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On Law and Reason

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I have also given examples of the role of strong support in moral and legal reasoning. *Inter alia*, the concept of strong support fits the fact that some norm-statements play a special role in legal reasoning. One may also claim that each general moral theory expresses a statement which strongly supports moral conclusions. In this way, one organises the totality of knowledge, justification, reasoning etc. into different levels, matrices and paradigms, such as, e.g., moral and legal reasoning, each characterised by its own core of premises which strongly support conclusions. Some of these premises may be characterised as *presupposed* within the paradigm in question; cf. section 3.3.5 supra. The concepts of "paradigm" and "presupposed premise" are thus linked to the concept of strong support. The examples make it plausible that the degree of coherence increases when not only weak but also strong support occurs. The following criterion and principle of coherence express this idea.

3. *Ceteris paribus*, the - more statements belonging to a theory are strongly supported by other statements, the more coherent the theory.
3*. One should formulate statements which strongly support as many statements as possible.

(4) Connection Between Supportive Chains

Coherence depends also upon the connection between various supportive chains belonging to the supportive structure. We will discuss two kinds of connections. Firstly, the same premise may support different conclusions. Secondly, the same conclusion may follow from different sets of premises.

A connection of the first kind occurs, e.g., when the same principle supports a number of legal rules, and thus makes them coherent. The following criterion and principle of coherence corresponds to this idea:

4.1.   *Ceteris paribus*, the greater the number of conclusions which are supported by the same premise belonging to the theory in question, the more coherent the theory.
4.1*. When justifying a statement, one should formulate premises supporting as many different conclusions as possible.

Cumulation of reasons within the supportive structure is also a criterion of coherence. It is well known that in judicial practice the decision often is justified by a cluster of reasons, none of which are sufficient in themselves, but which when taken along with others provide fairly good evidence. In other cases, the same conclusion follows from a number of independent reasons, each one sufficient. For example, the *Bundesverfassungsgericht* supported a conclusion concerning the position of a statute in the German legal order by three independent reasons: the principle that the state should be based on the law (*Rechtsstaat*), the principle of parliamentary democracy, and the basic rights {BVerfGE 49, 89 (126 f.)}.

The following criterion and principle of coherence express this idea:

4.2. *Ceteris paribus*, the greater the number of independent sets of premises within the theory in question, such that the same conclusion follows from each one of these sets, the more coherent the theory.

4.2*. When justifying a statement, one should formulate as many independent sets of premises supporting it as possible.

(5) Priority Orders Between Reasons

Moreover, coherence of some theories depends on priority orders between reasons. *Inter alia*, priority orders are important when one faces a collision of principles, e.g., when an individual right collides with the demand to protect the environment. The relevant question is then, How to optimalise both principles within the system? This is the question of creating coherence. The only possible answer is to establish conditional, more or less general, all-things-considered priority relations and *prima-facie* priority orders. This is the case regardless the fact that one can never establish an *un*conditional priority order, applicable to *all* thinkable cases of a collision between the principles in question. To establish a conditional priority order is the only way to avoid the risk that the system will be used to justify incoherent decisions. Incoherence would consist in the fact that though the decisions are logically compatible, their relation to each other is arbitrary. The following criterion and principle of coherence express this idea:

5. If the theory in question contains principles then, *ceteris paribus*, the greater the number of priority relations between the principles, the more coherent the theory.

5*. When using principles belonging to a theory as premises which justify a statement, one should formulate as many priority relations between the principles as possible.

(6) Reciprocal Justification

Reciprocal justification constitutes another criterion of coherence. One of the most fascinating and, at the same time, most controversial ideas connected with coherence is that of a system in which any statement supports each other one. It is easy to see the problem. The idea would be untenable had one defined support as logical entailment between p1 and p2 alone. Mutual support would then mean that p2 follows from p1 and p1 follows from p2. This is the case only when p1 and p2 are equivalent. The idea of a system in which each statement supports each other would thus lead to the conclusion that the system contains only logically equivalent statements, that is, it contains only one single statement. This is one of the reasons why we have chosen another definition of support, according to which p1 might support p2 even if p2 does not follow from p1 alone. Thus, p1 supports p2 if, and only if, p1 belongs to a *set* of premises, S, from which p2 follows logically. At the same

time, p2 might support p1, that is, p2 might belong to *another* set of premises, S',
from which p1 follows logically.

An important distinction is the one between three different kinds of mutual sup-
port: empirical, analytic and normative.

An empirical reciprocal support exists, e.g., when institutional enforcement of
basic rights constitutes a factual condition of democratic procedure of legislation
and the latter constitutes a factual condition of the former. Such empirical connec-
tions are normatively relevant. A normative theory which contains them is richer
and connects its elements in a better manner. The following criterion and principle
of coherence express this idea:

6.1.   *Ceteris paribus*, the greater the number of reciprocal empirical relations
        between statements belonging to a theory, the more coherent the theory.
6.1*.   When using a theory to justify a statement, one should see to it that the theory
        covers as many reciprocal empirical relations between statements belonging
        it as possible.

As an example for a mutual analytic support, one can proffer the relation
between basic rights and the well-known institution called in the Continental politi-
cal philosophy "*Rechtsstaat*" (the state based on the law). Many reasons support the
conclusion that legal validity of basic rights constitutes a conceptually necessary
condition of a fully developed *Rechtsstaat* and, at the same time, when no
Rechtsstaat at all exists, one cannot, for conceptual reasons, speak about the valid-
ity of the basic rights. A system which contains such conceptual relations connects
its elements in a better manner than a one which does not. The following criterion
and principle of coherence express this idea:

6.2.   *Ceteris paribus*, the greater the number of reciprocal analytic relations between
        statements belonging to a theory, the more coherent the theory.
6.2*.   When using a theory to justify a statement, one should see to it that the theory
        covers as many reciprocal analytic relations between statements belonging it
        as possible.

A normative reciprocal support exists when a relatively general statement sup-
ports a number of relatively special ones and the latter support the former. A con-
nection of the first kind occurs, e.g., when a general legal norm supports a number
of legal rules (see the criterion 4.1 supra). It is often called "deductive". A connec-
tion of the second kind, often called "inductive", may be made deductively com-
plete by an addition of some premises. The relatively general conclusion follows
then logically from the relatively less general statements together with the added
premises.

