

# Respect for Persons and the Moral Force of Socially Constructed Norms\*

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**Abstract:** When and why do socially constructed norms—including the laws of the land, norms of etiquette, and informal customs—generate moral obligations? I argue that the answer lies in the duty to respect others, specifically to give them what I call “agency respect.” This is the kind of respect that people are owed in light of how they exercise their agency. My central thesis is this: To the extent that (i) existing norms are underpinned by people’s commitments as agents and (ii) they do not conflict with morality, they place moral demands on us on agency-respect grounds. This view of the moral force of socially constructed norms, I suggest, is superior to views that deny the moral force of such norms, and it elegantly explains certain instances of wrongdoing that would otherwise remain unaccounted for.

## 1. Introduction

Socially constructed norms—i.e., norms that exist as a matter of social fact—are all around us: from the “ladies first” custom, to the practice of queuing; from the religious norm that one should stand up for the minister’s blessing, all the way to the complex demands that legal systems place on us.<sup>1</sup> A constant presence in our lives,

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<sup>1</sup> By “socially constructed norms” I mean norms whose existence depends on the actions and dispositions of individuals (for a precise definition, see section 2). I contrast socially constructed norms with “critical moral norms” (Hart 1963, 20). The latter, I assume, exist independently of individuals’ behaviour and dispositions. For instance, the norm that slavery is impermissible is a valid moral norm even in a slave society, namely a society that fails to *recognize* the validity of that moral norm (Perry 2006, 1176). Furthermore, the category of “socially constructed norms” is broader than that of informal “social norms,” as understood in the philosophy of social science. Socially constructed norms, on my view, also include formal legal norms. For an influential account of social norms, developed from a game-theoretic perspective, see Bicchieri (2006).

such norms elicit mixed reactions. On the one hand, we often feel their moral pull and believe that we would act wrongly if we violated them. On the other hand, we mistrust them. How could something that is not independently morally required become morally obligatory just because a socially constructed norm prescribes it? Moreover, don't many socially constructed norms—such as sexist and racist ones—perpetuate unjust power relations?

In response to these mixed reactions, it is tempting to adopt a *deflationary view* of the moral normativity of socially constructed norms. On this view, the mere fact that certain actions are required or prohibited by socially constructed norms does not affect their moral status at all. If we feel the moral pull of such norms, this is *either* because acting as they require helps us achieve good outcomes, such as safety and coordination, *or* because what they demand is independently morally mandated, such as not murdering, not lying, not harming, and so on.

In this paper, I explain why we should not accept the deflationary view, and I offer a new account of where the moral normativity of socially constructed norms comes from and what its limits are. I call my account the “agency-respect view.” In brief, I argue that the moral normativity of socially constructed norms comes from the pro tanto duty to respect people’s permissible exercises of agency—specifically, their commitments as agents, provided those commitments are morally permissible. This duty accounts for when and why the fact that a socially constructed norm requires something of us places us under a pro tanto obligation to comply.

The paper is structured as follows. In Section 2, I define socially constructed norms. In Section 3, I explain why the deflationary view is unsatisfactory. In Section 4, I turn to how our duty to treat others with respect relates to socially constructed norms. I suggest that this duty requires respecting the *concrete ways* in which people exercise their agency—i.e., it requires respecting their commitments—provided these are morally permissible (cf. Noggle 1999). I call this notion of respect “agency respect.” I argue that, since socially constructed norms exist by virtue of people’s

commitments, the pro tanto duty to treat others with agency respect grounds the moral normativity of those norms. In Section 5, I highlight some distinctive features of the agency-respect view and relate it to the existing literature on norms and joint commitments. In Section 6, I demonstrate the explanatory power of the agency-respect view. In Section 7, I sketch some broader implications and conclude.

## **2. Socially constructed norms**

Every human social context is governed by some socially constructed norms: norms that exist as a matter of social fact. Such norms are requirements (“oughts”) accepted as binding by a large enough number of people in a given context, typically as a matter of common knowledge (Southwood and Eriksson 2011).<sup>2</sup> They set out what counts as appropriate behaviour in that context—i.e., behaviour that is required in the eyes of the context’s inhabitants—and what counts as inappropriate behaviour—i.e., forbidden.<sup>3</sup>

The requirements of socially constructed norms are typically general: they purport to apply not merely to a specific agent in a specific situation, but to a class of agents in a class of situations (Brennan, Eriksson, Goodin, and Southwood 2013, 3). For instance, the German norm that one should use the polite form “Sie” when speaking to strangers, rather than the more informal “Du,” applies to anyone speaking German to another person above a certain age whom they have not previously met.

Socially constructed norms, I have said, are requirements accepted as binding by a large enough number of people in a given context. When I accept a requirement as binding, I robustly intend that the requirement function as a standard of behaviour: an authoritative guide for my own and others’ actions.<sup>4</sup> Consider the following simple

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<sup>2</sup> The “oughts” I have in mind here are those violations of which trigger the types of reactive attitudes associated with violations of moral requirements.

<sup>3</sup> In offering this characterization of norms, I have benefited from the work of Brennan, Eriksson, Goodin, and Southwood (2013). From now on, this will be referred to as “Brennan et al. (2013).”

<sup>4</sup> As I understand it here, intention is a volitional attitude that need not exclusively range over one’s own actions, but may also involve the actions of others. (Note that whether a requirement functions as a standard of behaviour also depends on others adhering to it.) This understanding of intention—where

example. What is it for the inhabitants of a village to accept the requirement that one should queue up when waiting for the bus? It is for them to intend that the requirement function as a standard of behaviour. This is evident from the villagers' overall adherence to the queuing rule and in their disposition to criticize and sanction one another for breaches thereof (cf. Hart 1961, 55–57). The intention involved, in turn, must be sufficiently robust: one does not really accept the prescription that one ought to queue for the bus if, as soon as following it becomes costly—e.g., one arrives last—one's intention that it function as a standard of behaviour evaporates.<sup>5</sup>

Finally, a robust intention of the relevant kind is sufficient to constitute an acceptance of a norm even if the intention remains unfulfilled on some occasions (cf. Brennan et al. 2013, 20–21). To see this, suppose that, one morning, the villagers wake up to the shocking news that a violent attack has taken place near their local church. Distressed and distracted, they pay little attention to what they do, inadvertently breach the queuing norm, and fail to criticize one another for it. Does this mean that the villagers have temporarily stopped accepting the queuing requirement, hence that the corresponding norm has temporarily ceased to exist? It seems not. The norm—and the villagers' acceptance of its demands—is still there, even if they fail to comply with it. If an observer were to make the villagers aware of their norm breaches, they would apologise for them. They still robustly intend for the queuing requirement to function as a standard of behaviour; they just contingently fail to act on their intentions.

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the content of the intention is a proposition that need not be restricted to one's own actions—is familiar from the literature on *shared* intentionality, where Michael Bratman (1999) famously argues that the object of one's intention may include actions performed by others—as in his canonical formulation “I intend that *we j*” (where “*j*” stands for a joint action). This understanding is also in line with ordinary language and experience. As Wayne A. Davis (1984, 48) points out: “We often intend other people to do things, and as a result make, help or let them do it: my parents intended that I go to college.” Some readers may be sceptical about this use of the notion of intention, insisting that one can only intend one's own actions. Since my aim here is not to engage in a dispute about how intention is best defined, let me emphasize what I take to be central to intention for my purposes. To intend is not merely to wish certain things to happen. It is to orient one's agency towards the realization of goals, including ones that can only be realized with others' cooperation. If readers find the term “intention” ill-suited to designate this phenomenon, they can replace it with a different one.

<sup>5</sup> I remain agnostic about how much robustness is enough: my account is consistent with different specifications of this parameter.

To sum up: a socially constructed norm exists in a given context if enough people in that context robustly intend that its requirements function as standards of behaviour (where, typically, this is a matter of common knowledge). Norms so defined abound in the social world.<sup>6</sup> Familiar examples include: “One ought to stop at the red light,” “Doctoral students ought to attend the PhD workshop,” “One ought not to trespass onto others’ property,” “Customers ought to tip for service,” “One ought not to injure innocent others.” And the list could continue.

Norms such as these always exist *in given contexts* (Searle 2006). Queuing up at the bus stop is a norm in the UK, but not in Italy. Tipping is a norm in the US and other countries, but not in Japan. Not trespassing onto others’ property is a widespread norm, yet one that only exists in contexts with well-defined private property rights; and so forth. Throughout my discussion, I will take the context to be exogenously given.

