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Moral Disengagement in Legal Judgments

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Abstract

We investigated the role of moral disengagement in a legally-relevant judgment in this theoretically-driven empirical analysis. Moral disengagement is social-cognitive phenomenon through which people reason their way toward harming others, presenting a useful framework for investigating legal judgments which often result in harming individuals for the good of society. We tested the role of moral disengagement in forensic psychologists' willingness to conduct the most ethically questionable clinical task in the criminal justice system: competence for execution evaluations. Our hypothesis that moral disengagement would function as mediator of participants' existing attitudes and their judgments– a theoretical "bridge" between attitudes and judgments – was robustly supported. Moral disengagement was key to understanding how psychologists decide to engage in competence for execution evaluations. We describe in detail the moral disengagement measure we used, including exploratory and confirmatory factor analyses across two separate samples. The four-factor measure accounted for a total of 52.18% of the variance in the sample of forensic psychologists, and the model adequately fit the data in the entirely different sample of jurors in a confirmatory factor analysis. Despite the psychometric strengths of this moral disengagement measure, we describe the pros and cons of existing measures of moral disengagement. We outline future directions for moral disengagement research, especially in legal contexts

Keywords: moral disengagement; judgment; decision; forensic; competen*; capital punishment; psycholog*

I. INTRODUCTION

Moral disengagement (Bandura, 1986, 1999, 2015) is a social-cognitive framework for understanding an individual's decision to act in a potentially harmful manner toward other(s). Grounded in a broader social-cognitive understanding of the self, Bandura argues that the cognitive disengagement of moral agency by an individual can allow one to act in ways they otherwise might not. It occurs via several interrelated cognitive mechanisms through which people can deactivate moral self-regulatory processes and disengage from feelings of moral "wrongness" to arrive at a decision to engage in behaviors that might otherwise feel "wrong." Humans are remarkably adept at reasoning their way toward desired conclusions, constructing justifications through cognitive processes designed in ways to help them do so (Kunda, 1990). Moral disengagement is one such cognitive process or pathway through which motivated reasoning may yield a desired conclusion.

Occupational roles in the legal system often involve decisions that may result in inflicting harm on others. A definition of harm we proffer for the study of moral disengagement in the legal system is any behavior which may, either directly or indirectly, cause physical or psychological injury, death, or deprivation of liberty to another person. For example, police officers must make decisions about arresting people and taking them into custody, thereby depriving them of liberty; prosecuting attorneys must use their discretion to decide whether or not to file charges and whether to seek more severe punishments; and forensic scientists and forensic mental health professionals must interpret evidence and communicate professional decisions relevant to the case, such as whether a particular pair of fingerprints "matched" the defendant or whether or the defendant was mentally ill at the time of the crime, decisions that contribute to triers' verdict and sentencing decisions. Furthermore, judges and jurors must make

decisions that may deprive people of liberty, place people in prison environments where they may be physically or psychologically injured, or impose the death penalty to end someone's life, among other decisions. Each of these decisions may lead to harm to the suspect or defendant. Of course, there may be compelling reasons to reach these judgments (and in fact there usually are – which is the primary reason we have a legal system in the first place), which underscores the utility of moral disengagement for understanding the process.

Various parties in the justice process hold occupational roles that require them to make decisions and engage in behaviors that will harm others. They may experience a variety of feelings, personal beliefs, moral objections, or attitudes related to the potential consequences of their decisions. As a result of these conflicts, people may selectively disengage from personal moral self-sanctions so they can perform their occupational or societal duties while simultaneously maintaining their emotional well-being (Neal & Brodsky, 2016; Osofsky, Bandura, & Zimbardo, 2005). For people who work in the legal system, who are often in situations in which their decisions may result in substantial potentially negative outcomes for suspects, defendants, and offenders, moral disengagement may serve a function to assuage guilty feelings related to potential outcomes of their societally-accepted involvement in the legal process that may lead to harm.

Despite a robust moral disengagement literature, few studies have applied this theory to the context of the legal system. We conduct a novel test of moral disengagement theory by examining its role in a new legally-relevant judgment context, as a mediator between decision makers' attitudes and their legally-relevant judgments. Specifically, moral disengagement is examined as a mediator of forensic psychologists' death penalty attitudes and their willingness to participate in Competence for Execution evaluations. The associations between these variables

have been documented, and this project focuses specifically on *how* those associations occur – the mechanism through which these variables may be related to one another. We hypothesize that moral disengagement is such a mediator that might explain how these attitudes and outcomes are related, given that moral disengagement can account for how people decide to do harm to others – especially in contexts when the harm may be justifiable (like this legal situation).

We have grappled with two tensions in moral disengagement theory relevant to its application in the legal system. First, Sternberg (2016) noted that sometimes some harm must be done for greater good. This reflects a tension that ethics scholars have written about in the legal system – that competing moral and ethical foundations exist in the legal system and thus that multiple perspectives are defensible and must be weighed against one another (e.g., individual rights vs. societal rights; Candilis & Neal, 2014). Second, Bandura (2015) noted that a person's subjective moral framework is what ultimately matters for moral disengagement. That is, people have different views regarding what constitutes moral behavior, and moral disengagement is a subjective process in which people disengage from these subjectively-held values. These issues have the potential to complicate measurement and hypothesis tests.

