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The Effects of Legal Institutional Choice on Lay Judgments of Harmdoers and Victims

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**THE EFFECTS OF LEGAL INSTITUTIONAL CHOICE ON LAY JUDGMENTS
OF HARMDOERS AND VICTIMS**

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Abstract

This dissertation brings together legal theory on institutional choice and psychological concepts of intent and agency. From a legal perspective, a situation in which one person or corporation harms another can lead to a criminal case, a civil case, or both. While past legal and psychological scholarship has focused on theoretical differences between the two systems, this dissertation empirically explores whether these consequences are functionally equivalent to laypeople, or whether the framing of a consequence as “civil” or “criminal” impacts lay decisions. It investigates some unanticipated effects of institutional choice by examining decisions in several domains. The first chapter shows that people do view equivalent civil and criminal consequences differently, and are more sensitive to harmdoer state of mind when a consequence is framed as “criminal.” The second chapter shows that information about harmdoers affects blame and damages judgments in criminal cases, while information about victims affects judgments in civil cases. These effects are driven in part by greater perceived agency of harmdoers in criminal cases and greater perceived agency of victims in civil cases. Further, even within the civil domain, victims who act more agentically are blamed more and are awarded less in damages. Ramifications for legal decisionmaking and for application of evidentiary rules are discussed.

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GENERAL INTRODUCTION

This dissertation presents two related lines of work that address a series of both psychological and legal questions. Previous work on blame, responsibility, and punishment has approached these issues from various perspectives. Most have investigated the psychology of punishment, blame, and retribution outside an explicit courtroom setting (e.g., Alicke, 1992; Carlsmith, et al., 2002; Carlsmith, 2008, Cushman, 2008, Cushman, 2014); some have focused on criminal punishments (e.g., Aharoni & Fridlund, 2012; Alter, Kernochan, & Darley, 2007; Ask & Pina, 2011; Robinson & Darley, 1995); and few on blame in the civil justice setting (e.g., O'Barr & Conley, 1988; Robbennolt, 2003).

Many harms (e.g., assault, battery, theft/conversion, environmental damage) can give rise to either a criminal case, a civil case, or even both. Particularly in the legal literature, but also to some extent in psychological work, there are a great deal of papers on and references to *theoretical* differences between the criminal and civil justice systems (e.g., Coffee, 1991, 1992; Darley, Carlsmith, & Robinson, 2001; Posner, 2009; Robinson, 1996; Zimring, 1992). However, there have been few psychological investigations that empirically investigate potential differences between the two systems. This dissertation investigates the differences between civil and criminal justice, e.g. to what extent do people find one more appropriate than the other? Are they functionally equivalent to laypeople, or does the framing of a case as “civil” or “criminal”

impact decisions? I will explore some unanticipated effects of institutional choice by studying lay decisions in several domains.

Understanding how laypeople actually view the systems is not merely an intellectual exercise. Under the theory of empirical desert, Paul Robinson and colleagues (2011, p. 1107) contend “the crime-control power of the criminal law depends in some significant part upon how well it tracks the community’s shared intuitions.” When legal codes and lay intuitions are in conflict, people lose respect for the justice system (e.g., Greene, 2003; Robinson, Goodwin, & Reising, 2010), and may be more likely to flout the law (Nadler, 2005). Recent critiques of Robinson’s empirical desert hypothesis have relied more on finding lack of consensus in laypeople’s underlying intuitions about the law than a lack of a relationship between *consistent* intuitions and the resultant consequences when the law conflicts with those intuitions (Slobogin & Brinkley-Rubinstein, 2013). While the legal system is, in some instances, expressly designed to counter people’s intuitions (e.g., as an alternative to vigilante justice), there is a danger of the pendulum swinging *too far* away from people’s underlying instincts about what consequences are just. This is especially true with regard to the questions addressed here regarding intentionality and institutional choice. The danger in this instance is exacerbated by both the sheer number of federal criminal statutes being passed, and the inconsistency of their mental state requirements.

Additionally, laypeople participate in both the civil and criminal justice systems as jurors. While the standard of proof, and therefore the threshold for

guilt/liability, differs between the criminal and civil systems, no work has explored whether jurors might use and interpret the same information differently depending on the type of case. The imprecision of legal statutes and general inconclusiveness of evidence in cases that are brought to trial leave ample room for psychological considerations to affect decisions about offenders and victims (e.g., Pepitone & DiNubile, 1976).

In using psychology to address the legal issue of institutional choice, this dissertation builds primarily on two areas in the literature; first, research on moral culpability, blame, and intent, and second, research on agency, patiency, and dyadic mind perception.

Perceptions of Blameworthiness and Intent

Perceptions of intentionality are potentially relevant in differentiating criminal and civil justice, as classically, criminal law has required intent. If this is a differentiating factor, it would be useful to know when and how people might be judging intent accurately, or at least consistently. However, all acts are not created equal: the content and valence of the act itself matters when assessing intent. People are more likely to engage in spontaneous causal reasoning when an event is unusual or abnormal (Pyszczynski & Greenberg, 1981; Weiner, 1985); for most people, fortunately, crimes fall under this umbrella. Intent judgments decrease when lay theories suggest that the behavior at issue *can* occur unintentionally; when lay theories suggest the opposite, intent judgments sharply increase (Malle & Knobe, 1997). Lay prototypes of crimes generally

include the concept of intent, so this bias may be particularly relevant for criminal defendants (Sebba, 1980; Smith, 1991).

Attributional processing, as well as other processing, also increases when the information or action is negative (e.g. Baumeister, Bratslavsky, Finkenauer, & Vohs, 2001; Fiske, 1980; Kanouse & Hanson, 1972; Weiner, 1985). The moral content of an action influences perceived intentionality. For instance, the classic Knobe effect (or “side-effect effect”) shows that a morally blameworthy side effect of a desired outcome (e.g. harming the environment when implementing a practice to increase profits) is seen as intentional, while a morally praiseworthy side effect (e.g. helping the environment when implementing a practice to increase profits) is not (Knobe, 2003, 2006). Further studies suggest that unintended (“lucky”) morally blameworthy outcomes are also seen as more intentional than lucky non-moral outcomes (Knobe, 2006; Malle, 2006).

Cushman and Young (2011) argue that this kind of asymmetry is not unique to moral actions. They used moral and non-moral vignettes to explore three known asymmetries in perceived intention in moral actions: act vs. omission, means vs. side effect, and contact vs. no contact. They found that both moral and non-moral *actions* are seen as more intentional than *omissions*, and both moral and non-moral actions undertaken as a *means* to an end are seen as more intentional than those performed as a *side effect* to an end. However, moral actions involving physical contact are seen as more intentional than those that do not, while non-moral contact and non-contact acts are seen as equally (un)intentional.

Uttich and Lombrozo (2010) also have argued that the asymmetry present in the Knobe effect is not a result of the moral content of the action, but rather, whether the action violates a norm. They ran a study in which participants read vignettes describing a person taking action to bring about an effect with a foreseeable side effect. They manipulated whether this side effect was norm-conforming or norm-violating, and whether the norm at issue was moral or merely conventional. In *both* moral and conventional conditions, the agent was perceived as having acted more intentionally when the side effect was norm-violating rather than norm-conforming. Violating a norm, regardless of moral content, could be seen as “making the hard choice” (Fiske, 1989), which may help to explain the elevated levels of perceived intent in this paradigm. These findings suggest potential ramifications for those charged with regulatory or *malum prohibitum* crimes, i.e. behaviors that are illegal only because of a statute, rather than their moral content, e.g. murder or theft (*malum in se* crimes).

Though there are some moderating variables, generally, the worse the consequences of an occurrence are—even an explicitly accidental occurrence—the greater tendency people have to assign intent and responsibility to a human causal agent (Gebotys & Dasgupta, 2001; Rosset, 2008; Tennen & Affleck, 1990; Walster, 1996; see Robbenolt, 2000 for a meta-analysis). Walster and other researchers suggested that this tendency is a result of defensive attribution: i.e. as consequences become more severe, people fear them more; blaming an agent for the consequences makes them seem more predictable and therefore avoidable (see Burger, 1981 for a meta-analysis). Subsequent studies showed

that this might be particularly true—or perhaps only true—when the agent or vignette was personally or situationally relevant to the perceiver (Shaver, 1970; Shaw & Skolnick, 1971). Most relevantly to legal questions, Chaikin and Darley (1973) extended these findings regarding severity and intent to a situation with a distinct perpetrator and victim; manipulation of identification with either the perpetrator or the victim (in a nonviolent scenario) led to differences in perceived intent.

Mind Perception

Perceptions of intent are one aspect of mind perception. More generally, how we infer others' objectives and mental states is a fundamental question in psychology. Our capacity to consider other people's mental states helps us to navigate our social environment. Within the context of the justice system (and perhaps in all social perception; see Malle & Holbrook, 2012), the fundamental mental state is intentionality. Understanding a person's intentions is often necessary to make accurate predictions of future behavior (Dennett, 1987; Heider, 1958). The vital role of assessing intentions and motives leads to the primacy of these judgments (Fiske, Cuddy, & Glick, 2007), as captured in the Warmth dimension in the Stereotype Content Model (SCM) (Fiske, Cuddy, Glick, & Xu, 2002), and the Morality dimension in work by Wojciszke (1994) and others.

It is *most* important to understand whether another person is a friend or a foe when he or she is capable of carrying out actions in line with those intentions. This ability is captured by the Competence dimension of the Stereotype Content Model (SCM) and the Agency dimension of Gray and Wegner's model of dyadic

morality (e.g., Gray, Gray, & Wegner, 2007). Agents who may be foes, as opposed to friends, are particularly salient; there is robust negativity bias in many lines of research regarding impression formation and perceived intention (e.g., Anderson, 1965; Fiske, 1980; Kanouse & Hanson, 1972; Morewedge, 2009; Rosset, 2008; Weiner, 1985; Wojciszke, Brycz, & Borkenau, 1993).

The negativity bias in perceived intentionality indicates the close linkage between morality and intentionality. Not only do intentional harms lead people to perceive moral culpability (Alicke, 1992; Darley & Pittman, 2003; Young & Saxe, 2009), but moral culpability can also impact the assessment of intentionality (Alicke, 2000; Knobe, 2003, 2006; Nadelhoffer, 2006; Nadler & McDonnell, 2012). Morally culpable actors are judged as having acted more intentionally; in some cases, this can occur even when the moral culpability is unrelated to the act itself. These impressions of moral status occur rapidly and are ongoing (Wojciszke, Bazinska, & Jaworski, 1998; Ybarra, Chan, & Park, 2001).

Thus, it is possible that negative moral character causes a *general* increase in perceived agency, that perceived agency causes us to pay more attention to moral character, or that both of these are at play. In either case, our attention should be drawn by these agentic actors, as they have the ability to help—and especially to harm—us and others. The second part of this dissertation investigates whether the civil and criminal justice systems work to redirect our attention to harmdoers versus victims, and to change our perceptions of their relative agency.

The first chapter will report investigations of the interaction between institutional choice—that is, the decision about what legal process is most appropriate to resolve a dispute or rectify a harm—and harm-doer intent. The studies explore both the effects of perceived intent on lay beliefs about institutional choice and the effect of institutional choice on perceived intent. The chapter following will report studies examining the interaction between institutional choice and mind perception of both harm-doers and victims.

CHAPTER 1: LAY INTUITIONS ABOUT INTENTIONALITY AND INSTITUTIONAL CHOICE

Chapter Summary

An intentional harm has traditionally been necessary for a person to face criminal liability. However, the reach of federal criminal law has recently expanded to include many strict liability crimes and crimes with less than intentional *mens rea* [guilty mind] requirements. Past work spearheaded by Paul Robinson and John Darley finds that it is important for laws of this kind to comport with lay intuitions of justice; if they do not, respect for the system decreases and compliance with laws in general may decline. In a series of studies, I investigate laypeople's intuitions about the appropriateness of criminal and civil consequences for harms committed with different levels of *mens rea*, in order to determine whether criminalizing unintentional behavior comports with laypeople's beliefs about what is just (Mueller, Fiske, Solan, & Darley, *in prep*).

Three studies find that people do find criminal consequences to be significantly more just when applied to truly intentional harms. The fourth study explores whether these lay beliefs about the appropriate relationship between criminal penalties and intentional harms lead people conversely to perceive harm-doers who face criminal consequences as having acted more intentionally than those who face civil consequences. People do perceive harm-doers facing criminal charges to have acted more intentionally, though this effect is qualified by their initial perception of the justness of the consequence.

From a psychological perspective, the findings of these studies counter the common view that the importance of moral culpability is what distinguishes

criminal consequences from civil ones. From the legal point of view, these findings support ongoing efforts to reduce overcriminalization, and call into question the extent to which jurors see those accused of crimes as “innocent until proven guilty.”

Introduction

“The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil” (Morissette v. United States, 1951).

Crime has classically been seen as the intersection of a culpable mind (*mens rea*) and a culpable act (*actus reus*). As stated in *Morissette* and many other cases throughout the history of the common law, an intentional act (and therefore a culpable mind) is a key characteristic of crime. In the American criminal justice system, a culpable mind has arguably been even more dominant than a culpable act in determining criminality, as those with guilty minds but incomplete wrongful acts may still be charged with criminal attempt. A wrongful act *without* a guilty mind has historically been a matter for civil, rather than criminal, justice; civil suits in tort were seen as the appropriate remedy for harms caused without intent (Darley & Pittman, 2003; Prosser & Keeton, 1984).

Requiring intentional harm plays an important role in both retributivist and utilitarian concepts of criminal law. These two punishment theories are much-discussed in the legal literature, but the question about which of them underlies why we punish has also been investigated by experimental psychology investigating lay decisions. From a retributivist perspective, the *mens rea* requirement signals that only those who, as a matter of personal choice, violate societal prohibitions should be subject to the government’s retributive arm – the

system of criminal justice. From a utilitarian perspective, the *mens rea* requirement is necessary because only those who act intentionally can be deterred through threat of punishment (Levenson, 1993). In addition to its retributive and utilitarian functions, criminal law has an expressive function; that is, in addition to deterrence and punishment, it has the power to morally condemn and shame offenders (e.g., Hedman, 1991; Sunstein, 1996). This capability to signal moral condemnation of the offender has been labeled as criminal liability's distinguishing feature (e.g., Robinson, 1996). As with punishment theories, discussions of the expressive function of law have been illuminated by psychological research on lay beliefs about what is communicated through different consequences for harmful acts.

In contrast, civil law generally has a lower threshold for liability and does not signal such moral condemnation (Darley & Pittman, 2003; Robinson, 1996). The psychology of blame and retribution enters less into this kind of transaction, which is viewed in more economic terms. For example, even though contract law contains doctrines with moral force, such as unconscionability (e.g., Uniform Commercial Code, § 2-302), it is widely accepted that breach of contract is subject to strict liability: Those who do not meet their contractual obligations must pay damages regardless of fault (Posner, 2009; Shavell, 2006). In fact, it is a maxim of contract law that people have the right to breach their contractual obligations so long as they are willing to make their counterpart whole through paying damages (Ayres & Klass, 2012; Shiffrin, 2007).

While tort law can have a more pronounced moral component—reflected in the law governing punitive damages, for example (e.g., Dobbs, 1989; Prosser & Keeton, 1984)—in most instances, the threshold for tort liability falls far short of the intent that is the hallmark of criminal liability. Because tort law has as its goal corrective justice—the economic compensation of an injured party to make the victim whole—rather than the psychology of blame (Coleman, 1992; Ripstein, 1998; Simons, 1996; Weinrib, 1995), for the most part, tort liability merely requires negligence (Holmes, 1881; Posner, 1972; Prosser & Keeton, 1984). In some cases, even those harmed by innocent wrongdoing also may be compensated in tort (Epstein, 2010). Moreover, even those who reject the corrective justice model of tort in favor of envisioning “torts as wrongs” define “wrongs” not as intentional acts, but rather as civilly actionable harm-causing acts, typically at the level of negligence (Zipursky & Goldberg, 2005).

Acts subject to strict legal liability have generally been the province of civil, not criminal, law. Though there have always been some strict liability *crimes*, they have generally been the exception rather than the rule (Robinson, 1980; Hart, 1958). However, at the start of the Industrial Revolution, two new types of laws proliferated: first, laws criminalizing conduct without *mens rea*, and second, laws criminalizing “morally neutral” conduct—that is, conduct that is illegal because a law has been passed against it (*malum prohibitum*) as opposed to conduct that is illegal because it is inherently wrong (*malum in se*) (Podgor, 2005; Travers, 1995).

The reduction in the distinction between criminal and civil law has been heavily criticized since its beginning. Many scholars claim that it will result in injustice and will weaken criminal law as a method of social control (see Coffee, 1991; Hart, 1958; Kadish, 1963; Levenson, 1993; Meyer, 2007; Packer, 1968; Sayre, 1933). Critics believe there should be a “close linkage between the criminal law and behavior deemed morally culpable by the general community” (Coffee, 1991, p. 198) and that “[w]hen the law begins to permit convictions for serious offenses of men who are morally innocent and free from fault...its restraining power becomes undermined” (Sayre, 1933, p. 79). These two principles make sense when taken together: Normatively, criminal consequences should be reserved for intentional harms, which are more morally blameworthy than accidentally-caused harms.

Despite this history, in recent years, the number of federal crimes that do not require intent has exploded; indeed, it may be argued that “the dominant development in substantive federal criminal law in the last decade has been the disappearance of any clearly definable line between civil and criminal law” (Coffee, 1991, p. 193). The blurring of the line is partially a result of Congress’s laxity in defining *mens rea* requirements for federal criminal laws (Kahan, 1996a). This expansion, and the disconnect between the law and people’s intuitions of fairness, has led to greater media attention toward these anomalous criminal laws and an increased perception of their injustice among commentators and citizens (Fields & Emshwiller, 2011; Podgor, 2005; Thompson, 2012).

To illustrate, consider some of the states of mind required for environmental crimes. The Clean Water Act (33 U.S.C. § 131(c)(1)(A)) includes increasing penalties for increasingly guilty states of mind, but as an initial matter requires only negligence for such acts as releasing petroleum into navigable waters (*United States v. Hanousek*, 1999). The Resource Conservation and Recovery Act (RCRA) punishes any person “who knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter” without a permit (42 U.S.C. § 6928(d)(2)(A)). Courts have held that it is enough for the defendant to know that it has disposed of a hazardous waste without a permit, even if the defendant does not know that the substance disposed of was on the statutory hazardous waste list (*United States v. Laughlin*, 1993). As for the permit requirement, it is enough in one court that the defendant either knew or should have known that one was required (*United States v. Johnson & Towers, Inc.*, 1984). For other courts, knowledge of the permit requirement is not a necessary element of the crime at all (*United States v. Wagner*, 1994). Thus, with respect to its various elements, the statute requires knowing, negligent (“should have known”), and innocent conduct. This is not atypical of environmental and other regulatory laws.

Both state and federal legislators are also beginning to take notice of this issue. In May 2013, the United States House Judiciary Committee authorized the creation of the Over-Criminalization Task Force, which chose to hold its first hearings on the topic (Mens Rea: The Need for a Meaningful Intent Requirement in Federal Criminal Law, 2013). In January 2015, Ohio passed Senate Bill 361,

which required that all future criminal statutes specify the requisite degree of mental culpability. If none is specified, the statute is void. It also clarified that existing statutes that do not specify a necessary mental state will be treated as if the required *mens rea* were recklessness. The law officially went into effect this March (Oh. Rev. Code § 2901.20).

Against this backdrop of debate about the proper role of the criminal law, I investigate whether laypeople actually perceive a difference in civil versus criminal consequences. Many acts could result in either a civil case or a criminal case (or both). The co-existence and overlapping jurisdiction of the civil, criminal, and administrative systems presents the legal system with a perennial institutional choice issue: Given the structures in place, which one provides the best path to deal with harm-doers and the harms they have done in any given situation? Much of the literature on institutional choice focuses on questions of which institution can most competently and efficiently further the law's goals. Some commentators suggest a general shift toward more deference to administrative agencies, because they have more area-specific expertise than judges do (e.g., Vermeule, 2006). Others argue that the choice of systems should be part of the underlying substantive law, as the institutional setting will necessarily affect outcomes over time (e.g., Komesar, 1990).

While efficiency and competence are important factors in choosing a given institution to assign consequences, it may be equally important to build a psychologically realistic system that considers the moral and expressive components of each institution before making the choice. The government's

reaction to the financial crisis of 2008 illustrates the importance of this choice and its moral facets. While a raft of civil lawsuits were filed, and financial institutions have paid huge civil penalties, there has been a public outcry regarding the absence of criminal prosecutions (e.g. Eaglesham, 2012; Morgenson & Story, 2011).

The fact that institutional choice has moral ramifications should not be wholly surprising. In addition to regulating behavior via the threat of sanctions, the choice of criminal or civil justice communicates norms. The consequences of this choice may carry important legal and social psychological consequences. When the norms communicated align with laypeople's intuitions of procedural justice and proportionality – most relevant here, their intuitions regarding moral blameworthiness – the system will be more successful at facilitating compliance (Robinson, 1996, 2000; Robinson & Darley, 1995, 2007; Tyler, 1992). The studies reported here anticipate that laypeople are sensitive to moral culpability and *mens rea* as a distinguishing aspect of the criminal law, and that this understanding plays a large role in determining their intuitions regarding appropriate institutional choice.

How laypeople determine the mental states of wrongdoers, and whether these determinations are accurate, has been the subject of much research by scholars in moral psychology, experimental philosophy, and empirical legal studies (e.g. Heller, 2009; Knobe, 2006; Malle & Knobe, 1997; Malle & Nelson, 2003; McGillis, 1978; Severance, Goodman, & Loftus, 1992; Shen et al. 2011; Simons, 1992). However, no studies have yet investigated whether different

mechanisms may be used, or different outcomes reached, when laypeople assess the mental states of harm-doers facing criminal charges versus those facing civil suit. Additionally, no studies have addressed whether one institution (criminal or civil) is seen as more appropriate for seeking redress from a harm-doer with a given mental state, and whether these differences are due to laypeople specifically distinguishing *criminal* justice from *civil* justice (as opposed to distinguishing punishment from compensation, or one specific penalty from another).

Everyday Moral Judgment and Institutional Choice

The studies reported below test whether laypeople distinguish remedies assessed via criminal versus civil means. They investigate whether criminally penalizing non-intentional harmful behavior helps to align, or further misaligns, the law with lay intuitions about criminal and civil justice. More specifically, these studies address two related questions:

1. Does criminalizing non-intentional harmful actions comport with laypeople's ideas regarding justice?
2. If people believe criminal penalties are appropriate only for intentional acts, does the presence of a criminal penalty cause people to judge a harm-doer to have acted more intentionally?

