

When in Rome, Do as the Romans Do: Respect, Positive Norms, and the Obligation to Obey the Law*

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Introduction

Most of us conform to local positive norms.¹ I certainly do. When I wait for the bus in England, I dutifully place myself in the queue. In Italy though, the idea of queuing at the bus stop does not even occur to me. When I am a guest at Oxbridge High Table, I follow local customs and stand up as grace is being said before dinner. This pre-dinner ritual, however, is one I would never perform at home. The list could go on, but I better stop here. The point should be clear enough. I, like many others, tend to follow the old saying: “When in Rome, do as the Romans do.”

In this paper, I want to investigate whether we have a pro tanto moral obligation to adhere to this rule, namely to obey the positive norms that exist in the contexts we inhabit. By “positive norms,” I mean not only the laws of the land, but also the established rules of etiquette, decency, and morality. To say that we have a pro tanto obligation to *obey* given norms is to say that we ought to perform or avoid certain actions *because* positive norms prescribe or prohibit them. To be sure, the “ought” in question may be outweighed by other moral demands: it is merely “pro tanto.” But when no competing or weightier moral concerns apply, obeying the norms is what we all-things-considered ought to do. So, do we have such a pro tanto obligation? And if we do, what grounds it?² I argue that, provided positive norms meet independent criteria of moral acceptability, *respect* for those who accept them grounds an obligation to obey them. This conclusion, I suggest, sheds light on the much-discussed pro tanto obligation to obey the law. If I am right, the latter is best understood as a particularly salient instance of the general respect-based obligation to obey positive norms.

My argument proceeds as follows. In Section 1, I introduce the phenomenon under discussion: positive norms. In Section 2, I motivate my inquiry by giving examples of actions whose intuitively wrongful nature can be explained only if we hypothesize that we have pro tanto obligations to obey positive norms. To corroborate this hypothesis, in Section 3, I turn to the relationship between our obligation to treat others with respect and positive norms. I distinguish between two types of respect. The first, “person respect,” is the respect owed to human beings *qua* equal moral persons. The second, “identity respect,” is the respect owed to individuals *given* who they are, their particular goals, commitments and identities (cf. Noggle 1999).³ I argue

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¹ I contrast “positive” with “moral.”

² For ease of exposition, in what follows, I sometimes omit the qualification “pro tanto.”

³ Both “person” and “identity” respect are instances of what Stephen Darwall (1977, 45) calls “recognition respect.” See Section 3.1 for further discussion.

that, provided positive norms are consistent with person respect, we have identity-respect obligations to obey them. In Section 4, I apply this conclusion to a particularly salient class of positive norms—i.e., legal ones—thereby defending an identity-respect-based account of the (pro tanto) obligation to obey the law. Section 5 addresses objections. Section 6 concludes.

1. Positive norms and social conventions

Each human social context is governed by *positive norms*. These set out what counts as appropriate—i.e., required or permitted—behaviour in the eyes of the context’s inhabitants, and what counts as inappropriate—i.e., forbidden—behaviour. Positive norms exist by virtue of people’s *collective attitudes*: they are norms accepted as binding by a large enough number of individuals in any given setting.⁴ A positive norm, in other words, is a widely accepted “ought,” “may,” or “ought not” (Southwood and Eriksson 2011).⁵

Positive norms abound in our social world. Familiar examples include those I mentioned at the outset: “One ought to queue at the bus stop,” and “One ought to stand when grace is said at High Table,” as well as “One ought to stop at the red light,” “Children ought to obey their parents,” “Doctoral students ought to attend the PhD workshop,” “Women ought to wear a veil in public,” “One ought not to trespass onto others’ property,” “Customers ought to tip for service,” “One ought not to injure innocent others,” “One ought not interfere with society’s democratic decision-making.” And the list could continue.

It is crucial to emphasize three features of positive norms. First, positive norms exist *in given contexts*. Queuing up at the bus stop is a positive norm in the UK, but not in Italy. Standing up when grace is said at High Table is a norm in Oxbridge colleges, not elsewhere. The positive norm that women should wear a veil in public exists within particular religious communities, not outside them. Not trespassing onto others’ property is a widespread positive norm, yet one that only exists in contexts with well-defined private property rights; and so forth.

Second, positive norms vary with respect to their level of *formality*. Following H.L.A. Hart (1961, chap. V), we may distinguish between “primary rules”—which directly govern individuals’ conduct—and “secondary rules”—namely rules concerning how primary rules may be created, ascertained, and enforced. For Hart, *formal law* is a “union” of both types of rules.⁶ From this perspective, any social practice governed by a union of primary and secondary rules—e.g., the state, but also smaller-scale associations such as universities and commercial enterprises—has its

⁴ There exist competing accounts of the *nature* of the relevant attitudes in the literature on social ontology. My argument is not affected by which particular account is assumed. See, e.g., Searle (1995), Epstein (2015) and Bratman (2014).

⁵ There is a further question, namely whether, for a positive norm to exist, individuals must have mutual, or (more demanding) common, knowledge of their acceptance of the relevant “ought.” For present purposes, I need not answer this question. Standardly, positive norms are thought to require common knowledge, and common knowledge is indeed present in all the real-world cases of positive norms I present. For a definition of norms that requires only mutual knowledge, rather than common knowledge, see Brennan et al. (2013). For critical discussion of Brennan et al. (2013), see Spiekermann (2015).

⁶ I should specify that Hart talks about “legal systems,” rather than “formal law.” Brennan et al. (2013, sec. 3.5) distinguish formal and informal norms by reference to their particular functions. While the former produce “mediated accountability”—i.e., subjects are held accountable via an external authority, such as the state—the latter produce “non-mediated accountability”—i.e., subjects hold each other accountable directly.

own *formal law*. *Informal norms*, by contrast, consist exclusively of primary rules, and are consequently less transparent and flexible than formal ones. For example, while a change in a university's constitution can be initiated by following a given procedure, changes in informal norms—say, queuing or tipping norms—require widespread non-compliance with the pre-existing norm (see also Searle 1995, 87–90; Posner 1996).

