

Law's Little Users

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HARVARD LAW REVIEW

POSITIVISM AND THE SEPARATION OF LAW AND MORALS †

H. L. A. Hart *

Professor Hart defends the Positivist school of jurisprudence from many of the criticisms which have been leveled against its insistence on distinguishing the law that is from the law that ought to be. He first insists that the critics have confused this distinction with other Positivist theories about law which deserved criticism, and then proceeds to consider the merits of the distinction.

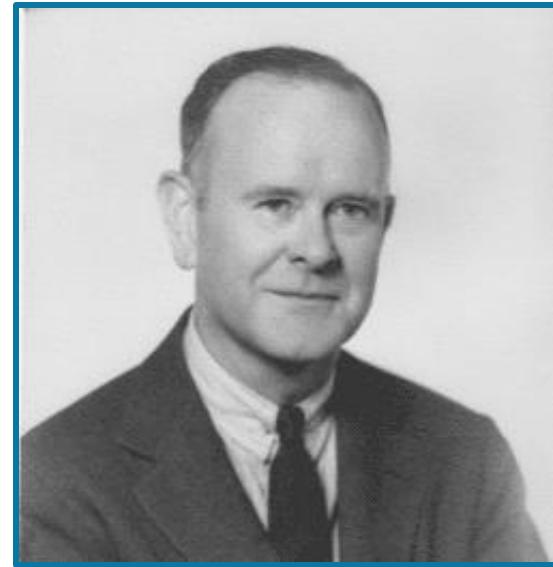
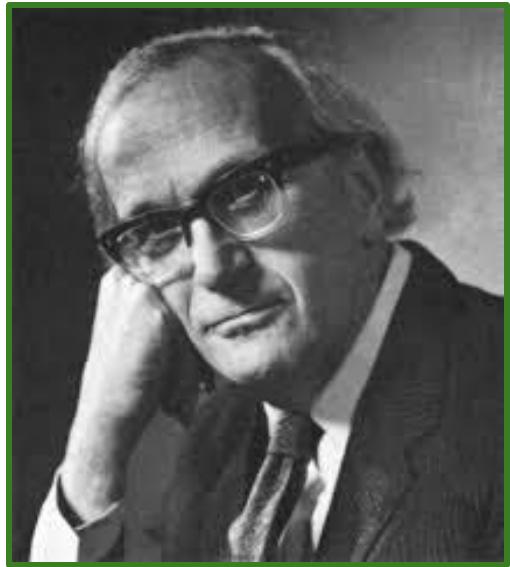






**NO MUSIC
PAST 10PM**

no music past 10 in order to allow rest



no music past 10 in order to allow rest

textualism

purposivism



**NO MUSIC
PAST 10PM**



Which behaviors are against the rule?



Humming a lullaby to one's crying baby at 1AM



Textualist verdict:



Purposivist verdict:

Which behaviors are against the rule?



Humming a lullaby to one's crying baby at 1AM



Literalist, 'plain meaning' textualist
T~~extualist~~ verdict:



E~~xt~~ textualist verdict:

Pragmatist, intentionalist, moralist

Which behaviors are against the rule?



Humming a lullaby to one's crying baby at 1AM



Textualist verdict:

✗ **FORBIDDEN**



Purposivist verdict:

✓ **ALLOWED**

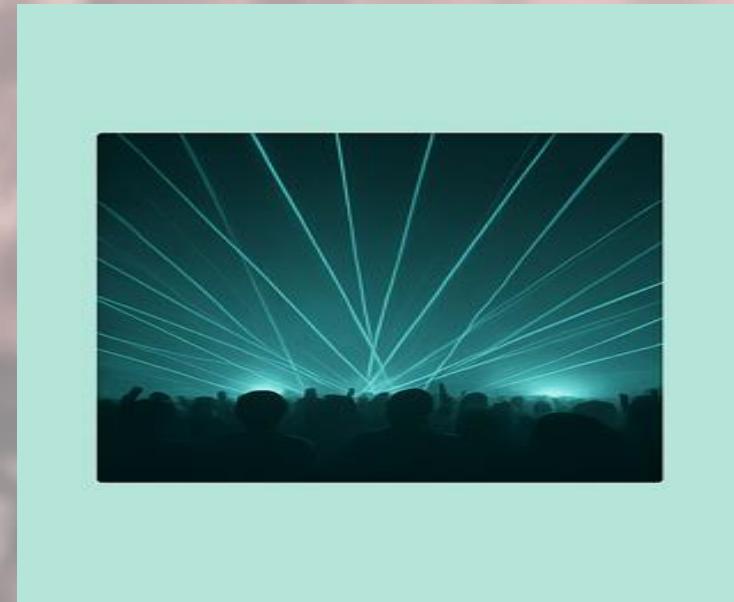
Which behaviors are against the rule?



Humming a lullaby to one's crying baby at 1AM



Putting on a late-night light show



Textualist verdict:



FORBIDDEN



ALLOWED



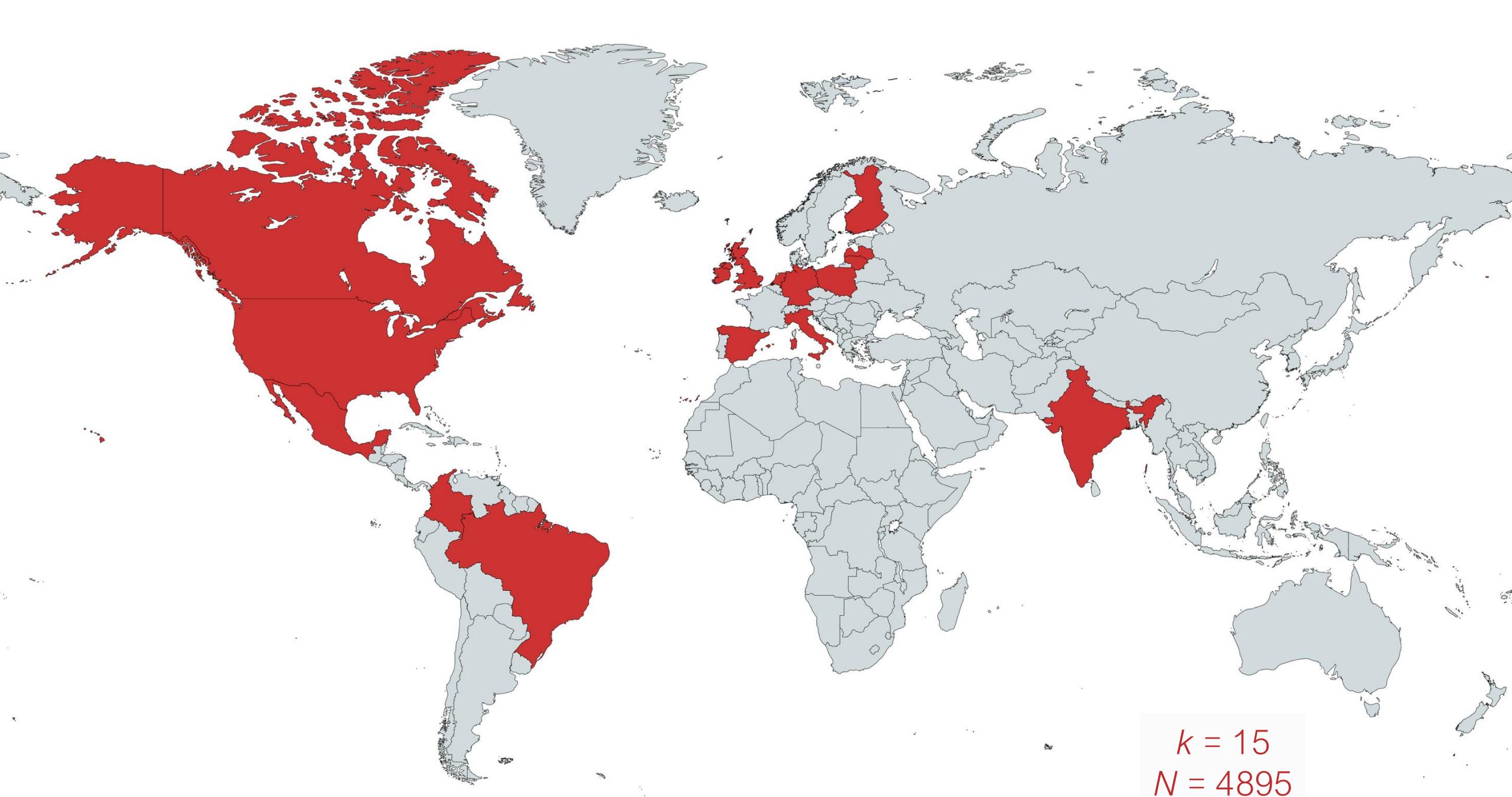
Purposivist verdict:



ALLOWED



FORBIDDEN



$k = 15$
 $N = 4895$

FORBIDDEN 7



4



ALLOWED 1

ALLOWED



4



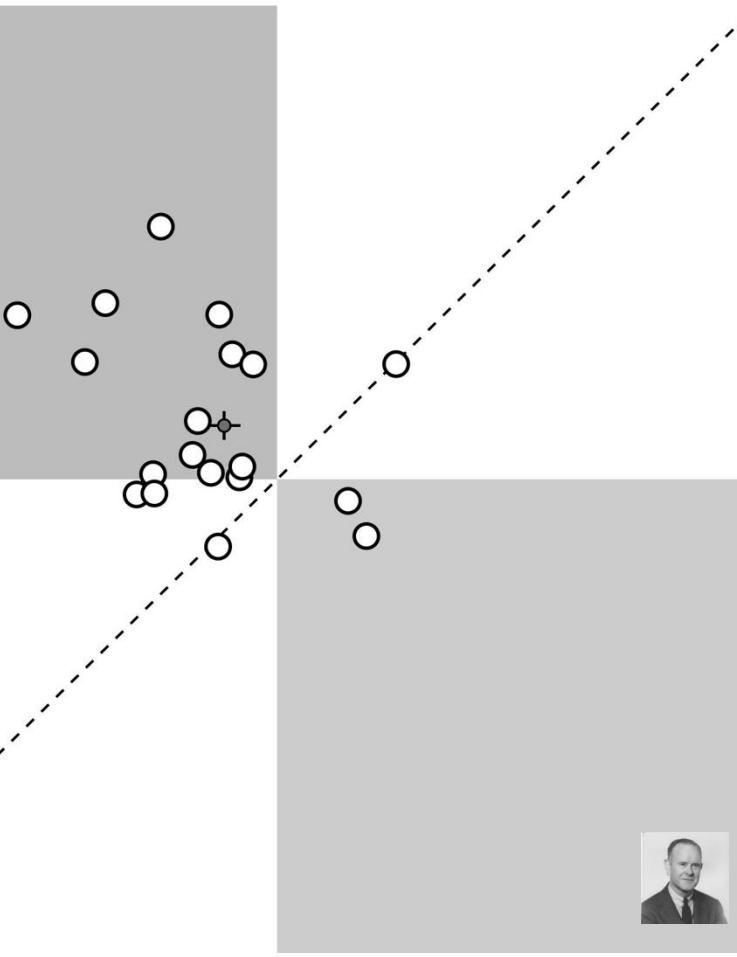
7

FORBIDDEN

FORBIDDEN 7



ALLOWED 1
1
ALLOWED

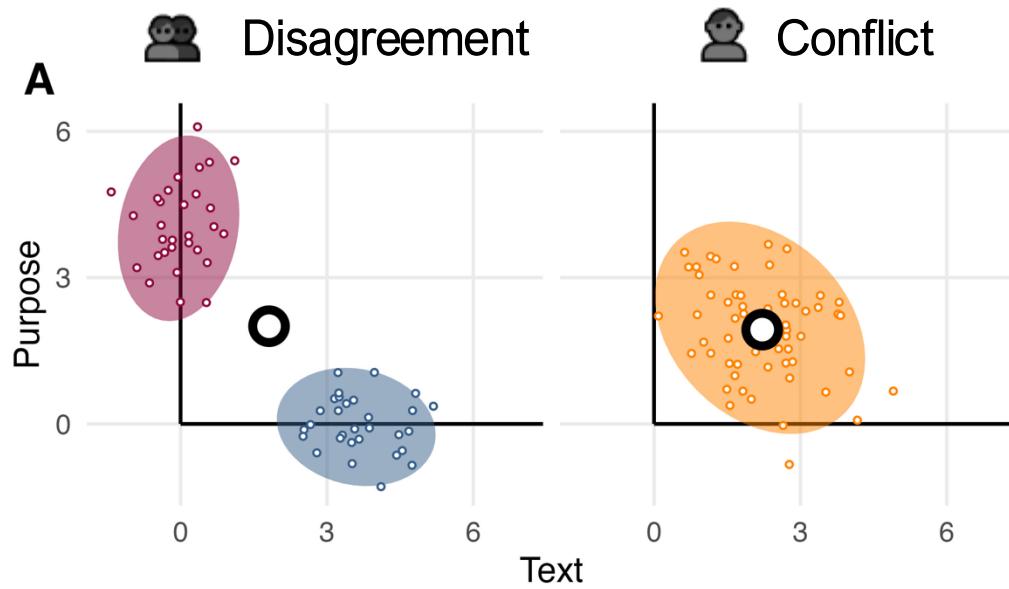


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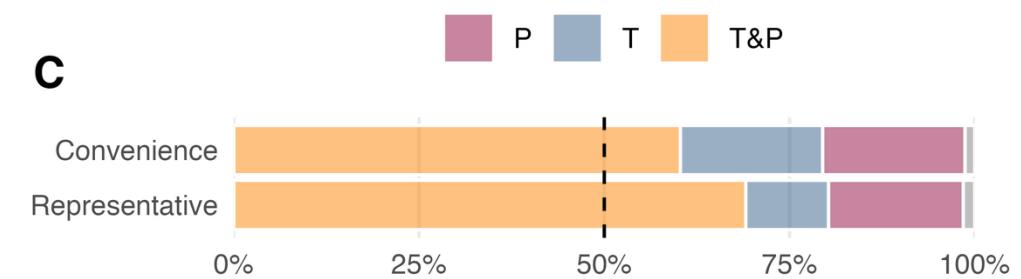
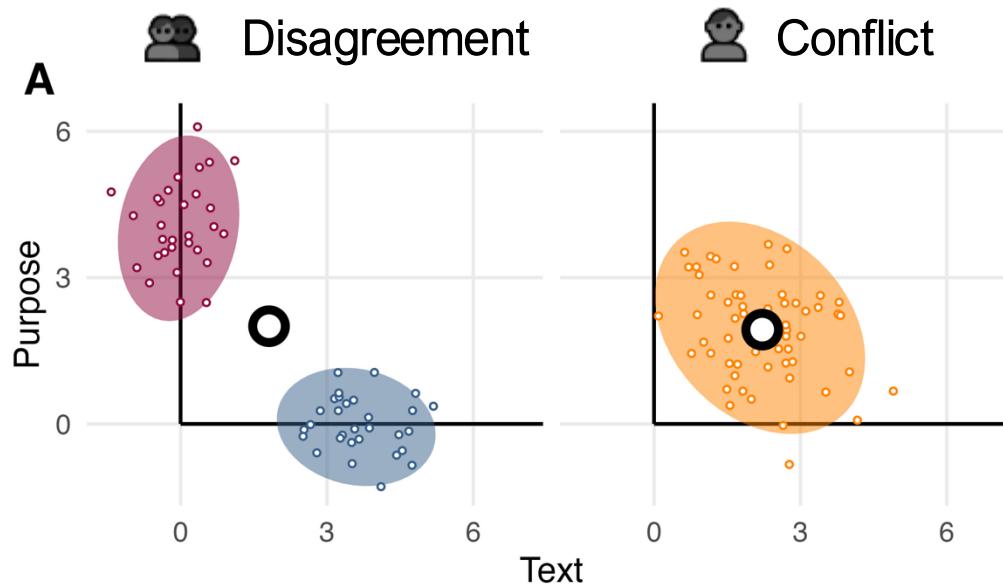
FORBIDDEN
X



People are torn between letter and spirit.



People are torn between letter and spirit.



60% - 69% fit conflict
40% - 31% fit disagreement

Concerns about purpose reflect moral condemnation.

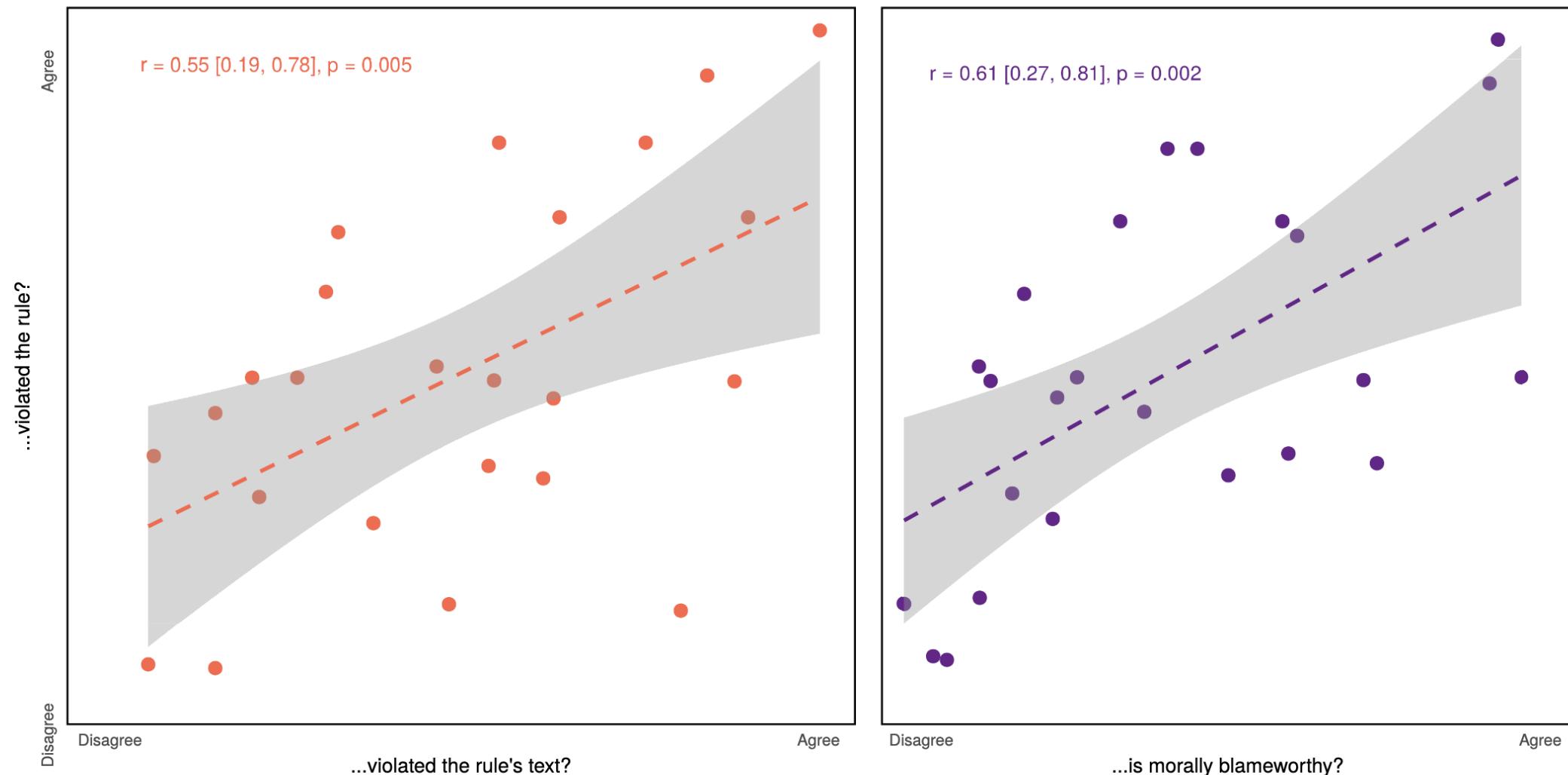
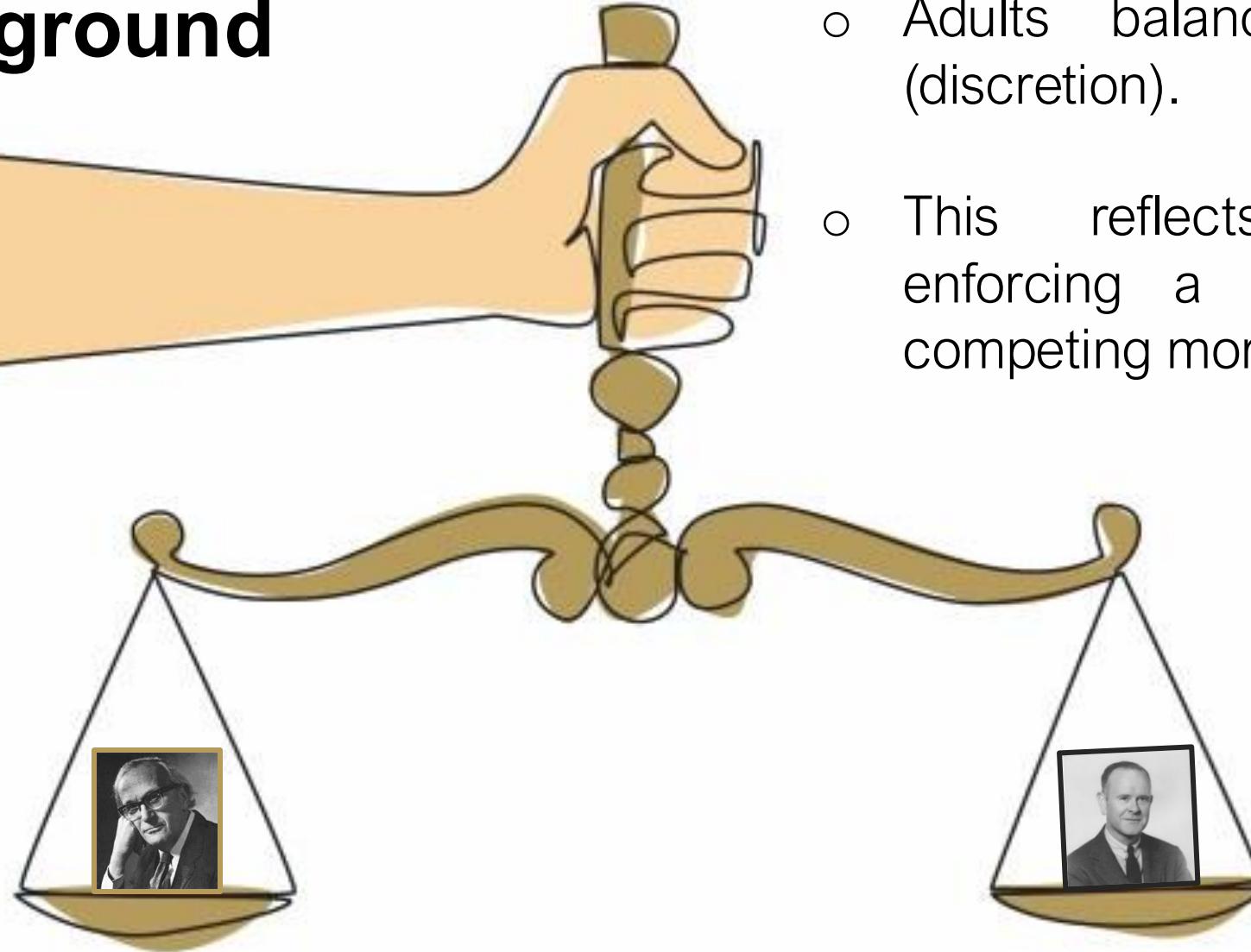


FIGURE 3: Rule violation judgments (y-axis) by textual (left) and moral (right) assessments. Each observation represents a scenario.

Struchiner et al., 2020, *JDM*

Background

- Adults balance letter and spirit. (discretion).
- This reflects conflict between enforcing a rule's plain text and competing moral considerations.





Agustín Vicente



Marta Ponciano





Agustín Vicente



Marta Ponciano

How does this capacity for rule interpretation and discretion develop throughout childhood?

1. Rule presentation

To protect people walking on the path,
the park boss came up with a new rule.'

The rule says:
"No cars allowed on the path."



2. Control cases

Remember...

The rule says: "No cars allowed on the path."

Purpose: To protect the people who walk on the path.

One day, John drives on the path at 100 kilometers per hour.

Did John obey the new rule?

YES

NO



One day, Anne goes for a walk on the path.

Did Anne obey the new rule?

YES

NO



3. Conflict cases

Remember...

The rule says: "No cars allowed on the path."

Purpose: To protect the people who walk on the path.

One day, Sarah rides a motorcycle on the path at 100 kilometers per hour.

Did Sarah obey the new rule?

YES

NO



One day, Jane drives an ambulance on the path to rescue a girl who has fallen.

Did Jane obey the new rule?

YES

NO



A 1. Rule presentation → 2. Control cases → 3. Conflict cases

To protect people walking on the path, the park boss came up with a new rule.'

The rule says:
"No cars allowed on the path."



→

Remember...
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Purpose: To protect the people who walk on the path.

One day, John drives on the path at 100 kilometers per hour.

Did John obey the new rule?

YES NO →

→

One day, Anne goes for a walk on the path.

Did Anne obey the new rule?

YES NO →

Remember...
The rule says: "No cars allowed on the path."
Purpose: To protect the people who walk on the path.

One day, Sarah rides a motorcycle on the path at 100 kilometers per hour.

Did Sarah obey the new rule?

YES NO →

→

One day, Jane drives an ambulance on the path to rescue a girl who has fallen.

Did Jane obey the new rule?

