984; Piaget, 1932/1965). In that time, he/she learns from experience what consequences flow from what actions, and acquires a set of rules from parents by which to predict and judge consequences. Furthermore, by watching other people, he/she begins to model the behavior of others (Wilson, 1993; cf. Bandura, 1986).

This course of “normal” moral development is predicated on interactions with the primary agents of social control that socialize children into the mores of the society in which they live, a process that may involve gender differences (Gilligan, 1982), which, in turn, may differentially impact moral decision-making later in life. The family is arguably the most important of these agents (Gottfredson & Hirschi, 1990), although the educational system is also quite important (Chase-Lansdale, Gordon, Brooks-Gunn, & Klebanov, 1997; Turner, Piquero, & Pratt, 2005). The family environment has a pervasive influence on children’s lives and personality development, particularly on the development of the antisocial behavior – behaviors that, by definition, violate social norms that are based on a shared conceptualization of morality. For example, when parents set high moral standards and practice what they preach, their moral principles become forceful. Children learn to delay gratification and become more socially responsible, academically successful, and productive (Ary, Duncan, Bigian, Metzler, Noell, & Smolkowski, 1999; Kochanska & Murray, 2000;). In contrast, harsh, inconsistent disciplinary practices, chaotic home environments, and lack of moral guidance have been shown to predict later aggression, loss of control, and disregard for the well-being of others (Caspi, Moffitt, Silva, Stouthamer-Loeber, Krueger, & Schmutte, 1994; Laible & Thompson, 2002).

Applying these precepts of morality and behavior in the contexts of law, we may assume that behaviors in accordance with the

requirements of law are a product, at least in part, of moral obligation (Vago, 2005; Kuther, 2000; Perry & McIntire, 1995). But research in developmental psychology suggests that human behavior is not so rigidly linked to learned moral codes. Kohlberg's theory of moral development suggests that people do not act consistently on external "right" versus "wrong" distinctions, but rather on a set of internalized moral principles that people use to govern their own behaviors (Kohlberg, 1984; Vago, 2005). There are critics of the assumption that one must pass through a series of moral developmental stages to achieve morality (e.g., Harré, 1983; Morss, 1996), but even such critics generally conclude people eventually comport themselves as autonomous beings in accordance with individualized principles rather than as automatons applying a set of predefined rules.

Tapp and Levine (1974, 1977) adapted Kohlberg's theory to the development of moral reasoning within the law. In accordance with classical deterrence theory, they postulated that obedience to law in one's behavior initially stems first from fear of punishment. As one matures and develops a sense of morality, obedience to law is predicated on agreement with the social contract insofar as one views the law as a tool for maintaining social order. But as one reaches a higher level of maturity, his/her corresponding notions of why his/her behavior should or should not comport with the requirements of law also evolve. People are no longer compliant with the prescriptions of law for the good of society, but rather they obey law because doing so is in accord with a sense of ethics and morality at which they have arrived as a function of their own moral development. The moral reasoning exhibited at this advanced stage of maturity is based on the constructs the individual has established based upon his/her interactions with the social environment (Cohn & White, 1990).

Criminological research on morality as a variable affecting criminal behavior lends support to the link between moral development and moral action (e.g., Paternoster, 1987; Pogarsky, 2002). Bachman, Paternoster, and Ward (1992), for example, found that believing a behavior to be morally wrong was an inhibiting factor to engaging in the conduct. Conversely, when people did not judge a behavior to be immoral, a threat of other sanctions was needed to in-

hibit the behavior. Accordingly, some researchers have advocated that effective deterrence requires both instrumental threats of punishment and deontological appeals to “right” and “wrong” (e.g., Paternoster & Simpson, 1996), a practical policy recommendation that is in full accord with Tapp and Levine’s theory for legal compliance.

### *Hypotheses*

The literature discussed above suggests that although morality, legality, and human behavior are distinct concepts, each has a significant impact on the other. Stated otherwise, law affects morality; morality affects law; and both law and morality affect behavior. The current research examines these interrelationships within the context of low-consensus deviant behaviors. Drawing from the literature, the following are hypothesized:

1. Conceptualizations of which low-consensus deviant behaviors are considered “immoral” will vary based upon a number of factors: age (see Kohlberg, 1964, 1981, 1984; Piaget, 1932/1965); gender (see Gilligan, 1982); and whether someone is liberal or conservative (cf. Devlin, 1965; Hart, 1963). Moreover, since so much of moral judgment has religious roots (Cottone, Ducker, & Javier, 2007), the degree of religiosity is also hypothesized to impact whether respondents judge the behaviors in the study to be immoral.
2. Based on the premises underlying the Hart–Devlin debate, moral judgments regarding low-consensus deviant behaviors will be positively correlated with views on whether the behaviors should be legal or illegal.
3. If people perceive a behavior as deserving to be criminalized, then the legitimacy of their belief in the threat of criminal punishment for the given behavior ought to deter them from engaging in that conduct.
4. If hypotheses #2 and #3 are supported insofar as there is a significant positive correlation between people’s perceptions of morality and legality, their own personal conduct ought to be in accord with those perceptions. Accordingly, behaviors that respondents view as immoral should be behaviors in which respondents do not engage.



