Intuitive Psychologist or Intuitive Lawyer?
Alternative Models of the Attribution Process

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The notion that humans commonly commit a “fundamental attribution error” by overattributing causality to persons rather than situations rests on a particular model of the attribution process. That model is a scientific analysis of causality. Using insights from legal reasoning, the present article contrasts the scientific model, “intuitive psychologizing,” with an alternative view of attributions as sanctioning decisions, or “intuitive lawyering.” It is suggested that sanctioning attributions rest on a different rational decision rule that tests whether the actor could have done otherwise. Kelley’s model of the attribution process appears to be fundamentally a scientific analysis, whereas Jones and Davis’s model appears to be fundamentally a sanctioning analysis. The supposed error of overattributing to persons is in fact an error only within the first type of model and may be perfectly rational within the second. Given that we are not always sure how experimental subjects interpret the situation or the questions they answer, further exploration of human use of “intuitive lawyering” as well as “intuitive psychologizing” is an important issue for future attribution research.

For over 20 years, social psychologists have accepted the notion that humans exhibit a “fundamental attribution error” in their causal inferences: that they overattribute causality to personal factors and underestimate the impact of situations (Heider, 1958; Jones, 1979; Ross, 1977). The data concerning such judgments are fairly clear. The interpretation, however, can be questioned. The idea that humans overattribute in one direction or the other requires a clear statement of what attribution is and a clear statement of criteria concerning attributional inaccuracy. The present article suggests an alternative approach to the attribution process according to which the fundamental attribution error may be simply an alternative rational decision rule. Ross (1977) has suggested that attribution theories provide a different view of human action from that implied by radical behaviorism because the attributionist views the perceiver as an “intuitive psychologist who seeks to explain behavior and to draw inferences about actors and their environments” (p. 174). The present model of the human perceiver accords him or her a further promotion, in prestige if not in wisdom, by suggesting that at least some attribution can be thought of as intuitive “lawyering” rather than intuitive “psychologizing.”

Defining Attribution

Attribution theories are remarkable for the absence of direct definitions of attribution itself. Perhaps the closest direct statement of what theorists mean is provided in the subtitle of Jones et al.’s (1972) Attribution: Perceiving the Causes of Behavior. In typical usage, however, attribution refers to judgments about one’s perceptions rather than causal perception per se (cf., for example, Michotte, 1963). As Ross (1977) has noted, attribution theories can usefully deal with three facets of such judgments. First, the observer must make
causal judgments, deciding to what cause or causes an effect can be attributed; second, he or she often forms inferences about stable characteristics of actors or situations; and third, the observer may use observation as a guide to prediction of future behavior and its outcomes. Attribution per se generally refers to a simplifying procedure by which one assigns (attributes) an event to a subset of possible causes, but it may refer to subsequent dispositional judgments about the causal agent or situational factors.

If one takes a scientific model\(^1\) of causal inference to be the standard of comparison, then error in the attribution process can be readily identified. The scientific model has been taken as the standard, implicitly or explicitly, in prior discussions of the accuracy of attribution (cf. Tversky & Kahneman, 1974). Thus the fundamental attribution error is as follows: If the primary determinant of actual behavior can be identified as situational and if naive perceivers attribute primary causal agency to the actor in the situation instead, then they have committed an error according to criteria of scientific inference. The picture of human attribution that emerges is one of untrained use of an almost-scientific procedure, hampered by certain basic processing errors but fundamentally understandable in the same terms in which psychologists understand their own data analyses.

Over 20 years ago, however, an intriguing alternative version of the attribution process was described in another discipline. Using ordinary language analysis of causation, Hart and Honoré (1959, 1961) distinguished between two ways in which causal questions arise in both law and everyday life. The two inference processes Hart and Honoré (1961) describe are what they label as *explanation* and *attribution*:

In ordinary life and in the law we may be presented with some contingency ... which we find puzzling: we do not know why or how it happened. In such cases to inquire for the cause of the contingency is to ask for an explanation which, when provided, makes what has happened intelligible.

