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Proterrence, Rule Illegitimacy, and the Ban on Tobacco Smoke in Amsterdam's Coffeeshops

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ABSTRACT

This article examines the concept of proterrence: scaring people into doing something to stop others from doing something bad. This contrasts to deterrence, which involves threatening persons to not do something bad. The tobacco ban in Amsterdam coffeeshops and, more specifically, coffeeshop personnel's reaction to it is used as the empirical vessel to examine proterrence. Proterrence permits examination of the interface between order maintenance and social control against a backdrop of perceived sanction illegitimacy. It also permits exploration of the process by which formal sanctions thread through informal mechanisms—where that threading is enforcement rather than consequence-based and where rule implementers face the brunt of the sanction that a third party violates. Data are based on in-depth fieldwork in Amsterdam coffeeshops. The wider applicability of proterrence is discussed.

Key words: Coffeeshop; tobacco; smoke; regulation; proterrence; qualitative

Introduction

The nexus between formal and informal control is fundamental to criminology. Offenders fear that people will call the police, stigmatize them if arrested or convicted, and accordingly treat them worse (e.g., not hire them). The nexus also concerns cases in which the government threatens to punish an actor (e.g., individual, business) for failing to stop *other actors* from doing something bad. We refer to this phenomenon as “proterrence” (Jacques 2019). For example, parents have been jailed for the sins of their children (Molina 2018); corporations have forfeited millions in legal settlements for employees' negligent acts (Dowie 1977); landowners stare down massive punitive verdicts for inadequate security on their premises (Nguyen 2004).¹

Outsourcing control creates scenarios in which informal parties are required to enforce rules that they deem illegitimate. Control makes order possible, but it is only legitimate when participants “buy into” the rules that govern everyday life (Goffman 1971; Weber 1978 [1924]). Less legitimate rules have less of their intended effect (Tyler, 1990). When a rule lacks legitimacy, rule-implementers and (potential) rule-violators are more aligned, reducing the probability of a proterrent effect. This involves more than turning a blind eye. Implementers help violators commit bad acts in certain ways meant to reduce formal detection.

A case in point is what started in Dutch coffeeshops in mid-2008. They came under the purview of a new rule, widely regarded—by outsiders and personnel (owners and employees)—as befuddling: The government banned tobacco smoking in coffeeshops, but continued to permit smoking cannabis (marijuana and hashish) (see Connolly 2008; Kucharz 2008). The policy was intended to protect personnel's health and welfare (cf. Eriksen and Cerak 2008). Yet, as we show, they did not want the rule; they defied it.

In what follows, we outline and explain the rules in Dutch coffeeshops; describe our data and method, namely qualitative accounts from interviews with 50 personnel of Amsterdam coffeeshops; present our findings on their perceptions and handling of the tobacco-smoke ban; outline the general theoretical implications of our findings; and, conclude by considering the policy implications.

Rules in Dutch Coffeeshops

Dutch coffeeshops are *de jure* prohibited from, but *de facto* permitted to, make retail-level cannabis sales and have consumption on the premises (Leuw 1991; Leuw and Marshall 1994; MacCoun 2011; NMFA 2008). They are the most (in)famous example of Dutch tolerance (Buruma 2007), but that perception is misleading. Dutch coffeeshops are highly regulated (Jacques 2019). They are required to comply with the following rules, punishable by short-term to permanent closure: On the premises, there cannot be minors, hard drugs, or more than 500 grams of cannabis; no customer may be sold more than 5 grams in a day; advertising is prohibited; and, the business cannot be a source of nuisance. To enforce the rules, police are required to randomly search each coffeeshops on a semi-annual basis, at minimum.

The risk of police searches and punishment have deterrence and proterrent effects (Jacques 2019). They scare personnel *out of* making violations (deterrence), such as intentionally selling to minors, peddling more than 5 grams, storing more than 500 grams, advertising cannabis, or allowing hard drugs and nuisance at the establishment. Moreover, the rules scare personnel *into* preventing other persons from breaking rules (proterrence). They actively shoo away minors, hard drug possessors, and persons prone to start fights or otherwise be a source of nuisance. In short, formal control (that by the government) motivates informal control (that by personnel) of potential rule violators.

No Tobacco Smoke

At the time of our study, described below, a new rule become relevant: no tobacco smoke was allowed in coffeeshops. The rule started coming into shape in 1998 when the Tobacco Act was created (NMHWS 2005). In 2002, it was amended to provide tobacco smoke-free

workplaces as of January 1, 2004. However, representatives of the hospitality industry, a branch of which is coffeeshops, fought the ban and argued for an indefinite exemption. The State Secretary of Health countered this was illogical because the sector's employees had the greatest exposure to tobacco smoke and, thus, were at greatest risk (STIVORO 2003). As a compromise, temporary exceptions were granted in a 2003 amendment. The hospitality industry was allowed to delay tobacco smoke-free working in exchange for the promise to enact self-regulation between 2005 and 2008.

On July 1, 2008, coffeeshops become regulated by a workplace-wide ban on tobacco smoke. Questions about enforceability in coffeeshops were addressed in the government publication, “Frequently Asked Questions on Smoke Free Catering” (NMHWS 2008). As to whether coffeeshops must be tobacco smoke-free: “Employees of coffeeshops also deserve protection from exposure to tobacco smoke. Coffeeshops are catering establishments and therefore subject to the tobacco legislation. Like other catering establishments, they may set up enclosed smoking areas.” Also, the publication addresses if “the smoking ban appl[ies] to cannabis not mixed with tobacco,” which the Dutch refer to as smoking “pure.” The answer: “The Tobacco Act and related legislation apply only to tobacco products, that is, products consisting wholly or partly of tobacco.”