To the extent that people think it wrong to criminalize conduct without proof of intent, serious questions arise as to whether these new negligence and strict liability crimes are serving their intended regulatory and retributive goals. In particular, strict liability laws generally sanction *malum prohibitum* rather than

malum in se behavior: that is, behavior that is forbidden only because the law says it is so, rather than forbidden because it violates commonly-held moral intuitions. Thus, it is unlikely that laypeople are aware of the existence or content of many of these strict liability laws. The combination of *mala prohibita* and strict liability in a criminal statute is likely to lead to a perception of injustice when someone is punished for violating it (Darley, Carlsmith, & Robinson, 2001). If laypeople feel that the expressive function of criminal law is to signal moral condemnation, it may seem inappropriate to attach it to *mala prohibita* harm-doers acting without a guilty mind. Indeed, the Supreme Court has stated that *mala prohibita* crimes “that require no *mens rea* generally are disfavored” (Staples v. U.S., 1994, p. 606), though the exception for regulatory, “public welfare” offenses negates much of the strength of that statement (*U.S. v. Balint*, 1922; *U.S. v. Dotterweich*, 1943; *U.S. v. U.S. Gypsum Company*, 1978). If *unintentional* harmful acts are pursued criminally, compliance with other laws may also decrease, as people are less likely to obey the law if they do not perceive the criminal code as a legitimate guide to moral conduct (Robinson, 2000; Robinson & Darley, 1995, 2007; Tyler, 1992) or perceive it to be inconsistent with their personal moral codes (Nadler, 2005).

I hypothesize that a criminal charge is—even to laypeople—psychologically different from a civil suit, and that laypeople will not support strict criminal liability, potentially even for quite harmful acts. What might be the cause of this distinction? Even when equated in amount, criminal consequences may

differ from civil consequences on at least two facets.¹ First, criminal outcomes are classically seen as punitive, while civil consequences are generally viewed as compensatory (e.g., Darley & Pittman, 2003). Criminal consequences may therefore be seen as appropriate in a situation where a harm-doer's actions merit punishment (e.g., he acted intentionally), as opposed to when the harm-doer's actions inspire a desire to compensate the victim (e.g., he caused an accident leading to injury).

Second, as mentioned above, criminal consequences may carry a degree of moral opprobrium that civil penalties do not. It has been argued that "the only real basis for distinction between crimes and civil wrongs lies in the moral condemnation which the community visits upon the criminal but not (at least not so powerfully) upon his civil wrongdoer counterpart" (LaFave, 2000), and that "[c]riminal trials are unavoidable morality plays, focusing on the defendant's moral blameworthiness or lack thereof" (Amar, 1997, p. 122; see also Bibas, 2003; Brown, 1998). Thus, criminal consequences may only be seen as appropriate for intentional harm-doers, as accidental (or even reckless) harm-doers may not merit *moral* condemnation for their wrongful acts. In short, less-than-intentional harm-doers may have committed a bad act, but they are not bad persons.

¹ Obviously, as a potential criminal penalty, prison differs from any civil consequence that could be assessed. Notwithstanding this special case, however, monetary criminal and civil outcomes can be equated fairly cleanly. Although laypeople may see monetary consequences as insufficient for certain crimes (Doob & Marinos, 1995; Kahan, 1996b), I do not anticipate that is the case here. The acts reported here involve relatively minor damage, which participants are unlikely to see as prison-worthy. Future studies will further consider regulatory infractions (which also often incur monetary sanctions), as those are some of the offenses most likely to be lacking intent requirements.

The second issue addressed in this paper turns the question around. If criminal charges should be saved for those who intentionally cause harm, does having been criminally charged cause people to perceive an actor to have acted more intentionally? If people judge an individual to have acted less morally and more intentionally simply as a result of a criminal charge, this has implications for the likelihood of conviction of the accused, as well as for the outcomes of civil suits following in the wake of a criminal prosecution. It may also taint society's perception of an individual charged with a "strict liability" crime, as they may assume he had to have acted intentionally. If a criminal charge taints people's judgments of both the act and the actor, it may be seen as unjust to subject a harm-doer to such negative automatic inferences about culpability and character; it calls into question the maxim of "innocent until proven guilty."

Criminal *conviction* does stigmatize offenders (e.g. Pager, 2003; Rasmussen, 1996); however, it may be argued that merely being accused of a crime provides no valid basis for making inferences about a person. The distinction is at the heart of the presumption of innocence. However, legal commentary suggests that "even a mere indictment—may impose a social stigma that permanently impairs the defendant's quality of life in a manner rarely equaled by a civil judgment" (Fellmeth, 2005, p. 2-3). Additionally, robust evidence in the psychological literature shows that people express preferences regarding others and make social inferences based on minimal or seemingly irrelevant information; for example, in making social judgments, people use cues including how others count dots, whether they are lucky, or even the temperature

of an unrelated warm beverage (e.g. Tajfel, 1971; Gosling, Ko, Mannarelli, & Morris, 2002; Williams & Bargh, 2008). Several strands of research in the psychological literature also suggest that the mere pairing of negative information with an individual will immediately induce changes in perceptions of that individual, as in priming research that shows spontaneous trait inference (Winter & Uleman, 1984; Todorov & Uleman, 2003), nonconscious semantic associations (Bargh & Pietromonaco, 1982), and affective primacy (Zajonc, 1980). A criminal charge is a strongly negatively valenced piece of information, and so might lead people to spontaneously and unconsciously make other negative inferences about the accused.

A few studies show more directly that one need not have been convicted for a criminal charge to affect others' perceptions. Finn & Fontaine (1985) found that people judging applicants on "employability" rated those who had been acquitted of crimes less employable than those who were never alleged to have committed a crime, and Lott (1992) found that even those merely *arrested* for drug crimes – not necessarily even brought to trial – often suffer sharp decreases in income. Therefore, while it may be true that a mere accusation of criminal behavior is not a *valid* basis for drawing inferences about a person, it is likely still an impactful one.

Two papers contain some suggestion that laypeople may in fact make different inferences based on whether someone is charged criminally or sued civilly. Schwartz and Skolnick (1962) found that a job applicant who was accused, but acquitted, of criminal assault had nearly as difficult a time finding a

job as one convicted of assault. The researchers then investigated the effect of civil suits on defendants by interviewing 58 doctors who had recently been sued. Fully 90% reported that the suit had no effect on their practice, and 9% reported that the suit actually improved their amount of business.

A second study explored character inferences drawn by people who were told that a juvenile had been criminally charged as an adult (Levine, Williams, Sixt, & Valenti, 2001). They found that many people assumed that the juvenile had a criminal history, and that this led them to believe he was guilty in the current case. However, this study contained no control condition in which participants were told that the juvenile had been charged as a juvenile, so the effects may not solely be a result of the inferred past criminal charge.

The findings of these past studies are merely suggestive of a difference between civil and criminal consequences. The current studies will test potential perceived differences in a more direct and controlled fashion.

Overview of Experiments

Five studies examined laypeople's intuitions about differences between criminal and civil consequences for harm-doers. The first four investigated perceptions of justice, and the last one addressed perceived intent. The first study explored whether people perceive criminal and civil consequences with and without intent requirements differently. The second study looked at the extent to which people were willing to assign civil and criminal consequences for harmful acts committed with different states of mind. The third and fourth studies specifically equated the civil and criminal consequences assessed for a harmful

act and measured perceptions of justice of these outcomes. The final study presented participants with a person either charged with a crime or sued in civil court and measured their perceptions of the accused.

General Procedure

Participants were all United States residents ages 18 and over. Participants were recruited on Amazon Mechanical Turk and were paid \$.40 to \$.50 per study; each study took participants an average of 5-7 minutes to complete. Mechanical Turk has begun to be widely used in social science research, as data can be collected much more quickly and from a more diverse sample than the undergraduate population. Direct data comparisons have shown that results do not substantially differ from those found in the lab (Buhrmester, Kwang, & Gosling, 2011; Mason & Suri, 2012; Paolacci, Chandler & Ipeirotis, 2010). New programming allowed excluding workers who had participated in one study from all other studies in this line of research (Peer, Chandler, Paolacci, & Mueller, 2012). Demographic information (age, gender, race, political orientation, experience with the criminal and civil justice systems) was collected for each study. Gender effects are reported for Study 3 below. None of the other demographic variables had a significant impact on results.

Study 1²

Method

Mechanical Turk participants (final $N = 111$) read a short vignette in which a man riding his bike (Mr. Blair) caused harm by crashing into another bicyclist (see Appendix for the full text of the vignettes). Mr. Blair's state of mind was manipulated between subjects. Five states of mind were used: innocent, negligent, reckless, transferred-intentional, and intentional. In the innocent condition, he did everything appropriately, but still could not avoid the crash. In the negligent condition, he failed to check the condition of his bike before setting out. In the reckless condition, he checked the bike, saw that it might cause an accident, and went riding anyway. In the transferred-intentional condition, he intended to ride close to the other cyclist and scare him, but ended up crashing. In the intentional condition, he actually intended to crash into the other cyclist.

Participants answered two factual multiple-choice questions about what damage Mr. Blair caused and why the collision occurred. Nineteen participants were removed for answering one or both of these questions incorrectly.

As a manipulation check, participants were asked on a 7-point scale about the degree of Mr. Blair's intentionality ("Did Mr. Blair hit the other cyclist accidentally or intentionally?") Participants then answered four key questions in counterbalanced order. They rated on 7-point scales "How *just* would it be if Mr. Blair [the harm doer] could be [all emphasis in original questions]:"

² This study was also replicated with a vignette in which Mr. Blair crashed into a tree in a national forest, damaging it and killing a bird that had been living in it. Such destruction of property in a national park is a strict liability crime: that is, Mr. Blair is legally guilty of the crime regardless of whether or not he meant to hit the tree. Results regarding people's intuitions about criminal and civil consequences were the same as in the study reported here.

...successfully sued for compensation *only if* he acted intentionally?"

...successfully sued for compensation *regardless of whether* he acted intentionally?"

...charged with and convicted of a misdemeanor and sentenced to pay restitution

only if he acted intentionally?"

...charged with and convicted of a misdemeanor and sentenced to pay restitution

regardless of whether he acted intentionally?"

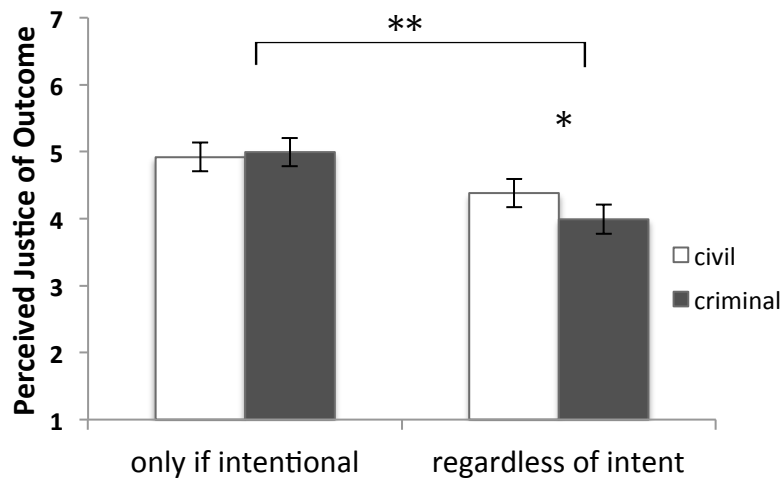
Participants were then asked, in counterbalanced order, whether they believed Mr. Blair should be sued, and whether he should be charged with a misdemeanor.

Results

A simple linear trend analysis was done to confirm whether participants had in fact interpreted the culpable states of mind as intended. The intent manipulation check showed a significant linear trend as state of mind culpability increased ($M_s = 1.13, 1.38, 1.29, 2.17, 6.67$), $F(1, 110) = 452.71$, $p < .001$, $\omega^2 = .56$, though the separation of the first four mental states was not ideal. The perceived justice of criminal and civil consequences with and without intent requirements was measured across mental states; as the questions were phrased in the abstract, and not about this specific case, there was no strong reason to anticipate differences across mental state conditions. While the interaction between consequence type and intent requirement was marginally

significant, $F(1, 109) = 3.10, p = .08, \eta_p^2 = .03$, the key comparisons of perceived justice were significant: across all state of mind conditions, participants believed that criminal penalties without intent requirements were less just ($M = 4.00$) than criminal penalties that required intent ($M = 4.99$), $t(109) = 2.93, p = .004$, Cohen's $d = .44$. They also believed criminal penalties without intent requirements ($M = 4.00$) to be less just than *civil* penalties without intent requirements ($M = 4.38$), $t(110) = 2.35, p = .021, d = .17$. There were no differences in the perceived justice of civil penalties with and without intent requirements ($M = 4.92; M = 4.38$; $t(110) = 1.51, p = .13$), or civil and criminal penalties *with* intent requirements ($M = 4.92, M = 4.99, t(109) = -.472, p = .64$). (See Figure 1.)

Fig. 1. Perceived justice of criminal and civil consequences as a function of whether or not they require intentional harm (Study 1). The asterisks indicate significant differences between conditions, * $p < .05$, ** $p < .01$. Error bars indicate standard errors of the mean.



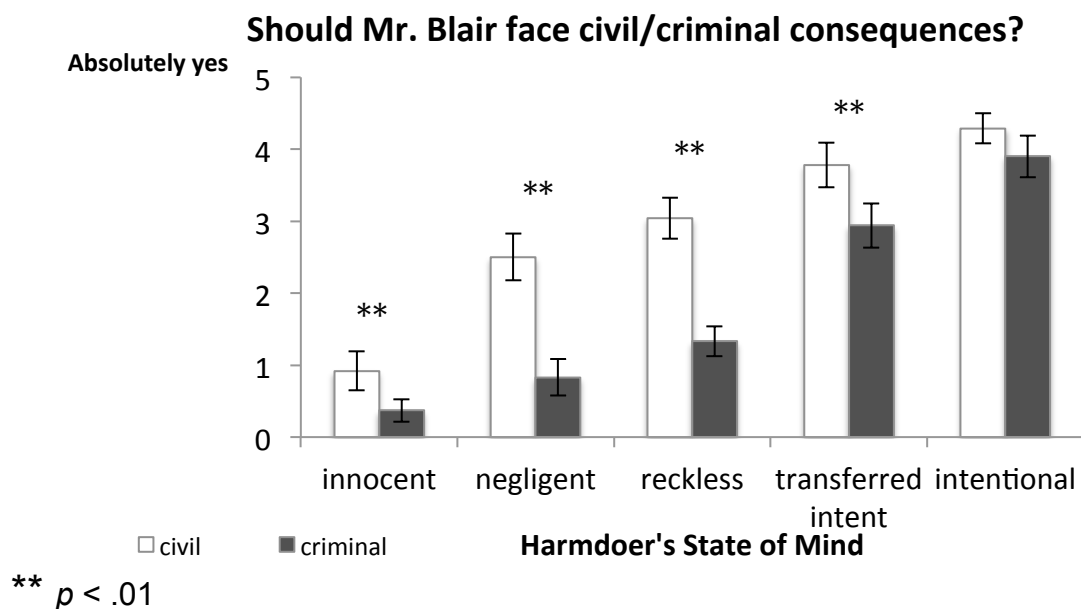
Mr. Blair's state of mind significantly affected beliefs about whether he

should suffer any legal consequences at all, $F(4, 106) = 34.76, p < .001, \eta_p^2 =$

.57. Across states of mind, participants were also generally less likely to believe

that Mr. Blair should be charged with a crime than that he should be sued, $F(1, 106) = 78.55, p < .001, \eta_p^2 = .43$. These effects were qualified by a significant interaction between belief regarding whether he should be sued and/or charged with a crime and the culpability of Mr. Blair's state of mind, $F(4, 106) = 6.12, p < .001, \eta_p^2 = .19$. Testing the simple effects using a Bonferroni correction for multiple comparisons revealed a significant difference in perceived appropriateness of civil and criminal penalties for innocent, negligent, reckless, and transferred-intentional states of mind. Participants found criminal consequences to be significantly less appropriate than civil consequences in these conditions. However, when Mr. Blair acted intentionally, there was no significant difference in the perceived appropriateness of civil and criminal penalties. (See Figure 2.)

Fig. 2. Perceived appropriateness of civil and criminal consequences as a function of the harm-doer's state of mind (Study 1). The asterisks indicate significant differences between conditions, $** p < .01$. Error bars indicate standard errors of the mean.



Study 2

Study 1 showed that the general principle under investigation is indeed part of people's lay intuitions: criminal consequences are seen as less just and less appropriate for harms that are less than intentional. However, the actual consequences were not defined beyond "civilly sued" and "criminally charged." In Study 2, I wanted to make the civil and criminal consequences more concrete. In this study, the vignette remained the same, but the dependent measures explored whether people's willingness to assign specific criminal and civil penalties to a harm-doer themselves was affected by the harm-doer's state of mind.

Method

The same vignettes as in Study 1 were presented between subjects. Participants (final $N = 100$) were recruited on Amazon Mechanical Turk. An additional 25 participants were removed for incorrectly answering the same comprehension test questions used in Study 1. The question about intent in Study 1 did not apparently capture potential perceived differences in Mr. Blair's state of mind (i.e., intentionality was reported as wildly different from other states of mind, rather than assessments falling nicely along a spectrum). Thus, Study 2 used a slightly different manipulation check. Rather than characterizing Mr. Blair's behavior on a spectrum from "completely accidental" to "completely intentional," participants were asked to categorize his behavior 1) dichotomously ("Did Mr. Blair injure the other bicyclist intentionally?") and 2) on a continuum of intentionality with more guideposts:

Some people think intentionality is more of a spectrum than a yes/no question. Regardless of how you answered the previous question, what description do you think best fits Mr. Blair's behavior?

- *1. Mr. Blair was innocent of misconduct. A reasonable person in the same situation would not have taken more precautions.*
- *Between 1 and 2*
- *2. Mr. Blair was negligent. A reasonable person would have been more careful in his situation.*
- *Between 2 and 3*
- *3. Mr. Blair was reckless. He knew there were risks of dangerous outcomes, but recklessly ignored these possibilities.*
- *Between 3 and 4*
- *Mr. Blair intentionally injured the other bicyclist.*

Participants were then asked which, if any, of the following penalties they would like to assess against Mr. Blair [the harmdoer]. Participants were presented with 4 questions in counterbalanced order. The main manipulation of outcome type was whether the consequences were criminal or civil. However, since one distinction that is thought by many to be the difference between the civil and criminal systems is whether an outcome is punitive or compensatory, I also manipulated whether the outcome was described as compensatory

damages/restitution or punitive damages/fine. Thus, the study was a 2 (criminal/civil) x 2 (compensatory/punitive) design:³

1. *civil/compensatory*: The cyclist sues Mr. Blair. Should Mr. Blair have to pay damages to the cyclist for the cyclist's medical bills?
2. *criminal/compensatory*: The state arrests Mr. Blair and charges him with third-degree battery, a misdemeanor. Should he be convicted and sentenced to pay restitution to the bicyclist for his medical bills?
3. *civil/punitive*: The cyclist sues Mr. Blair. Should Mr. Blair have to pay punitive damages to the cyclist?
4. *criminal/punitive*: The state arrests Mr. Blair and charges him with third-degree battery, a misdemeanor. Should he be convicted and sentenced to pay a punitive fine to the cyclist?

Each of these questions was presented with a 6-point scale labeled 1=*Definitely yes*, 2=*Probably yes*, 3=*Maybe yes*, 4=*Maybe no*, 5=*Probably no*, 6=*Definitely no*.

Participants were then asked four questions in counterbalanced order about Mr. Blair's blameworthiness for the other cyclist's injuries: 1) how morally culpable he was, 2) how responsible he was, 3) how much blame he deserved, and 4) how much harm the other cyclist suffered.

Results

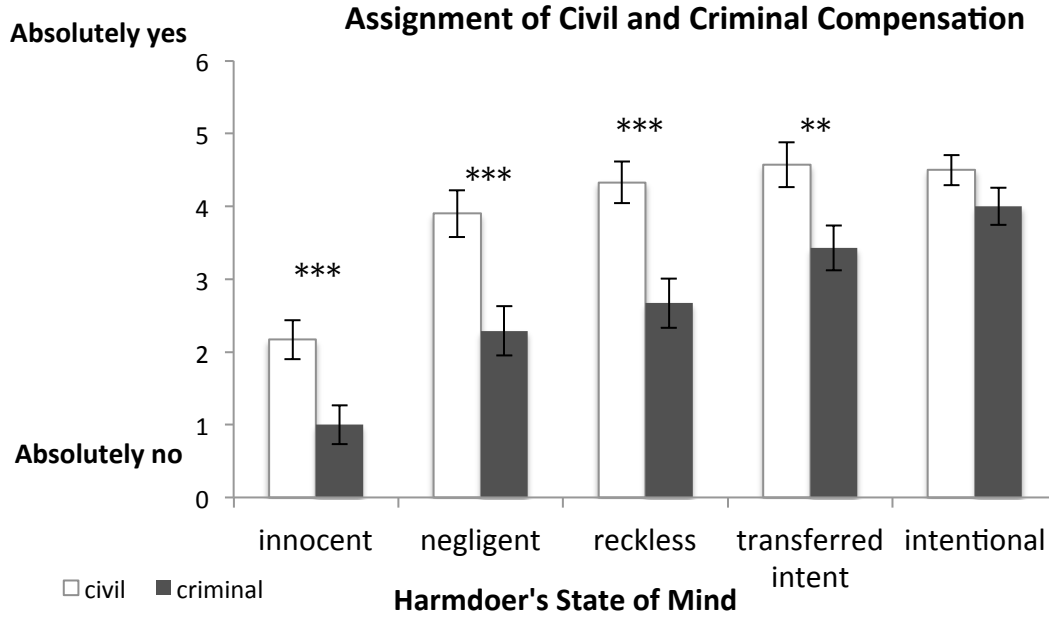
The continuous-scale manipulation check was more successful at separating perceived differences in Mr. Blair's state of mind ($M_s = 1.13, 1.95$,

³ Participants were also asked if they wanted to assign prison time to Mr. Blair. This question was presented after the four questions discussed above, and provided no relevant information, so it will not be further discussed here.

3.50, 4.07, 6.44). There was a significant linear trend in perceived intent as state-of-mind culpability increased, $F(1, 95) = 407.54, p < .001, \omega^2 = .78$.

