

# Causation and Norms

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# AIM

- ◆ Identify **biases** in the ascription of *actus reus* (bad act) and *mens rea* (guilty mind)
- ◆ Explore **alleviation** strategies
- ◆ Make the law **more just**

[www.guiltymindslab.com](http://www.guiltymindslab.com)

# **OVERVIEW**

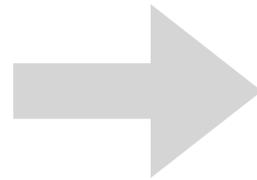
# SCENARIO 1



MARK



LAUREN



# SCENARIO 1



MARK



LAUREN



CAT

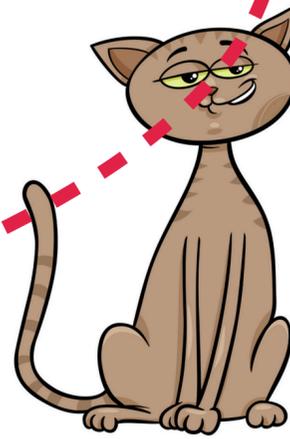
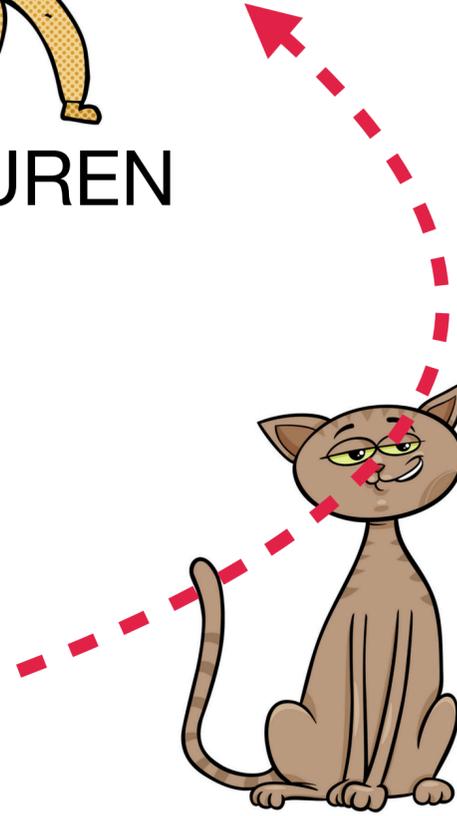
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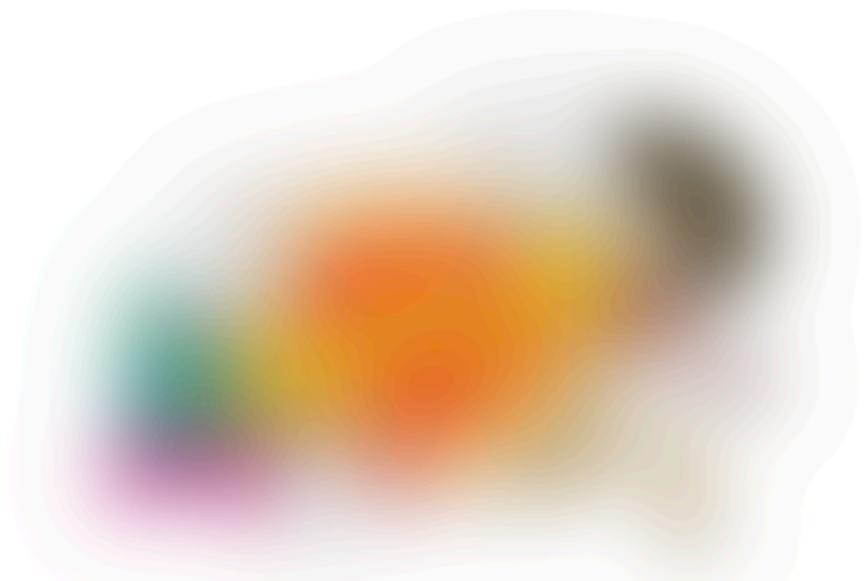
WHO CAUSED THE ACCIDENT?





# WHO CAUSED THE ACCIDENT?

- ◆ actual causation
  - ◆ ordinary notion
- 



# WHO CAUSED THE ACCIDENT?

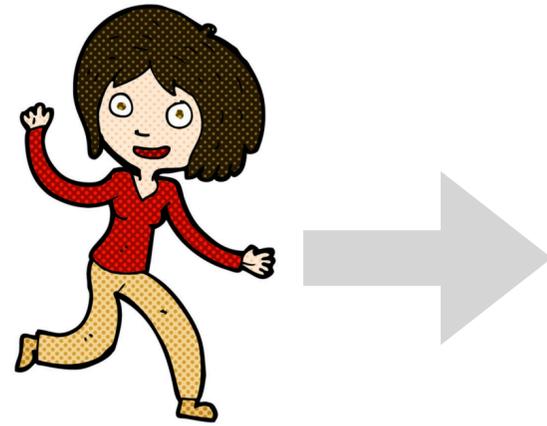
- ◆ Mark? Lauren?
- ◆ The cat?



