a coherent theory. It will often occur that they are abandoned during the process of construction.

   In this connection the famous metaphor of Neurath gives a good indication of the role of coherence.[43] According to this metaphor, 'we are like sailors who must rebuild their ship upon the open sea'. We start with a pre-existing body of spontaneous beliefs that is modified in order to make it coherent. Moreover, the process of modification never ends, if only because the entrance of new spontaneous beliefs never ends as long as one is able to perceive.[44] Coherence is a correctional device, a goal pursued in the processing the body of our beliefs.

   The third point that I want to emphasize and which I already mentioned in connection with Thagard's theory of coherence as constraint satisfaction, is that the connections between the elements of a theory, the constraints in Thagard's theory, are themselves part of the theory in question. A coherent theory is in accordance with constraints that are part of the theory themselves.[45] This third point is the crucial one for the theory of integrated coherence: the support relations between the elements of a theory are not defined outside the theory, but are part of the very theory. It can also be made by stating that in integrated coherence, logic is part of the coherent theory and not something outside of it. In this way, a kind of Quinean holism is incorporated into the theory of integrated coherence.[46]

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[43] Neurath 1932/3.

[44] Probably the process of modification would even continue if there were no new input, but this remains a matter of speculation because we do continuously receive input of new beliefs.

[45] The idea that a theory sets itself the standards that it must satisfy is an extrapolation of the idea that a belief set also contains meta-beliefs. Cf. the discussion of meta-beliefs in Bender 1989 (CJK).

[46] Cf. Quine 1953 and 1986.
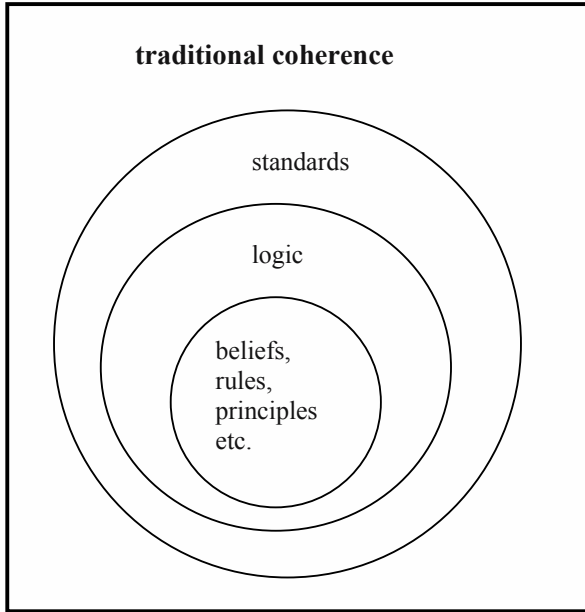
In a traditional coherence theory, the real theory consists of beliefs about the world and possibly rules and principles. Next to this theory there is a logic that defines which logical relations exist between the elements of the theory, what follows from the theory and what is inconsistent with it. And finally there is a substantive set of standards that define what a good theory is and, if these standards refer to coherence, what coherence in a theory amounts to. In integrated coherence the logic and the standards for a good theory are considered to be part of the theory itself. Outside the theory is only the minimal standard that a good theory satisfies its own standards.[47]

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[47] Notice, by the way, that this opens the possibility that the standards that a theory contains for good theories do not refer to coherence. In that case, a 'coherent' theory in the sense of this paper would not be coherent. This possibility does not worry me, because, given the nature of the human cognitive apparatus, it would surprise me if some actual 'coherent' theory would not also include some version of a coherence theory of knowledge. And if it did, I have no problem with giving up the name 'integrated coherentism'.
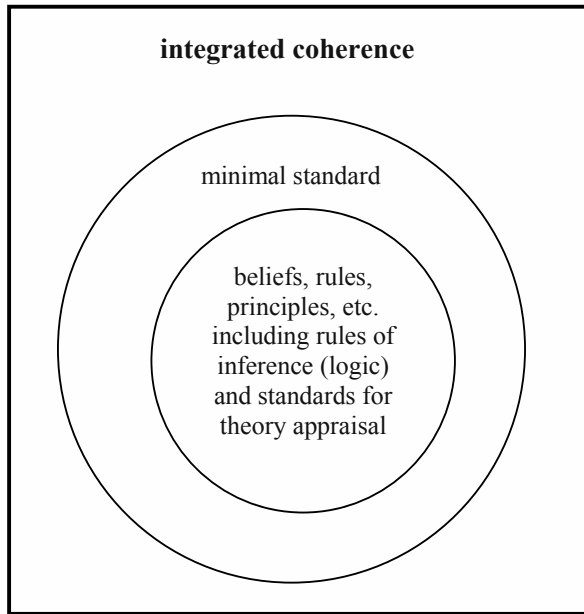
6.   INTEGRATED COHERENTISM

