

LAW AND COHERENCE

Jaap Hage

Summary

This paper deals with the questions whether the law should be coherent and what this coherence would amount to. In this connection so-called ‘integrated coherentism’ is introduced. According to integrated coherentism, an acceptance set is coherent if and only if it contains everything that should rationally be accepted according to what else one accepts and does not contain anything that should rationally be rejected according to what else one accepts. Such an acceptance set is ideally a theory of everything, including amongst others standards for rational acceptance. On the assumption that the law, as a social phenomenon, is what the best theory about the law says it is, the law must be coherent, because the best theory of the law is part of an integratedly coherent theory of everything. This view is compatible with Raz’s view that the law stems from different sources that need not be coherent in the sense that they consistently elaborate the same underlying principles or policies. Raz’s view is not a consequence of integrated coherentism, however.

1 Introduction

In the last few decennia, coherence theories have gained substantial popularity in the law.¹ Such theories hold that the law is a coherent whole, or that legal judgments are justified if they fit in a coherent theory of the law. The subject of coherence in the law has been approached in different ways. Some authors have focused on what makes a (legal) theory coherent; others on the question whether² and if so, why legal theories should be coherent. In this paper I will develop a particular version of a coherence theory, *integrated coherentism*, and argue why (knowledge about) the law must be coherent in the sense of this theory. Finally, to illustrate the use of the theory of integrated coherence as an analytical tool, I will discuss Raz’s criticism of coherentism in the law.

As a starter, I want to make some assumptions explicit, and to draw a few conclusions from them. The first assumption concerns a form of realism and holds that physical reality is mind-independent and a fortiori independent of our knowledge of it.³ A consequence of this assumption is that justified beliefs about physical reality can be false, and that unjustified beliefs can be true.

The second assumption is that the law is not mind-independent in this sense. The law of a country depends in a complex way on what people, amongst which lawyers, judges and legislators figure prominently, believe it is.⁴ A consequence of this assumption the contents of the law are to a large extent determined by (if they do not fully reflect) the best theory about its contents.⁵

The third assumption deals with the nature of justification. There are many things that are amenable to justification, and not all of them are beliefs or bearers of truth values. Besides beliefs, normative, aesthetic and (other) value judgments may be justified, as well as behaviour, (the acceptance of) goals, policies, rules, norms, and principles. I will use the term ‘acceptance’ as a catch-all for everything, with the exception of behaviour, that is amenable to justification.

A justification is an argument why something should be accepted rather than rejected, given what else is accepted. First, this means that every justification is relative to some set of acceptances. Everything that is justified is justified relative to something else. Something like ‘absolute’

¹ See for instance MacCormick 1978, Dworkin 1986 and Peczenik 1989.

² Levenbook 1984 and Raz 1994.

³ My personal view on this issue is moderately idealistic, in the spirit of Kant, Putnam’s internal realism (e.g. Putnam 1981), and Rescher’s idealism (e.g. Rescher 1992). The argument in this paper becomes even stronger if one rejects the first assumption and adopts a form of idealism.

⁴ A general defence of the view that social reality is mind-dependent (in combination with the view that physical reality is mind-independent), can be found in Searle 1995. A similar approach, more specifically related to the law, is taken by MacCormick and Weinberger 1986. See also Peczenik and Hage 2000.

⁵ The best justified theory about the contents of the law may (but need not) include the beliefs that the law is independent of individual beliefs about its contents and that the law is sometimes be undetermined, which might according to this same theory mean that in these cases there is no law.

justification is in my opinion impossible.⁶ And second it means that every justification must refer to other acceptances. In particular this implies that reality (with the exception of that part of reality that consists of acceptances) cannot play any role in justification. An acceptance cannot be justified because it ‘corresponds’ to reality, but only because it should rationally be accepted given what else one rationally accepts.⁷

This assumption concerning the relativity of justification leads immediately to a so-called *internalist* theory of justification. An internalist theory of justification holds that the justifiability of a belief (or - more generally – of something that one accepts) is a function of our internal states. An externalist theory denies just this.⁸ Since one’s acceptances, what one accepts, are internal states, the view these acceptances determine which (other) acceptances are justified is clearly internalist.

In traditional epistemology, that focuses on knowledge of the physical world, it is customary to distinguish between internalist theories that assign a privileged status to some acceptances, and internalist theories that do not. Acceptances with a privileged status are considered to need no justification, or are taken to be justified in themselves. The obvious candidates for acceptances with a privileged status are beliefs based on sensory perception. These beliefs are in some theories assumed to guarantee contact with the external world, and provide the foundations on which the building of other acceptances is erected. Such theories are called ‘foundationalist’.⁹

Internalist theories that do not assign a privileged status to some acceptances usually assume that the justification of acceptances rests on coherence with other acceptances. Therefore these theories are called *coherence theories*. Notice that these coherence theories are mainly defined in contrast to foundationalist theories. I will call coherence theories that do not pose additional demands on their contents, *coherence theories in the broad sense*. Coherence theories in the broad sense are internalist theories of justified acceptance that do not assign a privileged status to a particular set of acceptances.