We have done a few things to try to address these issues. First, to identify potential situations in which people might morally disengage in the legal system, we relied on the definition of harm provided earlier in this paper as a guide rather than on our own subjective values about what would be morally wrong or right. Second, we selected an issue about which we knew people would vary regarding what constitutes moral behavior (i.e., conducting competence for execution evaluations; e.g., Bonnie, 1990). And third, we measured moral values and included the full range of these values in our model for a robust test of our hypothesis.

A. Moral Disengagement Theory

The disengagement of moral agency is not a simple process. Moral disengagement theory assumes people self-regulate via a complicated set of cognitive hurdles (Bandura, 1999). Bandura and his colleagues (e.g., Bandura, 1986, 1999, 2015; Bandura, Barbaranelli, Caprara, & Pastorelli, 1996; Bandura, Caprara, Barbarenelli, Pastorelli, & Regalia, 2001; Osofsky et al., 2005) articulated the sequence of events that typically occur in order for an act to be perceived as morally justifiable by an individual. The sequence of events involves the actor of the potential act: (a) considering committing an act with the potential to harm a specified target, (b) evaluating the consequences of the action, and (c) judging whether the target is warranting of the act. Cognitive mechanisms by which justification is reached come from four sources: justifying the nature of the act itself (i.e., moral justification, palliative comparison, euphemistic labeling), minimizing the actors' role in committing the transgression (i.e., displacement and diffusion of responsibility), viewing the consequences as minimal (i.e., minimizing, ignoring, or misconstruing the consequences of the act), and by blaming the target as deserving of harm (i.e., dehumanization, attribution of blame; Bandura, 1999).

One study, conducted by Osofsky and colleagues (2005), examined the nature of moral disengagement among personnel at varying levels of the execution process: actual executioners, emotional support team members, and prison guards uninvolved in the process (presumably as a comparison group). As expected, Osofsky et al. reported that those legal personnel most closely associated to the harmful act (i.e., carrying out the death penalty) exhibited the greatest levels of moral disengagement. Of note, support team members, a group originally endorsing lower levels of moral disengagement, demonstrated increased moral disengagement as they participated in, or were habituated to, more executions. Osofsky and colleagues' (2005) findings show the

relevance of moral disengagement for people who work within the legal system. The impact of one's cognitive justification for decisions that may lead to harm, even for convicted offenders perceived as worthy of such punishment, warrants further attention.

B. Legal Context Our Study: Competence for Execution (CFE)

In the landmark case *Ford v. Wainwright* (1986), the United States Supreme Court held that capital punishment constituted cruel and unusual punishment for insane individuals in violation of the Eighth Amendment. Competency for execution requires that the defendant have both a factual and rational understanding of the reasons for the execution (*Panetti v. Quarterman*, 2007). To make these competency determinations, the legal system often asks mental health professionals to provide relevant information by conducting forensic mental health evaluations of these individuals.

1. Mental Health Professional Involvement in CFE Evaluations.

There has been a lively debate in the mental health fields about the ethicality of participating in CFE evaluations. On one side of the debate are scholars asserting that mental health professionals should not be involved in these proceedings due to the ethical prohibition against harming clients and patients (e.g., Ewing, 1987; Radelet & Barnard, 1986). On the other side of the debate are scholars asserting that CFE evaluations are not substantively different than any other kind of forensic evaluation in which there is potential that harm would occur to the evaluee (e.g., Bonnie, 1990; Mossman, 1987).

Regardless of one's position, data show that psychologists report less willingness to participate in CFE evaluations than other kinds of forensic evaluations (Pirelli & Zapf, 2008). Some data suggest clinicians may choose to be involved early in a capital case, but refrain as the possibility of an execution draws closer (Brodsky, Zapf, & Boccaccini, 2005). Pirelli and Zapf

reported that roughly 35% of mental health professionals said they would refuse to participate in competence for execution evaluations even though they would conduct other capital evaluations.

Might the clinicians' attitudes toward capital punishment have anything to do with their willingness to participate in CFE evaluations? Indeed, studies have suggested that stronger capital punishment support is associated with greater willingness to conduct CFE evaluations (Deitchman, Kennedy, & Beckham, 1991; Pirelli & Zapf, 2008). But these studies do not shed light on the reasons for that relationship; various mechanisms could explain it.

Perhaps clinicians with higher death penalty support are more willing to become involved because clinicians who do not believe in capital punishment abstain, thus leading to a biased representation of clinician support toward capital punishment among those willing to take CFE cases. This explanation would parallel Haney's (2005) observation that death-qualified juries are biased toward death given the overrepresentation of death penalty-supportive jurors on death qualified juries. However, these studies also show that some mental health professionals with low support for capital punishment may nevertheless be willing to conduct CFE evaluations (e.g., Pirelli & Zapf, 2008), which suggests that attitude toward capital punishment is not the only mechanism underlying clinicians' decisions to become involved in CFE cases. The current study zeroes in on another potential explanation: moral disengagement. The disengagement of moral agency might explain how mental health professionals – accounting for their position on the issue of capital punishment – become involved in cases in which they may end up facilitating the termination of the individual's life.

