

Must I Honor Your Convictions?

On Laura Valentini's Agency-Respect View

Katharina Nieswandt, Concordia University, Montreal

Publication & Download

Analyse und Kritik, 2024, online first, pp. 1–15.

DOI: 10.1515/auk-2024-2008.

Key Words

social convention; moral duty; respect; agency; Immanuel Kant

Abstract

Laura Valentini's novel theory, the Agency-Respect View, says that we have a fundamental moral duty to honor other people's convictions, at least *pro tanto* and under certain conditions. I raise doubts that such a duty exists indeed and that informative conditions have been specified. The questions that Valentini faces here have a parallel in Kant's moral philosophy, viz. the question of why one has a duty to value the other's humanity and the question of how to specify the maxim of one's action. Additionally, I discuss the concept of a social convention and Valentini's use of it.

1 Introduction

Morality and Socially Constructed Norms (2023) is original in perspective, ambitious in scope and well-argued. Laura Valentini's novel theory, the "Agency-Respect View," is one of the most exciting proposals in recent years, and while I do have questions for Valentini, I believe that her strategy to reconnect political with moral philosophy, especially metaethical topics such as rationality, is promising.

My discussion here focuses on Valentini's new view, which she sets out in her Chapter 3. I proceed as follows.

My Section 2 characterizes the Agency-Respect View and its pre-suppositions. Valentini treats the following claim as an axiom: The mere fact that another person is "committed" to something puts me under a duty, at least *pro tanto*, to honor their conviction—but only if said conviction exists as part of a social convention.

In Sections 3 to 4, I raise three worries regarding this axiom. First, I question whether there indeed is such a duty. Second, even if there should be such a duty, I doubt that respect for other people's agency is its most plausible justification. Third, I wonder why such a duty would only arise for a conviction held within a social convention.

Section 5 treats a related issue, the lack of proper definitions of key criteria for the proposed duty; I concentrate on Valentini's notion of a cost. Ultimately, this renders the Agency-Respect View empty, I fear.

Sections 6 to 7 then shifts focus. I briefly look at another part of Valentini's book, her Chapter 2, in which she rules out competing families of theories, including justifications of moral duties by convention. Conventionalism aims to offer a unified picture of normativity across domains, from moral to mathematical norms. Valentini rejects the view as an *ad hoc* explanation, tailor-made for moral normativity, which strikes me as a mischaracterization. My discussion takes a more general look at the concept of a convention.

These last two sections can be read independently. Readers only interested in Valentini's new theory may skip them altogether.

2 Valentini's "Agency-Respect View"

Valentini's central question is "why *the fact that* something is mandated by a socially constructed norm makes 'that something' morally binding." In other words, she wants "to take an *external perspective*" and explain why one must follow rules of games one takes to be unjustified (p. 81).¹ Consider an atheist who wears modest attire in a religious building or a communist who doesn't trespass on privately owned land. Her answer is the "Agency-Respect View," developed in Chapter 3 of her book.

Valentini thus proceeds from the idea that we have a *pro tanto* moral duty to obey local social norms. Her Agency-Respect View justifies this proposed moral duty from another, more fundamental one, which is "our duty to give people agency respect: to respect their authentic commitments as agents, provided those commitments are morally permissible and respecting them isn't too costly for us" (p. 82).

Hence, there is one, fundamental moral duty. "We have *pro tanto* obligations to respect other people's commitments [...] *provided* these are genuine (i.e., authentic), morally permissible, and respecting them is not too costly for us" (p. 90). *Pro tanto* here means "obligations that can be overridden by other, weightier considerations" (p. 82). This fundamental duty then "accounts for when and why the fact that a socially constructed norm requires something of us places us under an obligation to comply" with the norm (p. 82).

In other words, you have a general moral duty to respect people's agency and your particular duty to respect a given social norm, such as a dress code, instantiates this general duty for a particular case. Valentini formulates this general moral duty in her "target general moral principle *P*" which says that "one has an obligation to respect people's commitments (i.e., 'to give *agency respect* to people'), provided those commitments are authentic, morally permissible, and respecting them is not too costly" (p. 88). "The principle sets out an ab-

¹All page references, unless otherwise noted, refer to Valentini (2023). All emphases in quotations, unless otherwise noted, are original.

stract moral ought which, in conjunction with an empirical premise, gives rise to a more specific ought" (p. 101), such as that you ought not jump the queue for bus number *N* at London's central station on Tuesday this week at 10:15 a.m.