Furthermore, socially constructed norms vary with respect to their level of formality. They include not just informal social norms, but also legal norms, which can be very formal. Borrowing terminology from H.L.A. Hart (1961, chap. 5), we may distinguish between “primary rules”—which directly govern individuals’ conduct—and “secondary rules”—which concern how primary rules may be created, ascertained, and enforced. Formal law, on Hart’s account, involves a combination of both types of rules. Informal norms, by contrast, typically consist only of primary rules.

Finally, socially constructed norms need to be distinguished from non-prescriptive behavioural regularities or “habits” (Hart 1961, 56; Southwood and Eriksson 2011). For example, a large number of Italians eat pasta for either lunch or dinner. This, however, is a mere habit. Deviations from this regularity do not trigger criticisms or sanctions.

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<sup>6</sup> Not everyone will agree with my characterization of socially constructed norms, especially given that this notion is contested in the literature. Since my aim is not to engage in conceptual analysis, for my purposes, it suffices that my characterization captures an important and pervasive phenomenon, many instances of which fit our ordinary-language notion of a socially constructed norm.

With this simple characterization of socially constructed norms in hand, we can now turn to examining their moral status.

### 3. The deflationary view and its limits

Does the fact that a socially constructed norm prescribes that one should  $\phi$  (i.e., act in a particular way) place one under a pro tanto moral duty to  $\phi$  (where “pro tanto” means “overridable”)? In other words, do socially constructed norms have moral normativity, qua socially constructed norms? Considering the norms listed in the previous section, we might be tempted to answer in the affirmative. Most would agree that it is normally (at least pro tanto) wrong—hence against duty—for drivers not to stop at red lights, for doctoral students to skip the PhD workshop, for people to trespass onto others’ property, and so forth.

But note that the reasons we would most readily invoke to explain the wrongness of these actions have nothing to do with the fact that they breach socially constructed norms. Why should we stop at red lights? Because doing so is safe and efficient (Klosko 2011, 512). Why should students attend the PhD workshop? Because attendance is mutually beneficial, and fairness gives them a duty to contribute: nobody should free-ride. And why should we refrain from harming innocent others? Because this is what respect for their moral rights demands (Raz 1985, 141).

In all of these cases, we do not need to invoke the fact that a particular action is required by a socially constructed norm in order to explain why we have a pro tanto duty to perform the action. These cases thus do not seem to support the view that socially constructed norms have moral normativity qua socially constructed norms.<sup>7</sup>

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<sup>7</sup> An objector might complain that, if it wasn’t for traffic norms, stopping at red lights would not be the safest option in the circumstances. Similarly, if there did not exist a norm requiring attendance to the PhD workshop, the fairness principle that explains the moral obligatoriness of such attendance would not be activated. While the objector is right that, in the examples I have offered, the presence of socially constructed norms *causally* contributes to making certain actions safe or fair, this does not show that such norms have moral normativity. In the examples in question, the morally mandated actions are not so mandated *because* they are required by socially constructed norms. We can see this

At most, they show that we may sometimes have reasons to act as socially constructed norms prescribe. But those reasons, in the present cases, seem to stem from the independent merits—e.g., safety, fairness, efficiency, respect for rights—of the prescribed actions, not from the fact that those actions are prescribed by socially constructed norms.<sup>8</sup>

Taking these examples as paradigmatic, one may be tempted to accept a deflationary view, concluding that there is nothing more to the moral bindingness of socially constructed norms. On this view, the fact that certain actions are required or prohibited by socially constructed norms, *per se*, does not affect their moral status. It is just that we often have good independent reasons (moral or otherwise) to act as those norms demand (cf. Enoch 2011, 28).<sup>9</sup>

Although tempting, the deflationary view is unsatisfactory, for two reasons. First, the fact that people accept certain oughts *does* seem to affect the moral status of the corresponding actions. For instance, when I visit a foreign land, I often feel I ought to  $\phi$ —provided  $\phi$ -ing is morally acceptable—because local norms prescribe that I should  $\phi$ . Experience tells me that I am not alone in having this reaction. Treating this sense of obligation as merely epiphenomenal and as ultimately justified by the contingent merits of the actions prescribed by the norms—as the deflationary view does—is at odds with our moral phenomenology.

Second, there are intuitive cases of wrongdoing that the deflationary view cannot explain. Consider the following three scenarios.

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clearly when we ask ourselves what would happen if instead of socially constructed norms, traffic regulations and attendance to the PhD workshop were mere behavioural regularities or habits, not accompanied by any oughts. This would make no difference to the merits of stopping at red lights (i.e., it being safe), and of attending the workshop (i.e., it being necessary to avoid free-riding). Yet, in these alternative scenarios, socially constructed norms have been removed from the picture. In light of this, it still seems appropriate to conclude that the examples I have offered fail to vindicate the moral normativity of socially constructed norms.

<sup>8</sup> Our reasons to do as the norms require are thus “content-dependent” as opposed to “content-independent.” See H. L. A. Hart (1982, chap. 10); cf. Green (2012) and Gardner (2001). For discussion of difficulties in defending genuine content-independence in connection with the obligation to obey the law, see Klosko (2011) and Valentini (2018).

<sup>9</sup> The deflationary view is seldom explicitly defended, but seems implicitly held by many moral/political philosophers.

*Traffic Light*: My German father in law, Jürgen, was driving late at night, through a village in his home region. He came to an intersection in the road. The traffic light went red. He looked in every direction: there was no car, person, or speed camera in sight. It would have been impossible for anyone to get hurt if he had continued straight, ignoring the red light. Moreover, nobody would have witnessed the breach. The only outcome would have been a happy one: an earlier arrival home. My father in law stopped at the red light.<sup>10</sup>

Would not stopping have been *pro tanto* wrong? An affirmative answer presupposes ascribing moral normativity to the norm, prevalent in rural Germany, that one ought always to stop at red lights. Nothing else could explain why failing to stop would have been wrong in the circumstances. Ignoring the red light would have been the “Pareto superior” thing to do. Jürgen would have been better off—namely home sooner—at nobody’s expense.<sup>11</sup>

Different demographics are likely to respond differently to this scenario. Most Southern Italians would insist that there would have been nothing wrong with ignoring the red light, and that my father in law’s refusal to do so was a manifestation of his “German rigidity.” But I would also expect many Germans to insist that he did the right thing. These observations suggest that a case like *Traffic Light* lends only somewhat weak support to the hypothesis that socially constructed norms have moral normativity.

Now consider a second scenario.<sup>12</sup>

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<sup>10</sup> This is an autobiographical variant of a famous example in the “obligation to obey the law” literature. See, e.g., Smith (1973, 971).

<sup>11</sup> Considerations of free riding do not apply here. Driving through *in a scenario like Traffic Light* is universalizable: If everyone did it, the provision of the benefit of road coordination/safety would not be undermined. Thanks to Massimo Renzo for discussion.

<sup>12</sup> Cf. the harmless trespass scenario discussed in Ripstein (2006).

*Barbeque:* You are on a camping trip. You call some friends and make plans to spend the day with them, only to return in the late evening. Your barbeque set, pots and pans are amassed outside your tent. The Rossi family, whose tent is just a few meters from yours, notices your absence, and decides to use your grill and accessories for a barbeque feast. They celebrate during the day, but put everything back in order prior to your return. When you get back, you notice nothing.

What the Rossis did, I assume, was wrong, even if not gravely so. As in *Traffic Light*, however, nobody is made worse off, nobody's expectations are actually frustrated (since you notice nothing), and the Rossis are made better off. Furthermore, unless one subscribes to a rigid natural property rights view, the norm breached by the Rossis—i.e., “one ought not to use others' property harmlessly without consent”—does not seem independently morally mandated. Consider, for instance, an alternative norm, which includes a special provision for third-party use when this does not interfere with the owner's use (cf. Cohen 2009). This norm seems no less morally acceptable than that breached by the Rossis. If an explanation for the wrongness of the Rossis' actions exists, this must rest on the fact that those actions breach the relevant socially constructed property norm.

Consider this third and final case.

*Non-proceduralist President:* In the wake of the 9/11 terror attacks, President George W. Bush authorized the National Security Agency to track international calls and e-communications of people *inside* the US, without a court warrant (Risen and Lichtblau 2005). Once this became known, the President was criticized for acting *ultra vires*, in violation of the 1978 Foreign Intelligence Surveillance Act (FISA), which prohibits warrantless domestic electronic surveillance. In an open letter to Congress, a group of leading legal

scholars insisted that, to be lawful, such surveillance would need to be authorized by Congress, through legislative amendment (Dworkin et al. 2006).

