Dissolving the Moral-Conventional Distinction

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Abstract: One way in which philosophers have often sought to distinguish moral judgments from non-moral judgments is by using the "moral-conventional" distinction. I seek to raise serious questions about the significance of the moral-conventional distinction, at least for philosophers interested in moral judgment. I survey recent developments in the fields of philosophy, psychology, and cognitive science that have led many to the conclusion that moral judgment is not a distinctive kind of judgment or the result of a specific, identifiable cognitive process. I argue that if this conclusion is largely correct, the moral-conventional distinction loses significance. If moral judgment does not correspond to a distinctive cognitive process, it is unclear how distinguishing between types of norms tracks anything of significance to human judgment formation. I then discuss the implications of abandoning the distinction for research in the field of moral psychology and tentatively propose a more modest way of conceiving of norm significance.

Keywords: Moral-conventional distinction; metaethics; moral judgment; moral psychology

When a philosopher trots out a theory of moral judgment, typically one aim of the theory is to explain what counts as a moral judgment or what distinguishes moral judgments from other kinds of judgments (recent examples include Joyce, 2006; Haidt, 2012; Hauser, 2006; Gibbard, 1990; Kumar, 2016a; Kumar and Campbell, 2022; Nichols, 2004; Prinz, 2007; Smith, 1994). Not only do such theorists aim to distinguish moral judgments from non-moral judgments, they also typically criticize others for failing to sufficiently carry out this task (e.g., Nichols, 2004, p. 95; Hindriks and Sauer, 2020; Foot, 1972).

One way in which philosophers have recently sought to distinguish moral judgments from non-moral judgments is by using the "moral-conventional" distinction (e.g., Kumar and Campbell, 2022; Kumar, 2015, 2016; Hindriks and Sauer, 2020; Nichols, 2004). Briefly, the moral-conventional distinction maintains that individuals differentiate between two fundamentally different kinds of normative violations: Conventional violations and moral violations (e.g., chewing with one's mouth open would be a conventional norm violation in the United States and an unprovoked shoving of another person would be a moral violation). Studies have purported to show that research participants systematically conceive of moral violations differently than conventional violations. Study participants see moral violations as especially serious; as authority-independent; as time and place independent; and they typically appeal to the harm caused to others as an explanation for why it is wrong to violate the norm; however, they do not attribute such properties to conventional violations (e.g., Nucci and Turiel, 1978; Turiel 1983, 1989, 2002; Smetana, 1981).[1]

[1] For a recent overview, see Heath (2017). This distinction will be discussed in greater detail subsequently.

Philosophers (and others) have also interpreted studies that indicate that psychopaths fail to properly draw the moral-conventional distinction as evidence that psychopaths fail to understand (or do not completely understand) morality or that they fail to make "real" moral judgments, a position that has been employed in a variety of arguments (e.g., Kumar, 2016; Kumar & Campbell, 2022; Levy, 2007; Maibom, 2005; Matthews, 2014; May, 2023; Nichols, 2004; Prinz, 2007).[2] The widespread belief among philosophers that psychopaths do not make moral judgments often rests in part on their acceptance of the significance of the moral-conventional distinction.[3]

Here I seek to raise serious doubts about the significance of the moral-conventional distinction, at least for philosophers interested in moral judgment. I survey recent developments in the fields of philosophy, psychology, and cognitive science that have led many to conclude that moral judgment is not a distinctive kind of judgment or the result of a specific, identifiable cognitive process. I argue that if this conclusion is largely correct, then the moral-conventional distinction loses significance as a way of identifying different judgment types. If moral judgment does not correspond to a distinctive cognitive process and is not consistently conceived of in a distinctive

[2] This is a mere sampling of the philosophers who have made claims about the psychopath's capacity for moral judgment. See for example Schramme's edited volume *Being Amoral: Psychopathy and Moral Incapacity* (2014).

[3] A search of Google Scholar shows that R. J. R. Blair's 1995 article which purports to establish that psychopaths do not make moral judgments in the same way as healthy controls using the moral-conventional distinction has been cited 1,670 times since 2010 alone (1,830 citations overall). Attempting to narrow those results by searching for the word "philosophy" within those 1,670 citing articles does winnow things down a bit: Since 2010, 769 articles that have cited Blair's article also contain the word "philosophy". Of course, some of these results are questioning Blair's findings. Nonetheless, this is a significant result. One cannot deny that philosophers have cited and discussed (critically and uncritically) Blair's study of psychology using the moral-conventional distinction quite a bit.

fashion, it is unclear how distinguishing between types of norms tracks anything important about human judgment formation.[4] Furthermore, raising doubts about the significance of the moral-conventional distinction gives us additional reason to doubt that moral judgment really is a distinctive kind, as these two distinctions are in a kind of mutually reinforcing relationship. In this respect I aim to offer a kind of deflationary account: Although it may be conversationally useful to refer to some norms as moral and others as non-moral, this doesn't track anything deep about the nature of human judgment formation.

Recently some philosophers have purported to accept a position on which moral judgments are not a distinctive kind, yet they still ask questions and write articles that seem to presuppose that it is, and they continue to appeal to the moral-conventional distinction as evidence that moral judgment is distinctive in some way (or they still claim that psychopath do not understand morality based on the distinction).[5] My hope is that by encouraging philosophers to give up the significance of the moral-conventional distinction, they will become more amenable to a position on which there are merely "value judgments" or "normative judgments". Rejecting the supposed "specialness" of moral judgments may well direct the fields of philosophy and psychology down a more fruitful path concerning the nature of human judgment.

It is not my goal to argue that judgments cannot be meaningfully differentiated into types at all; it may be that casting doubt on the moral-conventional distinction causes us to doubt whether there are other types of judgment (e.g., do mathematical judgments constitute a distinctive type of judgment?); however, I believe it would be too hasty to rush to such a conclusion. My focus is on what are typically referred to as "moral judgments", which are often practical judgments about

[4] For the purposes of this paper, I assume that the mind is the result of brain processes.

[5] See for example Levine et al., (2021); May (2023); Rehren and Armstrong (2023).

what to do. It may be that what we conceive of as other judgment types have identifiable properties that could be used to meaningfully categorize them.

