

The Fair Share Theory of Conventional Normativity

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Abstract: Often, we should obey conventional, or socially constructed, norms. You should tip in America, queue up in England, spurn drugs in Singapore. But why? Laura Valentini (2021) has recently suggests that obeying conventional norms respects the agency of those who support such norms. In this paper, I argue that this isn't why we should obey conventional norms. Instead, we should think of the moral force of such norms in terms of fair shares. Many conventional norms help us discharge weighty collective obligations: obligations to fairly allocate goods, to help people author their own lives, to ensure people workers are paid sufficiently for their work. We have a duty to contribute our fair share towards discharging these obligations. And so we have a duty to uphold many conventional norms. This, I suggest, explains not only the moral force of conventional norms, but also provides a general theory of moral rights.

1. Introduction

In London, people queue up at bus stops. Buses are frequent, so usually queueing isn't necessary. But when everyone leaves work, sometimes that are too many people for all to get on the first bus. So Londoners form orderly queues, and the first to arrive at the bus stop is the first to board the bus. In this context, you do something seriously wrong, morally speaking, if you jump the queue. In contrast, in Rome, people do not form orderly queues to get on public transport. When there are too many potential passengers for a bus in Rome, those who end up getting on are those wily or quick enough to snag themselves a place. Do Romans do anything wrong by not queueing? I doubt it. They are not obligated to queue, because their social norms are different. There is no norm mandating queueing for buses in Rome.

Here is a different case. In New York City, you tip twenty percent of the pre-tax bill when you eat out. You do this at cheap places and at fancy places, you do it regardless of whether the server is better off than you. If you ever tip ten or fifteen or nineteen percent on a meal, you have done something wrong, sometimes seriously so. In Tokyo, in contrast, you don't tip anything. You may verbally thank the servers for a good meal, but tipping is neither required nor desired. The Japanese are not doing anything wrong when they don't tip in Tokyo restaurants.

Again, the conventions in New York and Tokyo are simply different: no norm mandates tipping in Tokyo, and that is why one needn't tip in Tokyo restaurants.

Consider one final case. Imagine you're an unmarried person in their thirties. If you are a Chinese person in China, your older relatives will give you a lot of advice about your situation. Your aunts and uncles will give you detailed advice about your appearance, career and comportment, all with the aim of getting you a spouse. Your parents will strongly encourage, even pressure, you into settling down. In England, none of this usually happens. Your older relatives stay out of your business. Are the Chinese (or the English) acting wrongly in their respective situations? I'm skeptical. Rather, familial norms in the two countries just differ. England has much stricter rules protecting adult children from familial pressure on relationship issues. This is why the kind of advice elder relatives can give younger scions of their family is different.

What these cases suggest is that conventional, or social, norms have moral force. We're morally obligated to do as certain social norms dictate. I'm not going to give a detailed account of what a social norm is at this point, but we know them when we see them. Consider the rule forbidding you from eating with your elbows on the table or mandating that you greet colleagues with a handshake: both are social norms in much of the anglosphere. Or consider the norm that adult children can live with their parents until marriage: this is a norm in much of Southern Europe. Social norms sometimes correspond to legal norms: traffic laws, for example, both impose legal obligations and, sometimes, match social norms. But social norms are very often less formalized than legal norms. Generally, social norms are the standards a group of people generally accepts for their behavior. Norms are social in the sense that they are socially-constructed. They are based on the attitudes of people. There is no general moral rule that you must stop your car at red lights, but in much of the world there is a social norm that you do so.

My aim in this paper is to explain why social norms have moral force, when they do have such force. Let me immediately address a deflationary position. This position says that there's nothing terribly interesting about social norms: they have moral force when and only when we have independent moral reason to do as they direct. We have a duty to tip in New York city restaurants, for example, because we have a duty to prevent servers from falling into poverty. I don't think this position is very plausible. For a start, the explanation of tipping doesn't work in many cases. At high-end restaurants the waiters earn more than me; still, it would be seriously wrong for me not to tip. Yet the more general problem with this position is that it doesn't explain the cultural variability of people's moral obligations. Londoners have a duty to queue at bus stops, but Romans do not; English parents have a duty to refrain from detailed commentary on their adult children's romantic status, but Chinese parents do not. If these duties just flowed

from independent moral reasons, one would need to explain why these reasons differed in different places. No explanation of this is obvious. So we have some reason to look for a more inflationary explanation of the moral significance of social rules.¹

The rest of the paper will be in part critical and in part constructive. The next section is critical. We'll explore Laura Valentini's recent account of the moral force of social norms (Valentini 2021). Valentini thinks we should obey social norms because doing so respects the agency of those who support the norms. I will raise some objections to this view. We'll then, in section 3, outline an alternative view. On this alternative view, we should comply with social norms when, and because, we have certain collective obligations that those norms help us discharge. Complying with the norm is doing our fair share towards discharging this obligation. In section 4 we'll explore some challenges to this theory, and in section 5 we'll explore its applications. Overall, this will provide what I think is quite good support for a fair share theory of the moral force of social, or conventional, normativity.

2. The Agency-Respect Theory

As I've said, Laura Valentini (2021) has recently advanced a very interesting account of the moral force of social norms.² To start with, she thinks that, generally speaking, we have a pro tanto moral obligation to respect people's genuine, morally permissible, commitments. A commitment is a robust intention around which we orient our plans and goals. You might intend to be a good parent. This intention is robust if it is not merely transitory or fleeting: you retain the intention to be a good parent in a wide range of situations. And you orient your goals around it if you modify them so that they are consistent with satisfying your intention. You won't work too much, for that would clash with your intention to be a good parent. Valentini thinks that to respect someone's agency, we have to respect these robust commitments (2021, 390–92). That means we have a pro tanto moral obligation to help, or at least not hinder, the satisfaction of people's robust commitments. If you are committed to being a good father, I have a pro tanto moral obligation to help you be a good father.

She further thinks that socially constructed norms are norms people robustly intend others to take as standards for their own behavior, in the sense of conform their behavior to the norm. Think about the norm "Wait for a bus in a queue."

¹ For much more on this point, see Valentini (2021, 387–89).

² For some other views, which I unfortunately do not have space to discuss, see (Gilbert 2006; Marmor 2009, 131–54; Owens 2022).

This is, according to Valentini (2021, 387), only a norm because many intend other people to act in this way. Were people not to intend others to conform to this norm, then there simply would be no norm. And people orient their other plans or goals around such norms: I have the goal of getting home earlier, but I'm not going to pursue this goal via jumping the queue. How I pursue the goal is constrained by my intending that everyone, me included, wait in line. So this norm counts as one of my commitments. Valentini suggests this goes generally for norms: when a social norm is in place, it expresses the commitments of many people in the society (2021, 392–94).