YES NO →

6 rules x 4 cases = 24 judgments per participant

2 letter (violate, comply) x 2 purpose (violate, comply)

49 children

51 young adults

51 older adults

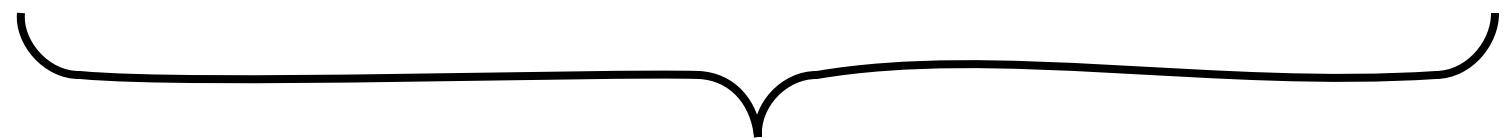
5 to 8 years old

18 to 25 years old

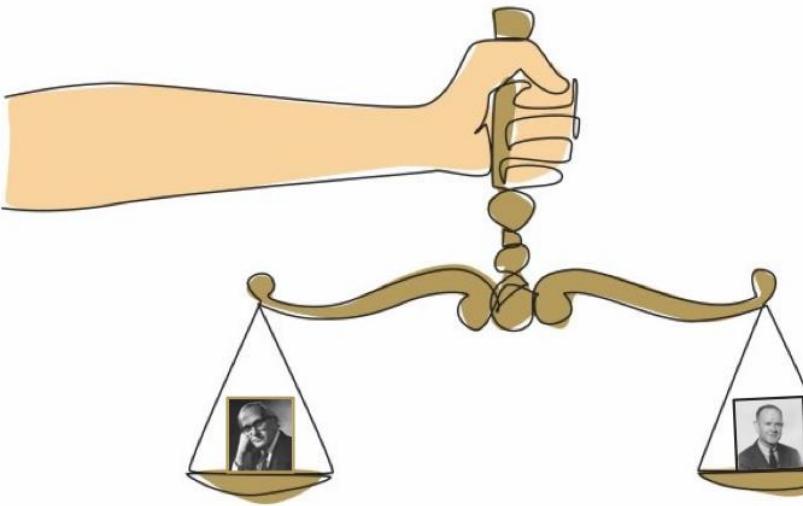
45 to 65 years old

verbally administered
on school premises

self-administered
online

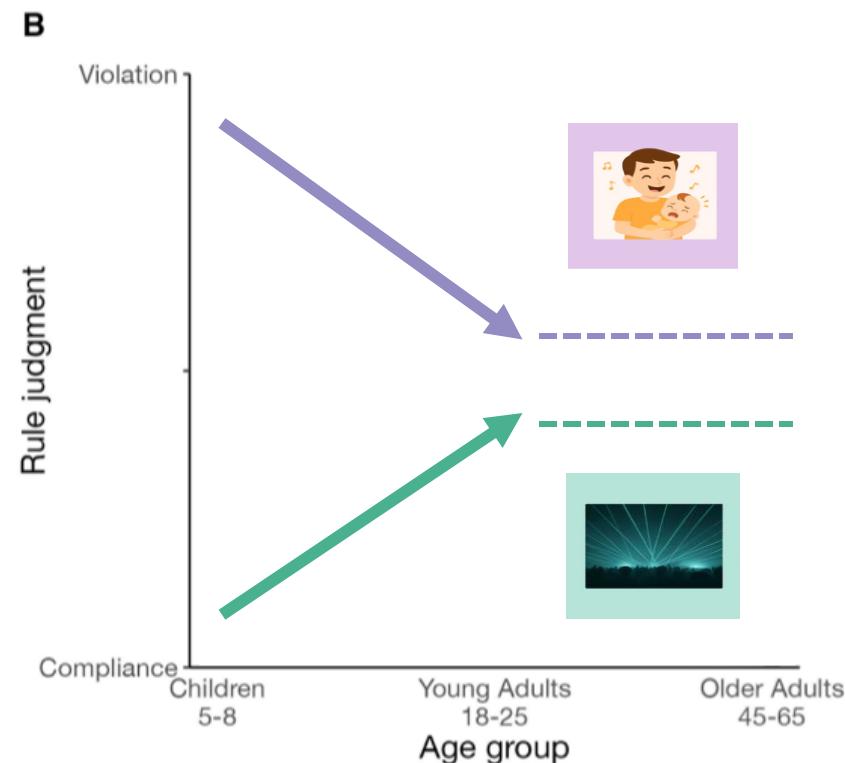


Predictions



Letter-as-precursor hypothesis

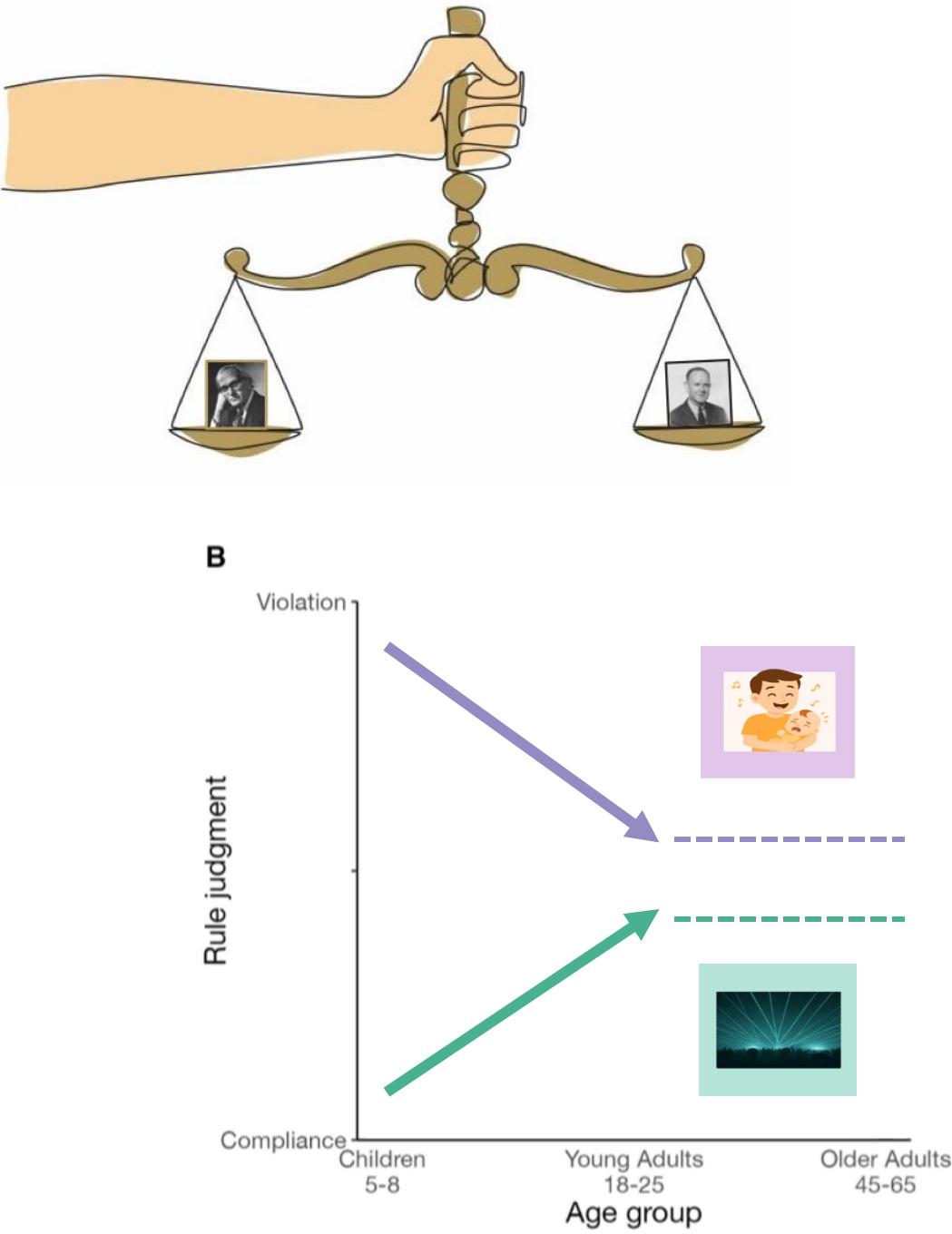
First...
children rigidly apply the rules' letter.



Later...
they acquire an appreciation for the rule's spirit with age.

```
glmer(violation ~ (text + purpose) * age_group) + ... , ...
```

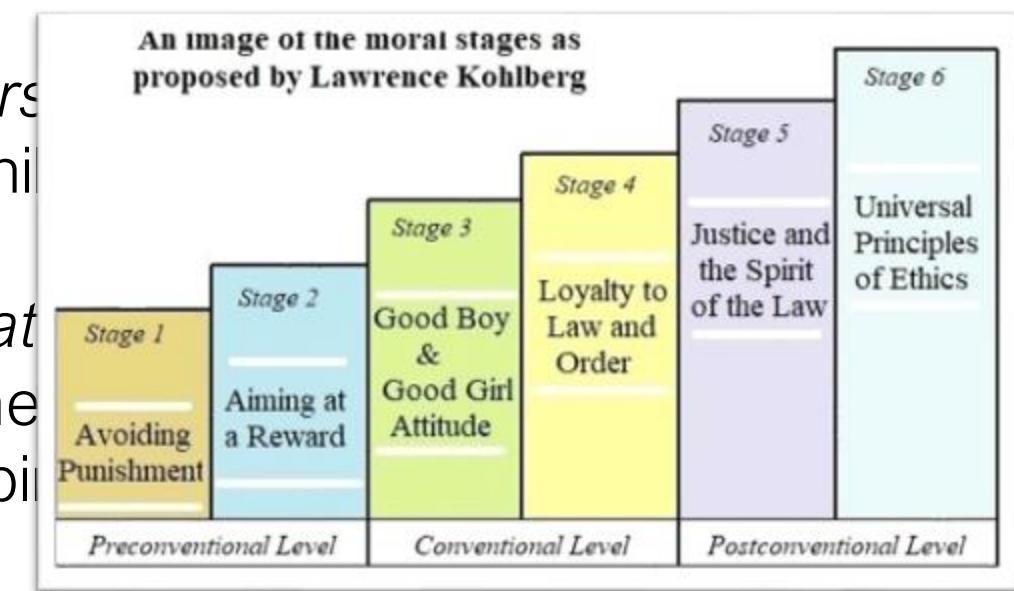
Predictions



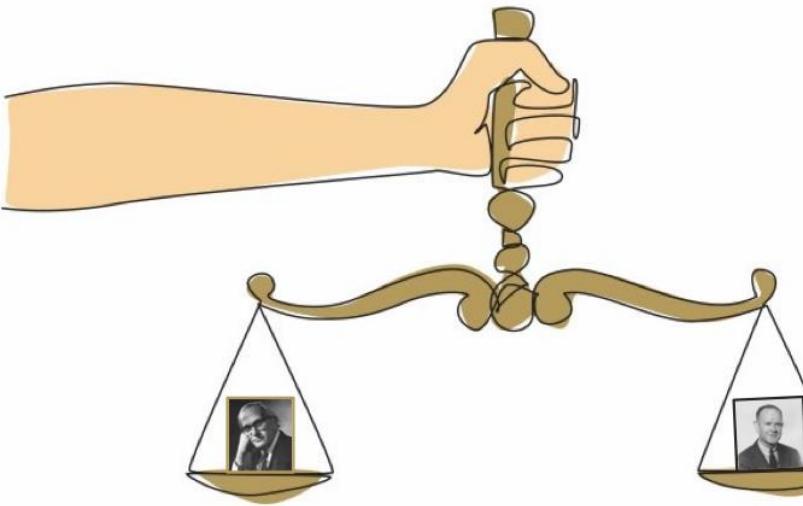
Letter-as-precursor hypothesis

First
child

Later
the
spirit

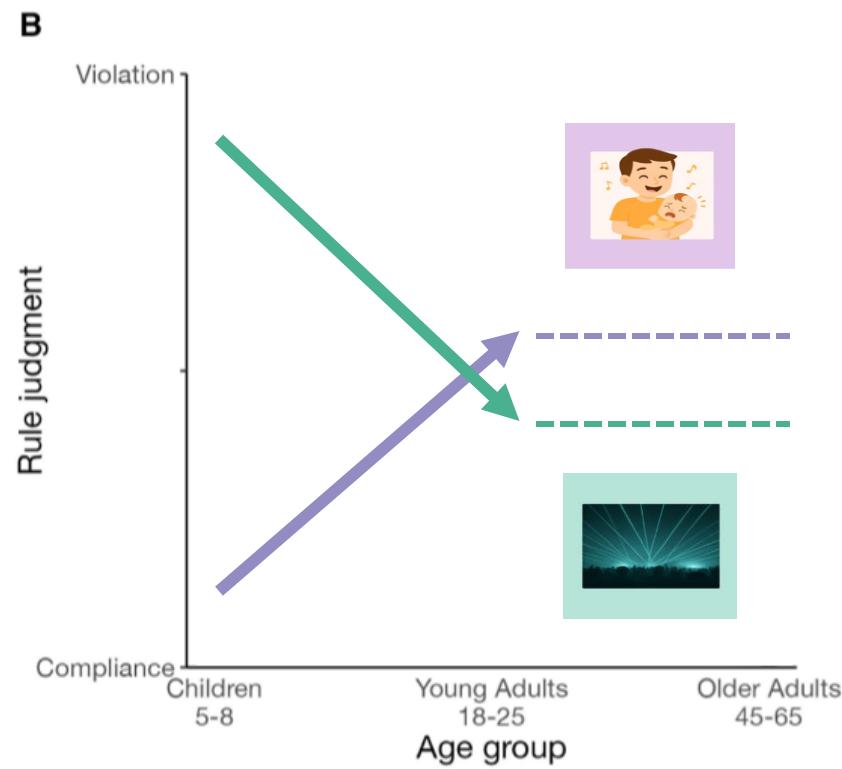


Predictions



Spirit-as-precursor hypothesis

First...
children prioritize the rules' spirit.



Later...
they acquire an appreciation for the rule's letter with age.

```
glmer(violation ~ (text + purpose) * age_group) + ... , ...
```

B

Rule judgment

Violation

Children
5-8Young Adults
18-25Older Adults
45-65

Age group

C

Age (years)

5 6 7 8 9

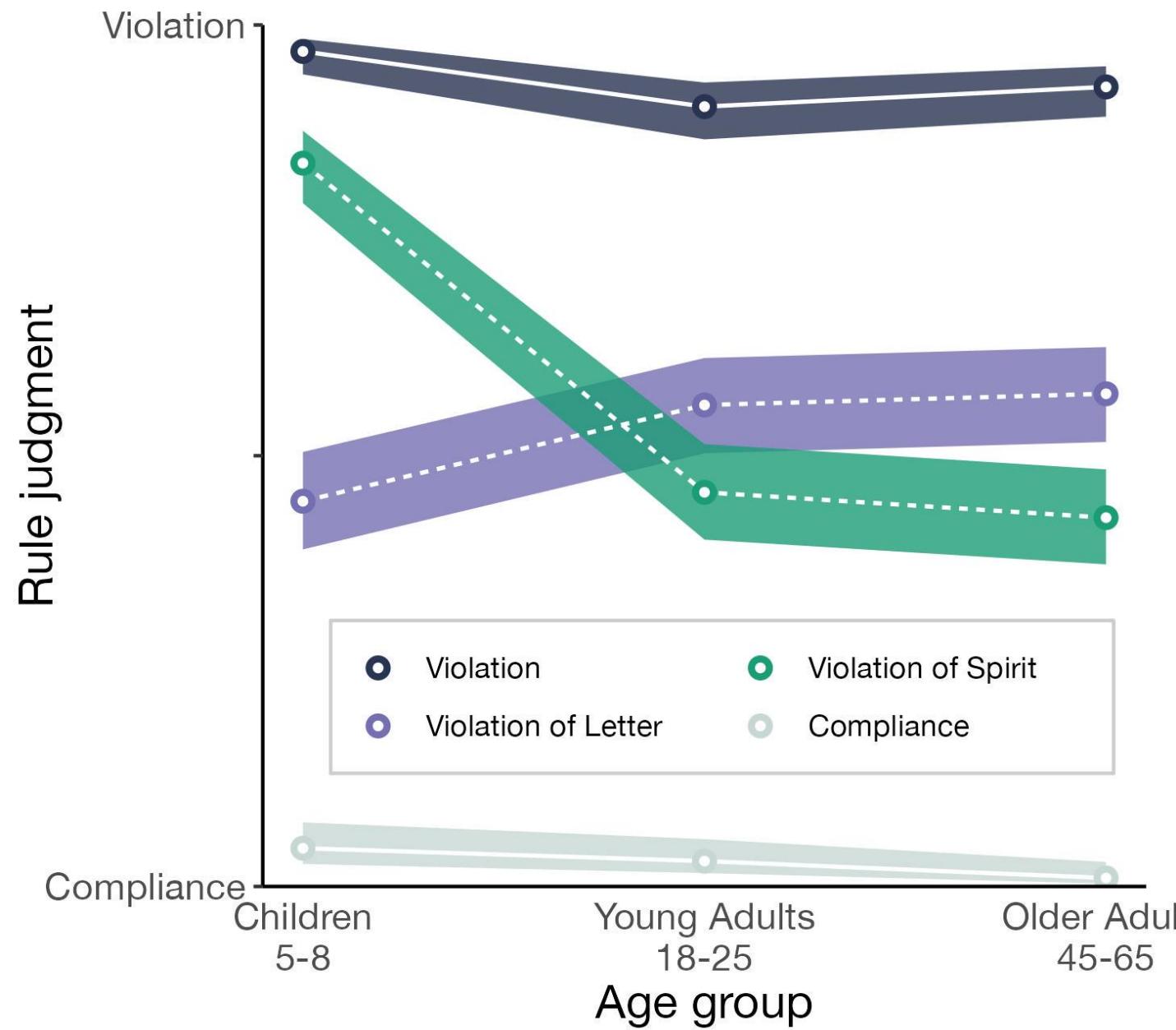
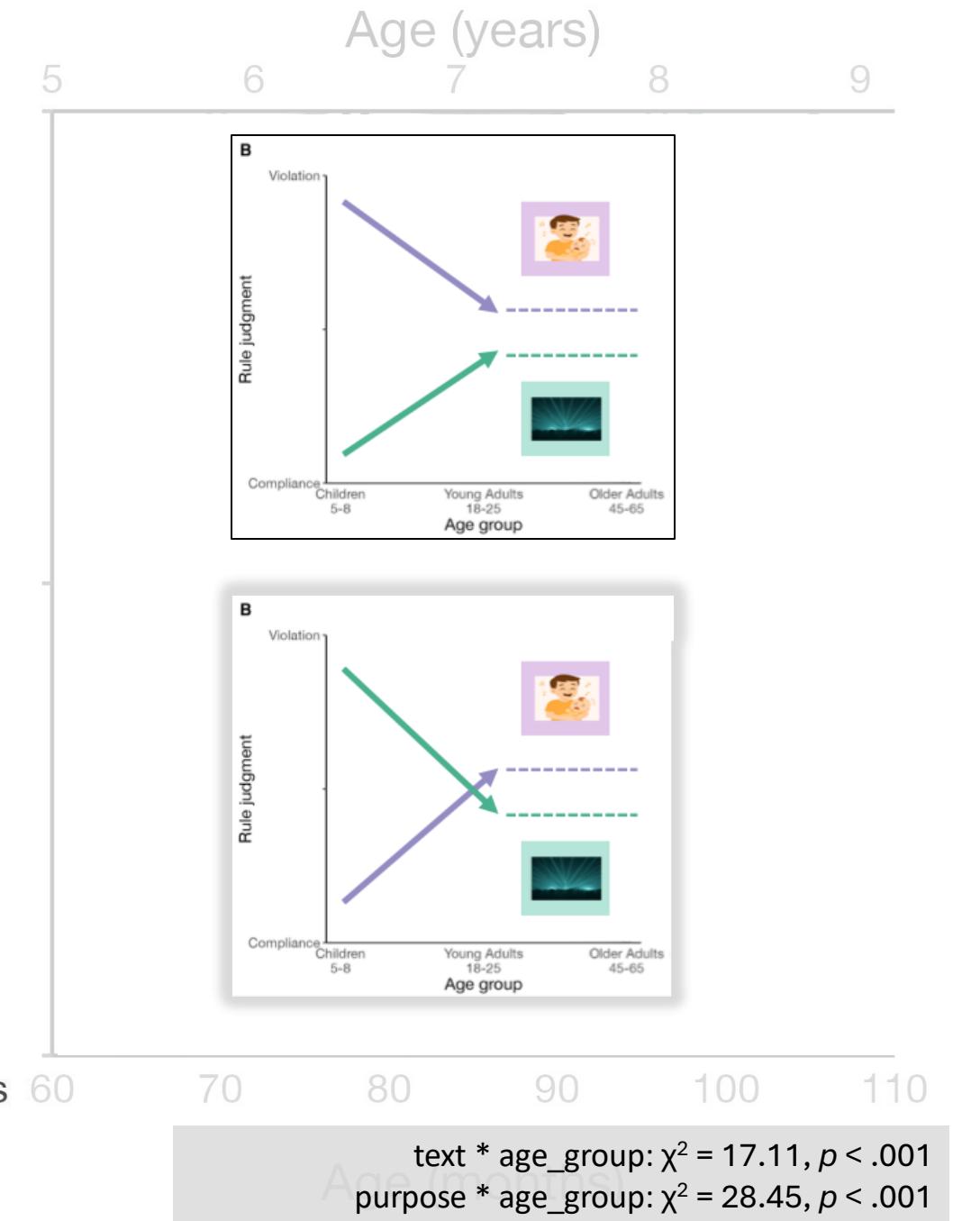
60 70 80 90 100 110

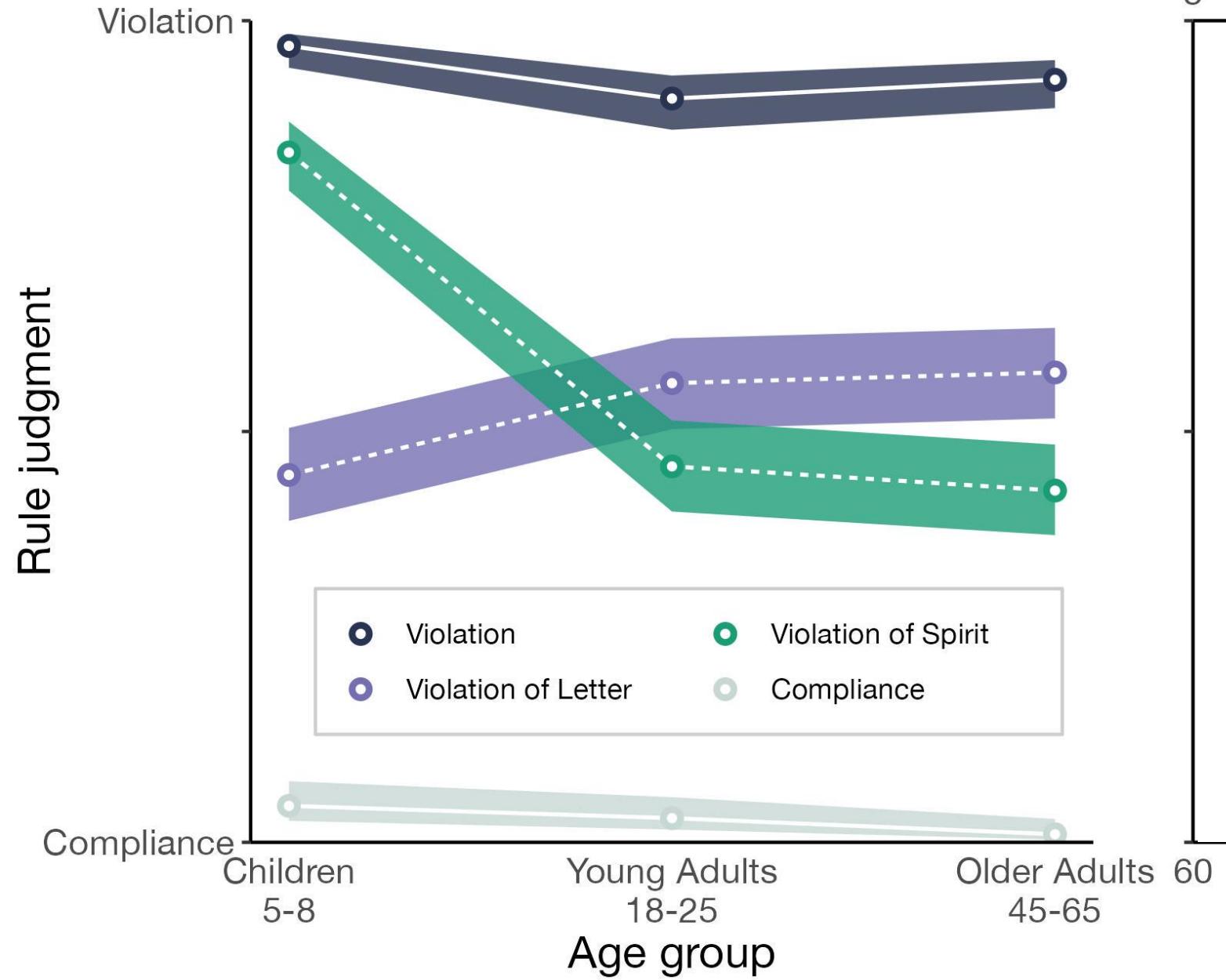
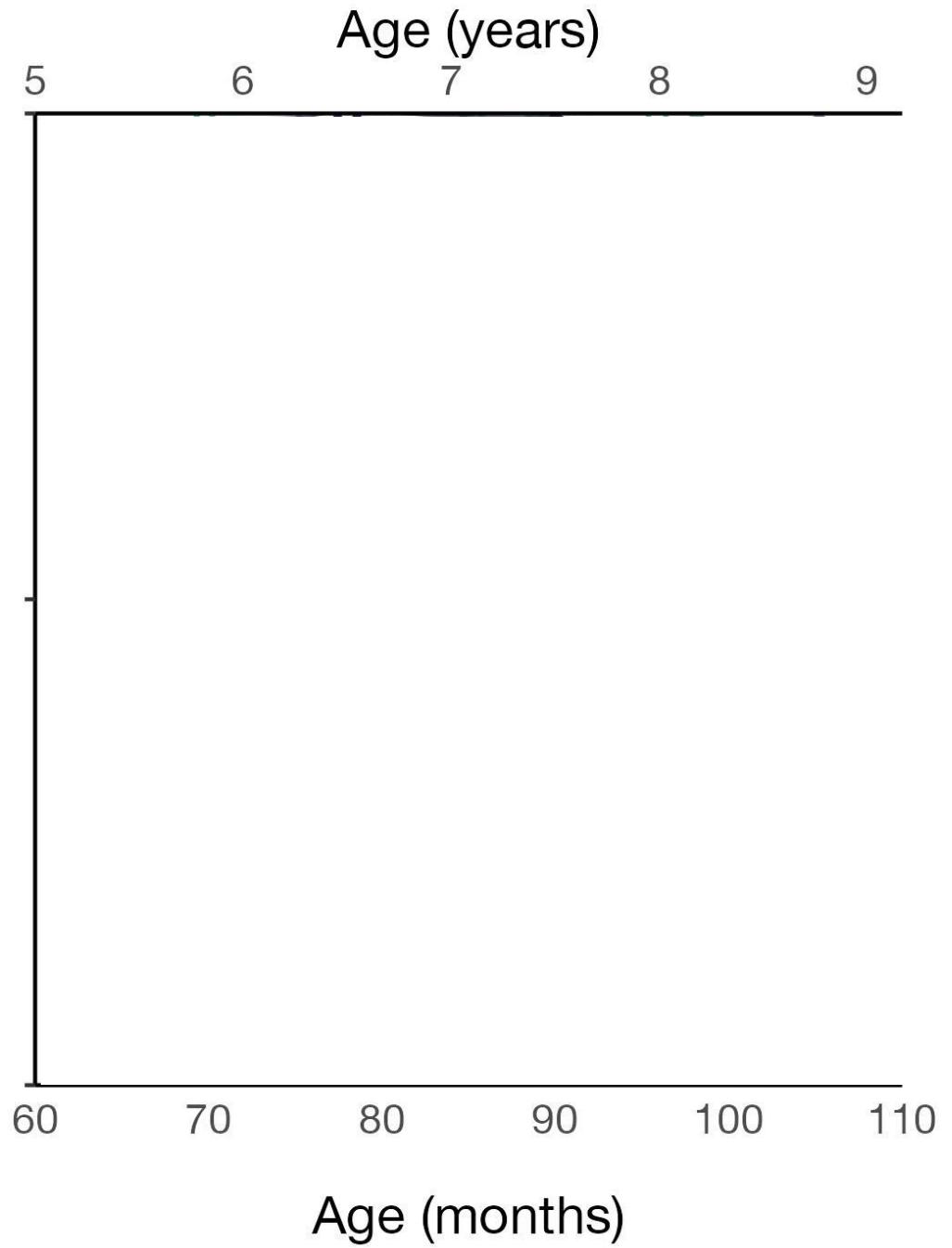
Age (months)