> The cumulation of both kinds of support is interesting because it leads to what Rawls calls
> "reflective equilibrium" (Rawls 1971, 48). I have already mentioned this concept in section
> 3.2.1 supra. The following example elucidates it a little more. During a long period, the
> *Bundesverfassungsgericht* interpreted the constitutional guarantee of human dignity as
> follows: "It contradicts human dignity to make a person a mere object" {BVerfGE 27, 1 (6)}
> of the activity of the state authorities. In spite of its vagueness, this formula supported the

solution of many cases, and the cases were regarded as a support for the formula. However, in a case concerning an interception of a telephone conversation, the Court found that human dignity is contradicted first when the action of the authorities not only makes a person a mere object but also constitutes a contempt {BVerfGE 30, 1 (26)}. The new formula helped to justify the change of the law, according to which a person whose conversation was intercepted no longer could appeal to a court, only to a special parliamentary body. Yet, one may find this change to be wrong and regard this evaluation as a reason against the new formula. Moreover, one may imagine a series of cases where an activity of the authorities violates human dignity in spite of the fact that it does not constitute a contempt. Thus, the old formula seems to be better than the new one. Consequently, the Court returned to it in later decisions {BVerfGE 45, 187 (228)}.

A creation of reciprocal normative relations, that is, a reflective equilibrium of the type described above, is not a perfect justificatory procedure, since it leaves open the priority order between general and special statements. Sometimes, a more special statement is easier to give up; sometimes it is easier to stick to it and change a more general one. Yet, one can hardly deny that this procedure is rational and contributes to the creation of a coherent system; cf. section 3.2.1 supra. The following criterion and principle of coherence correspond to this insight:

6.3.   *Ceteris paribus*, the greater the number of reciprocal normative relations between statements belonging to a theory, the more coherent the theory.

6.3*. When using a theory to justify a statement, one should see to it that the theory covers as many reciprocal normative relations between statements belonging to it as possible.

A more complex reciprocal justification is also conceivable. Imagine, e.g., the following inferences, a, b and c.

a.
p1
s & p1 -> p2
s
Conclusion: p2

b.
p2
s & p2 -> p3
s
Conclusion: p3

c.
p3
s & p3 -> p1
s
Conclusion: p1

Let me give two examples, the first containing causal propositions, the second including statements of many different kinds.
Example 1.
Imagine the following inferences, A, B and C.

A.

p1	Urbania has a greater number scientists per capita than any other country
s & p1 -> p2	If a country has an efficient economic system and a greater number scientists per capita than any other country, it also has a higher BSP per capita than any other country
s	Urbania has an efficient economic system
Conclusion (p2)	Urbania has a higher BSP per capita than any other country

B.

p2	Urbania has a higher BSP per capita than any other country
s & p2 -> p3	If a country has an efficient economic system and a higher BSP per capita than any other country, it also spends higher percent BSP for research than any other country
s	Urbania has an efficient economic system
Conclusion (p3)	Urbania spends a higher percent BSP for research than any other country

C.

p3	Urbania spends higher percent BSP for research than any other country
s & p3 -> p1	If a country has an efficient economic system and spends a higher percent BSP for research than any other country, it also has a greater number scientists per capita than any other country
s	Urbania has an efficient economic system
Conclusion (p1)	Urbania has a greater number scientists per capita than any other country

In this example, A, B and C reveal a causal feedback: *ceteris paribus*, the number of scientists influences causally the BSP, the latter influences causally the amount of money spent for research and this influences causally the number of scientists.

Example 2.
Imagine now the following inferences, A', B' and C'.

A'.

p1	Urbanian legal system contains the *prima-facie* negligence principle N_1, according to which one is liable for the damage one caused only if one's action made *a* damage (of *any* kind) foreseeable for a cautious person (a *bonus pater familias*).
s & p1 -> p2	If the law is fairly just, a legal system which contains the *prima-facie* negligence principle N_1 also contains the *prima-facie* principle concerning adequacy A_1 according to which one is liable in torts for the damage one caused only if one's action made a damage of *this* type foreseeable for a very cautious and well informed person (a cautious expert, a *vir optimus*)
s	The legal system of Urbania is fairly just
Conclusion (p2)	Urbanian legal system contains the *prima-facie* adequacy principle A_1

By the way, the second premise is justifiable in the following way. In a system of liability based on negligence without adequacy, one must face such cases as the

famous story by *von Kries*: A horse-cart driver slept when driving, the horse chose a different way home, and the passenger was killed by a thunder. The driver was negligent, since he certainly could foresee *a* damage, but should he be held liable for the thunder? To adjust liability to moral evaluations, one then must introduce the rule of adequacy, based, e.g., on foreseeability of a *definite* type of damage.

B'.

p2	Urbanian legal system contains the *prima-facie* adequacy principle A_1
s & p2 -> p3	If the law is fairly just, a legal system which contains the *prima-facie* adequacy principle A_1 also contains the *prima-facie* causation principle C_1 according to which one is liable not only if one's action was a necessary condition of the damage but sometimes also if one's action was a sufficient but not necessary condition therefor.
s	The legal system of Urbania is fairly just
Conclusion (p3)	Urbanian legal system contains the *prima-facie* causation principle C_1

Concerning the second premise, let me give the following example. A challenger, A, gives the champion poison, in order to lower his capacity. He is very careful not to endanger the victim's life. Another competitor, C, does the same. The cumulated amount of poison kills the victim. A's action was not an adequate cause of the victim's death, since not even an expert could have foreseen that also C would have the same idea. For the same reason, C's action was not an adequate cause the fatal result either. Yet, it would be obviously unjust to let both A and C go free from liability.

C'.

p2	Urbanian legal system contains the *prima-facie* adequacy principle A_1
p3	Urbanian legal system contains the *prima-facie* causation principle C_1
s & p3 -> p1	If the law is fairly just, a legal system which contains the *prima-facie* causation principle C_1 also contains the *prima-facie* negligence principle N_1
s	The law of Urbania is fairly just
Conclusion (p1)	Urbanian legal system contains the *prima-facie* negligence principle N_1

As regards the question how to justify the second premise, let me merely state that a legal system containing complex rules on causal overdetermination would be unjust if totally lacking the principle of negligence. Indeed, this would be a pure system of strict liability. In other words, one would be liable though only a *vir optimus*, certainly not oneself, would be able to foresee a damage.

4.1.4   Properties of Concepts

There are intrinsic connections between the properties of supportive structure and the properties of *concepts*. All supportive structures presuppose some logical concepts such as "if… then" etc. Besides, many supportive structures are possible only because of relations between some other, e.g., moral or legal, concepts. In the history of philosophy, there are examples of thinkers who emphasise concepts, e.g.,

Hegel, and those who emphasise statements, e.g., many logicians of the first half of 20th century. The classical German *Begriffsjurisprudenz* (Conceptual Jurisprudence) emphasised concepts, though many of its theses could be reconstructed as concerning support between statements. In this context, let us discuss the following criteria and principles of coherence.

