Original Article

What You Did Only Matters if You Are One of Us

Offenders' Group Membership Moderates the Effect of Criminal History on Punishment Severity

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Abstract. Research has demonstrated that repeat offenders are generally punished more severely than first-time offenders. In the present article, we argue that this should particularly be true if the offender is a member of one's own social category. A group of 86 students were told about a fellow student who hid books from the university library. The student was either an ingroup or an outgroup member and was either a first-time or a repeat offender. As expected, repeat ingroup offenders were more severely punished than first-time ingroup offenders; this effect was mediated by anger/outrage and societal concerns. If the offender was an outgroup member, however, criminal history did not influence punitive reactions.

Keywords: punitiveness, societal concerns, black sheep effect, ingroup favoritism

Introduction

When deciding about appropriate punishment in a criminal case, people usually take information about the offender's intentions and motives into account. If there is evidence that the offender acted out of ulterior motives or morally reprehensible intentions, he or she receives harsher punishment than when the offense is regarded a "slip-up." An important cue for the attribution of reprehensible intentions is the offender's "criminal history": If the offender has previously violated rules several times, people tend to attribute an offense more to personal factors than to situational circumstances (Carroll, Perkowitz, Lurigio, & Weaver, 1987; Feather & Souter, 2002). Furthermore, repeat offenders are perceived as more likely to reoffend in the future (Oswald, 2009; Roberts & Stalans, 2004).

Although it has been repeatedly demonstrated that – again generally speaking – repeat offenders are perceived as more liable and more dangerous than first-time offenders, and that these perceptions reliably predict more severe punitive responses for repeat than for first-time offenders (e.g., Eads, Shuman, & DeLipsey, 2000; Greene & Dodge, 1995; Kliemann, Young, Scholz, & Saxe, 2008; Sanderson, Zanna, & Darley, 2000), the question of the conditions under which people take information about the offender's criminal history into account has received much less attention. In this article, we argue that criminal history has a stronger effect on punitive responses when the offender belongs to one's own group than when he or she belongs to a different group. In other words, we hypothesize that the offender's group membership moderates the relationship between criminal history and punitive responses.

Group membership is an important factor that influences the form and magnitude of how a transgression is perceived and evaluated. However, the conceptual relation between group membership and punishment is not straightforward. Based on the basic premises of social identity theory (e.g., Tajfel & Turner, 1986), one would expect that ingroup offenders are treated more *positively* (i.e., punished more leniently) than outgroup offenders. On the other hand, research on the "black sheep effect" suggests that deviant ingroup members are judged more *negatively* by their peers than deviant outgroup members (Marques & Páez, 1994; Marques, Abrams, & Serôdio, 2001; Marques, Yzerbyt, & Leyens, 1988).

Empirical studies investigating whether ingroup members who violated a moral or legal norm are punished more severely (black sheep effect) or rather less severely (ingroup clemency effect) than outgroup members show mixed results: Some studies found a black sheep effect (e.g., Shinada, Yamagishi, & Ohmura, 2004), whereas others found an ingroup leniency effect (e.g., Lieberman & Linke, 2007). This suggests that ingroup-outgroup differences on punitive responses may depend on moderator variables such as the judging person's level of authoritarianism (Feather & Oberdan, 2000), intergroup status differences (van Prooijen & Lam, 2007), the offender's guilt

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probability (Kerr, Hymes, Anderson, & Weathers, 1995; Taylor & Hosch, 2004; van Prooijen, 2006), or the salience of intergroup stereotypes (Sommers & Ellsworth, 2000).

Recent theories in the retributive justice domain suggest that the offender's group membership shapes the *framing* and the *meaning* of a transgression (Okimoto & Wenzel, 2008; Tyler & Boeckmann, 1997; Vidmar, 2002; Wenzel, Okimoto, Feather, & Platow, 2008). If an offender belongs to the same group as the judging person, the offense is more likely to be conceptualized as a threat to the group's norms and values. An ingroup member who expresses disrespect for ingroup norms questions the validity of those norms and therefore undermines the group's normative cohesion (Abrams, Marques, Bown, & Henson, 2000; Abrams, Marques, Randsley de Moura, Hutchison, & Bown, 2004; Marques et al., 2001). Thus, finding out about the offender's motives, intentions, and dispositions is crucial for ingroup members in order to evaluate how much the group's normative cohesion is at stake. On the other hand, if an offender belongs to a different group than the judging person, the offense is more likely to be conceptualized as an attack on the group's status and power (Okimoto & Wenzel, 2008; Wenzel et al., 2008). Concerns about the validity of shared norms and the normative cohesion within one's group (labeled here as "societal concerns") are less important in this case.

