

# 9

---

## Re-examining Deep Conventions: Practical Reason and Forward-Looking Agency

---

VERONICA RODRIGUEZ-BLANCO\*

### I. Introduction

There are many key distinctions that play an important role in mapping out plausible ways of thinking about law construed as a social practice. Among the varied dichotomies the one that has probably been most influential is the distinction between a description of an action and the normative characterisation of an action. The former aims to explain the action without resorting to the values or principles of the agent; the latter aims to show how actions are part of the normative landscape where values, principles and other normative standards play a key role. The focus might be on the values, principles and standards of the agent or on values, principles and standards that are objective.<sup>1</sup> In previous work<sup>2</sup> I have defended the view that the primary conception of intentional action is normative all the way through. There is no ‘brute fact’ or ‘pure facts’ about actions and therefore actions cannot primarily be grasped by descriptors of the world either mental, physical or of a similar sort. I have argued that in order to make intentional actions intelligible we need to resort to the values or principles or good-making characteristics that the agent aims to bring about in the world and we need to understand that the values, principles or good-making characteristics of the action provide a unity and intelligibility to the various bodily movements of the agent. This is a complex and occasionally difficult understanding of agency but it is one that, in my view, is sound. The core elements of this account of

\* University of Birmingham, UK. This chapter relies on material that will be published in my paper (Rodriguez-Blanco 2016). I am grateful to Andrés Botero, Ken Ehrenberg, Sandra Gomora-Juárez, Jasminka Hasanbegovic, Maciej Juzaszek, Andrej Kristan, Dimitrios Kyritsis, Dennis Patterson, Josefa Ruiz-Resa, Pablo Sánchez-Ostiz, Paolo Sandro, Helga Varden, Caridad Velarde and Pilar Zambrano for their comments on earlier drafts of this chapter.

<sup>1</sup> I am referring here to all the possible kinds of objectivity.

<sup>2</sup> See Rodriguez-Blanco (2014).

agency are that (a) there is a parallel between practical reason or deliberative reasoning and intentional action; (b) practical reasoning involves practical knowledge which is non-observational; (c) the error of an action stems not from what the world looks like but from the performance of the agent; and (d) intentional action is primarily from the first person or deliberative point of view and therefore it is forward-looking.

I will not provide a full defence of features (a), (b) or (c) in this chapter; rather I will focus only on (d) and will argue that this feature provides the key premise for the conclusion that a characterisation of actions in social practices, including law, cannot be carried out on the basis of descriptions. I will first show that (d) is true and I will then advance the best account of actions in terms of descriptions provided by legal philosophers in recent years, which is the idea that actions and the resulting social practices can correctly be grasped as ‘deep conventions’. Finally, I will show that conventions *sensu stricto* and deep conventions require (d) to be intelligible.

## II. Intentional Action is Primarily Forward-Looking

Imagine the following two examples:

### NEIGHBOUR

You see your neighbour coming out of the supermarket and a few minutes later you see his well-known enemy (Mr Enemy) driving his vehicle and running into him. Your neighbour is killed.

### OMELETTE

You are a cook and instruct a group of people who are attending your cooking workshop on how to make a good omelette.

In NEIGHBOUR you can provide a description of the action in terms of mental states, ie the beliefs/desire pair that cause the bodily movements. The effect of this is to rationalise the action and make its description intelligible. You can, thus, say that Mr Enemy had the desire to kill his enemy *and* the belief that driving his vehicle over him would kill him.

NEIGHBOUR is a description of the action as a mental event and a consequential effect, which includes the bodily movements of Mr Enemy, eg his pressing the pedal, controlling the wheel, and the *further* effect of killing the neighbour. However, this account faces the difficulty encountered by some counterexamples which is that there is no connection between the mental state and the bodily movements. In other words, the agent has the appropriate mental state and the *further* effect has been obtained, nevertheless there is no intentional action. The description

fails as a correct description of the action. Let us imagine the following alternative scenario:

#### SWERVING THE WHEEL

You see your neighbour coming out of the supermarket and few minutes later you see his well-known enemy (Mr Enemy) driving his vehicle and running into him. Your neighbour is killed.

