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Using Perception of Guilt to Assess the Level of Cultural Adoption of a Transgressor Belonging to an Ethnic Minority: Influence on Sentencing

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Abstract

Perception of the feeling of guilt experienced by the defendant is known to affect judicial sentencing. This influence differs depending on the defendant's ethnic identity. We investigated the hypothesis that the perception of an out-group defendant's level of host society's norms adoption could mediate this mechanism. 64 native Belgian participants were randomly assigned to two experimental conditions, which differed in the presence or absence of guilt expressed by an out-group defendant during his audition, in a given scenario. Participants' impression of the defendant's social skills (warmth), his level of host's society norms adoption, and the severity of the sentence they would attribute to this defendant were then measured. A double mediation was tested in order to explain the effect of perceived feeling of guilt on sentencing through the perception of both the defendant's level of norms adoption and his warmth. Results revealed that all the hypotheses included in the double mediation were confirmed. These results emphasize the importance of inferences about the level of Norms Adoption by out-group members. An out-group member feeling guilty triggers inferences about his/her level of norms adoption, which is perceived as higher in comparison to a defendant who does not feel guilty. This inference induces a better perception of his social skills (warmth), which corresponds to a higher ability to be accepted in the group. In turn, it leads to a milder sentence. Limitations and implications are discussed.

Introduction

Just like many other types of behaviors, emotional behavior is regulated by norms. For example, people are expected to feel sad at a burial but happy at a wedding (Hochschild, 1983). According to Thoits (2004), emotional norms vary in content over contexts, time and cultures, and people who conform to these norms will likely get more social approval than those who do not. By contrast, the latter are subject to social exclusion and can therefore be stigmatized as "emotional deviants" (Thoits, 1985).

In the context of judicial settings, complying or not with emotional norms may impact the attributed sentence (Leys, Licata, Bernard, & Marchal, 2011; Leys, Licata, Klein, Marchal, & Bernard, submitted). In this context, the feeling of guilt, defined as a negative moral emotion felt after transgressing a social norm (Tangney & Dearing, 2002) is normatively expected. Indeed Leys et al. (2011) showed that felt guilt was expected when a defendant had committed a felony (factual guilt was clearly established), and that the defendant received a harsher penalty when he failed to express guilt than when he did.

Given that emotions have important functions in social communication at an interpersonal level (Van Kleef, Van Doorn, Heerdink, & Koning, 2011), conforming or not with emotional norms triggers inferential processes in observers concerning both the target's personality and the way this target regards the situation. Attribution processes are part of these inferences. Attribution theories explain how an individual can make sense of a specific event. Two main categories of attributions were distinguished (Heider, 1958; Kelley, 1967; Weiner, 1985): external attributions, which relate to the environment (attenuating or aggravating circumstances, etc.), and internal attributions, which relate to the individual (personality, dispositions, social skills, etc.). In Western cultural settings explanations based on personality traits seems mobilized by default while external attributions are drawn upon only in a second step, in order to correct the first explanation (Gilbert, Pelham, & Krull, 1988). Personality perception is thus central in attribution processes. Research on impression formation

has shown that people tend to evaluate others on two dimensions of personality (the Big Two): Warmth and Competence (Abele, Cuddy, Judd, & Yzerbyt, 2008; Dubois & Beauvois, 2005; Fiske, Cuddy, & Glick, 2007). Perception of warmth is particularly important in judicial settings. Indeed, possessing a high level of social skills indicates a person's ability to respect group norms and to be accepted in the group (Fiske, Cuddy, Glick, & Xu, 2002; Fiske, Xu, & Cuddy, 1999). In the context of a trial, the perception of the defendant's personality can be used in order to evaluate how dangerous s/he is for the group and how likely s/he will be able to reintegrate in society.