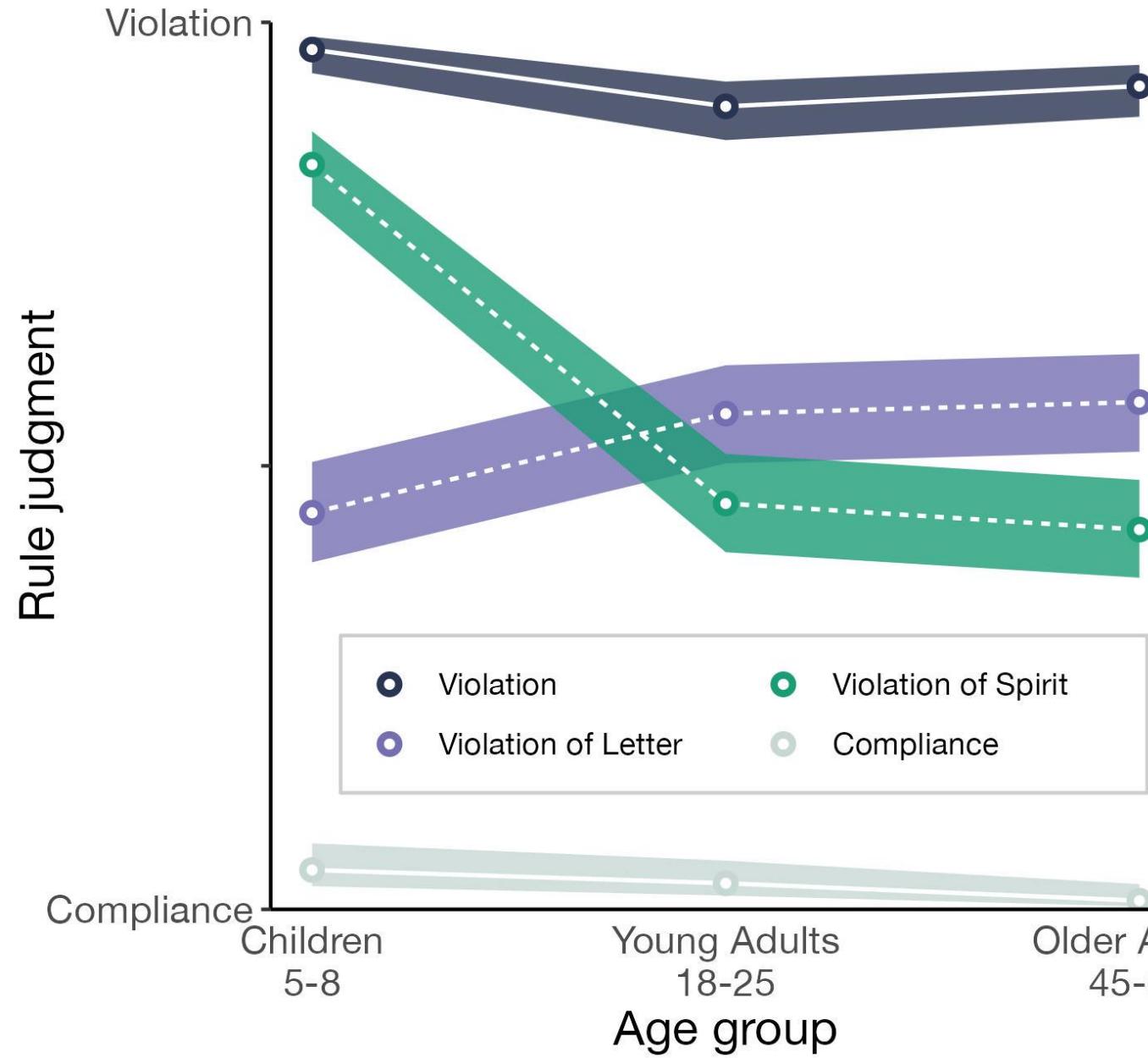
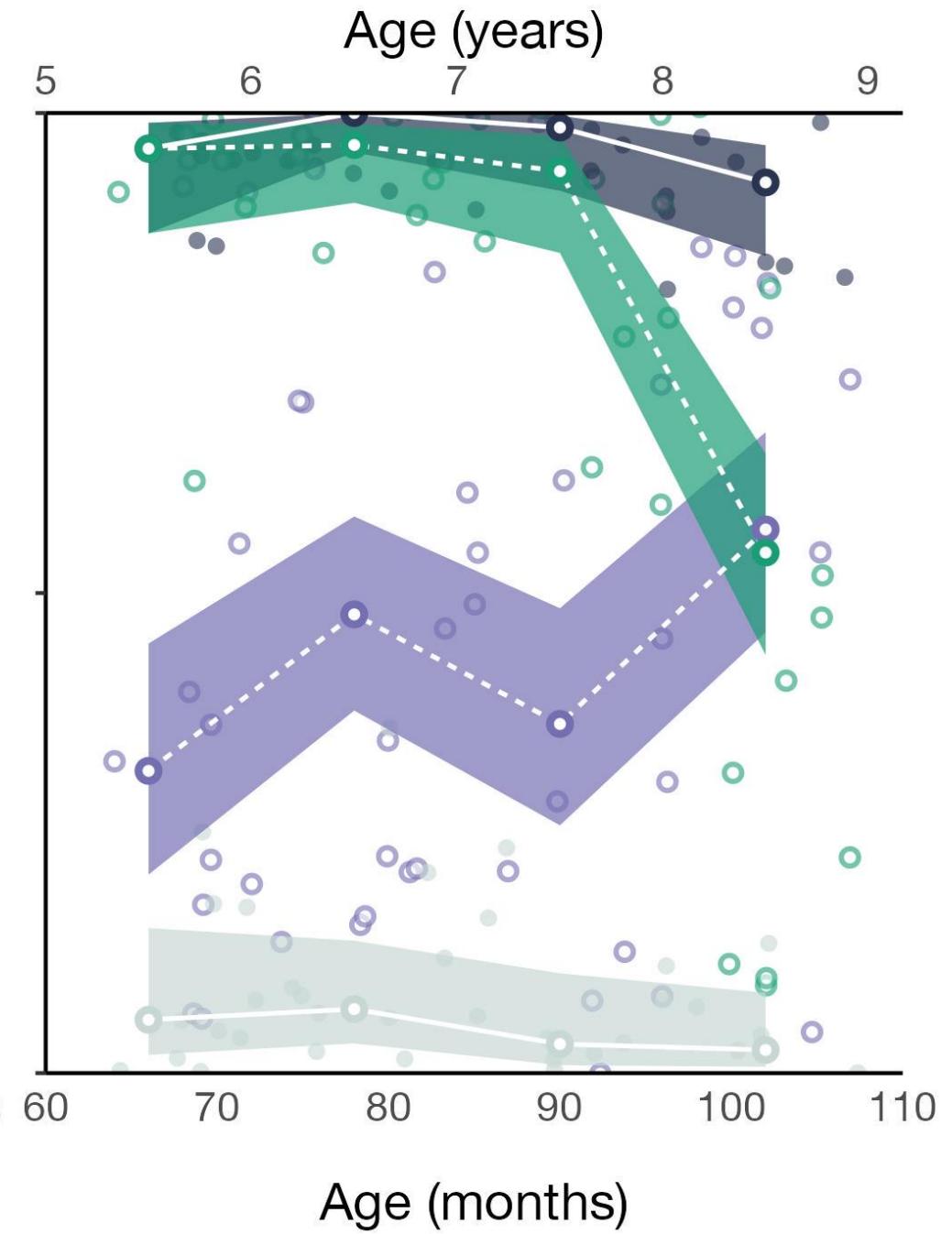
B

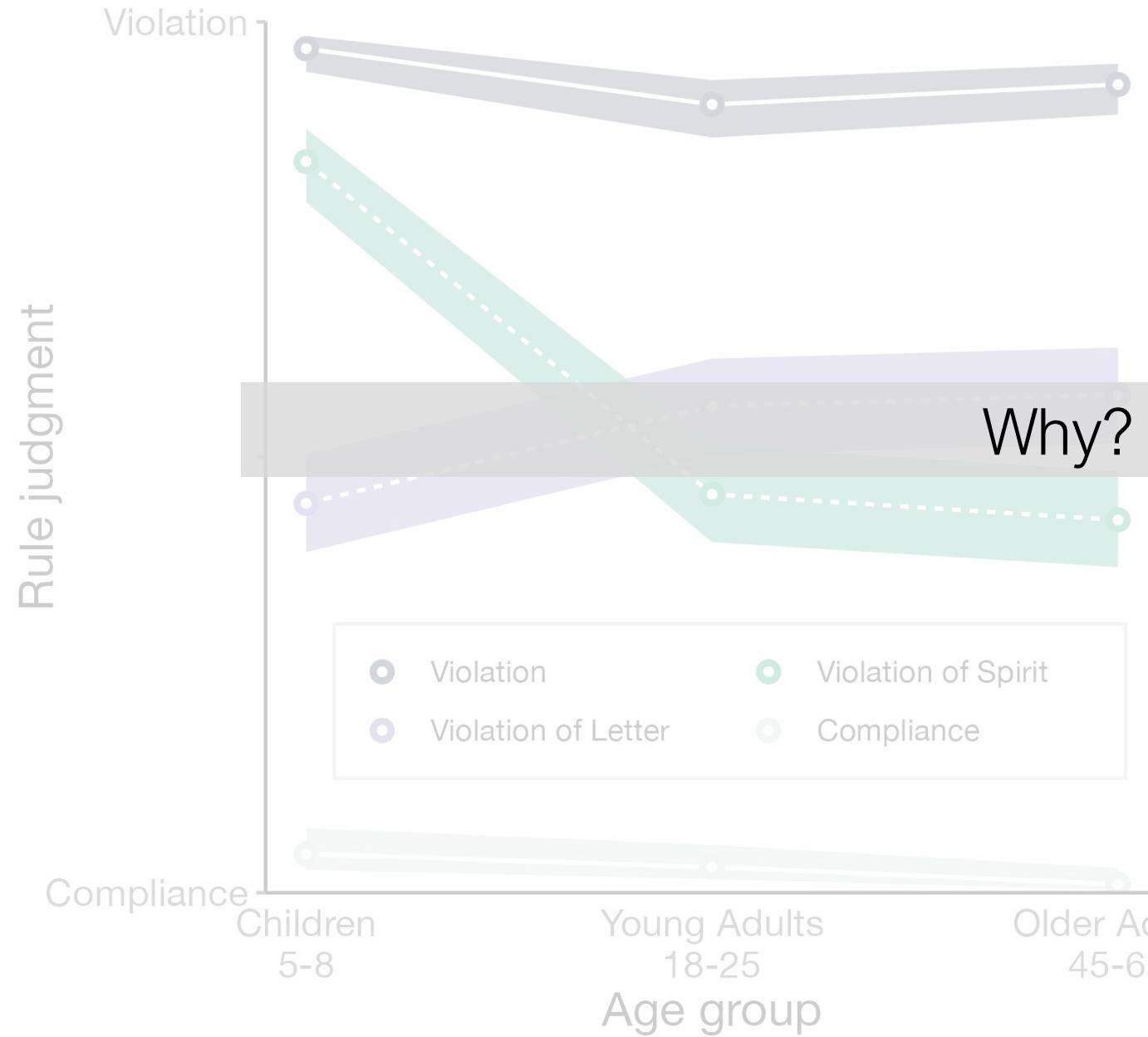
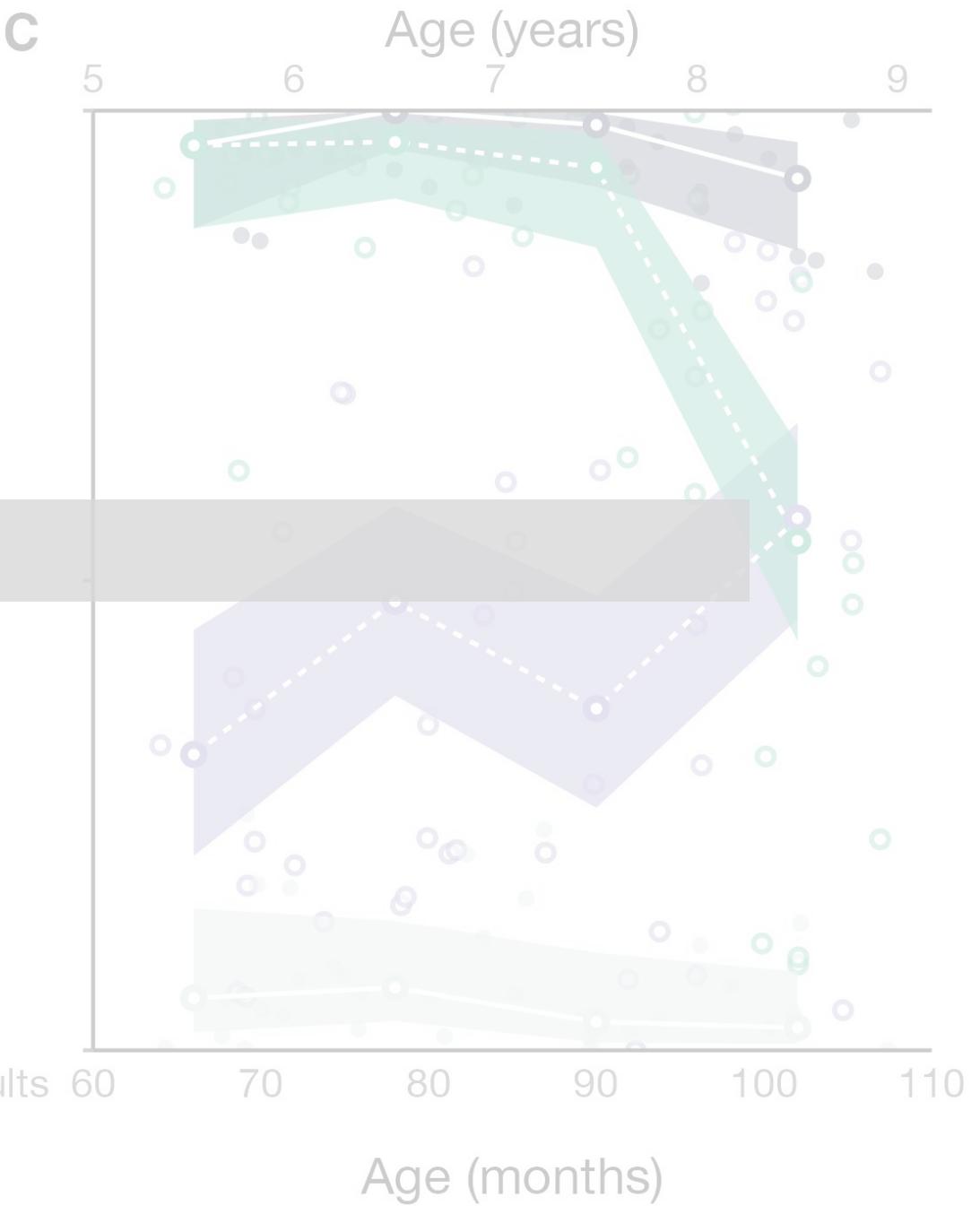
Rule judgment

**C**

B**C**

B**C**

B**C**

B**C**

Literal and moral appraisals ($N = 51$)

Remember...

The rule says: "No cars allowed on the path."

Purpose: To protect the people who walk on the path.

One day, Sarah rides a motorcycle on the path at 100 kilometers per hour.

Did Sarah drive a car on the path?

YES

NO

Was Sarah's behavior morally right or wrong?

VERY WRONG

...

...

VERY RIGHT



Literal and moral appraisals ($N = 51$)

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Purpose: To protect the people who walk on the path.

One day, Jane drives an ambulance on the path to rescue a girl who has fallen.

Did Jane drive a car on the path?

YES



NO



Was Jane's behavior morally right or wrong?

VERY WRONG



VERY RIGHT



Literal and moral appraisals ($N = 51$)

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VERY RIGHT



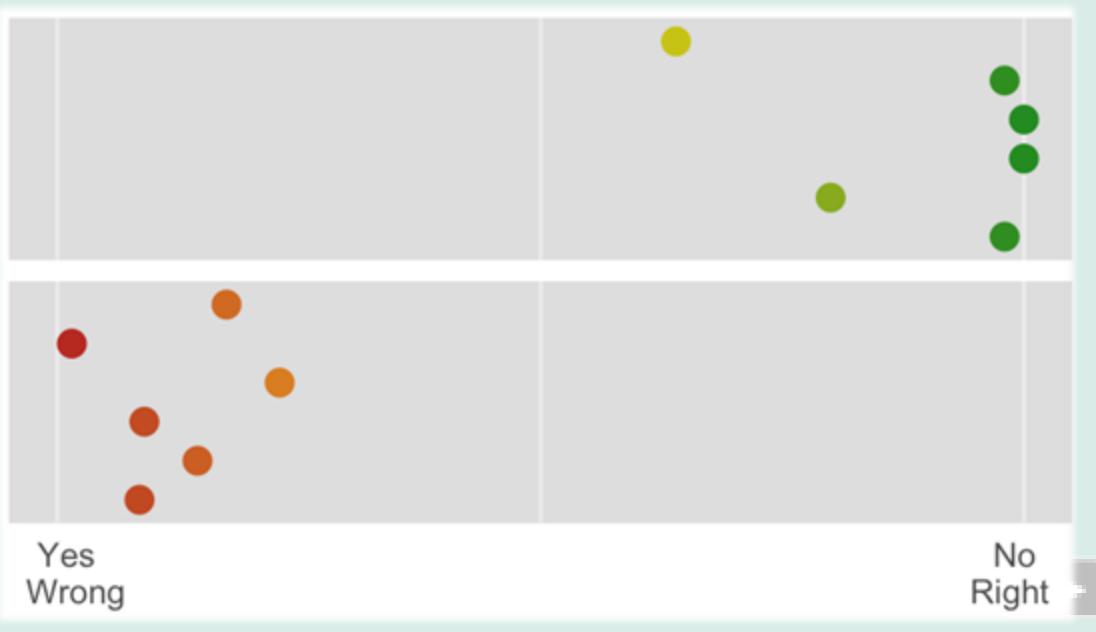
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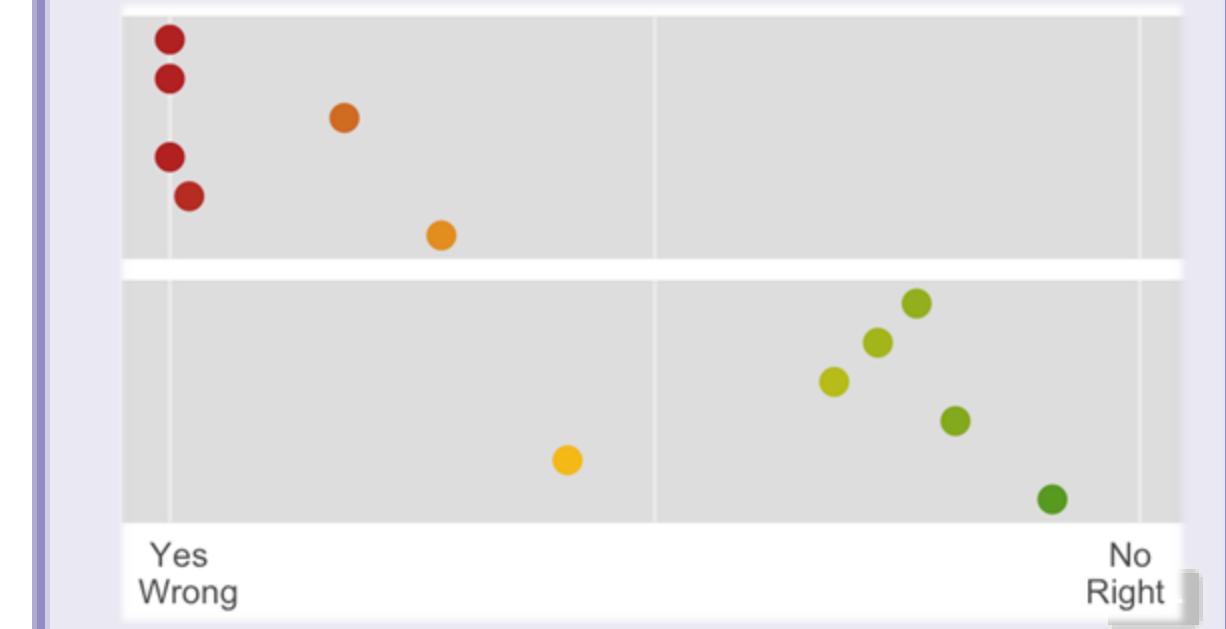