Let us assume that the President's critics are right: he did act *ultra vires*. Let us further assume, for argument's sake, that: (i) domestic warrantless surveillance was indispensable to avert serious terrorist threats and (ii) this legal breach was a one-off occurrence, necessitated by exceptional circumstances. Even so, the President's violation of a socially constructed (legal) norm appears *pro tanto* wrong. A head of state acting in this manner would seem to owe its citizens an explanation, if not an apology, for the breach, even on the assumption that, all things considered, he did the right thing.

Crucially, the *pro tanto* wrong in question is contingent on the US Constitution and US law more generally having the content that they do. If the Constitution had given the President greater discretion, or if the original provisions in the 1978 FISA had been different, the President's actions would not have involved any wrongful procedural breach. And it would seem implausible to suggest that the precise details of US law are independently morally mandated. We can imagine a morally permissible, but different, democratic setup under which the president has greater discretion, or under which the 1978 FISA has slightly different content. In short, the *pro tanto* wrong involved in *Non-Proceduralist President* cannot be explained satisfactorily unless we assume that a certain act being prohibited by existing norms makes a difference to its status: it makes its performance *pro tanto* wrong.<sup>13</sup>

*Non-proceduralist President* and, to a lesser extent, *Barbeque* and *Traffic Light* provide some support for the hypothesis that socially constructed norms have moral normativity. But can this hypothesis be systematically vindicated, in a way that matches the different strengths of our judgements in the three cases presented? Can

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<sup>13</sup> Nicholas Southwood has pointed out to me that the President's actions may seem wrongful because they set back people's interests in privacy. But whether a setback of interests is wrongful depends on the balance of interests at stake, and in this case, *ex hypothesi*, individuals' privacy interests are outweighed by the public interest in safety. So, while the setback may be harmful, it is not wrongful.

we identify a moral principle that lends moral normativity to socially constructed norms? In the remainder of this paper, I develop and defend an affirmative answer to this question.

#### 4. The agency-respect view

My account of the moral force of socially constructed norms rests on a particular interpretation of the principle of respect for persons, and on the way in which socially constructed norms fall under the purview of this principle. The argument can be schematically stated as follows:

- **P1:** One has a pro tanto obligation to respect people’s genuine commitments (i.e., “to give *agency respect* to people”), provided those commitments are morally permissible.
- **P2:** If one does not respect the socially constructed norms that exist in a given context, one fails to respect the commitments of norm-supporters.
- **Conclusion:** One has a pro tanto obligation to respect the socially constructed norms that exist in a given context, provided the commitments of norm-supporters are genuine and morally permissible.

I now elaborate on each of the premises, and then turn to the argument’s conclusion.

##### 4.1 *Agency respect and commitments (Premise 1)*

Almost nobody would deny that human beings ought *morally* to be treated with respect; that we should acknowledge others’ status as persons, and be “willing to constrain [our] behaviour” accordingly (Darwall 1977, 45).<sup>14</sup> But what does this, exactly, involve? A helpful cue is provided by Robert Noggle’s observation that

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<sup>14</sup> This is what Darwall calls “recognition respect,” as opposed to “appraisal respect,” which involves admiration for the positive qualities displayed by particular individuals.

persons' moral value attaches not only to their status as autonomous end-setters in general, "but also to their status as *particular* individuals" (Noggle 1999, 457, added emphasis).<sup>15</sup> Respecting persons thus requires not only respecting their abstract capacity for agency, but also the concrete ways in which their agency is exercised. I call respect for persons so understood "agency respect."

One particularly important way in which persons exercise their agency is through making *commitments*. Treating others with agency respect, therefore, demands respecting their commitments, provided these are morally permissible, hence consistent with others' status as equal, autonomous end-setters (cf. Hill 2000, 79). To better understand the implications of agency respect, let me briefly unpack the idea of a commitment.

A commitment is an exercise of will—specifically, a robust intention—with which we orient our agency in a certain way: e.g., in pursuit of a goal, a practice, a course of action, a value, etc. (Calhoun 2009, 618).<sup>16</sup> Three features of commitments are worth emphasizing. First, commitments involve robust intentions. Fleeting intentions that are easily abandoned, such as the intention to pick up an umbrella before going to the office or of eating an ice-cream after dinner, hardly qualify as commitments proper (Calhoun 2009, 618–19).<sup>17</sup> Second, commitments can be formed in different ways. People sometimes make commitments consciously, for instance, when they explicitly decide to convert to a particular religion or to pursue a certain career. Alternatively, people may grow into commitments over time—e.g., to a particular hobby, institution, or person—without explicitly making a decision to so commit (Chang 2013, 75). In both cases, as Cheshire Calhoun points out, commitments are active: they are something that we author. What differs is simply the

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<sup>15</sup> Noggle defends what he calls "Kantian particularism," namely, "a limited theory of the nature of moral respect which replaces Kant's focus on the ends set by a rational will with a focus on those core motives that constitute the person's identity" (471). My discussion of agency respect is inspired by Noggle's Kantian-particularist approach.

<sup>16</sup> I am referring not to interpersonal commitments, such as those we make through promises and contracts, but to what Ruth Chang (2013, 76–77) calls "internal commitments."

<sup>17</sup> I am agnostic about how much robustness is enough. Different specifications of this parameter are compatible with the broad view I am presenting here.

time-horizon and level of awareness with which this process of authorship takes place. Commitments therefore differ from desires or urges that simply arise in us (Calhoun 2009, 617; see also Chang 2013, 92). Finally, commitments may be more or less central to one's life plans and sense of self. For example, my commitment to the well-being of my partner is more important to me than my commitment to queuing up at the bus stop.

My personal, professional, moral, social, and religious commitments contribute to making me the particular agent that I am (cf. Chang 2009, 259). It is through committing to certain plans of action, values, goals, and projects that I express my agency as a particular person: a concrete "me," as opposed to an abstract autonomous self (cf. Sandel 1984). This, in turn, explains the relevance of commitments to agency respect: to respect for persons as particular agents.

From this it does not follow that we have unqualified obligations to respect others' commitments. First, sometimes, people's commitments are the product of coercion and manipulation, rather than an expression of their agency. To offer an extreme example, a slave may well robustly intend to satisfy his master's every wish, but we have reason to be suspicious that this commitment is a genuine one, and not a consequence of the coercive nature of slavery norms. Only *genuine* commitments, which express our agency, call for agency respect.<sup>18</sup>

Second, the moral status of commitments varies widely: some are permissible (e.g., excelling at music), others obligatory (e.g., not harming the innocent), some supererogatory (e.g., donating 95% of one's income to charity), and others impermissible (e.g., supporting the Mafia). We are morally required to respect others' genuine commitments only when these are morally permissible (see Hill 2000, 79ff.). Impermissible commitments, including commitments that entail a failure to respect others' capacity for agency, activate no respect-based demands. Many contemporary theories of justice or human rights may be regarded as articulating competing

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<sup>18</sup> Different specific criteria for what counts as "genuine" are compatible with my broad framework.

accounts of the requirements of moral permissibility. When individuals are tortured, enslaved, deprived of freedom of speech and association, or (avoidably) lack access to the means of subsistence, basic moral demands are violated. For present purposes, I need not endorse a particular account of moral permissibility. Readers may plug in their preferred view. In what follows, I will simply rely on (hopefully) uncontroversial examples of moral (im)permissibility.

In line with these observations, it is true to say that I have a *pro tanto* duty to, e.g.:

- schedule a meeting with you one hour later than usual, so that you can attend a church service and thereby honour your religious commitments;
- take my shoes off when I enter your home, since you are committed to keeping your apartment hygienic, and
- refrain from asking you to lie to my parents about my habits, given your commitment to not lying.<sup>19</sup>

In all three cases, I have a respect-based *pro tanto* duty to acknowledge your commitments and to accommodate them. Agency respect demands that I make reasonable allowances for your religious practice, that I adjust my behaviour in line with how you want to run your home, and that I think about the kind of person you are when I ask you for a favour. There is something disrespectful in asking you to choose between your loyalty to me and your integrity. By contrast, I lack a *pro tanto* duty to, e.g.:

- allow my racist apprentice baker to refuse to sell bread rolls to ethnic minority customers (assuming I am a master baker who runs a bakery shop);
- not come into contact with members of higher castes (if I belong to a lower caste in a hierarchically organized society), and
- practice religion R because several adherents of R are committed to universal conversion to R.

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<sup>19</sup> For further examples, see Noggle (1999, 472–3).

