The Psychology of Counterfactual Thinking

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11 When the social context frames the case

Counterfactuals in the courtroom

Patrizia Catellani and Patrizia Milesi

"If only the victim had not actively cooperated, the perpetrator could not have taken her jeans off and the rape would not have happened." A counterfactual thought of this type is implicitly referred to in the written motivation of an acquittal verdict given by the Italian Supreme Court (Corte di Cassazione) some years ago. It was a case of "acquaintance rape," in which a young woman was raped by her instructor during a driving lesson. In the verdict, the judges pointed out that: "it is almost impossible to take off another person's jeans without the person's active cooperation, because it is a difficult action even for the person who wears them" (Italian Supreme Court, section III, 6 November 1998–10 February 1999, no. 1636). The verdict, which reversed a previous verdict of guilt, caused great sensation in Italy along with several protests from the feminist movement.

The above verdict is just one of several possible examples of the use of counterfactual thinking in judicial decision making. It shows how interpretation and evaluation of judicial cases are heavily influenced not only by considerations of what actually happened, but also by considerations of what might have happened "*if only*. . . ." Much research has shown that focusing counterfactuals on one of the actors of a judicial case is likely to increase the amount of responsibility attributed to that actor. Investigating what factors may constrain counterfactual focus in the judicial context is therefore of relevance to a better comprehension of how legal cases are interpreted and evaluated. This issue is dealt with in the present chapter. Unlike previous research, which was mainly focused on intrapersonal, context-independent constraints (for a review, see Seelau *et al.* 1995), we focus our attention on psychosocial, context-dependent constraints that have been less investigated so far (see also Mandel 2003a).

Most empirical studies on counterfactual constraints have referred to norm theory (Kahneman and Miller 1986), according to which abnormal events are more likely to be counterfactually mutated. In these studies, attention has been mainly focused on the actor's behavior, and abnormality has been intended as deviation from routine behavior. According to this approach, the actor's behavior is compared with the actor's own behavioral standard, and behaviors showing low consistency with this *intrapersonal norm*

are more likely to be counterfactually mutated. However, in a socially embedded context like the judicial one, the actor of an event is likely to be perceived not only as an individual but also as a member of a social category (e.g., a woman, an old person, a gipsy). Consequently, the actor's behavior is likely to be compared not so much with the actor's own behavioral standard as with a social category's behavioral standard; namely, with a *social norm*. Behaviors that do not conform to that social norm are more likely to be counterfactually mutated. Thus, social or stereotype-based norms that are evoked by the actors' social memberships are likely to form a relevant category of psychosocial constraints influencing counterfactual mutability.

Other psychosocial constraints that are likely to influence counterfactual mutability are related not so much to the context of the event as to the context in which the event is interpreted. In particular, roles played by people when interpreting the event (e.g., perpetrator, victim, attorney, juror), together with role-related expectations and aims (e.g., defense, accusation, neutrality) may have an influence on counterfactual mutability. On the one hand, these factors may induce people who generate counterfactuals to focus attention on some antecedents of the event instead of others. On the other hand, they may induce people who are exposed to counterfactuals generated by others to take them into account or not in their own interpretation of the event. In consideration of the above points, in this chapter we propose a Social Context Model of Counterfactual Constraints, according to which two categories of psychosocial constraints influencing counterfactual mutability may be envisaged, one related to the social context of the event and the other to the social context in which the event is interpreted. In doing this, we aim at extending previous application of norm theory to the study of counterfactual thinking, showing how norms triggered by the social context can influence counterfactuals and, as a consequence, social judgment.

After starting the chapter with a brief survey of studies showing the links between counterfactual thinking and responsibility attribution in the judicial context, we focus our attention on studies investigating the so-called *exceptionality effect*; namely, how counterfactual mutability may be constrained by abnormality in the sense of violation of intrapersonal norms. We then devote the major part of the chapter to the two categories of psychosocial constraints envisaged by our Social Context Model of Counterfactual Constraints. First, we present recent research results supporting the existence and the strength of a *nonconformity effect*, according to which, under given circumstances, people would be especially inclined to focus counterfactuals on actors' behaviors that do not conform to social norms. Then, our attention shifts from the context of the event to the context in which the event is reconstructed. We offer empirical evidence of how role-related expectations and aims of people reconstructing the event may affect counterfactual mutability. In the final discussion, we suggest that the Social Context Model of Counterfactual Constraints might be usefully extended

from the judicial context to other real-life contexts in which counterfactual thinking is widely employed.