A subset of the coherence theories in the broad sense might be called *strict coherence theories*. These strict theories demand that a justified (in the sense of coherent) set of acceptances exhibits a particular structure of mutual support between its elements. An interesting issue for discussion then becomes what this structure of mutual support would be.¹⁰

Given the notion of justification adopted above, a theory of justified acceptance must be internalist and consequently either foundationalist or coherentist in the broad sense. It is, however, possible to incorporate a form of foundationalism in coherentism.¹¹ An acceptance set may include reasons why some acceptances should have a privileged status. This means that there may be broadly coherent acceptance sets that include the belief that some acceptances do not need any other support than that they stem from, for instance, sensory perception. Such sets may be justified from the point of view of broad coherentism, and also be foundationalist in the sense that they assign a special status to, for instance, sensory perception. But they are not foundationalist in the sense that some acceptances have a privileged status in the sense that they are considered to be justified in themselves or beyond the need for justification. In a sense the special status of these acceptances is merely contingent. They happen to take a special position within the theory as a whole because the theory as a whole assigns them this status.

It is possible to divide acceptance sets with a privileged status for some acceptances into sets that do not include justifying reasons why some acceptances should have a privileged status (strictly foundationalist theories) and acceptance sets that include such justifying reasons. The latter sets may be coherent in the broad sense, and it seems to me that such broadly coherent sets are preferable to strictly foundationalist ones, because it is unclear to me why some acceptances should have a privileged status for no reason.

⁶ It is interesting in this connection to contrast justification with truth. A deductively valid argument shows its conclusion to be true if its premises are true. The truth of the conclusion is not truth relative to the premises, however. An argument that aims to show its conclusion to be justified does not aim to show the conclusion to be justified in itself, but merely to be justified relative to the premises of the argument.

⁷ This theory of justification will be elaborated in section 3.

⁸ Pollock and Cruz 1999, p. 22f.

⁹ Some foundationalist theories assign a special status to some acceptances because they are assumed to be incorrigible, without necessarily being based on sensory perception. See Alston 1992.

¹⁰ Such a discussion can be found in, amongst others, Alexy and Peczenik 1990. See also Bracker 2000.

¹¹ See in this connection Haack’s plea for foundherentism (Haack 1993).

The conclusion from this argument is that, given my assumption concerning the nature of justification, the best theory of justification is coherentist in the broad sense. Notice that this conclusion not only holds for epistemology in the traditional sense, but a fortiori also for epistemology of social reality. That is because the major ‘reason’ for assigning a privileged status to some acceptances is that they are incorrigible because they are based on sensory perception. This is not a good reason in general and it is even worse where knowledge of social reality is concerned. This implies that *justified theories about the contents of the law should be coherent in the broad sense*. It does not follow, however, that such theories should also be strictly coherent. This last view needs a special argument, for instance in the line of Dworkin’s law as integrity.¹²

The above text already contains the main lines of my argument concerning coherence in the law. In the following sections I try to give the reader a feel of what coherence in the broad sense amounts to, both in general and in connection with the law, and how it relates to coherence in the strict sense.

2 A case study

To define what (strict) coherence means in general, or in connection with the law, often three dimensions of coherence are mentioned. A coherent set must be consistent, comprehensive and its elements must mutually support each other.¹³ I will argue that if the demand of comprehensiveness is taken sufficiently serious, comprehensiveness and consistency together make the additional demand of mutual support superfluous. Let me prepare this argument by means of a case study from the field of judicial proof.

Suppose that Lord Hard was found in his room, murdered by means of a knife. The butler was seen entering Lord Hard’s room. Moreover, the butler had a motive to murder Lord Hard, because his Lordship had seduced the butler’s daughter Harriet. However, the butler has a phobia for knives, which makes it less probable that he killed the Lord with a knife. The butler is accused of having murdered the Lord, and the issue at stake is whether he actually murdered Lord Hard.

The first thing I want to illustrate is how the strive for coherence, in an intuitive sense that does not yet distinguish between broad and strict coherence, almost automatically leads to making the acceptance set more comprehensive. To this purpose I will start with a very small set:

Set 1

1. The butler had a motive to murder Lord Hard.
2. The butler was seen entering Lord Hard’s room.
3. The butler murdered Lord Hard.

2.1 MISSING LINKS

Although it may be the case that none of the sentences of set 1 is above doubt, they mutually support each other and together they seem to form a coherent set. One question that must be answered is what the nature of this support is, since it is not deductive support. A weaker notion of support is that of a contributive reason for believing a conclusion. The presence of such a reason makes the conclusion more believable than it was without the reason. There is, however, no guarantee that the conclusion is true if a contributive reason for this conclusion obtains. For instance, the fact that the butler had a motive to murder Lord Hard does not guarantee that he actually did it. The same counts for the contributive reason that the butler was seen entering Lord Hard’s room. Let us assume, however, that taken together these two contributive reasons justify the conclusion that the butler murdered Lord Hard.

The mere presence of contributive reasons, no matter how many, does not guarantee that the belief in the conclusion is justified, because whether such a belief would be justified does not only depend on the reasons pleading for the conclusion, but also on the reasons pleading against it. A reason against believing the conclusion that the butler murdered Lord Hard is, for instance, that the Lord was murdered by means of a knife and that the butler had a phobia for knives. Whether a conclusion is

¹² See Dworkin 1986, p. 176f.