## METHODOLOGY

### *Participants*

Data for this study were gathered via an anonymous survey completed by 950 undergraduate students from a variety of majors at five U.S. colleges or universities. These institutions included one large, public research university in Arizona; one small, private liberal arts college in Massachusetts; one mid-sized, public, comprehensive college in New Jersey; one mid-sized, public, comprehensive university in Texas; and one mid-sized, public, comprehensive university in Michigan. Participants were asked to volunteer their participation in exchange for extra credit in course work. The participants included 519 (54.6%) females and 431 (45.4%) males. Caucasians comprised 86.4% of the research sample (N=821), while Non-Whites accounted for the remaining 13.6% (N=129) of the participants. Ninety-four percent of the sample self-reported that they were heterosexual.

### *Survey Instrument*

An anonymous survey presented respondents with 11 behaviors that either once were or currently are criminal offenses in the United States. The behaviors included were selected because they had previously been identified as low-consensus deviant behaviors (Meier & Geis, 1997; Packer, 1968; Winslow & Gay, 1993) that fell into one of three broad types of crimes: drug and alcohol offenses (smoking marijuana, snorting cocaine, underage drinking, and using a fake ID); "victimless" sex offenses (fornication, heterosexual sodomy, homosexual sodomy, and buying pornography); and traffic offenses (driving under the influence, speeding in excess of 25 miles per hour over the speed limit, and intentionally running a red light).

For each of the behaviors, respondents were asked their personal judgments whether the conduct was moral or immoral; their perceptions whether the behavior should be criminally punished; and to self-report their own personal conduct with respect to each behavior. Respondents were also asked to provide demographic information including age, gender, race, political conservativeness/liberality, and religiosity.

## RESULTS

### *Demographic Data*

The demographic characteristics of the participants in the research sample are presented in Table 1 [below].

**Table 1**  
**Summary of Demographic Characteristics**

Age	Number	Percent
18 and Under	193	20.3
19	184	19.4
20	206	21.7
21	221	23.3
22	63	6.6
23 and Older	83	8.7
Religiosity		
Very Unreligious	164	17.4
Somewhat Unreligious	97	10.3
Mildly Unreligious	66	7.0
Moderate	163	17.3
Mildly Religious	120	12.7
Somewhat Religious	241	25.6
Very Religious	92	9.8
Political Orientation		
Very Liberal	126	13.9
Somewhat Liberal	238	26.2
Mildly Liberal	111	12.2
Moderate	255	28.1
Mildly Conservative	87	9.6
Somewhat Conservative	72	7.9
Very Conservative	19	2.1

### *Bivariate Analyses*

Table 2 [next page] reports the descriptive statistics regarding respondents' views on the perceived (im)morality and (il)legality on each of the 11 behaviors about which they were asked, as well as their self-reported responses on whether they had ever engaged

**Table 2**  
**Descriptive Statistics and Bivariate Analyses of Responses to All Behaviors**

	Drug Items				Sex Items			Traffic Items			
	Smoking Marijuana	Snorting Cocaine	Drinking Under 21	Using a Fake ID	Fornication	Hetero. Sodomy	Homo. Sodomy	Buying Porn	DUI	Excessive Speeding	Running Red Light
<i>Immorality</i>											
<i>Not Immoral (0)</i>	573 60.3%	284 29.9%	693 72.9%	315 33.2%	660 69.8%	733 77.3%	618 65.2%	651 68.6%	86 9.1%	475 50.0%	339 35.7%
<i>Immoral (1)</i>	377 39.7%	666 70.1%	257 27.1%	635 66.8%	286 30.2%	215 22.7%	330 34.8%	298 31.4%	864 90.9%	475 50.0%	611 64.3%
<i>Illegality</i>											
<i>Legal (0)</i>	384 40.4%	105 11.1%	371 39.1%	87 9.2%	920 97.3%	921 97.2%	979 92.7%	887 93.5%	0 0.0%	34 3.6%	60 6%
<i>Illegal (1)</i>	566 59.6%	845 88.9%	579 60.9%	863 90.8%	26 2.7%	27 2.8%	69 7.3%	62 6.5%	950 100%	916 96.4%	944 99.4%
<i>Conduct</i>											
<i>Yes (0)</i>	503 53.0%	105 11.1%	858 90.9%	228 24.0%	662 71.5%	646 69.0%	58 6.1%	370 39.0%	365 39.0%	721 76.6%	467 49.3%
<i>No (1)</i>	447 47.0%	845 88.9%	86 9.1%	722 76.0%	264 28.5%	290 31.0%	890 93.9%	579 61.0%	570 61.0%	220 23.4%	480 50.7%

(Table continued on next page.)