The Agency-Respect View thereby closely resembles a contemporary school of human rights justifications, such as James Griffin's (2008) *On Human Rights*, which derives duties to respect this-or-that right from a more fundamental duty to respect agency. These proposals have been classified as "axiomatic" justifications of rights (Waldron, 2015); their proponents often cite Immanuel Kant as an inspiration. Valentini, too, places herself in this Kantian tradition (p. 10, pp. 89–103).

3 What Justifies the Proposed Imperative?

The closest Kant comes to formulating the relevant claim is the "Formula of Humanity" of his "Categorical Imperative." This famously tells you to "[a]ct so that you use humanity, as much in your own person as in the person of every other, always at the same time as end and never merely as means" (AA 4: 429). Kant himself, however, does not treat this claim as an axiom; he justifies it through a certain conception of practical rationality, and by "humanity" he really means the other's rationality here. Acting contrary to the Categorical Imperative means to act irrationally, viz. in the sense of being inconsistent.

What Kant understands by inconsistency in this context and whether his justification works has occupied generations of Kant scholars and critics. Valentini, similar to Griffin, does not embark on such a justification but treats the supposed duty to respect other people's agency as an axiom.

That is probably wise but makes it crucial for her to motivate the plausibility of this axiom. For a reader who harbors substantial doubts that other people's convictions create moral duties for oneself, even *pro tanto*, none of the rest follows. The Agency-Respect View would,

in fact, be an answer to a question such a reader never had, viz. why one must comply with other people's rules—at least those rules that are morally permissible and where compliance comes cheap.

Note that the mere claim that other people's aims can give me reasons is not enough for Valentini; that is something a virtue ethicist or a consequentialist would also embrace, such as when the well-being of another person gives you a reason (not) to do something. She needs the more specific claim that the mere fact of an authentic conviction by the other party provides a reason, and in fact not just *a* reason but *the* reason to follow their rules.

This claim, however, which Valentini treats as an axiom, strikes me as far from obvious. Even if we concede that "live and let live" is a prudent rule of thumb for handling many unimportant situations of daily life, this rule ceases to apply, I suggest, once the situation is important or conflictual. In other words, the proposed imperative does not apply in most situations that raise moral questions. And even in those trivial situations where we do follow the imperative, it is not obvious to me that the reason (or even a reason) for why such concessions are justified is that we thus respect other people's convictions. Moral philosophy and common sense offer many competing justifications to not be mean: self-interest, the greatest happiness of the greatest number, requirements of rationality, etc. Valentini's main presupposition hence is not only unjustified, as any axiom ultimately is, but of dubious plausibility to me.

Therefore, I, first of all, wonder whether the question to which the Agency-Respect View provides an answer, viz. why one has a *pro tanto* moral duty to comply with the rules of others, even arises because I wonder whether we have such a duty. Second, I doubt that, even if such an duty should exist, respect for other people's convictions is the most plausible reason for the duty's existence and hence the most plausible answer to this question.

This leads me to a third question, viz. why one's supposed duty to pay "agency respect" should arise only in contexts of rule-following. If I am *pro tanto* required to accommodate other people's authentic, per-

missible and low-burden convictions, then why would this be limited to convictions people have as part of games? This restriction appears to come out of nowhere, and I am unclear as to why it is being introduced.

4 My Committed Neighbor

Let me go through an example to illustrate all three questions. Suppose my neighbor has the quirky, idiosyncratic habit of parading our street every morning dressed in nothing but the national flag (or make that the pride flag if you prefer) and would appreciate it if passers-by briefly stood to attention. Suppose furthermore that the patriotic (or the queer) cause is permissible and that leaflets in our mailboxes have made all residents aware of our neighbor's desire.

Am I morally required to stand to attention, was my first question. My personal intuition is that I have no such duty, not even a *pro tanto* duty.

However, if there were any moral reason for me to stand to attention, was my second question, would that reason be the authenticity of my neighbor's convictions, plus its harmlessness plus its low cost to me? My answer here, too, is no. To be clear, I doubt I have a reason at all here, but if I were looking for one, considerations to do with my neighbor's happiness would strike me as a more plausible candidate.

My third question was why, even conceding both, that I have a reason and that that reason is the other's authentic conviction, the circumstance that that conviction is part of a social practice would make a difference? I constructed the case so that my neighbor's conviction (or rather the action resulting from it) is entirely individualistic. However, if agency respect requires me to respect authentic convictions that others hold as part of social conventions, such as standing up for the national anthem on certain occasions, then why doesn't this imagined, entirely individualistic conviction require the same of me, given that the conviction is permissible and the participation expected of me

is not very costly? Why would the fact that a conviction is part of a tradition even matter; i.e., why does social convention make a difference for my duties?