It is now straightforward to see how these premises explain the moral force of social norms. Norms express people's commitments, and we have *pro tanto* obligations to respect people's commitments. This just is to respect their agency. So we have *pro tanto* obligations to respect social norms. And that is to say we have a *pro tanto* obligation to take norms as a standard for our own behavior. We have *pro tanto* obligations to follow social norms. Now of course Valentini doesn't think we always should do as social norms dictate. For a start, our obligations here are merely *pro tanto*: they can be outweighed by other, weightier, obligations. And, additionally, it's only morally permissible commitments that we have a *pro tanto* obligation to respect. I might have a commitment to upper caste and lower caste people not mixing, but this is a morally impermissible commitment, and so nobody has any *pro tanto* obligation to help me realize it. These caveats aside, though, the general idea is that we should obey social norms in order to respect the agency of supporters of those norms. She calls this the "agency-respect" theory of the moral force of social norms.

This is an extremely interesting theory, but I don't think it is true. Let's turn to the objections. To begin with, I don't think we generally have a *pro tanto* obligation to comply with other people's commitments, even when these commitments are genuine and morally permissible. Suppose I am a Parisian. I form the commitment that people in London stop queuing for the bus; that they decide who gets on the bus by playing rock-paper-scissors instead. This is a morally permissible commitment, or so it would seem. If it's permissible to commit to one way, queuing to allocate spots on public transport, it seems permissible to appeal to another—random chance—to allocate such spots. Yet this gives Londoners no obligation at all to play rock-paper-scissors to decide who gets on the bus. And nor do things change if I get a lot of my fellow Parisians to share my commitments. Even if the whole of France is committed to Londoners allocating seats on overburdened buses via a game of chance, Londoners have no *pro tanto* obligation to do so. And so we don't, generally speaking, have *pro tanto* obligations to comply with other people's commitments.

It will be helpful to think about another case of this sort. Imagine I have strong commitments about what you wear. I intend you to wear red all the time. It seems this gives you no obligation whatsoever to wear red. Is my commitment in this case impermissible? It is not clear why it would be. I'm not proposing to force you to wear red or nor supposing you have less moral status than I do (perhaps I just think you'd look good in red). So I don't violate any rights against coercion or to equality. One might think that we have a general right to decide what we wear, and any commitment to our clothing choices violates this right. But I don't think Valentini can take this view. We often have social norms governing clothing. You should wear formal clothes at formal events. You shouldn't walk around in public naked. These norms have moral force: if you come to a wedding in sweatpants you've done wrong, and if you walk around Dubai unclothed you've violated your obligations. So, on the agency-respect theory, some commitments to other people's clothing choice must be permissible. Yet then there cannot be a general right to decide what we wear. So it is not clear why my commitment to you wearing red would not be permissible. And so the agency-respect view seems to imply, falsely, that you have a *pro tanto* obligation to wear red after all.

What is going on in these cases? I think the truth of the matter is that what commitments we have obligations to comply with is often determined by social norms themselves. You don't have any general obligation to comply with my commitments regarding your clothing choice, because our norms determine what you wear to be part of your personal sphere. I don't get any say on it (except in some cases, as when I invite you to my wedding). And Parisians don't have any say on how Londoners allocate spots on buses, because by the lights of our democratic norms this decision is a matter for Londoners alone. In contrast, I shouldn't interfere with your commitment to your religion because our norms pick out that commitment as something to be respected. Which commitments matter in this way and which don't is *post-* rather *pre-*institutional. It flows from the moral force of appropriate norms. If that is true, it augurs poorly for the agency-respect theory. We cannot explain the moral force of social norms via the import of our commitments if we need to explain the import of our commitments via appeal to the moral force of social norms. In the next section, we'll see a theory that gets what I think to be the order of explanation in these cases correct.

I want to consider one reply to this objection. One might suggest that, in these cases, one doesn't entirely lack a *pro tanto* obligation to comply with other's commitments. One merely has a very lightweight such obligation, in the sense of an obligation that is very easily outweighed by other duties. Our duty to comply with other people's commitments *per se* is lightweight. The problem with this reply is that it implies that, generally, we only have very lightweight obligations to comply with social norms. Yet often it seems we have weighty obligations to

comply with social norms. Think about the duty English older relatives have not to pressure their nieces to marry. This is no trifling thing. In England, if your aunt obsessively comments about your romantic life, she's done something seriously wrong. She owes you a heartfelt apology and should rectify her behavior. So this reply undercuts the capacity of the agency-respect theory to explain the substantial moral force of social norms.

Let us turn to two further objections to the agency-respect theory. These hinge on the extent to which respecting a norm really means respecting someone's agency. The first worry here is about what a social norm is. Valentini's position depends on the idea that a social norm is in place when people intend that others conform their behavior to the norm. Call this the intentional construal of social norms. This construal is important because intentions clearly matter to agency. It makes sense that respecting someone's agency involves helping, or at least not hindering, the realization of their intentions. Yet there is an alternative construal of norms. One might think that a norm is in place when people believe that everyone *ought* act in a certain way.³ Call this the normative belief construal of social norms. If the normative belief construal is correct, the link between norms and agency will be severed. We don't disrespect people's rational agency when we act out of line with their normative beliefs, and we don't have weighty moral reasons to do what people believe we ought to do. Some Christians, for example, think I ought not cohabit before marriage; this gives me no reason whatsoever not to cohabit. So the plausibility of the agency-respect theory depends on which construal of social norms is more plausible.

To evaluate that, let's first look at Valentini's evidence for the intentional construal of social norms. Her evidence is that this construal explains norm-supporters' "adherence to the...rule and their disposition to criticize and sanction others for breaches thereof" (Valentini 2021, 386). The idea is that they do these things because of their intentions. The problem with this is that the normative belief construal can explain such behaviors too. We often do what we believe we ought to do, and we criticize people for doing what we believe violates their obligations. Indeed, the explanation from normative beliefs seems better than that from intentions. I don't generally criticize people for not acting as I intend. Suppose we're playing chess. I move my queen, and I intend you to take it, falling into my trap. You see through me, and don't take the queen. I wouldn't criticize you for this; I am not even inclined to do so. In contrast, we are plausibly always disposed to criticize people for not doing what we think they ought to do. So the evidence Valentini raises seems to favor the normative belief construal of social norms.

³ For a more extended defense of this kind of view, see Brennan et al (Gilbert 2006; Marmor 2009; Owens 2022).

Additionally, it is puzzling how individuals could intend the behavior of others in relevant cases of social norms. Plausibly, I can intend something only if I think I have a non-trivial chance of bringing that thing about.⁴ I cannot intend that the moon orbit around Mars, because I know I have almost no chance of making the moon orbit Mars. Yet often I clearly have almost no ability to get other people to comply with the norms I support. I just don't have any way of making Donald Trump, for example, tip twenty percent on his dinner bill when he makes it to New York. And so it is odd to think that I intend Donald Trump to do this. I desire it. I think he ought to do it. But I lack the influence over his behavior that makes it proper for me to have intentions with respect to it. The point applies quite generally in the context of norms: I can influence some people to be norm-followers, but I have almost no influence on the overwhelming number of people who I take to be bound by the norm. So, on the face of it, we should construe norms in terms of beliefs not intentions, severing the connections between norms and the agency of norm-supporters.

