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Introduction

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Outline

Can an agent act out of normative considerations without engaging with the moral quality of their actions? Contrary to common understanding, a lot of philosophical work assumes a positive answer to that question. Accordingly it is not unusual to read in philosophical accounts that practical agency can be understood in the relation between some (normative) fact and a token of conduct; or in the relation between some mental state and a token of conduct. As long as an explanation of conduct can be plausibly offered in the light of either facts or mental states, an account of practical agency is considered successful. Such accounts of practical agency abound: 'Mary takes her umbrella because it rains'; or, to take another example, 'Mary evades paying her taxes, because she intends to free-ride on her fellow citizens.' No doubt these accounts fit well the model of theoretical explanation, yet they remain markedly insufficient for capturing what is practical about normative agency.[1] *For, in all those cases, there is a lingering sense that a fully-fledged practical account would need to demonstrate how the cited facts or intentions feature in agency qua agency-guiding items.*

The collection of essays at hand questions – for the first time in such explicit terms – the plausibility of accounts of normativity that eschew the link between agents and reasons for action. In challenging these accounts it illustrates the inadequacy of partial explanations of action, such as those that take normativity to reside in normative facts or outside agents, or to be reducible to psychological items, which pay no heed to mind-independent standards of action. The contributors, all leading or emerging scholars working in legal and practical philosophy broadly conceived, engage trenchant arguments to demonstrate the shortcomings of such views in respect of three key aspects of any account of practical

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[1] Besides being mutually incompatible.

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normativity: the normative meaning of action; the grounding of legal authority; and the relevance of social institutions to any such account. What emerges, far from some joint doctrine common to all contributors, are the ingredients of a theory in whose core resides the idea that a successful account of practical normativity needs to integrate intentions with reasons for actions. It is envisaged that the strong appeal of the suggested solution will invite thinkers in law and philosophy to engage further in the debate.

The standard picture

Arguably, a key controversy surrounding accounts of normativity concerns the understanding of what renders such accounts *practical*. While all sides in the debate claim to offer a 'practical' account, opinion as to what counts as 'practical' diverges considerably. Yet, even taking this divergence into account, most – if not all – accounts seem to be in broad agreement about the explanatory tasks involved in such an enterprise. The first task involves demonstrating how normative items (reasons) are linked to agents as authors of their actions; and the second task relates to the constraint imposed by the need to show that normative reasons concern the merit of an action, independent of the subjective psychology of an agent.

The first task can be brought under the scope of 'internalism'. While the term 'internalism' was coined within the Humean tradition of accounts of practical philosophy (Williams's 'reasons internalism' is the most prominent such account) it has since then gained wider plausibility, even though it is still resisted by the more ardent moral realists:[2] they prefer to explain away internalism by assuming that knowledge of practical reasons is independent of and prior to any intentional items, including acting intentionally.[3]

For all its laudable contributions, internalism is for the most part grounded on agents' psychology. In other words, internalist accounts (especially those that remain close to the Humean tradition) frequently

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[2] See D. Parfit, *On What Matters* (New York: Oxford University Press, 2011); T. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2008).

[3] In particular with respect to reasons internalism the argument runs that moral reasons, once cognized by the agent, ought to cause her to develop the appropriate intentional states, unless there exists some defect in their moral psychology.

operate under the assumption that what makes anything 'practical' or 'action-pertinent' is its capacity to motivate the agent in a straightforward manner, free of reliance on any non-motivational items. While the requirement of motivation can be developed in different ways, many accounts impose the following stringent condition: for any practical standard to remain internalist in an appropriate manner, it must be the kind of thing that is psychologically efficacious and to which agents have unmediated access when they reason – namely, a mental state. This condition comes at a high price, however, since if practical reasons are confined to mental states, it is difficult to see how they could offer anything more than (causal) explanations of action. Reasons, in this context, would rather be accounts of mere causal links between the action undertaken (*explanandum*) and some intentional state of the agent (*explanans*), and would be in isolation from anything that may feature as explanation qua normative standard for the action undertaken.