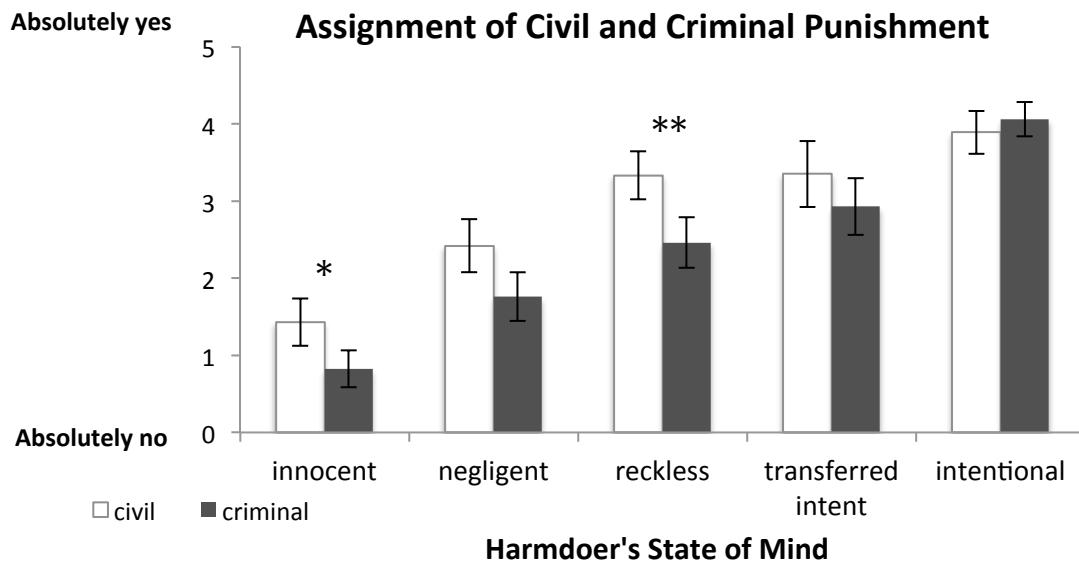
For the compensatory outcomes (i.e., compensatory damages for medical bills or criminal restitution for medical bills), there was a significant effect of mental state: $F(4, 95) = 20.15, p < .001, \eta_p^2 = .46$. Unsurprisingly, people were more willing to hold Mr. Blair liable for damages when he acted with a more culpable state of mind. There was also a significant effect of type of consequence (criminal v. civil): $F(1, 95) = 80.21, p < .001, \eta_p^2 = .46$. Participants were generally more likely to require Mr. Blair to pay civil compensation than criminal compensation. There was also a significant interaction between state of mind and type of consequence: $F(4, 95) = 2.44, p = .05, \eta_p^2 = .09$. Participants were less sensitive to the type of consequence they chose to assign (civil or criminal) when Mr. Blair acted intentionally than they were in the other state-of-mind conditions. (See Figure 3.)

Fig. 3. Willingness to assess civil and criminal compensatory consequences as a function of the harm-doer's state of mind (Study 2). The asterisks indicate significant differences between conditions, ** $p < .01$, *** $p < .001$. Error bars indicate standard errors of the mean.



For punitive outcomes (i.e., civil punitive damages or criminal punitive fine), there was again a main effect of state of mind, $F(4, 95) = 14.65$, $p < .001$, $\eta_p^2 = .38$, and a main effect of type of consequence, $F(1, 95) = 15.13$, $p < .001$, $\eta_p^2 = .14$. The interaction between state of mind and type of consequence was marginally significant, $F(4, 95) = 2.07$, $p = .09$, $\eta_p^2 = .08$. Again, participants found both civil and criminal consequences equally appropriate to assign when Mr. Blair acted intentionally. (See Figure 4.)

Fig. 4. Willingness to assess civil and criminal punitive consequences as a function of the harm-doer's state of mind (Study 2). The asterisks indicate significant differences between conditions, * $p < .05$, ** $p < .01$. Error bars indicate standard errors of the mean.



* $p < .05$

** $p < .01$

The moral culpability, responsibility, and blame variables formed a reliable scale ($\alpha = .92$).⁴ I used this scale to investigate blameworthiness as a potential mediator between Mr. Blair's state of mind and participants' decisions to assign civil and/or criminal consequences. I used Preacher and Hayes' (2004) bootstrapping method for mediation analysis. The blameworthiness scale fully mediated participants' decisions to assign civil penalties, both compensatory and punitive. The indirect effect via blameworthiness equaled $-.54$, 95% confidence interval $\{-.74, -.36\}$; additionally, a traditional Sobel test confirmed the significance of the mediation: $Z = -6.32$, $SE = 0.09$, $p < .001$. (See Figure 5.)

⁴ The harm variable did not fit into the scale, but the amount of harm was perceived to be significantly greater when the harm was caused by a harm-doer with a mental state other than innocence, $t(94) = -2.001$, $p = .048$ (see Ames & Fiske, 2013, 2015).

Fig. 5. Mediation of the relationship between state of mind and assignment of civil consequences by perceived blameworthiness (Study 2). The asterisks indicate significant differences between conditions, ** $p < .01$, *** $p < .001$.

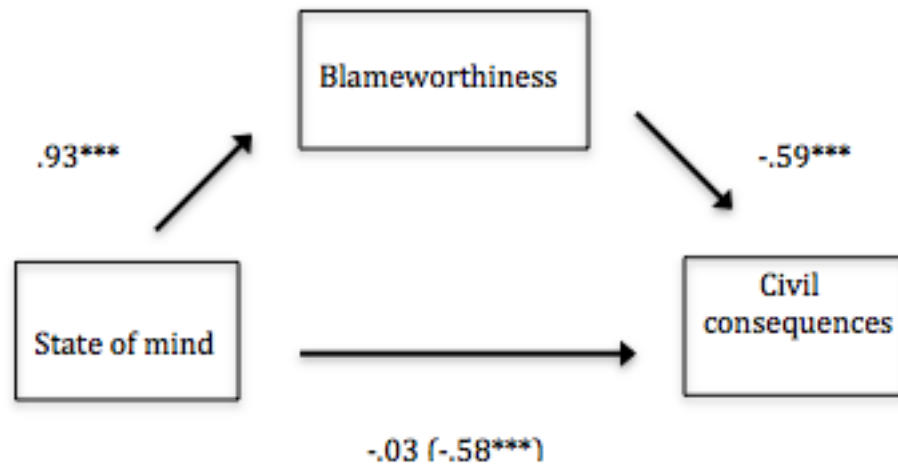
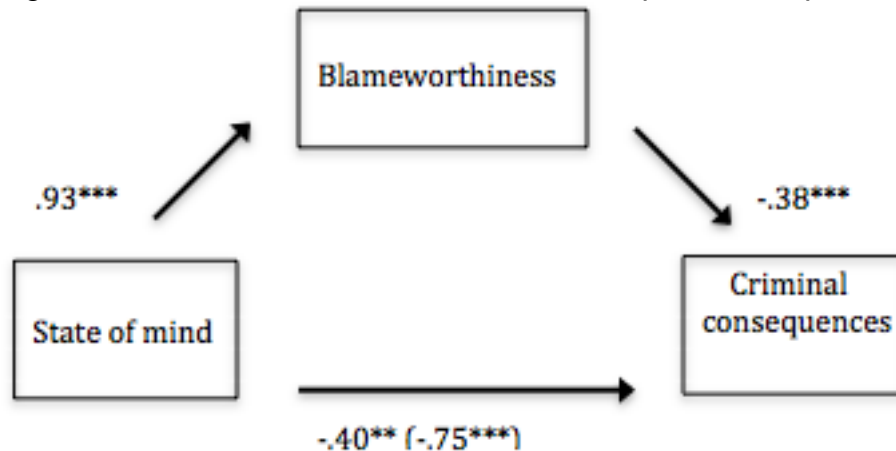


Fig 6. Mediation of the relationship between state of mind and assignment of criminal consequences by perceived blameworthiness (Study 2). The asterisks indicate significant differences between conditions, ** $p < .01$, *** $p < .001$.



Blameworthiness partially mediated participants' decisions to assign criminal penalties; indirect effect = $-.35$, 95% C.I. $\{-.57, -.16\}$; a Sobel test also confirmed this: $Z = -3.55$, $SE = 0.10$, $p < .001$. (See Figure 6.) These findings run counter to the traditional belief that criminal consequences flow from moral blameworthiness, while civil consequences do not.

Discussion

Study 2 provided further evidence that people believe criminal consequences to be less appropriate than civil consequences when a harm is not inflicted intentionally. When a harm-doer acted less than intentionally, people were significantly less likely to assign criminal compensation than civil compensation. Given the opportunity to impose either punitive damages or a criminal fine paid to the victim, this difference diminished, perhaps because participants intuitively recognize the retributive nature of punitive damages, making them more akin to criminal fines than compensatory damages are.

The biggest limitation of this study is that the amounts of medical bills and punitive damages/fines were not specified. Participants may have believed that the amount of a criminal fine would be larger than the amount of civil punitive damages. Study 3a was designed to eliminate this issue by having participants evaluate the appropriateness of various consequences when the monetary amount was explicitly held constant.

Study 3a

Method

Participants (final $N = 262$) were recruited on Amazon Mechanical Turk. An additional 39 participants were dropped for answering one or both of the test questions incorrectly. The same vignettes from Studies 1 and 2 were again presented between subjects. After reading the vignette, participants used the same two questions as in Study 2 to assess whether Mr. Blair intentionally injured the other cyclist. After answering the intentionality questions, participants

were then told what consequence Mr. Blair faced. These outcomes were manipulated between-subjects in a 2 (civil/criminal) x 2 (compensatory/punitive) design. The magnitude of the consequence was held constant; Mr. Blair had to pay \$15,000 to the other cyclist to cover his medical bills. Participants were told that Mr. Blair was sued and found liable for either compensatory or punitive damages, or that he was charged with a criminal misdemeanor – third-degree battery – and sentenced to pay restitution or a punitive fine.

Participants were first asked how just this outcome was, and then responded to the same blameworthiness questions regarding Mr. Blair as in Study 2: 1) how morally culpable he was, 2) how responsible he was, 3) how much blame he deserved, and 4) how much harm the other cyclist suffered.

Results

The continuous-scale manipulation check was again successful (M s = 1.05, 2.53, 2.98, 3.92, 6.19); there was a significant linear trend in perceived intent as state-of-mind culpability increased, $F(1, 252) = 914.89, p < .001, \omega^2 = .74$. In the initial analysis, I found no effect of punitive vs. compensatory consequences on perceived justice ($p = .21$), and no interaction between punitive/compensatory framing and either state of mind or criminal/civil consequence, so further analyses and comparisons do not include this variable. Additionally, there was an effect of gender on perceived justice and perceived intent, such that females ($M = 4.06$) saw all consequences as more just than males ($M = 3.07$), $t(259) = -4.21, p < .001$, and saw Mr. Blair as having acted more intentionally ($M = 3.50$) than males did ($M = 2.97$), $t(259) = -2.30, p = .022$.

Gender did not interact with any of the other variables, so gender will also not be discussed in the rest of the analyses.

A 5x2 ANOVA showed a main effect of state of mind on perceived justice: $F(4, 252) = 40.87, p < .001, \eta_p^2 = .39$ (see Figures 7a and 7b). There was also a main effect of criminal vs. civil consequences on perceived justice: $F(1, 252) = 22.60, p < .001, \eta_p^2 = .08$. Planned comparisons between adjacent states of mind (e.g., innocent and negligent, negligent and reckless) showed that civil consequences were equally appropriate for any harm committed with a state of mind more culpable than innocent, while criminal consequences were significantly more appropriate for truly intentional harms than for any other harm (See Figure 7a). Planned comparisons between the two types of consequence also showed significant differences in the perceived justice of criminal and civil consequences for acts committed with negligent, reckless, and transferred-intentional states of mind. Civil and criminal consequences were seen as equally just for intentional harms and equally unjust for innocent harms. (See Figure 7b.)

Fig. 7a. Perceived justice of civil consequences and criminal consequences as a function of the harm-doer's state of mind (Study 3a).⁵ The asterisks indicate significant differences between conditions, * $p < .05$, *** $p < .001$. Error bars indicate standard errors of the mean.

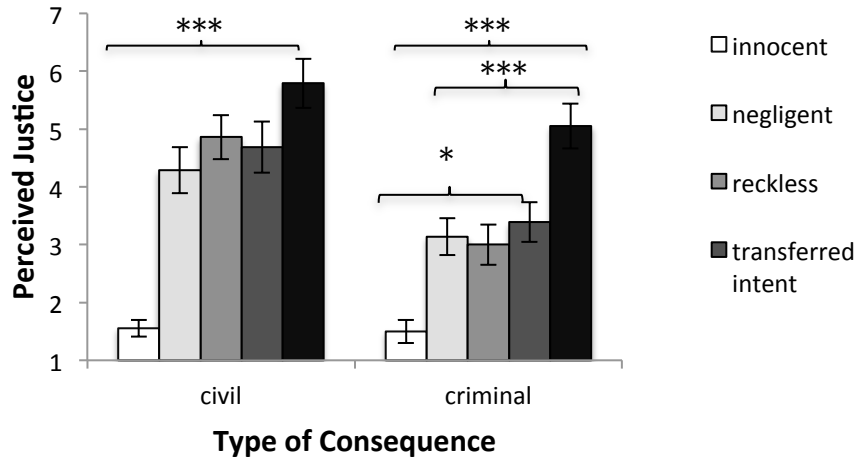
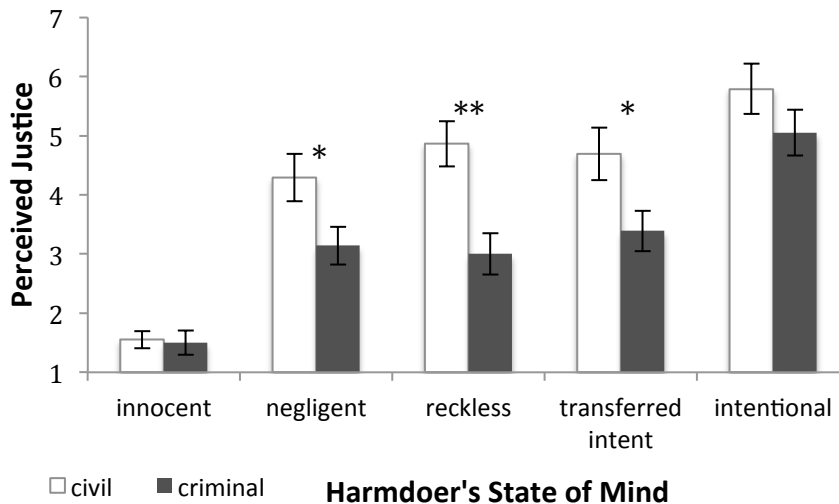


Fig. 7b. Perceived justice of civil versus criminal consequences as a function of the harm-doer's state of mind (Study 3a).⁶ The asterisks indicate significant differences between conditions, * $p < .05$, ** $p < .01$. Error bars indicate standard errors of the mean.

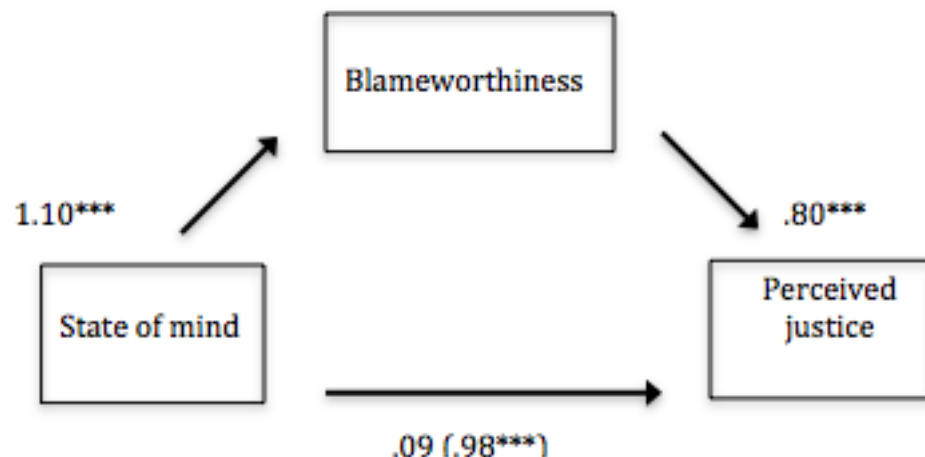


⁵ Bonferroni-corrected planned comparisons showed that people saw *civil* consequences as equally just for intentional, transferred-intentional, reckless, and negligent harmful actions, $p_{(\text{transferred-intentional})} = .94$, $p_{(\text{reckless})} = .25$, $p_{(\text{negligent})} = .19$. However, *criminal* consequences were perceived as significantly less just for all non-intentional harms than for intentional harms: all $ps \leq .001$.

⁶ Bonferroni-corrected planned comparisons showed that criminal consequences were seen as significantly less just than civil consequences for negligent ($t(49) = 2.89$, $p = .006$, $d = .82$), reckless ($t(55) = 2.54$, $p = .01$, $d = .67$), and transferred-intent ($t(49) = 2.89$, $p = .006$, $d = .82$) harms.

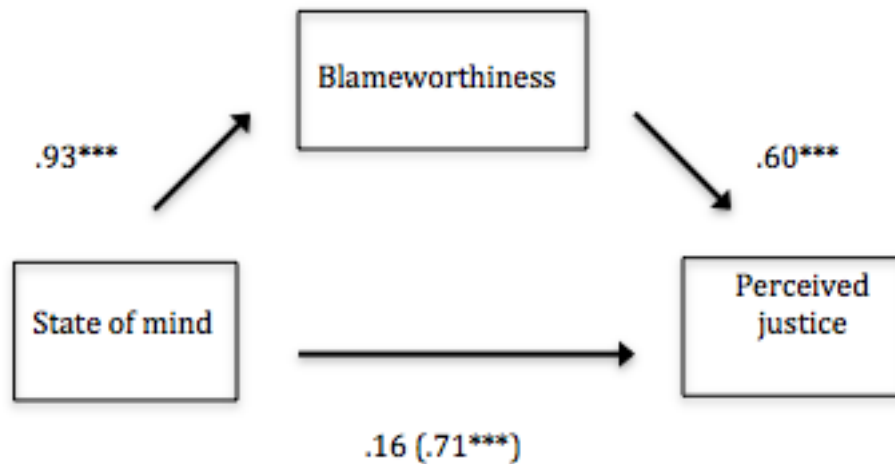
Again, ratings of moral culpability, responsibility, and blame formed a scale ($\alpha = .92$).⁷ This scale fully mediated the relationship between state of mind and perceived justice of civil penalties, indirect effect = .88, 95% C.I. {.70, 1.06}; Sobel's $Z = 7.78$, $SE = 0.11$, $p < .0001$. The scale also fully mediated the relationship between state of mind and perceived justice of criminal penalties, indirect effect = .59, 95% C.I. {.42, .79}; a Sobel test confirmed this: $Z = 6.04$, $SE = 0.10$, $p < .0001$. There was a marginally significant relationship between type of consequence (criminal vs. civil) and the blameworthiness scale $t(260) = -1.72$, $p = .09$, $d = .21$. This was primarily driven by the significant difference in Mr. Blair's perceived moral culpability; he was seen as significantly more morally culpable when he suffered criminal as opposed to civil consequences, $t(253.46) = -2.25$, $p = .025$. See Figures 8 and 9.

Fig. 8. Mediation of the relationship between state of mind and assignment of civil consequences by perceived blameworthiness (Study 3a). The asterisks indicate significant differences between conditions, *** $p < .001$. Error bars indicate standard errors of the mean.



⁷ And again, the harm was seen as greater when it was committed with a mental state other than innocence, $t(93.98) = -2.01$, $p = .047$.

Fig. 9. Mediation of the relationship between state of mind and assignment of criminal consequences by perceived blameworthiness (Study 3a). The asterisks indicate significant differences between conditions, *** $p < .001$.



Study 3b

While the results from Study 3a also supported the initial hypothesis, the first three studies all used a vignette with a bicycle crash between two individuals. The underlying crime or tort was battery – a cause of action that generally does require intent (transferred or direct) on the part of the actor to be successful. Thus, it was important to replicate these effects with a vignette that more closely tracked cases in the real world where intent might not be required. I chose to use an environmental-harm scenario, as those statutes often have minimal or no intent requirements, and can result in criminal, civil, and even administrative actions. The design and dependent variables were the same as in Study 3a. Participants (final $N = 212$) were recruited on Mechanical Turk; 21 additional participants were excluded for failing one or both of the manipulation checks. In the scenario, a farmer bought new fertilizer that would significantly

increase his crop yield. However, he was told that use of the fertilizer would damage the local ecology. In all vignettes, the fertilizer ended up contaminating the local pond and killing the fish in it. The manipulation was whether this occurred as a result of an accident, or via the farmer's negligent, reckless, knowing/transferred-intentional, or intentional behavior. (See Appendix for the full scenarios.)

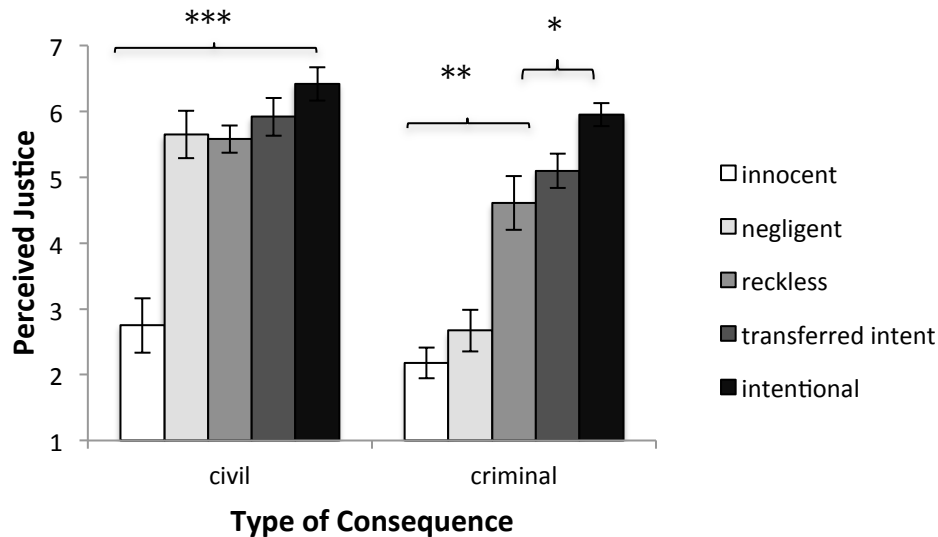
Results

The farmer's perceived intent increased as the culpability of his state of mind increased ($M_s = 1.48, 3.09, 3.64, 5.24, 6.73$); this linear trend in perceived intent was significant, $F(1, 207) = 240.10, p < .001, \omega^2 = .82$. Again, I found no effect of punitive vs. compensatory consequences on perceived justice ($p = .33$) and no interaction between that variable and the others, so it will not be reported in further analyses.

