

Practical Reason in the Context of Law

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What Kind of Mistake Does a Citizen Make When She Violates Legal Rules?

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1. Introduction

It is recognized by theorists and laymen that law is a social practice. However, if social practices are constituted by human actions then the following question arises: 'What is the sound characterization of human action that enables us to provide a satisfactory explanation of the production of authoritative legal rules and directives?' The key feature of legal rules and directives is that they guide the behaviour of citizens and have a normative force on the addressees of legal rules and directives. It is, however, puzzling how human beings are able through their actions to produce such a complex state of affairs, i.e. a legal rule that is authoritative and intervenes in the reasoning and actions of the addressees of the rule.

Let us suppose that we explain human action as merely an empirical phenomenon, i.e. a set of regular patterns produced by the reason-beliefs or acceptance-beliefs of the participants, which are construed as mental states.¹ Within this framework of explanation, the authoritative character of the legal rules, their guiding role and normative force are utterly mysterious. For example, let us think about the legal rule that demands that citizens stop at red traffic lights and also about citizen 'c' who does this numerous times every morning when driving to work. Following the empirical model of human action, the empiricist will say that citizen c's action is explained by the fact that 'there is a rule that is grounded on

¹ According to the empirical account of intentional action, the acceptance of legal rules provides reasons for actions in the context of the law. For a full explanation of the empirical account of action in the context of the law and its criticism, see Rodríguez-Blanco (2014b), Chapter 5. I argue that the empirical account of intentional action is parasitic on the 'guise of the good' explanation of intentional action.

reasons that respond to what everyone does’;² or, rather, ‘there is a rule that is grounded on our accepted reason-beliefs towards such a rule or accepted reason-beliefs towards a second-order rule about such a rule’;³ or, even more, ‘there is a rule that is the result of deep conventions, which are the result of social practices, responsive to our social and psychological needs, arbitrary, grounded on a reason-belief to follow them, instantiated in superficial conventions and resistant to codification’.⁴

We feel, however, that there is something fundamentally missing in this purely empirical portrait of human action. It seems to imply that if one day citizen ‘c’ decides not to do what everyone does or accepts, and decides instead *not* to stop at the red traffic lights, and consequently her vehicle collides with a number of other vehicles and she kills a child, then (following the empiricist explanation of human action) the only mistake she made in *her reasoning* that led her to the catastrophic action is that she did not accept what everyone accepted, or rather she did not have the appropriate reason-belief as mental state to follow the rule. This is a strange understanding of her reasoning, though it follows logically from an explanation of human action in terms of purely empirical features, i.e. social facts, beliefs or intentions as mental states, and reasons explained in terms of beliefs and therefore mental states.

The explanation of the reasoning of the agent in empirical terms is equally unintelligible in examples where what is at stake is the life, dignity or another fundamental value that we human beings care about. Let us scrutinize the following example. If an official aims to enforce the court decision that has established that citizen ‘p’ has violated the physical integrity of another citizen and therefore should be punished with imprisonment and we ask for an explanation of the official’s coercive action, it would be puzzling to hear the following response: ‘Citizen “p” has violated a constitutional rule which is grounded on our acceptance-belief or reason-belief which lies behind the constitutional rule.’ This value-free or value-neutral response cannot *truly* explain why citizen ‘p’ has to go to prison according to a court decision. Does it mean that if citizen ‘p’ escapes from the coercion of the official and manages to leave the country, then the only mistake in her reasoning that leads her to flee the country is her disagreement with either the acceptance-belief that there is a valid

² See Lewis 1969. ³ See Hart 2012.

⁴ See Marmor 2007. For a criticism of this view see Rodríguez-Blanco (2016).

constitution or secondary rule, or her disagreement with the acceptance-belief towards the constitutional rule and penal code that protects the physical integrity of all citizens? Thus, it is not that she disagrees with the value that is the content of the acceptance-belief or reason-belief, rather she disagrees *with the acceptance-belief or reason-belief*. The disagreement is just about beliefs, and therefore, according to the empirical account, the parties in disagreement are in different mental states. This is an equally strange and puzzling diagnosis of our disagreements.

When we characterize what legislators, judges, officials and citizens do in terms of actions as empirical phenomena, we seem to miss something fundamental. Worse, the empirical account of action cannot satisfactorily explain the guiding role of the law.⁵

Let us go back to our first example. Citizen 'c' is a law-abiding citizen who aims to follow and be guided by the law, and on her journey to work she knows there is a legal rule that states she ought to stop at red traffic lights. According to the empirical characterization of human action, she stops at red traffic lights because she has the acceptance-belief or reason-belief that there is such a rule and this acceptance-belief or reason-belief causes her to press the brake pedal on each relevant occasion. If she were asked *why* she presses the brake pedal she will reply, 'because there is a red traffic light', and if she were asked, 'why do you stop at the red traffic light?' she would reply, 'because there is a secondary rule that is accepted by the majority of the population and this establishes the validity of the rule 'citizens ought to stop at red traffic lights'. Alternatively, she might reply, 'I stop at the red traffic light because of the rule', but now the mystery is 'why do you act according to the rule?', to which she might answer, 'because rules give me reasons for actions'. The empirical account explains reasons in terms of beliefs/desires as mental states,⁶ and then it seems that it is the mental state that is causing the action. This is a problematic picture

⁵ Arguably, Raz's explanation of how legal rules intervene in our reasoning is non-empirical since he has emphasized that a reason for action should not simply be understood as beliefs as mental states. See Raz 1979, 1986, 1999. However, in Rodriguez-Blanco (2014b, chapter 8), I argue that Raz's explanation of legal authority is a theoretical explanation of our reasoning capacities, i.e. when we explain how legal directives and rules intervene in the citizen's practical reasoning from the third-person perspective. His explanation ignores the first-person or deliberative point of view of the citizen who follows legal rules.

⁶ See Davidson 1980.

because it supposes that for each action I need to ‘remember’ my belief/desire so that I am able to be in the *right* mental state so that I can stop at the red traffic light. However, we stop at red traffic lights even when we are tired or when we do not ‘remember’⁷ that we ought to stop at red traffic lights, and therefore we somehow just ‘know how to go around’ and stop at red traffic lights. Furthermore, the predominant empirical picture of human intentional action cannot explain the diachronic structure of intentional action. That is, we stop at red traffic lights over a prolonged period of time and even though the relevant mental state might be absent, we still continue doing it and it seems that we do it for a ‘reason’ that tracks values or good-making characteristics.