¹³ Bracker 2000, p. 167.

justified on the basis of contributive reasons depends on the balance of the contributive reasons for this conclusion and the contributive reasons against it.¹⁴

Given the notions of contributive reasons for and against a conclusion, the example can be given a more thorough analysis. The fact that the butler had a motive to murder Lord Hard is a contributive reason for the conclusion that he committed the murder. The same holds for the fact that the butler was seen entering Lord Hard's room, but there is a complication in connection with this reason. The mere fact that the butler was *seen* entering Lord Hard's room is hardly a reason why the butler murdered Lord Hard. It is rather a reason to believe that the butler in fact entered the room. And this fact is in turn a reason to believe that the butler had the occasion to murder the Lord. It is this last fact that is the immediate reason to believe that the butler murdered Lord Hard.¹⁵

If we compare this chain with the small acceptance set of our example, we find that the second and third link of the chain are missing in the set. Suppose that somebody believes the set, but suspends belief in the second and the third link of the chain, or - even worse - believes their negations. Would we then still say that the set is coherent? The support relation between the second and the third sentence of the set is lost, and with it the coherence of the set. The lesson to draw from this is that set 1 as such is not very coherent, but that it is part of a larger and more coherent set that includes the second and the third link of the chain:

Set 2

...

2a. The butler was seen entering Lord Hard's room.

2b. The butler entered the room.

2c. The butler had the occasion to murder Lord Hard.

...

2.2 CONNECTIONS AS ELEMENTS OF THE SET

Suppose that somebody holds the beliefs of set 2, but did not believe that there is any connection between the elements of this set. Would we then say that his belief set was coherent? Presumably not. The coherence of the set lies in the assumed connection between the elements. This assumption of relevance is not a factual belief as expressed in the sentences 1, 2a-c, and 3, but should nevertheless somehow be part of the coherent set, because its denial or even suspension of the assumption decreases the coherence of the set. Set 2 therefore naturally expands to the more coherent

Set 3

...

4a. 1 expresses a contributive reason for believing 3.

4b. 2a expresses a contributive reason for believing 2b.

4c. 2b expresses a contributive reason for believing 2c.

4d. 2c expresses a contributive reason for believing 3.

4e. 3 expresses a contributive reason for believing 1, (2a, 2b), and 2c.

Apparently, a coherent set not only contains independent beliefs, but also the links between these beliefs. The set itself indicates that some of its elements are supported by other elements and the other way round.¹⁶ This observation is characteristic for the theory of integrated coherence that will be

¹⁴ There are even more complications because some facts make that other facts that would normally be reasons for or against a conclusion lose their reason giving force, or change the relative weight of reasons. I will ignore these logical details here. The reader who is interested in the logic of (contributive) reasons may look into Hage 1997.

¹⁵ There are other ways to construct a chain of reasons leading to the conclusion that the butler murdered Lord Hard. The crucial point here is not *which* chain of chain is made, but rather *that* a chain is made.

¹⁶ It may seem that a set need not specify the logical relations between its elements, and that this job can be left to logic. This overlooks, however, that logic is not something that is given independent of one's beliefs. Even a generally accepted form of logic, such as for instance predicate logic, presupposes a theory of what can validly be derived from what, and such a theory requires acceptance just like one's beliefs.

defended here. The relations between the elements of an acceptance set are not determined by rules or standards outside the set, but are parts of the set itself.

2.3 PRINCIPLES AS ELEMENTS

Set 1 turned out not to be very coherent after all, because it needed expansion to set 3. However, even additional expansion is necessary, because reasons do not stand on their own. If some concrete fact is a reason for a particular conclusion, similar facts are normally reasons for similar conclusions. Another way to say the same thing is that reasons can be generalized.¹⁷ The result of such a generalization is a principle which declares that facts like the current reason are in general reasons for conclusions like the current conclusion. In the present case, for instance, one principle would run that if somebody has a motive for murdering somebody else, this is a reason to believe that the former person murdered the latter.

Since reasons can be generalized into principles, and since it is incoherent to accept that a particular fact is a reason for accepting a conclusion without accepting the principle underlying this reason, acceptance set 3 must be expanded to make it include the principles underlying the reasons expressed in the sentences 4a-4b:

Set 4:

...

- 5a. If somebody has a motive to murder somebody else, this is a contributive reason to believe that the former person murdered the latter.
- 5b. If something was seen happening, this is a contributive reason to believe that this actually happened.
- 5c. If somebody entered the room of a murdered person, the former person had the occasion to murder the latter.
- 5d. If somebody had the occasion to murder somebody else, this is a contributive reason to believe that the former person murdered the latter.¹⁸
- 5e. If a conclusion of a reason to believe is true, this is a reason to believe the reason for this conclusion.

In particular the principle formulated in 5e is interesting, because it is the principle that underlies so-called abductive arguments.¹⁹ If a fact would explain the occurrence of another fact, the occurrence of this other fact is in turn a reason to believe the explaining fact. The strength of this reason depends on the availability and the plausibility of other explanations. If the murder on Lord Hard would be explained better by the acceptance set that his wife murdered him out of jealousy, the fact that Lord Hard was murdered provides little support for the beliefs that the butler had a motive and that the butler was seen entering Lord Hard's room.²⁰ So the coherence of set 4 presupposes a belief that there is no better explanation for the murdering of Lord Hard than the facts stated in the sentences 1 and 2a-2c. This belief in turn presupposes beliefs about other possible explanations of the murder of Lord Hard and standards for the comparison of the plausibility of different explanations.

