

## THE IMPORTANCE OF 'THE GAP'

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The gap is a phenomenon affecting the rationality of following rules. 'The Gap' is an article published by Larry Alexander in 1991, in which Alexander, with characteristic brevity, identified the gap as a central dilemma affecting rule-following and the authority of law. 'The heart of the problem of rules and law is this: There is an always-possible gap between what we have reason to do, all things considered . . . and what we have reason to have our rules . . . require us to do.'<sup>1</sup>

Rules are relatively determinate prescriptions designed to produce consequentially desirable results when regularly followed over time. The benefits of rules come from the expertise and perspective of the rule-making authority and the capacity of general, determinate rules to coordinate the conduct of those who regularly follow them. The intrinsic generality and determinacy of rules, however, also results in the gap Alexander described: the rule-follower's reasons for action on particular occasions will sometimes diverge from the prescription of the rule. Meanwhile, the fallibility of human reasoners ensures that the rule-follower will not always assess those reasons correctly, which brings us back to the need for rules. We know the rules will sometimes be wrong, but we may not judge accurately when this is the case. Consequently, rules will not be effective if they are offered merely as guides to conduct and not as firm prescriptions for all cases that fall within their terms. Hence the gap: we have good reasons to adopt binding rules, and we often have good reasons not to follow them.

Alexander then briefly surveys some possible ways to close the gap. One strategy is rule-sensitive particularism, in which an agent assessing whether to follow a rule takes full account of the benefits of regular rule-following and the extent to which those benefits will be lost if the agent does not follow the rule in a particular case. It might appear that in a world of rule-sensitive particularists, each rule be made subject to a general exception for cases in which an agent's reasons for action, including potential harm to the value of the rule, favour defection from the rule. This general exception would then eliminate the gap: rules would require agents to comply only when reasons for action, broadly interpreted to include rule-based reasons, favor compliance. The rule-sensitive strategy, however, does not address the problem of fallibility: if all agents were omniscient and free from inferential error, rule-sensitive particularism might succeed. Real-world agents, however, will sometimes err in assessing reasons for and against defection. Consequently, rule-sensitive defection is not an effective solution to the gap.

Other gap-closing strategies also come up short. Frederick Schauer's approach, which he has called 'presumptive positivism', adds a presumption in favor of rule-following to the rule-sensitive strategy just described. This solution narrows the gap, but does not eliminate it.<sup>2</sup> Adding a credible threat of punishment for violation of a rule might close the gap, because the prospect of punishment alters an agent's reasons

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<sup>1</sup> Larry Alexander, 'The Gap' (1991) 14 *Harvard Journal of Law and Public Policy* 695, 695. 'The Gap' is a response to an article by Frederick Schauer ('Rules and the Rule of Law' (1991) 14 *Harvard Journal of Law and Public Policy* 645) and to Schauer's then unpublished book, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-making in Law and Life* (1991). It was published as part of a symposium on Schauer's work and presented at the first significant academic conference of my career, at the University of San Diego.

<sup>2</sup> This proposal appears in Schauer, 'Rules and the Rule of Law', above n 1, 691-94.

for action. A threat of punishment, however, is not credible without a system of enforcement, and the enforcement of rules depends on the willingness of officials to punish rule-violations that may have been justified, or at least excusable, in light of the facts before the agent at the time of violation. Nor does the legal pedigree of a rule of law, or the force of a commitment to follow the law, solve the gap, because neither legality nor prior commitment generates a first-order reason for action capable of altering the agent's current balance. So the gap perseveres.

These insights are very significant and, in my view, correct. 'The Gap' led to a book in which Alexander and I greatly expanded his elegant eight pages, examining solutions to the gap in greater detail and continuing to find them unsatisfactory.<sup>3</sup> More recently, I have returned to the problem in an effort to give a more precise philosophical definition to the problem raised by the gap. My interest lies not only with the implications of the gap for law, but with its implications for other practices, such as promising, that combine a generalized commitment with particular actions.