(7) Generality

A criterion of coherence is thus what could be described as generality in the broad sense, generality of concepts and, consequently, arguments. In this context, one may refer to (a) universality, (b) generality in the strict sense, and (c) resemblances.

a. Universality consists in the fact that one uses concepts designating *all* things belonging to a certain class, not merely names of individual objects. Universality, that is, the use of concepts, is a necessary condition of all coherence. Therefore, the criterion 7.1, formulated below, only declares what the criteria discussed above already imply.

   Universality is relevant for all concepts and theories. When using concepts, we put the same label on a class of things. The concept "swan" thus denotes *all* swans. One cannot think without concept, solely using individual names.
   Universalisability of a statement is often defined as the fact that it follows logically from a universal statement. Morality requires universalisability of norms and value judgments.

b. Generality, in contrast to universality, can be graded. The more general the concept in question, the greater the number of objects it covers (cf. Hare 1972/73, 2 ff.).

   In the law, this form of coherence manifests itself, *inter alia*, in the so-called general parts of criminal codes of many countries, dealing generally with negligence, intent, self-defence, and so on. Civil codes, such as the German BGB, also have a general part. Moreover, in legal reasoning, one often uses general arguments, rooted in moral philosophy, e.g., when the defendant pleads not guilty on the grounds that he was not negligent, and argues that responsibility without negligence would be unjust.
   The moral idea that the like ought to be treated alike is not purely logical but rather involves generality. A judgement that two persons ought to be treated differently is thus no moral one, unless it can be completed with a set of *reasonable* premises pointing out relevant differences between these persons and thus *supporting* the different treatment. This requirement of reasonable support is stronger than mere universalisability (cf. Alexy 1985, 357 ff.).

   > By the way, Kant's categorical imperative, demanding that one ought to act only according to the maxim about which one could wish that it be a general law, is not purely logical either. "Der tragende Gedanke der Lehrstücks vom kategorischen Imperativ scheint

folgende zu sein: Eine vieltahl von menschlichen Individuen, die in einer Gesellschaft vereinigt sind, besitzen eine Fülle von gegenläufigen Interessen… Wäre das freie Spiel der Kräfte und Interessen das einzige regulativ…, so wäre ein Chaos … die Folge… Hiergegen ist nun nach Kant die vernünftige Reflexion auf die Maximen des Handelns das einzige, aber auch ausreichende Hilfsmittel." (Patzig 1980, 162–163).

c. A conceptual family exists when the concept in question refers to a cluster of phenomena, one similar to another, this to a third one etc.

In legal reasoning, this kind of generality and thus coherence, shows itself when one argues *ex analogia*. Amongst these forms of argumentation is the so-called *analogia intra legem*, that is, the argument that a certain case is so similar to the cases the statute typically covers that it must itself be counted as covered by the linguistic meaning of it. Another form of argument is the so-called statutory analogy, which uses various similarities to extend the area of application of a statutory norm beyond its purely linguistic limits. Last but not least, there is reasoning by analogy, which applies a precedent to a subsequent case which is similar to the prior one.

The criteria of generality in the broad sense apply both to general theories and particular legal decisions. The latter must also be supported by coherent theories which use general concepts. In some cases, the court must formulate an explicit and general justification, in others it is enough that such a justification is possible.

Therefore, the following criteria and principles of coherence hold good.

7.1.   *Ceteris paribus*, the more statements without individual names a theory uses, the more coherent the theory.
7.1*.   When using a theory to justify a statement, one should see to it that the theory is expressed in as many statements without individual names as possible.
7.2.   *Ceteris paribus*, the greater number of general concepts belong to a theory, and the higher their degree of generality, the more coherent the theory.
7.2*.   When using a theory to justify a statement, one should see to it that the theory is expressed in as many general concepts as possible and in as highly general concepts as possible.
7.3.   *Ceteris paribus*, the more resemblances between concepts used within a theory, the more coherent the theory.
7.3*.   When using a theory to justify a statement, one should make as complete a list as possible of the resemblances between the concepts belonging to the theory.

(8) Conceptual Cross-connections

Conceptual cross-connections between parts of the structure constitute a further criterion of coherence. *Ceteris paribus*, two theories are thus coherent to the extent that they use the same or analogous concepts, structures, rules etc.

For example, due to such structural similarity, modal logic, which deals with the concepts of necessity and possibility, is highly coherent with deontic logic, which deals with the concepts of obligation and permission. This fact helped logicians to solve many ancient problems connected with the relations between such concepts as obligation, prohibition and permission, on the analogy of relations between necessity, impossibility and possibility (cf. the fundamental paper, v. Wright 1957). Another example is the fact that conceptual tools elaborated in economics, such as Pareto-optimality and indifference curves, can be used to analyse the weighing and balancing in legal and moral reasoning (cf. Alexy 1985, 100 ff., 145 ff.).

The criteria and principles of coherence which emerge from this idea are the following:

8.1. *Ceteris paribus*, the more concepts a given theory, T1, has in common with another theory, T2, the more coherent these theories are with each other.

8.1*. When using a theory to justify a statement, one should see to it that the theory is expressed in as many concepts belonging to other theories as possible.

8.2. *Ceteris paribus*, the more concepts a given theory, T1, contains which resemble concepts used in another theory, T2, the more coherent these theories are with each other.

8.2*. When using a theory to justify a statement, one should see to it that the theory is expressed in as many concepts similar to those used in other theories as possible.

4.1.5   Properties of the Objects the Theory Deals With

(9) Number of Cases

A further criterion of coherence is the number of cases a theory covers. This criterion has a connection with the idea of a "certain" premise (section 3.3.4 supra). Some certain premises concern particular cases. They are particular statements, expressing an intuition, observation, intention, evaluation, interest, interpretation etc. involved in a particular case. If they express an observation, they may be regarded as data statements. Coherence increases when a theory covers an increased number of alleged certain premises, among other things an increased number of alleged data, that is, "data candidates". I do not assume here any strong theory of data. Instead, I think that the criteria of coherence may contribute to establish the required difference between proper candidates to the data status, e.g., physical experiment, and improper candidates, such as dreams and spiritual revelations.

The following criterion and principle of coherence correspond to this idea.

9. *Ceteris paribus*, the greater number of individual cases a theory covers the more coherent the theory.

9*. When using a theory to justify a statement, one should see to it that the theory covers as many individual cases as possible.

To some extent, the number of cases a theory covers depends both on the dimensions of the supportive structure in question and the generality of the applied concepts. To this extent, the criterion 9 is a corollary of the criteria 1–8 discussed above.