Clearly acceptance set 4 is still in need of expansion. In particular it does not take possible reasons against the conclusion that the butler murdered Lord Hard into account. Drawing the conclusion that

¹⁷ To readers who do not include the generalisability of reasons in their own acceptance set, the argument in this section will not be convincing. Even that would provide some additional support for the theory of integrated coherence, however, because it shows why (non-)acceptance of general theories as the theory about the generalisability of reasons has implications for what else should be incorporated in one's acceptance set.

¹⁸ This principle does not sound convincing, which illustrates that the argument needs to be elaborated further than this paper allows place for. The elaboration I have in mind concerns the introduction of reasons why the weight of other reasons is increased. See Hage 1997, p. 184/5.

¹⁹ Abductive arguments are arguments of the following form:

Facts like P explain facts like Q.

A fact like Q occurred.

Therefore: a fact like P occurred.

²⁰ These two beliefs may nevertheless be true. In the indicated circumstances they merely receive little support from the fact that Lord Hard was murdered.

the butler committed the murder presupposes the balancing of reasons for and against this conclusion, which asks not only for a decision about the relative weight of the reasons, but also for a judgment whether there are reasons against the conclusion. Most notably it presupposes that one has not only balanced the reasons for a conclusion against the reasons against in ones acceptance set, but also that all relevant reasons are already part of the set. In other words, the set must contain (presuppositions about) all the reasons concerning a conclusion, including their relevance and their relative weights.

Further elaboration of the set would require more space than this paper allows. Moreover, the elaboration would probably presuppose still other acceptances which should then be added to the set, and which would in turn presuppose other acceptances, etc

2.4 CONCLUSIONS FROM THE CASE STUDY

What does the above sequence of acceptance sets illustrate? First and foremost, I think, why coherent acceptance sets, in the mutual support sense of coherence, must be comprehensive. The elements of a small set can only support each other if other elements are also accepted. This means that these other elements should also be part of the total acceptance set. Moreover, the additional elements lead to again other elements, etc Comprehensiveness is not merely an additional requirement for acceptance sets with mutually supporting elements, but rather a presupposition of coherence. The support relation between the elements of an acceptance set is weakened, if not destroyed, if the acceptance set does not also contain additional elements.

The second point illustrated by the above sequence of acceptance sets is that the strive for a coherent set is a never-ending enterprise. The bigger an acceptance set is, the more it presupposes, and the more 'follows' from it. Every addition to an existing set is an occasion to make new additions. In the end, a coherent acceptance set would be a set of 'everything'. Theories of everything are not realistic, and the same counts for ideal coherent acceptance sets. In the practice of real life reasoning, the strive for coherence functions as an incentive to revise the set of one's acceptances. By pointing out that a acceptance set in its present version is not coherent, one can move the holder of the set to amend it, either by deleting elements from it, or by adding new elements. The result of such a change will never be a completely coherent set, but if everything goes well, it is a more coherent set. The strive for coherence does not aim at a characteristic (full comprehensiveness) that real acceptance sets cannot possess, but it is rather a *correctional device* to be used in the never-ending process of updating and improving existing acceptance sets.

The insight that the strive for coherence is a correctional device is also important for another reason. A common objection to coherence theories is that they cut knowledge of from reality. If acceptances are only tested against other acceptances, the influence of reality on our acceptances would be lost.²¹ This objection would be effective if all beliefs in one's stock of acceptances were there on a voluntary basis, if – for instance – one would be offered several competing belief sets, with the invitation to adopt the most coherent one. That is not the case, however. We hold many of our acceptances spontaneously, and sometimes even unconsciously. Think for instance of beliefs based on sensory perception. If one sees a chair, this will normally lead to the belief that there is a chair. This belief is believed to be the direct *consequence* of seeing the chair, but it is not based on some reason, such as the reason that one believes to see a chair. These spontaneous beliefs play a crucial role in the construction of a coherent acceptance set, because they form the starting point that is to be reconstructed into a coherent set. Moreover, if one believes (if it is part of one's (coherent) acceptance set) that spontaneous beliefs somehow derive from reality, this belief promises that the contact between a coherent acceptance set and reality is not completely lost.

The third point that I want to emphasize, is that the connections between the elements of a set are themselves part of the set in question. A coherent set is in accordance with constraints that are part of the set themselves.²² This is the crucial point for the theory of integrated coherence:

²¹ A discussion of this objection can be found in Pollock and Cruz 1999, p. 74/5.

²² The idea that an acceptance set sets itself the standards that it must satisfy is an extrapolation of the idea that a belief set also contains metabeliefs. Cf. the discussion of metabeliefs in Bender 1989. It seems also to be implicit in Lehrer's view that a persons' preference system and her reasoning system, by means of which she determines what to accept on the basis of what, are part of this persons' evaluation system relative to which

The support relations between the elements of an acceptance set are not defined outside the set, but are part of it.

