

George Klosko*

Political Obligations and Respect for Social Norms

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Abstract: This paper examines Laura Valentini’s attempt to explain political obligations through her account of social norms, her ‘Agency-Respect View’ (ARV). A great strength of ARV is preserving the ‘content-independence’ of political obligations. However, ARV does not mesh well with the moral phenomenology of political obligations. ARV is able to generate moral requirements that are strikingly weak. Accounting for the far stronger moral force of requirements to obey the law requires appealing to law-independent considerations. Valentini’s account of these factors suggests greater explanatory force of an alternative view she dismisses, to which she refers as the ‘deflationary view.’ In addition, among alternative theories that Valentini rejects is one based on the principle of fair play. I respond to Valentini’s criticisms, thereby demonstrating the continuing applicability of fair play.

Keywords: political obligation; respect; social norms; content-independence; fair play

I want to thank Laura Valentini for her stimulating book, which sheds new light on a number of important issues. I am going to focus on one, political obligation. As generally understood, questions of political obligation concern moral requirements to obey the law. At the present time, the literature on this subject is in disarray (for an overview, see Dagger and David 2013). All the conventional accounts have been severely criticized, and an increasingly common view is that there is no satisfactory account. This makes Valentini’s attempt to solve the problem welcome, while if she were able to provide a convincing account, her accomplishment would be impressive. Moreover, in addition to providing a satisfactory account of political obligation, Valentini also attempts to demonstrate the shortcomings of the alternative theories. Accomplishing this as well would make her achievement more impressive. In responding to Valentini, I will discuss her attempt to explain political obligations

*Corresponding author: George Klosko, Department of Politics, University of Virginia, Charlottesville, VA, USA, E-mail: gk@virginia.edu

and then her criticisms of one particular theory of obligation, based on the principle of fair play.

1 The Agency-Respect View (ARV)

Valentini's account of political obligation is an application of her general theory of social norms. She calls this the 'agency respect' view, to which I will refer as ARV. According to ARV, norms attain their normative force from people's concern with them. To repeat one of Valentini's examples, Abel feels an obligation to take off his shoes when entering a Hindu temple, even though he does not find the reasons given for this practice persuasive. (Call this example *Temple*.) It is right to do so because other people care deeply about the practice. It is one of a set of norms or principles that is central to their senses of agency and of themselves. By taking off his shoes, Abel demonstrates respect for these other people. Not to do so would be perceived as disrespectful. Valentini (2023) recognizes conditions that must hold for ARV to operate. These are as follows:

In a nutshell, I argue that the moral normativity of socially constructed norms stems from our duty to give people agency respect: to respect their authentic commitments as agents, provided those commitments are morally permissible and respecting them isn't too costly for us. (Valentini 2023, 82)

Valentini argues that ARV grounds moral requirements to obey the law. These obligations are similar to requirements that hold in regard to other social norms.^{1,2} Consider an example Valentini uses – which is a staple in the literature (e.g., Smith 1973, 971). Beth comes to a red light in the middle of the desert, in the middle of the night. She has complete visibility in all directions and can be certain that no cars are coming from any direction. (Call this *Traffic Light*.) Would it be wrong for her to fail to stop and go through the light? Beth understands the reasoning behind traffic laws and recognizes the possibility that these considerations are not relevant in this case. But she decides she should stop, because that is the law.

Very briefly, Valentini's reasoning is that, by ignoring the law, Beth would demonstrate disrespect for her fellow citizens, similar to what Abel would by not taking his shoes off in *Temple*. Like the norms upheld by Hindus, her fellow citizens have enacted traffic laws, as part of the overall system of laws. They are deeply

¹ "If we have an obligation to obey the law, this is because we have obligations to obey the prescriptions of socially constructed norms more generally, legal norms being a particular class of such norms." (Valentini 2023, 151)

² Some exposition in this paper is lightly adapted from Klosko 2011, 2023 and other papers.

committed to the rule of law and see adherence to their laws as central to their identity and sense of agency.