C. Hypothesized Model

We expect that moral disengagement will mediate the relation between forensic psychologists' death penalty attitudes and their self-reported willingness to accept Competence

for Execution referrals (see Figure 1). We also set out to evaluate the structure of the Moral Disengagement Scale (MDS; Osofsky et al., 2005) among legal decision-makers who must recommend varying levels of punishment in independent samples by conducting an Exploratory Factor Analysis with our forensic psychologists and a Confirmatory Factor Analysis in an independent sample of actual jurors.

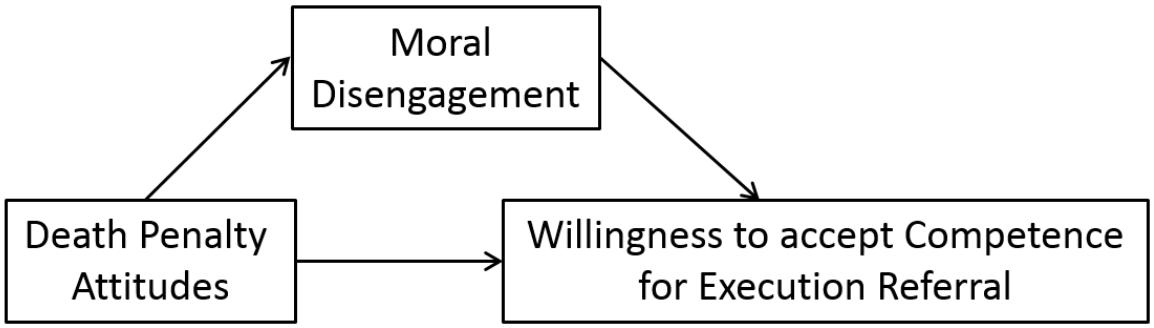

Figure 1: Moral disengagement as a hypothesized mediator of forensic psychologists' attitudes toward capital punishment and willingness to accept CFE referrals

II. METHOD [2]

A. Participants

The participant sample for this study consisted of practicing forensic psychologists in North America. To generate potential participants, the American Psychological Association (APA) website directory was used. Previous research with both APA members and those who are not APA members indicate APA membership is representative of doctoral-level clinicians with respect to demographic characteristics, education, and employment (Center for Mental Health Services, 1996; Howard et al., 1986; Stapp, Tucker, & VandenBos, 1985). Stapp,

[2] Portions of the same dataset used in this study were used in other papers (Neal & Brodsky, 2014, 2016; Neal, 2016). However, the variables of interest in each study are unique. The variables of focus in this paper (mediator and dependent variable) were not used or reported in the previous papers.

Tucker, and VandenBos concluded that the APA membership database is sufficiently representative of licensed clinicians to use the member database for policy research. A sample of 962 participants with clinical-forensic interests was identified through the APA directory. Surveys were mailed to all of these people.

Of the 962 surveys mailed, 351 were completed for a completion rate of 41.54%.[3] The full sample was composed of forensic psychologists in 43 U.S. states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, and British Columbia and Ontario, Canada. The age range was 28 to 86 years, with a mean of 59.25 (*SD*= 9.45). Most of the participants in this sample were Caucasian (90.6%); other reported ethnicities were 4.9% Hispanic, 1.1% African-American, 0.9% Asian, and 2.6% Other. Approximately two-thirds of the respondents were men (69.5%; 30.5% female). Participants in this sample evidenced a number of years of experience, with a mean of 22.35 years conducting forensic evaluations (*SD* = 9.68). Almost thirty percent (28.4%) reported being certified by a specialty board.

B. Procedure

The mailed packet included a cover letter indicating the research was being conducted by a university student, an Institutional Review Board participant information sheet, the questionnaire printed on green paper, and a separate trifolded debriefing page with "Please open only AFTER survey is complete" visible until unfolded. Also enclosed were a self-addressed stamped envelope with first-class postage and a one-dollar bill as gesture of appreciation. A

[3] One hundred and seventy-seven surveys were returned as undeliverable, thus 785 were presumably received. The completion rate was calculated as 351 returned out of 785. Of note, Neal (2016) used a subsample of this group of respondents – only those who practice in states with the death penalty (*n* = 206 of these 351 for that paper). We considered restricting the current analysis to that same subsample of 206, but decided to present the data for the full sample in this paper because we were interested in their willingness to consider CFE work irrespective of jurisdiction. We performed the same analyses described below on this subsample of 206 and a similar pattern of results were obtained.

follow-up postcard was sent two weeks later. These methods (e.g., university sponsorship, green paper, first-class postage, dollar bill, and postcard) were chosen because each have been shown to increase postal survey response rates (Fox, Crask, & Kim, 1988; King & Vaughan, 2004).

C. Materials

1. Demographics and Dependent Variable

A questionnaire developed for this study included personal and professional demographic questions. It also asked "Have you or would you conduct a competency for execution evaluation?" which served as our dependent variable in this analysis.