(10) Diversity of Fields of Life

From another point of view, however, a theory has a greater scope if the cases to which it applies are more *diversified*, that is, belong to more different areas of knowledge. A particular logical calculus is thus especially important if applicable to very different areas, e.g., to modal and deontic logic. A theory of weighing and balancing is particularly important if applicable to such different fields as economics, law and practical philosophy.

   The theory or the cluster of theories in question should be as wide-ranging as possible. Indeed, the most important theories, formulated in physics, chemistry, biology etc., are supportively and conceptually linked together in such a manner that they jointly constitute a coherent set of propositions covering a great number of fields of life and showing some supportive and conceptual connections with many fields of life.

   The following criterion and principle of coherence are thus justifiable.

  10. *Ceteris paribus*, the more fields of life a theory covers the more coherent the theory.
10*. When using a theory to justify a statement, one should see to it that the theory covers as many fields of life as possible.

   To be sure, the connections between sciences and, on the other hand, social institutions, history etc. are not sufficient to conclude that, for example, physics and history jointly constitute one coherent whole. Yet, our institutions and history have some connections with, e.g., physics and biology. At the very least, they exist in a universe following the laws of physics, and they must fit the biological limitations of human beings. Social institutions which aim at the achievement of the physically or biologically impossible are, of course, doomed.

   On the other hand, some science fiction stories, or even political ideologies, may to a high degree fulfil other criteria of coherence, yet they lack connection with many fields of life. If such a story covered our life so well that, among other things, a person performing his everyday actions had to pay attention to it in a similar manner as to his physical, chemical and biological characteristics and conditions, it would no longer be a science fiction but a coherent, and probably true, theory.

4.1.6 Weighing and Balancing of Criteria of Coherence

The degree of coherence is determined by weighing and balancing of the discussed criteria. One should not follow any of the principles of coherence in isolation from

others. In some cases, the higher the degree of fulfilment of one criterion, the lower that of another. For example, the supportive chain of reasons may be particularly long when one uses less general concepts, and shrink substantially when the concepts applied become more general. In such a case, one must perform a complicated act of weighing in order to answer the question which theory is more coherent, the more general one, or the one containing the longer chain of reasons.

4.2   Coherence, Correctness and Truth

4.2.1   Coherence and Rational Thinking

What is the importance and the full impact of coherence? In the present context, I cannot discuss this complex problem in a comprehensive manner. I will limit myself to a few brief remarks (which follow closely the quoted paper, Alexy and Peczenik 1989).

To clarify the contribution of coherence to practical rationality, one can discuss the difference between a legal justification which is supported by a fairly coherent system and such a justification which has no such support. A legal justification which neither explicitly nor implicitly refers to a system is an *ad-hoc* justification. Neither universal nor general, it would not fulfil elementary demands of justice (MacCormick 1984, 243). Justice requires that legal justification is embedded in a fairly coherent system. Moreover, the connection with a system has a number of further results to be positively evaluated from the point of view of practical ratio-nality (cf. Alexy 1989, 266 ff.): Legal dogmatics creates a system of concepts and statements which enables one to collect, test and improve opinions expressed by many generations of jurists. In this way, it contributes to stability and progress. Within such a system statements are tested in a much more efficient way than within an unsystematic *ad-hoc* justification. Moreover, construction of the system results in new insights which persons solely engaged in an *ad-hoc* justification would hardly gain. Finally, the system makes the work of the decision-maker easier. He can rely upon statements which have already been tested many times, and has no need to return in each case to the hopeless task of justifying everything at once.

Generally, it can be said that the concept of *justification* is related to that of support. Justification in a strong sense includes support and additional requirements. A central one is that of coherence. Moreover, such concepts as rationality and correctness are related to that of justification and thus coherence. Therefore one can say that coherence is a central element of a fully-fledged concept of justification, rationality and correctness. This relation can be expressed as follows.

> If the norm- or value-system in question is more coherent than any competing system, then it is *prima facie* better justified and more rational than any competing system. If the norm- or value-system in question is more coherent than any competing system, then there exists a *prima facie* reason that it is correct.

These analytical connections between coherence, justification, rationality and correctness might, however, not convince a sceptic. He might say that all this talk about justification, rationality and correctness is an illusion while the plain fact is that practical statements merely express our arbitrary feelings.

However, one can advance the following arguments against this kind of scepticism. The fact that one can arrange one's opinions concerning practical problems into a coherent whole means that one can rationally *think* about these problems. One could try to explicate the very concept of rational thinking as an effort to obtain a balance between the following criteria of coherence: (1) the greatest possible number of supported statements belonging to the theory in question; (2) the greatest possible length of chains of reasons belonging to it; (3) the greatest possible number of strongly supported statements belonging to the theory; (4) the greatest possible number of connections between various supportive chains belonging to the theory; (5) the greatest possible number of preference relations between various principles belonging to it; (6) the greatest possible number and complexity of reciprocal supportive relations between various statements belonging to the theory; (7) the greatest possible number of universal statements belonging to the theory; the greatest possible number of general concepts belonging to it; the highest possible degree of generality of concepts implemented within it; the greatest possible number of resemblances between concepts used within it; (8) the greatest possible number of conceptual cross-connections between various theories; (9) the greatest possible number of cases covered by the theory; and (10) the greatest possible number of fields of life covered by the theory.

Thus, it seems to be sufficiently clear that we can have not only feelings and emotions concerning practical matters but also more or less well grounded judgments. Certainly, a judgment based exclusively on feelings and emotions may have some advantages. For example, it may be better than a well grounded judgment insofar as it is easier to obtain. But it is difficult to doubt that a judgment which is supported by argument is better in what concerns rationality and correctness than a judgment which has no such support.

4.2.2   Coherence, Data, Presuppositions and Correctness

A sceptic, however, may insist that a theory can be coherent and still have no contact with reality. But this objection is easy to answer. The contact with reality is provided by criteria of coherence. Criterion 9 thus demands that a coherent theory covers a great number of "data candidates", or "certain statements". Criterion 3 relates coherence to presupposed statements, which characterise a certain practice, such as legal reasoning.

"Certain" statements are taken for granted by all people or at least all normal people belonging to the culture under consideration. Some certain statements concern particular cases. They express intuitions, observations, evaluations etc. involved in a particular case. If they express an observation, they may be regarded as data statements.

Other certain statements describe procedures of rational reworking of the observations, evaluations etc. The procedures are justifiable through weighing and balancing of all criteria of *coherence*, perhaps together with other considerations.