Imagine that there is an emergency. Citizen ‘c’ needs to bring her neighbour to the hospital because he is dying and consequently she decides not to stop at a red traffic light. Does this mean, if we follow the empirical account of human action, that in order to explain her action we need to say that she surely needed to ‘forget’ that she had the relevant belief as mental state of ‘stopping at red traffic lights’, or perhaps she decided ‘to get rid’ of her acceptance-belief concerning the rule ‘we ought to stop at red traffic lights’? Or, perhaps, she ‘decided to suspend’ her beliefs about the rule ‘we ought to stop at red traffic lights’. In the two latter possibilities we cannot say that it is not only a ‘belief’ that plays a role in action, but rather the ‘will’ of the rule-follower. She has used the words ‘get rid of’ and ‘decided to suspend’. It seems that there is something else going on. Imagine that we ask her, ‘why did you *not* stop at the red traffic light?’ The empirical answer, ‘because I do not have the acceptance-belief or reason-belief towards the rule *now* for this *specific* instance’, would be an odd one. Citizen ‘c’ is more likely to say, ‘Don’t you see it? My neighbour is dying and I want to save his life’. Furthermore, if reasons for actions are belief-acceptance or if they give me a reason for action and this reason is merely a mental state, how can I be guided by rules and principles? If the empirical explanation of action is the sound characterization, then the guidance of rules and principles is effective because I am in the *correct mental state*. The entire work is done by *my mental states* as long as I am in the supposedly *correct mental state*. The deliberation of the legislator or judge and/or my *own* deliberation plays no role in the execution of my action of rule-following or principle-following. The content of the legal

⁷ See Wittgenstein 1953: Section 645.

rule is irrelevant as long as the majority of the citizens are in the allegedly *correct mental state*.

Arguably, we need to resort to values in the form of good-making characteristics that are relevant to the specific form of life that is ours and that reflect *what* we care about individually and collectively. We need to understand human action in its naïve or fundamental form and this understanding, I argue, sheds light on the kind of things we produce, including human institutions such as law. Thus, if someone asks citizen 'c' why she stops at the red traffic light on her way to work, there is a *naïve* explanation of her action that seems to be more primary than any other explanation. Thus, she might respond, 'because I do not wish to collide with other vehicles and kill pedestrians'. If we ask her, 'why do you not wish to collide with other vehicles and kill pedestrians?', she most is likely to reply, 'because I value my property, other people's property, and life' and if we keep asking, 'why do you value property and life?', she will respond, 'because property and life are goods'.

We have learned that a mistaken conception of human action can take us down misleading routes in our understanding of the nature of law and, more specifically, its pervasive, authoritative, normative, and guiding role in our lives. Thus, the argumentative strategy of this paper will be to focus on developing and defending a sound explanation of human action, under the presupposition that this explanation of human action will illuminate how human beings produce law and will also shed light on the authoritative and normative features of law. In Section 2 I explain and defend a conception of human action that diverges from the standard empirical conception. In Section 3 I scrutinize the consequences of this conception of human action for our understanding of the nature of law and its authoritative and normative character.

2. Intentional Human Action Under the Guise of the Good

We will now concentrate on intentional human action as the paradigmatic⁸ example of human action to shed light on the making

⁸ For a defense of a conception of paradigms as the best methodology to understand social and human concepts see Rodríguez-Blanco 2003.

of law by legislators and judges and the character of legal rule-following.⁹

In her book *Intention* (1957) Elisabeth Anscombe engages with the task of explaining intentional action along the lines of the philosophical tradition of Aristotle and Aquinas and identifies a number of key features that characterize intentional action. These features include:

a) The former stages of an intentional action are ‘swallowed up’ by later stages

Intentional action is composed of a number of stages or series of actions. For example, if I intend to make a cup of tea, I first put on the kettle *in order* to boil water, I boil water *in order* to pour it into a cup of tea. Because my action of making tea is intentional, I impose an order on the chaos of the world and this order is the order of reasons. Thus I put on the kettle *in order* to boil water and I boil water *in order to* pour it into a cup. This is how I understand the sequence of happenings in the world that I, as an agent, *produce or make happen*. But, arguably, there could be an infinite number of series of actions; there could be a continuous infinite, or ceaseless, seamless web of actions. The question ‘Why?’ can always be prompted: ‘Why are you making tea?’ and the agent might reply, ‘Because it gives me comfort in the morning’. There is, however, an end to the ‘Why?’ series of questions and the end comes when the agent provides a characterization of the end or *telos* as a good-making characteristic. The action becomes intelligible and there is no need to ask ‘Why?’ again. The end as the last stage of the ‘Why?’ series of questions swallows up the former stages of the action and makes a complete unity of the action. Intentional actions are not fine-grained, they are not divisible into parts. Thus, parts of series of actions are only intelligible because they belong to an order that finds unity in the whole.

b) Intentional action is something actually done, brought about according to the order conceived or imagined by the agent

Intentional action is not an action that is done in a certain way, mood or style.¹⁰ Thus, it is not an action plus ‘something else’, i.e. a will or desire

⁹ I am using the term ‘rule-following’ but the same explanation applies to principle-following. See Rodríguez-Blanco 2012 and 2014a.

¹⁰ Anscombe 1957: Section 20.

that is directed towards an action. Intention is not an additional element; e.g. an interior thought or state of mind, it is rather something that is *done* or *brought about* according to the order of reasons that has been conceived by the agent. Consequently, if the question ‘Why?’ has application to the action in question, we can assert that the action is intentional. The prompting of the question ‘Why?’ is the mechanism that enables us to identify whether there is an intentional action. Intentional action is neither the mere movements of our body nor the simple result of transformations of the basic materials upon which agency is exercised, e.g. the tea leaves, kettle, boiling water. It is a doing or bringing about that is manifested by the expression of a future state of affairs and the fact that the agent is *actually* doing something or bringing it about according to the order of reasons as conceived or imagined by the agent.¹¹

c) Intentional action involves knowledge that is non-observational, but it might be aided by observation

What is the distinction between practical and theoretical knowledge? Let us take a modified version of the example provided by Anscombe in *Intention*.¹² A man is asked by his wife to go to the supermarket with a list of products to buy. A detective is following him and makes notes of his actions. The man reads in the list ‘butter’, but chooses margarine. The detective writes in his report that the man has bought margarine. The detective gives an account of the man’s actions in terms of the evidence he himself has. By contrast, the man gives an account of his actions in terms of the reasons for actions that he *himself* has. However, the man knows his intentions or reasons for actions not on the basis of evidence that he has *of* himself. His reasons for actions or intentions are self-intimating or self-verifying. He acts from the deliberative or first-person perspective. There is an action according to reasons or an intention *in doing* something if there is an answer to the question *why*. It is in terms of his own description of his action that we can grasp the reasons for the man’s actions. In reply to the question ‘*why* did you buy margarine instead of butter?’, the man might answer that he did so because it is better for his health. This answer, following Aristotle’s theory of action¹³ and its

¹¹ Anscombe 1957: Sections 21–22. ¹² Anscombe 1957: Section 32.

