Defiance Theory

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For many years, both scholars and elected officials had debated both between and among themselves whether applying criminal sanctions to individuals (i.e. arresting them, sentencing them publicly in court, and supervising them in the community or behind bars) caused the offenders to "get worse" or to be "scared straight." Those in the "get worse" camp were typically called labeling theorists because, as we have seen thus far in this part of the book, they believed that stigmatizing, excluding, and harshly treating offenders only increased their likelihood of reoffending. Those in the "scared straight" camp were advocates of rational choice theory and believed that offenders would be deterred from future crime if only criminal sanctions had the correct mixture of certainty and severity of punishment (see Part VII).

Lawrence Sherman, however, recognized that this debate between the labeling and deterrence theorists had grown stale. Neither side was budging from its long-standing position, and the result was two incompatible and, Sherman believed, limited views of what potentially happens when people are processed through the criminal justice system. Both sides, he realized, would not admit that such processing might make offenders more criminal (through labeling or a process he calls "defiance"), might deter them, or might prove irrelevant and have no effect whatsoever on recidivism. Labeling and deterrence theorists might both be partially right and partially wrong, but each theory by itself was clearly incomplete. Given that contact with the justice system certainly had these diverse effects, Sherman reasoned that an important explanatory task was at hand: to move beyond the labeling and deterrence perspectives so as to develop a comprehensive theory of the criminal sanction, one that could account for when such sanctions created "defiance, deterrence, or irrelevance" (Sherman, 1993, 2000).

Sherman makes a beginning effort in this direction by advancing what he calls "defiance theory." He defines the concept of defiance as the "net increase in the prevalence, incidence, or seriousness of future offending against a sanctioning community caused by a proud, shameless reaction to the administration of a criminal sanction" (1993: 459). However, what would make offenders react with defiant criminality, as opposed to cooperation and future conformity, when attempts are made to control them? A number of conditions might be involved, but two broad categories can be singled out as especially significant.

First, perhaps the most critical factor is the quality of the sanctions that are administered. Sanctions can be just or unjust, and they can seek to personally stigmatize the offender or condemn only a person's wayward conduct (Braithwaite, 1989 [Chapter 30 in this part]). When police officers, for example, act in a rude and discriminatory way, arrestees are likely to react with hostility and see their apprehension as something to be resisted. Defiance, not deterrence, is the likely result (see Paternoster et al., 1997).

Second, Sherman recognized that not all offenders come to the sanctioning event with the same social background; it followed that who an offender is can shape how he or she reacts to sanctions. Building on social bond theory (see Part VI), he hypothesized that those socially bonded to the conventional system would be most likely to be deterred, whereas those alienated from the community would be most likely to react defiantly. The troubling reality, moreover, is that those who are the most weakly socially-bonded, and thus are most susceptible to perceiving actions by criminal justice personnel as unfair, are precisely the people to whom overly formal, harsh, stigmatizing sanctions are disproportionately applied (Sherman, 2000).

Here, labeling theory's lesson of the self-fulfilling prophecy rings true. In these cases, the interaction of nasty sanctions and alienated,
Discussion Questions

1. Why is a “theory of the criminal sanction” needed? How well do criminologists explain why criminal sanctions sometimes increase, sometimes decrease, and sometimes have no effect on offender recidivism?

2. Think back to the most memorable times in your life when an authority figure—a police officer, a school principal, a teacher, a coach, or a parent—tried to sanction, punish, or reprimand you. Did you ever act or feel like acting defiantly? Alternatively, did you ever feel like you should change your behavior and act more appropriately? In these situations, what factors made the difference in how you felt and acted? How does this relate to Sherman’s defiance theory?

3. Based on his defiance theory, how would Lawrence Sherman want police to act when arresting suspects? Judges when sentencing defendants? Probation and parole officers when supervising offenders in the community? Correctional officers and wardens when making and enforcing prison rules against inmates? What do you think the effects of current sanctioning practices are likely to be in these different parts of the justice system?
spective of the offender, perhaps the offender would be less sensitive to disrespect and less ready to punish anyone who accidentally or intentionally shows new disrespect to the offender.