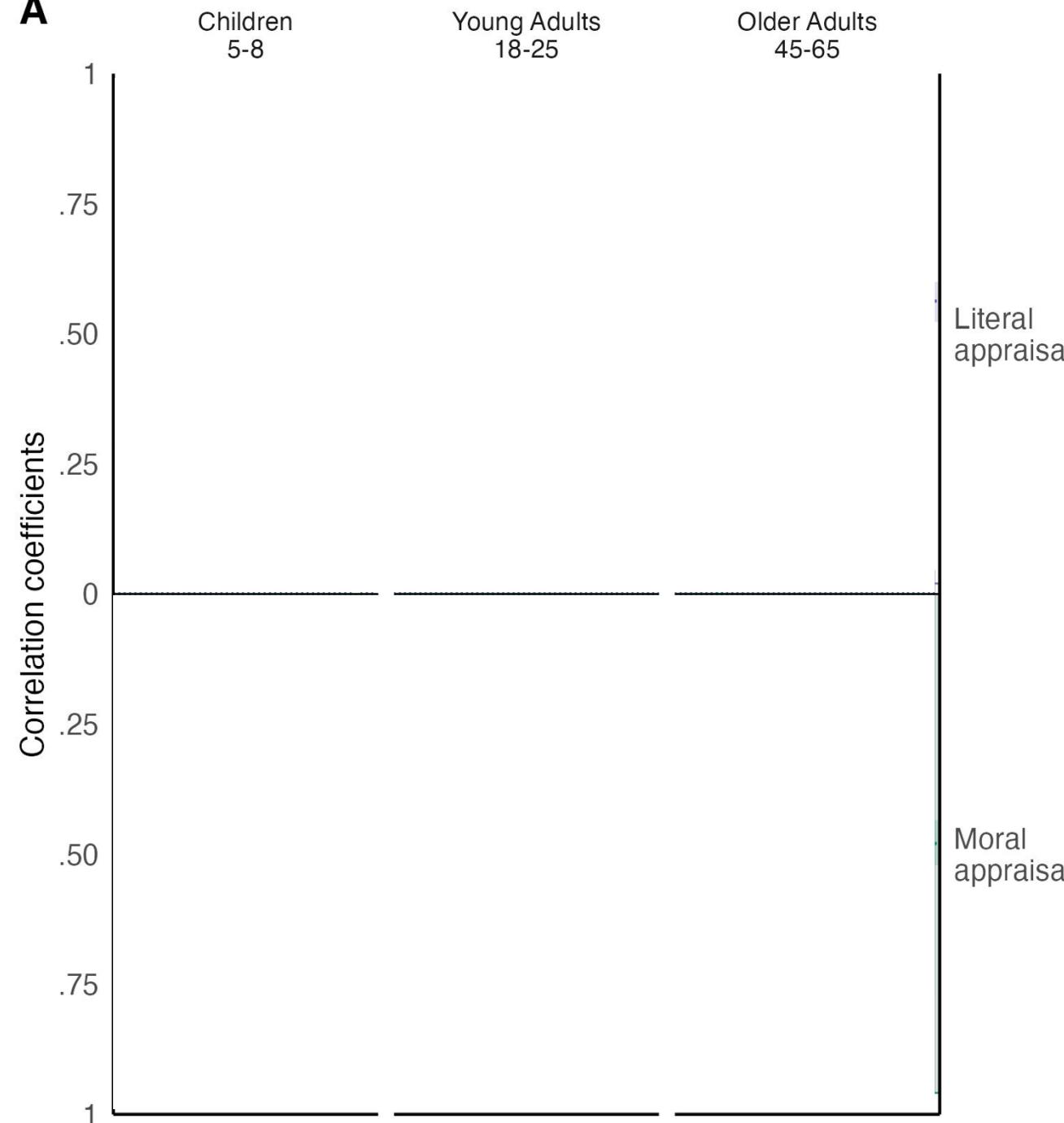
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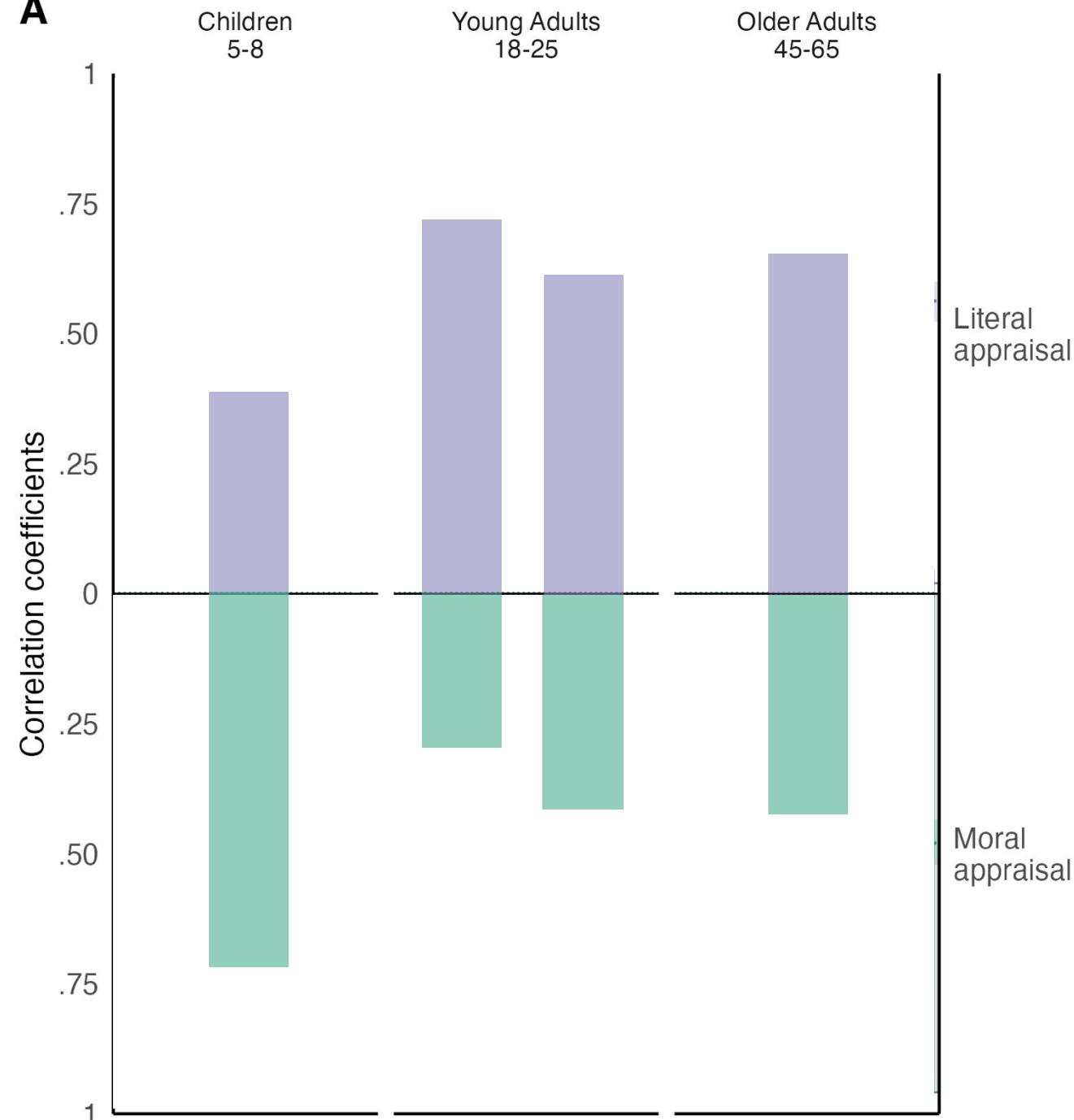
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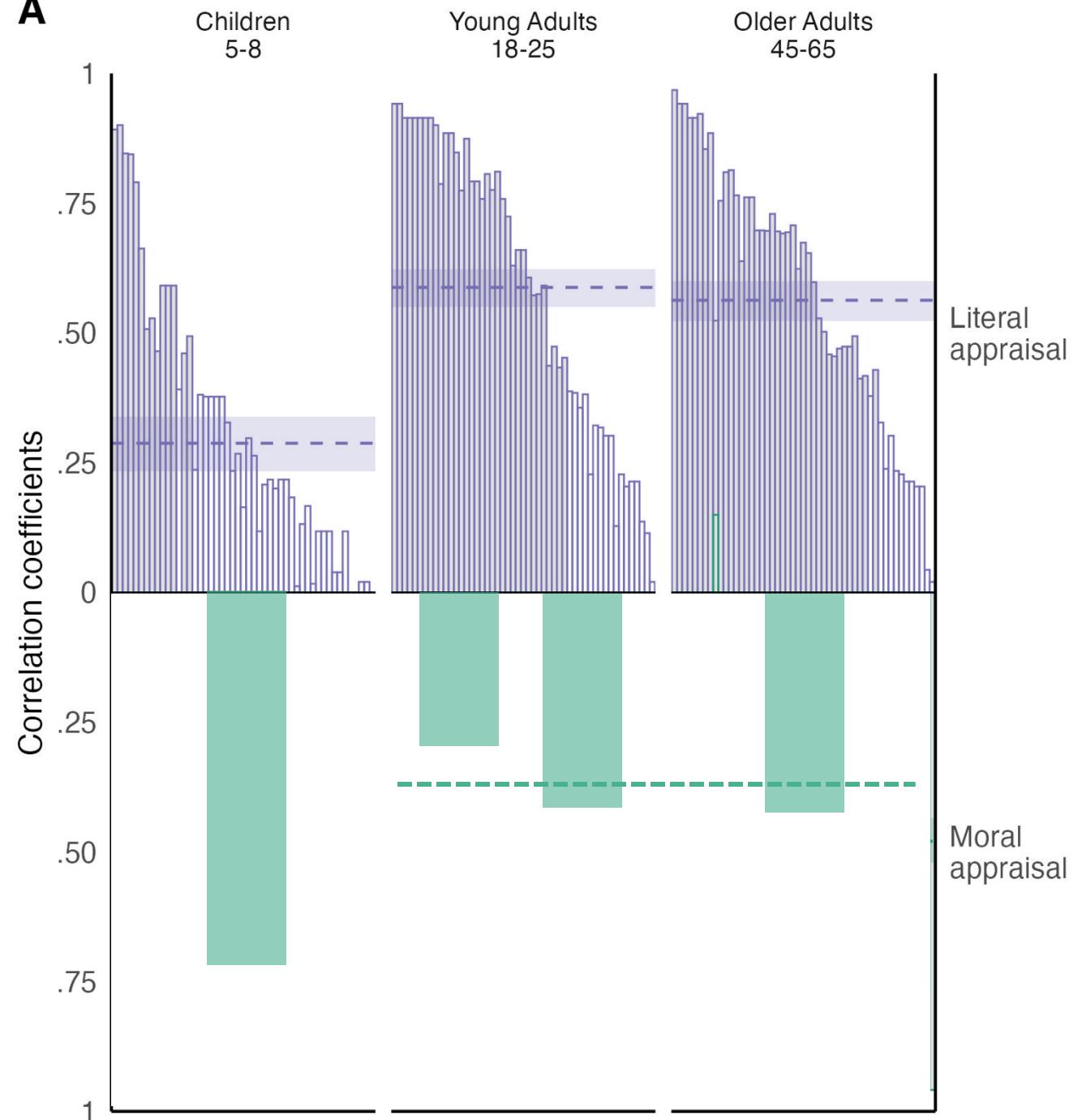


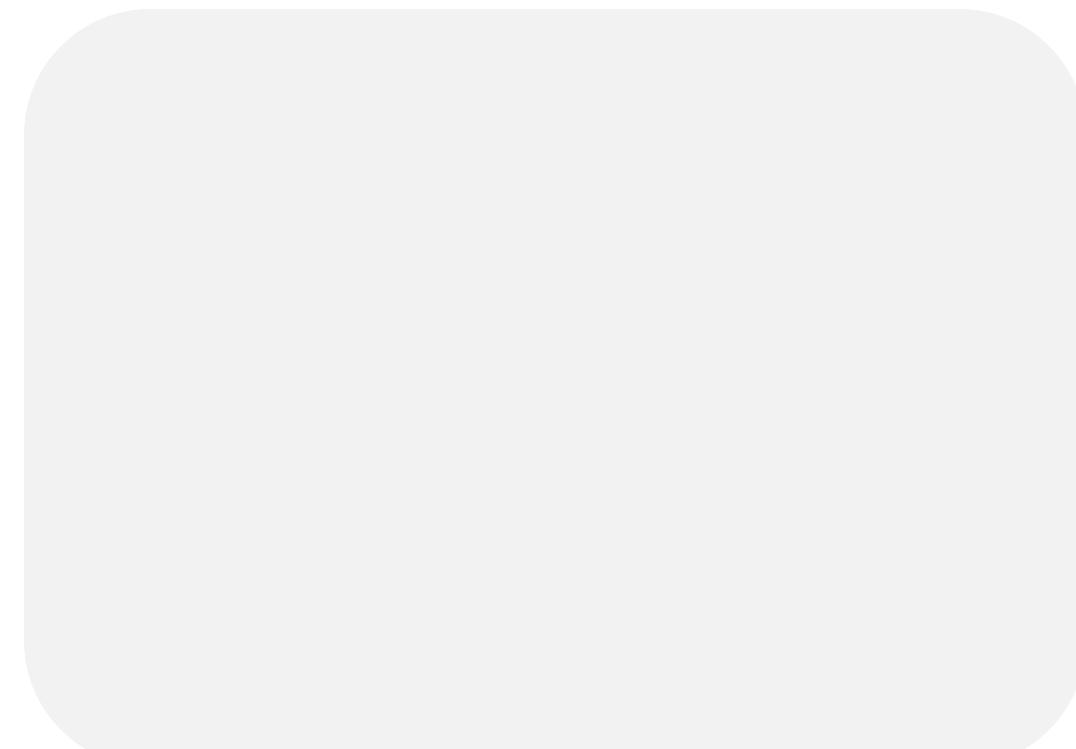
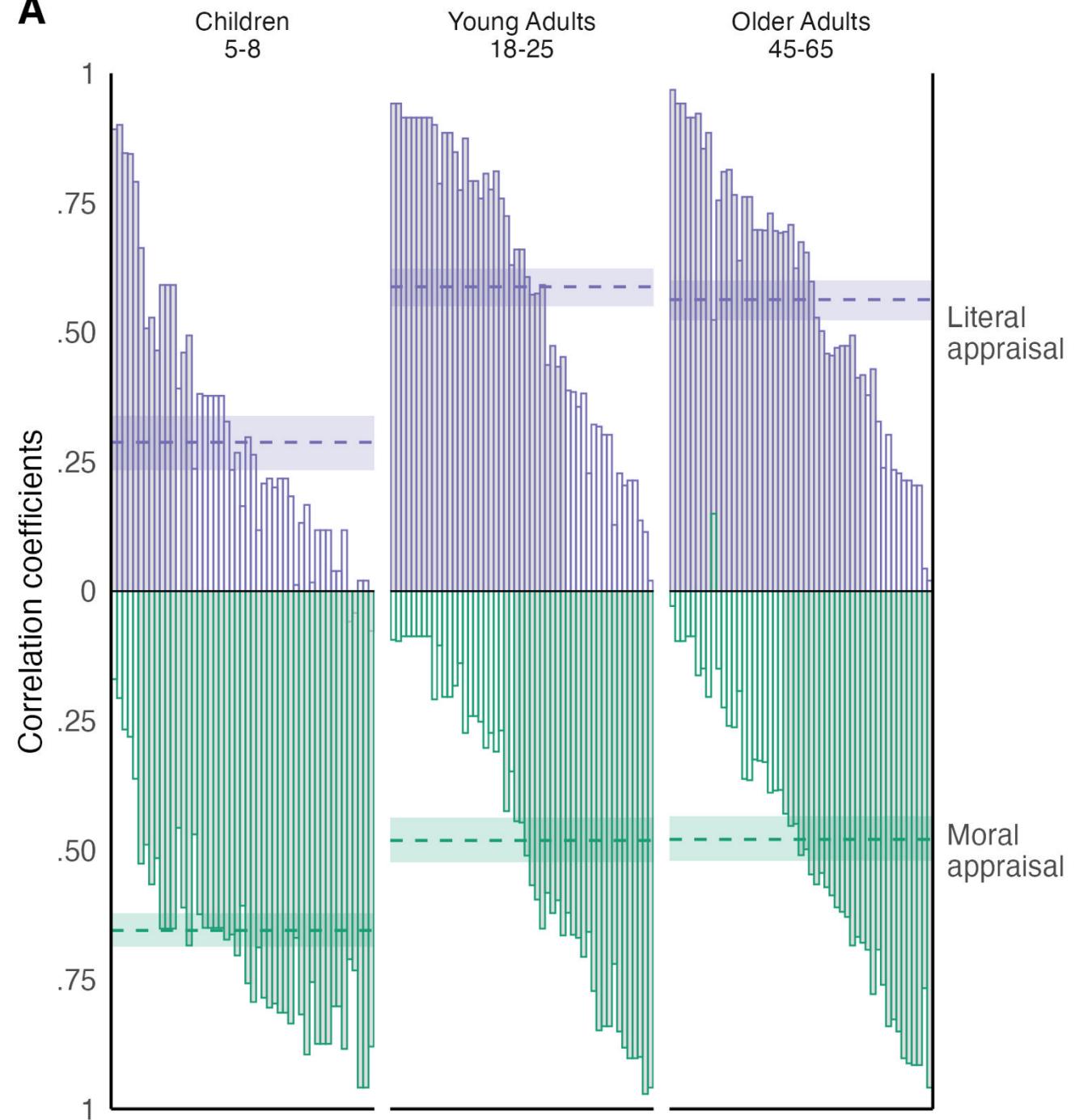
A

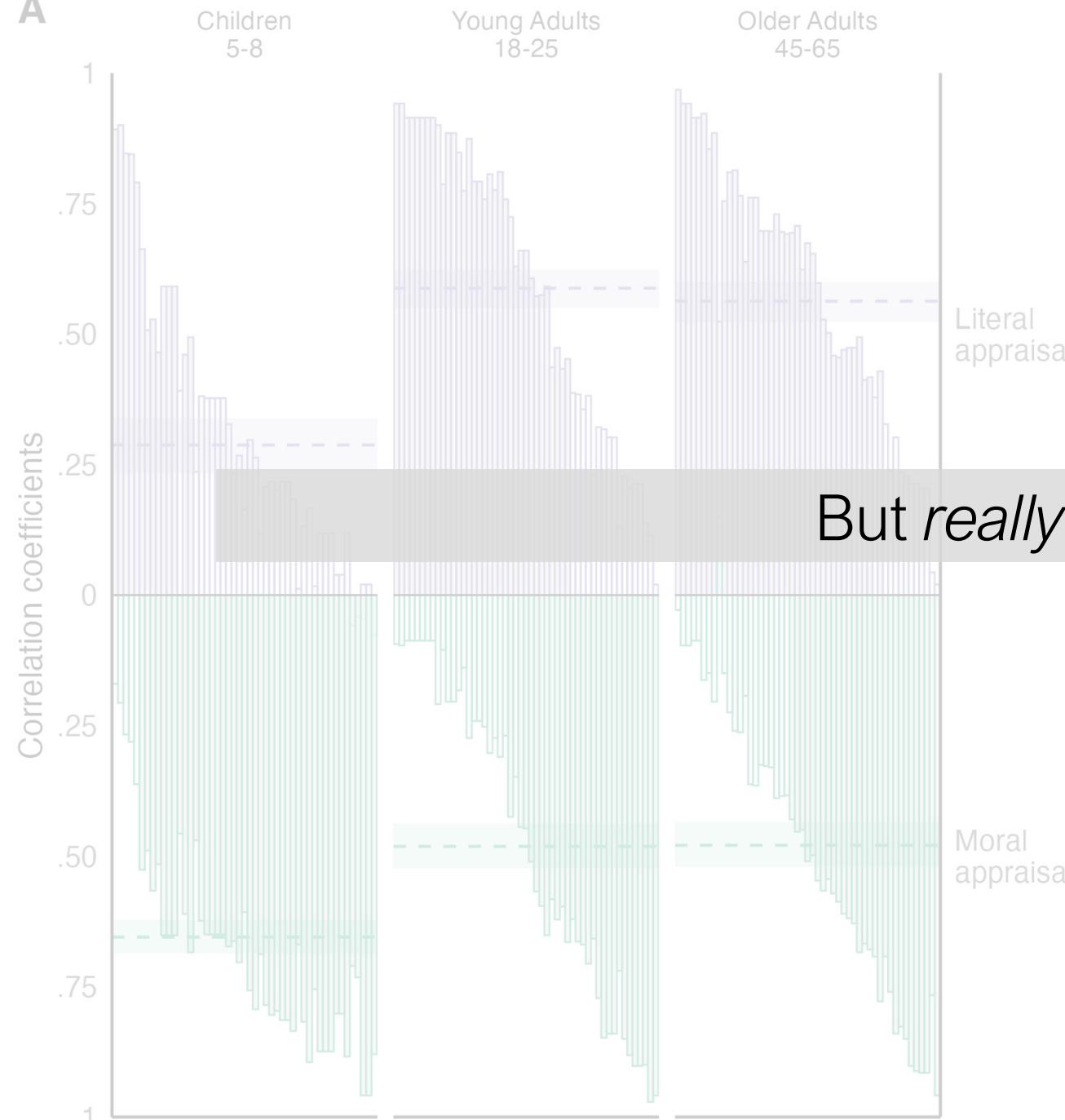
How well do literal and moral appraisals (item averages) predict children and adult's rule violation judgments?

A

How well do literal and moral appraisals (item averages) predict children and adult's rule violation judgments?

A

A

A

Letter-as-precursor hypothesis **X**

First...
children prioritize the rules' spirit.

Later...
they acquire an appreciation for the rule's letter with age.

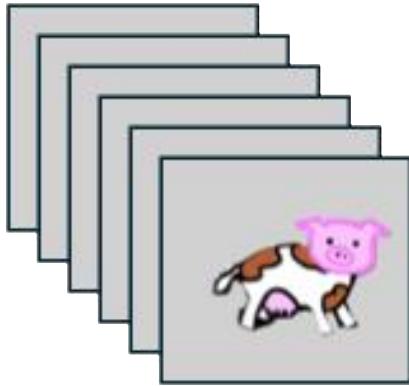
Spirit-as-precursor hypothesis **✓**

First...
children prioritize the rules' spirit.

Later...
they acquire an appreciation for the rule's letter with age.

Animal Stroop Task

Response inhibition



pig

cow

Digit Span Task

Forward Digit Span

Short-term memory

3-9-6

3-9-6

Backward Digit Span

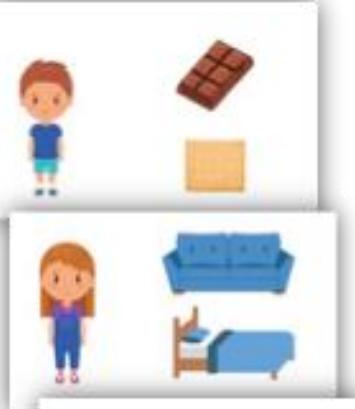
Working memory

5-2-7

7-2-5

Theory of Mind (ToM) task

What does Tommy want to eat?



What does Helen think is inside the can of potato chips?

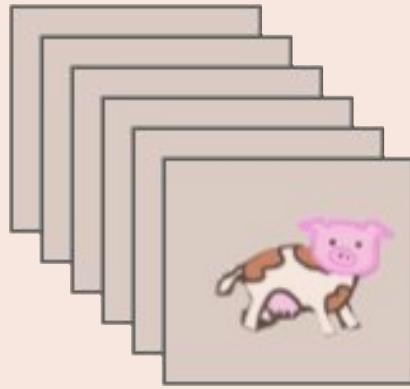


Does Robin's mother know that Robin has realized he will get a bicycle?



Animal Stroop Task

Response inhibition



pig

cow

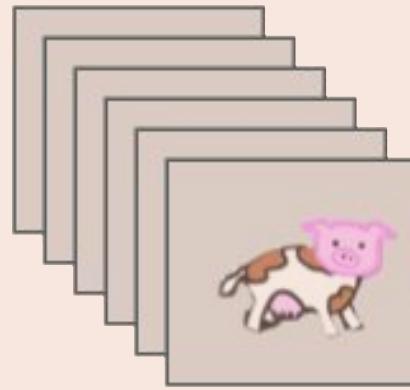
Name the font color of the word (don't read the word!)

Green	Red
Yellow	Black
Red	Green
Black	Red
Red	Yellow
Green	Black

Accuracy: correctly name the animal based on its body.
Reaction time (RT; ms): the delay from onset of stimulus.

Animal Stroop Task

Response inhibition



pig
cow

Name the font color of the word (don't read the word!)

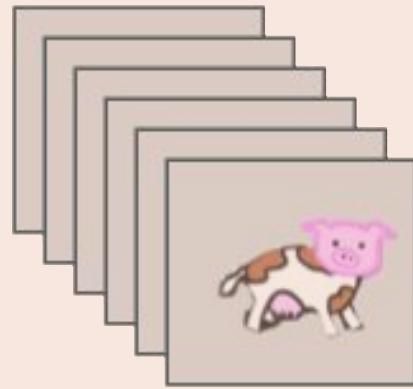
Green	Red
Yellow	Black
Red	Green
Black	Red
Red	Yellow
Green	Black

$$efficiency = - \sum_1^i RT_i / \sum_1^i Accuracy_i$$

Accuracy: correctly name the animal based on its body.
Reaction time (RT; ms): the delay from onset of stimulus.

Animal Stroop Task

Response inhibition



pig
cow

Name the font color of the word (don't read the word!)

Green	Red
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$$efficiency = - \sum_1^i RT_i / \sum_1^i Accuracy_i$$

Accuracy: correctly name the animal based on its body.
Reaction time (RT; ms): the delay from onset of stimulus.