Counterfactual focus and evaluation of judicial cases

Several studies have shown the existence of a link between counterfactual thinking and evaluation of judicial cases (*inter alia* Bothwell and Duhon 1994; Branscombe *et al.* 1996; Nario-Redmond and Branscombe 1996; Wiener *et al.* 1994). In these studies, participants are usually told to think how a crime episode might have turned out differently and to complete open-ended counterfactual stems.

Some studies have demonstrated that, when counterfactual alternatives to the negative outcome are readily available, participants feel greater sympathy towards the victim, envisage a more severe punishment for the perpetrator, and judge the case as more serious than when such alternatives are not so readily available (e.g., Macrae and Milne 1992; Macrae *et al.* 1993; see also Miller and McFarland 1986). Other studies have established that thinking about how a crime episode might have had a better outcome (upward counterfactual) if only an actor had behaved differently is likely to increase the degree of responsibility attributed to that actor. This means that the amount of blame assigned to the protagonists of a judicial case may depend on whose behaviors counterfactuals are focused on: more blame is usually attributed to the protagonist (either the victim or the perpetrator) who might have behaved differently and improved the outcome. For example, it has been shown that in a rape case the amount of blame attributed to the victim increases as the number of counterfactuals focused on the victim increases (Nario-Redmond and Branscombe 1996; see also Branscombe *et al.* 1996). Similar results have been observed in a variety of judicial cases: car accident cases (Branscombe *et al.* 1996), negligence and burglary cases (*inter alia* Branscombe *et al.* 1993; Wiener *et al.* 1994). Furthermore, the link between counterfactual focus and responsibility attribution has been observed both when participants generate counterfactuals on their own and when they listen to counterfactuals presented by an attorney (Nario-Redmond and Branscombe 1996).

All the above studies (and others that will be discussed in the following sections) suggest that judicial events are not judged in isolation. Rather, event interpretation and responsibility attribution are influenced not only by considerations of what actually happened but also by considerations of what might have happened "if only..." That is, these interpretations and attributions depend on what counterfactual alternatives are used as a comparison.

The influence of intrapersonal norms: the exceptionality effect

In consideration of the observed link between counterfactual focus and responsibility attribution in the judicial context, increasing our knowledge of what behaviors are more likely to be focused on may be of some relevance. According to norm theory, event antecedents perceived as abnormal or exceptional are more likely to be counterfactually mutated. In their classic experiment, Kahneman and Tversky (1982b) presented participants with the story of Mr Jones, who died while driving home because a truck driver failed to stop at a red light and crashed into his car. Participants were asked to complete open-ended counterfactual stems ("if only...") from the perspective of the Jones family and their friends. Over 80 percent of the participants were more likely to mutate an exceptional event, such as the victim leaving work earlier than usual, than a routine event, such as the victim taking the usual route home (the *exceptionality effect*). Thus, in Kahneman and Tversky's work, and in subsequent studies inspired by that work (*inter alia* Bouts *et al.* 1992; Gavanski and Wells 1989; Klauer *et al.* 1995; Wells *et al.* 1987), abnormality has been interpreted as low consistency of the actor's behavior compared with the actor's own behavioral standard (an *intrapersonal norm*).

In a similar vein, some studies carried out in the judicial context have also focused on abnormality intended as a violation of an intrapersonal norm, and have verified its consequences in terms of emotional response and responsibility attribution (Macrae and Milne 1992; Miller and McFarland 1986; Turley *et al.* 1995). These studies are based on the hypothesis of *emotional amplification*, according to which "affective response to an event is enhanced if its causes are abnormal" (Kahneman and Miller 1986: 145). It is assumed that people, faced with a judicial case including abnormal behaviors, are more likely to generate counterfactuals and, therefore, to exhibit extreme emotional and judgmental responses. In these studies, two groups of mock jurors were presented with two scenarios that differed only for one feature in the behavior of one of the actors, which was either consistent or inconsistent with the actor's routine behavior. For example, in a study by Turley *et al.* (1995: Study 3) one group of participants were presented with a scenario of a rape case in which a woman had been raped in a health club parking lot at night after going, *as usual*, to her aerobics class. Another group of participants were presented with the same scenario, except for the fact that the victim that night had *unusually* gone to aerobics class. Participants believed that the rape victim would feel more responsible and would experience greater regret when the rape was preceded by the victim's exceptional behavior.

Several studies dealing with a variety of judicial cases have shown that high availability of counterfactual alternatives for exceptional antecedents in a crime episode affects a whole range of incident-related judgments. Among

others, in the case of a man who was mugged while walking home, Macrae *et al.* (1993: Study 2) found that participants recommended a harsher punishment for the perpetrator, rated the crime as more serious, and felt greater sympathy for the victim when the incident was preceded by exceptional circumstances (i.e., the man had taken a new route home) than by routine circumstances (i.e., the man had taken his regular route home).

