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The Relevance of Coherence

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Coherence is in vogue. Coherence accounts of truth and of knowledge have been in contention for many years. Coherence explanations of morality and of law are a newer breed. I suspect that like so much else in practical philosophy today they owe much of their popularity to John Rawls. His writings on reflective equilibrium, while designed as part of a philosophical strategy which suspends inquiry into the fundamental questions of moral philosophy, had the opposite effect. They inspired much constructive reflection about these questions, largely veering toward coherence as the right interpretation both of reflective equilibrium and of moral philosophy. In legal philosophy, Ronald Dworkin’s work contributed to an interest in coherence accounts of law and of judicial reasoning.

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[Editor’s Note: The footnotes in this Article appear in the form that the author requested. In many instances, they do not conform to the standards of the Bluebook.]

1 Practical philosophy includes moral, legal, social and political philosophy, especially when they are conceived of as so many aspects of the general problem of rationality in action, emotion, attitudes, etc.


3 Interestingly, neither Rawls nor Ronald Dworkin (in his earlier writings) presents or discusses their work as coherence-based. For writers explaining Dworkin’s as a coherence-based account, see Kenneth J. Kress, Legal Reasoning and Coherence Theories: Dworkin’s Rights Thesis, Retroactivity, and the Linear Order of Decision, 72 CAL. L. REV. 369, 398-402 (1984); S.L. Hurley, Natural Reasons 262 (1989); S.L. Hurley, Coherence, Hypothetical Cases, and Precedent 10 OXFORD J. LEGAL STUD. 231
There were, however, other important influences on the growing popularity of coherence accounts in law and morality. They came from the application of a Davidsonian approach to ethics by Wiggins and McDowell.⁴ Their work points to the way coherence accounts chime in a vaguer, more pervasive way with the current philosophical climate. Coherence accounts fit well with the rejection of the Cartesian approach to philosophy. For one thing they seem a natural conclusion of the rejection of foundationalism, with its commitment to the view that all justified beliefs are justified by their relations to some incorrigible beliefs. Even those who accept that some beliefs are incorrigible would reject that. Moreover, under the impact of Quine’s dual rejection of empiricism (with its belief in incorrigible foundations for all justified beliefs) and the analytic/synthetic distinction, many philosophers embraced holism, that is, the view that everything depends on everything. Coherence accounts, while not logically entailed by holism, seem to go well with it. If everything depends on everything, how is one to distinguish between truths and falsehoods if not by a test of coherence?

All this leads naturally to a frame of mind which, once one gets used to it, turns out to be oddly reassuring. We are all in mid-ocean on Neurath’s ship.⁵ We cannot disembark and make a fresh start with a sound vessel, accepting only safe beliefs. We must use what we have, repairing our ship from within, jettisoning that which, in the light of our current beliefs, corre- gible and possibly mistaken as each one of them may be, seems mistaken. “What is reassuring here?” you may ask. Is that not a recipe for skepticism? Not if one is convinced by Wittgenstein, or alternatively by the very different and incompatible argument of Davidson, that such skepticism is incoherent. Davidson’s, rather than Wittgenstein’s, arguments show the way toward

(1990). The degree to which Dworkin’s theory relies on considerations of coherence is examined in the Appendix.


⁵ “No tabula rasa exists. We are like sailors who must rebuild their ship on the open sea, never able to dismantle it in dry-dock and to reconstruct it there out of the best materials.” Otto Neurath, Protocol Sentences (George Schick trans.), in LOGICAL POSITIVISM 199, 201 (Alfred J. Ayer ed., 1959).
coherence. Davidson concludes that it is incoherent to suppose that all or most of one’s beliefs are false. Instead, he argues that to understand people presupposes accepting their beliefs as largely true. This confidence in the essential soundness of Neurath’s ship seems to point to coherence as the inescapable solution to our puzzles.

I am not trying to describe a specific thesis here. My aim is to indicate some of the leading elements in the philosophical climate of opinion which make it congenial to coherence-based accounts—which make the air buzz with coherence. I will consider the merit and relevance of coherence in explaining the nature of law and of adjudication. In doing so, I will mention points derived from the writings of theorists who favor coherence. These borrowings notwithstanding, this is not an article about the work of any particular theorist. It is an exploration of the role and value of an idea, and of some of the different forms that it can take.

Herein lies a difficulty. How can one make sure that the main, the most promising and interesting uses of coherence have been examined? That is the claim I make for my discussion, but I know of no way to prove it. It is possible that there are other more interesting and promising uses of coherence in explanations of law and adjudication than those here considered. With that caveat let us begin.6

I. AGAINST EPISTEMIC COHERENCE THEORY

Coherence explanations can feature in theories of knowledge. As such, they hold coherence to be the condition of justified belief. But coherence explanations are also advanced as explanations of what makes a judicial decision correct or what makes a legal proposition true. Because a justified belief can be false, epistemic and constitutive (as I shall call coherence accounts of what makes propositions true or decisions correct) coherence-based explanations do not coincide. Rather, they respond to different concerns. Because one can be justified in holding a belief or taking an action which is, in fact (though unknown to one), wrong or mistaken, epistemic theses appear more moderate than constitutive ones, and therefore perhaps more appealing. But it would be wrong to think of them as being on a scale of moderation. Appearances to the contrary notwithstanding, the epistemic theses are more straightforwardly flawed than their constitutive counterparts. For most of this Article, I will be concerned with constitutive coherence theories of law and adjudication, which claim that coherence makes legal propositions true or judicial decisions right. But to show constitutive coherence-based explanations to best advantage, and to clarify their differ-

6 I have put forward some considerations relevant to this issue before. See Joseph Raz, The Rule of Law and Its Virtue, in The Authority of Law: Essays on Law and Morality (1979); Joseph Raz, Authority. Law and Morality, 68 The Monist 295 (1985).
ence from epistemic employment of coherence, I will begin with a considera-

tion of the latter.

The first thing to note is that epistemic coherence-based explanations are

not specifically legal. They claim that one's belief is justified (or that one's
decision is justified) if it coheres better than any alternative with one's other
beliefs generally, legal and non-legal alike. The reason is simple. A decision
which coheres best with all legal propositions one believes may cohere less
well than some alternative with all of one's believed propositions. Of
course, it is possible to argue either (1) that general coherence accounts
entail specifically legal coherence accounts of justified legal beliefs or legal
decisions because they regard local coherence (i.e., coherence among one's
beliefs about the law and adjudication) as in itself a strong constituent com-
ponent of general coherence, strong enough to make the divergence impossi-
ble or at least very unlikely, or (2) that justification lies in coherence between
beliefs of a certain class only, that is, that only beliefs about the law matter
for the justification of legal decisions or of beliefs about the law. But those
who uphold the epistemic force of coherence must have a reason for the
exclusion of other beliefs, or for making coherence in a certain area the test
for overall coherence. That reason will inevitably show that considerations
other than coherence matter to justification, for only such considerations can
lead to a deviation from a uniform account of coherence. Such explanations
are only partially based on coherence. There is nothing objectionable in this,
but as I am not aware of any reason favoring such a limited view of episte-
mic coherence, I will abandon that possibility and consider only general
coherence-based epistemic explanations.

Their appeal derives not simply from the positive connotation of "coher-
ence." Coherence conveys a specific good, the value of which is undeniable.
What is incoherent is unintelligible, because it is self-contradictory, frag-
mented, disjointed. What is coherent is intelligible, makes sense, is well-
expressed, with all its bits hanging together. Let us leave on one side the
question of the relative importance of coherence. (Does it make sense to say:
"I prefer him not to be so coherent, for only then does he succeed in expres-
sing his free spirit which is his best aspect"?) Can any one doubt the value
of coherence itself?

One can if one is a philosopher. I do not mean that philosophers can be
expected to say any silly thing. I mean that philosophers, some philoso-
phers, have taken "coherent" to mean not just "intelligible", but something
(some things) quite different. Nobody would think that a text ought to be
believed just because it is intelligible. But some philosophers think that it
ought to be believed just because it is coherent. So let us leave on one side
the undoubted value of coherence as intelligibility. We are after the philo-
sophical notion of coherence. Realizing this is the first step in breaking the
enchantment with coherence theories. In denying them one is not denying

7 Or, for that matter, it may cohere less well than some alternative with all known propositions.
the undoubted, familiar value of coherence (=intelligibility). The argument is about a technical notion of coherence and its systematic use in some philosophical theories.

I should not exaggerate the point. The philosophical notion, while deviating from the ordinary significance of "coherence," is continuous with it. This is readily seen when we consider coherence-based epistemic theories of justified belief. To say that a belief is justified is to say that it is epistemically permissible to hold it, that there is no epistemic defect in holding it. The notion is vague, perhaps even obscure. But we need do no more than use it intuitively to see the appeal of coherence theories of belief justification.

How so? Because in epistemic theories philosophers use "coherent" to mean something like "mutually supporting." Two beliefs cohere if each makes belief in the other more reasonable than its rejection. Opinions vary as to what relations must exist among beliefs in order for them to be mutually supporting. Let us say that if beliefs fit together they are mutually reinforcing, using "fit together" in place of whatever relation(s) between propositions makes them cohere, i.e., makes them mutually reinforcing. I will return to this problem later on. At the moment all we need to do is to acknowledge the force of this idea. It recognizes a relation of justification which is not linear and asymmetrical, but is circular and symmetrical. This may appear puzzling. If A justifies B, surely A cannot be justified by B. Justification must be asymmetrical, must it not? But, in fact, the thought that justification is circular and symmetrical is deeply rooted in our ordinary understanding of justification.

Suppose I believe (1) that John was seen going into Emily's house. Suppose further that I believe (2) that John has long wanted to visit Emily. My belief about John's desire to visit Emily tends to reinforce my belief that the reported sighting of John is correct. At the same time, if someone questions John's desire to visit Emily, I am likely to rely on the reported sighting as

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8 Among the most instructive discussions of coherence theories of epistemic justification are: KEITH LEHRER, THEORY OF KNOWLEDGE chs. 5-7 (1990); GILBERT HARMAN, CHANGE IN VIEW (1986); JOHN L. POLLOCK, CONTEMPORARY THEORIES OF KNOWLEDGE (1986). For an attempt to justify epistemic coherence with special reference to moral beliefs see BRINK, supra note 4. Not all of these authors have the same aim. Some are interested in the notion of justified belief for its own sake. Others are concerned primarily with an explanation of knowledge in which "justified" belief features. Harman advances an account of rational belief change. The discussion is aimed at the employment of coherence in accounts of justified belief only, and does not affect Harman's explanations in Change in View.

9 Should one not say that philosophers use "coherent" as meaning "fitting together," claiming what is coherent (=fits together) is mutually reinforcing as their substantive conclusion? I do not think so. The procedure seems to be the reverse. One starts by regarding coherence as a justificatory relation (i.e., as meaning mutually reinforcing) and proceeds to find what substantive relations make propositions or beliefs coherent in that sense. The main conclusion which defines the coherence theorist is that there is nothing to justification other than coherence.
confirmation. The two beliefs "fit together"—in this case because (2) explains (1), but we need not worry about what makes various beliefs "fit together" at the moment—and they are therefore mutually supporting or reinforcing. All this is common sense. But in this example "fitting together" is not an isolated and independent factor sufficient in itself to justify believing either proposition. I was told, by Jill, who is known to me to be trustworthy, that John was seen going into Emily's house, and I have reasons for holding that he has long since wanted to visit her. It is, one is inclined to say, only because of these further factors that I am justified in regarding the two beliefs as mutually reinforcing.

This seems sensible, but, as the advocate of the coherence theory of knowledge will point out, it does not show that there is anything more to justification than coherence. This point establishes only that coherence requires a larger circle to carry much weight. To justify my belief that it was John who was seen going into Emily's house, my belief about John's desire to visit her has itself to fit other of my beliefs (for example, about his general conduct toward Emily and his feelings about her). In order for my belief that John was seen going into her house to justify my view about his desire to visit Emily, it also must fit other of my beliefs (e.g., that the person who claims to have seen him knows him). It is all a matter of coherence, except that coherence works in larger, rather than smaller circles.

At this point things become problematic. Do we add nothing but further beliefs and further "fitting" relations to the two beliefs from which we started? Surely it matters that the reliable Jill told me that someone, call him Jim, saw John go into Emily's house. In other words, the fact that some beliefs were reliably acquired—that they are not tainted by superstition, prejudice, rashness, jumping to conclusions, or other epistemic defects in the way they were reached or in the way that they are held, as well as their "fitting together"—matters to the justification of holding them.

At this juncture the advocate of epistemic coherence theories may try his master argument. He may dismiss the objection on the ground that there is no escape from relying on the way one's beliefs relate to each other, for beliefs are all we have. What can one rely on in justifying one's beliefs other than further beliefs one has? Of course, he will concede that some of my beliefs may have been reliably reached, while others may not. But these facts cannot help me to justify my beliefs. In trying to justify my beliefs, all I have to go on are my own beliefs about the ways I arrived at them and their reliability. In asking when is a belief justified, we are asking when is it justified for a person to hold it.

How is one to judge between the coherence theorist and his opponent? At first blush it would appear that we are offered here two rival and coherent (=intelligible) ways of understanding "justified belief." The coherence theorist holds a belief to be justified if and only if something within the resources of the person who holds that belief provides better support for it than for other competing beliefs. The coherence theorist further holds that the resources of people which are relevant to the justification of their beliefs con-
sist entirely of their other beliefs, including their beliefs about the ways they formed, the ways they hold their beliefs.

Against the coherence theorist is the view that there are epistemic defects in the ways beliefs are formed or held: for example, that they were formed through prejudice or superstition, or by people who are not competent to judge the matters concerned, which render beliefs infected by them unjustified, even when the person whose beliefs they are has no inkling that his beliefs are so affected. A belief is justified if the person who has it is not epistemically at fault, if he has done what can be expected of him, or something to that effect.10

Both accounts of justified belief allow that justified beliefs can be false. I think that both regard justification as person-relative, that is, dependent on the state of the believer. They differ, however, on the basic features of justification of beliefs. They each have ramified implications and presuppositions, examination of which helps settle the dispute. They feed into one's account of reasoning and deliberation, they affect one's view of the nature of knowledge, and they reflect familiar differences of opinion concerning the presuppositions of responsibility. It is on the last aspect of the problem that I will comment.

