Examining the stability and predictors of deterrability across multiple offense types within a sample of convicted felons

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ABSTRACT

Deterrence research finds mixed support for the effect of sanction, potentially due to differences in deterrability across individuals. We assessed differential deterrabilty within a known offender sample (n = 428), and examined consistency in deterrability across multiple offense types: drunk driving, aggravated assault and commercial robbery. Using Pogarsky's (2002) classification method, inmates were categorized as acute conformist, deterrable, or incorrigible for each scenario. These classifications varied by scenario, suggesting little intra-individual consistency across offenses. Regression analyses uncovered little consistency in predictors of deterrability across offense types. Results suggest policies to increase certainty, swiftness and/or severity of formal sanctions will not have uniform deterrent effects, but may have differential impacts across individuals as they contemplate different crimes.

1. Introduction

Consequentialist theories of decision making contend that individuals freely choose their behavior based on an evaluation of its consequences (Loewenstein, Weber, Hsee, & Welch, 2001). In the field of criminology, deterrence theory is an example of a consequentialist theory whereby individuals are presumed to choose criminal behavior (or its abstention) based on an assessment of the perceived certainty, swiftness and severity of punishments associated with the act (Nagin, 1998; Paternoster, 2010). Accordingly, crime control policies that seek to increase the *certainty* of sanctions—e.g., hiring more police officers (Evans & Owens, 2007), increase the *swiftness* of sanctions—e.g., the use of specialized courts (Bouffard & Bouffard, 2011; Harrell, 2003), and/or increase the *severity* of sanctions—e.g., sentence enhancements (Helland & Tabarrok, 2007; Zimring, Hawkins, & Kamin, 2001) are all rooted in the deterrence doctrine. With such far-reaching applications, deterrence theory serves as the foundation for many modern systems of criminal justice (Akers & Sellers, 2009).

Across five decades of research on the deterrence doctrine, empirical support for the theory has been mixed (Piquero, Paternoster, Pogarsky, & Loughran, 2011). Illustratively, in his summary of this literature Nagin (1998:36) asserts, "I am confident…that our legal enforcement apparatus exerts a substantial deterrent effect" (see also Nagin, 1978). Paternoster's (2010:818) conclusions are more cautious:

"There does seem to be a modest inverse relationship between the perceived certainty of punishment and crime, but no real evidence of a deterrent effect for severity, and no real knowledge base about the celerity of punishment." More discouragingly, Pratt, Cullen, Blevins, Daigle and Madensen's (2008:383–384) meta-analytic review of the deterrence literature found effect size estimates for punishment certainty and severity to be "modest to negligible" at the bivariate level, and "substantially reduced—often to zero" at the multivariate level.

Why does the extant literature not find a stronger and more consistent deterrent effect? In part, the answer may lie in the scarcity of swift punishments (Paternoster, 2010), methodological differences across studies (Pratt et al., 2008), Bayesian updating of risk perceptions following sanctioning experiences (Anwar & Loughran, 2011; Wilson, Paternoster, & Loughran, 2017), and/or the impact that acute emotional states may have on decision making (Bouffard, 2002, 2014; Exum, 2002; Piquero et al., 2011). Here we examine yet another possible explanation for these mixed results—namely, the idea that *individuals naturally vary in their degree of deterrability*, with some segments of the population being unresponsive to variations in risk levels (Piquero et al., 2011). Some individuals may be more immune to the threat of sanctions and misbehave largely without regard to the risk of sanctioning (i.e., incorrigible), while others refrain from offending (e.g., out of concerns about the morality of criminal behavior) without ever considering the potential costs (i.e., conformists). If so, deterrence-

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based policies may only operate on a fraction of the population that considers crime potentially acceptable (e.g., not morally opposed) and also attends to the potential risks associated with the misdeed (i.e., they are "deterrable"). The current study advances our understanding of "differential deterrability" by examining the consistency of being deterrable (and predictors of such deterrability) across multiple offense types. We also advance existing knowledge by examining these issues in a sample of known offenders—a group whose degree of deterrability is keenly important to advancing theory and shaping policy, especially given the high recidivism rates seen among individuals released from prison (see Beck & Shipley, 1989; Cullen, Jonson, & Nagin, 2011; Langan & Levin, 2002).

1.1. Differential deterrability: conformists, deterrables and incorrigibles

Differential deterrability is the degree to which individuals vary in their responsivity to legal sanctions (Jacobs, 2010). Pogarsky (2002) explored this issue by attempting to classify individuals into one of three types of decision makers. At one extreme are the *acute conformists* who refrain from crime not because of the criminal justice ramifications, but because of extralegal constraints (e.g., strong moral fortitude or fear of social disapproval). At the other extreme are *incorrigibles*, who are strongly committed to offending despite the inherent risks of formal sanctioning. According to Pogarsky (2002), these individuals may be immune to sanctioning threats because of certain biological or psychological factors (e.g., weak executive cognitive functioning or high levels of impulsivity). Finally, individuals who are adjust their behavior in response to the threat of sanctioning constitute the *deterrable* group. As the perceived certainty, swiftness and/or severity of formal punishment increases, the deterrables become less likely to offend.