Thus, when an event has been preceded by exceptional antecedents, judgments tend to become extreme. This may give rise to paradoxical consequences: the victim of a crime may receive higher compensation than another victim of a similar crime only because the former was victimized in exceptional rather than routine circumstances. For example, a man who is shot on a robbery in a convenience store and loses the use of his right arm receives higher compensation by participants who are told that the man rarely frequents that convenience store than by participants who are told that he is a regular customer (Miller and McFarland 1986: Study 1; see also Macrae and Milne 1992).

The influence of social norms: the nonconformity effect

The studies reported so far have investigated the effect of perceived abnormality intended as deviation from the actor's routine behavior. In real life, however, the actor of an event is often perceived not just as an individual, but also as a member of a social category (e.g., a woman, a student, or a White person). Hence, actors' behaviors may be compared not only with the actors' own behavioral standards (i.e., their routine behaviors), but also with the perceived behavioral standards of the social categories evoked by the actors. In this case, the reference norm is not rooted in the past frequency of an individual's given behavior, but in the perceived frequency of that behavior in a specific social category.

Psychosocial research has clearly shown that behaviors perceived as frequent or normal within a given community are likely to evolve into social norms, behaviors perceived as right and proper for that community (see Thibaut and Kelley 1959). In other words, normal behaviors are likely to become normative behaviors. This entails that when the actor of an event evokes a social norm people may be more likely to generate counterfactual scenarios in which observed behaviors are substituted by expected normative behaviors. Let us consider the following case. A woman who usually goes to work by train decides to go by car for a change. Her car has a breakdown and she accepts a lift from a male stranger who afterwards rapes her. The victim's behavior is likely to be compared with her routine behavior (i.e., "if only she had taken the train"). However, the victim's behavior is also likely to be compared with the standard behavior of a (nonraped) woman, which implies not accepting a lift from a stranger (i.e., "if only she had not accepted a lift from a stranger").

Something similar happens when people explain intergroup differences

(Hegarty and Pratto 2001). For example, when people are asked to explain gender differences in voting behavior, they first think of a typical voter and call to mind a male exemplar. Consequently, male voters constitute the normative group, while female voters constitute the nonnormative group, whose behaviors need to be explained (Miller *et al.* 1991). Thus, behaviors of the nonnormative group attract people's attention and are compared with the ones of the normative group assumed as a standard reference. In a similar vein, McGill (1993) has observed that people asked to explain why a woman is not successful in a typically male task (e.g., shooting a pool) tend to compare the woman with successful men in the same task, while people asked to explain why a man is not successful in a typically female task (e.g., sewing) tend to compare the man not with successful women but, still, with successful men. According to McGill, this is because people are more likely to generate counterfactuals having men as protagonists instead of women, because men are treated as a default reference group (see also McGill 2000; McGill and Klein 1995).

Contrasting the observed behavior with the expected normative behavior may be even more likely to occur in an evaluative context such as the judicial one. However, a fundamental legal principle states: "all men are equal before the law." In principle, in the judicial context the observed behavior should be compared not with one that is normative of a given social category, but with one that is normative for everybody. Actually, in a number of lawsuits (e.g., tort, criminal, or discrimination) courts have relied upon the "reasonable person" standard (Keeton *et al.* 1984). For example, in a negligence suit involving a person who is blind, jurors were told to expect that person to "take the precautions . . . which the ordinary reasonable person would take if he were blind" (Keeton *et al.* 1984: 174). The behavior of the blind person is evaluated for its conformity to the reasonable person standard, and subsequent sanctions or compensation is established accordingly.

Referring to what the average person may do in a given context brings up the point of how some contexts might evoke behavioral norms *per se*; that is, norms that might be perceived as valid across different social categories. Some evidence in this regard may be found in a recent study by Mandel (2003a; see also Chapter 10, Dhami *et al.*). Participants asked to generate counterfactuals about a negative event they experienced either in an *academic context* (e.g., failing an exam) or in an *interpersonal context* (e.g., having problems with a friend) have generated more self-focused counterfactuals in the first case than in the second one. According to Mandel, the difference is because the academic context evokes a norm of personal responsibility and control, while the interpersonal context evokes norms of shared responsibility and reciprocity; in generating counterfactuals, participants would therefore have referred to context-related norms.