Third, and finally, as Southwood and Eriksson (2011) point out, positive norms need to be distinguished from *social conventions*, namely behavioural regularities that lack normativity.⁷ To see the distinction, consider the following case.⁸ The pool near my home is organized into four lanes: slow, medium, fast and a wider lane for “free swimming.” At the bottom of the first three lanes stand signs indicating the required direction of swimming: clockwise or counter-clockwise. There are no signs at the bottom of the “free” lane.

Whenever possible, I swim in the free lane, which can host about four swimmers, each going back and forth on a straight line. Often, this is precisely the “equilibrium” or “convention” that emerges spontaneously among swimmers using that lane. This peaceful equilibrium is sometimes upset by younger frequenters of the pool. Their arrival is inconvenient, and causes me to quickly move to one of the “regulated” lanes. But the youngsters have not breached any norm. The “free” lane of the pool is, as the name says, free, and nobody has an entitlement to using it in any particular way. Conventions may arise, but they are not normative.

The situation is different with respect to the regulated lanes. There, the signs *prescribe* that swimmers should proceed in one direction rather than the other. When swimmers ignore those signs, they violate a positive “ought.” And whenever that happens, it's not deemed inappropriate—in the context in question—to politely point it out to them. In fact, when I do, I find that they immediately apologise, explain that they had not noticed the sign, and adjust their behaviour accordingly.

As the scenario illustrates, the sign, in the pool context, expresses a positive norm. And the existence of this norm is dependent on a complex set of interlocking attitudes on the part of the pool's frequenters and staff members. Specifically, swimmers and staff members are disposed to hold each other to account by appeal to that norm, and adjust and correct one another's behaviour accordingly (Southwood and Eriksson 2011, 209–11). The same is not true in the case of conventions—i.e., of mere behavioural regularities. No such normative attitudes exist there.

With a clearer account of positive norms in hand, we can now turn to asking whether we have obligations to obey them.

2. Breaches of positive norms and wrongdoing

Do we have pro tanto obligations to *obey* positive norms? At first sight, the answer may seem trivial: “Of course we do!” Going back to the norms listed in the previous section, most would readily agree that it is typically (at least pro tanto) wrong—hence contrary to obligation—for drivers not to stop at red lights, for children to disobey their parents, for doctoral students to fail to attend the PhD workshop, for third parties to trespass onto others' property or injure innocent individuals, and so forth.

But note that the reasons we would most readily invoke to explain the wrongness of these actions have *nothing to do* with the fact that these actions *breach*

⁷ Cf. Hart's (1961) distinction between “habits” and “rules.” For an overview of the literature on *social norms* in particular, see Bicchieri and Muldoon (2014).

⁸ Thanks to Christian List for suggesting it.

positive norms. For example, why should we stop at red lights? Primarily, because doing so is *instrumentally useful* in facilitating coordination, and avoiding harmful outcomes. The existence of a positive norm prescribing to stop is not part of the most natural explanation for why we should in fact stop. If, instead of positive norms, we were dealing with mere behavioural regularities, we would continue to have coordination-based reasons for stopping at red lights.

Or else, consider the positive norm that doctoral students ought to attend the PhD workshop, and that we ought not to physically harm innocent others. The obvious explanation for why the addressees of these norms ought to conform to them is that the norms *mirror independent moral principles*. Students should attend the PhD workshop because free riding on others' cooperation is morally prohibited. The workshop is mutually beneficial, and fairness gives all students an obligation to contribute, independently of the existence of a positive norm prescribing that they do. Similarly, one has a weighty obligation not to physically harm innocent others because this is what morality independently demands.

In all the cases just discussed, the existence of a positive norm, namely of a widely accepted "ought," is *not a necessary part of the explanation* for why one has a pro tanto obligation to perform a given act (cf. Raz 1985b, 141). These cases thus fail to support the hypothesis that we have obligations to *obey* positive norms: i.e., to perform or avoid an action *because* there are positive norms prescribing or prohibiting it. At most, they show that we have contingent reasons to *act in line with* the norms' prescriptions.

But now consider the following three scenarios. The first is an autobiographical variation on a case much discussed in the literature.

Traffic Light: My German father in law, Jürgen, was driving late at night, through a village in his home region. He came to an intersection in the road. The traffic light went red. He looked in every direction: there was no car, person, or speed camera in sight. It would have been physically impossible for anyone to get hurt if he had continued straight, ignoring the red light. The only outcome would have been a happy one: an earlier arrival home. Yet my father in law stopped at the red light.⁹

Would not stopping at the red light have been pro tanto wrong? An affirmative answer to this question, it seems, can only be sustained if there is a pro tanto obligation to obey the positive norm (prevalent in rural Germany) that one ought always to stop at red lights. Nothing else could explain why failing to stop would have been wrong in the circumstances. After all, ignoring the red light would have led to no harm. In fact, it would have been the "Pareto superior" thing to do. Jürgen would have been better off—namely home sooner—at *nobody else's expense*.¹⁰

Presented with the above scenario, different demographics are likely to offer different verdicts. Most Southern Italians would probably insist that there would have been nothing wrong with ignoring the red light, and that my father in law's refusal to do so was just a manifestation of his "German rigidity." But I would also expect most

⁹ Cf. "traffic light in the desert" cases. See, e.g., Smith (1973, 971), Soper (1989, 227) and Edmundson (2004, 235).

¹⁰ Considerations of "free riding" do not apply here. Driving through *in a scenario like Traffic Light* is perfectly universalizable: If everyone did it, the provision of the benefit of road coordination/safety would not be undermined. Thanks to Massimo Renzo for discussion.

Germans—at least from rural areas—to insist that he did the right thing, and that not stopping would have been wrong.

These observations suggest that a case like *Traffic Light* lends only relatively weak support to the hypothesis that we have a pro tanto obligation to obey positive norms. Ordinary folk’s judgements about it are rather disparate. Furthermore, it is tempting to explain away the intuition that not stopping would be (pro tanto) wrong as an instinctive reaction, ultimately driven by real-life considerations—e.g., not stopping is risky and undermines an otherwise useful rule. Even if such considerations are stipulated away in the proposed scenario, our intuitions—trained to respond to real-world circumstances—may inadvertently continue to track them; or so one could argue.