The same point can also be made by stating that in integrated coherence, logic is part of the coherent set, and not something outside of it. In this way, a kind of Quinean holism is incorporated into the set of integrated coherence.²³

According to a non-integrated coherence theory, an acceptance set consists of beliefs about the world and possibly rules and principles. Apart from this set there is a logic that defines which logical relations exist between the elements of the set, what follows from it, and what is inconsistent with it. And finally there is a substantive set of standards that define what a good acceptance set is, and, if these standards refer to coherence, what coherence in an acceptance set amounts to. In integrated coherence the logic and the standards for a good acceptance set are considered to be part of the set itself. *Outside the acceptance set there is only the minimal standard that a good acceptance set satisfies its own standards.*

3 Integrated coherence

After the preparatory work of the previous sections, I will use this section to sketch the outlines of the theory of integrated coherence. The most basic notion is that of an acceptance set. An acceptance set is a set of beliefs and standards. In this connection I use the expression ‘standard’ as a catch-all for rules, principles, values, goals, interests, etc., in short for everything that is relevant for what somebody should believe or do, and what is not a belief about the world. I assume that these standards, in combination with the beliefs in an acceptance set, determine what it is rational to believe, what standards should rationally be accepted, what it is rational to reject, and about which potential elements of the acceptance set one should suspend one’s judgment because it is neither rational to accept them, nor rational to reject them.

At some moment in time, an acceptance set might contain elements of all three categories, that is elements that should rationally be accepted (the *justified* elements), elements that should rationally be rejected (the *unjustified* elements), and ‘neutral’ elements. The idea of integrated coherence is that the acceptance set should be modified such that the unjustified elements are removed from it (the counterpart of the traditional demand of consistency), while elements that rationally should be accepted, but which are not yet part of the acceptance set, should be added to it (the counterpart of traditional comprehensiveness, or – more accurately - closure under a particular logic²⁴). Neutral elements that are part of the acceptance set remain in it, while neutral elements that are not part of the acceptance set remain outside. In this connection the question which (potential) elements should rationally be accepted or rejected is answered solely on the basis of the actual acceptance set.

A coherent acceptance set is an acceptance set that contains everything that is justified (should rationally be accepted) according to its own elements, and that does not contain anything unjustified according to its own elements.

The definition of a coherent acceptance set refers to itself, and is therefore recursive. This recursion must bottom out on spontaneous acceptances. Or, to approach the same issue bottom up, a coherent acceptance set must be the outcome of a correction process that started from a number of spontaneous acceptances. If such a spontaneous acceptance set contains everything that should rationally be accepted according to itself and does not contain any unjustified elements, it is coherent. If it is not coherent, lacking elements should be added, and unjustified acceptances should be removed from it.²⁵ (This is why the strive for coherence is a *correctional device*. See section 2.4.) The result is a modified acceptance set, which in its turn may or may not be coherent. If it is incoherent, the above mentioned

coherence is defined. See Lehrer 2000, p. 130. The idea is also stressed by Brink 1989, p. 127, with further references.

²³ Cf. Hage 2001 about the role of logic in relation to domain knowledge.

²⁴ A theory is closed under a particular logic, if this theory includes everything that follows from it according to this logic.

²⁵ The order in which changes are made may influence the final outcome. The right order of making changes (if there is a right one) is determined by the current contents of the acceptance set.

corrections should be made ... etc. until a coherent set results.²⁶ Moreover, in a realistic case an acceptance set also changes because of new spontaneous acceptances. This is not relevant for the characterization of coherence as a theoretical notion, but it is crucial for the construction of coherent theories.

An acceptance set specifies which elements should be accepted or rejected relative to its own elements. To this extent the standard for coherence is integrated in the acceptance set. A minimal standard must be external, however, namely the standard that a coherent acceptance set should satisfy its own standards for a good acceptance set.

Integrated coherentism does not refer to mutual support as a standard for coherence. What counts as mutual support and the extent to which this kind of mutual support increases the quality of an acceptance set are issues that are left to the acceptance set itself. In theory, an integratedly coherent acceptance set might consist of elements that give little support to each other. The theory of integrated coherence is therefore not a strict coherence theory, but merely a coherence theory in the broad sense. However, the demands that a coherent acceptance set contains all those elements that should rationally be accepted according to itself and should not contain any elements that should rationally be rejected according to the acceptance set itself, almost certainly guarantee a substantial degree of mutual support, because all elements that are part of the acceptance set because of these demands will be supported by other elements. Moreover, if the acceptance set contains something like abduction and induction, which is very plausible if the acceptance set is the outgrowth of a spontaneous human belief set, many supported elements of the acceptance set will in turn support the elements that support them. For this reason, mutual support seems to be unnecessary as an additional demand on coherent theories next to consistency and comprehensiveness, because these last two demands, if interpreted in the sense of broad coherentism, bring mutual support along.

Nevertheless, it is probable that an acceptance set, which is ideally a theory of everything, will contain subsets that are mostly disjoint. For instance, the part that deals with the program of the local theatre will have few connections with the part about the classificatory systems of flora and fauna. However, a sufficiently comprehensive acceptance system will explain why these topics have so little in common, and both the subsets about the local theatre program and about the classification systems will cohere with that part of the full acceptance system that provides this explanation, *precisely because they have so little in common*.

