

others) scientific theory construction in mind, when he expressed his preference for belief revision above non-monotonic logic. If one takes the purpose of scientific theory construction as to give precise descriptions of law-like connections, Alchourrón's preference for belief revision is understandable, because the use of a non-monotonic logic only masks the incorrectness of the theory that can only be applied defeasibly. For instance, Newtonian mechanics is – in a sense - wrong, because it only gives the right outcomes when small velocities are involved. However, even when dealing with scientific theory construction, one might prefer relatively simple laws with a restricted scope of application³⁷ and consequently the use of a non-monotonic logic to model law application. This might be better than working with universally applicable laws that buy their broad scope of application at the cost of a highly complex content (e.g. the more complex content of relativistic mechanics). The question that needs to be addressed in this connection is whether the nature of legal justification would lead to a preference for belief revision, or for the use of a non-monotonic logic.

4.2 Soeteman on legal justification

Soeteman precisely gives the necessary type of argument for belief revision and against the use of a non-monotonic logic.³⁸ In his opinion real justification must always be based on a deductively valid argument. He writes:

... as long as an argument cannot be analyzed deductively, the conclusion is not warranted. As long as an argument is not reconstructed as deductively valid an alternative conclusion is still possible and the conclusion therefore is not completely justified.

Moreover, Soeteman emphasizes that such a 'complete justification' is of the greatest importance in law, because of the weighty consequences of legal judgments. His point is that legal conclusions, because of their importance, must be completely justified and that a conclusion is only completely justified if an alternative conclusion is impossible.

There are several things that may be said about this argument. First, it may be highly desirable that legal conclusions are beyond any doubt, but conclusions beyond any doubt are seldom to be reached within human affairs. Therefore, the demand for such indubitable conclusions might be a demand for the impossible. Obviously, we should strive for the best, but I

³⁷ Compare in this connection what Toulmin writes about Snell's law. (Toulmin 1953, 57f.)

³⁸ Soeteman 2003.

will argue that the use of a non-monotonic logic does not interfere with this endeavor.

The second thing that can be said regards the premises of justifying arguments. Non-monotonic logic can, according to Soeteman, only justify a conclusion under the presupposition of a normality hypothesis. Without this hypothesis, the argument is unconvincing. Therefore such a normality hypothesis should be part of the premises. If the normality hypothesis is added to the premises, the argument becomes deductively valid and the conclusion has become unavoidable for those who accept the premises. For instance, the argument that John is a thief, that, barring exceptions, thieves should be punished and that therefore John should therefore be punished, is defeasible, but can be analyzed deductively by adding the premise that in John's case there is no exception to the rule that thieves should be punished.

There are three objections that can be raised against this approach. The first objection is that if one wants to use logic to model justification, logic has the task to answer the question whether acceptance of some belief is justified in the light of one's other beliefs. These other beliefs are in this connection fixed. If a normality hypothesis N is added, the question has changed. It is not anymore whether conclusion C is justified in the light of belief set B , but whether C is justified in the light of $B + N$.

Second, it is not a viable strategy to make additions to a set of premises, in order to make a conclusion that seems to be justified in the light of what is accepted, follow deductively. The conclusion would only be justified if the additional premise is true. However, the truth of this premise can often only be established if one knows whether the conclusion is true. Whether the conclusion is true is usually precisely the issue at stake.

Take the argument that John is punishable because he is a thief and because, in general, thieves are punishable. It is given that John is a thief and that, in general, thieves are punishable and the function of the argument is to establish whether John is punishable. The question that logic must answer is whether it is rational to accept that John is punishable, given that he is a thief and that in general thieves are punishable. Because the justification of this conclusion on basis of these premises is defeasible, one might want to add the normality hypothesis to the premises, to make the argument deductively valid. However, the only way to make certain that the normality hypothesis is true is to establish that John is punishable indeed.³⁹ Since it is precisely the point of the argument to establish that John is punishable, it makes little

³⁹ This would only be different if there were an exhaustive list of all exceptional circumstances.

sense to include a normality hypothesis in the premises that presupposes the truth of the conclusion.

My general point here is that logic often plays a role in contexts in which the available premises do not allow the deduction of the conclusion. The demand that the premises are completed to make them entail the conclusion makes logic useless in these contexts, because the truth of the additional premises cannot be established independent of the truth of the conclusion. It will not do to state that the argument presupposes these premises nevertheless. What the argument presupposes is that the premises provide *sufficient support* for the conclusion to make it *rational to accept* the conclusion on the basis of the premises. This presupposition concerns the rationality of belief change, not the truth of one or more premises.

The third argument against Soeteman's approach, according to which a defeasible argument is replaced by a deductively valid argument with an additional (normality) hypothesis, is that it moves the cause of uncertainty from the validity of the argument to the truth of the additional premise. The deductive justification of the judge's conclusion has been achieved, but the certainty of the conclusion has not become any stronger, because the possible reasons why John should after all not be punished remain the same in both cases. If there is a ground of justification, this is handled under deductive logic by the falsity of the premise that there is no exception to the rule that thieves are punishable. Under a non-monotonic logic it is handled by making an exception to the rule that thieves are liable to be punished. It seems, therefore, that the difference between deductive logic with an uncertain premise and non-monotonic logic with certain premises does not make a difference. The use of non-monotonic logic does not increase uncertainty in comparison to deductive logic in combination with dubitable premises.