"Presupposed" statements are taken for granted within a particular practice belonging to the culture under consideration, e.g. within the legal paradigm. Their link with the criteria of coherence includes the following. One organises the totality of knowledge, justification, reasoning etc. into different levels, matrices and paradigms, such as, e.g., moral and legal reasoning, each characterised by its own core of premises which *strongly* support conclusions. Some of these premises may be characterised as presupposed within the paradigm in question. The concepts of "paradigm" and "presupposed premise" are thus linked to the concept of strong support. But strong support is the third criterion of coherence. Coherence increases when not only weak but also strong support occurs.

"Proved" statements follow from a consistent set of certain premises and/or premises presupposed within the particular practice, such as the legal paradigm. They are thus indirectly connected with criteria of coherence.

Finally, *all* reasonable statements are linked to the ideas of coherence *and* certainty in the following manner. The hypothesis is not sufficiently corroborated that they do not follow from a coherent set of premises.

To be sure, practical reasoning involves often weighing and balancing of considerations. The final step of such a reasoning is to be chosen under influence of will and feelings; cf. section 2.4.5. However, the act of weighing is rational only if the considerations to be balanced are organised in coherent systems. Moreover, the fifth criterion of coherence explicitly deals with weighing and balancing. It thus makes coherence dependent on the number of preference relations between various considerations to be weighed.

One may now restate the discussion of correctness of legal reasoning in a manner emphasising its connection with coherence. To be sure, deep justification of legal reasoning is problematic because this form of reasoning constitutes a peculiar mixture of theoretical propositions and practical (normative or evaluative) statements, and yet is supposed to give knowledge of valid law or of juristic meaning of the sources of the law. It is difficult to see how value judgments can lead to (true) knowledge of the law. On the other hand, they certainly can be included in a highly coherent set of statements. Such a set has the discussed contact with "certain" and presupposed statements. Its supportive structure possesses a high degree of perfection. Why not to regard this kind of perfection as *correctness* of legal reasoning?

4.2.3   Theories of Truth

However, what is the relation between coherence and *truth*?
To answer this question, one must, at first, say something about the concept of truth.
It is controversial whether, and in what sense, scientific theories *succeed* in their pursuit of truth. Do theories formulate correct models or interpretations of reality? Are theories

irreplaceable: must replacing them by observational propositions lead to loss of true knowl-edge? (cf., e.g., Kutschera 1972 vol. 2, 391 ff.). Epistemological realism answers these questions in the affirmative, instrumentalism in the negative (cf. Hempel 1958, 49, on the paradox of theorising; cf. Gärdenfors 1980, 78 ff.). The controversies should not, however, obscure the central point, namely that the "regulative" idea of truth gives purpose to theo-retical thinking, *inter alia* to science (cf. Popper 1972, 29–30.).

Ordinary people understand truth as correspondence between beliefs and facts. Roughly speaking, a statement is true if and only if facts are such as it states them to be. This is the core of the classical theory of truth, often called the *correspondence theory*.

The correspondence theory of truth faces, *inter alia*, the following difficulty, emphasised already by ancient sceptics, René Descartes, George Berkeley and many other philoso-phers. We can report our beliefs. But can we compare them with the facts? The only way to know the facts is to rely upon experience and reason, but how can we know that these sources of knowledge are reliable? If an evil demon all the time had deceived us, we could not notice it but would believe in fictions, not in facts. One can thus argue for the conclu-sion that an individual solely knows his own psychical experiences, not the facts.

In consequence of such and other difficulties, many philosophers defend non-classical theories of truth.

According to the *coherence theory* of truth, p is true if and only if it belongs to a highly coherent set of statements. But must a highly coherent theory be true? An obvious objection is that even a novel, although not true, can be highly coherent. A sophisticated coherence theory of truth claims thus that a true statement must be included in a set of statements covering almost all fields of life; cf. criterion 10 of coherence.

The *consensus theory* defines truth, as follows. A statement, p, is true if and only if people agree that p. The fact that the proposition "the Earth is round" is true is thus the same as the fact that everybody agrees that the Earth is round. An obvious objection is that the Earth were round already in the period when everybody thought it was flat. Some philosophers, among others *Karl-Otto Apel* and *Jürgen Habermas* thus have elaborated more sophisticated consensus theories of truth. According to *Habermas* (1973, 218), a proposition is true, if the validity claim with which we utter it is justifiable. This claim is justifiable if and only if people participating in the rational discourse would agree that p (id. 240). The perfectly rational discourse would exist in the ideal speech situation in which intellectual communication of people would not be impeded by violence and every-body would have the same chance to ask and answer questions, interpret others' views, recommend actions etc. (id. 252 ff.). Alexy's theory of optimal discourse, discussed in Section 4.3 infra, was inspired by Habermas's theory.

According to the *pragmatic theory* of truth, p is true if and only if, roughly speaking, it is useful to believe in p. In other words, p is true if the belief in p helps one to achieve one's goals. Physics, e.g., is true because it helps engineers to build machines that work. The obvious difficulty is that even false beliefs can be useful in some situations. For instance, an engineer's belief that God requires of him at least seventy hours work pro week would certainly increase his chance of success. A sophisticated theory of truth must thus assume that only true beliefs *invariably* lead to pragmatic success, that is, help one to achieve one's goals. This assumption is, however, controversial. One must state the connection between truth and pragmatic success in a very careful way.

The non-classical theories of truth face the following difficulty (analogous to Moore's "open question argument, cf. Section 2.1 supra). It is meaningful to ask such questions as "To be sure, p belongs to a coherent world picture, but is p true?; "To be sure, p would be accepted in an optimal discourse, but is p true?"; etc. If the non-classical theories correctly reported the meaning of the word "true", such questions would be as meaningless as "To be sure, John is a bachelor but is he not married?" The latter question is meaningless because the word "bachelor" means the same as "a man who never married". The questions concerning truth are, on the other hand, meaningful because the word "true" does *not* mean the same as "coherent", "accepted" etc. Good reasons thus exist, in spite of all problems,

for accepting the correspondence theory. This theory elucidates the sense of "truth". The non-classical theories of truth give mere criteria of truth, not the concept of truth.

4.2.4 More About the Correspondence Theory of Truth

One must, however, briefly discuss some additional difficulties the correspondence theory faces. Let me return to the preliminary formulation that a statement is true if and only if facts are such as it states them to be. The following questions then occur.

1. *What* are the facts? Among other things, *what* facts do correspond to such statements as "x can happen", "x causes y" or to mathematical propositions? Assume for a moment that the world is the totality of facts, not things (Wittgenstein 1922, No. 1.1). Does the world itself consist of modalities, causal relations etc.?
2. One may also argue that any fact, e.g., the fact that x causes y, is theory-laden, dependent on our language, theories etc. (cf. Strawson, 1964, 32 ff.; Habermas 1973, 211 ff.).