**Table 2**  
**Descriptive Statistics and Bivariate Analyses of Responses to All Behaviors (continued)**

	Drug Items				Sex Items			Traffic Items			
	Smoking Marijuana	Snorting Cocaine	Drinking Under 21	Using a Fake ID	Fornication	Hetero. Sodomy	Homo. Sodomy	Buying Porn	DUI	Excessive Speeding	Running Red Light
Immorality by Illegality											
<i>Chi Square</i>	191.434*	141.409*	101.701*	106.309*	27.632*	1.799 <sup>^</sup>	61.912*	60.720*	N/A <sup>^^</sup>	35.262*	10.883*
<i>Phi</i>	.449*	.386*	.327*	.335*	.171*	0.44	.256*	.253*	N/A <sup>^^</sup>	.193*	.107*
Illegality by Conduct											
<i>Chi Square</i>	117.100*	9.999+	24.921*	15.859*	30.763*	16.555*	0.406	26.667*	N/A <sup>^^</sup>	10.763*	0.001
<i>Phi</i>	.351*	.103+	.162*	.129*	.182*	.133*	0.21	.168*	N/A <sup>^^</sup>	.107*	.001
Immorality by Conduct											
<i>Chi Square</i>	75.991*	24.414*	96.143*	32.630*	59.182*	21.172*	24.088*	84.390*	14.522*	48.168*	23.594*
<i>Phi</i>	.283*	.161*	.319*	.185*	.252	.150*	.159*	.298*	.125*	.226*	.158

\* p < .001; + p < .01

<sup>^</sup> Because the entire sample felt that driving under the influence should be illegal, a chi-square could not be calculated.

<sup>^^</sup> It should be noted that the chi-square for homosexual sodomy not reaching statistical significance is likely the result of two factors. First, the overwhelming majority of the sample (93.9%) had not engaged in an act of homosexual sodomy. Second, the overwhelming majority of those respondents believed that the behavior should not be regulated by the law.

in those behaviors. Chi-square analyses and Phi coefficients were calculated to explore the nature of the relationships between immorality, illegality, and personal conduct for each of the 11 behaviors.

#### *Multivariate Analyses*

As discussed above, the literature identifies several demographic and attitudinal variables that affect moral development and/or law abidingness, including gender, race, age, political orientation, and religiosity. Logistic regression was used to determine the extent to which these variables influenced the likelihood of respondents' viewing an act as immoral, believing it should be illegal, and choosing whether to engage in each of the 11 behaviors contained on the survey. The results of these 33 logistic regression models are provided in Tables 3, 4, and 5, which respectively presented models for (im)morality, (il)legality, and personal conduct. To facilitate logistic analyses, religiosity was recoded into a trichotomous variable: unreligious (into which respondents who had self-identified as very unreligious, somewhat unreligious, or mildly unreligious were collapsed); moderate; and religious (into which respondents who had self-identified as very religious, somewhat religious, or mildly religious were collapsed). Political orientation was recoded into a trichotomous variable in the same manner.

Each column in Tables 3, 4, and 5 gives the results of a separate logistic regression model, including the odds ratios for each independent variable followed by the model summary statistics. The summary statistics include the Nagelkerke R-squared, the chi-square goodness of fit, the constant percent correct, the model percent correct, and the percent change. The odds ratios are derived from the regression  $\beta$  coefficients (not illustrated here) and indicate the predicted change in odds in the dependent variable for a one unit increase in the corresponding independent variable. Odds ratios less than 1 correspond to a decrease in the odds of the dependent variable; odds ratios more than 1 correspond to increases in the odds of the dependent; and odds ratios close to 1 suggest that the independent variable does not affect the dependent variable. For readability purposes, only the odds ratios derived from statistically significant ( $p < .05$ ) Wald's chi-square statistics are provided in Tables 3, 4, and 5.

*Morality dependent.* Table 3 [next page] provides the results of the 11 logistic regression models examining the influence of the independent variables on the decision to categorize a particular behavior as immoral. The independent variables include gender (males=1, females=0), race (Whites=1, Non-Whites=0), age (reference category is “18 and under”), political orientation (reference category is “conservative”) and religiosity (reference category is “very religious”).

For the drug-related and sex-related logistic regression models, the chi-square goodness-of-fit statistics reached statistical significance, suggesting a reasonable fit. Similarly, model percent correct exceeded the constant percent correct for all eight models, suggesting that the independent variables contributed to the model’s ability to differentiate between categories of immorality. As predicted, age, gender, liberality/conservativeness, and religiosity achieved statistical significance in logistic models across a number of behaviors.

