

## Confounds in Moral/Conventional Studies

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In ‘The nature of moral judgments and the extent of the moral domain,’ Fraser (2012) criticizes findings by Kelly et al. (2007) that speak against the moral/conventional distinction, arguing that the experiment was confounded. First, we note that the results of that experiment held up when confounds were removed (Quintelier, Fessler, and De Smet 2012). Second, and more importantly, we argue that attempts to prove the existence of a moral/conventional distinction are systematically confounded. In contrast to Fraser, we refer to data that support our view. We highlight the implications for the moral/conventional theory.

**Keywords:** moral/conventional distinction; morality; harm; social cognition; confounds

### Introduction

Moral/conventional theory holds that individuals distinguish moral from conventional social interactions. Although this is a widely used paradigm in moral psychology (e.g., Nichols 2004) and philosophy (e.g., Joyce 2006), of late, critics have questioned the existence, interpretation, and appropriate experimental tests of the

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moral/conventional distinction (e.g., Levy 2005; Kelly et al. 2007; Stich et al. 2009; Quintelier, Fessler, and De Smet 2012). In turn, these criticisms have raised counter-criticisms and new interpretations of the moral/conventional distinction (e.g. Sousa 2009; Sousa, Holbrook, and Piazza 2009; Sousa and Piazza 2013).

Recently, with the explicit aim of defending the moral/conventional distinction, Fraser (2012) has raised concerns about confounds in Kelly et al.'s (2007) study. In this paper, we reply to Fraser's critique in two ways. First, we discuss findings that we published documenting that the basic pattern reported by Kelly et al. (2007) persists even when confounds unique to Kelly et al.'s design are removed. Second, we argue that, rather than being limited to recent empirical work challenging the M/C distinction, confounds instead pose a challenge to much previous research in the M/C tradition. We refer to data that support our view and discuss the findings in light of moral/conventional theory. In order to set up our argument, we first give a short overview of the present discussion surrounding the moral/conventional distinction.

### **The moral/conventional distinction, criticism, and Fraser's counter-criticism**

In a recent article in this journal, Fraser (2012) defended (among other things) the view that human beings tend to perceive 'moral' transgressions as different from conventional transgressions. In his article, Fraser stays close to Turiel's (1983) seminal book, *The development of social knowledge*, in regard to the characterization of this moral/conventional distinction: According to Turiel and followers, most individuals develop the capacity to distinguish between two kinds of social transgressions. Researchers refer to these kinds as 'moral' transgressions and 'conventional' transgressions. 'Moral' transgressions elicit responses that differ from the responses elicited by 'conventional' transgressions, on (at least) three dimensions: generalizability, authority-dependence, and justification. Specifically, 'moral'

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transgressions are perceived to be generalisably wrong (across time and place, independent of convention), and independent of the opinions or ordinations of an authority; furthermore, the wrongness of 'moral' transgressions is justified by referring to harm inflicted, injustice done, or rights violated. Accordingly, if asked if the transgression would still be wrong if it occurred at a different time and place, if an authority sanctioned it, or if the conventions were different, people would purportedly still be likely to condemn the act, and would refer to harm, justice or rights when asked why. These are called moral responses. 'Conventional' transgressions are perceived to be right or wrong depending on convention; their wrongness is justified by referring to social order. If asked if the transgression would still be wrong at a different time and place, when an authority sanctioned it, or if the conventions were different, people purportedly would be likely not to condemn the act, and would refer to convention or social order when asked why. Thus, such questions elicit conventional responses. In this paper, we focus on the generalizability criterion.