## SCENARIO 2



MARK



LAUREN

# SCENARIO 2



MARK



LAUREN



CAT

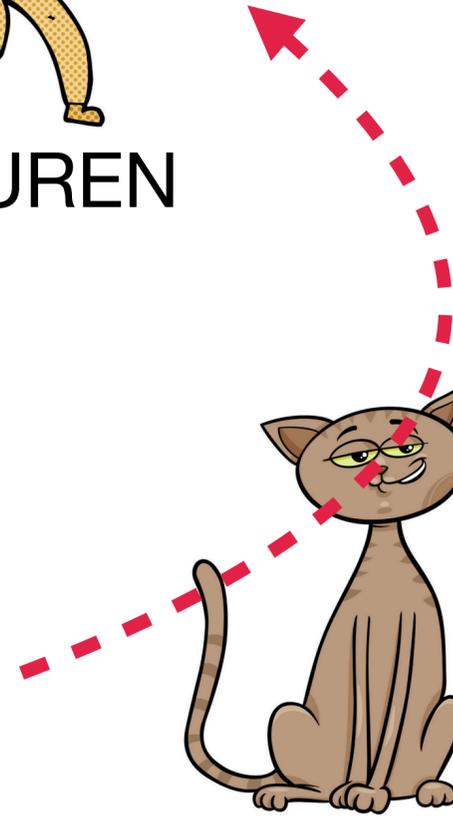
# SCENARIO 2



MARK



LAUREN



CAT

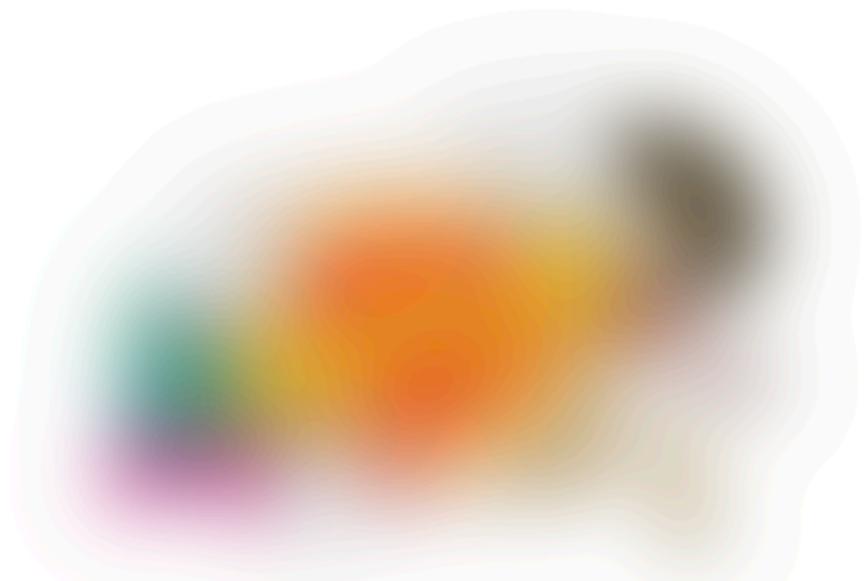
## SCENARIO 2



MARK LAUREN



CAT

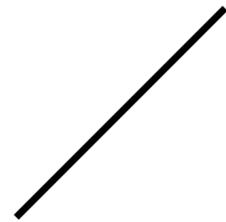


# WHO CAUSED THE ACCIDENT?

- ◆ Mark? Lauren?
- ◆ The cat?



# Three perspectives



## PHILOSOPHY

**Mark<sub>S1</sub> = Mark<sub>S2</sub>**

→ Descriptive

- ◆ physical connection view *Dowe (2000)*
- ◆ counterfactual view *Kvart (2004)*
- ◆ statistical correlation view *Yablo (2002)*

# Three perspectives



LAW

- ◆ Practical culmination in **tort** and **criminal** law
- ◆ **Norm violations** and **causation** *always* required
- ◆ To illustrate: ***Mens rea*** not always required (strict liability)

# Three perspectives



## LAW

*America*

### **Proximate causation**

◆ **Formalism** → Legal causation is **descriptive**

◆ **Realism** → Legal causation includes **normative** considerations

↳ *Weak and strong realism*

*Germany*

### **Objective ascription**

◆ Legal causation is **explicitly normative**

# Three perspectives



## LAW

*America*

### Proximate causation

◆ Formalism → Legal causation is **descriptive**

◆ Realism → Legal causation includes **normative** considerations

↳ *Weak and strong realism*

*Germany*

### **Objective ascription**

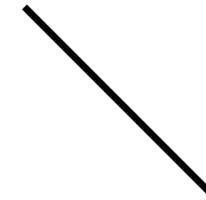
◆ Legal causation is **explicitly normative**

# LEGAL CAUSATION

 = descriptive  
 = normative

	Nature	Application
<b>Formalism</b>	DESCR.	DESCR.
<i>Weak realism</i>	DESCR.	NORM.
<i>Strong realism</i>	NORM.	NORM.
<b>Objective ascription</b>	NORM.	NORM.

# Three perspectives



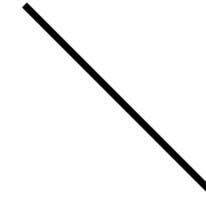
PSYCHOLOGY

**Mark<sub>S1</sub> < Mark<sub>S2</sub>**

**→ Normative?**

- ◆ **counterfactual view** *Kominsky et al. (2015)*
- ◆ **bias view** *Alicke (1992, 2000)*
- ◆ **responsibility view** *Livengood et al. (2017)*

# Three perspectives



## PSYCHOLOGY

**Mark<sub>S1</sub> < Mark<sub>S2</sub>**

**→ Normative?**

- ◆ counterfactual view *Kominsky et al. (2015)*
- ◆ bias view *Alicke (1992, 2000)*
- ◆ responsibility view *Livengood et al. (2017)*

## ***BIAS VIEW***

Norm violation



Agent is blameworthy



Elevated causal judgement

## ***RESPONSIBILITY VIEW***

Norm violation



Agent is *morally* responsible



Elevated causal judgement

## ***BIAS VIEW***

Norm violation



Agent is blameworthy



Elevated causal judgement

## ***RESPONSIBILITY VIEW***

Norm violation



Agent is *morally* responsible



Elevated causal judgement

- ◆ Assumes folk notion of causation to be inherently *descriptive*
- ◆ Systematic misapplication due to blame-driven bias

## *BIAS VIEW*

Norm violation



Agent is blameworthy



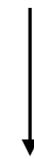
Elevated causal judgement

## ***RESPONSIBILITY VIEW***

Norm violation



Agent is *morally* responsible



Elevated causal judgement

- ◆ Folk notion of causation inherently *normative*
- ◆ „A caused B“ synonymous to „A is responsible for B“

**Mark<sub>S1</sub> < Mark<sub>S2</sub>**

***BIAS VIEW***

*Scenario 1: No blame*

*Scenario 2: Blameworthy*

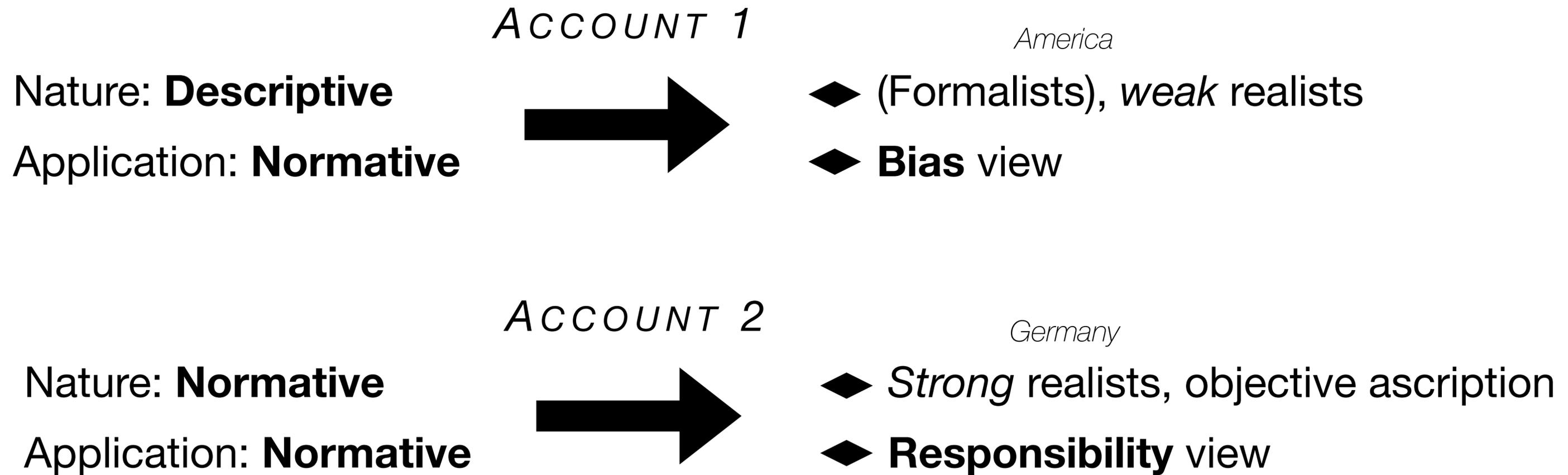
**Mark<sub>S1</sub> < Mark<sub>S2</sub>**