I proceed on the assumption that we are interested in explicating the notion of justified belief which is part of our common epistemic vocabulary. The first step in the clarification is to identify justified belief with belief that one is not epistemically at fault in holding, belief that one may properly hold. The coherence theorist proceeds from here to claim that if one's other beliefs support the belief in question better than any of its alternatives, the condition of epistemic blamelessness is satisfied. What else can one expect of a person?11 His opponent replies that we also can expect that a person

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10 Notice that for a belief to be justified it is not necessary that the believer has a justification for it. It is merely necessary that the believer is justified in holding it. I am wary of attributing such considerations to any particular theorist. Many treatises in epistemology are inexplicit about the way they understand the nature of their endeavors.

11 Two comments on the wider aspect of the problem will help clarify the comments that follow. First, we need to distinguish between holistic views of epistemic justification and coherence accounts of justified belief. Holistic views of justification hold that any belief may (depending on what else one justifiably believes) bear on the justification of holding any other belief. Holism implies (1) that there are no incorrigible beliefs and (2) that beliefs cannot be compartmentalized (by subject-matter or otherwise) into mutually invulnerable sets of beliefs. Holism is logically independent of coherence accounts, that is, it neither implies them nor is it implied by them. Coherence accounts of justified belief imply that if a belief-set can be made more coherent by replacing one of its members by another which is inconsistent with it, this should be done. Holism does not sustain this conclusion.

My discussion here is aimed against coherence accounts, and has no bearing one way or another on holism. One may say, following Pollock, that its real target is the doxastic assumption, that is, the view that justification of a person's beliefs depends exclusively on that person's other beliefs. See Pollock, supra note 8. In other words, the discussion is
should not be rash, or gullible, or prejudiced, or superstitious. That is, he upholds (in addition to coherence) objective conditions of epistemic blamelessness. People are to blame—epistemically speaking—when they fail to meet these standards. In these cases their epistemic functioning is at fault. The coherence theorist will acknowledge that when we do not function epistemically well we are more likely to fall into error. But when we have no inkling that we suffer from such failings we are not, according to him, to blame, and when our beliefs are blameless they are justified even when they happen to be false.

When we think of justified beliefs in this light, that is, as turning on whether the believer is at fault, whether he is responsible for holding a false belief, several observations become evident. First, it is simply false that we hold as justified beliefs conceived in prejudice and superstition, or entertained because of gullibility, obstinacy, or similar cognitive defects of the believer. The racist’s belief in the untrustworthiness of members of a certain race, bred of prejudice, is not justified even if it coheres best with all the racist’s other (mostly racist) beliefs. Coherence theory may seem plausible when attention is focused on the believer alone. But it is seen to be plainly false to our entrenched understanding of justified belief when we consider our judgment on the beliefs of others. We agree that people’s beliefs are justified even when false, when they hold them in a reasonable way, on adequate evidence, and so on, but we regard them as unjustified when their cognitive processes or capacities are at fault, when they should have known better.

Second, the prejudiced, gullible, obstinate, etc., can avoid their mistake. They can acknowledge that they are prejudiced, gullible, obstinate, etc.—many people are aware of possessing such faults—and can counteract the effects by double-checking their evidence, consulting others, refusing to come to any conclusions, etc. One suspects that coherence theories appeal in part because there seems no alternative. If a belief coheres best with one’s other beliefs, there is nothing to alert one to its defects. This is true so far as it goes. But it does not follow that one could not have known, or could not have suspected that it is not safe. It is a non sequitur to conclude that because one did not question a belief, one could not have, or that one could not have known what one’s other beliefs did not provide (sufficient) reason to suspect. Justification and absence of blame may follow from an impossi-

aimed as much against foundationalism as against coherence accounts. I avoid referring to foundationalism as a possible alternative to coherentism. I find, however, most discussions of the subject confused. Some versions of foundationalism are not committed to the doxastic assumption (here belong those who believe that perception is a source of knowledge, whereas hallucination, let us say, is not). Other accounts of foundationalism are firmly committed to the doxastic assumption. They understand the foundations to be beliefs identifiable by their form or content, rather than by their sources. While I hold no brief for either variant of foundationalism, the arguments advanced in the main text apply against the last variant only.
bility of knowing that one's belief is suspect. They do not follow where there was an epistemic fault which could have been avoided.12

Third, it seems likely, though no firm conclusion can be reached without examining closely what the "fitting" relation consists of, that coherence is not only insufficient for justification but that it is not necessary either. For example, you see your friend, John, out of your window. You believe, therefore, that he is in town. This contradicts your other belief that he is on holiday in Spain, and various other beliefs which you have about his actions and plans. As it happens, you momentarily forgot about his holiday and all the rest, and are not in the least surprised to see him out of your window. There is no doubt in my mind that your belief that John is in town today is justified. At least on superficial examination, however, that belief does not fit as well with your other beliefs as the belief that you are mistaken in thinking that you saw John in the street.13 If so, then coherence theory leads to the erroneous conclusion that your belief that John is in town is unjustified. It seems to me, though I am not confident about this, that there is no way of explaining what counts as "fitting together" which will avoid the conclusion that the belief that he was in town did not fit best with one's other beliefs, though one will have to construct careful counterexamples to various possible articulations of that relation.

Fourth, another reason for rejecting coherence as necessary for justified belief becomes evident when we consider cases when one is justified in accepting or holding inconsistent beliefs. It is true that all true propositions are necessarily consistent. But it is false that any coherent set of propositions is closer to the truth than any incoherent set. It is not even the case that every consistent set of propositions is closer to the truth than any inconsistent one. This is so even when we confine ourselves to two sets which largely overlap in content, except that one is consistent and the other is inconsistent.14 Even under these circumstances we have no reason to believe that the consistent set is necessarily closer to the truth. (Inconsistent though the Fregean articulation of the foundations of arithmetic was, it was closer to the truth than many of its consistent rivals.) Bear in mind here that because we are concerned with believed propositions and because people do not believe all that is entailed by their beliefs, I am referring to sets of propositions which are not closed under entailment, i.e., which do not include all that they entail.

12 Notice that not all flaws in the way a belief is acquired or held render it unjustified. Sometimes, for example, the believer cannot avoid falling prey to a trick or being taken in by unusual circumstances.

13 I believe that Burns wrote the Waverly novels. But last week when asked who their author was I could not remember. It does not follow that at that time I had lost my incorrect belief. My failure was of recall, of the ability to tap my memory, to activate it when the need arose.

14 I am assuming that we can establish the overlap in content even though the set is inconsistent.
Given the possibility that a contradictory set is closer to the truth than a consistent alternative, the move to consistency can be a move in the wrong direction: the consistent set of beliefs replacing the inconsistent one may be both false and further away from the truth than the inconsistent one. Given that one knows that, it would hardly seem epistemically justified to move from the inconsistent to the consistent beliefs—at least not without further information, i.e., information which goes beyond indications of consistency to identify either which set is more likely to be true, or which of the propositions yielding the contradiction is in fact false. Again, it is possible, but seems to me unlikely, that an articulation of a relationship of “fitting together” can be found to avert this possibility.

Finally, the last two points depend on the following proposition: while coherence theory, to make sense at all, must relate to the totality of one's beliefs, and not merely to what one is thinking of at the time, many of one's beliefs are not accessible to one at will. Much of what we believe we do not remember and cannot recall at will. Furthermore, many of the implications of our remembered beliefs elude us. This brings out the inherent incoherence of coherence theories. Their appeal depends on rejecting, as irrelevant to the justification of belief, everything other than a person's beliefs, on the ground that those other factors are not available to him. But by the same reasoning most of his beliefs are to be discounted as well. On the other hand, as we saw, sometimes what is not available could have been available. In many cases one could have come to recognize the existence of various epistemic defects, such as biases, prejudices, or incompetence to judge the matter at hand, much more easily than one could have come to remember certain of the things one knows which bear on the matter, or to work out their implications. Indeed, a defect one may be able to realize one suffers from is precisely this difficulty in remembering information of a certain type, or in realizing its consequences when one is under stress, and so on. Hence, sometimes one can know that one cannot remember correctly more easily than one can remember. But this shows that coherence theories are guilty of greatly exaggerating one's voluntary control over one's beliefs, as well as of espousing excessively voluntaristic notions of responsibility and justification. It is this excessive voluntarism which renders coherence theories ultimately incoherent.

II. FROM EPISTEMIC TO CONSTITUTIVE COHERENCE:
REDEFINING COHERENCE

So far I have been concerned to refute the view that coherence provides the key to the justification of belief. You may, of course, say that all this is irrelevant because my topic is coherence and the law. Writers who have advanced coherence theories of law and justification did not offer them as epistemic accounts but as explanations of the nature of law and of correct adjudication. So why deviate from the view that coherence provides the key to the objective constitution of the law, to the view that it is the key to the
justification of belief? There are three reasons for the detour. The first is rhetorical. Coherence enjoys such a good name that we should be on our guard: coherence may be the key to the solution of some problems, but it is not the solution to all the problems it is invoked to solve. This touches on the second reason for the detour. It is not always clearly understood that the jurisprudential theories of coherence are not epistemic, but constitutive. It is important to make clear that coherence is invoked in several distinct contexts, and that its success in some of them may well be logically independent of its success in others.

This brings us to the last reason for the detour. It may be thought, though I do not know of anyone actually making this claim, that the success of the coherence account of the law follows directly from the coherence theory of justification of belief. Roughly speaking, the claim would be that if justified beliefs form a coherent whole then so does the reality they represent. The subjective and the objective, the beliefs and the reality they are about must, when the beliefs are true, mirror each other. Whatever the independent problems with this argument, it can be put aside given the rejection of theories of epistemic coherence.\(^\text{15}\)

I stated at the outset that constitutive coherence theories of law and adjudication are more plausible than coherence theories of justified belief. While by now my reasons for finding epistemic views suspect are clear, it may still be puzzling how constitutive theories can be taken seriously. Coherence may be a desirable feature of an intellectual system, the objector may say. We may prefer theories which display more coherence to those which display less. But this is all either a matter of intellectual satisfaction in one mode of presenting results rather than others, or a value judgment of some sort. Such judgments and preferences, the objector will continue, are irrelevant to an inquiry into the nature of law.\(^\text{16}\) When we ask about the nature of law we aim to discover how things are independently of us. I do not mean that the law is as it is independently of human beings and their activities, only that what it is, is independent of my, or anyone else's, inquiry into its nature. Therefore, our preferences or value judgments are immaterial. Our account of the law should be faithful to the nature of legal phenomena. And while it is possible that some legal systems display considerable coherence, there surely cannot be a general reason to suppose that they all do. There is no reason to suppose that the law lives up to our preferences or values.

In the end, this objection may very well prove decisive. But things are not that simple. To begin with, we need to recharacterize the way coherence is understood when it is advanced as a constitutive thesis about the nature of law, or as a thesis about correct adjudication. The epistemic notion of

\(^{15}\) It does not follow, of course, that because justification is not by coherence alone, reality or the law is not a coherent whole. They may be coherent wholes even if considerations about the coherence of one's beliefs are irrelevant to their justification.

\(^{16}\) To simplify, I will concentrate on law, and will make no special mention of adjudication except when the arguments bear differently on law and on adjudication.
One thing, we are now concerned not with coherence of beliefs but with the coherence of legal norms, rules, standards, doctrines, and principles. Furthermore, epistemic coherence is relative to each person. The justification of each person’s beliefs is relative to that person’s totality of beliefs. This makes it possible for each of two people to be justified in holding beliefs that contradict those of the other. As justified beliefs may be false, there is no problem about that. A constitutive account of law cannot enjoy the same luxury. It cannot be person-relative. What is or is not the law in the United States today is one thing, and what people believe it to be is another. If two people hold contradictory views about American law, then at least one of them is wrong. So if coherence is to play a role in an account of the nature of law (or of correct adjudication), it cannot be understood in a person-relative way.

This draws attention to the fact that to make coherence play a role in an account of the law (or of justified belief) that account must consist of another consideration beside a preference for coherence. It must include a principle providing what I will call “a base,” that is, something which is to be made coherent. Epistemic accounts take the base to be a person’s belief set. Each of a person’s beliefs is justified if and only if it stands in a certain relation to that person’s belief set. Constitutive coherence accounts of the law cannot have the same base. They cannot take as their base each person’s beliefs, nor that person’s legal beliefs which correspond to (a potential) legal principle. That would make them person-relative and we have just seen that they cannot be person-relative. Their base must be, practically speaking, the same for all believers, so that the coherence imposed on it will yield one legal system per state, however much people may disagree about its content.

The introduction of the base may sound like a betrayal of coherence in favor of a form of (a constitutive version of) foundationalism. Why should we not say that all legal propositions, let us say all the propositions starting with “according to law . . .,” should be submitted to the test of coherence? On this view, the law is as stated by the most coherent subset of all legal propositions. Only in this way—you may say—can coherence be the sole

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17 I do not mean that it is logically impossible to apply the epistemic notion of mutual support here. I suggest only that we need a more abstract formulation of coherence, not committed from the outset to its epistemic understanding. That formulation, broadly of a system whose principles are unified, will leave open what form of unity is relevant. It may turn out that epistemic support provides the answer to this question.

18 For every standard there is a corresponding belief. To the principle pacta sunt servanda corresponds the belief that they should be. But not every belief corresponds to a legal standard. Neither the belief that oaks blossom in the spring, nor the belief that Jenny made a valid contract with Jane correspond to any legal principle. Constitutive coherence is not even the coherence of all legal propositions, only of those which correspond to legal principles.

19 In principle, if a transitory base is admitted, each person may have a different transitory base from which he or she is led, by considerations of coherence, to converge on everyone else’s conclusions.
judge of truth in the law. And I agree. So the first lesson we learn is that, even according to coherence accounts, coherence is but one of at least two components in any theory of law. The other component provides the base to which the coherence account applies.

This is the first lesson we learn, for clearly the suggestion we just envisioned, namely that the coherence test be applied to all legal propositions, is a non-starter. Think of it: among possible legal propositions are the propositions, "According to law one should act to maximize the happiness of the greatest number," and "According to law one should always act in accordance with the categorical imperative." That is, if we take all possible legal propositions as the base, we may end up with a morally perfect set of propositions as allegedly being the law, but this moral perfection will be purchased at the cost of losing contact with reality. What will be baptized as law by the pure coherence account of the law will bear no relation to the law.