The gap, as Alexander describes it, is a gap between the agent's reasons to commit to follow a rule or a system of rules and the agent's reasons to act on this commitment by following the rule in particular cases. The implication of the gap (and of 'The Gap') is that it may be rational for an agent to adopt a rule, and yet be irrational, in some sense, for the same agent to follow the rule when reasons for action at the point of application support breaking the rule. If this is correct, then some form of irrationality must intervene to sustain the authority of law. The questions I address briefly here are what sort of irrationality is at stake, and whether irrationality of this kind matters for law. My conclusions reinforce my original view, 25 years ago, that Alexander was correct: the gap he described in 'The Gap' remains unresolved and is indeed at 'the heart of the problem of rules and [...] law.'<sup>4</sup>

Rationality is often equated with practical rationality, or rationality in action: rational agents act or choose to act in ways that will advance their ends. Traditional models of practical rationality hold that the rationality of a decision to act depends on the agent's current assessment of the reasons for action.<sup>5</sup> The implication for rule-following is that following a rule is irrational whenever it would be better, all things considered, to break the rule. That is, rule-following is irrational in all cases that fall within the gap.

A number of philosophers concerned with practical rationality, however, have developed 'temporally extended' models of practical rationality. Models of this kind allow prior deliberation to affect the rationality of current choices. Applied to the problem of rule-following, they offer a way around the adverse implications of the gap.<sup>6</sup>

In my view, the most promising theory of temporally extended practical rationality is Michael Bratman's planning theory, which relies on the capacity of prior intentions to control current actions.<sup>7</sup> Bratman argues that in certain circumstances, standards of practical rationality permit agents to act on prior intentions that were rational when formed, without engaging in further deliberation at the point of action.

<sup>3</sup> Larry Alexander and Emily Sherwin, *The Rule of Rules: Morality, Rules, and the Dilemmas of Law* (2001).

<sup>4</sup> Alexander, above n 1, 695.

<sup>5</sup> See, eg, Derek Parfit, *Reasons and Persons* (1984) 87.

<sup>6</sup> See, in particular, Michael E Bratman, *Intentions, Plans, and Practical Reason* (1987). See also, eg, David Gauthier, 'Intention and Deliberation' in P Danielson (ed) *Modeling Rationality, Morality, and Evolution* (1998) 41; Edward McClennen, 'Pragmatic Rationality and Rules' (1997) 26 *Philosophy and Public Affairs* 210; Scott J Shapiro, 'The Difference That Rules Make' in Brian Bix (ed) *Analyzing Law: New Essays in Legal Theory* (1998) 33.

<sup>7</sup> See generally Bratman, above n 6.

Specifically, an agent is rational in acting on her prior intentions without reconsidering if, in doing so, she is guided by reasonable dispositions to retain intentions over time, reasonably applied to particular cases. Reasonable dispositions toward prior intentions are those that serve the agent's long term interests. Thus, if the agent has good long term reasons to retain and act on certain types of intentions, or to act on prior intentions below a certain threshold of apparent error, then the agent is rational in doing so without consulting current reasons for action at the time she acts.

Bratman's theory of temporally extended rational agency rests on the instrumental value that stable intentions have for agents with limited deliberative resources. Stable intentions allow agents to bypass future deliberation and thus to make effective plans. In the context of rule-following, they may also enable the agent to obtain the benefits of coordination and rule-maker expertise over time.<sup>8</sup> If so, and if the agent's disposition to follow rules is beneficial in the long run, then it is rational for the agent to follow the rule in most or all cases without consulting current reasons for action.

Temporally extended rationality does not eliminate the gap generated by authoritative rules, but it may have the potential to neutralize the gap by establishing that it is rational to act unreflectively on a prior intention to follow a rule, whatever the agent's unexplored current reasons for action may be. Through the mechanism of action on prior intentions, systematic rule-following becomes broadly rational, despite the theoretical problems raised by the gap. There are some flaws in this defense of rule-following. One is that intentions themselves are general, so that the gap can easily reassert itself in specific applications of an intention. Another is that intentions normally are understood to be subject to revision. Consequently, an effective theory of temporally extended practical rationality, capable of avoiding the gap, must provide reliable criteria for judging the reasonableness of the dispositions that determine whether and when an agent will reconsider her intention.

I will set these problems aside and suggest instead that the principal reason why temporal extension of practical rationality cannot justify rule-following in the gap is that it fails to address the epistemic side of rationality. Epistemic rationality is rationality in belief. I will assume, without defending, several features of epistemic rationality. First, epistemic rationality is truth-oriented in the sense that it requires a connection between the grounds of an agent's beliefs and the probable truth of those beliefs. Second, epistemic rationality is synchronic: standards of epistemic rationality assess the agent's current justification for current beliefs rather than her long-term attitudes and habits of belief-formation.<sup>9</sup> Third, I assume, more controversially, that the best theories of epistemic rationality are 'evidentialist' theories, holding that the rationality of a belief depends on an objectively reasonable fit between the agent's evidence and her beliefs.