One might argue, however, that there is a difference, because the judge that uses deductive logic must establish that there is no exception to the rule before he can punish John. If he would use a non-monotonic logic, he would, on the contrary, be free to disregard the presence of a possible exception as long as this presence has not been argued.

Such an argument would assign logic a too important role, however. Logic as such cannot determine the investigatory tasks of a judge. Under a non-monotonic logic just as well as under a monotonic logic, the judge may have the task to gather all information that might be relevant for his judgment. If this information includes that there is an exception to the rule that thieves should be punished, the verdict under the use of a non-monotonic logic will be the same as under the monotonic logic, namely that John should not be punished.

More generally, the logical formalism that one chooses for the analysis of legal justification needs not have any influence on the outcome of legal judgments. Everything that can legally be accomplished with the use of deductive logic together with belief revision can also be accomplished with the use of a non-monotonic logic and vice versa. Therefore, the undeniable importance of legal justification need not have any impact on the choice of the logic by means of which legal decision making is analyzed. Which logic one uses is a matter of pragmatics and - as I have argued in the first part of this section - non-monotonic logic is *prima facie* the obvious candidate to deal with justification defeat.

4.3 The nature of logic

Although non-monotonic logic is *prima facie* the obvious candidate for the logical analysis of justification defeat, there is still a lot of resistance against this kind of logic. One possible explanation of this phenomenon is that non-monotonic is not considered as a 'real' logic at all. The criticism of Alchourrón discussed in section 4.1 seems to illustrate this. To deal with such criticisms, I will pay some attention to the nature of logic.

The function of logic lies in the evaluation of arguments. In an argument, one or more reasons are adduced to support the acceptance of a conclusion. Two questions arise in this connection: are the statements that mention the reasons true and - assuming that these statements are true - is it rational to accept the conclusion? The function of logic is traditionally taken to provide standards with the help of which the second of these questions can be answered.

Formulated thus, the function of logic is quite broad. Logic would, for instance have the task to answer the question whether it is rational to accept the conclusion that John is punishable, on the assumption that John is a thief. More precisely, the question of rationality can be formulated as whether it is more rational to accept the conclusion as true, to reject it as false, or to postpone judgment, under the assumption that the premise is accepted as true.

In comparison to this broad function, modern logic has been restricted in at least two ways. Firstly, the scope of logic has been minimized by removing everything that might be seen as domain knowledge out of the realm of logic by treating it as 'content', while logic is taken to deal with the 'form' of arguments only. Secondly, the standard for acceptance of an argument's conclusion has become that the conclusion must be true, given the truth of the premises, thereby declaring arguments that provide their conclusion with less support as invalid. To state it more briefly, logic has been restricted to deductive logic.

There is, however, no necessary connection between rational acceptance and deduction. In fact, the very existence of justification defeat presupposes that there may be circumstances that a belief is justified relative to a belief set, even though it does not follow deductively from this set. Restricting logic to deductive logic has the disadvantage that it excludes induction, abduction and many forms of practical reasoning⁴⁰ from logical evaluation, or condemns them to invalidity, namely if measured by deductive standards. This disadvantage is avoided if logic is taken as *the study of standards for rational acceptance*. On this view, logic deals with arguments in the sense of sentences adduced to support the acceptance of some other sentence.

Deductive logic as the study of necessary relations between the truth values of sentences has *as such* nothing to do with what we should rationally believe. It only provides data (q must be true if both $p \rightarrow q$ and p are true) that may be considered relevant for a theory of rational belief (revision). The following quotation from a paper by Israel illustrates the point⁴¹:

The rule of modus ponens is, first and foremost a rule that permits certain kinds of syntactical transformations on (sets of) formally characterized syntactic entities. (Actually, first and foremost, it is not really a rule at all; it is “really” just a two-place relation between on the one hand an ordered pair of well-formed formulas and on the other hand, a well-formed formula.) adherence to a set of deductive rules of transformation is not a sufficient condition for rational belief; Real rules of inference are rules (better: policies) guiding belief fixation and revision.

If one adheres to this view of logic, the use of non-monotonic logic rests on confusion with regard to the nature of logic. This confusion is that one tries to make logic do what it was not meant to do, namely make it provide standards for the evaluation of holding beliefs on the basis of other beliefs. However, if one adopts the broader view of logic as standards for rational acceptance, it is precisely the purpose of logic to provide such ‘policies for belief fixation and revision’. More or less the same point can be made by pointing out that on the deductive view logic deals with truth and with relations between truth values of sentences. On the broader view, logic deals with justification.

On the deductive view, logic is essentially monotonic. If a conclusion must be true given a set of premises, this same conclusion must still be true

⁴⁰ I take practical reasoning here both in the sense of real life reasoning (as opposed to, for instance, philosophical and mathematical reasoning) and in the sense of normative reasoning.