In many cases, however, a given context is likely to evoke not only generic context-related norms, but also more specific social norms related to the different categories of people who may act in that context. For example,

the *academic context* may evoke a generic norm of personal responsibility but also social norms regarding the different degree of personal responsibility of female versus male students, of younger versus older students, of psychology versus law students, and so on. If these social categories are made salient by the context, the observed behavior is likely to be compared with the expected behavior in the salient contrast category. Similarly, the *judicial context* may evoke a general (although very strong) norm of personal responsibility, but is also likely to evoke more specific social norms related to the social categories active in the context. For example, previous research has shown that people have different expectancies regarding crimes that may be committed by Black people as compared with White people (Gordon 1990). As we will see in more detail in the following section, previous research has also shown that people have different expectancies regarding behaviors of male crime victims as compared to female crime victims.

Thus, when interpreting events in a social context perceived abnormality of the actors' behaviors may regard not only behaviors that are inconsistent with what the actor is used to do (an *intrapersonal norm*), but also behaviors that do not conform to behavioral standards of a contrast social category (a *social norm*). Accordingly, besides the much studied exceptionality effect mentioned above, the existence of a *nonconformity effect* (Catellani *et al.* 2004) may be envisaged, according to which behaviors that do not conform to a relevant social norm are perceived as more likely to be mentally mutated in counterfactuals than behaviors that conform to that norm. Endorsement of social or stereotype-based norms may vary from one person to another. Hence, the strength of the nonconformity effect will depend on the degree of the perceiver's endorsement of social norms that are relevant in a given context, being highest in case of high social norm endorsement. For this reason, research aimed at assessing the nonconformity effect should also include measures of social norm or stereotype endorsement.

The presence of a nonconformity effect in counterfactual thinking is likely to have a strong influence on the attribution of responsibility and blame. As research on attribution processes by Jones and McGillis (1976) clearly highlighted, the actor's behaviors that do not conform to our expectancies are diagnostic of the actor's dispositions and are therefore likely to orient our evaluation of the actor. Similar to our argument in this chapter, in Jones and McGillis's approach expectancies are based not only on information regarding the specific actor (target-based expectancies) but also on information regarding the target social category (category-based expectancies).

Social norms in rape cases

Although previous research has suggested that "stereotype-inconsistent" behaviors might especially evoke counterfactual thoughts (Branscombe and Weir 1992; Branscombe *et al.* 1993; Hegarty and Pratto 2001), only recent

studies (Catellani and Milesi 2001, 2004; Carellani *et al.* 2004) have offered empirical evidence of the influence of social or stereotype-based norms on counterfactual mutability. These studies have focused atrention on rape cases and in particular on how rape victims' behaviors are likely to be counterfactually mutated. This is because there are strong stereotypes about rape victims (the so-called rape myth; Burt 1980) and these, by contrast, prescribe what a woman should or should not do to avoid rape.

For example, according to stereotype-based norms, a woman should not engage in a host of tisky behaviors, such as accepting lifts from strangers (Acock and Ireland 1983), walking late at night (Pallak and Davies 1982), or drinking on her own in a pub (Krahè 1988). At rhe same time, a woman is expected to assume a number of preventive behaviors, such as trying to escape and opposing appropriate dissent and resisrance (e.g., saying "no" to unwanted advances and fighting back, Howard 1984), in order to avoid being raped.

In facr, such a rich set of presctiptions has been shown to direct people's attention in rape cases to the victim rather than to the perpetrator, contrary to whar happens in most other judicial cases (*inter alia*, Arkinson and Drew 1979; Borgida and Brekke 1985). Consistenrly, in a study on counterfactual thinking in two different judicial cases, Catellani and Milesi (2001) have shown that in a rape case counterfactual focus is more on rhe victim rhan on rhe perpetrator, while it is more on the perpetrator than on the victim in an assault case involving rwo men. This result has been explained by the fact rhat the rape victim's behavior is compared with a consolidated set of social norms, while the same does not hold for victims of different crimes.

Generation and evaluation of explicit counterfactuals

Further studies (Carellani *et al.* 2004) have investigated the nonconformity effect in a more direct way, assessing whether people with higher endorsement of the rape victim stereotype are especially inclined to focus counterfactuals on the victim's behaviors that do not conform to the stereotype-based norm. The distinction berween conforming and nonconforming behaviors was based on the protorypical profile of the rape situation described by Krahè (1991) and was corroborated by the results of a pilot study where participants presented with a rape report were asked ro rate how rhe victim's behaviors conformed to the way a woman should behave with a stranger. Participants in the main studies were asked to play the role of mock jurors and were presented with the same rape report employed in rhe pilot study. The report described a case involving a woman who had a car breakdown on her way home and accepted a lift from a police officer, who afterwards raped her. The victim's behaviors were balanced as regards their conformiry versus nonconformiry to stereotypic norms concerning women's behavior. For example, one of the normative behaviors was "she got frightened when the man rook off the gun and laid ir aside," while one of the non-

normative behaviors was "she was pleasant with the man." The victim's behaviors were also balanced as regards their being actions (e.g., "she talked freely to the man") versus inactions (e.g., "she did not say 'no' clearly").

