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Psychological analyses of punishment

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The psychological analysis of punishment focuses on the question why people tend to punish behavior that violates legal or informal norms of society. The diversity of needs and calls for sanctions is dependent upon specific features of the offense and the offender, on features of the person who intends to punish, as well as on the interaction of both, that is the interplay of situational and personal variables. Furthermore, this dynamic is influenced by the cultural context in which it is embedded.

FEATURES OF THE OFFENCE AND THE OFFENDER

In Western European cultures, a person's behavior has to be considered culpably deviant in order to make punishment (by the state) an acceptable reaction. Hence, whether people will be punished for their behavior depends on the one hand on what is regarded as deviant, and on the other on how the antecedents and circumstances of this behavior are perceived and interpreted.

A widely used method to analyze the influence of features of the offender and the offense on moral judgment is the vignette technique: Respondents read short descriptions of offenses and assign sentences to the hypothetical offenders. By systematically varying the features of the described offence, their specific and combined influences on punishment can be assessed. The main problem of this kind of research is the difficulty of measuring punishment severity in an unequivocal manner that is comprehensible for lay people. Furthermore, nothing but opinions are assessed, of which we cannot be sure will also be expressed in daily life.

With respect to judicial decisions, the influence of case specific features can also be investigated by analyzing sentencing decisions. Although this has the advantage that real decisions are analyzed, this method has to face the problem of controlling the variability in the cases that different judges and jurors have to decide on.

Of the variety of features that have been investigated using the vignette technique, the following have reliably often been shown to influence the assigned punishment: First, aspects of intentionality and controllability of the offensive behavior influence the attribution of blame, and are thus related to the harshness of punishment. Second, demands for punishment increase with the severity of damage done to the victim, and are higher for perpetrators who have prior criminal records. These and the general pattern of results indicate that lay people in general do take legal criteria into account. However, psychological research has also revealed that aspects such as gender, race, attractiveness of the persons involved, or harshness of the sentence demanded by the prosecutor, which should be irrelevant from a legal point of view, can influence the judgmental process. This is true especially if people are not sufficiently motivated, or unable to process available information in a systematic and rational way, or if they are unaware of possible biasing influences, such as mood or implicitly activated stereotypes. A further variable that is of psychological interest is the similarity between offender and judging person. From the (in criminological text-books still popular) psychoanalytically based scapegoat hypothesis, it can be derived that similarity should increase the harshness of punishment. However, empirical research suggests that similarity leads to more lenient reactions (similarity-leniency hypotheses), a bias that is compatible with the social psychological notion of ingroup-favoritism.

FEATURES OF THE JUDGING PERSON

Features of the judging person influence sanctioning behavior in general through context-specific aspects. In other words, features of persons influence their perception and

elaboration of offense and offender related information. Of these, sentencing goals and values have attracted the particular interest of psychological research.

Sentencing Goals. By punishing, people try to attain, more or less consciously, goals like deterrence, retribution, or enforcement of societal norms. Preferences for one goal or the other may be due to relatively stable features of personality, or vary depending on features of offense and/or offender. The well known distinction in penal theory between utilitarian and retributive rationales of sentencing goals can also be found in psychological conceptualizations. Here, we find a differentiation between the notion of controlling future behavior, like preventing future crime, and the notion of retribution as basic motives (cf. Vidmar, 2001). Punishment as prevention: If punishment is to prevent norm violation, potential offenders have to perceive the punitive consequences as being sufficiently severe to deter them from committing a crime. This can happen in two ways: either by making punishment sufficiently likely (i.e., ensuring a high probability of detection and punishment), or by applying punishment that is sufficiently severe. Accordingly, people tend to assume this deterring effect to grow linearly with the harshness of their punishment. However, psychological research has revealed that punishment diminishes antisocial behavior only under specific conditions. Further it seems as if the certainty of punishment is more important than its severity. Punishment as retribution: Contrary to the notion, that humans strive only to maximize personal outcome, psychological theories such as the relative deprivation theory, equity theory or research on the “just world” consider the desire for retribution to be a basic human motivation. Empirical research has shown that although the majority of respondents verbally report prevention as being their main goal, the sentences they propose predominantly reflect a preference for retribution. That is, features concerning the severity of the guilt are reliably incorporated in the sentence, whereas features concerning the conceivable preventive effect of the punishment are not (cf. Carlsmith, Darley & Robinson, 2002). It seems as if lay

people apply the notion of prevention as legitimization of punishment, whereas they apply the notion of retribution to the assignment of sanctions. Other studies have revealed that both the goal of negative prevention (deterrence) and the goal of retribution are almost indiscriminately associated with punitiveness.

Values. Values are linked to the relative relevance of social norms. If, for example, respect of ownership is central, even minor thefts will be considered serious offenses, and will thus be punished more severely (Feather, 1999). Values may cluster together with respect to particular types of personality, such as conformity, tradition, and security in rightwing authoritarianism, or to ideologies, such as conservatism, and liberalism. Starting from the question of to what extent the application of punishment is regarded as self evident, this set of values, beliefs and attitudes finds its expression in all stages of the judgmental process and the further reactions.

Conceptualizing individual demands for punishment not as interpersonal but as intragroup behavior, the group value model by Tyler and colleagues (1997) proposes that groups punish rule breakers to defend group identity and group values. Thus, the need to punish is linked to the need for cohesiveness and identification with groups. In a similar vein, the threat to social order can be related to punishment reactions. Both models mentioned have gained empirical support.

ABOUT THE ROLE OF RETRIBUTIVE MOTIVES

Psychological approaches, e.g. theories of responsibility and blame attribution, have mostly ignored that retributive motives seem to be deeply rooted in the fabric of human beings, and are closely linked to anger and aggression (cf. Vidmar, 2001). Even with reference to moral judgments in general, there is now an ongoing debate as to whether they are reached by an elaborated, rational process, or rather by an automatic, intuitive or emotional response to the violation of a norm. Thus, it remains unclear whether our needs to

punish, however morally elaborated they may be explained, are nevertheless driven by emotional reactions.

However, the impact of retributive motives should not be overemphasized either. There are some possibilities to reduce the intensity of punishment, or even the underlying retributive needs. First, intentions to punish will decrease if restitution takes place. This can most clearly be shown in cases of negligence, where the offender is considered by lay people to owe compensation to the individual harmed. However, in cases of intentional offenses a more lenient punishment also results if restitution by the offender takes place. Second, justifications of the offender why he/she has violated the norm, and excuses (apologies) that show serious remorse, will generally reduce punishment. Remorse and justification seem to reassure that the offender accepts the validity of the violated norm, and this may repair social bonds on one hand, and decreases the perceived probability of the offender's recidivism on the other. Third, experience of the low effectiveness of punishment has obviously increased the willingness to consider alternatives to retributive justice. One alternative is the so-called restorative justice, which is based on healing injuries rather than the assignment of blame and punishment. However, whether restorative justice will be accepted by society in general or only by a small subgroup of people, remains an open question.

Further readings:

Carlsmith, Kevin M., J. M. Darley, and P. H. Robinson. (2002). "Why Do We Punish?

Deterrence and Just Deserts as Motives for Punishment." Journal of Personality and Social Psychology 83: 284-299.

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