⁴¹ Israel 1980. I replaced the abbreviation ‘wff’ with ‘well-formed formula’.

given even more premises. The monotonicity of deductive logic follows immediately from the deductive nature of the logic. Moreover, the notion of truth with which deductive logic deals, is, metaphorically speaking, itself monotonic. If a sentence is, given a number of facts, true, it cannot become false in the light of even more facts.⁴²

If logic deals with justification, things become completely different. Justification is by definition relative, namely relative to the premises on which the justification is based. A judgment that is justified by a set of premises is *justified relative to these premises*.⁴³ If the set of premises is changed, the justification relative to the old set of premises does not amount to justification relative to the new set of premises, not even if the new set is an extension of the old set. Just as truth is, metaphorically speaking, monotonic, justification is, metaphorically speaking, non-monotonic. Logic according to the broad view deals with justification and is therefore essentially non-monotonic.

The only reason I can think of to prefer deductive logic is that one believes, as Israel does, that only deductive logic is ‘real’ logic and that, for instance, justification has nothing to do with logic as such, but at most with one use logic is put to. It does not make much sense to have a discussion about the proper meaning of the word ‘logic’, so I will not argue that Israel’s view is wrong. Instead I would like to say that a tool to evaluate whether a conclusion should rationally be accepted in the light of what else one believes, whether it is called ‘logic’ or something else, should not have the property of monotonicity.

5. CONCLUSION

In this chapter I have tried to answer three questions, namely what defeasibility is, whether it occurs within the law and whether we need a non-

⁴² This may be different in contexts where truth is identical to being justified and the law might be such a context. In Hage 2004 (see also chapter 2 of this work) I adopt the theory that the law is what the best (justified) theory about the law says it is. If this view is correct, the ‘monotonicity of truth’ does not hold.

⁴³ This should not be confused with the false view that the conclusion of a justificatory argument runs that this conclusion is justified relative to the premises. That the justification of a conclusion is always relative, does not mean that justified conclusions are themselves relativised. The relativity is presupposed, rather than stated.

A similar point might be made with regard to value judgements (and all judgments based on the application of some standard). Every value judgment is relative to a standard, but the judgment itself is in general not relativised to this standard.

monotonic logic to deal with defeasible legal reasoning. My conclusions were that it is possible to distinguish several kinds of defeasibility, but that the most interesting kind for our purposes is justification defeat. Justification defeat is the phenomenon that a conclusion that is justified in the light of one belief set is not justified in the light of another belief set (which is a superset of the former).

Justification defeat plays a role in the law, both in the division of the burden of proof and in the context of discovery in which CLCPs are formulated that can be used in deductive justification of legal conclusions.

Non-monotonic logics almost mimic justification defeat (if ‘is justified by’ is replaced by ‘is derivable from’) and they are therefore very useful for the logical analysis of justification defeat. It is, however, always possible to replace these logics by a combination of deductive logic and belief revision. Under some circumstances this might be useful, but despite Soeteman’s argument to the contrary, legal justification seems not to fall under these circumstances.

Chapter 2

LAW AND COHERENCE

1. INTRODUCTION

In the last few decennia, coherence theories have gained substantial popularity in the law.¹ These theories hold that the law is a coherent whole, or that legal judgments are justified if they fit in a coherent theory of the law.

The subject of coherence in the law has been approached in different ways. On the one hand there are coherence theories for the law that find their inspiration not only in jurisprudence, but also and perhaps mainly in epistemology. The work of Peczenik might be treated as representative for this approach.² In his *On Law and Reason*, Peczenik writes that

- legal reasoning is supported by reasonable premises
and that
- a premise is reasonable if and only if:
 - it is not falsified, and
 - the hypothesis is not to a sufficiently high degree corroborated that this premise does not logically follow from a highly coherent set of premises.³

¹ See for instance MacCormick 1978, Dworkin 1986 and Peczenik 1989. A general overview can be found in Kress 1996.

² Peczenik 1989, Alexy and Peczenik 1990, Peczenik 1997 and Peczenik and Hage 2000.

³ Peczenik 1989, 158.

In this way, Peczenik connects legal justification to coherentism. The next question is when a set of premises, a theory, is coherent. The first step of the answer is that ‘the more the statements belonging to a given theory approximate a perfect supportive structure, the more coherent the theory’. Several theories about this supportive structure are possible in the eyes of Peczenik, but he goes on to describe one of them in terms of ten factors including the number of supportive relations between elements of the theory, the length of the supportive chains, whether there exists a connection between the supportive chains and whether the elements of the theory reciprocally justify each other. Some of these factors contain subfactors and many of them merely have a prima facie status.⁴

Concerning the relevance of coherence for the law, Peczenik first refers to MacCormick according to whom justice would require that legal justification is embedded in a fairly coherent system. This is a normative/evaluative argument why the premises of legal justification should belong to a coherent theory. However, Peczenik also takes a second road. He writes that ‘If the norm- or value-system in question is more coherent, then there exists a prima facie reason that it is correct’.⁵ On this approach, coherence is evidence for correctness and this fits well in an epistemic view of coherence.