Although my apprentice is committed to racist views, and does not want to serve minority customers, I am *not* required to accommodate her commitments. Why? Because they are morally impermissible: they presuppose a denial of persons' equal moral status. Similarly, the commitment of a caste society to segregating members of lower castes does not generate a valid claim to respect, since it is premised on a hierarchical view of human relations that is contrary to a plausible account of basic moral constraints (cf. Buss 1999, 810). Finally, others' commitments to my conversion to religion R do not make any agency-respect claim on me. Since honouring my freedom of religion is a fundamental moral demand, any putative claim for accommodation that would conflict with it is automatically invalid.

I have argued that only morally permissible commitments trigger demands of agency respect. The strength of these demands, in turn, depends on the commitments' centrality to someone's life plans and sense of self (Noggle 1999, 473–75). The more central a commitment or project is to a particular person's life plans, the stronger our pro tanto duty to accommodate it. Plausibly, for instance, our pro tanto duties to respect others' religious commitments are stronger than our duties to respect commitments to football teams. We can in fact assume that, typically, the former are more central to persons' life plans and sense of self than the latter.

#### 4.2 *Socially constructed norms and people's commitments (Premise 2)*

I now turn to the second premise in my argument: the claim that failing to respect socially constructed norms involves a failure to respect the commitments of norm-supporters. To defend this claim, we need to first unpack the relationship between people's commitments on the one hand and socially constructed norms on the other. Let us remind ourselves of the characterization of socially constructed norms offered in Section 2. There, we saw that socially constructed norms exist by virtue of people's acceptance of corresponding oughts, where "accepting an ought" means *robustly intending* that it function as a standard of behaviour. As we then learnt in Section 4.1,

commitments also involve robust intentions, ones with which we orient our agency in a certain way, e.g., towards a given goal. Combining these observations, it follows that socially constructed norms exist by virtue of people's commitments: their commitments to the norms' requirements functioning as standards of behaviour.

Consider the norms that, e.g., one ought not to drink alcohol in public places, one should give up one's seat on the bus to the elderly, one ought not to skip the queue, one ought not to interrupt others when they are speaking, and so forth. By definition, their existence in any given context depends on there being a large enough number of people who are committed to the relevant oughts: who robustly intend that those oughts function as standards of behaviour. Call them *norm supporters*. Failing to respect the relevant oughts—i.e., acting contrary to their demands—is tantamount to failing to respect the commitments of norm supporters. This is precisely what Premise 2 states.

The claim that respecting norm-supporters' commitments—in line with agency respect—requires respecting the corresponding norms may prompt three forms of scepticism. First, a critic might worry that, often, socially constructed norms are not genuine expressions of the agency of norm-supporters. That is, they are not the product of genuine commitments, but of coercion or false consciousness. For example, some South Asian women support norms requiring them to prioritize the nutritional needs of their husbands and male children. Several commentators argue that such support counts as coerced because it is developed against the background of oppressive gender relations (see, e.g., Stoljar 2014).

This is a valid point, but it does not threaten Premise 2. One can accept that the commitments *of the oppressed* to oppressive norms never count as genuine. This, however, does not go against the claim that socially constructed norms—including oppressive ones—are underpinned by agents' commitments to certain oughts, and that respecting those commitments requires respecting the corresponding norms. It only points to the fact that, in some cases, those commitments are not genuine, hence they

*lack the moral significance* that commitments otherwise have. When commitments are not genuine, agency respect places no duties on us (as my argument's conclusion makes explicit). And, as long as at least a good number of norms are underpinned by genuine commitments, the "coercion worry" is not threatening to my view.

The objector may reply that the problem of coercion is not the exception, but the rule. This is because socially constructed norms are accompanied by social sanctions: some formal, others informal. Since a coercive element is inherent in *all* socially constructed norms, one might be tempted to conclude that no norm can be underpinned by *genuine* commitments, namely the kinds of commitments that activate obligations.

This conclusion would be too strong. After all, the fact that murder is punished severely does not undermine the claim that I am genuinely committed to not murdering people. To determine whether commitments to the requirements of existing norms are genuine, we can rely on the "authenticity tests" developed in the philosophical literature on autonomy. Reviewing that literature would take us too far from our present concerns, but by way of example, a plausible test involves asking whether, upon reflection and independently of the sanctions associated with norm-breaches, norm-supporters would continue to support the norms in question (cf. Christman 2004, 154). If the answer is positive, then norm-supporters' commitments count as genuine. My impression is that, with many norms—from queuing, to standing up at high table dinners and not swearing in sacred places—affirmative answers are to be expected. Of course, authenticity tests can take different forms, and different specifications of these tests will lead to slightly different verdicts. What matters is that the broad strategy offered by such tests can be employed to further supplement the agency-respect framework.

A second worry may be that, instead of being underpinned by commitments, socially constructed norms are often just a matter of habit. To determine how damaging to Premise 2 this worry is, we need to clarify what "following a norm out of

habit” means. Habitual norm-following is consistent with at least two attitudes. The first is one of *indifference* towards the norm. This is the attitude of someone who, say, stands in line at the bus stop out of inertia and conformism, but who does not believe that one ought to queue and does not disapprove of queue-jumpers.

If this is what “following a norm out of habit” means, then the agent in question does not even *accept* the corresponding requirement. And if the majority of agents in the context under consideration have an equally indifferent attitude towards queuing, then that practice is not governed by a socially constructed *norm* in that context. It is a mere habit (Hart 1961, 56). The present argument is silent on habits.

A second possibility is that following a norm out of habit simply means following it without having reflected long and hard about its merits. This understanding of habitual norm-following, unlike the previous one, is consistent with agents’ intending to be guided by the relevant oughts, and being prepared to sanction, or at least disapprove of, others’ non-compliance. In this case, it remains true that these individuals are committed to the underlying oughts; it is just that they have developed this commitment in a less-than-fully-reflective manner.<sup>20</sup> As I have argued above, a commitment that does not stem from a precise decision moment, preceded by deliberation, is a commitment all the same. And if, abstracting away from sanctions, norm-supporters are prepared to stick to that commitment, the commitment counts as genuine. Respecting that commitment, in turn, will require respect for the relevant norm.

Finally, a sceptic might insist that norms—in fact, their prescriptions and prohibitions—are rarely the objects of commitments. Instead, our commitments are

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<sup>20</sup> One might wonder how we should interpret the attitude of those who abide by socially constructed norms because “this is how things are done around here.” Do they qualify as norm-supporters? I answer in the affirmative: if the people in question robustly intend for the relevant requirements to function as general standards of behaviour, are prepared to sanction non-compliance, and to stick to their commitments upon reflection, then their commitments place agency-respect demands on us. Of course, it may be that the commitments, in this case, are somewhat weak, depending on how attached to the value of “tradition”—if this is what the expression “this is how things are done around here” points to—norm-supporters are. For further discussion, see also the next paragraph. I thank an anonymous reviewer for raising this point.

often directed at the broader practices governed by those norms or the values those norms express. For example, my commitment to my university explains why I stably intend to be guided by its norms. Similarly, a believer in Hinduism is committed to the rule that shoes should be taken off when entering a Hindu temple, but this is because of her broader commitment to the Hindu religion.

The objection accurately characterizes the nature of many of our commitments, but it does not disprove the claim that we are committed to the requirements associated with socially constructed norms. Instead, it highlights the fact that our commitments to those requirements are often the product of broader commitments to certain practices or values: they are derivative. True, my commitment to, e.g., the rule that students' papers should be marked within a certain timeframe stems from another commitment: that to my university. But this in no way invalidates the claim that I am committed to that rule. Similarly, our religious believer's commitment to the "no-shoes-in-the-temple" rule is not invalidated by the fact that it derives from her broader commitment to Hinduism.<sup>21</sup>

If this is right, the claim that socially constructed norms exist by virtue of individuals' commitments to the corresponding oughts stands. There is one important qualification, however. A commitment to a norm's prescriptions and prohibitions—be it fundamental or derivative—must stem from reasons that relate to the value of the norm itself or of the practice of which the norms is a part. I do not count as committed *to certain oughts* if the only reason I comply with them is respect for those who embrace them: i.e., for those who are genuinely committed to them. For example, I am not a supporter of the "no-shoes-in-the-temple" norm if I take my shoes off before

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<sup>21</sup> One might wonder about the status of people's commitments to rules when these commitments are motivated by fear of the anarchic situation that would follow in the absence of widespread norm-compliance. Would these commitments count as genuine? It depends. If they are ultimately driven by the value of stability, as opposed to by coercion or indoctrination, then a case could be made that the commitments are genuine. Yet, if norm-followers actually find the relevant norms rather problematic content-wise, would not uphold them upon reflection, but perceive deviations to have consequences as unpalatable as those of coercive threats, then the genuine nature of the commitments is put into question. More generally, whether any given commitment is genuine or not is something that must be determined through careful contextual and interpretive analysis. Thanks to an anonymous reviewer for raising this question.

entering a Hindu temple out of respect for the locals' religious beliefs. By contrast, those who take their shoes off for genuinely religious reasons do count as norm-supporters.