¹³ Aristotle 1934. *Nicomachean Ethics* I. i. 2; III. V. 18–21. See also Aquinas, *Summa Theologiae*. I-II, q8, a1; Kenny 1979, Pasnau 2002 and Finnis 1998: 62–71 and 79–90.

contemporary interpretations advanced by Anscombe provides a reason for action as a desirability or good-making characteristic. According to Anscombe, the answer is intelligible to us and inquiries as to *why* the action has been committed stops. However, in the case of the detective when we ask *why* did you write in the report that the man bought margarine, the answer is that it is the truth about the man's actions. In the case of the detective, the knowledge is theoretical, the detective reports the man's actions in terms of the evidence he has of it. In the case of the man, the knowledge is practical. The reasons for action are self-verifying for the agent. He or she does not need to have evidence of his own reasons for actions. This self-intimating or self-verifying understanding of our own actions from the deliberative or practical viewpoint is part of the general condition of access to our own mental states that is called the 'transparency condition'¹⁴. It can be formulated as follows:

(TC for reasons for actions) 'I can report on my own reasons for actions, not by considering my own mental states or theoretical evidence about them, but by considering the reasons themselves which I am immediately aware of.'

The direction of fit in theoretical and practical knowledge is also different. In the former case, my assertions need to fit the world whereas in the latter, the world needs to fit my assertions. The detective needs to give an account of what the world looks like, including human actions in the world. He relies on the observational evidence he has. The detective's description of the action is tested against the tribunal of empirical evidence. If he reports that the man bought butter instead of margarine, then his description is false. The man, by contrast, might say that he intended to buy butter and instead bought margarine. He changed his mind and asserts that margarine is healthier. There is no mistake here.

The idea that we accept from the internal point of view primary or secondary legal rules¹⁵ presupposes an inward-looking approach to action as opposed to an outward-looking approach. The latter examines intentional actions as a series of actions that are justified in terms of other actions and in view of the purpose or end of the intentional action as a good-making characteristic, e.g. to put the kettle on in order to boil the

¹⁴ See Evans 1982: 225 and Edgeley 1969. The most extensive and careful contemporary treatment of the 'transparency condition' is in Moran 2001.

¹⁵ See Hart 2012.

water, in order to make tea *because* it is pleasant to drink tea. The former examines the mental states that rationalize the actions; however, at the ontological level, arguably, it is mental states that cause the actions. The mental states consist of the belief/pro-attitude towards the action. If the 'acceptance thesis' is the correct interpretation of Hart's central idea concerning the internal point of view towards legal rules, then criticisms that are levelled against inward-looking approaches of intentional actions also apply to the 'acceptance thesis'.¹⁶ The main criticism that has been raised against the idea that the belief/pro-attitude pairing can explain intentional actions is the view that it cannot explain deviations from the causal chain¹⁷ between mental states and actions. Let us suppose that you intend to kill your enemy by running over him with your vehicle this afternoon when you will meet him at his house. Some hours before you intend to kill your enemy, you drive to the supermarket, you see your enemy walking on the pavement and you suffer a nervous spasm that causes you to suddenly turn the wheel and run over your enemy. In this example, according to the belief/pro-attitude view, there is an intentional action if you desire to kill your enemy and you believe that the action of killing your enemy, under a certain description, has that property. Ontologically, the theory would establish that you had both the desire to kill your enemy and the belief that this action has the property 'killing your enemy'. Thus, this mental state has caused the action and there is an intentional action. The problem with this view is that it needs to specify the 'appropriate causal route'. Davidson has made much effort to specify the 'attitudes that cause the action if they are to rationalize the action'.¹⁸ In the following paragraph, Davidson seems to fear that the idea of attitudes causing action might lead to *infinite regress*:

A climber might want to rid himself of the weight and danger of holding another man on a rope, and he might know that by loosening his hold on the rope he could rid himself of the weight and danger. This belief and want might so unnerve him as to cause him to lose his hold, and yet it might be the case that he never *chose* to loosen his hold, nor did he do it intentionally. It will not help, I think, to add that the belief and the want must combine to cause him to want to loosen his hold, for there will remain the *two* questions how the belief and the

¹⁶ Hart 2012. ¹⁷ The first person to discuss deviant causal chains was Chisholm 1976.

¹⁸ Davidson 1980: 79.

want caused the second want, and how wanting to loosen his hold caused him to loosen his hold.

Here we see Davidson struggling with his own proposal.¹⁹ He asks *how attitudes must cause actions if they are to rationalize actions*. Davidson's model of intentional action does not help us to determine whether there is an intentional action, it only **help** us to determine the *conditions* that would explain the existence of an intentional action. The intentional action is already *given*. A similar criticism is applicable to the 'acceptance thesis' and to this we now turn.

Let us suppose that I intend to go to the park in my car however I read a sign at the entrance of the park that states 'Vehicles are not allowed to park in the park', I turn the wheel of my vehicle, reverse it and park a few streets away. You ask me why I turned the wheel of my vehicle, reversed and parked a few streets away from the park; I answer that I carried out these actions because there is a rule that states 'Vehicles are not allowed to park in the park'. According to the 'acceptance thesis', my desire to follow the pattern of behaviour indicated by the rule and my belief that turning the wheel of my vehicle, reversing it and not parking in the park is the type of action or pattern of behaviour indicated by the rule. However, let us suppose that I desire to avoid parking in the park and have the respective belief. In other words, I accept 'not parking in the park'. On my way to the park, however, whilst following directions to the park, I take a wrong turning and end up parking just outside the park entrance. Even though the two criteria of the 'acceptance thesis' have been met, this was not a case of following the legal rule by acceptance since I comply with the rule by accident.