*Legality dependent.* Table 4 [page 218] provides the results of the 11 logistic regression models examining the influence of the independent variables on the belief that a particular behavior should be illegal. The independent variables include gender (males=1, females=0), race (Whites=1, Non-Whites=0), age (reference category is “18 and under”), political orientation (reference category is “conservative”) and religiosity (reference category is “very religious”). As with Table 2, the 11 behaviors are divided into three categories: drug items, sex items, and traffic items.

Overall, the legality dependent models were very weak. In fact, solutions could not be calculated for the fornication, heterosexual sodomy, DUI, and running a red light models. Furthermore, there is no percent change in the cocaine, use fake ID, homosexual sodomy, buying pornography, and speeding models. This is likely the result of the skewed split in the dependent variable, illegal (yes =1, no=0). Over 90% of the respondents felt that sex items should remain legal, while the same percentage felt that the traffic items should be illegal. The lack of results from the logistic regressions suggests that these views were held across gender, race, age, political, and religious lines. In other words, factors other than the demographic and

**Table 3 Odds Ratios and Summary Statistics of Logistic Regression Models for Morality**

	Drug Items				Sex Items			Traffic Items			
	Smoke Marijuana	Snort Cocaine	Drink Under Age	Use Fake ID	Fornication	Hetero. Sod	Homo. Sod	Buy Porn	DUI	Speed 25mph+ Over Limit	Run Red Light
Gender		.638		.573			1.843	.647	.463		
Race			.489		.560	.393	.437	.606	1.9		
19	.452	.516	.185								1.9
20	.298	.355	.276	.707				.609	.455		
21	.263	.474	.333			.595			.539		
22+	.204	.389	.355		.312	.246	.271	.422			.667
Politically Liberal			.623	.671	.139	.418	.290	.421		1.54	1.36
Politically Moderate		1.47			.359	.625	.543	.454			
Unreligious	.393	.382	.513		.185	.375	.340	.402			
Religious Moderate	.369	.543	.643		.507			.365	.536		
Nagelkerke R <sup>2</sup>	.141	.103	.143	0.37	.230	.151	.217	.145	.069	.015	.035
Wald Chi2 Goodness of Fit*	104.61	71.85	98.87	25.5	169.1	99.3	163.03	103.2	30.2	10.97	24.28
Constant Percent Correct	60.3	70.1	72.9	66.8	69.5	77.2	65.1	68.6	90.9	50.0	64.3
Model Percent Correct	64.5	70.06	76.3	67.2	75.6	78.7	71.1	73.2	90.9	55.4	64.5
Percent Change	0.2	0.5	3.4	0.4	6.1	1.5	6.0	4.6	0.0	5.4	0.2

\* All chi-square values are statistically significant (p<.05).

**Table 4 Odds Ratios and Summary Statistics of Logistic Regression Models for Legality**

	Drug Items				Sex Items				Traffic Items		
	Smoke Mari- juana	Snort Cocaine	Drink Under Age	Use Fake ID	Forni- cation	Hetero. Sod	Homo. Sod	Buy Porn	DUI	Speed 25mph+ Over Limit	Run Red Light
Gender	.423	.315	.655					.308			
Race		2.477	.508	.390							
19			.447								
20			.632								
21		.567		2.40							
22+	.365	.381							.418		
Politically Liberal	.514		.737	.137		.506					
Politically Moderate				.139							
Unreligious	.497	.592									
Religious Moderate	.602	2.14									
Nagelkerke R <sup>2</sup>	.146	.126	.063	.085		.018	.085		.018		
Chi <sup>2</sup> Goodness of Fit*	108.7	62.17	45.31	37.9		7.09	31.3		4.47		
Constant Percent Correct	59.6	88.9	60.9	90.8		92.7	93.5		96.4		
Model Percent Correct	64.2	88.6	62.4	90.8		92.7	93.5		96.4		
Percent Change	4.6	-0.3	1.5	0.0		0.0	0.0		0.0		

\* All chi-square values are statistically significant (p<.05).



attitudinal variables used in this study are largely responsible for participants' views on which behaviors should be criminalized.

The only two models to yield notable results were the models for smoking marijuana and drinking under the age of 21. Those who are female, younger, more conservative, and more religious tended to believe that smoking marijuana should be illegal. Similarly, those who are female, Non-White, under the age of 18, and more conservative tend to believe that drinking under 21 should remain illegal.

*Personal conduct dependent.* Table 5 [next page] provides the results of 11 logistic regression models examining the influence of our independent variables on the decision to engage in the given behavior (yes=0, no=1). The independent variables include gender (males=1, females=0), race (Whites=1, Non-Whites=0), age (reference category is "18 and under"), political orientation (reference category is "conservative") and religiosity (reference category is "very religious"). Those who are younger, Non-White, conservative, and religious tend to refrain from engaging in the given behaviors. Gender is split, with women more likely than men to engage in drinking under age, fornication, and heterosexual sodomy. Conversely, men are more likely than women to buy pornography, drink and drive, speed excessively, and intentionally run red lights.