After the preparatory work of the previous sections, I will use this section to sketch the outlines of the theory of integrated coherence.[48] The most basic notion is that of a theory. A theory is a set of acceptances plus perceptive states.[49] I assume that these acceptances and perceptive states determine what it is rational to believe, what standards should rationally be accepted, what it is rational to reject and about which potential acceptances one should

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[48] The theory of integrated coherence as sketched in this section has parallels with argument-based semantics as discussed in Dung 1995, Prakken and Vreeswijk 2001 and Verheij 2003 (DL).

[49] Haack 1993, 29 argues, to my opinion convincingly, that not only the contents of beliefs, but also perceptive states (such as 'I see a chair') can be reasons for or against adopting or maintaining acceptances.

   Haack continues to draw the - in my opinion false – conclusion that not all justification is a logical matter. She draws this conclusion from the fact that perceptive states, which are obviously not propositions, play a role in justification. Her error seems to me to be that she overlooks that even where descriptive sentences are used in arguments, the logical role (that of reasons) is played by the *facts* expressed by these sentences. A similar logical role can also be played by the *fact* that one is in a certain perceptive state.

suspend one's judgment because it is neither rational to accept them, nor rational to reject them.

At some moment in time, a theory might contain elements that should rationally be accepted, elements that should rationally be rejected and 'neutral' elements. The idea of integrated coherence is that the theory should be modified such that the elements that, according to the (rest of the) theory, should rationally be rejected are removed from it (the counterpart of the traditional demand of consistency), while elements that rationally should be accepted, but which are not yet part of the theory, should be added to it (the counterpart of logical closure). Neutral elements that are part of the theory remain in it, while neutral elements that are not part of the theory remain outside. In this connection the question which (potential) elements should rationally be accepted or rejected is answered solely on the basis of those elements of the theory that should not rationally be rejected. *A coherent theory is then a theory that contains all potential elements that should rationally be accepted according to its own elements and that does not contain any elements that should rationally be rejected according to (the rest) of its elements.*

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

Integrated coherentism does not refer to mutual support as a standard for coherence. What counts as mutual support and the extent to which this kind of mutual support increases the quality of a theory are issues that are left to the theory itself. It might therefore be the case that an integratedly coherent theory consists of elements that lend little mutual support to each other. However, the demands that a coherent theory contains all those elements that should rationally be accepted according to itself and should not contain any elements that should rationally be rejected according to the theory itself, almost certainly guarantee a substantial degree of mutual support because all elements that are part of the theory because of these demands will be supported by other elements. Moreover, if the theory contains something like the abduction principle[50], which is very plausible if the theory is the outgrowth of a spontaneous human belief set, many supported elements of the theory will in turn support the elements that support them.

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[50] What holds for the abduction principle also holds for a principle that allows induction. I will leave induction outside the scope of this paper, however.

7.   THE RELATIVITY OF JUSTIFICATION

In the remainder of this chapter, the implications of integrated coherentism for legal justification will be traced. I will use Raz's criticism of coherence theories in the law as starting point for my discussion. In his paper *The Relevance of Coherence*, Raz formulates fundamental criticism against all forms of epistemic coherentism.[51] Remember that coherence theories are internalist, meaning that they only deal with mental states of persons to determine which acceptances are justified *for these persons*.[52] Justification is consequently a personal matter; acceptances are justified for a particular person and not in general, whatever 'general justifiedness' might mean. Raz does not object to this person-relatedness of justification, but points out that some of the mental states[53] of a person may be acquired in an unreliable way, for instance through prejudice or superstition. According to Raz coherence with such wrongly acquired mental states would not lead to justification. Consider, for example, a person who is influenced by a self-acclaimed prophet, who has written a book of 'revelations' containing a peculiar vision of the world and of moral and epistemic standards. The most important epistemic standard is that the book of revelations in question contains answers to all questions. If the acceptances of this person are taken as input set, the resulting coherent set may be weird in the eyes of non-believers.[54]

The justification of a particular acceptance is ideally based on a coherent acceptance set to which this particular acceptance belongs. This coherent set must be the outcome of a correction process that started from a number of spontaneous acceptances. Raz's criticism boils down to it that not every set of spontaneous acceptances can lead to a coherent set that justifies its contents. In particular if the original set of spontaneous acceptances contains irrational elements, the resulting coherent set would not justify its elements.