A 5x2 ANOVA showed a main effect of state of mind on perceived justice: $F(4, 202) = 45.58, p < .001, \eta_p^2 = .47$ as well as a main effect of criminal vs. civil consequences on perceived justice: $F(1, 202) = 37.52, p < .001, \eta_p^2 = .26$. (See Figures 10a and 10b). The interaction between state of mind and type of consequence was again significant, $F(1, 202) = 6.16, p < .001, \eta_p^2 = .11$. Planned comparisons between adjacent states of mind again showed that civil consequences were equally appropriate for any harm committed with a state of mind more culpable than innocence, while criminal consequences were significantly more appropriate for truly intentional harms than for any other harm. (See Figure 10a). Planned comparisons between the two types of

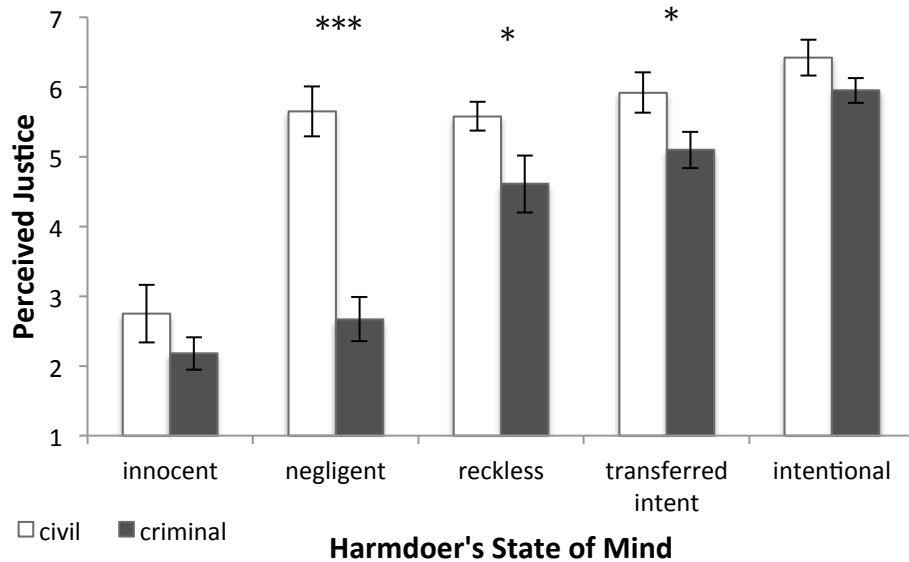
consequences also again showed significant differences in the perceived justice of criminal and civil consequences for acts committed with negligent, reckless, and transferred-intentional states of mind. Civil and criminal consequences were seen as equally just for intentional harms and equally *unjust* for innocent harms (see Figure 10b).

Fig. 10a. Perceived justice of civil consequences and criminal consequences as a function of the harm-doer's state of mind (Study 3b).⁸ The asterisks indicate significant differences between conditions, * $p < .05$, ** $p < .01$, *** $p < .001$. Error bars indicate standard errors of the mean.



⁸ Planned comparisons showed that people saw *civil* consequences as equally just for intentional, transferred-intentional, reckless, and negligent harmful actions, $p_{(\text{transferred-intentional})} = .92$, $p_{(\text{reckless})} = .64$, $p_{(\text{negligent})} = 1.00$. However, *criminal* consequences were perceived as significantly less just for all non-intentional harms than for intentional harms: innocent, negligent, reckless, and knowing $ps < .001$, $< .001$, $.002$, $.036$.

Fig. 10b. Perceived justice of civil versus criminal consequences as a function of the harm-doer's state of mind (Study 3b).⁹ The asterisks indicate significant differences between conditions, * $p < .05$, *** $p < .001$. Error bars indicate standard errors of the mean.



Again, ratings of moral culpability, responsibility, and blame formed a scale ($\alpha = .92$).¹⁰ This scale fully mediated the relationship between state of mind and perceived justice of civil penalties, indirect effect = .84, 95% C.I. {.57, 1.08}; Sobel's $Z = 7.06$, $SE = 0.12$, $p < .0001$. The scale partially mediated the relationship between state of mind and perceived justice of criminal penalties, indirect effect = .67, 95% C.I. {.49, .86}; Sobel's $Z = 6.03$, $SE = 0.11$, $p < .0001$. However, in this case, there was no significant relationship between type of consequence (criminal vs. civil) and the blameworthiness scale $t(232) = .64$, $p = .52$. (See Figures 11 and 12.)

⁹ Bonferroni-corrected planned comparisons showed that criminal consequences were seen as significantly less just than civil consequences for negligent ($t(49) = 2.89$, $p = .006$, $d = .82$), reckless ($t(55) = 2.54$, $p = .01$, $d = .67$), and transferred-intent ($t(49) = 2.89$, $p = .006$, $d = .82$) harms.

¹⁰ However, in this instance, intentional harm was seen as significantly greater than harms caused with any other state of mind, as opposed to innocent harmdoers being distinguished from those with any mental culpability, $t(78.82) = -2.4$, $p = .019$.

Figure 11: Mediation of the relationship between state of mind and assignment of civil consequences by perceived blameworthiness (Study 3b). The asterisks indicate significant differences between conditions, *** $p < .001$.

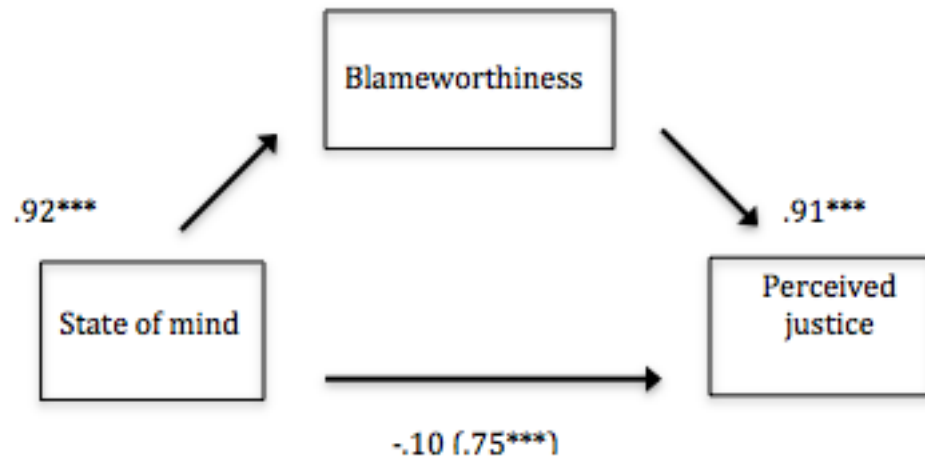


Figure 12: Mediation of the relationship between state of mind and assignment of criminal consequences by perceived blameworthiness (Study 3a). The asterisks indicate significant differences between conditions, ** $p = .01$, *** $p < .001$.



Discussion

Studies 3a and 3b present the most stringent test of the hypothesis that criminal consequences are seen as less appropriate than civil consequences when a harm is not intentional. Additionally, Study 3b provides some evidence that this phenomenon is generalizable to cases outside of simple assault; most

importantly, that this phenomenon applies to cases that, in the real world, implicate institutional choice and may not require a harmdoer to have acted intentionally.

As a whole, these studies show that even when consequences are held explicitly constant, their framing as “civil” or “criminal” causes them to be perceived quite differently. Participants see criminal outcomes as less just when harm is not caused intentionally than when it is intentionally inflicted. They also find criminal consequences to be less just than *civil* outcomes for harms that are not intentional. Civil consequences are seen as equally appropriate for harms committed intentionally and harms committed with other, less culpable, states of mind—though perhaps not for innocent harms. Participants seem to find neither criminal nor civil penalties particularly appropriate for innocent harm in the situations used in these two studies.

Two potential reasons for this difference in perception were explored in the studies, though neither provides a satisfying explanation. The dominant scholarly view in the legal literature holds that the difference between the criminal justice system and the civil justice system is that criminal justice is meant to penalize, while civil justice is meant to compensate for losses. However, I found that participants’ perceptions of justice were insensitive to whether consequences were explicitly compensatory or explicitly punitive. The second explanation, espoused by both legal and psychological scholars, suggests that moral blameworthiness plays a role in criminal, but not civil, justice; however, while the blameworthiness of the harmdoer mediates the relationship between

state of mind and perceived justice of both criminal and civil penalties, it does not answer the more interesting question of why there are *differences* in the perceived justice of criminal and civil outcomes when the harm done is not intentional.

Study 4

Study 4 takes the conclusions of the prior studies and looks at them from the opposite perspective. The prior studies show that 1) people are less likely to think that criminal penalties should be used for those who commit unintentional harms than civil penalties, 2) they are less willing to assign criminal penalties to less-than-intentional harmdoers, and 3) when criminal penalties are assessed against fully unintentional harmdoers, people find it unjust.

This pattern of findings suggests that if participants were presented with a harmdoer who was facing either criminal or civil charges, they might see the person facing criminal charges as having acted more intentionally to cause harm. Providing some suggestive evidence in this direction, Study 3a did show a difference in judgments of Mr. Blair's moral culpability depending on which kind of legal consequence he suffered.

If this intentionality inflation exists, it is likely only observable in instances where the criminal charge is seen as a just charge. If the observer believes a criminal charge is *unjust*, there is no need for him to believe that the accused must have acted intentionally. In typical situations, it is difficult to manipulate perceived justice independent of intentionality. For instance, if one attempts to suggest an unjust charge by stating that "the DA charged Mr. Blair only because

he needed another conviction to get reelected,” the necessary inference is that Mr. Blair did not act intentionally; otherwise, there *would* be a reason other than reelection for the DA to charge him. A lack of intentionality is, in many instances, the reason that the charge is unjust, so in this study, perceived justice was measured as a moderator, rather than manipulated.

Pretesting suggested that when no mental state information was given, participants overwhelmingly saw the consequences (particularly the criminal ones) as extremely unjust, rather than attributing any culpability to the harm-doer. (Perhaps the default state of mind assumption for a bicycle crash is unintentional.) A second pretest used the “negligent” vignettes from the earlier studies. Participants again saw the consequences as significantly more unjust in the criminal condition, and a backlash effect on most assessments of culpability occurred, such that harm-doers facing criminal charges were seen as *less* culpable.

Hence, in this study, I used both the “negligent” and “reckless” vignettes from the prior bicycle-crash studies. I aimed to replicate the finding of the “negligent” pretest, and to explore whether a nominally “reckless” state of mind would allow the consequences to be seen as more just, thereby allowing any actual differences in perceived civil and criminal culpability to emerge.

Method

Participants (final $N = 205$) were recruited on Amazon Mechanical Turk; 26 participants were removed for failing one or both of the check questions (“How

often have you suffered a fatal heart attack?” and “Are you paying attention to these questions? Please select option 3 if you are.”)

At the end of each vignette, a paragraph was added about the consequences Mr. Blair was facing. Pretesting also suggested that whether a civil/criminal trial was pending or had been resolved, with Mr. Blair being found guilty or liable, did not impact responses. Therefore, I continued with the versions where the case was pending, because any inferences people might make about Mr. Blair are more powerful if they are based solely on a charge, rather than a decided case.

In the *civil* version, the consequence read: “As is appropriate under the laws of his state, Mr. Blair is sued by the other cyclist for his injuries. The trial is pending. If he is found liable, he will have to pay for the other cyclist's medical bills.”

In the *criminal* version, the consequence read: “As is appropriate under the laws of his state, Mr. Blair is arrested and charged with a misdemeanor – third-degree battery – for injuring the other cyclist. The trial is pending. If he is found guilty, he will be ordered to pay restitution to the other cyclist for his medical bills.”

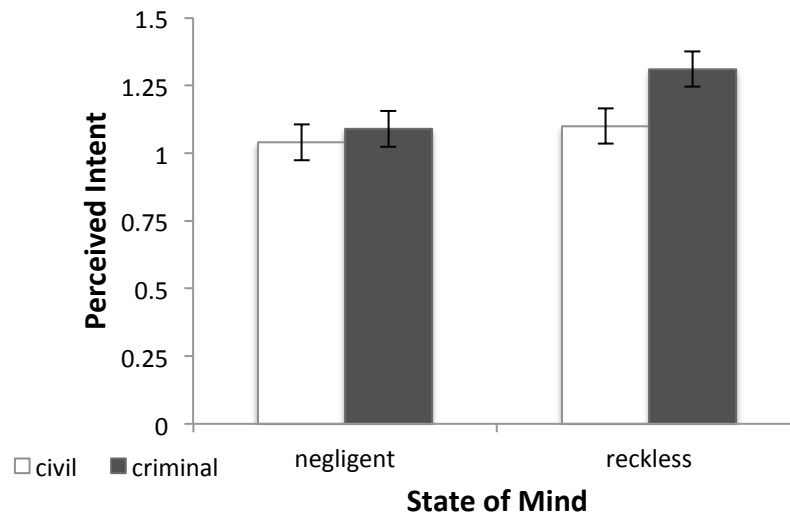
Participants then answered a series of questions exploring potential mediators (e.g., moral culpability, harm, etc.). A full list of questions is available in the Appendix. After answering these questions, participants assessed Mr. Blair's intentionality in two ways. Due to a lack of variance in the prior studies (only participants in the intentional condition were responding “yes”), the

dichotomous question (“Did Mr. Blair injure the other bicyclist intentionally?”) from Studies 2 and 3 was changed to a 6-point scale, from 1=“*Absolutely no*” to 6=“*Absolutely yes*.” The second intentionality judgment was the same as in Studies 2 and 3. Last, participants answered questions about the objectivity, fairness, and vengefulness of the plaintiff or prosecutor, and the justness of the (civil or criminal) consequence.

Results

The critical dependent variables were the two distinct measures of intentionality. On the first measure, which was the scale from “*Absolutely no*” to “*Absolutely yes*”, participants were generally unlikely to see the harm as intentional (overall $M = 1.14$). However, participants saw the nominally “reckless” act ($M = 1.21$) as significantly more intentional than the “negligent” act ($M = 1.07$), $F(1, 198) = 4.63$, $p = .03$, $\eta_p^2 = .02$. Participants also saw the act as more intentional when Mr. Blair potentially faced criminal consequences ($M = 1.20$) than when he potentially faced civil consequences ($M = 1.07$), $F(1, 198) = 4.15$, $p = .04$, $\eta_p^2 = .02$. The interaction between state of mind and type of consequence was not significant. (See Figure 13).

Fig. 13. Perceived intent of harm-doers as a function of state of mind and whether they are facing civil or criminal consequences (Study 4). Both civil/criminal and negligent/reckless comparisons are significant at $p < .05$. Error bars indicate standard errors of the mean.



Perceived justice was then analyzed as a moderator. Participants rated the outcomes as relatively just (overall $M = 4.59$), but rated criminal consequences ($M = 4.19$) as significantly less just than civil ($M = 5.01$), $F(1, 199) = 12.34$, $p = .001$, $\eta_p^2 = .06$. State of mind (negligent versus reckless) did not impact justice judgments, nor did it interact with the type of consequence to affect justice judgments. Including perceived justice in an ANCOVA suggested in addition to type of consequence and state of mind, perceived justice was a significant predictor of intent, $F(1, 198) = 4.18$, $p = .04$, $\eta_p^2 = .02$.

Differences in the perceived justice of the outcome did moderate the effect of type of consequence on perceived intent. Including perceived justice as a predictor by itself significantly improved the model, and the interaction of perceived justice and type of consequence also significantly predicted greater perceived intent. The interaction of perceived justice and state of mind did not (β

= .84, $p = .51$), so for clarity, it is not included in Table 1 below. Criminal outcomes increased judgments of intentionality only when participants perceived the outcome as just; the perceived justice of civil outcomes did not impact intentionality judgments. Adding this interaction significantly improved the fit of the model. See Table 1 below, and see Figure 14 for a comparison of intent judgments at low, mean, and high levels of perceived justice.

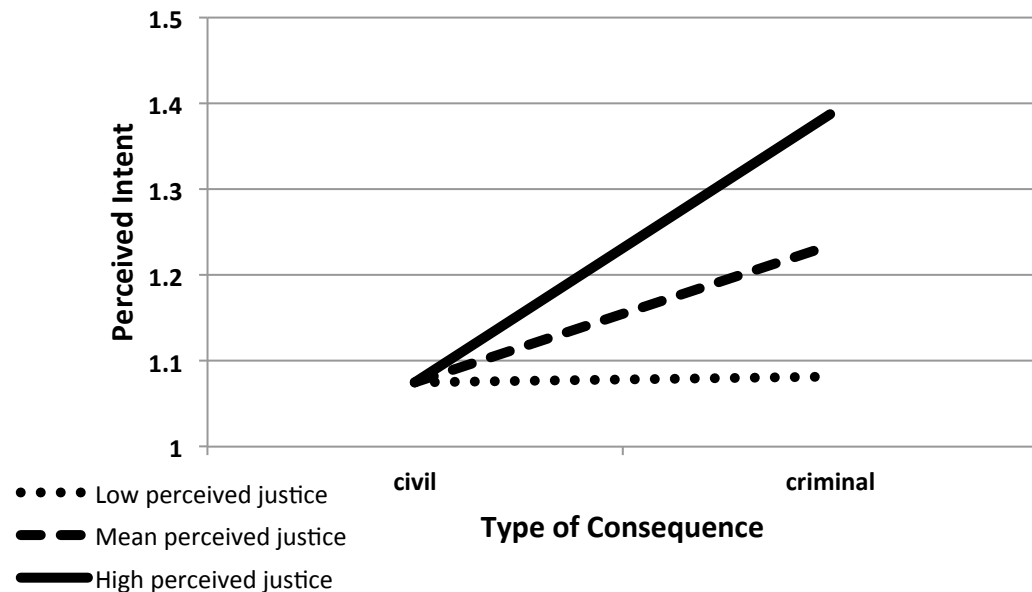
Table 1

Summary of Hierarchical Regression Analysis for Variables Predicting Perceived Intent

Variable	Model 1 (effect of state of mind and type of consequence on perceived intent)			Model 2 (Model 1 + effect of perceived justice of the outcome on perceived intent)			Model 3 (Model 2 + effect of the interaction between consequence type and perceived justice on perceived intent)		
	<i>B</i>	<i>SE B</i>	β	<i>B</i>	<i>SE B</i>	β	<i>B</i>	<i>SE B</i>	β
Increased Mental Culpability	0.14	0.07	0.15*	0.14	0.07	0.14*	0.13	0.07	0.14*
Criminal Consequence	0.13	0.07	0.15*	0.17	0.07	0.17*	0.16	0.07	0.17*
Perceived Justice of Consequence				0.04	0.02	0.15*	-0.008	0.03	-0.03
Criminal Consequence x Perceived Justice							0.09	0.04	0.23*
R^2		0.04			0.06			0.08	
F		4.31*			4.40**			4.51**	
ΔR^2					0.02			0.02	
ΔF					4.44*			4.58*	

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

Fig. 14. Perceptions of intent as a function of type of consequence (civil/criminal) and perceived justice of the consequence (Study 4).



On the second intentionality measure, which asked participants to rate the harmdoer's intentionality using a spectrum from innocent to intentional, participants were again generally unlikely to see the harm as intentional (overall $M = 2.7$, near "negligent" on the spectrum). Participants again saw reckless acts as more intentional than negligent acts, $F(1, 198) = 12.37, p = .001, \eta_p^2 = .06$, but in contrast with the other intentionality measure, when perceived justice was included in an ANCOVA, justice was a strong predictor of perceived intent, $F(1, 198) = 36.17, p < .001, \eta_p^2 = .15$, while the type of consequence (criminal vs. civil) did not predict perceived intent, $F(1, 198) = .858, p = .64$. Thus, with this intent measure, perceived justice was not a moderator of perceived intent.

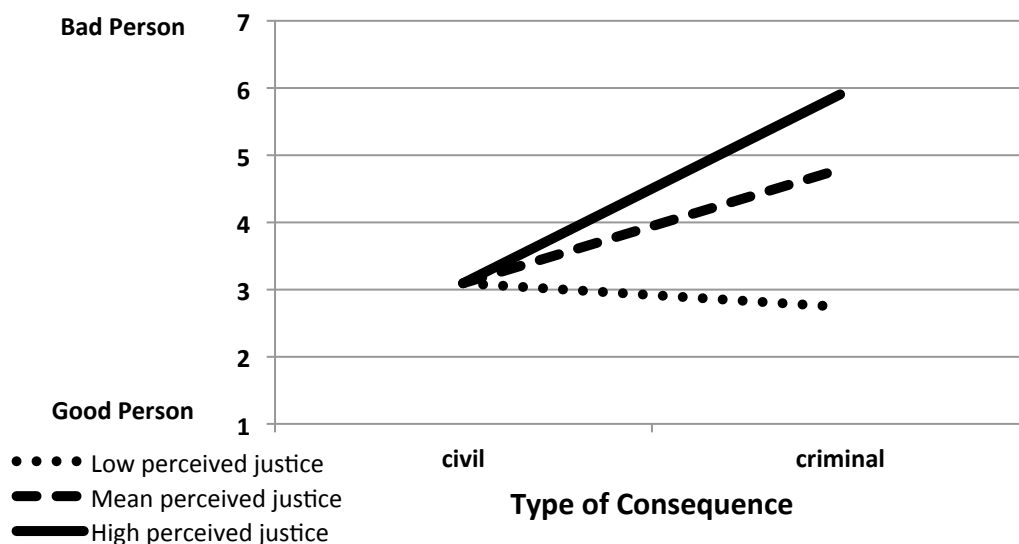
Thus, the key questions regarding whether type of consequence affected perceived intent were significantly influenced by participants' perceptions of justice. Participants perceived defendants facing a criminal charge to have acted more intentionally when they perceived the charge as just, but this effect was not observed in those who saw the criminal charge as unjust. The perceived justice of a civil suit did not predict participants' perceptions of the actor's intent. Perceived justice had a strong impact on nearly all of the other dependent variables as well; indeed, for the second intent measure, the perceived justice of the consequence was a stronger predictor of perceived intent than the type of consequence was.

There continued to be a significant amount of backlash against less-just penalties expressed in these other dependent variables; e.g., participants believed that the harm-doer facing criminal charges less deserved to be punished ($F(1, 201) = 10.70, p = .001$) and was less responsible for the harm ($F(1, 201) = 4.93, p = .028$) than his civil counterpart. Participants also believed that the prosecutor was less fair than the plaintiff ($F(1, 201) = 8.28, p = .004$).

