

Laura Valentini*

Do Socially Constructed Norms have Moral Force? Précis to a Symposium

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Abstract: Do not chew with your mouth open! Take your hat off when you enter a church! Do not skip the queue! Pay your taxes! Do not cross on a red light! These are familiar imperatives, and their immediate source are ‘socially constructed norms’: norms that exist as a matter of social fact. These range from informal etiquette and politeness norms to the complex norms making up our legal systems. While we often feel bound by these norms, we are also aware that they can be pernicious: the product of injustice and vehicles for its perpetuation. The question thus arises: when and why, if ever, does the fact that a socially constructed norm requires us to perform a certain action place us under a *genuine moral obligation* to comply? In *Morality and Socially Constructed Norms*, I answer that such an obligation, when it exists, is grounded in a broader, familiar duty, namely the duty to respect people’s permissible and authentic exercises of agency. This is what I call the ‘Agency-Respect View.’ The first part of the book outlines and defends the view, the second part considers relevant applications.

Keywords: socially constructed norms; agency respect; commitments; political obligation; rights; sovereignty

1 Introduction

No matter where you find yourself, countless norms apply to you. In a church, you must wear modest clothes and keep quiet during service. At a high-table dinner in Oxford or Cambridge, you must stand up when grace is said. If you wish to catch the bus in the UK, you must patiently wait in line. If you are in a philosophy seminar and wish to ask a question, you must raise your hand and wait for the chair to signal that it is your turn. In many countries, if you go to a restaurant, you must pay a tip at the end of your meal. And as a citizen, you must pay taxes and generally do what the law requires of you.

*Corresponding author: Laura Valentini, Fakultät für Philosophie, Wissenschaftstheorie und Religionswissenschaft, LMU Munich, Munich, Germany, E-mail: l.valentini@lmu.de

The obligatory behaviours I have just enumerated are all mandated by ‘socially constructed norms,’ namely norms that exist as a matter of social fact. Some of them are informal – e.g., the queuing norm, the tipping norm – while others are formal – e.g., legal norms. In the contexts in which they apply, these norms function as standards of mutual accountability. When someone breaches them, others have the social standing to blame, criticize, and reprimand this person for that breach. For example, when someone skips the queue in the UK, others have the standing to complain. Similarly, if, in a philosophy seminar, an unruly participant interrupts the speaker without it being their turn, other participants and the chair may sanction their behaviour. And violations of the law are frowned upon by the public and come with official punishment.

In short, breaches of socially constructed norms trigger the kinds of accountability responses and reactive attitudes that are typical of *moral* breaches: blame, resentment, criticism, guilt, and the like. The question thus arises whether and, if so, under what conditions, such ‘accountability responses’ are *justified*. When and why is it appropriate for us to feel guilty *because* we are breaching a socially constructed norm? And when and why is it appropriate for others to blame us and hold us accountable for norm breaches? That is, when and why are socially constructed norms genuinely morally binding? *Morality and Socially Constructed Norms* addresses these questions.

Although these questions have not been given much attention in the literature, a narrower but closely related question is central to debates in legal and political philosophy. This is the question of whether we have an obligation to obey the law ‘because it is the law’: does the fact that some piece of conduct is legally required place us under a moral obligation to perform it? The law, at bottom, is just a particularly complex set of socially constructed norms. So, the very same question that political and legal philosophers have been asking for centuries – in fact, since Plato’s *Crito* – can be raised about socially constructed norms in general. This is what my book does.

I argue that, under a set of stringent conditions, we genuinely have moral obligations to do what socially constructed norms require *because* the norms so require. I ground those obligations in what I call the ‘agency-respect’ principle. The intuitive idea behind my position is that socially constructed norms call for our obedience whenever they express people’s authentic and permissible commitments and whenever obedience is not too costly to us. Thus, the moral force of socially constructed norms stems from a prior moral imperative to respect people’s exercises of agency, specifically, their commitments.

The first part of the book develops this ‘Agency-Respect View.’ It offers an account of what socially constructed norms are (chapter 1), then critically discusses existing approaches to the moral normativity of socially constructed norms

(chapter 2), and subsequently presents the Agency-Respect View (chapter 3). The second part of the book applies the Agency-Respect View to three important questions in practical philosophy: the grounding of moral rights (chapter 4), the obligation to obey the law (chapter 5), and the explanation of the wrong of collective sovereignty violations (chapter 6).