The problem with the 'acceptance thesis' is that it does not consider the action from the deliberative point of view, i.e. as it is seen from the point of view of the agent or deliberator. When the agent explains his actions he does not examine his own mental actions, rather he looks outwards to the vehicle, the park, the sign and so on. The reasons for actions, i.e. turning the wheel to reverse the vehicle, then parking outside the park to follow the rule, are self-evident or *transparent* to him. But then, an objector might advance, what is the good-making characteristic of a rule that, as in the example of the shopper who intends to buy margarine because is healthier,

¹⁹ For an illuminating discussion of this point see Vogler 2007.

is the goal of the action of avoiding parking in the park. My reply is as follows. When the driver is asked why he or she is turning the wheel and reversing the vehicle, his answer will be 'because it is the rule'. But this is still not completely *intelligible* unless we *assume* or *know* that the driver is a law-abiding citizen or that he believes in the general fairness of legal rules, etc. We can still ask him, 'Why, because of the rule, do you do this?' His answer would need to be in terms of reasons as good-making characteristics for him, in order to make intelligible his intentional action. He will probably reply that he has reasons to follow the legal rule because it is the best way of preserving the peace of the park, or that he has reasons to follow legal rules in general because it is the best way of preserving coordination²⁰ among the members of a community. In a nutshell, the agent or deliberator needs to provide the reasons for the action in terms of good-making characteristics and the end or reason of the action provides the *intelligible form of the action*. This explanation of action has also been called a *naïve* explanation of action as opposed to a more sophisticated explanation of action, i.e. in terms of mental states.

If I am an agent that acts in an intentional way, I know that I am bringing about something and I know this without the need to observe every single step of my series of actions to verify that (effectively) I am acting.²¹ In performing my action I might be aided by observation, but I know *what* is the order of the series of actions and *why*. This is the essence of practical knowledge. You do not need a theoretical stance towards yourself, a verification and observation of the movements of your body to know that you are performing an intentional action and bringing about *something*. Following the previous example, you do not need to observe that 'you are making tea' to know that you intend to 'make tea' and that you are bringing this about. You put on the kettle and boil the water, you do not ask yourself, 'let me see what my body is up to, let me observe what I am doing', and then infer from the movements of your body that you are actually bringing about 'making tea'. Of course you can be aided by observation, you need your sight to put the kettle in the right position and to pour the boiling water without spilling it. But you do not use your observation and inferences from the observational data to know that you are making tea.

²⁰ See Anscombe 1981 for an argument of authority as practical necessity.

²¹ Anscombe 1957: Sections 28–29.

The state of affairs that you intend to bring about is at a distance, it might not be within your sight.²² Imagine a painter who intends to make a painting. He has an idea about what the painting will look like, e.g. how the colours will be distributed across the canvas, and what topics and concepts will be at work in the painting. The painting is at a distance and the painter does not need to observe the movements of his body and the motion of the brushes to know *what* he is painting and *why* he is painting what he is painting. Certainly, his sight will help him to find the adequate colour at the correct time and to shape the figures at the right angle, but his intentional action is not what he observes; it is not the result of his painting but what he is actually doing. We do what happens.

d) In acting intentionally, we exercise our practical knowledge. We can understand practical knowledge if we understand the structure of practical reasoning

Intentional action is not in the mind; it is not primarily a mental state; it is not an internal thought.²³ Rather, it manifests itself publicly and within the public reasons that we share as creatures with certain constitutions and belonging to a particular time and place. For example, we eat healthy food because it is good to survive; we look after our family because we love them; we avoid harm because we aim to enjoy pleasant things and so on. Similarly, we know that to make a cake you need flour, sugar, eggs and milk. If I see you mixing grass and earth and you tell me that you are making a cake, then I can assert, if I consider that you are in sound mind (your full capacities), that there might be a mistake in your performance or that you do not understand what it is 'to make a cake'.

According to Anscombe, Aristotle establishes a strong analogy between practical and theoretical syllogism and this has led to misinterpretations about what practical syllogism is.²⁴ Like theoretical syllogism, practical syllogism is often systematized by Aristotelian interpreters as having two premises, i.e. major and minor, and a conclusion. It is said that, as in the

²² Anscombe 1957: Sections 29–30.

²³ Anscombe 1957: Sections 21–22, Section 25, Sections 27–28.

²⁴ Anscombe 1957: Section 33, Sections 33–34.

case of theoretical syllogism, the practical syllogism is a proof or demonstration. The typical form might be as follows:

Vitamin X is good for all men over 60
 Pig's tripe is full of vitamin X
 I am a man over 60
 Here is pig's tripe

But in this case nothing seems to follow about doing anything. Furthermore, the practical syllogism is sometimes interpreted as having an ethical or moral character and establishing a way to prove what we ought to do. Following the previous example, the conclusion might be, 'I should eat pig's tripe'. Anscombe rejects this view since Aristotle's examples are not in ethical contexts, i.e. 'dried food is healthy', 'tasting things that are sweet' that are pleasant. Additionally, the word 'should' (*dei*) as it appears in the Aristotelian texts has an unlimited number of applications and does not necessarily refer to the ethical or moral context.²⁵

Aristotle insists that the starting point of any intentional action is the state of affairs or something that the agent wants and is wanted because it is presented to the agent as having good-making characteristics or as being valuable. For example, the man wants to have vitamin X because it is healthy. Furthermore, the practical syllogism is not limited to two premises and a conclusion; there can be many intermediate instances that are part of the syllogism. After a close analysis, the analogy between practical and theoretical syllogism breaks. Unlike theoretical syllogism, practical syllogism is not a proof or demonstration of a true proposition, nor is it a proof or demonstration of what ought to be done or what we ought to do. It is a form of *how* and *why* we are bringing something about when we are *actually* bringing it about.

Anscombe presents us with an alternative analysis to the practical syllogism and a different way to understand practical reasoning. Thus, the series of responses to the question 'Why?' manifests or reveals the practical reasoning of the agent and enables us to identify whether the action that the agent is performing is intentional or not. However, she warns us, the why-question methodology is as 'artificial' as the Aristotelian methodology of practical syllogism.²⁶ When we act

²⁵ Anscombe 1957: Section 35. ²⁶ Anscombe 1957: Sections 41–42.

intentionally, we are exercising a kind of reasoning which is not theoretical and which is grounded on a desire for that which seems to the agent to be constituted by good-making characteristics. You know the thing or state of affairs that you are bringing about because you desire the thing or state of affairs that you are bringing about, and you are able to desire the thing or state of affairs that you are bringing about because you know *practically* the state of affairs. Your desire arises because you represent the thing or the state of affairs to be brought about as valuable or good. Volition and knowledge do not fall apart.²⁷ For example, if you are a painter, you know how and why the shapes and colours on the canvas are what they are, it is because you desire and value the painting you will produce that it should be such and such a colour and shape. But it is also true that because you desire and value *this* and *not that* arrangement of colours and shapes, that you are able to know it *practically*. Consequently, moral approbation is irrelevant for practical reasoning and for our practical engagement with the world.²⁸ This does not mean that there are no instances of objectively justified reasons for actions. On the contrary, we aim at getting it right and finding the genuine good-making characteristics that will provide meaning and intelligibility to the movement of our bodies. Therefore, the possibility of hitting the target of genuine good-making characteristics resides in our good characters and capacities. But to understand the basic structure of practical reason and the different scopes of agency, we do not need to begin from fully justified and objective values.²⁹

Whatever strategy we follow to show the structure of intentional action, whether we take the Aristotelian practical syllogism or the Anscombian series of actions revealed by the question ‘Why?’, we are able to grasp the mechanism of practical reasoning in its different manifestations.