In Study 1, after reading the report participants were asked to complete open-ended counterfactual stems, starting with "The outcome might have been better, if only. . ." In Study 2, participants were asked to rate their agreement with the most frequent counterfactual statements generated in Study 1, again balanced as regards their focus on conforming versus nonconforming behaviors and on actions versus inactions. In both studies, participants' endorsement of the rape victim stereotype was also assessed, using a scale based on Burt's (1980) Rape Myth Acceptance Scale, reviewed by Lonsway and Fitzgerald (1995). Results of both studies confirmed the presence of a nonconformity effect in high stereotypers. These participants generated more counterfactuals focused on the victim's nonconforming behaviors (Study 1) and showed higher agreement with the same type of counterfactuals (Study 2). Such counterfactuals were also shown to have the highest correlation ratings with the victim's responsibility.

A further result of our research is that high stereotypers focused a greater number of counterfactuals on the victim's nonconforming *inactions*. That is, they focused on what the victim did not do but might have done according to stereotype-based norms regarding a woman's behavior with a stranger (see Table 11.1). As mentioned above, stereotype-based norms regarding rape victims include a series of actions aimed at preventing an assault, for example "crying out for help." It is, therefore, not surprising if the absence of one or more of these normative actions in a specific episode may especially catch the attention of high stereotypers, leading them to generate counterfactuals like "if only she had cried out for help." Such enhanced counterfactual focus on inactions observed by Catellani *et al.* (see also Zeelenberg *et al.*

Table 11.1 Counterfactuals focused on the rape victim's nonconforming behaviors as a function of stereotype endorsement

	Stereotype endorsement	
	Lower	*Higher*
Mean proportion of self-generated counterfactuals (Study 1)		
Actions	0.13_a	0.18_a
Inactions	0.09_a	0.29_b
Mean agreement with other-generated counterfactuals (Study 2)		
Actions	2.87_a	4.10_a
Inactions	2.68_a	5.59_b

Source: Adapted from Catellani *et al.* (2004).

Note
Means within rows not having a common subscript differ at $p < 0.01$.

2002) becomes especially interesting, as it contrasts a general tendency often observed in previous research on counterfactual thinking; namely, the tendency to focus attention on actions more than on inactions (the so called *action–inaction effect*; *inter alia* Kahneman and Miller 1986; Landman 1987; Lundberg and Frost 1992; Miller and Taylor 1995; Zeelenberg *et al.* 1998b). Kahneman and Miller (1986) suggested that actions are usually perceived as more abnormal than inactions and therefore more likely to be focused on in counterfactuals. However, Catellani *et al.*'s research has shown that the nonconformity effect may be strong enough to moderate the action–inaction effect. When stereotype-based norms that prescribe actions are evoked, inactions may be perceived as more abnormal than actions and may therefore be more likely to be mutated in counterfactuals.

In Catellani *et al.*'s research, counterfactuals focused on the victim's nonconforming inactions turned out to be highly related to responsibility assigned to the rape victim. This result extends what was found by previous research on the link between counterfactuals and responsibility attribution, as it shows that this link may hold not only for action-focused counterfactuals (Turley *et al.* 1995), but also for inaction-focused counterfactuals. This is likely to be the case when, as for rape victims, stereotype-based expectations include the adoption of preventive behaviors aimed at avoiding the crime. Consistently, in Catellani *et al.*'s research perceived crime avoidability turned out to be a significant mediator of the relationship between inaction-focused counterfactuals and victim's responsibility (see also Mandel and Lehman 1996): people thought of what the victim might have done, but did not do, to avoid the rape and this led to increased responsibility attributed to the victim. Overall, the above findings demonstrate that abnormal behaviors, in the sense of nonconforming to stereotype-based norms, may stimulate the generation of counterfactual alternatives focused on those behaviors and, consequently, may increase the attribution of responsibility to the actors.