Yet some defiance may be a more explicit project of displaced just deserts. Much offending occurs in cyclical but brief, multi-offense crime "sprees" or rampages, among both poor street robbers and middle-class adolescents (Katz 1988, p. 203). Such sprees might be touched off by episodes of disrespect, perhaps from authority figures other than criminal sanctioners: teachers, parents, employers.

The 1992 Rodney King verdict in Los Angeles illustrates this process for general defiance. The acquittal of the four accused officers symbolized the unfairness of criminal sanctions that allowed police to beat a Black man already in custody. But the riots that followed were not aimed at the police or Ventura County jurors. Rather, a major target was Korean and other Asian merchants operating in Black and Hispanic neighborhoods; 2,000 of whose businesses were destroyed (Kotkin 1993). These businesses had been repeatedly accused of disrespectful behavior toward neighborhood young people, including illegal use of deadly force against thieves (National Public Radio 1993). Those businesses thus substantively provoked the attacks on them, at least in the eyes of the attackers. But the attacks may never have occurred if the procedurally unfair beating and jury verdict had not sent the weakly bonded community into a spiral of proud defiance and rage.

Defiance theory thus calls attention to a problem that extends far beyond the criminal sanction: the conduct of everyday discourse with alienated persons who react with indignation to any hint of social disapproval. Schools, parents, employers, and fellow citizens increasingly recognize large numbers of highly "touchy," angry people ready to punish any available target for the sins of their past insulators, starting with the shame they felt as children from rejection by caretakers (Schell and Reitzinger 1991, p. 64) or historical insults to their social cate-

gory. Some of them are police, some of them are criminals, and some of them merely file lawsuits.

Testing Defiance Theory

The best tests of defiance theory, like all criminal sanction effects, will be randomized experiments. But that does not leave out other methods. Ethnographic work with criminals in field settings, longitudinal cohort designs, interviews with offenders immediately after arrest and on subsequent occasions, interviews with offenders' families and romantic partners, and observations of arrests and courtroom encounters can all test aspects of defiance theory. Perhaps the most important question for non-experimental methods is how offenders choose to accept or deny shame—how they choose impotence or indignation. Is that the true significance of testosterone (Booth and Osgood 1993) or body type? A strong domineering parent? A powerful social network of co-offenders, or a charismatic peer leader? These and many other questions need to be explored to further develop the causal mechanisms of defiance.

As for future experiments, randomization is only the first step. Theoretically guided measurement of causal mechanisms must also be incorporated. Observations of sanctioning experiences, for example, are needed to classify them as reintegrative or stigmatic, disrespectful or polite, consistent or arbitrary. Interviews with sanctioned and unsanctioned offenders are needed to determine their moral evaluation of the sanctioning decision and what emotional reaction they may have had. Similar detail could be sought about future crimes to capture the motivation and circumstances associated with them and test the connection (if any) to past sanctioning or more recent encounters with unfairness or disrespect.

Until recently the science of sanction effects has been short on facts and even shorter on theory. Now, it seems, the available theory has gotten ahead of the facts. The future of research in crime and delin-
minor offenses (such as noise or public drinking), punctuated by arbitrary or discriminatory cases of enforcement (Reiss 1971, p. 57). "Rounding up the usual suspects" implies police laziness in looking for the truly guilty, rather than efficiency in locating the probably guilty. Courts letting suspects go on "technicalities" and juries not making the right decisions (Clements 1993) are other sources of perceived unfairness.

Remarkably, although most citizens feel unfairness is widespread, they do not feel courts or police discriminate against "people like them" (Tyler 1990, p. 50). Thus, in comparing procedural to substantive unfairness, the former seems to do far more powerful harm to legitimacy. Personal experience with unfairness, most often in the form of perceived disrespect, may be the greatest spark of defiance.

Anger and Displaced Just Deserts

Once a poorly bonded offender is punished unfairly and chooses to deny the shame of it all, he may or may not become angry at the punishers. Among the arrested suspects in the Milwaukee domestic violence experiment, 23% denied that it was immoral to hit your partner, but only 10% said the arrest had made them angry at the police (Sherman 1992, pp. 330–331). No matter what they say, we would expect almost none of them to attack the police in direct retaliation. Rather, their anger is displaced onto their present or future romantic partners or other citizens, who represent the clients police serve.