Of course, researchers must beforehand specify what kinds of transgressions constitute 'moral' transgressions and are thus theoretically predicted to elicit moral responses, and what kinds of transgressions are 'conventional' transgressions and are thus theoretically predicted to elicit conventional responses. If they fail to do so, the matter becomes entirely circular: 'Moral' transgressions are then predicted to elicit moral responses, but if a seemingly 'moral' transgression happens not to elicit such responses, it must not have been a 'moral' transgression after all. We must note that it is a matter of debate as to what transgressions are theoretically expected to elicit moral or conventional responses (Stich et al. 2009; Sousa 2009; Sousa, Holbrook, and Piazza 2009; Sousa and Piazza 2013). However, in this paper, we focus on Fraser's critique of Kelly et al.'s (2007) study in which he argues that the latter's design is plagued by

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confounds. We therefore keep our characterization of moral transgressions in line with this debate: Here, we say that transgressions that involve harm, injustice, or rights violations are moral transgressions. We subsequently denote them as HJR transgressions, in order to avoid confusion with ‘moral responses’. (We acknowledge that HJR transgressions are not the only kind of transgressions that elicit moral responses [e.g., Southwood 2011; Nichols 2004]. However, these other cases are not the focus of this paper.) Conventional transgressions are transgressions that involve a breach of convention without the involvement of harm, injustice, or rights violations. We will subsequently refer to them as conventional transgressions.

Kelly et al. (2007) challenged the assertion that transgressions involving harm would reliably evoke moral responses. They constructed contrasting pairs of scenarios describing a harmful act. These scenarios varied with respect to where the harm described occurred, when the harm described occurred, or whether the harm described was sanctioned by an authority or law. After each scenario, they asked participants whether they thought the harmful act was OK or not. The authors found that participants are more likely to condone a harmful act when it either happens far away, happened a long time ago, or when it is not sanctioned by law or authority, than when it happens in the present time, happens nearby, or when it is sanctioned by an authority or law. Based on these results, they argued that harmful transgressions are not judged to be generalisably wrong, and that their wrongness is not independent of authority or law, thus refuting that harmful transgressions reliably evoke moral responses.

Fraser (2012) criticizes these findings, highlighting the problem of moral confounds in the scenarios used by Kelly et al. (2007). Fraser argues that it is not the “temporal differences or differences in authoritarian approval *per se* that generate the differences in subjects’ responses.” Instead, participants might have held a general

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moral principle stating that “inflicting harm is permissible when necessary as a means to achieving a sufficiently valuable end.” This principle might have caused the effect of scenario on permissibility. Fraser gives several examples. In one scenario, Mr. Williams whipped a sailor on a ship 300 years ago, when it was not against the law. This was contrasted with Mr. Johnson whipping a sailor nowadays, when it is against the law.

Fraser argues that participants might have reasoned that 300 years ago,

...whipping may have been the only punishment fierce enough to deter sailors from drinking on duty and thus the only way to safeguard the lives that could depend on a watchful lookout’s warning. In today’s setting, by contrast, whipping is probably not seen as necessary to maintaining shipboard discipline. (Fraser 2012, 6)

Another scenario contrasted physical abuse in military training when it is against the law, versus when it is not against the law. Fraser (2012) reasons:

[S]uppose in addition that subjects take the pronouncements of relevant authorities to be a good guide to the necessity or otherwise of certain harms in bringing about valuable ends. This further supposition is by no means unreasonable. Deference to (supposed) experts and epistemic division of labor is a feature of our everyday practices, in moral judgment no less so than in other arenas. If these two suppositions are correct, it would account for the responses of subjects who judged that physical abuse in military training is OK when permitted by military authorities but not when it is prohibited. (Fraser 2012, 6)

As a consequence, Fraser proceeds, these scenarios need not refute the existence of the moral/conventional distinction, but rather simply feature moral differences within the contrasting scenario pairs.

We take issue with Fraser’s counter-criticism, for two reasons. First, in a study intended to improve upon Kelly et al.’s (2007) work, we removed from the whipping

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scenario precisely those moral confounds identified by Fraser, and yet still obtained results similar to those of Kelly et al. – thus undermining the empirical basis of Fraser’s counter-criticism. Second, we argue that the problem of confounds plagues not only Kelly et al.’s work (that is critical of the moral/conventional distinction), but, indeed, most studies defending the existence of a moral/conventional distinction. This casts serious doubts on findings supporting the existence of the moral/conventional distinction.

In what follows, we summarize the study that we conducted using an improved whipping scenario. We first discuss our findings in light of possible confounds in the previous study by Kelly et al. (2007). We then discuss our findings in light of possible confounds in most moral/conventional studies.