#### 4.3 *Socially constructed norms and agency respect (Conclusion)*

We can now combine the arguments advanced in the previous two subsections, and conclude that the pro tanto duty to agency-respect others—to respect their permissible and genuine commitments—lends moral normativity to socially constructed norms. This explains why the fact that  $\phi$ -ing is required by a socially constructed norm makes a difference to the moral status of  $\phi$ -ing.

To see the implications of this conclusion, consider some (by now familiar) socially constructed norms. Take the norm, prevalent in the UK, that people should queue up when waiting for the bus. Needless to say, we have prudential and coordination-based reasons to act in line with this norm, as proponents of the deflationary view would argue. But if we take agency respect seriously, those reasons are not the only ones that matter. The British—and, in fact, many others—are committed to the oughts associated with the queuing norm. Of course, this norm is probably not particularly central to their life plans and sense of self. Still, norm-supporters' adherence to the practice of queuing and willingness to sanction those who deviate from it show that it matters to them (Schmitt and Dubé 1992, 807). This being so, we have a pro tanto “agency-respect” duty to queue up at the bus stop in contexts where the local norms prescribe it, just as we have a pro tanto duty to take our shoes off when visiting people who support the no-shoes norm.

For another example, in a country like Germany, there is a norm that requires customers to tip approximately five to ten percent for service, except in cases where service is poor. This norm applies even in restaurants where—due to the reasonableness of the official wages—tips are not strictly necessary for waiters' subsistence, so that the action prescribed by the norm is not independently morally

mandated. Even so, the demands of agency respect towards those who accept the norm give it some moral normativity.

In so saying, I am implying neither that tipping is a core feature of German identity, nor that agency respect is the only or main reason why one should tip in Germany. My argument is consistent with tipping being a very weak commitment for many Germans, and with failures to tip being wrong for several reasons. I am simply noting that, since (and to the extent that) the tipping norm exists by virtue of many Germans' permissibly exercising their agency in particular ways, the requirements of agency respect confer—however weak—moral normativity on that norm.

Finally, consider having to stand up when grace is said at Oxbridge High Table. This norm is part of the broader practice of “Oxbridge college life.” Many dons and students are committed to this practice and its associated prescriptions. Agency respect for them confers moral normativity on the corresponding norms. This, in turn, explains in what sense, at Oxbridge High Table, one ought to stand up as grace is being said, *because* there is a social norm requiring it (cf. Southwood 2011, 787–89).

More examples could be given, but the general spirit of the argument should be clear. If we take the demands of agency respect seriously, the fact that certain actions are mandated (or prohibited) by morally permissible socially constructed norms makes a difference to their moral status.<sup>22</sup> Just as we have pro tanto duties to respect individuals' permissible and genuine commitments, so too we have pro tanto duties to respect permissible socially constructed norms, when these are underpinned by genuine commitments. Furthermore, as explained earlier, the strength of these norm-related duties depends on how central the practices governed by the norms are to norm-supporters' plans of life and sense of self. This is why our duty not to swear in sacred places, for instance, is stronger than our duty to queue at the bus stop.

An objector may be concerned that my conclusion proves too much, and is

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<sup>22</sup> Cf. Marmor's (2009) discussion of the morality of social conventions.

vulnerable to serious counter-examples.<sup>23</sup> This is why. Respecting others' commitments, as we have seen, places constraints on our agency. For instance, to respect the commitments of my Catholic friends, I must not interfere with their religious practice and, perhaps, even facilitate it. But it seems implausible to suggest that respect for their commitments requires that *I subject myself* to Catholic norms. Yet, the agency-respect view appears to prescribe precisely this. It says that we have obligations to respect—i.e., obey—socially constructed norms. Violating those norms would frustrate norm-supporters' commitments to the norms' requirements functioning as standards of behaviour.

The objector is right: the suggestion that I ought to abide by the rules of Catholicism is implausible. Luckily, the agency-respect view is not vulnerable to this, or similar, counter-examples. This is because such counter-examples are *either* based on a misinterpretation of the scope of the norms at issue *or* because those norms are morally impermissible, and therefore not binding. The “Catholicism” case illustrates both points well. First, typically, the norms governing the practice of Catholicism do not count non-Catholics among their subjects. The content of my Catholic friends' commitments is not, say, that “they *and I* should attend service on Sunday.” Their commitments tend to be self-regarding. To that extent, respecting them does not require me to obey Catholic norms. What is more, if Catholics supported norms that required non-Catholics to practice Catholicism, their commitments would be impermissible: they would encroach on individual freedom of conscience. This is not to say that Catholics are not permitted to *believe* that Catholicism is the one, true religion. What is impermissible is supporting socially constructed norms that require everyone, no matter their convictions, to act in line with the demands of Catholicism.

Still, very many socially constructed norms purport to bind classes of agents *beyond* those who are independently committed to their prescriptions and prohibitions. The queuing, tipping, and high-table norms are cases in point. They

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<sup>23</sup> I thank an anonymous reviewer for raising this objection.

purport to apply to anyone who finds him- or herself in a given context: e.g., a British supermarket, a German restaurant, or an Oxbridge college dining-hall. I may be someone who is not particularly into queuing, tipping or standing up when grace is said, yet, if I find myself in the aforementioned contexts, the corresponding norms apply to me too.

There is a crucial difference, however, between these other-regarding norms, and a (hypothetical) norm requiring global conversion to Catholicism. The latter would be morally impermissible—it would ignore others’ status as autonomous end-setters—while the former are perfectly permissible. There appears to be nothing intrinsically objectionable about the other-regarding nature of queuing and tipping norms. Therefore, respect for the commitments of the agents who support them requires respect for the norms themselves.

A sceptical reader might retort that the plausibility of this conclusion is a function of the particular examples I have chosen, where the costs of norm-compliance are low. Once we focus on cases in which abiding by the norms is very costly, my conclusion loses plausibility. Consider the following example. Suppose that, in context C (e.g., a Southern European country) there exists a norm requiring children to make considerable sacrifices to care for their elderly parents, a lot more than in context C' (e.g., a Northern European country). It seems implausible, the objector might continue, that children in C should be obligated to take on such significant costs to care for their elderly parents *out of respect for* those who support the relevant family care norm.<sup>24</sup>

The agency-respect view possesses the resources to respond to this objection. Whether the norm referred to by the objector has moral normativity or not depends, again, on whether we find it morally permissible. Different readers’ intuitions are likely to vary. Some may find such a norm too intrusive: it dictates features of family relations that should be, ultimately, settled by family members themselves. If so, no

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<sup>24</sup> I thank an anonymous reviewer for raising this concern.

obligation to obey the norm would arise in the first place. This conclusion is consistent with the plausible suggestion that, in the circumstances just described, children in context C do have obligations to care for their parents *on grounds other than* the presence of the relevant norm qua norm. For example, certain legitimate expectations about care-provision may have been formed. Alternatively, it may be that parents would become destitute without children's care, or that children and parents have tacitly agreed to this type of family arrangement. These considerations certainly would explain why children in C ought to invest a lot in parental care, without invoking the bindingness of socially constructed norms.

Others may believe that the Southern European care norm is consistent with morality and that, therefore, it does place pro tanto moral demands on sons and daughters. Yet, they may add, it seems implausible that the reason why children in context C ought to make considerable sacrifices for their parents is respect for norm-supporters.

