Katharina Nieswandt

What Is Conventionalism about Moral Rights and Duties?

Abstract

A powerful objection against moral conventionalism says that it gives the wrong reasons for individual rights and duties. The reason why I must not break my promise to you, for example, should lie in the damage to *you*—rather than to the practice of promising or to all other participants in that practice. Common targets of this objection include the theories of Hobbes, Gauthier, Hooker, Binmore, and Rawls.

I argue that: (1) The conventionalism of these theories is superficial. (2) Genuinely conventionalist theories are not vulnerable to the objection. (3) Genuine moral conventionalism is independently plausible.

Key Words

practice view • promises • rule-consequentialism • contractarianism • John Rawls • G.E.M. Anscombe

Publication & Download

Australasian Journal of Philosophy
http://dx.doi.org/10.1080/00048402.2018.1425306

Acknowledgements

I am deeply indebted to Ulf Hlobil for multiple readings of this paper in its various stages.

I am furthermore grateful to editor Stephen Hetherington and three anonymous reviewers, whose feedback greatly improved the final version. For additional feedback, I'd like to thank participants at multiple workshops; in particular Oded Na'aman, Jorah Dannenberg, Nico Cornell, and Michael Goodhart.

Final Draft, January 2018

1 Introduction

'Conventionalist' or 'practice views' of morality are a large and diverse group. Contractarians (Hobbes or Gauthier), rule-consequentialists (Hooker), Neo-Aristotelians (Anscombe or Foot), evolutionary ethicists (Binmore), and Rawls are commonly regarded as conventionalists; many treatments also include Hume (e.g. Kolodny and Wallace [2003: sec. 1]; Owens [2011: sec. 3]).[1]

The following definition seems thin enough to captures all of these views: Moral conventionalists believe that many moral rights and duties are assigned within social practices, and they believe that these practices play an important role in justifying an individual's rights and duties. Thomas Scanlon [1990: 199], in his famous critique of conventionalism, defines the target as follows: On a conventionalist view,

> the analysis of the obligation […] is a two-stage affair. First, there is the social practice, which consists in the fact that a given group of people generally behave in a certain way, have certain expectations and intentions, and accept certain principles as norms. Second, there is a moral judgement to the effect that, given these social facts, a certain form of behaviour (is possible and) is morally wrong.

Others additionally claim that the 'task for a conventionalist theory' is to use the *justification of the practice* 'to explain why it is that we have an obligation' [Habib 2014: sec. 5.3, §2]. As will become clear below, however, this is true only of contractualism and rule-consequentialism.

The most significant objection to conventionalism says that conventionalists give the wrong reasons for an individual's rights and duties [Scanlon 1990: 200, 221]. Hobbes [1651: ch. 15, §7], for instance, justifies my duty to keep a promise by saying that its breach might erode the whole practice of promising. The damage done to the practice, however, seems to be the wrong justification. This comes out in the fact that it identifies the wrong victim in cases where that duty is violated: If Hobbes is right, my breach harms everyone who is harmed by an attack on the practice, and not mainly (or only) the promisee. That, in turn, seem to be all those 'who have contributed to and benefit from the practice' [Scanlon 1990: 221]—including me, the wrong-doer! Let's call this the 'wrong reason objection'.

There are further objections to moral conventionalism. For promising, Thomas Scanlon and others (e.g. Shiffrin [2008]; Gilbert [2011])

[1] For an overview, see Taylor [2013: sec. 1–2].

claim that we don't *need* the concept of a practice in order to justify the duties. The wrong reason objection, however, is particularly pressing. First, it is an objection to the whole conventionalist project—as opposed to conventionalism about promising in particular. Second, it does not presuppose any moral theory. It simply requires the intuition that the wrong we commit in disrespecting a duty is a wrong against that person whom we owe the duty. Third, the wrong reason objection is accepted even by many who reject Scanlon's counterproposal (e.g. Kolodny and Wallace [2003: 125–6]; Owens [2006: 53–9]; Darwall [2011: sec. 3]). I myself believe that the wrong reason objection is correct. We should reject any theory to which it applies, and it applies to the theories of Hobbes, Gauthier, and Hooker, and also to Rawls' theory (on a common reading).

My project might hence appear surprising. (1) I shall argue that the aforementioned theories are not genuinely conventionalist. A conventionalist, I argue, is someone who justifies practice-internal rights and duties by some fact for which the rules of the practice in question assign this right or prescribe this duty. The mentioned authors, however, collapse the justification of practice-internal rights and duties either into the justification of this practice (Hobbes, Gauthier, Hooker) or into a general requirement to comply with justified practices (Rawls). (2) I show that the aforementioned theories are vulnerable to the wrong reason objection precisely because their conventionalism is superficial. (3) I argue that genuinely conventionalist theories avoid the wrong reason objection. (4) I outline one such theory, and I argue that it is a plausible view.