On the assumption that this brief account is satisfactory for present purposes, we can proceed to examine it. A great strength of ARV is that it is able to preserve the ‘content independence’ of political obligations (Adams 2017; Hart 1958; Hart 1982).² With content-independent (CI) reasons, the ordinary connection between the reason for an action and the action itself is severed. An example of an ordinary reason is that I close the window because the room is cold (Hart 1982, 255). CI reasons allow the substitution of different contents without otherwise affecting reasons for action. To use a military example, the sergeant orders the private to stand at attention. The latter is required to do so not because of the inherent value or other features of the actions but because he has been ordered to do so. Or imagine that a father tells his young daughter to eat her peas. In a case such as this, we are able to distinguish the reason why she should eat her peas, which is the father’s command, and the action commanded. If her father told her to go to bed, her reasons to comply would be similar, in spite of the different contents of the two commands.³

According to traditional understanding, political obligations are also content independent (CI). If the law says you should pay an income tax of 25 %, that is what you are required to pay. The state may have mandated taxes of 20 % or 40 %, which would then be the requirement. In all these cases, the underlying reasons why you should comply are no different, even though the actions required do differ. The reason you are required to pay is that is the law. On this account, obligations to obey the law follow from social facts concerning the nature of laws or how they are made, rather than from their content. Understanding political obligations in this way is standard in the literature. For instance, according to Leslie Green: “Political obligation is the doctrine that everyone has a moral reason to obey all the laws of his or her own state and that this reason binds independently of the content of the law.” (Green 1999, 309) Green views this feature as a “necessary one in any argument purporting to establish the existence of a political obligation.” It could not be abandoned “without abandoning part of any satisfactory analysis of political authority” (Green 1988, 226, 239).

Central to what I regard as the traditional view of content independence is a single, expansive CI reason to obey virtually all laws because they are laws. This view is bound up with what Green calls the “self-image of the state.” (Green 1988, chapt. 3) He claims that the state sees itself as a ‘duty imposer.’ By passing a law or other edict, it changes people’s normative status, giving them reasons to obey the edict in question. Although the state is not able to pass any law it pleases, central to

³ Some examples in this paragraph are taken from Adams 2017, 149, 145.

the traditional view is that it has extremely wide latitude. Basically, it is able to pass any law that has rational basis and is not objectionable on moral or constitutional grounds. As long as these minimal requirements are satisfied, people subject to its jurisdiction are required to obey laws that are passed almost without regard to their content, because they are laws. ARV includes similar conditions in its requirement that socially constructed norms, including laws, be ‘morally permissible.’

In recent years, developing a theory of political obligation that preserves content independence has proved to be a considerable challenge. One familiar ground of obligation that is able to preserve this is consent. Assume that Claudia consents to the government. On such a view, she agrees “to be concluded by the majority” (Locke 1988, sec. 96), and so what the majority decides binds her to obey—because it is law, rather than the content of specific laws. However, as is generally recognized, such a view is beset by the insuperable problem that relatively few people have performed express acts that constitute consent to obey government or consented tacitly (esp. Simmons 1979, chapt. 4) Other proposed grounds of obligation are not able to support requirements to obey sufficiently expansive laws (Klosko 2023). For instance, natural duties of justice are not able to ground obligations to obey laws if doing so would be costly, while obeying many laws, e.g., tax laws, may require considerable costs. (We will return to cost considerations below.)

The magnitude of Valentini’s accomplishment becomes apparent in this light. According to ARV, citizens’ requirements to obey the laws are grounded in the need to respect the agency and commitments of their fellow citizens. The laws of their polities express these concerns, and so people have requirements to obey the law. Like other CI obligations, these requirements are grounded in social facts rather than in their specific contents. On this account, then Beth is required to stop at the red light, regardless of particular circumstances, because not to do so would violate the law and show disrespect to her fellow citizens.

