

12-1969

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Recommended Citation

Jon P. McConnell and J. David Martin, *Judicial Attitudes and Public Morals* (1969).

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Judicial Attitudes and Public Morals

by Jon P. McConnell and J. David Martin

If there is an ascertainable community standard as to what acts are right or wrong—a value system within our society—is that standard shared equally by all elements of society, including judges? Sociological research in the State of Washington indicates a broad consensus shared by judges and other groups in the community, but yet there are deviations that possibly are explained by the education, status and sophistication of judges.

DO JUDGES SHARE the commonly accepted moral standards of the community, or do their ideas of right and wrong represent a closed system, alien to that of the community they are judging? Are there in fact shared standards within the community regarding right and wrong, or is there a hodgepodge of different value systems operating in conflict with one another?

These questions have been the source of much speculation, but few data are available to provide answers. In the hope of obtaining evidence relevant to this inquiry, a modest research project was initiated. A questionnaire was devised enumerating thirty-five different acts. Of these, some were crimes, including both felonies and misdemeanors, some were not crimes but torts, and some were merely in bad taste or antisocial. An attempt was made to include a wide range of different acts varying both in severity and in quality. The questionnaire was submitted to a group of judges (all the superior court judges of the State of Washington) and three groups of laymen.

The lay groups were members of a Kiwanis International club in a metropolitan area of about 25,000; a sample selected at random from the Spokane, Washington, telephone directory; and a sample of students from Washington State University. An "alternating extreme" technique, which is described by J. David Martin and Stuart C. Dodd in an unpublished manuscript, *Techniques for Obtaining Rankings*, was employed.

Response rates were 95 per cent for the students and 80 per cent for the Kiwanians. The student questionnaires were distributed and collected personally, while those completed by the Kiwanians were distributed personally

but returned by mail. The judge's response was 30 per cent and the Spokane sample, 13 per cent. Both of these were conducted entirely by mail. These responses are fairly typical of reported rates.¹

The lay groups were asked to rank the thirty-five acts in terms of the amount of guilt the respondent would feel on being caught committing each act. This approach, it is believed, provides insight into the personal moral code of the respondent. The questionnaires submitted to the judges were slightly different. The judges were asked to state their opinion as to which offenses were most serious. By this device, a comparison could be drawn between the "official" view of the judges and the personal moral code of the layman.²

The questionnaire itself is too lengthy to be reproduced here, but a

1. See Linsky, *A Factorial Experiment in Inducing Responses to a Mail Questionnaire*, 49 *SOCIOLOGY & SOCIAL RESEARCH* 183 (1965). However, it is recognized that the Spokane sample was biased in favor of upper- and middle-class groups for two reasons: Nonowners of telephones were excluded, and those with lesser education probably found the questionnaire too difficult to complete. All the students in the survey were enrolled in a business law course. Only about one third were business majors, but it is likely that the subject matter of the course tended to exclude students of the far left, rendering this sample probably biased slightly to the conservative side.

2. Two measures of judge-citizen agreement were used. For over-all agreement, the Goodman-Kruskal coefficient gamma was computed between the judges' over-all order and those of other groups. See Goodman & Kruskal, *Measures of Association for Cross Classifications*, 49 *J. AM. STAT. ASS'N* 732 (1954). For a discussion of the use of gamma appropriate for non-statisticians, see BLALOCK, *SOCIAL STATISTICS* 180 (1959) or FREEMAN, *ELEMENTARY APPLIED STATISTICS* (1964). The over-all order was computed as described by J. David Martin in an unpublished manuscript, *Summary Techniques for Sets of Rankings*. This technique is similar to the procedure used to compute average tau.