In this section I will argue that if Anscombe is right and both strategies are ‘artificial’ ways of understanding,³⁰ then a deeper and more ‘natural’ way of understanding practical reasoning is by grasping the nature of

²⁷ Anscombe 1957: Section 36. ²⁸ Anscombe 1957: Sections 37–38.

²⁹ In Chapter 9 of Rodríguez-Blanco 2014b I show that robust value realism is indispensable to making sense of our actions, practices and first-order deliberative phenomenology. See Chapter 3 for a full defense of the ‘guise of the good model’. See also Grisez’s interpretation of Aquinas’s precepts of natural law in Grisez 1969: 368.

³⁰ Anscombe 1957: Sections 41–42.

the capacity that is exercised by the agent. *In other words, the answers to the 'Why?' questions show a capacity that the agent is exercising when acting.* In the next section, I will show that the Aristotelian potentiality/actuality distinction sheds light on understanding the exercise and nature of our practical reasoning capacities. Furthermore, the potentiality/actuality distinction illuminates each of the key features of intentional action (a, b, c and d) and their interplay as identified by Anscombe.

2.1 Aristotle's Distinction Between Actuality and Potentiality

Contra Parmenides, who argued that motion is impossible since something cannot come from nothing, Aristotle advances the idea that motion or change is possible if there is an underlying nature or constant feature that does not change. To explain this, Aristotle resorts to the distinction between potentiality and actuality. In *Metaphysics*, book Θ, Aristotle uses the analogical method to show that particular instances of the scheme or idea of potentiality and actuality³¹ have a pattern.³² Thus he begins with the particular instances of capacity/change and matter/form to explain the common patterns that will illuminate the general scheme of potentiality/actuality. However, since our purpose is to elucidate the character of practical reasoning which is a power or capacity, and I have argued that the general scheme of potentiality/actuality will help us to clarify the nature of practical reason, it is circular to resort now to a particular instance of capacity/change to explain potentiality/actuality. I will, therefore amend the Aristotelian argumentative strategy and explain the general scheme of potentiality/actuality. I will then proceed to explain the particular instance of exercising our practical capacities as the actuality of a potentiality.

It is difficult to capture what 'motion' is and many definitions of 'motion' tend to use terms that presuppose motion (for example, 'a going-out from potency to act which is not sudden', but 'going-out' presupposes motion

³¹ I use this term as Kosman and Coope interpret it from Aristotle's *Physics, Books III and IV*. This means, the change that acts upon something else so that this something else becomes F, i.e. the fulfillment of a potentiality. For example, the building of a house by a builder so that the house becomes built. See Kosman 1969 and Coope 2009.

³² I follow the interpretation of Aristotle's *Metaphysics*, book Θ advanced by Frede 1994 and Makin. See Aristotle 2006. *Metaphysics* book Θ: 133]. Cf. Ross 1995.

and 'sudden' is defined in terms of time which is also defined in terms of motion). Therefore, this kind of definition is discarded by Aristotle for being circular and unhelpful. Nor can we define motion in terms of pure potency, because if we say that 'bronze is potentially a statue', we are merely referring to the piece of bronze which has not yet been changed and therefore there is no motion. You can neither refer to motion nor to change as what is actual. For instance, you cannot refer to what has been built or transformed, e.g. a building or statue, because it is not being moved, but has *already* moved. In the example of a building, the bricks, wood, clay, cement of the building have been already moved; and in the case of a statue, the bronze has already been transformed. Thus, Aristotle defines motion as a kind of actuality which is hard to grasp. In other words, *the actuality of what exists potentially, in so far as it exists potentially*.³³ Motion is an actuality that is incomplete. It is hard to grasp and the tendency is to say that motion is the actuality. In the example of the house, it is the house that has been built. The other tendency is to say that motion is the privation of something, i.e. the going from nothing to something; from not being a house to being a house. Finally, the tendency is also to think that motion is what exists before *potentiality* e.g. the bricks, steel, wood, cement and so on. Contrary to these tendencies, Aristotle insists that motion is what happens exactly at the *midpoint*, neither *before* when nothing has been moved and is mere potentiality, and neither *after*, when something *has* been moved. Furthermore, motion is not privation, it is rather constitutive actuality. For example, if the baby has not learned to speak English, we say that the baby is potentially a speaker of English, when a man knows how to speak English and is in silence, he is also potentially a speaker of English, and finally when the man is speaking English, we say that he is actually an English speaker speaking English. However, the potentiality of the baby (p1) is different from the potentiality of the man in silence (p2), and motion is located in the second potentiality (p2), when the man is in silence, but begins to pronounce a sentence to speak English. Motion is midway and is not privative, but rather constitutive. We do not say that the man speaking English went from being a non-speaker of English to a speaker of English, we say that he spoke English from being in silence (he knew how to speak English, but did not exercise his capacities).

³³ Aristotle 1983. *Physics*: III.1.201a9–11.

The previous example locates us in the domain of the particular instance of capacity and change as exemplified by the potentiality/actuality distinction. Aristotle argues that there are many different types of capacity, i.e. active/passive, non-rational/rational, innate/acquired, acquired by learning/acquired by practice, and one way/two way capacities. Two way capacities are connected to rational capacities, whereas one way capacities are linked to non-rational capacities. For example, bees have a natural capacity to pollinate a foxglove flower in normal circumstances,³⁴ ('normal' circumstances might include a healthy bee in an adequate foxglove, and the absence of preventive circumstances). In the case of two way capacities there ought to be an element of *choice or desire* to act, and the rational being can exercise her capacity by producing or bringing about 'p'. Furthermore, she also knows how to produce or bring about 'non-p'. The paradigmatic example used by Aristotle is medical skill. The doctor knows how to make the patient healthy (p) and how to provoke disease or illness (non-p). Therefore, the doctor can bring about two opposite effects.³⁵ For Aristotle, to have a rational capacity is to have an intellectual understanding of the form that will be transmitted to the object of change or motion. Thus, the doctor will have an understanding of what it means to be healthy and without illness, but also of what it means to be ill. Let us suppose that a doctor is producing illness in the enemies through prescribed drugs. She needs to understand the order of the series of actions that will result in sickness for the enemies and she needs to possess knowledge about the necessary drugs to make the enemies to collapse. Her action will be directed to produce illness. But the doctor can choose otherwise, e.g. she can choose to make the enemy healthy.