2. Death Penalty Attitudes Scale (DPAS).

O'Neil, Patry, and Penrod (2004) constructed the 15-item DPAS to measure jurors' attitudes toward the death penalty. Items are answered on a nine-point Likert-type scale (1, *strongly disagree*, to 9, *strongly agree*) with higher scores indicating greater death penalty support. Although the scale was initially designed to measure jurors' death penalty attitudes, the scale has been found to correlate highly ($r > 0.85$) with other measures of death penalty support and has demonstrated strong psychometric properties in previous research. Results were used to obtain quantitative data regarding the relative strength of the participants' attitudes toward the death penalty. The DPAS evidenced good reliability in this sample; $\alpha = 0.84$, average inter-item correlation = 0.27.

3. Moral Disengagement Scale (MDS)

Participants completed the MDS (Osofsky et al., 2005), a 19-item self-report inventory with items anchored on a 5-point scale ranging from 1 (*strongly disagree*) to 5 (*strongly agree*).[4]

[4] The actual scale uses the reverse anchors, which we used in data collection (i.e., 1 was *strongly agree* and 5 was *strongly disagree*). However, the data is easier to interpret when recoded, so for the purposes of these analyses, we reversed the scale so that higher scores corresponded with higher moral disengagement.

Although moral disengagement theory is not specific to the death penalty context, this particular scale was developed in the context of measuring the various forms of disengagement from moral self-sanctions regarding executions. This is because Osofsky et al. examined the cognitive processes involved in executioners and support staff prior to an execution. Because the current study is also in the capital punishment context, we chose to use this measure. The items on this scale assess eight mechanisms Osofsky and colleagues (2005) outlined thorough which moral self-sanctions are disengaged from involvement in the lethal death penalty process. The MDS evidenced good reliability in this sample; $\alpha = 0.86$, average inter-item correlation = 0.25.

Although the authors of the scale published data examining its validity and reliability in various contexts (see e.g., Osofsky et al, 2005), the individual items had not been published prior to our analysis. We contacted the authors and obtained permission to use the scale and a copy of the individual items from Drs. Osofsky and Zimbardo (personal communications, Feb 27 2009). We had hoped to confirm the factor structure previously summarized in Osofsky et al.'s (2005) original report. Unfortunately, however, we were unable to obtain details about which items loaded on which factors in the Osofsky et al.'s (2005) report. Thus, we opted to conduct an exploratory factor analysis in this sample and to attempt to confirm it in a separate sample to establish the psychometric validity of the scale prior to conducting our *a priori* analyses for this project. Dr. Zimbardo expressed permission on behalf of himself and his colleagues for us to publish their MDS items in this report (personal communication, August 19, 2012).

a. Exploratory Factor Analysis (EFA) of the Moral Disengagement Scale.

We conducted an EFA in this sample of forensic psychologists to explore the underlying internal structure of the measure. First, we conducted an EFA on the 19-item MDS with principal component analysis as the extraction method in SPSS. Four factors had eigenvalues

greater than one; thus we rotated data with an orthogonal Varimax with Kaiser Normalization method set to four factors. Table 1[5] shows the items that loaded at values greater than 0.4 on the four factors. Nine items loaded on the first factor, "Rationalization," which accounted for 18.18% of the variance after rotation (eigenvalue = 3.46 after rotation). The second factor, "Security and Economic Justifications," accounted for 15.39% of the variance after rotation and had six items loading on it (eigenvalue = 2.93). The third factor was "Dehumanization" (10.77% of the variance, eigenvalue = 2.05), and the fourth factor was "Non-Responsibility" (7.84% of the variance, eigenvalue = 1.49). These four factors overlap conceptually with those reported by Osofsky et al. (2005) and we used their language to label these factors where we could do so. Please refer to Table 2 for scaled descriptive statistics regarding the MDS factors and total scores.

[5] Note that the EFA values in the table are from the forensic psychologist sample, and the CFA values are from a separate sample of jurors.

Table 1. Factor Loadings for MDS Items from the EFA (forensic psychologists) and the CFA (separate juror sample).