SWERVING THE WHEEL is exactly like NEIGHBOUR but there is one key difference. What really happens is that Mr Enemy has the relevant beliefs and desires, ie the desire to kill your neighbour and he believes that driving his vehicle into him will enable him to kill him, but he suffers an involuntary spasm that makes him swerve the vehicle towards your neighbour and kill him non-intentionally. All the elements of an intentional action as mental events are present, ie the relevant desire and belief, nevertheless there is no intentional action. Consequently, the model of belief/desire as a mental event causing the action does not really explain the action in SWERVING THE WHEEL. The key problem is that the model cannot ensure the causal connection between the mental event and the *further* effect.<sup>3</sup>

In OMELETTE the cook is not telling the participants his beliefs and desires so that they can act upon them. It would be absurd and unintelligible if he were to say, 'I desire to instruct you to make an omelette because I can charge a fee for this and I believe that giving you these instructions will enable you to make an omelette and pay me a fee'. What about if the desire/belief pair is present in every single instruction on how to make an omelette? In the example, the cook would have to say, 'I desire the eggs to be stirred and I believe that putting them in this bowl and moving the fork in this way will enable the eggs to be stirred'. The participants will probably look perplexed. It does not say anything about *how to make an omelette*. Worse, it does not say anything about the next steps in the omelette making process or about the *know how* required to follow these steps. It would presuppose an absurd sequence of randomly connected mental states (the pair belief/desire). There would be no answer to the questions, 'Why should we *not* put the stirred eggs in the frying pan prior to the butter? Why shouldn't we begin the process with putting the frying pan on the heat, then taking the fork and stirring the eggs, then washing the frying pan, and finally pouring the eggs on the wet and unoiled frying pan?'

By contrast, in order to ensure success in his instructions the cook needs to tell the participants the chain of reasons that are required to correctly perform the action, ie the making of the omelette. His 'know how' to make an omelette entails

<sup>3</sup> This is called in the literature the deviant causation problem (see Chisholm 1976). Surprisingly, there are some philosophers who assert that this is a problem for every theory of action (see Enoch 2011a and also Enoch 2011b). This is incorrect. It is not a problem for accounts of action that do not rely on mental events. Furthermore, my diagnosis shows that something else is happening and that the idea that we can provide a pure description of actions is mistaken.

knowing the answers to the ‘Why?’ questions involved in making an omelette, ie knowing why it is necessary to stir the eggs; knowing why there needs to be a knob of butter in the pan; knowing why the pan needs to be hot before you pour in the stirred eggs, and so on. He also needs to know ‘why’ people make omelettes and the good-making characteristics of omelettes, ie that they are nutritious, delicious, and a quick and easy meal to make, etc. The cook presents the chain of reasons but the final end that unifies the series of actions is advanced by the agent who actually performs the action. It might be that the answer to the question ‘why?’ is obvious in many circumstances due to the internal rationality of the activity or social practice, but perhaps in other circumstances it is required in order to explain ‘why’ certain actions should follow others. The final end of ‘why’ the participant aims to learn to make omelettes can be various, eg for nutritional reasons, for reasons of practicality or expense, but this final end provides unity to the action *when* the participant executes the set of actions in order to make an omelette. Let us imagine that the participant goes home and starts to make an omelette as instructed; he will ‘know how’ because he knows ‘why’ certain actions follow other actions. In response to the final question ‘Why are you making an omelette?’ he might reply in different ways, but always providing the end as a good-making characteristic, eg ‘because it is practical and easy’, ‘because it is nutritious’, ‘because it is delicious’. If he responds ‘I do not know’ we will probably suspect that his action is not intentional. I am not asserting that he constantly reminds himself of ‘why’ he is making an omelette, but if the action is intentional he certainly knows ‘why’ he is making it. In order to succeed in his action he is *only* looking forward; thinking about the next step in the series of actions and ‘knowing how’ to make it and ‘why’ there is a series of actions x, y and z.