What follows from these arguments is that those factors that contain information about an offender's motives, intentions, and dispositions (such as criminal history) are more relevant if the offender belongs to one's ingroup than if the offender belongs to some outgroup. If the offender is an ingroup member, it is more important to know whether he or she has committed the offense for the first time or several times before. In the case of a first-time ingroup offender, the actions could be attributed to situational circumstances: The offender is perceived as less liable and blameworthy, and the offense does not necessarily evoke anger, moral outrage, or societal concerns. In other words, there is not much to worry about if the offender has simply committed a slip-up. In the case of a repeat offender, however, generating situational attributions and mitigating circumstances becomes more difficult for the judging person. The offender's actions are perceived as being more indicative of his or her character and are thus perceived as more blameworthy as well as more threatening to the group's normative cohesion. In other words, we predict that a repeat ingroup offender should evoke more societal concerns, anger, and moral outrage than a first-time ingroup offender.

Since anger, moral outrage, and societal concerns are strongly connected to punitive responses (Darley & Pittman, 2003; Miller & Vidmar, 1981; Tyler & Boeckmann, 1997; Vidmar, 2002), these factors are expected to mediate the effect of criminal history (first-time vs. repeat offender) on punishment severity if the offender is an ingroup member. If the offender belongs to an outgroup, his or her motives, intentions, and dispositions are less important since the transgression is more likely to be framed in terms of an attack on the group's status and power instead of disrespect for the group's values (Okimoto & Wenzel, 2008; Wenzel et al., 2008). Therefore, the effect of criminal history on anger, moral outrage, societal concerns, and punishment severity should be weaker if the offender is an outgroup member.

Hypotheses

- *Hypothesis 1:* A repeat ingroup offender should receive harsher punishment than a first-time ingroup offender. In contrast, participants' punitive responses should not be affected by criminal history when evaluating an outgroup offender.
- *Hypothesis 2:* The effect of criminal history on punishment severity for an ingroup offender should be mediated by societal concerns and anger/outrage. More specifically, a repeat ingroup offender should evoke more societal concerns and more anger/outrage than a first-time ingroup offender, which affects punishment severity. Societal concerns and anger/outrage should not mediate the relationship between criminal history and punishment severity when judging an outgroup offender.

To the best of our knowledge, only two studies have addressed similar hypotheses so far. Feather and Souter (2002) asked white Australians to evaluate a case of theft that has ostensibly been committed by either a White Australian or by an Aboriginal Australian. The offender was either a first-time or a third-time offender. The authors found a significant interaction between ethnic background (i.e., group membership) and criminal history on punitive responses that runs counter to our (and their) predictions: Participants perceived a penalty as more deserved if the ingroup offender was a first-time (compared to a repeat) offender. Furthermore, deservingness ratings were higher for a first-time ingroup offender than for a first-time outgroup offender. However, these findings may well be a result of the context in which these predictions were tested: The study was conducted at a time when past injustices in the treatment of Aboriginal Australians were being fervidly debated in Australia. This might explain the high levels of sympathy toward first-time outgroup offenders.

Schroeder, Bembenek, Kinsey, Steel, and Woodell (2008) conducted another study relevant to the present research. They report findings from an unpublished study in which university students were confronted with an uncooperative fellow student from their own vs. from a different workgroup. The number of times the student failed to cooperate with the group was experimentally varied. The results from this study are in line with our reasoning: Participants' punitive responses were weaker if the target was a first-time ingroup deviant than when the target was a repeat ingroup deviant. If the target belonged to a different workgroup, the number of times the student did not cooperate did not influence participants' punitive responses.