In what follows, I give a more detailed overview of the book's contents, focusing specifically on its central thesis and then, more briefly, on its applications. One small caveat before I begin. The views I develop in the book are inspired by the work of other scholars. In this précis, for ease of exposition and in light of space constraints, I will not refer extensively to this other work. I invite readers to look at the book itself, to trace the many intellectual debts I owe to those who have preceded me.

2 Socially Constructed Norms Versus Valid Moral Principles

In chapter 1 of the book – partly drawing on work from Hart (1961) and Brennan et al. (2013) – I characterize socially constructed norms as propositions containing normative operators, such as 'ought' and 'may,' that are publicly accepted by a large enough number of people in a given context. According to this characterization, the proposition 'everyone who wishes to take the bus ought to queue at the bus stop' is a socially constructed norm in the context of the UK. It is a proposition containing a normative operator ('ought') that is publicly accepted in the given context. The acceptance is 'public' insofar as it is common knowledge among the context's inhabitants. But what, exactly, does it mean for a proposition to be 'accepted'?

A variety of options offer themselves. Acceptance could take the form of a belief, a desire, an intention, a piece of behaviour, or a combination thereof. I opt for an interpretation of acceptance according to which acceptance requires *both* a belief in the relevant proposition *and* a robust intention that the proposition function as a general standard of behaviour. My opting for this interpretation is in part motivated by the book's central question and aim. (Different interpretations of 'acceptance' – and hence different conceptualizations of socially constructed norms – may be appropriate in the context of an inquiry with different purposes.)

So, why do I take beliefs and robust intentions to be the markers of acceptance? First, I regard beliefs as necessary since, in the absence of beliefs, breaches of norms would not be accompanied by sincere accountability responses. For instance, if people followed the queuing norm due to pluralistic ignorance – i.e., out of the mistaken belief that others accept the proposition 'one ought to queue' – the sanctions or criticisms levelled at queue-jumpers would not be accompanied by sincere reactive attitudes. Nobody would regard jumping the queue as genuinely wrong,

but they would all act as if it was, out of conformism. The presence of a norm would be, in some sense, an illusion: an illusion that would be revealed as soon as people's true beliefs were exposed (Prentice and Miller 1993).

While I regard beliefs as necessary for the existence of socially constructed norms, I do not think they are sufficient. This is because, at least according to a prominent (though not universally accepted) model of agency, beliefs by themselves – mere *cognitive* attitudes alone – cannot be action-guiding. To obtain action-guidance, some *conative* attitude is also needed. Here, I think intentions – rather than desires – can do the job. When we intend something, we have, in some sense, committed to it: we have made a certain agential investment in it. Intentions are thus more 'committed' action-guiding attitudes than, e.g., desires. I may desire that, say, the queuing requirement function as a general standard of behaviour, but this wish of mine, even if shared by others, may not give rise to something we would recognize as a queuing norm. After all, many seem to desire that stricter environmental requirements function as general standards of behaviour, but this shared desire does not suffice for there to be corresponding norms. Also, not all norms we accept are ones we desire: I may feel bound by a norm, believe in it, and intend to conform to it, while not desiring that it function as a general standard of behaviour, since I find it inconvenient (Brennan et al. 2013, 25–27).

While desire would be too weak, requiring conforming behaviour for there to be a norm would be too strong. At times, a norm exists even when many do not conform to it, out of, say, distraction or weakness of will. If non-conformity is accompanied by the relevant kinds of reactive attitudes – e.g., guilt or resentment – then a norm is present.

In light of these considerations, I opt for intention as the relevant action-guiding attitude constitutive of socially constructed norms – and not any kind of intention, but one that we possess sufficiently robustly. For instance, if people's intention that the queuing requirement function as a general standard of behaviour were to disappear whenever they happened to be at the bottom of a queue, the queuing norm would probably not exist. Following Calhoun (2009), I call robust intentions 'commitments': ways of robustly orienting our agency towards a goal, a principle, a norm, a certain activity or pursuit. To sum up, socially constructed norms are: normative propositions that are the object of public beliefs and commitments on the part of enough people in a given context.