The second explanatory task involved in an account of practical normativity is to spell out the relationship between reasons as 'explanations' of actions, which do not collapse into the subjective psychology of agents, but instead derive their authority from their capacity to justify the action under consideration. That justificatory dimension of normativity features prominently in cognitivist accounts of practical reasons, such as those advanced by moral realists. Simplifying somewhat, moral realism considers normative reasons to explain actions in virtue of their being (agent-independent) facts about what ought to be done. In so arguing, realists take the justificatory task of normative reasons to be antecedent to the explanatory one.

Some refinement is needed here, lest one jump to the conclusion that realist accounts eschew any connection between reasons and the agent's intentional environment. Rather, the realist account requires that the agent be in some cognitive mental state (belief or, should one subscribe to the view that it is a mental state, knowledge), which puts them in touch with the appropriate normative reason. To that extent it is true that the explanation of action, under the realist model as well, requires the presence of agential mental states. It is arguable, however, that cognitive mental states do not contribute any additional practical input to the explanation of action other than the propositional content of the normative reason which they (purport to) represent. To that extent it is the normative reason that explains the relevant action, rather than any intentional state of the agent. That is why, on the proposed understanding, it is antecedent belief/knowledge of a reason which can, by itself,

explain the action performed. Accordingly, if I believe/know that there exists a normative fact R, such that 'I ought to Φ', then intending to Φ is merely what I ought to do if my Φing is to be explained appropriately.

Among the problems emerging from that account is that if normative reasons provide the required justificatory reasons for action independently of the explanatory reasons for actions from the agent's point of view, then it becomes difficult to explain the persistence of complex actions over time. Moral realists can explain justificatory reasons for action but not reasons in the action and when the agent acts. In other words, they cannot explain the reasons that the agent had and on the basis of which he persisted in his actions. Furthermore, control and guidance are interconnected. The reason needs to be transparent to the agent from the deliberative point of view in order to be able to guide the agent and for the agent to be in control of his reasons *during the action.* Furthermore, the realist account has the tendency to portray normative knowledge as theoretical. Given that in order for agents to connect to reasons they are required to acquire some relevant cognitive state, it is hard to see how the realist account of normativity can fail to turn into a theoretical one.

Towards an integrated account of intentions with reasons

It would seem that a key shortcoming of both the internalist and moral realist accounts of practical normativity is a tendency to focus either only on states of agents which causally determine the origin of actions, or only on normative facts which, in determining permissibility, function as external constraints to agency. By contrast, a practical account of normativity – as several contributors to this volume suggest – should aim to integrate intentions with reasons in a twofold manner: on the one hand, it is not the case that intentions should, or could, be confined to internal states of agents when it comes to accounting for action. Increasingly philosophers have come to realize that intentions are wedded to the actions they explain in a manner that encompasses the normative meaning of those actions. For, as Anscombe notably remarked, a practical account of intention entails that to intend to act is already to be in the process of doing the action. Intending to act is thus not something that could be the efficient cause of that whole process but, conversely, needs to be informed by it.

Mutatis mutandis there is a parallel case to be made about realist accounts of reasons. Standards of permissibility or normative correctness, unless they form part of the agents' intentionality, will fail

to determine the meaning and, further, provide an explanation of the act they are called to explain. Stripped of their explanatory power, realist reasons would cease to be about this or that action, when it happens, but would merely relate to it as a token act relates to a type act. Yet the kind of explanation provided by token type correlations fails to capture the *practical difference* that reasons for action make; that is, their contribution to the meaning of action and agency in a manner that is asymmetric to the contribution of other non-practical or speculative items, which for that reason cannot replace an account in terms of practical reasons.