There was also a significant backlash effect on most of the variables tested as potential psychological mechanisms to explore in future studies. Generally, no significant effects were seen, which was an outcome driven by participants who were below the mean on perceived justice. Two potential mediators did show effects to be explored further. These were questions about whether Mr. Blair had normal human feelings, and whether Mr. Blair was a good or a bad person. Participants believed that harm-doers who were facing criminal

charges ($M = 6.27$) were less likely to have normal human feelings than those facing civil charges ($M = 6.59$), $F(1, 201) = 6.36$, $p = .01$, $\eta_p^2 = .03$. Perceived justice had no impact on this difference. Across all participants, people were also marginally more likely to believe that Mr. Blair was a less good person when facing criminal charges than when he faced civil charges ($\beta = .13$, $p = .07$). Here, perceived justice also significantly predicted participants' views; collapsed across type of consequence, when the outcome was perceived as just, participants believed Mr. Blair to be a less good person ($\beta = .17$, $p = .02$). However, perceived justice also significantly moderated the effect of type of consequence, such that participants who saw the outcome as just were significantly more likely to think less of Mr. Blair when he faced criminal charges than when he faced a civil suit, $\Delta F(1, 199) = 4.74$, $p = .031$, $\Delta R^2 = .022$ (See Figure 15).

Fig. 15. Perceptions of character as a function of type of consequence and perceived justice of that consequence (Study 4).



Discussion

In part, the data showed the anticipated pattern—harm-doers facing criminal charges were perceived as having acted more intentionally than those facing civil charges. However, perceived justice of the consequences significantly impacted the intent measures and nearly all of our potential mechanism measures—in most instances, by causing a backlash effect against criminal consequences. This backlash could be due to the fact that participants are rating what legally would be considered “reckless” behavior—checking your bicycle tire, explicitly deciding it might blow out, and choosing to go for a ride anyway—almost exactly at the “negligent” point on the scale ($M = 2.94$). Future studies may need to further elevate the initial description of culpability of the harm-doer’s state of mind or the severity of the harm to see if the difference in perceived intent or in any of the potential mediators becomes more exaggerated as the harm-doer’s state of mind is generally *perceived* as reckless. Needing something more culpable than a negligent state of mind to perceive greater intent is in line with Mueller, Solan, and Darley’s (2012) findings; in several studies, participants were willing to call reckless (but not necessarily negligent) behavior intentional when legal consequences depended on perceptions of intent. The effect of perceived justice on estimates of intent merits further exploration. Manipulating the perceived legitimacy of the justice system and asking participants about harmdoer intent is the logical next step. Additionally, while preliminary, the findings regarding perceptions of those charged with a crime having less normal human feelings and being a less good person suggest that dehumanization of criminals may

begin well prior to conviction (see Judge Posner's opinion in *Johnson v. Phelan*, 1995).

Chapter One Discussion

These studies show that laypeople do have stable intuitions about the appropriateness of criminal and civil consequences. They prefer criminal penalties to be reserved for truly intentional acts. Criminal penalties are seen as less just than civil penalties when they are applied to harm-doers who act with a less culpable degree of *mens rea*. Study 1 finds that this basic difference in perceived justice exists; participants believe criminal penalties with no intent requirement are less just than both criminal penalties *with* an intent requirement and civil penalties with no intent requirement. Study 2 shows that participants are less likely to choose to assess criminal consequences than civil consequences against a non-intentional harmdoer. Studies 3a and 3b hold criminal and civil outcomes explicitly equal, and show that participants still see the criminal consequence as less just than the civil consequence, except when the harm is truly intentional. These findings all suggest that the current crop of strict liability laws may not comport with lay intuitions about the relationship between justice and institutional choice.

Finally, Study 4 shows a perverse effect of having harms that can lead to both civil and criminal consequences: Harm-doers merely facing criminal charges—not even those who are found guilty—are seen as having acted more intentionally than harm-doers who committed the same act, but face a civil suit. Additionally, these harm-doers are seen as less *good* people, and in fact, as less

human people. This provides initial evidence that the “presumption of innocence” may be even more of a fallacy in jurors’ minds than already thought. This will be especially critical if the same inflation of perceived intentionality and degradation of personhood occurs for crimes that do not have an intent requirement.

Further work is needed to explore the psychological mechanism of both effects explored in this set of studies. While moral blameworthiness does some of the work to explain perceptions of justice, in Study 2, it only partially explains participants’ desires to assign criminal consequences. In Study 3, while it explains people’s perceptions of justice of both civil and criminal consequences, it does not explain the consistent *difference* in the perceived justice of criminal and civil consequences, which is the most interesting finding. Study 4 provides initial evidence for inflations of intent when a harm-doer is facing criminal penalties, but it does not provide much information about why this may be occurring. Chapter 2 will explore a different potential psychological mechanism for explaining the civil/criminal difference.

CHAPTER 2: MORALITY AND MIND PERCEPTION IN THE JUSTICE SYSTEM

Chapter Summary

In the previous chapter, I found that laypeople consistently perceived equivalent criminal and civil consequences differently. However, contrary to other scholarship, I found that this difference was not due to differences in perception of the moral opprobrium aimed at a harm-doer by each system. This chapter explores another potential difference in lay perceptions of criminal and civil consequences: a focus on the harm-doer as opposed to a focus on the victim.

Two studies show that information about the harm-doer affects judgments in criminal cases, while information about the victim affects judgments in civil cases. This effect is due, in part, to perceptions of agency of the parties in a case. Two more studies further explore the interplay between perceived agency and victimhood, finding that victims who act agentically are seen as less ideal victims, and are therefore blamed more and compensated less. Ramifications for the role of victims in their own justice process are explored, and recommendations for the application of evidentiary rules are made.

Introduction

How do moral judgments operate in our legal decisions? Classically, psychologists and legal scholars have claimed that the central role of morality in the American legal system is to differentiate punishment from compensation, or more generally, criminal from civil justice (e.g., Carlsmith & Darley, 2008; Drane & Neal, 1980). The expressive capacity of criminal law—its ability to morally condemn an offender—is seen by scholars as its distinguishing feature (e.g., Hedman, 1991; Robinson, 1996; Sunstein, 1996). In contrast, civil liability is not generally thought to signal such moral condemnation (Darley & Pittman, 2003; Robinson, 1996).

In the previous chapter, I explored whether this moral aspect of criminal law would cause the perceived appropriateness of civil and criminal consequences for various acts to differ. I had hypothesized that participants would not necessarily need to be morally outraged at a harmdoer to believe that civil compensation of victims was appropriate, but that some moral outrage would be necessary for them to want to assess a criminal fine (Carlsmith & Darley, 2008; Darley & Pittman, 2003). However, I found that moral culpability judgments were relevant to both civil and criminal consequences, and did not explain differences in the perceived justness of or the willingness to assign criminal versus civil consequences.

The fact that moral judgments did not explain either consistent differences in willingness to assess criminal and civil consequences, or the perceived

justness of consequences others assessed, sharply contrasts with the prevailing views about the difference between the criminal and civil systems. This surprising finding compelled us to seek another explanation for laypeople's differing perceptions of criminal and civil consequences.

Besides the differing expressive values of the two systems, another distinction is the *focus* of criminal and civil proceedings. Throughout the *criminal* process, the focus is on the offender. Police often search for a harm-doer's motive when deciding whether to charge the suspect; juries are asked to assess the harm-doer's state of mind when acting (e.g., negligent, reckless, intentional); and sentencing can be affected by a harm-doer's past actions and personal characteristics (aggravating, mitigating) (Klinge, Scott, & Dickey, 2010). Nothing in these decisions needs to take the victim's interests into account. Many have argued that criminal justice's focus on the harm-doer neglects the victim's interests (e.g., Braithwaite, 1999; Henderson, 1985; Weitekamp, 1993). This asymmetry has led some scholars to advocate for a change to a restorative justice model, which incorporates more of the victim's needs, in the criminal process (e.g., Darley & Gromet, 2010; Gromet & Darley, 2009; Gromet, Okimoto, Wenzel, & Darley, 2012).

Conversely, in *civil* cases, particularly in tort law, the victim takes a more central role. The purpose of tort law, as typically stated, is to "make the victim whole" (Holmes, 1881; Prosser & Keeton, 1984). Indeed, as Judge Cardozo's classic opinion in *Palsgraf* makes clear, without a victim, there is generally no cause of action: "What the plaintiff must show is 'a wrong' to herself; i.e. a

violation of her own right, and not merely a wrong to someone else, nor conduct 'wrongful' because unsocial, but not 'wrong' to anyone" (*Palsgraf v. Long Island R.R. Co.*, p. 100). Under some theories, the efficacy of the tort system depends entirely on the actions of the person who suffers harm (e.g., civil recourse, Zipursky, 1998; Zipursky & Goldberg, 2005).

I propose that laypeople have internalized this difference in focus between criminal and civil cases, and developed different schemata for them (Fiske & Taylor, 2013; Hastie, 1981). Some research on prototypical crimes suggests that people's schemata for criminal cases do involve more information about harm-doers and their acts than about the people who are harmed (e.g., Green, 2000; Smith, 1991; Smith, 1993). Conversely, prototypical civil cases may involve more attention to the victim (e.g., Grey, 2001). I predict that this difference in focus will make information about either the harm-doer or the victim more salient. This heightened salience may, in turn, cause one's perceptions of the harm-doer to drive decisions in criminal cases, while one's perceptions of the victim should do the same in civil cases (Taylor & Fiske, 1978).¹¹ Landy and Aronson (1969) provide some evidence for this hypothesis. They manipulated the character of both the harmdoer and victim in a series of vignette studies describing only criminal cases. They found strong effects of defendant character on sentencing. However, while the effect of victim character was trending in the right direction (victim with positive characteristics leads to greater punishment for the defendant), it did not reach significance.

¹¹ While this paper will use this difference to compare people's judgments in civil and criminal cases, I do not claim that the findings are specific to that divide. The underlying psychological mechanism would predict the same pattern of judgments in any other situations in which focus on the harmdoer or victim is more salient.

It is likely that any difference in focus on the harm-doer versus the victim is general, such that manipulations of many kinds of information about harm-doer and victim could differentiate perceptions of criminal and civil cases. However, some types of information are more powerful than others. Notably, information about moral character has been shown to affect people's judgments of harm-doers, including those regarding blame, intent, and punishment (e.g., Alicke, 1992; Alter, Kernochan, & Darley, 2007; Eisenberg & Hans, 2009; Holyoak & Simon, 1999; Pizarro & Tannenbaum, 2011). In fact, even when a harm-doer's moral character is separate from the harmful act itself and other related acts, it can impact judged responsibility, blame, and causality (e.g., Alicke, 2000; Nadler, 2012; Nadler & McDonnell, 2011).

A more restricted body of research focuses on effects of information about the moral character of victims. Many of these papers focus on the role of victims in rape cases.¹² A woman's allegedly questionable moral character (e.g., drinking, drug use, premarital sex) disadvantages her throughout (e.g., Burt & Alvin, 1981; Galvin, 1986). Prosecutors are less likely to file charges in the first place (e.g., Spohn, Beichner, Frenzel, & Holleran, 2002). Convictions are less likely, and sentences are shorter, when a woman's sexual history is mentioned, even if her experience is relatively limited (L'Armand & Pepitone, 1982). In one study, a woman's moral character influenced jurors even more than pieces of actual evidence, including eyewitnesses, use of a weapon, and injury to the victim (LaFree, Reskin, & Visser, 1985). Another set of studies examined civil

¹² Despite being a criminal cause of action, rape cases often create a situation in which the victim plays an active role in the proceedings. Because of their agentic actions, victims in these cases may be viewed more like victims who bring civil suit than most criminal victims would be.

sexual assault cases, both naturalistically and experimentally, and found victim moral character influential there as well (Shen, 2011).

The law is conscious of these potential negative effects of moral character. Federal Rule of Evidence 412 and many “rape shield” statutes limit introduction of evidence regarding a victim’s sexual history or behavior; however, many loopholes remain (Hilsheimer, 2009; Shen, 2011). More generally, Federal Rule of Evidence 404(a) specifies that character evidence is generally inadmissible to prove that a person acted in accordance with that character, and lists specific limited exceptions in criminal cases.¹³ However, character evidence may be introduced when relevant to the cause of action (e.g., fraud, defamation), and it often can be admitted in other guises (e.g., a person’s habit or routine, witness credibility). Regardless of the provision under which the character evidence is introduced, it is still subject to Rule 403’s test: Does its potential prejudicial nature outweigh its probative value? (Hilsheimer, 2009).

Given the potency of moral character information, and the legal system’s current safeguards, I chose to manipulate harm-doer and victim moral character in our studies, in addition to manipulating the type of case (criminal or civil). If there is an asymmetry in the use of character information in criminal and civil cases (as I suggest), the calculus as to whether it is more probative than prejudicial should perhaps be shifted depending on the type of case (criminal vs. civil).

¹³ One set of exceptions allows for impeachment of witnesses based on the witness’s reputation for truthfulness or untruthfulness, and in some instances, based on his criminal record. The other set allows for defendants to offer evidence about their own character or the victim’s character, subject to rebuttal by the prosecutor, including introduction of further character evidence regarding the defendant. The prosecutor may also introduce evidence of a homicide victim’s peaceful character to rebut evidence that the victim was the first aggressor.

Overview of Experiments

No research has yet investigated whether a harm-doer's moral character may differentially affect civil versus criminal judgments, nor has much research explored any interaction between harm-doer and victim moral character. The studies presented here take identical sets of facts and explore whether the framework of "civil" versus "criminal" leads people to use identical moral character information in different ways. The studies also provide first steps toward a psychological explanation of this difference, and suggest potential consequences of this differential use of information.

The first two studies manipulate the moral character of the harm-doer and the victim. The third and fourth studies focus on the victim, investigating what characteristics make for a "good" or "bad" victim. All studies used Mechanical Turk for online recruitment. Participants were paid a base rate as well as a bonus for answering the comprehension and attention checks correctly. Those who participated in one study were blocked from participating in subsequent others.

Study 1

Method

Mechanical Turk participants (final $N = 311$) were randomly assigned to one of eight conditions in a 2 (harm-doer moral character) x 2 (victim moral character) x 2 (civil or criminal outcome) design; 18 participants were excluded for incorrectly responding to one or both comprehension checks.

Participants read a vignette describing a two-car accident, based loosely on Alicke's (2000) scenario. (See Appendix for the full text.) In the vignette, one driver (hereafter, the "harm-doer") collided with the other driver (hereafter, the "victim"), causing damage, while remaining relatively uninjured himself. In actuality, there are (fortunately) few situations of unambiguous villainy against completely innocent victimhood, particularly in traffic cases. Thus, as is generally the case in the real world, I chose to have both drivers exceeding the speed limit by 10 miles an hour. The moral character manipulation related to the reasons why each was speeding. Two instantiations of negative and positive moral character were needed so that the scenarios did not feature drivers involved in an accident who just happened to be speeding for the same reason. In the negative moral character conditions, the driver either was speeding home to hide from his wife a present that he had bought for his mistress, or was speeding to bring signs to a protest by a Westboro Baptist Church-like group.¹⁴ In the positive moral character conditions, the driver either was speeding home to hide from his wife a present that he had bought for their anniversary, or was speeding to bring the necessary keys to a church group gathered to perform community service. Last, participants read either:

Kevin was sued by Richard for reckless driving that resulted in bodily harm. If Kevin is found liable, he will likely have to pay compensation to Richard for injuries and damage.

or:

¹⁴ Several potentially immoral acts were pretested for the extent of their immorality. These two scored similarly, and were among the most immoral.

Kevin was charged with reckless driving that resulted in bodily harm, a misdemeanor. If Kevin is found guilty, he will likely have to pay a fine, which will go to Richard to cover injuries and damage.¹⁵

Participants then responded to comprehension checks about why the drivers were speeding and manipulation checks about the morality of the drivers. The key dependent variables were questions about the extent of responsibility of each of the drivers for the accident. I included an additional question about how much the harm-doer should have to pay the victim (either as civil damages or a criminal fine), telling them to assign a value between 0 and \$100,000, and that the average award in similar cases—if damages were awarded—was \$25,000.

Results

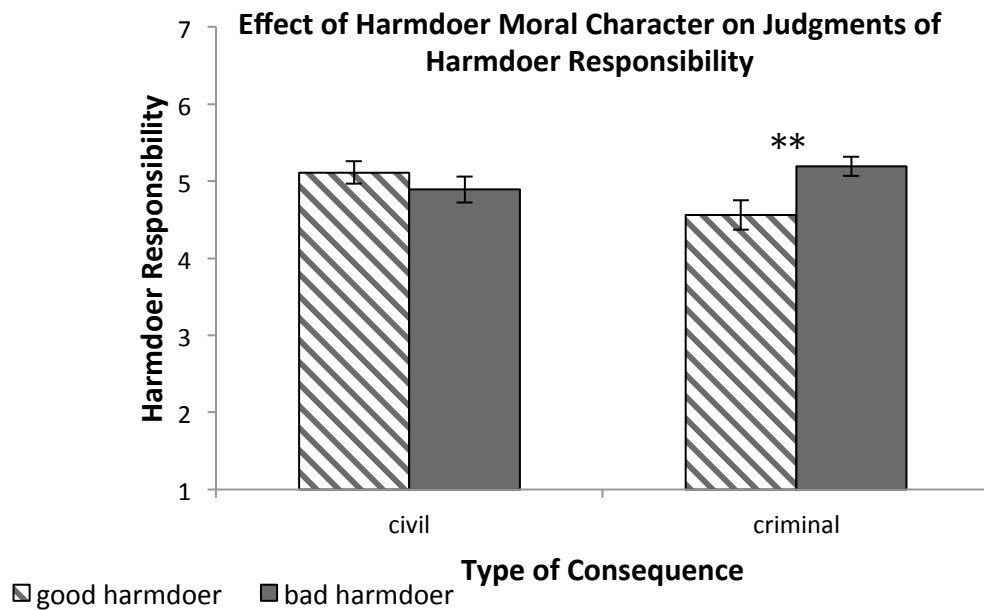
The moral character manipulation was successful; “bad” harm-doers ($M = 5.58$) were rated significantly more immoral than “good” harm-doers ($M = 2.08$), $t(309) = -27.31, p < .001, d = -3.1$, as were “bad” victims ($M = 4.80$) when compared to “good” victims ($M = 2.21$), $t(309) = -15.71, p < .001, d = -1.8$.

No significant three-way interaction emerged among harm-doer moral character, victim moral character, and type of legal consequence on judgments of harm-doer responsibility. In order to test whether harm-doer moral character had a greater impact in criminal than civil cases, I looked at the interaction between moral character and case type, and found that it was significant. In criminal cases, harm-doer moral character impacted judgments of harm-doer responsibility—“bad” harm-doers were, unsurprisingly, seen as more responsible—but it did not significantly impact judgments of harm-doer

¹⁵ The names of the drivers were counterbalanced; there was no significant effect of name order.

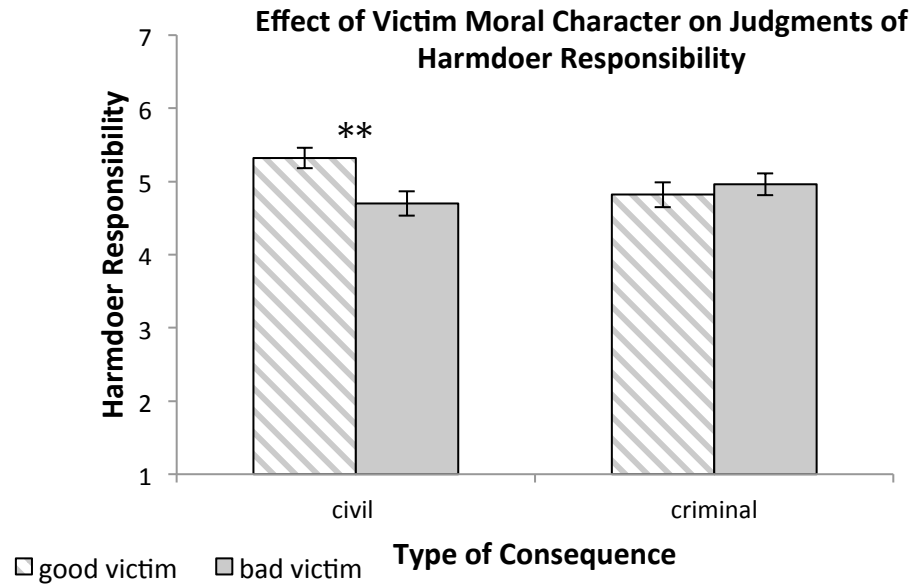
responsibility in civil cases, $F(1, 303) = 7.29, p = .007, \eta_p^2 = .02$. The simple effect of harm-doer moral character in criminal cases was also significant, $t(148) = -2.82, p = .005, d = -.46$; see Figure 16.

Fig. 16. Judgments of harm-doer responsibility as a function of harmdoer moral character and type of case (civil vs. criminal) (Study 1). The asterisks indicate significant differences between conditions, $** p < .01$. Error bars indicate standard errors of the mean.



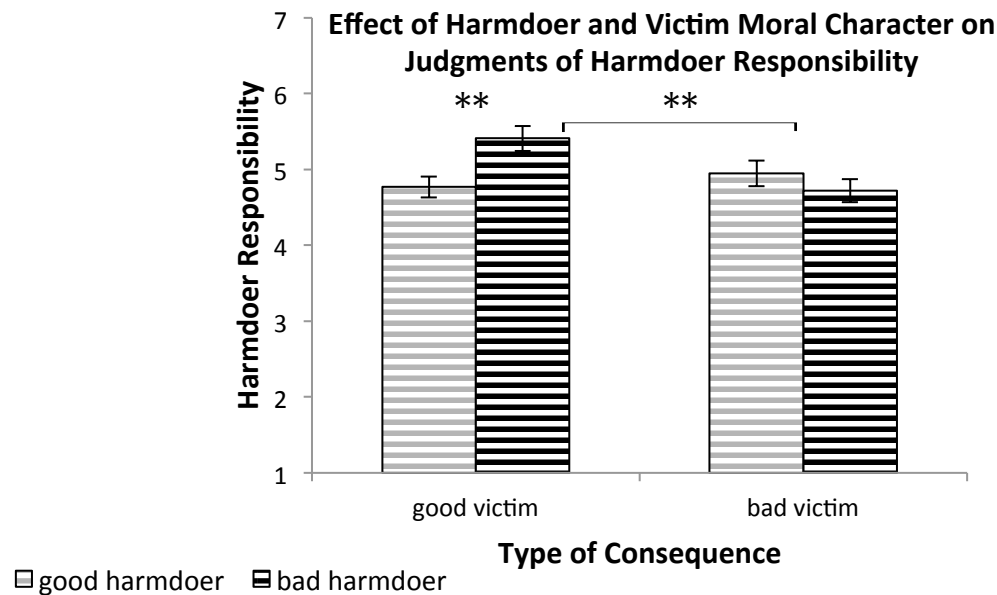
In looking at the same interaction for victim moral character and case type, I found, conversely, that *victim* moral character impacted judgments of harm-doer responsibility in civil cases, but not in criminal cases, $F(1, 303) = 6.07, p = .01, \eta_p^2 = .02$. In civil cases, harm-doers were seen as *less* responsible when the victim was “bad” than when he was “good;” simple effect: $t(159) = 2.85, p = .005, d = .45$. See Figure 17.