Now consider a second scenario.¹¹

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

Presented with this scenario, I would expect most to think that what the Rossis did was wrong, even if only mildly so. As in *Traffic Light*, however, nobody is made worse off, and the Rossis are made better off. Moreover, it would be implausible to suggest that the positive norm breached by the Rossis—i.e., “one ought not to use others’ property harmlessly without consent”—corresponds to an independent moral demand. For example, one might think that camping trips, if not society more generally, would go better if the privileges associated with property included a special provision for third-party use when the latter does not interfere with the owner’s use (Cohen 2009).¹² This alternative norm does not seem in principle any less morally acceptable than the one breached by the Rossis. Indeed, we could even suppose that the Rossis are tourists visiting from a land where this is precisely how property norms work. If an explanation for the wrongness of the Rossis’ actions exists, this must rest on those actions breaching the relevant positive norm.

If you are not yet convinced that some wrongs can only be explained by hypothesizing obligations to obey positive norms, consider this third and final case.

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

¹¹ Cf. the “harmless trespass” scenarios discussed in Ripstein (2006).

¹² For a critique of Cohen, see Ronzoni (2012).

surveillance would need to be explicitly authorized by Congress, through legislative amendment (Dworkin et al. 2006).

Let us assume that the President's critics are right: he did act *ultra vires*.¹³ Let us further assume, *for the sake of argument*, that: (i) domestic warrantless surveillance was *indispensable* to avert serious terrorist threats and (ii) this legal breach was a one-off occurrence, necessitated by exceptional circumstances. Even so, the President's violation of a positive (legal) norm appears pro tanto wrong. A head of state acting in this manner would at least owe its citizens an explanation, if not an apology, for the breach, *even* on the assumption that, all things considered, he did the right thing.

Crucially for our purposes, the pro tanto wrong in question is *contingent on* the US Constitution and US law more generally having the content that they do. If the Constitution had given the President greater discretion, or if the original provisions in the 1978 FISA had been different, the President's actions would not have involved any wrongful procedural breach. And it would seem implausible to suggest that the precise details of US law are "independently morally mandated." We can easily imagine a morally permissible democratic set up under which the president has greater discretion, or under which the 1978 FISA has slightly different content. In short, the pro tanto wrong involved in *Non-Proceduralist President* cannot be explained unless we assume the existence of an obligation to *obey* positive (including legal) norms.¹⁴

Non-proceduralist President, as well as, arguably to a lesser extent, *Barbeque* and *Traffic Light*, provide some motivation for the hypothesis that we have pro tanto obligations to obey positive norms (at least when they align with some independent moral criteria). But can this prima facie plausible hypothesis be systematically vindicated? Furthermore, can it be vindicated in a way that allows us to explain the different strength of our intuitions in the three cases presented?

3. Respect for persons and positive norms

My vindication of our pro tanto obligation to obey positive norms is based on the following, simple argument:

- **P1:** One has a pro tanto obligation to *identity respect* others, provided they have not forfeited their claim to identity respect.
- **P2:** Disobeying positive norms that one is subjected to in any given context is *identity disrespectful* towards the community of individuals who accept the norms.
- **Conclusion:** One has a pro tanto obligation to obey the positive norms one is subjected to in any given context, provided the community of individuals who accept the norms have not forfeited their claim to identity respect.

¹³ The Bush administration insisted that the President acted within his mandate, in the context of the war on terror. Here, I remain agnostic about this matter of fact.

¹⁴ Some might be tempted to suggest that considerations of "fair play" do the explanatory work here. But how could they? The President is not free riding on others' compliance with the law. His breach is not structurally comparable to someone cheating on her taxes. Furthermore, by design, the scenario in question assumes that society at large *benefits* from the President's actions.

Assuming the argument is valid, in the rest of this section, I elucidate and defend its two premises.

3.1 *The moral obligation to identity-respect others (Premise 1)*

The notion of respect is as morally attractive as it is elusive. Almost nobody would deny that human beings are owed some form of respect; that we should acknowledge others' status as persons, and be "willing to constrain [our] behaviour" accordingly (Darwall 1977, 45).¹⁵ But so stated, this claim is virtually empty. Disagreement arises when we go on to specify what respect for others concretely involves.

I propose that we distinguish between two types of respect: "person respect" and "identity respect." Although the labels are mine, in drawing this distinction, I am indebted to Robert Noggle's observation that persons' moral value attaches "not only to their status as rational wills, but also to their status as particular individuals" (Noggle 1999, 457).¹⁶ "Person respect" and "identity respect" respond to these two dimensions of persons' moral value. Specifically, person respect is what individuals are owed as equal and autonomous end-setters, independently of their particular identities, commitments and desires.¹⁷ Many contemporary theories of justice or human rights may be regarded as articulating competing accounts of the requirements of "person respect" as I characterize it here (Rawls 1999). When individuals are tortured, enslaved, deprived of freedom of speech and association, or (avoidably) lack access to the basic means of subsistence, we can say that the demands of person respect have been violated. For present purposes, I neither need nor wish to commit myself to a particular substantive account of what person respect requires. Readers may plug in their preferred view. What I am offering is simply a justificatory scheme.

While the perspective of person respect is "coarse-grained," looking at people simply qua autonomous end-setters, the perspective of identity-respect is "fine-grained." Identity respect denotes what we owe to others *given* the particular individuals that they are (Noggle 1999). This form of respect gives us reason to acknowledge people's identities, and to accommodate their projects and commitments, *provided*—I hasten to add—that doing so is consistent with the demands of person respect. When the latter condition is not satisfied, individuals *forfeit their claim* to identity respect.¹⁸

¹⁵ This is what Darwall calls "recognition respect," and contrasts with "appraisal respect." The latter refers to the positive appraisal (some) people merit in light of their character and achievements. My discussion focuses exclusively on recognition respect in Darwall's sense.

¹⁶ Noggle's (1999, 450 original emphases) main focus is the question of how "respect for *persons* translate[s] into respect for their *aims*." In answer to this question, he defends what he calls "Kantian particularism," namely the view that respect for persons has to be directed at the *particular individuals* that we are, rather than at persons qua *rational agents* simpliciter. Noggle sees what I call "identity respect" as *the* correct notion of respect for individuals. I, by contrast, see "person respect" and "identity respect" as complementary, rather than as mutually exclusive. Specifically, and as explained in what follows, I consider the demands of the latter conditional on their compatibility with the demands of the former. A distinction similar to the one I draw between person respect and identity respect is implicit in Thomas E. Hill Jr. (2000, 79).