	EFA	CFA (Standardized)	
	λ	λ	S.E
Factor 1: Rationalization			
#1 (Murderers should be executed to deter others from committing murder)	0.43	0.05	0.11
#6 (Capital punishment is not as bad as the murders that convicts have committed)	0.74	0.61‡	0.11
#8 (Capital punishment is just a legal penalty for murder)	0.50	0.52‡	0.06
#9 (An execution is merciful compared to a murder)	0.62	0.70‡	0.04
#11 (When the 12 jurors approve the death penalty, no 1 juror should be held responsible for the decision to execute a murderer)	0.51	0.39‡	0.10
#12 (Those who carry out state executions should not be criticized for following society's wishes)	0.69	0.51‡	0.07
#14 (Nowadays the death penalty is done in ways that minimize the suffering of the person being executed)	0.71	0.66‡	0.05
#15 (Elaborate legal safeguards assure that innocent persons are not executed)	0.42	0.46‡	0.06
#19 (Murderers should blame themselves when they receive the death penalty)	0.58	0.64‡	0.05
Factor 2: Security and Economic Justifications			
#1 (Murderers should be executed to deter others from committing murder)	0.62	0.81‡	0.10
#2 (If a society is to be law-abiding, murders must be avenged with capital punishment)	0.65	0.83‡	0.04
#3 (The bible teaches that murders must be avenged: "life for a life and eye for eye")	0.43	0.63‡	0.04
#4 (Life imprisonment for murderers is unacceptable, b/c prison guards will be endangered by convicts who have nothing to lose)	0.74	0.70‡	0.05
#5 (Life imprisonment for murderers is unacceptable, because they can escape to kill again)	0.79	0.65‡	0.05
#7 (The death penalty is right because it costs society less than keeping murderers in prison for life)	0.50	0.68‡	0.05
Factor 3: Dehumanization			
#10 (Jurors do not have much say about the death penalty because later court rulings will decide the matter)	0.41	0.14	0.08
#16 (Murderers who receive the death penalty have forfeited the right to be considered full human beings)	0.75	0.73‡	0.05
#17 (Because of the nature of their crimes, murderers have lost important human qualities)	0.79	0.87‡	0.05
#18 (Society has no choice but to impose the death penalty for horrible crimes)	0.51	0.21	0.11
Factor 4: Non-Responsibility			
#10 (Jurors do not have much say about the death penalty because later court rulings will decide the matter)	0.49	0.38‡	0.10
#11 (When the 12 jurors approve the death penalty, no 1 juror should be held responsible for the decision to execute a murderer)	0.56	0.17	0.11
#13 (Jurors do not have much choice in their decisions about the death penalty because they have to follow sentencing instructions)	0.76	0.83‡	0.15

Note. CFA items significantly loading on factors at the ‡ $p < 0.001$ level

Table 2. Means (and Standard Deviations) on the MDS Factors and Total Scale.

	Factor 1 Rationalization	*Factor 2* Security & Economic Justifications	*Factor 3* Dehumanization	*Factor 4* Non-Responsibility	*Total Score*
Forensic Psychologists	2.88 (0.77)	1.74 (0.59)	1.75 (0.71)	2.74 (0.69)	2.32 (0.54)
Actual Jurors	3.67 (0.76)	3.09 (1.01)	2.85 (1.85)	3.37 (0.81)	3.32 (0.75)

Note: Higher MDS values indicate higher moral disengagement. The values for the factors and total scores presented here are average values as rated on the 5-point response scale ranging from 1 (*strongly disagree*) to 5 (*strongly agree*).

b. Confirmatory Factor Analysis (CFA) of the Moral Disengagement Scale.

We tested the optimal four-factor structure that emerged from the EFA in the forensic psychologist sample by using Confirmatory Factor Analysis (CFA) in a separate sample of actual jurors who also completed the same MDS scale ($\alpha = 0.91$, average inter-item correlation = 0.33). These participants were 301 jury venire members from four county courthouses in the southwestern United States. The sample had mean age of 47.3 years (*SD* = 12.7) and was 55.5% female (43.5% male, 1.0% unspecified) and 77.7% White (8.6% African American, 5.0% Hispanic, 6.9% other, and 1.8% unspecified). No other details about this separate sample are provided, because the data is solely relevant for examining the psychometric properties of the MDS scale as relevant for this paper.

A total of three *a priori* CFA models were tested: a) a one-factor model indicated by all MDS items, b) a model in which items loaded on four factors with randomized items, and c) our proposed four-factor model from the EFA. The purpose of comparing these three models was to explore whether our proposed four-factor model would better fit the data than the other two models.

We conducted a CFA with maximum likelihood estimation in M*plus* 5.21 (Muthen & Muthen, 2005). We estimated parameters with robust scaling (i.e., MLR) and freed the

parameters but fixed latent variances to one so that the latent factor scores would have a standardized metric. We evaluated model fit with the Satorra-Bentler scaling correction χ^2 statistic (Satorra & Bentler, 1994) as well as the Root Mean Square Error of Approximation (RMSEA), Standardized Root Mean Square Residual (SRMR), Confirmatory Fit Index (CFI; Bentler, 1990), Akaike's Information Criterion (AIC; Akaike, 1987), and Bayesian Information Criterion (BIC; Schwarz, 1978).

We included these comparative fit indices because the χ^2 statistic is easily influenced by sample size and is therefore an inappropriately strict test of model fit (Bentler & Bonett, 1980; Kline, 2010; Marsh, Hau, & Grayson, 2005). Comparing the fit of various models is an acceptable method of evaluating model fit: smaller χ^2, AIC, and BIC values correspond to better fitting models (Schumacker & Lomax, 2010). RMSEA values up to 0.05 indicate good fit, between 0.06 and 0.08 indicate adequate fit, and $\geq$ 0.10 indicate poor fit (Hu & Bentler, 1999; Kline, 2010). SRMR values below .08 are indicative of a good fit (Hu & Bentler, 1999). CFI values greater than 0.90 generally indicative of acceptable model fit (Hu & Bentler, 1999).