TABLE I
DATA SUMMARY

Act	Judges Rank	Kiwanis Rank	Spokane Rank	Student Rank	Difference in Rank	Legal Rank
1. Murder	1	1	1	1	0	1
2. Armed robbery	2	2	4	3	2	5
3. Stealing \$75 / friend	3	4	3	4	1	10
4. Stealing \$75 / stranger	4	5	5	5	1	10
5. Robbing sleeping drunk	5	6	6	8	1	10
6. Small shoplifting	6	7	7	6	3	10
7. Drunk driving	7	10	15	17	10	13
8. Perjury to protect a friend	8	13	14	16	8	2
9. Cheating on income tax	9	9	11	11	2	4
10. Homosexuality (consenting)	10	3	2	2	8	3
11. Adultery	11	12	10	10	1	7
12. Unsafe powermower left near children	12	15	12	15	3	29
13. Slander	13	14	13	14	1	29
14. Smoking marijuana	14	8	8	12	6	6
15. Careless parking resulting in injury	15	11	9	7	8	29
16. Setting back speedometer on car for sale	16	22	25	27	11	18
17. Needling coworker to hurt him	17	17	20	18	3	29
18. Breaking quarantine	18	26	22	23	8	22
19. Informing on friend who is tax cheat	19	16	18	9	10	29
20. Running burger stand without license	20	20	19	24	4	18
21. Lying about job error	21	19	17	20	4	29
22. Telling boss about friend's poor work	22	23	21	19	2	29
23. Wiring without license	23	21	24	25	2	18
24. Refusing to pay judgment	24	18	16	13	11	29
25. Fistfighting (willing)	25	28	30	29	4	10
26. Calling host S.O.B.	26	25	27	22	4	29
27. Parking by a fireplug	27	31	28	30	4	18
28. Fishing without license	28	29	29	31	3	18
29. Using obscenities in mixed company	29	24	23	21	8	18
30. Driving 60 mph in 50 zone	30	32	31	33	3	18
31. Drunk and throwing up at a party	31	27	26	26	5	29
32. Being noisily drunk	32	30	32	28	4	29
33. Breaking theater line	33	33	33	32	1	29
34. Driving on two beers	34	34	34	34	0	29
35. Jaywalking on quiet street	35	35	35	35	0	18

brief description of the acts postulated and the responses to the acts by the different groups that were surveyed appears in Table I.

Hypotheses:

(1) Judges, because of their preoccupation with the law, might tend much more than laymen to condemn any act that is illegal. For example, they might consider speeding or jaywalking more significant than an act such as needling a coworker just to hurt him, simply because the former are illegal and the latter is not.

(2) Certain categories of acts with a common purpose, as examples, protection of property or protection of person, might be found to be of different significance to judges than to laymen.

(3) Despite hypotheses one and two, there would be substantial consensus among groups.

Results:

The first two hypotheses do not fare well. A glance at the rankings in Table I shows that in most instances judges view illegal but nonetheless inoffensive acts in about the same light as do laymen.

Moreover, no discrete functional categories—such as protection of property or protection of persons—were found in which judges and lay groups differed markedly. As will be explained later, there were categories of differences, but the common denominators of these categories were more subtle and more related to thought processes

than to objective classifications. Hence, hypotheses one and two are rejected.

After examining Table I, it would seem fair to say that on the whole the differences found between the groups are not great. A difference of five rankings between the judges and one other group was chosen arbitrarily as indicating a significant difference. It should be noted that these data show only a ranking and do not establish the intensity of feeling among the groups. It is conceivable, although not at all likely, that judges feel more strongly about all acts than do other groups. The incidence of differences in ranking were: 0 to 4 ranks, 24; 5 to 9 ranks, 7; 10 or 11 ranks, 4.

Especially striking is the similarity of response relating to those crimes against person and property that are probably the major concern of both citizen and judge—murder, armed robbery and larceny. There is found to be a similar consensus as to most minor regulatory law with which the citizen is most concerned, such as speeding, fishing without a license and parking by a fire plug.

Thus, the third hypothesis receives qualified support. There is a substantial consensus among the groups polled. Agreement with the judges is greatest for Kiwanis members, next greatest for the Spokane group and smallest for students.³ All groups agree with the judges more than they agree with an artificial measure of "legal severity" based on the maximum punishment for each act under Washington state law. Indications are that the judges' "law-in-fact" agrees with public sentiment better than does "book law".

In summary, it may be said, subject to qualification, that in a broad sense there does seem to be a coherent set of moral standards shared by judge and layman alike. The qualifications are two. First, the respondents are over-

3. Column 5 of Table I shows the difference in rank as to each of the thirty-five acts. The values of gamma (a measure of association) between judges and the various other groups were: judges-Kiwanians, .82; judges-Spokane sample, .77; judges-students, .71. The gamma between judges and "legal severity" was .50.

wholly from various layers of the middle class, although a few may be upper class and some of the Spokane group might be lower class. Differences might be greater if a clearly lower-class sample were included. Second, there are a number of areas in which the data do show substantial differences in attitude between groups.

We feel that the nature of the categories in which important differences between judges and laymen are found constitute the most significant findings of the inquiry. Most of these differences were unanticipated. A discussion of these, perhaps our most interesting findings, follows.

Crimes Without Victims

There has been much discussion in the recent literature concerning "crimes without victims", especially whether these acts ought to be crimes at all.⁴ Examples include practically all sex crimes that consist of acts committed between freely consenting adults, the illegal use of drugs, and abortion.