I also want to emphasize that I do believe that some norms are conceived of as more important or significant than other norms. Yet this doesn't show that they are a distinctive kind of norm or the result of a distinctive cognitive process. Nor does this count as evidence that moral judgment is a distinctive kind of judgment. Further, as I will argue, the way in which a norm is conceived is likely more the result of the context of consideration than its content.

I begin by explaining the moral-conventional distinction and the outsized significance it has played for philosophers' moral theorizing over the past 30 years. Then I survey some of the doubts and arguments that have already been raised against the distinction. Next, I argue that if the emerging position on which moral judgment is not a distinct kind of judgment is correct, it is hard to see how such a position could sit comfortably next to a view on which people perceive norms as categorically distinct. I conclude by discussing the implications of this view for research in the field of normative judgment and tentatively propose a new way of conceiving of norm violations.

1. The moral-conventional distinction

The moral-conventional distinction and its prominence in the fields of philosophy and psychology can be traced primarily to the work of Elliot Turiel and his various collaborators who have argued that human beings, from as young as three years old, reliably distinguish between two of sets of norms: Moral norms and conventional norms. Turiel claims that this distinction corresponds to, or represents the formation of, "domain-specific" cognitive processes (1989, p. 89). On Turiel's view, as humans develop, they come to conceive of moral and conventional (i.e.,

societal customs) norms in distinctive ways. For example, Turiel states "The proposition that distinct organized systems of thought are constructed through individual-environment interactions implies that individuals conceptually transform social events" (1989, p. 92); that is, individuals classify events as moral or conventional using consistent cognitive domains, or classificatory systems, that they form via their life experiences.

On Turiel's view, properly socialized individuals distinguish moral norms from conventional norms based on the following features:

> [M]oral prescriptions are considered to be obligatory, not determined by personal inclination, non-changeable on an arbitrary basis, and applicable across situations and contexts. The analysis of justification categories showed that moral judgments are structured by underlying concepts of justice, rights and welfare (1989, p. 95).

Here we see Turiel laying out the features he takes to distinguish moral cognition: People conceive of moral norms as being obligatory and not up to the individual; the norms do not change regardless of change in context; people explain why a given norm must be followed by appealing to harm that might be caused by not following the norm or by appealing to considerations of justice and rights (fairness). On the other hand, conventions are understood to be contingent on authority, non-generalizable, and not having to do with rights or welfare considerations.

Turiel's evidence is drawn primarily from school age children. In his studies, participants are asked questions like the following: If there were no rule against hitting another child, would it be okay to hit? If there were no rule against wearing pajamas to school, would it be okay to wear

pajamas to school? (Misak & Turiel, 1988; Turiel, 1989). For the most part children report that it would not be okay to hit even if there were no rule against it; however, they report that it would be more acceptable to wear pajamas to class if there were no rule against it or if it were explicitly allowed by an authority figure. Turiel (2002, pp. 108-109) reports an exchange with a 5-year-old boy who explains why, even if a school allowed hitting, it would still be wrong to do so. The boy appeals to the harm that would be caused to others by hitting as justification for its continued wrongness. When asked if it would be okay to be naked on warm days at school if there was no rule against it, the boy says, "Yes, if [another child] wants to, he can because it is the rule" (2002, p. 109). For Turiel, it is clear that children quickly learn to classify different types of norm transgressions, and conceptualize moral norms differently from conventional ones.

A point worth driving home is that Turiel is committed to a position on which there are distinctive types, or kinds, of judgment. As we've seen, he explicitly refers to the development of "domain specific" cognitive processes. Beyond referring to cognitive domain specificity, he says "It is implicitly assumed that the same principles of acquisition apply across *types* of judgments" (1989, p. 90, my italics). In his 2002 we find a continuing commitment to this position: "Drawing distinctions between domains is important not only to an understanding of the different paths of thought in children's development, but also to an understanding of morality itself" (p. 109).

Additionally, Turiel appeals to the work of well-known moral philosophers to bolster his distinction between moral judgments and other types of judgments:

> As delineated by moral philosophers, moral prescriptions are not specific to a given society; they are not legitimated by agreement; and they are impartial in the sense that they are not determined by personal preferences of individual

> inclinations [Dworkin, 1977; Gerwith, 1978; Habermas, 1990a, 1990b; Rawls, 1971; 2001] (2002, p. 110).

The very properties that Turiel attributes to the conceptualization of moral judgments by children are the same properties that prominent moral philosophers in the Western tradition ascribed to moral judgments from the armchair; that is, Turiel found the properties that prominent moral philosophers expected him to find, and then (as I will show) philosophers subsequently relied on Turiel's findings to further justify what they already believed.

In sum, we should interpret Turiel as positing distinctive judgment types that correspond to distinctive cognitive processes.[6] Turiel clarifies that this does not mean that he thinks that emotions are not involved in moral judgments (2002, p. 112). The point for him is that individuals conceive of the two types of norm violations differently, attributing different properties to each, as well as offering differing types of justification for each, and that this distinction is attributable to distinct cognitive domains.

2. Philosophers and the moral-conventional distinction

Just as Turiel drew on philosophical tradition in establishing the moral-conventional distinction, philosophers subsequently turned to Turiel's work to empirically justify the very same distinction. That is, although most philosophers already assumed that moral judgments formed a distinctive kind, they have had a hard time explaining just what differentiates the two types. As philosopher Nicholas Southwood observes in his article "The Moral/Conventional Distinction":

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[6] Heath (2017, pp. 280-281) seems to have a similar interpretation of Turiel. He explains Turiel's conception of domain-specificity by appealing to the way we learn to categorize things in the world as "agents" or "objects", which may depend on a kind of innate cognitive architecture (at least at first).

"Commonsense suggests that moral judgments and conventional judgments are importantly different in kind" (2011, p. 761). He continues, "What is not so clear, is what *makes* them so different" (2011, p. 763, author's italics).[7] Turiel and other researchers in psychology provided philosophers with empirical evidence to support their "commonsense" position that moral judgments are in fact distinctive.