I start by identifying how genuinely conventionalist theories justify moral rights and duties (section 2). I then show that contractarianism and rule-consequentialism (sections 3–4) as well as Rawls' theory (section 5) justify moral rights and duties through something different. As it turns out, their lack of conventionalism is what validates the wrong reason objection against them. I then argue that conventionalist theories identify the correct reasons for our duties (section 6). Finally, I outline a plausible conventionalist theory (sections 7–9). All authors I shall discuss have written about promising; hence promising will serve as my main example.

2 Conventionalists Justify by a Fact within a Practice

A conventionalist justification of a moral duty justifies the duty by conventions. A conventionalist holds that the duty exists as part of a larger

social game, a 'practice'. She justifies the duty by pointing out that a rule of the practice prescribes it for the case in question. To give an example: A conventionalist justification for my duty to φ after I promised to φ would proceed from the assumption that my duty exists as part of the practice of promising. A conventionalist would justify my duty simply by pointing out that a rule of this practice requires me to φ after I've made a certain announcement. My duty exists within a social practice, and it is justified by the application of the rules of that practice to some empirical fact. The following formula is a *first approximation* of the conventionalist position:

F1 *Conventionalism* (preliminary formulation)

> If the rules of practice P say that X must φ given fact F, then, given F, X must φ *because* of F.

I shall refer to instantiations of F as 'facts within a practice'. Suppose that the practice in question is the practice of promising. Juliet may have a duty to be at Romeo's place at 5 p.m. because of F, where F is the fact that she told him she would pick him up at 5 p.m. Similarly, Juliet may have a duty to pay Romeo $5,000 because of F, where F is the fact that she signed a lease with him. Or suppose the practice in question is the practice of private property. In that case, Juliet may have a duty to pay Romeo $5,000 because of F, where F is the fact that she damaged his vehicle. And the same form of justification applies to other duties and other practices.

Depending on your view of the relevant practice, such duties will either be *prima facie* or all-out duties. To me, the view that they are *prima facie* seems more plausible: Juliet's duties could be trumped by conflicting duties, voided by additional facts, or waived by Romeo. However, conventionalism does not commit you one way or the other. A conventionalist *could* hold, for example, that promises must never be broken, or that property rights can never be trumped.

Note also that to subscribe to F1 is not to regard *all* moral duties as conventional. F1 treats only of practice-internal duties, and perhaps not all moral duties are of this kind. For instance, one could think that duties of justice are practice-internal whereas duties of charity are not.

For my purposes, the most important feature of genuinely conventionalist justifications is this: The justification of the overall practice may at most constitute a necessary *background condition* for the justification of my practice-internal duty. It cannot serve to justify that duty itself. A

conventionalist would tell me, 'You must φ because that's what the rules of promising say for F.' She would be free to add, 'Provided that promising is a justified practice.' In that case, she holds that one can be bound by a rule of P *only if* P is a justified practice. A conventionalist could not, however, use the justification of P to justify my individual duty. What justifies my duty simply is that our social rules dictate that duty for the fact in question. This formula summarizes this refined conventionalist position:

F2 *Conventionalism*

> If the rules of practice P say that X must φ given fact F, *and P is a justified practice*, then, given F, X must φ because of F.

Suppose that I promised to transfer $100 into your bank account. On F2, the justification for my duty to then transfer $100 to you is that *I promised to transfer $100 to you*. The practice of promising contains a rule that we can state as the following conditional: If X announces to Y in the right way that she will φ (that is, if X promises), then X has a duty towards Y to φ. I'm X; you are Y; φ-ing is transferring $100. The reason for my duty to perform this action is that which is mentioned in the antecedent: I promised it to you.

According to F2, I am only required to pay if promising is a justified practice. That is a *precondition*. But the justification of the practice of promising is not mentioned again in the justification of my duty—that is, it is not picked up again in the because-clause of F2. For a conventionalist, the justification of the practice of promising has the same status as, for instance, the US currency or its banking system. All three must be in place in order for me to have a duty to transfer you $100. But neither the Dollar nor the banking system nor the justification of the practice of promising are part of the justification of my duty. The justification for my duty is that I promised. The three mentioned facts only form the necessary background on which my duty can exist.[2]

One might wonder here: Doesn't promising differ from the other two existential presuppositions in that it has a 'moral flavour'? That is true, but all it means is that my duty to pay you can be *classified* as a moral duty. I shall below spell this out as: a duty within a practice that has a certain

[2] For more on how the background of the practice turns mere announcements into promises, see Nieswandt [2017: sec. 2.2 and 3.1].

kind of function in human life (sec. 8). Our story about this function, however, is not part of the justification of my duty, not even indirectly.

I argued that conventionalist theories justify practice-internal duties by some fact within the practice. In order to determine whether a theory is conventionalist, we need to determine whether it fulfils this criterion. To that end, let us consider what different authors say about the same example: the duties created by a promise.