The present study aims to contribute to and extend this

line of research. As in the research by Feather and Souter (2002) and by Schroeder et al. (2008), we independently manipulated (1) the target person's group membership and (2) his or her criminal history in a between-subjects design. Unlike Schroeder et al. (2008), we decided to use a case in which the target violated a formal (and highly important) social norm. Our study also differs from Feather and Souter (2002) in that we focus on an intergroup context that is not associated with a history of conflict.

Method

Sample

Students in several psychology classes at the University of Koblenz-Landau, Germany, were asked to participate in the study in exchange for extra course credit. During the following 4 weeks, 97 students handed in their questionnaire. Eleven cases were not included in the analysis because their response pattern was conspicuous (e.g., identical responses to all items) or because they had missing values on more than 50% of the items. The remaining 86 participants consisted of psychology students in their 2nd to the 13th semester. Ages ranged between 20 and 50 years (M = 25; SD = 4.5). The majority of them were female (84%).

Material and Conditions

Participants received a 5-page booklet consisting of the norm violation vignette and items measuring participants' reactions toward the offense. The norm violation vignette told the story of a male student who hid publicly accessible library books in a personal cubicle within the university library, so that he – and nobody else – had access to these books. These books were said to be extremely important for students of psychology *and* students of biology. After the library personnel found the books in the student's cubicle, he was immediately taken to the library manager. The library manager's task was to decide whether and which punitive sanctions would follow.

Two aspects of the vignette were experimentally manipulated: First, the offender was said to be either a student of psychology (ingroup condition) or a student of biology (outgroup condition). Second, it was either added that the student has never committed such an offense before (first-time offender condition), or that he had admitted to having repeatedly hidden important books in his personal cubicle prior to being caught (repeat offender condition). These factors were manipulated in a fully between-subjects design.

Dependent Variables

After the case was described, anger/outrage ("I am outraged about the student"; "I am angry about this offense"; "I am angry about the student"; α = .89) and societal concerns ("I think that this deed threatens the normative cohesion among us students"; "These people threaten the validity of important norms among us students"; α = .81) were measured. Responses were made on a 6-point rating scale ranging from 0 (*not at all*) to 5 (*absolutely*). Anger/outrage and societal concerns scores were positively correlated (r = .53; p < .01). Nevertheless, given that these scales are separate theoretical constructs, we decided against collapsing items into one score in order to be able to test the mediating effects of anger/outrage and societal concerns separately.

Punishment severity was assessed with three items. First, participants were asked to what extent they thought the student's behavior should be punished (ranging from *certainly not* to *certainly yes*). Second, they were asked how severe the punishment should be (ranging from *very lenient, e.g., an admonishment* to *very harsh, e.g., a library ban*). Third, participants' agreement with the item "The student should be severely punished" was assessed. These three items formed a coherent scale (α = .80), and the items were aggregated into a composite index of punishment severity.

Results

We had hypothesized that (1) repeat ingroup offenders should receive harsher punishment than first-time ingroup offenders, whereas criminal history should not affect responses to outgroup members; and that (2) this effect should only for ingroup members be mediated by societal concerns and anger/outrage. These hypotheses suggest a two-way interaction between Group membership and Criminal history on anger/outrage, societal concerns, and punishment severity. Therefore, in a first step, the three dependent variables were submitted to a 2 (Group membership: ingroup vs. outgroup) × 2 (Criminal history: first-time vs. repeat) analysis of variance.[1] The main effect of Group membership was not significant on any of the dependent variables (p's ≥ .16). The main effect of Criminal history was significant on societal concerns, $F(1, 82)$ = 7.74; p < .01; η^2_p = .09, and on punishment severity, $F(1, 82)$ = 6.67; p = .01; η^2_p = .09. More importantly, the Group membership × Criminal history interaction was significant on all dependent variables, that is, anger/outrage: $F(1, 80)$ = 11.39; p < .01; η^2_p = .13; societal concerns:

[1] Including participants' gender did not alter the overall pattern of results: Gender had a marginally significant main effect on societal concerns (p = .06). More importantly, however, gender did not interact with any of the other independent variables on any of the dependent variables (p ≥ .24). Therefore, gender was not included in the final models.