The diagnosis of SWERVING THE WHEEL is that action is conceived in its secondary conception, namely as a description of events, ie mental states, bodily movements and further effects that happen in the world. But the primary conception of an action is the model of OMELETTE. If we ask Mr Enemy ‘why’ he deliberately moved the wheel in the direction of your neighbour, he will respond that ‘he did not’ and then understand that his action was not intentional.

The difficulty is that any correct description of an action and therefore of social practices must grasp the model of OMELETTE. In other words, it needs to grasp the deliberative mode of the agent and this is only possible if we begin and finish with the answers to the question ‘Why?’. The correct interpretation is not that we ‘effectively’ ask the agent ‘why’ he did this and not that. It is rather that it is implicit because we ourselves are ‘knowers’ of the ‘know how’ of the practice and tap into the good-making characteristics, values and principles of the intentional actions and resultant practices. We are all practical reasoners, we have acquired know how and exercise this capacity. Therefore we can perceive this capacity in others.<sup>4</sup>

<sup>4</sup> This point requires a deeper analysis of perception and practical knowledge. This is, however, an under-researched area. The Aristotelian notion of ‘perception’ is widely explored in ancient philosophy of history, but its connection to practical knowledge is almost absent in the secondary literature.

### III. A Criticism of Deep Conventions: Deep Conventions are Always Forward-Looking and Therefore Presuppose Practical Reason

From this feature of forward-looking many paradoxes arise and the most significant one is that the responsibility for and evaluation of an action is backward-looking. Therefore, when making judgments about responsibility we cannot grasp the forward-looking feature if we are located in the backward-looking perspective. One solution to understanding how the forward-looking perspective can be grasped from the backward-looking view is to focus on capacities and how they work. Unfortunately, this piece of work is beyond the remit of this chapter. Another puzzling matter is the related intuition that collective social practices, such as rule-following, are better explained by conventions and not necessarily by the forward-looking approach. Furthermore, recent legal philosophers, for example Andrei Marmor, have introduced the idea of deep conventions to show that descriptions can have a normativity, ie a force that is imposed on the subjects. The resulting thesis is what I will call the ‘Eliminativist Strategy’, which can be formulated as follows:

ELIMINATIVIST STRATEGY: *if* collective rule-following can be explained by deep conventions, then an explanation of rule-following exemplified by the model of OMELETTE (ie the forward-looking approach,) can be RULED OUT.

The Eliminativist Strategy is puzzling, however, since it presupposes that there are *two different kinds* of practical rationality, one that determines ‘what we do when we act with others’ and another that determines ‘what we do when we act individually’.

The Eliminativist Strategy unjustifiably multiplies rationalities. Why should there be two different practical rationalities, namely one when I act collectively and one when I act individually? I will attempt to challenge the Eliminativist Strategy by showing that *nothing* seems to justify two different kinds of practical rationality. I will show that deep conventions and conventions in general are only intelligible because ‘when we act with others’ we are actually acting primarily under the model of OMELETTE (the forward-looking approach). Therefore, there is no distinction in terms of our practical reasoning between ‘what we do when we act with others’ and ‘what we do when we act individually’. Let us first analyse the idea of deep conventions and conventions in general.

Marmor identifies three key features of what he calls ‘conventionality’ (CONV). They are:

- (1) SOCIABILITY: conventions are social rules. This means that there is a group of people that normally follow a rule R in circumstances C.<sup>5</sup>

<sup>5</sup> See Marmor (2007: 586–610).

- (2) RATIONALITY: there is a primary reason 'a' for members to follow the rule R in specific circumstances or members of the community P widely believe that there is such a reason.
- (3) ARBITRARINESS: there is at least one potential rule S that if members of P had followed it in the specific circumstances, then reason 'a' would have been a sufficient reason for members of P to follow S instead of R. Additionally, one cannot comply with rules S and R at the same time.