Pogarsky (2002) argued that by classifying individuals on their level of sanctioning responsivity, researchers can develop more efficient tests of deterrence theory, because by including acute conformists and/or incorrigibles in their samples researchers have incorrectly underestimated deterrent effects. As such, these deterrence estimates are biased downward when examining their effects on the entire population (including conformists and incorrigibles). In order to more accurately assess the deterrent properties of punishment, Pogarsky recommended researchers identify and exclude these groups, instead focusing only on those who are responsive to punishment (i.e., deterrables). In particular, Pogarsky (2002) suggested that research was needed to examine whether certain types of offenses might have larger (or smaller) segments of the population who would be categorized as "deterrable," though little if any subsequent research has taken up this charge.

1.2. The measurement and prevalence of deterrability

Pogarsky (2002) was not the first to categorize individuals based on their sanctioning responsivity; Andenaes (1974) proposed a similar tri-part classification decades earlier. Pogarsky's (2002) work is unique however, in that he developed and tested an empirical method for cataloguing individuals. In his study, undergraduate students were asked to read a hypothetical drunk driving scenario and then report how likely they would be to drive their car under the conditions described in the scenario. This value, reported on a 0%–100% scale, represented participants' offending likelihood (OL) score. Using the same scale, participants were later asked how likely they would be to drive the car assuming there was "absolutely no chance you will be apprehended by the police for driving while intoxicated" (p. 438). This measure constituted participants' offending likelihood scores under no risk of sanctioning (OL_0).

Those for whom $OL = OL_0 = 0\%$ were deemed to be *acute conformists* because they were completely unwilling to engage in the offense even when there was no chance of being caught. Pogarsky suggested that a variety of internal and social constraints (e.g., conscience/morality, perceived legitimacy of the law, fear of social disapproval)

keep these individuals from even considering criminal behavior, and its possible costs (cost perceptions were then unrelated to these individuals' OL). On the other end of the classification scheme were those Pogarsky classified as *incorrigible* (i.e., likely to offend no matter the sanction risk), for whom $OL = OL_0 > 50\%$. Pogarsky's chosen "cut off" for classification as incorrigible is important here, in that he selected those who were more likely than not (i.e., OL and $OL_0 > 50\%$) to offend, under either sanction risk context—that is incorrigibles are both likely to offend and unresponsive to variation in sanction risks. Pogarsky suggested that a number of factors may motivate these individuals' criminal activity (i.e., biological and psychological deficits, such as impulsivity or poor self-control) making them unresponsive to sanction risks. Finally, individuals for whom $OL < OL_0$ were categorized as *deterrable*, because they reported a lower likelihood of offending when some risk of apprehension was present. Conceivably then, these individuals are neither well-bonded enough to eschew potential offending opportunities outright, nor so entrenched in a pattern of misbehavior that they are willing to engage in it regardless of consequences.

Using this classification scheme, Pogarsky (2002) found 21% of students to be acute conformists, 8% to be incorrigible, and 62% to be deterrable (the remaining 9% were left *unclassified* because their OL and OL_0 scores did not match any of the above three categories). Validating this classification scheme, multivariate analyses revealed that the OL scores of deterrables were significantly and inversely related to the certainty and severity of sanctioning, whereas the OL scores of incorrigibles were not, suggesting they were immune to the threat of punishment. No examination was performed on the acute conformists because their OL scores were, by definition a constant (all were 0%).

Despite the theoretical and empirical justifications for categorizing individuals on their sanctioning responsivity, there appear to be only two subsequent studies that have applied Pogarsky's (2002) particular classification schema. Urban (2009) used this method on a sample of 118 detained juvenile offenders; however, rather than administering a hypothetical scenario in order to query a particular type of offense, Urban asked these juveniles about their likelihood to break the law more generally (OL), and their likelihood to break the law if they knew they would not get caught (OL_0). Unfortunately this technique does not allow for an examination of differential deterrability across different offense types. The distribution of acute conformists (19%), incorrigibles (5%) and deterrables (51%) was similar to that uncovered by Pogarsky (2002) in relation to drunk driving specifically, although a higher proportion of the juvenile offenders were unclassified (24%) relative to Pogarsky's university sample. More recently, Worrall, Els, Piquero, and TenEyck (2014) administered a hypothetical drunk driving scenario to a sample of 306 undergraduate students and collected their OL and OL_0 estimates. In a series of ancillary analyses, they applied Pogarsky's (2002) classification schema to identify, and focus upon only the deterrables in their sample (approximately 63% of the sample). No information was provided on the proportion of acute conformists, incorrigibles, or unclassified students in the study.

Collectively, this literature on sanctioning responsivity finds at least half of the studies' participants could be classified as deterrables (Pogarsky, 2002; Urban, 2009; Worrall et al., 2014). This is encouraging because, as Pogarsky (2002) notes, the efficacy of deterrence interventions is heavily dependent upon the proportion of deterrables within society. However, the existing research has not yet examined the degree to which this sanction responsivity classification can be applied to known adult offenders. Perhaps for instance, a sample of known offenders would contain no acute conformist individuals, or be composed predominantly of incorrigibles. Additionally, we do not know if one's sanction responsivity classification would be consistent across different offense types, nor whether sanctioning responsivity (across offenses) would be influenced by a consistent set of individual level factors (as opposed to features of the criminal opportunity itself, for instance).