On the other hand, there are coherence theories that look for their inspiration mainly to jurisprudence. Dworkin’s theory of law as integrity is a good example of this approach. According to Dworkin:

*The adjudicative principle of integrity instructs judges to identify legal rights and duties, so far as possible, on the assumption that they were all created by a single author – the community personified – expressing a coherent conception of justice and fairness ... 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.*⁶

When he argues for adoption of law as integrity, Dworkin does not refer to epistemological theories, or to factors that might play a role in epistemology too, but to typical normative considerations by arguing that ‘a community of principle, which takes integrity to be central to politics, provides a better defense of political legitimacy than the other models [of community].’ In arguing for law as integrity, Dworkin deals with legal philosophical issues

⁴ Peczenik 1989, 160f. and Alexy and Peczenik 1990.

⁵ Peczenik 1989, 177f.

⁶ Dworkin 1986, 225.

such as the duty to obey the law and the right of the government to use collective force. It seems, at least at first sight, that when Dworkin discusses law as integrity, he is dealing with another issue than Peczenik when he argues that legal justification must start from a coherent theory.

In his paper *The relevance of coherence*, Raz distinguishes between two variants of coherentism, the epistemic one and the constitutive one.⁷ Given this distinction, Peczenik's approach to coherence in the law would, at least to a large extent, be based on the epistemic variant of coherentism, while Dworkin's approach would be an example of constitutive coherentism. As we will see in section 7, Raz believes that the epistemic variant of coherence is essentially flawed, not only in connection with the law, but in general. For legal coherentism this would not be problematic, however, because in Raz's view coherence in the law would be constitutive. In contrast to Dworkin, however, Raz sees only a limited role for constitutive coherence in the law.

In this chapter I will argue for a coherentist theory of justified acceptance that I will call *integrated coherentism*. Integrated coherentism is a theory of justified acceptance and fits as such in the domain of epistemological theories. Nevertheless I will argue that this theory is - given some assumptions about the nature of social reality - also a theory of the law. This means that I reject in connection with the law the distinction between epistemic and constitutive coherentism. Moreover, I will argue that integrated coherentism plays a central, rather than a limited role, in the law.

2. JUSTIFICATION

Epistemic coherentism is a theory about the justification of, usually, beliefs. Its plausibility depends amongst others on what one takes justification to be. In this connection it is important to distinguish between what justification is and the standards by means of which justification is measured. In this section I will briefly deal with the nature of justification, without saying much about the standards that should be used for justification.

Justification can be looked at from at least three angles. The first one is from the object of justification. For instance, is a particular act or belief justified? The second angle is the person who is justified in, for instance, holding a belief, or performing some act. The third angle is the auditorium for which the justification takes place. A judge who motivates his judgment justifies this judgment for, in the first place, the process parties, and in the

⁷ Raz 1994 (RC).

second place the (legal) community that has vested decision making powers in him. I discuss these three angles in turn.

2.1 Acceptances

At first sight there are many things that can be justified, such as acts, decisions, policies, rules, beliefs and states of affairs. On closer inspection, everything that can be justified turns out to depend somehow on decision making. For instance, acts can be justified to the extent that they are potentially the outcome of decision making (intentional acts); policies and rules can be adopted and abandoned, respectively abrogated and all of these are the outcomes of decisions. The same counts for beliefs, which can also be adopted and abandoned deliberately. And, finally, states of affairs can be justified to the extent that they are the outcome of decision making, or can be changed intentionally.

The view of justification that I will present here as a presupposition of what follows does not deal with all objects of justification, but is broader than merely a theory about the justification of beliefs. Its topic is the justification of ‘acceptances’ in general and it treats a belief as one kind of acceptance. I will use the term ‘acceptance’ as a catch-all for everything, with the exception of behavior⁸ that is amenable to justification. An acceptance is something that is actually accepted; ‘things’ that are amenable to acceptance are called ‘potential acceptances’. Potential acceptances include:

- beliefs (‘London is the capital of the United Kingdom’),
- practical judgments (‘I should review this paper tomorrow’),
- plans (‘I will take the plane to Bologna next Saturday’),
- rules (‘One ought to drive on the right hand side of the road’),
- values (‘Truth is to be promoted’),
- logical standards (‘If $P \rightarrow Q$ and P are both true, Q must be true’), or
- guidelines for belief revision (‘If two acceptances are incompatible, the one that was more recently required should be abandoned’).

An acceptance may be said to be justified if it is right. The precise form of rightness depends on the nature of the acceptance. Right beliefs are true; right logical standards lead to conclusion that, given the premises are better accepted than rejected or suspended; right rules are those rules that lead to

⁸ Legal decisions (e.g. convict the suspect) can both be seen as behavior, in which case it is not amenable to acceptance and as a judgement about what should be done (the suspect should be convicted), in which case it is a potential acceptance.

the goal for which they were adopted (in case of rules that were adopted for some purpose). Whether an acceptance is right depends on the facts and on standards that make these facts relevant for the kind of rightness in question. In the case of beliefs, for instance, the standard is whether the belief is true and therefore the rightness of the belief that it is raining depends on this standard and the fact that it is raining. Given this standard, the belief that it is raining is justified if it is in fact raining.