Let us look at one reply to this worry. I've just suggested that one cannot intend something when one knows one has very little chance of bringing it about. One might reply that this constraint covers only one kind of practical, goal-orientated attitude. Perhaps one can have other kinds of goal-orientated attitudes even when one thinks one has almost no chance of achieving one's goals (cf. Valentini 2021, n.4). These weaker practical attitudes, whether we call them "intentions" or not, might be the ones that give norms their moral force. The problem with this reply is that such attitudes seem to have a much looser connection to agency than do full-blooded intentions. Perhaps there's a sense in which I can have the goal of making the moon orbit Mars, despite believing in my almost complete ineffectuality. Yet I cannot, I think, really orient my agency around such a goal in these circumstances. The less influence I think I have on achieving the goal, the less my attitude towards it implicates my agency. So this reply wins a pyrrhic victory for the agency-respect theory. It rescues some way of connecting norms to the goal-orientated attitudes of their supporters, but at the cost of distancing those attitudes from agency. Either way, we lose the tight connection between social norms and the agency of norm-supporters, and so cannot explain the moral force of the former in terms of the latter.

I want to raise a third and final objection to the agency-respect theory. Let us grant that norms involve commitments. The theory relies on the idea that, insofar as we want to respect people's rational agency, we must respect these commitments. The thought, in Valentini's words, is that these commitments "are active: they are something that we author" (Valentini 2021, 390). To respect people's active

⁴ For endorsement of this kind of point, see Velleman (1997) and Bratman (1999).

authorship, one might naturally think, is at least a very good way of respecting people's agency. The worry is that this is a deeply misleading picture of how most of us come to accept the norms we do. There is nothing very active about the way we usually come to accept norms mandating queuing or tipping or determining our familial rights and obligations. We don't reflect on these norms rationally and decide to endorse them. Rather, we're hard-wired into seeking out and internalizing the norms that are extant in our social context. Norm-following is an innate feature of our psychology, and our incorporation of norm is passive in a way akin to how we learn language or acquire aesthetic standards.⁵ When we see norm acquisition in this way, it is less clear that respecting them could be an especially important way to respect people's rational agency.

Let me say a little more about this picture of norm acquisition. The evidence for it starts from the fact that we begin to acquire norms when we're very young. Rakoczy, Warneken, and Tomasello (2008) report a nice experiment providing evidence for this. They get a bunch of three-year-olds to come into their lab. In the lab is an adult playing with some objects: the adult puts some wooden pieces together to form a bat, and uses them to push a block across a table into a gutter. The adult then leaves without ever interacting with the children. The experimenter then comes into the lab with his hand-puppet, Max. He has Max play with the objects differently to how the adult did. Specifically, Max lifts up the table so that the block slides into the gutter. The children respond by telling Max off; he's doing it wrong. This suggests we acquire norm-enforcing behavior as young children, long before we acquire the kind of practical agential faculties that warrant respect. So our norm supporting behavior need not be explained by anything to do with these faculties. Even if norms do involve commitments, these are not the kind of reflective commitments that one might think have deep moral significance.

We can underline this point, I think, by looking a bit more at the variation in norms across societies. People almost always do endorse the norms they are raised with, at least in large part. British people think queuing is the appropriate way to allocate scarce goods. Americans think tipping twenty percent is obligatory. Chinese people see nothing wrong with interfering in the relationships of their younger relatives. This underlines the point that most people's absorption of norms is not a product of critical reflection. Critical reflection usually produces a lot of disagreement about normative matters. The history of ethics is enough to see this: when people think in a sustained a serious matter about what they ought to do, they come to very different conclusions. There is little convergence in ethics; philosophers have very different views about moral issues. Within each society, though, there is a lot of convergence on which norms to endorse. People

⁵ For important sources of this picture, see (Chudek and Henrich 2011; Henrich 2016).

simply adopts the norms extant in their society. All that suggests a mechanism besides that of critical reflection is leading to their adoption of norms.

What is this mechanism? A view recently championed by Joseph Henrich (2016) is that we are simply innately disposed to imitate other people, especially prestigious people. We do this, primarily, by working out what norms exist in our environment and internalizing them. Here to internalize a norm just is to take it as a standard for one's own and other's behavior. There is an evolutionary explanation for why we do this. Knowledge is extremely important in human societies: it is vitally important to know how to make fire, cook casava or find edible plants. But the relevant kind of knowledge is hard to verbally communicate. It is complicated, and often tacit. So the best way to utilize such knowledge is simply by imitating other people, especially successful (and thereby prestigious) people. And we do this by acquiring and living by norms. The key point is that the acquisition of norms here is arational rather than rational. There is a sensible causal explanation for why we're disposed to internalize norms, but we don't think through these issues when we internalize norms (children surely don't). We are simply strongly disposed to internalize norms.

Why does all this matter? Because commitments should be taken most seriously, I think, when they're reflective. They should be taken most seriously when those who have them have thought carefully about them and, upon detailed consideration, decided to endorse them. Perhaps unreflective, unconsidered commitments also have some moral force.⁶ But they reflect people's actual exercise of rational agency to a far lesser degree than do other commitments, and so have far less moral force. Yet our commitment to norms, I believe, is usually unreflective and unconsidered. British people don't reflect on whether queueing is the best way to allocate seats on the bus, they are arationally committed to queueing. If that is so, the commitments identified by the agency-respect theory are ones we should not take too seriously. They are not ones that reflect the actual exercise of rational agency, and so respecting agency doesn't require much of us with regard to such commitments. My own sense is that such morally weak commitments are not sufficient to explain the moral force of social norms.

Some might suggest that what really effects the moral force commitments is not whether they are the product of actual reflection, but rather whether their formation could have survived hypothetical reflection. The idea is that we have reason to help someone fulfil one of their commitments when, had they attended to its development, they would not have resisted that development.⁷ But I think this position is difficult to motivate. Insofar as we care about agential capacities,

⁷ This is in the spirit of Christman (1991).

and thereby commitments, it is because we care about those capacities really molding our lives. We care about our deliberative dispositions, our tendencies to give different considerations certain weight, having an actual causal influence on what happens to us. Hypothetical reflection does not get us this, and so emphasizing hypothetical reflection unmoors us from the reason we had to care about agential capacities in the first place.

Let me respond to one objection to this position. One might think that religious commitments are typically unconsidered and unreflective. People don't become Catholic or Muslim or Hindu because they've thought carefully about the veracity of different religious doctrines: they just adopt the beliefs extant in their community. But religious commitments are paradigmatically one's that we should respect. This objection, I think, paints a somewhat uncharitable picture of many people's religious commitments in the contemporary world. I think a lot of contemporary Catholics, for example, have dwelt on whether God exists and whether they ought to keep their faith. Their Catholicism is in part a product of this reflection. More generally, though, I think we should respect people's religion because social norms that mandate such respect are generally good for them. The point here is not that each individuals' commitments are worthy of a lot of respect—perhaps those which are genuinely unconsidered and unreflective are not worthy of much respect. Rather, it is that for many people religion is a sphere of reflective and considered commitments, and so protecting religious choice helps instantiate a general respect of such commitments. Again, we should respect people's religious commitments, but that is a post- rather than a pre-institutional fact. I'll spell out this view in more detail in the next section.