***RESPONSIBILITY VIEW***

*Scenario 1: No responsibility*

*Scenario 2: Responsible*

# COMPARING LAW & PSYCHOLOGY



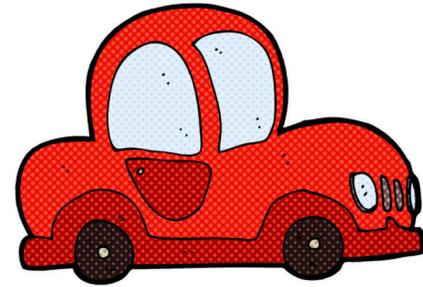
**Problem:** How can we distinguish between the *bias* view and the *responsibility* view?

**Suggestion:** Manipulate features that stand *peripheral* to moral responsibility, but are apt to evoke judgements of blame

**Peripheral feature: General character**

# ALICKE (1992)

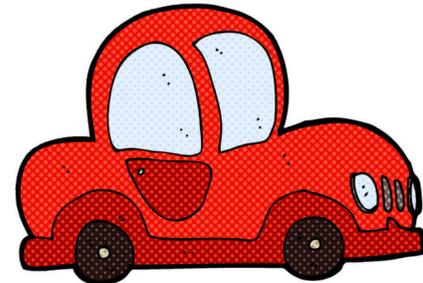
*Scenario 1*



AGENT



*Scenario 2*

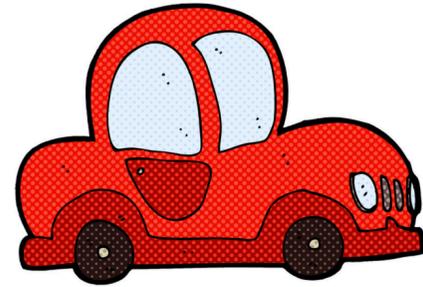


AGENT



# ALICKE (1992)

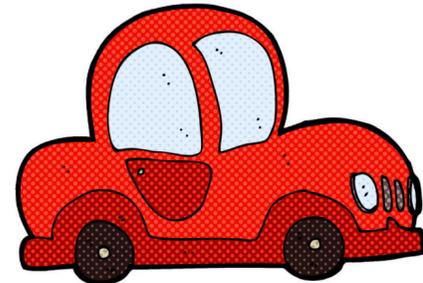
Scenario 1



AGENT



Scenario 2



AGENT



motive → **[character]** → blame → causal judgement

*peripheral feature*

# SYTSMA (2019)



**Experiment 1:** Change in character, fixed driving ability ❌

**Experiment 2:** Character fixed, change in driving ability ✅



# SYTSMA (2019)

[character] → blame → causal judgement

*peripheral feature*

**[epistemic state] → responsibility → causal judgement**

*pertinent feature*

- Knowledge
- Desire

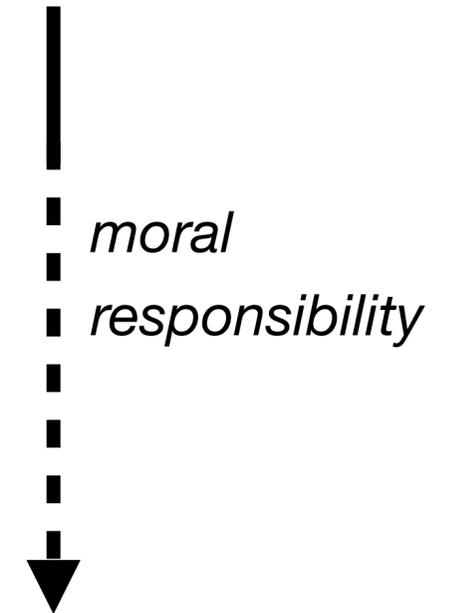
**Peripheral feature: Norm-type**

*Pertinent* norm violations

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*Non-pertinent* norm violations

*Silly* norm violations



# **EXPERIMENTS**

# EXPERIMENTS

- ◆ Two **preregistered** experiments ( $N = 415$ )
- ◆ Filtered for **attention, comprehension, and time**
- ◆ **Conditions:**

NO NORM

v.

NORM

v.

NON-PERTINENT NORM

v.

SILLY NORM

- ◆ Strictly **between-subjects**

# EXPERIMENTS

## ◆ **Methodology: Vignette**, followed by...

1. **Causation** primary agent
2. **Causation** secondary agent
3. **Knowledge**
4. **Desire**
5. **Blame**
6. Moral **responsibility**
7. **Punishment**

◆ All on *Likert* 1–7

# EXPERIMENT 1

## ROLLERBLADING

### **Base condition (No norm)**

One recent summer afternoon, Mark is rollerblading outside. The path Mark is on is commonly used by cyclists, rollerbladers and pedestrians.

One of these pedestrians is Lauren, who is walking ahead of Mark.

Suddenly a cat jumps onto the path right in front of Lauren. Lauren is startled and steps to the left to evade it.

Mark, who is approaching speedily on rollerblades from behind, collides with Lauren. The collision sweeps her off her feet and knocks her to the ground. Lauren sustains bruises all over.

# EXPERIMENT 1

## ROLLERBLADING

- ◆ Modelled after Swiss Federal Court verdict *6B\_974/2010*
- ◆ Procedural doing of primary agent (rollerblading)
- ◆ Point-like doing of secondary agent

### **Norm condition**

Not permitted to rollerblade on the path.