Two things are noteworthy about this last example. First, that the rightness of a belief does not depend on one's other beliefs. It depends on the facts in the world, not on the beliefs about these facts. However, the standard for the rightness of beliefs, that right beliefs are true ones, is not a matter of fact, but depends on the person or group that uses standards for the rightness of beliefs. (A belief might also be considered to be right if it is in accordance with the text of a holy book, even if it were false.)

The second thing to note is that being justified as a characteristic of acceptances is redundant next to the already existing characteristic of being right. Being justified is nothing else than being right. For this reason I prefer to stick with rightness and to ignore the notion of being justified as a characteristic of acceptances. The only reason I mention it is that being justified in the sense of rightness sometimes seems to play a role in discussions about justification.⁹

2.2 Internal personal justification

Instead of asking whether a particular acceptance is justified, it is possible (and makes more sense) to ask whether a person is justified in accepting something. Is the judge justified in holding the suspect guilty? Is Amnesty International justified in accepting the goal to free as many as possible political prisoners? By asking these questions, the emphasis is on the persons (or personified organizations) that accept something, not on what is accepted. That is why I call justification from this point of view *personal justification*.

⁹ For instance, Chisholm (1989, 8) writes that 'The term "justify" in its application to a belief, is a term of epistemic appraisal: it is used to say something about the reasonableness of that belief'. On this view, being justified is a characteristic of the belief.

Audi (1998, 163) writes about the inferential transmission of justification as if being justified is a characteristic of beliefs that can, just like truth, be transmitted from the premises to the conclusion of an argument.

See also the discussion of 'absolute justification' in chapter 1, section 2.5. It seems to me that the notion of 'absolute justification' only makes some sense in connection with the justification of acceptances in the sense of rightness.

There are two perspectives on personal justification. The one perspective is that of the person who asks himself ‘Am I justified in accepting this?’ This is, for instance, the question of the judge who is wondering whether the evidence is sufficient to convict the suspect. The second perspective is that of the spectator, who wonders whether some other person is or was justified in accepting something. The legal commentator, for instance, may ask whether the legislator was justified in his judgment that this bill should be passed. To make the discussion of these two perspectives more convenient, I will dub the first perspective ‘internal personal justification’ and the second perspective ‘external personal justification’ and abbreviate them to *internal*, respectively *external justification*.¹⁰

Suppose that P believes, and has no reason to doubt, that it is raining. Suppose, moreover, that P must make up his mind whether the streets are wet. Going by his best knowledge¹¹, P should come to the conclusion that the streets are wet and in this sense he is justified in his belief that the streets are wet. However, the reason for P to believe that the streets are wet is not that he believes that it is raining, but rather (the fact) that it is raining. In terminology of Haack¹², it is the *content* of what P believes, not his belief *state*, which is relevant for his internal justification. Whether P is internally justified in holding a belief (or, in general, accepting something) depends on, one the one hand, the facts and, on the other hand, the standards that P uses (and is justified in using) to assign relevance to the facts.

Now suppose that in fact it is not raining. Then P is not internally justified to believe that the streets are wet, for his reason to believe this is that it is raining, while in fact it is not. However, if we ask, from the external point of view, whether P is justified in his belief that the streets are wet, the answer must be affirmative. Assuming that P was both justified (but not right) in believing that it is raining and in adopting the inference rule¹³ that the streets may be taken to be wet if it is raining, the best thing P could do is to adopt the belief that the streets are wet. Apparently, there is a difference between internal and external justification, because where for internal justification the facts are relevant, for external justification (justified) beliefs about the facts are relevant. The same point can again be made in terms of

¹⁰ Notice that the notions of internal and external justification as used here differ from Alexy’s use of them. Cf. Alexy 1978, 273 and chapter 1, section 3.2 of the present work.

¹¹ For the sake of argument, I assume that it would not be rational to invest time and energy to acquire additional information.

¹² Haack 1999.

¹³ In this chapter I use the expression ‘inference rule’ for what Toulmin (1958) called a ‘warrant’, not for inference rules in the sense in which they occur in systems of formal logic.

the distinction between belief contents and belief states: belief contents are relevant for internal justification, belief states for external justification.

That this difference between internal and external justification is legally relevant, is illustrated by the following Dutch case.¹⁴

X was suspected of hiding two dangerous kidnappers. For this reason the police raided his house, causing damage in the course of action. At the end, it turned out that the suspicion was false, although at the moment that the police decided to raid the house, it was justified. X sued the government for the damages. The government defended itself by adducing that the raid was justified, given the information that was at the time available to the police. The Dutch Supreme Court convicted the government to pay for the damages, however, because the police behavior was only *prima facie* justified, but turned in the end out to have not been justified. Apparently, the government used the external notion of justification, while the Supreme Court used the internal notion.

Both from the internal perspective, when a person is wondering whether to accept something, and from the external perspective, when the question is raised from the outside whether a person is justified in accepting something, the relevant facts to go by are this person's internal states.¹⁵ When I wonder whether the streets are wet, my decision should depend on the fact whether the streets are wet, but I can only 'access' this fact through my belief that the streets are wet. This belief may be false, but the best thing I can do about this is to check it ... by means of my other beliefs (and standards). The same counts for the standards involved. These standards are not given with the facts, but are adopted (accepted) by the person using them. They may be wrong, but the best thing to do about this is to check them by means of my other standards and beliefs.