Generalizing from this example, one might guess that a good acceptance set includes a subset that deals with the ways in which other parts of the full set should cohere with each other in the strict sense. If these other parts in fact cohere, or fail to cohere as specified by this subset, this is as it should be according to integrated coherence. Lack of strict coherence as explained by this subset should be interpreted as a sign of broad coherence, rather than as proof of the lack of it.

Similarly a broadly coherent set might specify a number of elements that should *prima facie* be accepted without further justification. Most people would count beliefs stemming from sensory perception as belonging to this category. This does not mean that these beliefs are beyond criticism. The rest of an acceptance set may contain reasons why beliefs stemming from sensory perception should be rejected. But when these reasons for rejection are lacking, beliefs stemming from sensory perception are counted as acceptable. This view has something in common with foundationalism, but there is an important factor that makes it broadly coherentist nevertheless. This factor is that the acceptance set itself provides a reason why these sense-based beliefs should be treated as privileged. Such a reason may, for instance, be based on the (accepted) belief that sensory perception reflects the nature of the external world. If one has such a belief, one has coherentist reasons for being foundationalist. This form of 'foundationalism' is broadly coherent, but may locally be

²⁶ Notice that there is no guarantee that the process of modifying the acceptance set will ever end. It is possible to say quite a bit more about what can happen in this connection, but this is not the place to engage in this logical research. The interested reader is referred to the discussion in Prakken and Vreeswijk 2001. What is written there about the relation between arguments can be translated into a similar account about the relation between elements of an acceptance set.

foundationalist. It is in my opinion preferable to strict foundationalism, because that would give a privileged status to some acceptances without justification.²⁷

It might be objected that the theory of integrated coherence is almost empty and therefore both immunised against criticism and useless. I agree that it is almost immunised against criticism, because most criticisms would be accommodated by pointing out that they might be correct if they fit into an encompassing theory that is broadly coherent, and as such precisely illustrate the correctness of broad coherentism. The remaining criticism would be that such a theory is useless. I would disagree with that criticism, because broad coherentism explains why coherentism is popular, and assigns strict coherentism its proper place, namely as part of a more encompassing theory that should be broadly coherent.²⁸ Integrated coherentism is a theory about the justification of *all* knowledge, and has as its central point that as little as possible should be excluded from the acceptances that play a role in the evaluation of (other) acceptances. As a theory about justification, integrated coherentism is both minimal and maximal. It is maximal in its scope because it deals with all kinds of acceptances, including more concrete standards for the justification of acceptances (the nature of rationality), views about the objects of acceptance (ontology) and views about the relation between acceptances and reality (epistemology, (aesth)ethical theory). As such it will consider more concrete theories about justified acceptances as parts of more comprehensive theories with which they should cohere in the sense of integrated coherentism. It is minimal concerning itself, precisely because it treats any substantial standard for justification as a potential element of an acceptance set.

4 Why the law must be coherent

Broad coherentism may be an attractive theory about the justification of knowledge, but what has it to do with the law? Let us assume – wrongly, I think – that the law is mind-independent and that knowledge of the law, both of what the rules of law are in general, and what the legal solutions for particular cases are, is in this respect like knowledge of physical reality. Then, if broad coherentism is a good theory about the justification of beliefs about physical reality, broad coherentism is also a good theory about knowledge of the law. Beliefs about the rules of law in general, or about the legal solutions for particular cases, would then be justified if they would fit in a broadly coherent theory of ‘everything’. On the assumption that the law is independent of our beliefs about it, broad coherentism is relevant for the law because it is the best theory about justified legal beliefs. A judge who must decide a particular case should formulate the best justified belief about the legal solution for this case, and in this connection broad coherentism should play a role, if only as a correctional device.

If law is mind-independent, the law itself need not be coherent, but our justified beliefs about the law should be (broadly) coherent. And since it is the justified beliefs, rather than the law itself, that matters for our justified behaviour, broad coherentism is the theory to go by when legal decision making is at stake.

It is more plausible, however, that the law, as a social phenomenon, is not mind-independent. Suppose that there is a best justified theory of the law, and that this theory includes the belief that the law is a mind-dependent social phenomenon. Such a theory might hold, amongst others, that the law is what stems from particular sources recognised by legal officials, or that is the best interpretation of the phenomena usually identified as legal phenomena. Whatever the best justified theory of the law, compatible with the theory that the law is mind-dependent, might hold, it would be incoherent to believe both this theory and that the law is actually different from what this best theory holds it is. Briefly stated, it is incoherent to believe the following sentences simultaneously:

- The law is a social phenomenon.
- Social phenomena are what the best theory about them says they are.
- The best theory holds that the law is A.
- The law is not-A.

²⁷ Although I did not try to find counterexamples, I would be surprised if strict foundationalism as I described it would have serious adherents. Most ‘foundationalists’, especially those that adduce philosophical reasons for being foundationalist, would in my terminology be a kind of coherentists.

²⁸ Both points are illustrated by the argument in section 5.

According to integrated coherentism, the best theory of the law is part of the best theory of ‘everything’. This best theory of everything, including the law, should be broadly coherent, and so should – if the law is according to this best theory a social phenomenon – the law itself:

If the law is what the best theory about the law says it is, and if this best theory is part of a broadly coherent theory of everything, the law itself must, in this sense, be broadly coherent.