The crucial question in this connection is which standards should be used to determine whether the spontaneous acceptance set contains irrational elements. Should this be determined by means of standards in the coherent set that is the outcome of this spontaneous set, or by means of different, 'objective' standards?   If the rationality of the input set should be measured

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[51]   Raz 1994 (RC).

[52]   Later in this section I will retract this claim somewhat.

[53]   Raz writes about beliefs. For reasons exposed in section 2.1 I prefer to broaden the set of entities that are considered for justification to acceptances in general.

[54]   Some non-believers may be so optimistic to think that even coherent sets based upon such 'irrational' input sets would turn out to be 'rational' after all, because such 'irrational' input sets are even irrational according to themselves and would become 'rational' after correction by their own standards.

against standards in its resulting coherent set, Raz's argument misses the point. In the final coherent set, the resulting acceptances are rational according to the standards in the set itself. If the input set contained irrational elements, these elements have been filtered out in the resulting coherent set and the original mistakes have been corrected. If some elements were not filtered out, they turned out to be not irrational after all.

Presumably, however, Raz meant to say that the rationality of the input set should be measured against independent standards. The crucial question then becomes what these independent standards would be. Raz mentions a few, such as that beliefs should not result from prejudice or obstinacy. These seem to be good standards, but who is to be the judge of that? If these standards are part of the coherent acceptance set, the effects of prejudice and obstinacy will be filtered out in the coherent set. If the standards are not part of the coherent set, where stems their justification from, then?

The only sensible answer seems to be that they are generally accepted. Moreover, if they are to be good standards, they should not only happen to be generally accepted, but should also be rationally generally accepted. Or, to put it in coherence terminology, they should be part of a coherent set of generally accepted acceptances. Formulated thus, it becomes clear what Raz's problem is. Justification according to 'our common epistemic vocabulary' is not a personal matter, but a matter of standards that are broadly accepted, or – probably even better - correct. What would seem to be justified because it belongs to a personal coherent acceptance set, may be unjustified because it does not belong to a more broadly acceptable or even correct coherent set.[55]

I can be brief about the 'objective' or 'correct' standards. Standards are by their very nature not true or correct in the sense of solely dependent on an independent reality. They can be reliable and there can be very convincing reasons to adopt them, but they are never true or correct in the sense that they are somehow given independent of acceptance. They can be justified, but this justification is necessarily relative to other standards that are not true or correct in the sense considered here. The best that can be obtained are standards that (rightly) have received broad acceptance.

The question then seems to be what the correct standards for justification are. Are they the standards which are part of a coherent personal acceptance set, or are they the standards that belong to a coherent acceptance set which

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[55] More complex constructions are also imaginable. One might construct a coherent acceptance set on the basis of spontaneous *personal* beliefs and spontaneous *social* standards. The result would be a coherent set based on a hybrid of personal and social input. Such a set might even better capture what is commonly called justified than a coherent set based on purely social acceptances.

resulted from what was commonly accepted? Asking the question is already giving most of the answer. Apparently two different versions of justification are involved. One deals with the question what a particular person is justified in accepting. The other deals with the issue what is acceptable according to common standards. These different versions of justification are not a reason against coherence theories of justification, but rather a reason to relativize justification not so much to a person, but to an acceptance set, leaving the question open whether they are the acceptances of a person or a group. An acceptance may then be justified for a particular person or for a social group, such as physical scientists or lawyers. It makes no sense to ask the question whether a particular acceptance is justified in abstract. All justification is relative, and the criticism that what is justified according to a particular coherent acceptance set is not 'really' justified seems to overlook this point.