Among other things, a fact is not the same as an event. The event that Brutus killed Caesar took place in 44 B.C. but today, two thousand years later, one can say that it *is* (not merely "was") a fact that Brutus killed Caesar. Facts are "that-entities". It is a fact *that* Brutus killed Caesar (cf., e.g., Patzig 1980, 20, 34 ff.). The "that" is a language-dependent component. The world itself contains no "that" (cf. Mulligan, Simons and Smith 1987, 210 ff.).

3. One must also discuss alleged impossibility of comparing so different entities as statements and facts. Wittgenstein (1922, No. 2.1. ff. and 4.01. ff.) probably assumed that statements correspond to facts, if they have the same structure. However, this thesis is highly metaphysical, and also open for criticism (cf., e.g., Bunge 1974, 93). One objection is founded on the vagueness and continual change of the language: Are the facts themselves vague? Do they change when the language changes? (Apel 1976, 124–5).

In the present context, nevertheless, one may avoid such problems and simply state the following. **By regarding a statement as true, one makes recourse to the external world, quite independently of the question what the world consists of.**

"(I)n making any kind of truth-claim or knowledge-claim, we are committed to holding that certain objects, which the assertion is ultimately about, exist"; Black 1977, 57.

There is something in the world which makes a given statement true or false. This "something" is the same as *truth-conditions* of the statement. Though one cannot grasp these truth-conditions without having formulated the corresponding statement, they can exist before one uttered the statement (cf. Patzig 1980, 38). They "there outside" in the world, not merely in our statements. Let me call them *truth-makers* (cf. Mulligan, Simons and Smith 1987, 210 ff.).

Let me thus understand the correspondence theory of truth and its relation to coherence in the following manner:

a. If something in the world, a "truth-maker", makes the statement p true, then p is true.
b. If p is true then there exists a "truth-maker" making it true (cf. Mulligan, Simons and Smith 1987, 246).
c. The truth-maker is impossible to describe; to emphasise this impossibility, one may call it a truth-maker in itself.
d. The statement p thus describes something else, say a knowable fact, e.g., that Brutus killed Caesar.

e. The statement p can describe the knowable fact correctly or not.
f. If and only if the description is correct, p is true.
g. If we wish to make the ordinary use of the word "true" understandable, we must postulate that there is a correspondence between the truth-maker and the knowable fact.
h. What we call thinking is an approximation of the ideal of coherence.
i. Thinking, and hence coherence, is adapted to the task of representing knowable facts.

The fact that one can arrange one's beliefs into a coherent whole means that one possesses knowledge of connections, logical and causal. One may perhaps assume with *Hegel* that a complete knowledge of connections is an approximation of that what actually exists.

4.2.5   Conclusions About Truth and Coherence

In consequence, the following metaphysical assumptions are (not proved but) reasonable:

1. If a theory is perfectly coherent then it corresponds to knowable facts.

Moreover:

2. If a theory *can* be made highly coherent, then there exist truth-makers which decide about this possibility.

Something in the world, some truth-makers, are necessary conditions of coherence. The truth-makers decide that some statements can be ordered into a coherent set while others cannot.

Finally:

3. If a theory is perfectly coherent, then it corresponds to truth-makers, that is, to the world.

Coherence thus is a sufficient condition of this correspondence. In other words, correspondence between a theory and truth-makers is a necessary condition of coherence. (I am grateful to *Risto Hilpinen* who expressed this idea in an oral discussion).

To show that the latter thesis is plausible, let me state the following.

1. To be sure, one also needs some external contact of a theory. For example, a political ideology can be very coherent, yet false because it lacks empirical foundations, or is so vague that it can "explain" all thinkable phenomena. I have already stated (in section 3.3 supra) that knowledge must have something to do with empirical data, or at least with some "certain" and presupposed statements.
2. However, the class of certain and presupposed premises contains not only shared intuitions, observations, intentions, evaluations, interests, interpretations etc. but

    also procedures of rational reworking of them. The latter include arranging the observations, evaluations etc. in *coherent* theories, submitting them to a rational *discourse* and criticising them according to scientific methods, such as Popper's conjectures and refutations. The main idea of coherence thus constitutes a certain or at least presupposed statement in the discussed sense.

3. Moreover, the class of certain and presupposed statements is sufficient to bear the whole edifice of knowledge only if it is understood in the broad sense, including the main idea of coherence as well as other basic assumptions concerning the concept and criteria of truth. Paraphrasing *Kant*, one can say: Without observations etc., our knowledge is empty, without reworking procedures it is blind.

4. Assume, finally, that one takes into account *all* beliefs and standpoints, existing within one's surrounding, including observational data, other "certain" statements, presuppositions of various scientific disciplines and everyday practices, hypotheses and guesses, indeed even dreams and religious revelation etc. In this way, one perfectly fulfils two criteria of coherence, that is, those concerning *scope* of theory (criteria 9 and 10 supra). The hypothesis is plausible that the other criteria of coherence, demanding complexity and preciseness of supportive structure (criteria 1–6) and generality of concepts (criteria 7 and 8) are then sufficient to sort out such things as dreams. What is left within a coherent theory is, indeed, only "certain" and presupposed premises, and conclusions following of them.

5. The hypothesis is also plausible, that such a coherent theory would explain the special status of observational data in natural science, in opposition to theories (cf. section 4.2.2 supra). Among other things, criterion 9 requires that a coherent theory covers as many individual cases as possible. One can reasonably interpret the expression "individual cases" as covering observational data.

    One may wonder whether another thesis is not justifiable, as well, namely that something in the world, some truth-makers, are *sufficient* conditions of coherence. In other words, coherence of a theory is a necessary condition of its correspondence with the world:

4. If a theory corresponds to the world, then it is highly coherent.

This thesis would be false had the world been chaotic. But *if* one assumes that the world is relatively ordered and stable, then it is plausible.

    These reflections about truth make the following theses plausible:

5. *Ceteris paribus*, the more coherent a theory, the greater amount of true information it gives.

6. *Ceteris paribus*, the more coherent a theory, the closer it comes to true information.

In his recent paper, (1985), Rescher modified his earlier views and developed similar ideas: There exists essential connection between truth and coherence. If a statement which belongs to a data basis possessing certain formal qualities is optimally coherent, then it corresponds to reality.

4.2.6 Truth and Correctness of Practical Statements

Comparing the role of coherence in practical and theoretical contexts, one may state, what follows.

Generally speaking, "truth" is an *ontological* concept, that is, a concept presupposing something about the real facts. For that reason, it is doubtful whether norms and value statements, *inter alia* legal interpretative statements, possessing not only theoretical but also practical meaning, can be true. Practical meaning of norms and value statements is partly independent of their theoretical meaning. All-things-considered (not merely *prima facie*) norms and value statements presuppose weighing and balancing of reasons and counter-arguments, ultimately involving the will and feelings (cf. Section 2.4.5 supra).