Participant 1 takes 2s per answer and gives 9 correct answers:

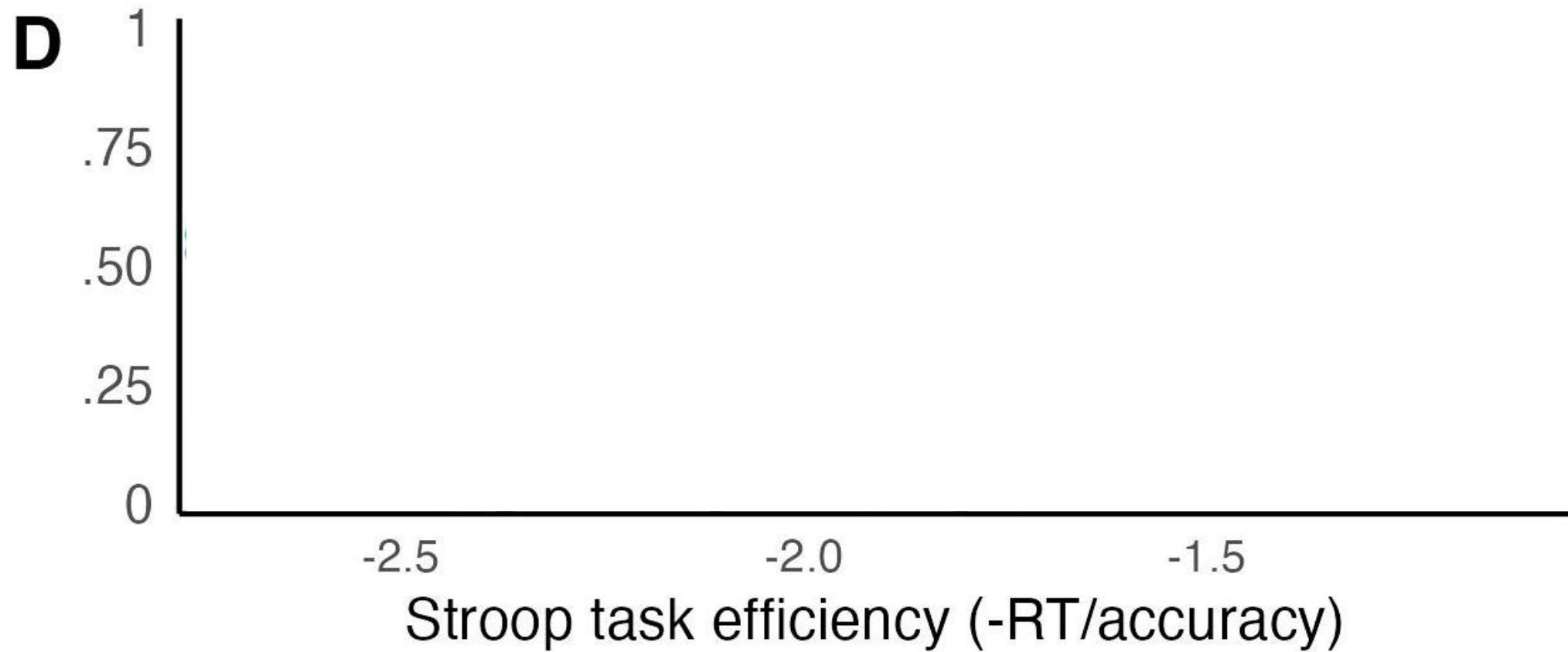
$$IE_{P1} = -(2.5 \times 12) / 9 = -2.7$$

Participant 2 takes 1.3s per answer and gives 11 correct answers:

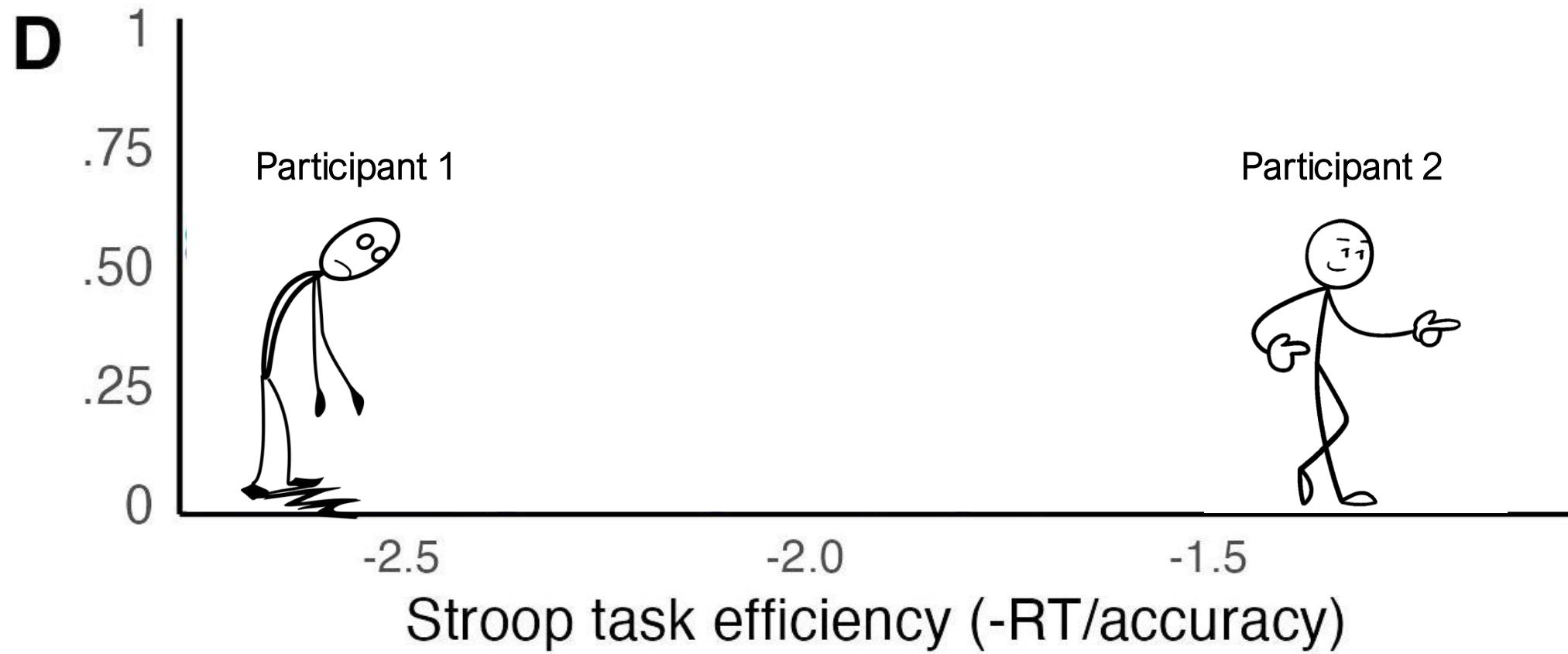
$$IE_{P2} = -(1.3 \times 12) / 11 = -1.4$$

Conceptually...
the average cost in seconds to provide a correct answer.

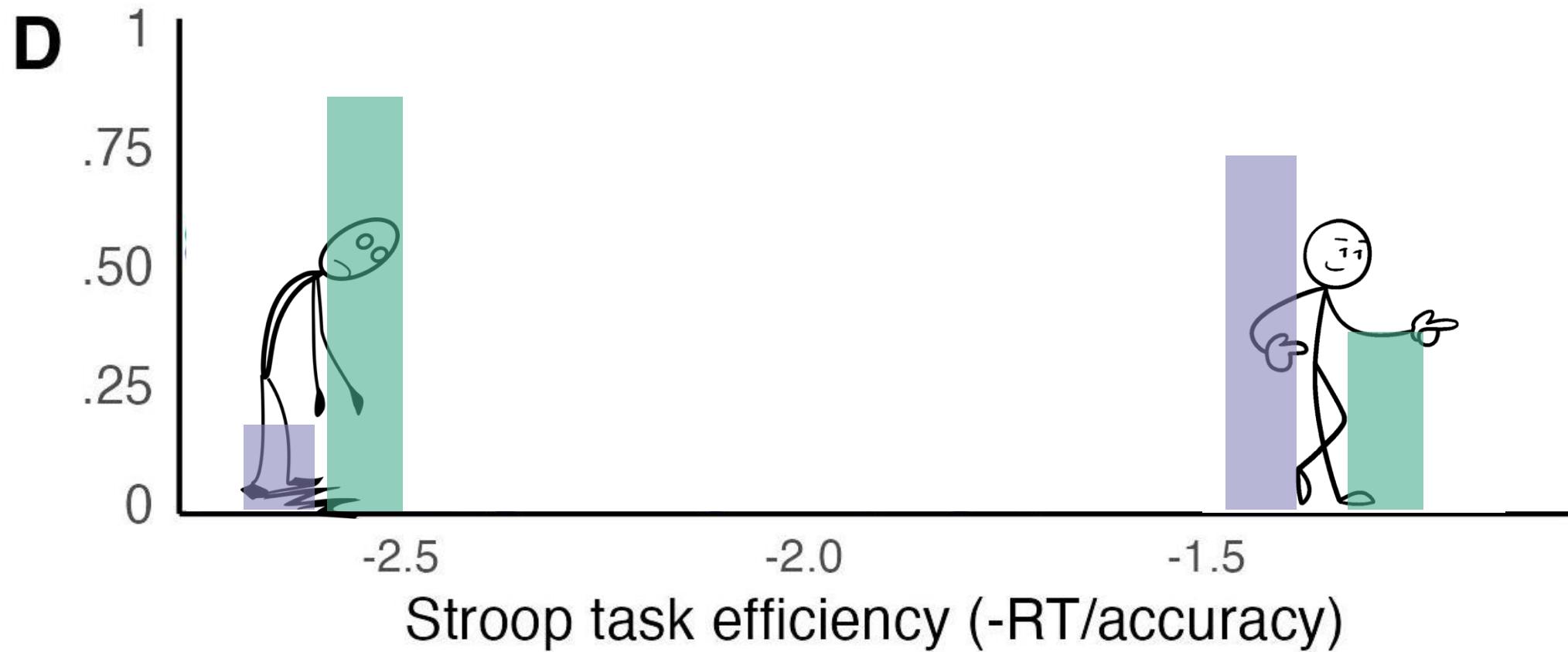
 Literal appraisal
 Moral appraisal

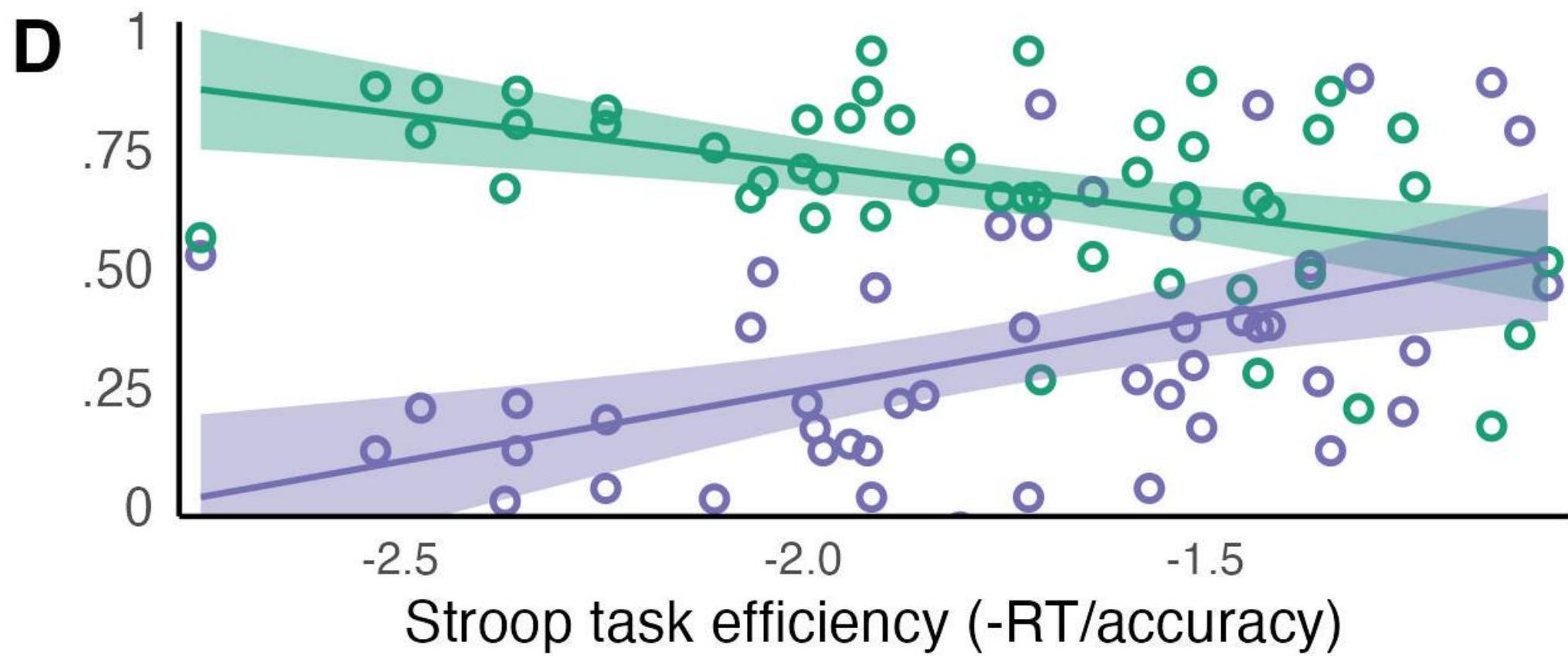


- Literal appraisal
- Moral appraisal

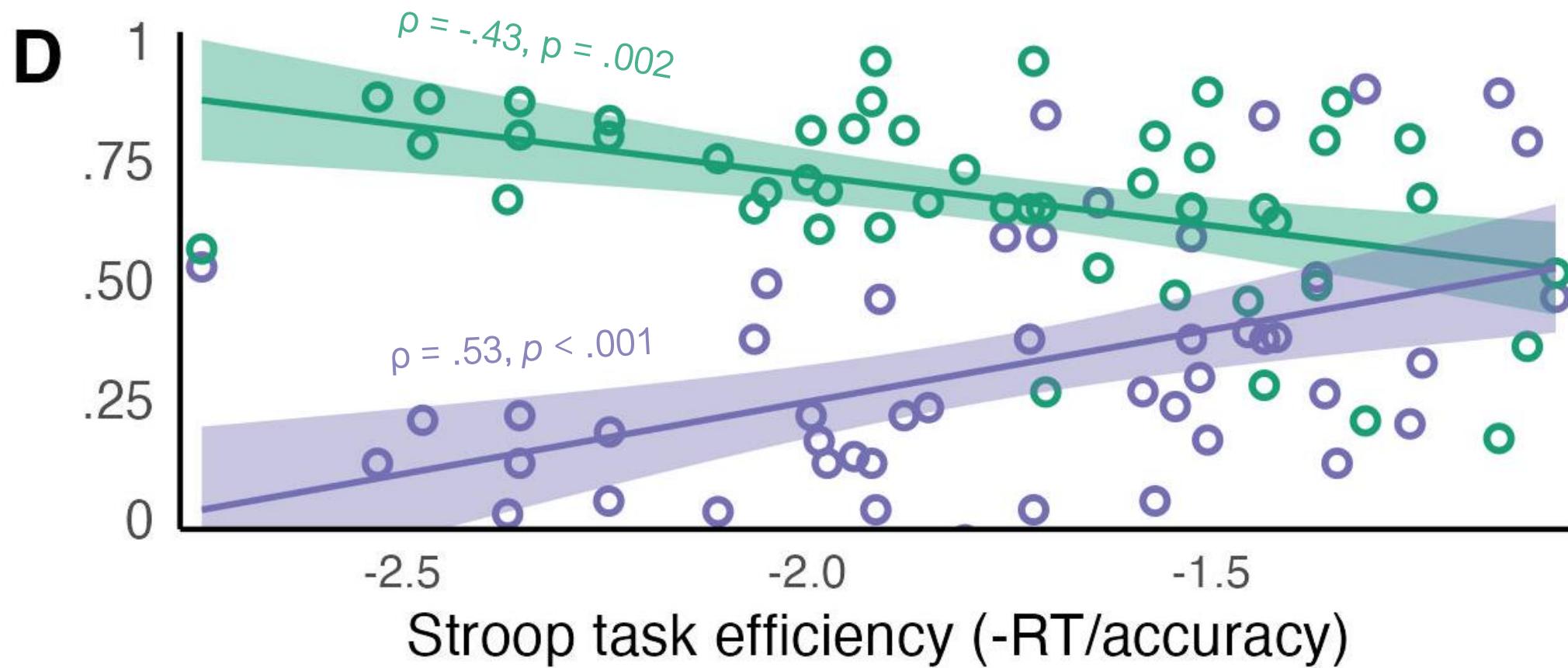


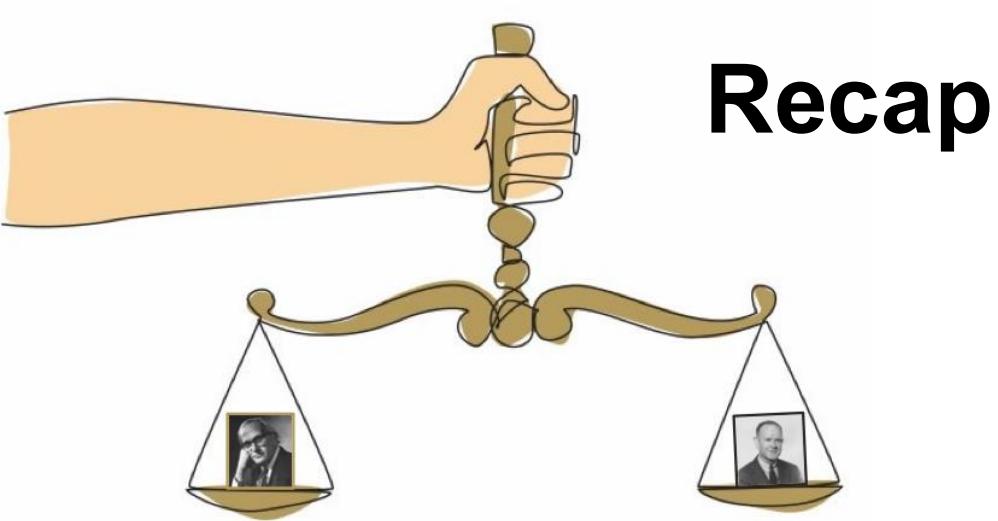
 Literal appraisal
 Moral appraisal





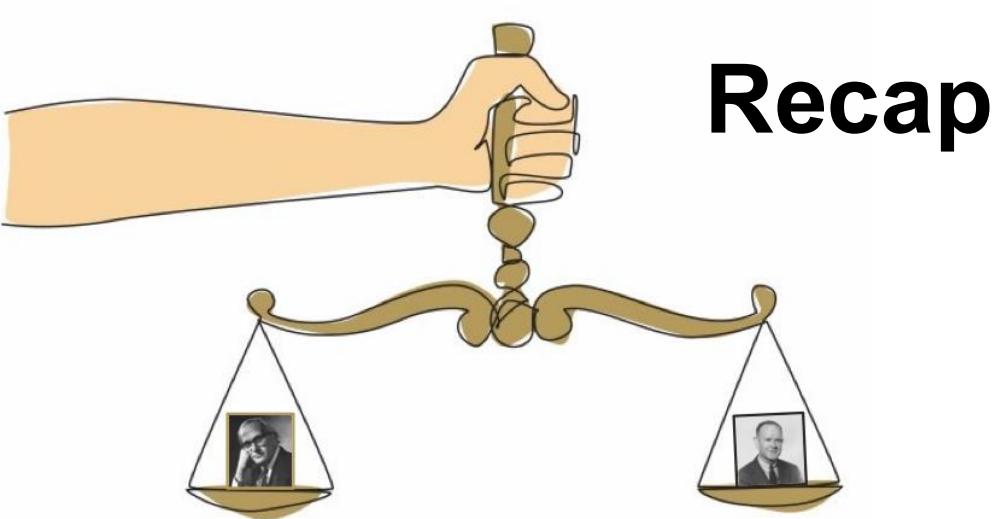
Controlling for age in months:
partial- p = .39, p = .007
 p = .090 (n.s.)





Recap

1. Adults *balance* letter and spirit. We are conflicted between enforcing a rule's plain text and competing moral considerations.

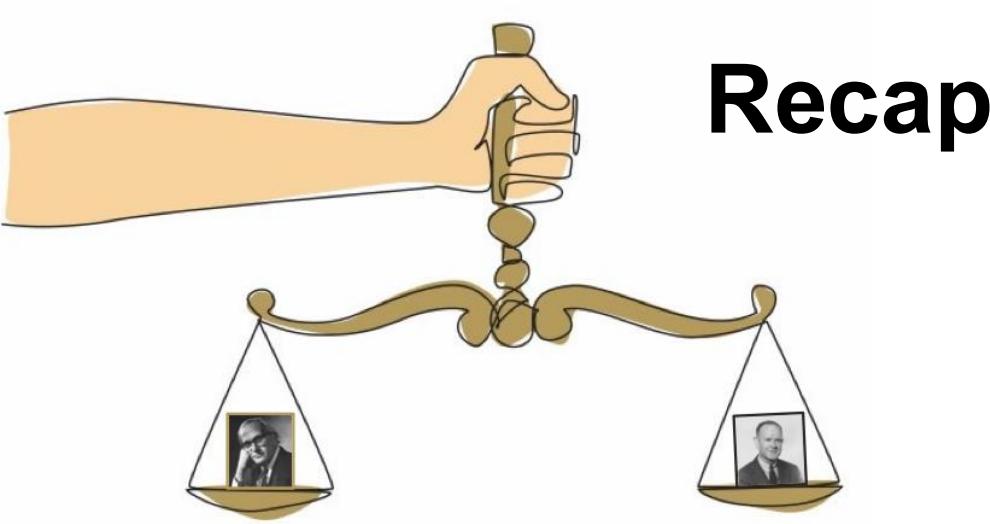


Recap

1. Adults *balance* letter and spirit. We are conflicted between enforcing a rule's plain text and competing moral considerations.



2. Children do **NOT**. *They care very little* about the rule's plain text.

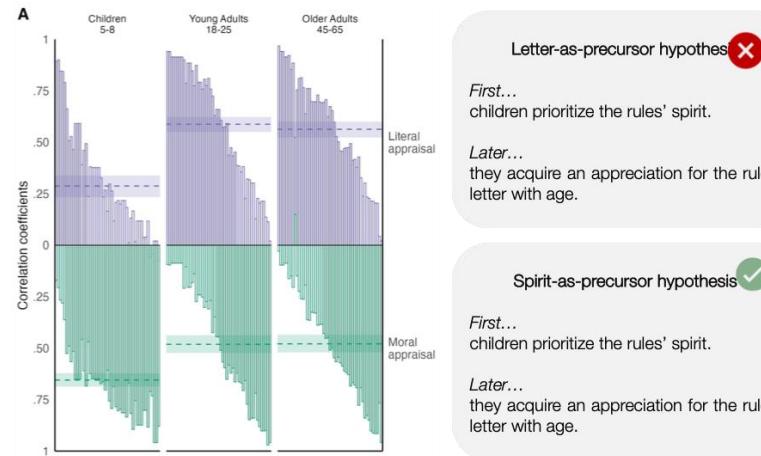


Recap

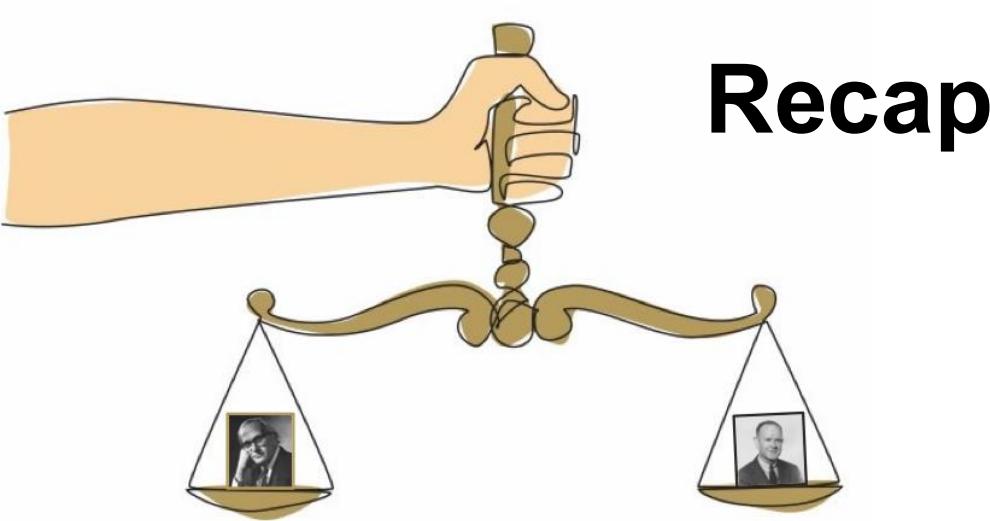
1. Adults *balance* letter and spirit. We are conflicted between enforcing a rule's plain text and competing moral considerations.