Surprisingly, perhaps, moral philosophers with diverse theoretical commitments have turned to the work of Turiel. By that I mean both rationalists and sentimentalist have used the work of Turiel to bolster their respective positions.[8] By *rationalists*, I mean those who believe that moral judgments are primarily arrived at via reasoning processes. By *sentimentalists*, I mean the family of views that aim to explain moral judgments primarily via emotional processes. According to sentimentalists, moral judgments just are emotional reactions or are somehow importantly related to emotional reactions. For example, Hindriks and Sauer (2020) argue for the compatibility between rationalism and the moral-conventional distinction despite what they see as sentimentalist attempts to co-opt the distinction;[9] on the sentimentalist side, Prinz and Nichols

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[7] See Southwood (2011) for an overview of philosophical attempts to distinguish between moral and conventional judgments, which he judges unsuccessful. He then goes on to provide his own account that incorporates some of Turiel's own conclusions. Southwood focuses on how people tend to ground or justify their judgment as the basis for drawing the distinction.

[8] As I've argued, Turiel presents his view as a cognitive, or rationalist, account. However, he seems to see it as perfectly compatible with a sentimentalist account of morality (2002, p. 111). For an additional overview of how philosophers have employed Turiel's work, see Heath (2017).

[9] Ultimately, they argue for a modified version of the moral-conventional distinction that adds a third category which they call ethical norms, so in this respect their view is a bit different. This modification itself suggests that the moral-

argue that one way we might usefully differentiate moral emotions from non-moral emotions is by appealing to the moral-conventional distinction (2010, p. 121). Evolutionary-based accounts of moral judgment that seek to explain moral judgment as a distinctive evolutionary adaptation also employ the distinction to support their arguments, such as the more sentimentalist-inspired account offered by Kumar and Campbell (2022, see section 4.5) and the rationalist-compatible offering from Richard Joyce (2006, see chapter 4).[10]

At this point it is hopefully clear that the moral-conventional distinction has directly influenced moral theorizing over the past 30 years. However, it's indirect influence may be even more substantial. The distinction has been used to explain the peculiar defect of psychopathy, and philosophers have furthered demonstrated their commitment to Turiel's distinction by readily embracing the conclusion that failure to draw the moral-conventional distinction indicates that a person fails to understand morality or is incapable of making "real" moral judgments.

Some philosophers have drawn their conclusions about the moral incapacity of psychopaths from the work of R. J. R. Blair, who used the moral-conventional testing material developed by Turiel and others on criminal offenders diagnosed as psychopaths. After taking himself to have established that diagnosed psychopaths do not draw the moral-conventional distinction in the same way as healthy controls, Blair states the following:

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conventional distinction isn't all that clear to begin with, as not even philosophers routinely distinguish between ethical and moral norms in a consistent fashion. Their view will be further discussed.

[10] For additional examples of use of the moral-conventional distinction in arguments concerning the nature of moral judgment, see also Fraser (2012); Haidt (2001); Hauser (2006a); Kumar (2015, 2016); Prinz (2007); Nichols (2004). See Heath (2017) for additional examples and discussion.

> [Turiel's] framework would have to account for the present findings as indicating that the psychopath has not constructed the moral domain either because of a failure of the construction process or because of a lack of experience of the social interactional consequences of moral and conventional transgressions (1995, p. 21).

In other words, psychopaths do not understand morality because, for some reason, they have failed to properly construct the "domain" of the moral and the conventional. Blair is here explicitly adopting Turiel's conception of "cognitive domains", and in Blair's view the reason that psychopaths are more prone to violence than the average person is because they are suffering from a cognitive defect: The failure to properly construct the moral domain because of a deficit in the area(s) of the brain responsible for inhibiting violent responses (1995, pp. 21-22).[11] Later, Blair sought to explicitly identify psychopathy with abnormalities in brain areas he hypothesized to be directly involved in moral judgment formation (Blair et al., 2007). [12]

The idea that a person can have a deficit in their moral judgment faculty presupposes that there is a moral judgment faculty, and that presupposition is based in part on Turiel's work establishing

[11] Although Blair's diagnosis of a disordered "Violence Inhibition Mechanism" was already being abandoned by the mid-2000s, his claim that psychopaths have a kind of disorder in the brain that makes it so they cannot properly understand morality has persisted to the present day, as will be discussed. For a rejection of Blair's Violence Inhibition Mechanism explanation, see Nichols (2004, pp. 11-16).

[12] In his (2007), Blair aims to connect psychopathy with disfunction in the amygdala. The association between disfunction in the amygdala and psychopathy has been subsequently seriously doubted (see for example Deming et al., 2022).

the moral-conventional distinction.[13] Blair took Turiel to have shown that healthy people (for lack of a better term) conceive of morality in a certain way, and that if psychopaths do not conceive of morality in the same way this demonstrates that they are unwell.

Philosophers interested in moral judgment seized on Blair's conclusion that psychopaths have a disordered moral judgment system, a conclusion founded in part on the moral-conventional distinction.[14] The idea that psychopaths are incapable of moral judgment has been used in arguments for motivational internalism (Kumar, 2016b); arguments for moral sentimentalism (Prinz 2007, p. 43; Haidt, 2012, chapter 3); arguments for moral rationalism (Smith, 1994, pp. 68-71; Matthews, 2014); arguments against moral rationalism (Nichols, 2004, pp. 76-82); and arguments concerning moral responsibility (e.g., Malatesi & McMillan, 2010; Levy, 2007, 2010). A good chunk of the philosophical community has taken it for granted, based in large part on Blair's 1995 study, which is rooted in the moral-conventional distinction, that psychopaths are morally impaired (e.g., Beal, 2021; Kumar & Campbell, 2022; Maibom, 2005; May, 2023; Joyce, 2006).[15]

In short, the moral-conventional distinction has been highly influential for philosophical theorizing on moral judgment. Several influential arguments concerning the nature of moral

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[13] See for example Hauser (2006a), where he argues for an innate moral faculty in the brain and cites both Turiel and Blair's work in support of his argument.

[14] For an argument that there is no substantial evidence that diagnosed psychopaths do not understand the moral-conventional distinction and that Blair's original study should be rejected on a number of grounds, see Sackris (2022). This issue will also be discussed further below.

[15] See Schramme (2014) for an edited volumed devoted to philosophical reflections on psychopathy. The list could be extended even further.

judgment are essentially founded on the moral-conventional distinction (e.g., Nichols, 2004; Kumar & Campbell 2022). Furthermore, the philosophical community has frequently taken it as fact that psychopaths have a disabled moral judgment faculty, and the acceptance of this disability depends on the soundness of the moral-conventional distinction.[16]

I will now argue that we have good reason to seriously doubt the significance of this distinction, and that doing so will ultimately be liberating for the philosophical community.