Given Bratman's extension of practical rationality over time through the mechanism of action on intentions, and my assumptions about the conditions for epistemic rationality, the demands of practical rationality and epistemic rationality can

<sup>8</sup> In his study of rationality, intentions, and plans, Bratman was not concerned specifically with rule-following. Scott Shapiro, however, refers extensively to Bratman's planning theory and other theories of extended practical rationality in his discussions of the authority of law. See Shapiro, above n 6, 118-24, 193-95.

<sup>9</sup> This assumption holds true for process-based theories of epistemic justification as well as evidence-based theories of justification. Most process-based theories ask whether token current beliefs are justified by the processes by which the agent formed them, not whether the agent generally pursues truth-conducive habits of belief formation. See Alvin Goldman, 'What is Justified Belief?' in George Pappas (ed) *Justification and Knowledge* (1979) (presenting a theory of process-reliabilism).

diverge. In particular, they will diverge in the circumstances Alexander describes in 'The Gap'. An agent may form a practically rational intention to follow a rule in all cases governed by the rule, based on a set of epistemically rational beliefs about the coordination and other benefits of following the rule in all cases. Later, the same agent may encounter a case in which it is practically rational to act unreflectively on her intention to follow the rule, but epistemically rational, based on current evidence, to believe that she should not now follow the rule. The interesting question, for the purpose of assessing the importance for legal theory of Alexander's observations in 'The Gap', is whether the divergence between practical rationality and epistemic rationality represents a genuine conflict or a reconcilable divergence between concepts that differ in scope.

Proponents of temporally extended practical rationality are likely to say there is no genuine conflict between practical rationality and epistemic rationality because a practically rational agent who has formed an intention to follow a rule, and later is caught in the gap, can rationally follow the rule without reflection. If her reasonable dispositions lead her to follow the rule unreflectively, she will never form a belief about reasons for action and so will never have occasion for epistemic irrationality. Thus, in the area of the gap, practical rationality prevents epistemic rationality from coming into play.

Notice that this argument does not rest on the claim that the rationality of an action is unaffected by the agent's current beliefs. According to Bratman, practical rationality is extended across time when an agent forms a rational intention, reasonably retains the intention, and later acts on it without reflection. Like most other theories of temporally extended rationality, however, Bratman's theory assumes that intentions are always open to reconsideration based on current reasons for action. Thus, if an agent first forms an intention to follow a rule, then later reflects on current reasons for action and concludes that she ought not follow the rule, or that she ought not follow it in a particular case, it is no longer rational for her to follow the rule.<sup>10</sup> Reconsideration, in these circumstances, occurs automatically, as soon as the agent forms the belief that she ought not to act as intended. What Bratman adds, to extend practical rationality over time, is the possibility of unreflective action on intentions when unreflective action is consistent with practically rational dispositions toward intentions. The argument, then, is not that practical rationality is indifferent to, or overrides, beliefs about action, but that beliefs about action are not always required.

It follows that the crucial question, in determining whether it can be rational for an agent to follow a rule in the gap, is what responsibility, if any, epistemic rationality imposes on agents to form beliefs about reasons for action. One possible answer is that the only condition necessary to epistemic rationality is that if and when agents do form beliefs, their beliefs must match their evidence. If this is the limit of epistemic rationality, then it will often be rational, overall, to follow rules in the circumstances of the gap. Rules, regularly followed, serve valuable practical ends, in particular by supporting intrapersonal and interpersonal coordination. Accordingly, a disposition to follow rules in most cases, without further reflection, is practically rational, even in cases that fall within the gap. As long as the agent has formed a practically rational intention to follow a rule, and does not reflect further on reasons for action, epistemic rationality plays no role and the agent rationally should follow the rule. Accordingly, the impact of the gap is limited to the relatively few cases in which agents ignore their

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<sup>10</sup> See, eg, Bratman, above n 6, 16-17 (discussing reconsideration of intentions). Gauthier implies the same. See Gauthier, above n 6, 44 (offering a revised version of the effects of prior intentions). McClennen seems to say that it remains rational to act, but his approach may be limited in scope. See McClennen, above n 6, 232 (defining 'Resolution').

practically rational dispositions to act on rules that, in the long run, produce good personal and social results. Moreover, we should not worry about this remaining effect of the gap, because those few agents who depart from the rules are acting irrationally. We can simply dismiss them as unjustified anarchists.