Perception and reproduction of implicit counterfactuals

In Catellani *et al.*'s Study 2 people were presented with and asked to evaluate other-generated counterfactuals expressed in the explicit form "if . . . then." However, in real life, counterfactuals are often conveyed implicitly, through linguistic indicators like *even*, *at least*, *without*, *next time* (Catellani and Milesi 2001; Sanna and Turley 1996; Sanna and Turley-Ames 2000). For example, the adverb "even" may convey a counterfactual focused on a person's action. This means that a sentence like "She *even* talked intimately to him" implicitly hints at the counterfactual hypothesis that "if she had not talked intimately to him, things might have ended differently." Similarly, the adverb "without" may convey a counterfactual focused on a person's inaction. Therefore, a sentence like "She accepted the kiss *without* any resistance" implicitly hints at the counterfactual hypothesis that "if she had put up some resistance, things might have ended differently."

What happens when people are presented with implicit counterfactuals? More specifically, what kind of relation exists between implicit counterfactuals "suggested" by others and counterfactuals that people generate on their own? Such an issue, which has not been previously investigated by counterfactual research, may be of some interest to research aimed at reproducing the conditions in which counterfactual thinking is employed in courtrooms. During a trial, jurors are likely to be exposed to counterfactuals more or less deliberately suggested by other protagonists of the trial. For example, attorneys have been shown to be especially inclined to employ counterfactuals as a means of influencing jurors (Conley and O'Barr 1990; Kassin *et al.* 1990).

Catellani and Milesi (2004: Study 1) have investigated whether the nonconformity effect may still be observed when people generate counterfactuals following exposure to other-generated counterfactuals. Mock jurors with higher versus lower endorsement of the rape victim stereotype were presented with the report of a rape case that included four implicit counterfactuals focused on the victim's nonconforming actions (e.g., "She even told him that he was nice"), and four implicit counterfactuals focused on the victim's nonconforming inactions (e.g., "...without showing embarrassment"). After reading the report, participants were asked to complete open-ended counterfactual stems, starting with "The outcome might have been better, if only..." Results showed that high stereotypers were significantly more inclined than low stereotypers to reproduce counterfactuals "suggested" in the report (e.g., "...if only she hadn't told him that he was nice"). Moreover, high stereotypers generated a higher number of "original" counterfactuals of the same type, that were not referred to in the report but might be inferred from it (e.g., "...if only she hadn't been pleasant to him").

These findings offer a further confirmation of the presence of the nonconformity effect in counterfactual thinking. First, they show that high stereotypers pay special attention to counterfactuals suggested by others when they are focused on nonconforming behaviors, even if these counterfactuals are only implicitly conveyed. Second, they show that after exposure to these counterfactuals high stereotypers are also specially inclined to generate further counterfactuals of the same type. This suggests that, once evoked, stereotype-based norms are likely to become the main reference norm in generating counterfactuals.

The studies presented in this section thus offer converging evidence that social norms may influence counterfactual thinking similarly to intrapersonal norms. In the interpretation of complex social events, the actors' behaviors are likely to evoke and be compared to social norms. Even behaviors that *per se* would be unlikely to attract the perceiver's attention and be mutated in counterfactuals (for example, the actor's inactions), if they deviate from an evoked social norm may become the focus of perceiver's attention and, consequently, mutable in counterfactual thinking.

The influence of the communicative context

So far, our analysis of counterfactual constraints in the judicial context has focused on factors related to the context of the event being interpreted (e.g., a rape case). However, counterfactual thinking is often a social practice carried out through interpersonal communication (see Hilton 1991). Therefore, further constraining factors may be taken into account, related to the context in which counterfactual thinking is expressed (e.g., reconstruction of a rape episode during a trial). In this case what is under examination are not intrapersonal or social norms concerning people acting in the event, but other psychosocial and communication-related factors concerning people interpreting the event.

What people say is usually constrained by the roles people play in a given context. Role-related expectations and goals are therefore among the factors that are likely to influence counterfactuals expressed in a given communicative context. The judicial context is particularly fit for investigating the presence of such an influence as it is characterized by higher formalization than other everyday contexts. In a trial, the participants' roles are fixed (e.g., perpetrator, victim, attorney, juror) and so are the goals they pursue (e.g., defense, accusation, neutrality). Accordingly, strong expectations prescribe what participants should or should not say as a function of their judicial role (*inter alia* Atkinson and Drew 1979; Mannetti *et al.* 1991).