3. Previous criticism of the moral-conventional distinction

Despite the widespread embrace of the moral-conventional distinction by the philosophical community, there has always been significant doubt about the distinction, both before and after Turiel's publications that sought to establish its significance. We can turn back to early anthropologists like Ruth Benedict, who held that there are merely norms:

> We recognize that morality differs in every society, and is a convenient term for socially approved habits. Mankind has always preferred to say, "It is a morally good," rather than "It is habitual," and the fact of this preference is matter enough for a critical science of ethics. But historically the two phrases are synonymous (1934).[17]

Benedict is somewhat mystified that philosophers take moral norms as a distinctive area of inquiry. For Benedict, there are no distinctive kinds of norms—there are merely accepted and

[16] E.g., Nichols discusses Blair (1995) and the moral-conventional distinction in establishing that psychopaths do not understand morality (2004, pp. 76-77). Cf. Borg and Sinnott-Armstrong, 2013; Jurjako & Malatesi, 2018; Larsen et al., 2020; Sackris, 2022.

[17] Heath (2017) makes a similar point about the views of Emile Durkheim.

unaccepted behaviors. For more recent skepticism towards the distinction, we can turn to an array of empirical work.

Once again, here are the defining features of a moral norm:

- Obligatory or overriding of other concerns (i.e., serious)
- non-changeable on an arbitrary basis
- not context dependent
- Justified by appealing to concepts of justice, rights or welfare

Over the past twenty years or so, philosophers have begun to conduct their own research into how adult non-philosophers conceive of moral judgment and it has become clear that these four criteria do not co-occur with law-like regularity, especially once the examples move from schoolyard transgressions to consideration of more diverse norm violations. It is here worth emphasizing that the majority of Turiel's research into the moral conventional distinction was performed on children. For example, Kelly et al. (2007) have shown that changes in time and place can radically affect judgments of permissibility in adult respondents: Roughly 10% of respondents thought it was permissible for a captain to whip a derelict solider in the year 2004; however, over 50% of respondents thought it was permissible for a captain to whip a derelict soldier 300 years ago (2007, p. 127). Quintelier and Fessler (2015) conducted a follow-up study on the work of Kelly et al. (2007) that verified their findings that judgments of moral wrongdoing vary in relation to the study participants' perception of the local conventions where the act is described as taking place.

Although study participants often describe certain moral violations as being wrong in practically all circumstances, Quintelier and Fessler argue that research into the moral-conventional

distinction has failed to rule out the possibility that adult study participants perceive certain norms as being upheld by almost all societies; that is, study participants could perceive all norms as dependent on societal beliefs and customs yet simultaneously view some norm violations as "generalisably against convention" (2015, p. 65), meaning they expect all societies to have conventions/customs prohibiting that particular act. Therefore, judging that an act would still be wrong even if performed in another culture does not prove that individuals conceive of certain norm violations as independent of societal conventions.

Additionally, Beebe and Sackris (2016) show that survey respondents spanning a range of ages vary in the level of objectivity they are willing to attribute to moral claims, treating moral claims they perceive as controversial far less objectively than non-controversial moral claims. Their findings suggest that perceived moral wrongness may be related to perceived societal agreement, thereby demonstrating context-relativity for some moral norms.[18] Margoni and Surian (2021) show that the moral-conventional distinction is sensitive to question-framing. When study participants are asked to evaluate a moral transgression described as occurring in different times or places based on their personal judgment, they readily condemned it. However, when explicitly asked to evaluate the transgression in the foreign context, they perceive the transgression more conventionally.

Despite these criticisms, philosophers have not been quick to abandon the distinction. Kumar argues that merely giving examples of moral violations that do not exhibit all four trademark

[18] See also Goodwin and Darley (2008). Beebe and Sackris (2016) also indicates that attitudes regarding the objectivity of moral judgments change as individuals age. Margoni (2020) indicates that older adults judge conventional violations more harshly than younger adults and tend to perceive conventional violations "as context and authority independent" (p. 11).

features is not enough to falsify the theory (2015, p. 2899).[19] Hindriks and Sauer (2020) recently modified the distinction in order to defend a rationalist conception of moral judgment by putting forward a third category, which they call "ethical norm violations". This allows them to narrow the category of "moral" norm violations so that they can argue for the primacy of a single criterion of moral norms: Moral norms are those norms that are conceived of as justifiable to all.[20] Although criticisms have circulated in the discipline for almost 15 years, the distinction is relied on in Kumar and Campbell's 2022 book on the nature of moral judgment. And philosophers continue to maintain that psychopaths have a faulty moral judgment faculty.

My goal is to now offer what I hope will be seen as a serious problem for the distinction. It is to this task I now turn.

4. Dissolving the moral/conventional distinction

[19] Cf. Sackris and Larsen, 2023.

[20] The norm-categorization scheme defended by Hindriks and Sauer is different from the one defended by Turiel and embraced by other philosophers. They categorize norms backed by appeals to considerations of purity, community, and authority, which are often conceived of as moral norms by cultures around the world, into a new category they instead call "ethical norms". For example, the moral judgment that incest is wrong is typically interpreted to be backed by an emotion like disgust. They state, "Norms the violation of which elicits disgust are ethical norms rather than moral or conventional norms." (pg. 578). Therefore, their view implies that norms prohibiting incest (which study participants are reluctant to give up on even in cases in which there is supposedly no harm from the act) do not belong in the "moral" category, which is a surprising result. Their view also implies that people are frequently wrong about what counts as a moral issue (e.g., pp. 583-584). These normative implications regarding how people *should* conceive of morality seems to conflict with the descriptive spirit behind the original drawing of the moral-convention distinction.