¹⁷ Cf. Ian Carter's (2011) notion of "opacity respect."

¹⁸ Note that, where exactly to draw the line between person and identity respect is a complex matter, and one central to prominent controversies in the contemporary literature on multiculturalism and the politics of recognition. See Bird (2004, esp. 216). Take, for instance, the debate over the norm, prevalent in many Muslim communities, that "women ought to wear a headscarf in public." In 2004, the French government controversially prohibited the wearing of the veil in public schools. Advocates of the ban insisted that the "veil norm" was a symbol of female subordination, and thus oppressive. In other words, they insisted that accommodating the veil was inconsistent with person respect. Critics, on

Let me offer a few examples (for further examples, see Noggle 1999, 472–3). On the view I have sketched, it is true to say that I have a pro tanto identity respect obligation to, e.g.:

- schedule a meeting with you one hour later, so that you can attend a religious ceremony;
- take my shoes off when I enter your home, since this matters to your project of keeping your apartment hygienic, and
- give you a voucher for your favourite restaurant as a birthday present.

In all three cases, I have a pro tanto obligation to acknowledge your aims, desires and commitments, and to accommodate them. Identity-respect demands that I take your religious beliefs seriously, and make allowances for your practicing them. It also requires that I adjust my behaviour in line with how you want to “run your home,” and take my shoes off if this is one of the rules you and your family have established. Identity-respect also urges me to think about your preferences when deciding what to buy you for a present (Noggle 1999, 475). If I know full well that you feel uncomfortable in posh restaurants and much prefer rustic trattorias, I “identity disrespect” you if I get you a voucher for a three Michelin-starred meal instead.

Now consider a second set of cases. It seems perfectly reasonable to say that I *lack* an identity-respect obligation to, e.g.:

- allow my racist apprentice baker to not sell bread rolls to black customers (if I am a master baker in a racially diverse society);
- not drive a car in Saudi Arabia (if I am a woman living there), and
- avoid contact with a Brahmin (if I am a pariah in a caste society).

Although my apprentice is committed to racist views, and feels uncomfortable serving black customers, identity respect does *not* require that I accommodate her convictions. Why? Because those convictions are at odds with person respect: They presuppose a denial of persons’ equal moral status. Similarly, Saudi Arabia’s prohibition on women operating motor vehicles does not generate a claim for accommodation. That prohibition is premised on a hierarchical view of gender relations that is contrary to person respect. The same reasoning applies to the third example, involving a pariah in a caste society (cf. Buss 1999, 810).

The examples just offered illustrate how moral demands to identity respect others are conditional on the satisfaction of demands of person respect. Let us now focus on *identity respect* in particular—namely the form of respect on which most of my argument is going to rest. As Noggle (1999, 474–5) plausibly suggests, the strength of the requirement to accommodate someone’s commitments or goals at any given time depends on their centrality to that person’s identity. The more central a commitment or project is to a particular person’s self-conception and life-plans, the stronger our pro tanto obligation to accommodate it. To see this, consider a variation on an example offered earlier.

Some of my friends care about people not wearing shoes in their homes. When I visit them, I have a pro tanto obligation to take my shoes off. But assume that my

the other hand, complained that the ban was “identity disrespectful” towards Muslim girls, since the veil is a genuine expression of their identity (Laborde 2008).

religious commitments forbid me from taking my shoes off. It seems plausible to suppose that one's deep religious commitments are *more central* to one's identity and life plans than one's commitment to guests' taking their shoes off.

If this is correct, the identity-respect (pro tanto) obligation my friends have to let me keep my shoes on is weightier than the identity-respect (pro tanto) obligation I have to take them off when I visit them. In fact, it would be all-things-considered wrong for them to insist that I should take my shoes off. This, however, does not mean that keeping my shoes on does not involve "disregarding" an identity-respect claim. When my hosts graciously allow me to keep my shoes on, I should thank them and apologise for the inconvenience. This is appropriate behaviour precisely because there remains an identity-respect, pro tanto requirement to take my shoes off, even if it is overridden by the contrary demand to let me keep them on.

To be sure, "measuring" how central a particular commitment, project or preference is to one's identity and life plans is a complex matter. Sophisticated accounts have been offered in the literature, and readers may wish to rely on one of them in particular (e.g., Noggle 1999; Williams 1981, chap. 1; Taylor 1994; Shoemaker 2014). A pre-theoretical, intuitive understanding of what counts as "central" or "peripheral" to someone's identity will suffice for present purposes.

3.2 *Positive norms and identity disrespect (Premise 2)*

Identity-respect generates moral demands to obey (person-respect-compatible) positive norms, namely norms that exist by virtue of individuals' collective acceptance of certain "oughts." Positive norms structure practices that individual norm-supporters value and identify with to various degrees.

To see this, consider again some (by now familiar) positive norms. Take the norm, prevalent in the UK, that people should queue up when waiting for the bus. This is a norm that the British—and, in fact, many others—support and value. To be sure, I would be surprised if it were central to their identities and projects in the way in which, say, religious and political commitments typically are. Still, norm-supporters' adherence to the practice of queuing and willingness to sanction those who depart from it show that it matters to them (Schmitt and Dubé 1992, 807). This means that, when in the UK, we have an identity-respect obligation to obey the norm that prescribes queuing up at the bus stop. Failure to do so would be identity-disrespectful towards the community of individuals who accept it.

Equally, in the United States—and, increasingly, elsewhere—there is a positive norm that requires customers to tip for service. Let us counterfactually *assume*, for the sake of argument, that the practice is compatible with, but not mandated by, person respect.¹⁹ P2 states that identity-respect towards the community of individuals who support the norm requires us to obey it, and thus tip when we are in the US. This is how appreciation is expressed in this context, and to the extent that the practice of expressing appreciation is one that individuals care about, respect for them demands obeying the tipping norm.²⁰

Or else, consider having to stand up when grace is said at High Table dinner. This norm is part of the broader practice of "Oxbridge college life." Many

¹⁹ I am making this assumption since, with tipping in the US, the situation is further complicated by the fact that often tips form a large part of employees' income, in the face of unreasonably low wages. In this specific context, tipping might be not only permitted, but *required* by person respect.