In short, tobacco smoking, but not that of cannabis, became outlawed in coffeeshops. The police were in charge of detecting and, should they choose, escalating offenses to sanction. The penalties were administrative (i.e., civil) and issued by the Dutch Food and Consumer Product Safety Authority. Punishment escalated from a warning, to a few hundred euros fine, to several times that amount (NMHWS 2005). To be clear, the punishments were applied to coffeeshops, not personnel *per se*, nor to smokers. Thus, coffeeshops could only protect themselves by preventing, detecting and managing violations by others; i.e., proterrence was in effect. Yet because the law did not require personnel to report violations to the authorities, the certainty of detection versus apprehension can go in opposite directions. We now turn to describing the methods and data behind our exploration of personnel's motives and practices for enforcing the ban—or at least appearing to do so.

Methods and Data

The first-author, hereafter referred to as the fieldworker, obtained qualitative data by interviewing 50 coffeeshop personnel. The study² focused on coffeeshops in the center of Amsterdam; the area—referred to as the 1012—is approximately one square mile in size and a bustling tourism spot. During fall 2008, the fieldworker created a population list of

the area's coffeeshops by walking the entirety of each street, recording the name and address of each coffeeshop. To ensure the list was accurate and complete, he compared it to two online sources, Google Maps and the Amsterdam Coffee Shop Directory (coffee.shop.freeuk.com/Map.html). This procedure produced a population list of 84 coffeeshops.

In 2009 and 2010, the fieldworker recruited personnel from each coffeeshop. First, he mailed each one a letter outlining the nature of the study and requesting participation; one side was written in English and the other in Dutch. Next, he visited each business to request the participation of personnel. The goal was to interview the highest-ranking representative possible (e.g., a manager over a server). The minimum requirement was that the person must have worked there for at least 6 months. Upon meeting a potential participant, the fieldwork introduced himself, handed them his business card, and briefly stated the study's purpose and methods, including that respondents would receive a remuneration payment of €50.

The participants are 64% male; average age is 34; 70% identified as White, 6% as Black, and 24% other; 40% immigrated to the Netherlands; 10% were married; 26% graduated from secondary school; 56% and 30% reported daily use of cannabis and alcohol, respectively. Participants also provided information on characteristics of all personnel of their coffee shop. They reported, on average, 67% are male; 81% White; 47% immigrants; and, 15% married. (For my details on the interviewees and coffeeshops, see Jacques, 2019).

Interviews were audio-recorded and transcribed verbatim. All questions were asked in English because the fieldworker only speaks it fluently; fortunately, this language is the “coin of the realm” in the study area due to tourism and the influx of working immigrants from European Union nations. As with any self-report study, some participants may have (un)intentionally said something not wholly reflecting the “truth.” The fieldworker sought to reduce this problem by asking follow-up questions, promising confidentiality, and informing participants of their rights as a research subject through a consent form.

The primary purpose of the interviews was to obtain data about coffeeshops' prevention, experiences with, and handling of victimization (for findings, see Jacques et al. 2016). However, the project's beginning coincided with that of the ban on tobacco smoking in coffeeshops. An intriguing topic, the fieldworker also questioned personnel about it. First, he would ask an informal, open-ended question along the lines of, “What do you think about the ban?” After the response, he would pose follow-up questions to elicit further details. Because this part of interviews was largely unplanned and unstructured, we do

not attempt to quantify and accordingly statistically interpret various responses. Instead, we focus on what is gleaned from the qualitative data with respect to how and why personnel perceived and managed the ban.

Using a qualitative software package, NVivo 10, files were coded with identification tags corresponding to relevant research issues. Initial tags were generally broad. One of these was tobacco-related information. The fieldworker sifted through the data to create narrower distinctions. The major emergent categories were personnel's perceptions of the ban and their handling of it. The final coding step involved detailed analysis of variance across cases. The goal was to uncover ways in which personnel perceived the ban as well as why and how it influenced their control posture inside the coffeeshop. For this step of analysis, the first-author coded the tobacco-ban data into broad themes and a narrative; in turn, this was revised, as appropriate, by the second-author; finally, the first-author confirmed that the validity of the second-author's interpretations. In the following quotes, all names are pseudonyms.

Findings

The notion that customers should be prohibited from using a legal drug (tobacco), but not an illegal one (marijuana), was difficult for personnel to fathom and even more difficult (perceptually) for them to enforce. “You open a coffeeshop for smoking. Someone who doesn't smoke won't go in a coffeeshop. You open a coffeeshop for the kind of people who smoke.” Claire declared the policy “rubbish,” while Luuk labeled it “crazy.” Or, as Jana expounded: “I think it is ridiculous for the government to say it is ok to smoke weed inside [coffeeshops], but not tobacco. It is so weird for a government to say that.” Indeed, a number of personnel chose the coffeeshop profession precisely because it permitted them to smoke (tobacco) while working—an intrinsic benefit available to few other customer service occupations. “If you want to work in a coffeeshop,” Anna surmised, “you know you will be working with [tobacco]. It [basically] is like smoking [tobacco]. If you don't want to work in a coffeeshop because of your health, then you don't go work in one.”

Readers must understand that tobacco has been embedded in Dutch culture for centuries, providing historical context for these sentiments (Roberts 2017). As early as the 1600s, the Netherlands was a central tobacco hub for all of Northern Europe (Postma and Enthoven 2003). Dutch ships were among the first to introduce the plant to the Far East (Gilman and Zhou 2004), and by the 18th century, Dutch colonists created a thriving tobacco trade in the New World—exporting the plant back to Europe for widespread consumption (Postma and Enthoven 2003). To this day, Holland and tobacco remain culturally synonymous,

with Dutch Masters Tobacco depicted in rap/hip hop songs in which blunts are stylistically consumed by posturing artists (Foster 2016).