In this line of thinking, previous studies (Archer, Foushee, Davis, & Aderman, 2006; Esqueda, Espinoza, & Culhane, 2008; Leys et al., 2011) showed that participants assessed the social skills of the transgressor and partially relied upon this judgment to decide the severity of the penalty. In another study (Leys et al., submitted), the ethnic identity of the target was manipulated: the defendant was either presented as Belgian (in-group) or North African (out-group). Results showed that the perceived emotional behavior of the defendant affected the sentence. In the in-group condition, this effect was mediated by perception of warmth and by attribution to external factors (attenuating circumstances), whereas, in the out-group condition, the effect was only mediated by perception of warmth. When considering a set of two emotional norms (to feel guilty and not angry), when out-group members transgressed one of the two norms while complying with the other, they received a more severe sentence. On the contrary, in-group members adopting such an unexpected behavior could trigger attribution to extenuating external factors, therefore lowering the sentence. Thus, these results confirmed that, when dealing with an out-group transgressor, his/her emotional behavior may influence the severity of the penalty through different attributional processes than those applied for in-group transgressors.

In order to explain this difference, this study will examine the role that majority members' evaluation of an ethnic minority transgressor's level of in-group norms adoption could play. We reasoned that perceivers could use the defendant's emotional behavior during the legal judgment process as a clue indicating her/his level of adoption of the host society's norms. This criterion would not be salient for in-group transgressors, since they are necessarily viewed as culturally "integrated" in their own society, even if they adopt a delinquent behavior. However, it could become salient with out-group members, especially when they are targeted by negative stereotypes, which often depicts them as not integrated. It is particularly the case for Muslim immigrants (Billiet & Swyngedouw, 2009) such as the North Africans in Belgium. Therefore, as soon as North Africans fail to fully comply with the in-group's emotional norms, they could be considered as less "integrated" with the host society and thus more severely convicted.

Research on acculturation perceptions (Van Acker et al., 2011; Zagefka, Brown, Broquard, & Martin, 2007) examined how perceptions of the acculturation strategies of minority members affect the attitudes of majority members towards them. These studies relied on Berry's model of acculturation (1997), which distinguishes two dimensions: maintenance of the minority culture, and contact with the host culture. Zagefka et al. (2007) showed that perceiving that minority members wish to have contacts with the host society led to more positive attitudes towards them, whereas perception of cultural maintenance had no effect. Recently, Van Acker et al. (2011) confirmed this result, but further showed that perception of adoption of the majority culture by the migrants had a stronger positive effect on intergroup attitudes than their perceived desire for contact. Thus, we hypothesized that perceiving a defendant's guilt during the legal judgment process would be interpreted as evidence that he/she has adopted the emotional norms of the host culture, and would therefore yield a milder sentence.

In sum, the present study was designed to test hypotheses in line with Leys et al. (submitted) previous studies. We aimed at uncovering the relevant processes explaining the link between perceived guilt and the penalty in the out-group condition. We hypothesized the following (see Figure 1):

1. Confirming previous studies (Leys, Licata, Bernard, & Marchal, 2011; Leys, Licata, Klein, Marchal, & Bernard, submitted), the inflicted penalty will be less severe for a defendant who feels guilty than for a defendant who does not.

2. A North African (out-group) defendant feeling guilty will be perceived as having a higher level of Norms Adoption than a North African defendant feeling no guilt.
3. A North African defendant feeling guilty will be perceived as warmer than a North African defendant feeling no guilt.
4. A North African defendant perceived as having a higher level of Norms Adoption will be perceived as warmer than a North African defendant perceived as having a lower level of Norms Adoption.
5. A North African defendant perceived as having a high level of Norms Adoption will be less severely sentenced than a North African defendant perceived as having a lower level.
6. A North African defendant perceived as warmer will be less severely sentenced than a North African defendant perceived as colder.
7. A double mediation will explain the effect of the feeling of guilt on the sentence through the perception of both the level of Norms Adoption and the defendant's warmth.
8. The effect of the feeling of guilt on warmth will be mediated by the perception of the defendant's level of Norms Adoption.
9. The effect of the level of Norms Adoption on the sentence will be mediated by the perception of the defendant's warmth.