## DISCUSSION

### *Hypothesis #1: Predictors of Moral Judgments*

It was hypothesized the deviant behaviors that respondents considered to be "immoral" would vary based upon a number of factors. The data generally support this hypothesis with respect to age, gender, political conservativeness/liberality, and religiosity. However, the ability of these demographic and attitudinal characteristics to predict moral judgment varied significantly by the type of behavior. Youthful age and deeper levels of religiosity were statistically significant predictors of participants judging the drug and alcohol behaviors to be immoral.

For the sex-related behaviors, Non-Whites, those 18 and under, political conservatives, and the more religious were more likely

**Table 5 Odds Ratios and Summary Statistics of Logistic Regression Models for Conduct**

	Drug Items				Sex Items			Traffic Items			
	Smoke Mari- juana	Snort Cocaine	Drink Under Age	Use Fake ID	Forni- cation	Hetero. Sod	Homo. Sod	Buy Porn	DUI	Speed 25mph+ Over Limit	Run Red Light
Gender			2.03		1.67	1.48		.253	.582	.555	.514
Race			.465	.378					.513	.394	1.645
19	.292		.058	.288	.366	.535		.572	.528		
20	.304		.186	.143	.233	.502			.323	.427	
21	.346		.290	.209	.151	.232		.442	.234	.671	
22+	.081	.337	.263	.098	.116	.134	.129	.287	.143	.287	
Politically Liberal	.286				.496	.525		.420	.618		
Politically Moderate	.363			.646	.364	.525		.445	.461		
Unreligious	.679	.501			.451						.571
Religious Moderate	.377		.449		.512	.537		.530	.498		.399
Nagelkerke R <sup>2</sup>	.223	.060	.144	.126	.213	.144	.138	.223	.175	.094	0.77
Chi2 Goodness of Fit*	173.7	25.87	64.28	83.8	149.7	101.02	49.41	170.6	129	60.61	56.62
Constant Percent Correct	52.9	91.1	90.9	76	71.6	68.9	93.9	61.1	61.0	76.6	50.7
Model Percent Correct	67.1	91.1	90.9	74.8	75.1	71.1	93.9	69.7	67.4	76.3	60.0
Percent Change	14.2	0	0.0	-1.2	3.5	2.2	0.0	8.6	6.4	-0.3	93.

\* All chi-square values are statistically significant (p<.05).

to judge the behaviors as being immoral. Interestingly, gender was not a significant predictor of moral judgments concerning fornication or heterosexual sodomy models, but it did reach statistical significance with regard to homosexual sodomy and purchasing pornography. Males are 1.843 times more likely than females to find homosexual sodomy immoral. Females, however, are 1.546 times more likely than males to believe purchasing pornography is immoral.

In terms of age, only the 22 and over group reached statistical significance in all four models. Those 22 and older were less likely to view the sex behaviors as immoral than those 18 and younger. The unreligious item in these models is particularly noteworthy as it also reaches statistical significance in all four models and is a fairly strong predictor. In fact, those who are religious are 5.4 times more likely (odds ratio = .185) than the unreligious to find fornication immoral. In addition, the fornication model is the strongest of the 11 immorality models with a Nagelkerke  $R^2$  of .230 and a 6.1% change.

The results of the traffic variables were more mixed than those of the drug- or sex-related items. Those who found DUI to be immoral were more likely to be women, White, younger, and religious. Although all three traffic models reached statistical significance, they were fairly weak as indicated by the low Nagelkerke  $R^2$ s.

Collectively, the results of the logistic regressions suggest that while certain demographic and attitudinal characteristics play a part in making moral judgments relative to low-consensus deviant behaviors, other factors clearly impact moral reasoning with a legal framework.

*Hypothesis #2: The Link Between Law and Morality*

It was hypothesized that judgments regarding the immorality of deviant behaviors would be positively correlated with views on whether the behaviors should be illegal. Overall, the data suggest that moral judgments and beliefs about criminalization of conduct are strongly related. This link was strongest for DUI (with 91% of the respondents finding DUI to be immoral and 100% reporting it should be illegal). The link was also strong for perceptions regarding the immorality of drug use and beliefs that drug-related behav-

iors should be criminalized, especially for smoking marijuana and snorting cocaine. Somewhat surprisingly, in light of the population from which the research sample was drawn, this link was still moderately strong even with regard to underage drinking.