The cost qualifier Valentini (2023, 170) posits for social norms in general also applies to political obligations. They too must be complied with only if doing so is not overly costly.⁴ She recognizes that this severely limits the strength of these requirements:

On the view that I have defended, the obligation to obey the law turns out to be potentially rather weak and is fundamentally no different from the obligation to queue up at bus stops, to wear modest clothes in church, to stand up at high table when grace is said, and so forth. (Valentini 2023, 176)

⁴ Valentini generally puts this in terms of costs to one’s conscience or beliefs: “if obedience to legal requirements were to undermine one’s integrity, say because such requirements contradict one’s deepest religious or ethical convictions, the agency-respect principle would not mandate obedience.” (Valentini 2023, 169)

Accordingly in any particular situation, in terms of moral force, the obligation to obey the law may contribute relatively little: it “often accounts for *a fraction* of the wrong involved in performing actions prohibited by morally permissible laws” (Valentini 2023, 176; her italics). However, the moral requirements to comply with such laws can be strong, as reinforced by law-independent considerations. For instance, the requirement not to assault another person can be quite strong, based largely on the moral wrong of committing assault, although the requirement to obey the law does not make a major contribution.⁵

2 Critical Assessment of ARV

Clearly, the ARV account of political obligation is an impressive achievement. Valentini has found an original, plausible basis for CI requirements to obey the law. Unlike other bases in the literature that are claimed to ground political obligations, ARV is not immediately suspect (Klosko 2023) – or, I should perhaps say, I do not know of immediate severe objections. But in spite of these points, I believe it confronts difficulties. In particular, it is not clear how successful Valentini is in satisfying two criteria she says a satisfactory explanation should meet: explanatory force and fit. As she describes the former, an “explanation is powerful, [if] it makes the phenomenon in question less surprising.” (7) For “fit” to be satisfied, the explanation must fit “the available evidence.” (8) I believe ARV falls short on both grounds. We will begin with explanatory power. I believe that examining ARV in the light of what I view as the moral phenomenology of political obligation calls into question its ability to satisfy this criterion. Questions of fit are discussed, below.

I should begin with a disclaimer. Talk of the moral phenomenology of political obligation is immediately problematic, because of the lack of reliable evidence. I know of few dependable studies of people’s attitudes towards political obligations, while even the best of these do not provide much insight into their moral reasoning in their beliefs that they are or are not required to obey given laws.⁶ What I present here is what strikes me as intuitively plausible – in the hope that the reader too will find it plausible.⁷

⁵ “Much – though not all – of what is wrong with performing those actions will likely be law-independent, as in the case of laws against murder and theft, as well as traffic and safety regulations.” (Valentini 2023, 176)

⁶ Tyler 2006 is probably the best known. Although, as a social psychologist, Tyler provides an insightful explanation of people’s feelings about political obligation in this work and his many others, he has relatively little to say about the moral reasons to which they appeal.

⁷ To some extent, I draw on the evidence in Klosko 2005, esp. that based on focus groups, which I believe is the most suitable method for exploring the relevant reasoning.

As it seems to me, when people reason about their political obligations, they draw connections between what the law tells them to do and functions the law fulfills. In other words, questions of political obligation are deeply involved with the state and what it does. It is the state that people are required to obey, and I believe the state is a central feature of general reasoning on this subject. Accordingly, if Danielle is required to pay some percentage of her income as tax, in thinking about this requirement, she will likely connect it up with the services tax dollars provide. If she is ordered to report for military service, she will likely connect this up with the need to defend her country. If she is ordered not to cause pollution in various ways, she is likely to connect this up with need to protect the environment. In cases such as these, when people consider their legal requirements, it is likely that the factors they recognize as providing reasons to obey the law are mainly law-independent. If Danielle is ordered to pay some tax, she will consider the social good her tax payments do, rather than the need to obey the law because it is the law.⁸ It is likely that, when she takes into account the fact that the tax is required by law, she will focus mainly on penalties for non-payment.⁹

Consider Danielle's reasoning if she is able to call to mind particular moral principles that could underlie her requirements. For instance, if she believes that her obligation to obey stems from gratitude, she is likely to think about her gratitude in regard to what the state does for her, as opposed to a conception of gratitude that does not refer directly to these factors. Similarly, if she is a proponent of fair play, she may well say that her requirement to pay taxes is a duty to contribute to social goods that depend on the contributions of everyone. She would conceptualize fairness in regard to this context, as opposed to a norm that does not appeal to these factors.