This first lesson has far-reaching ramifications. It suggests a division of labor between the two components of a theory of law. The base assures it contact with the concrete reality of the law; the coherence test provides the rationalizing element which enables us to view the law as a rational system governing the conduct of affairs in a country. This characterization is not precise, but its intuitive force is sound. It is strengthened by the second lesson which has already been pointed out above: the base cannot be subjective. It must be the same for all persons. In particular, theories of law cannot take as their base each person's beliefs, nor each person's legal beliefs. The law is not subjective in that way. It is not the case that there are many legal systems in the United States because different people have different beliefs about what American law is. Because the law is one, the base to which the coherence test must apply is one. Were the coherence test to apply to people's beliefs about the law, one would end with different legal systems for different believers. The need to find a common base to which the coherence test applies emphasizes the importance of that part of the theory and its connectedness to the concrete realities of the country concerned.

It is true that the base itself is not immune to coherence considerations. It provides the starting point, the material to which one applies the coherence test. In the process of applying the test, the base may be modified. Elements may be added while others are rejected. One possibility for a coherence theory is to have a transitory base, that is, one which provides a starting point on which some coherence-maximizing procedure is applied, leading eventually to a discarding of the base. Rawls's writings on reflective equilibrium illustrate the possibility of a base which can, in principle, be transitory. To achieve reflective equilibrium one starts a process of deliberation leading toward it from one's existing normative beliefs, against the background of all other beliefs. During the deliberation one is led to accept principles which increase the coherence of the totality of one's normative beliefs at the time (again, given the rest of one's beliefs). In this process one also may discard some of one's original beliefs or beliefs which one has reached at that stage. Deliberation continues until one is content with the beliefs one has at that
time. While in practice one is likely to reach that point while continuing to
hold many of one's original beliefs, in principle they all may have been
replaced by other beliefs.\textsuperscript{20}

While a transitory base is logically consistent with a coherence account of
law and adjudication, we can dismiss that possibility from our deliberation.
Nobody has ever suggested a view of law which allows for it. All coherence
accounts of law admit an additional consideration, one which provides the
base from which only modest deviation is allowed. Thus, all coherence
accounts of the law are mixed accounts. In due course I will raise the ques-
tion of what that additional consideration could be. For now, it is enough to
understand coherence theories of law as those which take a certain base, say
court decisions and legislative and regulatory acts, and hold the law to be the
set of principles that makes the most coherent\textsuperscript{21} sense of it. The more unified
the set of principles, the more coherent it is. If all the principles follow from
one of their number, then we have strong monistic coherence. If they all
follow from a small group of principles which display a unified spirit or
approach, they are less coherent but more so than if the principles derive
from a plurality of distinct and irreducible principles which do not display a
unified spirit or approach.\textsuperscript{22} Similarly, if the law is derivable from a set of
distinct principles which are completely ranked, then it is more coherent
than if they are only partially ranked, and so on. Other forms of unity dis-
playing coherence are possible as well. One can imagine unity through cir-
cular interdependency of a set of propositions such that giving up one
principle requires the abandonment of all the others. If coherence takes this
form, then no proposition enjoys priority over any other.

It is not possible to determine in advance precisely what coherence means,
and how precisely different accounts of the law compare in the degree of
coherence they show the law to have. These questions are among those
which are at issue between competing accounts of the law and can only be
determined concretely in the face of the competing accounts. Only the very
broad characterization of coherence as the degree of unity in the legal system
can be stated in advance. The more united the law is made to be the more
coherent it is. The more pluralistic the law, the less coherent it is. Coher-

\textsuperscript{20} See Raz, \textit{The Claims of Reflective Equilibrium}, supra note 2. As is clear from this
schematic and not very accurate description, reflective equilibrium need not be
committed to coherence. But consideration of this point need not detain us here.

\textsuperscript{21} But resist the natural inclination to understand “coherence” as “intelligible” in this
sentence.

\textsuperscript{22} I am assuming here that distinct principles can display a similar approach, or one
spirit, without being derivable from one more abstract principle. Different jokes can
evince the same attitude, or express the same outlook, without being derivable from a
statement of that point or attitude. I am assuming that the same is true for moral,
political, or legal principles.
ence theories claim that a greater degree of coherence is one of the considerations which make an account of the law true.\textsuperscript{23}

III. Is There an Argument from Radical Interpretation?

The existence of law depends on social practices, and this makes coherence theories tempting. There are two arguments to be considered. The first can be dismissed fairly quickly. The second, however, will occupy much of the rest of this Article. The first argument suggests that law is dependent on social practices, that is, dependent on human actions, desires, and beliefs. If so, then to identify the law one needs to identify the relevant social practices, and the actions, desires, and beliefs which constitute them. Familiar arguments establish that the attribution of actions, desires, and beliefs to people is interdependent. What a person does depends on what he believes and wants, what he wants depends on what he does and believes, what he believes depends on what he wants and does. There is no need to rehearse these arguments here.\textsuperscript{24} An example will make their point clear: The Metropolitan Police in London used a photograph of Don McCullin in its drive to recruit more minority police officers. In it a young black man is running, followed by a white police officer. The caption read something as follows: “Do you see a policeman chasing a black youth? If so you are prejudiced not us.” The photo is of a uniformed constable assisting a black plainclothes police officer in pursuing a suspect. You see the point: While one knows neither the beliefs nor the desires nor the goals of the agents, one cannot know what actions to attribute to them. Once one knows their beliefs and goals, one knows what they are doing. Conversely, once one knows the agents’ actions and desires, one can easily determine their beliefs. (The agent wants to eat, he opens the cupboard, so he must believe that there is food in the cupboard.) Similarly, once one knows their beliefs and actions one knows what they want. (The agent takes a book off the shelf, believing it to be a biography of Jean Rhys, so he wants to find out something about Jean Rhys.)

These examples are simplified. They overlook the possibilities of alternative explanations and other nuances. They do illustrate, however, the general point we need: that we attribute beliefs, goals, and actions to people, not singly but in interdependent clumps. This interdependence means nothing other than a presumption of coherence. That is, the attributions determine each other on an assumption that the agent has coherent sets of beliefs, goals and actions; that the agent acts rationally as one would given that one has these beliefs and goals; that one has the goals appropriate to someone with these beliefs who performs these actions; that one has the beliefs appropriate

\textsuperscript{23} The Appendix includes a discussion of some other ways in which “coherence” is sometimes used.

\textsuperscript{24} A crisp statement of them may be found in Anthony Kenny, The Metaphysics of Mind (1989).
to someone who, having the goals one has, performs these actions. Given that actions, beliefs and goals are attributed on an assumption of coherence, and that the law depends on social practices, i.e., on actions, beliefs and goals that people have, does it not follow that the law forms a coherent whole?

Clearly, to conclude so would be to commit a gross non sequitur. The argument merely establishes that to have beliefs and goals and actions one must have clumps of coherent sets of the three. Cases in which the coherence fails do exist, but they are—must be—the exception rather than the rule. It is a far cry from here, however, to an assumption of global coherence in any agent's overall set of beliefs, goals, and actions. Conceding that local coherence is necessary for rational agency is consistent with recognizing that people are all too often quirky, inconsistent, wayward, and even incoherent overall. It is certainly consistent with thinking of them as having consistent but mutually independent sets of goals and desires, displaying very little unity.

Some philosophers, notably Davidson,\textsuperscript{25} have generalized the argument in an attempt to establish that to understand any creature as a person, i.e., as an agent who has goals and beliefs, presupposes an assumption that for the most part his beliefs are true and his goals and beliefs cohere. That argument depends for its plausibility on the supposition that we understand our parents and closest friends, indeed that we understand ourselves, in the same way in which we might inquire whether a newly encountered creature of an unknown species on Mars is a person, and what beliefs and goals he has. The soundness of that argument need not detain us here. Even if it is sound, it does not establish that the law is coherent. What the law is is the result of the activities of a multitude of people, and the interactions among them, over many years, sometimes over centuries. One cannot infer, in a Davidsonian-style argument about radical interpretation, the coherence of the activities, beliefs, or goals of all those whose activities make the law what it is.

Given the previous remarks, I will proceed on the basis of two propositions. First, that the law is a function of human acts and social practices (though not necessarily exclusively so). Second, that one can identify the acts, beliefs, and goals of people without presupposing that they form, collectively, a coherent set. When discussing the law we are often concerned with the promulgation of statutes or statutory instruments, and with judicial decisions stating reasons for reaching a certain outcome to litigation. Such acts have a content: the statute, the judicial reasons. Coherence theories offer a solution to the problem of the relation between human action and the law.

To show how coherence theories deal with this relation, I will look at the two steps of another simple alternative—what I call the intention thesis. First, statutes and judicial decisions have the content that their makers

\textsuperscript{25}For example, see DONALD DAVIDSON, Radical Interpretation, in Inquiries Into Truth and Interpretation 125 (1984), and other of the essays in that volume.
intended them to have. Second, the law is the sum total of all the statutes and those judicial decisions which have the force of precedent.

The intention view is widely ridiculed today. But it is not without its appeal. After all, legislators promulgate statutes with the content they intend to become law; courts advance those reasons which they intend to be understood as the justification of their decisions. If the intentions of legislators and judges are not made into law, it is not clear why they are chosen to legislate or adjudicate. This explains why we care so much who is elected or appointed to the legislature and to the courts. We know that those people will try to affect the content of our law, and given the power to legislate or decide cases they will do so. They will be able to translate their intentions into law. But for this, why do we care whether a Democrat or a Republican is elected to the Senate? Why care whether a pro-choice or an anti-abortion person is appointed to the Supreme Court? It is not enough to say that we care because the court and the legislature affect the law. If they do not affect it by translating their intentions into law, then there is no need to care about their intentions. So the intention thesis has a core of good sense. Many dismiss it because legislatures and courts consist of many people and no single person’s intention can be decisive. The problem of institutional intention is a serious one, and not only for supporters of the intention thesis, but it cannot be discussed here. The burden of the earlier discussion is that we can identify intentions without presupposing any degree of collective coherence. So there is no way from the intention thesis to any coherence account of the law. Quite the opposite. It is unlikely that the intentions of all lawmakers cohere, and, therefore, one would not expect the law to display a high degree of coherence.

Given all that, can one resist the intention thesis? Is it not the inevitable consequence of the fact that the law is a function of human acts and social practices? Not at all. The answer depends on what sort of a function it is. We share a concept of law which assigns a special status to rules and other standards which stand in a certain relation to, are a certain function of, human activities. But what is this function? The intention thesis suggests that it is one of identity with all the principles representing the content of the intention with which lawmaking acts and court decisions are undertaken. This is but one possibility. Another might be that the law consists of the valid moral principles which are closest (i.e., most similar) to the propositions representing the intentions of lawmakers and courts. On this thesis, which we may call the moral approximation thesis, one acts as if each lawmaking act points to a valid moral principle. Sometimes it identifies the principle correctly. In these cases, the result of the moral approximation thesis is the same as that of the intention thesis. At other times, the lawmaker’s or the court’s intention, while aiming at a valid principle, misses it. The lawmaker or the court wants to identify correctly the principle of respect for freedom of contract, or of just, progressive taxation on income, but the rule they establish falls short of the morally sound rule. In this case
the law is not as is stated by the intention thesis; rather, it is the valid principle nearest to the legislator’s or court’s intention.

I do not suggest that the moral approximation thesis be taken seriously. I mention it only because it shows how the law can be a function of legislative acts and judicial decisions without being as stated by the intention thesis. Moreover, the moral approximation thesis is sensitive to the intentions of the legislator. It therefore can claim to explain why it makes sense to care who the legislator is. It shows that the intention thesis is not the only one which can capture the basic sound sense which lies at its core. Nor is the moral approximation thesis the only alternative to it which is sensitive to the intentions of courts and legislators.

It all depends on the concept of law, by which I mean the way we conceive of the social institution known as the law. The exploration of that understanding is a theoretical enterprise aimed at improving our understanding of human society. On the one hand, it must be true to the basic features of the institution, which in its basic elements and manifestations is known to all. On the other hand, it is not an attempt at an exhaustive description of the law. Rather, it is an attempt to highlight the law’s most significant features, those which contribute most to our understanding of the functioning of the institution in our lives and its relations to other institutions and social practices. The intention thesis is one suggested partial answer to this theoretical quest. It captures some elements correctly, and any adequate explanation of the law will have to succeed in doing justice to these elements. The moral approximation and the coherence views of the law offer rival ways of understanding the law. It remains to be seen how successful coherence accounts are.

IV. THE EXTREME PARADIGM: LAW AS COHERENCE

Following my method so far, I will formulate a pure version of a coherence-based account of the nature of law:

The law of a certain country consists of the most coherent set of normative principles which, had they been accepted as valid by a perfectly rational and well-informed person would have led him, given the opportunity to do so, to promulgate all the legislation and render all the decisions which were in fact promulgated and rendered in that country.

26 I have discussed the methodology of the inquiry into the nature of law elsewhere. See, e.g., Raz, Authority, Law and Morality, supra note 6; Joseph Raz, The Problem About the Nature of Law, 21 W. ONTARIO L. REV. 203, 210-12 (1983).

27 Many accounts of law emphasize the importance of coherence. Many of them bear no resemblance to the thesis formulated here. An example of such an unrelated accounts is to be found in Ernest J. Weinrib, Legal Formalism: On the Immanent Rationality of Law, 97 YALE L.J. 949 (1988). I have discussed Weinrib’s ideas in Joseph Raz, Formalism and the Rule of Law, in NATURAL LAW THEORY (Robert George ed., 1992). Other theorists who assign importance to coherence include: Rolf E. Sartorius, The Justification of the Judicial Decision, 78 ETHICS 171 (1968); ROLF E. SARTORIUS,
Before we consider the thesis, the examination of one possible objection to it will help clarify its nature. The thesis, one may say, presupposes that we know what legal decisions, legislative or judicial, are, but that we do not know their content without the coherence exercise. This, the objector concludes, is unwarranted. If we know what the decisions are, we also can know their content, and have no need for the coherence thesis. The objector claims that having to introduce a base to which the coherence test applies undermines coherence. The base provides all we need for a theory of law without help from coherence. But in this form the objector misunderstands the thesis. It is perfectly capable of accommodating the objection, by incorporating the very identification of the legal acts of promulgating legislation and rendering of judicial decisions within the coherence test itself. After all, the content of the law which the test identifies includes the rules establishing courts, their rules of jurisdiction, and their procedures, as well as rules for the constitution, election, appointment, and procedures of legislative institutions. The identification of the legal acts which the test uses to establish the law is itself secured by the law which the test identifies. This is a totally innocuous circularity. Of course, the thesis assumes some base. It assumes a rough identification of the relevant legal acts with which to start, an identification that can be confined to the totally uncontroversial acts of the legal institutions of the country concerned. But the thesis does not remain bound by this initial identification. It expands the range of legal activities assigned to its rational legislator-cum-court as the legal doctrine it identifies requires, and it may even, within limits, conflict with the initial consensus and delete certain institutions from its list if that seems necessary to improve the coherence of the main body of legal propositions.  