In contrast to the drug-related behaviors, the link between the perceived immorality of sexual acts and a desire to see the act criminalized was practically nonexistent. Only 26 people (2.7%) in the research sample thought that premarital sex should be criminalized; conversely, 266 (93%) of the 286 respondents who thought that this behavior was immoral thought that fornication should be beyond the reach of the criminal law. Nearly identical results were found for consensual, heterosexual oral or anal sex. And even though over 1.5 times as many people (N=330) thought that acts of homosexual sodomy were immoral than did acts of heterosexual sodomy (N=215), 83.6% thought that such acts should be beyond the reach of the criminal law. These data provide strong support for the U.S. Supreme Court's decision in *Lawrence v. Texas* (2003), which decriminalized both homosexual and heterosexual sodomy by philosophically embracing Hart's views on the impropriety of criminal legal regulation of sex between consenting adults.

The link was weaker with the traffic offenses other than DUI. For example, an overwhelming majority of respondents (96.3%) thought that speeding more than 25 miles per hour over the speed limit should be illegal. Yet, respondents were roughly equally divided on whether this behavior was immoral. Presumably, it is the harm to others that excessive speed can cause that explains the desire to see such behavior criminalized, a morally permissible use of the criminal law even under the tenants of classical liberalism.

### *Hypothesis #3: The Link Between Legality and Personal Conduct*

The hypothesized link between the perceived legitimacy of criminalized conduct and refraining from engaging in that conduct was only partially supported. This relationship was found to exist, and only weakly, with regard to select drug-related and sex-related behaviors. The relationship was not supported by the analyses of the traffic-related behavior. Interestingly, minority status was related to an increased chance of comporting oneself in accordance with the

law with regard to all of the low-consensus deviant behaviors in the research survey. This may be explained by greater levels of religiosity among nonwhite respondents. It may also be a function of minority students' knowledge of the greater likelihood of their coming in contact with law enforcement for low levels of deviant behaviors than their Caucasian counterparts, especially for drug-related and traffic offenses (e.g., Austin & Allen, 2000; Smith & Petrocelli, 2001). In other words, their perceptions of heightened levels of the certainty of punishment on account of race/ethnicity may have an increased deterrent effect on their behaviors.

Views of illegality and personal conduct were significantly related for the drug behaviors in the survey. The relationship, however, was fairly weak, suggesting that factors other than one's moral views on drug use influences a person's decision whether to use drugs. There was, however, one notable exception to this generalization. The Phi coefficient for smoking marijuana ( $\Phi = .351$ ) revealed a stronger relationship between the decision to refrain from using that drug and its illegal status.

Similarly, respondents' views on whether the law should criminalize certain sexually-related behaviors were related to whether they personally had engaged in those behaviors. As with the drug-related behaviors, however, the legality–personal conduct relationship is weak for fornication, heterosexual sodomy, and buying pornography. However, as Table 2 illustrates, since the overwhelming number of respondents did not believe that the law should criminally regulate any of the sex-related offenses (probably reflective of the fact that most of the sex-related offenses have been decriminalized), the relationship between perceived legality and criminal conduct in the research sample is a function of a relatively small proportion of respondents (at most, 70) refraining from sexual conduct that they believed the law should criminally regulate.

The vast majority of the study participants thought that all three traffic-related offenses should be criminalized. Yet, a large number of respondents engaged in each of the traffic offense behaviors. A full 76.6% of the sample admitted to speeding in excess of 25 miles per hour over the posted speed limit, 49.3% admitted to

intentionally running red lights, and an alarming 39% of the sample admitted to driving under the influence of drugs or alcohol. These data call into question the deterrent effect of the laws regulating these driving behaviors. While an argument could be made that severity of criminal punishment for all three behaviors is low, it is also plausible that respondents do not feel there is a high enough certainty of punishment since the relative likelihood of being caught while engaging in any of these behaviors is quite low. Alternatively, the link between morality and personal conduct might explain these data.

Significant proportions of the respondents did not identify excessive speeding or red light running as having any moral component (in spite of their risk to human life). It is plausible that the lack of any perceived moral dimension to these behaviors translated into a failure of internal social controls to mediate the behaviors. Theory suggests that when people do not judge a behavior to be immoral, a more severe threat of legal sanctions is needed to inhibit the behavior (Paternoster & Simpson, 1996; Tapp & Levine, 1977). Without more severe and/or certain punishments for these driving behaviors, the law alone is unlikely to deter these driving behaviors effectively.

*Hypothesis #4: The Link Between Morality and Personal Conduct*

The data support the proposition that personal judgments about the immorality of behaviors are related to whether people engage in that behavior. Overall, behaviors that respondents viewed as immoral were behaviors from which they refrained from engaging. This relationship was strongest with regard to underage drinking, smoking marijuana, purchasing pornography, and engaging in premarital sex. This lends support to the findings of researchers who have reported that believing a behavior to be morally wrong is an inhibiting factor to engaging in the conduct (Bachman, Paternoster, & Ward, 1992; Paternoster, 1987; Pogarsky, 2002).