Let's sum up. As I've said, I think the agency view is an interesting, initially attractive, view. But I think it is ultimately untenable. Both the ideas it relies on seem to me false. It is false that commitments must generally be respected, and it is false that norms instantiate important commitments. Let us see, then, whether we can construct a more attractive theory of conventional normativity.

3. The Fair Share Theory

My positive proposal descends from the Rawlsian idea that we can explain many obligations in terms of a duty to do our fair share.⁸ Rawls understood certain obligations, such as promissory obligations, in terms of a duty to contribute our fair share to the maintenance of cooperative schemes from which we benefit. This is a kind of duty of reciprocity. The idea, in the promissory case, is that we benefit from the practice of promise, and keeping our promises is making a fair return for

⁸ For this view, see Rawls (1971, §18, 52). Rawls himself was influenced by Hart (1955, 185).

that benefit. These specific ideas, dependent as they are on reciprocity, do not easily generalize to social norms. The chief problem is that often we don't benefit from social norms that bind us.⁹ Consider the tipping norm. It is, primarily, waitstaff that benefit from the norm that twenty percent be tipped on every meal. I've never been a waiter. I don't benefit from this norm, or at least don't benefit much.¹⁰ Still, I am bound by the norm. I do something seriously wrong if I leave a New York restaurant without tipping. So my positive proposal distantly descends from Rawls' idea, but the details are very different.

I propose that we start with the claim that we have many collective obligations.¹¹ Collective obligations are duties that we have not simply as individuals, but as a plurality.¹² Consider, for example, our duty to avert very serious global warming. This is not a duty any individual has. None of us can individually avert serious global warming. Rather, it is a duty we have collectively, as a society or as the whole of humanity. Such collective obligations are common. We have them whenever there is a morally urgent goal that we need to coordinate on in order to achieve. We have collective obligations to ensure goods are fairly distributed in our society, that people are paid sufficiently for their work, that everyone has a decent chance at authoring their own life, and much else besides. We aren't just individually obliged to ensure these things: indeed, typically, we cannot individually do so. We're collectively obliged to do them.

The key further observation is that it is very hard to discharge our collective duties. Consider the duty to ensure that goods are fairly distributed in our society. There are two things that makes this very difficult to discharge. First, there is a motivational problem. We cannot reach into everyone's head and ensure they give appropriate weight to fair distributions on each occasion they deliberate. We aren't capable of influencing people's practical deliberations in this fine-grained way. The problem is exacerbated by the fact that people have strong countervailing motivations. We're selfish: we're disposed to give ourselves more than our fair share. And we're partial: we give our friends and family members more than their fair share too. This means merely trying to persuade people to give appropriate weight to fair distributions is of limited efficacy. Second, there is an epistemic problem. To satisfy our collective obligations, people have to know what others

⁹ There are also other problems, brought out by discussion of this theory applied to political obligations. For these problems, see Simmons (1979, 101–42) and Huemer (2013, 86–93). For a more extended critique, see Monti (2023, 12–14).

¹⁰ Do I benefit because the norm yields good service? Well, they have excellent service in Japan.

¹¹ Here the positive proposal I advance has some similarity to that in Wellman (2005). The differences are that Wellman is interested in duties to obey the law, rather than social norms more generally and, relatedly, he doesn't mention the empirical work on which I rely.

¹² For a classic discussion of collective obligations, see Parfit (1984, 75–86).

are doing. Whether giving you some good on some occasion is fair depends on what you get on other occasions. But it is very difficult for me to know what you get on other occasions, and even if I did know it would be very difficult for me to work out whether it was fair relative to other people's allocation. It is difficult to predict the behavior of other people.

These problems present enormous barriers to discharging our collective obligations. Fortunately, there is a solution to both problems. In our discussion of the agency-respect theory, I staked out a particular account of the psychology of social norms. On this account, we human beings are norm-following creatures. We're innately, and strongly, disposed to evaluate what norms hold in our social group and then adopt those norms. We are disposed to take those norms as a standard for our own and other's behavior. This is, the thought went, an arational process, and our disposition to follow norms often overwhelms our other motivations; it often overwhelms our selfishness, or partiality for friends and family members, our apathy. British people, for example, feel terrible about jumping a queue, even when they are about to miss their flight; people will refrain from lying or stealing or marrying their cousins, because their social norms forbid it. Norms have a pervasive influence on our behavior.

That means, I suggest, that often the only way to discharge our collective obligations is to set up and maintain norms that, if complied with, would discharge these obligations. This solves the motivational problem, because norm following is such a powerful human drive. Setting up norms is an indirect way of reaching inside people's heads in order to ensure they deliberate appropriately. And, as a result, it solves the epistemic problem. We can predict others will comply with the norm, because human beings are norm-following animals. To see this solution at work, reconsider the duty to ensure goods are fairly distributed in our society. One way to ensure certain goods, such as seats on public transport, are fairly distributed is by queueing. It's fair to equalize the time everyone spends waiting for their bus to come, and a queueing system will tend to do that. Those at the back of the queue will, on average, end up waiting about as long for their bus as those at the front have already waited. So to discharge our collective obligation here we should set up a queueing norm (or some equally effective allocative norm) or maintain one if it is already in place. Doing so has the best chance of, and is perhaps a necessary, means to, satisfying one of our collective duties.

Why does that matter to our individual obligations? Here, we need a further moral claim—and this connects the present view with the Rawlsian idea. The claim is that, when we have a collective obligation to do something, we are individually

obliged to contribute our fair share towards that thing.¹³ Think about global warming: we're collectively obliged to avert very serious global warming, so we're individually obliged to contribute our fair share towards averting such warming. Concretely, we're obliged to reduce our consumption, or to offset our emissions, or install solar panels. More generally, I think we're obliged to make the kind of efficacious sacrifices such that, if everyone made these sacrifices, we would discharge the collective obligation.¹⁴ It's a sacrifice to not fly transatlantically or to pay money to offset your household emissions. But these sacrifices contribute to averting serious global warming, and if everyone made such sacrifices, then we would succeed in such global warming. And so making such sacrifices is a way of doing your fair share towards contributing to this goal.

That completes the fair share theory of conventional obligations. The theory says that setting up and maintaining good social norms is the most reliable means for us to discharge our collective obligations. This means that, when we have such norms, we're collectively obligated to maintain them. So we have an individual obligation to do our fair share towards maintaining social norms. We each should make the sacrifices such that, if everyone made similar sacrifices, the norm would be maintained. In most cases, what those sacrifices are is fairly clear: we should internalize the norm. We should take it to be a standard for our own and others behavior, and so we should comply with it. If everyone did this, the norm would be maintained. Norms, then, have moral force when, and because, complying with them is doing our fair share towards discharging our collective obligations. We have many collective obligations that norms help us fulfil, and complying with those norms is our way of contributing to such obligations.