2. Children do **NOT**. *They care very little* about the rule's plain text.



3. Their application of rules tracks **adults'** moral judgments very closely.



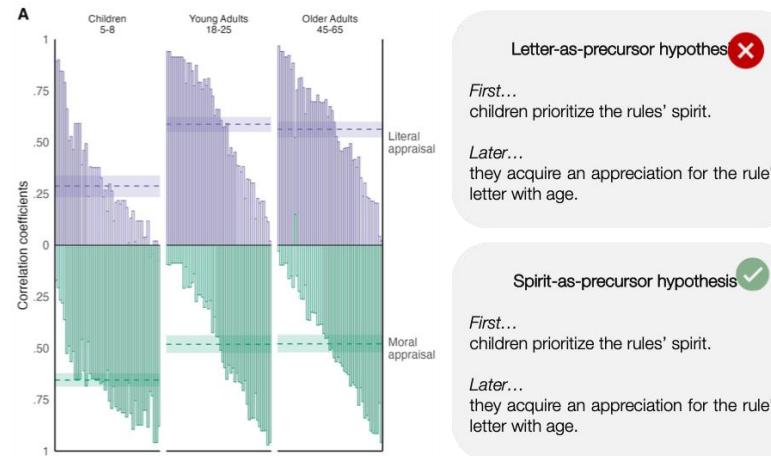
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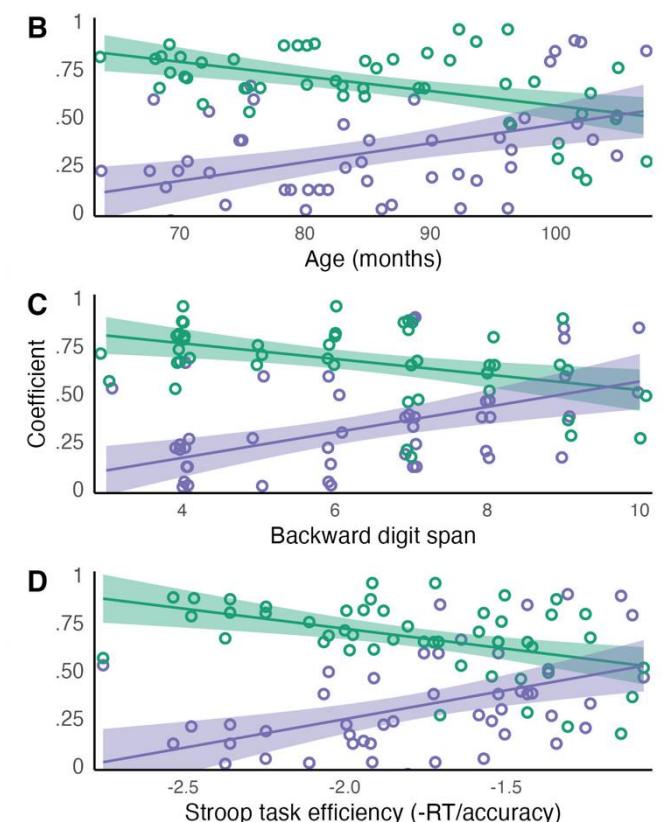


2. Children do **NOT**. *They care very little* about the rule's plain text.

4. Cognitive development and, in particular, inhibitory control seems to support the acquisition of textualist intuitions.



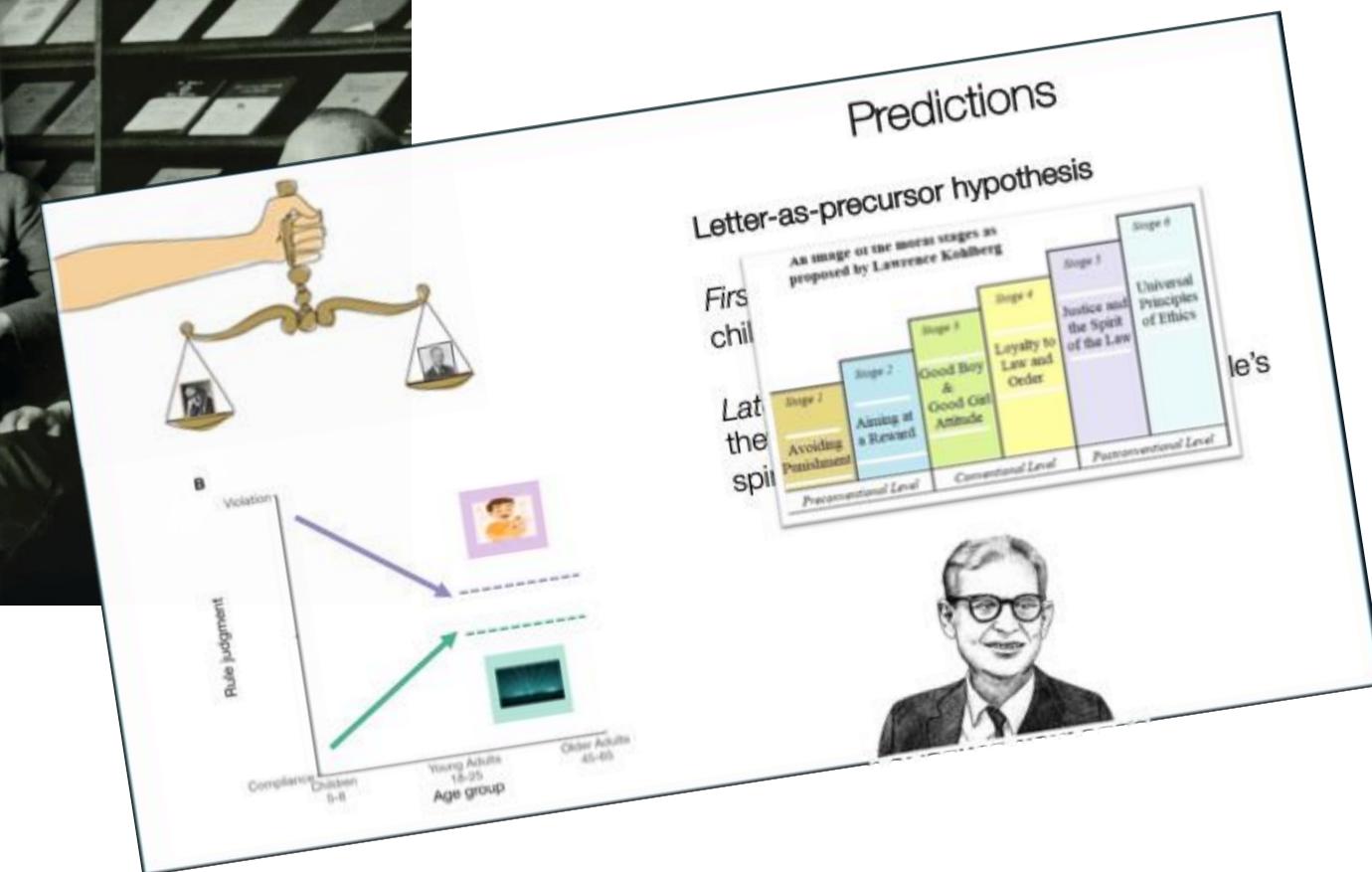
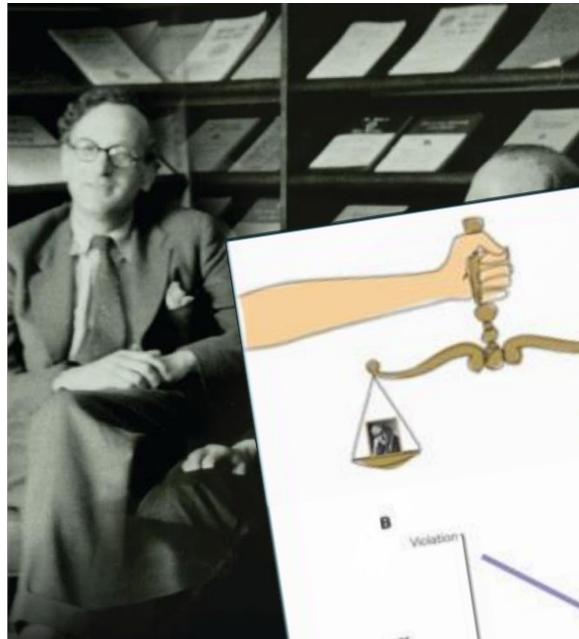
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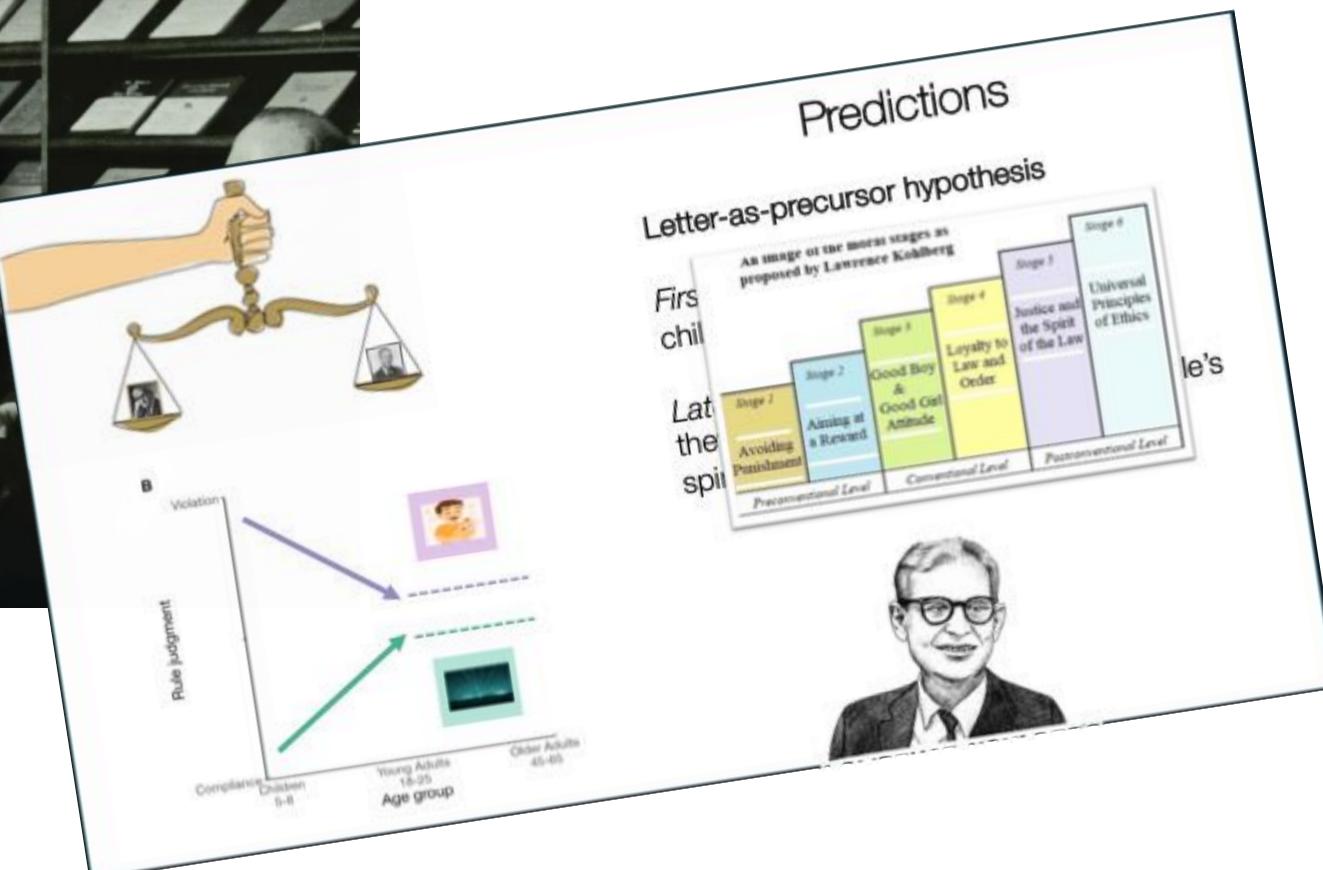
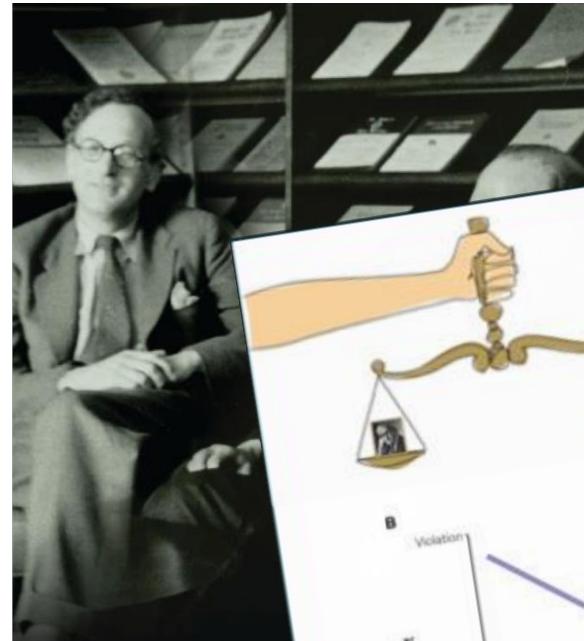
Traces of an intuitive commitment to natural law?



Traces of an intuitive commitment to natural law?



Traces of an intuitive commitment to natural law?





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DE CIENCIA, INNOVACIÓN
Y UNIVERSIDADES



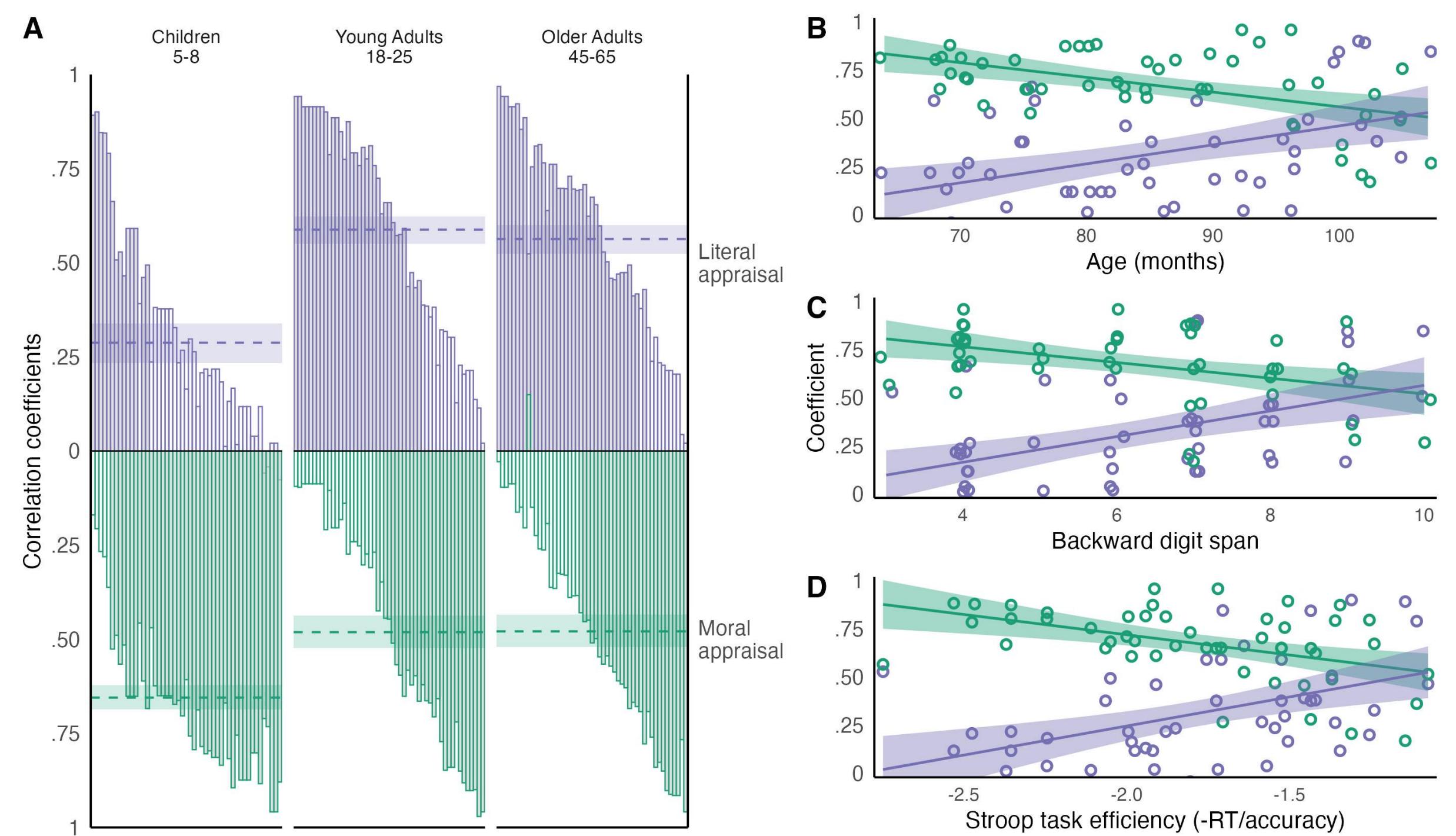
Financiado por
la Unión Europea
NextGenerationEU



Thank you!

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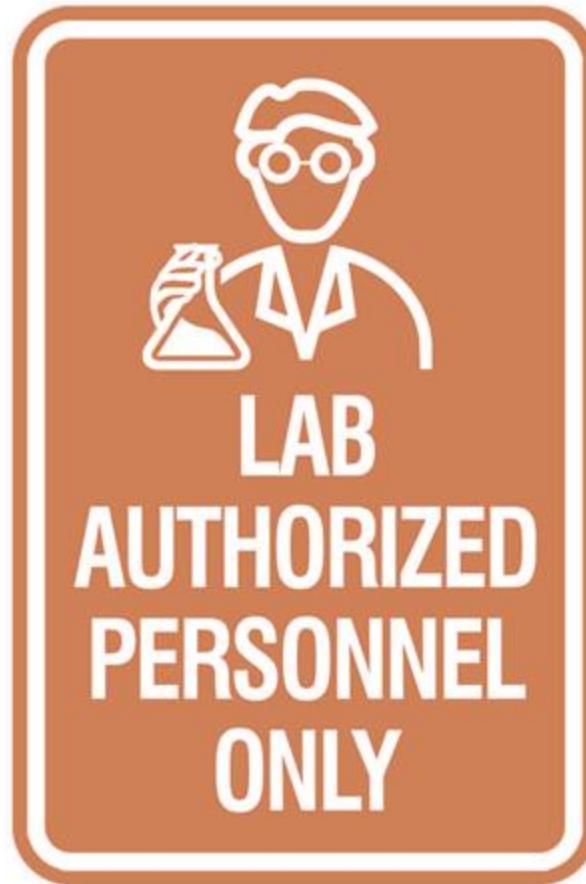




At the nuclear power plant, scientists experiment with sources of clean energy.

To **ensure the staff's safety**, the director creates the rule.

A tech hobbyist gains access and plays with the equipment.

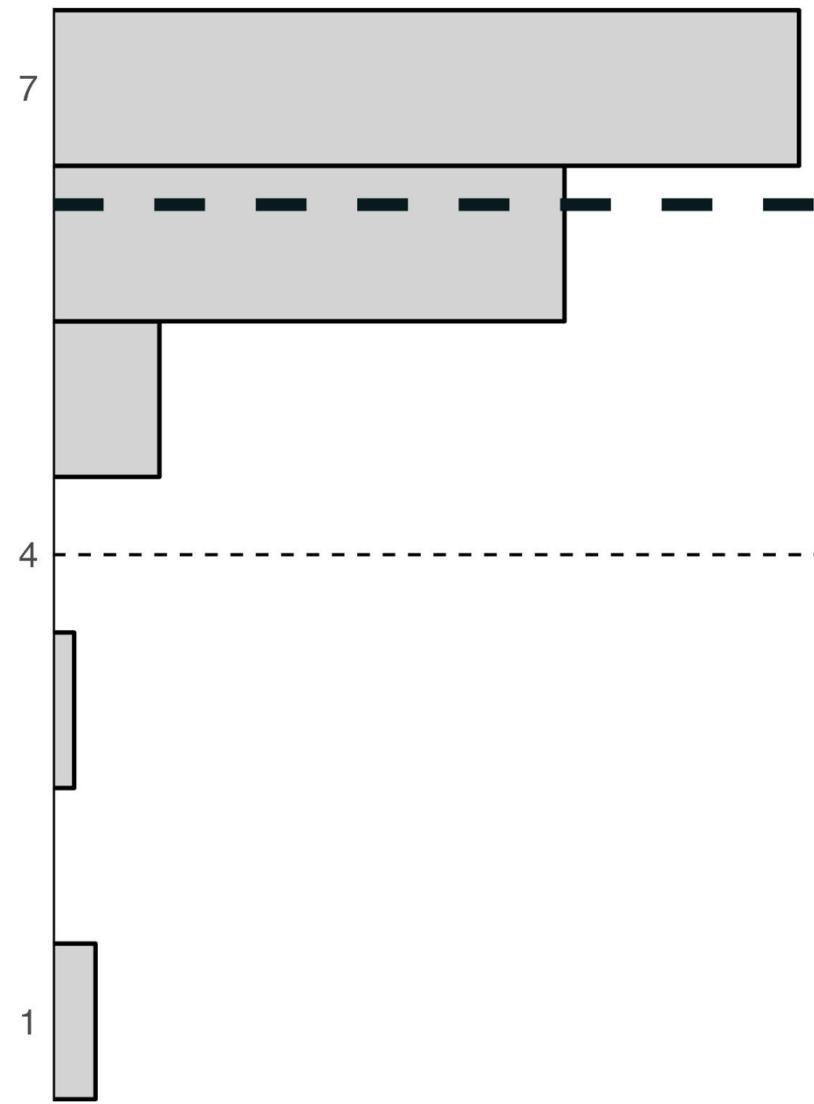


At the nuclear power plant, evil scientists experiment with human exposure to radiation.

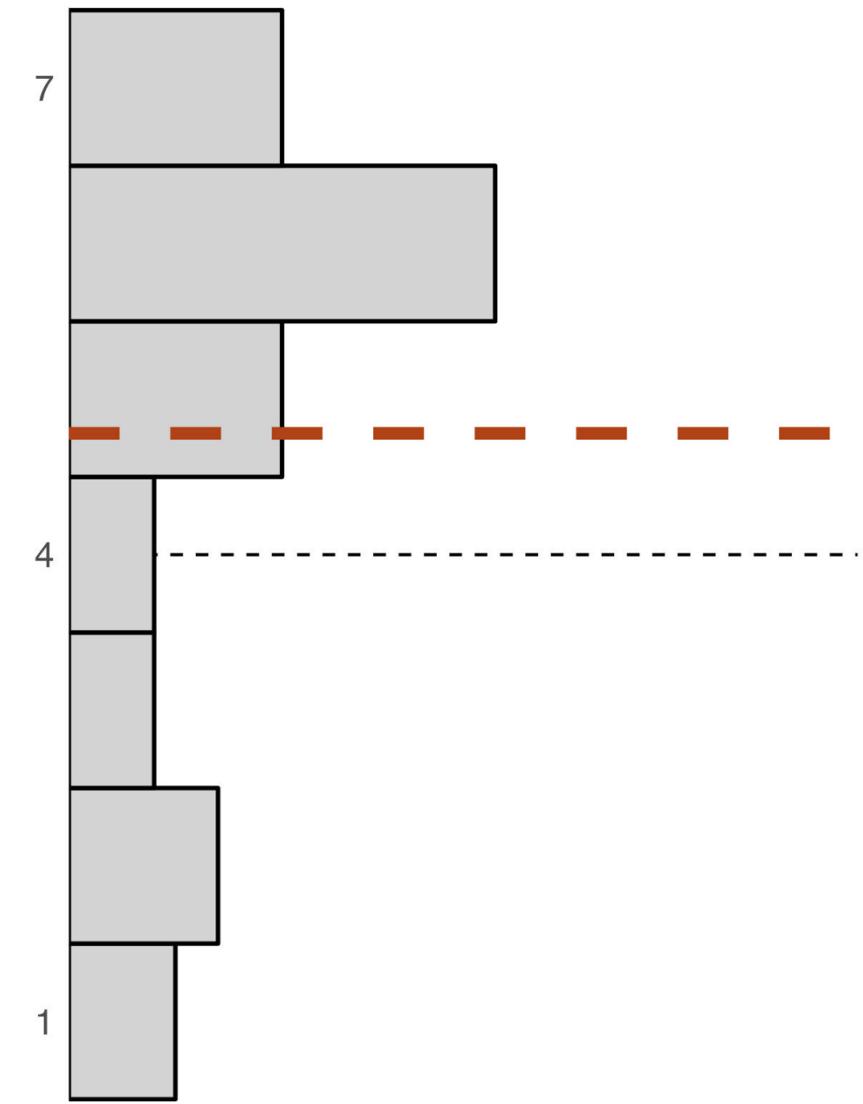
To **keep the project secret**, the director creates the rule.