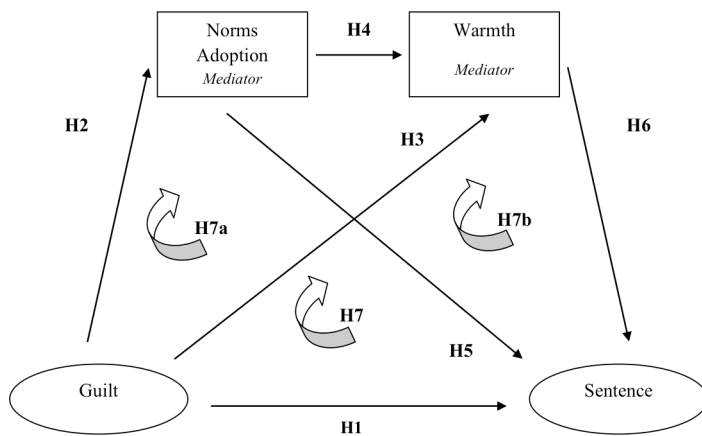


Figure 1. Relation between perceived guilt and sentence mediated by perception of the defendant's level of norms adoption and perception of his/her warmth (hypotheses).

Method Participants and Procedure

Among 80 participants, all students in last year of childcare studies and a last year of high school who volunteered to participate in this research, in accordance with the school directors, only the 64 native Belgian participants were kept (mean age = 18.64 years, $SD = 1.26$; 33 males). All students filled in an informed consent to participate in the study and were free to decline. Anonymity was guaranteed.

Participants were randomly assigned to two experimental conditions. Because a social emotion such as guilt is not associated with any facial correlate (Keltner & Buswell, 1996), guilt was manipulated through vignettes stating its presence or absence in a written sentence. The questionnaire contained several sections: the first explained that participants were about to read a short scenario and were to answer several questions in relation to their impressions of the defendant. Afterwards, a home burglary scenario was presented (see Appendix). Because felt guilt is only expected when factual guilt is unquestioned (people do not expect felt guilt from someone that did not commit the felony), the transgressor was described as caught red handed. As in Leys et al. (submitted) study, the transgressor was named with a fictional North African name: Mr. Youssef El Kader. At the end of the questionnaire, a manipulation check confirmed that participants were all aware of the transgressor's origin.

Guilt was described as either present or absent depending on the condition (see Appendix). Experimental manipulations were introduced in the scenario via three excerpts: one situated at the beginning of the scenario,

which described the defendant's deposition in the magistrate's office (i.e., "At his arrival, he did not feel guilty" / "At his arrival, he felt very guilty"); one in the middle (i.e., "I don't care" / "I feel very guilty"); and at the end of the scenario, which described the defendant's testimony during his trial (i.e., "the defendant keeps feeling no guilt" / "the defendant still felt very guilty"). Excerpts were always congruent. At the end of the questionnaire, a manipulation check, on a 5-point Likert scale, confirmed that participants perceived the transgressor's feeling of guilt according to the condition: $M_{\text{Guilt}} = 3.45$, $SD = 1.53$; $M_{\text{noGuilt}} = 1.38$, $SD = .81$, $t(34) = 4.88$, $p < .001$.

Some information was provided concerning the defendant: he had a small criminal record (simple theft, two years ago). In Belgium, many trials involve recidivists and a first offense rarely yields a strong penalty (except for crimes). Victims were present during the robbery, although no physical harm occurred; no external justification was provided. When the prosecutor inquired about his motives, the defendant provided none.

The dependent variables (see appendix) were Penalty ($\alpha = .77$); attribution to External Factors ($\alpha = .70$); perceived Warmth ($\alpha = .84$); Level of Defendant's Norms Adoption ($\alpha = .69$): "Do you think that the defendant follows the Belgian society's norms?" and "Do you think that the defendant is seen as well integrated into the Belgian society by the prosecutor?". All items were measured on 7-point Likert scales.

Results

Table 1 reports the descriptive statistics of all variables. Confirming the first hypothesis, regressing Perceived Guilt (Absent vs. Present) on Penalty yielded a significant regression coefficient, $\beta = -.43$, $t(60) = -3.68$, $p < .001$, $R^2 = .18$, equivalent to an independent t -test. When the defendant was described as feeling guilty, the attributed sentence was significantly less severe than when he was described as not experiencing that emotion (see Table 1).

Table 1

Severity of the Sentence, Level of Norms Adoption and Degree of Warmth for a Defendant Feeling Guilty and for a Defendant Who Does Not (Means with Standard Deviations; $N = 62$).