Concerning the requirement of Rationality, Marmor asserts that reasons are facts that count in favour of the action and that therefore reasons track values or good-making characteristics.<sup>6</sup> However, Marmor asserts that, 'it is not part of this condition of conventionality that members of P must be aware of the reason, A, to follow R or, indeed, that they are aware of the fact that there is any such reason'. This is puzzling since we follow the rules because of reasons and it is therefore mysterious how this reason can remain *opaque* to us. On this account there is no connection between the reason for the action and the agent who moves his body and performs certain actions *because of a reason*.

According to Marmor, Arbitrariness is not fulfilled and therefore the rule is not a convention if a rule does not have an alternative rule that could have been followed without a significant loss of the purpose or function of the rule.

Marmor tells us that deep conventions (DEEP-CONV) require conventionality (CONV) plus five further conditions which are:

- (1) SOCIAL AND PSYCHOLOGICAL RESPONSIVENESS: deep conventions emerge as responses to basic social and psychological needs.
- (2) INSTANTIATION: deep conventions emerge as a result of surface conventions. This entails a practice and a 'know how'.
- (3) PRACTICE THROUGH INSTANTIATION: deep conventions are practised through instantiation in surface conventions.
- (4) DURABLE: when comparing surface and deep conventions the latter are more durable and less amenable to change.
- (5) RESIST CODIFICATION: deep conventions typically resist codification.

Marmor's typical example of deep conventions are games. For example, the game of chess is constituted by rules but these rules are performed under a shared normative background of deep conventions, 'determining the concept of games and the essential point of engaging in such a practice'.<sup>7</sup> Games of chess are a particular instantiation of the activity we call 'playing a competitive game'.

Marmor tells us that there is a difference between ethical and moral rules and DEEP-CONV. Some features might overlap between these two different kinds of rules, but they remain different. In this section of the chapter I will challenge Marmor's demarcation between DEEP-CONV and ethical and moral rules and show that this demarcation is problematic.

<sup>6</sup> *ibid* 588.

<sup>7</sup> *ibid* 594.

Let us begin with the ethical rule of 'being respectful towards friends'. It requires a 'know how'. It is not sufficient to 'believe' that if I do not gossip and speak inappropriately about a friend then I have acted respectfully towards that friend. It is also necessary to act accordingly and this action should be performed with prudence and wisdom considering the circumstances of the occasion. This means that in order to be respectful to a friend I need to engage in a practice that becomes actual through a set of superficial conventions; for example, remaining silent when a friend feels embarrassed. Thus, the ethical rule of 'being respectful towards friends' determines the practice of the superficial convention of 'remaining in silence when a friend suffers an embarrassing moment'. In this way the conditions of Instantiation and Practice Through Instantiation are fulfilled in the example. The ethical rule of being respectful towards friends is, arguably, a Response to Social and Psychological Needs, ie the establishment and ensuring of permanent bonds with other human beings. Finally, we could assert that the rule of 'being respectful towards friends' is Durable and not susceptible to Codification.

Let us think about another example, in this case the moral rule of 'treating others with dignity'. The rule is not a mere belief but entails the practice of and engagement with the 'know how' of the content of the moral rule, eg acting in a non-discriminatory way. Such behaviour requires a special appreciation of the circumstances of the case and involves treating others with consideration, kindness and humanity. The action or set of actions require 'knowing how' to be considerate and kind. This moral rule is also instantiated through superficial conventions, eg treating others with courtesy and acting appropriately according to the occasion. The moral rule determines the content of the superficial conventions. Similarly, one could also assert that the moral rule of treating others with dignity is a response to social and psychological needs, for example, evolutionary theories of morality aim to show that moral rules have emerged as a response to our psychological and social make-ups. Finally, one could also assert that this moral rule is not susceptible to being codified but remains more or less unchanged.