**Total sample**

👥 220  
♀ 44%  
X̄ 43 years

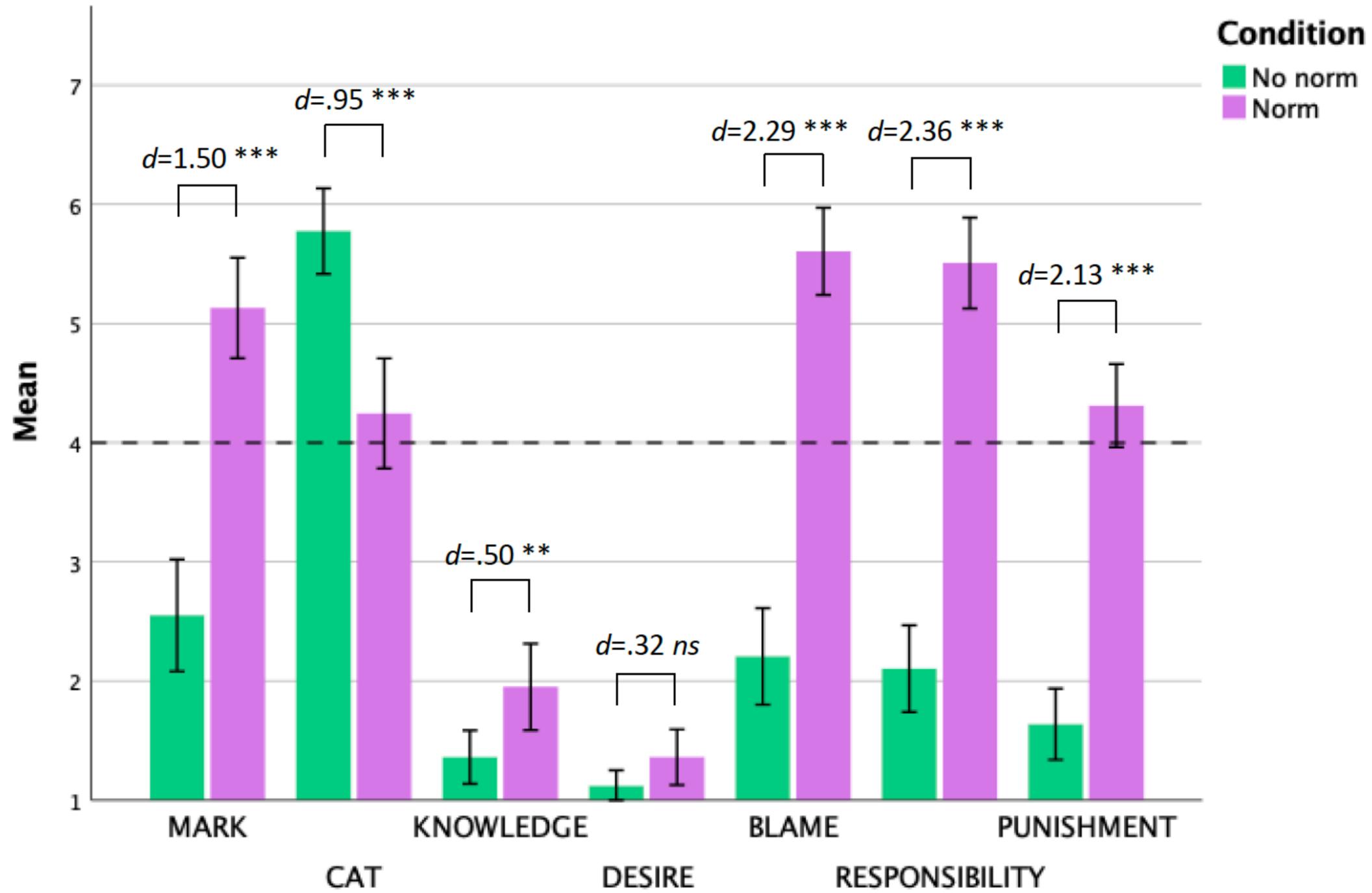


Fig. 1: Comparison of means between the *No norm* and *Norm* conditions. Effect sizes are given in terms of Cohen's *d*, \* indicates  $p < .05$ , \*\* indicates  $p < .01$ , \*\*\* indicates  $p < .001$ . Error bars denote 95%-confidence intervals.

**Non-pertinent norm condition**

Rollerbladers must wear a helmet. Mark is not wearing one.

**Silly norm condition**

Rollerbladers must wear a gray t-shirt. Mark is wearing a blue t-shirt.

**Total sample**

👥 220  
♀ 44%  
X̄ 43 years

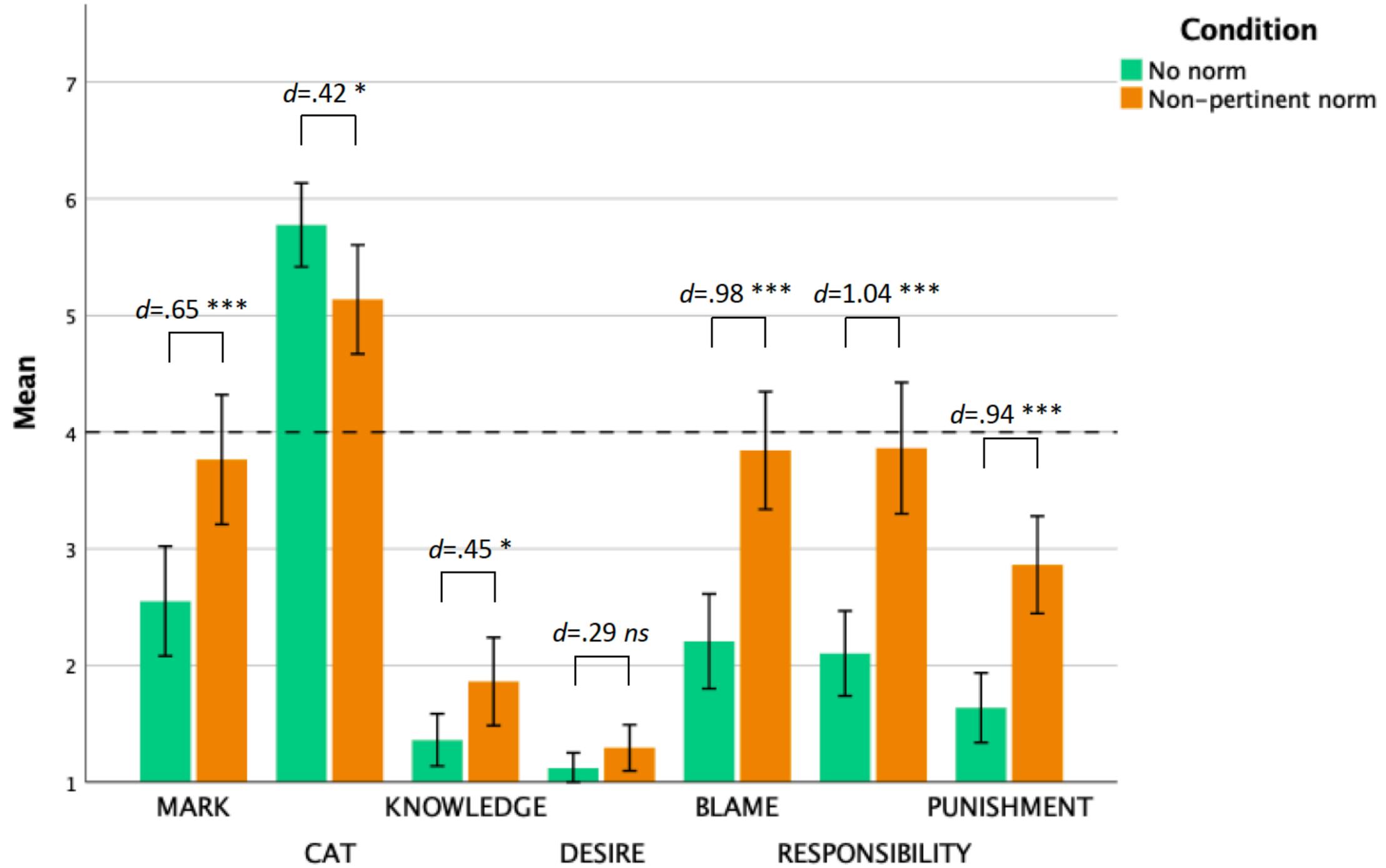


Fig. 2: Comparison of means between the *No norm* and *Norm* conditions. Effect sizes are given in terms of Cohen's *d*, \* indicates  $p < .05$ , \*\* indicates  $p < .01$ , \*\*\* indicates  $p < .001$ . Error bars denote 95%-confidence intervals.