Producing an integrated account, however, is no small task, and surely not one within the scope of this collection. For present purposes, some signposting should suffice. The task of an integrated account will most certainly appear too demanding, or even insoluble, if one approaches it as a theoretical or speculative task. For, in that case, one would be starting with isolated intentions, reasons, and actions, and seek to establish connections between them only at later stage. As we saw earlier, this two-stage model assumes the existence of self-standing items – intentions, and reasons – which are *practical* antecedently to their connection to agents and their actions, and which proceed to explain[4] action as being practical on the basis of those items: either because it can be causally explained by them, as in the case of internalist accounts, or because it can be subsumed under them, as in the case of realist justification.

It would seem, then, that an integrative approach ought to part with the kind of theoretical knowledge that undergirds the two-stage model of normativity and seek to offer an account in terms of *practical knowledge*. Practical knowledge has been a recurrent theme in philosophical debates on reasons despite the lack of a uniform treatment of the term. Aristotle and Kant, to name the two most prominent defenders of the idea, seem to place great importance on the existence of a special kind of knowledge which pertains to our grasp of reasons for action. Yet many philosophers have argued that the lack of any uniform understanding of practical knowledge by those thinkers suggests that there exists no single useful

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[4] Recall that, in the case of internalist accounts, explanation takes the form of causal explanation, where intentions function as sufficient causes for action. Conversely, in the case of moral reasons qua facts, on which realist accounts rely, the explanation takes the form of a 'justification' which is generated by subsuming a token act under a type act. This kind of justification counts as theoretical in that it requires assertion of a (moral) fact independently of the agent who acts and the action undertaken.

concept of practical knowledge: Aristotelian accounts (especially in their Anscombian variation) place the emphasis on the capacity of the agent to know what they are doing. Conversely, Kantian accounts focus mainly on the capacity to know what it is right to do.

Careful consideration of the two seemingly opposing positions might suggest that they merely represent different aspects of a single capacity or power: that is, the power to act through reasoning.[5] Acting through reasoning can accommodate Aristotelian and Kantian intuitions in a coherent manner. The key supposition here is that when we act through reasoning we are involved in two operations. On the one hand, we are reflecting upon what is good to do, *simpliciter*. On the other, we attend to reasons *as we engage in the process of doing the action intentionally*. Such an interpretation would suggest that practical knowledge, through the capacity to act through reasoning, combines knowledge of what the agent is doing with knowledge of what it is good to do. If the picture adumbrated here can lay claim to plausibility, practical reasoning and the capacity to act through it emerge as crucial ingredients of practical knowledge. While this is neither the time nor the place to develop that idea further, it seems that practical reasoning ought to occupy centre stage in accounts of practical normativity, and can certainly be considered an implicit theme unifying most of the contributions in the present volume.

Positioning the volume within the current debate

The unappealing picture of the fragmented relationship between reasons, intentions, and action, which is supported by the two-stage model, has

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[5] For this idea and an illuminating development of it see the excellent paper by Sebastian Rödl, 'Two Forms of Practical Knowledge and their Unity', in A. Ford *et al.* (eds.), *Essays on Anscombe's Intention* (Cambridge, MA: Harvard University Press, 2011), 211–41. Rödl's arguments build on more foundational work on the role and nature of powers in practical reasoning, to be found both in classical and contemporary authors. See, among others, Aristotle, *Physics, Books III and IV*, trans. E. Hussey (Oxford: Clarendon Press, Clarendon Aristotle Series, 1983); Aristotle, *Metaphysics Book Θ* with commentaries and introduction by S. Makin (Oxford: Clarendon Press, Clarendon Aristotle Series, 2006), 133; T. Reid, *Essays on the Active Powers of Men*, ed. Knud Haakonssen and James Harris, a critical edition (Edinburgh University Press, 2010); U. Coope, 'Change and its Relation to Actuality and Potentiality', in G. Anagnostopoulos (ed.), *A Companion to Aristotle* (Oxford: Wiley-Blackwell, 2009); T. Pink, 'Power and Moral Responsibility', *Philosophical Explorations* 12 (2009), 127–49; H. Steward, *A Metaphysics for Freedom* (Oxford University Press, 2012); G. Yaffe, *Manifest Activity: Thomas Reid's Theory of Action* (Oxford University Press, 2004).