### **Improved whipping scenario**

Recently, we adapted the Kelly et al. (2007) whipping scenario and removed the moral confounds outlined by Fraser (2012) by keeping time, place and authority ordains constant (Quintelier, Fessler, and De Smet 2012). As in Kelly et al. (2007), we then varied other factors in the scenarios and tested whether these factors would have a significant effect on the perceived wrongness of the act. Specifically, we tested whether the act – whipping as a punishment – would be generalisably wrong, independent of convention.

The scenario in which the harmful act was entirely in accordance with convention read as follows:

Mr. Williams is an officer on a cargo ship in 2010, [carrying goods along the Atlantic coastline. All the crew members are American but the ship is mostly in international waters. When a ship is in international waters, it has to follow the law of the state whose flag it sails under and each ship can sail under only one flag.

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This ship does not sail under the U.S. flag. The law of this ship's flag state allows both whipping and food deprivation as a punishment.]

On this ship, whipping is always used to discipline sailors who disobey orders or who are drunk on duty; as a consequence everyone on this ship has come to think that whipping is an appropriate punishment. Food deprivation however is never used to discipline sailors and no one on this ship thinks food deprivation is an appropriate punishment.

One night, while the ship is in international waters, Mr. Williams finds a sailor drunk at a time when the sailor should have been on watch. After the sailor sobers up, Mr. Johnson punishes the sailor by giving him 5 lashes with a whip. This does not go against the law of the flag state. (Quintelier, Fessler, and De Smet 2012, 187)

The above scenario was contrasted with another scenario that was also set in the present day, in international waters, and involved American sailors. However, in the second scenario, whipping was not in accordance with convention on the ship described; in order to avoid moral confounds related to the conventionality of a harsh punishment, food deprivation, another harsh punishment, was presented as being in accordance with convention.

We found that when whipping was in accordance with convention, participants were significantly more likely to respond that the whipping was permissible than was true when whipping was not in accordance with convention, despite the fact that both acts were equally harmful. We also found that this effect was stronger if more aspects of convention were explicit than if fewer aspects of convention were explicit.

In order to identify interpretation confounds and to check for moral confounds, we asked participants to justify their answers. We found no evidence for either type of confound. These results militate against Fraser's critique regarding confounds in the

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Kelly et al. (2007) study. The full study and results are presented in Quintelier, Fessler, and De Smet (2012).

### **Confounds in moral/conventional studies**

Importantly, while we recognize that Kelly et al.'s (2007) methods suffered confounds – leading us to demonstrate that their results did not owe to these confounds – we think that confounds are more prevalent in studies *defending* the existence of a moral/conventional distinction. As noted in the Introduction, and as we will explain below, we maintain that moral/conventional theory centrally predicts that HJR transgressions are perceived as generalisably wrong *independent of convention*. In contrast, conventional transgressions are predicted to be judged as right or wrong *depending on the prevailing convention*. First, we illustrate the importance of this requirement.

Turiel's position is commendably clear on independence from (a notion of) convention as a defining feature of moral wrongness. While the wrongness of conventional transgressions “may be altered by consensus or general usage within a social system,” (Turiel 1983, 35), Turiel (id.) explicitly mentions that “moral issues are not perceived as relative to the social context;” for example, “an individual's perception of an act such as the taking of a life as a transgression is not contingent on the presence of a rule” (id.); or, consider the following telling statement: “today one would not say that slavery was morally right in the 1800s but morally wrong now simply because of a change in the consensus,” (36); or, when Turiel refers to Dworkin's example of a moral transgression: “The vegetarian's claim, according to Dworkin, is that in spite of a lack of consensus and irrespective of its widespread practice, it is wrong to kill animals for food,” (id.).