Individual Conduct and Social Norms 181-210 (1975); S.L. Hurley, Natural Reasons, supra note 4; Robert Alexy & Aleksander Peczenik, The Concept of Coherence and Its Significance for Discursive Rationality, 3 Ratio Juris 130 (1990). Ronald Dworkin's work also has affinities with coherence theses, and will be considered below. My aim here, however, is not to address any theorist's specific views, but rather to address a generic position. Given the difference in the understanding of the relations between the law and coherence, my arguments do not apply directly to all these coherence-oriented accounts. But they do bear on the general merits of coherence, and to that extent they have implications for all coherence-oriented accounts.  

28 A similar objection has been raised against H.L.A. Hart's doctrine of the Rule of Recognition. According to it the law of a legal system consists in those laws which the courts and other institutions of that country are under a customary duty to apply. This presupposes an independent way of identifying which are the relevant institutions, it has been objected. See Neil MacCormick, H.L.A. Hart (1981); see also Mathew H. Kramer, Legal Theory and Political Theory and Deconstruction 120 (1991). Not so. The Rule of Recognition itself identifies certain institutions as the relevant ones. Potential Rules of Recognition are represented by any proposition of the right form, for example, a proposition identifying certain bodies and imposing on them a duty to apply a set of doctrines and rules. That proposition is the Rule of Recognition of a country which meets the following two conditions: First, the institutions it refers to do
Think of this thesis what you like. It clearly offers various hostages to fortune, for example in its fictional would-be single legislator-cum-judge, acting on the basis of a set of principles, and outside the constraints of any political process. Nevertheless, two features stand out as potentially great advantages of the coherence over the intention thesis. First, it regards the law as contemporaneous, and as free from the dead hand of age-old intentions which shackles the intention thesis. Second, it presents the law as a rational meaningful whole, rather than as the higgledy-piggledy assemblage of the remains of contradictory past political ambitions and beliefs, as does the intention thesis. I describe these as potential advantages because, as they stand, they are suspect of wishful thinking. It would be nice if the law were a coherent rational system, free from the dead hand of past intentions and from the debris of past political struggles. But we all know that this is not so, that the law suffers precisely from all these disadvantages, and that so long as it remains, as it must, the main vehicle of politics, it will remain so marred.

Are these suspicions justified? Defenders of the coherence thesis will protest that they are as aware as anyone of the vagaries of politics. The question, as we saw, is what is the relation between these facts and the law. It is common ground to most writers on the nature of law today that the law is meant to be taken as a standard for conduct and for judgment by its subjects, and that typically they do take it so. That fact must be at the center of any explanation of law. An explanation must show how the law can be taken as a standard for conduct and for judgment, and how it is typically so taken by its subjects. Further, the explanation must make these facts central to our understanding of the law. The acceptance of the law as a standard is some-

exist. Second, they actually follow a rule whose content is that proposition, that is, they have a practice whose content is as stated by the proposition. Hart's Rule of Recognition escapes from the circularity even without assuming an external starting point, which seems necessary for coherence thesis. But if his theory is to be a theory of law, rather than of some other institutionalized normative system, Hart needs to rely on a similar device to identify the undoubted legal institutions as the starting point for the process.

29 The coherence thesis also gets around the problem of attributing intentions to institutions. But, as I have indicated, there is no reason to take this problem too seriously, except as against rather silly versions of the intention thesis. The problem may be sufficient, however, to reject the views sometimes known as "originalist." Compare their discussion in Michael J. Perry, Morality, Politics, and Law (1988).

30 This point has been more or less explicitly denied by O.W. Holmes in The Common Law, and implicitly by Marxist and economic theories of the law. See Oliver Wendell Holmes, The Common Law (1881). It has been made central to his theory by H.L.A. Hart, in developing his thesis about the centrality of the internal point of view. See H.L.A. Hart, The Concept of Law (1961). Among other works which further developed this idea (in ways which go beyond Hart's conception of it) are: R.A. Duff, Legal Obligations and the Moral Nature of Law, 25 Jurid. Rev. 61 (1980); Joseph Raz, Practical Reason and Norms (2d ed. 1990); Joseph Raz, The Authority of Law: Essays on Law and Morality ch. 2 (1979); John M. Finnis, Natural Law
times regarded as the reason for embracing the coherence thesis. The reason is plain to see. An outsider observing a foreign legal system can see it as a hodgepodge of norms derived from the conflicting ideologies and the pragmatic necessities which prevailed from time to time over the many years of its evolution. Someone who adopts the internal point of view cannot possibly do this. Adopting the internal point of view means that he regards the norms as valid for him, as guides for his behavior and judgment. It makes no sense to accept an assemblage of norms as one's own norms unless one regards them as valid and justified, and one cannot regard them as justified unless they form a coherent body.\(^\text{31}\)

There are several decisive objections to this argument, but before I address them let me discard one failed objection. It is no objection that we do not always view the law from the internal point of view. True, most people have this attitude toward the law of their country only, and some do not share it even there. All people are perfectly capable of understanding that states have legal systems and of finding out what the law is. Therefore, the law must be comprehensible from the point of view of an observer. And it was acknowledged that, for an observer, it need not be coherent. All this is true, but none of it is an objection to the argument. Given the admitted priority of the participant's point of view, even the observer, in order to acquire a sound understanding of the law, must understand it as it would be seen by a participant. If it must be coherent to a participant then coherent it is.

The most fundamental objection to the argument I am considering amounts to a rejection of its premise that it is unintelligible for people to accept a less coherent body of principles over a more coherent alternative. The clearest counter-instance is the case of morality. Some moral theories enjoy great coherence, perhaps even the greatest coherence possible. Utilitarianism might be such an example, but any monistic morality, that is, one which derives all its precepts from one fundamental precept, is an illustration of a coherent moral system. All of them, however, are misguided. In fact, morality is not a system or a coherent body of principles. It contains, to be sure, pockets of coherence, and it is consistent. But it consists of a large number of principles which neither derive from a common source nor are capable of fitting into a uniform system or a system whose principles are mutually supportive and interdependent. Unfortunately, though sound and interesting, this objection cannot be pursued here, as this is not the occasion

\(^{31}\) This argument does not vindicate the coherence thesis as articulated above, nor any other specific coherence thesis. All it does, if anything, is argue for coherence as an element in any explanation of the nature of law.
to explore the nature of morality. Instead, we can resort to a second argument, of a more limited scope but pertinent to law. The argument for coherence we are considering proceeds from the assumption that, to be acceptable, a set of principles must be coherent. Let us assume that to be cogent and valid in themselves, directly, that is, due to considerations which are of the primary, most basic kind in establishing validity and cogency, principles must be coherent. This is consistent with the possibility that they are valid even though they do not form a coherent body of principles, for their validity may derive from indirect considerations. For example, if the set of principles one is considering represents the dictates of authority, they may fail to cohere and yet be valid because the authority is a legitimate one with power to bind its subjects.  

An authority may be justified, for example, because it is capable of achieving social coordination without which the level of personal security, social facilities, and economic prosperity enjoyed by the population would be much lower. Granting for the sake of argument that an ideal authority would have promulgated and sustained a coherent set of principles, an authority may be legitimate and its directives may be binding on its subjects, even if it is far from ideal and its directives a far from coherent body of rules. Even so, it is entirely possible that those rules secure the social cooperation necessary for the realization of goals which could not have been secured any other way, and whose importance is sufficient to overcome the shortcomings resulting from the fact that the authority is less than ideal.

To put the point more directly, it is possible, indeed I would argue that it is the case, that many existing governments and legal systems fit the description of the previous paragraph. That is, their law is the result of the rough and tumble of politics, which does not exclude the judiciary from its ambit, and reflects the vagaries of pragmatic compromises, of changing fortunes of political forces, and the like. Their law, therefore, does not form a coherent body of principle and doctrine. But it makes sense to accept it and regard it as binding. Sometimes citizens are duty-bound to do so because of the benefits of maintaining its authority in spite of all its defects. At other times, it may be morally wrong to acknowledge the legitimacy of legal authorities. Most of the time, however, it is intelligible that people take it to be binding, regardless of its degree of coherence. None of this assumes that the law is not necessarily coherent. I merely point out that sets of principles can be sensibly embraced even when not coherent. Therefore, the fact that the law is typically embraced by many of its subjects is no argument that it is necessarily coherent.

This second argument, the argument from authority, applies only to the special cases where principles are valid for indirect (content-independent)....
reasons. But that the law is such a special case is not disputed. The coherence thesis takes as its base the activities of legal authorities. It regards the law as the most coherent set of principles which could lead one who believes in them to act as the legal authorities in the country concerned have acted. The existence of legal authorities is fundamental to the law: on this, coherence theorists agree with their opponents. Hence we come to the third argument against the coherence thesis, which establishes that it fails to make sense of the existence of legal authorities. The third argument is simple. This much is common ground: (1) the law is to be explained in a way that illuminates how those who are subject to it are meant to view it; (2) those subject to the law are meant to take it as a set of valid standards for the guidance of their conduct and judgment; (3) those standards are, moreover, standards which emerge from the activities of authoritative institutions, and are to be taken as justified in the way which is appropriate to the justification of authority; (4) legal authorities are required to act with deliberation and for good reasons. Judicial authorities are often required to state their reasons, or some of them. Legislative bodies are not as commonly required to state their reasons, but they are subject to a requirement of acting with deliberation, in good faith, and for cogent reasons.

As we saw, the third point means that, if the law reflects the intentions of its makers, we need not expect a high degree of coherence in the law. Together with the fourth point it also means that we must assign considerable importance to the intentions of legal authorities and to their reasons for acting as they do when we interpret the law and establish its content. Otherwise, it would be a mystery why legal institutions are invested with authority in the first place, and why they are required to exercise it on the basis of reasons. If the way we determine the content of the law does not reflect the intentions and the reasons of legal authorities, then—barring the existence of a yet to be discovered invisible hand mechanism—nothing is gained by their acting for reasons rather than arbitrarily.

This point is so simple that I feel I ought to apologize for making it. My excuse is of course that it shows that the coherence thesis is wrong. It establishes that because the law is meant to be taken as a system based on authority its content is to be determined by reference to the intentions of legal authorities and their reasons, and, therefore, that given the vagaries of politics, including, let me repeat, judicial involvement in politics, there is no reason to expect the law to be coherent. By and large, one would expect it to be coherent in bits—in areas relatively unaffected by continuous political struggles—and incoherent in others. Perhaps coherent regarding the mental conditions of criminal liability, but not on the rights and wrongs of abortion.

33 See RAZ, supra note 32, at ch. 2.
34 I have here gone beyond the vaguer, more open formulation of the primacy of the internal point of view given above, in order to render it in the way which I believe is most appropriate. While this formulation will be disputed by some, most theorists agree on the primacy of the internal point of view, and that is all that is required here.
I suspect that one reason, perhaps the main reason, why this lesson is often overlooked is that people think that it drives them back into the bosom of the intention thesis, which we all know to be wrong. But it does not. It points to the importance of the intentions and reasons of legal authorities, not necessarily to those of the legislator. This is a large theme and cannot be fully addressed here. Briefly, the intention thesis errs in isolating each act of lawmaking and regarding the law made by it as determined by that episode in isolation, once and for all. This is an unsustainable view. What we need is a way of regarding the law as the function of the activities of legal authorities in general, that is, a way of seeing how its content is a function of various activities, and layers of activities, in continuous interaction, rather than as a function of a single act, fixed once and for all. This authority-based view of the law will avoid the pitfalls of the intention thesis, while preserving its ability to explain the institutional nature of the law, something the coherence thesis fails to do.\footnote{It may be of interest to reflect on the methodological assumption underlying this argument by comparing it with Ronald Dworkin's views on method, a subject to which he has contributed more than any other legal philosopher in recent years. Dworkin would regard the considerations raised here as legitimate (though not necessarily convincing), but would place them further down the deliberative process. For him, explaining the nature of law (the main task of jurisprudence) is one of many questions about American law. For example, can corporations be guilty of intentional crimes? It is a legal question like any other, except at a higher level of abstraction. As such, it is to be understood as an attempt to interpret the legal practices of the United States, an attempt which is subject to the fundamental principle of (constructive) interpretation: that interpretation is correct which shows the law to be the best item of its kind. The criteria for assessing which explanation of the nature of law is correct are essentially moral criteria. The conclusion that the law is to be understood as authority-based and, therefore, that its content is a function of the intentions and reasons of legal authorities, if correct, is to be regarded as based on the view that seeing the law in this way makes it morally better than alternative ways of seeing it.

By contrast, I am regarding the question of the nature of the law as different in kind from questions about the content of American law, different even, for example, from questions of the constitutional conditions of validity of legislation in the United States. In addition, while the argument, like Dworkin's, relies both on familiar and uncontroversial facts about the law and on evaluation, the evaluation involved is not a moral one, nor is it concerned with showing American law to best (moral) advantage. Rather, the evaluation concerns structural aspects of practical reasoning, and not its content (authority-related, content-independent justification of principles versus their direct, content-dependent justification). The evaluation is of what is important to our understanding of the processes shaping our social environment, for example, that the existence of social authorities is important, rather than of anything which shows them to be morally worthy.}
dered in a country. But why pay such attention to these acts of legislation and adjudication? One reason is that one has to do so because we are concerned with the law, and whatever a coherence theory which has a different base may be a theory of, it is not a theory of law. Our common understanding of the law, that is, of "the law" when used in the relevant sense, is that it is intimately concerned with acts of legislation and adjudication. This is true, but it fails to answer the question. When I asked why we take these acts as the base, I did not mean to question that they are to be taken as the base. I asked about the significance of this fact. We take legislation as the base because of its centrality to the understanding of law and of the governance of human affairs by deliberate decisions of human institutions appointed to control and give direction to human conduct and to social change. An account of the law must explain the main features of the workings of those institutions, for example, that they tend to generate a plurality of directives which cannot be readily fitted into a neat system. It must explain why they have these features. Coherence accounts take the base because it is too absurd to disregard it; then they strive to ignore it and to explain the law in a way which transcends the inherent limitations of the workings of human institutions, and by transcending them they misunderstand them.