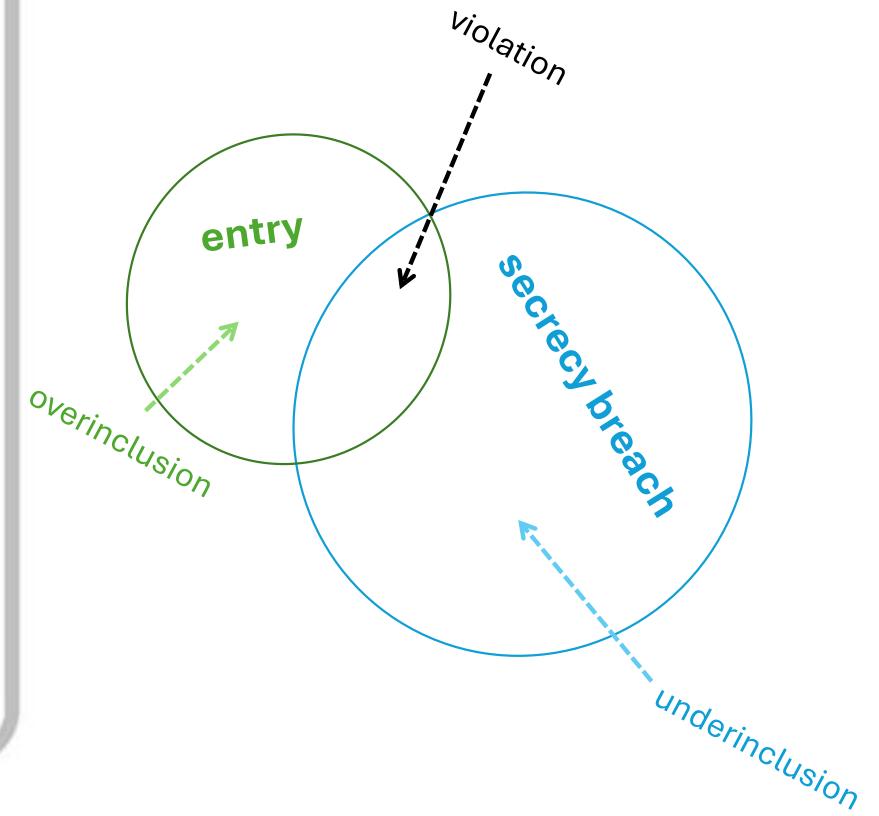
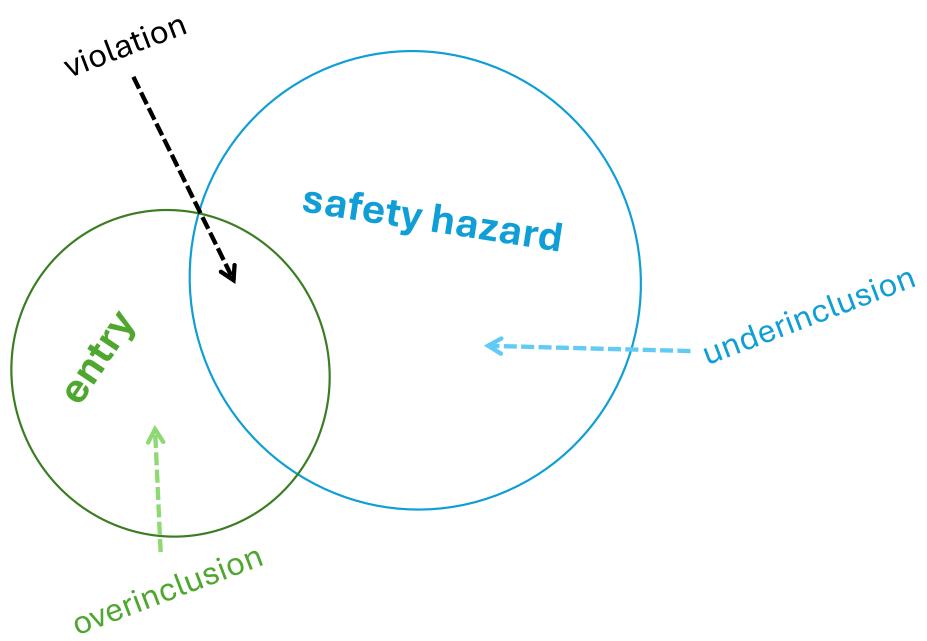
A journalist gains access and exposes the humanitarian crimes.

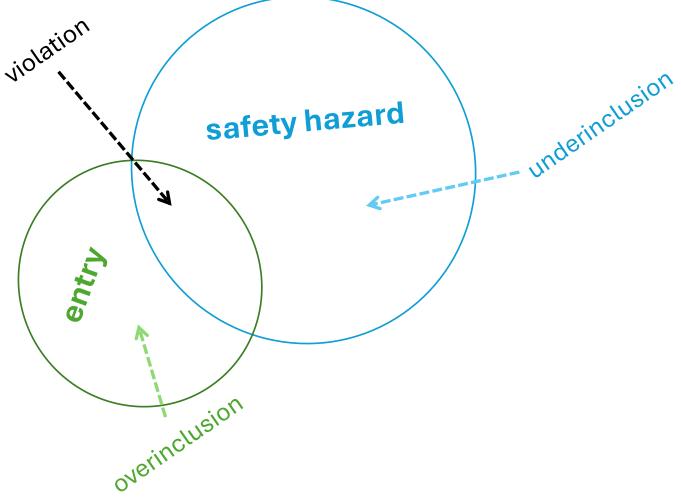
Did the hobbyist violate the No Access Rule?



Did the journalist violate the No Access Rule?

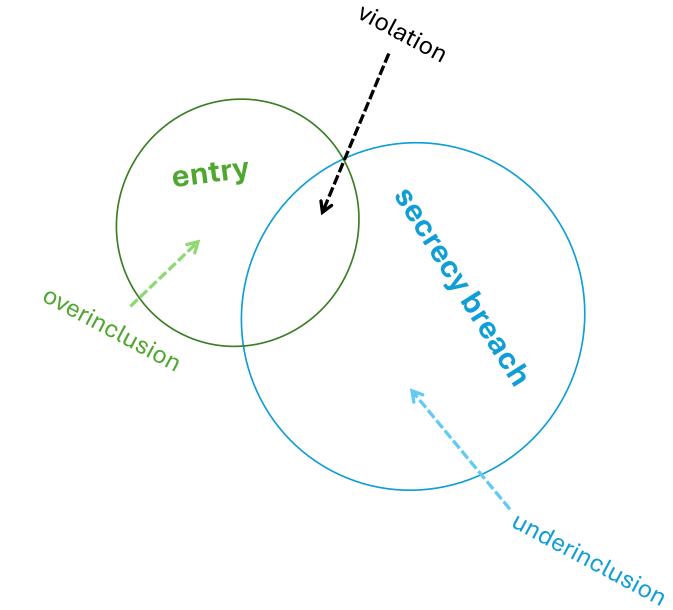






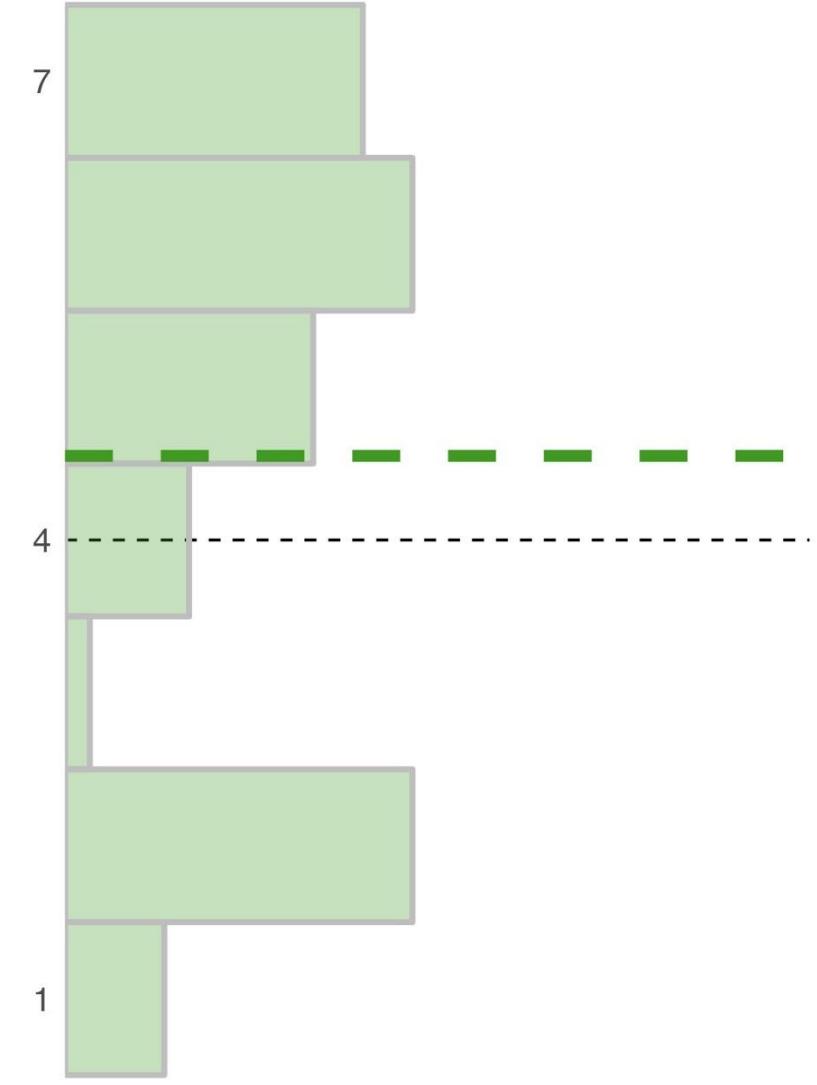
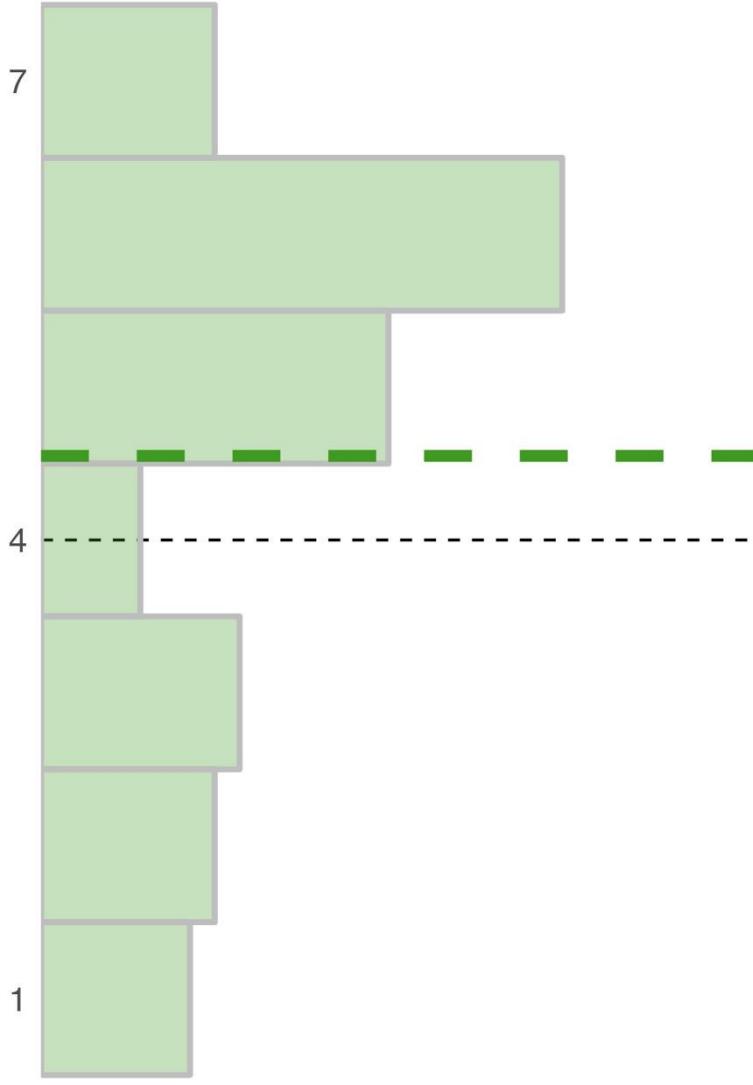
A retired scientist returns to the lab to empty her desk.

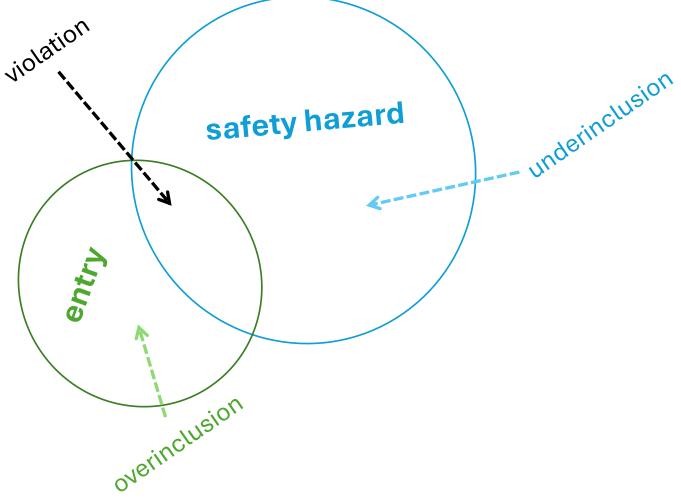
A sleepy lab technician handles the equipment carelessly.



A fervent supporter visits the lab to applaud the scientists' work.

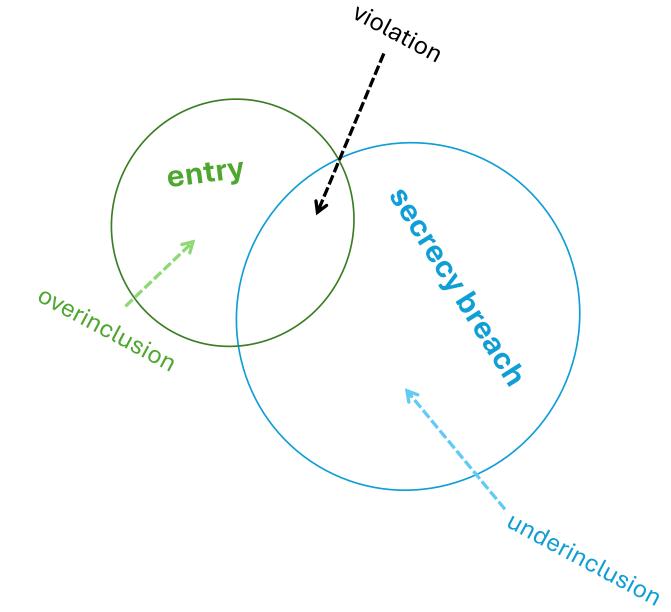
A lab technician leaks footage of the scientists' cruel acts.





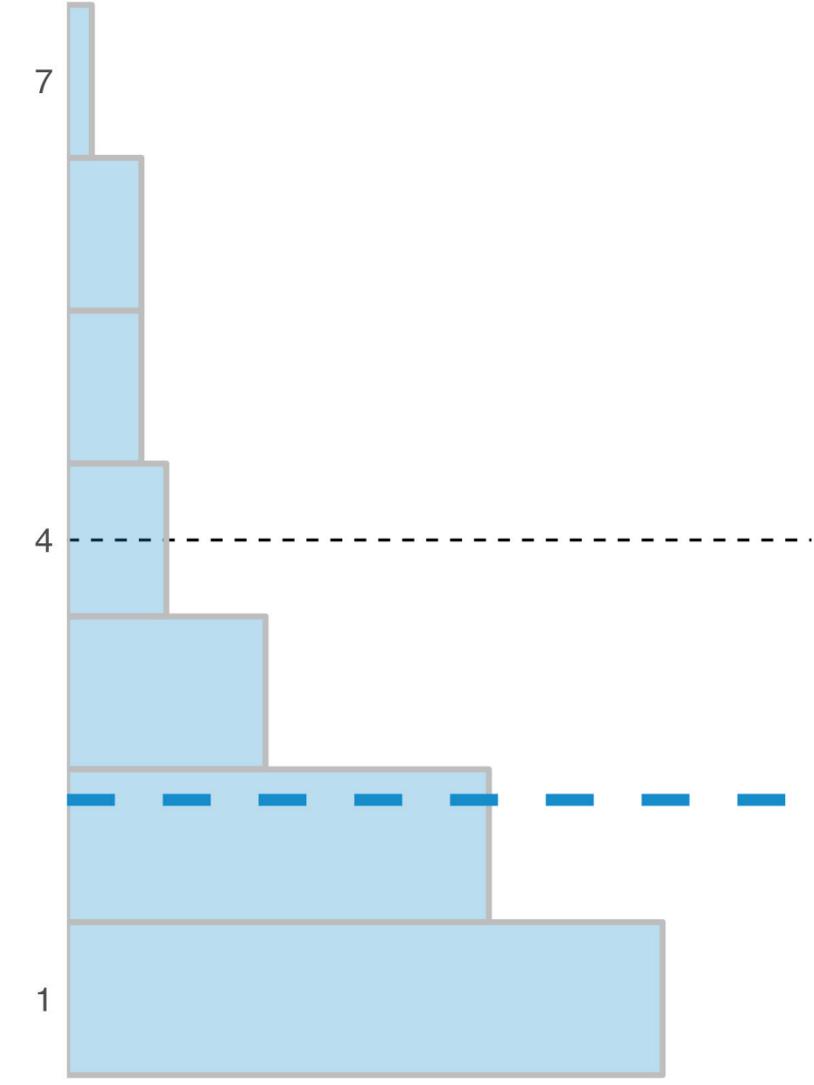
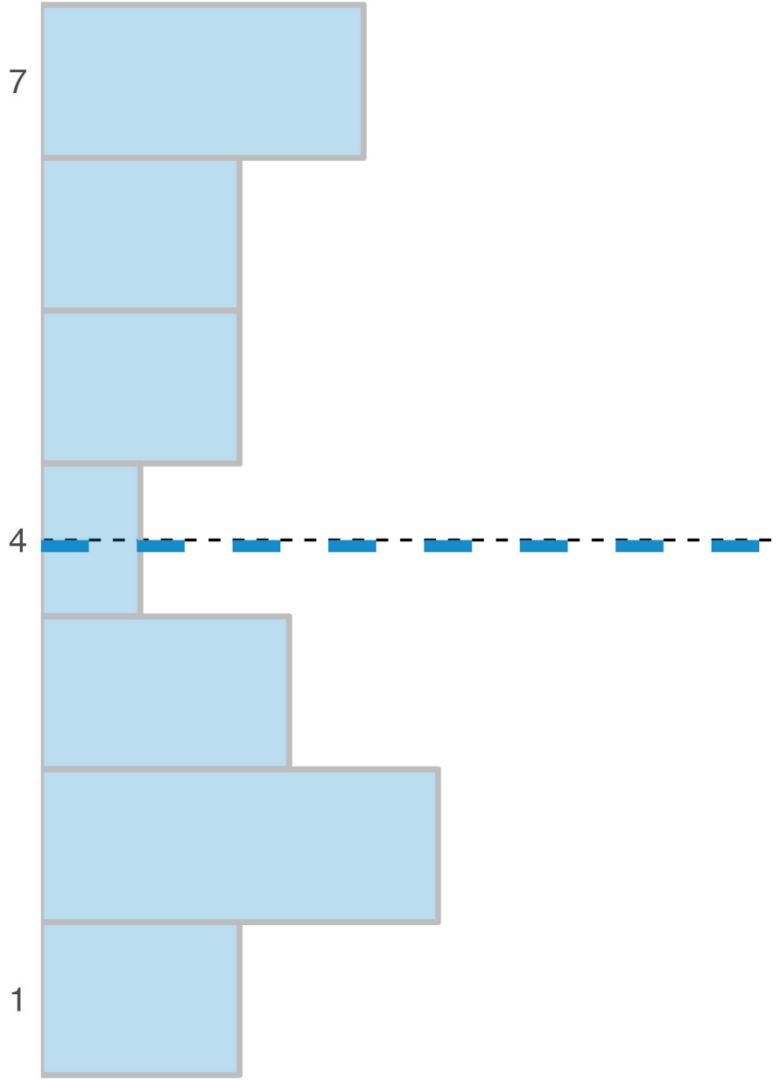
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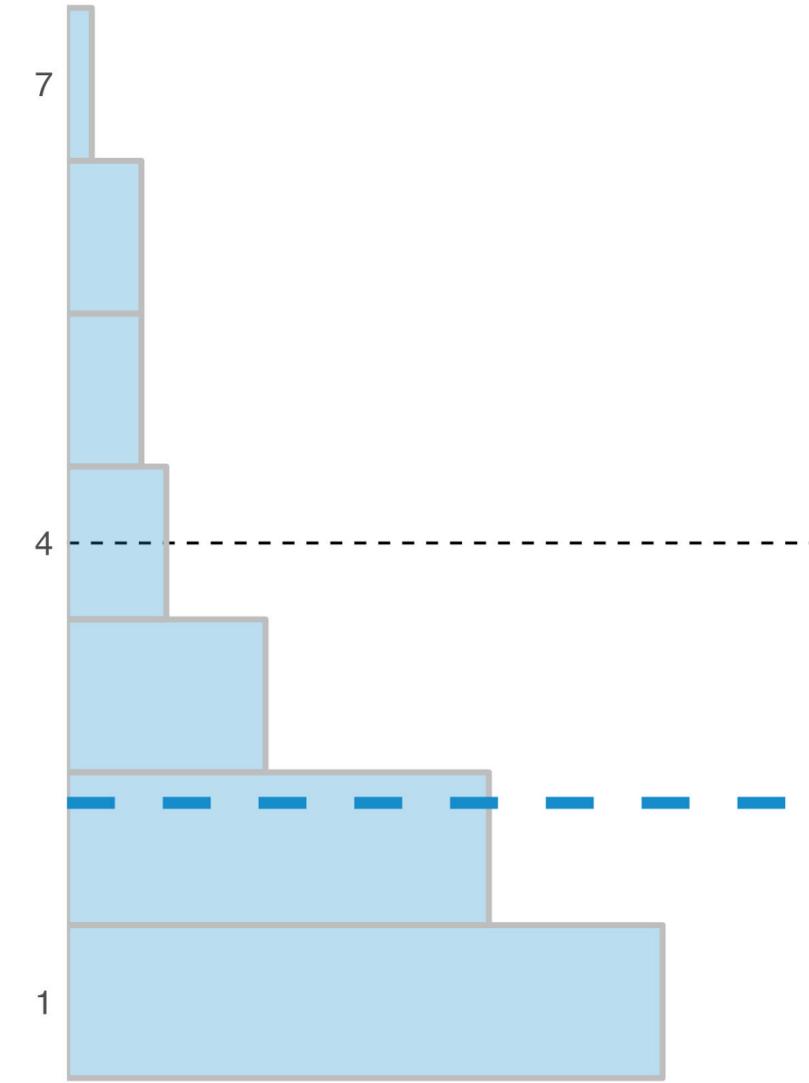
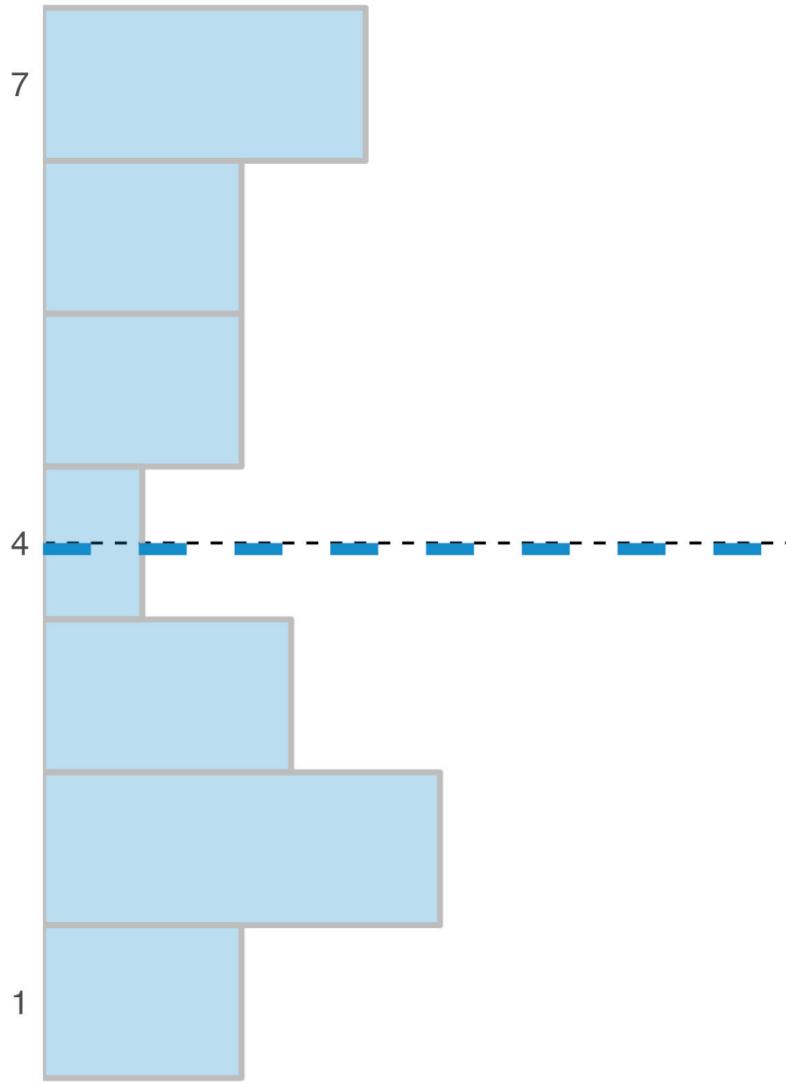


A fervent supporter visits the lab to applaud the scientists' work.

A lab technician leaks footage of the scientists' cruel acts.