Yet, in spite of these statistically significant relationships, a fairly large percentage of people who judged these behaviors to be immoral nonetheless engaged in those behaviors. For example, 35.5% of the respondents who thought smoking marijuana was immoral (N=134) self-reported engaging in the behavior. Similarly, 75.9% of the respondents who thought underage drinking was im-

moral (N=195) drank before they turned 21 years of age. And, 54.5% of the 286 respondents who thought premarital sex was immoral (N=156) had nonetheless engaged in that behavior. The behaviors that displayed the largest disconnect between moral judgment and personal conduct were the traffic ones. Of the 849 respondents who judged DUI to be immoral, 37.1% (N=315) reported that they had driven under the influence. Similarly, 312 (67%) of the 466 people who thought that criminal speeding was immoral nonetheless engaged in that behavior. And 264 (43.4%) of the 608 study participants had intentionally run red lights even though they thought doing so was immoral. We conclude this research by exploring the theoretical reasons why these apparent disconnects between law, morality, and personal conduct might exist.

## CONCLUSION

### *Theoretical Implications*

*The Hart–Devlin debate on the legislation of morality.* The data support Lord Devlin’s argument that the criminal law should be used a tool to enforce widely shared public morality. This was especially evident in drug offenses like smoking marijuana and underage drinking. Yet, analyses of the participants’ responses to consensual sex offenses clearly align themselves with H. L. A. Hart’s positions. This distinction might be due to the fact that the consensual sex offenses were overwhelming judged to be “not immoral” and, therefore, the participants may not have considered the sex-related behaviors to be socially threatening. Alternatively, the differences between participants’ differing views on the drug- and traffic-related offenses and the sex offenses may lie at the crux of the Hart–Devlin debate itself. What consenting adults do in private is no one’s business but their own. Without harm to selves or to others, respondents appear to embrace classical liberalism’s position that such behaviors should lie beyond the reach of the criminal law.

*Deterrence theory.* At first blush, the data suggest that the threat of criminal sanction, even when people believe in the legitimacy of the criminal law at issue, is insufficient to deter low-consensus deviant behaviors. Proponents of classical deterrence theory

could easily dispute this conclusion by pointing to the low levels of severity and certainty of punishment surrounding the majority of behaviors examined in the present study. While that certainly may be true, the data suggest an alternative explanation.

With the exception of smoking marijuana, the perceived immorality of a behavior was more influential in the decision to engage in or refrain from the behavior than the criminalized status of the behavior. This lends support to the argument made by Pratt, Cullen, Blevins, Daigle, and Madensen (2006) that the efficacy of law's ability to deter is more complex than a rationally-based hedonistic calculus that pits the risks associated with the perceived severity, certainty, and celerity of punishment against the benefits of engaging in the proscribed conduct. Specifically, the moral cost of engaging in conduct matters, as predicted by both Social Learning Theory and Differential Association Theory. In other words, one's morals appear to be stronger mediators of deviant behavior than the law (Robinson & Darley, 1997; Tyler, 2006).

*Moral development theory.* The multivariate analyses performed on the data gathered in this study lend support to theories of differential moral development. The logistic regression models that identify age as a predictor of moral decision-making suggest that new college students bring with them a moral code connected to parental rules about right and wrong, hallmarks of Kohlberg's conventional morality phase in which moral judgments are made to maintain both the social order and good interpersonal relationships. Over the course of their college education, however, students presumably mature and learn to engage in critical thinking that includes more complex moral reasoning that is characteristic of post-conventional morality in Kohlberg's theory, as well as in Tapp and Levine's theory regarding decision-making within a legal framework and corresponding compliance with the law.

The data, however, suggest a disconnect between moral reasoning and personal conduct concerning several of the low-consensus deviant behaviors studied. Significant numbers of respondents engaged in behaviors in spite of both their beliefs about the immorality of the conduct and their beliefs in the legitimacy of criminal



punishment to deter the behavior. This was particularly evident in the research sample for behaviors like driving under the influence and drinking underage. Given the population from which the sample was drawn, these results are not surprising. Drinking is a ubiquitous pastime among college students. Given the social pressures college students face, their peer associations likely moderate both the deterrent effect of law and their own moral beliefs regarding these behaviors (see Akers, 1998; Higgins & Makin, 2004; Pogarsky, 2002;). Similar peer pressure effects might also explain the significant proportion of respondents who thought that smoking marijuana (N=134) and premarital sex (N=156) were immoral behaviors, yet they self-reported having engaged in these behaviors. Peer pressure may also explain the number of respondents who judged excessive speeding (N=312) and intentionally running a red light (N=264) to be immoral, but nonetheless engaged in such conduct. Or perhaps these respondents have not yet matured sufficiently to operate at the post-conventional level of moral development with respect to abiding by the law (Reason, Parker, & Lawton, 1998). Alternatively, these respondents may, in fact, be exercising a high level of moral development by exercising a flexible-individualistic approach to traffic law compliance based on their judgments about the safety of excessive speeding or red light running relative to the type of road on which they are driving (Lawton, Parker, Stradling, & Manstead, 1997a).