I am very sympathetic to the idea that conventional cases differ from private choices, but I miss an explanation here for why Valentini holds this. The concept of a convention, in my impression, is a wheel turning empty in the Agency-Respect View. My proposed duty to pay respect rests on a Kant-inspired conception of agency, on which the agent's rationality ultimately is my reason to respect their actions, and this leaves no residue which could be explained through convention.

Valentini's discussion indeed seems to confirm this. It moves back and forth between examples of the conventional kind, such as queuing, to those of the private kind, such as a supposed duty to circumvent another person's sandcastle on the beach rather than walk right over it (pp. 86–7). Her own stance regarding such private commitments ultimately remained unclear to me—whether she would think that if I indeed have a duty to stand up for the anthem, then I also have a duty to acknowledge the private parade, and that it would be the same kind of duty for both cases, and also the same as for the sandcastle. If she does, then why is the Agency-Respect View built around the idea of conventions? And if she doesn't, then why is the conventional case privileged?

The topic at the heart of this is both philosophically interesting and politically timely. My neighbor's desire would be respected by few, I suspect, so let me give a more realistic example. Many people now respect an individual's desires to be referred to with a self-chosen word in public third-person discourse; indeed, they regard doing so as the fulfillment of a moral duty. In the long run, of course, this may lead to the establishment of a new social convention—but in the meantime, the case appears similar to the sandcastle and the parade.

As indicated, I share Valentini's intuition that convention makes a difference. My neighbor cannot privately create a duty for me to stand to attention, even if we conceded that a very similar duty exists within an established tradition. Individuals are not at liberty to uni-

laterally create duties for others through their convictions or, rather, the metaphysical claim that they could is false. Contrary to that, social agreement can create hard facts in the world, such as the fact that I am solvent or a thief or that a certain piece of paper has exchange value, and it can create moral duties, such as a customer's duty to pay for goods ordered and delivered—to use some of Anscombe's (1981b) examples.

To my mind, this is an argument against the Agency-Respect View and others in the same spirit because it indicates that moral duties are not created by mental states of others, such as their authentic commitments (Valentini) or faithful expectations (Scanlon, 1990).² Adapting a classic formulation by Hilary Putnam (1975, p. 144), I'd say: Cut the pie anyway you like, reasons for duties just ain't in the head.

5 Is the Imperative Empty?

As a last point on the Agency-Respect View, I move on to a new topic, the view's central Principle *P*. One's "duty to give agency respect to people" (p. 88) is hedged by three qualifications, which are authenticity, permissibility and cost. Let's look into the relation between these three and their contents.

The proposal that I have a duty to honor other people's convictions naturally raises the question where that duty ends. Some further specification hence is needed, and Valentini says that my duty ends where the cost to me become too high (p. 88). Her task here of providing such specifications has a parallel in Kant again, viz. the much-discussed question of how to specify the maxim.

It would be unfair to an author and silly to demand a hard-and-fast criterion here, one fit to decide every individual case. In practical matters, there always is a residue left to power of judgment, as a long line of eminent philosophers from Aristotle to Kant have pointed out.³

²For a related point, see Thompson (2012).

³See *Nicomachean Ethics* (1094b12–26) and *Critique of Pure Reason* (A133–5/B172–4), respectively.

Valentini's Chapter 3, however, may leave us without any criterion, I fear, except for a lower base-line.

This boundary is that "agency respect does not demand that we altogether sacrifice our own agency for the sake of respecting the agency of others." Valentini illustrates this with the example of dedicating half one's time to a friend's construction project: "Assisting my good friend in realizing his commitments would prevent me from pursuing my own; it would be too burdensome for my own agency" (p. 91). My *pro tanto* moral duty to help my friend build his house ceases where I have too little time left over for the realization of my own commitments.

Valentini acknowledges the threat of emptiness, for "cost" and her other two qualifications, and she attempts to avert it by providing examples; i.e., she goes through a number of cases and specifies what the Agency-Respect View would say for each. Such can be an acceptable method in philosophy, I believe, but only if the examples serve to illustrate application of the view and thereby its explanatory power. Here, however, adjudication of cases seems to rest on common sense rather than the transparent application of a theory.