Against this backdrop, the tobacco ban was as illogical to personnel as the punitive threat was real. “[A]s a coffeeshop there is this huge spotlight on you,” Linda explained, “They have a close eye on coffeeshops and if you make one wrong move. If they [the police] see you [or anyone in the coffeeshop] smoke a cigarette, you are doomed.” The threat, of course, was mediated: Violations by the customer would be attached to the shop itself—requiring personnel to “police” customers to protect themselves.

Message Conveyance

For personnel, the first line of defense was message conveyance. Potential violators cannot be threatened into compliance by a rule about which they do not know (Beccaria 1995). Customer ignorance was a problem that personnel needed to confront head-on. A venue filled with smoke, after all, would presumably not differentiate between good smoke and bad smoke, much less criminalize one and not the other.

Ignorance was especially common in coffeeshops in the study area, given the ubiquity of tourists therein. “Most of [the customers] don’ t know [about the policy],” Noah explained, adding, “It is ridiculous to people from other countries that you can smoke weed, but you can’ t smoke tobacco.” Gijs fully understood how “strange” it would to “go to a city where you can smoke dope and you cannot smoke tobacco. It is very confusing. You can get weed but you can’ t smoke tobacco. They [customers] don’ t understand. It’ s very confusing for them.”

The confusion required coffeeshop personnel to teach and re-teach newly arrived entrants in an endless onslaught of verbal control. “We are constantly on top of people to tell them to put their tobacco away,” Lizzie complained, “I explain to them that in the coffeeshop you cannot smoke tobacco because we have a tobacco ban generally in Holland. Only marijuana [is allowed].” Gijs lamented that the tobacco ban is “a burden. You have to play police officer next to being a dealer, a manager, or bar lady. It’ s tourists who don’ t know.”

Alongside the verbal instruction were visual devices used to broadcast the message.

Placards proclaiming “No Tobacco,” “Smoke Free Zone,” “Rookvrije Zone,”

“Smoking Forbidden,” and “Verboden te Roken” populated coffeeshop interiors. Other signage publicized the ban with a universal “no” symbol over the image of a burning cigarette. The size, formatting, and placement of these signs was similar to those depicting other rules, such as “No entry under 18 years,” “No hard drugs,” and “No

violence” —with one exception: Tobacco signs were uniquely detailed, offering information on the rule’ s background, where it applied, the punishment risk, and the legal consequences of consumption.

Given the frequency with which potential rule-breakers ignore warnings or fail to fully process them cognitively (Stewart and Martin 1994), message conveyance also hinged on the anticipatory removal of symbols that might otherwise signal tolerance. Of particular relevance was the ashtray. Restricting their availability provided an ideal mechanism for rule announcement at the moment the rule was going to be violated:

Jana: If the ashtray is there, people think they can smoke cigarettes here. Since the smoking ban came in, I give it out, and I say they are not allowed to smoke cigarettes, only joints [i.e., marijuana in rolling paper]. So then they know. That works a lot better than in the beginning when we still had all the ashtrays out, you could see people also smoked cigarettes, but now you have the chance to tell them not to.

Olivia: People have to ask for one [an ashtray] now because of the smoking ban. We tell people they have to ask for one, and they will get one. There used to be ashtrays on every table, because obviously people were coming here to smoke [tobacco]. Now we don’ t always have ashtrays on the table, and people have to ask for them, and we have to explain about the smoking ban and stuff. We take them off the tables now [when they leave].

Limits and Adaptations to Message Conveyance

Readers understand that message conveyance had limited utility. The sheer number of people who patronized coffeeshops, the rate at which they turned over, the inability to alert every conceivable patron of the ban, and the recalcitrant few patrons who would defy the ban despite being told of it meant that message conveyance was never wholly effective.

Personnel could still conceivably prevent patrons from violating the ban, however, yet permit them to smoke. This is because the new policy allowed tobacco smoking in a designated/enclosed area inside businesses, or outside if there was at least one non-partitioned, unblocked side (NMFWS 2008). Smoking outside was the superior option—because the smoke would dissipate into the sky—but that option was often neither feasible nor practical. Coffeeshops with a terrace could provide it, but terraces were not altogether common, and constructing one could be cost-prohibitive. Even with a terrace, Amsterdam’ s climate was not necessarily conducive to outside smoking. Boasting nearly

30 inches of annual rainfall and average minimum temperatures under 40°F almost half the year (Royal Netherlands Meteorological Institute 2013), smokers might—literally and figuratively—be “snuffed out.”

Interior solutions had their own set of problems. In coffeeshops with multiple levels, one floor could be dedicated to tobacco smoking. The stipulation was that the tobacco floor could not be one in which personnel primarily worked. Because the entry-level floor tended to be the level with the sales counter(s), either the basement or upstairs would become the default tobacco area. The problem was that personnel would continue to walk into tobacco smoke when cleaning up after customers on these other floors or enforcing other rules, triggering a *de facto* rule violation.

Another solution required constructing a glass wall and door to separate areas within a floor, so that the primary work area became the non-tobacco space. Many coffeeshops in Amsterdam, however, were small, which made floor-splitting impractical (both spatially and economically). Floor-splitting also had a chilling effect on sociability—the reason so many Dutch coffeeshops thrive in the first place. “If you want to kill any form of social intercourse in a public place,” Finn intoned, “put up a glass wall. That is so stupid.”

