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Feldman, Y.; Rorie, M.; Van Rooij, B.

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Rule-breaking without Crime: Insights from Behavioral Ethics for the Study of Everyday Deviancy

Yuval Feldman, Bar-Ilan University¹

Melissa Rorie, UNLV

Benjamin Van Rooij, University of Amsterdam

Introduction

The study of criminology has mostly focused on understanding criminal behavior, including the processes of criminalization as well as why people engage in criminal conduct. Here criminology has a particular focus that (while not always present) has been dominant. The focus has been on behavior that is in violation of criminal law (and thus legally can be defined as criminal) and on understanding deviancy, asking what makes criminals commit acts that most others would not commit. Of course, all of this is logical, since criminology by its very name is about crime, and thus delinquency and violations of criminal legal rules.

Outside of criminology, though, there has also been much scholarly interest in rule-breaking behavior. Here, the focus is less on the study of breaking criminal law or deviancy, but more on how ordinary people break rules in their ordinary lives. This body of work from psychologists, economists, and organizational scientists has shown the rational choice, cognitive and social aspects of decision-making in the context of rule-breaking. This essay introduces some key insights from this body of work to criminologists. It focuses in particular on a recent development in the study of ordinary rule-breaking—the field broadly known as “Behavioral Ethics.” This field draws on earlier insights about cognitive and motivational biases that come from rule-breaking research but applies them to show how such cognition processes specifically shape ethical decision-making processes. It studies how people’s limited self-awareness affects their own unethicality and thus their behavioral response to rules. This field is especially important to criminology because some of its core findings show that ordinary rule-breaking may have very similar aspects and influences as criminal rule-breaking.

Everyday rule-breaking

In everyday reality, there are many instances where people break rules without this being perceived either by themselves or by their peers as a criminal act, either in a legal or in a broader social sense. When people litter, when they cheat on tax reporting, when they take office supplies home, or when they inflate business expense reports, they are breaking rules. Yet, in all these forms of rule-breaking, people are not seen as criminal and do not see themselves as such. It is precisely their “mundane” nature that makes these “ordinary” unethical acts so dangerous. First, the prevalence of these small acts of rule-breaking may accumulate to a large overall harm. For example, the harms of employee theft result in a 10 to 15 percent increase in the price of consumer goods, costing American families billions of dollars a year (Hollinger & Clark, 1983). Losses related to employee theft play a major part in the bankruptcies of between 30 to 50 percent of all insolvent organizations (Friedrichs, 2004, p. 115:). Second, these mundane forms of rule-breaking may undermine the authority and legitimacy of rule systems, creating more harmful behavior. Third, because they are mundane, people can justify these mundane forms of rule-breaking to themselves maintaining their self-view as ethical people, further normalizing such rule-breaking and violating rules in general.

Studies of everyday rule-breaking

One approach to study everyday rule-breaking is the rational choice approach. Similar to rational choice criminology, this approach focuses on the costs and benefits involved in the decision to engage in rule-breaking behavior. Here, rule-breaking behavior results from negative incentives; to correct it, the incentives must be addressed. The expected utility of rule-breaking should go down, and the expected utility of compliance up.

Behavioral economics questions the core tenets of rational choice thinking (Jolls, Sunstein, & Thaler, 1997). In the Behavioral Ethics field—just as in criminological studies by the likes of Shawn Bushway, Tom Loughran, Dan Nagin, Ray Paternoster, Justin Pickett, Alex Piquero, and Greg Pogarsky—thousands of papers have uncovered a whole list of biases and heuristics that impact decision making. Such scholarship demonstrates that people are very limited in promoting their self-interest as they are very limited in their ability to understanding important economic concepts. This has fundamental implications for core tenets in the rational choice approach to rule-breaking behavior such as people’s ability to understand probabilities and their objective understanding of financial costs.