In her account of ARV reasons to obey the law, it is striking how infrequently Valentini discusses the state and its functions. As we have seen, her explanation is centrally concerned with the norms of one's fellow citizens. Danielle should pay her taxes because her fellow citizens view the norm of paying taxes as central to their sense of self and agency. It is in this light that I believe Valentini strays from the ordinary moral phenomenology of political obligations. I think it is unlikely that many people actually think of their obligations to obey the law in terms such as these. We could perhaps push people's reasoning back an additional step. When she explains her conduct in terms of ARV, if pressed further, Danielle may say that people care about obeying the law because of what the law does for them. But what

⁸ Schauer 2015, 5–6, provides some support here – and as we have noted, Valentini believes that the moral force of CI reasons in ARV may be rather weak.

⁹ Studies of tax compliance demonstrate that this is an important factor, as is also the perceived fairness of the tax system; for references, see Klosko 1992, appendix 2.

the law does for them is content-dependent rather than content-independent, and ARV's initial reasoning is not in these terms.

One reason ARV operates in this fashion may stem from the kinds of examples on which Valentini draws in developing it. Many times she speaks of coming to Britain and being struck by the practice of queuing. As an Italian, she was not familiar with this practice, and it struck her as peculiar. Trying to find out why she would be criticized for not doing this helped her arrive at the basic principles of ARV. People take the queuing norm seriously and it as part of their identity. To flout the norm is to disrespect something they care about, and so is viewed unfavorably. What is striking in this example, or in the similar example of the norm to remove one's shoes in *Temple*, is that the norms in question are observed from the perspective of an outsider, who does not perceive them as fulfilling useful functions. One reason such outsiders have difficulty grounding the relevant norms in their contributions to society is that, in their eyes, the norms do not appear to contribute.¹⁰ Thus the explanations for their normativity must be sought elsewhere.

The examples Valentini considers in regard to obeying the law are more complex and I will return to them below. But the conduct described in *Red Light* is similar in that Valentini describes the required behavior as making no detectable contribution to the social good.¹¹

3 The 'Deflationary View'

The position towards which these arguments is pointing is one that Valentini rejects, which she calls the "deflationary view" (cf. Valentini 2023, 53–60). On this account, the reasons people invoke to explain the wrongness of given actions do not include violation of norms as norms. Rather they focus on law-independent considerations, which include other norms that are relevant to the actions in question as well other factors. In Valentini's words: "The obvious explanation for why the addressees of these norms ought to conform to them is that the norms *mirror independent moral principles*." (Valentini 2023, 54; her italics) As noted above, if asked why it is wrong to assault other people, Danielle is likely to appeal to the wrong of assaulting someone rather than the fact that it is against the law. Moreover, if she does refer to obeying

¹⁰ I should note that, having lived in Britain, not only as an American but also from New York, which is notorious for the rudeness of its inhabitants, I found the norm of queuing useful and civilized.

¹¹ Valentini 2023, 19–20, provides a list of eleven norms, in which she intermixes norms of etiquette, moral norms (e.g., not to harm 'innocent others') and significant political obligations, e.g., requirement to pay one's taxes.

the law, it is likely that she will appeal to her desire not to face the consequences of being found to have broken it.

Valentini recognizes advantages of this account. These include that it explains our strong sense that we should act as certain laws require and so fits with common sense. As we have noted, the deflationary view is also able to ground obligations that are strong. For example, without including a requirement to obey the law, it provides strong reasons not to assault other people. But the view also has disadvantages. It makes political obligations content-dependent rather than independent. The reason to comply with a given law centers on specific factors that bear on it and consequences of obedience or disobedience rather than the fact that it is law.¹² If a satisfactory theory of obligation must be CI, the deflationary view falls short hence one of the strong points of ARV. Because it does not include a norm to obey the law because it is the law, Valentini contends that the deflationary view is unable to explain our intuitions in cases in which we feel we should obey the law, even though there are not other strong reasons to follow it. This is her main argument against the deflationary view, and so it must be considered.