Restrictive Proterrence

These challenges and the impracticability of enforcing a blanket ban caused personnel to rely on a coterie of tactics that obfuscated tobacco use by patrons or provided personnel plausible deniability of the fact that patrons were indeed smoking tobacco. Such tactics involved a combination of conspiracy and ignorance, both real and feigned, in which personnel leveraged the functional limits of enforcement to minimize their own culpable awareness of violations or the probability that violations would result in sanctions. The proterrent effect was not absolute but restrictive, resulting in continued rule violation at a lower perceived risk.

To see how this dynamic operated, it first is necessary to contextualize how patrons smoked cannabis and the mechanisms it provided for subtle ban violation. One modality was to smoke out of a reusable device, such as a pipe, bubbler, bong, hookah, or vaporizer. Other than the hookah, these devices were only packed with cannabis. The more popular method was to sprinkle cannabis into a small, thin piece of paper and roll it into a joint. The cannabis could be mixed with tobacco, an herbal substitute, or alone (again, referred to as “pure”).

Joints posed the obvious enforcement problem for personnel and police alike, as there was no practical way to tell if tobacco was inside unless one witnessed the joint being

rolled. When burned, tobacco-infused joints could not reasonably be differentiated by smell from joints containing only cannabis. This impediment allowed patrons to openly smoke tobacco-mixed joints without being exposed as rule breakers, something personnel knew and exploited. “Sometimes it happens with people,” Wouter admitted, “because you cannot smell it.” Or as Gijs quipped, “I don’ t have a little machine that detects nicotine, like an alcohol test where you blow in alcohol fumes and it can be detected.” Personnel took it for granted that neither they nor the police could legitimately disassemble joints in their midst. “What are they [police] going to do,” Adam asked rhetorically, “check your joint to check if you are smoking tobacco or not?” Lola similarly revealed that, “I cannot open all the joints that come inside. I cannot check [to make sure people are not rolling mixed joints].”

Unlike other coffeeshop violations that were obvious and thus to enforce against (e.g., using hard drugs in plain view), this particular violation was in plain sight yet impossible to see. Plumes of smoke wafting in the air gave no indication of their botanical source, while the manner in which patrons prepared tobacco-mixed joints reinforced the ambiguity of rule violation: Possessing tobacco was not a crime in and of itself, joint-rolling was fairly simple, and embedding tobacco in joints could be done quickly and furtively. As Lizzie put it, “If it is in the joint and [I] cannot see it [then it is ok]. I cannot open a joint.” Thomas shrugged his shoulders about the issue, commenting, “Once it is wrapped, hey, it is wrapped. I am not going to break open your joint to ask you what is in it. The rule states that you are not supposed to smoke tobacco, period. If we don’ t see it then we don’ t know about it. You are not allowed to smoke a cigarette, but you can mix your tobacco with a joint [as long as we don’ t see it].” Clearly, the issue was plausible deniability and whether personnel *knew* that tobacco was in a joint. That knowledge putatively required intrusive measures. As Jack thusly proclaimed, he was “not a tobacco Nazi.”

Theoretically speaking, detection might come retrospectively after seeing, for example, dismantled cigarettes or other tobacco residue in or around patrons’ consumption spaces. But residue did not necessarily equate to rule breaking. “[Finding a broken cigarette] doesn’ t mean it’ s been smoked in there,” Stefan rationalized. Nonetheless, personnel minimized the risk further by requiring customers to hide source clues of tobacco, such as cigarette packs or broken cigarettes:

Gijs: I tell people they can’ t have tobacco on the table because [smoking tobacco is] against the law, [but] if you put a bit in your joint [and] I don’ t see it, you know? I only allow it because I tell them ‘I don’ t look if you put tobacco in your joint, I am

making a coffee or whatever. [But] I don't want to see anything on the table, no filters in the ashtray.' People are like, 'Ok, ok.' So basically we allow it, but we don't allow it. If the people [tobacco police] who checkup come in, I say, 'Everybody smokes pure.'

In the event personnel came across tobacco remnants, they would quickly whisk them away. "We take [the ashtrays] off the tables quicker now and clean them out to make sure there is no tobacco left in there," Olivia explained. Note her concern was raw tobacco, since the ashes of cannabis and tobacco look and smell the same.

All of this control occurred against a backdrop of acquiescence, if not downright encouragement, of rule flouting. Personnel understood that they could not permit tobacco smoking should they come across it, yet they also were not reticent to publicize defiant solutions to the very rule they were supposed to enforce. As Anna illustrated, "If I see people smoking cigarettes, then I say they cannot smoke cigarettes, but [then I tell them] if you want to have a little tobacco in your joint [that's ok]." "We let them smoke joint with tobacco," Mara continued, "but no cigarettes. We only say no to cigarette smoking." James' justification for rule flouting was moralistic, suggesting that his real concern was the wellbeing of patrons:

We were very strict about it to start with when the law first came in: only smoking pure weed. But when I was on my own I had three people pass out at the same time and there is no way I can drag unconscious people outside so it is just better to let people smoke tobacco in their joints. If you are used to smoking a mixed joint and then you put a gram of pure weed in and you smoke it because that's the law, you are not enjoying the experience. You are supposed to enjoy the experience, relaxing.

James' comment underscores the role of discretion in enforcement—which has long been the critical intervening variable that links rule creation with rule imposition. Discretion permits rule-implementers to define infractions upward or downward depending on circumstances.³ Such circumstances gave coffeeshop personnel multiple mechanisms with which to manage enforcement flexibly. Personnel attuned to such factors could moderate the strictness of their posture toward the ban and permit violations when they knew, based on a rudimentary assessment of cues in space and time, their own risk of detection to be low.