Let me illustrate this with one of Valentini's examples, the racist apprentice. "I lack a duty to [...] 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)" even if "my apprentice is committed to racist views [...]. Why? Because [her commitments][...] are morally impermissible; they presuppose a denial of persons' equal moral status" (p. 92). While I personally agree with Valentini's conclusion that the baker is under no moral obligation to humor her apprentice's authentic commitment to racism, I fail to see how the Agency-Respect View yields this. In judging her apprentice's commitment "impermissible," the baker seems to be drawing on some objectivist moral theory, some idea of equality of persons. Which theory is that; can we choose from different ones here, and how do these objective moral demands generally relate to people's authentic personal commitments? Furthermore, how do we square such sudden moral objectivism with the explicit moral relativism, imported via the

B/D paradigm and Rawlsian pluralism, that earlier chapters characterized as underpinning Valentini's view (pp. 35–6, 101–3)?

Valentini later seems to propose that we can indeed choose our moral theory. In replying to the charge of emptiness, she calls it "a feature, not a bug of the view" that it allows us "to retain the core insight that respect for agency is what lends moral normativity to socially constructed norms, while being compatible with different substantive views about which norms do, in fact, have moral normativity" (pp. 108–9). That, however, assumes what is to be proven, viz. that the Agency-Respect View provides any guidance to the agent and explanation to the reader. What guides and explains in the baker's example, however, is one's substantive moral view.

Note the following implications: The apprentice has, by stipulation, authentic racist commitments and presumably holds a substantive moral view on which these are permissible. From her own epistemic position, she is fully justified in her demand. Let's assume that the baker shares this view, rather than Valentini's substantive view "of persons' equal moral status." Is such a racist baker morally obligated to humor her apprentice's racist commitments? She may never ask herself that question, of course, as she and the apprentice agree, but that's irrelevant for the philosophical question of her moral duty, plus the question may actually come up even in this situation. After all, not serving certain customers is bad for business.

Valentini could certainly take the stance here that what substantive view the agents hold is irrelevant for their moral duties; they have whatever duties they objectively have, i.e., according to the correct moral view. This gets us into difficult territory in moral epistemology and would be a detour here anyway because it does not seem to change my earlier point: To the extent that we get a justification, for the baker's action and our own intuitions, that consists in a substantial moral view (ours or the objectively correct one), not in agency respect.

Slight modifications to the example make it clear that the Agency-Respect View is so thin as to allow both conclusions for many situations, i.e. that there is or isn't a duty, and either for multiple reasons.

Suppose, the apprentice is not authentically committed to racism but to sustainability. Is this a permissible commitment? Probably yes. Suppose, she therefore refuses to serve customers who turn up with a plastic bag or to sell any loaves that are not organic. Would the baker have to respect these authentic and permissible commitments? My own intuition says no, but I honestly cannot predict Valentini's judgment for this case. Even if she should agree with me, how would the Agency-Respect View vindicate our judgment?

A number of moves would be open to Valentini here. On the Agency-Respect View, one can argue that the apprentice's actions are still intolerable even though her new commitment is permissible. One may say, for instance, that it is permissible for the apprentice to be committed to sustainability but impermissible for her to force others to behave sustainably, just as it is permissible to practice one's Catholic faith but not to force others to practice it (pp. 98–9). Alternatively, one could see the apprentice's demand as permissible but the cost imposed on the baker by the missed sales as too high, hence overriding the baker's *pro tanto* moral duty to honor her apprentice's authentic and permissible commitment to sustainability. However, I can equally imagine that agency respect directs us the other way. Suppose, the bakery has multiple apprentices, and it would not be much of a practical problem and hence not constitute too high a cost for the baker to task this apprentice with only those aspects of the business that do not conflict with her commitment. Then, we might think, agency respect obliges the baker. In sum, for any given decision, I see enough leeway both to interpret and to weigh the three qualifications to point us either way and hence to void the principle of any action-guiding or explanatory power.

The concept of a cost worries me most in this context. It seems that we could stipulate any example so that cost are either too high or acceptable. Take the example of standing up for the national anthem. From a pragmatic point of view, the cost are low; neither physical exhaustion nor lack of time speak against doing this. People who refuse to stand up, however, usually see a different cost here. They may be

committed pacifists, e.g., and see displays of national pride as belligerent or imperialist. We might call this cost "symbolic" and judge that it is high for them. Must they, then, all things considered, stand up or not? Do their cost outweigh the authentic and, let's suppose, permissible patriotism of their fellow citizens? Again, my complaint here is not that there are difficult or vague cases but that we lack any criterion except for a baseline. That baseline clearly does not help here, since the small practical effort that standing up entails, does not undermine a pacifist's own agency.