Valentini's first case is analogous to *Red Light*. Ernie feels he should stop at a red light, although it is the middle of the night and no cars are visible in any direction. Valentini's explanation is of course ARV. We must ask, then, if the deflationary view is able to account for the intuitive feeling that one should stop, although there is no functional reason to do so.

I believe it can. Valentini's account of the deflationary view is incomplete. We are able to modify this position and draw on additional resources that she does not consider. According to a modified deflationary view, once again, Ernie is required to behave in accordance with the law, because of non-law-related factors. In analyzing such cases, scholars typically distinguish between *obeying the law* and *complying* with it. In order to count as an instance of obeying, one factor in the subject's practical reason must be that the action in question is required by law. As Robert Paul Wolff puts this: "Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*." (Wolff 1970, 9; his emphasis) Complying with the law is behaving in accordance with the law for reasons other than the fact that it is law, e.g., not assaulting other people because it is wrong to do so, without regard to what the law says on the matter.

To this extent, this analysis is consistent with Valentini's account of the deflationary view. But we can include additional considerations. Underlying moral

¹² I should note that, in certain cases, I believe the consequences in question should be assessed as *generalized* consequences, i.e., "what if everyone did that?" rather than the consequences of a given single act; see Klosko 1990.

norms admit great latitude. In regard to assault, for instance, there is room for disagreement as to exactly what behavior is forbidden. While assault may appear to be relatively straightforward, other areas of conduct are far more open-ended. A clear example is rules in regard to property. While there are clearly underlying norms that dictate behavior in regard to property, these allow considerable variation, and people are likely to disagree about them. Accordingly, in order to coordinate the activities of large numbers of people in a modern society, the state must specify exactly what is allowed in regard to property and what is not. Even though the state assumes this role, its doing so is consistent with the deflationary view, as the fact that certain behavior is mandated by law need receive no normative force from the fact that it is law. All normativity is transmitted to the rules made by the state from underlying norms (Brinkmann 2020; Garthoff 2010).

Because of the state's role in specifying the content of relevant moral factors, an additional aspect of a modified deflationary view concerns the epistemic dimension of complying with the law. Even if we grant that the fact that law *L* is law provides it with no normative force, if we assume that it is adequately supported by non-law considerations, Ernie will be required to behave in accordance with it – to comply with it – because of these factors. The ends *L* is intended to accomplish require this. Complying with the law, then, is not entirely without reference to the law. Although the moral force of the relevant reasons to comply do not include the fact that *L* is law, the *content* of the requirements encompassed by *L* are determined by law. Recognizing this, we can see that, even though the deflationary view is not CI in the conventional sense of being required by a single inclusive moral reason, it includes content independence in a reduced sense. In each particular area in which the law must pronounce, the state must determine the content of what it requires. This is generally necessary, even if requirements to comply in different areas are supported by different considerations. When the state has made its determinations – ideally through democratic processes – its determinations become the content of its subjects' obligations.

Because citizens are required to comply with *L* in this way, complying with the law involves an epistemic sacrifice. Once again, Ernie must set his own views aside and act as the law says to act. It is here, I believe, that we find reasons why Ernie may believe he should stop at the red light, though there do not appear to be good law-independent reasons to do so. Confronted with the red light, Ernie recognizes the requirement that he set his own views aside and behave as the law demands. In spite of seeing no good reason to stop, he recognizes the need to defer to the law's judgment and set his own reasoning aside. Obeying the law is generally a useful cognitive shortcut in determining how one should act. In this particular instance, as is generally the case, obligations to follow the law are of limited force. They are *prima facie* or *pro tanto* obligations, rather than conclusive obligations, capable of

being overridden by competing moral considerations. If there are pressing reasons to ignore the red light, it may be legitimate for him to do so. For instance, if he had to take an accident victim to the hospital, that would likely be sufficient ground. *Red Light* is a close case and one on which people may have different intuitive responses. There are clear reasons to ignore the law, but whether these tilt decisively in one direction rather than the other is difficult to say, and people may well disagree (cf. Valentini 2023, 57). But clearly, the general need to set aside one's own judgment and defer to the state explains Ernie's possible intuitive feeling that he should stop without having to invoke the considerations central to ARV.