Fig. 17. Judgments of harm-doer responsibility as a function of victim moral character and type of case (civil vs. criminal) (Study 1). The asterisks indicate significant differences between conditions, ** $p < .01$. Error bars indicate standard errors of the mean.



Additionally, though not relevant to the central hypothesis, I found a significant interaction between harm-doer and victim moral character, $F(1, 303) = 8.67$, $p = .003$, $\eta_p^2 = .03$. This showed that a “bad” harm-doer who harmed a “good” victim was seen as significantly more responsible than any other harm-doer/victim pairing; a bad harm-doer was seen as more responsible when there was a good victim than a bad victim, $t(156) = 3.43$, $p = .001$, $d = .55$, and only when the victim was good, a bad harm-doer was more responsible than a good harm-doer, $t(148) = -2.99$, $p = .003$, $d = -.49$. See Figure 18.

Fig. 18. Judgments of harm-doer responsibility as a function of harm-doer and victim moral character (Study 1). The asterisks indicate significant differences between conditions, ** $p < .01$. Error bars indicate standard errors of the mean.

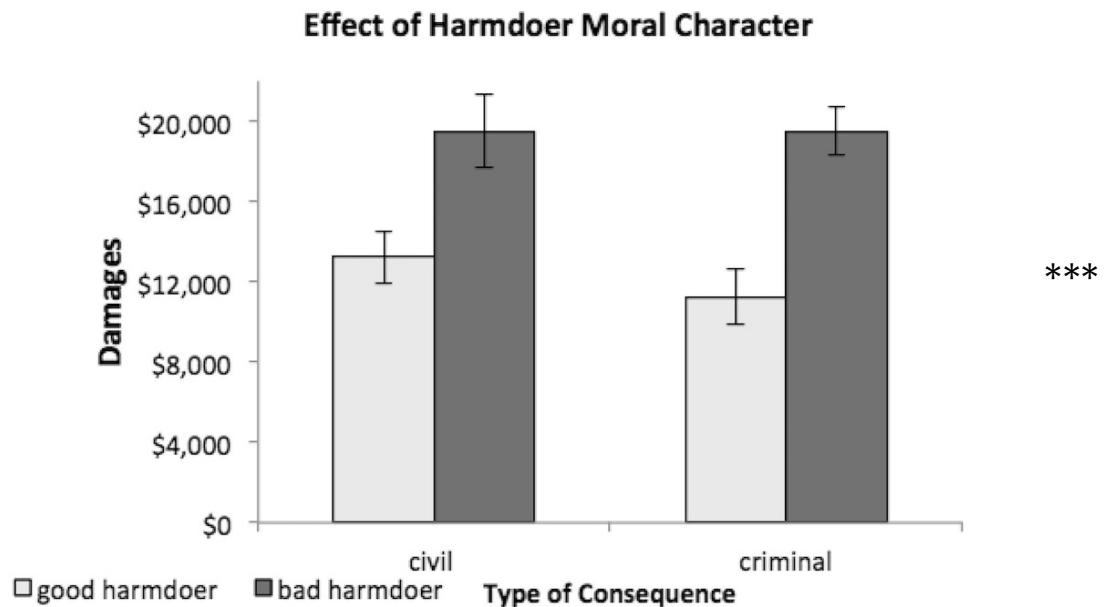


Judgments of victim responsibility did not show corresponding effects. No interactions were significant, nor was there a main effect of victim character. However, there was a main effect of harm-doer moral character, $F(1, 303) = 4.85$, $p = .03$, $\eta_p^2 = .016$, such that, surprisingly, victims were held more responsible when a harmdoer was “bad” ($M = 3.49$) than when he was “good” ($M = 3.14$).

There was no overall difference between criminal and civil cases in amount of damages awarded. Both harm-doer and victim moral character, however, affected the amount of damages (or amount of a criminal fine) participants were willing to assess. Harm-doer moral character affected assessment of damages in both criminal and civil cases; participants believed that harm-doers with bad moral character should pay more in damages ($M =$

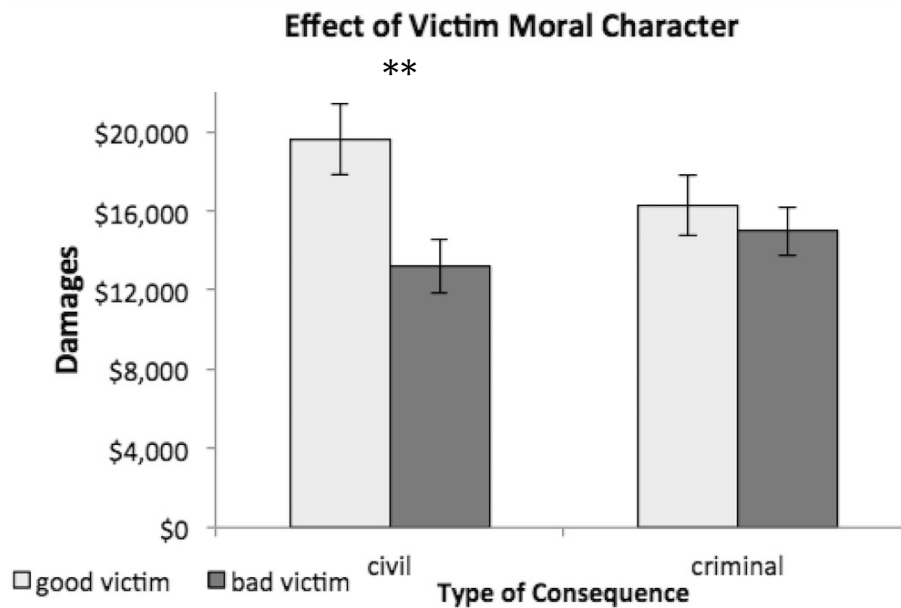
\$19,506) than those with good moral character ($M = \$12,324$); $F(1, 303) = 26.99$, $p < .001$, $\eta_p^2 = .08$. Participants also believed that victims with bad moral character ($M = \$14,071$) should receive less than those with good moral character ($M = \$18,013$); $F(1, 303) = 8.46$, $p = .004$, $\eta_p^2 = .03$. However, this effect was driven by civil cases; damages differed based on victim moral character only in civil cases, $t(159) = 2.87$, $p = .005$, $d = .46$. Victim moral character did not impact damages judgments in criminal cases ($p = .51$)¹⁶; see Figures 19a and 19b.

Fig. 19a. Judgments of compensatory damages or restitution as a function of harm-doer moral character (Study 1). The asterisks indicate significant differences between conditions, *** $p < .001$. Error bars indicate standard errors of the mean.



¹⁶ The interaction between victim character and type of consequence was marginally significant, $F(1, 303) = 2.99$, $p = .08$, $\eta_p^2 = .01$.

Fig. 19b. Judgments of compensatory damages or restitution as a function of victim moral character (Study 1). The asterisks indicate significant differences between conditions, ** $p < .01$. Error bars indicate standard errors of the mean.



Discussion

Judgments of harmdoer responsibility supported our hypothesis about differential use of moral character information. Participants used information about the harmdoer to judge his responsibility only when they were told that he had been criminally charged with reckless driving, rather than civilly sued for reckless driving. On the other hand, participants used information about the victim to make judgments about harm-doer responsibility only when the victim sued the harm-doer, and not when a criminal charge was brought against the harm-doer.

These findings add another dimension to theories about the place of morality in the justice system. Instead of a simple effect of moral culpability that drives judgments of responsibility in criminal cases and not civil cases, there is a

complex but psychologically plausible interplay among the moral character of the harm-doer, the moral character of the victim, and the type of case.

Study 2

The next study was aimed at investigating a psychological mechanism to explain these differences. One psychological model suggests that morality may be essentially dyadic (Gray, Young, & Waytz, 2012). That is, the template for a moral action involves a harm-doer (an agent) and one who suffers harm (a patient).¹⁷ Agents are active, and are likely to be perceived as causal influences. Patients can be acted upon, and receive the effects of agents' causal influences. The model's claims about the nature of dyadic morality easily applies to legal conflicts, which are inherently two-sided, even if they involve more than two individuals.

Most of the current psychological work has primarily explored agency, and addressed patiency only incidentally (e.g., Malle, 1999; Epley & Waytz, 2009; Malle & Holbrook, 2012). Much of the work on moral judgments within the legal system has also concentrated on various questions relating to harm-doers and their intentions (e.g., Darley, Solan, Kugler, & Sanders, 2010; Mueller, Solan, & Darley, 2012; Nadler & McDonnell, 2011; Shen et al, 2011). By focusing on the harm-doer, both the legal and the psychological research overlook the potential impact of the moral characteristics of the victim. This impact is likely to be greatest in situations where the victim does not passively accept a patientic role: for instance, when a victim brings a civil suit against a harm-doer. If the

¹⁷ This may apply to positive moral actions as well, but most of the literature merely footnotes this point and restricts analysis to negative moral actions.

schemata people have regarding criminal and civil cases are fundamentally related to perceptions of agency and patiency (as I propose that they are) harm-doers should be perceived as more agentic in criminal cases, and victims should be perceived as more agentic in civil cases, relative to each actor in the converse case.

Such a difference in perceived agency could explain the general difference in focus, because we are more likely to pay attention to agentic individuals: those who have the capacity to act on their intentions (e.g., Fiske, Cuddy, & Glick, 2007; Gray, Gray, & Wegner, 2007). Additionally, as a protective measure, agents who are perceived to have negative intention are even more salient (e.g., Anderson, 1965; Fiske, 1980; Kanouse & Hanson, 1972; Morewedge, 2009; Rosset, 2008; Weiner, 1985; Wojciszke, Brycz, & Borkenau, 1993).

In Study 2, I hypothesized that, in criminal cases, harm-doers with bad moral character would be seen as more agentic than those with good moral character. The same would be true for victims in civil cases. This increased agency would then predict judgments of responsibility, because actors who are more agentic are also viewed as more causal.

I also wanted to use Study 2 to further explore inferences about the victim. The lack of corresponding effects on victim responsibility in Study 1 is perhaps not as surprising as it initially seems. Despite the fact that both drivers were speeding, in this vignette, one car clearly crashed into the other, as opposed to a situation where fault might more clearly be shared. There is very little justification

in this case for saying that the “victim” was in fact *responsible* for being hit. I decided to assess blame in addition to responsibility in Study 2, in order to shed more light on whether judgments about victims are being made differently based on civil or criminal context as well.

Method

Mechanical Turk participants (final $N = 298$, 25 were removed for failing the comprehension and/or attention checks) were assigned to the same conditions and read the same vignette as in Study 1. I replicated the main dependent variables (responsibility judgments), and participants judged harm-doer and victim blame as well. Items assessing perceived agency of the harm-doer and the victim were also added. These items were exploratory in nature, as agency is generally seen as a positive attribute, and most studies assessing agency have used adjectives that are quite positively valenced (e.g., clever, industrious, self-confident). When they addressed “negative agency,” they generally meant a lack of agency (e.g., aimless, messy, passive). Here, I specifically wished to assess perceived “positive” agency of people who may have a negative moral character. Based on previous work (Abele & Bruckmüller, 2011; Gray, Jenkins, Heberlein, & Wegner, 2011), I chose eight items: from the first body of research, *assertive*, *active*, *competent*, *determined*, *effective*; from the second, *capable of self-control*, *capable of remembering*, *capable of moral/immoral action*. Participants rated both the harm-doer and the victim on each of these dimensions.

Results

Responsibility

Participants' judgments of harm-doer blame and responsibility were highly correlated— $r(292) = .79, p < .001$ —therefore, for the following analyses, I combined them to form a single index. The key results from Study 1 replicated.¹⁸ Harm-doer moral character and type of legal consequence had an interactive effect on judged harm-doer blame and responsibility: $F(1, 284) = 5.30, p = .022, \eta_p^2 = .018$. Again, harm-doer moral character influenced judgments only when the harm-doer faced criminal consequences, but not civil consequences; simple effect: $t(151) = 2.99, p = .003, d = -.48$. Victim moral character and type of case also had an interactive effect on judged harm-doer blame and responsibility, $F(1, 284) = 6.31, p = .013, \eta_p^2 = .022$, such that victim moral character influenced harm-doer judgments only in civil, not criminal, cases; simple effect: $t(137) = 2.37, p = .019, d = .41$. See Figure 20a.

¹⁸ The results replicated regardless of whether responsibility, blame, or the index averaging the two was used.

Fig. 20a. Judgments of harmdoer responsibility and blame as a function of type of case, harmdoer moral character, and victim moral character (Study 2). The left panel shows the effects of case type and harmdoer character, and the right panel shows the effects of case type and victim character. The asterisks indicate significant differences between conditions, $** p < .01$. Error bars indicate standard errors of the mean.

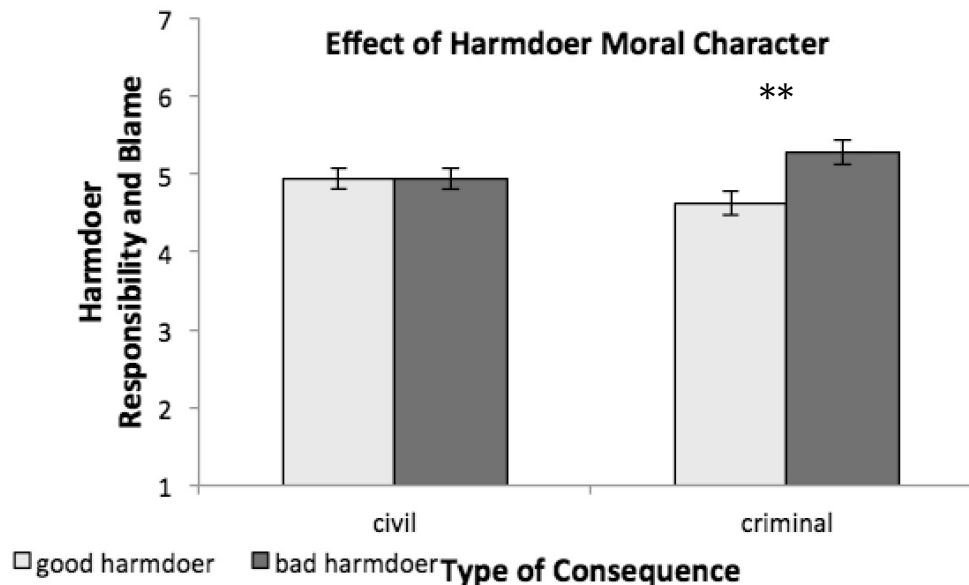


Fig. 20b. Judgments of harmdoer responsibility and blame as a function of type of case, harmdoer moral character, and victim moral character (Study 2). The left panel shows the effects of case type and harmdoer character, and the right panel shows the effects of case type and victim character. The asterisks indicate significant differences between conditions, $* p < .05$. Error bars indicate standard errors of the mean.



Judgments of victim blame and responsibility were also highly correlated, $r(292) = .82, p < .001$, so I also combined these responses into an index.¹⁹ Victim moral character did not significantly impact judgments of victim blame or responsibility. There was a marginal effect of type of case on judgments of victim blame and responsibility, $F(1, 284) = 3.50, p = .06, \eta_p^2 = .01$, such that victims were generally blamed more in civil cases. Type of case also interacted with harm-doer moral character to affect judgments, $F(1, 284) = 6.88, p = .01, \eta_p^2 = .02$; victims were held more responsible and blamed more in cases, especially civil cases, where the harm-doer had a good moral character; see Figure 20b.

Agency

Choosing the items for a scale to measure the perceived agency of ill-intentioned individuals was difficult. Many agency items are positively valenced, and many papers defined negative agency as the lack of agency, rather than the presence of maleficence. The items ultimately chosen came from different bodies of literature with differing conceptions of agency, and it was not clear that they would form a single reliable scale. Indeed, when the items were combined, the alpha value for both the harmdoer scale and the victim scale was quite low: $\alpha = .64$. Exploratory factor analysis showed that, for each actor, the agency items loaded onto two distinct factors. These factors did not differ for harm-doers and victims. One factor encompassed ratings of *assertive*, *active*, and *determined*

¹⁹ Since I initially anticipated different patterns of responses for victim blame and victim responsibility, I also looked at the individual results. The only difference was that for victim blame, the effect of case type was significant, $F(1, 284) = 3.74, p = .05, \eta_p^2 = .01$, and it was only marginally significant for victim responsibility, $F(1, 284) = 2.64, p = .10, \eta_p^2 = .01$.

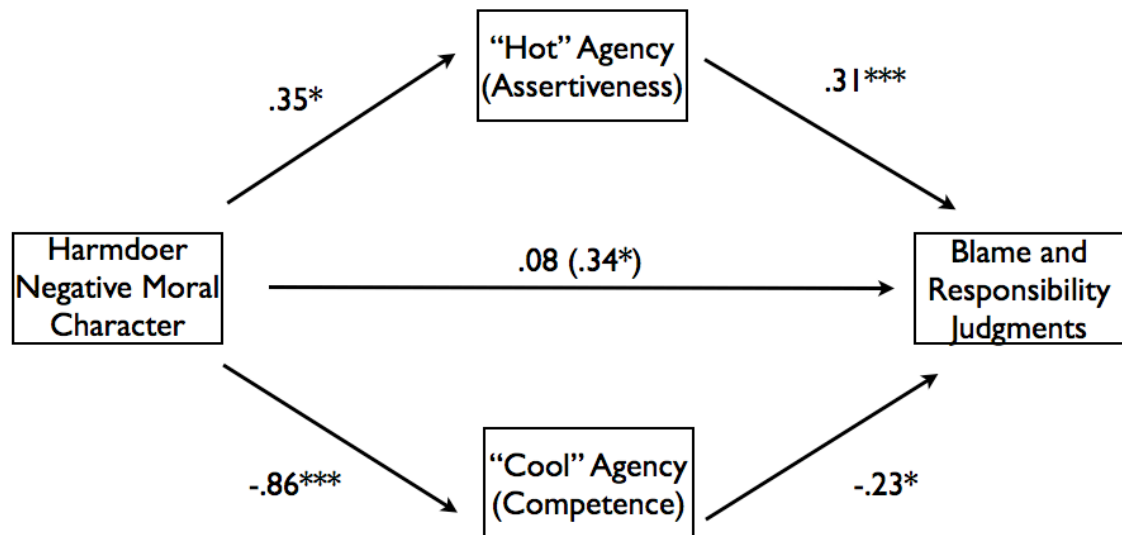
(Assertiveness), while *competent*, *effective*, and *self-control* (Competence) composed the other. The other two items did not correlate with either factor.

I then tested the relationship between moral character and each of these factors. I had anticipated that those with lower moral character would be perceived as more agentic. I found that moral character was related to both of these factors, but in opposing directions. Harm-doers were seen as more competent when their moral character was positive, $F(1, 288) = 74.65, p < .001, \eta_p^2 = .21$, but were seen as more assertive when their moral character was negative, $F(1, 288) = 5.30, p = .02, \eta_p^2 = .02$. Similarly, victims were seen as more competent when their moral character was positive, $F(1, 288) = 86.34, p < .001, \eta_p^2 = .23$, but were seen as more assertive when their moral character was negative, $F(1, 288) = 22.50, p < .001, \eta_p^2 = .08$.

These findings were somewhat surprising, as agency is generally thought of as a fundamental single construct. Instead, I found that two distinct factors of agency were related to moral character in opposing ways. These two opposing measures of agency completely mediated the relationship between harmdoer moral character and judgments of harm-doer responsibility. Using Preacher and Hayes' (2004) bootstrapping method, and Hayes' (2012) PROCESS tool for calculation, I found that, overall, the more immoral a harm-doer was, the more assertive he appeared, and the more assertive, the more blameworthy; indirect effect = .07, 95% C.I. {.01, .18}. However, the more immoral a harm-doer was, the less competent he seemed, and the less competent, the more blameworthy; indirect effect = .19, 95% C.I. {.04, .37}. A confidence interval not including zero

indicates a significant indirect effect. See Figure 21.

Fig. 21. Mediation of the relationship between harm-doer moral character and blame/responsibility judgments by components of perceived agency (Study 2). The asterisks indicate significant differences between conditions, * $p < .05$, *** $p < .001$.



When looking at a moderated mediation model, each agency measure continued to partially mediate the relationship between moral character and blame in criminal cases. When both mediators were in the model, all paths resembled the overall model, though the competence path became marginally significant; indirect effect via assertiveness = .15, 95% C.I. {.03, .36}, indirect effect via competence = .19, 95% C.I. {-.05, .45}. Neither measure of harmdoer agency predicted judgments of harm-doer responsibility in civil cases.

Additionally, neither measure of victim agency correlated with judgments of harm-doer responsibility in any type of case.²⁰

²⁰ While victim moral character did not have a *direct* effect on victim blame, there actually was a significant indirect effect from victim moral character to victim blame via perceived victim competence. The more

Harm-doer moral character was not at all affected by case type, but for victims, there was a significant interaction between case type and agency, such that victims were seen as more “active” in civil cases, and more “competent” in criminal cases, $F(1, 290) = 7.43, p = .013$.

Discussion

The same interactive effects between harm-doer and victim moral character and type of legal proceeding found in Study 1 also emerged in Study 2. The effects appear to be relatively small, but consistent. In addition to replicating the key result, Study 2 shed some light on the potential mechanism. Results revealed a pattern of judgment consistent with our predictions, but more complex than anticipated. Criminal cases do not directly influence harm-doer agency; that is, a harm-doer is not automatically seen as more agentic because it is a criminal case. However, when the criminal case setting focuses our attention on the harm-doer, it makes the harm-doer’s moral character more salient. Thus, if a harm-doer has a negative moral character, it will lead us to perceive their agentic qualities in a certain way regardless of the type of case, but it is only in criminal cases that these agency inferences become salient and influence judgments of responsibility.