It turns out that personal justification is necessarily relative, namely relative to the internal states of the person for whom the justification holds. This does not mean that the justified acceptances are themselves relativized. If I am justified in my belief that the streets are wet, this justification is relative to what else I accept, but this does not mean that I believe that 'the streets are wet, assuming the rightness of my other acceptances'. I believe that 'the streets are wet' and this belief is justified (or not) relative to the rest of my acceptances. Personal justification is inherently relative in this sense.

¹⁴ HR 26 januari 1990, NJ 1990/794.

¹⁵ In section 2.3 I will discuss the objection that the right standards are not up the person, but are 'independently' given.

2.3 Justification for an audience

If one attempts to justify something in front of an audience, one should present this audience with an argument that will probably convince it. This means that the premises from which this argument starts should be accepted by the audience.¹⁶ If one wants to convince an audience that P was justified in accepting something, this will be much easier if the beliefs and standards on which P's acceptance is based are accepted by the audience too.

This holds in particular with regard to the standards. Suppose that P believes that the streets are wet and bases this belief on the fact that it is raining and on the standard (inference rule) that if it is raining, the streets are wet. Suppose, moreover, that the members of the audience live in a country where all streets are roofed and that they are not familiar with countries in which this is not the case. For such an audience, it may seem that P is not justified in his belief that the streets are wet, because he uses a wrong standard. The reason is that the audience replaces a standard that P is justified in accepting by a standard the audience is justified in accepting. In the eyes of the audience, the right (misleadingly called 'justified') conclusion cannot be that the streets are wet. However, if P was justified in his acceptance of the inference rules 'if it is raining, the streets are wet', P is justified in his conclusion that the streets are wet too, even if this conclusion is unjustified (that is: wrong) in the eyes of the audience.¹⁷

2.4 Broad coherentism

The view adopted above, that all justification is relative to the internal states of the person who is justified, is a so-called *internalist* theory of justification.¹⁸ An internalist theory of justification holds that the justifiability of holding a belief (or - more generally - of something that one

¹⁶ This was emphasised by Perelman and Olbrechts-Tyteca (1969, 23f.)

¹⁷ We will encounter a more realistic example of this fallacy in section 7.

¹⁸ The distinction between internalist and externalist epistemological theories should not be confused with the internal and the external perspective on justification. The former distinction deals with the issue whether only mental states play a role in the justification of beliefs. The latter distinction concerns the issue whether justification is dealt with from the perspective of a reasoning person, or from the perspective of an external observer who evaluates this reasoning. If my view of the internal perspective is correct, namely if facts rather than beliefs about facts play a role from the internal perspective, this perspective presupposes an externalist epistemological theory. The external perspective presupposes on my view an internalist epistemological theory.

accepts) is a function of our internal states. An externalist theory denies this.¹⁹

In traditional epistemology, which focuses on knowledge of the physical world, it is customary to distinguish between internalist theories that assign a privileged status to some acceptances and internalist theories that do not. Acceptances with a privileged status are considered to need no justification, or are taken to be justified in themselves, whatever that may be. The obvious candidates for acceptances with a privileged status are beliefs based on sensory perception. These beliefs are in some theories assumed to guarantee contact with the external world and provide the foundations on which the building of other acceptances is erected. Such theories are called 'foundationalist'.²⁰

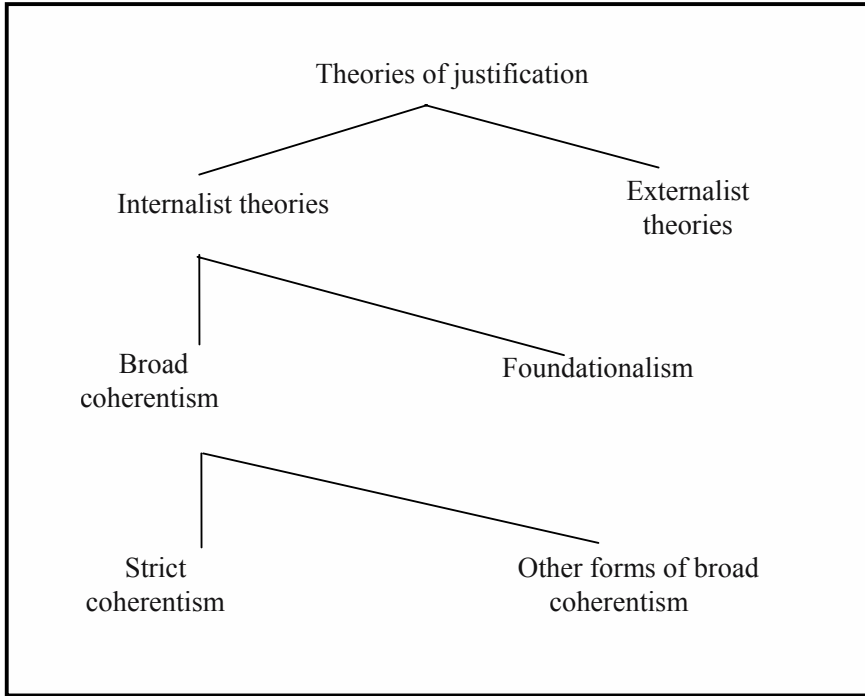
Internalist theories that do not assign a privileged status to some acceptances usually assume that the justification of acceptances rests on coherence with other acceptances. Therefore these theories are called *coherence theories*. Notice that coherence theories in this sense are defined in contrast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