Even though Valentini's other cases differ in various ways, I believe the basic pattern of reasoning in regard to *Red Light* can be extended to address them as well, and so I will not work out the details here. If this is true, then, I believe that, in terms of explanatory adequacy, this modified deflationary view is more persuasive than ARV. It provides a clear, commonsense explanation of why we should obey the laws and is more consistent with familiar moral phenomenology of obeying the law than is ARV.

In addition to the difficulties with explanatory power, ARV can be seen to have problems with Valentini's second criterion, proper fit. In particular, it has trouble covering the relevant material because of its restrictions on the strength or cost of obligations. As we have noted above, under ARV, political obligations like other norms hold only if they are not overly costly (above, 2). The problem this causes is that political obligations can be extremely costly.¹³ Relevant obligations include requirements to pay income taxes, which could cost one a high percentage of her income. A central political obligation concerns being required to serve in the country's armed services, which could cost one her life. A theory of obligation that is not able to ground requirements such as these has problems fitting with the evidence. As it seems to me, the difficulty here is that, in terms of their moral force, the requirements to respect other people that are central to ARV resemble natural duties of justice. As these are commonly described, natural duties are owed to people generally, unlike obligations, which are owed to specific people.

For instance, by making a promise A creates a standard example of an obligation. If A makes a promise to B, what is promised is owed only by A and only to B. Other people are not directly involved. Because ARV is an expansive requirement to treat other people with respect, it is not restricted in this way. Accordingly, natural duties generally tend to be limited in regard to what they can demand of

¹³ Valentini is skeptical of this claim: "The reason why advocates of the authority of law often defend a very weighty obligation to obey it, I suggest, is that they surreptitiously build into the force of that obligation independent moral reasons that have little to do with 'something being required by law.'" (Valentini 2023, 177)

people. For instance, in probably the best-known account of natural duties of justice, John Rawls recognizes cost limitations. For instance, the duty of mutual aid is to help others when they are in need, “provided that one can do so without excessive risk or loss to oneself.” (Rawls 1999, 98) The duty to bring about a great good holds “only if we can do so relatively easily” (Rawls 1999, 100). Interestingly, when it comes to the natural duty to support just institutions, which Rawls views as more or less equivalent to political obligations, he drops the cost qualification:

From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. (Rawls 1999, 293–94; similarly, 99)

One will note that when Rawls moves from the specific requirement to support the just institutions that apply to us to the general duty to help establish such institutions when they don’t exist, he posits a cost qualifier.¹⁴

Valentini has a response, that the norms of ARV do not in themselves have to justify requiring adherence to costly laws. As we have noted, she believes they can be supported by law-independent considerations. However, on this interpretation, ARV verges uncomfortably close to the deflationary view. Although ARV contributes to the normativity of certain norms, as we have seen, its contribution is extremely weak. The state is able to generate adherence to costly laws only if there exist law-independent reasons to obey them. In Valentini’s view as in the deflationary view, these law-independent factors bear almost the entire burden of grounding requirements to obey the law.

In sum, then, I believe there are problems with ARV’s fit with the evidence, as well as the explanatory power of its account of why people are required to obey the law. Once again, I find the deflationary view – properly modified – more persuasive than ARV on both of Valentini’s grounds. It has greater explanatory power, and because it is not beset by cost qualifiers, fits better with the evidence. Of course, the great advantage of ARV in comparison to the deflationary view is its content independence. But to my mind, this advantage does not outweigh its disadvantages. Like a theory of political obligation based on consent, a requirement of content independence may be intuitively pleasing, but represents an impediment to solving important philosophical problems. Because adherence to content independence impedes development of an acceptable theory, in the spirit of Wittgenstein, rejecting it lets the fly out of the fly bottle and makes progress on the relevant issues possible.