²⁰ On the independent moral worth of norms of politeness and appreciation, see Buss (1999). On the fact that tipping, in the US, might not matter morally *only or primarily* as an expression of appreciation, see the previous footnote.

individuals, including dons and students, care about this practice, in part identify with the role of being a student or a don, and regard their participation in the practice as an important dimension in their life projects. Identity respect for them, i.e., for the community of individuals supporting the norm, requires us to obey it (cf. Southwood 2011, 787–88).²¹

More examples could be given, but the general spirit of the argument should be clear enough. Our obligations to obey positive norms—when these are consistent with person respect—are a matter of identity respect.²² Furthermore, as explained earlier, the strength of the relevant obligations depends on how central the practices structured by the norms are to norm-supporters’ identities. This is why our obligation not to mock religious figures (for instance) seems much stronger than our obligation to swim in the prescribed direction at the pool, which is fairly weak.

At this point, readers might be wondering about the “structure” of the pro tanto *wrong* involved in failures of identity respect that originate in breaches of positive norms. To answer this question, it is crucial to distinguish between:

- *what grounds* or explains the moral normativity of (person-respect-compatible) positive norms, and
- *who is wronged* by the breach of such norms.²³

Identity-respect grounds the moral force of positive norms, and the “object” of identity respect here is the community (i.e., the set) of individuals who accept them. This, however, does not mean that the community of individuals specifically is being wronged when those norms are violated. Who is wronged and how depends on the content of the relevant norms.

In some instances, the norms establish *directed duties*, namely duties correlative to rights. Consider the norm that one ought to tip. Here, the particular individual “entitled” to a tip is wronged by one’s failure to abide by the relevant norm. Identity-respect only explains why we should take *that* specific norm seriously from a moral point of view.

Other positive norms, such as the norm that one ought to stand up when grace is said at High Table, do not establish directed duties, but *non-directed* “oughts.” This means that failing to stand up at High Table is, in the context of an Oxbridge College,

²¹ While discussing the difference between moral and conventional normativity, Nicholas Southwood (2011, 787) briefly notes that, as *outsiders* to social practices, we have respect-based reasons to conform with their rules (e.g., wearing black at funerals, or passing the port to the left at High Table). Southwood’s main claim, however, is that, as *participants*, our reasons to follow a practice’s rules stem from the practice’s contribution to “shap[ing] our sense of self and our relations with others,” and are not mediated by an independent moral notion of respect (Southwood 2011, 789). This, in Southwood’s view, explains the distinctive normativity of conventional (as opposed to moral) judgments—namely judgments that are grounded (at least in part) in the fact that “this is how we do things here.” In my discussion, I remain agnostic about the idea of conventional normativity, and exclusively focus on the *moral* reasons—in fact, obligations—we have to obey positive norms.

²² It might be fruitful to compare my view with Andrei Marmor’s discussion of the morality of what he calls “social conventions.” Social conventions are a subset of positive norms, namely those we “arbitrarily” happen to follow, and could replace with other norms “without any significant loss of purpose” (Marmor 2009, x). Marmor (2009, 152–3) argues that we have (weak) *moral* reasons to follow social conventions insofar as they “concretize” abstract moral imperatives. He also acknowledges some “quasi-moral” reasons to follow conventions of courtesy and civility (Marmor 2009, 141; Buss 1999).

²³ Thanks to Christian List for discussion.

wrong simpliciter, without involving *wronging particular others*. Structurally, this type of wrong is similar to the wrong involved in failures of beneficence, at least from a (broadly) Kantian-deontological perspective. From this perspective, a failure to help strangers when one could do so at little cost to oneself does not wrong anyone in particular, but is wrong simpliciter. Similarly, a violation of a non-directed positive duty to, say, stand up as grace is said at High Table, is wrong simpliciter *within* a given community.

A structural analogy might help consolidate the distinction between the ground and structure of duties. Consider a group of five individuals who agree to set up a business by voluntarily signing a contract whose terms and conditions are fair. Assume that the said terms envisage an equal division of profits among the five: 20% each. Through a complex banking manoeuvre, one of the business partners, Alan, succeeds in diverting an extra 10% from Bob's (another business partner's) account into his. Clearly, what Alan does is wrong. He steals resources to which Bob is entitled, in accordance with the terms of the contract. The wrong is one *against Bob* in particular: a violation of Bob's rights. But our ability to deliver this verdict depends on the terms of the contract having moral normativity. And the explanation or ground for this moral normativity lies in the consent of all five associates. This is why the terms of the contract have morally binding force in the first place.

In a similar way, identity respect explains why positive norms have moral force, but *the nature of the wrong* involved in violating positive norms depends on the structure of those norms.

4. Implications

Having set out my account, I now wish to consider its wider implications for *Traffic Light*, *Barbeque*, and *Non-proceduralist President*. I then turn to exploring how my account offers a fresh perspective on the obligation to obey the law.

4.1 Implications

If my argument is correct, it allows us to explain why a failure to abide by German traffic norms, even when such a failure would have no negative consequences, is pro tanto wrong. To the extent that German traffic norms are consistent with person respect, we have a pro tanto, identity-respect obligation to obey them, and we commit a pro tanto wrong (of a non-directed nature) when we disregard them. This means that anyone driving on German roads would be doing something pro tanto wrong by ignoring the red light in a situation like the one in which Jürgen found himself. When in Germany, identity respect for persons requires that “one should do as the Germans [think one ought to] do.”²⁴

Note, further, that my account can explain why my hypothetical Southern Italian interviewees need not be *entirely* mistaken in denying that stopping at a red light would be wrongful. While they would be mistaken if the context of occurrence of the breach were Germany, they would not be if we shifted the context to (say) Naples. This is because, as anyone who has spent time there knows, *in the specific context of Naples*—as opposed to Italy as a whole—there is no positive norm that requires obeying traffic signs.

