Extended Abstract

CONFLICTS OF NORMS

THE DYNAMICS OF DEVIANT BEHAVIOR WHEN DECIDING WHICH RULE TO FOLLOW

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I.   INTRODUCTION

Understanding why people violate legal rules represents an urgent need of governments, that keep on allocating substantial national resources in favour of public safety and criminal prosecutions (Hirschberger, 2020). With well over 10 million people imprisoned worldwide (Walmsley, 2018), it has been estimated that the annual cost of mass incarceration in the US alone amounts to ca. USD 182 billion (Wagner & Rabuy, 2017). In addition to those direct economic costs, then, a wide range of societal ones burden on the law-and-order systems (Trends, 2021).

Yet, scholars still hold apparently irreconcilable positions regarding the mechanisms behind legal breaches. Contributions in the field of psychology and psychiatry suggested that impulsivity drives antisocial behavior (Lynam, 1996; Newman & Wallace, 1993), whilst sociological research has targeted structural societal characteristics as the factors influencing criminality (Sampson & Groves, 1989; Thrasher, 1927). In the holistic attempt to understand what really motivates rule breaking, we claim that both theoretical 'factions' omit to answer a preliminary fundamental question: *what are the beliefs surrounding 'breaches of law'?*

II.   LITERATURE REVIEW & THEORETICAL ARGUMENTS

Recent contributions have already tried to solve the deficient integration of key explicative insights of 'deviant behavior.' Among those, Situational Action Theory considers crimes as outcomes of combinations of kinds of people in kinds of places (Wikström, 2006). Even this stream of research, though, omitted to really disentangle the mechanisms linking personal inclinations and exogenous social structures. In the meanders of the interaction between people and environmental criminogenic exposure, we posit that social expectations play a role. The extensive literature on social norms suggests that social expectations vastly influence individuals' choices, so much that individuals may prefer to take an action just because they hold expectations eliciting that

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[1] A very first draft of the working manuscript is provided in the OSF page.

particular preference (Bicchieri, 2017; Bicchieri et al., 2021). The types of behaviors that could be conditioned by those, then, range from ordinary daily actions to devastating antisocial patterns (*e.g.*, FGM or child marriage). For the latter, although legal systems coercively prohibit the conducts, contrasting societal factors seem to make the practices persist.

In this respect, the current body of literature on the interplay between legal and social norms is limited and somewhat mixed. On the one hand, prior empirical studies (Casoria et al., 2021; Desmet & Engel, 2021; Feldman & Harel, 2008) have suggested that there is a relationship between legal rules and social norms, still without disentangling the underlying mechanisms. On the other hand, most of the models that have explored further the relationship between the two failed to provide convincing empirical evidence supporting their models.

As to this relationship, van Winden and Ash (2012) described legal-rule violations as the interaction of cognitive and emotional forces. Given two different functions C(x) and E(x) and the respective gradients Ex and Cx, representing the cognitive and emotional components of criminal decision-making, supposing the case of an individual in which cognition sustains criminal behavior (Cx>0) while emotion discourages the conduct (Ex<0), should Cx>|Ex|, individuals will choose to commit the crime until the equilibrium point where Cx+Ex=0 is reached. Interestingly, when identifying the psychological components of the Emotion vector, the authors mention the role played by social norms: if they sanction the same social harms targeted by legal rules, then the emotions elicited by their violation will operate as a deterrent of delinquency. In a well-functioning society, people are surely committed to upholding policies so that legal and social norms strengthen each other (Licht, 2008), but *what about the case in which social preferences conflict with existing legal norms?*

Expanding from this literature, we posit that the individual decisions to 'break the law' is the result of a *three*-function interaction:

1. C(x), the 'cognitive' component of legal decision-making, expressed as the function difference between the 'immediate benefit' associated to breaking the law and the expected 'cost' that could derive from those breaches.

2. EL(x), the 'strength' of emotions associated with the legal rule prohibiting conduct *x* or, better, a person's propensity (net of other effects) to abide by the rule of law.

3. ES(x), the 'strength' of emotions associated with social expectations surrounding (mis)conduct *x*. Depending on the nature of those expectations: (*i*) for some, the resulting social norm will operate in accordance to the existing legal rule; (*ii*) for others, it will elicit legal-rule violations, contrasting with EL(x).