It is not this type of causal question that creates the main perplexities over the use of causation in the law. These perplexities arise even where it is perfectly clear how or why some loss or harm happened, but the courts have still to determine whether such loss or harm can be attributed to the defendant's wrongful act ... This type of question we shall, for clarity's sake, call a question of attribution as opposed to explanation. (p. 329)

In Hart and Honoré's terms then, "attribution" is a process quite distinct from causal explanation.

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\(^1\) I use the term *scientific model* here in order to encompass the somewhat varied approaches in the relevant literature, all of which are actually statistical. Of course, there are modes of scientific thought that do not rely on statistics of either the conventional or Bayesian variety. The statistical models do, however, have more in common with other scientific modes of reasoning than they do with the alternative model I am describing. Hence the more general label seemed appropriate for purposes of distinguishing general patterns of reasoning.
tion and considerably more troublesome. It may therefore be worthwhile for social psychologists to consider the possibility that what they have been calling attribution covers two quite disparate things: explanatory inquiries and sanctioning inquiries. In the remainder of this article I shall lay out some of the differences between these two kinds of inquiry and indicate how these differences may be reflected in social psychological theories of attribution processes.

**Explanation Versus Sanctioning**

What are the differences between explanatory and sanctioning decisions? Table 1 summarizes a number of salient distinctions. A central difference is in the starting point for the inquiry. Explanation begins with some effect (in legal settings the effect being one of harm or loss). An attempt is made to explain this effect in terms of previously understood general laws of causation. The process, as Hart and Honoré describe it, is a movement from the known effect to the uncovering of previously unknown causal forces. Sanctioning, which Hart and Honoré call "attribution," begins with two known points: an act and an effect. Again, in law the act is usually in itself "wrongful," and the effect is one of harm or loss. The task is to determine whether the wrongful act caused the ill effect, so that sanctions can be applied. The goal of an explanatory inquiry is understanding; the goal of a sanctioning inquiry is assignment of responsibility.

These different processes have a familiar look, if we consider two major attribution theories flowing from Heider's (1958) seminal work. Kelley's model (1967, 1973), with its debts to John Stuart Mill and its principle of covariation, can be described as a model of the explanation process. Jones and Davis's (1965) model, with its emphasis on inferences to underlying personal dispositions as causal factors (i.e., correspondent inferences), can be described as fundamentally a model of the sanctioning process.² The evidence Jones and Davis use is quite analogous to the information used in law to determine guilt: (a) commission of an act, (b) the normal inference that performed action is intended, and (c) information that the act is not to be expected as part of the normal performance of the actor's role or is not that of an average person ("reasonable man") in those circumstances. A correspondent inference need not be an accurate inference, just as a judgment of guilt is a sanctioning decision rather than a scientific inquiry into causation.

What can be gained from distinguishing between explanation theory and sanctioning theory? There are several possible benefits from thinking about these as distinct issues in social psychological approaches to human inference. First, we can clarify which theory is likely to be useful for which sorts of inference or which steps in the inference process. Second, we can identify more clearly what criteria of accuracy should be applied and when. Third, we may be able to uncover likely discrepancies between the two sorts of inquiry once it is clear that they are distinct processes.

The key rule for processing information according to each model, however, has remained implicit so far. In the case of explanation, this rule is readily available in the Kelley model: the principle of covariation. In legal terminology, the search is made for that factor "but for" which the effect would not have occurred. For judgments based on single observations, the discounting principle must be used instead to guide the assessment of plausible facilitators and inhibitors of action in order to evaluate potential contributing causes. Despite a spirited attempt by Hart and Honoré (1961) to replace the "but for" principle with a more sophisticated version of causation as always involving a set of jointly sufficient conditions, the common sense judgments made by the average perceiver probably do resemble the simpler Kelley model closely enough for present purposes (e.g., McArthur, 1972; Orvis, Cunningham, & Kelley, 1975).