V. COHERENCE IN ADJUDICATION

Some may feel that, so far, I have refrained from mentioning the most powerful case for coherence, that is, that courts have no alternative but to rely on coherence in deciding cases. The case is, one may say, a variant of the argument from the priority of the internal point of view. It says that even if ordinary citizens can have the internal point of view without seeing in the law a coherent whole, judges cannot do so. Their job requires them to apply a coherent body of principles. The argument about adjudication, however, cannot undermine our conclusions so far. I have argued not only that the advocates of the coherence thesis have failed to produce convincing arguments for their thesis, but also that it is false because it is inconsistent with the authority-based character of law. This argument establishes that the existence and content of statutes and binding precedents must be identified in relation to the intentions and reasons of legal institutions. The argument from adjudication must, and can, accommodate this conclusion. I will take the argument as advanced to support the Adjudicative Coherence thesis which claims:

Given the law's settled rules and doctrines a court ought to adopt that solution to the case before it which is favored by the most coherent of the theories (i.e., set of propositions) which, were the settled rules of the system justified, would justify them.36

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36 It may have been simpler to say "statutes and binding precedents" instead of "settled rules and doctrines." But in order to accommodate legal systems which admit
The difference between the Adjudicative Coherence thesis and the extreme paradigm considered in the previous part is that the Adjudicative Coherence thesis assumes a way of establishing, free of coherence considerations, the content of the prima facie rights, duties, and powers created by law. Coherence comes into play at a later stage. Given that the law consists of many prima facie reasons, arising out of myriad pieces of legislation, rules and doctrines, including the common law and constitutional doctrines, the different prima facie legal reasons may, and often do, conflict. Coherence is invoked by the Adjudicative Coherence thesis to establish the relative ranking of the different prima facie reasons. By allowing for a coherence-independent identification of the settled law, the thesis is consistent with the argument from authority, which led to the rejection of the extreme paradigm. Considerations of authority are given their due in the first stage, in establishing what is the settled law. The resolution of the conflict among the prima facie reasons established by settled law is the province of coherence.

Some advocates of this thesis distinguish between a doctrine of law and a doctrine of adjudication. The law, they would say, consists of what I called the settled rules and doctrines. The Adjudicative Coherence thesis is about how courts should decide cases. Its import is that they should follow the law where it applies, and should extend it according to its "spirit," as articulated by the most coherent theory which would justify the law were it justified. Others regard the thesis as being about the nature of law, on the ground, perhaps, that if it is true then courts never have discretion. They always are duty-bound to decide cases according to what the most coherent theory which justifies settled law requires. If the Adjudicative Coherence thesis is sound, then this latter view has much to recommend it. I will, however, refrain from engaging in this argument, as I suspect that the thesis is not sound.

How strong is the thesis meant to be? It can be read to state a necessary and sufficient condition for a judicial decision being correct. It can be seen as a comprehensive and complete theory of adjudication. Alternatively, it can be seen as advancing one desirable feature of judicial decisions only. It is possible to hold that while it is desirable that judicial decisions should accord with the most coherent theory, they are to be judged by other criteria as well. Given a multiplicity of criteria, it is possible that sometimes coherence has to be sacrificed for some other good. There is one powerful argument favoring the latter view. It appears that the relation "a more coherent theory than" is not connected, that is, various theories are neither more nor less coherent than each other. Various theories can equally account for the settled law without any of them being the most coherent one. If so, then it is

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other sources of law, let us use the wider expression, understanding it to mean all those rules and doctrines to which the argument from authority applies.

37 They include much more than what David Lyons called the explicit law. See David Lyons, Moral Aspects of Legal Theory, in 2 MIDWEST STUDIES IN PHILOSOPHY 223 (Peter A. French et al. eds., 1982).
reasonable to invoke other criteria for the guidance of courts, and to hold that coherence is but one of various considerations which make one outcome better or more correct, legally speaking, than any other. A natural suggestion is to add that of the theories among which coherence does not decide, that theory is to be preferred which is morally best. But natural as this suggestion is, it is eminently resistible on reflection: Must moral merit be confined to being a tie breaker? It may be thought more plausible to make it another desired feature of the best theory of adjudication, so that one may prefer the morally better theory over the more coherent one, up to a limit. Given my doubts about the importance of coherence, I share the sympathies of those who prefer that option. Once this further step is taken the problem of underdetermination reappears, that is, there is no way of deciding which mix of coherence and other values is best. I will consider the weaker of these interpretations of the Adjudicative Coherence thesis. That is, I will take it merely to indicate one desideratum in good judicial decisions. If this weaker theory is vindicated, one will have to consider the stronger thesis, giving it lexical priority over all other values, or even excluding all other values.

A number of arguments in support of this thesis can be culled from writings on coherence. To consider them we have to understand clearly what it is they must show. The Adjudicative Coherence thesis applies to all judicial decisions. It applies to cases to which settled law provides a definite solution, and it instructs the court to adopt that solution. It also applies to cases

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38 It is possible that all the solutions recommended by all the theories which account for settled law and are not less coherent than any other theory which does so, are acceptable, and it is a toss up between them. But it is more plausible to expect that while quite possibly some cases may have various outcomes, all of which are acceptable with nothing to choose between them, some of the time there are other considerations which may break ties.

39 For a criticism of Dworkin's theory which points out that it is caught in an analogous problem, see John M. Finnis, On Reason and Authority in Law's Empire, 6 LAW & PHIL. 357 (1987). Of course, the problem is not necessarily overwhelming for anyone who is willing to allow for underdetermination and for gaps in the law. But the matter requires further consideration which cannot be undertaken here, as we are not specifically concerned with problems of underdetermination.

40 See, e.g., Neil MacCormick, Legal Reasoning and Legal Theory chs. 7, 8 (H.L.A. Hart ed., 1978) (hereinafter LEGAL REASONING); Neil MacCormick, Coherence in Legal Justification, in THEORY OF LEGAL SCIENCE 235-51 (Aleksander Peczenik et al. eds., 1984); Robert Alexy, A Theory of Legal Argumentation (Ruth Adler & Neil MacCormick trans., 1989); S.L. Hurley, Natural Reasons, supra note 4, chs. 4, 10, 12; S.L. Hurley, Coherence, Hypothetical Cases, and Precedent, 10 OXFORD J. LEGAL STUD. 221, 222-26 (1990). As has been noted at the outset, the most influential writer on coherence in the law has been Ronald Dworkin who has developed a rich legal theory which is generally taken to be based on coherence. See Dworkin, Law's Empire, supra note 30. I will adapt some of his arguments in considering the Adjudicative Coherence thesis in this section and consider his own use of these arguments in the Appendix.
to which settled law fails to provide a definite answer. Plainly, the reason courts should follow settled law when it provides a definite solution has nothing to do with the merits of coherence. The Adjudicative Coherence thesis presupposes that settled law is to be followed, and extrapolates from this to other cases. The answer to the binding force of settled law derives from the doctrine of authority.\footnote{I have argued elsewhere that it is wrong to think that judges should always follow the law where its effect is definite. Their power may vary from one country to another, and their desirable power depends on complex factual issues such as the legal culture of the country concerned, the traditions of advocacy, and the qualifications of judges. But in all Common Law countries courts, both judges and juries, have a legally recognized discretion to refuse to enforce a clear law on grounds of equity, or because it violates fundamental constitutional doctrines. While this refutes the Adjudicative Coherence thesis, I will not pursue this matter here.} The Adjudicative Coherence thesis comes into its own where settled law does not provide a definite answer.\footnote{Such cases are sometimes known as "hard cases," though they need not be hard at all. The best outcome in them may be evident to any right-minded person upon a moment's reflection.} These are the cases on which we should concentrate.

Recall that we are assuming, for the sake of argument only, that sound moral and political principles form a strongly coherent theory. It follows that if the law is all that it should be, the Adjudicative Coherence thesis leads to the same results that the courts would reach if they were to disregard it and successfully follow sound moral and political principles, because those principles form a coherent set of which settled law is a part. Were we faced with such an ideal law, it would be difficult to determine whether the courts ought to decide according to the morally best outcome or to follow the Adjudicative Coherence thesis. Fortunately, no legal system is that perfect. Therefore, among other alternatives, the courts are faced with the question, "Should we adopt what would have been morally the best outcome had settled law not been imperfect, or should we follow the Adjudicative Coherence thesis, which may lead to an otherwise less than ideal solution in view of the imperfections of settled law?" The arguments I will canvass all support the second alternative.

A. The Argument from the Nature of Theory

THE ARGUMENT: No argument for the Adjudicative Coherence thesis is needed. It is simply an application to the law of the general maxim of rationality. Rational conflict resolution is simply the construction of the most coherent theory incorporating the settled cases.

REFUTATION: If anything hangs on the idea of constructing "a theory," then the argument begs the question. Perhaps the right way for courts to adjudicate does not involve any theory construction.\footnote{This indeed is my view.} If the argument is that there is no method of rational reasoning other than maximizing coher-
ENCE, IT BEGS THE QUESTION IN ANOTHER WAY. IT ASSUMES THAT THERE IS A GENERAL METHOD OF RATIONAL ARGUMENT, OR OF RATIONAL THOUGHT. BUT THERE IS NO GENERAL METHOD OF RATIONALITY IN THE SCIENCES OR IN DAILY REASONING. WE USE WHOLE CONGENIES OF METHODS AND RULES OF REASONING AND INFERENCE, ALMOST ENTIRELY UNAWARES. NOR ARE THEY CONSTANT FIXTURES OF RATIONALITY. WE LEARN TO DISCARD SOME, AND WE ACQUIRE OTHERS. AND SO DO SCIENCE AND OTHER AREAS OF HUMAN ENDEAVOR THROUGH THEIR HISTORY. IF, GIVEN THE STATE OF OUR KNOWLEDGE, LEGAL ADJUDICATION SHOULD BE GOVERNED BY THE ONE METHOD OF ADJUDICATIVE COHERENCE, THEN THERE MUST BE SPECIFIC REASONS TO EXPLAIN WHY THIS IS SO.

B. The Argument from Analogy

THE ARGUMENT: This is exactly what adjudication is like. It requires no argument, looking only at the facts. The facts are that courts always rely on analogies, and analogies are an informal way of describing the process of establishing coherence between previous decisions and the current one.

REFUTATION (or perhaps I should call it a deflection): The view of analogy presupposed in the argument is correct. But the conclusion does not follow from the very reliance on analogy. First, while use of analogy is a common feature of common law jurisdictions, there is no evidence that it is universal, let alone necessary, in all legal systems. Second, reliance on analogy in common law countries is too unsystematic and unreliable in effect. The apparently random effects of resort to analogy have often been used as evidence that courts do what they like, and use arguments from analogy as a fig leaf, because one can use analogy of one kind or another to vindicate any possibly supportable conclusion. None of this shows that reliance on analogy is humbug. But it does mean that the apparent facts do not speak for themselves. One needs an account of the rationale of argument by analogy. Although coherence accounts offer one such rationale, it is not the only one available. Moreover, analogies are always partial and local. The Adjudicative Coherence thesis is global and speaks of coherence with the totality of settled law. No direct support for any such practice can be gleaned from simply noticing the facts of judicial practice. One needs a theoretical argument to support one understanding of them or another, and we are yet to find one leading to the Adjudicative Coherence thesis.

C. The Argument from Fairness

THE ARGUMENT: A principle of formal justice requires treating like cases alike and different cases differently. Treating certain people one way, under settled law, and others, in like situations, in some other way is unjust.

44 On the analysis of analogies, see MACCORMICK, LEGAL REASONING, supra note 40, and RAZ, THE AUTHORITY OF LAW, supra note 6, ch. 10.

45 See, e.g., JULIUS STONE, LEGAL SYSTEM AND LAWYERS' REASONING (1964).

46 I will discuss several alternatives below.
to them. The Adjudicative Coherence thesis establishes a baseline of similarity, so that treating people who are alike, in its terms, differently is unjust.

**REFUTATION:** The weakness of the argument is evident. The question is why should the Adjudicative Coherence thesis provide the baseline for the application of the principle of formal justice (if there is such a principle). Surely there could be some other baseline, and what we need is a reason to prefer this one to others. That the argument does not provide. Instead, it betrays a misunderstanding of the nature of formal justice. Given that it can be satisfied by any baseline, and that the choice of the correct baseline requires independent justification, formal justice itself cannot help in justifying any principle of action. Its effect is confined to condemning arbitrary deviations from principles which are otherwise justified.\(^{47}\)

D. *The Argument from Authority*

**THE ARGUMENT:** In a way, the duty to follow (an imperfect) settled law is itself an example of justified deviation from doing what would be right had settled law not been imperfect. Following the most coherent theory which leads to all the same decisions as settled law leads to is no more a deviation than that. It requires no more than following the spirit of the law, or the implicit law, just as the duty to follow settled law requires following the letter of the law, or explicit law. Both flow from the duty of obedience to legitimate authority.

**REFUTATION:** Could the argument be based on a misunderstanding of the nature of authority? Authoritative directives bind because they are actually promulgated by authority. A principle cannot be authoritatively binding because of abstract arguments. It must arise out of actual human or institutional actions. Of course, one can direct implicitly as well as explicitly. But one has to direct for there to be directives to obey. Because settled law includes all the law issued by authority, implicitly and explicitly, the Adjudicative Coherence thesis cannot apply outside settled law on grounds of obeying authority.