²⁴ The text in square brackets is needed since the wrong is constituted by the breach of positive norms (i.e., “accepted oughts”) rather than the breach of mere behavioural regularities/conventions. My sense is that the additional text in brackets is in fact implicit in the old saying “When in Rome....”

The “identity-respect” explanation I offer also allows us to make sense of why our obligation to stop at a red light, in a context like Germany, is rather weak. No matter how attached to their rules some Germans might be, it is hard to think that traffic norms are *so deeply bound up* with their identities.

In other words, the “identity respect” explanation gives us exactly what we want: it accounts for why and how we may sometimes be bound to stop at a red light on an empty road, but in a way that allows us to make sense of many people’s intuitions to the contrary. In many places (including Naples, or indeed central London) there is no identity respect obligation to stop at red lights in the circumstances I describe—and to the extent that our intuitions have developed in contexts where such norms are absent, it is no surprise that we come to the conclusion that obeying traffic signs when obedience seems “instrumentally useless” is not a matter of morality. And even where my identity-respect view concludes that it is a matter of morality, it accounts for the obligation to obey being rather weak.

The identity respect view also explains the wrongdoing involved in *Barbeque*. Here, the violated positive “ought” is directed. This means that *you*—namely, the owner of the barbeque set—are wronged by the Rossis’ actions. The view also explains why this second case is more intuitively wrongful than the first. To begin with, private property norms are ones most of us presuppose and are—often unconsciously—deeply attached to. They are the norms on the basis of which we pursue our ends, projects and goals. Furthermore, the violation of a directed “ought” is typically more intuitively problematic than the violation of non-directed demands. The fact that, in *Barbeque*, there is a clearly identifiable victim renders the wrongness of the breach all the more intuitively vivid.

Finally, my account illuminates the nature of the wrong done in *Non-proceduralist President*. To the extent that the President violates the positive norms that structure the US’s collective decision-making, he acts (pro tanto) wrongly, contrary to the demands of identity respect. Furthermore, since political membership—with its constitutive norms, including those governing the people’s collective-will formation—is an important dimension of individuals’ identity, it is clear why, intuitively, the wrong involved in *Non-proceduralist President* is a serious one, despite being non-directed.

So far, I have sought to establish that we have identity-respect obligations to obey positive norms, and have used a variety of examples to this effect. The reader, though, is likely to have noticed one common feature of my three lead-examples in particular. These do not merely involve the breach of any kind of positive norms, but of positive norms typically classified as “legal”: concerning traffic, property, and political decision-making. This suggests that the account I have presented might also, and crucially, shed light on an obligation much discussed in political and legal philosophy: the obligation to obey the law.

4.2 Identity-respect and the obligation to obey the law

To the extent that what we call “the law” constitutes a particular sub-class of positive norms—i.e., formal ones involving primary and secondary rules—my account of the pro tanto wrongness of breaching positive norms also extends to legal ones.²⁵ In other

²⁵ Note that what we might intuitively call “the law” does not always correspond to positive norms. For example, in light of the earlier discussion, it seems plausible to say that Italian traffic law is not a set of positive norms *in the context of Naples*. From this it follows that, *in the context of Naples*, it is *not* pro tanto wrong to disobey traffic law, at least not for the reasons I discuss. Is this a problem for my view? I do not think so. First, the conclusion that disobeying traffic laws in Naples is not pro tanto wrong

words, it explains why it is *pro tanto* wrong to disobey the law: it is identity disrespectful to those whose attitudes sustain it. This is good news for advocates of the authority of law, but not such bad news for anarchists either. On the view that I have defended, the obligation to obey the law turns out to be potentially rather weak, and is fundamentally no different from the obligation to queue up at bus stops, to wear modest clothes in Church, to stand up at High Table when grace is said, and so forth. My view thus has the virtue of doing justice to both anarchists and their opponents.

On the one hand, it acknowledges that, under appropriate circumstances, there is indeed something (*pro tanto*) wrong in disobeying the law. In other words, action X's being prohibited by a set of permissible (i.e., person-respect compatible) positive laws gives us a *pro tanto* obligation not to do X; an obligation that would not exist were it not for the positive laws in question. However, and this is where my view leans in the direction of anarchism, the relevant obligation often only accounts for a *small fraction* of the wrong involved in performing actions prohibited by morally permissible positive laws. Most—though not all—of what is wrong with performing those actions tends to be “positive-law independent,” as in the case of laws against murder and theft, as well as traffic and safety regulations.

The reason why advocates of the authority of law often defend a very weighty obligation to obey it is that they surreptitiously build into the force of that obligation independent moral reasons that have little to do with “something being a positive law.” To see this, recall the points made earlier about our obligations “to obey” vs “to act in line with” positive norms. There are two different ways in which the expression “X is wrong *because* it is a breach of morally admissible positive laws” may be interpreted. On one interpretation—the one I suspect ordinary folk and more robust accounts of the obligation to obey the law implicitly use—describing something as “a breach of law” is a quick and parsimonious way of pointing to a *variety of law-independent moral (and prudential) grounds* for an action's wrongness. Since the empirical association between breaches of law and independent moral wrongs is rather regular, appeals to breaches of the law can function as “summaries” of these independent reasons.²⁶ But note that, on this use, the obligation to obey the law, strictly understood, does not exist. The fact that there is a set of formal positive norms prescribing a particular conduct is *not part of the explanation* for why we should engage in that conduct.²⁷

does not strike me as particularly unpalatable. Furthermore, the view I have proposed *need not* lead to this conclusion. In particular, three moves could be made to avoid it (and on which I remain neutral here). First, one could point out that traffic rules in Naples are a “limiting case,” and for this reason, not much hinges on how the present approach handles them, so long as it does a good job of handling “core cases.” Second, one could say that, when it comes to the law, the only admissible context of analysis is the law's entire jurisdiction, not a small portion of it. So, when we talk about Italian traffic law, we ought to focus on the whole of Italy as the relevant context of analysis. There, traffic laws do correspond to positive norms. Finally, one could suggest that what the law is in any given context depends not solely on what “is written in certain documents” but also on the “actual practice of citizens and state officials.” In that case, traffic *law* in Naples would amount to the prevalent positive norms, and thus fall under the purview of my account.