For Guus, time was the issue and the presupposed absence of enforcement agents during certain points of the day: "I am going to let them [customers] smoke [cigarettes] after 11 o'clock at night," he explained. "If you want to smoke cigarette, smoke it, because we

know there is no people [police] coming and watching [that late].” For Emma, temporal sensitivity was more seasonal in nature: New Year’s Eve was essentially ban-free because of the impracticality of rigorous enforcement by personnel or police. “The only time we allow people to smoke everything down here [in the nonsmoking room],” she illustrated, “is New Year[’s Eve] because it is too busy [to police everyone], it is so crazy.”

Dean explained lenience as a function of spatial factors and, specifically, the natural obstacles to detection that came with the large, multi-floor shop in which he labored. Although he publicized the tobacco rule, he also recognized that global enforcement was infeasible. “Sometimes [patrons] are coming in and when people see it we tell them they are not allowed to smoke [tobacco]. It is not allowed, but, yeah, sometimes it happens. Over here it is a bit difficult when the people are standing downstairs [because we mostly work only upstairs].” Selma similarly observed that customers would be allowed to smoke tobacco if their physical position within the shop obstructed the view of enforcement agents who potentially passed by the shop: “If there are two people sitting there by the door and one is sitting with his back to the door he can smoke a cigarette as long as they keep it out of sight from the door, you know, but if there would be one person sitting on his own on this side of the table looking outside and then be smoking the cigarette like this, then I would not allow it.”

Discussion

This article examines proterrence: The Dutch government sought to scare coffeeshop personnel (i.e., rule-implementers) into stopping others (i.e., (potential) rule violators) from smoking tobacco (a “bad” action) in their establishments. Personnel deemed that rule to be illegitimate, which shaped how they implemented it. The dissonance caused defiance (Sherman 1993) and restrictive proterrence (cf. Jacobs 2010). Indeed, when decision-makers take specific measures to evade sanction threats with which they have a “fundamental problem,” defiance and restrictive proterrence become one and the same. In essence, coffeeshop personnel became rule-implementers with a rule-breaking mentality.

That paradox occurs when informal and formal control intersect against a backdrop of perceived rule illegitimacy. When secondary actors are made responsible for controlling potential violators, institutions run more efficiently—reducing the probability of rule-breaking and the consequences therefrom (Sykes 1981). Whether that social control is deemed legitimate is a different matter. It tends to be procedurally defined because fairness of process determines the level and intensity of buy-in from social actors (Feather

and Boeckmann, 2013; Tyler and Jackson, 2014; Van der Toorn et al. 2011). In contrast, the *substantive* validity of rules tends to be presupposed. Yet our research shows that assumption may be mistaken. Perceived illegitimacy (from a substantive rather than procedural perspective) cuts to the core of feelings about what is right, just, and proper. Rules that lack face validity and which levy sanction threats in the name of protecting persons engaged in voluntary activity undermine human agency itself (Sherman 1993; Tyler 1990).

Although affect may traditionally be thought either to excite or inhibit conduct (Frijda 2004; Topalli and Wright 2014), perceived illegitimacy does both by energizing defiance while controlling its expression. When there is a perceptibly illegitimate sanction threat, motives align between rule-implementers and primary violators. Perceived illegitimacy is that rare form of visceral affect that enhances consequence relevance and renders decision-making more careful, not less. This is because its moralistic underpinnings give rise to calculation designed to get around the threat. Indeed, we can think of no other example in the literature where affect simultaneously promotes consequence *relevance* and defiance. These dimensions are often expected to vary directly, not inversely. Even respondents' message conveyance activities, which putatively illustrate a neutral effort to publicize rules, was really more about reducing the likelihood that patrons would get caught than anything else. The sensitizing role of affect in decision-making (Piquero et al. 2004) is enhanced when responsibility for rule-breaking is put as much on the intermediary (e.g., the coffeeshop) as on the actual rule-breaker (i.e., the patron) because it incites the former to conspire with the latter to mitigate the threat's functional reach.

In traditional settings, control agents manipulate irregular sanction threats to make offenses look more certain and celeritous than they are in fact, the goal of which is deterrence (Pogarsky et al. 2018; see also Koper 1995; Sherman 1990). Yet in this article, we also show that control agents may exploit unpredictability to *undermine* rather than enhance prevention, more specifically proterrence. In essence, personnel exploit ambiguity because it makes their own potential guilt more difficult to establish. This occurs, for example, by ignoring the fact that joints could very well have tobacco in them and by otherwise concealing infractions that would be actionable (e.g., quickly removing discarded cigarette filters and/or tobacco debris from tables). These actions make the *official* sanction threat less probable, not more.

The proterrence process also bifurcates the certainty dimension and propels it in opposite directions (see, for example, Cherbonneau and Jacobs 2019). Bifurcation occurs when personnel communicated an elevated risk of punishment (i.e., "you're violating the law

by doing this and here' s how to not do that") to prevent patrons from getting caught as opposed to making formal punishment more certain. In so doing, they increased the certainty of *detection* to decrease the certainty of sanction. This is precisely the opposite of how deterrence is supposed to operate (see, for example, Nagin and Pogarsky 2003). Indeed, our data show that the formal threat produced various forms of noncompliance and concealment to evade the sanction. Given that many patrons did not know or understand the tobacco rule, fresh offenses were always being committed anew. Thus, the issue was as much about not getting caught for the violation as it was about attempting to reduce the frequency of violations. The enactment of message conveyance and sneaky evasion reveals the synergy between these two goals in practice.