We estimated three separate models using the 19 MDS items. Please refer to Table 3 for the model fit indices.[6] The four-factor model that emerged in our EFA was a better fit for the data than the one-factor and random four-factor models. The only model that adequately fit the data according to the RMSEA value was this optimized four-factor model. Although each of the three models were acceptable according to the SRMR, the optimized four-factor model had the lowest (i.e., best) value and the AIC and BIC were lowest for this optimized four-factor model as well. None of the models were an acceptable fit according to the CFI criteria, though the CFI

[6] We used the random number generator at www.random.org to assign items randomly to four factors in the "random" model.

value for the optimized four-factor model was certainly the closest to the .90 cut-off with a value of .87. It should be noted that the CFI statistic has been shown to be excessively low in models that use item-level data even when the models are accurately specified (see e.g., Marsh et al., 2005). We conclude based on the totality of the information that the optimized four-factor model is an adequate fit for the MDS data, Satorra-Bentler χ^2 (143) = 351.40, CFI = 0.87, RMSEA = 0.070 (90% CI = 0.061 – 0.079), SRMR = 0.06, AIC = 17,203.83, and BIC = 17,447.39.

All but four items loaded significantly on their respective factors at $p < 0.001$ (see Table 1). None of those four items loaded significantly on their respective factors. Specifically, item 1 about deterring future murders did not load on factor 1, though it did load on factor 2 where it theoretically fits better. Item 10 about judges rather than jurors having control over sentences did not load on factor 3, but loaded on factor 4 where it fit better. Items 11 and 18 did not load on any factor, which reflected that no single juror should be held responsible for a sentencing.

Table 3. Goodness-of-Fit Indices for Model testing the MDS Factor Structure in CFA.

Model	SB-X^2	*df*	CFI	RMSEA (90% CI)	SRMR	AIC	BIC
Items							
One-factor	540.56	152	0.76	0.093 (0.085-0.101)	0.07	17,411.16	17,621.51
Four factor (Random)	540.71	146	0.75	0.096 (0.087-0.104)	0.07	17,413.02	17,645.52
Four factor (Optimized)	351.40	143	0.87	0.070 (0.061-0.079)	0.06	17,203.83	17,447.39

Note. SB-X^2: Satorra–Bentler scaled chi-square; *df*: degrees of freedom; CFI: comparative fit index; RMSEA: root mean square error of approximation; SRMR: standardized root mean square residual; CI: confidence interval; AIC: Akaike's information criterion; BIC: Bayesian information criterion.

III. RESULTS

A. Descriptive Statistics

Please refer to Table 4 for basic descriptive statistics, including the mean, standard deviation, and range for forensic psychologists' scores on the death penalty attitudes scale and the moral disengagement scale as well as the frequencies and percentages of forensic psychologists responses to the "have or would you conduct a CFE evaluation" outcome variable.

Table 4. Descriptive Statistics.

Death Penalty Attitudes Scale	*M* (*SD*) = 3.16 (1.25)	Range = 1 to 7
Moral Disengagement Scale	*M* (*SD*) = 2.32 (0.54)	Range = 1 to 3.89
Have or would you conduct a CFE evaluation?	"No" *n* = 154 (43.9%)	"Yes" *n* = 146 (41.6%)

B. Hypothesized Mediation Analysis.

We conducted a simple mediation analysis using ordinary least squares path analysis (for the *a* path) and maximum likelihood logistic regression path analysis (for the *b*, and *c'* paths; Hayes, 2013) using Hayes' PROCESS macro. Consistent with our hypothesis, results indicated that death penalty support indirectly influenced willingness to accept a CFE referral through its effects on the cognitive disengagement of moral agency.

As can be seen in Table 5 and Figure 2, participants with higher death penalty support engaged in greater moral disengagement than those with lower death penalty support (a = 5.982), and participants who engaged in greater moral disengagement were more likely to accept a CFE referral (b = 0.039). A bias-corrected bootstrap confidence interval for the indirect effect (ab = 0.232) based on 10,000 bootstrap samples was entirely above zero (0.017 – 0.466), indicating that the indirect mediation path was significant. This indirect effect means that evaluators with higher support for the death penalty engage in more moral disengagement (because *a* is positive), which is turn is associated with into greater willingness to engage in CFE evaluations (because *b*

is positive). There was no evidence that attitudes directly influenced willingness to conduct CFE evaluations independent of its effect on moral disengagement (*c*'= 0.181, *p* = 0.219).

Table 5. Model Coefficients.

	Mediator (MDS)			*Outcome* (Willingness to accept CFE referral)		
	Coeff.	*SE*	*P*	Coeff.	*SE*	*p*
Predictor (DPAS)	5.982	0.342	<0.001	0.181	0.147	0.219
Mediator (MDS)	---	---	---	0.039	0.018	0.035
Constant	25.023	1.171	<0.001	-2.332	-3.867	0.001
	R^2 = 0.535 $F(1, 266) = 306.466$, $p < 0.001$			Nagelkerke R^2 = 0.099 Normal theory tests not available for binary outcome models (Hayes, 2013)		

Note: DPAS = Death Penalty Attitude Scale. MDS = Moral Disengagement Scale. CFE = Competence for Execution. Coeff. = unstandardized regression coefficient. *SE* = standard error.