A subset of the coherence theories in the broad sense may be called *strict coherence theories*. These strict theories demand that a justified (in the sense of coherent) set of acceptances exhibits a particular structure of mutual support between its elements. An interesting issue for discussion then becomes what this structure of mutual support would be.²¹

¹⁹ Pollock and Cruz 1999, 22f. Their wordings suggest, however, that they intend their distinction to apply to the justifiability of beliefs themselves (justifiability in the sense of rightness), rather than the acceptance of these beliefs.

²⁰ Some foundationalist theories assign a special status to some acceptances because they are assumed to be incorrigible, without necessarily being based on sensory perception. See Alston 1992.

²¹ Such a discussion can be found in, amongst others, Alexy and Peczenik 1990. See also Bracker 2000.



In the following, I will deal with justification from the external perspective. Then, given the relative notion of justification adopted above, a theory of justified acceptance must be internalist and consequently either foundationalist or coherentist in the broad sense. The distinction between foundationalist and coherentist theories is not as strict as might seem at first sight, however.²² In particular a theory may assign a privileged status to some of its elements, but base this status on reasons derived from other parts of the theory. For instance, one can have a theory that holds that perceptive states provide us - under suitable circumstances - with reasons why what we perceive is true, while these perceptive states themselves are not in need of any justification.²³ This theory would assign a privileged status to perceptive states (they need no justification), but does this for reasons based upon the rest of the theory. Such reasons might for instance be that, under suitable circumstances, perception provides us with a reliable picture of the world. These reasons have themselves no privileged status and need justification in the sense that they are part of a coherent theory. Such a theory would be

²² This is also extensively argued in Haack 1993, 13f.

²³ Cf. Haack 1999.

coherentist in the broad sense, because the privileged status of perceptive states is not a priori given with this epistemological theory, but depends on the actual contents of the theory that is developed within a framework which as such does not assign a privileged status to any element. In a sense, however, the theory would also be foundationalist, because the perceptive states end up with a privileged status.

The crucial difference with a straightforward foundationalist theory is that in the variant under discussion here, the privileged status of perceptive states is not given with the theory of epistemic justification as such, but merely with the contents of one particular theory about the world, which fits in a broadly coherentist theory of epistemic justification. This distinction, between on the one hand the postulates of a theory of epistemic justification as such and on the other hand the contents of a theory about the world that fits within such an epistemic theory, is crucial for the understanding of integrated coherentism.

3. MUTUAL SUPPORT

When coherentism is at stake, it is generally taken to be more specific than merely epistemic internalism without privileged acceptances. A fashionable view of coherentism runs that a theory is coherent if it is consistent and comprehensive, and if its elements mutually support each other.²⁴ Let us assume for a while that the notions of consistency and comprehensiveness are unproblematic and focus on the idea that the elements of a comprehensive theory mutually support each other. The question that must be answered then is what this mutual support involves.

3.1 Deductive support

A simple view of support would be that an element of a theory is supported by the rest of the theory if it can be deduced from the rest. Let us call this view the deductive support theory. That the deductive support theory is unattractive becomes clear from a simple example:

²⁴ See, for instance, Bracker 2000, 166/7.

Theory 0

1. The butler murdered Lord Hard.
2. The butler had a motive.
3. The butler murdered Lord Hard and the butler had a motive.

The elements 1 and 2 of this theory together deductively support element 3, while element 3 deductively supports both the elements 1 and 2. This small theory would therefore be coherent in the narrow sense (strong mutual support). However, it is not a very interesting form of support, because element 3 merely repeats the elements 1 and 2.²⁵ Although the triviality of the support relation may be less plain if the deductive chains between the elements of a theory are longer, deductive support between elements of a theory will always be trivial in the sense illustrated by the example above, because deductively valid inferences are in general reformulations of information contained in the premises of the argument.²⁶

Another problem with deductive support is that it can only be applied to theories that contain only elements with truth values. Deductive validity of arguments is defined in terms of the truth values of the premises and the conclusion. Although rule and principle applying arguments superficially seem to be of the same form as some kinds of deductively valid arguments, this appearance is deceptive, if only because rules and principles lack truth values.²⁷ Therefore, if coherentism is to be applied to legal theories too, the support relation must not be confined to deductive support only.

It turns out that the mutual support needed for a coherent theory cannot be deductive support.²⁸ But what else can it be? Let us look at a theory of coherence that was elaborated by Thagard *cum suis*, according to which coherence is a form of constraint satisfaction.

²⁵ Cf. also Alexy and Peczenik 1990, note 5.