In response to this objection, I would say this. Once we believe—as the objector does—that children in context C have a pro tanto obligation to make considerable efforts to care for their parents *because a local norm requires it*, it is unclear why locating the source of normativity of that norm in agency respect for norm-supporters is implausible. This alleged implausibility is likely to stem from the perception that, as explained earlier, the main sources of parental-care obligations have little to do with local norms, and all to do with legitimate expectations, tacit agreements, and duties of assistance. Children in context C ought to make considerable sacrifices for their parents mainly for those reasons. But *if* we believe that children *also* ought to make the relevant sacrifices *because local norms require it*, it is unclear what is so implausible in grounding the moral normativity of those norms in agency respect for norm-supporters.<sup>25</sup>

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<sup>25</sup> Cf. David Owens (2017, 570–72), who argues that such a norm gains moral normativity from the fact that its existence is *good for* family members, since it furthers their *normative interests* (e.g., their

At this point, the objector may still insist—more generally—that the constraints others’ commitments impose on our agency should *always* be a matter of forbearance from interference, and *never* of obedience, even in cases where the relevant norms are morally permissible and obedience would not excessively burden our own agency.<sup>26</sup> There are two things to say in response. First, from a principled point of view, there is no clear distinction between the constraints involved in “refraining from interfering with” and “conforming to or facilitating” others’ commitments. Suppose someone is very keen on attending a religious ceremony. Refraining from interfering with this commitment may mean not scheduling another important event that clashes with it, while conforming to or facilitating it may mean accompanying the person to the ceremony. Both types of conduct involve constraints on my actions, and it is not obvious that the former constraint is more acceptable or easier to defend than the latter. In many circumstances, acting in a way that can be described as “refraining from interfering” is costlier than acting in a way that counts as “facilitating or conforming.” Second, when it comes to socially constructed norms, the distinction between “not interfering” and “facilitating or conforming” becomes blurred. Consider, for instance, queuing or High Table norms. What does it mean to not interfere with the queuing norm if not obeying it? What does it mean to not interfere with High Table norms if not following them? After all, the moment I refuse to stand up when Grace is being said, I automatically disrupt the functioning of the relevant norm. In sum, *if* we accept that others’ commitments place constraints on our agency on respect grounds, the distinction between constraints involving forbearance and constraints involving positive actions or conformity appears of little significance, especially in the context of socially constructed norms.<sup>27</sup>

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interests in being bound to one another in particular ways). Unlike mine, this view—which I lack the space to discuss here—rests on postulating a new, *sui generis* class of interests: normative interests.

<sup>26</sup> I am grateful to an anonymous reviewer for raising this point.

<sup>27</sup> One might wonder how the agency-respect view would respond to a “principled non-conformist”: someone who is committed to not giving any normative significance to others’ commitments. Since this would be someone committed to ignoring the demands of agency respect, from the perspective

In light of all this, the overall conclusion of my argument still stands: morally permissible socially constructed norms place pro tanto obligations on those who are subjected to them.

## **5. The structure and implications of the agency-respect view**

Having set out the basic building blocks of the agency-respect view, I further elaborate on its structure and implications, and contrast it with its main alternative in the literature.

### *5.1 Agency-respect vs joint commitments*

While the agency-respect view gives commitments a central role in explaining the moral normativity of socially constructed norms, it does so in a way that differs from another, well known commitment-based account of the normativity of such norms: Margaret Gilbert's. Contrasting the agency-respect view with Gilbert's will help us put the distinctiveness of my view into sharper focus.

Gilbert holds that our obligations to obey socially constructed norms—especially the norms governing our common life in society—are grounded in joint commitments. For Gilbert, socially constructed norms are constituted by joint commitments.<sup>28</sup> Such norm-constituting joint commitments exist when (i) the parties express their readiness to commit to a requirement together and (ii) their readiness is common knowledge among them (Gilbert 2006, 138–40). Joint commitments—paradigmatic examples of which include contracts and agreements—are binding: they give rise to rights-correlative obligations among the parties involved (Gilbert 2006, 156–61). As Gilbert puts it: “by virtue of the joint commitment present when there is

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advanced here, her commitment would be morally impermissible: contrary to respect for persons as particular agents. Thanks to an anonymous reviewer for raising this point.

<sup>28</sup> In her words: “*There is a social rule in a population P* if and only if the members of P are jointly committed to accepting as a body a requirement [...] of the following form: members of P are to perform action A in circumstances C” (Gilbert 2006, 197, emphasis original). Gilbert further argues that those who are jointly committed form a “plural subject.” I set aside this ontologically demanding aspect of Gilbert's view here.

a social rule, each member of the population in question has a right against every other member for conformity to the rule” (Gilbert 2006, 200).

As this short sketch shows, for Gilbert, the normativity of socially constructed norms stems from the bindingness of *joint commitments* themselves. In the same way in which, by agreeing to sign a contract, the parties bind themselves to comply with the relevant terms and conditions, by jointly committing to acting in a certain way, the parties bind themselves to so act. The *source* of the normativity of socially constructed norms, on this view, is individuals’ exercise of a normative power: the power to create joint commitments (Gilbert 2006, 201).

Unlike Gilbert’s, my view focuses on *personal commitments*, and locates the *source* of the moral normativity of socially constructed norms not in those commitments themselves, but in the demands of agency respect. Commitments, qua expressions of people’s particular agency, *activate* demands whose source is an underlying moral principle: the agency-respect principle. So, the demands are *ultimately* grounded in agency respect. The commitments merely *trigger* them.<sup>29</sup> It so happens that whenever there are certain kinds of commitments, the agency-respect principle has non-vacuous implications. This grounding strategy presents some advantages over Gilbert’s.

While it is clear how contracts, agreements, and perhaps norms that exist in small-scale contexts are constituted by obligation-generating joint commitments, it is much less clear that the same can be said of society-wide norms. For instance, I am personally committed to the queuing norm, and I know that many others around me are as well (and vice versa). I find it odd, however, to suggest that *we* have *jointly committed* to upholding the queuing norm. Violating that norm may be wrong, but not in the way breaching a contract is. If I skipped the queue and someone ahead of me protested by saying: “You are violating *our* joint commitment, a commitment we all

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<sup>29</sup> I owe the helpful distinction between commitments as “triggers” vs “sources” of reasons (normativity) to Chang (2013, 97). See also the distinction between “reason-giving in the triggering sense” and “robust reason-giving” discussed in Enoch (2011).

made together,” I would respond that I do not know what commitment she is talking about (cf. Gilbert 2006, 153).

This is not to deny that socially constructed norms may be underpinned by what Michael Bratman calls shared intentions. To simplify somewhat, for Bratman, those intentions obtain within a group when (i) the members of that group each hold intentions of the form “I intend that *we j*” (where “*j*” is a joint action), (ii) each is prepared to adjust their conduct so as to *j*, and (iii) this is common knowledge among group members (Bratman 1999, 121). It may well be that, when a socially constructed norm exists, each norm supporter robustly “intends that *we* (i.e., everyone in context C) *j* (i.e., act so that certain requirements function as standards of behaviour),” is prepared to adjust their conduct so as to *j*, and this is common knowledge among those in C. The point is simply that, as Bratman himself acknowledges, *per se*, shared intentions do not generate obligations. A shared intention so described falls short of a promise or a binding agreement (Bratman 1999, 132–35).

What, in my view, generates obligations is the agency-respect principle, whose demands are activated by the commitments underpinning socially constructed norms. This principle does not make the moral bindingness of socially constructed norms dependent on one’s sharing an intention to uphold them. The norms are morally binding even for those who are not already committed to their demands. It is *others’* (individual or shared) robust intentions, not one’s own, that activate the demands of agency respect.

Not only does my account of the *source* of the normativity of socially constructed norms differ from Gilbert’s, the *type* of normativity I am concerned with differs from hers too. The obligations Gilbert talks about are not moral obligations, but distinctive “obligations of joint commitment.” On her view, being jointly committed to, say, a Mafia-style organization still creates genuine obligations of joint commitment. It is just that these obligations are outweighed by moral demands (Gilbert 2006, 233–37, 256). By contrast, the agency-respect view exclusively focuses

on our *moral* obligations to obey socially constructed norms. To that extent, my enterprise and Gilbert's are somewhat different.

Finally, for Gilbert, obligations of joint commitment are always correlative to rights (Gilbert 2006, 200). The parties to a joint commitment owe it to one another to act in line with the content of the relevant commitment (Gilbert 2006, 153–56). This has the counter-intuitive implication that any violation of a socially constructed norm violates the rights of everyone who sustains it. For example, if I skip the queue, I do not merely violate the rights of those standing in line, but of everyone in society who upholds the queuing norm. My obligation to adhere to the queuing norm is owed to all of them, such that they should rightly feel *betrayed* by my non-compliance (Gilbert 2006, 150–51). As I will make clear in the next subsection, on my view, this is not the case. Whose rights are violated when socially constructed norms are breached is a by-product of the structure of those norms, not a function of the joint commitments that (in Gilbert's view) underpin them.

## 5.2 *Whose rights are violated by breaches of socially constructed norms?*

I have argued that breaches of morally permissible socially constructed norms are *pro tanto* wrong. But whose rights, if anyone's, are violated by such breaches?<sup>30</sup> As explained, the duty to agency-respect others grounds the moral force of socially constructed norms, and the object of agency respect is the set of norm-supporters, in the context under analysis. This, however, does not mean that those individuals *themselves* have their rights violated when the norms are breached. Whose rights, if anybody's, are violated depends on the *content* of the relevant norms (cf. Owens 2017, 558).