But there is another way of reading the argument. It can be seen as a denial that there is anything which falls outside settled law, if settled law is understood broadly to include implicit law. For it can be seen to argue that implicit law always includes all that is required by the Adjudicative Coherence thesis. The thesis is simply a way of working out the (implied) meaning of authoritative actions. But if so, then the argument is misguided. Different legal institutions at different times pursue different goals; the implications of their activities are as numerous, diverse, and lacking in coherence as their explicit directives. There is no spirit to the law, only different spirits to

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\(^{47}\) The argument from fairness is supported by MacCormick. Dworkin introduces it as an independent argument only to relegate it to a consequence of his argument from integrity, which will be considered below. See *Dworkin, Law's Empire*, supra note 30, at 165-67.
THE RELEVANCE OF COHERENCE

different laws or bodies of law. Working out the implications of the law on
the assumption that all of it was promulgated in pursuit of one set of princi-
pies is to be false to the spirit of all of the bodies which enjoy legal authority,
and cannot be justified as an obligation of obedience to their authority.

E. The Argument from Loyalty to the Community

THE ARGUMENT: Perhaps I should have called it the argument from
integrity, for I have in mind Dworkin's argument. But, as I am using it to
support the Adjudicative Coherence thesis rather than Dworkin's own view
of adjudication, it is best to give it a different name. The demise of the
argument from authority makes the justification of the Adjudicative Coher-
ence thesis much more difficult. The problem we face is how the existence of
a less than perfect settled law justifies deviating from what is otherwise mor-
ally best. The authority argument amounts to saying that we are not really
deviating from the best that we can do. Rather, our limitations and the
limitations of political practices make following the authority the best
approximation of doing the best which is open to us. Barring this justifica-
tion, however, how can the existence of less than perfect settled law justify
(even if prima facie only) doing less than the best in cases to which settled
law provides no definite solution? The answer must be that such deviations
from what would otherwise be best are justified, because they manifest a
distinct virtue which is brought into play precisely by the existence of a less
than perfect settled law.

This is precisely what Dworkin claims to have established. He argues that
in all but degenerate legal systems, one has an obligation to obey the law.
Legal systems, he implies, are constitutive elements of political communities.
Therefore, membership in a political community entails an obligation to
obey the law. Moreover, he argues that the features which make communi-
ties genuine political communities ensure them a character which makes
membership in them intrinsically valuable. Those features entail the doc-
trine of law as integrity. Here, I am not concerned with all aspects of Dwor-
klin's views on Law as Integrity. Instead, I will consider the claim that
genuine political communities have a character which yields the Adjudica-
tive Coherence thesis (a thesis which is, arguably, an aspect of the law as
integrity doctrine). Naturally, this consideration cannot be regarded as an

48 See Dworkin, Law's Empire, supra note 30, at chs. 6, 7.
49 One may also doubt whether Dworkin's argument has anything to do with
integrity. Dworkin's integrity comes into play when people or communities fall short of
the requirements of justice and fairness. It is the virtue of sticking by principles which
"justify" one's past actions, however misguided they were, even though such principles
fall short in justice and fairness. See id. at 176-77. It is doubtful whether any of this is
true of the virtue of personal or institutional integrity.
50 For a detailed argument that authority is justified only when this is so, see Raz,
supra note 6.
examination of Dworkin's own views, though my conclusions may be transferable to a consideration of his writings.

"Political association, like family and friendship and other forms of association more local and intimate, is in itself pregnant of obligation."^{51} Membership in a society is a good in itself, and the duty to obey the law is part and parcel of membership. There can be no doubt that membership in decent political communities is valuable, both instrumentally and intrinsically.^{52} The question is what this tells us about the law. The argument from loyalty makes four claims: First, membership in a genuine political community carries with it an obligation to obey the law, because the law is the organized voice of the community. Second, this presupposes personifying the law, regarding it as a separate person, which means, of course, that the law does not speak for any of the institutions which create it and administer it, nor for the social groups which dominate and direct them; rather, the law speaks in its own voice, which differs from theirs. Third, this independent voice is an extrapolation from actual decisions. Fourth, this extrapolation is the one described by the Adjudicative Coherence thesis. All four stages are necessary to the argument, for it is people's relation with their community which explains the obligation to obey the law, and it is the fact that the law is an aspect of the community which forces one to accept its personification. The personification in turn leads to the need to disregard, to transcend, as one may say, the political vagaries reflected in the law. This is achieved, and here I turn Dworkin's argument away from its original target and toward ours, by embracing the Adjudicative Coherence thesis.

REFUTATION: The argument touches on more issues than can be adequately handled here. I will comment briefly on each of the points. First, we should beware of a tendency to over-intellectualize the implications of membership in national groups. It is primarily a matter of socialization, which is a major factor giving content to and setting the limits of one's options and capabilities on the one hand, and of one's imagination, affection, tastes and ambitions on the other hand. National groups vary in character.

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^{51} DWORKIN, LAW'S EMPIRE, supra note 30, at 206. At times Dworkin appears to say that the existence of such a duty as an element of membership in what he calls "political communities" is clear and beyond dispute. See, e.g., id. at 208. But as it is in fact very much disputed by philosophers and non-philosophers alike, and as he offers no arguments in support of his position, I will disregard these claims.

^{52} On the notion of a decent society, see AVISHAI MARGALIT, THE DECENT SOCIETY (forthcoming). We need not consider here whether Dworkin's description of what makes a community a genuine moral one is adequate to what I called a decent society. More relevant to our purpose is the question whether only degenerate societies fail to be decent societies, or at least approximately decent ones. If, as some would argue, most human societies to date fail this test, if most of them are such that their members (ought to) feel shame in their societies and guilt by association for their character and actions, then there is little we can learn about the law in general from the notion of an approximately decent society. For law exists in all political societies, decent or otherwise, and those which fail the test of decency cannot be dismissed as occasional deviations from the norm.
Most of them are nonideological in the sense that membership in them does not require adherence to any religion or morality. Some, however, are ideological. One cannot be a member of those (assuming membership to be morally permissible) without being bound by the duties their ideology imposes. It is less clear whether membership in other societies imposes any additional moral duties. To be sure, living in one's own country concretizes many universal duties in ways which direct one toward one's society: one should contribute to its services, to the support of its members (though not only to them) who require assistance, and so on. When one is visiting a different country, however, those duties are directed toward that society and its members.

Does membership impose duties which are not so contingent, that is, which are really essential to membership in national communities? I believe that there are such duties. They appear to me to derive from one's own identification with certain groups and communities. It does not follow, however, that membership in a community carries a special obligation to obey the law. Dworkin bases his claim to the contrary on his view that the law is a constitutive aspect of the community. This view is difficult to assess. Communities are constituted by social practices, and there is no reason to think that they are all constituted by similar practices. It is clear that the relations between the polity and the law vary from place to place and from time to time. Today, in many countries, we are used to associating the law with the state, though some believe, and many hope, that the development of supernational organizations portends a decline in that identification in the future. In Britain, for example, where there are several legal systems (notably the English and the Scottish) in one country, the association has never been very strong. Perhaps for the Scots, their law is an important aspect of their Scottish identity (though not of their British identity). For the English, things are very different. Many in the middle classes regard the Common Law and its judicial institutions as part of the English genius. Statutory law and Parliament, however, are a different matter. Moreover, working class English people have traditionally felt that the law is not theirs but that of the upper classes.

For a more extensive discussion of membership, see Avishai Margalit & Joseph Raz, National Self-Determination, 87 J. PHIL. 439 (1990).

The question is not whether such duties will or will not be universalizable. I take it for granted that they all are. The question is whether they are such as to be undetachable from membership in a national society, rather than those which are addressed toward one's national community simply because one happens to reside there at the time, or due to other contingencies which can change without change of membership.

Identification does not mean willing endorsement. It means one's self-understanding of who one is. People can see themselves as Jews, or Moslems, or as academic types, and so on, while hating themselves and/or Judaism or Islam or academic types generally, and that hate may be fueled precisely because their identification with the group, or type, is hateful for them.
More generally, in many subcultures a fierce sense of national pride and loyalty (not always expressing itself in admirable forms: football hooligans tend to be fiercely nationalistic) accompanies a lack of any sense of obligation to obey the law, and often a high degree of lawlessness without guilt feelings. While these are empirical observations, the claim about what accompanies membership in certain communities should be regarded as subject to empirical examination. As a general claim about political communities, however, it is mistaken.

The second limb of the argument, that the law should not be regarded as a simple function of the aims and actions of the people engaged in shaping it, is clearly true. It is true simply because the law is the product of such complex interactions between so many individuals that, as we were taught by students of collective action, it is idle to think that its content can correspond to the beliefs or goals of any of the people who contribute to its creation and administration. Notice, however, that this argument for the personification of law has nothing to do with any moral value that it, or the society of which it is the law, possesses. There is no moral argument for personification. Dworkin rests his claim to the contrary on the fact that integrity presupposes personification, and that there is a (partially moral) argument for integrity. Before turning to this point, however, let me pause to agree with the third proposition in the argument from loyalty—that the independent voice is an extrapolation from previous decisions. As I argued in the previous part, the fact that the law claims authority requires regarding its content as a function of the activities, aims and beliefs of the legal institutions with authority to fashion it. The question is why should its content be extrapolated from their activities in accordance with the Adjudicative Coherence thesis?

The answer is that we recognize, as a distinct virtue of communities, that the government is required "to speak with one voice, to act in a principled and coherent manner toward all its citizens." This involves two principles: "a legislative principle, which asks lawmakers to try to make the total set of laws morally coherent, and an adjudicative principle, which instructs that the law be seen as coherent in that way, so far as possible." It is this second principle which is our concern, as it is the one which governs adjudication, and (partially) determines the content of the law (it determines the "grounds of law" as Dworkin says).

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56 Dworkin regards it, I assume, as an interpretive claim. But that leaves it subject to the sort of empirical considerations I adduced.

57 See Dworkin, Law's Empire, supra note 30, at 187-88 ("We must not say that integrity is a special virtue of politics because the state or community is a distinct entity, but that community should be seen as a distinct moral agent because the social and intellectual practices that treat community in this way should be protected.").

58 Id. at 165.

59 Id. at 176.

60 See id. at 110.
The notion of "speaking with one voice" is taken by Dworkin to require coherence. But why should it? We can readily see that a person who is contradicting himself, saying and unsaying the same thing, is not "speaking with one voice." Is there anything more to "speaking with one voice" than consistency? It seems that one speaks with one voice if one is saying, or promulgating as law, what could be said or made into law by a single person who does not act randomly and who does not change his mind. "Speaking with one voice" can be understood as a metaphor for these two conditions. It can also be understood to include a third condition, the "no-compromise" condition. I speak or legislate with one voice if I say or enact what I think is in its content best, given the conditions of the society to which my legislation applies. I do not speak with one voice if, in order to secure a majority in the legislature, or to avoid a presidential veto, or to secure re-election, or for other similar reasons, I compromise what I say or enact in order to secure the agreement or lessen the opposition of people whose views I regard as mistaken. Unless otherwise indicated, I will use "speaking with one voice" to express all three conditions. Should adjudication be guided by the ideal of speaking with one voice, thus understood? And, if so, does this vindicate the requirement of coherence in adjudication?

This last question will be taken up in the Appendix. Let us now confront the first, more fundamental issue. Should adjudication be conducted on the assumption that the law speaks with one voice? Ideally, the law should speak with one voice. That much follows from the fact that it should be just and fair, and, in general, morally ideal. It cannot be morally ideal if it is random or reflects changes of mind or compromises with people whose views are wrong. This does not entail, of course, that speaking with one voice is something desirable in itself. It may be simply the by-product of what is correct and sound. But possibly being random is a distinctive way of going wrong. We need not adjudicate such questions here. The problem is that we know that it is in fact unlikely, to engage in hyperbolic understatement, that the law is just and fair and morally correct in all respects. Given that the law falls short of the mark, should the courts decide cases as would be right were it up to the mark? Should they decide cases as if the law is morally correct, even though it is not? In the politics of this imperfect world we know that imposing one voice on the law can be achieved—if at all—only through the imposition of a regime with an inherent tendency to sacrifice justice and fairness, restrict civil rights, and curtail individual freedom. We therefore design constitutional processes to foster compromises in a way which we hope will approximate the ideal.

Compromises take various forms. On the one hand, we accept as normal the persistence of laws passed by the previous government, even when a new, more morally sound government comes into power. There is a strong body of opinion, both lay and academic, in Britain, for example, which regards it

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61 I suspect, however, that reaching a compromise with people with wrong views or changing one's mind are not in themselves distinctive ways of going wrong.
as highly objectionable for either Conservative or Labour governments to overturn all the principled legislative innovations introduced by their predecessors in government. Another way in which we regard compromise as acceptable is in passing legislation which does not answer to the principles of any particular section of the population, but meets various of them halfway. To give examples of a similar, yet not exactly the same, kind let me confess that I do not believe that mothers have a right to maternity leave. I believe that, aside from what is required by the pregnant woman/mother for health reasons, either parent (at their discretion) or both should have it. But I am willing to accept existing arrangements as the best that can be expected at present. I believe that the right to marry should not be confined to marrying a person of the opposite sex, and that gay men and lesbians should not be denied the opportunity to adopt and to foster children. Again, while I regard present arrangements as unsound in principle, I accept them as the best that can be hoped for for the time being.

In all these cases we accept the nearest approximation to morally sound solutions that we can obtain, even though by doing so we may reduce the coherence of the law. We make no concession to any alleged principle about speaking with one voice. Nobody who cannot have a whole loaf refuses, on principle, half of one.62 This is precisely what the Adjudicative Coherence thesis asks one to do with respect to adjudication. I do not mean to suggest that courts should themselves engage in direct political compromises. The question cannot be answered in the abstract because the role of the judiciary varies from country to country, and from time to time. In general, I would simply say that courts should adopt the most morally sound outcome. The question remains, however, whether they should deviate from what is otherwise the morally preferable solution on the ground that, in the past, less than satisfactory rules have been adopted, even though those rules do not apply to the case before them. In other words, should they deviate from what is otherwise the best solution in order to make the law speak with one voice? We must bear in mind the following important point: so that the law might speak with one voice, the thesis requires a court, say the High Court in Britain, to extend a precedent which it regards as misguided in principle, but cannot overturn in the instant case (either because the precedent has the authority of the House of Lords, or because given the cause of action before it the court has no jurisdiction to overrule those principles to which it objects), even though the doctrine of precedent does not bind the court to follow the objectionable precedent. Of course, sometimes it would be unjust to treat some people worse than others are treated, even if those others do not deserve the relatively favorable treatment they receive. Hence, if an unsatisfactory rule benefits some people this may be a reason for extending the benefit to other people, even though neither group deserves it. Sometimes, therefore, such considerations will weigh against replacing the unsat-

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62 They may do so on tactical grounds, for example as a means of forcing the rest of the population to concede their full case.
is satisfactory rule with a better one. But this is so only where special circumstances exist. Such circumstances are unlikely to exist, for example, when specified individuals will have to suffer in order to secure a benefit to those not entitled to it.\(^6\)

In sum, no principle of speaking with one voice has any validity as a general principle of law or of adjudication.\(^6\) It is not necessary in order to regard the national society or membership in it as valuable, nor is it necessary in order to regard the national society as a distinct entity, not reducible to its members. Speaking with one voice is a by-product of an ideal situation. In an ideal world, because morality is properly applied and morality speaks with one voice, so does the law. But it is not an independent ideal with the moral force to lead us to endorse solutions less just than they need be. Without it we are left with no reason to support the Adjudicative Coherence thesis.