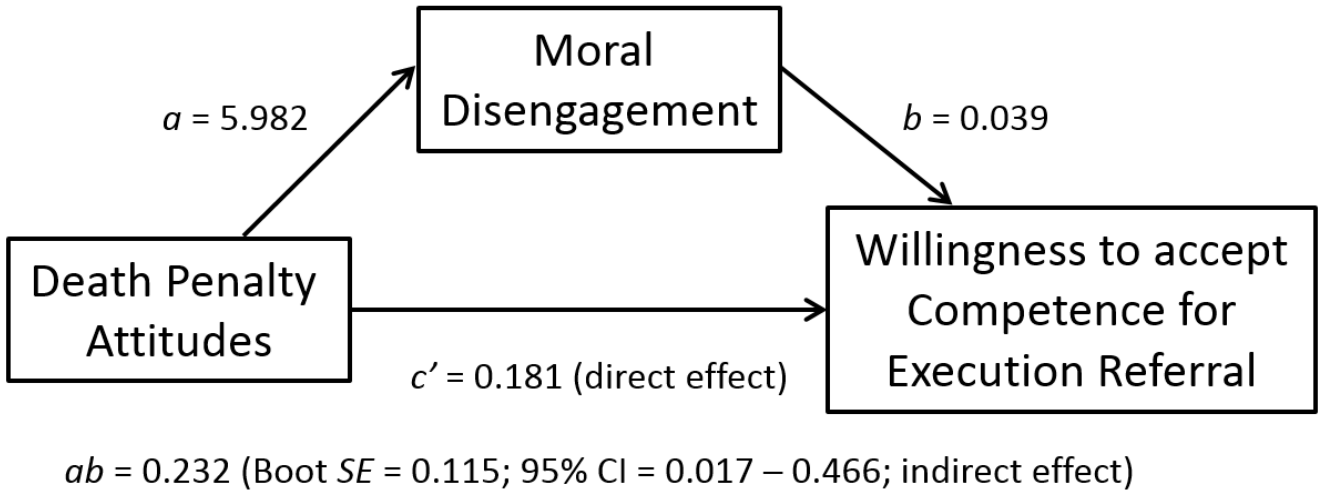

Figure 2: Simple mediation model with unstandardized coefficients.

It is important to note direction and causation cannot be inferred in correlational mediation analysis. We are careful to avoid causal language, but the theoretical directions we inferred in Figure 2 may not be the correct directions. That is, perhaps a forensic psychologist who decides to engage in competence for execution evaluations then engages in a process of moral disengagement that leads them to revise their death penalty attitudes to be consistent with

their behaviors. It is also worth noting that scholars of mediation analysis have adopted the perspective that mediation analyses are appropriate even in the absence of a direct association between independent and dependent variables, as is the case with this data (see e.g., Hayes, 2013, pp. 87-88).

VI: DISCUSSION

The purpose of this study was to investigate the role of moral disengagement in a legally-related decision and to further establish moral disengagement as a construct worthy of study in the legal context. In the present study, we did not focus on a particular mechanism of moral disengagement: rather, we were looking to establish a broader link between the theory of moral disengagement and legal judgments beyond the one legally-relevant context Osofsky et al. provided in 2005. This aim was achieved. The tenets of moral disengagement are compelling (see Bandura, 2015) and this theory lends itself to many different applications in the legal system, with this study and the Ososfky et al. study providing the initial link between the theory of moral disengement and legal judgments. Future work is needed to understand the various specific mechanisms of moral disengagement in legal contexts.

Our hypothesis that moral disengagement would play a critical role in legally-relevant judgments was robustly supported. Specifically, we hypothesized that forensic psychologists' death penalty attitudes would affect their willingness to take these CFE cases (a direct effect), but that the relationship would be fully mediated by moral disengagement. Indeed, results indicated that the moral disengagement mechanism is key to understanding how forensic psychologists make these decisions. But this mechanism was even stronger than we expected. We were surprised to discover that death penalty attitudes themselves had no direct association with willingness to accept CFE referrals (i.e., the direct effect was not significant). But adding in

moral disengagement as a mechanism of this decision fully linked these variables in a mediation model. The findings reveal that greater death penalty support among forensic psychologists was associated with increased disengagement of moral agency, which in turn was associated with increased likelihood of accepting CFE referrals. This means that the more supportive psychologists are of the death penalty, the more likely they are to construct cognitive justifications for engaging in the CFE evaluator role – a finding that is consistent with theories of motivated reasoning (Kunda, 1990) and motivated justice (e.g., Sood, 2013). These findings lend strong support to the theory of moral disengagement and its application to the legal context.