Let's see how this theory applies to our cases. Start with queuing. Here, I think the relevant collective obligation is to fairly distribute public goods. In London, maintaining the queuing norm is the most effective means of discharging this obligation. So we have a collective obligation to maintain the queuing norm. We should each contribute our fair share to maintaining this norm. So we should each internalize and thereby comply with it. So Londoners have an individual obligation to queue up at buses in order to contribute to discharging their collective obligations. In Rome, in contrast, there is no such norm and so no such individual obligation. Now turn to tipping. Here I think our collective obligation is to ensure that workers are paid sufficiently for their work. In the United States, the tipping norm ensures that waitstaff are paid sufficiently for their work. New Yorkers have

¹³ Dietz (2016) is one recent source for this claim. Wellman (2005) and Maskivker (2019) also endorse something of this sort.

¹⁴ For this kind of view, see Murphy (2003).

a duty to do their fair share in maintaining this norm, and thus they should tip themselves. In Japan there is no such norm, and so people aren't obligated to tip.

Familial norms are a little more complicated. These implicate, I think, two of our collective obligations. On the one hand, we have a duty to help people author their own lives; to help them ensure that their important choices manifest their own values, intentions and commitments. On the other hand, we have a duty to ensure people can have close and rewarding family relationships. This includes relationships in which they can give advice to family members freely. There are plausibly many equally good ways of balancing these goals. The English norms, that constrain older relatives from giving certain kinds of advice to family scions, tends to more promote the first goal. Chinese norms, that permit such advice, tend to more promote the second. Both are, one might think, fitting ways to discharge our multiple, conflicting, collective obligations. If so, then one has a fair share duty to comply with the norms in the society one finds oneself in. So neither Chinese nor English people do anything wrong in complying with their respective norms. Generally, the moral force of social norms comes from a duty to contribute our fair share to discharging collective obligation.

I want to apply the fair share theory to one final case. In the previous section, I mentioned that, an important aspect of autonomy is freedom of religion. Yet in some cases people's commitments to their religion is unreflective and unconsidered, and I suggested that such commitments are not of paramount moral significance. Nonetheless, I think the fair share theory explains why we should respect such religious commitments anyway. The picture is simple. We have a collective obligation to respect people's genuine and reflective commitments. This is simply a corollary of our obligation to help people author their own lives. We will not effectively discharge this obligation by setting up a norm that allows individuals, or states, to evaluate which religious commitments are genuine and reflective and which aren't. Third-parties do this badly; they don't have the information to tell whether a commitment is genuine and reflective, and their evaluation is predictably biased. We're much more likely to think a commitment is reflective if we share it. So instead we should just set up norms that mandate we respect *all* religious commitments. And that is why we should respect even unreflective and unconsidered religious commitments. Doing so contributes to norms that effectively discharge our collective obligation.

This illuminates a more general point. In the previous section, I claimed that what commitments we have a duty to respect often depends on the structure of our social norms. I have a duty to respect Londoners' commitments about how to allocate public transport in London, but not those of Parisians. I have a duty to respect your commitment that I wear a suit at your wedding, but not your commitment that I wear red all the time. Generally, what's going on here is that

our duties to respect commitments are filtered through social norms. We should respect those commitments that good norms, those which generally help us discharge our collective obligations, tell us to respect. The norm that gives you control over what people wear at your wedding (within reason) is such a norm. There is no norm that gives you control over what people wear all the time, and if there was it wouldn't be a good norm. It wouldn't help us generally discharge our collective obligation to ensure others author their own lives. And so the fair share theory explains what the agency-respect theory cannot: it explains why our autonomy rights so often seem post- rather than pre-institutional.

The fair share theory should, now, be tolerably clear. But let me clarify a couple of final points about the theory. First, there is an important question of when a social norm is sufficiently good at helping us discharge our collective obligations as to generate obligations. One could, in answering to this, say that each collective obligation is defined by a goal: the goal of fair distributions or reciprocity or self-authorship etcetera. Then one could say that a norm generates individual duties as long as it brings us within some threshold of achieving that goal. This, however, seem to me implausible. The problem lies in defining a threshold; any threshold here will seem arbitrary. A better view then seems to me a simple counterfactual view. When evaluating a norm, we see whether the relevant goal would be better achieved were the norm not to exist. Here we evaluate what other norms would take its place were it not to exist (and the answer might be "none."). If in this situation the relevant goal would be less well-achieved than it actually is, the norm's existence brings us closer to achieving the goal. And so we should do our fair share to uphold the norm.

Second, it's an interesting question what the ideas behind the fair share theory imply when we don't have relevant norms in place. To take an extreme case, imagine we lives in Hobbes' state of nature, and had no shared norms at all. Here, as I've mentioned in passing, we have a collective obligation to set up such norms. So we have an individual duty to do our fair share towards setting up such norms. But what that requires, I think, is much more varied than when we already have such norms in place. For a start, we need to evaluate what norms to try to set up. That involves evaluating both how good different norms are, and how feasible they are to establish. We then need to work out what the best way is for us to contribute towards setting them up. This might be some mixture of activism and conformity to the norm before it is prevalent. Evidently, what we should do in such cases is much more multifarious and context-dependent than what to do when we already have a good norm in place. Fortunately, to explain the moral force of actually existing norms we only need to consider the simpler case.

That completes my statement of the fair share theory of the moral force of social norms. I think this theory is a *prima facie* plausible, attractive, account of when

and why conventional normativity is morally binding. But let me now address some challenges to the theory.

4. Challenges

4.1. Directed Obligations

The most serious challenge to the fair share theory is how it captures the special directedness of our duty to obey social norms. Here's the issue. When you jump a queue, you don't wrong everyone who benefits from the queue norm equally. You wrong the people in the queue especially. It's to them you owe an apology, it is them you must compensate for your wrongdoing. And they have special standing to resent and criticize you. Yet, on the fair share theory, it's not clear why that would be. For, on the theory, jumping a queue is wrong because it's not doing your fair share to uphold norms that help discharge our collective obligations. But your duty to do your fair share to uphold such norms is owed to all others with the collective obligation, not those in the queue especially. So it is not clear why those in the queue would be wronged especially by your queue-jumping.