3 Contractarians and Rule-Consequentialists Justify by the *Telos* of the Practice

Practices are generally thought to be justified by the goods that they help us achieve. The practice of promising is usually said to help us achieve goods which require us to rely on others: either because these goods require cooperation [Rawls 1999: ch. 52, §7] or because others possess the necessary skills or resources [Anscombe 1981a: 18] or because others could destroy everything we laboured to build [Hobbes, 1651: ch. 15, §4–8]. People at all times and places have needed methods to ensure a certain comportment by others, and promising is usually seen as one of these methods.[3]

Since Hume, philosophers wonder how this admittedly useful practice can generate *moral* rights and duties. To promise is to give a sign by which one artificially creates a duty for oneself [Anscombe 1981b: 98–9]. That sign may be an explicit utterance, such as 'I promise to φ'; but it may just as well consist in a nod at the right moment or in writing one's name in a certain place. Once we signalled that we will φ, we have a duty to φ. Such are the rules of the practice.

In our daily lives, we often have incentives to keep our promises: Others will reproach and press us if we don't. Some people, however, reproach you for all kinds of things—for instance, for breaking 'silly rules of etiquette' [Foot 2001: 17]. Why is the reproach that you broke your promise 'of any more significance than: "You eat your peas with your knife"' [Anscombe 1981a: 16]?

Contractarians and rule-consequentialists give the following answer to Hume's question:

[3] Hobbes and Hume even take promising to be a prerequisite for human life as a group.

F3 *Contractarianism and Rule-Consequentialism*

> If the rules of practice P say that X must φ given fact F, and P is a justified practice, then, given F, X must φ because of *that which justifies P*.

Take Hobbes, for whom the ultimate reason to do anything is self-interest. Hobbes argues that we must keep even those promises that *seem* to violate self-interest, since defection, if discovered, can lead to our expulsion from 'any society that unite themselves for peace and defence' [1651: ch. 15, §4]. Furthermore, by an eventual gain through defection on our part, 'others are taught to gain the same in like manner' [1651: ch. 15, §7], which means that we erode the whole practice. Both exclusion from and destruction of the practice would deprive us of those goods that the practice was supposed to help us achieve in the first place. Thus, although defection sometimes seems to advance our interests, it likely harms us in the long run. Hence we should not defect. We can formulate this Hobbesian application of F3 to promising as follows:

F4 *Contractarianism for Promising*

> If the rules of promising say that X must φ given fact F, and promising is a justified practice in that *promising furthers X's own good*, then, given F, X must φ because *φ-ing furthers X's own good*.

F4 is also held by Gauthier [1986: ch. 7] and many evolutionary ethicists (e.g. Binmore [2005]). Rule-consequentialists subscribe to a slightly different application of F3. Hooker [2000: 94] echoes Hobbes' argument that defection or too many exceptions lead to the destruction of a practice:

> [I]f we just had the one rule 'Maximize the good', sooner or later awareness of this would become widespread. […] Trust would break down. In short, terrible consequences would result from the public expectation that this rule would prescribe killing, stealing, and so on when such acts would maximize the good.[4]

[4] Hooker's [2000: 95] second argument strikes a similar tone: '[A] morality comprised of just the one rule "Maximize the good" would have extremely high internalization costs', since it would require extensive training to 'get people to always be perfectly impartial'. Here, too, the reason why we should stick to practice-internal duties is that this will (better) promote the overall aim of the practice.

Contrary to Hobbes, however, consequentialists have an altruistic conception of the goods that practices help us achieve. A traditional rule-utilitarian, for instance, would say that, in the long run, we bring about the greatest good of the greatest number if we respect every promise:

F5 *Rule-Utilitarianism for Promising*

> If the rules of promising say that X must φ given fact F, and promising is a justified practice in that *promising furthers the greatest good of the greatest number*, then, given F, X must φ because *φ-ing furthers the greatest good of the greatest number*.

4 Contractarianism and Rule-Consequentialism Are Not Conventionalist

None of these justifications are conventionalist. F3–F5 make apparent that contractarianism and rule-consequentialism ultimately give *the same* justification for X's individual duty to φ that they give for practice P. The justification for the practice of promising is that it furthers the relevant good, and the justification for X's duty to keep her promise is also that that furthers the relevant good. Thus, contractarianism and rule-consequentialism do not justify practice-internal duties by a fact within the practice. They instead justify them by the good to be achieved through that practice. Contrast this with the application of F2 to promising:

F6 *Conventionalism for Promising*

> If the rules of promising say that X must φ given fact F, and promising is a justified practice in that *promising furthers … [pick your favourite]*, then, given F, X must φ because of *F*.

Here, the justification for my duty is not some good to be achieved through the practice of promising. The justification of promising is not even picked up again in the because-clause. Instead, the justification for my duty simply is that *I promised*. I gave the sign; the rule says that I must φ if I gave the sign; now I must φ because I gave the sign.