In the exercise of practical reason, we choose to act³⁶ and this choosing activates the action and directs the capacity towards the series of actions that will be performed. By contrast, a non-rational capacity is non self-activating; its acts are necessary. If the bee is in good health and there are no obstacles, it will pollinate the foxglove flower. By contrast, rational agents need to *choose or decide* to act to produce a result.

³⁴ See Makin's commentaries at Aristotle 2006: 43.

³⁵ Aristotle 2006. *Metaphysics Book Θ* 1046b 4–5, 6–7.

³⁶ Aristotle 2006. *Metaphysics Book Θ* book Θ 5, 1048 a10–11.

When we say that the medical doctor has the rational capacity to change the unwell patient into a healthy human being, we say that she has the 'origin of change'. She is curing the patient and therefore she is in motion because she actualizes her practical reasoning capacities to bring about the result as she understands it. She has an order of reasons that connects a series of actions and knowledge of how to produce changes.

She is the origin of change because her medical knowhow explains why certain changes occur in situations involving that object, e.g. the patient who suffers chickenpox has fewer spots and less fever. For example, when a teacher intends to teach and starts to say some sentences on the topic of 'Jurisprudence' to her pupils, we say that she is teaching. She is the origin of change in the pupils who are the objects of change. Thus, the students begin to understand the topic and have a grasp of the basic concepts.³⁷ Similarly, when legislators create the law and judges decide cases, they establish rules, directives and principles and these rules, directives and principles can be found in statutes and case reports. Can we say that legislators and judges have reached the end of the process? No, we cannot: statutes and case reports do not represent the end of the process since citizens need to comply with the legal rules and directives and perform the actions as intended by the legislators and judges. We say that legislators and judges are the origin of change because they know how and have an order of reasons that enables citizens to comply with legal rules and directives. The order or reasons as good-making characteristics ground the rules, decisions and legal directives. In parallel to the situation of the teacher, I cannot say that I am teaching unless my pupils begin to understand the topic that I am teaching. Thus, the legislator cannot say that she is legislating and the judge cannot say that she is judging, in paradigmatic cases, unless there is some performance of their actions by the addressees as they intend.

The distinction between potentiality/actuality clarifies the structure of practical reason as a capacity that is actualized when we act intentionally. We can now understand that the features of an intentional action identified by Anscombe can be illuminated by the potentiality/actuality distinction. The idea that the former stages of an intentional action are swallowed up by

³⁷ Makin argues that the teacher analogy is intended to show that the teleological perspective is equally appropriate for other-directed capacities and self-directed capacity. See Aristotle 2006: 198.

the later stages is explained by the idea that motion is constitutive and not privative. It is not that when I begin to act I do so as an irrational or a-rational being, and that I when finish acting I am a rational being, or that I go from non-intentional to intentional action, but rather that I go from being a rational being and *potentially* intentional action to being a rational being and *actual* intentional action. Later stages begin to actualize something that was potentially there. My practical reason was always there *potentially* and the intentional action actualizes an order of ideas provided by my practical reason. For Anscombe, intentional action is something *actually* done, brought about according to the order conceived or imagined by the agent. If practical capacity is understood in the light of the general scheme of actuality/potentiality, then intentional action involves knowledge that is non-observational, but it might be aided by observation. In acting intentionally, I am exercising my practical reasoning capacity and this capacity is in motion. This motion is represented at the midpoint; *after* I potentially have an intention to act and *before* I have reached the result of my intentional action. It is not that the forming of an intention from nothing to something is a *magical* process. *It is rather that I potentially have the power to intend which in appropriate circumstances can be exercised.* As being in motion, I am the agent who knows *what* she is doing and *why* she is doing what she is doing, but if I observe myself doing the action, then I have stopped the action. There is no action. There is no more motion and no exercise of my capacities. Finally, Anscombe asserts that in acting intentionally, we exercise our practical knowledge. Because we are the kind of creatures that we are, we can *choose* or *decide to bring about* a state of affairs in the world and we do this according to our order of reasons. Practical knowledge is potentially in all human beings and when we decide to bring about a situation or do certain things, then we actualize this potentiality. We can direct our actions to produce either of two opposing results, e.g. health or illness, ignorance or knowledge, as opposed to non-rational creatures who can only produce one result under normal circumstances and with no impeding conditions e.g. the bee pollinating the foxglove. It should be noted that to have an actual capacity, such as practical reasoning and the capacity to act intentionally, does not mean that A can Φ , nor that A will Φ if there are normal conditions and no impeding elements. Instead it means that *A will Φ unless she is stopped or prevented.* Thus, once our practical reasoning capacity begins to be actualized, it will strive to produce or do what A (she) has conceived. Once A (she) decides or chooses to act, then a certain state of affairs will be

produced unless she is prevented or stopped. Intentional action and practical reasoning are not dispositions like being fragile or elastic, nor are they possibilities that something will be done. They are powers.

Now that we have grasped the idea of potentiality/actuality as the general scheme for explaining the structure of practical reason, we can turn to the rule-compliance phenomenon and the creation of legal rules by legislators and judges, which raises a different set of difficulties that will be dealt with in the next section.

3. Law and *Energeia*: How Do Citizens Comply with Legal Rules?

So far we have argued that an intentional action is the bringing about of things or states of affairs in the world. We can argue, too, that there are different kinds of bringing about. Human beings can produce houses, clocks, tables, tea cups and so on, but we can also produce rules of etiquette, rules for games, and legal directives, rules, and principles. Legislators create legal rules and directives and judges create decisions according to underlying principles and rules. These legal rules and directives are directed to citizens for them to comply with. They are meant to be used in specific ways. When a legislator creates a rule or a judge reaches a decision that involves rules and principles, she creates them exercising her practical capacities with the intention that the citizens comply with them. But how is this compliance possible? How do legislators and judges create legal rules and directives that have the core purpose of directing others' intentional actions and of enabling them to engage in bringing about things and states of affairs in the world? In other words, how do other-directed capacities operate? This is the question that we aim to explore in this section.