In light of the above, we argue that:

> *Given the gradient vectors $\nabla C(x)=Cx$, $\nabla EL(x)=ELx$ and $\nabla ES(x)=ESx$, when ESx>0, even though ELx<0, for a constant Cx, the equilibrium point where Cx+ELx+ESx=0 will be higher than the one when ESx<0.*

Translating this in testable Hypotheses, given a (mis)conduct *x*:

H1 – The exposure to antisocial information about *x* will elicit greater violation of the rule prohibiting *x* than the exposure of prosocial information.

H2 – The exposure to antisocial information about *x* will elicit greater violation of the rule prohibiting *x* than the exposure to socially 'neutral' information.

H3 – The exposure to prosocial information about *x* will elicit greater compliance with the rule prohibiting *x* than the exposure to socially 'neutral' information.

III. THE EXPERIMENT AND MAIN RESULTS

To support our Hypotheses, we resort to the highly-controlled environment of an online experiment, overcoming the relevant empirical challenge that studying the interaction between legal and social norms 'in the field' would pose (Buckenmaier et al., 2021).

N=598 participants were recruited via MTurk and asked to play an incentive-compatible dice-rolling game. Across 12 rounds, we kept the formal non-cheating 'rule of the game' (our legal-rule proxy) and economic incentives (potential benefits and punishments) constant, but we systematically varied the 'direction' of social information presented across three randomized groups. While participants in the 'Antisocial' group learnt about others' deviant actions and beliefs, those in the 'Prosocial' group received information about others' compliant behavior and beliefs (with the control group receiving neutral, normalized information). Thus, we measured the differential cheating rate (*i.e.*, deviancy) across groups.

We analyze our data through a robust set of parametric and non-parametric tests, employing multiple measurements and controlling for confounds. Results provide compelling evidence showing how a difference exists between our Antisocial and Prosocial groups: on average, participants in the former tended to deviate from the legal rule more frequently than those in the latter. Thus, through systematic variations of the type of social information provided, while keeping constant (*i*) the potential costs and benefits of deviant behavior, and (*ii*) the proxy purposely structured to resemble the core characteristics of legal rules, our findings convincingly indicate in favor of the recognition of a pivotal role of social expectations for deviancy.

IV. CONCLUSION

By shedding light on individual reactions to conflicting norms, our contribution to diverse fields of literature has several merits. Among those, first, combining the self-interest tradition that argues how people's suppression of their inherent inclination to delinquency is the main determinant of criminality with the novel framework recognizing a role to situational factors proposed by SAT, our contribution fills the lack of adequate experimental research in the field. Second, we provide a scientifically rigorous answer to the mere speculations that had been offered regarding the role of social norms in impacting potential desuetude of existing legal rules (Acemoglu & Jackson, 2017; Feldman & Harel, 2008; Stuntz, 2000).

Finally, from a policy and legal theory perspective, given the impact that social norms seem to have on (legal) rule-breaking, crime prevention and rehabilitation programs, especially in contexts where there is a misalignment of social expectations and

legal rules, should aim at realigning social norms with existing legal rules before simply prohibiting a conduct and punishing those who deviate. In other words, being able to accurately measure the causes of rule-breaking would allow the design of effective preventive programs, calibrated on the 'right trigger' to reduce legal breaches; or rehabilitative programs able to help prevent recidivism and reintegrate convicted persons into society. From a merely theoretical perspective, then, we call for legal theory considerations. In many legal systems, for a person to be held criminally liable, either her negligence (*culpa*) or intention (*dolus*) shall be ascertained (Bertelsen, 2012), and both the type and magnitude of punishment shall vary accordingly. From our findings, we derive two relevant normative precepts in this respect: (*i*) in addition to these two subjective elements, probably a *tertium shall be datur*, this *tertium* being the case in which people's intention to commit a crime is conditional on the existence of measurable social expectations; and (*ii*) if, as it happens, *culpa* and *dolus* are different subjective elements to which legal systems usually associate proportional punishments, likewise, punishments in the case of *dolus* and this sort of 'conditional intentionality' shall not be equated.