Another implication for moral development theory concerns our finding of gender differences with respect to perceptions of (im) morality and personal conduct. As Table 5 illustrates, for example, men were more likely than women to engage in all three traffic behaviors even though men judged DUI to be an immoral behavior more frequently than women and there were no statistically significant gender differences in the moral conceptualizations of the other driving behaviors (see Table 3). A gender effect may explain the difference between moral beliefs and personal conduct with these driving behaviors (see Yagil, 1998).

Consider that an alternative theoretical model to Kohlberg's theory of moral development posits that unconscious psychological processes, especially emotions, play a strong role in moral judg-

ments and corresponding behaviors (e.g., Haidt, 2003). We know that emotions greatly affect driving behaviors, particularly the feelings of exhilaration and power that males – especially young males – tend to feel while speeding or otherwise driving recklessly (Lawton, Parker, Manstead, & Stradling 1997b). Males also tend to rationalize their own dangerous driving by adopting the belief that excessive speeding and red light running are dangerous for others, but not themselves (Yagil, 2005). Their moral beliefs and knowledge of the associated risks of such reckless driving are mitigated by the use of two common mechanisms of cognitive dissonance reduction. First, they create the illusion of control by perceiving themselves to be better drivers than others and, therefore, in control of what happens to themselves while driving. Second, by adopting the bias of a just world, they believe that something bad, like a serious accident, would not happen to them (Yagil, 2005). These rationalizations are likely to be sufficiently powerful to overcome the normal mediating effects of the combination of moral beliefs and legal proscriptions with regard to the traffic offenses in the present study.

#### *Public Policy Implications*

The strong link between law and morality is empirically demonstrable, even when dealing with low-consensus deviant behaviors. But even when behaviors are criminalized and perceived as being within the legitimate sphere of penal social control, the criminal law does not effectively deter people from engaging in proscribed conduct without other factors entering into the decision-making process. The data from the present study suggest that the perceived immorality of criminally proscribed conduct is a significant factor in people's decision-making process whether to abide by the law. These results add to the growing body of research that suggests morality is an important predictor of criminal conduct, "even with the powerful competitor, self-control, taken into account" (Antonaccio & Tittle, 2008, pp. 502-503). We therefore join Antonaccio and Tittle in recommending that morality be integrated as a " 'standard' variable" (p. 503) in criminological research. And we echo Paternoster and Simpson's (1996) recommendation to policy makers that effective deterrence requires both instrumental threats of punishment and deontological appeals to "right" and "wrong."

*Limitations*

Our conclusions should be viewed in congruence with the limitations of our research. First, the external validity of the study may be constrained by the population from which the research sample was drawn: college students (Davis & Buskist, 2008; Peterson, 2001). We attempted to minimize the threats to the external validity of the present research by using a large sample drawn from five sites across the U.S. Moreover, understanding deviance among college student populations is important since 17- to 25-year-olds engage in deviant behavior at a level disproportionate to other age groups. Nonetheless, before the findings are generalized, the research should be replicated using participants of more diverse ages drawn from non-student populations.

Second, as with any survey research, there are concerns about the ecological validity of the present study since responses to survey questions regarding compliance with the criminal law may differ from people's actual compliance in real-world settings (Davis & Buskist, 2008).

Third, a number of the low-consensus deviant behaviors used in this study are currently illegal while others have been decriminalized. These variables were intentionally selected since they were likely to elicit disparities in people's moral judgments on whether the criminal law ought to be used as a tool to control the behaviors (see Winslow & Gay, 1993). However, the current legal status of these behaviors may have played a part in the judgments made by the respondents in the study, thereby complicating comparisons between the variables.

Finally, there are always risks of both intentional and unintentional inaccuracies when respondents are asked to self-report their own behaviors (Stone, Bachrach, Jobe, & Kurtzman, 1999). This risk is likely heightened when asking people to self-report their own violations of the criminal law. However, self-report data are essential to criminological research, since they allow us to collect information on conduct not detected by authorities and, therefore, not contained in official records (Farrington, Loeber, Stouthamer-Loeber, VanKammen, & Schmidt, 1996). To reduce the risk of in-

accuracies in self-report data, respondents were asked relatively straightforward questions, and responses were coded as dichotomous variables (i.e., yes, no; legal, illegal; moral, immoral). This relatively crude method of data gathering and coding yielded nominal-level data, limiting our data analyses to chi-squares, Phi coefficients, and logistic regression. A more sophisticated survey instrument that gathers interval-level data might yield results with better predictive validity than the results reported herein.

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232 AN EMPIRICAL EXAMINATION OF  
LAW AND MORALITY

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234 AN EMPIRICAL EXAMINATION OF  
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236 AN EMPIRICAL EXAMINATION OF  
LAW AND MORALITY

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