¹⁴ For the implications of Rawls’s handling of cost qualifiers, see Klosko 1994.

4 Criticisms of Alternative Views

As noted above, in addition to establishing the strengths of ARV, Valentini attempts to demonstrate that familiar accounts of political obligation are defective. To bring this brief paper to a conclusion, I will respond to her criticisms of one particular theory, based on the principle of fair play.

The moral basis of this principle is mutuality of restrictions. Under specified conditions, the sacrifices made by members of a cooperative scheme in order to produce benefits also benefit noncooperators, who do not make similar sacrifices (Arneson 1982; Hart 1955; Klosko 1992). According to the principle, this situation is unfair, and it is intended to justify the obligations of noncooperators. The underlying moral principle at work in such cases is described as “the just distribution of benefits and burdens” (Lyons 1965, 164).

Valentini has three main criticisms of fair play. First and to my mind most important, the principle has problems establishing CI political obligations. Valentini recognizes an interpretation of fair play that overcomes this problem. The overall system of laws can be viewed as a cooperative scheme, with everyone required to obey (see Dagger 2018). Valentini appears to direct further criticisms of fair play at such a view.¹⁵

She presents two main criticisms. First is the fact that some laws “may be silly or unhelpful.” Even generalized failure to obey them does not have negative consequences or undermine the rule of law (Valentini 2023, 160). The second critique questions whether obeying the law “always corresponds to one’s fair share.” If burdens or benefits are not in fact fair, then by reciprocating people would not in fact be doing their fair shares (Valentini 2023, 161). I will reply to these objections, in turn.

As it seems to me, any theory of political obligation is vulnerable to the first objection. Any code of laws may have silly or useless laws, and so interesting questions can be raised about moral requirements to obey them. A familiar example cited by Hart is laws against witchcraft that are still on the books in various British jurisdictions (Hart 1961, 60–61). A theory based on ARV would seem to be particularly vulnerable to this problem, given its concern to explain obligations to obey norms that do not have reasonable bases. But a theory based on fair play is also troubled by it, given its concern with fair reciprocation. Requiring a burdensome return for something that has no value is clearly unfair. However, there is a possible response as seen above. Fair play political obligations, like obligations generally,

¹⁵ I should note that I do not accept this interpretation of fair play, and so view the problem of content-independence as one with which fair play must deal. This complex matter cannot be discussed in this paper.

hold only other things being equal and are able to be overridden or dissolved by countervailing factors. The fact that a given law is obviously silly and useless could well be one such factor, and so a proponent of fair play might well not have a moral requirement to comply with it. It is notable that, although they may remain on the books, laws such as this are routinely ignored by citizens and public officials alike.

As indicated, the second criticism concerns possible unfairness of particular laws. Given its central concern with equal benefits and burdens, this is a significant problem for fair play. However, there is once again a response. First, as just noted, the relevant obligations hold *pro tanto* and are able to be dissolved or overridden by substantial countervailing factors, including significant unfairness. More significant, in a large society, especially a pluralistic one, people are likely to disagree about exactly what fairness consists in as well as about the substantive fairness or unfairness of particular distributions. Given the need to treat people with equal concern and respect, it seems clear that such disagreements must be settled by fair democratic processes (Christiano 2008; Klosko 1992, chapt 3). The fact that a given distribution is judged fair by such a process raises the burden of justification a critic must bear. As suggested above, fair play obligations involve an epistemic sacrifice. Although Felicia might believe that a given distribution is not fair, part of her obligation to make appropriate recompense is to go along with it, barring egregious injustice or uselessness. Included in her moral requirement to bear burdens equal to those of her fellow citizens is a requirement to submit her judgment on the relevant issues to the same decision-making processes that they are also bound to accept. Once again, it is worth noting that these processes are content-independent. Whatever the majority decides (within reason) is binding on all who are bound by law.