Sanctioning is a step that logically follows the explanation process, because a potential cause must be identified before a responsibility

² Note that I am concentrating on the original Jones and Davis discussion rather than on the more recent attempt by Jones and McGillis (1976) to draw linkages between the original model and the Kelley model. This is because in terms of the issues discussed here I suspect Jones and Davis of being more fundamentally divergent from Kelley than the attempted rapprochement would suggest.
judgment can be made. The rule used in sanctioning judgments must be teased out by considering Hart and Honoré together with that of Jones and Davis. Hart and Honoré stress the importance and the "first cause" status of voluntary human action in the assessment of responsibility. Jones and Davis stress the identification of (a) differing effects that would result from the course of action chosen and its alternatives and (b) low social desirability of the chosen alternative as the central criteria for correspondent inference. A correspondent inference can thus be said to follow from an application of the discounting principle, with a resulting inference that the action observed occurred in the face of inhibitory forces (social desirability or role requirements). The general inference rule that underlies both of these versions of attribution is a rule of could have done otherwise. Even if a variety of other factors ultimately caused one to act, if one could have done otherwise one is still responsible. Role requirements, situational pressures, and social convention may mitigate responsibility but they do not eliminate it. To the extent that such other factors can be eliminated, however, one becomes more and more clearly responsible—and the observer's inference becomes more and more correspondent. The judgment that is being made is fundamentally a sanctioning judgment, and rests on a moral-legal decision rule rather than a rule of scientific inference (cf. Jones & Thibaut, 1958).

The Fundamental Attribution Error

Where is the fundamental attribution error in all this? In a sense, it is gone. In determining causation—the first step of the sequence, represented by the Kelley model—the criteria according to which overattribution to persons has been called an error remain valid ones. But if the issue is sanctioning—the evaluation of a potential linkage between act and effect, represented by the Jones and Davis model—then overattribution to voluntary human actors is simply the operation of the moral-legal decision rule of "could have done otherwise." Such a rule surely discounts most of the things that lead people to act. In consequence, such a rule may well be unfair. But such a rule is eminently rational. Explanation calls forth the intuitive psychologist; sanctioning calls for the intuitive lawyer.

Much of the evidence for the fundamental attribution error comes from experiments in dissonance, forced compliance, and role playing (e.g., Festinger & Carlsmith, 1959; Jones & Harris, 1967). Subjects (and observers) tend to rate actions performed under experimental constraints as being reflections of the preferences of the actors, even when all actors in fact succumb to the pressures. Such judgments are obviously faulty as accurate assessments of causality in the situation, but they are fully plausible as assessments of responsibility. No subject in the Festinger and Carlsmith (1959) study acted as a result of a gun held to the head or an epileptic fit. The fact that everyone else acted in the same way in response to the experimenter's instructions is thus useful causal information but is less relevant morally or legally. All subjects could have done otherwise. It is thus no surprise to find a recent interpretation of dissonance effects by Insko, Worchel, Folger, and Kutkus (1975) to be phrased in terms of subjects' perceptions of their responsibility. Insko et al. argue that to obtain dissonance effects it is necessary to induce in subjects the perception that they are responsible for the effect in question—in other words, in the present terminology, for subjects to perceive that they could have done otherwise. Sufficient external justification provides an opportunity for the discounting principle to operate; insufficient external justification leaves the judge with no alternative but to pronounce the experimental subject guilty. If subjects and observers are acting as intuitive lawyers, then they should (and do) come to the same conclusion.