led many philosophers to question – in more or less explicit terms – its premises. While there is no unified approach emerging as yet in the literature, the most common strategy is to side with either intentions or reasons with an eye to articulating a more appealing alternative. Thus a number of authors have attacked the relevance of intentions to questions of permissibility (Scanlon), or otherwise undermined the importance of intentional accounts of normativity (Raz, Scanlon). Conversely, others have placed the emphasis on intentions over reasons (as normative facts) in order to illustrate what is practical about normative agency (Bratman). Exceptions to such dualistic approaches are those accounts of neo-Aristotelian or Kantian orientation that argue that reasons and intentions are constitutively interconnected through practical reasoning. Their merit notwithstanding, such accounts are often strongly indebted to the intellectual tradition of Aristotle or Kant, failing to articulate arguments that appeal to those working outside these traditions.

Nowhere does the disparity between the two models of normativity play out more strongly than in the domain of law. While the richer debate in the philosophy of normativity has made significant progress in exploring connections between intentional action and reasons, scholarship in law has shunned direct inquiry into the relationship between reasons and intentional action. As a result, despite the new vindication of old (and interesting) ways of understanding practical reason and reasons for action in philosophy, the connection between practical reason and law remains elusive in contemporary legal theory.

The contributions in this volume, some originating in legal philosophy and others in the general philosophy of agency, are linked to one another by making law their implicit or explicit focus. As such, in addition to advancing important new philosophical positions, they also generate fresh argument on a number of topics in the domain of legal philosophy and the legal doctrine. The volume comprises three parts: Part I, 'The normative meaning of actions'; Part II, 'Normativity of legal authority'; and Part III, 'The social dimension of normativity'.

In Part I the authors raise questions about the relevance of intentions and reasons in determining the normative meaning of actions. The task is carried out in a number of ways including by asking how intentions and reasons contribute to the normative content of actions (Ulrike Heuer); by assessing the model of rationality that underlies standard accounts of intentional action (Sergio Tenenbaum); and, finally, by scrutinizing a particular understanding of the contribution of intentions to the meaning of legal authoritative enactments, which is traditionally employed in

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so-called originalist accounts of the semantic content of legal propos-
itions (Heidi M. Hurd; Ori Simchen).

The contributions in Part II aim to challenge the standard picture of
legal authority. Legal obligation, in involving different orders of agents
(those who issue and those who incur the obligation), displays a seeming
asymmetry of structure: there is a sense in which a person acceding to
another person's order or request does that person's will rather than his
own. Yet the order or request does not override his will: he chooses to do
the other's bidding, and he presumably has his reasons for doing so. To
that extent an adequate account must capture both the sense in which
he does this other person's will and the sense in which he does his own.
Matthew Hanser, Veronica Rodriguez-Blanco and Antony Hatzistavrou
tackle the asymmetry in contradistinction to Joseph Raz's service
conception of authority. In the remainder of the second part of the volume
the authors take issue with the stand-alone model of legal obligation,
which is often taken to presuppose the idea of coercion. Painting with a
broad brush, the claim is that because legal obligation conceptually
requires some fact or instance of authoritative imposition by institutions
(coercion), the law generates special obligations which are distinct from
other reasons we have. This assumption is scrutinized, and eventually
rejected, in the chapters by A. J. Julius, William A. Edmundson, Ben
Laurence, and George Pavlakos.

Part III of the volume collects essays by Kenneth M. Ehrenberg, Joshua
P. Davis and Manuel Vargas, and Bruno Verbeek. All three contributions
engage in some form with the question about the possibility of an
account of legal normativity in terms of social facts. While such accounts
might prima facie be considered bad candidates for practical accounts
of normativity, the contributions do not aim to dismiss the practical
element of normativity. Rather, they propose to offer accounts of social
practices which explain how such practices generate reasons for their
participants, while retaining the explanatory neutrality of social sciences.

PART I

The Normative Meaning of Actions