This is also a problem for the agency-respect theory. On this theory, queue-jumping wrongs those who are committed to the queueing norm. But those outside the queue might be just as committed to the norm as those in it, and so it is not clear why you wrong those in the queue especially. In response to this problem, Valentini suggests that "respecting norm-supporters means taking seriously the normative world they have created" (Valentini 2021, 399). The idea is that norm supporters don't just support a single norm ("Line up"); they support a whole world of norms. These, *inter alia*, govern what people may and should do when the norm is violated. They should apologize for violating the norm, we may not criticize victims for resenting norm violations and so on. Respecting the agency of norm supporters means acting in these ways. Moreover, Valentini believes, all it is to be the recipient of a directed obligation is for you to occupy the kind of normative position defined by this world: what it is to be owed some behavior is for others to be obliged to apologize to you for not doing it, for your resentment of their inaction to not be criticizable, etcetera. Those in the queue occupy this position with respect to line-jumping, so you owe it to them not to jump the line.

I don't find this strategy satisfactory. I doubt that being in the relevant kind of normative position is sufficient for being owed a directed obligation. To see why, notice how we can put people in almost any normative position artificially. Suppose you live in a brutal autocracy, and the dictator says he'll start killing children unless you rub my feet. And he says he'll kill even more children unless

you apologize for not rubbing my feet, criticize me if I resent a lack of feet rubbing, and so on. In this case, you should rub my feet, you should apologize for not doing so, you shouldn't criticize me for resenting the lack of your ministrations, etcetera. Yet still, surely, you do not in this case owe it to me to rub my feet. You have a facsimile of directed duties, but not the real thing. The same goes for the application of this story to queue jumping. Valentini's story suggests that, when you jump the queue, you should apologize to those in line, you may not criticize them for resenting you, and so on. That captures the appearance of directed obligations, but not the thing itself. To be the recipient of a directed obligation goes beyond being in the relevant kind of normative position.

Fortunately, I think there is another, better, story available (to both fair share and agency-respect theory). This other story hinges on the observation that, when you violate a norm, the *harm* of your norm violation doesn't fall on everyone equally. It falls especially on the victims of your violation. When you violate the queueing norm, the harm of your violation falls on the people already in line. It's they who have to wait longer for a seat on the bus. The people harmed by your wrongdoing are those waiting in line. Why does that matter? Because we have weighty directed duties not to foreseeably harm people by our wrongdoing.¹⁵ To provide some evidence for this claim, consider recklessness. Suppose you drive home drunk. You wrong everyone on your route home by imposing a risk on them. Now suppose, additionally, that because you are drunk you lose control of your car and crash into someone, injuring them. You harm the person you injure. By harming them, you wrong them more seriously degree than to those you merely imposed unrealized risks on. Yet it's not wrong in itself to lose control of your car and crash; if you'd crashed because of ice or fog or bad luck, you wouldn't have wronged the person you injured. It is because your crash stemmed foreseeably from your own prior wrongdoing, your decision to impose risks on people, that you wrong this person. You have a weighty moral obligation not to foreseeably harm them by your wrongdoing, which is why you wrong them especially.

That explains why the perpetrator of a norm violation wrongs the victims especially: the harms of their wrongdoing foreseeably befall the victim, and they have weighty moral obligations not to foreseeably harm people by their wrongdoing. These are directed obligations, and so they have violated a weighty directed duty to the victim. This is why they owe it to the victim to apologize to them. They must apologize for harming them via their wrongdoing. And it is why the victim and can resent them; they can resent that the perpetrator's wrongdoing has lead to a harm befalling them, and so wronged them. As I've said, I think this view is open to both the agency-respect and the fair share theories of conventional

¹⁵ For a more extensive defense of this kind of view, see Cornell (2015).

normativity. I think it captures why social norms generate especially directed obligations.

Let me address one worry about the view. One might think that some violations of social norms are harmless, but still wrong the victim especially. Suppose we're at a campsite, and I take your barbeque gear without your permission when you are out for the day (Valentini 2021, 388–89). I put it back before you return, and you never know about the theft. I've wronged you especially, but where's the harm? You might think my theft is a harmless wrongdoing, that it leaves you no worse off. But that thought, I suspect, rests on a too narrow conception of harm. Harms are not only things that give you bad feeling or waste your time: harms include things that set back your autonomy interests. These are interests in controlling certain parts of the world, in deciding what happens in those parts of the world. My theft impairs this interest of yours, even if you remain ignorant of it. And so it does harm you. I think many cases of putatively harmless wrongdoings can be treated in this manner.

4.2. Pointless Norms

Let's look at a second challenge. The fair share theory of conventional norms only gives us a reason to obey norms that have a point; that genuinely help us discharge one of our collective obligations. Yet one might think that there are many norms we should obey that don't have such a point. At dinners in Oxbridge colleges, for example, people must stand while a grace is read out before their meal. One might be inclined to view this (and perhaps several other Oxbridge norms) as entirely pointless. Standing while a grace is read out, one might think, doesn't help us discharge any of our collective obligations. Yet, still, if you visit an Oxbridge college you should stand for the grace. The agency-respect theory can explain this; the norm of standing for grace expresses the agency of members of the college, and so standing is required to respect this agency. The norm might have no point, but one should respect it nonetheless. So perhaps these cases are evidence for the agency-respect theory over the fair share theory.

I doubt that this is correct. The fair share theory can explain why we should obey *seemingly* pointless norms. The simple observation is that such norms are often much less pointless than they appear. Consider standing during grace. This is, among other things, a ritual; it is something that all the members of the college do together. Rituals have many beneficial effects.¹⁶ Perhaps most importantly, they promote group cohesiveness. They increase the emotional bonds between participants and the likelihood participants will make sacrifices for the good of

¹⁶ For an overview, see Xygalatas (2022).

the group. We may well have collective obligations to help bring about such group cohesiveness, or at least collective obligations the satisfaction of which is served by such cohesiveness. And so standing at grace may well help us satisfy our collective obligations.

These are many other ways in which norms that seem pointless on their face have a point upon less superficial investigation. Think about taking your hat off when you enter a church. Some might think this is pointless, but most of us know better. Taking off your hat expresses respect for the relevant religion. We plausibly have collective obligations to not disrespect people's religions, and so the norm helps us discharge a collective obligation. This identifies the point of many seemingly pointless norms, and so the fact we should obey such norms is perfectly explicable by the fair share theory. Nonetheless, we can of course imagine norms that are genuinely pointless. Imagine that standing at grace didn't serve any of the purposes rituals usually serve and didn't help us discharge our collective obligations in any other way. In this case, I doubt we would have genuine duties to stand at grace. It would be reasonable to not do so, on the grounds of its pointlessness. I am inclined to think, then, that the agency-respect theory gets the verdict in such cases wrong. Our judgements about genuinely pointless norms provide evidence for the fair share theory over the agency-respect theory.

4.3. Foreign Norms

Let's turn to a third challenge. One important feature of social norms is that, when you visit a foreign place, you should comply with foreign norms. If you go to New York, tip twenty percent. If you visit London, queue up at bus stops. Generally, when in Rome, do as the Romans do. You should comply with the norms extant in your geographical location. Why should that be? The worry is that that maintaining foreign norms helps foreigners discharge their collective obligations. But, one might think, you don't share collective obligations with foreigners; you only share collective obligations with members of your own society. So the fair share theory doesn't give you a duty to comply with foreign norms.