As noted in the above discussion of the moral-conventional distinction, Turiel holds that the moral-conventional distinction depends on the development of distinctive cognitive modules. Turiel was a student of Lawrence Kohlberg, and one of the things he shares with Kohlberg is a conception of moral judgment as a distinctive judgment type.[21] As was noted above, Turiel (and Kohlberg before him) was influenced by philosophical conceptions of moral judgment, and philosophers have long thought of moral judgment as a distinctive judgment type.[22] However, despite this long-standing belief that moral judgment is a distinctive type, as discussed above it has been difficult to establish that adults really do consistently conceive of moral judgment in the distinctive way proposed by Turiel when they are confronted with a variety of moral norm violations. The recent empirical research demonstrates that in some contexts individuals will attribute many of the features identified by Turiel to moral judgments; in other contexts they will not.

In addition to the doubts raised about the legitimacy the of the moral-conventional distinction reviewed so far, over the past fifteen years or so significant doubt has developed in the field of cognitive science, and among a subset of empirically oriented philosophers, that moral judgment really is a distinctive kind or type at all. As we have seen, Turiel holds that the perception of moral norm violations is attributable to particular cognitive domains; psychologists and psychiatrists have attributed the "moral blindness" of psychopaths to disfunction in areas of the brain thought to be specifically responsible for moral judgment formation; and philosophers and evolutionary moral psychologists have postulated distinctive brains areas that developed for the

[21] See for example Kohlberg and Higgins (1984).

[22] See Sackris and Larsen (2022) for an overview of the widely held philosophical commitment to the position that moral judgment constitutes a distinctive type.

purpose of moral judgment formation. These beliefs about psychopathic disfunction and brain areas devoted to moral judgment formation can be traced back to confidence in the significance of the moral-conventional distinction. If there is no distinctive area of the brain devoted to the formation of moral judgments, this should raise additional doubt about the significance of the moral-conventional distinction, as well as these other positions that employ or rely on it.

The argument here is rather straight forward, although admittedly it took a good bit of stage setting to get us here. I will refer to this as the *Argument from Cognitive Architecture*:

Argument from Cognitive Architecture

1) If human beings draw a meaningful distinction between moral and conventional norm violations when making judgments of norm-transgressions, then we would expect to find that moral judgments would be somehow differentiable in terms of brain activity from other judgment types.
2) There is positive evidence that moral judgments do not correspond to distinctive brain areas or brain functions and are instead the result of general judgment formation processes.
3) So, human beings do not draw a meaningful distinction between moral and conventional norm violations.

At this point, the evidence from research into the brain is quite clear: Cognitive scientists, even ones like Joshua Greene who explicitly attempt to conduct research on moral judgment, do not

believe that moral judgment constitutes a distinctive kind.[23] Greene refers to the brain as having "a general purpose reasoning system" (2014, p. 696) that is employed to make what we refer to as "moral judgments". He later makes his position even more explicit, stating "So far as we can tell, the field of moral cognition does not study a distinctive set of cognitive processes" (2015, p. 40). Others have reached a similar conclusion: Cushman and Young conclude that moral judgments are "derived" from general judgment forming processes (2011, p. 1053); Borg et al. conclude that negative moral judgments make use of the same brain regions that play "a general role [. . .]in encoding negative valence and avoiding aversive stimuli rather than a unique role in contributing to negative moral verdicts" (2011, p. 408); Young and Dungan conclude that moral judgments are likely formed by "domain general-processes which are housed in many parts of the brain" and go on to say that "morality is virtually everywhere in the brain" (2012, p. 1); Decety and Cowell state that there is "no unique center in the brain for moral judgment" (2014, pp. 528-529); McHugh et al. argue that moral judgment is "a process of categorizing something as morally right or morally wrong (or indeed not morally relevant)" and that the process of categorization is "domain-general (not unique or specific to the moral domain)" (2022, p. 131).[24] Based on research conducted on individuals with alexythemia (a deficit in the ability to identify, describe, or think about one's emotions), Díaz and Prinz suggest that "our evaluative judgments might be sourced on emotion or reasoning depending on the context", indicating that moral

[23] That Greene conducts research specifically focused on understanding moral judgment while simultaneously holding that it is not a distinct kind is itself something of a confound, as we might imagine that he could place subjects in fMRI machines and ask them to form judgments about anything. For a critique of such an approach, see Sackris and Dale (2024).

[24] See also Bzdok et al. (2012).

judgments are not always made in one way or via one specific cognitive process (2023). Finally, in the only attempt that I am aware of to study the moral-conventional distinction via differences in brain activity, the findings indicate that judgments of moral and conventional violations largely recruit the same areas of the brain (White et al., 2017), again indicating that such judgments seem to originate from a general judgment formation process in the brain.

Further, there is also significant doubt that psychopaths are "morally impaired". The argument that psychopaths are not morally impaired has been made on empirical and philosophical grounds. In an attempt to replicate the earlier findings of Blair (1995), Aharoni et al. conclude that "contrary to earlier claims, insufficient data exist to infer that psychopathic individuals cannot know what is morally wrong" (2012, p. 484). Not only did Aharoni et al. fail to replicate Blair's results concerning psychopaths and the moral-conventional distinction, Blair's (1995) results have been challenged or dismissed by multiple researchers on several different grounds (e.g., Borg & Sinnott-Armstrong, 2013; Jalava & Griffiths, 2017; Marshall et al., 2018; Sackris, 2022). Larsen et al. performed a systematic review of behavioral studies performed on diagnosed psychopaths and "found no consistent, well-replicated evidence of observable deficits in conscience, remorse, empathy or moral judgments" (2020, p. 305). Other researchers have similarly concluded that there is no clear evidence that diagnosed psychopaths are incapable of making moral judgments (Borg & Sinnott-Armstrong, 2013; Jalava et al., 2015; Larsen, 2022; Sackris, 2022). If moral judgments are the result of a general judgment forming faculty, as many have come to believe, then these updated findings regarding diagnosed psychopath's ability to make moral judgments coheres with the arguments presented here: A person cannot be disabled primarily in their ability to make moral judgments if there is no distinctive brain area or cognitive process devoted to making such judgments or recognizing moral norms.

Not only have researchers failed to establish that psychopaths really are deficient in their ability to make moral judgments, attempts to correlate psychopathy with structural abnormalities in the brain have largely failed and are starting to be dismissed. A systematic review (PRISMA) of neuro-imaging research found no meaningful differences between the brains of psychopathic and non-psychopathic samples (Jalava et al., 2021). In another systematic review of studies focused specifically on the amygdala of diagnosed psychopaths (the amygdala has been implicated in psychopathic disfunction going back to Blair [1997]), Deming et al. report that "the majority of studies found null relationships between psychopathy and amygdala structure and function, even in the context of theoretically relevant [e.g., moral-judgment] tasks" (2022).