As others in the literature have pointed out, socially constructed norms need to be distinguished from valid moral principles (Brennan et al. 2013, 5ff.). While socially constructed norms are the ones we happen to accept and around which we happen to orient our conduct, valid moral principles are those we *ought* to accept and which ought to guide our conduct. They provide us with a standpoint for evaluating and criticizing our actions and practices.

Now, there are complex debates in meta-ethics about the sources of moral validity, debates in which the book does not engage. The only minimal assumption made by the book is that valid moral principles do not reduce to the norms we happen to accept. In other words, while those norms may coincide with those principles, the fact that we accept the norms is not what makes those norms morally valid. So, for example, in a slave society, the rules of slavery are publicly accepted. Yet, those rules are clearly not morally valid. Throughout, I will be invoking moral principles which, I assume, my audience broadly considers valid (e.g., the principle that people should be treated as free and equal agents, the principle that we should not needlessly harm innocent others, and the like).

3 The Deflationary View and its Limits

With the distinction between socially constructed norms and valid moral principles in hand, chapter 2 puts our original question into sharper focus. That question asks whether the empirical fact that a certain action is mandated/prohibited by a socially constructed norm places us under an obligation to perform it. Since, at least in the eyes of many, one cannot derive an ought from an is, an affirmative answer to this question requires identifying a moral principle, *P*, which lends normativity to the fact that an action is norm-mandated/prohibited. So, our question is: Is there a valid moral principle *P* that explains when and why the empirical fact that an action is mandated (or prohibited) by socially constructed norms makes that action morally mandated (or prohibited)?

Ideally, good candidates for *P* should be familiar principles, typically accepted as valid within our political-moral outlook. Following this line of reasoning, it may be tempting to invoke well-known principles such as the following:

P1: One ought not to expose others to the risk of harm.

P2: One ought to honour others' legitimate expectations.

P3: One ought not to free ride on others' cooperation.

For example, P1 might explain why we ought to follow traffic norms, P2 why we should be tipping (in countries where tipping is the convention), and P3 why we are under moral obligations to pay taxes, since doing otherwise would mean taking advantage of tax-financed public services without contributing.

But note that, while P1, P2, and P3 explain why we often have moral obligations to do what socially constructed norms *happen to* require, they do not explain why *the fact that* they so require generates the obligations in question. To see this, note that when violating traffic norms would expose nobody to the risk of harm – e.g., in case the road is empty – P1 would not mandate obedience. P1 thus does not

single out something's being norm-mandated as morally relevant. Similarly, suppose a waiter knows that a particular customer never tips. In that case, P2 would not mandate tipping – since no legitimate expectations would be frustrated – and yet the norm still does. P2, as well, cannot infuse socially constructed norms *qua* norms with moral significance. Similar considerations apply to P3. All these familiar principles pick out facts that often accompany socially constructed norms as morally relevant, but not the fact that certain actions are mandated/prohibited by those norms.

Now, one might think that the fact that certain actions are mandated/prohibited by norms is *never* morally relevant. According to this view, the way socially constructed norms make a difference to our obligations is always reducible to the kinds of mechanisms illustrated by P1, P2, P3, and other, similar principles. Those who subscribe to this position hold what I call the *deflationary view* of the moral normativity of socially constructed norms.

While this view is certainly appealing – after all, we may instinctively be suspicious of the moral force of socially constructed norms, many of which are morally dubious – I think it has limits. First, phenomenologically, it looks like the fact that, in a given place, people accept certain requirements, makes a difference to what we ought to do. For instance, why do I feel obligated to take off my shoes when entering a Hindu temple? Not for hygiene reasons. Imagine, for instance, the shoes are brand-new, and I haven't previously worn them on the street outside. Also, I don't feel obligated to take my shoes off because doing otherwise would be dangerous or a matter of free riding. Instead, I feel obligated out of respect for the convictions and commitments of those who subscribe to that norm. Similarly, as an Italian living in the UK (some years ago), I felt under an obligation to respect the queuing norm at a bus stop (a norm that, in Italy, does not apply to that context) not because I thought that doing otherwise would be unfair or a matter of free-riding, but out of respect for the locals' commitment to that norm. I felt obligated because this is how 'the British wanted things to be done.'