Purpose \times Valence: $F_{(1, 362)} = 29.38$, $p < .001$



2 (valence: good vs. bad) \times 2 (text: violate vs. comply) \times 2 (purpose: violate vs. comply)

disagreement & conflict

Participant	Case1	Case2	Case3
1			
2			
3			

disagreement & conflict



disagreement prediction

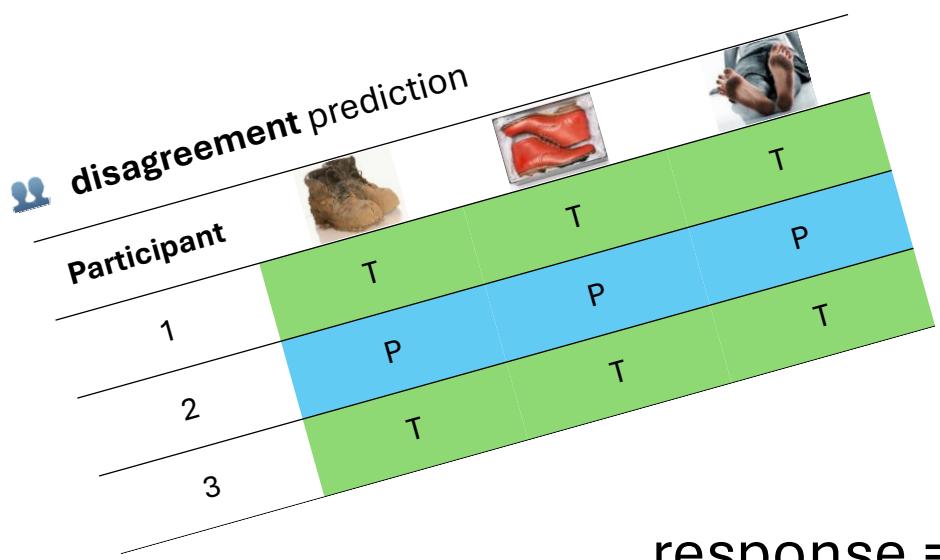
Participant			
1	T	T	T
2	P	P	P
3	T	T	T

disagreement & conflict

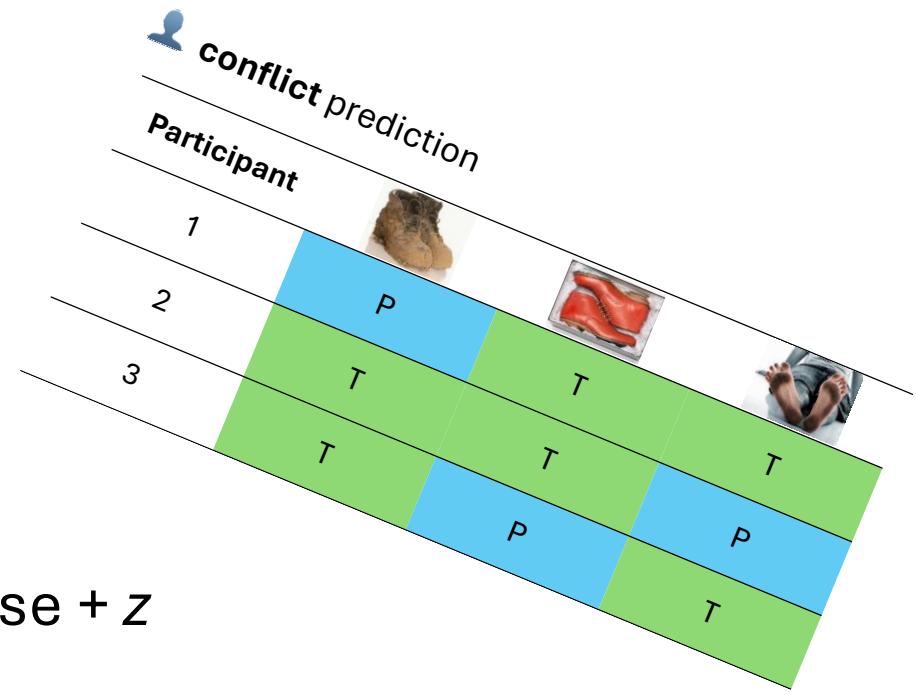
👤 **conflict** prediction

Participant			
1	P	T	T
2	T	T	P
3	T	P	T

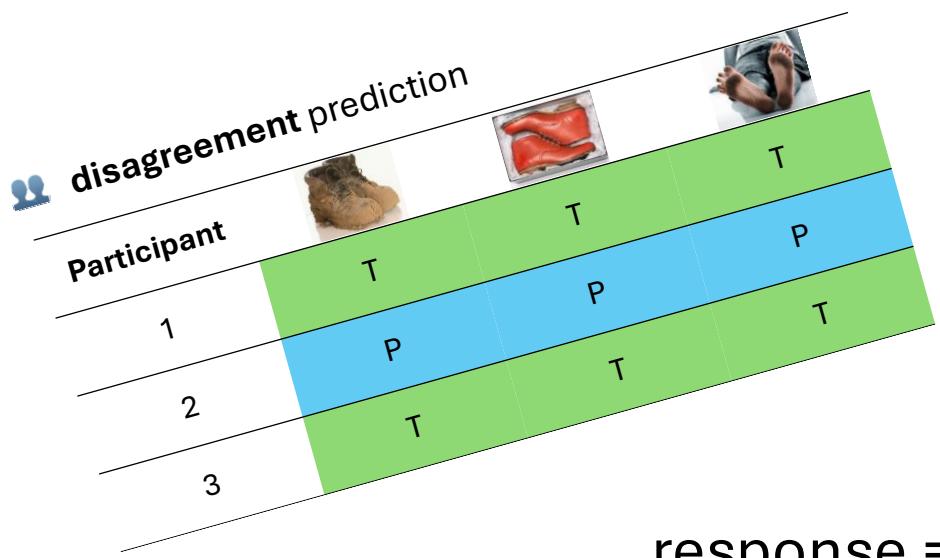
by-participant regression



$$\text{response} = x * \text{text} + y * \text{purpose} + z$$



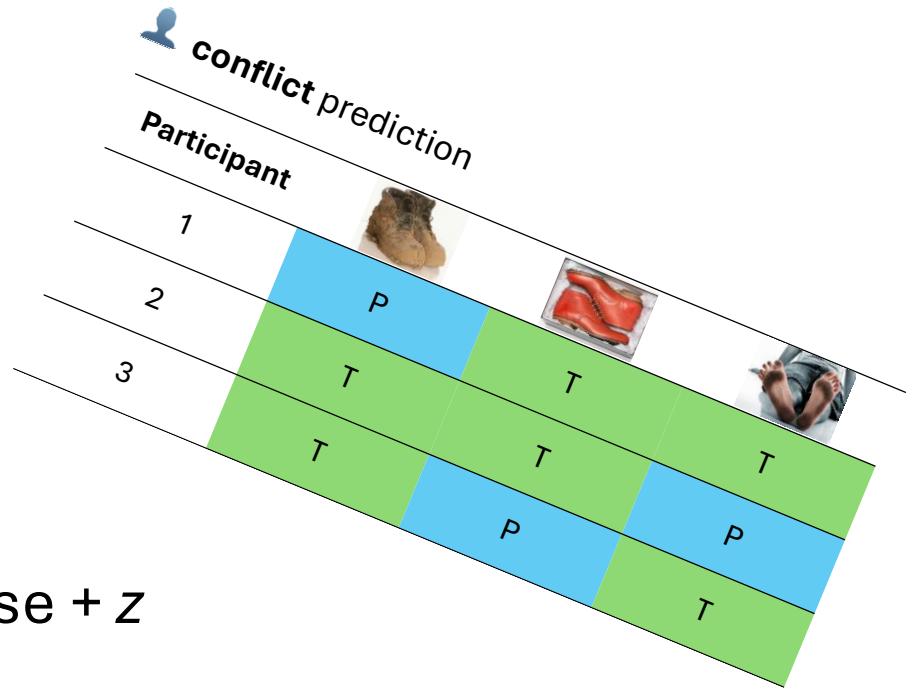
by-participant regression



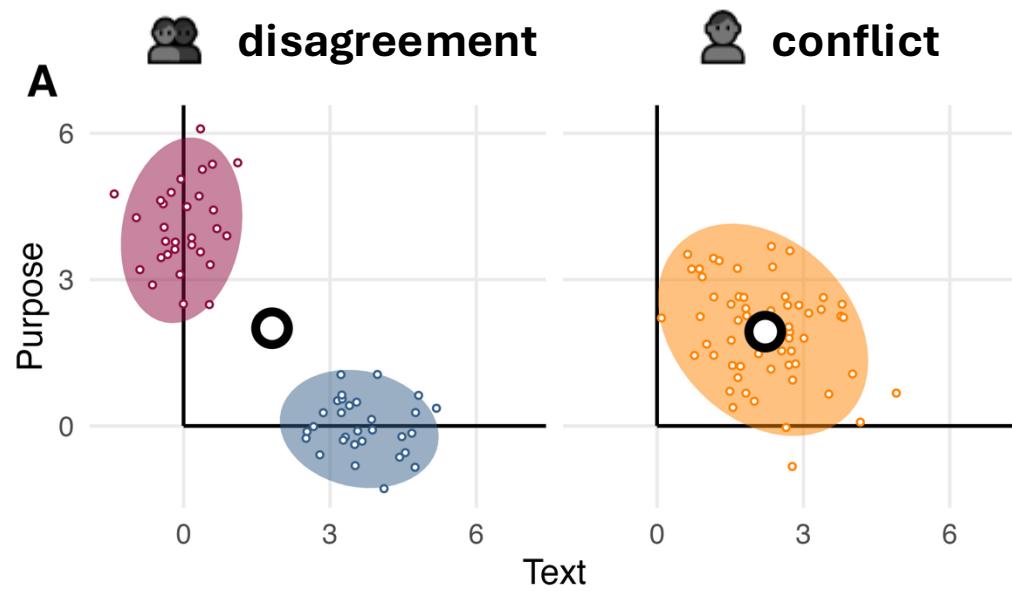
$$\text{response} = x * \text{text} + y * \text{purpose} + z$$

$x = 0 \text{ OR } y = 0$

$x > 0 \text{ AND } y > 0$



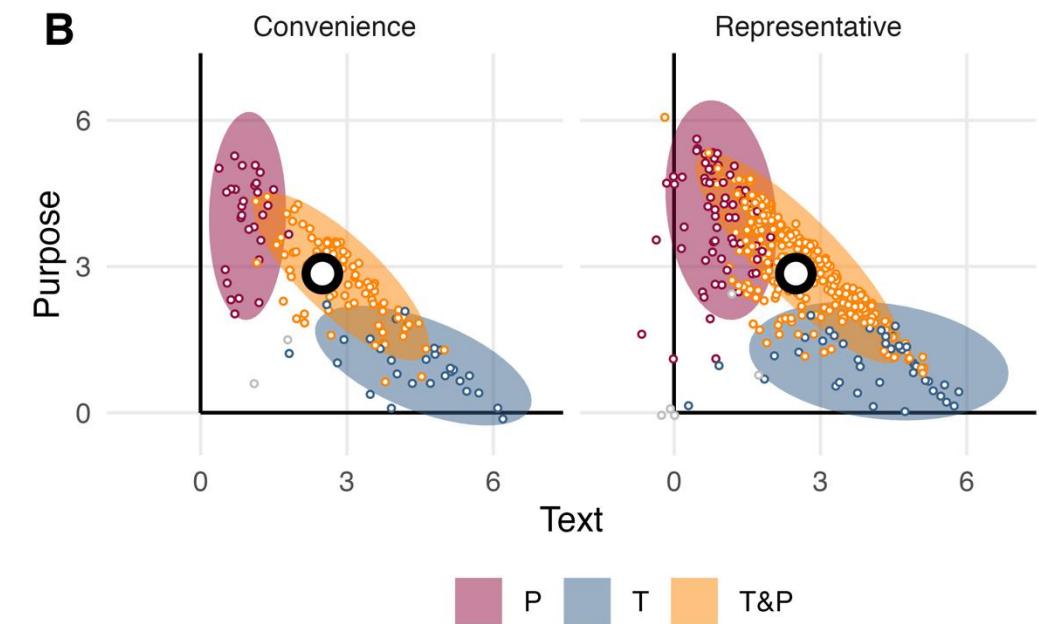
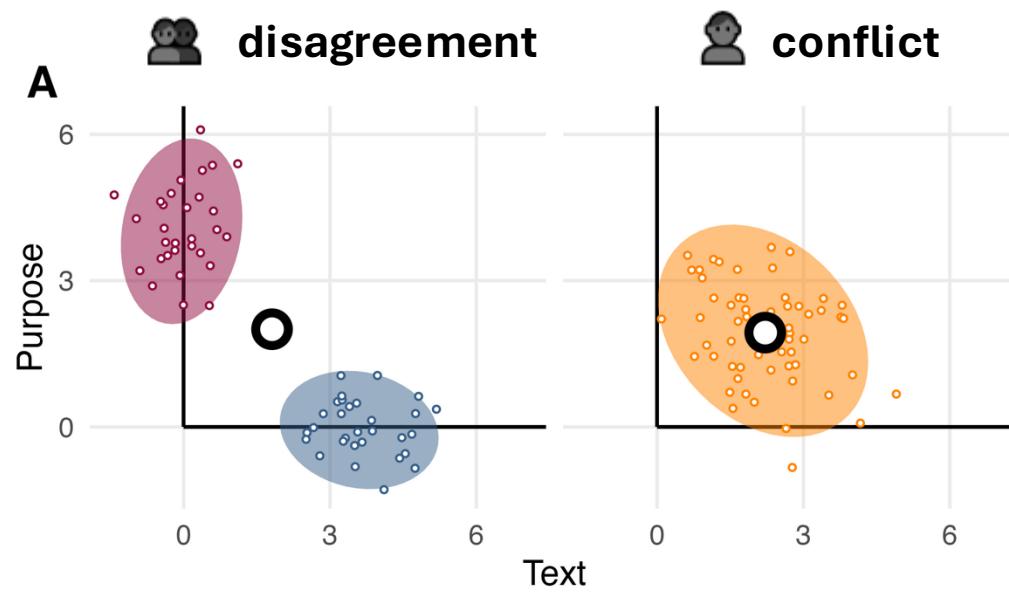
by-participant regression



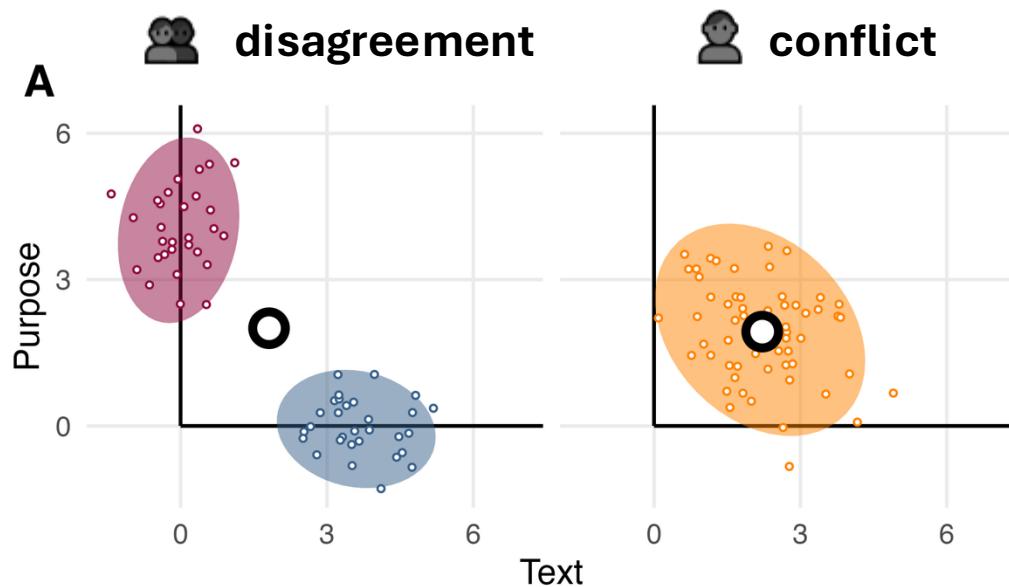
convenience ($n \sim 150$) & nationally
representative ($n \sim 360$) samples

20 - 40 observations per participant

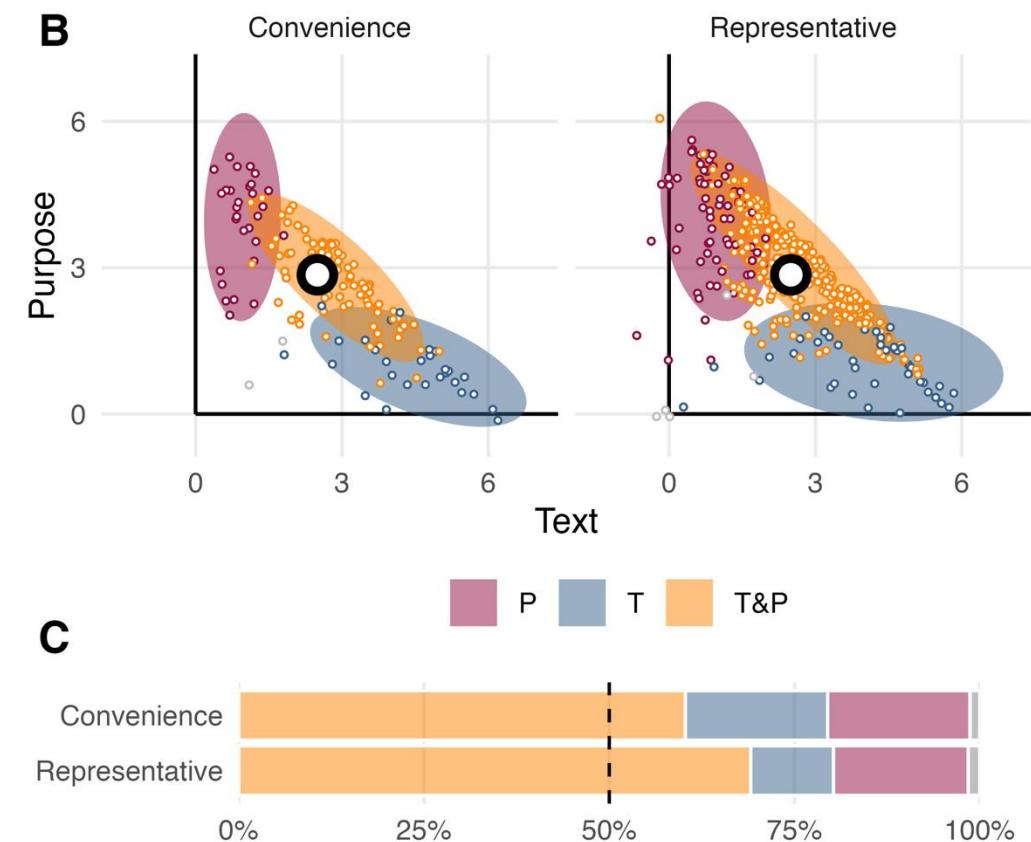
by-participant regression

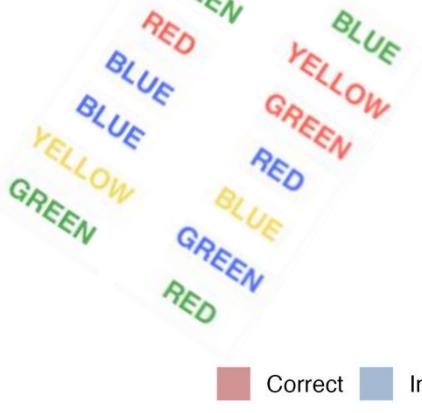


by-participant regression



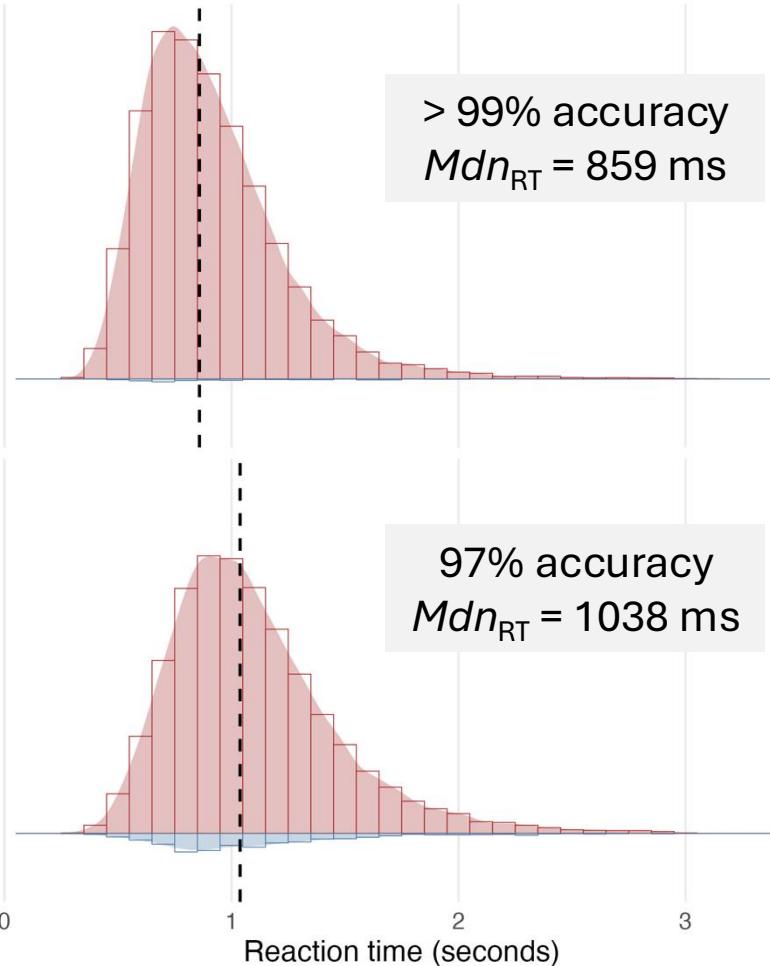
60% (C) and 69% (NR) fit **conflict**
40% (C) and 31% (NR) fit **disagreement**





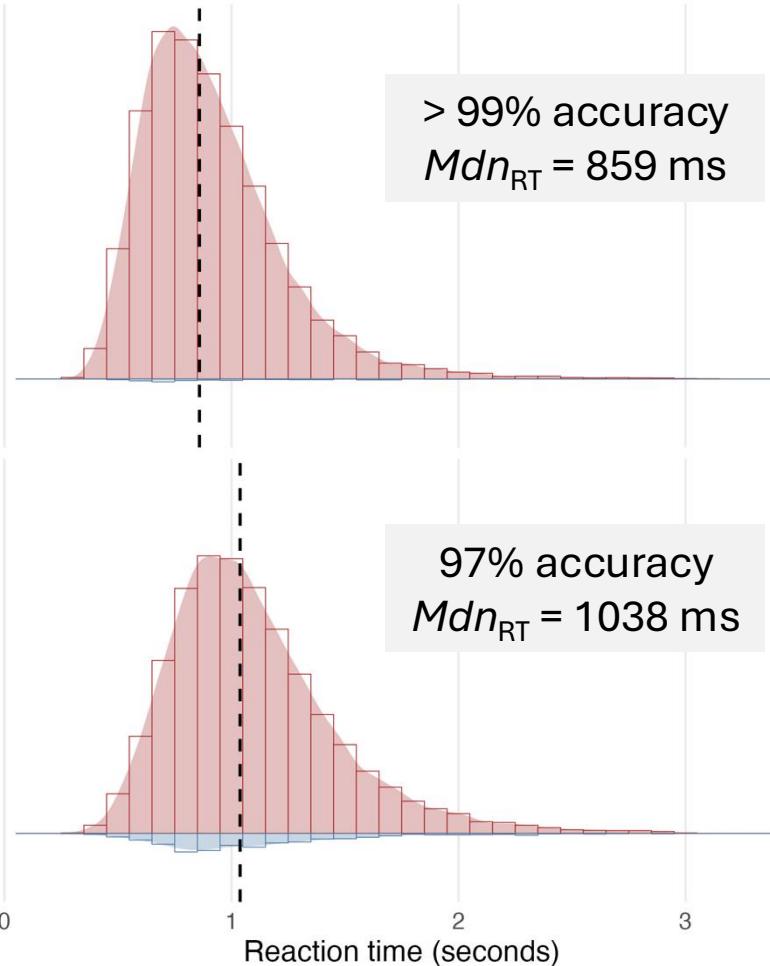
interference effects

■ Correct ■ Incorrect



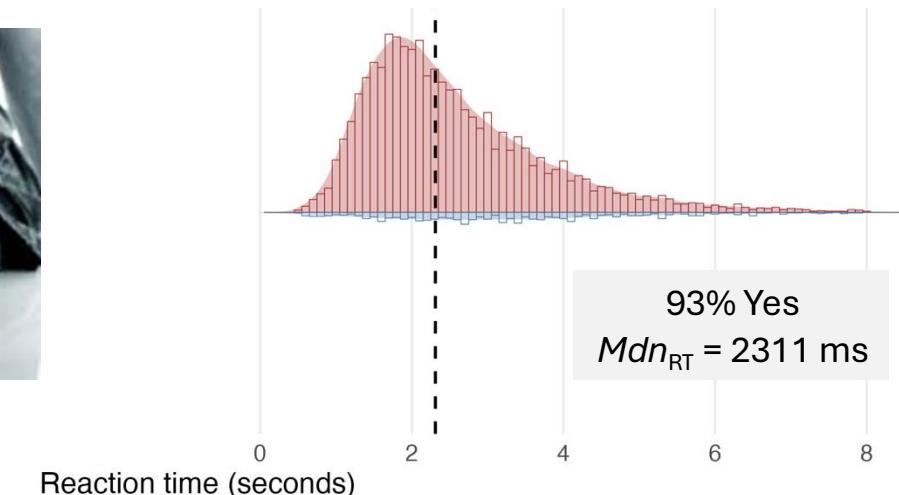
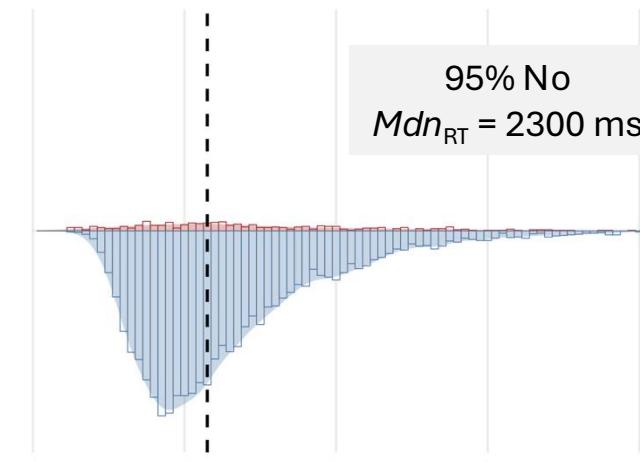
RED
GREEN
BLUE
BLUE
BLUE
YELLOW
GREEN
RED
GREEN
RED

Correct Incorrect



interference effects

Yes No



RED
GREEN
BLUE
BLUE
YELLOW
GREEN
RED
BLUE
GREEN
RED

interference effects