In sum, the idea that psychopaths cannot make moral judgments has been largely rejected and the attempt to connect psychopathy with a particular brain disorder has largely failed.[25] Not only do diagnosed psychopaths fail to exhibit a clear deficit in drawing the moral-conventional distinction, there is also no clear evidence that the psychopathic brain is consistently different from the brains of healthy controls. We can put the argument like this: If the moral-conventional distinction really did correspond to a specific "cognitive domain" we might expect it to be possible for individuals to failure to develop the relevant cognitive architecture and therefore fail to make moral judgments while still being able to make other judgment types. However, the current evidence suggests we should reverse the direction of reasoning: There is no clear

[25] For a more detailed overview of the empirical research on diagnosed psychopaths, see Sackris (2022) and Larson (forthcoming). One reviewer worried that this argument suggests that psychopathy is not a legitimate diagnostic category. In fact, researchers in the field of psychopathy are beginning to move that direction. See for example Lilienfeld (2021); Larsen (forthcoming). If the diagnosis is ultimately abandoned in its current form, this would support the position offered for here.

evidence that individuals can be specifically disabled in their ability to make moral judgments while still being able to make other types of judgments, so this is evidence that the moral-conventional distinction is not a deep one that corresponds to specific brain areas or functions.

What at first looked like a virtuous circle now appears to be a vicious one: Philosophers used research on the moral-conventional distinction to provide empirical underpinnings for their theorizing about moral judgment; however, research into the moral-conventional distinction was itself motivated by the pre-existing philosophical assumption that moral judgments really were distinct from other judgment types. What if the prevailing philosophical consensus that influenced Turiel's research was simply wrong?

Some philosophers have woken up this possibility and have begun to question or outright reject the position that moral judgment constitutes a distinctive kind. Johnson (2012), Sackris (2021), Sackris and Larsen (2022, 2023), Sinnott-Armstrong and Wheatly (2014), and Stich (2006) all argue that there is nothing that unifies moral judgment as a class or judgment type. Rehren and Sinnott-Armstrong (2023) have shown that moral judgments are not especially consistent over time, as we might expect especially serious or over-riding judgments to be. Sackris and Dale (2024) argue that moral judgments are just as susceptible to seemingly irrelevant contextual influences as any other judgment type, again suggesting that moral judgment is not distinctive.

Even if we put aside the evidence from brain studies, as a proponent of the distinction might reject the position that the significance of the moral-conventional distinction requires distinctive cognitive modules, we have already seen that there is plenty of other evidence that should lead us to reject the distinction: The survey based research conducted by philosophers and psychologists has shown that the four features of moral judgment as defined by Turiel are not consistently present in the moral judgments of adult survey respondents (e.g., Beebe & Sackris, 2016;

Goodwin & Darly, 2008; Kelly et al., 2007; Margoni & Surian, 2021; Quintelier & Fessler, 2015); philosophers have recently offered arguments on other grounds that indicate that there is no single feature that allows us to clearly distinguish moral judgments from other judgment types (e.g., Sackris, 2022; Sackris & Larsen, 2023, 2024; Sinnott-Armstrong & Wheatley 2012, 2014; Stich, 2006); and there is recent behavioral evidence that indicates, at least in controlled settings, psychopaths do make moral judgments in a similar fashion to healthy controls (e.g., Aharoni et al., 2012; Borg et al., 2013; Larsen et al., 2020). This should lead us to believe there is no distinct moral judgment cognitive domain that can become selectively impaired.

Richard Joyce (2006) offers a traditional, armchair philosophical argument that questions how children would even come to infer the four properties that supposedly distinguish moral norms from conventional norms as Turiel's account requires.[26] Joyce says:

> It is true that a child may observe that some transgressions are considered more serious than others (invite more outrage, incur worse punishment), but there is nothing in a child's external world to provide the inferential basis for matching up this observable distinction with the typically unobservable distinction between authority-dependent and authority-independent transgressions. Likewise, what experience allows a child to infer that certain norms are local whereas others hold more generally?.... All in all, the hypothesis that children the world over acquire this distinction through some kind of inference from similar interactive

[26] Joyce is making this argument in support of the idea that there is a kind of innate moral faculty—that is, he accepts the moral-conventional distinction but argues that it arises from some innate moral faculty that developed via evolution. Although I reject his conclusion, his argument against the moral-conventional distinction being learned or intuited the world over is still a good one.

> experiences has never been to my knowledge spelled out in any detail, and on reflection it [is] simply incredible (2006, p. 139).

It is completely unclear how children, or even grown adults, would come to know that certain norms are supposed to be considered transcendent of time, place, and authority without specifically being told this. And the empirical research bears this out: People don't appear to treat moral norms in the consistent fashion that Turiel's theory, at least in the way it has been employed by the philosophical community,[27] requires (e.g., Beebe & Sackris, 2015; Goodwin & Darley, 2008, Kelly et al., 2007; Margoni, 2020; Margoni & Surian, 2021).

Putting all this together, we have good reason to doubt that there is a moral-conventional distinction that tracks anything of philosophical significance. There is now strong evidence that there is no special area of the brain that is responsible for making moral judgments, contrary to what Turiel's theory requires;[28] and there is no clear evidence that laypeople conceive of moral judgments in a way consistent with what the theory requires; and there are seemingly sound traditional philosophical arguments against the distinction. It is undoubtedly true that we treat some norms as more serious than others. And we do in fact refer to some norms as moral and others as non-moral. But to think our ordinary language usage tracks a deep, underlying reality

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[27] Heath (2017) argues against the significance of the moral-conventional distinction by showing that philosophers have, in some sense, misinterpreted it. He argues that when one reads Turiel's work closely, they find that the number of transgressions that Turiel considers to be moral is quite small, and that Turiel ultimately does a good deal of hedging about the distinction in his later work that philosophers have largely ignored.