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Like Turiel, other authors in this school provide extensive grounds for concluding that, if we are to test the moral/conventional distinction, we must systematically vary these aspects of convention in the moral/conventional task. Smetana (1981, 1333) states that “transgressions that are consistently evaluated as [...] universally wrong, *even in the absence of rules*, have been considered moral events,” (our emphasis). Royzman et al. (2009, 160) asserts that “the prototypically immoral acts are generally judged inappropriate even when subjects are instructed to consider the performance of these acts under a set of counterfactual conditions designed to negate their status as *a breach of the established socio-conventional order*” (our emphasis). Importantly, Royzman clarifies the kind of questions that constitute good probes for distinguishing moral from conventional transgressions: “Thus [...] a subject may be invited to imagine that there is no rule against the act, that the act has been permitted by a legitimate authority or that the act is a matter of general agreement,” (id.). As such, generalizability, rule alterability, and authority dependence questions all support that moral/conventional theory predicts the wrongness of moral transgressions independent of convention.

The fact that various concepts are related to the notion of convention also explains why an extensive variety of generalizability questions have been employed in the moral/conventional task, as they each probe a different facet of convention. Huebner, Lee, and Hauser (2010) ask their participants if the act would still be wrong if X lived somewhere where everyone else did this; this changes the existence of a behavioural uniformity. Smetana (1981) asks if it would be OK if there were no rule about it, thus varying 'explicit regulations.' And the questions in Royzman et al. vary social norms:

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Suppose that there were NO social norms against [the behaviour]; [...] Suppose that the majority of people in this country decided that [the behaviour] was OK; [...] Suppose that the majority of people in another country decided that [the behaviour] was OK. Suppose that Julie and Mark were born, raised and lived in this other country... (Royzman et al. 2009, 169)

Now, our critique is that generalizability questions/probes associated with HJR transgressions should vary convention to the same extent as generalizability questions/probes associated with conventional transgressions. We argue that generalizability questions/probes employed in much moral/conventional research are inadequate in this regard.

Generalizability questions do not effectively test whether moral transgressions are wrong independent of convention. While each of these questions indeed varies some aspect of convention, all of these questions leave to the imagination of the participant what other aspects of the situation would vary or stay the same. For example, while the generalizability questions in Huebner, Lee, and Hauser (2010) clearly induce participants to think about a place where all children hit other children for fun, it may still be thought of as a convention in this other place (cf. Southwood and Eriksson 2011): It is unspecified if, in this other place, children consent to being hit, or are also allowed by their teachers to hit other children for fun. In this example, most participants will probably assume that, even if hitting is the general practice in a school in another place and time, the teachers will still forbid it, or it will still be against general consensus. If either of the latter apply, we cannot exclude the possibility that participants condemn the moral transgression – even at another time and place where everyone else does it – because it is nonetheless against explicit rules or against an implicit consensus. It might be that, were the participant prompted to imagine the act somewhere where it was entirely in accord with convention, the participant would not

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condemn it. Some other examples of moral transgressions that have been used are “a child throwing water at another child,” (Smetana 1981, 1334), and “an angry student driving his car through a crowded area on the college campus ‘trying to hit people,’” (Huebner, Lee, and Hauser 2010, 22). In each case, simply stating that there is no rule against it will not make the act in accord with convention. In all of these cases, it is conceivable that the moral transgression will be at odds with other aspects of the prevailing convention, even where ‘everyone else does it,’ or ‘where there is no rule about it.’ When thinking about a place or time where people tend to hit others with their cars, participants conceivably think about a place and time where, despite the frequency of this act, people nonetheless do not consent to the practice. Recall that Turiel mentions implicit consensus as a relevant aspect of convention (Turiel 1983, 35; see paragraph 2 of this section).

In contrast, in the case of the conventional transgression, the conventionality of the act *is* likely to vary across the experimental probes, because it is at least likely that a rule or habit is the only thing that made the act at odds with the prevailing convention in the first place. Asking participants to imagine that the rule does not exist is then akin to asking them to imagine the act when it is totally in accord with convention. Examples of conventional transgressions are “a child not saying grace before snack,” (Smetana 1981, 1334), and “getting the waiter’s attention by yelling across the room,” (Huebner, Lee, and Hauser 2010, 22). When thinking about a context where everybody yells to get the waiter’s attention, one may be likely to think that there are also no other expectations or rules about this kind of behaviour.