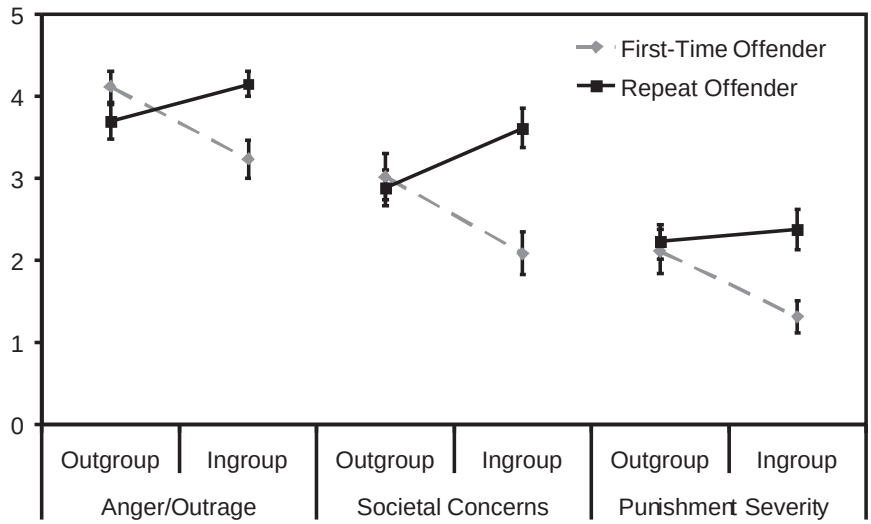

Figure 1. Two-way interaction of group membership and criminal history on anger/outrage, societal concerns, and punishment severity. Vertical bars denote standard errors of means.

$F(1, 82) = 10.99$; $p < .01$; $\eta^2_p = .12$; and punishment severity: $F(1, 82) = 4.32$; $p = .04$; $\eta^2_p = .05$ (see Figure 1).

As expected, post-hoc tests revealed that, in the case of an ingroup offender, anger/outrage, societal concerns, and punishment severity were significantly lower in the first-time than in the repeat offender condition (all p values ≤ .01). In the case of an outgroup offender, however, criminal history did not affect responses on any of the three dependent variables (all p values ≥ .14).

Hypothesis 2 states that the Group membership × Criminal history interaction on punishment severity is mediated by societal concerns and anger/outrage. In order to test this conditional indirect effect, we followed the suggestions by Muller, Judd, and Yzerbyt (2005). First, both independent variables were dummy-coded (Group membership: –1 = outgroup offender; +1 = ingroup offender; Criminal history: –1 = first-time offender; +1 = repeat offender). Both mediators (societal concerns, anger/outrage) and the dependent variable (punishment severity) were standardized (see Aiken & West, 1991).

Table 1 depicts the results from the three crucial regression models. In the first model, punishment severity was regressed on Group membership, Criminal history, and the interaction of the two. As in the 2 × 2 ANOVA, the interaction significantly predicts punishment severity (β = .21). In the second model, both mediators (societal concerns and anger/outrage) were regressed on Group membership, Criminal history, and the interaction of the two. The same interaction effect significantly predicts societal concerns (β = .33) and anger/outrage (β = .35). In the third model, punishment severity was regressed on Group membership, Criminal history, the interaction of the two, the respective mediator, and the respective Mediator × Criminal history interaction. The important result here is that the Group membership × Criminal history interaction becomes smaller and insignificant when either societal concerns or anger/outrage are controlled for. A second important result is that the Mediator × Criminal history interactions are not significant; that is, the Group membership × Criminal history interaction is mediated by societal concerns and anger/outrage, and not by the Mediator × Criminal history interactions, with which they are necessarily correlated (see Baron & Kenny, 1986).

The conditional indirect effects of Criminal history on punishment severity via societal concerns and anger/outrage were tested by inspecting confidence intervals with

Table 1. Regression results for mediation analysis (Hypothesis 2)

	Model 1 (*DV* = Punishment severity)		Model 2 (*DV* = Mediators)				Model 3 (*DV* = Punishment severity)			
			Societal concerns		Anger/outrage		*MV* = Societal concerns		*MV* = Anger/outrage	
	β	*t*	β	*t*	β	*t*	β	*t*	β	*t*
Group membership	–.15	–1.42	–.04	–0.41	–.11	–1.05	–.11	–1.03	–.12	–1.19
Criminal history	.26	2.58*	.28	2.78**	.13	1.23	.16	1.60	.20	2.06*
Membership × History interaction	.21	2.08	.33	3.32**	.35	3.37**	.08	0.83	.09	0.82
Mediator							.38	3.55**	.42	4.01**
Mediator × History interaction							–.08	–0.71	.09	0.81