The argument that I have outlined above will be called the 'no-differentiation argument'. It shows that there seems to be no clear demarcation between DEEP-CONV and ethical and moral rules. How then shall we proceed to undermine 'the no-differentiation argument' and to show that there is a distinction between DEEP-CONV and ethical and moral rules? How can we carve the space that Marmor is so eager to make for DEEP-CONV? Arguably, the key feature that would enable us to distinguish DEEP-CONV and moral or ethical rules is Arbitrariness. Thus, as stated above, a rule is arbitrary if there is a potential alternative rule that fulfils the same purpose or function as the original rule and participants follow the rule for the same reason 'a'. Let us examine whether Arbitrariness can undermine the 'no-differentiation argument'.

One hurdle that needs to be overcome in order to show that Arbitrariness is the key feature that differentiates between DEEP-CONV and moral and ethical rules

is that Arbitrariness is fulfilled by both deep and superficial conventions. Deep conventions are, however, also conventions *sensu stricto* and therefore they need to fulfil the set of characteristics for conventions (it is an abuse of the language to call them ‘conventions’ otherwise). Furthermore, deep conventions only become intelligible when they come to the surface through conventions *sensu stricto*. Therefore, Arbitrariness will not enable us to distinguish between DEEP-CONV and mere conventions. But perhaps Arbitrariness does enable us to distinguish between general conventions and ethical and moral rules. Let us explore this point by supposing the following example:

#### FRIENDSHIP

Amanda has just discovered that the boyfriend of her best friend Sophia has been unfaithful on many occasions. Sofia knows nothing about the infidelities of her boyfriend. Amanda knows well how Sophia has sacrificed her career, friends and family to be with her boyfriend. Sophia rings Amanda to tell her that her boyfriend has proposed to her, that she has said ‘yes’ and that they both want to start a family straight after the wedding. Amanda always aims to ‘be respectful towards her friends’.

How should we understand this ethical rule in this context? It is not like the rules of chess which are clear and transparent to the players. In FRIENDSHIP Amanda must choose between keeping her silence regarding the infidelity of Sophia’s boyfriend or have the courage to tell Sophia the truth. The purpose of the rule ‘being respectful towards friends’ is to cultivate bonds of deep friendship where honesty, dignity, mutual respect and concern for the friend’s interests are the predominant virtues. The purpose of the rule might be fulfilled with either the action of having the courage to tell Sophia the truth or the action of keeping quiet regarding the infidelities of her boyfriend. As pointed out by both Lewis<sup>8</sup> and Marmor, Arbitrariness does not require indifference, it only requires that there is an alternative rule or action whose reason for following it also applies to the original rule and there is no significant loss if the agent decides to act according to the alternative rule. Therefore, as the example shows, Arbitrariness is equally fulfilled in ethical rules.

Marmor advances the example of a moral rule such as ‘you should not kill’ in order to show that there is a genuine distinction between conventions and moral rules. There is, Marmor tells us, no Arbitrariness in moral prohibitions and therefore moral rules are different from conventions. However, I argue that in the case of all prohibitions, there is no Arbitrariness and this is so because you have *been* asked not to act therefore there cannot be an arbitrary alternative action or rule-following. For example, let us imagine that the rules of chess were formulated as prohibitions, eg ‘You must not move the knight diagonally’ or ‘You must not move the castle diagonally’. If this is the case, of course, there is no alternative rule that satisfies Arbitrariness. The purpose of the prohibitions is

<sup>8</sup> Lewis (1969).



to ensure that only one piece, ie the bishop, moves diagonally. It is, therefore, the structure of 'prohibition' in all respects that determines that there are no arbitrary alternative rules rather than a substantive distinction between moral rules and conventional rules.

One might raise the following objections to my proposal.