### Total sample

👥 220  
♀ 44%  
X̄ 43 years

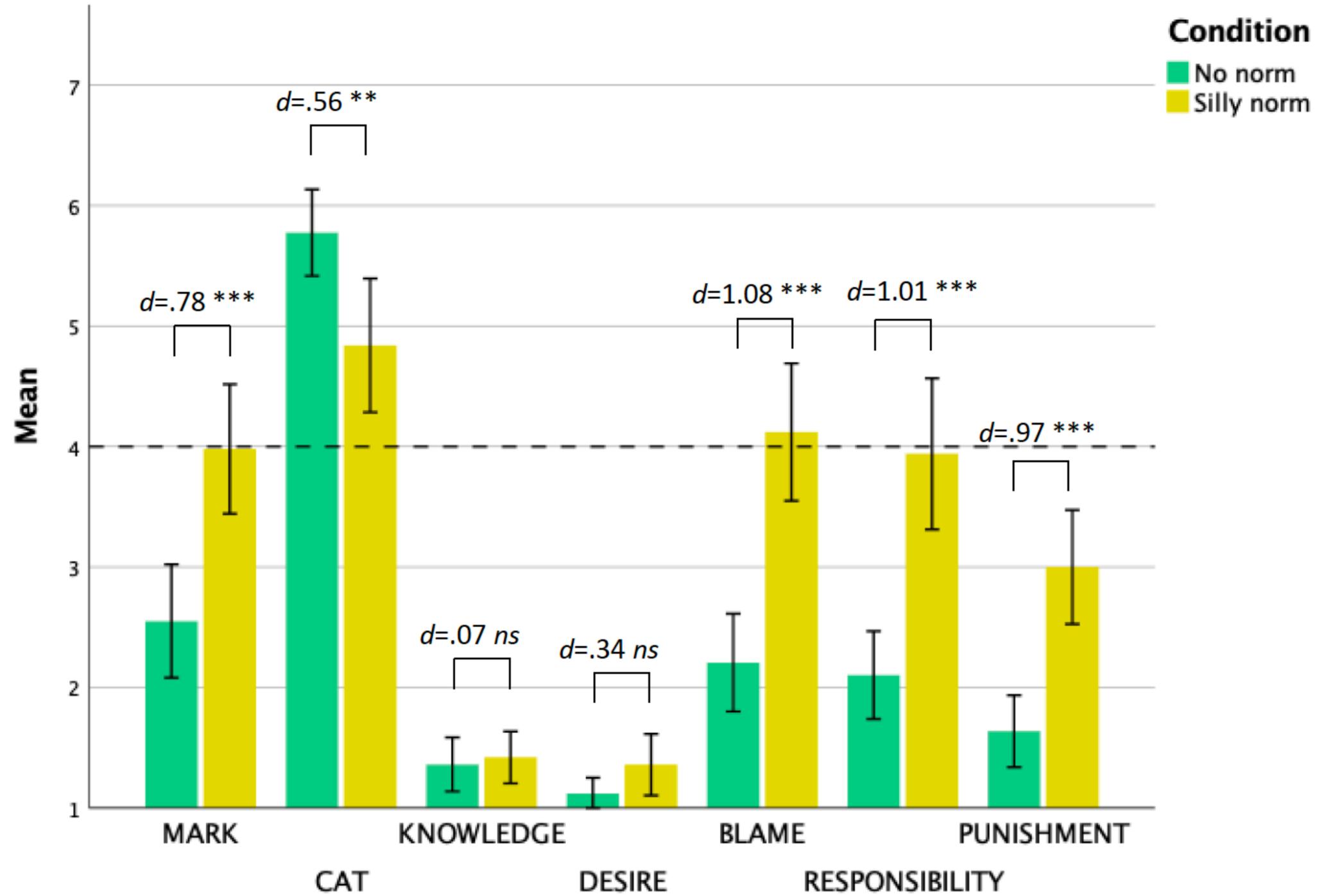


Fig. 3: Comparison of means between the *No norm* and *Norm* conditions. Effect sizes are given in terms of Cohen's *d*, \* indicates  $p < .05$ , \*\* indicates  $p < .01$ , \*\*\* indicates  $p < .001$ . Error bars denote 95%-confidence intervals.

# EXPERIMENT 1

## ROLLERBLADING

- ◆ Statistically significant and pronounced difference in **causation**
- ◆ **Knowledge** only significant in the non-pertinent condition
- ◆ Elevated **blame** and **punishment**

What about getting *above* the midpoint?

## EXPERIMENT 2

### FESTIVAL

#### **Base condition (No norm)**

Mark is at a music festival, where he goes from stage to stage and watches the bands play. It is now midday, and a large crowd has gathered to watch the headlining band perform. Mark stands in the center of that crowd.

Lauren creates the special effects for the headlining band. She has filled a few cannons with colored powder and plans to release it over the dancing partygoers as soon as the headlining band appears.

While everyone is waiting for the band to appear, Mark lights a cigarette and starts smoking. Finally, the band members step on stage, and Lauren fires the colored powder over the crowd.

Suddenly, disaster strikes: The powder comes into contact with Mark's cigarette and bursts into flames, leading to a small dust explosion! One festivalgoer receives mild burns, but the crowd is otherwise unharmed.

## EXPERIMENT 2

### FESTIVAL

- ◆ Modelled after Taiwanese criminal case
- ◆ Short procedural doing of primary agent (smoking)
- ◆ Point-like doing of secondary agent

### **Norm condition**

Not permitted to smoke on festival grounds.