Empirical evidence of the influence that the role played by people in the judicial context may have on counterfactual mutability may come from examining counterfactuals by people who give an account of a judicial case from opposite perspectives. In research by Catellani and Milesi (2001: Studies 1 and 2), male and female participants were first presented with the report of a rape case and then invited to give their own accounts of the same event, playing the role of either the female victim or the male perpetrator. Analysis of counterfactuals implicit in the participants' accounts revealed that the number of counterfactuals focused on actions versus inactions (e.g., "if Julia hadn't joked" versus "if Julia had put up some resistance") and on controllable versus uncontrollable behaviors (e.g., "if Julia hadn't been so kind" versus "if Julia hadn't been scared") was influenced by role-related aims. For example, the often observed tendency to focus counterfactuals on controllable instead of uncontrollable behaviors (*controllable–uncontrollable effect*, Davis *et al.* 1995; Girotto *et al.* 1991; Markman *et al.* 1995) was still visible in these studies, but it was stronger in the case of other-focused counterfactuals than in the case of self-focused counterfactuals (cf. Mandel 2003a).

Role-related expectations and goals may also influence the perception and subsequent reproduction of other-generated counterfactuals. What happens, for example, when people are exposed to implicit counterfactuals generated either by the police – supposedly a trustworthy source – or by the perpetrator – supposedly an untrustworthy source? In Catellani and Milesi (2004:

Study 2), participants with higher endorsement of the rape victim stereotype were presented with the same rape report used in Catellani and Milesi's Study 1 (see above), including implicit counterfactuals focused on the rape victim's nonconforming behaviors. This time, however, half the participants were told that the report came from the police, while the other half were told that the report described the facts as the perpetrator had reconstructed them. After reading the report, participants were asked to play the role of mock jurors and to complete "if only . . ." sentence completion stems. In the case of the perpetrator reporting the event, participants were expected to experience a conflict regarding the norm or rule to be referred to in expressing their counterfactuals. On the one hand, reference to stereotype-based norms would induce them to reproduce "suggested" counterfactuals focused on the victim's nonconforming behaviors. On the other hand, reference to the communicative rule according to which the source of the report is unreliable would induce them to discard the same "suggested" counterfactuals. Such a conflict is likely to evoke cognitive dissonance: the individual endorses stereotypic beliefs that are also endorsed by someone else the individual wants to keep his/her distance from.

Results showed that participants faced with the untrustworthy source found a way to overcome this conflict. As compared to participants faced with the trustworthy source, they generated a significantly higher number of "original" stereotype-consistent counterfactuals, not suggested by the suspected source, but still consistent with stereotype-based norms regarding the victim (Figure 11.1). In this way, they could confirm their stereotypes without seeming to follow an untrustworthy source. The outcome is somehow disconcerting, as the fact of being exposed to stereotype-consistent counterfactuals suggested by an untrustworthy source may lead to an increase, instead of a reduction, of stereotype-based counterfactuals.

This result may remind the reader of the "rebound effect" described by Macrae *et al.* (1994), according to which people who have been initially asked to suppress their stereotypes engage in a systematic cognitive activity that induces them to reaffirm these stereotypes even more strongly afterwards. What we have observed in our research, however, differs from the rebound effect in two respects. First, our participants were not induced to suppress stereotypes by an explicit request, but by a communicative situation evoking suspicion (see Fein and Hilton 1994). Second, our participants did not go through the two separate steps of stereotype suppression and stereotype reaffirmation. Rather, we suspect that, right from the beginning, participants engaged in systematic cognitive activity to overcome their cognitive dissonance, which led them to find a way of expressing their stereotypes without violating the rules of the communicative context.

To sum up, the studies described in this section offer converging evidence that role-related goals and expectations regarding people who report on a given event (e.g., their being trustworthy versus untrustworthy) may have an influence on counterfactual thinking regarding the same event. More