VI. THE RELEVANCE OF COHERENCE

The critical character of the discussion so far should not be seen as a sign

\(^{6}\) McLoughlin v. O'Brian, 1 App. Cas. 410 (1983) is a case in point. In this case, the defendants objected to the payment of compensation to a woman who suffered nervous shock. Those who object to compensation for nervous shock would be happy to leave an anomalous exception allowing compensation for a shock caused at the scene of accident at the time or immediately after it. Ideally, they would like to overturn that rule. But if they cannot they would not regard its existence as a reason for extending it further to shock caused away from the accident. To extend it you must believe in its soundness, rather than in the need for the law to speak with one voice.

\(^{6}\) It could be argued that in some countries, given their constitutional arrangement, the best implementation of a separation of powers doctrine requires judges to act on the Adjudicative Coherence thesis. It could be said, for example, that in the conditions of that country courts will forfeit their legitimacy if they attempt to apply considerations of justice and fairness. Therefore, it will be suggested, they should follow coherence simply because doing so keeps them away from attempting to follow moral and political considerations.

While the structure of the argument is sound and the need to minimize reliance on moral and political considerations by the courts may be important in some countries, it seems to me unlikely to lead to coherence doctrines because coherence does not provide courts with determinate guidance, as this argument requires. Due to pervasive incommensurabilities among values, many incompatible lines of reasoning are equally coherent with the rest of the law. This makes coherence an unsatisfactory guide to courts if the problem is finding a determinate and value-free guide. For a discussion of this problem, see John M. Finnis, Natural Law and Legal Reasoning, 38 CLEV. ST. L. REV. 1, 7 (1990), and Finnis, On Reason and Authority in Law's Empire, supra note 39. On incommensurability in general, see RAZ, THE MORALITY OF FREEDOM, supra note 32, at ch. 13.

It is also worth noting that coherence is in fact very difficult to establish. It requires intellectual capacities, formal training, and a command of information about the law generally that is in excess of what is needed to reach decent decisions on most moral issues facing the courts.
that I do not see a role for coherence in the law. In conclusion I will menti-
three reasons for valuing coherence in the law. The coherence I will
speak in favor of is local coherence: coherence of doctrine in specific fields. The coherence-based explanations to which I objected are global coherence
accounts. They impose coherence on the whole of the law. They seem to me
to err in two important ways, and these considerations underlie the discus-
sion in the preceding parts. First, and this point must remain in the back-
ground for it cannot be explored in this Article, global coherence accounts
underestimate the degree and implications of value pluralism, the degree to
which morality itself is not a system but a plurality of irreducibly independ-
ent principles. Second, and this has been the main lesson of the arguments
above, they are attempts to idealize the law out of the concreteness of poli-
tics. The reality of politics leaves the law untidy. Coherence is an attempt to
pretify it and minimize the effect of politics. But, in countries with decent
constitutions, the untidiness of politics is morally sanctioned. It is sanc-
tioned by the morality of authoritative institutions. There is no reason to
minimize its effects, nor to impose on the courts duties which lead them to
be less just than they can be.

Where does coherence come in? The first point to bear in mind is that
value pluralism does not mean incoherence. Sound moral principles are con-
sistent, and should be consistently applied in the law. The coherence to
which value pluralism is hostile is the felt need, to which moral philosophers
seem to be professionally prone, to subsume the plurality of values under as
few as possible supreme principles. While these attempts ought to be
resisted, we must recognize that the application of each of the distinct values
ought to be consistently pursued, and this generates pockets of coherence
which exist, or should exist, where the law should reflect one overriding
moral or evaluative concern. Two examples of such cases are the doctrines
concerning the mental conditions of criminal responsibility and those which
establish fault in private law, where fault is a condition of a duty of repara-
tion. Morality recognizes mental conditions for responsible agency and also
separates conditions which render the agent guilty from those which make
him liable to a duty of reparation (in some circumstances I ought to apolo-
gize and help someone I hurt by accident, even though I am not guilty and
do not deserve punishment). The law ought to incorporate these precepts in

65 For an instructive account giving coherence a limited role in reasoning, see Barbara
66 While I am not advocating courts which are fully involved in political decisions on
the same footing as legislatures, the nature of their task requires them to be somewhat
political (in the wider meaning of the word). The form and manner of their political
involvement, however, should be sensitive to the methods of recruitment to the courts,
the qualifications and terms of tenure of judges, the nature of other political institutions,
and—most importantly—the political culture of the country at the time. There is little of
general principle that can be said. What was true of the United States in the mid-19th
century is not true of the Unites States today.
its doctrines of criminal and civil liability, and we can expect it to develop a coherent body of doctrine deriving from the consistent application of the moral doctrines to the complex factual situations which confront the courts, taking into account the institutional setting of their application.

Three features distinguish this type of case from the other two to which coherence is also relevant and which are discussed below. First, coherence is not here an independent consideration, not something to be pursued for its own sake. It is a mere by-product of the consistent application of a sound moral doctrine. Second, I am tempted to say that the moral doctrine of responsibility is a pure one, that is, it does not reflect the outcome of a conflict of competing values and rival concerns. This may be an exaggeration, but it is true if qualified somewhat by saying "in the main" or "as applied under normal circumstances," or some other moderating qualification. In the main, the moral doctrines of the personal conditions of responsibility do not involve settling conflicts between competing values, or other legitimate concerns. This is a type of case to which value pluralism is largely irrelevant. Finally, this type of case illustrates coherence as applying equally to legislation and adjudication.

Perhaps in this last respect the contrast between my first type of case where coherence is relevant in the law and the others is only a matter of degree. In the first case, in common law countries, doctrines of responsibility are primarily developed by the courts, legislation having a subsidiary role. The other two cases also apply to legislation as well as to adjudication, differing only in their special pertinence in common law adjudication. Both, however, are cases in which coherence becomes an independent (though not ultimate) consideration, and is no mere by-product. Each of them arises out of one of the two types of value and moral pluralism: pluralism in the sense in which a society is pluralistic when there is wide divergence of views in it regarding value and moral issues (at most one of which is true or sound, the others being mistaken); and pluralism in the sense that morality is pluralistic if it (truly or correctly) asserts the validity of a plurality of irreducibly distinctive and competing values.

Social pluralism, that is, the existence of a plurality of inconsistent views on moral, religious, social and political issues in democratic (and in many other) societies, is likely to be reflected in a society's law. That is, it is likely to lead to legal rules and principles being in force reflecting the different outlooks of the people who fashioned them. This may lead the courts (and legislatures) to a dilemma. A court may be faced with a case in which it can, in principle, embrace a ruling which is morally best. Because the law on related matters was developed by people with misguided ideas, however, embracing the morally best rule may lead to bad consequences. That is, it may lead to the existence of different rules pushing in different directions, encouraging conflicting social and economic conditions. Thus, the actual consequences of embracing the (otherwise) morally best ruling may be far from ideal. Indeed, there may be a less than ideal alternative ruling which, if
adopted, would have better social and economic consequences for as long as
the other misguided rules remain in force.

When a problem of this kind faces the legislature it can simply revoke the
bad rules, replacing them with better ones. The legislature can, in principle,
opt for a comprehensive reform. The courts have fewer opportunities to do
so. Given the cause of action in the instant case, for example protected ten-
ancy, they may be unable to revise other laws (e.g. tax laws) which promote
opposing social consequences. Even the legislature, empowered though it is
to adopt comprehensive reform, may find it politically inexpedient to do so.
In such cases, both courts and legislatures are faced by what I term "the
dilemma of partial reform." They have to decide whether compromising
and choosing the morally second best rule which has better conse-
quences is best in the circumstances, or whether it is more important to let the law
speak clearly and soundly on a moral issue, and hope that an occasion to
extend the correct ruling to other cases will arise and be followed before
long. This conflict is a conflict between coherence of purpose and uncom-
promising pursuit of the morally correct line. Depending on the circum-
stances, it will be best to go one way on some occasions and the other way on
others. In such circumstances we see pluralism generating the dilemma of
partial reform, and giving a local and limited value to coherence.

Finally, the third reason for local coherence. It derives from the way
moral pluralism gives coherence (non-ultimate) value. Moral pluralism
means that various irreducibly distinct and competing values are valid. It
leads to conflict as a permanent moral state, arising not because of moral
disagreement and mistakes but as an inescapable aspect of sound morality.
Moral pluralism means that conflict is not a result of any imperfection, but is
the normal state for human beings. Furthermore, most of the time, "the
correct way of balancing the competing values" does not exist. More pre-
cisely, on many occasions there is a whole range of ways of mixing the dif-
ferent values, none of which is superior to the others. In such situations there
is no moral objection to adopting any of the mixes which are not ruled out as
inferior. People simply do what they like, choosing in accordance with their
personal taste. Where many people are involved, the ability to achieve any
of the not-ruled-out possibilities may depend on social coordination, that is,
on its adoption as a rule for this society. Hence the permanent state of con-
flict between opera lovers and sport lovers, puritans and hedonists, and so
on, over collective decisions.

Legislatures may be required to strive toward some equitable resolution of
such disputes, allowing those who share each taste opportunities to satisfy it.

67 See RAZ, THE AUTHORITY OF LAW, supra note 6, at 200-01.
68 See id. at 200-06.
69 I highlight the role of social pluralism here, but the same problems can arise because
of previous mistakes of like-minded judges or legislatures.
70 See RAZ, THE MORALITY OF FREEDOM, supra note 32, at ch. 13; Joseph Raz,
That means legislatures should give weight to numbers, and decide on equitable distribution, through zoning or other measures. Even after such considerations are exhausted, there still remain many mixes of values which are not inferior to any alternative. It comes down to choice. Courts may reach situations of choice even more quickly than legislatures, because their institutional ability to reach sensible judgments on equitable distributions and their jurisdiction to put them into effect are much more limited. Either way, moral pluralism leads to the permanence of conflict and to occasions in which social policies are adopted by choice rather than reason. In these instances, it is important to adhere to a policy once it is chosen. There are two reasons for this. First, adhering to the chosen solution is necessary for it to work in all cases where its benefits depend on social coordination. It is often also necessary for the efficient operation of bureaucratic institutions. Where a person can decide one way one day and the opposite way the following day (in matters in which there is no overriding reason to decide one way or the other), an institution may well be thrown into considerable confusion and chaos if it is allowed to do so. Second, ordinary rule of law considerations come into play. Only by adhering to one coherent policy can the law be made widely known and its application predictable.

Thus, this is another context in which coherence comes into its own, another context in which precedent acquires a natural force, where there is reason to follow it even in countries which do not have a formal doctrine of precedent. Coherence, as we saw in the previous part, forces one to decide in a certain way because past decisions are of a certain character. Coherence gives weight to the actual past, to the concrete history of the law. The burden of the argument of the previous part is that there is no general reason of coherence which applies to the settlement of all cases. The consideration of moral pluralism shows, however, that local coherence is, because of moral pluralism, of great importance. I call it local coherence because there are many isolated decisions which amount to an unconstrained choice between

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71 This does not mean that these choices are either arbitrary or unreasoned. They are not unreasoned because they are taken for the reasons which support that policy. Reason only fails to provide sufficient argument to prefer this policy over all alternatives. That is where choice comes in. They are not arbitrary for it is only arbitrary to disregard reason. That is, where reason dominates one can be arbitrary; where there is none it is not arbitrary to choose in accordance with one's wish or taste (is it arbitrary to choose a peach rather than an apricot when offered one or the other?).

72 I do not mean that it should never change, only that it should not be changed too frequently.

73 Formal rules of precedent, like the English rule that all the courts (other than the House of Lords itself) are bound by the ratio decidendi of the House of Lords, give precedent a force similar to that of legislation, i.e. within the scope of the rule laid down in the ratio of the binding decision. The natural force of precedent which does not depend on any formal doctrine is not so limited. It works through considerations of coherence of purpose, and applies outside the scope of the rule enunciated in the precedent-setting decision, so long as coherence considerations require that.
different possible compromises between conflicting values. There is no reason to lump all these compromises together as one decision covering all cases, and I suspect that the very attempt is incoherent. Societies are faced with numerous discrete issues of conflict, and decide on solutions to them as they arise. Each solution gives rise to considerations of coherence within its scope, based on the need to secure coordination and on rule of law values.

In this schematic discussion it is impossible to analyze conflict cases in detail. It is important, however, to note in conclusion how pervasive they are. They include issues of the allocation of resources to public amenities; regulation of the character of the natural and human environment (noise as well as river pollution); constitutional rights adjudication, such as the balance between the interest of people in being able to express their views and being heard and the interest of the same or other people in being able not to listen and not being made to hear unless they want to; and the allocation of liability to risk and its imposition on others, as in rules which determine what forms of conduct are negligent and what standards of care people are required to observe. These are but a few examples of the pervasiveness of choice-demanding conflicts. Therefore, they are also examples of the pervasiveness of the force of localized coherence considerations.

