When Should the Organization be Expected to Punish Employees’ Extra-organizational Activities?

On a regular basis, stories emerge of observers calling for organizations to punish employees for acts committed outside of their jobs, or, as we will refer to them, extra-organizational behavior. In the domain of sports, teams have released players due to off-field malfeasance, as the New York Giants did with their kicker Josh Brown after he admitted to abusing his wife (Dubin, 2016). Social media activity has also provoked employee punishment, as demonstrated when Justine Sacco was fired from her job for a single offensive Tweet (see Ronson, 2015).1 Most recently, politicians, journalists, prominent filmmakers, and actors have been removed from companies and projects in light of allegations of sexual misconduct. While some of the alleged behaviors took place within the purview of work or work-related activities (e.g. meeting with a producer), others were outside of the office (e.g. at social events

As noted, discussions of punishment often focus on actions at work. This phenomenon of extra-organizational punishment is distinct from other more common forms of organizational punishment in two key ways. First, and most obviously, these behaviors are not confined to the workplace. Indeed, extra-organizational behaviors are perpetrated in a context that is not related to work. These can include but are not limited to comments on a personal social media page, personal affiliation with a particular social group, endorsement of a certain political figure as a private citizen, or inappropriate though not necessarily illegal behaviors. Though spillover may happen such that the behaviors in questions manifest both at work and outside, extra-organizational punishment in theory refers to those exclusively outside of work. Second, the call for punishment for extra-organizational behaviors can come from parties external to the organization. In other words, individuals with no affiliation to that person or the organization they work for may expect and demand sanctions by the organization.

Punishment and Perceived Justice

While research has explored punishment for behaviors within work (e.g. Schnake, 1986; Treviño, 1992), little work has explored it in relation to extra-organizational behavior. As public pressures continue to rise calling for sanctions of misbehaving employees, it seems timely and relevant to outline the motivations underlying these desires as well as the ethical justifications of expecting such punitive actions. Using organizational justice as a lens, we discuss first the question of why observers (i.e. anyone external to the organization) expect people to be punished for behaviors inside of work. Turning to extra-organizational behaviors, we then use the same lens to understand the expectations for punishment of behaviors outside of work. Furthermore, and more importantly, we then address the philosophical question of whether people should expect organizations to punish their employees for behaviors that are not directly related to their work. Using Mill and Kant, we will attempt to identify not only whether these expectations are justified, but also which behaviors are appropriate for punishment and which are not. It should

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1 We acknowledge, though, that organizations increasingly have introduced social media policies governing what can and can’t be said on employees’ personal pages. Organizations may also have other clauses within their hiring paperwork that allows for the intervention of the organization when they feel that the employees’ activities reflect poorly on the organization itself. Nevertheless, the purpose of this paper is not to assess why the organization engages in such sanctions but why third-party observers expect them to and whether such an expectation is rational.
be noted that while our treatment of the subject is unique in some aspects, we are not the first to consider the role of organizations in dealing with injustices (see Cropanzano, Chrobot-Mason, Rupp, & Prehar, 2004) nor the first to address punishment with an empirical ethical lens (see Treviño & Weaver, 2010). However, our work focuses particularly on the phenomenon of punishment of extra-organizational behaviors and, relatedly, the justification of those reasons for which external observers call for such punishment.

We argue that individuals expect organizations and actors within them to punish because they have the power and obligation to do so. The power or authority given to organizations to punish misbehaving employees not only enables them to do so, but also makes them beholden to do so. As a juristic person with authority (see Folger & Cropanzano, 2001), failure to punish in the face of harm or injustice also elicits the same counterfactual process observed when assessing wrongdoers. Third-party observers could conclude that the failure to punish reflects harm, that the choice to not punish was discretionary, and that the failure to punish people who break rules or standards is a moral wrong. As noted, the failure to enact procedures and provide equitable outcomes is inherently unfair (see Colquitt et al., 2001; Cohen-Charash & Spector, 2001; Rupp, 2011). Although the individual or organization in question is not initially responsible for the harm that befalls the victim, they may perpetuate that harm by not punishing and therefore be accountable for the other’s wrongdoing (i.e. complicity). Furthermore, even if one is not seen as accountable for the others’ actions, individuals may feel that the supervisor or organization is committing a harm by not intervening, therefore making them accountable for their own non-interference. Indeed, as organizations and actors within them have the only legitimate authority to punish, their failure breaks down the system of justice within the organization desired by others. As such, in addition power and authority, fairness theory also explains why supervisors and organizations are held accountable for the behaviors of employees and may be expected by others to punish wrongdoers.