[28] Admittedly, we have good reason to doubt the reliability of information from fMRI research (see for example Deming et al., 2022 and Marek et al., 2022). It may be the case that future findings could overturn current beliefs regarding how moral judgments are made.

appears to be a mistake. Likely the way we treat a norm depends more upon the context in which we are confronted with it than its content.[29]

5. Implications of dissolving the moral-conventional distinction

Without the ability to appeal to the well-trodden moral-conventional distinction, it is not clear how philosophers can continue to maintain that moral judgment is distinct from other normative judgment types, or that moral norms are conceived of in some distinctive way. If the argument presented here is largely correct, not only is it no longer legitimate for philosophers to criticize a moral theory for failing to clearly demarcate moral judgments from non-moral judgments, the inability to do so becomes a virtue: If there is no meaningful distinction to be made, not making said distinction counts in a theory's favor.

I see the biggest implication having to do with the kind of research projects philosophers might carry out. If there is no meaningful distinction between these two judgment types, then some philosophical arguments appear moot or have suddenly (hopefully) been settled. For example, although Joshua May seems to accept that moral judgment is not a distinctive cognitive type (2023, p. 249), he still feels compelled to argue in favor of moral rationalism:

> I show that neuroscience, when combined with relevant psychological science and philosophical analysis, adds positive evidence that corroborates, illuminates, and strengthens the empirical case for moral rationalism…although inference and affect appear to be entangled in the brain, rationalism is surprisingly well-suited to explain this blurring of the reason/emotion dichotomy (p. 238).

[29] See Sackris and Dale (2024) for an overview of some of the contextual influences on moral judgment formation.

If we accept the premise that moral judgment is not a distinctive type because, as May admits, it "appears to arise from domain-general capacities in the brain" (2023, p. 238), then his subsequent argument appears unmotivated. Once we grant that moral judgment is the result of our "domain-general capacities", it's not clear that we need to make any special arguments for or against rationalism regarding moral judgment. It would be just as fruitful to wonder whether judgments about what to have for dinner are primarily the result of emotion or rational process, or some combination of the two. If it seems intuitively obvious that judgments about what to have for dinner are likely a result of some combination of reason and emotion processes (at least it does to me: Rationally, I should eat healthy foods and care about the plight of animals; on the other hand, I really like chicken wings), then we should likely apply that same conclusion to moral judgments, no special arguments necessary. That is, if there is a general judgment faculty that produces all, or almost all, of our evaluative judgments, then almost of our judgments are the result of a combination of what we think of as emotional and rational processes. Similarly, there is no need to show, as Hendriks and Sauer (2020) aim to do, that the perception of moral norm violations depend more on rational thought processes than emotional ones; instead, we should embrace the idea that judgments of norm violations will likely be backed in some cases more by rational processes and in some cases more by emotional processes, depending on the context. Yes, some judgments may "feel" more emotional to us, or some judgments may "feel" more cognitive, but the evidence indicates that although these judgments may feel different, they were still produced by a general judgment faculty that brings together information from a variety of brain areas. In other words, a great many of our judgments likely involve both reason and emotion, including judgments concerning norm violations.

This is not to say May's conclusion isn't reasonable: It's eminently reasonable. The point is that he seemingly hasn't fully internalized his own stated position: If moral judgment is simply the result of our general judgment faculty, then his conclusion that moral judgments are the result of a blending of reason and emotion is exactly what we should have expected. Again, something similar can be said about the arguments of Hendriks and Sauer (2020): If we acknowledge that what we typically refer to as judgments of "moral" and "conventional" norm violations stem from a general judgment faculty, then we should similarly expect judgments of norm violations to contain some blend of reasoning and emotional processes. It is unclear why, as Hindriks as Sauer seek to do, we need to create a distinctive third normative category, called "ethical norms" for norms seemingly backed by specific emotions, like disgust. If normative judgments really are the result of a domain-general judgment capacity that combines reason and emotion, such distinctions may not be worth attempting to draw, as we should expect some norms to be (in some contexts) more backed by emotion than reason and vice versa.

If philosophers were to really believe that moral judgments are the result of domain-general capacities, then the better question to investigate may be this: Are all normative judgments the result of some combination of reason and emotion? Or better yet: Can reasoning and emotional processes be meaningfully differentiated in a judgment process?

Recent work of Hanno Sauer seems to admit of a similar criticism. Sauer argues that we should abstain from making moral judgments as much as possible:

> Recent evidence from moral psychology and cognitive science shows that many of our moral judgments are based on such unreliable processes. That is why we should often not engage in moral judgment, simply because we are no good at it. At least this would be the right thing to do (2021, p. 151).

Skeptical arguments going back to, well, the Greek skeptics, have given us plenty of reasons to doubt the reliability of our general judgment formation processes. More recently, Kahneman's popular *Thinking, Fast and Slow* (2012) has given us empirically grounded reasons to doubt our general judgment formation processes. If moral judgment is merely a sub-species of our general judgment formation processes, then moral judgments are likely just as reliable or unreliable as our general judgment formation processes. That is, whatever doubts or confidence we have about our general ability to form accurate judgments about what to do or what to value, that doubt and confidence should transfer directly to moral judgments.[30] We don't need any special argument about moral judgment reliability and we can no more refrain from making moral judgments than we can refrain from making judgments of what to eat or what time to go to bed.

While it is true that moral judgments are often of much greater import than judgments about what to eat, it is similarly hard to see how we could refrain from making them as Sauer suggests. First, what we typically refer to as moral judgments seem fundamental to human interaction. Second, as discussed, many philosophers have concluded that "moral judgment" itself is an ill-defined, nebulous category with no clear unifying features (see for example Heath 2017; Johnson 2012; May 2023; Sinnott-Armstrong & Wheatley 2012, 2014; Sackris 2021, 2022; Sackris & Larsen 2023, 2024; Stich 2006).[31] If we aren't sure what counts as a moral judgment, it is unclear how we could successfully refrain from making them. Although Sauer's point may be a metaphysical one, this epistemic problem blocks us from taking his advice seriously (Is deciding

[30] See Sackris and Larsen (2023) for a similar argument regarding aesthetic judgment.