Our findings also demonstrate how the celerity of sanction enforcement was manipulated to mitigate its certainty. Celerity, or the speed with which sanctions follow rule-breaking, is the most understudied component of sanction-based prevention (Nagin and Pogarsky 2001). It is presumed to vary independently from certainty. Thus, sanction threats can be fast in coming but unlikely (in an overall sense) to be suffered, or slow in coming but certain in ultimate application. In mediating the threat' s delivery, personnel essentially introduced measures that delayed the time gap between potential formal awareness of infractions and actual enforcement of those infractions. This occurred, for example, by instructing patrons to change their location within shops and by removing evidence from tables of tobacco. By introducing these delays, personnel manipulated the celerity of the sanction threat to undermine its certainty. The celerity/certainty relationship has not, to our knowledge, been specified previously in this way (but see Jacobs 2012 and 2013), partly because celerity has historically focused on the gap between infraction and punishment, not infraction and detection. Detection, however, is a form of punishment (Pogarsky, Piquero, and Paternoster 2004; Pratt and Turanovic 2018). For some offenders, getting caught is as, or more, consequential as the official penalty that comes after getting caught (Mamayek, Paternoster, and Loughran 2017).

When the enforcement of rules or laws is mediated through informal mechanisms and where secondary parties are held responsible for the sins of primary others, the celerity dimension of sanctions can be leveraged to decrease the perceived certainty that a violation will be formally detected. Proterrence thereby shows that certainty need not precede celerity and severity—a traditional assumption within neoclassical research. When punishment is conceptualized as detection and not just the penalty that results from detection, tactics can be taken informally (by personnel, for example) to lengthen the gap between infraction and detection and thereby alter the certainty (i.e., probability) of formal punishment.

The manipulation of celerity to influence certainty has broader implications for the concept of punishment avoidance. Conceptually speaking, punishment avoidance has almost always centered on its post-incident implications for offending trajectories (Paternoster and Piquero 1995): Offenders commit an infraction, they get away with it, and their future perceptions of the likelihood of sanction threats are altered, usually downward, due to emboldening effects (Pogarsky and Piquero 2003).⁴ The same happens when punishment avoidance experiences are vicarious: Offenders hear about others who have gotten away with rule-breaking, causing them to lower their own perceived probabilities of detection (Stafford and Warr 1993; Paternoster and Piquero 1995; Piquero and Paternoster 1998). Our data, by contrast, reveal the *prospective* role of punishment avoidance in risk calculation. That is, punishment avoidance is a process, persons engage in it on-the-fly, and these practices influence subjective perceptions of risk as perceptions unfold real-time. Our data also demonstrate the manner in which punishment avoidance affects perceptions of sanction risk before sanctions are suffered, and how specific practices undertaken by individuals alter perceptions of risk in an anticipatory rather than reactive fashion (cf. Jacobs 1996). To our knowledge, this phenomenon has only been identified one other time in the literature (Cherbonneau and Jacobs 2019).

Conclusion

By the time you read this article, it will have been a decade or more since “no smoking (tobacco)” took effect in Dutch coffeeshops. Our study takes advantage of a lucky coincidence: the fieldworker was stationed in Amsterdam during the rule’s first years of implementation. It is a unique time, never to be exactly repeated. It is unknown whether, how, and why our findings are generalizable to coffeeshop life in the years since. As the rule became custom and more widely known, the (counter)actions evident in our data may have dissipated or become more pronounced. The same could result from other factors, such as a sway from liberal to conservative government policies.

Those context-specific issues notwithstanding, the practice of holding actors responsible for others’ rule-breaking is commonplace, probably increasing in size and scope (Tutin 2016). Consider some examples: Merchants are prohibited from selling particular items in particular circumstances, so they conspire with customers to create plausible deniability (Davis 2015). Collegiate athletic coaches skirt financial assistance rules for indigent players with workarounds that facilitate monetary contributions while minimizing risk (Branch 2011). Companies like Apple respond to formal requests to unlock users’ phones by making it more difficult for anyone to get in via a backdoor (Barrett 2020). Automobile inspection services work with car owners to cheat on emissions

and safety tests, due to thinking the standards are too high or unfair (Landen and Dougherty 2018). Medical practitioners are barred from prescribing certain treatments that they believe would work well, so they instruct patients on how to obtain the illegal treatment with reduced risk (Levinson 2018). The list could go on and on. At the time of writing, the most pervasive case of proterrence stems from COVID-19. In businesses across the world, there are personnel who perceive “mask mandates” as immoral, ineffective, or irrational and therefore—despite the risk of a fine—let unmasked patrons congregate.

Proterrence is not a new tool of control, but it has gone unnoticed compared to deterrence. If society is to become more secure, orderly, and civilized (Elias, 2000), then policymakers, police, and other formal agents should make proterrence a bigger and sharper sword in their arsenal. In theory, they will effect greater control if they use it more often and attach stronger sanctions (though not too severe) with more certain and celeritous odds of punishment. However, they should be aware that success hinges on the extent to which informal-implementers perceive rules as legitimate. Moral disagreement thwarts law and order, if not absolutely then restrictively. Thus, formal agents should work with rule-implementers to find and trek a path with more legitimacy and, consequently, better proterrent effects. Or, in some cases, they may conclude that the best option is to have no rule at all.

References

- Barratt, Brian. (2020). The FBI Backs Down Against Apple—Again. *Wired*. Retrieved at <https://www.wired.com/story/fbi-backs-down-apple-encryption-pensacola-iphones/>.
- Beccaria, C. (1995). *On Crimes and Punishment*. New York: Cambridge University Press.
- Black, D. (1980). *The Manners and Customs of the Police*. New York: Academic Press.
- Branch, T. (2011). The Shame of College Sports. *The Atlantic*. Retrieved at <https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/>.
- Buruma, Y. (2007) Dutch Tolerance: On Drugs, Prostitution, and Euthanasia. In *Crime and Justice in the Netherlands*, edited by Michael Michael and Catrien Bijleveld, 73–114. Chicago, IL: University of Chicago Press.
- Cherbonneau, M., & Jacobs, B. A. (2019). “Imminent Capture and Noncompliance: Probing Deterrence in Extreme Environments.” *Justice Quarterly* 36:1122-1143.