This displacement of just deserts for the wrong done to the sanctioned offender need not be a consciously articulated program. Rather, as Katz (1988) suggests, it can appear in the construction of a reputation for "badness," a "hardman" who will tolerate no disrespect and who will dominate anyone he chooses. When disrespect by another citizen is a precipitating situational cause of crime, it may actually reflect an underlying anger at the disrespect shown by police or courts in the last sanctioning encounter. Had that encounter been more re---

Once a sanction of this kind has been experienced, it is not difficult to appreciate how the offender (or his primary group) might view the police as unfair.

Other substantive sources of unfairness include the widespread nonenforcement of specif---
1. When poorly bonded offenders accept the shame an unfair stigmatizing sanction provokes, the sanction will be irrelevant or possibly even deterrent to future rates of offending.

2. When poorly bonded offenders deny the shame they feel and respond with rage, the unfair stigmatizing sanction will increase their future rates of offending. This unacknowledged shame leads to an emotion of angry pride at defying the punishment. That pride predisposes the defiant offender to repeat the sanctioned conduct, symbolically labeling the sanctions or sanctioner, and not the offender’s own acts, as truly shameful and morally deserving of punishment. In the process, the victims or targets of the sanctioned acts become vicarious substitutes for the state or its sanctioning representatives.

3. The full shame-crime sequence does not occur, however, when a well-bonded offender defines a sanction as unfair. The unfairness may weaken the deterrent effect of the sanction and make it irrelevant to future conduct. But even if the offender (like my son in the theater) denies the shame, proud defiance is unlikely because it is less valued than the pride associated with social bonds.

Defining Sanctions as Unfair

Respect. The evidence suggests respect by punishers for the punished is a separate dimension from Braithwaite’s (1989) distinction between reintegrative and stigmatic shaming. Rather, it is a more basic matter of treating people with human dignity. Reintegration can be done rudely, and stigma can be applied politely. As Braithwaite (1989, p. 101) points out, reintegrative shaming “can be cruel, even vicious,” as long as it has a finite end point and explicit ceremonies for accepting the offender back into the community administering the punishment. It seems reasonable to posit that unfair or disrespectful sanctions that are also stigmatizing are the most likely to provoke defiance, but that still presumes the two dimensions are distinct.

Fairness and respect is also not a simple matter of whether punishment is delivered or spared, as Tyler’s (1990) findings show. What is more important in Tyler’s evidence is that the offender’s interpretation of events gets a fair hearing and that the sanctioning decision maker considers and respects that viewpoint.

Consider this datum: in the Milwaukee domestic violence experiment, arrestees who said (in lockup) that police had not taken the time to listen to their side of the story were 36% more likely to be reported for assaulting the same victim over the next 6 months than those who said the police had listened to them (Bridgforth 1990, p. 76). This fact might be a spurious result of an underlying personality type that is both more recidivistic and more likely to become defiant. But it may also reflect a history of police rudeness, or failure to listen, to that offender and members of his primary group.

It is no accident that the demographic groups with the lowest opinion of the police—minorities and young men (Wilson 1983, p. 93; Clements 1993)—are also the most subject to police-initiated encounters (Sherman 1980) that lack the legitimacy of a citizen requesting police involvement (Reiss 1971, pp. 58–59). These are also situations in which police are more likely to encounter disrespect, get injured, make arrests, and have complaints filed against them. And although mutual respect characterizes most observed police encounters, inner-city police are somewhat more likely to be uncivil than the citizens they confront (Reiss 1971, p. 144). There is much evidence that police and poor young men are caught in a shame-disrespect-anger spiral (Schell and Retzinger 1991, p. 68). But the question for defiance theory is what effect that cycle has on the future offending of those caught up in it—on either the police (Skolnick and Fyfe 1993) or civilian side.