Additionally, I find that negative moral character does not simply lead to a general increase in perceived agency. The psychological literature tends to treat agency as a unified construct, one of the “Big Two” (Abele & Bruckmüller, 2011; Abele & Wojciszke, 2007; Paulhus & Trapnell, 2008), roughly corresponding to

immoral a victim was, the less competent he was perceived to be, and the less competent a victim, the more blameworthy they were perceived to be; indirect effect = .32, 95% C.I. {.12, .61}.

competence (Fiske, Cuddy, & Glick, 2007). However, I find that two distinct concepts fall under the umbrella of agency: one that envisions a more systematic, “cool,” and deliberate actor (*competent, effective, capable of self-control*), and the other that describes an active, “hot,” potentially impulsive actor (*assertive, active, determined*). Not only are these two concepts distinct, they point in opposite directions when predicting important outcomes. For both harm-doers and victims, negative moral character decreased perceptions of “cool” agency while increasing perceptions of “hot” agency. For harm-doers, decreased “cool” agency and increased “hot” agency both predicted increased judgments of harm-doer responsibility.

Further work investigating what specifically and consistently characterizes these two dimensions is necessary; there may be distinctions to be drawn regarding general agency and moral agency (e.g. Gray & Wegner, 2009). Additionally, the humanness model (e.g., Bastian et al., 2011; Haslam, 2006) suggests that moral status might be divisible into three segments: the capacity for moral/immoral behavior, the desire to actively engage in moral/immoral behavior, and the capacity to be the recipient of morally relevant actions. The third factor is clearly akin to patiency, but the first two facets might correspond with our diverging concepts of agency.²¹

Despite the parallel findings regarding victim moral character and perceptions of “hot” and “cool” agency, victim perceptions did not predict decreased judgments of harm-doer responsibility, contrary to our prediction. It is

²¹ However, contrary to our results, and more in line with dyadic morality theory, they find that those with greater capacity for moral/immoral behaviors were blamed more.

possible that agency does not quite pinpoint the construct at work here. Some papers on the dyadic morality model seem to suggest a hydraulic relationship between agency and patiency, such that increased agency necessarily implies equivalent decreased patiency (e.g., Gray & Wegner, 2009; Gray, Young, & Waytz, 2013). However, other papers make clear that the dimensions of Agency (e.g., planning, communication, thought, memory) and Experience (e.g., capacity to feel pain, hunger, fear, joy, consciousness), though highly negatively correlated, are two distinct factors (e.g. Gray, Gray, & Wegner, 2007). Victims in civil cases who incur more victim blame and lower judgments of harm-doer responsibility may do so not because they are actually acting agentially, but because they are acting non-patientically—they rate lower on “experience.” Increased experience has been shown to decrease blame for moral transgressions (Gray & Wegner, 2009), and increase perceptions of pain in a harmful situation (Gray & Wegner, 2010). Either of these effects could be relevant to the differing perceptions of victims in criminal and civil cases. Further research using measures aimed at experience in addition to agency is ongoing to investigate whether decreased patiency can explain the effects of victim moral character on harm-doer blame and responsibility. Additionally, victim moral character had no impact on victim blame and responsibility. Both other factors – case type and harm-doer moral character – had an impact on judgments regarding the victim, but the victim himself had no effect on the outcome. The next two studies were designed to explore victimhood more thoroughly.

Victimhood, Agency, and Moral Character

Study 2 provided preliminary evidence supporting our hypothesis regarding the relationship among negative morality, agency, and blame for harm-doers. While the definitive story of harmdoer blame and agency has not been fully explained, the relationship between victim agency and blame is even more of a puzzle, as this study suggested that victim agency was not the mechanism for the effects of victim character. This may not be anomalous, however; since the main dependent variable in Studies 1 and 2 was *harm-doer* responsibility/blame, if blame was not completely hydraulic in the scenario, victim agency would not have a direct effect on this measure. Therefore, Studies 3 and 4 were designed to look more closely at the dynamics of victimhood. These studies manipulated characteristics that would cause a victim to be viewed as a “better” or a “worse” victim.

These studies were motivated by the idea that agency and victimhood or patency might be in tension with one another (e.g., Gray & Wegner, 2009). Thus, victims who act agentially may be less likely to be seen as victims. In the prior studies, I found that victim agency increased when the victim had a low moral character and/or when the harm led to a civil case. The next two studies were both set in civil court, but the agency manipulation was whether the victims filed suit themselves. I hypothesized that a victim who did not have to file suit himself, and thereby did not have to act agentially, would be seen as a “better” victim. I also hypothesized that increased agency would most likely play a role in victim blaming when one or more of these were true: 1) the harm-doer’s moral

character is neutral or positive, 2) the situation is one of less-than-intentional harm, 3) the situation has shared fault between the harmdoer and victim.

Study 3

The scenario in Study 3 featured a morally neutral harm-doer and a less-than-intentional harm. In addition to manipulating whether the victim filed suit himself, I manipulated his moral character, testing whether people might be more influenced by this information when a victim acted agentically.

Method

Mechanical Turk workers ($N = 225$) were presented with a civil case in which a homeowner, Bill Prentiss, was involved in a lawsuit against a contractor who had caused his kitchen to explode. Again, I manipulated who filed this suit: in this case, either the homeowner himself or his insurance company. I also manipulated the victim's moral character. He had either been keeping the condo as a *pied-a-terre* in the city for his wife and himself, or keeping it as a place where it would be easy for him to continue an affair with his coworker. See Appendix for the full text of the scenarios.

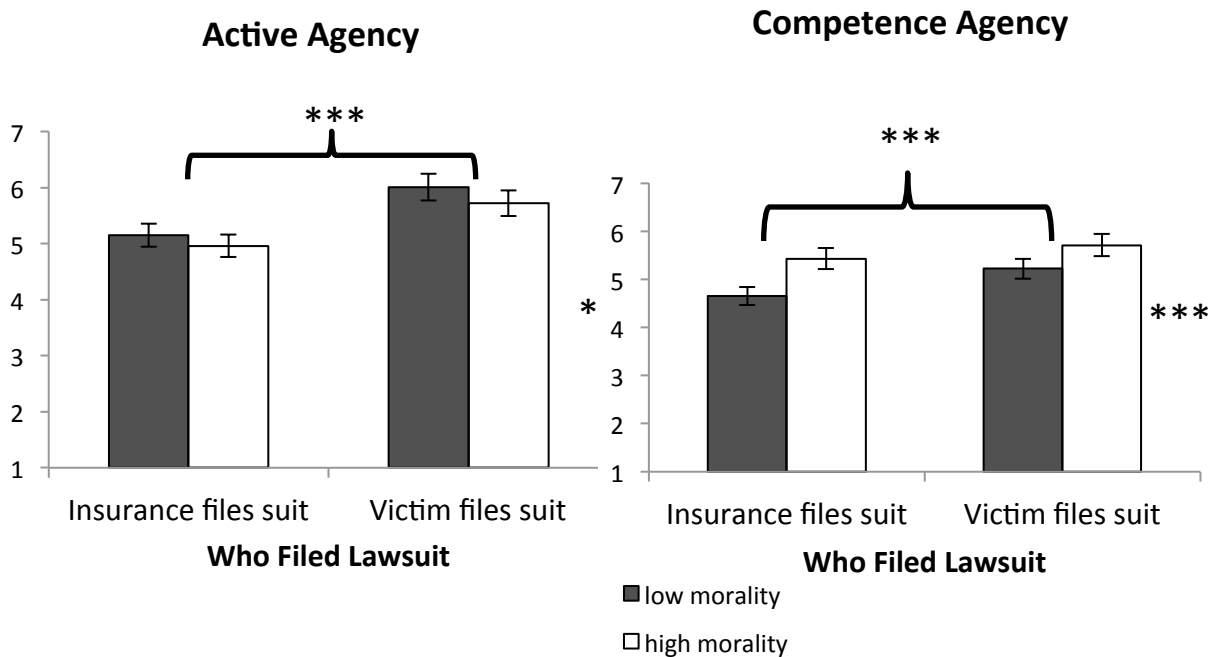
Participants again rated the factors comprising "active" and "competence" agency. Scale reliability was relatively good; for active agency, $\alpha = .82$, and for competence agency, $\alpha = .83$. They also assessed fault for both the harmdoer (the contractor) and the victim (Bill), and were asked what they would award Bill in compensatory and punitive damages.

Results

Participants' perceptions of agency were affected both by the victim's

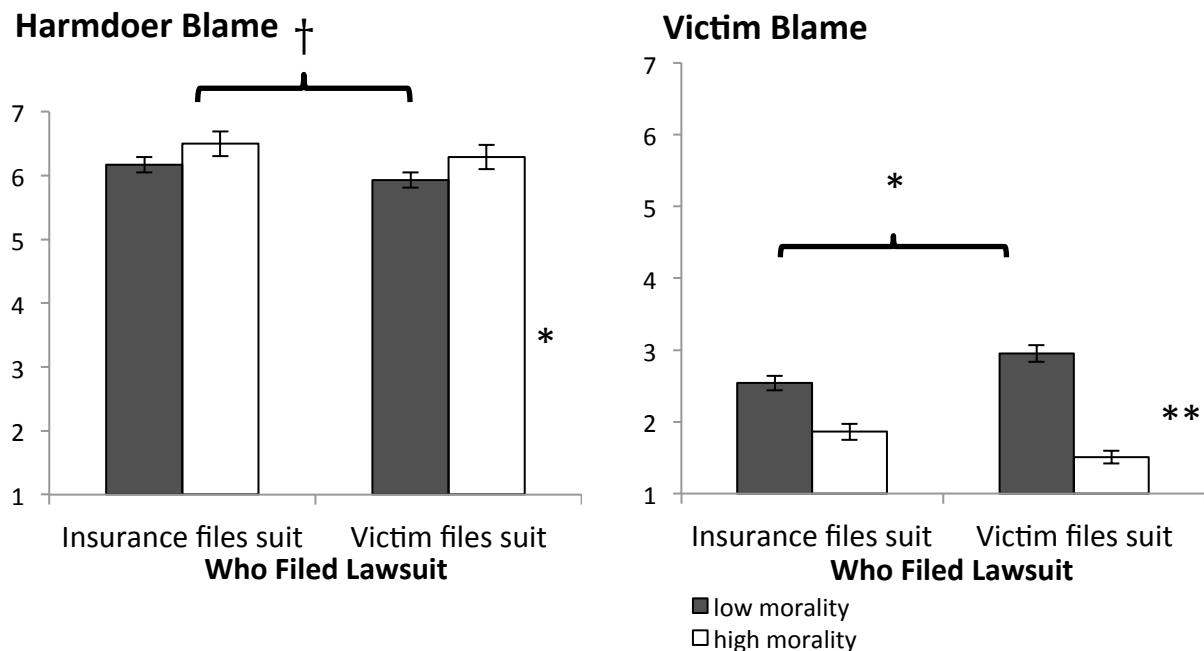
moral character and by who filed the lawsuit. A victim with a lower moral character was again seen as more actively agentic, $F(1, 216) = 5.31, p = .02$. Unsurprisingly, a victim who filed suit himself was also seen as more actively agentic, $F(1, 216) = 58.61, p < .001$. As in the prior study, a victim with a lower moral character was seen as less competently agentic, $F(1, 216) = 25.85, p < .001$. However, a victim who filed suit himself was seen as more competent than one who did not, $F(1, 216) = 11.20, p = .001$. See Figure 22.

Fig. 22. Perceptions of a victim's active and competence agency as a function of victim moral character and whether a victim files suit himself (Study 3). The asterisks indicate significant differences between conditions, *** $p < .001$. Error bars indicate standard errors of the mean.



The negligent contractor was blamed significantly more for the incident when the victim had low moral character, $F(1, 216) = 6.66, p = .01$, as well as marginally more when the victim filed suit himself, $F(1, 216) = 2.94, p = .08$. On the measure of harm-doer blame, there was no significant interaction between moral character and suit-filing. On the other hand, participants were more likely to blame the victim when he had low moral character, but this effect was qualified by a significant interaction between morality and who filed suit, $F(1, 216) = 4.74, p = .03$. Victim morality affected blame judgments more when the victim filed suit himself than when the insurance company sued. See Figure 23.

Fig. 23. Willingness to blame the victim as a function of victim moral character and whether the victim filed suit himself (Study 3). The asterisks indicate significant differences between conditions, * $p < .05$, ** $p < .01$. Error bars indicate standard errors of the mean.



Results for damages were similar to those for blame. Because damages data are bounded at zero at one end and have no upper bound, the responses were log transformed. Victims with low moral character received marginally less in compensatory damage awards only when the victim filed suit himself, $F(1, 215) = 2.51$, $p = .10$, and received significantly less in punitive damage awards, again only when the victim filed suit himself, $F(1, 215) = 6.28$, $p = .01$.

Whether or not the victim filed the suit himself did not directly affect blame judgments; however, there were significant indirect effects via both active (indirect effect = .28, 95% C.I. {.06, .57}) and competence (indirect effect = -.31, 95% C.I. {-.54, -.12}) agency. When victim morality was included as a moderator, active agency continued to impact blame for both low- and high-morality victims (indirect effects = .27, 95% C.I. {.06, .54}; .30, 95% C.I. {.07, .63}), while competence agency only significantly affected blame judgments for low-morality victims (indirect effects = -.37, 95% C.I. {-.70, -.10}; -.19, 95% C.I. {-.44, .01}). Damages judgments were not mediated by victim agency.

These results suggest that when victims actively seek recourse through the justice system, they may be paying a penalty by appearing to be less of a victim, especially when their moral character is questionable. In the final study, I explored whether this might also be the case for victims who are morally neutral, but may be partially at fault.

Study 4

In addition to manipulating who filed the lawsuit, in Study 4, I also manipulated the level of emotion the victim displayed, as prior research (e.g.,

Rose, Nadler, & Clark, 2006) has also shown that victims who display more emotion—as long as the emotion is appropriate to the injury—are viewed as better victims.

Method

Mechanical Turk workers (final $N = 224$)²² were presented with a civil case in which a person, Steven, was injured at work. He had been working offsite at a client's (Lattice Corporation's) offices (essentially on a secondment, though that language was not used in the study), and the client's insurance company denied part of his claim for benefits. Using a 2x2 design, I manipulated whether the injured employee or the employee's boss filed suit against the insurance company, and whether the worker demonstrated a low or high emotional response. See Appendix for full scenarios.

Participants then responded to a five-item scale assessing sympathy for the victim (*compassion, kindness, pity, sympathy, understanding*), items assessing classic patency (*how much pain did Steven experience, general sensitivity to pain, general sensitivity to pleasure*), a seven-item agency scale (*assertive, competent, competitive, determined, dominant, effective, intelligent*), and five-item blame scales (*could have prevented the injury; is responsible for the injury; should have known better; should have been able to foresee; the injury was their fault*) for the victim and the corporation.

Responses to the patency items were not correlated with one another, so a valid scale could not be formed. Participants additionally responded to a five-

²² 57 participants were removed for answering at least one of the three multiple choice manipulation checks wrong (In whose offices was Steven injured?, What costs did the insurance company cover? Who sued the insurance company?)

item measure of willingness to help the victim, but the data suggest that a substantial minority of the participants misinterpreted the direction of the scale, rendering responses uninterpretable.²³

Results

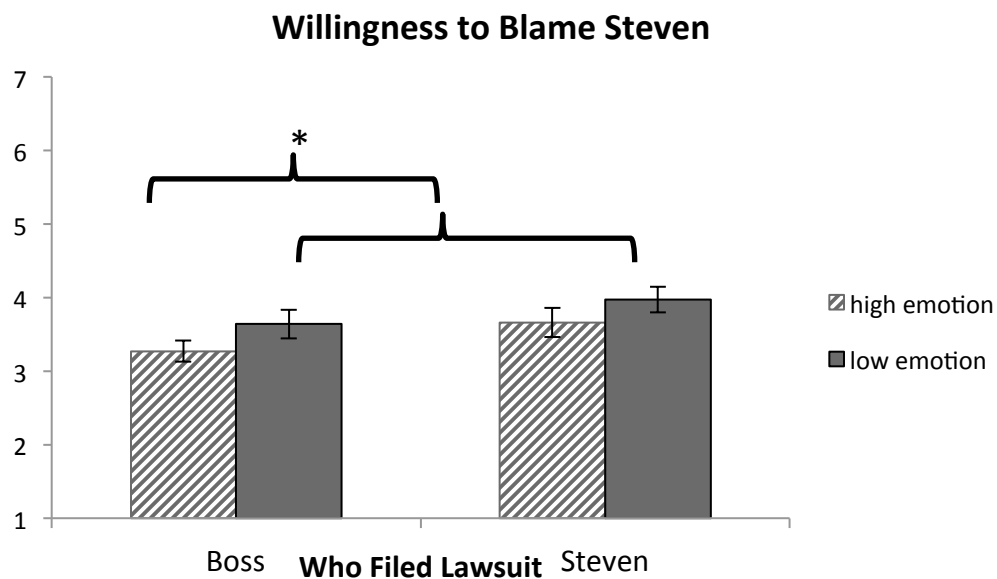
Factor analysis indicated that sympathy, agency, willingness to blame Steven, and willingness to blame Lattice were each distinct factors. Agency again was split into “hot” agency (*assertive, competitive, determined, dominant*) and “cool” agency (*competent, effective, intelligent*). Reliabilities for each of these scales were high: sympathy, $\alpha = .91$; blaming Steven, $\alpha = .93$; blaming Lattice, $\alpha = .90$; “hot” agency, $\alpha = .83$; “cool” agency, $\alpha = .88$.

Participants blamed Steven significantly more for his injuries when Steven filed the lawsuit, as opposed to his boss, $F(1, 219) = 4.22, p = .04, \eta_p^2 = .02$, and marginally more for his injuries when he did not display sufficient emotion, $F(1, 219) = 3.72, p = .055, \eta_p^2 = .02$. See Figure 24. Similarly, they blamed Lattice marginally *more* when Steven’s boss filed the suit, $F(1, 219) = 3.69, p = .055, \eta_p^2 = .02$, and when Steven displayed appropriate emotion at the injury, $F(1, 219) = 3.34, p = .06, \eta_p^2 = .02$. The interaction of emotional display and action in filing the suit was also marginally significant, $F(1, 219) = 3.17, p = .08, \eta_p^2 = .014$. See Figure 25. In this instance, it is clear that the experimental cell in which Steven is the “best” possible victim (i.e., expresses appropriate emotion and does not file suit himself) is driving the effects. Contrast analysis comparing this

²³ Participants were provided with a scale that ran from Definitely would help (1) to Definitely would not help (7). Most participants were less likely to say that they would pay for the victim to go on vacation, and were willing to help him out in some degree with legal fees, counseling, etc. However, a substantial minority responded that they would pay to send him on vacation, and were not willing to help him in other ways.

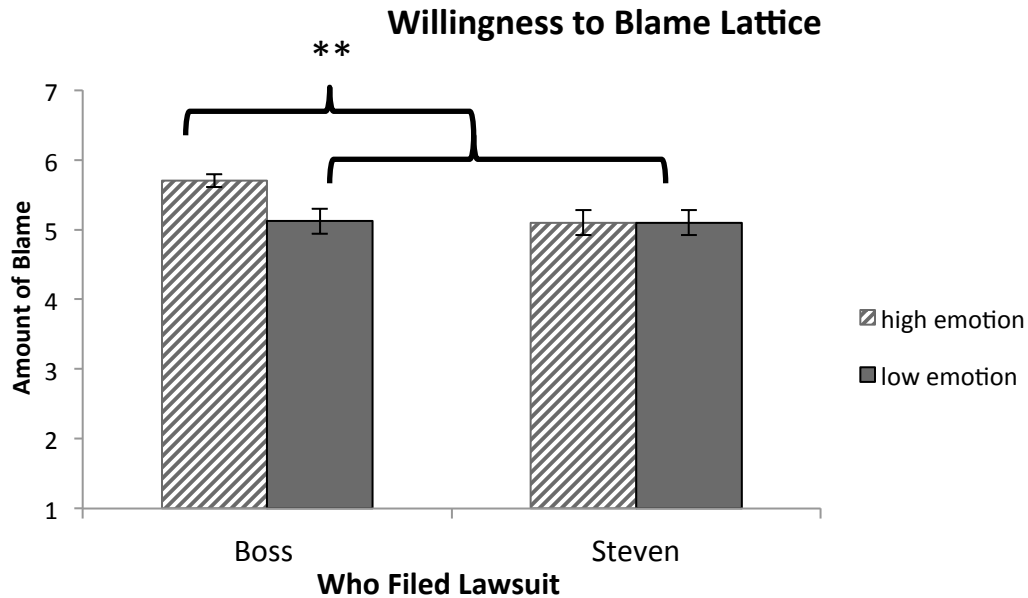
cell to the other three suggests this is the case for both willingness to blame Steven, $t(219) = 2.47, p = .014$, and willingness to blame Lattice, $t(219) = -3.29, p = .001$. Additionally, participants awarded Steven less in damages when he filed the suit himself ($M = \$9021.25$) than when his boss filed the suit ($M = \$54,755.75$), $F(1, 215) = 7.62, p = .006, \eta_p^2 = .034$.²⁴

Fig. 24. Willingness to blame the victim as a function of the victim's emotional response to a harm and whether the victim filed suit himself (Study 4). The asterisks indicate significant differences between conditions, $* p < .05$. Error bars indicate standard errors of the mean.



²⁴ This difference remained significant when the log of nonzero damage amounts was taken, $F(1, 134) = 8.53, p = .004, \eta_p^2 = .06$.

Figure 25: Willingness to blame the non-victim party as a function of victim emotional response and whether the victim filed suit himself (Study 4). The asterisks indicate significant differences between conditions, ** $p < .01$. Error bars indicate standard errors of the mean.



Turning to the possible mechanisms for this difference, I found that participants cared more for Steven when Steven’s boss filed the lawsuit against the insurance company, $F(1, 219) = 6.69$, $p = .01$, $\eta_p^2 = .03$. Additionally, when Steven filed the lawsuit, participants saw him as more “hotly” agentic, $F(1, 219) = 26.60$, $p < .001$, $\eta_p^2 = .11$, but there was no significant difference in perceptions of “cool” agency. Steven’s expression of emotion did not impact any of these measures. Neither expression of emotion, nor the identity of the person who filed suit, affected the “patency” judgments of perceived sensitivity to pain and pleasure.