(1) One could object that in FRIENDSHIP there is only one rule and there are no alternative rules. The rule is 'one always ought to act with respect towards friends'. Truly, one can say that there is no alternative rule, for example 'one ought to treat friends with contempt'. The objector could argue that this is precisely what distinguishes conventions and ethical rules. Therefore, the condition of Arbitrariness is not fulfilled in FRIENDSHIP and this condition enables us to draw the demarcation between conventions and ethical rules. However, one could argue that it is almost impossible to imagine ethical and legal rules with such a degree of concreteness as in, for example, the game of chess. Consequently, it is the feature of 'concreteness' that makes the illusion or appearance of Arbitrariness. If we reach a certain level of concreteness for ethical rules we see that Arbitrariness is also fulfilled for ethical rules. Thus, for example, and following Marmor's view, in chess the rule that 'the bishop should move diagonally' could find an arbitrarily alternative rule such as 'the bishop should only move vertically'. The primary reason to follow the rules is because the 'game is entertaining', and this reason applies equally to the original and alternative rule. Nevertheless, the level of concreteness is such that Arbitrariness is fulfilled *trivially*. In the case of ethical rules we can also create this level of concreteness, for example in FRIENDSHIP, and thereby show that Arbitrariness is fulfilled *trivially*. Let us suppose that in FRIENDSHIP Amanda adopts the rule 'I ought to tell Sophia the truth by phone'. The primary reason to follow the rule is 'to cultivate honest relationships'. One could create the following alternative rule: 'Amanda ought to tell Sophia everything by letter'. Arbitrariness is fulfilled in both rules since the primary reason, which is to cultivate honest relationships, applies to both rules. Therefore, we must conclude that what determines whether Arbitrariness is fulfilled or not is the level of concreteness rather than an intrinsic or substantive difference between ethical and conventional rules.

(2) One could also object that morality and ethics are not a matter of rules but rather of principles, which require interpretation. FRIENDSHIP explores whether Arbitrariness could distinguish between conventional and non-conventional rules, but FRIENDSHIP is really about principles.

But this is not an objection to our proposal. Marmor's view relies on the mistaken assumption that one can reduce moral or ethical actions to moral or ethical rules and then in a second argumentative strategy he aims to show that there is a distinction between conventional, and ethical and moral rules. One could assert that this presents morality in a distorted way since in morality we are dealing with principles whose scope is widely interpreted and the sound interpretation gets us closer to the required action according to the circumstances of the case.

## IV. An Alternative Diagnosis

Is there any way to save the distinction between conventional and non-conventional rules?

Marmor has ignored what has traditionally been the key feature that enables us to distinguish between conventional and non-conventional rules. The distinction is often grounded in the idea that one follows the rule because others do so. This is called a ‘conventional reason’ (CONV-REA). However, CONV-REA clearly contradicts Marmor’s condition of Rationality established in the characterisation of ‘conventionality’. If CONV-REA operates then one could assert that there is no primary reason to follow the rule independently of the fact that others are following the rule.

It seems, however, that CONV-REA is the key condition to draw a demarcation between conventional and non-conventional rules. On the other hand, CONV-REA does not apply to the example of chess which, intuitively, is the best example that illustrates conventional rules. Let us imagine a dialogue between a chess player and an observer of the game of chess:

Observer: Why do you move the knight in this way?

Player: In order to block the king from moving.

Observer: Why do you want to block the king from moving?

Player: In order to put him in checkmate.

Observer: Why do you want to put the king in checkmate?

Player: In order to win.

Observer: Why do you want to win?

Player: To entertain myself.

It would be absurd to think that the player will say that he follows the rules of chess, eg moving the bishop diagonally to put the king in checkmate, because others do the same. Marmor himself admits that the primary reason for the player to play chess is because ‘it is entertaining’.<sup>9</sup>

Marmor introduces another example of conventions, ie the artistic genre. He asserts that medieval Christian art searched for a representation of God in order for the faithful to know the Holy Scriptures and be close to the divine. In Islamic art, Marmor tells us, we find more or less the same end of art. However, in Islamic art, the artist does not represent figuratively but rather advances an abstract representation. According to Marmor, the representation is arbitrary since the end is fulfilled in both instances. However, if CONV-REA is applied then the primary

<sup>9</sup> Marmor (2007: 594).

reason for an artist at the time to engage in either medieval Christian art or Islamic art cannot be ‘to know the Holy Scripture and be close to the divine’. It should be, rather, that the members of the group follow the convention. Let us imagine the following dialogue between the artist El Greco and a spectator of the painter’s work:

Spectator: Why are you painting Christ crucified?