In sum, the moral transgressions that have been used in moral/conventional studies are plausibly transgressions that are also generalisably conventionally wrong. Hence, even when investigators explicitly vary one aspect of convention via a

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generalizability question, they leave unaddressed the possibility that other aspects of convention might still be at odds with the moral transgression. As a consequence, such moral/conventional tasks do not effectively test the moral/conventional distinction. To be effective, the generalizability question or probe must explicitly vary every aspect of the prevailing convention for both the conventional transgression and the moral transgression.

This lack of symmetry across the testing conditions may partly explain the difference in response patterns in previous M/C studies, as the methods employed make it impossible to rule out the possibility that moral transgressions are deemed generalisably wrong because they happen to be generalisably against convention – while the claim is that they are wrong independent of convention. Interestingly, the possibility of this confound shines through in the following quote from Turiel: “Agreement regarding moral obligations often exists among a group of people.” (Turiel 1983, 36). Moreover, our argument is consistent with our findings based on the improved whipping scenario (Quintelier, Fessler, and De Smet 2012): In one condition, we varied more aspects of convention than in another condition. In the condition where more aspects of convention were explicitly made to vary, participants were more likely to think that the act was variably right or wrong, while in the condition where only one aspect of convention was explicitly made to vary, participants were more likely to think that the HJR transgression was generalisably wrong. Since the latter condition resembles classical moral/conventional studies more than the former condition does, we are confident that perceived generalizable conventionality of HJR transgressions plays a role in previous findings.

If our concerns are apt, then the cases of moral transgression that have been used in previous moral/conventional studies might still be perceived to be against convention

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when participants are asked to imagine a place where there is, for instance, no rule against the act, while the cases of conventional transgression depict acts that are not perceived to be against convention when participants are asked to imagine a place where there is, for instance, no rule against the act. But does this not mean that there is a difference between moral and conventional transgressions nonetheless? And is this not a significant finding that ought to be taken note of? Below we address these possibilities.

### **Explanation of previous findings**

In this section, we discuss what might explain the correlation between previous HJR transgressions, perceived generalizable wrongness of these acts, and perceived generalizable unconventionality of these acts.

We argue that, to date, moral/conventional researchers have systematically selected only a small range of HJR transgressions, namely those that most human beings, all over the world, would consider examples of defection in a social dilemma. Importantly, the range of HJR transgressions is much broader than this. However, while these other transgressions are dismissed by moral/conventional researchers, we argue that they constitute a substantial part of everyday morality, and that therefore a theory of morality should try to explain them. Below we discuss each of these three steps in our argument.

First, a small range of HJR transgressions is overrepresented in moral/conventional studies. One of the functions of moral judgment is likely to uphold cooperative behaviour in social dilemmas. Social dilemmas are situations wherein everyone is better off if all cooperate, but, as long as enough individuals cooperate, any given individual can still gain more by defecting. In such situations, most people involved will condemn defection because they all want the other actors to cooperate. As a first consequence, since conventions arise from the evaluations of individuals, there

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will also be several conventions in place that proscribe the defection. For instance, even when there is no law against cutting in line in a queue, there is still likely to be a consensus that it is not OK, or a sign that says 'wait in line'. As a second consequence, participants in moral/conventional studies will judge the transgression to be wrong regardless of rules and authority. Thus, a third factor (the fact that the act is a defection in a social dilemma) explains both the generalizable wrongness of the behaviour and the fact that it is against convention everywhere. Some behaviours are defections in a social dilemma everywhere – for instance, violence for selfish reasons. These are the transgressions that are typically used as HJR transgressions in moral/conventional studies.

Second, there is a vast range of behaviours that are HJR transgressions in one place, where certain rules are at work, but are acceptable in another place, where other rules are at work. Consider the case of speeding. In regions where 50 miles per hour is the maximum speed, and most drivers obey the speed limit, driving faster than 50 mph is potentially harmful – the driver might collide with a slower car or hit a surprised pedestrian; it is also unjust – it is not fair towards those who do not speed. However, if the maximum speed is legally and visibly increased to 70 mph on exactly the same road, driving faster is OK because others will drive faster as well and everyone can read the speed limit signs, so they know what to expect and will be more careful. This is an example of a behaviour that is a HJR transgression under certain conditions, but is perceived to be OK when the rules are altered. As this example illustrates, what constitutes defection, is harmful, or is unjust (i.e., what qualifies as a HJR transgression) can also depend on the prevailing convention. Situations such as this are very common: Many local laws create social dilemmas where defection is harmful and unjust or unfair, and thus hypothesized to elicit moral responses. Most traffic laws create such situations.