It is possible, however, to make a case for a stronger ethics of belief that imposes responsibility on agents to form beliefs about reasons for action in circumstances such as those presented by the gap. An epistemic standard of this type, applied in the context of rules that are justified in the long run but produce incorrect outcomes in particular cases, may also have logical priority over the requirements of extended practical rationality espoused by Bratman. If so, then rationality requires defection from the rules and the gap remains a serious dilemma for legal authority.

In the 19<sup>th</sup> century, W K Clifford raised the problem of epistemic responsibility to respond to evidence with belief.<sup>11</sup> Clifford told the story of a shipowner who had doubts about the seaworthiness of his ship. The shipowner suppressed these doubts and convinced himself that the ship was safe, based on its prior record and the benevolence of God. He then sent the ship on its way with passengers; it sank. Clifford said that the shipowner:

*had no right to believe on such evidence as was before him.* He has acquired his belief not by honestly earning it in patient investigation, but by stifling his doubts. And although in the end he may have felt so sure about it that he could not think otherwise, yet inasmuch as he had knowingly and willingly worked himself into that frame of mind, he must be held responsible for it.<sup>12</sup>

There are several ways to read this passage. Clifford may be suggesting only that an agent must not form beliefs that contradict her evidence. On the other hand, his criticism of the shipowner for 'stifling his doubts' indicates that an epistemically rational agent must not disregard evidence in her possession when assessing reasons for action. Thus, the shipowner erred not only by believing a proposition his evidence did not support, but also by failing to take account of current evidence against the action he proposed to take.

More recently, epistemologists have expressed a range of views on the question of epistemic responsibility to form beliefs in response to evidence. Thomas Kelly, for example, argues that evidence is normative for agents: for all agents, having a particular set of evidence creates an epistemic reason to believe what their evidence supports.<sup>13</sup> Thus, in Kelly's view, '[i]f, despite my utter lack of interest in the question of whether Bertrand Russell was left-handed, I stumble upon strong evidence that he was, then I have strong epistemic reasons to believe that Bertrand Russell was left-handed'.<sup>14</sup> If this is correct, then an agent who has evidence about current reasons to depart from a rule may be required as a matter of epistemic rationality to process the evidence and form a belief.<sup>15</sup>

<sup>11</sup> W K Clifford, 'The Ethics of Belief' (1886) 29 *Contemporary Review* 289.

<sup>12</sup> *Ibid* 290 (emphasis in original).

<sup>13</sup> Thomas Kelly, 'Epistemic Rationality as Instrumental Rationality: A Critique' (2003) 66 *Philosophy and Phenomenological Research Journal* 612. See also Thomas Kelly, 'Evidence and Normativity: Reply to Leite' (2007) 75 *Philosophy and Phenomenological Research Journal* 465 ('there is no gap between possessing evidence that some proposition is true and possessing reasons to think that that proposition is true.') In support of this view, Kelly notes that we typically treat reasons for belief as categorical for all agents, without reference to their personal epistemic goals.

<sup>14</sup> Kelly, 'Epistemic Rationality as Instrumental Rationality: A Critique', above n 13, 625.

<sup>15</sup> Kelly retreated somewhat from his initial position in an exchange with Adam Leite. Leite gave

In contrast, Richard Feldman takes the position that epistemic rationality requires a proper fit between the agent's evidence and beliefs she actually forms, but nothing more.<sup>16</sup> Questions about whether a rational agent should advert to evidence and form beliefs in response to evidence are practical or moral questions, not governed by epistemic standards. If so, then an agent who has evidence about current reasons to depart from a rule is under no epistemic obligation to advert to that evidence and form a belief; instead, she is free to act unreflectively on her prior intentions.<sup>17</sup>

At one end of the continuum of possibilities suggested by the literature is a standard of epistemic responsibility that requires agents to advert to all evidence in their possession, draw inferences from that evidence, and form beliefs that fit the evidence. This standard, however, imposes an unmanageable burden on agents. Even if evidence confined to facts of which the agent is aware and relevant background beliefs, human reasoners acquire far more evidence than they reasonably can process and translate into beliefs. Instead, we navigate through by declining to advert to or draw inferences from most of the evidence we acquire. It follows that not all evidence should be normative, or at least that not all evidence should require extended inferential reasoning of the type required to form a belief about current reasons for action. At the other end of the continuum is a standard that allows agents to ignore any and all evidence, and requires only that the beliefs agents happen to form should fit their evidence. This too is unsatisfactory, because it does not seem to capture common understandings of what it means to believe rationally.