Greco: In order to represent the sacrifice of Jesus.

Spectator: Why do you want to represent the sacrifice of Jesus?

Greco: Because all artists do so.

But this latter answer seems absurd and unintelligible: it does not throw any credible light on the actions of El Greco. Let us imagine that the dialogue continues as follows:

Spectator: Why are you doing what other artists are doing, namely representing the sacrifice of Jesus?

Greco: Because this is the best way to know God.

Spectator: Why do you aim to know God?

It would be absurd to assert that El Greco would return to a similar reasoning as CONV-REA, namely ‘because everyone does’. It is therefore necessary to introduce a primary reason to make intelligible the action of the artist. We should, therefore, conclude that there is something suspicious about the idea of conventions as standing independently of the reasons for actions that we have in certain circumstances.

## **V. Conclusion: Forward-Looking and Primary Reasons for Actions**

In the previous sections I have argued that forward-looking reasoning (see OMELETTE) is the primary model of practical reasoning. Considering that law is a social practice and presupposing that social practices are somehow composed of intentional actions, then forward-looking reasoning should be the primary model to understand key aspects of law. The idea of ‘conventions’ and especially deep conventions as advanced by Marmor are the most notable candidates to provide normative depth to descriptions of social practices like law. However, in this chapter I have shown that a clear demarcation between conventional and non-conventional rules is lacking or, at least, I have shown that this distinction is more problematic than is currently thought. I have indirectly argued that ethical, moral and conventional rules presuppose the OMELETTE model of practical reasoning, ie a first person or deliberative stance that is forward-looking to be

intelligible. The common thread between all kinds of rule-following is the capacity to engage agents from the first-person perspective which entails a forward-looking dimension and consequently conventional rules do not stand outside the phenomenology of the forward-looking perspective. Therefore, we have shown that the Eliminativist Strategy cannot stand scrutiny.

Hume published *An Enquiry Concerning Human Understanding* in 1748 and since then the idea of a conventions has become prominent in Western philosophy; however, its precise characterisation is elusive. Contemporary philosophers like David Lewis and Andrei Marmor, among many others, have attempted to provide a precise demarcation between ethical and conventional rules, but have also searched for normative depth in conventional rules avoiding a collapse with ethical and moral rules. I have shown that Marmor's defence of an autonomous domain for conventional rules and the normativity of conventional rules is not fully satisfactory. By contrast, I have defended the view that there is a continuum between ethical, moral and conventional rules because the primary mode of action is normative all the way through. OMELETTE as the primary model of practical reasoning seems to rule both 'what we do when we act with others' and 'what we do when we act individually'.

## References

- Chisholm, R (1976) 'Freedom and Action' in Keith Lehrer (ed), *Freedom and Determinism* (New York, Random House)
- Enoch, D (2011a) 'Reason-Giving and the Law' in L Green and B Leiter (eds), *Oxford Studies in Philosophy of Law* (Oxford, Oxford University Press)
- (2011b) 'Giving Practical Reasons' 11 *Philosopher's Imprint* 1
- Hume, D (1999) *An Enquiry Concerning Human Understanding* (TL Beauchamp (ed), Oxford, Oxford University Press)
- Lewis, D (1969) *Convention* (Cambridge, MA, Harvard University Press)
- Marmor, A (2007) 'Deep Conventions' 74(3) *Philosophy and Phenomenological Research* 586
- Rodriguez-Blanco, V (2014) *Law and Authority Under the Guise of the Good* (Oxford, Hart Publishing)
- (2016) 'Convención y Normatividad: Una Visión Escéptica' in L Ramirez-Ludeña and J María Vilajosana (eds), *Convención y Derecho* (Madrid, Marcial Pons)