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One can also think of laws specifying what weapons one can legally carry, or laws about the minimum wage that can be paid to workers. In each case, the defector has an unfair advantage, and defecting harms others. However, this is only true because a certain law is in place. As a consequence, hence the act is more likely to be perceived as OK if there is no law against it and everyone starts engaging in the practice.

Third, the Turiel tradition acknowledges the existence of such cases, but dismisses them as being ‘complex’ cases: how people process or respond to these cases is not predicted by Turiel and followers’ formulation and explanation of the moral/conventional distinction. According to the Turiel tradition, harm, injustice, and any violation of rights are seen as invariably determining the generalizable wrongness of an act. However, if our view is correct, then research in the Turiel tradition has only proven that there *exist* HJR transgressions that are generalisably wrong, and that there exist conventional transgressions that are exclusively conventionally wrong. We argue that there are also HJR transgressions whose wrongness depends on convention, and that such HJR transgressions are sufficiently common that they cannot be disregarded by any theory that aims to explain moral thinking.

We can now refer back to the question of confounds in moral/conventional studies. We propose that oft-cited results in the moral/conventional literature may have been obtained not because the specific HJR transgressions employed are wrong independent of convention, but rather because those transgressions are generalisably against convention.

To recapitulate, like Fraser, we are concerned about confounds. However, turning Fraser’s defence of the moral/conventional literature on its head, our concern leads us to doubt that the results from classical moral/conventional studies support Turiel and followers’ account of the nature of moral judgments. Of course, it is not

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enough to point to the possibility of confounds and leave it at that: it is also necessary to conduct empirical studies. We pointed to previous findings supporting our arguments (Quintelier, Fessler and De Smet 2012), and we hope that this paper also paves the road for further investigations.

### **Summary and conclusion**

One key claim of research into moral psychology is that moral prescriptions differ from conventional prescriptions in that moral transgressions are perceived to be generalisably wrong, while conventional transgressions are perceived to be variably right or wrong depending on the background conventions. In this paper, we analysed Fraser's defence of the M/C distinction and concluded that his arguments could be extended to raise doubts not only about research challenging this distinction but, moreover, about the large corpus of results amassed by proponents of this distinction.

We agree that Kelly et al.'s (2007) study is subject to the important limitation of suffering moral confounds. In fact, unaware of Fraser's work, we recently raised similar concerns in a previous study (Quintelier, Fessler, and De Smet 2012). However, while Fraser mentions only moral confounds, and only in regard to work that criticizes the moral/conventional distinction, we also see the potential for conventional confounds in work that defends the moral/conventional distinction. In the aforementioned recent project, we went further and demonstrated that these confounds have an effect: the explicitness of a convention does indeed seem to matter.

In general, we hold that it is incumbent upon proponents of the moral/conventional distinction to apply the same level of scrutiny to moral/conventional studies as to critiques of moral/conventional studies. For if one is concerned about confounds, then moral/conventional studies leave much to be desired. Moreover, merely raising the potential of confounds fails to settle the matter. How do we know that these

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confounds really affect results? Shouldn't we simply test their effect? Thus, we hope that, in the future, researchers will test for our outlined concerns.

Our critique of moral/conventional theory is of broader relevance for moral psychology: Strict adherence to moral/conventional theory may preclude research into moral contents other than harm, justice, or rights (e.g., Graham et al. 2013; Rai and Fiske, 2011), or research into meta-ethical issues such as contextualism and relativism, simply because, according to the moral/conventional distinction, these forms and contents are by definition not part of *moral* philosophy (see Quintelier and Fessler 2012). Given the stakes at issue, it is high time that scholars take a closer look at the methods that produced the voluminous body of material adduced in support of moral/conventional theory.

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