At the same time, the concept of truth has a certain function in epistemology and philosophy of science, that is, determines the purpose of such practices as science. The purpose it to tell the truth. Similarly, one can say that the purpose of legal reasoning is to state precisely what is right.

> Cf. Popper 1966, vol. 2, 384–5: "First, both proposals and propositions are alike in that we can discuss them, criticize them, and come to some decision about them. Second, there is some kind of regulative idea about both. In the realm of facts it is the idea of correspondence between a statement or a proposition and a fact; that is, the idea of truth. In the realm of standards, or of proposals, the regulative idea may be described in many ways, and called by many terms, for example by the terms 'right' or 'good'."

Finally, the concept of truth has a function in formal logic. Logicians thus construct calculi with two values, 0 and 1, where 1 means "true" in the formal sense. In spite of some known objections, I am of the opinion that such a calculus, appropriately modified in formal respects, can be applied to value statements, as well.

But on the other hand, norms and value statements, *inter alia* in the law, can to a high degree fulfil the criteria of coherence. Fulfilment of these criteria indicates that they are *correct*.

4.3 Rational Discourse

4.3.1 Introductory Remarks on D-Rationality

Let me now present some remarks concerning the relation between coherence and rational discourse. The remarks follow closely the already mentioned paper prepared jointly with *Robert Alexy* (Alexy and Peczenik 1989).

Advantages of a coherent system are limited by three necessary disadvantages.

The first one follows from the concept of coherence. Coherence is a matter of degree. It also depends on weighing and balancing of partly incompatible demands. The criteria of coherence do not always lead to a unique answer to the question of whether one system is more coherent than another. In some cases, they only decide that one system is more coherent in one respect, another system in another respect.

The choice between the systems requires then an evaluation which cannot be based solely on criteria of coherence.

The second limitation follows from the formal character of coherence. The criteria of coherence do not say anything about the content of normative systems. Certainly, the criteria comprise generality and universality. Moreover, a fully elaborated justification is apt to contribute to rationality and justice rather than to irrationality and injustice. Thus, fulfilment of the criteria restricts irrationality and contributes to justice. Yet, it cannot entirely eliminate unjust and unreasonable content of a normative system.

The third limitation is the most important in practice. It results from the necessary incompleteness ("open texture") of all normative systems, regardless their degree of coherence. A creation as well as an application of a normative system makes it necessary to formulate some new norm-statements and value-statements. This fact is particularly important when the following steps are concerned: the step from relatively general to relatively special norms (4.1), the weighing and balancing of principles (5.) and the creation of a reflective equilibrium (6.3).

These limitations do not destroy the idea of a coherent system of statements. However, they show that another level is also important, that is, the procedural level, in which persons and their acts of reasoning play the decisive role. The idea of justification connects these levels with each other. Justification requires two things. Firstly, it requires the creation of an as coherent system of statements as possible. Therefore, it is true, perhaps even analytically true that if a norm- or value-system in question is more coherent than any competing system, then consensus about it would be *prima facie* rational. Secondly, justification requires an as rational procedure of argumentation as possible which aims at a reasonable consensus. A theory of rational discourse deals with this requirement. Coherence is a property concerning statements only. On the other hand, discursive rationality concerns both relations between statements and between persons dealing with them. Discursive rationality thus comprises coherence and additional demands of procedural rationality, such as freedom from violence, equal respect etc.

A rational discourse results in a rational *consensus*. In this context, one may also express the following thesis about the link between coherence and consensus:

> If a norm- or value-system is more coherent than any competing system, then consensus about it is *prima facie* rational.

As regards rationality of *practical* reasoning, consensus has also an independent importance. Practical reasoning depends on weighing and balancing; the ultimate step consists in an act of will, cf. section 2.4.5 supra. For that reason, an individual may only guess, but can never be entirely sure of, the result of weighing and balancing performed by another individual. But one needs no guesses when other people tell one what conclusions their acts of weighing support (cf. Alexy 1988).

Rationality thus depends on both coherence and consensus. Briefly speaking, a legal view is rational, and in this sense correct, if it unanimously would be accepted by lawyers who support their conclusions with a highly coherent set of certain, presupposed, proved and/or otherwise reasonable premises.

This idea is very different from the primitive consensus theory, holding that the actual majority opinion is always right. What matters for rationality is not actual consensus but acceptability (cf. Aarnio 1987, 185 ff.) within the relevant group of people, that is, "audience" (cf. Aarnio 1987, 221 ff.), colleagues, peers etc. These persons accept p or at least agree that p is acceptable according to the standards they accept; p is acceptable to a person, A, if he finds it legitimate (or permitted) for another person, B, to accept and assert p even if A himself prefers not to accept and not to assert it. *Tranöy* (1980, 191 ff.) claims that one judges acceptability in view of *norms of inquiry*, and it is these which A and B actually accept. Let me add that the *principles of coherence* (see above) constitute the most important norms of inquiry. On the other hand, A can always ask himself *why* he should follow the accepted norms of inquiry, *inter alia* the principles of coherence, why he should follow the socially accepted sense of the word "knowledge" etc. A's total system of beliefs, standpoints etc., and nothing else, ultimately determines what are the yard-sticks of acceptability with which A is satisfied. B's total system determines the yardsticks of acceptability with which B is satisfied. One cannot "jump out" of one's system of beliefs etc.

In general, the relationship between coherence and consensus is thus the following. The idea of coherence is not sufficient to solve some epistemological problems. To go deeper, one needs the idea of consensus. On the other hand, the idea of consensus is not sufficient, either. To go deeper, one needs the idea of coherence.

> The role of consensus is also linked with the idea of form of life (cf. section 3.3.4 supra). Systems of beliefs, values etc. of different people often stand in the relation of causal inter-dependence and relevant similarity as regards concepts, accessible empirical data and endorsed values. When this requirement is not fulfilled, "then each man declares the other as fool and heretic. There can thus be some topics about which a maximal discussion in A's system will lead to the conclusion p while in B's system it would lead to the conclusion non-p. This rules out rational discussion and rational consensus between A and B. A and B belong to the same *form of life* if their system of beliefs, standpoints, values etc. are in such a relation of causal interdependence and relevant similarity that they can rationally discuss about most of the relevant topics of their respective lives. When A and B can ratio-nally discuss about x (for instance, physics) but not about y (for instance, justice), they belong to the same *aspect* of the form of life as regards x, and to two different aspects as regards y.