In some—but not all—instances, the norms establish duties correlative to rights. Consider, for example, the norm that one ought not to jump the queue. If someone jumps the queue—e.g., arriving last, but putting himself at the top of the

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<sup>30</sup> Thanks to Nicholas Southwood for discussion.

queue—he thereby breaches the entitlements of those who have been waiting in line until then. According to the queuing norm, each person has a right to a particular place in the queue (first, second, third, etc.), based on his or her time of arrival. The queue-jumper’s actions violate those entitlements, thereby wronging *those standing in line*.<sup>31</sup>

Other socially constructed norms, such as the norm that one ought to stand up when grace is said at High Table, establish oughts that are not correlative to rights. This means that failing to stand up at High Table, in the context of an Oxbridge College, is wrong simpliciter, without involving any rights-violation.

On my account, then, the objects of agency respect (i.e., norm-supporters) and those whose rights may be breached by norm-violations need not coincide. Some may find this puzzling. But on reflection, it seems just right. Respecting norm-supporters means taking seriously the normative world they have created. Since that world is partly constituted by socially constructed norms, the demands of agency respect give *those norms* moral normativity. For example, those who support the British-style queuing norm see queue-jumping as a (mild) wrong against people *in the relevant queue*, not themselves. Why should the demands of agency respect entail a structure of wrongdoing that deviates from the one they have created? Imagine I inadvertently jump the queue while waiting for the bus in a small English village. Upon realizing it, I proceed to apologise to everyone on the street, including random passers-by, on the assumption that they all support the queuing norm. This behaviour would not only be odd, but also not in line with the demands of agency respect. If the local norm implies that those standing in line are wronged when I skip the queue, then, in that context, I ought to apologise to them.

An objector might protest that my view involves abandoning a widely shared assumption, namely that, when an action wrongs an agent A, the wrongness of that

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<sup>31</sup> For present purposes, I assume that rights violations constitute wrongings of (i.e., “wrong”) right-holders in particular.

action must (at least in part) be explained by some morally significant feature of A.<sup>32</sup> Contrary to what the objector suggests, my view is not in tension with this assumption. On my view, when an action wrongs A, its wrongness is explained by a morally significant feature of A. The feature in question is that a binding socially constructed norm picks out A as the individual who is wronged by that action. If the objector were to insist that this feature is inadmissible as an explanation for why A is wronged, this would be tantamount to denying that socially constructed norms can have moral normativity. And in the present context, this denial would be question begging. The objection thus seems unsuccessful.

### *5.3 What about people whose commitments clash with the commitments underpinning existing norms?*

We know that, in any given context, and all the more so in a multicultural world, there are bound to be people whose commitments are at odds with socially constructed norms. What does agency respect recommend in relation to them? Consider this low-stakes scenario; the lessons drawn from it carry over to high-stakes ones.

*Japanese tourist:* A Japanese tourist at a traditional German restaurant, in Germany, wishes to express his satisfaction with the meal and service. In Japan, there is a strong norm that one ought *not* to tip, but instead verbally thank service providers. In Germany, there is a reasonably entrenched tipping norm. The Japanese tourist feels uncomfortable at the prospect of tipping someone.

Here, we are confronted with agency respect pulling in different directions: the tourist should tip (in line with the commitments of local norm-supporters); the restaurant should not expect a tip from him (in line with his own commitments). Most people's

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<sup>32</sup> I thank an anonymous reviewer for raising this objection.

intuitions would probably suggest that, all things considered, the tourist should tip, and this would continue to be the case even if the tourist's commitment to the no-tip norm were more central to his sense of self than locals' attachment to the tipping norm. Can the agency-respect view help us make sense of cases like this?

I think it can. Except in private and personal contexts, where others' commitments are well known to us, satisfying the demands of agency respect presents considerable epistemic obstacles. Other people's commitments are not public; they are not transparent to us. And it would be practically impossible—as well as undesirable—for us to get to know all of them, one person at a time. This is why, outside private and personal contexts, we tend to assume that one should simply obey local norms, as concisely expressed in the old saying “When in Rome, do as the Romans do.” After all, more often than not, the content of those norms is accessible to us and tracks the commitments of those with whom we interact. Provided local norms are morally permissible and underpinned by genuine commitments, obeying them “by default” is a perfectly reasonable—in fact, a justified—rule of conduct in light of agency respect combined with efficiency and publicity concerns (cf. Scanlon 1998, 339).<sup>33</sup>

This explains the underlying intuition in *Japanese tourist*—i.e., that the customer ought to obey local norms and tip—while at the same time allowing us to acknowledge that asking the tourist to obey local rules involves a (very small) pro tanto agency wrong. This acknowledgement is important. Consider higher-stakes cases, such as those involving refugees being accepted into a new country and culture. In such cases, we typically regard it as appropriate that, within the limits imposed by basic moral demands, refugees be asked to integrate and obey local norms. Yet it is crucial to acknowledge that this rule is one the justification of which also depends on considerations of publicity, coordination, and practicality. While the demands of agency respect certainly push in the direction of refugee integration, they *also* push in

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<sup>33</sup> See also G.A. Cohen's (2003) notion of a “rule of regulation.”

the direction of accommodating the valued practices of refugees. When refugees make considerable sacrifices in terms of integration and adaptation, we should recognize that a pro tanto wrong occurs. And if there exist reasonable strategies for minimizing this wrong, they should be pursued.

#### 5.4 *What about the moral force of “one’s own” norms?*

A sympathetic reader may find that the agency-respect view successfully explains when and why the fact that “foreign norms” demand that we  $\phi$  places us under a pro tanto duty to  $\phi$ . But she may also be sceptical about its ability to vindicate our obligation to obey the norms structuring *our own* community. What can be said in response to this concern?

First, the question of why we should obey the norms of societies other than our own is independently important and seldom discussed. To that extent, my argument would still have merit, even if it only explained the obligation to obey the norms of societies we are visiting. But I think the potential of my argument is greater than the objector believes. To see this, we should keep membership-based or associative obligations—i.e., the obligations one has as a member of a community—and our obligation to obey socially constructed norms separate (for discussion of the former, see van der Vossen 2011). As Joseph Raz points out, the obligations that arise out of membership in a given society are not limited to—and sometimes do not even include—the obligation to obey various socially constructed norms. In fact, our associative responsibilities may require us to disobey existing norms (when they are unjust), as well as to do things on which existing norms are silent (e.g., show solidarity towards our fellow members in circumstances that are not the object of formal or informal regulation) (Raz 2006, 1004–5). In this paper, I have remained agnostic about associative obligations, and have only focused on the moral normativity of socially constructed norms.

Furthermore, the presupposition that the moral normativity of a society's norms is tied to membership appears unsupported by day-to-day experience. Most of us do not think that, while we ought to obey legal and informal norms in our country of citizenship (and/or residence), we have no such obligation when we visit a different country. My sense of obligation tracks the set of norms I am actually subjected to, in the jurisdiction in which I find myself. If I move to Australia for a short academic visit, I consider myself under an obligation to do what Australian law (and custom) requires, because it so requires.

Second, I grant that one may have *additional reasons*, beyond agency respect, to act as the norms of one's own community prescribe. This is so when and because one is committed to the oughts making up the norms of that community. Under appropriate conditions, commitments may well generate reasons for those who make them (Chang 2013). Moreover, if one strongly identifies with and values certain norms, acting as they require may carry expressive significance (on valuing, see Scheffler 2011). In the same way in which, say, members of Oxbridge colleges engage in a number of rituals to express their commitment to, and identification with, college life, so too members of political communities might follow the formal and informal norms of their polities to express their commitment to a political project they find valuable and with which they identify (see Stilz 2016).

But although commitments to certain oughts, and identification with the associated practices, may generate additional reasons to act on their demands, it is not clear that they give rise to any additional *moral obligation* to obey socially constructed norms (cf. Southwood 2011, 787–89). Affirming the norms' demands "from within" may be valuable for an agent, but it is not morally obligatory, in the same way in which appreciation of the arts is valuable, but not obligatory. The moral grip socially constructed norms have on us—whether at home or abroad—can be accounted for by the agency-respect principle. In fact, that principle allows us to

explain why even a non-committed member of a community, who is not particularly invested in its norms, nonetheless has a pro tanto obligation to obey them.

In response, one might point out that there must be reasons why the members of a given community commit to particular requirements.<sup>34</sup> For example, they implement a given set of traffic rules because they find those rules efficient and effective; they adopt a specific political decision-making system because, in their view, “it delivers the best results overall,” and so forth. While the grounds of visitors’ obligations to obey those norms need not refer back to those reasons, any plausible account of *members’* own norm-generated obligations should. The agency-respect view, it might be thought, is problematic because it does not satisfy this desideratum.