**Total sample**

👥 195  
♀ 45%  
X̄ 40 years

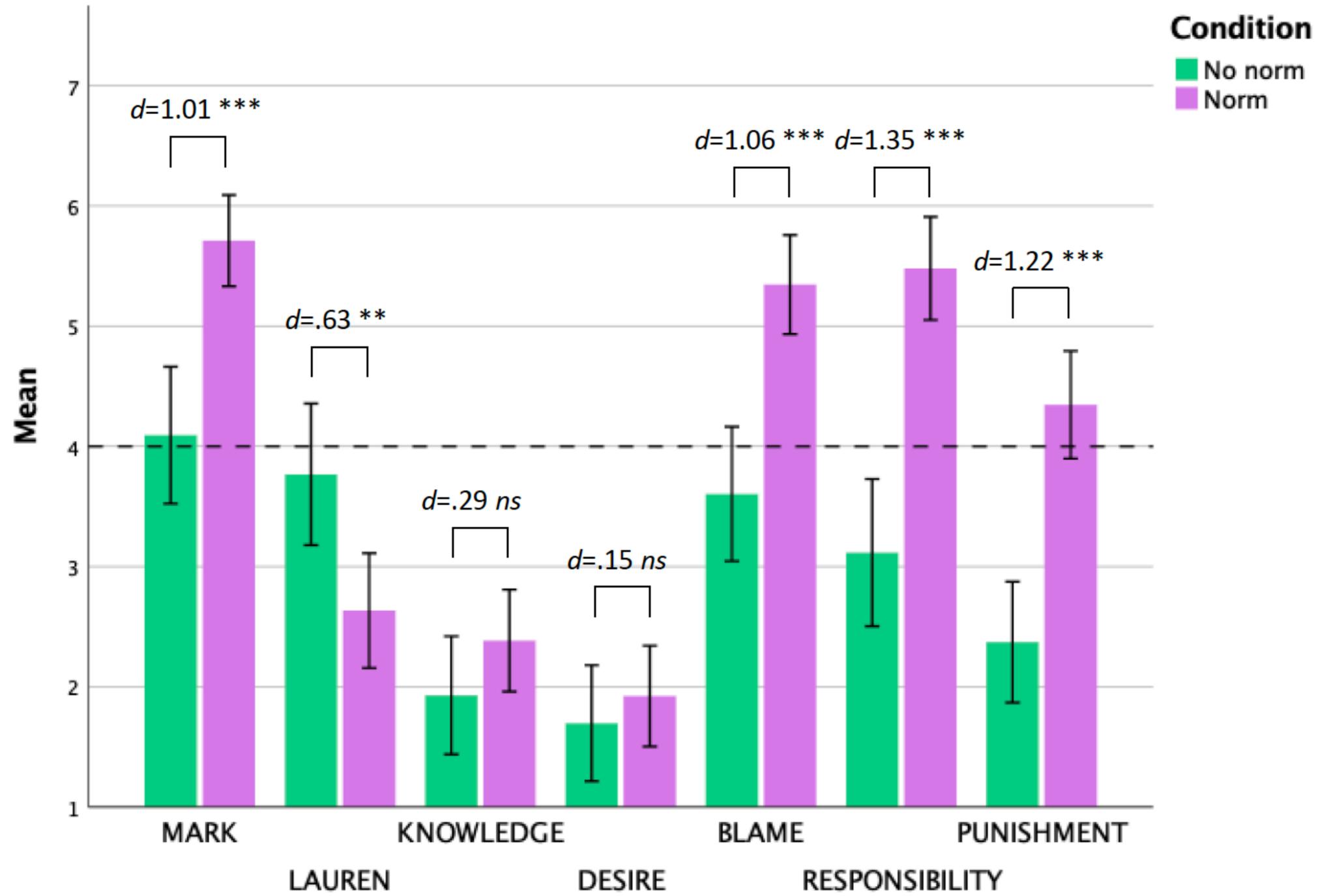


Fig. 4: Comparison of means between the *No norm* and *Norm* conditions. Effect sizes are given in terms of Cohen's *d*, \* indicates  $p < .05$ , \*\* indicates  $p < .01$ , \*\*\* indicates  $p < .001$ . Error bars denote 95%-confidence intervals.

### **Non-pertinent norm condition**

Strict clothes-on policy on festival grounds. Mark is in his boxers.

### **Silly norm condition**

Festival attempts to break the world record for largest musical event where everyone wears a green cap during the headlining performance. Mark agrees to participate, receives a green cap, but decides to wear his black cap instead. The attempt fails.