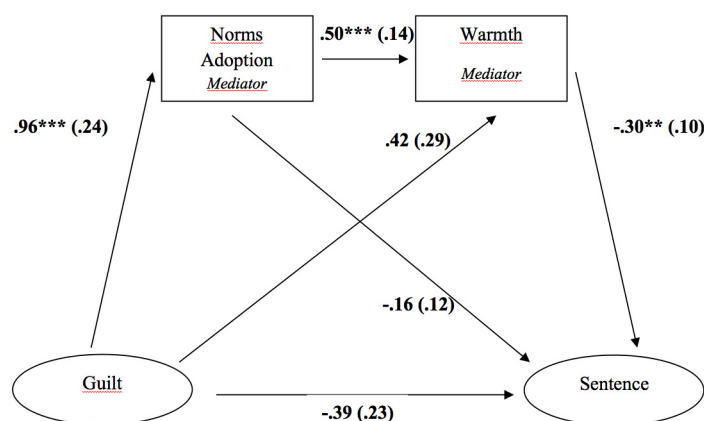
Scale	Guilt	No guilt
Sentence	2.64 (.78)	3.45 (.97)
Norms Adoption	2.94 (1.01)	2.03 (.93)
Warmth	3.79 (1.12)	2.90 (1.15)

In line with the second hypothesis, a defendant feeling guilty was perceived as having a higher level of Norms Adoption than a defendant feeling no guilt, $\beta = -.45$, $t(60) = -3.98$, $p < .001$, $R^2 = .21$ (see Table 1). In line with the third hypothesis, a defendant feeling guilty was perceived as warmer than a defendant feeling no guilt, $\beta = -.37$, $t(60) = -3.98$, $p = .003$, $R^2 = .14$ (see Table 1).

In line with the fourth hypothesis, a defendant perceived as having a higher level of Norms Adoption was perceived as warmer than a defendant perceived as having a lower level of Norms Adoption, $\beta = .52$, $t(60) = 4.68$, $p < .001$, $R^2 = .27$. In line with the fifth hypothesis, a defendant perceived as having a high level of Norms Adoption was less severely sentenced than a defendant perceived as having a lower level of Norms Adoption, $\beta = -.45$, $t(60) = 3.98$, $p < .001$, $R^2 = .21$. In line with the sixth hypothesis, a defendant perceived as warmer was less severely sentenced than a defendant perceived as colder, $\beta = -.54$, $t(60) = 4.98$, $p < .001$, $R^2 = .29$.

Hypotheses 7, 7a and 7b were confirmed through a double mediation test (Hayes, 2013. See Figure 2). Both mediations of Perceived Guilt on Sentence through Norms Adoption and through Warmth are partial. The double mediation, taking both mediators into account in series, is complete: the presence of guilt induces the perception of a high level of Norms Adoption, which, in turn, induces the perception of a high level of warmth, which induces a mild sentence, and conversely for the absence of guilt.

Attribution to External Factors also predicted the Penalty, $\beta = -.56$, $t(60) = -5.27$, $p < .001$, $R^2 = .31$. However, Guilt did not significantly predict attribution to External Factors, $\beta = .22$, $t(60) = 1.79$, $p > .05$, $R^2 = .05$. External factors were taken into account to determine the penalty, but they were not influenced by perception of the defendant's feeling of guilt.



* $p < .05$. ** $p < .01$. *** $p < .001$

Indirect effects:

Hypothesis 7: $-.14 (.08)$, CI $[-.39, -.04]$

Hypothesis 7a: $-.16 (.15)$, CI $[-.52, .04]$

Hypothesis 7b: $-.12 (.11)$, CI $[-.46, .03]$

Figure 2. Relation between perceived guilt and sentence mediated by the perception of the defendant's level of norms adoption and the perception of his/her warmth (results)

Discussion

These results confirm our hypotheses and emphasize the importance of inferences about the level of Norms Adoption by out-group members. Expressing guilt after having transgressed influences the severity of the sentence attributed by observers. This influence can be explained as follows: an out-group member feeling guilty triggers inferences about his/her level of Norms Adoption (perceived as higher than for a transgressor feeling no guilt); this inference induces a perception of the defendant as possessing more social skills (warmth), which corresponds to a higher ability to be accepted in the group. In turn, being perceived as warm induces a milder sentence.