In response, we must distinguish between (a) the grounds of the moral normativity of socially constructed norms—which explain why the fact that a given norm requires one to  $\phi$  generates an obligation to  $\phi$ —and (b) the considerations justifying norms-supporters’ commitments. As we saw in Section 2, the moral normativity of socially constructed norms cannot rest on the norm-independent virtues of the actions they prescribe. A focus on those virtues leads us to the deflationary view. But a robust intention to treat the demands of these norms as standards of behaviour often rests precisely on the norm-independent merits of those demands, whatever these may be. Take, again, traffic norms established on grounds of safety and efficiency. Safety and efficiency are reasons for adopting traffic norms, but they cannot ground the moral normativity of those norms. Once again, when a socially constructed norm has moral normativity, it is true to say that one ought to  $\phi$  *because* the norm prescribes that he or she should  $\phi$ . That is, one ought to  $\phi$  in light of morally salient considerations that attach to *the fact that  $\phi$ -ing is norm-prescribed*, not in light of the norm-independent virtues of the prescription’s *content* (e.g., “ $\phi$ -ing is

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<sup>34</sup> I thank Samuel Scheffler for pressing me on this.

safe”).<sup>35</sup> This is why the grounds for accepting (committing to) the demands of socially constructed norms and the grounds of the norms’ moral normativity cannot be the same.

## 6. The explanatory power of the agency-respect view

In the previous two sections, I articulated the agency-respect view, explained how it relates to other views, and addressed possible objections to it. Before concluding, I wish to consider the implications of my view for *Traffic Light*, *Barbeque*, and *Non-proceduralist President*, so as to establish whether it delivers on its explanatory promise. First, the view allows us to explain why a harmless failure to obey German traffic norms is pro tanto wrong. To the extent that German traffic norms are morally permissible, agency-respect gives them moral normativity. We thus have a pro tanto duty to obey them, and we commit a pro tanto wrong, though not a rights-violation, when we disregard them. This means that anyone driving on German roads would be doing something pro tanto wrong by ignoring the red light in a situation like the one in which Jürgen found himself.

My account can also explain why our hypothetical Southern Italian interviewees need not be *entirely* mistaken in denying the wrongfulness of ignoring a red light on an empty street. While they would be mistaken if the context of occurrence of the breach were Germany, they would not be if we shifted the context to, say, Naples. This is because, as anyone who has spent time there knows, *in the specific context of Naples*, there is no norm that requires obeying traffic signs. The agency-respect explanation also allows us to make sense of why our duty to stop at a red light, in a context like Germany, is rather weak. No matter how law-abiding some Germans might be, it is hard to think that their commitments to traffic regulations are core aspects of their life-plans.

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<sup>35</sup> Though, as reference to moral permissibility shows, the obligation to obey is *conditional* on [positive socially constructed](#) norms having morally acceptable content. Cf. the distinction between content-independence and content-sensitivity in Valentini (2018).

The agency-respect explanation, therefore, gives us exactly what we want: it accounts for why we may sometimes be bound to stop at a red light on an empty road, it also allows us to make sense of many people’s intuitions to the contrary, and it matches the judgement that the pro tanto duty in question is rather weak.<sup>36</sup>

The agency-respect view also explains the wrongdoing involved in *Barbeque*. Here, the violated socially constructed ought is correlative to rights. This means that *you*—namely, the owner of the barbeque set—are wronged by the Rossis’ actions. The view also explains why this second case is more intuitively wrongful than the first. To begin with, private property requirements are ones most of us presuppose and are deeply committed to. The (conventional) demands of property norms shape and constrain “from within” the pursuit of our ends, projects, and goals. Furthermore, the violation of a right—hence of a duty *owed* to someone—is typically more intuitively problematic than the violation of a duty simpliciter. The fact that, in *Barbeque*, there is a clearly identifiable victim renders the wrongness of the breach all the more vivid.

Finally, my account illuminates the nature of the wrong done in *Non-proceduralist President*. To the extent that the President violates the socially constructed norms that structure the US’s collective decision-making, he acts (pro tanto) wrongly. Furthermore, since political membership—with its constitutive norms, including those governing the people’s collective-will formation—is often an

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<sup>36</sup> An anonymous reviewer has raised the following concern: traffic regulations are legal norms, and our obligation to obey *those* norms should not be contingent on people’s being committed to them. After all, unlike informal norms, laws do not cease to exist just because the majority no longer complies with them. While it is true that my view has implications for debates about the authority of law, my primary aim here is not to contribute to those debates—something that would require a separate paper. That said, let me offer a few reflections in response to the concern raised. First, the claim that a law does not cease to exist when most people cease to abide by it is itself controversial: it rests on a particular account of the existence conditions of law. For example, one could suggest that what the law is in any given context depends not solely on what “is written in certain documents” but also on the actual practice of [both](#) citizens and officials. See Brennan et al. (2013, 48ff.) for discussion. Second, independently of what it takes for something to have the status of law, it isn’t obvious that the violation of laws which are on the books but neither enforced nor followed by citizens is wrongful “because they are the law.” Suppose both traffic wardens and locals in Naples have developed an alternative system of norms concerning traffic, which departs from the official letter of the law. The system works well, is publically known, and not challenged. According to this system, red lights are merely advisory: if the light is red, but there’s nobody around, one is supposed to carry on without stopping (doing otherwise would slow traffic down). It isn’t clear why, in such circumstances, driving through would be wrongful “just because it is technically against the law.”

important dimension of individuals' sense of self and life-projects, it is clear why, intuitively, the wrong involved in *Non-proceduralist President* is a serious one.

The agency-respect view, I hope to have shown, lives up to its explanatory promise.

## **7. Conclusion**

I have offered an account of the grounds and limits of the moral normativity of socially constructed norms. Central to this account is the pro tanto duty to agency-respect others: to respect their genuine commitments, provided these are independently morally permissible. This account offers a parsimonious explanation of the wrongdoing involved in breaches of socially constructed norms, including those that the deflationary view cannot explain. Moreover, the account makes sense of, and is true to, our mixed reactions in relation to socially constructed norms. It shows that the moral pull of such norms is more than just illusory, while acknowledging that it has significant limits: those imposed by basic moral demands. Of course, determining whether a given norm is morally permissible requires careful contextual interpretation. The framework I have proposed helps us make sense of the need for such contextual interpretation.

Given the ubiquity of socially constructed norms in our lives, vindicating their moral normativity has significant implications for several questions in moral, legal, and political philosophy. I lack the space to enumerate all of these implications, but my discussion in this paper already points to two important ones. First, as readers may have noticed, several of my lead-examples involved not just any kind of socially constructed norms, but legal ones in particular: concerning traffic, property, and political decision-making. This suggests that the agency-respect view can be brought

to bear on long-standing debates about the moral normativity of law (for overviews, see, Dagger and Lefkowitz 2014; Green 2012).<sup>37</sup>

Second, the view offers a promising analytic framework for making sense of our moral duties in a pluralistic world, in which different systems of norms and commitments often clash with each other. These are the questions addressed in the ever-growing literature on multiculturalism, and as my brief remarks about refugee integration suggest, the agency-respect view can make a contribution there too.

These illustrative examples demonstrate the significance of the exploration undertaken here, and the broader importance of giving socially constructed norms their moral due.

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<sup>37</sup> But one may wonder: Isn't the law "special"? In response, let me note that, if laws are indeed particular types of socially constructed norms, the burden of proof of showing that their normativity has a distinctive character, compared to that of other such norms, should fall on those who advocate this distinctiveness. This is not to deny that we typically treat the law as "special," but to point out that this default assumption requires justification. One possible justification, in keeping with my broader view, is that abiding by the law—when it is arrived at democratically and its content is morally acceptable—is necessary for people to treat each other with respect under circumstances of reasonable disagreement about people's rights. I am not unsympathetic to this line of reasoning. However, as I have argued elsewhere (Valentini 2018), I do not think it suffices to demonstrate that we have an obligation to obey the law *because it is the law*. In particular, as there exist several concrete forms of democracy (e.g., parliamentary, presidential, with different electoral set-ups, etc.), which are themselves the object of reasonable disagreement, a broad appeal to the democratic pedigree of the law doesn't seem sufficient to explain why the legislation produced via *a particular instantiation* of democracy should be binding. The question is: Why are *these* democratic procedures, namely those that happen to be operative around here, binding? An appeal to the virtues of democracy *in general* cannot provide an answer to this question.

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