5 Authority versus coherence?

In his paper *The Relevance of Coherence*, Raz formulates several lines of criticism against coherentism, both in epistemology (epistemic coherentism) and in connection with the law (constitutive coherentism). Here I will discuss only one of them. According to Raz, the law is a set of standards that guide conduct and judgments about conduct. These standards emerge from the activities of authoritative institutions. Consequently, the law reflects the intentions of its makers and the reasons they had for making the law as they did. This means that the contents of the law are, at least in part, determined by politics, and given the vagaries of politics, ‘there is no reason to expect the law to be coherent’.

Before considering whether this criticism really affects coherentism in the law, I want to draw the reader’s attention to what might be an underlying motive of Raz’s attack on coherentism. The real issue at stake might be to what extent legal decision makers have leeway to frame their decisions as seems best to them and to what extent they are bound by the law that is independent of the way they see it. This discussion can be focused on the specific question to what extent the law is determined by its sources, and amongst these in particular the sources that involve explicit decision making. To frame the question (overly) simply: Who makes the law, legislators or judges who must decide new cases? The more a judge is allowed to see the law as part of a coherent whole, the more leeway she seems to have to (re)construct the law as seems fit to her. The issue of coherence is then just a way to discuss the degree in which legal decision makers are bound by the law, and in particular by legislation and case law.²⁹ I do not want to take sides in this discussion. Instead I want to show that different positions in it can be accommodated in a framework of broad coherentism.

A normative system can be coherent in content, but also in origin.³⁰ A typical example of a system that is coherent in content is utilitarianism. There is one ultimate moral principle, to strive for the greatest happiness of the greatest number, and the rest of morality is merely elaboration of this ultimate principle on the basis of factual circumstances. A typical example of a system that is coherent in origin is a legal system as envisaged by Kelsen. There is one basic norm, that determines who are competent to make new law. The law consists precisely of those norms that are made on the basis of this basic norm. What these norms are is again a matter of factual circumstances. The law is determined by which persons or organizations that were directly or indirectly made competent by the basic norm and by what they decided. The crucial difference with systems that are coherent in content is that in systems that cohere in origin, the contents of the law are, at least partly, determined by new decisions. These decisions need not be coherent in content, as Raz correctly pointed out.³¹

A system that is coherent in origin need not be coherent in content, and vice versa. If this is what Raz wanted to point out with his argument, he was right. It seems, however, that he meant to say more in two respects. He apparently adduced the point of several sources of law as an argument against coherentism in general. That would be a mistake, because the coherence of law might in Kelsenian

²⁹ It is not unusual to reframe this old discussion in fashionable terminology. It is for instance also possible to formulate it as a discussion about whether the law, or legal reasoning, is defeasible. The more defeasibility, the more leeway for legal decision makers, it might seem. See in this connection for instance Bayón 2001. In my opinion, this connection between defeasibility and freedom of legal decision making is just as misguided as the connection between judicial freedom and broad coherentism.

³⁰ This distinction was inspired by Kelsen’s distinction between static and dynamic normative systems. See Kelsen 1960, p. 198.

³¹ It may intuitively be attractive to say that a system that is based on one single starting point, no matter whether it concerns content or origin, is for that reason coherent. However, the presence of a single starting point has more to do with simplicity than with coherence. I do not see why a system with several starting points that are suitably delimited in their sphere of operation should be less coherent. In this paper, I will not develop this issue any further, however.

vein be constructed as coherence of origin instead of content. Moreover, he seems to assume that the fact that the contents of legal decisions need not be coherent implies that the content of the law is not coherent. That would only follow on a view according to which the contents of the law are by and large determined by the contents of these decisions. Such a view is certainly defensible, but depends on a particular view how the law is to be constructed. An alternative view would be that the contents of these decisions should be considered as input to a process of (re)construction that leads to a system that is coherent in content.³²

Let us take a step back from the discussion about the proper role of authoritative legal decisions in the construction of the law. The position one takes in this discussion will be influenced by one's views about the relation between the law and state authorities and between law and politics.³³ Coherentism in the broad sense requires that one's politico-philosophical views in this respect cohere with one's views about the room for legal decision makers to make the law coherent in content. It is compatible with different views about the proper kind of coherence (origin or content) in constructing the law. It is even compatible with rejection of both content and origin coherentism concerning the law.

The discussion whether the law should be constructed coherently, and if so on the basis of content or origin, deals with another form of coherentism than the broad version defended in this paper. It puts stronger demands on the way law should be constructed than merely that the theory of the law is part of a coherent acceptance set as defined in section 3. In fact it is a discussion whether the law should be coherent in the strict sense, and what such strict coherence should look like (criteria for strict coherence). All answers in this discussion, including non-coherentist ones, are compatible with integrated coherentism, at least if it makes one's position in this discussion broadly coherent with one's other views, including especially those concerning the relation between the law and politics.

Raz's argument against constitutive coherentism seems to presuppose that the discussion about legal coherence can be treated independently of the rest of one's acceptance set. By treating the discussion as a local one, it seems that the argument based on different sources of authority can be adduced as an argument against coherentism in general. By taking a step back from this discussion and seeing it in the context of a broader discussion (a step toward global coherence), one can see why Raz's argument does not affect broad coherentism, but only one specific and local variant of strict coherentism, namely *content* coherence of the *law*.