Fortunately, this line of thought is defective. We very often do share collective obligations with foreigners. The boundaries of states and citizenship very often fail to determine boundaries for collective obligations. We can see this in the global warming case: when I say *we* have an obligation to avert very serious global warming, I don't mean just British people have such an obligation. I mean the whole of humanity has an obligation to avert very serious global warming. Similarly, when I say we have an obligation to ensure the fair allocation of goods, or that workers are paid sufficiently for their work or that people author their own lives, the 'we' doesn't refer just to people who I share citizenship with; it refers to

everyone. The boundaries of states here are not of fundamental moral import; it is all of us that have this obligation.

This provides us with a straightforward perspective on foreign norms. Italians share with the English a collective obligation to ensure that goods are fairly distributed. In London, the most reliable way to do this involves maintaining the queuing norm. So Italians have a duty to do their fair share towards maintaining this norm. And that means complying with it when they are in London. More generally, when local norms do indeed help promote the goals behind our collective obligations, we have a duty to comply with those norms. This is just our duty to do our fair share towards promoting those goals. That is why, when in London, you should do as the Londoners do.

4.4. Discretion

Let's address a fourth and final challenge. I've suggested we have a duty to contribute our fair share to the maintenance of social norms, and that involves making sacrifices that contribute to that maintenance. But one might do this without complying with those norms. Suppose I spent all my money on an advertising campaign reminding people to tip and worked tirelessly to set up organizations promoting tipping. This might contribute more to the maintenance of the tipping norm than would tipping myself. So, one might think, this exhausts my fair share contribution to maintaining the norm. Still, I would do something wrong if I ordered a meal and didn't tip. Generally, I don't have discretion over how to contribute to maintaining the norm: at minimum, I have to at minimum comply with the norm, no matter how else I contribute.¹⁷ Is this compatible with the fair share theory of conventional normativity?

I think it is, but to explain it we have to supplement the fair share theory with some relational egalitarian ideas. The key thought is that, when you encourage other people to obey norms that you yourself do not obey, you put yourself above them.¹⁸ We can think of this in terms of Kolodny's notion of regard (Kolodny 2023, 101–16). Kolodny thinks that when one shows someone less regard than one does another person including oneself, one puts them in a relationship of

¹⁷ Wellman (2005, 40–46) discusses this issue at length in defending a fair share theory of political authority. He thinks that exercising discretion is valuable, and so those who exercise discretion sacrifice less than those who comply with the laws. I don't think this is a successful response to the worry. Discretion can, surely, be traded off against other goods. If I spend all my time and money supporting laws, but sometimes break them, then I sacrifice more in supporting the laws than do mere law-abiders. I may enjoy a bit more discretion, but the value of this is outweighed by my other sacrifices. *Mutatis mutandis* the same goes for norms.

¹⁸ For a similar view, see Monti (2023).

inferiority, thereby wronging them. You can show someone relatively low regard by esteeming them less than others or by caring about their interests less. But equally, I think, one can show someone relatively low regard by expecting them to conform to rules that one doesn't expect others to conform to. Imagine someone insists that their female colleagues dress meticulously but never attempts to impose such norms on their male colleagues. Applying a more demanding standard to women, in this case, is a way of showing female colleagues less regard and thus a way of making them inferiors. I think this is happening when I attempt to maintain a rule that I am not myself conforming to. In this case I show other people less regard than I show myself, and so I am subjecting them to a relationship of inferiority. Hence, we use relational egalitarian ideas to explain what goes wrong in cases in which someone contributes to maintaining a norm but doesn't comply with it.

One might wonder whether this relational egalitarian thought can explain the moral force of social norms in many other contexts. I doubt it. The problem, I think, is that often norm breakers have little inclination to maintain the norms they break. Reconsider the tipping norm. I might refrain from tipping because I generally oppose tipping. In this case, I do not expect others to tip or try and get them to conform to the tipping norm. And so there's no sense in which, when I don't tip, I show less regard for other people than I show to myself. Similarly, when Italians comes to London, they may have no inclination to enforce the queuing norm. An overly nosy English aunt may have no intention to promote restrictive English familial norms. Norm breakers, I think, are often dissenters rather than hypocrites. The relational egalitarian thought has little traction in these cases, and so provides a very limited explanation of the moral force of social norms. For a more general explanation, we need the fair share theory.

Let me sum up. The fair share theory of conventional normativity, or of the moral force of social norms, can explain the core cases in which social norms have moral force. I think we can also address the most serious challenges to it. And so, I believe, it is the most plausible account of why we have an obligation to obey social norms. In the final section we will explore the applications of this account.

5. Applications

My primary explanandum, in this paper, has been why we have moral reasons to do as our social norms direct. And our main examples have been ones that not everyone will take to be terribly serious: queuing, tipping, familial advice. (although I think these are weighty matters). Yet, in the course of constructing the fair share theory, we've seen it can perhaps explain some the structure of other moral phenomena, such as freedom of religion or property rights. In this section

I wish to pursue this idea. My own belief is that many of our moral obligations as post-institutional. In many moral spheres, we have a fairly broad collective obligations to pursue some goal. To discharge those obligations, we have to set up and maintain norms. As a result, we have an individual obligation to do our fair share towards setting up and maintaining those norms. And so, for most of us, the fine-grained structure of our actual moral obligations is determined by our social norms.¹⁹

To think about this more systematically, it is useful to begin thinking about the interest theory of rights. This is a venerable, but often vague, theory.²⁰ The idea is that our rights should be explained in terms of interests. Our rights to control our property or not to be harmed or that people keep the promises they make to us should all be explained in terms of the interests we have in such things. The problem is in formulating this theory in a more precise way while maintaining its appeal. By far the most natural idea is that we have a right to a certain kind of treatment when, and because, we have an especially strong interest in that treatment.²¹ It is especially good for us to be treated in that way. Yet this idea is false. I might have an enormously strong interest that you not apply to an academic job I have applied to: I might be left unemployed if I don't get the job. You might simply have to stay in your existing job. Yet, still, I have no right to prevent you from applying. Similarly, you might have a right to prevent me from taking your barbeque gear and returning it, unbeknownst to you. Yet you have no weighty interest in my not doing this. So the thought that rights should be explained in terms of interests is appealing, but it is very difficult to identify exactly how interests could translate into rights.

I think this is a serious, underappreciated, difficulty with the interest theory of rights. I propose to solve this difficulty by combining it with the fair share theory of conventional normativity. The idea is simple. We have a number of especially important interests. These are interests such as that in authoring our own lives, or not being harmed, or being able to rely on our reasonable expectations. Often it is very difficult to protect such interests without coordinating with others. So such interests generate collective obligations. We are all, collectively, obligated to help people satisfy these interests. Yet, in line with the fair share theory, it is typically very hard to discharge this obligation. The most effective way to do so is to set up and maintain norms that, if we complied with them, would discharge our obligation. So we are collectively obliged to do this. And that means, individually, when we have such norms we should do our fair share towards their maintenance.