**Total sample**

👥 195  
♀ 45%  
X̄ 40 years

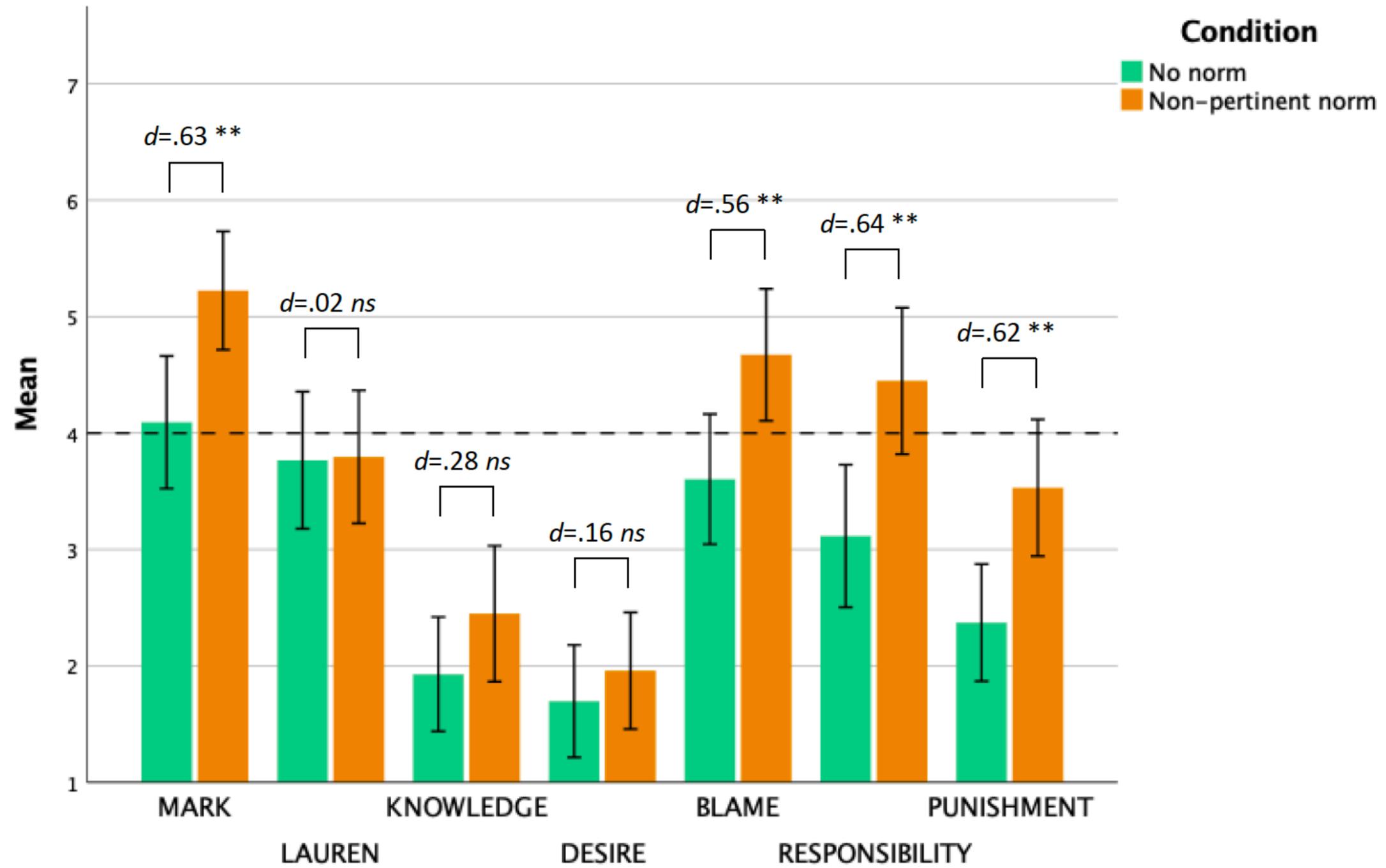
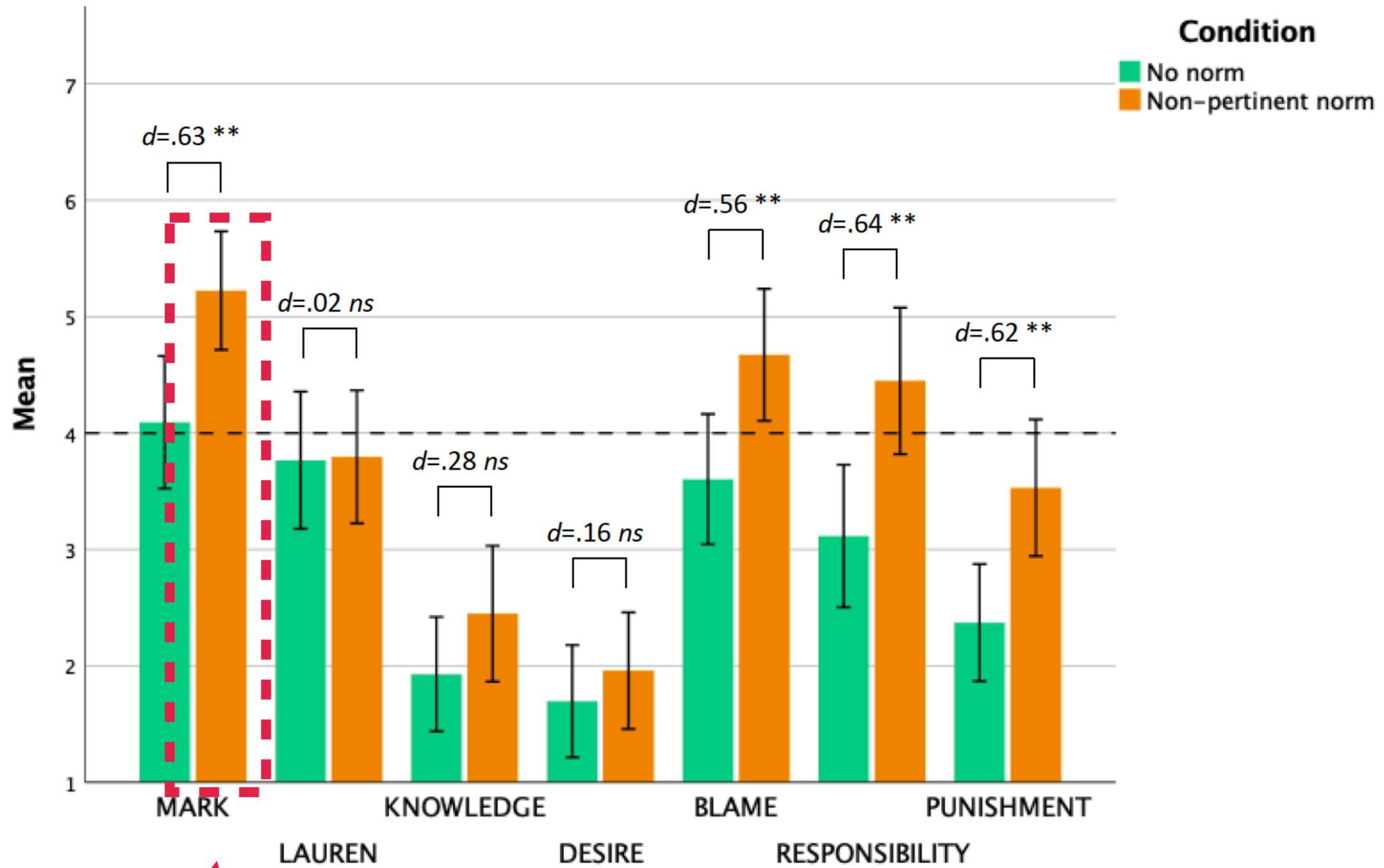


Fig. 5: Comparison of means between the *No norm* and *Norm* conditions. Effect sizes are given in terms of Cohen's *d*, \* indicates  $p < .05$ , \*\* indicates  $p < .01$ , \*\*\* indicates  $p < .001$ . Error bars denote 95%-confidence intervals.