Accordingly, I believe a fair play theory of political obligation is able to withstand Valentini's criticisms. As I envision it, a modified deflationary view would accord a large role to the principle of fair play. But I should reiterate that such a view does not generate CI political obligations as traditionally understood. Establishing a basis for political obligations that meet this standard is an important strength of Valentini's position.¹⁶

¹⁶ I am grateful to Ernie Alleva, Nate Adams, and Samantha Koreman for comments on a previous draft.

References

- Adams, N. P. 2017. "In Defense of Content-Independence." *Legal Theory* 23: 143–67.
- Arneson, Richard. 1982. "The Principle of Fairness and Free-Rider Problems." *Ethics* 92 (4): 616–33.
- Brinkmann, M. 2020. "Legitimate Power Without Authority: The Transmission Model." *Law and Philosophy* 39 (2): 119–46.
- Christiano, Thomas. 2008. *The Constitution of Equality*. Oxford: Oxford University Press.
- Dagger, Richard. 2018. *Playing Fair: Political Obligation and the Problems of Punishment*. Oxford: Oxford University Press.
- Dagger, Richard, and David Lefkowitz. 2013. "Political Obligation." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta. <https://plato.stanford.edu/entries/political-obligation/> (accessed May 1, 2020).
- Garthoff, Jon. 2010. "Legitimacy is Not Authority." *Law and Philosophy* 29 (6): 669–94.
- Green, Leslie. 1988. *The Authority of the State*. Oxford: Clarendon Press.
- Green, Leslie. 1999. "Who Believes in Political Obligation?" In *The Duty to Obey the Law*, edited by William Edmundson. Lanham: Rowman and Littlefield.
- Hart, H. L. A. 1955. "Are There Any Natural Rights?" *Philosophical Review* 64 (2): 175–91.
- Hart, H. L. A. 1958. "Legal and Moral Obligation." In *Essays in Moral Philosophy*, edited by A. I. Melden. Seattle: University of Washington Press.
- Hart, H. L. A. 1961. *The Concept of Law*. Oxford: Oxford University Press.
- Hart, H. L. A. 1982. "Commands and Authoritative Legal Reasons." In *Essays on Bentham*. Oxford: Clarendon Press.
- Klosko, George. 1990. "The Moral Force of Political Obligations." *American Political Science Review* 84: 1235–50.
- Klosko, George. 1992. *The Principle of Fairness and Political Obligation*. Lanham: Rowman and Littlefield.
- Klosko, George. 1994. "Political Obligation and the Natural Duties of Justice." *Philosophy and Public Affairs* 23: 251–70.
- Klosko, George. 2005. *Political Obligations*. Oxford: Oxford University Press.
- Klosko, George. 2011. "Are Political Obligations Content Independent?" *Political Theory* 39: 498–523.
- Klosko, George. 2023. "Content-Independence and Political Obligation: Scope-Limitations of Content-Independent Moral Reasons." *Political Studies* 71: 30–46.
- Locke, John. 1988. *Two Treatises of Government*, Student ed, edited by Peter Laslett. Cambridge: Cambridge University Press.
- Lyons, D. 1965. *Forms and Limits of Utilitarianism*. Oxford: Oxford University Press.
- Rawls, John. 1999. *A Theory of Justice*, 2nd ed. Cambridge: Harvard University Press.
- Schauer, Frederick. 2015. *The Force of Law*. Cambridge: Harvard University Press.
- Simmons, A. John. 1979. *Moral Principles and Political Obligations*. Princeton: Princeton University Press.
- Smith, M. B. E. 1973. "Is There a Prima Facie Obligation to Obey the Law?" *The Yale Law Journal* 82: 950–76.
- Tyler, Tom. 2006. *Why People Obey the Law*, Revised ed. Princeton: Princeton University Press.
- Valentini, Laura. 2023. *Morality and Socially Constructed Norms*. Oxford: Oxford University Press.
- Wolff, R. P. 1970. *In Defense of Anarchism*. New York: Harper & Row.