One answer may be that the groups receiving the most disrespect from the police also have the highest participation rates in crime (Blumstein, Cohen, Roth, and Visher 1986). This fact might be dismissed as a mere artifact of measurement if arrest records were not confirmed by both self-re-
Defiance Theory

Defiance is the net increase in the prevalence, incidence, or seriousness of future offending against a sanctioning community caused by a proud, shameless reaction to the administration of a criminal sanction. Specific or individual defiance is the reaction of one person to that person’s own punishment. General defiance is the reaction of a group or collective to the punishment of one or more of its members. Direct defiance is a crime committed against a sanctioning agent. Indirect defiance is the displaced just deserts committed against a target vicariously representing the sanctioning agents provoking the anger. Defiance is distinct from other hypothetical mechanisms by which sanctions increase crime, such as labeling (Lemert 1972), thrill seeking (Katz 1988), imitation, or brutalization (Bowen 1988). Defiance theory explains variation in criminal events, not criminality (Hirschi 1986). Defiance theory may encompass many types of crimes but may also be more powerful a predictor of predatory and competitive offenses than of mutualistic or retributivist offenses (Felson 1987).

Defiance occurs under four conditions, all of which are necessary:

1. The offender defines a criminal sanction as unfair.
2. The offender is poorly bonded to or alienated from the sanctioning agent or the community the agent represents.
3. The offender defines the sanction as stigmatizing and rejecting a person, not a lawbreaking act.
4. The offender denies or refuses to acknowledge the shame the sanction actually caused him to suffer.

Sanctions are defined as unfair under two conditions, either of which is sufficient:

1. The sanctioning agent behaves with disrespect for the offender, or for the group to which the offender belongs, regardless of how fair the sanction is on substantive grounds.
2. The sanction is substantively arbitrary, discriminatory, excessive, undeserved, or otherwise objectively unjust.

Defenders deny shame as one of two adaptive responses to alienation, as Karl Marx put it: “impotence and indignation” (quoted in Scheff and Retzinger 1991, p. 64). The first response accepts shame and seeks escape through retreat or intoxication, as in Anderson’s (1978) “wineheads.” The second denies shame and insulates the offender against it by anger and rage in reaction to insult, as in Anderson’s “hoodlums.” We lack sufficient evidence or theory to specify the individual or social conditions under which alienated persons choose these alternative responses.

Defiance theory therefore predicts three reactions to punishment defined as unfair:
Overview

Sitting in a movie theater that was showing Stanley Kubrick’s *2001*, my 10-year-old son and my wife were talking. They started out in a whisper, then spoke sotto voce, then got very loud when the music was loud. Finally, another patron came over and rudely told them to “shut up.” They complied. But all the way home my son protested that the chastisement was unfair. As my wife tried to justify the patron’s actions by the impoliteness of their having bothered other people by loud talking, my son became more defiant. He felt so humiliated by the rudeness of the patron’s conduct that he denied the morality of the rule the patron was enforcing—arguing that people had a right to talk so that they could interpret the movie to each other. His only escape from the stigmatizing shame he had suffered was a refusal to acknowledge that shame, adopting a false pride in his own moral superiority over the disrespectful and—in his view—unfair patron.

Compare that episode with a recent scene from the richest county in the United States (Brown, 1993):

A 14-year [old] freshman at McLean High School in Fairfax County [said] “I was talking to one of my friends, and the teacher said something like ‘shut up,’ and it pissed me off and I said, ‘Go to hell, [Expletive] you.’ ... ‘I explained why I was late to my teacher, and she started going on about what I needed to do to get to school on time,” said Gisela Aponte, 17, a junior at McLean. “I just freaked out and called her the B word.... I got Saturday detention, but I don’t regret it. She deserved to be called that.” ... Some youths think they deserve as much respect as anybody else, including their elders.

In both the theater and the high school, the rule breakers were punished in a manner they defined as disrespectful. And in both cases, as Scheff and Retzinger (1991) would argue, the disrespect made them ashamed of being ashamed, infusing them with self-righteousness. In Braithwaite’s (1991) commentary on Scheff and Retzinger, “Actor A gets angry at actor B for disapproving of her instead of examining the (correct or incorrect) reasons for the disapproval” (p. xi). This pattern supports Durkheim’s hypothesis that “for any penalty to have an educational influence it must seem worthy of respect to the person on whom it is inflicted” (quoted in Braithwaite 1989, p. 178).