F2 and F3 can be understood as mirror images of each other. On F2, the good to be secured through the practice is a necessary condition for the duty. That which justifies the duty, however, is a fact for which the rules of the practice prescribe this duty. F3 says the reverse: That the rules of the practice prescribe this duty is a necessary condition for the

duty. That which justifies the duty, however, is the good to be secured through the practice. F3 contains a conventionalist element, since the duty would not exist if it weren't for the rules. But F3 does not *justify* the duty by convention.[5]

We saw that F3 collapses the practice-internal justification into the justification of the practice. This move is what invites the wrong reason objection. Let's again consider promising. If I promise to mow your lawn, then, according to F5, I must mow your lawn because this furthers the greatest good of the greatest number. According to F4, I must mow your lawn because this furthers my own good. Either of these justifications might or might not justify the practice of promising. Both, however, seem inapt as justifications for my duty to you. Imagine I chose not to mow your lawn. Then the rule-consequentialist would say that I am wronging all of humanity (or all sentient beings) by breaking my promise—instead of mainly (or only) wronging you, the promisee. The contractarian would say that I am not wronging anyone; I'm being imprudent.[6]

---

[5] The same is true of Erin Taylor's [2013] 'new conventionalism'. Taylor [2013: sec. 4.1] follows Scanlon in that the reason why X must φ is the promisee's legitimate expectation that X will φ (an actual expectation for Scanlon, a potential one for Taylor). Against Scanlon, she argues that we need the practice of promising to determine whether Y's expectation is indeed legitimate. However, Taylor calls X's duty 'conventionally mediated', not 'conventional', and indeed her account is no closer to F6 than is Scanlon's. She would say: If the rules of promising say that X must φ given fact F, and promising is a justified practice, then, given F, X must φ because *if Y had formed the expectation that X will φ, then this expectation would have been legitimate*. We must hence ask whether, for Taylor, the following is a general moral principle or a rule of a social practice:

F* If you act in such a way that someone else could form a legitimate expectation that you will φ, then you must φ.

I take it that F* (just like Scanlon's Principle F) is a general moral principle, in which case her account is not conventionalist in my sense. Nevertheless, F6 and New Conventionalism share a common element: That promising is justified is *a condition of the possibility* of X's duty. In this sense, both can be called 'transcendental' [Taylor 2013: fn. 2].

[6] Could there be cases where both F2 and F3 apply? That is, cases where X must φ because of some fact for which the rules of the relevant practice prescribe φ-ing *and* because of that which justifies the relevant practice? There might be such cases, but those are not at stake in the debate: (1) The wrong reason objection targets cases where the justification of the

It hence is the fact that these theories justify my duty to you by the larger purpose of promising which validates the wrong reason objection. Their problem is the conflation of justifications of and *within* a practice famously described by Rawls [1955].

5 Rawls Justifies by the Principle of Fairness

Rawls' own theory does not conflate these justifications. Nevertheless, it is a target of the wrong reason objection. Rawls [1999: ch. 52, §6] says about promising: 'Once a person […] has made a *bona fide* promise' the 'principle of fidelity' kicks in, which says 'that *bona fide* promises are to be kept'. This 'principle of fidelity is a moral principle, a consequence of the principle of fairness'.

> [B]y making a promise one invokes a social practice and accepts the benefits that it makes possible. […] Having, then, availed ourselves of the practice for this reason, we are under an obligation to do as we promised by the principle of fairness. [Rawls 1999: ch. 52, §7]

The principle of fairness imposes this obligation, since it

> holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second one has voluntarily accepted the benefits of the arrangement […]. [Rawls 1999: ch. 18, §5]

Judging from these passages, Rawls justifies practice-internal duties as follows:

---

practice gives the wrong reason for the individual's duty. It does not presuppose that the justification of the practice could never be the right reason for the individual's duty. (2) Those who make the wrong reason objection claim that practice views justify individual duties in *only* the manner of F3. For my purposes, it hence suffices to hold that some principle other than F3 is true and allows us to evade the objection; I don't have to claim that principles like F3 (or its applications F4 and F5) are false. However, once we focus on the cases that are problematic for F3, and we have additional principles that can handle these cases, there will be little reason to keep F3. (This case is different from the civil/criminal law case discussed on p. 10 below. There, we have two F2-style justifications for the same duty.)

F7 *Rawls' Contractualism*

> If the rules of practice P say that X must φ given fact F, *and* P is a justified practice in that P fulfils the two principles of justice, *and* X has voluntarily accepted the benefits of P, then, given F, X must φ because *the principle of fairness requires X to follow the rules of justified practices whose benefits X has voluntarily accepted.*

On the most common reading, F7 derives practice-internal duties 'from a general obligation *to the members of the group* who have contributed to and benefit from the practice' [Scanlon 1990: 221, emphasis added].[7] On this reading, practice-internal duties are duties that we have towards the community. Everyone playing by the rules of the practice does their fair share, whereas those who violate the rules violate a general requirement of fairness towards these honest participants.