For this case, too, I can furthermore imagine entirely different descriptions of the situation within the paradigm of agency respect. Another option is that my previous description of commitments being overridden by cost was wrong anyway. Instead, patriotism is like Catholicism, so that the pacifist never even had a *pro tanto* duty to humor their compatriots commitments by participation, as these are a private choice not to be imposed on infidels.

In conclusion, Valentini's examples, while interesting in themselves, do not help me see an adjudicating principle. The Agency-Respect View systematically allows the agent to choose either way and cannot justify readers' intuitions on Valentini's sample cases. As for a lot of contemporary political philosophy, what saves us from complete arbitrariness here is an implicit moral objectivism. Readers go by what "reasonable people" currently think (Rawls, 1999).

Not that I take myself to stand outside of this academic bubble. My views on slavery, plastic bags, and which artisanal bakery in Kreuzberg serves the best organic bread are in no way original or surprising. Nevertheless, I worry that the possibility of legitimate deep disagreement is not taken seriously enough, here as in a lot of other contemporary philosophy.

Imagine an actual baker, scratching their head at apprentices who refuse to fulfill standard tasks on the job because of authentic convictions—be these convictions racist, environmentally conscientious or other—and then being told by philosophers that it is her moral duty to accommodate at least some of these refusals. Would the baker truly

position herself outside the space of reasons if she replied that a bakehouse is an unsuitable domicile for snowflakes?

Perhaps the Agency-Respect View can be amended. It may well be possible to spell out all three qualifications and their relations in a plausible and consistent way. Until then, however, its Principle *P* boils down to the harmless demand to do what those around you regard as polite—if you don't personally find that too much.

6 Are Conventionalist Justifications of Moral Norms *ad hoc*?

I now move on to a new topic, alternatives to the Agency-Respect View. Valentini's proposal is preceded by the discussion and rejection of four recent alternative views of the moral force of social norms: Thomas Scanlon's (2013; 1998, p. 339) justification through established procedures, David Owens' (2012; 2022) justification through normative interests, Margret Gilbert's (2006) justification through joint commitments, and my own, conventionalist view.⁴ In the current and the next section, I give a brief reply to Valentini's analysis of my view.

While I am hesitant to bore readers with a repetition of my own ideas in a commentary that should be devoted to somebody else's, a brief sketch of my position can unfortunately not be avoided. Rest assured that discussion in this and the next section is intended to illuminate a general, philosophical point, viz. the different conceptions of a duty by convention at stake in the current discussion.

Valentini's overall conclusion says: "The conventionalist view, I have suggested, is poorly motivated" (p. 79). This conclusion is expanded upon later (p. 84).

Now take the conventionalist principle proposed by Nieswandt, according to which the rules of a justified partice are, *ipso facto*, morally binding on their own terms. As we

⁴See Nieswandt (2016; 2018).

saw in the previous chapter, the principle appears reverse-engineered to deliver a particular conclusion. Absent further argument, conventionalism comes across as *ad hoc* and thus falls short in terms of explanatory power.

Naturally, I am as disinclined as the next philosopher to be swayed by arguments, especially those against my own view. The charge that this view is *ad hoc*, however, is seriously surprising to me—for two reasons.

First, I advertise it as one of the benefits of Conventionalism that it unifies moral normativity with that in other domains, such as grammatical normativity or mathematical normativity or 'norms' in leisure games. A central motivation behind my proposal is my profound agreement with Anscombe's (1981a) claim that the 'moral ought' is not special (Nieswandt, 2017). I am honestly wondering how the impression that Conventionalism is reverse-engineered even arose and to what target I supposedly tailored Conventionalism.

Second, Valentini's conclusion that the view is *ad hoc* appears to in no way follow from her preceding discussion. Her argument consists in a number of alternatives to Conventionalism, each tailored to one specific example (pp. 68–9). This surely is itself *ad hoc* but, more importantly, cannot possibly support the claim that I am guilty of false advertising. Valentini's argument is treated in the next section.

In the current section, let me outline, in the briefest possible terms, what I claim. This should make the generality of Conventionalism evident.

Following "Wesley Newcomb Hohfeld's (1913, p. 32) almost universally accepted explication," I define a person's right through the duties it entails for others.

