



The construction of morals[☆]

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ABSTRACT

When do policies generate expressive or backlash effects? Recent economic models suggest that where a proscribed activity is prevalent, permissive laws liberalize attitudes toward partakers while increasing utility. The opposite occurs in communities where the proscribed activity is rare. To test these predictions, we randomize data entry workers to transcribe newspaper summaries of liberal or conservative court decisions about obscenity. We find that liberal obscenity decisions liberalize individual and perceived community standards and increase utility. Yet religious workers become more conservative in their values, identify as more Republican, view community standards as becoming more liberal, and report lower utility. Workers update beliefs about the prevalence of sexual activities differently in response to liberal or conservative decisions. These results provide causal evidence for the law having indirect social effects that may amplify or attenuate deterrence effects and suggest that legitimacy of law can affect utility and self-identification.

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1. Introduction

Efforts to shape moral values through the law abound in history. Policies on areas of abortion, alcohol, same sex relationships, sex education, and free speech are commonly justified in terms of values, whether to protect moral standards or to promote civil liberties and social justice. The law's expressive power, separately from its deterrent effects, is widely presumed to influence values (Lessig, 1995; Sunstein, 1996). Courts in particular, as arbiters of the law in the United States, are viewed to communicate normative judgments that affect deeply held beliefs. People's preferences to follow social norms (Bicchieri, 2006), together with the law's role in changing beliefs about those norms, are theorized as important mechanisms that explain law's expressive effects (Dharmapala and McAdams, 2003). At the same time, a rich literature argues that legal decisions are themselves influenced by social trends and preferences and depending on the context, can inspire backlash against the law (Klarman, 1994, 2005).

Despite plentiful theoretical and popular discussion, little is known empirically about the effects of law on moral values. In our paper, we experimentally examine the expressive effects of court-made obscenity law on sexual attitudes and perceived

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norms. Because of its emotional salience, obscenity law enables us to differentiate expressive from deterrent effects. In the short time frame of our experiment, the role of material penalties is trivial.

Few areas of law are as salient and as directly predicated on morality as obscenity law, which restricts acts or expressions deemed to be offensive. History has shown that U.S. obscenity cases are decided mainly on the basis of moral harm (Linz et al., 1995; Koppelman, 2005). Norms are endogenously codified in U.S. obscenity law through the Supreme Court's *Miller* test, which relies on community standards to determine whether or not an expression is obscene. Since existing norms guide obscenity decisions in courts, it is likely that more liberal sexual attitudes predict more liberal obscenity laws across jurisdictions (Chen and Yeh, 2013a). One community may find homosexuality obscene, when homosexuality is not openly prevalent in that community, while another may deem it acceptable where homosexual people are not rare. To disentangle cause and effect in the legal construction of morals, we run an experiment.

We recruited 600 data entry workers from the U.S. on Amazon Mechanical Turk to transcribe newspaper reports, which we randomly assign to be about a liberal or conservative obscenity decision or a placebo. We measure values by surveying all workers immediately after the treatment and some workers immediately before on their attitudes about sexual relationships, sex education, pornography, and their political party affiliation. This study design, which focuses on changes in attitudes and beliefs, allows us to identify the law's expressive effects without the problem of confounding deterrence effects. The obscenity decisions do not impose material penalties for merely expressing a particular attitude.

To theoretically motivate our analysis, Section 2 provides the intuition of a model by Benabou and Tirole (2011) of how law affects morals. Individual behaviors are determined by a person's intrinsic motivations (values), extrinsic incentives, and social norms. One seeks honor or avoids stigma by signaling one's values relative to the perceived social norm. Laws provide information that people use to update their beliefs about norms. For example, because of *Miller's* community standards test, a decision that outlaws pornography as obscene may cause people to believe that pornography is offensive and less accepted in society. It may also cause people to believe that pornography is more prevalent in society because pornography was deemed to be a problem by the court. Laws therefore can affect individuals' actions not only through traditional deterrence (formal sanctions) but also through perceived norms. Depending on the underlying norms of a community, a law may have an expressive effect, which we define as people adopting moral views *in favor* of what the law values, or a law may have a "backlash effect," which we define as people adopting moral views *against* what the law values. We present the conditions under which either expressive or backlash effects are likely to occur.

We find that court decisions on obscenity have an expressive effect on average – they lead to responses in favor of the values promoted by the law. Exposure to liberal obscenity decisions, which reflect more sexually permissive community standards according to the *Miller* test, increases workers' likelihood of displaying more sexually liberal attitudes. Exposure to conservative decisions reduces the likelihood of displaying sexually liberal attitudes. We rule out the possibility of deterrence effects or self-reporting effects. We find no changes in self-reported sexual behaviors.

To examine the mechanism for the law's expressive effects, we measure its impacts on individual and community standards of morality. In our experiment, one group was asked to report their own standards of morality while another group was asked to estimate the other workers' standard of morality and was offered payment incentives for accuracy. We also asked one group to report their own sexual behaviors and another group to estimate the prevalence of the other workers' sexual behaviors with incentive pay for accuracy. This design allows us to test for a belief-updating channel that could explain law's expressive effects according to the model. Exposure to liberal obscenity decisions caused more sexually liberal attitudes and increased the perceived prevalence of sexually liberal attitudes.

Historically, one-half to two-thirds of appellate obscenity cases in the past 50 years have been related to homosexuality (Chen and Yeh, 2013b). U.S. society has typically been more tolerant of lesbian women than of gay men, with the latter group more likely to be socially stigmatized and more likely to experience violent crimes (Herek, 2009). We find different responses depending on whether obscenity decisions made references to gay or lesbian depictions. While liberal obscenity decisions making no reference to homosexuality had expressive effects, obscenity decisions that specifically allowed lesbian depictions resulted in a backlash of less acceptance of homosexual sex. We consider whether women respond differently from men to decisions that allow lesbian materials, but recognize that more data are needed.

Under the model, either expressive or backlash effects arise depending on the norms of the community. Behavioral or attitudinal responses to policies have been observed to vary by group ideology (Costa and Kahn, 2010), historical and economic experiences (Alesina and Fuchs-Schündeln, 2007), or how prominent an issue is to a community before the law's enactment (Kotsadam and Jakobsson, 2011). We examine the attitudinal mechanism for differential responses. In particular, we look at heterogeneous effects by religiosity and geography, where the community norms are likely to differ. Among workers who reported more frequent attendance of religious services, liberal obscenity decisions led to more conservative sexual attitudes, more liberal estimates of community standards, and stronger identification with the Republican Party. Liberal obscenity decisions increase worker satisfaction overall, but decrease satisfaction among religious workers, consistent with the model's predictions: agents from liberal communities feel honor for one's signal but backlash if they come from a conservative community. Conservative decisions also increased subjects' estimates, significantly so among religious workers, of the prevalence of non-marital sexual behaviors.

Prior empirical research has emphasized the role of legitimacy when laws shift public opinions in their favor (Bartels and Mutz, 2009) and when people obey the law (Tyler, 2006). That is, individuals respond to whether the law or the lawgiver reflects their attitudes and beliefs. Such results are consistent with ours and have implications for the role of legitimacy in organizations, courts, and democracies. Our experimental framework makes several novel contributions: we isolate the

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