²⁶ This was already pointed out forcefully in Toulmin 1958, 123f. See also my discussion of the container metaphor of reasoning in Hage 1997 (RwR), 245f.

²⁷ This subject is too complex to go into details here. The interested reader is referred to Hage 1997 (RwR), 78f.

²⁸ Other objections against what he calls 'coherence as implication' are formulated in Lehrer 2000, 100/101.

3.2 Coherence as constraint satisfaction

In a number of publications²⁹, Thagard developed the theory of knowledge as constraint satisfaction. In Thagard and Verbeurgt 1998, this theory of coherence is summarized as follows:

- Elements are representations such as concepts, propositions, parts of images, goals, actions, and so on.
- Elements can cohere (fit together) or incohere (resist fitting together). Coherence relations include explanation, deduction, facilitation, association, and so on. Incoherence relations include inconsistency, incompatibility and negative association.
- If two elements cohere, there is a positive constraint between them. If two elements incohere, there is a negative constraint between them.
- Elements are to be divided into ones that are accepted and ones that are rejected.
- A positive constraint between two elements can be satisfied either by accepting both of the elements or by rejecting both of the elements.
- A negative constraint between two elements can be satisfied only by accepting one element and rejecting the other.
- The coherence problem consists of dividing a set of elements into accepted and rejected sets in a way that satisfies the most constraints.

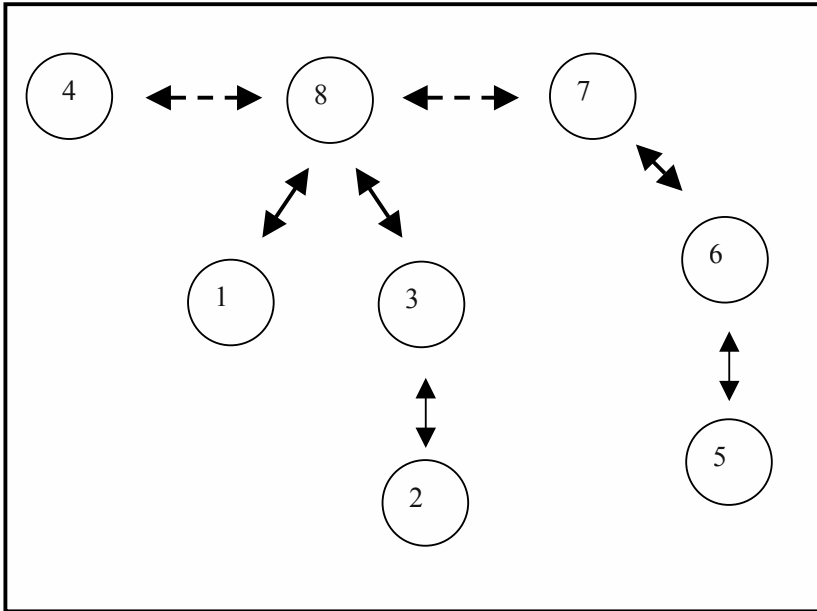
Let me illustrate this theory by means of an example from the field of judicial proof. Suppose that Lord Hard was found in his room, murdered by means of a knife. The butler was seen entering Lord Hard's room. Moreover, the butler had a motive to murder Lord Hard, because his Lordship had seduced the butler's daughter Harriet. However, the butler has a phobia for knives, which makes it less probable that he killed the Lord with a knife. Lady Maureen, Lord Hard's wife, had a motive for murder too, because knowing of the seduction, she suffered from heavy jealousy. The butler is accused of heaving murdered the Lord and the issue at stake is whether he actually murdered the Lord.

In order to depict the constraints between the different beliefs that play a role in this case, I will number them:

1. The butler was seen entering Lord Hard's room.
2. Lord Hard seduced the butler's daughter.
3. The butler had a motive to murder Lord Hard.
4. The butler had a phobia for knives.

²⁹ Amongst others: Thagard 1992, Thagard and Verbeurgt 1998 and Thagard 1999.

5. Lady Maureen was jealous with regard to the Lord.
6. Lady Maureen butler had a motive to murder Lord Hard.
7. Lady Maureen murdered Lord Hard with a knife.
8. The butler murdered Lord Hard with a knife.



The circles in this picture represent the possible beliefs in a theory about the murder case. The double-headed arrows represent constraints between these beliefs. Arrows with a closed line represent positive constraints; arrows with a dotted line represent negative constraints. Initially the beliefs 1, 2, 4 and 5 have a positive status. By repeatedly increasing the status of the beliefs that are positively connected to another belief with a positive status, or negatively connected to a belief with a negative status and decreasing the status of the other beliefs, in the end an equilibrium results.³⁰ This equilibrium divides the beliefs into two categories, beliefs with a positive status, which are accepted and beliefs with a negative status, which are rejected. The resulting theory is coherent, because the beliefs and disbeliefs mutually support each other.

This theory of coherence as constraints satisfaction has several advantages. First it leaves the nature of the elements in a coherent set open.

³⁰ I am implicitly applying the connectionist treatment of the network of beliefs, that Thagard applies in his publications. More on this approach can be found in Rumelhart and McClelland 1986, or in modern introductions to artificial intelligence or cognitive science.