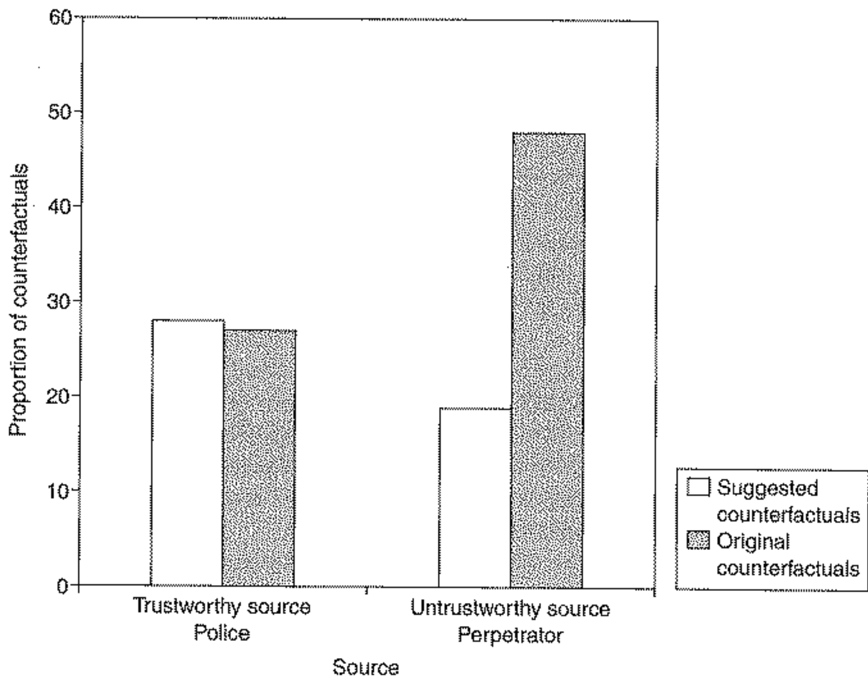

Figure 11.1 Mean proportion of counterfactuals focused on the rape victim's non-conforming behaviors as a function of source trustworthiness (source: Adapted from Catellani and Milesi (2004)).

generally, they suggest that counterfactual thinking may be influenced by psychosocial factors related to the context in which the interpretation of the event takes place.

Conclusion

In the present chapter, we have examined the factors that influence counterfactual mutability in a socially embedded context such as the judicial one. While previous research has mostly focused attention on context-independent, intrapersonal constraints, we have provided evidence in support of a Social Context Model of Counterfactual Constraints. According to our model, two categories of psychosocial constraints may play a relevant role in counterfactual mutability: one related to the context of the event that is interpreted, the other related to the context in which the interpretation of the event takes place. Although the research presented in this chapter has been carried out in the judicial context, we argue that the two categories of psychosocial constraints are also likely to play a role in other socially embedded contexts.

As for the psychosocial constraints regarding the context of the event, our model suggests that the social categories evoked by the actors of an event are likely to have an influence on the kind of norm referred to in counterfactuals. The assumption is that the study of counterfactual thinking in applied real-life contexts requires a wider conceptualization of norms – and, therefore, of abnormality – than the one often implied by previous research (see Hilton 2001). Behaviors perceived as abnormal may be not only those deviating from intrapersonal norms, but also those deviating from social norms. Consistently, we have reported several research results supporting the existence and strength of a nonconformity effect, according to which behaviors perceived as nonconforming to social norms may be especially likely to be mentally undone. Observed results may be summed up in the following six points.

First, the nonconformity effect is more likely to manifest itself when people generate counterfactuals about scripted events for which a well developed set of social behavioral prescriptions is available. Second, the nonconformity effect is stronger in people who endorse the social norms that are relevant in the context of the event. Third, the nonconformity effect may be found in the generation of counterfactuals, as well as in the perception and evaluation of counterfactuals generated by other individuals. Fourth, the nonconformity effect has a significant impact on the evaluation of the event, given that counterfactuals focused on an actor's nonconforming behaviors are especially related to the attribution of responsibility to that actor. Fifth, the nonconformity effect may moderate the often observed action–inaction effect. When inactions deviate from stereotypic expectations regarding the actor they become especially likely to be counterfactually mutated. Sixth, the nonconformity effect does not disappear even when the source of counterfactuals is presented as unreliable. (Paradoxically, as we have seen, it may even be enhanced.) This persistence of the nonconformity effect suggests that comparing reality with its alternatives often results into a confirmation of one's preconceptions, instead of favoring the creation of new options and a change in one's preconceptions (see also Tetlock 1998; Chapter 12, Tetlock and Henik).

The second category of psychosocial constraints implied by our Social Context Model of Counterfactual Constraints pertains to the communicative context in which the event is interpreted. In particular, the studies presented in this chapter have shown that role-related expectations and aims of people reconstructing the event influence the generation, selection, and evaluation of counterfactuals. These results may be summed up in the following three points. First, the expectations and aims of people generating counterfactuals may be so strong as to moderate two "basic" effects in counterfactual mutability, such as the action–inaction effect and the controllable–uncontrollable effect. Second, a role-related expectation, such as trustworthiness, may influence the perception of counterfactuals generated by other individuals and the subsequent generation of further

counterfactuals. Third, role-related expectations regarding the people who interpret the event may interact with expectations regarding the people who act in the event, as exemplified by the study on how the nonconformity effect may be influenced by a source's trustworthiness.

In conclusion, our Social Context Model of Counterfactual Constraints implies that counterfactual thinking is constrained not only by context-independent, intrapersonal factors, but also by psychosocial factors that are activated by the context of the event and by the context in which the event is interpreted. Further examination of these factors and of their interaction may contribute to a better comprehension of counterfactual thinking and, therefore, of the interpretation of events in various real-life contexts.