Connolly, K. (2008). Dutch Smoking Ban: No Tobacco in Your Joints, Cafes Ordered. *The Guardian*, June 30.

David, J. C. (2015). The Business of Getting High: Head Shops, Countercultural Capitalism, and the Marijuana Legalization Movement. *The Sixties* 8:27-49.

Dowie, M. (1977). *Pinto Madness*. San Francisco, CA: Mother Jones.

Elias, N. (2000). *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*, revised edition. Oxford: Blackwell.

Eriksen, M. P., & Cerak, R. L. (2008). The Diffusion and Impact of Clean Indoor Air Laws. *Annual Review of Public Health* 29:171-185.

Feather, N. T., & Boeckman, R. J. (2013). Perceived Legitimacy of Judicial Authorities in Relation to Degree of Value Discrepancy with Public Citizens. *Social Justice Research* 26:193-217.

Foster, D. (2016). How Blunts Came to Define Hip-Hop's Golden Age In New York City. April 19. Retrieved at <https://www.elitedaily.com/life/blunts-hip-hop-golden-age-nyc/1464522>.

Frijda, N. H. (2004). Emotions and Action. In Manstead, A. S. R., Frijda, N., and Fischer A. (eds.), *Feelings and Emotions: The Amsterdam Symposium* (pp. 158-173). New York: Cambridge University Press.

Gilman, S. L., and Zhou X. (2004). *Smoke: A Global History of Smoking*. London: Reaktion Books.

Goffman, E. (1971). *Relations in Public: Microstudies of the Public Order*. New York: Basic Books.

Higgins, R. S., & Rubin, P. H. (1980). Judicial Discretion. *Journal of Legal Studies* 9:129-138.

Jacobs, B. A. (1996). Crack Dealers and Restrictive Deterrence: Identifying Narcs. *Criminology* 34:409-431.

Jacobs, B. A. (2010). Deterrence and Deterrability. *Criminology* 48:417-441.

Jacobs, B. A. (2012). Carjacking and Copresence. *Journal of Research in Crime and Delinquency* 49:471-488.

- Jacobs, B. A. (2013). The Manipulation of Fear in Carjacking. *Journal of Contemporary Ethnography* 42:523-544.
- Jacques, S. (2019). *Grey Area: Regulating Amsterdam's Coffeeshops*. London: UCL Press.
- Jacques, S., Rosenfeld, R., Wright, R., & Van Gemert, G. (2016). Effects of Prohibition and Decriminalization on Drug Market Conflict: Comparing Street Dealers, Coffeeshops, and Cafés in Amsterdam. *Criminology & Public Policy* 15:843-875.
- Kelling, G. L. (1999). *Broken Windows and Police Discretion*. Washington, DC: US Department of Justice, Office of Justice Programs, National Institute of Justice.
- Klinger, D. A. (1997). Negotiating Order in Patrol Work: An Ecological Theory of Police Response to Deviance. *Criminology* 35:277-306.
- Koper, C. (1995) Just Enough Police Presence: Reducing Crime and Disorderly Behavior by Optimizing Patrol Time in Crime Hotspots. *Justice Quarterly* 12:649-672.
- Kucharz, C. (2008) Amsterdam: Hold the Tobacco, Pass the Joint. *ABC News*, July 1.
- Landen, X., & Dougherty, M. (2018). State moves to ease vehicle inspection rules after complaints. Retrieved at <https://vtdigger.org/2018/03/21/state-moves-ease-vehicle-inspection-rules-complaints/>
- Leuw, E. (1991). Drugs and Drug Policy in the Netherlands. *Crime and Justice* 14:229-76.
- Leuw, E., & Marshall, I. Haen. (1994.) *Between Prohibition and Legalization: The Dutch Experiment in Drug Policy*. Amsterdam: Kugler.
- Levinson, J. (2018). Opioid addicts are turning to a clinic in Mexico to break their addiction, but there's a catch. The treatment is illegal in the US. Retrieved at <https://www.pri.org/stories/2018-03-06/opioid-addicts-are-turning-clinic-mexico-break-their-addiction-theres-catch>
- Liebling, A. (2000). Prison Officers, Policing and the Use of Discretion. *Theoretical Criminology* 4:333-357.
- MacCoun, R. J. (2011). What Can We Learn from the Dutch Cannabis Coffeeshop System? *Addiction* 106:1899-1910.
- Mamayek, C., Paternoster, R., & Loughran, T.A. (2017). "Temporal Discounting, Present Orientation, and Criminal Deterrence." Pages 209-227 In W. Bernasco, H. Elffers, and J-

L. van Gelder (Eds.), *Oxford Handbook of Offender Decision Making* (pp. 209-227). New York: Oxford University Press.

Molina, B. (2018). Mom Sent to Jail After Her 6-Year-Old Missed 26 Days of School.” *USA Today*, November 30.

Nagin, D. S., & Pogarsky, G. (2001). Integrating Celerity, Impulsivity, and Extralegal Sanctions Threats into a Model of General Deterrence: Theory and Evidence. *Criminology* 39:865-892.

Nagin, D. S., & Pogarsky, G. (2003). An Experimental Investigation of Deterrence: Cheating, Self-Serving Bias, and Impulsivity. *Criminology* 41:167-193.

Netherlands Ministry of Foreign Affairs (NMFA). (2008). *Q & A Drugs*. The Hague, NL: Ministry of Foreign Affairs.