Most crimes are condemned because they result in injury or a probability of injury to others. Crimes without victims usually do not result in injury or even the probability of injury. They are crimes because they are defined as crimes, and they are defined as crimes because of social convention.

The crimes included in Table II are "crimes without victims", although one, use of obscenity, is not ordinarily so categorized merely because it rarely is considered at all. This is because it is not often prosecuted and is lightly penalized on the few occasions when prosecution occurs.

In each instance of "crimes without victims" except for one, adultery, the judges rank the offense as significantly less important than do most other groups. The judges seem more concerned with actual harm and less with deviance from accepted mores or traditions. In the case of adultery, the judges might be influenced by their experience in divorce courts. Perhaps adultery is not properly classified among "crimes without victims", because the spouse of the adulterer is usually an injured party.

TABLE II
"CRIMES WITHOUT VICTIMS"
(Rank 1, most severe; Rank 35, least severe)

Act	Judges	Kiwanis	Spokane Mail Poll	Students
Homosexuality (consenting)	10	3	2	2
Smoking marijuana	14	8	8	12
Using obscenities in mixed company	29	24	23	21
Adultery	11	12	10	10

TABLE III
INTENTIONAL, "POTENTIALLY" HARMFUL ACTS, WHERE
HARM MAY NOT FOLLOW
(Rank 1, most severe; Rank 35, least severe)

Act	Judges	Kiwanis	Spokane Mail Poll	Students
Drunk driving	7	10	15	17
Setting back speedometer	16	22	25	27
Breaking quarantine	18	26	22	23
Fistfighting (both parties willing to fight)	25	28	30	29

It should be noted that a noncriminal act, "drunk and throwing up at a party", demonstrates the same forces at work. Although not actually illegal, this act is obviously contrary to prevailing mores, yet there is no victim. Consistent with our other findings, judges rated this most tolerantly, students and the Spokane poll least (Table I, Item 31), with a difference in ranking of five. This is consistent with the finding that the judges are relatively more concerned with real harm than with violations of mores or traditions.

It should be noted that ordinarily, and perhaps contrary to what might be expected, the students are the group most concerned with upholding mores and tradition and consequently less concerned with actual harm. The students' response to the use of marijuana is a special case. Use of marijuana is fairly common among students, but it is certainly not common among any of the other groups polled. Thus, student experience is atypical, and this is reflected in their ranking.

Intentional Acts Not Necessarily Harmful

Another category of acts may be detected that have a different common denominator. This is a group of intentional acts that may not result in harm, for example, setting back a speedome-

ter in a car for sale, but carry a potential for harm—in this instance, because a purchaser may pay too high a price. Judges, relative to others, tend to condemn these acts, evidently seeing them as the direct cause of serious harm. Other groups evidently tend to view these acts as more neutral, perhaps guessing that usually they will not cause serious harm. These acts are set out in Table III.

Greater concern with cause than effect on the part of the judges may explain the differences in ranking. The judges may be influenced more by the fact of an intentional and wrongful act being committed; the other groups may be influenced more by the result, which is usually that serious harm does not result.

This analysis is complementary to another finding, that judges seem more tolerant than the other groups when wrongful intent is *not* present but injury *does* result, the opposite of the situation just described. This appears to be demonstrated by the fact that in ranking the one act included in our questionnaire in which negligence results in an injury, "parking a car carelessly, which injures someone" (Table I, Item 15), other groups are more se-

4. Rooney & Gibbons, *Social Reactions to Crimes Without Victims*, 13 *SOCIAL PROBLEMS* 400 (1966); SCHUR, *CRIMES WITHOUT VICTIMS* (1965).



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vere in their ranking than the judges. The students are very tough indeed on this negligent act, ranking it seventh; the judges ranked the same act fifteenth. Again, this may suggest that the other groups are more impressed by results, the judges by cause. The cause here being unintended, the judges assume a tolerant posture.

Other Differences

Adherence to the law is not always a simple problem in which the only consideration is one's own convenience or inconvenience in doing so. Often other values conflict with that of respect for the law. Our questionnaire contained two instances in which this was the case. In both, the interest placed in conflict with the law was that of per-

sonal friendship, and in both cases the differences in response between groups was significant.

Judges are markedly intolerant of perjury, while all of the other groups are substantially more tolerant of perjury, at least to protect a friend, with the students differing from the judges by eight rankings. Of course, judges are in a better position to witness the baleful effects of perjury, which, after all, might convict the innocent or free the guilty and, at least, greatly complicate the administration of justice.

These findings suggest that students feel the demands of personal friendship more strongly than the demands of the law, as compared with other groups. This seems borne out when we take another situation, informing upon a

friend. Students feel this act is much more blameworthy than do other groups, while judges, responding more to the demands of the law, believe informing to be much less blameworthy.