We used the Moral Disengagement Scale developed by Ososfsky, Bandura, and Zimbardo in their 2005 study of executioners. This scale is internally consistent and its factor structure fits the theory it purports to measure. However, the way they designed the scale was heavily influenced by the context of the original study. In fact, many of the items appear to measure capital punishment support, even though they were designed to measure various moral justifications for the execution process (such as minimizing consequences, displacement of responsibility, and dehumanization –all specific to the capital punishment context). In other work in which Bandura and colleagues investigate moral disengagement processes, they designed different scales that fit those other contexts (e.g., justifying military force in McAlister, Bandura, & Owen, 2006, delinquent and aggressive child behavior in Bandura et al., 1996).

Given that our study was in the context of capital punishment, and given that this particular measure of moral disengagement was designed to measure this construct in a capital punishment context, it is perhaps not surprising that results emerged. Similar theoretically-driven studies of moral disengagement as a mediator of legally-relevant judgments in contexts outside of capital punishment should perhaps use a context-independent (or a context-

appropriate) measure of moral disengagement. It is worth noting, however, that some studies have successfully used a context-dependent moral disengagement scale in contexts other than the scale's context (e.g., McDermott & Miller, 2016 used a moral disengagement scale for torture contexts in a vigilante justice study). It is worth exploring when and why different measures of moral disengagement are useful in various contexts.

Perhaps a context-independent, "pure" measure of moral disengagement could be developed as a standardized way of measuring moral disengagement across contexts. Some posit that moral disengagement as a trait-like tendency (e.g., Pelton, Gound, Forehand, & Brody, 2004), but no measure is yet available to measure moral disengagement across contexts. At the very least, researchers need to be aware that whereas the theory of moral disengagement is widely applicable, the existing published measures of moral disengagement are heavily context-dependent.

Given these reflections, it appears more research is needed to explore moral disengagement as a context-specific phenomenon versus a dispositional trait-like tendency. If it is the former, then context-specific measures of moral disengagement are likely to proliferate, as has occurred in domains in which debates about the domain-specific versus generalized nature of constructs have occurred (e.g., self-efficacy and institutional trust – see respectively Bandura, 1997 and PytlikZillig et al., 2016). If it is the latter, a good measure of moral disengagement applicable across various contexts is needed.

This discussion of moral disengagement as a trait-like vs. more contextually-based concept is not necessarily consistent with Bandura's theory. Moral disengagement, as proposed by Bandura, is not a trait construct. Rather, people disengage selectively from moral standards in specific contexts (Bandura, 1999, 2015). Hence, the more situationally-specific the measure, the

stronger the relationship with behavior is likely to be. The development of a context-independent, trait-like measure of moral disengagement might require a different conceptualization of the moral disengagement process than that proposed by Bandura.

Another direction for future research is to experimentally study the various mechanisms of moral disengagement in legal contexts, such as in mock juror studies. Can moral disengagement be experimentally induced and reduced? For example, might manipulated euphemistic language from the prosecutor about the defendant increase moral disengagement compared to a control group? Might manipulated euphemistic language from the defense attorney about the victim decrease moral disengagement compared to control?

There are several strengths of this paper, but of course there are limitations as well. The primary strengths are that the research question was approached in a unique ways and with an ecologically valid sample: real forensic psychologists. The legal context was ecologically valid as well: forensic clinicians actually have to decide whether to do competence for execution evaluations. Although it is unfortunate that we don't have access to data about the people who did not respond to the survey, we know that a 43% response rate is a reasonably high response rate for surveys like this and fits in the range that is typical for this kind of research (e.g., response rates among psychologist participants was 35% in Lally, 2003, 40% in Rabin, Barr, & Burton, 2005, and 42% in Boothby & Clements, 2000). The limitations include limitations of the sample itself, and limitations associated with the measures and with our methods.

With regard to the forensic psychologist sample, it was composed of older, White men – perhaps retirees with enough time to respond to a survey like the one we mailed. With regard to limitations of our measures, each construct was measured with a single measure –with particular contextual assumptions as described previously. Including additional measures of these

constructs might have clarified the extent to which the findings were related to the limitations of the single measures, as opposed to the theory. And our question about willingness to conduct the evaluations simultaneously asked about past behavior and future willingness in a single question. Ideally, either past behavior or future willingness would have been the focus of the question.

With regard to our methods, these data were correlational and thus causality cannot be inferred. We were careful to appropriately restrict language about the correlational relationships. Nevertheless, these correlational data mean that the directionality of the pathways in the mediation model is not known. For instance, our data cannot shed light on whether death penalty support results in increased moral disengagement or vice versa – a common issue with mediation in correlational designs. And furthermore, increased involvement in performing CFE evaluations could lead to more moral disengement. Thus, future work designed to infer causality will be useful for studying moral disengagement in the legal system.

In sum, we think moral disengagement is a useful framework that may yield a rich and interesting line of research on how the mechanisms proposed by Bandura operate in legal contexts. This theory holds great promise for understanding how justice is decided, meted out, and perceived. Future research is needed to understand the antecedents and consequences of moral disengagement in and to what degree it is a "state" versus a "trait." Is moral disengagement a learned "skill?" If moral disengagement can be measured across contexts, a context-independent tool for measuring it is needed. We look forward to future discoveries of these and many other answers related to moral disengagement in the legal system.

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