Another line of work has questioned the individual nature of decision making in the context of rule-breaking. This body of work,

¹ The order of authorship is alphabetical.

largely developed by social psychologists, has shown the importance of social norms. It has focused on descriptive social norms (what others do) and injunctive social norms (what behaviors others approve or disapprove of). Prime examples are studies by Cialdini on littering, energy consumption, and the theft of fossils in natural parks (e.g., Cialdini & Goldstein, 2004;). Similar work has also shown that seeing others break the rules undermines the legitimacy of the rules in general and creates more and more severe (even criminal) rule-breaking (Keizer, Lindenberg, & Steg, 2008).

The behavioral ethics of everyday rule-breaking and the law of good people

Behavioral Ethics, a growing area within psychology and management literature, demonstrates that an individual's unethical behavior is enabled and exacerbated through a combination of deliberate and non-deliberative processes. Behavioral Ethics thus shows that people may not be aware of their own unethicality or that they may be able to influence their own view of their unethical conduct by justifying their behavior. This can explain how people can engage in unethical behavior but still consider themselves good people. A leading approach in this tradition would focus on the dissonance people experience between their need to be viewed as ethical and their need to maximize their self-interest. To deal with this dissonance people try to find ways to achieve both goals. This has major implications for everyday rule-violating behavior, as one of us (Yuval Feldman) has elaborated in his recent book, *The Law of Good People* (Feldman, 2018). The core premise of this book is that our legal and regulatory systems do not properly account for people's ethicality and mundane violations of rules. Naturally, the law is quite challenged in regulating the behavior of people who have limited ability to understand their own wrongdoing. The first key insight from Behavioral Ethics is that wrongdoing and misconduct is common.

Behavioral Ethics offers one important reason for why so many people who engage in misconduct still see themselves as good people (Ariely & Jones, 2012). This is the idea of "Bounded Ethicality." Just like psychologists and economists have shown that there is bounded rationality, ethicality can also be bounded by human cognitive processes, which makes them less aware of their own ethicality. Bounded ethicality clouds individuals' judgment and prevents them from seeing how their own self-interest is subconsciously driving their actions (e.g., through self-deception, ethical fading, motivated reasoning, moral forgetting, and moral disengagement), leading them towards unethical decisions (Feldman, 2014, 2018). Bounded ethicality is supported by people's tendencies to overestimate their own ability to remain impartial and to accurately assess the nature of their actions and motives (Sezer, Gino, & Bazerman, 2015, p. 77).

Another component of people being ethically-bounded is related to the fact that much unethical behavior is driven by a series of automatic and unaware processes, which limits their ability to recognize their own wrongdoing. Moore and Loewenstein (2004) have found that the effect of self-interest on decision making is automatic. For example, Epley and Caruso (2004) conclude that automatic (i.e., System 1) processing leads to egocentric ethical interpretations (Epley & Caruso, 2004, p. 173; Moore & Loewenstein, 2004, p. 195). In a recent meta-analysis, Kobis and his colleagues found evidence of intuitive self-serving dishonesty—in the absence of a clear victim, people making ethical decisions based on intuition are more likely to lie and cheat compared to when decisions are made under full deliberation (Kobis, Verschuere, Bereby-Meyer, Rand, & Shalvi, 2019).

Another important Behavioral Ethics insight points to the contexts in which transgression occur (Feldman & Kaplan, 2019). It shows that people's ethicality is situational and, thus, that situations can lure people to make unethical and rule breaking decisions. Studies have, for instance, established that legal ambiguity decreases the likelihood that deterrence and other incentives-based mechanisms will induce compliance because of people's self-serving interpretation of the law. Another example is how decision making happens in dyad or group contexts. Recent studies show a greater likelihood of cheating with partners or in a group (Kocher et al. 2017). This runs against rational choice predictions of greater dishonesty and wrongdoing happening when people are alone but is, of course, analogous to the criminological literature establishing that criminal offending is much more likely to occur in group settings, especially among adolescents (Elliott et al., 1982; Hoge et al., 1994; Thornberry et al., 1994).