I then investigated whether perceived victim agency or sympathy for the victim would mediate the relationship between Steven taking action to file a

lawsuit and judgments of blameworthiness for harmdoer and victim. See Figures 26 and 27. I found that for both willingness to blame Steven and willingness to blame Lattice, perceived “hot” or “active” agency and sympathy were significant mediators. When Steven (as opposed to his boss) filed the lawsuit, Steven was perceived as more agentic and less sympathetic, leading to greater judgments of Steven’s blameworthiness: indirect effect via agency = .17, 95% C.I. {.05, .33}, indirect effect via sympathy = .15, 95% C.I. {.05, .31}. Similarly, Steven filing the lawsuit caused Lattice to be viewed as *less* blameworthy, indirect effect via agency = -.13, 95% C.I. {-.30 -.01}, indirect effect via sympathy = -.20, 95% C.I. {-.29, -.05}. Indirect effects via “cool” agency were not significant in either case of blame.

Figure 26: Agency and Sympathy Mediate the Relationship Between Lawsuit Filing and Victim Blame (Study 4). The asterisks indicate significant differences between conditions, * $p < .05$, *** $p < .001$.

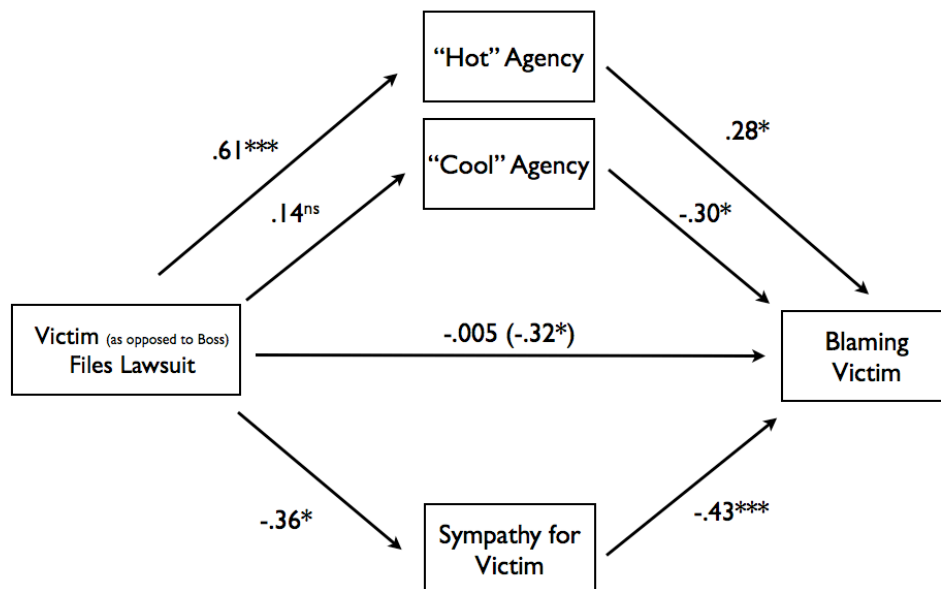
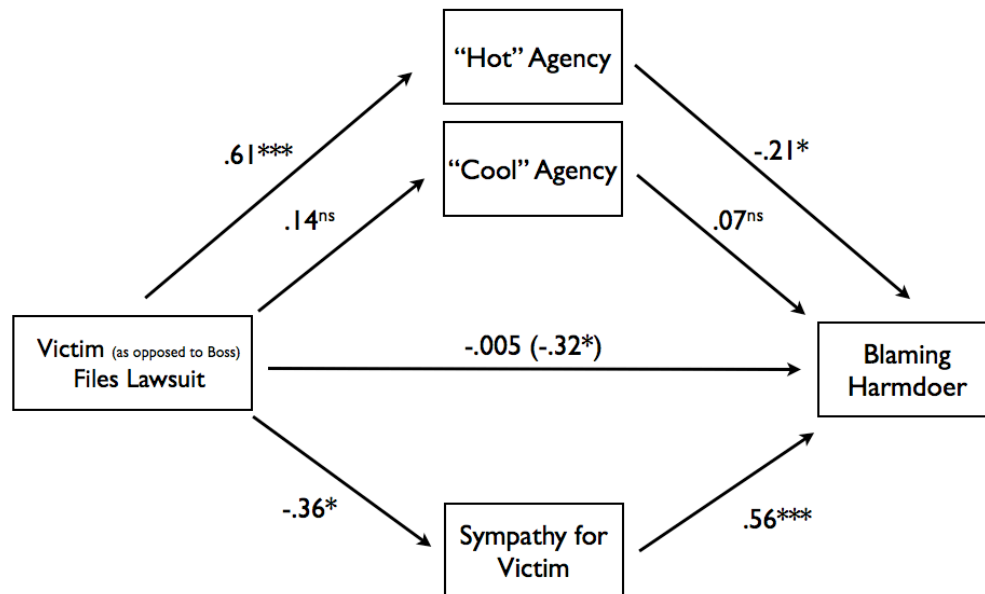


Figure 27: Agency and Sympathy Mediate the Relationship Between Lawsuit Filing and Harmdoer Blame (Study 4). The asterisks indicate significant differences between conditions, * $p < .05$, *** $p < .001$.



Chapter 2 Discussion

The results of Study 1 add another dimension to theories regarding morality and the justice system. I found that harmdoer moral character impacted judgments of harm-doer responsibility only in criminal cases—not in civil cases. I also found that *victim* moral character impacted judgments of harm-doer responsibility in civil, but not in criminal, cases. In Study 2, I found that the proposed mechanism—perceived agency—was successful at explaining half of the equation. “Agency,” though, did not emerge as a single construct, as other research might have suggested. It was rather split into two: a “hot,” active conception of agency, and a “cool,” deliberative form of agency. Both factors

mediated the relationship between harm-doer moral character and judgments of harm-doer responsibility and blame. However, despite the fact that victim moral character impacted the two types of agency in the same manner, agency was not a useful construct for explaining the effect of victim moral character on harm-doer responsibility.

In Studies 3 and 4, I found that victims who filed lawsuits on their own behalf were blamed more than victims who had lawsuits filed for them. This was a result of these proactive victims being perceived as more agentic and less sympathetic. While the results of these two studies suggest some ways in which victim characteristics impact judgments of blame in civil cases, they are not fully aligned with the results of Study 2, and they do not provide a definitive mechanism for how victim characteristics impact blame judgments. Most clearly, the measures I used do not provide direct support for the idea that a lack of victim patience, rather than actual victim agency, drives judgments of harmdoer and victim responsibility. More research is necessary to determine whether increased sympathy for victims is as a result of perceived victim patience, or perhaps a completely separate construct (e.g., liking).

More work also needs to be done to clarify what concepts define the two contrasting conceptions of agency, and confirm their consistency. Additionally, these studies investigate an extremely limited set of factors—indeed, a single situational difference, albeit an important one—that impact focus of attention and agency. Other factors and situations might also impact attention and perceived

agency, perhaps providing more clues as to how these biases in judgment occur, and how best to counter them.

I anticipate that the agency (and sympathy) effects seen here are not dependent on the criminal-civil distinction. This just happens to be a difference that, by default or by tradition, places the focus on either the harm-doer or the victim. However, the differential use of information in criminal and civil cases suggests that a judge making a decision about whether character evidence is more probative than prejudicial should take case type into account, since victim character evidence is more likely to be prejudicial in civil cases, and harm-doer character is likely to be more prejudicial in criminal cases. Beyond the criminal-civil distinction, though, any situation that places the focus on the harm-doer (e.g., a civil case in the aftermath of a criminal case) will likely cause the harm-doer's moral character to be more at issue (see O. J. Simpson). This may provide yet another reason that a defendant should think seriously before deciding to testify on his own behalf.

Conversely, any situation that increases focus on the victim could increase the likelihood that the victim will be seen as non-patientic, and thus increases the likelihood that victim moral character will be used when making judgments. This suggests that the expansion of shield statutes into other types of cases, including sexual harassment and other civil suits, is quite important to protect victims against introduction of moral character information based on their sexual history, etc. It also suggests that the move toward using more victim impact statements

and allowing victims to play a more active role in criminal cases (see Kozkela, 1997; Gruber, 2004) could have unfortunately ironic effects.

CONCLUSIONS AND APPLICATIONS

The findings reported in this dissertation make contributions to both legal and psychological knowledge. The legal question of institutional choice turns out to have unexpected psychological ramifications, and the psychological framework of agentic harm-doer and patientic victim can be shifted, and perhaps even reversed, depending on what kind of case results from the harm.

The studies in the first chapter provide evidence that criminal laws without intent requirements run counter to lay intuitions about what is just. In the first study, participants explicitly rate such laws as less just in general; in the second study, they are unwilling to assess criminal penalties for less-than intentional harm; and in the third study, they find it less just when the same consequence is assessed in the criminal system than in the civil system when the harm-doer did not act intentionally.

The findings in Chapter 1 contribute empirical support to the movement to end the trend of overcriminalization. To the extent that people find criminal laws without intent requirements to be unjust, the proliferation of such laws undermines the legitimacy and moral gravity of the criminal justice system. Not only will people be unlikely to apply these *mens rea*-less laws as intended (perhaps engaging in jury nullification), they may be less likely to obey other laws as well. The solution to this seems relatively straightforward: stop passing criminal laws without intent requirements, and pass a law stating what will happen to extant laws that lack the intent requirement (e.g., a reckless state of

mind is the default). State legislatures have begun to implement such a solution; however, the majority of regulatory wrongs that can result in civil or criminal cases are federal statutes. While the federal government has held hearings and begun to take notice of the problem, a law mandating intent requirements in criminal statutes is not close to being proposed.

The studies in the second chapter extend the theory of dyadic morality. First, agency may not be a unitary construct; participants consistently rate “active” agentic adjectives in a different way than competence-related agency items. Further work exploring general agency and moral agency in relation to these two factors is necessary. Also, I find that the underlying schema of an agentic harm-doer and a patientic victim persists, in general, in criminal cases (though this might change if a victim acted especially agentially in the courtroom). In civil cases, however, this schema is upended when the victim takes on an agentic role. Victims might have to choose between having a voice and an active role in their own justice process, and being able to recover the full measure of damages. Since the goal of the civil justice system is to make victims whole, future studies will investigate the extent to which victims are “compensated” through the psychological advantages of taking on agency. Understanding whether this psychological boost is worth the financial tradeoff victims face if they act agentially is a critical issue to address to make the best policy recommendation for victims.

Another policy consideration implicated by the results in Chapter 2 is the admissibility of evidence in court. The fact that the institutional choice affects

laypeople's use of evidentiary information (in these studies, moral character information, but likely other facts as well) should inform any updates to the Federal Rules of Evidence. For instance, perhaps the burden for being allowed to introduce certain types of evidence about the harm-doer or the victim should be different in criminal versus civil cases (i.e., negative information about a harm-doer should be seen as more potentially prejudicial in criminal cases than in civil cases, and vice versa for negative information about the victim).

It is not clear whether the differences in perception of criminal and civil consequences would diminish or increase among legally-trained individuals; an argument could be made in either direction. It is also an open question whether judges and other legal decisionmakers would be affected by perceptions of harmdoer and victim agency, as laypeople seem to be. However, a relatively extensive body of literature investigating whether judges' decisions are impacted by heuristics and biases in the same way that lay decisions are suggests that in most instances, judges do behave the same as laypeople (e.g., Guthrie, Rachlinski, & Wistrich, 2001; Wistrich, Guthrie, & Rachlinski, 2005; Rachlinski, Johnson, Wistrich, & Guthrie, 2009). Future work may attempt to obtain a legally sophisticated sample to address these two questions.

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Appendix:

Vignettes:

Introduction to all vignettes:

Mr. Philip Blair is the owner of State Home Improvements, a midsized construction company. He is married, lives in a modest house, and has two children.

Accidental

One afternoon, Mr. Blair decided to go out for a bike ride. His bike had not been ridden all winter, so he checked it over carefully, and everything looked to be in good shape.

As he is riding along, his front tire blows out. He struggles to regain control of his bike, but is unable to prevent it from hitting another bicyclist and running off the road.

Later investigation reveals that the collision was due to a small spike that had been in the road; the tires had been in good condition and Mr. Blair did not see the spike because it was covered with leaves. Even the very best riders would not have been able to avoid the collision in this situation.

Negligent

Mr. Philip Blair is the owner of State Home Improvements, a midsized construction company. He is married, lives in a modest house, and has two children.

One afternoon, Mr. Blair decided to go out for a bike ride. His bike had not been ridden all winter, but he did not check it over to make sure things were in good shape before setting out. Had he checked, he would have discovered that the tires were in bad shape and might blow out.

As he is riding along, his front tire blows out. He struggles to regain control of his bike, but is unable to prevent it from hitting another bicyclist and running off the road.

Later investigation reveals that the collision was due to the worn condition of the tires; had they been in good condition, the collision would not have occurred.

Reckless

Mr. Philip Blair is the owner of State Home Improvements, a midsized construction company. He is married, lives in a modest house, and has two children.

One afternoon, Mr. Blair decided to go out for a bike ride. His bike had not been

ridden all winter, so he checked it over before setting out. He discovered that the tires were in bad shape and might blow out, but decided to go for a ride anyway.

As he is riding along, the tire blows out. He struggles to regain control of his bike, but is unable to prevent it from hitting another bicyclist and running off the road.

Later investigation reveals that the collision was due to the worn condition of the tires; had they been in good condition, the collision would not have occurred.

Transferred Intent

Mr. Philip Blair is the owner of State Home Improvements, a midsized construction company. He is married, lives in a modest house, and has two children.

One afternoon, Mr. Blair decided to go out for a bike ride. His bike had not been ridden all winter, so he checked it over before setting out. He discovered that the tires were in bad shape and might blow out, but decided to go for a ride anyway.

As he is riding along, he sees a slow cyclist in the middle of the bike path. Mr. Blair is annoyed that the other cyclist is blocking the path without moving over, so he decides to “buzz” the other cyclist by passing him closely. As he approaches the other cyclist, his front tire blows out. He struggles to regain control of his bike, but is unable to prevent it from hitting the other bicyclist and running off the road.

Later investigation reveals that the collision was due to Mr. Blair’s maneuvering to “buzz” the other cyclist and the worn condition of the tires; had he not been engaging in inappropriate cycling behavior, or had the tires been in better shape, the collision would not have occurred.

Intent

Mr. Philip Blair is the owner of State Home Improvements, a midsized construction company. He is married, lives in a modest house, and has two children.

One afternoon, Mr. Blair decided to go out for a bike ride. His bike had not been ridden all winter, so he checked it over before setting out. He discovered that the tires were in bad shape and would definitely blow out if he rode it over any rough patch of road, but decided to go for a ride anyway.

As he is riding along, he sees a slow cyclist in the middle of the bike path. Mr. Blair is annoyed that the other cyclist is blocking the path without moving over, so he decides to cause a blowout in his tire and collide with the other cyclist. He rides close to the other cyclist as a rough patch of road approaches. When Mr. Blair’s bike reaches the rough patch, his front tire blows out and he hits the other cyclist.

Later investigation reveals that the collision was due to Mr. Blair's maneuvering to hit the other cyclist and the worn condition of the tires; had he not been engaging in inappropriate cycling behavior, or had the tires been in better shape, the collision would not have occurred.

Conclusion to all vignettes:

The other bicyclist sustains moderate injuries and is hospitalized. He ultimately makes a full recovery.

Study 4 Questions (1-7 scales)

How criminal was Mr. Stevens' behavior?

How likely is Mr. Stevens to injure another bicyclist in the future?

How aggressive is Mr. Stevens?

How dangerous is Mr. Stevens?

How morally culpable is Mr. Stevens for injuring the other bicyclist?

How angry are you at Mr. Stevens for injuring the other bicyclist?

How deserving of punishment is Mr. Stevens for injuring the other bicyclist?

How responsible is Mr. Stevens for injuring the other bicyclist?

How much do you blame Mr. Stevens for injuring the other bicyclist?

How violent is Mr. Stevens?

How malicious is Mr. Stevens?

How likely is Mr. Stevens to have normal human feelings?

Do you think Mr. Stevens is mainly a good person or a bad person?

Do you think Mr. Stevens has good moral standards?

Open-ended: How much, in dollars, would you estimate the other bicyclist's medical bills to be?

Appendix

Vignette for Studies 1 and 2

Kevin was driving over the speed limit (about 40 mph in a 30 mph zone)

Good: in order to get home in time to hide a special birthday present he had

bought for his wife. They have been married for a little over a year. He had left the present out in the open and needed to hide it before his wife got home and saw it, ruining the surprise.

Bad: in order to get home in time to hide a special birthday present he had bought for his mistress. They have been having an affair for a little over a year. He had left it out in the open and needed to hide it before his wife got home and saw it, and found out about the affair.

Richard was driving to meet his church group.

Good: One of his church's main goals is to support those who are less

fortunate. They were meeting to complete a volunteer project to help the poor in their community. He was also speeding (again, about 40 mph in a 30 mph zone) because he was running late. He had the keys and needed to get there before other people started arriving.

Bad: One of his church's main goals is to spread the word that God is angry at

America for its tolerance of homosexuality. They were meeting to hold a protest, picketing at a soldier's funeral, to broadcast their beliefs. He was also speeding (again, about 40 mph in a 30 mph zone) because he was running late. He had the signs for the protest and needed to get there before other people started arriving.

As Kevin came to an intersection, he applied his brakes, but was unable to stop as quickly as usual because of some oil that had spilled on the road. As a result, Kevin hit Richard's car, which he had been driving on the cross street.

Kevin hit the car on the driver's side, causing Richard multiple lacerations, a broken collar bone, and a fractured arm. Kevin suffered some bruises and stiffness, but was relatively unhurt in the accident.

Civil: Kevin was sued by Richard for reckless driving that resulted in bodily

harm. If Kevin is found liable, he will likely have to pay compensation to Richard for injuries and damage.

Criminal: Kevin was charged with reckless driving that resulted in bodily harm,

a misdemeanor. If Kevin is found guilty, he will likely have to pay a fine, which will go to Richard to cover injuries and damage.

Vignette for Study 3

After they got married about a year ago, Bill Prentiss and his wife moved from the city to the suburbs...Bill sometimes has to stay in the office very late when a deal is closing, so he decided to keep his close-to-the-office city townhouse as a place to crash on those nights.

Good moral character: Bill also thought that keeping his old "bachelor pad" would be

convenient for when he and his wife wanted to have a night out in the city or have a few friends over after work. Since his wife liked to cook, Bill decided to redo and modernize the kitchen as a present for her.

Bad moral character: Bill also thought that keeping his old "bachelor pad" would be

convenient since he was having an ongoing affair with one of his coworkers. Since his girlfriend liked to cook, Bill decided to redo and modernize the kitchen as a present for her.

Joe Martin is the contractor who was working on the kitchen in Bill's townhouse. He had been working there for a few weeks, and had finished installing the new cabinets and the sink. He had generally been doing a good job, although Bill had recently argued with him about an increase in some of the costs of the project.

Joe's next job was to replace the electric stove with a new professional gas range. This involved running a new gas line to the kitchen. Joe installed the new pipes and connected them to the outside gas source.

He then took a break and went out to pick up lunch and some more supplies, not realizing that the gas was still flowing into the kitchen. When Joe came back, he turned on the light switch inside the front door.

Since the kitchen was just off the front hall, and the gas had been flowing for more than an hour, that was enough to ignite the gas, causing an explosion. Since Joe had barely gotten inside the front door when the explosion happened, he was mostly unharmed, though his hair and clothes were a little singed. He ran down the driveway and called 911. By the time the firemen arrived and extinguished the fire, it had consumed most of Bill's kitchen and hallway. None of the nearby townhouses were affected.

Bill files suit himself: Of course, Bill was extremely upset with Joe about what happened to

the townhouse. In order to get compensation to restore the townhouse, Bill himself sued Joe for the damage done.

Bill was very involved in the trial, and was able to testify about what happened. At the trial, Bill explained what he lost as a result of the fire and how long it will take until the house can be restored with the help of insurance money.

Insurance files suit: Of course, Bill was extremely upset with Joe about what happened to

the house. In order to get compensation to restore the townhouse, Bill's homeowner's insurance company sued Joe for the damage done.

Bill did not have any involvement in the trial (other than watching some of it as a member of the public). At the trial, an insurance company representative explained what Bill lost as a result of the fire and how long it will take until the house can be restored with the help of insurance money.

Vignette for Study 4

Steven Tanzer works at Eversupply, a large paper goods corporation. In Steven's division, his boss, Louis, sometimes sends employees out for a few weeks or months to work directly with one of Eversupply's corporate clients. During these projects, the employee's salary and benefits are paid by the client.

When Steven was on one of these projects for a company called Lattice, he suffered a knee injury in Lattice's offices.

Steven did not realize that it would be necessary for him to go down to the processing floor that day, and he was wearing dress shoes. He knew that dress shoes were not officially appropriate footwear for the floor, but having been on the processing floor many times before, he believed it would not be a problem.

High Emotion: When he entered the processing floor, he slipped in some machine lubricant that was spilled the night before. The spill had been reported, but Lattice had not cleaned it up in a timely manner.

Steven's left knee slammed into the floor, and he crumpled to the ground. Other workers asked him if he was OK, and he said, "Oh my--oh no! OW! No! I'm not OK. It really hurts a lot." The other workers called an ambulance.

Steven was out of work for three weeks, and was in severe pain for most of that time. He has been undergoing physical therapy, and is expected to have to continue the therapy for the next 9-12 months. However, with therapy, he is expected to make a full recovery.

Low Emotion: When Steven entered the processing floor, he slipped in some machine lubricant that was spilled the night before. The spill had been reported, but Lattice had not cleaned it up in a timely manner.

Steven's left knee slammed into the floor, and he crumpled to the ground. Other workers asked him if he was OK, and he said, "No, I'm not OK. It really hurts a lot." The other workers called an ambulance.

Steven was out of work for three weeks, and was in severe pain for most of that time. He has been undergoing physical therapy, and is expected to have to continue the therapy for the next 9-12 months. However, with therapy, he is expected to make a full

recovery.

Boss Files Suit: While Lattice's insurance covered the cost of initial treatment and two weeks of paid leave, they are refusing to pay for the third week Steven was out of work, as well as the ongoing physical therapy. Both Steven and his boss Louis think that this is not fair and not right.

Because the injury occurred in Lattice's offices, Steven's boss Louis filed a lawsuit against Lattice's insurance company to try to force them to cover the full amount of Steven's damages, including lost pay and physical therapy.

Steven Files Suit: While Lattice's insurance covered the cost of initial treatment and two weeks of paid leave, they are refusing to pay for the third week Steven was out of work, as well as the ongoing physical therapy. Both Steven and his boss Louis think that this is not fair and not right.

Because the injury occurred in Lattice's offices, Steven filed a lawsuit against Lattice's insurance company to try to force them to cover the full amount of Steven's damages, including lost pay and physical therapy.