For instance, your property right in your bicycle imposes a duty D_1 on me not to use the bike without your permission, a duty D_2 not to damage it and so forth, as well as other duties on various other people [...]. Thus, we can explicate what it is to have right R by listing the duties D_1, \dots, D_n

that *R* imposes on others. Suppose I came from a culture where private property did not exist, and I asked: "What does it mean that *X* has a property right in this bicycle?" One answer says: "Well, to say 'X has a property right in this bicycle' is to say that you cannot take this bicycle without *X*'s permission, that you may not damage it, ... and similarly for me and for various others." (2016, p. 314)

I then continue to say that a "right exists by convention just in case *the only* justification for its corresponding duties is that the rules of a socially shared pattern of acting impose these duties" (2016, p. 315). Such appears to be the case for the previous example of property.

If [another person,] *Y*[,] asked "Why can't I take this bike?", then the answer "It's *X*'s"—in other words, "*X* has a property right in it"—usually counts as a perfectly good justification for *Y*'s duty. Indeed, it seems that any justification not conveying that the crucial normative fact is that *X* has right *R* is *eo ipso* an inadequate justification. (After all, *Y* could take the bike, other things being equal, if neither *X* nor anyone else had a property right in it.) This reply, however, draws on the very thing it is supposed to justify. [...] We say: "*Y* must (not) do something, because there is a whole set of things that *Y* and others must (not) do, and this action happens to be a member of that set." The reason why one must (not) carry out any of the actions in that set is that one must not violate *R*. *R* itself, though, is nothing over and above this set.

Interestingly, the justification of rights and duties seems to always be self-referential in this way, as Anscombe (1981c, pp. 97–9) points out. As depicted in *Figure 1*, rights and duties always runs in "Hume's Circle."⁵

⁵See Hume, *Treatise* (sec. 3.2.1).

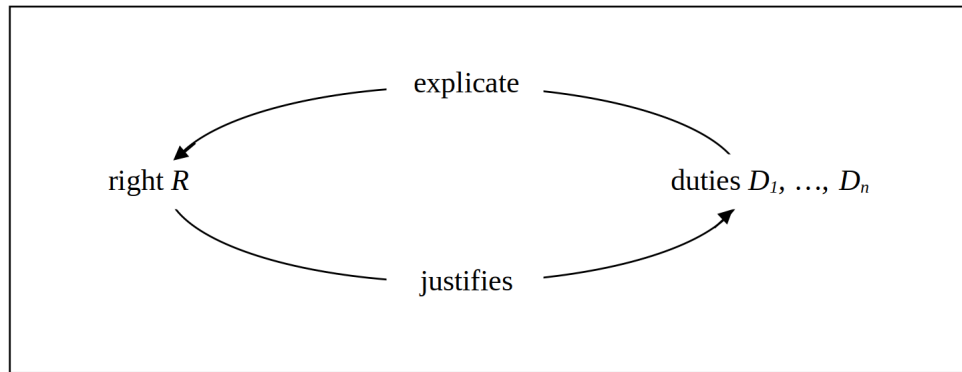


Figure 1: Hume's Circle.

Questions about how we should live, on the other hand, meaning most of the pressing 'moral' and 'political' questions, instead concern "the rules of a socially shared pattern" or the pattern in total.

At the level of the practice we can pose questions such as: "Should we have the practice of private property at all?" or [...] "Should we change some of the rules of our current practice of private property?" Justifications on the practice level appeal to something categorically different, viz. the point of the practice. Contrary to justifications of rights, they mention a fact over and above the thing to be justified. (Nieswandt, 2016, p. 322)

Readers may find this whole construction plausible or not. My point here is that it is completely general. This analysis is supposed to apply to "right" and "duty" in any sense, whether we are talking about moral rights, legal rights, established customs, grammar, or leisure games. I have not myself written about theoretical reasoning, but nothing in principle, I suppose, speaks against the idea of applying the same conception in mathematics or logic, should you have such pragmatist leanings.

In conclusion, Conventionalism is anything but *ad hoc*, at least as an aspiration.

7 Does Valentini Provide Any Argument Here?

Aspirations may fall short of reality. Perhaps Valentini has provided good arguments to the conclusion that Conventionalism is *ad hoc* indeed. She takes up my examples of a moral practice, promising, and of a leisure game, football, and says (p. 68):

Nieswandt (2018, pp. 25–6) notes that the “offside rule” was introduced within the practice of football to make the game livelier. This is why the rule was adopted. However, if we ask why a [given] football player is forbidden from scoring a goal offside, answering that scoring offside makes the game less lively seems to get the explanation completely wrong. The reason why an offside goal is invalid has all to do with the rules of football. In fact, there may be instances in which allowing an offside goal would make matches livelier, [e.g.,] by evening out the score. So, the inference from what explains why we should adopt a certain rule to what grounds rule-based duties [of individuals] is fallacious.