Behavioral Ethics literature has also emphasized that the context of who benefits from transgressing behavior matters. It has found there is a much greater likelihood for wrongdoing when it is done for the sake of others (Wiltermuth 2011), similar to the empirical support for criminal offending related to "appeals to higher loyalties" (Sykes and Matza, 1957; see also, e.g., Cromwell and Thurman, 2003; Piquero et al., 2005). All of those situational contexts make it easier for people to either ignore their ethical meaning or justify it to themselves. Those situations could be seen as "societal blind spots", following the broader concept of *ethical blind spots*, a term generally associated with the work of Bazerman & Tenbrunsel (2011). Thus, "societal ethical blind spots" represent situations and mechanisms that allow for unethical behavior by ordinary people who otherwise value morality.

These insights from Behavioral Ethics provide a new perspective on mundane everyday rule violations. In contrast to existing rational choice and bounded rationality paradigms as well as the social norms and legitimacy approaches, Behavioral Ethics shows how central ethics are in offending decisions. Research must look deeper into how individuals process ethics and how that shapes their responses to rules.

Combining behavioral ethics and criminology

Behavioral Ethics focuses on the mundane everyday violations of rules, or (as Yuval calls it) the *Law of Good People*. Here the object of study is both similar and different from most criminological endeavors. It is similar in that it studies rule-breaking, it is different in that it chooses to focus on minor forms of rule-breaking—behaviors that are not deemed criminal nor seen as immoral. The question is what happens when we combine insights from Behavioral Ethics with those from criminology. This seems to be an interesting research agenda.

One interesting implication is that—even though the types of behavior studied in each discipline are dissimilar—some of the core findings are similar. Just like deterrence studies in criminology (e.g.; Chalfin and McCrary, 2017), Behavioral Ethics has questioned the effectiveness of punishment as a deterrent of unethical (but non-criminal) behavior and has looked for alternative processes to ensure good conduct (Chugh et al., 2005). Similar to studies of self-control in criminology—in which offenders are impulsive and risk-taking and crime is an opportunistic way to satisfy short-term desires (Gottfredson and Hirschi, 1990)—Behavioral Ethics has shown that automated and unconscious processes may create more rule-breaking behavior, but here finding its source in the fact that people relying on System 1 cognition (characterized by intuitive and emotional decision making, more so than System 2's deliberation and planning) are more likely to be unethical (Shalvi et al., 2012). Just like neutralization studies in criminology whereby inherently conforming individuals can talk themselves out of conformity with ethical norms, Behavioral Ethics (using the term “moral licensing”) emphasizes that people may be able to overcome their own ethical concerns, yet it shows that this may also happen in an unconscious manner. And just like situational crime prevention and routine activities theories in criminology where one's environment and lifestyle shape the opportunity to commit crime (e.g., Cohen and Felson, 1979; Clarke, 1997), Behavioral Ethics has shown that unethical behavior is strongly related to the situations people are in. However, the Behavioral Ethics literature focuses less on the opportunity for conduct itself but instead focuses on how situations can affect the *ethical view* of such wrongdoing.

It is our hope that this review demonstrates that there are important parallels between the study of crime and the study of mundane rule-breaking and that it would be mutually beneficial for criminologists and Behavioral Ethics scholars to engage in more collaborative research. For criminologists, specifically, we hope that the insights from Behavioral Ethics lead to some new focus areas or some “finessing” of existing theoretical propositions. One possible focus could be on whether criminological insights also apply to mundane rule-breaking. Another focus could be on how ethics and ethical processes play a role in criminal decision making and behavior. Also, criminological theories might benefit from incorporating the empirical findings on similar research questions from the Behavioral Ethics scholarship. Engaging in a deeper comparison of insights from Behavioral Ethics and criminology accords nicely with the interdisciplinary nature of the criminological endeavor and has great potential to provide a deeper understanding of human rule-violating behavior.

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