On this account, the duty is again owed to the wrong addressee: In breaking the promise, we wrong every participant in the practice of promising, not mainly (or only) the promisee.[8] The account is furthermore non-conventionalist. After all, the principle of fairness *precedes* all practices. It is that which requires us to comply with the rules of justified practices.

6 Conventionalism Identifies the Right Reasons

We saw that neither contractualism nor rule-consequentialism nor Rawls' theory of promising are conventionalist, and that the wrong reason objection applies to them because they are not conventionalist.

This does not automatically allow us to conclude that conventionalism is not vulnerable to the wrong reason objection: More than one feature can make a theory identify the wrong reasons for our duties. We need additional arguments that conventionalism doesn't do so. Now, it is difficult to show in general of any moral theory that it identifies the right reasons for our duties. Rather than giving a general proof, I will hence apply F6 to our previous examples and show that it yields plausible results.

---

[7] Kolodny and Wallace [2003: 122], for example, and Habib [2014: sec. 5.3–4] follow this interpretation.

[8] Many recent discussions of conventionalism treat F3 and F7 together (e.g. Shiffrin [2008: 482–3]; Taylor [2013: 667–8]).

On F6, 'conventionalism for promising', the reason why I must mow your lawn is a fact for which the rules of promising say that I must mow it. We are engaged in the practice of promising; that practice has certain rules; and *because* this-and-that is the case, one of these rules now applies to me and puts me under a duty.

That which is the case is that I carried out a certain action: I promised. My promising created the duty because the rules of the practice of promising say that it does. Within the practice of promising, the addressee of my duty is that person towards whom I acted in the manner that the rule specifies, in this case: you. So, conventionalism about promising says: I have a duty to do as I promised because I promised. And my duty is owed to that person to whom I promised. That seems to be the correct result.[9]

Promising is just one example of a practice. Not in all cases will my practice-internal duty be created through an action of mine or through an action at all. Take the practice of property: My duty not to use a particular computer could be owed to the fact that this computer is yours. In that case, there perhaps is a past action on *your* part that created my duty: You bought the computer. Or there was an action on the part of a third person, who gave this computer to you as a present. Or there was no action at all: The previous owner peacefully passed away, and you inherited the computer. Nevertheless, the rules of the practice assign me a duty: Owners like you have certain rights that put all others, including me, under corresponding duties.

For a conventionalist, the addressee of a duty is determined by the rules of the relevant practice. (Which is not to say, of course, that there couldn't be difficult or vague cases.) If my duty to pay someone was generated within the practice of promising, then the addressee will be the person to whom I made the corresponding announcement. If the same duty is owed within the practice of private property, then the relevant fact will be different: The addressee of my duty might be someone whose property I damaged.

An interesting illustration of this is the difference in addressee for one and the same duty within the practice of criminal law versus within the practice of civil law. Suppose I deliberately injure someone. Within

[9] Theories which identify the promisee's expectations as reason for my duty have this result only if 'I promised' and 'I (potentially) created a legitimate expectation' are intensionally equivalent [Thompson 2012]. After all, '… is the reason why X must φ' creates an intensional context.

the practice of *civil law*, the duty that my action violated is understood as a duty owed to the victim. I would be accused by a representative of that victim, a private lawyer, and my punishment would likely be a compensation payment to the victim. Within the practice of *criminal law*, the duty that my action violated is understood as a duty owed to the whole community. I would be accused by a representative of that community, a public prosecutor, and my punishment would likely be imprisonment. Thus, one and the same duty is owed to different people within these two different legal practices. If conventionalism is true and both civil law and criminal law are justified practices, then there are at least two reasons why I must not injure anyone: that doing so would wrong the injured person and that I owe it to my fellow citizens collectively.

Note that criminal law is an interesting practice with respect to our topic. Scanlon and others criticize accounts according to which duties are owed to all participants in a practice. As we have seen, this criticism is often justified. Criminal law, however, constitutes an exception. Within criminal law, the duties owed are indeed owed to all participants in the practice. We might say: The views criticized by Scanlon and others treat all practices on the model of criminal law.

I claim that it is only within a practice that facts such as the examples in this section create duties. Within the practice of promising, my announcement to pay you $5,000 creates a duty for me to pay you $5,000. Outside of this practice, the same announcement might not create a duty. And within another practice, a completely different kind of fact could create the same duty—for instance, the fact that I injured you considered within the practice of civil law. On my analysis, the practice determines what facts count as reasons for individual duties as well as what these duties are. Within the practice of promising, my announcement constitutes a reason; within civil law, my infliction of the injury is a reason for the very same duty. If my analysis is correct, then it trivially follows that conventionalism identifies the correct reasons, for it says precisely this: that the reasons are whatever the practice determines the reasons to be.