Second, there appear to be cases of norm-breaches that strike us as intuitively wrongful, and where no explanation for the wrong in question seems available unless we attribute moral force to the relevant norms. Harmless trespass or harmless uses of others' property are cases in point. So, suppose that, while camping, I leave my kitchen utensils just outside my tent. Discovering I'm off for the day, you use one of my pots to cook your lunch, dutifully clean it, and put it back where it was. Clearly, you have in no way damaged me, and on the plausible assumption that property rights are conventional, the strong intuition that, since you did not ask for permission, you wronged me, can only be vindicated if those rights have moral force, independently of the benefits brought about by respecting them.

Based on considerations such as these – about phenomenology and explanatory necessity – I proceed in the book by considering possible alternatives to the deflationary view. Those alternatives include Scanlon's (1998, 339ff.) principle of established practices, Nieswandt's (2018) conventionalism about rights and duties, Owens' (2012, 2022) deontic-value theory of the binding force of convention, and Gilbert's (2006) joint-commitments view. While I find that each position has merit, I conclude that none of them satisfactorily vindicates the moral force of socially constructed norms.

This then leads me to chapter 3 of the book, where I defend my positive proposal.

4 The Agency-Respect View

The core idea, as already mentioned, is that respect for persons as particular individuals ('agency-respect') requires respect for the norms that they support, to the extent that such norms are authentic expressions of their agency.

Behind this idea lies a picture of human beings as autonomous agents, who direct their lives and express their particular selves in a variety of ways and, in particular, through making commitments. Such commitments involve robust intentions with which we orient our agency towards goals, practices, courses of action or values (Calhoun 2009). Commitments so understood can be formed in different ways. Some come into existence at a particular moment, when we make a decision: e.g., our commitment to going on a diet. Others, instead, develop gradually. We may take up painting as a hobby and then, over time, develop a commitment to devoting at least one day per week to our artistic pursuits. Furthermore, commitments can be more or less central to our lives. I am committed to both returning graded essays to students in a timely manner and being a loving mother. But the latter commitment is more central to my sense of self and who I am than the former. Similarly, people's religious or career commitments are typically more central to their sense of self than, for instance, their commitments to supporting a particular football club or to practicing sports regularly, though there may of course be exceptions.

Now, commitments are important expressions of our agency and, under certain specified conditions, they command our respect. This insight is central to what I call the agency-respect principle, which goes as follows: We have a *pro tanto* (i.e., overridable) obligation to respect people's commitments, provided these are authentic, morally permissible, and respecting them isn't too costly to us.

The idea is that we ought to lead our lives with appropriate sensitivity to other people's commitments. This 'ought' is heavily qualified, however. The relevant *pro tanto* obligations are generated only by commitments that are authentic, morally permissible, and respecting which doesn't place excessive burdens on our own

agency. These various parameters (authenticity, permissibility, and costliness) can be specified differently, giving rise to different versions of the agency-respect principle. In the book, I give some general sense of what my preferred specifications are, but the validity of the principle is not, in my view, dependent on those precise specifications. Different readers may plug in their own favourite specifications. Plausibly, there will be a fair amount of overlap between reasonable such specifications.

Moreover, even commitments satisfying these qualifications only generate *pro tanto*, that is, overridable obligations of respect. Sometimes, agency respect may require that we act in a particular way, but other considerations may militate in favour of our acting differently, and those considerations may well outweigh agency-respect-based ones. Whether they do partly depends on the nature of these other considerations and the weight of agency-respect reasons. These will be all the more weighty, the more central the relevant authentic and permissible commitments are to someone's identity and sense of self.

Now, as we saw, norms are partly constituted by public commitments (i.e., robust intentions) that certain requirements function as general standards of behaviour. This being so, failing to respect those norms means failing to respect the commitments of norm-supporters. Provided those commitments are genuine, morally permissible, and respecting them isn't too costly to us, agency respect obligates us to respect the corresponding norms. The reason we should do so, however, has little to do with the contingent merits of the contents of the norms (though, of course, the contents should be morally permissible), but with the fact that, by their nature, norms are expressions of people's agency. On the Agency-Respect View, the presence of a norm – i.e., of a public commitment – is integral to the explanation for why certain types of conduct are morally permitted or prohibited. The contingent merits of the actions mandated by the norms do not do the explanatory heavy lifting.