6 Conclusion

The foundation of this paper is a definition of justification. According to this definition, a justification is an argument why something should be accepted rather than rejected, given what else is accepted. Coherentism as a theory about justification is, given the above definition necessarily internalist. Justification is justification of acceptances on the basis of acceptances. There are two variants of internalist theories of justification, that is foundationalist and coherentist, which seem to be mutually exclusive and jointly exhaustive. On closer inspection, however, it turns out that foundationalism can be incorporated in a broad form of coherentism, and that broad coherentism is the single convincing theory of justification as it was defined. This broad form of coherentism merely holds that acceptances are to be justified by means of other acceptances and that none of them is a priori justified.

If one takes a closer look at the way coherentism functions in the practice of justification, it turns out that there is a natural tendency of acceptance sets to become more and more comprehensive, but also that a completely coherent set is an unattainable ideal. The strive for coherence functions in practice as a correctional device by means of which incoherent acceptance sets can be improved. The unattainable ideal is a completely coherent set, that is a set that contains all acceptances that it should contain according to its standards contained in the set itself, and does not contain anything that according to these standards should be rejected.

A broadly coherent acceptance set may, but need not, demand that some part of it, for instance the part dealing with the law, is coherent in a more strict way. If it does, this demand should be broadly coherent with the rest of the complete acceptance set. Moreover, the standards for this more strict form of coherence should also cohere in the broad sense with the rest of the acceptance set as a whole.

³² Cf. Peczenik and Hage 2000.

³³ The discussion about coherentism between Dworkin and Raz clearly illustrates this point.

Theories as those of Dworkin (law as integrity) and Raz (merely a limited role for local coherence) can be seen as competing precisely on the issue whether and how the law should be constructed as coherent in a more strict sense. An argument that it should not be constructed as strictly coherent should not be interpreted as an argument against broad coherentism, however. It is rather the case that such an argument should fit in a broadly coherent theory of everything.

References

- Alexy, R. and A. Peczenik (1990). The Concept of Coherence and Its Significance for Discursive Rationality. *Ratio Juris* 3, no. 1, p. 130-147.
- Alston, W.P. (1992), Foundationalism, entry in J. Dancy and E. Sosa, *A Companion to Epistemology*, Blackwell, Oxford, p. 144-147.
- Bayón, Juan Carlos (2001). Why is legal reasoning defeasible?. In A. Soeteman (ed.), *Pluralism and law*. Dordrecht: Kluwer Academic Publishers, p. 327-346.
- Bender, J.W. (1989). Coherence, Justification, and Knowledge: The Current Debate. In J.W. Bender (ed.), *The Current State of the Coherence Theory*, Kluwer Dordrecht 1989, p. 1-14.
- Bracker, S. (2000). *Kohärenz und juristische Interpretation*. Nomos, Baden-Baden.
- Brink, D.O. (1989). *Moral Realism and the Foundations of Ethics*, Cambridge University Press, Cambridge.
- Dworkin, R. (1986). *Laws Empire*, Fontana, London.
- Haack, S. (1993). *Evidence and Inquiry*, Blackwell, Oxford.
- Hage, J.C. (1997). *Reasoning with rules*, Kluwer Academic Publishers, Dordrecht.
- Hage, Jaap C. (2001). Legal logic. It's existence, nature and use. In A. Soeteman (ed.), *Pluralism and law*. Dordrecht: Kluwer Academic Publishers, p. 347-374..
- Kelsen, H. (1960). *Reine Rechtslehre*, 2nd ed., Franz Deuticke, Wien.
- Lehrer, K. (2000). *Theory of Knowledge*. 2nd ed. Routledge, London.
- Levenbook, B.B. (1984), The Role of Coherence in Legal Reasoning, *Law and Philosophy* 3, p. 355-374.
- MacCormick, D.N. (1978). *Legal Reasoning and Legal Theory*, Clarendon Press, Oxford.
- MacCormick, D.N. and O. Weinberger (1986), *An Institutional Theory of Law*, Reidel, Dordrecht.
- Peczenik, A. (1989). *On Law and Reason*, Kluwer Academic Publishers, Dordrecht e.a.
- Peczenik, A. and J.C. Hage (2000). Legal Knowledge about What?, *Ratio Juris* 13, no. 3, p. 326-345.
- Pollock, J.L. and J. Cruz (1999), *Contemporary theories of knowledge*, 2nd. ed., Rowman and Littlefield, Lanham.
- Prakken, H. and G. Vreeswijk (2001). *Logics for defeasible argumentation*, in D. Gabbay and F. Guenther (eds.), *Handbook of Philosophical Logic*, second edition, volume 4. Kluwer Academic Publishers, Dordrecht etc.
- Putnam, H. (1981). *Reason, Truth and History*. Cambridge University Press, Cambridge e.a.
- Raz, J. (1994). The Relevance of Coherence, in *Ethics in the public domain*. Clarendon Press, Oxford, p. 277-326.
- Rescher, N. 1992). *A System of Pragmatic Idealism*, vol. 1, Princeton University Press, Princeton.
- Searle, J. (1995). *The construction of social reality*. The Free Press, New York.