But the “unfair” sanctions had different effects on the sanctioned behavior. In the theater, my well-bonded son, under the watchful “handling” (Felson 1986) of his mother, complied with the rule despite the anger from his unacknowledged shame. In the high school, the students—perhaps poorly bonded at home and in general—defied both the rules and the sanctioners, attracting more severe sanctioning for their defiance. That sanctioning, in turn, further strengthened their denial of shame for the original rule violation and their pride in having themselves punished an unfair punishment.

These cases highlight four key concepts in the emotional response to sanctioning experiences: legitimacy, social bonds, shame, and pride. Foremost is the degree of legitimacy the sanctioned offender grants to the sanctioning agent’s behavior, driven more by the agent’s respectfulness and procedural fairness than by the substance of the morality the agent enforces (Tyler 1990). Second is the strength of the social bond the offender has to the sanctioning agent, the community in whose name the sanctioning agent was acting, and other close attachments (Scheff and Retzinger 1991). Third is the shame the offender either acknowledges or bypasses, respectively repairing or weakening social bonds to agent or community (Braithwaite 1989). Fourth is the source of pride the offender feels in the aftermath of the sanction: social solidarity with the relevant community or isolation from that com-
angry offenders will produce exactly the opposite outcome of what those “cracking down” on and “getting tough” with offenders hope to accomplish: high rates of defiance and reduced public safety.

References


Does punishment control crime? This question provokes fierce debates in criminology and public policy. Yet there is ample evidence that it is the wrong question. Widely varying results across a range of sanction studies suggest a far more useful question: Under what conditions does each type of criminal sanction reduce, increase, or have no effect on future crimes? Answering that question is central to the future of research on crime and delinquency.

That claim has no better justification than the universal presumption of criminal law that punishment deters (Morris 1966, p. 631). As the dosage of criminal sanctions skyrocketed in the United States over the past decade (Farrington and Langan 1992; Blumstein 1993), criminology produced increasing evidence that punishment can backfire. If our first duty is to do no harm, then criminology is morally compelled to identify the ways in which punishment may be causing crime and to invent alternatives to criminogenic practices....

The absence of theoretical guidance reflects the preoccupation of modern criminology with the problem of crime causation. Yet the historic (Beccaria [1764] 1963) and conceptual core of criminology is the science of sanction effects, net of other causes of crime. By definition, both criminality and criminal events are responses to the formal threat of punishment attached to the legal proscription of certain behaviors. Yet the role of that threat in crime causation and prevention has received far less scientific attention than other factors.

A science of sanction effects requires explicit theories of those effects, not just modified theories of crime causation. Until recently, the deterrence and labeling doctrines have kept a stranglehold on the field, demanding a choice between the two (Wellford and Tripplet 1992). But three new theories offer the promise of resolving that stalemate with far greater explanatory power. Most visible among criminologists is Braithwaite’s (1989) theory of reintegrative shaming. Most prominent among political scientists is the procedural justice school, notably Tyler’s (1990) major study of compliance. The third theory is Scheff and Retzinger’s (1991) sociology of the “master emotions” of pride and shame that dominate human responses to experienced and vicarious sanctions. Each of these theories can help explain a phenomenon that Black (1983) identified in which crime is committed as an attempt at social control.

Briefly, Braithwaite (1989) argues that criminal sanctions can be delivered in either “reintegrative” or “stigmatizing” ways, the former by drawing social shame on the act and the latter by shaming and rejecting the actor. Reintegrative shaming controls crime, whereas stigmatic shaming increases it. Tyler (1990) distinguishes between sanctions citizens perceive as fair or unfair. Fair sanctions increase compliance with the law by affirming the legitimacy of law enforcement, but unfair sanctions reduce compliance by reducing legitimacy. Scheff and Retzinger (1991) argue that individuals vary in their emotional response to sanctions or shaming of any kind, depend-