[31] The following authors mention in passing that they don't believe that moral judgment is definable, but do not make sustained arguments for the position: Dreier, 1996, p. 411, footnote 9; Flanagan, 1993, p. 17; Richardson 2018; Svavarsdottir 1999, p.165 footnote 6; Shafer-Landau, 2015 (See "Introduction").

between biking and driving an instance of a moral judgment?). Should we be cautious in our moral pronouncements and avoid making them in the heat of the moment? If Sauer's point is merely this, then I agree with it. But such a point is a general one: We should refrain from making any important practical judgment in the heat of the moment.

Even seemingly staunch advocates of the position that moral judgments are not a distinct type revert to research projects that seem to assume they are. Paul Rehren and Walter Sinnott-Armstrong recently published a paper entitled "How Stable are Moral Judgments?" (2023). Based on the argument presented here, I suggest we instead ask: How stable are judgments in general? Or how stable are normative assessments? Or how stable are preferences? That is, we should want to know about the stability of judgments more generally before inquiring about moral judgments specifically. Rehren and Sinnott-Armstrong pursued this question to demonstrate that moral judgments are not as stable as philosophers might have expected and in that respect they are challenging conventional philosophical wisdom. Yet the study did not explicitly compare the stability of moral judgements with the stability of other judgment types (say, judgments about career fields, or university choice, or choice of romantic partners). If we have good reason to think that moral judgments are no different than other judgment types, we should take as our default position that moral judgments are just as stable (or instable) as other judgments and preferences. Showing that they are more or less stable than other typical judgments we make would then be the surprising result. If the arguments presented in this paper are largely correct, it no longer makes sense to offer theories narrowly focused on moral judgment at all.

Perhaps by changing our research approach we may be able to firmly affirm or reject the existence of distinctive judgment types that correspond to the moral-conventional distinction.

Consider Meltem Yucel et al.'s 2020 publication that aimed to investigate pupil dilation rates as children and adults viewed moral and conventional transgressions on a television screen. They found that study participants' eyes dilated to a higher degree in response to a moral violation as compared to the conventional violation. Yet, it is hard to see how a research design along these lines can truly establish a difference in *kind* in the processing of moral and conventional norm violations. The human eye dilates in response to a great many stimuli: e.g., increased concentration results in dilation (Kahneman, 2012). I am guessing that children's eyes would dilate in response to watching a cheetah attack a wildebeest or watching a heavy object fall on a person accidently, although these don't constitute norm violations of any sort, and we likely wouldn't conclude they were making any special judgment type if we discovered that children's eyes dilate in response to watching nature documentaries. And of course, not all moral violations are witnessed: We are also told about moral norm violations. Do our eyes dilate in such cases? To establish any real difference in response, researchers should aim to present study participants with a variety of scenarios in a variety of contexts. [32]

I believe we need greater research into general judgment processes. It cannot be conclusively claimed that moral judgments are distinctive from conventional judgments if we have yet to demonstrate that moral judgments are different from judgments of what to wear, what to eat, or what to do on Saturday afternoons. As of right now, I would tentatively predict that there will be

[32] Yucel et al. (2022) shows that children treated violations of distributional fairness as more of a conventional norm violation than a moral violation, although adults typically view fair distributions of good as a moral issue and appealing to fairness/justice is one of the justificatory criteria for moral norms offered by Turiel as discussed above. This just drives home the complexity of the situation and the need to study judgment using a variety of issues and in a variety of contexts: There does not appear to be any neat and tidy categorizing of judgment types.

no fundamental difference in the brain processes involved in judging that smoking is bad, deciding what to have for lunch, and judging someone to have acted inappropriately at dinner. In other words, I would predict that, e.g., study participants could be induced to show high levels of affect when making a conventional judgment or low levels of affect when making a moral judgment, depending on the contextual parameters of the study.

6. Conclusion

Philosophers have been using the moral-conventional distinction to define moral judgments or distinguish them from other judgment types for some time. They have also taken the distinction to establish that psychopaths do not make moral judgments, and they have further employed this claim about psychopaths in a variety of arguments. I have argued for rejecting this distinction between norm types by showing that evidence from cognitive neuroscience, as well as survey-based research, counts against it. I have supported this position by further showing that there is significant doubt concerning the claim that "psychopaths cannot make moral judgments"; this newfound doubt makes sense if the moral-conventional distinction is not, in itself, a significant one. If psychopaths can make other judgments about what to do, then they should be able to make what we refer to as "moral judgments" if they are not truly distinctive. And that is exactly what researchers have found.

My hope is that the argument presented here might raise serious questions about the significance of the moral conventional distinction, and along with it philosophical theorizing that addresses itself only to "moral judgment" without acknowledging that there is no clear reason to think moral judgment is different in kind from other judgments we tend to make in our day-to-day lives. My hope is that it also spurs additional research into judgment formation that seeks to examine the similarity between moral, conventional, and other practical judgments. The

argument here has not ruled out that there may be other ways to distinguish among judgment types;[33] however, the current evidence counts against the idea that there are distinctive cognitive processes that correspond to the moral-conventional distinction, or that there is a distinctive area of the brain devoted to making "moral" judgments.

It is most likely the case that the moral-conventional distinction is more usefully conceived as a continuum than as two distinctive ways of conceiving of normativity.[34] However, I worry that even suggesting this will lead many philosophers to maintain that the judgments on one end of the spectrum really are substantially different in kind than the judgments on the other end. I believe that it is far more useful to consider the context in which a normative judgment is being made: The context is more likely to influence the perceived features of the judgment than what the judgment is about. Although I alluded to this above, let me aim to clarify what I mean: When teaching children rules such as "Do not hit" we do present such rules as absolute. However, we also teach rules such as "Do not touch the stove" or "Do not touch the electrical outlet" as very important absolutes that apply everywhere the child might go. Such rules seem just as important as "Do not hit" to the successful development of a child. As the child develops, rules about electrical outlets will start to seem less important, just as other rules will come to be seen as more important (practice safe sex; do your homework; be home by midnight; don't drink and drive).

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[33] E.g., perhaps Hindriks and Sauer's (2020) sub-division of norms into three distinct categories can ultimately be bolstered by further empirical research.

[34] Margoni and Surian (2021) suggest something similar here. They propose that we think of moral and conventional norms as an interconnected web, similar to how Quine represented scientific knowledge, with some norms being more central and regarded more seriously and other norms being more peripheral.

Context matters to how norms are perceived, processed and treated: It isn't clear we can say anything more significant than that at this time.[35]

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