One intermediate possibility might be a standard that requires agents to process evidence if and only if the evidence bears on questions of significant practical and moral importance. For example, Clifford's shipowner, knowing he was in the business of transporting passengers, and having possession of evidence suggesting that his ship was not seaworthy, might be required to advert to this evidence and form a belief about reasons for action. He would not, however, be required to advert to evidence about how many of his sailors were wearing blue hats, which was practically and morally inert for him. Questions about rule-following in the gap have practical and moral importance both for agents and for society in general, suggesting that agents should weigh evidence and draw inferences about whether to depart from a rule. The difficulty, however, is that this standard for response to evidence conflates epistemic rationality and practical rationality. To the extent that the motivation for a requirement to respond to evidence is practical, it presumably can be overcome by contrary

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the example of an agent who notices that many people leaving a certain building have dogs with them. As a result, the agent now had evidence that the next person to leave the building was likely to have a dog, but had no reason to believe the proposition that the next person was likely to have a dog. See Adam Leite, 'Epistemic Instrumentalism and Reasons for Belief: A Reply to Tom Kelly's Epistemic Rationality as Instrumental Rationality: A Critique' (2007) 75 *Philosophy and Phenomenological Research Journal* 456. Kelly's reply was that in Leite's example, the agent never considered the target proposition. The implication is that evidence is normative only to the extent that the agent entertains a proposition on which the evidence bears. In the context of rule-following, this may mean that evidence about reasons for action is not normative for an agent who is disposed not to reflect on propositions about current reasons for action. On the other hand, Kelly might say that evidence bearing on reasons for action is normative for any agent who recognizes that it may bear on some proposition in the form 'I should now . . .'

<sup>16</sup> Earl Conee and Richard Feldman, *Evidentialism: Essays in Epistemology* (2004) 178-79.

<sup>17</sup> Feldman, too, equivocates. Having said that epistemic requirements pertain only to the fit between an agent's evidence and her beliefs and impose no obligation to believe, he suggests that if an agent encounters evidence that contradicts a belief she now holds, she may be required to process that evidence and revise his beliefs. *Ibid* 186-88.

practical considerations.

Another possibility is to say that agents have no general responsibility to respond to evidence with belief, but that they must respond to evidence that tends to defeat beliefs they now hold. This is a strictly epistemic standard of responsibility: the agent must advert to evidence and draw inferences whenever she acquires new evidence indicating that her current set of beliefs needs adjustment. At first glance, it also appears to apply to the problem of rule-following in the gap. An agent who has formed an intention to follow a rule in all cases has new evidence indicating that she should not follow the rule in a particular case. Therefore, as a matter of epistemic rationality, she should examine her evidence and form a belief about what to do. Consequently, following the rule may be practically rational, but it is not epistemically rational. If this argument is correct, the significance of the gap is confirmed.

The difficulty with the argument is that in fact, the agent's new evidence about reasons to depart from the rule does not actually contradict her prior beliefs. An agent who forms an intention to follow a general rule in future cases does so on the basis of two related beliefs. One is that following the rule in all future cases will yield net benefits over time; the second is that in some of those cases, the best course of action, all things considered, will be to depart from the rule. Due to the possibility of error, the second of these beliefs does not contradict the first: regular application of the rule may still generate net benefits, even if the outcome of the rule in some of those cases is wrong, because the agent will not always make an accurate particular judgment about reasons for action. Strictly speaking, therefore, the standard of epistemic responsibility just proposed does not apply, because the agent's new evidence does not directly contradict her prior beliefs.

Only minor adjustments are needed, however, to fit the standard of responsibility just described to the problem of rule-following in the gap. It is rational, practically and epistemically, for an agent to form the intention to follow a rule if she believes that regular rule-following will produce better outcomes over time than case-by-case judgment over time, and if her beliefs fit her evidence. If, when the time comes to follow the rule, new evidence indicates that she should not follow the rule, this evidence does not contradict her initial belief but it does suggest a better belief, that the agent will do best if she regularly follows the rule except in the circumstances now before her. Acting on this new and better belief may not be *practically* rational, because the agent may be wrong. Her evidence may be incomplete or her inferences may be faulty. This is why she formed the intention to follow the rule in the first place. Epistemically, however, what counts is the fit between her beliefs and her current evidence, and the new belief is a better fit.