While not directly related to this discussion, it is convenient to mention here one surprise: Judges feel much less strongly than other groups toward failure to pay a judgment. The other groups evidently view this act as welshing on a just debt, while judges recognize that other factors—such as inability to pay, having an appeal in progress or natural and even justified resentment at losing a doubtful decision—may enter into the equation. Only one other act showed as great a difference in view as this.

One cannot help observing that, except for the students, the order in which the groups respond is also an order of socioeconomic class based on occupation. The judges are the highest status group. The Kiwanians, being businessmen with some professional men, are next. The Spokane poll would be the lowest in status of the adult groups.

Interpretations

How might this order be explained? We suggest that certain influences are more characteristically present among higher than among lower socioeconomic classes and that these influences favor the development of tolerance and "reasonableness" (as exemplified by placing more emphasis on causes than on results). Among these influences are such advantages as a high level of education, opportunities for varied and broadening experience, employment situations permitting exercise of discretion and responsibility, and the opportunity for a stimulating social life.

Other studies have demonstrated that members of lower socioeconomic classes, lacking the advantages of these influences, tend to be rather low in tolerance and in what we loosely call "reasonableness".⁵ Our study suffers from not having much, if any, representation from clearly lower-class

TABLE IV
THE LAW AS OPPOSED TO FRIENDSHIP
(Rank 1, most severe; Rank 35, least severe)

Act	Judges	Kiwanis	Spokane Mail Poll	Students
Perjury to protect friend	8	13	14	16
Informing on friend who is cheating on his income tax	19	16	18	9

⁵ See Cohen & Hodges, *Lower-Blue Collar-Class Characteristics*, 10 *SOCIAL PROBLEMS* 305 (1963).

groups. Nonetheless, there are undoubtedly class differences among the adult groups in our survey, and we believe these class differences may explain the ordering of the adult groups. The order of the groups is in the direction that would be expected, *i.e.*, the higher the socioeconomic status of the group, the greater the degree of tolerance and "reasonableness" evidenced in the response to the questionnaire. As a tentative explanation for the differences in response among these groups, it seems possible that differences in outlook may well be related to differences in exposure to the influences described above.

Many of these same considerations may explain the extreme ranking of the students. Because of their age (mostly 20 years in our sample) they have not had the opportunity to absorb broad experience or exercise much re-

sponsibility. The students polled were mainly sophomores, and it might be expected that they have on the average more education than the Spokane group but less than the Kiwanians. Certainly less than the judges. The greater experience and maturity of the respondents in the Spokane poll conceivably produced greater tolerance and "reasonableness" than the somewhat more education but less experience among the students. As a guess, it would appear that age is an important variable in the development of these qualities. If, as we believe, broad ex-

perience and responsibility are key factors in the development of tolerance and "reasonableness", it is not surprising that the students are found at the opposite pole from the judges.

At any rate, these suppositions seem a reasonable explanation of the data until further investigation sheds more light.

(AUTHORS' NOTE: The research on which this article is based was supported by a grant from the Bureau of Economic and Business Research of Washington State University, whose assistance is gratefully acknowledged.)

TABLE V
FAILURE TO PAY JUDGMENT
(Rank 1, most severe; Rank 35, least severe)

Act	Judges	Kiwanis	Spokane Mail Poll	Students
Refusal to pay judgment	24	18	16	13

Calendar of Association Meetings

Annual

St. Louis, Missouri	August 10-14, 1970
New York, New York	July 5-7, 1971
and London, England*	July 14-20, 1971
San Francisco, California	August 14-17, 1972
Washington, D. C.	August 6-9, 1973

Midyear

Atlanta, Georgia	February 17-24, 1970
(Meetings at Regency Hyatt House and Marriott Motor Hotel. Administration Committee, February 17 and 18; Budget Committee, February 18; Board of Governors, February 19 and 20; Committees, Sections and other group meetings, February 20-22; House of Delegates, February 23 and 24.)	
Chicago, Illinois	February 4-9, 1971
New Orleans, Louisiana	February 3-8, 1972
Cleveland, Ohio	February 7-13, 1973
Houston, Texas	February 1-5, 1974

Spring, 1970

Washington, D. C. (Mayflower Hotel)	May 19-23, 1970
(Budget Committee, May 19-21; Administration Committee May 20-21; Board of Governors, May 22-23.)	

* — The Board of Governors on October 16, 1969, adopted a revised priority policy with respect to the assignment of accommodations for the 1971 Annual Meeting in London. This policy appears on page 1169 of this issue.