Let us give two examples of authoritative commands to highlight the distinction between different kinds of authoritative rules:

Scenario 1 (REGISTRATION): you are asked by a legal authority to fill in a form that will register you on the electorate roll.

Scenario 2 (ASSISTANCE AT A CAR ACCIDENT): you are asked by an official to assist the paramedics in a car accident, e.g. to help by transporting the injured from the site of the accident to the

ambulance, to assist by putting bandages on the victims, to keep the injured calm and so on.

Arguably, the performance required by the addressee is more complex in the latter example than in the former since the latter requires the engagement of the will and the performance of a series of actions over a certain period of time, and it requires that the addressee should circumvent obstacles to achieve the result according to what has been ordered. It requires that the addressee exercises her rational capacity in choosing *this way* rather than *that way* of proceeding. While the addressee executes the order she needs to make judgments about how to do *this or that*. Successful performance as intended entails knowledge about how to proceed at each step in order to perform the series of actions that are constitutive of what has been commanded. This cannot be done unless our practical reasoning and intentional action are involved in the performance. In other words, the successful execution of the order requires the engagement of practical reasoning and therefore of our intentions. Furthermore, it requires an understanding of the *telos* or end as a good-making characteristic of what has been commanded. In the case of ASSISTANCE AT A CAR ACCIDENT, it requires engagement with the health and well-being of the victims of the accident. Thus, the addressee needs to know that the bandage ought to be applied in *this way* and not *that way in order* to stop the bleeding, and she knows that she needs to stop the bleeding *in order* for the victim to have the right volume of blood in his body. The victim needs a certain volume of blood in his body in order to be healthy and being 'healthy' is something good and to be secured.

Because our practical reasoning capacity is a two-way capacity the agent needs to *decide or choose* to actualize this capacity which, prior to actuality, is mere potentiality. As in our example in Section 2.1, the speaker needs to *decide or choose* to speak in order to actualize their potentiality of speaking English. Then the exercise of their capacity to speak actualizes according to a certain underlying practical knowledge, e.g. the order of the sentences, grammar, style and so on. It is not the case that as a bee pollinates a foxglove without any decision or choice by the bee, the agent will speak English and actualize their potential capacity to speak. In the case of legal rules, the question that emerges is how a legislator or judge can produce or bring about something that will engage the citizens' intentions so that they comply with legal rules or

directives that are constituted by a complex series of actions. The core argument is that legislators and judges intend that citizens comply with legal directives and rules, and this intention is not merely a mental state that represents accepted reasons or reason-beliefs. On the contrary, for the legislators' and judges' intentions (i.e. to engage the citizens' practical reasoning,) to be successful, they need to exercise their own practical reason. It is not that they interpret or construct the citizens' mental states and interior thoughts so that their values and desires can constitute the ground that enables legislators, judges and officials to construct the best possible rules, directives or legal decisions according to the citizens' values as represented in their beliefs. On the contrary, they will look outward to *what* is of value and *why* certain states of affairs and doings are valuable (see the discussion on practical knowledge as non-observational Section 2, c). Reasons for actions as values and goods that are the grounds of legal rules and directives will engage others' practical reason. Therefore, the citizens' practical reasoning power or capacity become an *actuality*. If, as I have argued, our intentional actions become *actuality* by an order of reasons in actions and for actions that are ultimately grounded on good-making characteristics, then legislators and judges need to conceive the order of reasons as good-making characteristics that will ground their legal rules, legal directives and decisions. Judges and legislators would hence take the first-person deliberative stance as the privileged position of practical reasoning to disentangle *what* good is required and *why* it is required. In other words, if as judge or legislator you intend that your legal rule or directive is to be followed by the addressees and, *arguendo*, because these legal rules and directives are grounded on an order of reasons, then you cannot bring about this state of affairs, i.e. rule-compliance, without thinking and representing to yourself the underlying order of reasons. Let me give a simple example. You are writing an instruction manual on how to operate a coffee machine. You need to represent to yourself a series of actions and the underlying order of reasons to guide the manual's users. If you are a person of certain expertise, e.g. a manufacturer of coffee machines, then the practical knowledge that entails the underlying order of reasons is actualized without much learning and thinking. The required operating instructions are actualized as a native English speaker speaks English, after being in silence. By contrast, if you have only just learned to write instruction manuals

for coffee machines, then you need to ask yourself 'Why do it this way?' at each required action to make the machine to function. This process guarantees understanding of the *know how* to operate the machine, and the success of the manual is measured by the fact that future buyers of the coffee machine are able to operate it. When legislators and judges create legal directives and legal rules they operate like the writers of instruction manuals, though at a more complex level. They need to ensure that the addressees will decide or choose to act intentionally to comply with the legal rules or directives and thereby bring about the intended state of affairs. But they also need to ensure that the order of reasons is the correct one so that the intended state of affairs will be brought about by the addressees. We have learned that the early stages of an intentional action are 'swallowed up' by the later stages and ultimately by the reason as a good-making characteristic that unifies the series of actions. Thus, for addressees with certain rational capacities and in paradigmatic cases, understanding the grounding reasons as good-making characteristics of the legal rules and legal directives will enable them to decide or choose to comply with the rule and will guide them through the different series of actions that are required for compliance with the rules and directives.

Legal rules and directives do not exist like houses, chairs, tables or cups of tea. We need to follow them for them to exist. But we create legal rules and directives as we create houses, chairs, tables. We bring these things about by exercising our practical capacity and we are responsive to an order of reasons as good-making characteristics that we, as creators, formulate and understand. Thus, builders create houses that are either majestic or simple, elegant or practical, affordable or luxurious. To achieve the intended features of a house, builders need to select specific materials and designs, hire skilled workers, and so on. Similarly, legislators, officials and judges create legal directives and rules to pursue a variety of goods, e.g. to achieve safety, justice, the protection of rights and so on. Legislators, officials and judges actualize their practical reasoning by creating an order of reasons in actions that will ground rules so that we are able to comply with them because we actualize our practical reasoning. Like builders, legislators, officials and judges need to choose values, goods and rights that will be fostered or protected by their rules or directives. Likewise, they need to formulate legal rules and directives that will have appropriate sanctions, are clearly phrased and follow procedures for their

publicity. Arguably, what is at stake is not the mere publicity of a rule, but the publicity of the values that are embedded in the set of legal rules and principles. In this way, judges make the addressee of a directive choose or decide to actualize their potential practical reasoning capacity to comply with legal rules and directives. The addressees of a legal directive or rule are not like bees, who without decision and, given normal conditions and the absence of impediments, will pollinate the foxglove. As addressees of legal directive and legal rules, we need to choose or decide to bring about a state of affairs or things which are intended by the legislator, official or judge. This can be summarized as the idea that legal authority operates under the guise of an ethical-political account since it needs to present legal rules and directives as grounded on reasons for action as good-making characteristics.