²⁶ Massimo Renzo has made a similar claim in relation to the notion of “rights-forfeiture,” in [check.]

²⁷ Raz's (1985a) “service conception” of authority arguably suffers from this problem. The claim that I have a weighty (in fact, exclusionary) moral reason to obey the law's commands when doing so better allows me to comply with the moral reasons that independently apply to me seems plausible, but not as a vindication of “the obligation to obey the law because it is the law.” Obedience to the law, on Raz's account, is just a contingent *means* to compliance with independent moral (and prudential) reasons. I thank Kim Sterelny and Florian Ostmann for discussion.

A second, more pertinent sense of the expression “X is wrong *because* it is a breach of morally admissible positive laws” alludes to the law as explanatorily necessary to make sense of the relevant wrong. X is wrong—among other things—*because* it breaches the law. This is the sense I have been invoking throughout the paper, and the only sense that vindicates the “distinctiveness” of the obligation to obey positive norms, including legal ones.

5. Objections

In this final section, I consider four families of objections against the view I have offered. The first is that I have not succeeded in vindicating the idea that “When in Rome we should do as the Romans [think we ought to] do.” In short, my account fails from an explanatory point of view. The second suggests that neither have I succeeded in vindicating the obligation to “obey the law because it is the law.” The third highlights seemingly counter-intuitive implications of my view. The final objection expresses a concern about status quo bias.

5.1 Explanatory Failure?

An objector might be concerned that identity respect does not really ground a moral obligation to “do as the Romans do.” To make the point vivid, she might propose the following case.

American Tourist: An American tourist at a Japanese restaurant, in Japan, wishes to express his satisfaction with the meal and service. In Japan, there is a positive norm that one ought not to tip, but instead verbally thank service providers. This is part of Japanese culture, and is a valuable practice of courtesy in Japan. The American tourist, though, is deeply attached to the practice of tipping. This is what “Americans do” to express their gratitude. As an American, the tourist feels strongly that he ought to, in fact, tip.

In this, admittedly somewhat unusual, case, we are confronted with identity-respect pulling in different directions: it requires the tourist not to tip, and the restaurant staff to allow him to tip. Furthermore, as the case is construed, it looks like the American tourist is unusually attached to his tipping practices, so much so that the balance of moral demands would seem to speak in favour of allowing him to tip. The case is structurally analogous to the one presented earlier involving taking one’s shoes off when visiting friends. Yet, the saying “When in Rome do as the Romans [think you ought to] do” points to a different conclusion: it is the American tourist who should do what the Japanese [think he should] do, not the other way round.

I have two things to say in response. First, my identity-respect view *does* explain why the tourist has a *pro tanto obligation* to obey the norm that he should thank but not tip—which is, in fact, all I set out to explain. Second, I admit that this conclusion does not vindicate the intuition that the tourist should, all things considered, obey local norms (he not only has a *pro tanto obligation* to obey them). I think there is an explanation for the intuition, and one that is consistent with the view I put forward—though the view itself, up to this point, is insufficient to vindicate it.

The general rule “When in Rome” is not a “fundamental moral principle.” Instead, it is what G.A. Cohen calls a “rule of regulation” (Cohen 2003). It is a reasonable rule of conduct to adopt in light of identity-respect *combined with* efficiency, publicity, and coordination concerns. Given coordination, efficiency, and epistemic difficulties that arise in large-scale and pluralistic communities, the best

strategy for us to satisfy the demands of identity respect is to adopt the “When in Rome” rule.

This “rule of regulation” explains the underlying intuition in *American Tourist*, while at the same time allowing us to acknowledge that there is a (very) small identity-wrong in asking the tourist not to pay. This recognition is important, and in no way undermines the plausibility of the view. If anything, it enhances it. To see this, it suffices to think of more serious cases, such as those involving refugees (or, generally, immigrants) being accepted into a new country and culture. In such cases, we typically regard it as morally appropriate that, within limits—i.e., those imposed by person respect—refugees be asked to “integrate” and “do as their hosts do.” Yet it is crucial to acknowledge that this rule is one the justification of which relies, to a good extent, on considerations of efficiency, coordination and practicality. While “identity respect” *per se* certainly pushes in the direction of refugee integration, it equally pushes in the direction of making accommodations for the identity and valued practices of refugees. When refugees make a much greater sacrifice than their hosts in terms of integration and accommodation, we should recognize that a pro tanto identity wrong occurs. And if there exist reasonable strategies for minimizing this wrong, they should be pursued. Appropriately appreciating the status of the “When in Rome” imperative as a rule of regulation, rather than a fundamental moral principle, allows us to acknowledge this fact.

5.3 *Not a vindication of the obligation to obey the law?*²⁸

Some of those who are familiar with the literature on political obligation might be puzzled by my view. They may think that it explains why we ought to obey the laws of countries we are visiting, but that it fails to account for the sui generis obligation to obey the law of one’s own state, namely what is typically called “political obligation.” To that extent, the view may be of philosophical interest, but not as a contribution to the debate on political obligation.

I want to resist this deflationary reading of the view—even though resisting it is not strictly necessary, since the question of why we should obey the rules of communities other than our own is independently important and seldom discussed. My resistance is motivated by two sets of considerations. First, the question of political obligation and the question of obedience to the law should be kept separate, even though they are in fact often conflated. Political obligations, namely the obligations that arise out of membership in a given society, are certainly not limited to—and sometimes do not even include—an obligation to obey the law. In fact, our membership responsibilities may require us to disobey the law, as well as to do things on which the law is silent (e.g., show solidarity towards our fellow members in a variety of circumstances that are not object of legal regulation).²⁹ So the relationship between political obligation and obedience to the law is not one of identity. In this paper, my only concern is obedience to the law. I have remained silent about political obligations more generally.

Furthermore, the very presupposition that the obligation to obey the law is tied to political membership appears unsupported by day-to-day experience. Most of us do not think that, while we ought to obey the law in our country of citizenship (and/or residence), we have no such obligation when we visit a different country. My sense of

²⁸ I was prompted to add this section after a discussion with Jeffrey Lenowitz and a helpful seminar on Samuel Scheffler’s work on associative obligations, at King’s College, London (January 2016).