¹⁹ This is part of a broader “conventionalist” construal of moral rights and duties. For another recent defense of such views, see Nieswandt (2019).

²⁰ For advocates of this theory see e.g. (MacCormick 1977; J. Raz 1984; Kramer 2001).

²¹ For this statement see Raz (1984, 195) and, more recently, Lovett and Riedener (2021, 228).

We should internalize and, therefore, comply with them. And so the pattern of rights and duties generated by our interests will be filtered through the structure of our actual norms. Call this a conventionalist theory of moral rights.

Let us see how this works in a few cases. Start off with property rights. The interest connected to property, I think, is an autonomy interest: it is an interest in authoring our own lives. To be the author of what projects we pursue or how we spend our time we, typically, need control over some things in the external world.²² That is to say, we need property rights. Yet we clearly don't have property rights in those things that would maximally promote our authorship. My self-authorship might benefit more from owning your car that does your self-authorship, yet still it is you who has rights over the car. But this interest generates a collective obligation. We are collectively obliged to help others author their own lives. To discharge this obligation, we need to set up norms protecting private property. And we have done just that. We have an intricate web of socially constructed, and often legally constructed, rules that say what kinds of rights each person has over things in the external world. By complying with these rules, we help contribute to our discharging our collective obligations. So we should comply with people's conventionally defined property rights because doing so is doing our fair share towards discharging our collective duty to protect people's self-authorship.

Now consider promises. Many people have thought that promises are somehow grounded in interests, but they differ on what the relevant interest is. Perhaps the most tenacious theory is that the interest is one in being able to rely on our reasonable expectations.²³ Yet again, clearly, we don't generally have a right to rely on our reasonable expectations. Imagine we live together. Every day, you slam the door when you leave the house and it wakes me up. I thus reasonably expect you to slam the door, and indeed come to rely on you doing so to wake me up. Still, I don't have a claim on you to slam the door. If you close the door gently one day, and I oversleep, you haven't wronged me. What we should say, then, is that the interest in being able to rely on our reasonable expectations generates a collective obligation to help people rely on said expectations. That can be satisfied by setting up certain norms, and among those norms are those that say you must keep your promises. So we should keep our promises because doing so help maintain said norms, and that is our contribution towards discharging our collective obligations.

Let us consider a final, more controversial, application of the conventionalist theory. I have an interest in people not making my life worse. Yet this does not always give me a claim against not being harmed; I have no claim you don't apply to the job mentioned above, even if you harm me by applying and getting it. And

²² This kind of view is mentioned by Waldron (1992, 18–19).

²³ For discussion, see (Scanlon 1990; Kolodny and Wallace 2003).

there are a variety of puzzles about what my rights are when it comes to people making my life worse. One is about whether I have weightier rights against people visiting intended rather than merely foreseen harm on me. Another is whether I have a weightier right against people doing harm to me rather than merely allowing harm to befall me. The puzzle here is that, intuitively, the intended/foreseeing distinction and the doing/allowing distinction are of weighty moral import. Yet it is very difficult to get a grip on what they actually amount to. It is very difficult to spell out, in any satisfactory way, the distinction between intending and foreseeing and that between doing and allowing. There seems no deep metaphysical distinction between these things, and so it is unclear why they would be so morally momentous.²⁴ So the structure of my rights against harm is difficult to explain.

We can cut through this whole morass by understanding our rights against harm in terms of social norms. The idea is that our interest in our lives not being worsened generates a collective obligation to protect others from such worsening. To discharge this collective obligation, we have to set up norms that protect people from various worsenings. This is a very complicated process, for there are very many ways to worsen someone's life, and often the goal of not worsening other people's lives conflicts with our other collective goals. So our norms are complicated, and they do not cut reality at its joints. This is why there is no deep metaphysical distinction between, for example, doings and allowings. Nonetheless, we have set up such norms, and they do a good job of protecting people from at least the most egregious kinds of harms. And so we all have a duty to do our fair share towards upholding such norms, which is just to say we have a duty to internalize and comply with such norms. Thus, the particular structure of our moral obligations around harm are post-institutional: they are downstream of our actual, contingent, institutions.

I think the conventionalist theory of moral rights can be applied in various other cases too: to privacy, to compensation, to bodily integrity, to gratitude and much else besides. But much could be written about each of these applications, and indeed much more would need to be said about the three applications above to make them wholly convincing. I don't have the space for that detailed project here. So let me end with some final, general, points about the conventionalist theory. The first is clarificatory. On the theory I've outlined, our interests are multiple, and generate multiple different collective obligations. We cannot collapse all these duties into one general duty, to maximize well-being. This is why the theory turns out to have very different implications than consequentialism. Each interest generates distinct duties. I myself doubt that there is any general

²⁴ For this kind of criticism of the doing/allowing distinction, see Bennett (1998). For problems in spelling out the intending/foreseeing distinction satisfactorily, see Foot (1967).

duty to simply maximize the amount of well-being there is in the world. But even if there was, satisfying this duty would not be a way to satisfy these other duties.

Second, I want to acknowledge the most serious challenge to this theory. If this theory is correct, then, when we lack norms that help us discharge a collective obligation, people's rights are very different than when we have them.²⁵ In a state of nature, in which we have no norms, we don't have the kinds of rights we have in our actual societies. One might think that that refutes the theory: we clearly do have some moral protections in the state of nature, and so the conventionalist theory is unviable. I am not going to give a full response to this objection here, but I want to indicate what I think is a tenable line of reply. Simply, the conventionalist theory doesn't imply we're entirely lacking in moral protections in a state of nature. In such a situation people will still have a collective obligation to set up norms to protect our interests.²⁶ And, plausibly, if they fail to set up such norms, they will have a duty not to benefit from their own failures. We shouldn't benefit from our own wrongdoing. So people will be constrained from harming us or misleading us or taking our possessions: doing so would involve benefitting from their own collective moral failings. In a state of nature people's obligations to others will, on the conventionalist theory, be very different and less defined than in our actual societies. But they will not just lack such obligations. We need to say more, of course, to flesh out this line of response, but my own belief is that it adequately defends the conventionalist theory from its most serious challenge.

6. Conclusion

Why should you queue up at London bus stops, or tip twenty percent in New York city, or refrain from criticizing your English nephew's bachelorhood? I have suggested that this is not because we must respect the agency of those who support such social norms. Rather, it is because such norms serve genuine moral goals, and we should do our fair share towards contributing to these goals. And if we accept this view, I've additionally suggested one might think that our duty to obey such social norms as not so different from our duties in more traditional spheres of morality: from promises, harming, property, privacy, gratitude, bodily integrity and compensation. We can think of the structure of our obligations in all these domains as one filtered through out actual norms. Conventional normativity, I suspect, is the key to a large swathe of moral normativity.

²⁵ For this kind of challenge, see Scanlon (1990).

²⁶ For this point, see Rozeboom (2018).

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