I am not persuaded by this argument. While I am fully prepared to believe that the reason why the offside rule was added to the practice of football had to do with how it would make football more entertaining, this seems to me irrelevant to what makes the practice of football “justified” in the sense of its rules being *morally binding* for those participating in it. [...] [I]ts rules, it seems to me, become binding on participants only when, and because, they *agree* to play *football*. When they do, they bind themselves to each other to play precisely that game. [...]

In sum, what explains the (moral) bindingness of the offside rule is the implicit agreement between participants: it is the familiar moral principle that one ought not to breach agreements. If we appeal to this principle—rather than to

the greater entertainment value of a game with the offside rule—to explain why it is wrong to score a goal offside, what Nieswandt described as a fallacy no longer seems one.

I have a number of questions here. First, I don't understand how Valentini's move would dissolve the fallacy—or how it even differs from mine. I alleged that the justification for adding the off-side rule was to make the game livelier. Valentini concedes this. I say that player *P*'s duty in yesterday's game was justified by something completely different. To justify it through a duty on *P*'s part of making yesterday's game livelier would be fallacious. Valentini's seems to agree with me again but then deny the agreement. On her alternative, *P*'s duty yesterday was justified through *P*'s implicit consent to the rules, which *P* gave yesterday simply by playing. In other words, Valentini agrees that it would be fallacious to justify both the rule and the individual player's duty through the same thing; she simply proposes a different justification for the latter, viz. implicit consent.

Second, why would I claim that football generates moral duties? Football and other leisure games create, for want of a better word, "ludic" duties. Law creates legal duties; systems of logic create (again, for want of a better word) "inferential" duties, etc. Each of these rule-governed activities has a domain, and the rights and duties that it creates are specific to that domain. Some actions are subject to the norms of multiple domains. Presumably, I do not only have a legal duty not to poison my annoying neighbor but a moral duty, too. Here, however, we simply seem to regard the same action (or omission) under different normative perspectives and, in that sense, seem to assign different duties for different justifications (unless, of course, you think that one of the domains can be reduced to the other). Perhaps one can argue, as Valentini does, that I have not only a ludic duty not to attempt a goal from off-side but also a moral duty to respect all rules of leisure games in which I participate. This moral duty not to cheat, however, would exist in addition to the ludic duty created by the leisure game. Note,

though, that the case is slightly different from the previous one, where my legal and my moral duty regarded the same action. In the football case, I seem to have ludic duties within the game, created by the rules, plus a moral meta-duty to stick to all rules. In any case, the point of my football example is not to argue that football bestows moral duties but to show that the ontology of duties is the same across domains. Football duties carry no moral weight but we can use the same model to describe moral duties and how they come to be—e.g., the duty of a promisee.

Third, and that is my main question, I cannot see how the previous points show my conventionalism to be "ad hoc" or "reverse-engineered." If anything, Valentini sketches an alternative, viz. implicit consent. Her argument then boils down to the claim that Conventionalism has not been shown to be superior to alternatives.

Obviously, I possess no argument that would demonstrate my view to be superior to all imaginable alternatives. What I can show, however, is that Valentini's suggested alternative is itself an *ad hoc* fix. For I take it that she would not want to apply her justification of implicit consent across domains. Hardly anyone would want to say: You broke agreement by affirming the consequent, since through participation in this particular system of logic you gave consent not to do that, and *pacta sunt servanda*. Neither do the parallel claims for mathematics, for grammar etc. make sense. Least plausible is the parallel claim for morality, on which you need to keep your promise because you implicitly consented, i.e. promised, to always keep your promises—the Achilles' heel of any contract theory that wants consent 'all the way down'. I hence draw the reverse conclusion to Valentini's, viz. that implicit consent is a tailored fix for exactly one example, leisure games.

This conclusion receives further support once we turn to the second example Valentini discusses, which is traffic rules. About these, she says (p. 69):

Let us see whether it is really fallacious to ground the obligation to stop at the red light in the considerations that jus-

tify the relevant practice (i.e., which make it morally binding). Here, we have (i) the practice-internal obligation to stop at the red light and (ii) the practice-justifying obligation to act in ways that minimize the risk of harm to others. But there appears to be absolutely nothing wrong or fallacious in the suggestion that one ought to stop at the red light because, and insofar as, doing so minimizes the risk of harm to others. In fact, it seems artificial to keep the two separate.