Note. DV = dependent variable, *MV* = mediator variable. $N = 86$; $^{**}p < .01$, $^{*}p < .05$.

standard errors that were estimated via bootstrapping (Preacher, Rucker, & Hayes, 2007). Indirect effects were separately tested in both conditions of group membership (the moderator).[2] As expected, in the ingroup offender condition, the indirect effect of Criminal history on punishment severity via societal concerns was significant, $\beta = .23$; $SE(\beta) = 0.08$; 95% CI = [.095; .435]. This suggests that repeat ingroup offenders are punished more severely than first-time ingroup offenders because they raise more societal concerns. Furthermore, the indirect effect of Criminal history on punishment severity via anger/outrage was significant, $\beta = .20$; $SE(\beta) = 0.08$; 95% CI = [.073; .376]. This suggests that repeat ingroup offenders are punished more severely than first-time ingroup offenders because they evoke more anger and moral outrage. In the outgroup offender condition, however, the indirect effect of Criminal history on punishment severity was neither significant for societal concerns as the mediator, $\beta = –.02$; $SE(\beta) = 0.06$; 95% CI = [–.144; .081], nor for anger/outrage as the mediator, $\beta = –.09$; $SE(\beta) = 0.07$; 95% CI = [–.255; .011].

Discussion

In this article, we hypothesized that criminal history is more strongly related to punitive responses when the offender belongs to the ingroup (i.e., to the same social category as the judging person) than when the offender belongs to an outgroup. We argued that since transgressions committed by ingroup offenders are more likely to be conceptualized as threats to the group's normative cohesion (see Okimoto & Wenzel, 2008; Wenzel et al., 2008), it is more important to gather information about the offender's motives, intentions, and dispositions when he or she is an ingroup (vs. an outgroup) member. The offender's criminal history is highly informative in this regard: A transgression committed by a repeat offender represents a stronger threat to the group's normative cohesion than a transgression committed by a first-time offender. This, in turn, should explain why repeat ingroup offenders are punished particularly harshly by their ingroup peers.

A first-time offender, on the other hand, is more likely to be given the "benefit of the doubt" (Schroeder et al., 2008; van Prooijen, 2006). When confronted with a first-time offender, it is likely that mitigating or situational circumstances come to mind that might potentially diminish the offender's blameworthiness (e.g., "the student forgot about bringing back the books because he was so nervous about the upcoming exam"). Thus, first-time ingroup offenders should evoke less anger/outrage and less societal concerns among their ingroup peers and should therefore be punished less harshly than repeat ingroup offenders.

The results from our study are in line with this reasoning. Participants reported being more outraged and more concerned about the normative cohesion of their group when they were confronted with a repeat ingroup offender than when they were confronted with a first-time ingroup offender. Furthermore, societal concerns and anger/outrage mediated the effects of criminal history on punishment severity if the offender was an ingroup member.

If the offender belongs to a different group than the judging person, however, transgressions are more likely to be perceived as threats to the whole group's power and status, and not to the validity of ingroup norms or the normative cohesion of the ingroup (see Okimoto & Wenzel, 2008; Wenzel et al., 2008). Thus, the offender's criminal history should be a less important factor for deciding about appropriate punishment. In line with this reasoning, we found that if the offender was a student of biology, his criminal history (first-time vs. repeat offender) did not influence participants' societal concerns, their anger/outrage, or their punitive responses. Possibly, participants ignored any information about the number of prior transgressions and attributed the norm violation schematically (Bodenhausen & Wyer, 1985).

The pattern of results reported here is in line with recent theorizing on identity aspects in retributive justice (Okimoto & Wenzel, 2008; Tyler & Boeckmann, 1997; Vidmar, 2002; Wenzel et al., 2008) and with research on "subjective group dynamics" (Abrams et al., 2000, 2004; Marques et al., 2001). The question whether group norms are at stake is more important if the offender is one of "us." Thus, information about the offender's criminal history influences punitive judgments to a larger degree when he or she is an ingroup member (as opposed to being an outgroup member). Furthermore, our findings confirm the notion that punitive responses are shaped by concerns about the validity of ingroup norms and about the group's normative cohesion (see Tyler & Boeckmann, 1997; Vidmar, 2002). In this regard, punishment can be regarded as a means to revalidate the violated norm and to enhance consensus about and commitment to the norm (Durkheim, 1960; Vidmar, 2002; Wenzel & Thielmann, 2006).