7 A Plausible Conventionalism?

I argued that conventionalism gives the right reasons for our moral duties—at least for those that exist as part of practices. That certainly speaks in its favour: If a moral theory gives the right reasons for our moral duties, then that seems a strong reason to adopt it. Some readers might wonder,

however, what a fully formulated conventionalist position looks like. So far, all I have said is that conventionalist theories accept F2, which leaves room for a whole family of moral theories.

As a last step, let me therefore outline *one* particular proposal around F2—one which, in my mind, combines elements of social constructivism with moral realism into a plausible metaethical framework.[10] This discussion will have to be brief. I shall structure it around the two main features that any plausible conventionalism must have:

A. A plausible conventionalism must be truly normative; that is, it must describe moral rights and duties as moral rather than pure social entities.

B. A plausible conventionalism must be truly conventionalist; that is, it must not collapse into one of the 'pseudo-conventionalist' views rejected earlier.

Section 8 deals with Condition A. Section 9 addresses Condition B.

8 How to Avoid Relativism

Any conventionalist proposal starts from F2, the claim that practice-internal rights and duties are justified by a fact for which the rules of the practice prescribe them. Practices are socially constructed. This can seem to imply an implausible cultural relativism. The worry is that conventionalism says: You have whatever right or duty our practice assigns you, and you have it *only* because we assign it to you. That, however, is too quick: The claim that the practice is socially constructed does not entail that that which justifies the practice is socially constructed.

Assume that the practice is justified by something that is *not* socially constructed. Here are some candidate justifications for a practice P: (1) The greatest good of the greatest number can be better furthered with P than without it. (2) P maximizes everybody's individual gains. (3) P is required in order for us to treat others as ends in themselves. These are just examples; F2 can be combined with any moral theory that allows for a teleological reading. In all three examples, the justification of the practice is not conventional.

[10] Nothing in the previous sections hangs on this proposal: You can accept the first part of this paper but reject the particular conventionalism outlined now.

The account on which I want to expand here combines F2 with a fourth choice: (4) P is necessary for a good human life. This Aristotelian proposal grounds socially constructed systems of practices in human nature but regards human nature as not socially constructed. The basic components for this conception can already be found in the work of Elizabeth Anscombe [1981a; 1981c]. Similar proposals have been advanced by Philippa Foot [2001: ch. 3], Martha Nussbaum [2011: ch. 2] and Amartya Sen [1992].

Where does such a justification of *practices* through universalist claims about human nature leave us with respect to *rights* and *duties*? Interestingly, the suggested view makes space for universal rights and duties in a fairly robust sense. It is often assumed that if a right Q is socially constructed, then Q cannot be universal. The Aristotelian hybrid, however, enables us to argue along the following lines: Certain goods are necessary for a good human life. Let G be one of these goods, and suppose that, in order to achieve G, it is necessary for any community to have practice P and for P to contain right Q. Then Q should be granted everywhere.[11]

This form of argument gives us 'universal rights' in the following sense: Any community must grant right Q if Q is required to live well. Whether a given community grants Q is of no importance for whether they should grant Q. The result thus is a universal necessity to grant a certain right, rather than a universal right itself.[12] This necessity is normative in whatever sense the non-conventionalist justification of the practice is normative.

Notice that the *telos* which justifies the practice may also justify each of its rules. Suppose, for instance, that one important justification for the practice of democratic elections is that they enable the governed to control those who govern them. Let R be a rule that forbids members of the electorate to make unlimited 'donations' to political parties. Suppose further that a lack of R causes a lack of control over the government on the part of those who donate little or nothing, that is, the vast majority of the governed (for evidence of this see: Gilens and Page [2014]). Then we could argue that rule R *must* be part of the practice of democratic elections: Without R, we cannot achieve that which justifies our practice in the first place.

---

[11] The same form of argument can be used to attack existing rights.

[12] Many human goods are realizable through multiple practices, of course, which could grant (slightly) different rights.

Conventionalism hence avoids relativism by appeal to non-relativist justifications of practices and their rules. What, however, about the individual's rights and duties within these practices? Can the conventionalist justification of them ground a genuinely moral normativity?

9 How to Avoid Pseudo-Conventionalism

This leads us back to the above Condition B. Someone might grant that we now have a non-relativist moral theory, but worry about two things: First, that this was achieved at the cost of collapsing the two justifications again. How would the suggested Aristotelian hybrid block the appeal to the purpose of the practice in justifying an individual's right or duty? This is what I shall show in the following paragraphs. The second worry is that, if the theory truly blocks this appeal, then the individual's rights or duties have no moral justification. The theory provides a moral justification for the practice of promising, for example, and also for the general duty to keep promises. Its justification for Juliet's duty to keep her promise to Romeo, however, is purely conventional. My answer to this second worry is that Juliet has a moral duty whose justification is purely conventional. The whole point of the account is that moral duties can be conventional.

In order to address the first worry, we need to consider the distinction between the justification of a rule and the justification for its application. I start with the example of a leisure practice and then return to the moral case, since my argument is a general point about rule-following. The moral cases targeted by the wrong reason objection are simply particular instantiations.