Remember, the duties imposed within leisure game are justified, according to Valentini, by something other than the game, viz. implicit consent versus entertainment, respectively. The duties imposed within a system of traffic, however, are now supposed to have the same justification as that system itself—a justification which, in turn, is different from any of the two previous ones for the leisure game case. This third justification is a supposed moral duty to act in ways that minimize the risk of harm to others. In other words, the new example receives a new explanation and that explanation is different both in structure and content from that for the previous case. That certainly is *ad hoc*.

As an aside, note an additional set of problems that I want to flag but put aside here. The contention that there is nothing fallacious in collapsing the two levels of justification, that within and of the game, for the specific example of traffic, is assumed rather than argued for. I don't see why traffic should be such an exception. Rule-consequentialism about traffic appears to generate the same problems as rule-consequentialism about anything, viz. Scanlon's wrong reason objection and the objection that I have no reason to stick to the rules in situations where no harm threatens.

In conclusion, Valentini's argument does nothing to show that Conventionalism is *ad hoc* but appears to itself be susceptible to this problem.

8 Conclusion

Valentini's novel theory, the Agency-Respect View, says that we have a fundamental moral duty to honor other people's convictions, at least *pro tanto* and under certain conditions. In this commentary, I raised doubts that such a duty exists indeed and that informative conditions have been specified. The questions that Valentini faces here are philosophically difficult and have a parallel in Kant's moral philosophy, viz. the question of why one has a duty to value the other's humanity and the question of how to specify the maxim of one's action.

Additionally, I questioned whether Valentini's theory actually makes use of a concept that figures prominently in her account, the idea of a convention, and whether her characterization of competing views that center on conventions is correct.

References

- Anscombe, Elizabeth (1981a). "Modern moral philosophy." In: *The Collected Philosophical Papers*. Vol. 3. Oxford: Blackwell, pp. 26–42. [1958].
- (1981b). "On brute facts." In: *The Collected Philosophical Papers*. Vol. 3. Oxford: Blackwell, pp. 22–25. [1958].
- (1981c). "Rules, rights and promises." In: *The Collected Philosophical Papers*. Vol. 3: Ethics, religion and politics. Oxford: Blackwell, pp. 97–103. [1978].
- Gilbert, Margaret (2006). *A Theory of Political Obligation. Membership, Commitment, and the Bonds of Society*. New York: Oxford University Press.
- Griffin, James (2008). *On Human Rights*. Oxford; New York: Oxford University Press.
- Hohfeld, Wesley Newcomb (1913). "Some fundamental legal conceptions as applied in judicial reasoning." In: *Yale Law Journal* 23, pp. 16–59.
- Kant, Immanuel (1903). "Grundlegung zur Metaphysik der Sitten." In: *Kants gesammelte Schriften*. Ed. by the Königlich Preußische Akademie der Wissenschaften. Vol. 4. Ed. by Paul Menzer. Berlin: Reimer, pp. 385–463. [1785].

- Nieswandt, Katharina (2016). "Do rights exist by convention or by nature?" In: *Topoi* 35.1, pp. 313–325.
- (2017). "Anscombe on the sources of normativity." In: *The Journal of Value Inquiry* 51.1, pp. 141–163.
- (2018). "What is conventionalism about moral rights and duties?" In: *Australasian Journal of Philosophy* 97.1, pp. 15–28.
- Owens, David (2012). *Shaping the Normative Landscape*. Oxford: Oxford University Press.
- (2022). *Bound by Convention. Obligation and Social Rules*. Oxford: Oxford University Press.
- Putnam, Hilary (1975). "The meaning of 'meaning'." In: *Minnesota Studies in the Philosophy of Science* 7, pp. 131–193.
- Rawls, John (1999). *Theory of Justice*. Rev. ed. Cambridge, Mass.: Belknap. [1971].
- Scanlon, Thomas (1990). "Promises and practices." In: *Philosophy and Public Affairs* 19.3, pp. 199–226.
- (1998). *What We Owe to Each Other*. Cambridge, Mass.: Belknap.
- (2013). "Reply to Leif Wenar." In: *Journal of Moral Philosophy* 10.4, pp. 400–405.
- Thompson, Michael (2012). *You and I: Some puzzles about 'mutual recognition'*. [Unpublished.]
- Valentini, Laura (2023). *Morality and Socially Constructed Norms*. Oxford: Oxford University Press.
- Waldron, Jeremy (2015). "Is dignity the foundation of human rights?" In: *Philosophical Foundations of Human Rights*. Ed. by Rowan Cruft, Matthew S. Liao, and Renzo Massimo. Oxford: Oxford University Press, pp. 117–137.