Coherence, one might say, is everywhere. But it is local rather than global coherence, and it comes into its own mostly once questions of principle (including questions of resolving conflicts of value where they are resolvable by reason) are resolved on other grounds.
It is impossible to miss the ambivalent interpretation of Ronald Dworkin's work in this Article. On the one hand, it is regarded as one of the main springs of the interest in coherence theories in the law, and the argument from integrity has been examined as the most promising argument for a coherence account of the law. On the other hand, I dissociated Dworkin from this use of the argument, and warned the reader not to assume too hastily that Dworkin does see coherence as important. My ambivalent attitude stems from Dworkin’s less than clear discussion of these subjects. In this Appendix, I will examine his attitude toward coherence as revealed by the central chapters of Law’s Empire. The interest in doing so is not merely an interest in understanding Dworkin. Part IV of this Article included a refutation of the suggestion that there is a distinct virtue of coherence through loyalty to the past which justifies deviating from the precepts of justice and fairness. I will suggest below that Dworkin’s view of law as integrity is subject to the same criticism independently of whether it does favor coherence. This shows that the argument deployed in the text catches theories other than coherence theories. It applies to any idealizations of the law which diminish the importance of the doctrine of authority and the role of politics in its explanation. It is an objection of principle to any doctrine which requires the courts to adjudicate disputes on the assumption that the law speaks with one voice, regardless of whether this univocality expresses itself through a doctrine of coherence or in some other way.

For Dworkin, explaining the nature of law is offering an interpretation of the law. This is not the place to assess his view of the nature and role of interpretation. I merely want to discover the way it does or does not interact with considerations of coherence. The ambivalence begins at the beginning. At the most basic level, Dworkin explains interpretation as follows: “constructive interpretation [of which the interpretation of the law is an instance] is a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong.”\textsuperscript{74} Here, interpretation is defined in terms of strong monistic coherence. Coherence, as we know, means close systematic interdependence of all the parts. Seemingly, Dworkinian interpretation is conceived from the start as committed to strong monism, for it is committed to finding one purpose which unites and dominates all the parts of the interpreted object or practice (dominates, for in the post-interpretive stage,\textsuperscript{75} what the practice requires is adjusted to suit the imposed purpose).

But is it right to attribute to Dworkin this commitment (which is never justified even by a shadow of an argument) to strong coherence? Perhaps his

\textsuperscript{74} DWORKIN, LAW’S EMPIRE, supra note 30, at 52.
\textsuperscript{75} See id. at 66.
reference to one purpose is simply a *façon de parler*; perhaps Dworkin is willing to contemplate a plurality of unrelated purposes imposed by the interpretation, which shows whatever is interpreted as being the best of its kind. In the more detailed general description of interpretation, he writes of "some general justification" for the practice.\(^{76}\) A general justification can be monistic, exhibiting a high degree of coherence, but it need not be. It may be of any degree of coherence down to pluralistic justifications by a plurality of unrelated elements. The evidence is ambiguous, tending on balance to support an unargued-for endorsement of monistic coherence when the interpretation of social practices is concerned.\(^{77}\)

The tendency toward strong coherence seems to reappear when Dworkin introduces integrity:

> "It will be useful to divide the claims of integrity into two more practical principles. The first is the principle of integrity in legislation, which asks those who create law by legislation to keep that law coherent in principle. The second is the principle of integrity in adjudication: it asks those responsible for deciding what the law is to see and enforce it as coherent in that way."\(^{78}\)

Dworkin's first principle is to guide legislators in making law. My concern is with the second principle, which determines both how cases are to be decided and what the law is, because, according to Dworkin, these two questions are one and the same. How the courts should determine the law is far from clear from this statement. What stands out is the duty to see the law as coherent. But does the principle as stated really express an endorsement of coherence? It seems to do so because the word appears in its formulation. We know, however, that coherence is often used to indicate no more than the cogency or even the intelligibility of a principle or an idea. Which way does Dworkin mean to use it? Dworkin's earlier discussion of interpretation, which, to be any good, must be understood to lead to a strongly, monistically coherent view of interpretation, suggests that he means something similar here.

But does he? A few pages later he states (discussing integrity in legislation): "Integrity is flouted . . . whenever a community enacts and enforces different laws each of which is coherent in itself, but which cannot be defended together as expressing a coherent ranking of different principles of justice or fairness or procedural due process."\(^{79}\) There is no trace of one point or purpose here. The degree of coherence is much less; it is merely that of ranking a plurality of irreducibly distinct principles of justice and fairness. This is still a commitment to a greater degree of coherence than

\(^{76}\) *Id.*

\(^{77}\) For several additional references to one purpose in *Law's Empire*, see *id.* at 67, 87, 94, 98. Other locutions, however, are more open to pluralistic justifications.

\(^{78}\) *Id.* at 167.

\(^{79}\) *Id.* at 184.
exists, given that, in fact, such principles are not rankable. My purpose is simply to point out the difficulty in attributing any definite view on coherence to Dworkin.

When Dworkin turns from integrity in legislation to his explanation of law as based on integrity, coherence simply drops, quietly and without comment, out of the picture: "According to law as integrity, propositions of law are true if they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice." It is inconceivable that Dworkin would have allowed coherence to disappear without explanation had he been genuinely committed to it. It is especially important to remember that there is nothing in Law's Empire to suggest that the principles of justice are not themselves irreducibly plural, and the same is true of fairness and procedural due process.

I suggest, therefore, that his is not a coherence explanation of either law or integrity. His position is as explained in this quotation: The law consists of those principles of justice and fairness and procedural due process which provide the best (i.e., morally best) set of sound principles capable of explaining the legal decisions taken throughout the history of the polity in question. Whether or not such principles display any degree of coherence, in the sense of interdependence, is an open question. Thus, while coherence may be a by-product of the best theory of law, a preference for coherence is not part of the desiderata by which the best theory is determined. The reason for thinking that Dworkin is not at all committed to the desirability of coherence is that his text is ambivalent and that while Dworkin argues at length that interpretations are necessarily evaluative, and that they try to show their object as the best of its kind, and that the interpretation of the law is committed to integrity, he never provides any reason whatsoever to suggest that coherence is a desideratum in correct interpretations.

Three objections may be raised to the conclusion that Dworkin's theory of law contains no commitment to any degree of coherence. First, in the quotation above, while coherence is not specifically mentioned, it is implied in the reference to "constructive interpretation," for as we saw above interpretation must, according to Dworkin, be not only coherent but monistic. This would be a decisive argument but for the fact that Dworkin's commitment to a monistic view of interpretation must itself be questionable, partly on textual grounds, partly because it is so unlikely that he would have committed himself to such an initially implausible view without even a shadow of an argument to support it.

Second, it may be argued that while integrity (in adjudication) itself is not committed to coherence, this does not show that either the law or adjudication need not be based on a set of principles displaying tight coherence, because integrity is only one element in law and adjudication. This is a mat-

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80 Id. at 225.
ter of some delicacy. Clearly, integrity is not a conclusive ground for good legislation. While legislators should value integrity for its own sake, they may find that other considerations prevail and thus may compromise it. The adjudicative principle of integrity has, however, a different status from that of the legislative principle. On the one hand, it is a principle about how courts should decide cases. On the other hand, it is a principle identifying the grounds of law and, as such, is the touchstone distinguishing what is the law from what is not. As a principle about how courts should decide cases it is merely prima facie, and there may be cases in which the courts ought not to compromise justice and fairness for the sake of integrity. But in its second capacity it is definitive. Rules which do not pass the test of integrity are not part of the law.

The two aspects of the principle are consistent. It merely means that sometimes courts ought not to decide cases on the basis of the law, but that they should overturn it and lay down a different rule. Less clear, however, is whether this imperative—the requirement that judges go against the law when it calls for too great a sacrifice of justice for the sake of integrity—is a legal or a non-legal one. That is, does Law's Empire recognize a legal duty on the courts to decide cases on appropriate occasions by transcending the law, or does the book hold that legally the courts ought always to apply the law, but morally they sometimes should not do so. Most theorists agree that the latter is sometimes the case. Many legal theorists believe that the former is always the case, though not normally for the reasons indicated in Law's Empire. When courts are legally required to apply non-legal considerations they are commonly said to have discretion. Dworkin has first distinguished himself as a legal theorist who denies that courts are ever legally required or permitted to do anything other than apply the law (to the facts). It therefore would seem that while he holds that courts always have and sometimes should exercise moral discretion to transcend the law, they are never legally allowed to do so. This position indicates a major development in Dworkin's views. In the past he had no independent theory of law. Unlike theorists like Hart, Kelsen and others who distinguish between (1) "what is the law?" and (2) "what considerations should guide courts in deciding cases?" and hold that the answer to the second includes more than the law, Dworkin has always identified the two questions. His theory of adjudication was his theory of law. The answer to the question what consid-

81 See id. at 181, 217.
82 Id. at 218.
83 Id. at 225.
84 Id. at 218.
85 The term does not mean that they can do what they like. Its meaning in the debates in legal theory is that courts are entrusted with more than applying the law. Their task, their legally appointed task, includes power to revise and develop the law, which they do with guidance from legal standards which direct them to step beyond the bounds of the law and apply moral considerations.
erations should guide courts in deciding cases answers the question of what is the law. Given that assumption, courts have no discretion and must always obey the law. In Law's Empire, a new position emerges. We have a concept of law which is totally independent of any reference to adjudication. This leaves room for the possibility of discretion. As we saw, Dworkin allows that such discretion exists. He still seems to differ from other theorists, however, in thinking that in exercising discretion courts violate the law. But that is a moot point. First, he does not explicitly say this. Second, because according to Law's Empire the reasons to deviate from the law are open moral reasons which guide the action of the courts in appropriate circumstances, it is not clear why the law should not be understood to sanction them. Even writers like myself and others whose understanding of the law allows room for the role of extra-legal considerations in adjudication hold that the law recognizes the practice of resorting to them, a recognition which is expressed in the very fact that courts do so openly and without any legislation or directive to stop them. In the past, Dworkin suggested that there be no resort to extra-legal considerations in adjudication. There was never a strong argument to justify this and he does not repeat this claim in Law's Empire. It is now moot whether and why Dworkin does not accept judicial discretion as a legal practice. Be that as it may, given that the requirement to go against integrity is a requirement to go against the law, there is nothing we can learn from it about the degree of coherence in the law.

I have to admit that there are further unclarities in the position advocated in Law's Empire. In the course of Dworkin's extensive discussion of the McLoughlin case, he says "but here . . . questions of fit surface again, because an interpretation is pro tanto more satisfactory if it shows less damage to integrity than its rival. [The judge] will therefore consider whether interpretation (5) fits the expanded legal record better than (6)." This seems to imply that integrity is a matter of achieving the greatest possible fit with past legal record. We know from the general discussion that fit is but one of two dimensions which identify the law. The other is value. If so, then integrity is but one, and not—according to Law's Empire—a lexically prior

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86 I call it an assumption as Dworkin has never argued for it. It may seem that he has not realized, at least not at the beginning, that it is at this point that he disputes the work of Hart and others. That is, he may not have realized that once this assumption is granted the question whether courts enjoy discretion is settled. Of course, if everything they can take into account is the law, they do not have (so-called strong) discretion to go outside the law. See Joseph Raz, postscript to Legal Principles and the Limits of Law, in Dworkin and Contemporary Jurisprudence (M. Cohen ed., 1984); Raz, The Problem About the Nature of Law, supra note 26.

87 Dworkin states, "The law of a community . . . is the scheme of rights and responsibilities that meet that complex standard: they license coercion because they flow from past decisions of the right sort." DWORKIN, LAW'S EMPIRE, supra note 30, at 93.


89 DWORKIN, LAW'S EMPIRE, supra note 30, at 246-47.
consideration in determining the content of the law and what the courts may legally be required to do. Hence, it may well be that Dworkin regards the law as much more coherent than his commitment to integrity would suggest, for it may be that the combination of the two dimensions will make it so. But this line of thinking gives undue weight to the one text in which Dworkin equates integrity with fit. It seems best to disregard it.

Third, the final objection to my earlier conclusion that Law's Empire assigns no importance to coherence in the law is that my arguments turn on close textual analysis. This, according to the objection, is the wrong attitude toward the understanding of a book which does not carefully formulate the views it advocates. The general feel of the book suggests that coherence is to be striven for. Perhaps it is impossible to say in advance what degree of coherence is to be achieved. But the drift of the argument suggests that coherence is a distinctive advantage, and that therefore one should strive to end up with a view of the law which regards it as coherent as possible, provided not too much violence is done to other values.

There is something to this point. The position it assigns to Law's Empire is explicitly advocated by Hurley,90 who seems to think that she is following Dworkin with regard to the law. The difficulty is that Dworkin provides no argument to support that position, unless the suggestion is made that the arguments for integrity are also meant to be arguments for coherence.91 If so, then they have been dealt with above. My feeling that Dworkin does not regard coherence, as understood in this Article, as a virtue at all is strengthened by his use of the term at times to convey other ideas, and by Dworkin's belief in the virtue of coherence when understood in some of those other ways. He believes that the law is coherent = intelligible, he believes that the law is coherent = holistic, and, more distinctively, he believes that the law speaks with one voice (on the strength of the argument canvassed in Part V). In Part V, I took that requirement to imply at least a preference for coherence = unity. But there is no sign that Dworkin does so, nor is there any reason to do so. Speaking with one voice may mean no more than that the law is not arbitrary nor reflects changes of mind or policy. For Dworkin, "speaking with one voice" means also that the law does not reflect compromises among people or factions. Whatever "speaking with one voice" means in Dworkin's writings, it can be represented as "coherence," and it is a way of employing "coherence" unrelated to the concerns explored in this Article. Finally, "coherence" is sometimes used by him to indicate fitting the historical record.92 This again has nothing to do with coherence as explored here. None of this shows that Dworkin does not regard coherence as unity as desirable. The degree to which, and the reasons for which, Law's Empire is committed to coherence must remain moot.

But if I am right in the main conclusion above, namely that there is noth-

90 See S.L. Hurley, Natural Reasons, supra note 3, at 262.
91 This is indeed Hurley's view. Id. at 262-63.
92 See discussion supra note 89 and accompanying text.
ing in the book's advocacy of what Dworkin calls interpretation and integrity to require an endorsement of, or any presumption in favor of coherence, any tendency to favor coherence, does this not undermine my own criticism of the value of Dworkinian integrity offered above? Not so. My criticism of integrity is valid even if integrity is not taken to support coherence. It relies on one feature of integrity only: that it advocates acting on principles which may never have been considered nor approved, either explicitly or implicitly by any legal authority, and which are inferior to some alternatives in justice and fairness. The objections I raised were to this as groundless in morality and as deriving from a desire to see the law, and judicial activities, as based to a larger degree than they are in fact or should be in morality, on an inner legal logic which is separate from ordinary moral and political considerations of the kind that govern normal government, in all its branches.