In our analyses, we focused on the effect of criminal history on punishment as a function of the offender's group membership. Alternatively, one can focus on the effect of group membership on punishment as a function of criminal history, which would be more consistent with how data are being looked at in the literature on the "black sheep effect" (e.g., Marques et al., 1988, 2001). An inspection of the results for punishment severity in Figure 1 reveals that first-time ingroup offenders are treated more leniently than first-time outgroup offenders, whereas group membership did not influence punishment in the repeat offender condition. This pattern is consistent with the notion that if the offender's guilt is uncertain, an ingroup clemency effect emerges

[2] 5000 bootstrap resamples were used to approximate the sampling distributions of the conditional indirect effect (see Preacher & Hayes, 2004; Preacher et al., 2007).

(see Kerr et al., 1995; Taylor & Hosch, 2004; van Prooijen, 2006). It furthermore corresponds to the findings reported by Schroeder et al. (2008). In this study, an ingroup deviant was treated more leniently than an outgroup deviant, but only if the number of "transgressions" was small. The pattern reversed as a function of the number of "transgressions": If the ingroup deviant failed to cooperate four or more times, she was treated more harshly than a respective outgroup deviant.

It should be noted that our findings are inconsistent with those reported by Feather and Souter (2002). These authors found that an ingroup offender was generally treated more harshly than an outgroup offender, and that this effect was particularly strong if the target was a first-time offender. We have already mentioned the possibility that this pattern of results should be interpreted with caution since the political and societal context may have affected the results. In addition, these authors also discuss the possibility that the intergroup context they created (i.e., a White vs. an Aboriginal Australian) might not have been optimal since (1) most participants possibly did not perceive the Aboriginal offender to be an "outgroup" member, or (2) most participants might have been motivated to respond in a "politically correct" way (Feather & Souter, 2002; p. 434; see also Sommers & Ellsworth, 2000).

Our findings suggest that information about the offender's motives, intentions, and dispositions such as his or her criminal history are more influential if the offender is an ingroup member. If our reasoning is correct, the same pattern should emerge for other factors indicative of the offender's motives, intentions, and dispositions, such as (1) the reasons he or she gave for committing the offense, (2) his or her identification with the ingroup and its normative system, or (3) his or her willingness to apologize for the transgression. Those factors should influence how ingroup members perceive and evaluate the transgression and the transgressor, and such perceptions should predict the form and magnitude of punishment that ingroup members consider appropriate.

Future studies should investigate this notion using different intergroup contexts, different information related to the offender's intentions and motives, and different forms of sanctioning. Whereas we measured punishment severity on a relatively abstract level in the present study, it could be worthwhile to investigate people's preferences for different forms of sanctions under different circumstances. Several theorists have proposed that sanctions can be either punitive in nature (e.g., incapacitation, capital punishment, high fines), or restorative in nature (e.g., counseling or therapy, victim-perpetrator compensation, mediation, moral education; Gollwitzer & Bücklein, 2007; Gromet & Darley, 2006; Okimoto & Wenzel, 2008; Roberts & Stalans, 2004; Wenzel & Thielmann, 2006). It is plausible to assume that ingroup members who are concerned about their group's normative cohesion prefer sanctioning forms that they consider instrumental for reeducating the offender or for reinforcing values (Wenzel et al., 2008). If the offender belongs to an outgroup, however, people might in general prefer more punitive sanctioning.

In sum, the present study aimed at contributing to the question under which conditions factors such as the offender's criminal history are more or less taken into account by laypersons asked to assign a subjectively appropriate punishment for a moral or legal transgression. Investigating the factors that shape laypersons' punitive responses is important not only for advancing theories at the crossroads of social identity and retributive justice, but also for understanding how social and legal processes can be shaped in order to make sure that they are considered fair and appropriate.

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