The justification for adding the offside rule to football, for instance, was that, without it, the game is much less lively [Carosi 2010]. Formulated in more abstract terms, we could say:

Justification 1 *(Rule):*

Rule R is necessary in order for practice P to function well.

The justification for why Wambach's goal against Colombia (in June 2015) did not count, however, was not that her behaviour made the game less lively. The justification was that she was offside. Given the offside rule,

the fact that Wambach stood in that particular position on the field relative to other players made it necessary for her not to kick the ball between the posts.

Justification 2 *(Rule Application):*

> *Given Rule R, Fact F makes it necessary for Agent A (not) to φ.*

On F3 (contractarianism and rule-consequentialism), justifications of the second kind *derive from* or *are backed up by* justifications of the first kind. We would argue: (2) Wambach's action was not allowed and (1) actions of this kind are generally not allowed because they make the game less lively; therefore: (3) Wambach's action was not allowed because it made the game less lively. In ethics, this deduction opens the door to the wrong reason objection.

Leisure examples show that this move is fallacious and that it would be fallacious even without the wrong reason objection: (1) and (2) are true while (3) is false. For one thing, Wambach would have been free to do all sorts of other things that would have made the game less lively (such as standing still for 90 minutes). Second, the accusation of non-liveliness might not even have been true for her particular case. (In fact, this was a particularly capturing moment of the game.) Some moral philosophers make this fallacious move. The reason why we should reject their claims, however, is not that this gives us an *ad hoc* response to the wrong reason objection, but that the move in general is fallacious.

Let's transfer what I said about football to my earlier democracy example. In section 8, the following claim was about a rule: The justification for adding a cap to party donations is that, without this rule, the vast majority of the governed lack control over the government. This is an instance of Justification 1. Now, assume the US had been engaged in the well-functioning variety of P in 2016, and that the cap was $50,000. Given this rule, Renaissance Technologies would have had a duty not to donate $59,265,461 (in roughly equal amounts) to the two biggest US parties (see Center for Responsive Politics [2017]). This is an instance of Justification 2.

Fact F here is the fact that Renaissance Technologies' payments would have totalled $59,265,461. This fact makes it necessary for them not to donate the money. Consider our fallacious deduction again. In our imaginary world, it would be true that (2) Renaissance Technologies' action was not allowed and that (1) actions of this kind are generally not

allowed because they lead to a lack of control for the vast majority of the governed. But it would be incorrect to conclude: (3) Renaissance Technologies' action was not allowed because it led to a lack of control for the vast majority of the governed. For one thing, even in that imaginary world, Renaissance Technologies might still be free to do other things that could lead to such a lack of control. (Perhaps they are allowed to lobby against public funding for campaigns, to ensure that only rich individuals can run). Second, the accusation of causing a lack of control might not even be true for their particular case. (Unlikely, I admit; but since we are imagining a better world here, the victorious party might use their Renaissance Technologies co-funded victory to impose stricter controls of the cap on donations.)

Conventionalism does not endorse (3). On F2, the justification for Renaissance Technologies' duty not to make this donation is the fact that their payments would have totalled $59,265,461. This fact only constitutes a justification within P—our improved practice of democratic elections. (Just as the fact that little Betty measures 1.20m only constitutes a justification for not letting her ride the roundabout if the fair rules say you have to be at least 1.35m.) On the suggested Aristotelian account, P itself has a justification, viz. to ensure control of the government by the governed. And there was a justification for adding R to P, which was that R seemed necessary to ensure that control. But we do not appeal to the justification of P nor of R, not even indirectly, in justifying Renaissance Technologies' duty.

Transfer this to the much-discussed example of promising, with which we started: For a conventionalist, the fact that I announced to mow your lawn creates a duty for me—but only within the practice of promising. Within that practice, my announcement makes it necessary for me to do as announced.

> It may be asked: "But what is this necessity?" The answer is given only by describing the procedure, the language-game, which as far as concerns the 'necessity' expressed in it does not differ from this one: "I say 'ping' and you have to say 'pong'." [Anscombe 1981a: 18]

For promising, Anscombe and others argue that it is necessary for human beings to have this practice (see p. 5 above). Any individual necessity within that practice, however, exists by convention and cannot be justified through that which necessitates the practice.

This brings me to the second worry: The individual promisor's duty is conventional. Is this a reason to think that the duty is optional, not real, or not a moral duty? My account says: *You have to pong, because I pinged, and*

you wrong me if you don't. Our community plays the ping-pong game for good reasons. Its rules are as they are for good reasons. If you nevertheless regard yourself as not morally obliged to pong (at least *prima facie*), this must be because you don't consider the rules of justified practices as binding. But that these rules are binding is just what it means that they (and the practice) are justified. Whether or not you want to use the word 'moral' here, there is no reason to worry that conventionalism makes your rights and duties non-binding.