A standard of epistemic responsibility just proposed, requiring agents to respond to new evidence and refine their beliefs when the subject matter of their existing beliefs moves from the general to the particular, does not impose an unmanageable burden. The agent is not obliged to process all available evidence into beliefs. Instead, this standard is closely similar to the limited form of responsibility that many epistemologists readily accept – a responsibility to advert to evidence that threatens to defeat an existing belief. In this case, although the agent's new evidence does not defeat her prior beliefs, it modifies them in important ways and allows her to preserve good epistemic order as she moves from general forecasts to judgments about particular events.

Given this plausible understanding of the conditions for epistemic rationality, epistemically rational agents must respond to evidence in their possession that narrows prior general beliefs in response to new conditions. The result is a conflict between epistemic rationality and practical rationality. Practical rationality requires agents to act unreflectively on prior intentions in a range of circumstances; epistemic rationality

requires agents to reflect and form new beliefs about reasons for action, and so to reconsider their prior intentions.

So far we have conflict between practical rationality and epistemic rationality; it does not follow automatically that epistemic rationality should prevail. Some epistemologists have suggested that practical rationality and epistemic rationality are incommensurable.<sup>18</sup> Others, such as Richard Foley, maintain that conflicts between practical rationality and epistemic rationality can be resolved by weighing the agent's practical and epistemic goals and the likelihood that the actions under consideration will advance these goals. Consequently, epistemic rationality must sometimes give way to more pressing practical concerns.<sup>19</sup> Foley relies on the case of an agent who can save the world from a demon by adopting a false belief, arguing that overall, it is rational for the agent to adopt the belief.<sup>20</sup> Given the choice Foley describes, it surely is better to save the world.

Foley's example, however, is quite different from the problem raised by rule-following in the gap. In Foley's case, practical rationality and epistemic rationality are unrelated except for the stipulated fact that the agent must choose between them. If the agent elects to believe that the sky is green in order to save the world, her false belief plays no part in her decision-making process; it is simply the by-product of her decision. In the context of rule-following, the agent must avoid or suppress epistemically rational beliefs about reasons for action in order to pursue a practically rational course of action over time.

If practical rationality is given priority, one consequence is that the agent will sometimes follow the rule when full assessment of current reasons for action would lead to a better practical result. This is not, however, a serious problem, if regular adherence to the rule will lead to a better sum of outcomes over time. If adherence to the rule will not yield a better sum of outcomes, then the rule yields no practical advantages in any event and the agent should, by practical as well as epistemic standards, reconsider her intention to follow the rule. If the rule does yield a better sum of outcomes, then long term practical benefits will outweigh practical setbacks in particular cases.

The practical rationality of rule-following, however, is entangled in other ways with rational belief. Temporally extended rationality, as described by Bratman, involves webs of intentions over time. Thus, when the agent first forms an intention to follow a rule, or a system of rules, her choices are constrained by other, prior intentions that her practically reasonable dispositions have led her to retain without reflection.<sup>21</sup> Throughout the process of forming and retaining intentions and forming additional intentions, practical rationality depends on the instrumental reliability of the agent's dispositions toward prior intentions. Yet at each stage in what may be a long chain of intention and action, the agent must suppress contrary evidence that might lead to a different assessment of reasons for action. Without the check of epistemically rational reflection on current reasons for action, there is no obvious foundation for the argument that the agent's dispositions are reliable and that it is practically rational for her to follow the rule.

The conclusion to be drawn from this excursion into rationality and epistemology is that yet another strategy for eliminating, avoiding, or neutralizing the gap Alexander described twenty-five years ago proves to be unsuccessful. We have good reasons to

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<sup>18</sup> This is Richard Feldman's view. See Conee and Feldman, above n 16, 193-94.

<sup>19</sup> See Richard Foley, *The Theory of Epistemic Rationality* (1987), 212-225; see also Kelly 'Epistemic Rationality as Instrumental Rationality: A Critique', above n 13, 618-620.

<sup>20</sup> Foley, above n 19, 213. See Conee and Feldman, above n 16, 193-94.

<sup>21</sup> See Bratman, above n 6, 15-18 (discussing the 'reason-centered' function of intentions).



impose rules on ourselves, either internally or through the mechanism of a legal system. We may not, however, have reason to follow them in particular cases. Temporal extension of practical rationality, through unreflective action on rational intentions, appears to override the worry about particular cases, and so to reduce the gap to an inconsequential conceptual feature of rule-following. In fact, however, it succeeds only at the expense of epistemic rationality. Thus, as Alexander predicted in 'The Gap', the gap has not been solved.