8.   THE BASE OF COHERENCE

The first line of criticism adduced by Raz against coherentism in the law, which I discussed in the previous section, was directed against epistemic coherentism in general. The second line of criticism deals with constitutive coherentism in the law, the view that the content of the law is determined by coherence. In his discussion of constitutive coherence in the law, Raz points out that any coherent theory presupposes something that must be made coherent and Raz calls this the 'base'. In the previous section we already encountered this base as the input set for a coherent acceptance set and in section 5 the role of the base was mentioned as reason why coherent theories need not be disconnected from reality. From this correct observation concerning the necessity of a base, Raz concludes that 'even according to coherence accounts, coherence is but one of at least two components in any theory of law'.[56]

In a sense this is right. The base plays a role in determining the coherent acceptance set that stems from it. But if this observation is the first step towards the conclusion that if a legal judgment is to be justified, the base from which it was ultimately derived should be justified (or correct) too, it is misleading. The base that functions as input to this process is irrelevant for the justification on basis of the coherent acceptance set that resulted from it. A particular acceptance is justified relative to an acceptance set, if this acceptance set is coherent and if the acceptance is an element of it. The base

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[56] Raz 1994 (RC), 289.

from which the coherent acceptance set stems may *determine* the contents of this set, but has no role in the *justification* of an acceptance.

Nevertheless, Raz's text suggests that he wants to take the misleading road of assigning the base of an acceptance set a role in the justification of the acceptances that are part of it. He considers the possibility that the base would contain all possible legal propositions, including the principle of maximizing happiness and the categorical imperative. We might then end up, according to Raz, with a morally perfect set of propositions, but not with a theory of the law. Raz sees this as a reason why we should only include objective legal propositions in the base.

I would prefer a different road, namely not to confine the base to only legal (or moral) propositions, but to make it contain all propositions. Then it would also include propositions about what counts as law and what counts as morality and propositions concerning the proper demarcation of law and morality. The resulting coherent acceptance set would then presumably contain a theory about the relation between law and morality and if this theory would be a positivist one, it would assign the principle of the maximization of happiness and the categorical imperative to the realm of morality and declare them irrelevant (or only slightly relevant) for the contents of the law. What Raz sees as a danger of placing too many (and in particular the wrong, moral) acceptances in the base is in my opinion a danger of placing too few acceptances in it. If the acceptances of the base include all acceptances, the role of individual elements of the base in determining the coherent output set is less important than Raz assumes and that is the reason why the base is not an independent factor in determining the justification of legal judgments.

The difference between integrated coherentism and Raz's view becomes even more prominent when we look into the question to what extent the base is 'transitory'. Under a transitory base, Raz understands a base 'which provides a starting-point on which some coherence-maximizing procedure is applied, leading eventually to a discarding of the base'. Raz mentions Rawls' theory of reflective equilibrium as an example of a theory that uses such a transitory base. According to Raz, a transitory base is not suitable for law and adjudication and nobody has ever suggested such a view of law. The prima facie plausibility of Raz's view is that if the whole base were overthrown by the coherent acceptance set that results from it, the law according to this coherent set would have nothing to do with the law as we actually know it and can therefore not sensibly be called 'law' at all. It should be noted, however, that a truly comprehensive acceptance set would presumably contain a subset about semantics, including a theory of reference. If this theory holds that words like 'law' refer directly to certain phenomena, e.g. the contents of legislation and court decisions, and that

these phenomena are therefore necessarily part of what we refer to by the word 'law'[57], the coherent acceptance set could not contain a subset that is completely different from what we actually call law. However, this does not show that there cannot be a transitory base for the law, but only that, given certain boundary conditions amongst which a particular semantic theory, the base that is in theory transitory will in fact not be overthrown.

Let me add an example to illustrate why Raz is wrong. Suppose that somebody has a base that includes the rule of recognition that all rules made by the government according to procedure P (P-rules) are rules of law and that there are no other legal rules. The same base contains the beliefs that the rules 1-10, which are not P-rules, are legal rules. The base does not contain any other purely legal beliefs, but it does contain a belief about the proper role of government within society and that his role includes that it can exclusively make authoritative guidelines for behavior within society. Moreover, this belief is firmly embedded in a political philosophy, which is in turn embedded in a view of the world as a whole and the role of human beings in it. The purely legal part is inconsistent and should be modified. Given the way it is embedded in a total view of the world, the rule of recognition is not the best candidate for removal and therefore the belief that the rules 1-10 are legal rules will be sacrificed in making the set coherent. This means that more than 90% of the legal beliefs should be given up, because they are badly embedded in the rest of non-legal knowledge.