Netherlands Ministry of Health, Welfare and Sport (NMHWS). (2005). *Tobacco Control in the Netherlands*. The Hague, NL: NMHWS.

Netherlands Ministry of Health, Welfare and Sport (NMHWS). (2008). *Frequently Asked Questions on Smoke Free Catering*. The Hague, NL: NMHWS.

Nguyen, D. P. (2004). Jury Awards \$10-Million More: The Owner of Remington Apartment Homes is Punished for Failing to Protect a Tenant Who Was Shot. *Tampa Bay Times*, December 17.

Paternoster, R., & Piquero, A. (1995). Reconceptualizing Deterrence: An Empirical Test of Personal and Vicarious Experiences. *Journal of Research in Crime and Delinquency* 32:251-286.

Piquero, A. R., & Paternoster, R. (1998). An Application of Stafford and Warr's Reconceptualization of Deterrence to Drinking and Driving. *Journal of Research in Crime and Delinquency* 35:3-39.

Piquero, A. R., Gomez-Smith, Z., & Langton, L. (2004). Discerning Unfairness Where Others May Not: Low Self-Control and Unfair Sanction Perceptions. *Criminology* 42:699-734.

Pogarsky, G., & Piquero, A. R. (2003). Can Punishment Encourage Offending? Investigating the 'Resetting' Effect. *Journal of Research in Crime and Delinquency* 40:92-117.

- Pogarsky, G., Roche, S. P., & Pickett, J. T. (2018). Offender Decision-Making in Criminology: Contributions from Behavioral Economics. *Annual Review of Criminology* 1:379-400.
- Pogarsky, Greg, Alex R. Piquero, & Ray Paternoster (2004). Modeling change in perceptions about sanction threats: The neglected linkage in deterrence theory. *Journal of Quantitative Criminology* 20:343-369.
- Postma, J., and Enthoven, V. (eds.). (2003). *Riches from Atlantic Commerce: Dutch Transatlantic Trade and Shipping, 1585-1817*. Leiden, NL: Brill.
- Pratt, T. C., and Turanovic, J. J. (2018). Celerity and Deterrence. In D.S. Nagin, F.T. Cullen, & C.L. Jonson (Eds.), *Deterrence, Choice, and Crime: Contemporary Perspectives—Advances in Criminological Theory*. New York: Routledge.
- Re-examining the functional form of the certainty effect in deterrence theory. *Justice Quarterly* 29:712-714.
- Roberts, B. B. (2017). *Sex, Drugs and Rock ' N' Roll in the Dutch Golden Age*. Amsterdam, NL: University of Amsterdam Press.
- Royal Netherlands Meteorological Institute. (2013). Stationsdata station Schiphol 1981-2010.
- Ryan, K. (1994). Technicians and Interpreters in Moral Crusades: The Case of the Drug Courier Profile. *Deviant Behavior* 15:217-40.
- Sherman, L. W. (1990). Police Crackdowns: Initial and Residual Deterrence. *Crime and Justice: An Annual Review of Research* 12:1-48.
- Sherman, L. W. (1993). Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction. *Journal of Research in Crime and Delinquency* 30:445-473.
- Stafford, M., & Warr, M. (1993). A Reconceptualization of General and Specific Deterrence. *Journal of Research in Crime and Delinquency* 30:123-135.
- Stewart, D. W., & Martin, I. M. (1994). Intended and Unintended Consequences of Warning Messages: A Review and Synthesis of Empirical Research. *Journal of Public Policy & Marketing* 13:1-19.
- STIVORO. (2003). Environmental Tobacco Smoke at The Work-Place in the Netherlands, 2002. STIVORO. Published by Author.

Sykes, A. O. (1981). An Efficiency Analysis of Vicarious Liability Under the Law of Agency. *Yale Law Journal* 91:168-206.

Topalli, V., & Wright, R. (2014). The Role of Emotion in A Dynamic Foreground Model of Predatory Street Crime. In van Gelder, J. L., Elffers, H., Reynald, D., and Nagin, D. (eds.), *Affect and Cognition in Criminal Decision-Making* (pp. 42-57). New York: Routledge.

Tutin, M. (2016). Vicarious Liability: An Ever Expanding Concept. *Industrial Law Journal* 45:556-564.

Tyler, T. R. (1990). *Why People Obey the Law*. New Haven, CT: Yale University Press.

Tyler, T. R., & Jackson, J. (2014). Future Challenges in the Study of Legitimacy and Criminal Justice. In Tankebe, J., and Liebling, A. (eds.), *Legitimacy and Criminal Justice: An International Exploration*. New York: Oxford University Press.

van der Toorn, J., Tyler, T. R., & Jost, J. (2011). More than Fair: Outcome Dependence, System Justification, and the Perceived Legitimacy of Authority Figures. *Journal of Experimental Social Psychology* 47:127-138.

Weber M. (1978 [1924]). *Economy and Society*, Vols. I and II. Edited by Roth G., and Wittich, C. Berkeley, CA: University of California Press.

Footnotes

1. More examples of proterrence are outlined in the Conclusion section. [↩](#)
2. The study was approved by Institutional Review Board of the fieldworker' s university. [↩](#)
3. For examples of discretion among representatives of the criminal justice system, see, for example, Black 1980; Higgins and Rubin 1980; Kelling 1999; Klinger 1997; Liebling 2000. [↩](#)
4. Although detection avoidance is also a form of punishment avoidance, existing scholarship puts that conduct within the domain of restrictive deterrence. Restrictive deterrence captures the process by which offenders elude sanctions rather than its implications for future offending likelihoods. We focus on process rather than outcome and in so doing, seek to sensitize criminology to a temporal nuance of punishment avoidance (i.e., both prospective and real-time) that is less often studied. [↩](#)