When is Extra-Organizational Punishment Justified?

Although it is the case that people desire others’ punishment for the sake of perceived justice, it could very well be the case that their desire is unjustified, in which case, organizations who satisfy the observer’s desire to punish could be considered to have punished their employee unjustly. In some cases, regardless of the observers’ desire to punish, organizations would be justified in ignoring those desires, citing them as unfair in themselves. We are therefore presented with the philosophical task to parse out when third person perceptions of required punishment are justified and when they are not justified, in which case, the organization need not punish their employee to satisfy the expectations of social shamers. Sometimes social shaming of an employee’s outside work activities is fair and sometimes it is unfair, and this is true regardless of the strength of moral conviction of the observing party (Rawls, 1999) (Phillips, 1997). When observer expectations can be determined to be unfair, it would seem justified to let the organization morally “off the hook” for their employee’s bad behavior outside of work.²

² There could be the decision made to terminate the employee for bad behavior outside of work that is based on financial decisions. For instance, if an organization decides they will lose too many customers if they do not fire the employee and then decide to please the observers’ expectations, that decision is a financial one, not a decision based on satisfying justice. If all roads lead to the “customer (observer) is always right” for the sake of maximizing profit, it will turn out that when observer expectations are unfair and unjustified, there would need to be an effective strategy to mitigate the expectations of the observer. What that method would be is outside the scope of this paper but acknowledged as needed remedy to let companies “off the hook” when morally justified.
This argument assumes that there is a distinction between mere perceived justice and actual justice (Rawls, 1999). From an ethical perspective, this assumption is uncontroversial yet vital for determining when punishment in the form of firing or any employee censure is just.

Our philosophical task will be to attempt to parse out when the organization need not from a moral and philosophical perspectives satisfy observers’ need for perceived justice. Not all social shaming should be recognized as just and fair. We believe it is important to establish explicit criteria for organizations to justify when it is reasonable to argue against social shaming and the call to punish an employee for actions witnessed outside of the work environment. The decision to punish carries with it not only direct negative consequences (e.g. loss of employment), but also long-term implications that are problematic. Namely, if a critical mass calls for firing regardless of the offense, organizations may find themselves harming others for the sake of nothing more than the will of the mob. Though organizations may be inclined and entitled to do so, they may also wish to exercise caution given the harm it may inflict.

We will first appeal to already established rules and regulations by making an analogy to permissible hiring practices (Laws Enforced by EEOC). For cases that do not fall within the purview of already established laws and regulations, we will appeal to widely recognized and highly intuitive moral theories and principles such as Mill’s “On Liberty” and for contrast, Kant’s Categorical Imperative to establish additional criteria for justified punishment (Mill, 1998) (Bowie, 2000) (Kant, 2011). For cases where observers call for the organization to fire employees for their bad behavior outside of work, we can attempt to make an analogy to justified reasons for deciding whether to hire a job candidate or to pass on her/him in favor of another candidate. This analogy would be useful for helping us determine when punishment in the form of firing an existing employee for bad outside behavior is justified since we can rely on the legal system as an objective standard of fairness for reasons not to hire someone. If an analogy can be made, what applies to one can be applied to the other. However, if the analogy does not hold, we will need to look elsewhere for more objective criteria, for instance criteria provided by Mill and Kant, to determine when third party expectations for organizations to fire employees for bad outside behavior is either fair or unfair.

Mill and Kant can be used to help distinguish between demands of punishment by observers that are just and those that are unjust. The ability to distinguish between just and unjust social shaming is important because observers’ desire for punishment is influential and demanding in this age of social media. The fact that observers are basing their desire for punishment on perceived notions of justice makes the ability to distinguish even more important. Without the ability to distinguish when social shaming is fair, the observers more than likely believe that they are on the side of justice and the moral high ground. But often times, observers perceived justice is not enough to actually be just. Other times, observers’ perceived justice is legitimate, even if they are unaware of it, because the action in question causes the type of harm that any one of us would expect to be protected from as a moral society (Rawls, 1999).

Bibliography