Although lots of possibly relevant details, including details about semantics, are lacking, I believe that an account like the above of what acceptance revision might entail is not unrealistic and that would go to show that Raz's idea that a legal base cannot be transitory, is wrong. In general, it is my opinion that precisely because Raz considers the base of a coherent theory of the law as a base theory *of the law* and consequently in isolation of the rest of one's acceptances, he assigns the base a far too important role in determining whether a particular legal judgment is justified.

9.   AUTHORITY VERSUS COHERENCE?

Another line of criticism that Raz formulated against coherentism in the law has to do with the authority of law makers. According to Raz, the law is a set of standards that guide conduct and judgments about conduct. These standards emerge from the activities of authoritative institutions. Consequently, the law reflects the intentions of its makers and the reasons

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[57] Cf. Kripke 1972, Putnam 1975 (MM) and Stalnaker 1997.

they had for making the law as they did. This means that the contents of the law are, at least in part, determined by politics and given the vagaries of politics, 'there is no reason to expect the law to be coherent'.

Before considering whether this criticism really affects coherentism in the law, I want to draw the reader's attention to what might be an underlying motive of Raz's attack on coherentism. The real issue at stake might be to what extent legal decision makers have leeway to frame their decisions as seems best to them and to what extent they are bound by a law that is independent of the way they see it. This discussion can be focused on the specific question to what extent the law is determined by its sources and amongst these in particular the sources that involve explicit decision making. To frame the question (overly) simply: Who makes the law, legislators or judges who must decide new cases? The more a judge is allowed to see the law as part of a coherent whole, the more leeway he seems to have to (re)construct the law as seems fit to him. The issue of coherence is then just a way to discuss the degree in which legal decision makers are bound by the law and in particular by legislation and case law.[58] I do not want to take sides in this discussion. Instead I want to show that different positions in it can be accommodated in a framework of integrated coherentism.

A normative system can be coherent in content, but also in origin.[59] A typical example of a system that is coherent in content is utilitarianism. There is one ultimate moral principle, to strive for the greatest happiness of the greatest number, and the rest of morality is merely elaboration of this ultimate principle on the basis of factual circumstances. A typical example of a system that is coherent in origin is a legal system as envisaged by Kelsen. There is one basic norm, which determines who are competent to make new law. The law consists precisely of those norms that are made on the basis of this basic norm. What these norms are is again a matter of factual circumstances. The law is determined by which persons or organizations that were directly or indirectly made competent by the basic norm and by what they decided. The crucial difference with systems that are coherent in content is that in systems that cohere in origin, the contents of

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

[59] This distinction was inspired by Kelsen's distinction between static and dynamic normative systems. See Kelsen 1960, 198.

the law are, at least partly, determined by new decisions. These decisions need not be coherent in content, as Raz correctly pointed out.[60]

A system that is coherent in origin need not be coherent in content and vice versa. If this is what Raz wanted to point out with his argument, he was right. It seems, however, that he meant to say more in two respects. He apparently adduced the point of several sources of law as an argument against coherentism in general. That would be a mistake, because the coherence of law might in Kelsenian vein be constructed as coherence of origin instead of content. Moreover, he seems to assume that the fact that the contents of legal decisions need not be coherent implies that the content of the law is not coherent. That would only follow on a view according to which the contents of the law are by and large determined by the contents of these decisions. Such a view is certainly defendable, but depends on a particular view how the law is to be constructed. An alternative view would be that the contents of these decisions should be considered as input to a process of (re)construction that leads to a system that is coherent in content.[61]

Let us take a step back from the discussion about the proper role of authoritative legal decisions in the construction of the law. The position one takes in this discussion will be influenced by one's views about the relation between the law and state authorities and between law and politics.[62] Integrated coherentism requires that ones politico-philosophical views in this respect cohere with one's views about the room for legal decision makers to make the law coherent in content. It is compatible with different views about the proper kind of coherence (origin or content) in constructing the law. It is even compatible with rejection of both content and origin coherentism concerning the law.

The discussion whether the law should be constructed coherently and if so on the basis of content or origin, deals with another form of coherentism than the broad version defended in this chapter. It puts stronger demands on the way law should be constructed than merely that the theory of the law is part of a coherent acceptance set as defined in section 5. In fact it is a discussion whether the law should be coherent in the strict sense and what

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

[61] Cf. Peczenik and Hage 2000.

[62] The discussion about coherentism between Dworkin and Raz clearly illustrates this point.