**Total sample**

👥 195  
♀ 45%  
X̄ 40 years



M = 5.22,  $p < .001$ ,  $d = .69$

### Total sample

👥 195  
♀ 45%  
X̄ 40 years

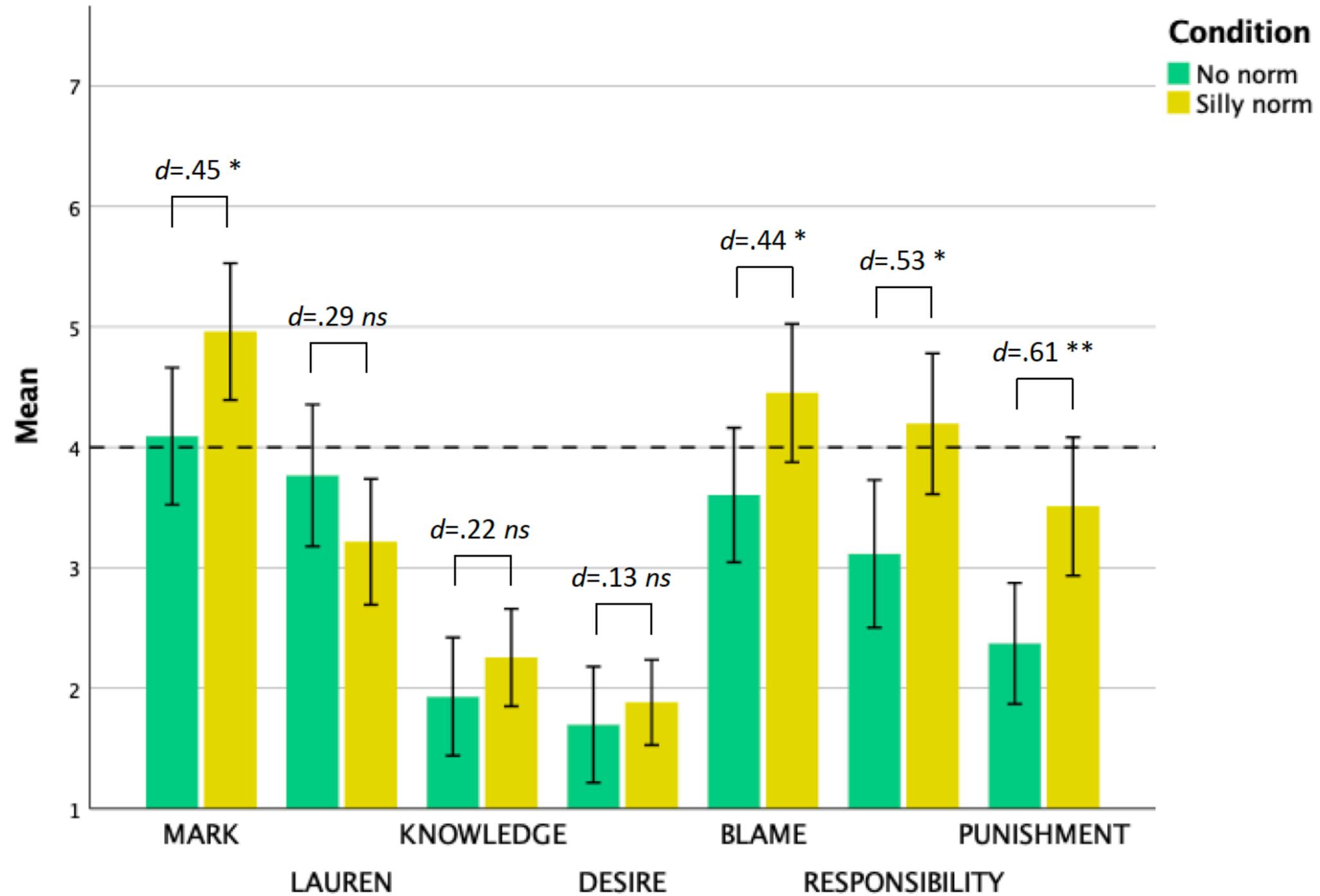
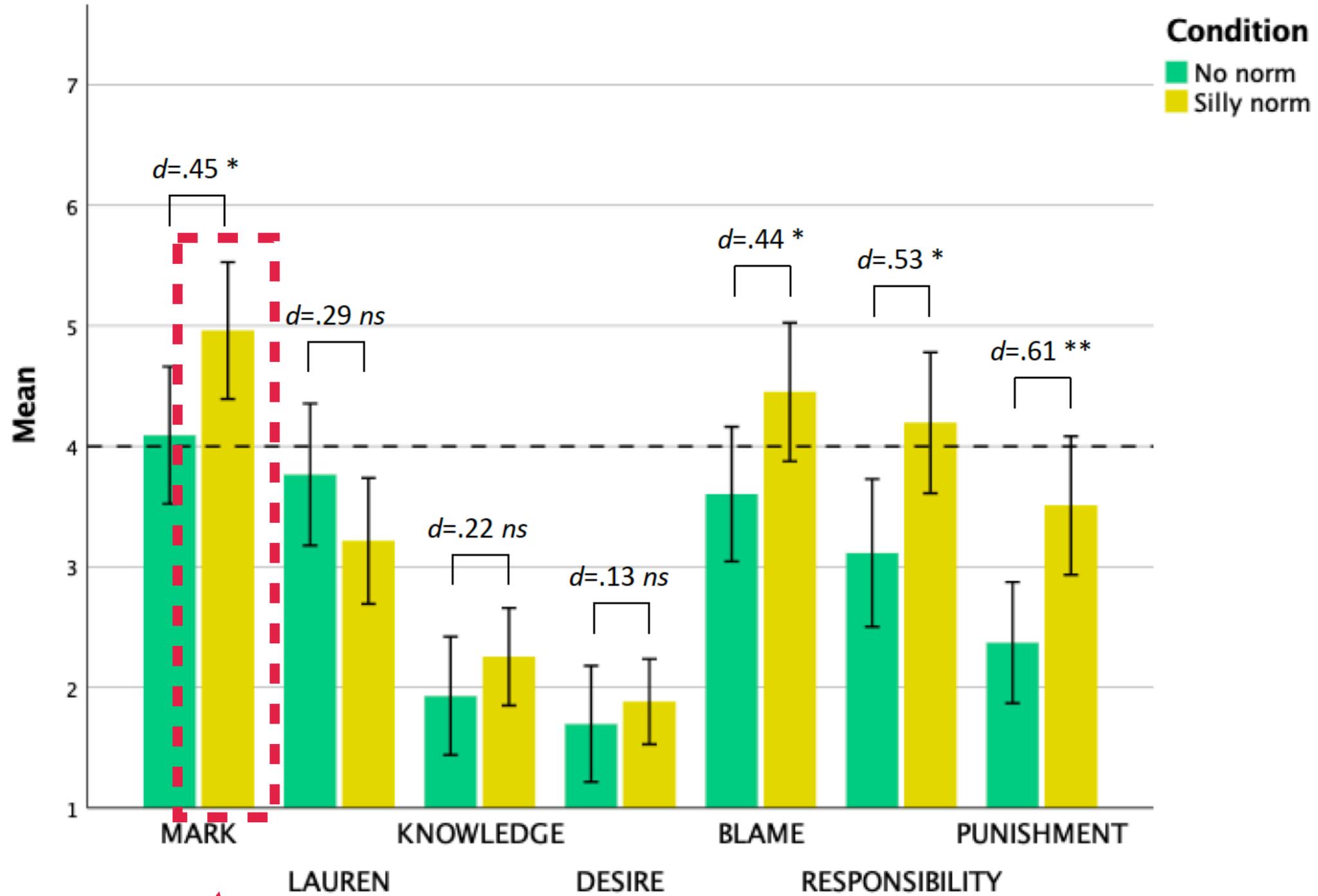


Fig. 6: Comparison of means between the *No norm* and *Norm* conditions. Effect sizes are given in terms of Cohen's *d*, \* indicates  $p < .05$ , \*\* indicates  $p < .01$ , \*\*\* indicates  $p < .001$ . Error bars denote 95%-confidence intervals.

**Total sample**

👥 195  
♀ 45%  
 $\bar{X}$  40 years



$M = 4.96, p = .001, d = .48$

## EXPERIMENT 2

### FESTIVAL

- ◆ Statistically significant and pronounced difference in **causation**
- ◆ **Epistemic states** fixed throughout all four conditions
- ◆ Elevated **blame** and **punishment**

Effect significantly above the midpoint!

**CONCLUSION**

# Conclusion

AS CONCERNS PSYCHOLOGY

Attribution of causation **is** sensitive to **distortive normative factors!**

- ◆ Non-pertinent and silly norms stand **peripheral** to responsibility
- ◆ **Causal difference** throughout
- ◆ **Epistemic states** explanatorily inadequate

# Conclusion

AS CONCERNS PSYCHOLOGY

- ◆ High responsibility ascriptions despite **no moral difference** (anything goes?)
- ◆ **Blame** apt to explain findings, drives all ascriptions
- ◆ Strengthening of **Alicke's** position

# Conclusion

AS CONCERNS THE LAW

- ◆ Problematic from a **legal** point of view
  - ◆ On **no** account should non-pertinent and silly norms influence causal judgement
  - ◆ Potential **injustice**
- Direct influence on **lay juries**, presumably also judges  
*Kneer & Bourgeois-Gironde (2017); Zehnder & Kneer (ms)*

**Thank you** for your attention! :-)

Interested in **collaborations**? Write us

*[www.guiltymindslab.com](http://www.guiltymindslab.com)*

Funded by the SNSF Project „Reading Guilty Minds“