This process is of potentially important consequences in judicial settings. Indeed, considering the level of host society's norms is obviously irrelevant for in-group members. As shown previously (Leys et al., 2011), feeling guilty influences the sentence of in-group members through both attribution of extenuating external factors and perception of the defendant's social skills. Leys, Licata, Bernard, & Marchal (2011) did not find any influence of the latter mediator in case of out-group members. Hence, it seems not only that individuals are influenced by emotional norms when forming impression of a defendant, but also that the inferences they draw differ depending on the defendant's membership with the cultural in-group or with an out-group. These differences could explain, at least partially, the differences of sentencing following the transgressor's ethnicity observed in previous studies (Franklin, 2013; Leys, et al., submitted; Steffensmeier & Demuth, 2000).

Some limitations of this study have to be underlined. First, participants were students and not seasoned magistrates. Previous studies compared students in the field of Law and students from other fields (Leys et al., submitted), and no significant differences were observed. However, seasoned magistrates could cope differently with transgressor's ethnicity issues, and studies on this specific population are needed. Second, the use of questionnaires has its known limitations, such as a low level of implication. However, this study replicates a previous study using the same method. Moreover, it allowed manipulating felt guilt explicitly instead of relying on proxies such as apologies or remorse. Third, felt guilt was manipulated to be normatively present or counter-normatively absent. However, other norms (emotional or not) could yield different results. Further studies should investigate a broader range of norms. Fourth, the level of Norms Adoption is identified as a mediator.

The next step is to set this mediator as an independent variable to establish its effects through experimental manipulation. Lastly, the measure of the penalty's severity on 7 points Likert scales differs from ecological sentencing. We used this measure for methodological reasons but at the cost of ecological validity. Further studies should investigate this issue. Hence, at this point of our research, it seems too soon to infer practical recommendations from our results. Yet we draw attention on possible source of discriminations between groups that are not obvious given that it relates with emotional norms, and with slight variations in cognitive processes.

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Appendix

Scenario

M. Youssef El Kader is caught red handed for burglary, while the owners were home but did not wake up. M. El Kader works in a restaurant; he has two children and has already been convicted for simple theft two years ago. Arriving in the examining magistrate's office for his statement he felt really guilty / he felt no guilt at all. The following takes place in the magistrate's office,

M. Tembele: ...

M. Tembele: "Mister El Kader, you have been caught robbing a house and stealing Hi-Fi devices, jewels and the owners' wallets while they were asleep. Do you recognize the facts?"

M. El Kader: "Well your colleague was there, what is there to add?"

M. Tembele: "And are you comfortable with breaking into a house and stealing people's belongings for your own benefits? What would you have done had they woken up?"

M. El Kader "I feel guilty for them / I don't care ..."

M Tembele: "Can you tell me why you'd do that? Did you need the goods you stole?"

M. El Kader: "I felt compelled; I've let myself doing it."

...

During the trials, evidences have been provided. The prosecutors and the attorney exposed their conclusions. *Flagrante delicto* was confirmed. There was no procedural defect. The defendant felt still guilty / felt still no guilt. The judge now has to define the sentence, taking potential extenuating or aggravating circumstances into account.

Measures

Warmth (social skills) assessment:

Do you perceive the defendant as: Sociable – Thoughtful – Unpleasant (rev.) – Tolerant – Irritable (rev.) – Selfish (rev.) – Disdainful (rev.) – Agreeable – Warm – Cold (rev.) (all going from "not at all" to "totally").

Penalty assessment:

Picture yourself as the judge. What penalty would you give the defendant, compared to the standard penalty: minimal penalty – maximal penalty.

Do you believe that the penalty should be: very mild – very harsh.

Extenuating circumstances:

Do you believe external factors might have influenced the defendant's behavior regarding his felony?

Would you say that the defendant's criminal behavior might be explained by circumstances that did not depend on the defendant?

Do you believe that reasons independent from the defendant might have explained his felony?

Manipulation checks:

The defendant is: North African – Belgian – Other

Do you think the defendant feels guilty?