As rational creatures, we are responsive to reasons as grounded in good-making characteristics, but if this is truly the case, how do mere expressions of doing as brute facts, such as ‘because I said so’, or beliefs, intentions or reasons construed as *mere* mental states make possible the *actuality* of our practical reason? In fact, this is only possible if ‘because I said so’ involves reasons in action that are grounded in good-making characteristics, e.g. ‘I am the authority and compliance with the authority has good-making characteristics’. For example, compliance with authority is a secure way that some goods – apparent or genuine – will be achieved. The potentiality/actuality and capacity/change discussion shows that as intellectual and rational beings, we need to apprehend the ‘form’ that underlies the brute fact ‘because I said so’, so that we are able to comply with legal directives and rules. As theoreticians, we now understand the limits of the empirical explanation of action, i.e. it has no ‘form’ that makes intelligible the actuality of our practical reason and explains the dynamic reality of our intentional actions. Of course, we can decide that there is no such a thing as practical reason and that it is perfectly reducible to theoretical reason³⁸, but then the price we pay for this simple approach is too high: it leaves a set of human actions and the phenomenology of our first-order or deliberative stance in the mists of mystery.

³⁸ See Enoch 2011 for a recent defense of the reductive approach. See Rodríguez-Blanco 2012 for a criticism of his position.

The 'form' takes the shape of goods and values that are intended to be achieved by legislators, officials and judges. If it were a matter of mental or social facts, and we were able to apprehend the brute fact 'because I said so' by our senses, or access legislators' and judges' reasons and values via our mental states *only*, without directly engaging with values and reasons, then how could we control and direct the doings and bringing about that are intended by legislators and judges? Some stages of the action will *seem* this and other stages will *seem* that. There is no way to bring about *this* and not *that*. Let us take the example of ASSISTANCE AT THE CAR ACCIDENT. I assist the official at the car accident *because he has said* so. I have no reason to assist him at the car accident; my action is only *caused* by my fear of sanction, i.e. a psychological impulse in me. But now as I am merely guided by my senses, it *seems* to me that I need to put the bandage on in this way rather than that way, but my sight alone cannot guide me on this. Since I am guided by my eyes and other senses, I do not know *why* I should apply the bandage or *how* I should apply the bandage. Furthermore, how can we attribute responsibility as we cannot be blamed for not 'seeing' or 'hearing' appropriately? By analogy, mere scribbles on the board by the teacher cannot make the pupil understand the topic that the teacher is teaching. The teacher needs to make transparent the premises and conclusions of her arguments so that the pupils can 'grasp' the form of the argument and can *themselves* infer its conclusion.

Let us return to our initial example. Citizen 'c' stops at the red traffic lights on her way to work. If we ask her 'why are you stopping at the red traffic lights?' and we are satisfied with the empirical explanation which is, 'because there is a secondary rule that is accepted by the majority of the population and this establishes the validity of the rule "citizens ought to stop at red traffic light"', then how can we attribute responsibility to citizen 'c', who just happen to have certain mental states? How can citizen 'c' produce the required action just by remembering her mental state? By contrast, within the framework of the notion of practical reason that we have defended in this article, she will *naïvely* reply, 'because the legal rules say so', and to reach intelligibility we could continue by asking, 'why do you follow what the legal rules say?'. She could then *naïvely* reply, 'because I do not wish to damage my vehicle or other vehicles and I do not wish to kill other people'. We can try to reach yet further intelligibility of her actions and ask, 'why do you not wish to damage other people's

vehicles or kill people?', and her reply will be, 'because property and life are valuable'.

We are now in a position to understand that citizen 'c's answers have a structure which is the structure of practical reason, where reasons are connected to other reasons, whose chain has a finality. The finality is provided by the agent from the first-person or deliberative perspective when she advances a value or good-making characteristic that swallows the earlier stages of the action and provides intelligibility to the movements of 'c's body. This explanation seems primary and more fundamental than the explanation in terms of acceptance-beliefs, reason-beliefs as a mental state of either primary or secondary rules of the legal system or exclusionary reasons.³⁹

If citizen 'c' decides not to stop at the red traffic light because she is driving her neighbour to the hospital, who is dying, then to the question 'why are you not stopping at the red traffic light?', she might reply, 'don't you see it? My neighbour is dying and I need to get to the hospital as soon as possible'. And to the question, 'why do you need to bring him to the hospital as soon as possible?' she might reply, 'because I want to save his life'; in response to the question 'why do you want to save his life?', the answer will be, 'because life is valuable'. This set of answers will give intelligibility to her actions, which includes the movements of her body and what she produces, i.e. a vehicle moving in the direction of the hospital, and will also explain why she did not stop at red traffic lights. Thus, she went through the red traffic light not because of her belief that on this occasion there was no valid legal rule, nor because of her belief that the rule of 'stopping at red traffic lights' does not protect or ensure values such as property or life. Her mistake lies, arguably, in *not* 'perceiving' that the life of her neighbour is as valuable as the lives of pedestrians and the drivers of other vehicles. Her mistake lies in her understanding of the goods or values at conflict in the particular situation.

The classical model of practical reasoning and intentional action laid out the view that for an action to be controlled and guided by the agent the reasons need to be *in the action* and therefore transparent to the agent (see Section 2, c). The answers to the question 'Why'? provide the order of reasons that guarantees successful compliance with the legal rules and

³⁹ Raz's exclusionary reasons account (Raz 1999) privileges the theoretical point of view. See also footnote 5 above.

directives by the agent. They are the *reasons in action* that the agent has together with the values or good-making characteristics that the legislator and or judges aim to promote and want the citizens to ‘grasp’ as the grounding of their actions. The transparency condition of practical reason warrants that the citizen is able to engage with the good-making characteristics that ground legal rules. But if the order of reasons is opaque, how can there be an action as intended by the legislator or judge as an order of reasons that has as a finality a value or good-making characteristics? If the reasons are opaque and you do something ‘because someone says so’ you do not know ‘why’ you are performing the action and therefore the action is not intentional. Furthermore, one might assert, the legislator, judge or official is not the origin of change and the origins of change are in external empirical factors, e.g. the fear *mechanism* that acts within the agent, psychological processes in the agent, mental states such as beliefs, acceptance-belief or reasons-belief, and so on.

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