10 Conclusion

The wrong reason objection is widely regarded as fatal to conventionalism about moral rights and duties. In this paper, I defined genuinely conventionalist theories as theories which justify a moral right or duty through a fact within a practice, and I argued that such theories identify the correct reasons for our moral rights and duties. Various genuinely conventionalist theories are conceivable. I briefly outlined one, which combines conventionalism about moral rights and duties with an Aristotelian justification of practices and their rules.

Let me conclude by flagging what I take to be the two major selling points of conventionalism: The first is the one for which I argued earlier, viz. that it gives the correct justification for our moral rights and duties. This was not true of the discussed 'pseudo-conventionalist' accounts. Many have argued, however (see p. 2 above), that it is also not true of the explicitly anti-conventionalist theories devised to replace them, especially Scanlon's.

The second point has not been discussed but should be flagged here: Conventionalism provides a unifying moral framework. The suggested account applies to moral rights and duties from promising to property, which makes it a true alternative to the accounts I analysed. Contrary to that, most non-conventionalist alternatives treat promising only. It is not obvious how their key ideas, such as justified expectations or intimate relations, would be transferred to other moral rights and duties.

References

Anscombe, Elizabeth 1981a: On Promising and Its Justice and Whether It Need Be Respected in Foro Interno, in *The Collected*

Philosophical Papers of G. E. M. Anscombe, Vol. 3: *Ethics, Religion and Politics*, Oxford: Basil Blackwell: 10–21.

Anscombe, Elizabeth 1981b: Rules, Rights and Promises, in *Collected Papers* 3: 97–103.

Anscombe, Elizabeth 1981c: On the Source of the Authority of the State, in *Collected Papers* 3: 130–55.

Binmore, Kenneth 2005: *Natural Justice*, New York: Oxford University Press.

Carosi, Julian 2010: The History of Offside, *CorsehamRef.Org*, URL = <http://www.kenaston.org/download/KenAstonRefereeSociety/offside_history-JulianCarosi.pdf>.

Center for Responsive Politics 2017: Top Organization Contributors, Election Cycle 2016, *OpenSecrets.Org*, URL = <https://www.opensecrets.org/orgs/list.php/list.php?cycle=2016>.

Darwall, Stephen 2011: Demystifying Promises, in *Promises and Agreement: Philosophical Essays*, ed. Hanoch Sheinman, New York: Oxford University Press: 255–76.

Foot, Philippa 2001: *Natural Goodness*, Oxford: Oxford University Press.

Gauthier, David 1986: *Morals by Agreement*, Oxford: Clarendon Press.

Gilbert, Margaret 2011: Three Dogmas About Promising, in *Promises and Agreement*: 80–108.

Gilens, Martin and Benjamin Page 2014: Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens, *Perspectives on Politics* 12/3: 564–81.

Habib, Allen 2014: Promises, *The Stanford Encyclopedia of Philosophy* (Fall 2017 Edition), ed. Edward Zalta, URL = <http://plato.stanford.edu/entries/promises/>.

Hobbes, Thomas 1651 (1994): *Leviathan*. With Selected Variants from the Latin Edition of 1668. Ed., with Introduction and Notes by Edwin Curley. Indianapolis, IN: Hackett Publishing.

Hooker, Brad 2000: *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*, Oxford: Clarendon Press.

Kolodny, Niko and Jay Wallace 2003: Promises and Practices Revisited, *Philosophy and Public Affairs* 31/2: 119–54.

Nieswandt, Katharina: Anscombe on the Sources of Normativity, *The Journal of Value Inquiry* 51/1: 141–63.

Nussbaum, Martha 2011: *Creating Capabilities: The Human Development Approach*. Cambridge, MA: Harvard University Press.

Owens, David 2006: A Simple Theory of Promising, *The Philosophical Review* 115/1: 51–77.

Owens, David 2011: The Problem with Promising, in *Promises and Agreement*: 58–79.

Rawls, John 1955: Two Concepts of Rules, *The Philosophical Review* 64/1: 3–32.

Rawls, John 1999: *A Theory of Justice* (Revised Edition). Cambridge, MA: Harvard University Press.

Scanlon, Thomas 1990: Promises and Practices, *Philosophy and Public Affairs* 19/3: 199–226.

Sen, Amartya 1992: *Inequality Reexamined*, New York: Russell Sage Foundation.

Shiffrin, Seana 2008: Promising, Intimate Relationships, and Conventionalism, *The Philosophical Review* 117/4: 481–524.

Taylor, Erin 2013: A New Conventionalist Theory of Promising, *Australasian Journal of Philosophy* 91/4: 667–82.

Thompson, Michael 2012: You and I: Some Puzzles about 'Mutual Recognition'. Presentation at the *133rd Session of the Aristotelian Society*. URL = <http://www.academia.edu/8971544/I_and_You_slides_and_Aristotelian_Society_mp3_>.