Crucially, the Agency-Respect View does not command general conformity to norms. By contrast, in many cases, it will only lend little if any moral normativity to them. This is because, in the case of many norms, the commitments underpinning them won't be authentic, but the product of coercion, power abuses or brainwashing. Only in cases where norm-supporters, upon reflection, do not feel alienated from their commitments to the norms, can their commitments be regarded as authentic – at least under my preferred specification of the authenticity parameter, inspired by Christman's (2007) work. Equally, norms with dubious moral content will also not generate *pro tanto* obligations. And just as much, if respecting norms underpinned by permissible and authentic commitments would place too great a burden on our agency, then no relevant *pro tanto* obligation would be created. Finally, even when the obligations are created, their strength may vary significantly, and they are still liable to being outweighed.

The main take-home message of the Agency-Respect View, then, is that norms can indeed have moral normativity qua norms (and not just thanks to the merits of the actions they prescribe or prohibit), but there are significant limits to such moral normativity. And that moral normativity is the byproduct of a broader, familiar principle which requires us to respect other people's commitments, compatibly with the pursuit of our own.

5 Applications

The second part of the book, as I have mentioned, applies the Agency-Respect View to three major questions in moral, legal, and political philosophy: the grounding of moral rights, political obligation, and the nature of the wrong of collective sovereignty violations. The aim of this second part is not to settle these questions – such an aim would be absurdly ambitious. Instead, it is to 'put the agency respect view to work' and thereby illustrate what insights can be gained, in relation to each question, when we do so.

Regarding the first question, namely the grounding of moral rights, in chapter 4, I distinguish between rights in two senses: as inviolability and as control. The former amount to particular forms of obligatory treatment owed to humans. The latter to specific normative powers – i.e., powers of normative control over others' conduct, by giving them obligations/permissions – that humans are thought to possess. I argue that while rights as inviolability can exist in the absence of socially constructed norms, rights as control presuppose socially constructed norms for their existence. I contend that, without socially constructed norms, there would be no publicly accessible fact of the matter as to what amounts to exercising the relevant normative control – e.g., giving permissions/prohibitions – which would in turn render rights as control completely inert. I then consider how the agency-respect principle lends moral normativity to the socially constructed norms that confer rights-as-control upon us. In so doing, I extend my analysis of the moral force of socially constructed norms to a specific class of such norms, namely power-conferring norms.

Regarding the second question, namely the grounds of political obligation, in chapter 5, I put forward two main claims. First, I argue that virtually all extant theories, while offering plausible reasons for why we often ought to do what the law requires, fail to explain why we ought to obey the law 'because it is the law.' They are, in this sense, versions of the deflationary view. Second, I argue that the Agency-Respect View provides a basis for establishing an overridable obligation to obey the law 'because it is the law' out of respect for people's commitments to the rule of law. In so doing, the Agency-Respect View steers a middle course between anarchism and realism about political obligation. Why? Because it vindicates a *heavily qualified*

form of political obligation, one according to which the obligation to obey the law is, ultimately, no different from our obligation to respect other socially constructed (non-legal) norms.

The third question, explored in chapter 6, concerns the wrong involved in violating collective, as opposed to personal sovereignty. Individuals have rights as control, which make them ‘sovereign’ within a specific domain. In that domain, they possess normative control over others’ actions: they can determine whether those actions are permissible/forbidden. Similarly with collectives, such as states: within a certain domain, it is up to them as collectives to determine what actions, on the part of citizens (internal sovereignty), aliens, and other states (external sovereignty), are permitted or forbidden. Now, it is easy to explain why violations of collectives’ – specifically, states’ – sovereignty that are associated with a negative impact on the lives and interests of individuals are wrongful. But what about ‘pure’ sovereignty violations, namely the collective equivalent of ‘harmless trespass’, where no discernible individual interests are undermined, yet we intuitively think that something wrong has occurred? Cases that are discussed in the recent literature include peaceful annexations. I argue that, here too, agency respect can provide a satisfactory answer: harmless violations of state sovereignty are wrongful to the extent that they breach people’s – specifically citizens’, but also the international community’s – authentic and permissible commitments to state sovereignty norms.

Of course, much more would need to be said about each of the debates explored in the second part of the book, but hopefully this brief section can give readers a little taste of the conclusions reached in chapters 4, 5 and 6, and (if I am lucky!) spark their interest in reading the arguments leading to those conclusions.

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