²⁹ John Tasioulas made this point at the King’s College seminar (see previous **footnote**).

obligation to obey the law tracks the set of laws I am actually subjected to, in the jurisdiction in which I find myself. If I move to the US for a short academic visit, say two months, I consider myself under an obligation to obey US law, including tax law. In fact, I consider that obligation no different from the obligation to obey the law of the country where I normally reside and of which I am a citizen.

To be sure, I do not think that my obligations with respect to the American polity extend as far as my political obligations to “my own” society. For example, as a citizen, I have greater responsibility for the justice of the society of which I am a member. I may have duties to engage in political activity, I may have more stringent obligations to assist the poor in my own society than abroad, and so forth. But my *obligation to obey the law* appears independent of my political membership.

Second, I grant that one may have additional *reasons*, beyond identity respect, to act as the law of *one’s own community* prescribes. These, however, are reasons that make obedience particularly meaningful for the member, without making it any more morally obligatory. These are reasons to “affirm the law from within,” as an expression of one’s identity and membership in a community one finds valuable. In the same way in which, say, members of Oxbridge colleges engage in a number of rituals to express their identity as “Oxbridge dons,” so too members of political communities might obey the law of their polities to express who they are and affirm a political relationship they value. But although this form of affirmation allows agents to enjoy a good that would otherwise be unavailable to them, it does not give rise to any additional *obligation* to obey the law (cf. Southwood 2011, 787–89). Affirming the law from within may well be valuable for an agent, but is not morally obligatory, in the same way in which appreciation of the arts is valuable, but not obligatory. The obligation to obey the law is entirely accounted for by the identity-respect principle.

5.3 Counterexamples?

It is quite likely that, presented with my “identity respect” view, readers will come up with counterexamples. Here is one.³⁰ Imagine two friends visiting a country where there exists the following positive norm: One ought not to drink alcohol, whether in public or in private. Assume further, that the two friends in question know fully well that neither of them is committed to this norm, and find themselves in a very private hotel room with a bottle of wine. Do they have any “identity respect” obligation not to drink? Most readers, the objector would continue, would say: “they do not.” Yet it is not clear what my view implies in a case like this.

I agree that my view does not deliver a straightforward verdict in this case, but “delivering verdicts” is not my ambition here. The identity-respect view is meant to offer a *framework* for analysing complex cases, not a recipe for answering difficult questions. That said, I do think the view has the resources to vindicate a negative answer to the question posed. There are two avenues for doing so. The first consists in adopting a particular substantive account of what person respect requires, and concluding that the positive norm under discussion is inconsistent with it. On this account, prohibitions on what an individual should do *in private*—provided that the actions in question are not harmful to others—are inconsistent with person respect, because problematically intrusive.

A second line of argument could instead focus on the “relevant context of analysis.” Recall that, throughout, I have spoken about the positive norms that “exist

³⁰ Thanks to Richard Fallon for proposing it. Gabriel Wollner independently suggested a similar example to me.

in a given context.” I have then treated the context as *exogenously* given: I assumed various contexts, and drew conclusions about them. I have said nothing about what the right context of analysis for each given question is. Now, one possibility may be that, when it comes to our two friends, the relevant context of analysis is precisely “the two of them in a private hotel room.” And since, in *that* context, no positive norm against drinking exists, there is no identity-respect obligation not to drink.

What I have said in relation to the example just described also applies to structurally similar cases. One’s views about what identity-respect demands depend on (i) what is compatible with person respect and (ii) what the relevant context of analysis is. In this paper, I have not offered a substantive account of either (i) or (ii), and different ways of filling these “parameters” will satisfy different objectors.

5.4 *Status quo bias?*

Finally, an objector might be concerned that the view I have offered is inherently conservative, since it vindicates moral obligations to obey *existing* positive norms. This problematically implies that *informal* norm-change will always involve wrongdoing. If informal norms can most readily be changed by consistently breaking them, but consistently breaking them is contrary to identity respect, then there is no “morally clean way” of changing informal positive norms.

This is not quite right, though my view is admittedly not too far from supporting this conclusion. Breaching positive norms is *pro tanto* wrong, because contrary to moral demands to identity respect others, *only provided* that those norms are morally permissible: compatible with person respect. This means that the “conservative” pull of my view only applies when norms have no moral disvalue. And once this qualification is appreciated, it is no longer mysterious, or problematic, why we might have *pro tanto* obligations to obey those norms.

This does not rule out the possibility of “justified” informal norm-change. For example, a positive norm may be morally permissible but quite inefficient, and some might reasonably wish to change it for this reason. Friends have told me, for instance, that in Japan one is not supposed to eat while walking. There is a positive norm that forbids it. I would not find it unreasonable for someone to think that this norm is worth changing: people are busy, and it’s often quite convenient to eat a sandwich on the go. To change the norm, though, many would have to start breaking it, by eating on the street. On my view, doing so would be *pro tanto* wrong (even if mildly so), and would require the “norm-entrepreneurs” in question to both apologise to the wider community and justify their actions.³¹ For instance, they could create a website explaining their motives. Still, I am happy to “bite the bullet” (in fact, I am not even sure it is a bullet) and conclude that breaching morally admissible positive norms is always *pro tanto* wrong, even when the breach is done with a view to justifiably changing the norms in question.³²

Conclusion

I have offered a framework for explaining how it is possible for breaches of positive norms to be *pro tanto* wrong *qua* breaches of positive norms. I have argued that a simple answer can be offered by appealing to a general principle of respect for persons, and to the notion of “identity respect” specifically. I have also shown how

³¹ The term “norm entrepreneur” was coined by Cass Sunstein (1996).

³² Although I cannot pursue the point here, I believe that this gives us an insight into the justification of civil disobedience.

my identity-respect view offers a fresh perspective on the much-debated topic of the obligation to obey the law. If correct, this view situates itself in the middle ground between anarchists and traditional supporters of the authority of law. It sides with the latter in insisting that a pro tanto obligation to obey the law exists, but concedes to the former that this obligation is less weighty than often assumed. Finally, I have offered a simple justification for the common-sense rule that, when one is in Rome, one should do as the Romans [think one ought to] do.

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