There is one sense in which a fundamental

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1 Jones and Thibaut usefully distinguished among three perceiver "sets" that could influence judgments: a causal-genetic set, in which the perceiver is concerned with identifying causes in a scientific manner; a value-maintenance set, in which the perceiver is concerned with evaluating information for its personal relevance; and a situation-matching set, in which the perceiver judges what is observed against some socially defined standard, as in sanctioning decisions. This third possible perceiver set is thus what may be involved in the alternative rational judgment procedure I am proposing.
attribution error remains, however. This is in predictions concerning conformity studies. For example, social scientists and test subjects have repeatedly underestimated the likelihood of obedience in the Milgram experiment (Milgram, 1974). Yet this failure can be interpreted as a failure of the sanctioning model to serve as a predictive (rather than evaluative) model. In viewing or hearing about any subject’s going on to the limits of obedience, the observer who applies the “could have done otherwise” rule to the actor concludes that the actor is at least partly responsible for his or her deeds. The lawyer’s model of human action is one of an autonomous chooser between courses of action. The evidence from conformity studies suggests, however, that to a large extent the lawyer’s model is empirically wrong if it is taken as a predictive one. The tension and fascination surrounding studies like Milgram’s lie in the confrontation between moral fiction and observable fact, for such studies reveal the gaps between norms as prescriptions concerning behavior and norms as descriptions of behavior. Such results are not morally neutral. No one wants to find the levels of obedience and conformity that emerge. I submit that the tension is due to the fact that we are all intuitive lawyers as well as intuitive psychologists. As intuitive lawyers, we find that Milgram’s subjects break moral norms. As practicing psychologists, we find that Milgram’s subjects break moral norms. As practicing psychologists, we find that it is normal to do so. We thus reach a place where our rules of explanation clash with our rules for sanctioning. Conformity studies are a nightmare for the intuitive lawyer (or moralist). They are evidence of the normalcy of wrong-doing, a fundamental challenge to the philosophical premise of “could have done otherwise.”

Conclusion

It is time for social psychologists to be less parochial about rationality. A scientific or information-processing decision rule is eminently rational, but so is a moral or legalistic one. The rules are simply formulated toward different ends. Before we conclude that our research subjects are committing vast numbers of errors, we should perhaps evaluate more carefully what questions they think they are answering and what questions they usually find it useful to answer. Buss (1978), for example, has argued cogently that the actor–observer differences that have been a subject of great recent interest (e.g., Monson & Snyder, 1977) may result from answers to different implicit questions. Actors may be giving reasons and observers seeking causes. From the present point of view, another distinction is also plausible. Actors may be giving explanations or accounts (cf. Scott & Lyman, 1968), whereas observers may be using implicit “could have done otherwise” rules and giving what Hart and Honoré would call attributions. Careful investigation of what subjects see themselves as doing and when they see themselves as using different decision rules may be in order.

If we find that research subjects often do utilize a sanctioning process as their dominant judgment rule, then it will be time to do some hard thinking about the psychological structure of a “could have done otherwise” rule. Laws and lawyers can be of some help here, but both lawyers and social scientists interested in legal decision rules have often left implicit just what the underlying cognitive process might be. For example, Kalven and Zeisel (1966) present important data on the contrasts between jury decisions and the corresponding assessments by judges of the “correct” decision. We now know a good deal about what sways jurors from the a priori legally correct path—including such variables as sympathy, prejudice, and concern with equity at the expense of responsibility. We know relatively less about what governs the responsibility-based sanctioning decision itself. Yet if judges, bosses, parents, and subjects in dissonance experiments all appear capable of and even inclined toward making sanctioning decisions, then we may want to take rather seriously their use of rational rules that serve a different purpose from that served by causal explanation.

In summary, humans have been perceiving one another for a long time, but they have been standing in judgment over one another for just as long. A perspective like that of Jones (1979) toward the fundamental attribution error is understandable from the point of view of psychology:

The journey from acts to dispositions is apparently often taken in unthinking haste and leads commonly
to unwitting error. But what are the social consequences of this omnipresent tendency and how is it embedded in the broader story of cognitive evolution? Is some adaptive purpose served by overattribution to the person? It is tempting to say that such overattribution facilitates effective action, that it increases opportunities for control. But how does it do these things? How can this ubiquitous proneness to attributional error really facilitate control? This leaves us saying, perhaps, that at least it promotes the illusion of control and is therefore comforting. (p. 116)

From the point of view of law and human social control, however, what is currently seen as psychological "error" may be social common sense. I suspect that were Professor Jones to sue me for this libelous interpretation of attribution theory, he would quickly find both comfort and rationality in the lawyer's attribution process.

References


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