For such reasons, the theory of correct legal reasoning, developed above, has a prepared place for *D*iscursive rationality, connected with the idea of consensus. It is also connected with consensus in a more particular manner: The idea of presupposed premises, which plays a great role in the theory, is related to "culture under consideration" and "legal paradigm", and thus to a kind of consensus within the culture.

4.3.2   Robert Alexy's Rules for Rational Practical Discourse

Robert Alexy has elaborated a well-known theory of *rational practical discourse*. A practical discourse concerns evaluative and normative questions. It is perfectly rational, if it follows some *rationality rules* he formulated. The more frequently

these rules are violated, the less rational the discourse. Alexy's rationality norms can be interpreted as guaranteeing that the outcome of the debate solely depends on reasons, that is, on coherence, not on violence or emotions. A perfect practical discourse is precisely the kind of discussion in which conclusions solely depend on coherence of reasons. A D-rational discourse must thus be S-rational.

Let me quote the rules in an abbreviate manner, and provide them with some comments.

The set of rules is divided into five classes. I am omitting some problems, concerning the basis of the classification.

1. The Basic Rules (Alexy 1989, 188 ff.)

    (1.1) No speaker may contradict him or herself.

    This rule expresses the demand of *L*ogical rationality, cf. section 2.2.4 supra.

    (1.2) Every speaker may only assert what he or she actually believes.

    The following considerations, *inter alia*, justify this rule.

a. One may efficiently lie only if others believe one tells the truth. Without expectation of sincerity, not even a lie would make sense.

b. To be sure, a lie can constitute a rational action. It is thus rational to lie for dangerous enemies. But in a perfect discourse, there are no enemies. A lie is no correct reason. A discourse full of lies in not perfect as *a* discourse.

    (1.3) Every speaker who applies a predicate F to an object *a* must be prepared to apply F to every other object which is like *a* in all relevant respects.

    This rule expresses the idea of generality. As stated before, generality is a criterion of coherence; cf. section 4.1.4 supra.

    A special case is this:

    (1.3') Every speaker may assert only those value judgments or judgments of obligation in a given case which he or she is willing to assert in the same terms for every case which resembles the given case in all relevant respects.

    (1.4) Different speakers should not use the same expression in different senses.

2. The Rationality Rules (Alexy 1989, 191 ff.)

    (2) Every speaker must give reasons for what he or she asserts when asked to do so, unless he or she can cite reasons which justify a refusal to provide a justification.

    This rule expresses the idea of S-rationality: In a perfectly rational debate, one's views are supported by reasons. Of course, this is the central idea of coherence; cf. section 4.1.2 supra.

    This requirement supports, *inter alia*, the more and more frequent claims that *judicial* decisions should be provided with comprehensive justification, cf. section 6.5 infra.

    (2.1) Everyone who can speak may take part in discourse.

    A perfectly rational discourse is thus *open* for everybody. It thus fits the idea of universalisability. If anybody may discuss, the probability also increases that all relevant reasons are considered.

One may, of course, for some reasons, introduce some restrictions, e.g., only the parliament members may participate in parliamentary debates. But then, the debate is not *perfectly* rational.

(2.2) (a) Everyone may problematize any assertion. (b) Everyone may introduce any assertion into the discourse. (c) Everyone may express his or her attitudes, wishes and needs.

(2.3) No speaker may be prevented from exercising the rights laid down in (2.1) and (2.2) by any kind of coercion internal or external to the discourse.

The reason-rules (2) and (2.1)–(2.3) are connected with criterion 1 of coherence, since they result in introducing to the debate a maximal number of reasons; cf. section 4.1.3 supra. Moreover, these rules flow from the idea that violence is no reason. An optimally rational debate, by definition governed by reasons alone, must thus be free of violence.

One may, of course, find reasons to introduce some violence, e.g., in order to stop a terrorist propaganda. But then, the debate is not perfectly rational. No terrorists participate in a perfect debate.

3. Rules for Allocating the Burden of Argument (Alexy 1989, 195 ff.)

(3.1) Whoever proposes to treat a person A differently from a person B is obliged to provide justification for so doing.

(3.2) Whoever attacks a statement or norm which is not the subject of the discussion must sta te a reason for so doing.

(3.3) Whoever has put forward an argument is only obliged to produce further arguments in the event of counter-arguments.

(3.4) Whoever introduces an assertion… which does not stand as an argument in relation to prior utterance, must justify this interjection when required to do so.

The rule 3.1 expresses the idea of generality, and thus a criterion of coherence; cf. section 4.1.4 supra. All the rules of the burden of argumentation express S-rationality, i.e. the idea that the perfectly rational debate is entirely determined by reasons. One must thus give reasons for such moves as treating various persons differently, introducing new topics, demanding repeated argumentation etc. Let me state again that this is the central requirement of coherence. They also express criterion 1 of coherence, since they result in introducing to the debate a maximal number of reasons; cf. section 4.1.3 supra.

4. The Argument Forms (Alexy 1989, 197 ff.) are omitted here.
5. The Justification Rules (Alexy 1989, 202 ff.)

(5.1.1) Everyone who makes a normative statement that presupposes a rule with certain consequences for… other persons must be able to accept these consequences even in the hypothetical situation where he or she is in the position of those persons.

(5.1.2) The consequences of every rule for the satisfaction of interests of each and every individual must be acceptable to everyone.

(5.1.3) Every rule must be openly and universally teachable.

A perfectly rational debate is thus, by definition, entirely determined by reasons accessible to and testable by everybody.

The rules (5.1.1)–(5.1.3) express, again, the principle of generality and thus coherence.

(5.2.1) The moral rules underlying the moral views of a speaker must be able to withstand critical testing in terms of their historical genesis. A moral rule cannot stand up to such testing if: (a) even though originally amenable to rational justification, it has in the mean time lost its justification, or (b) it was not originally amenable to rational justification and no adequate new grounds have been discovered for it in the mean time.

(5.2.2) The moral rules underlying the moral views of a speaker must be able to withstand critical testing in terms of their individual genesis. A moral rule does not stand up to such testing if it has only been adopted on grounds of some unjustifiable conditions of socialization.

(5.3.) The actually given limits of realizability are to be taken into account.

6. The Transition Rules (Alexy 1989, 206.)

The perfectly rational discourse is determined by different kinds of reasons, practical, empirical and analytic (cf. section 3.3 supra). Consequently, the following rationality rules apply to it.

(6.1) It is possible for any speaker at any time to make a transition into a theoretical (empirical) discourse.

(6.2) It is possible for any speaker at any time to make a transition into a linguistic-analytical discourse.

(6.3) It is possible for any speaker at any time to make a transition into a discourse-theoretical discourse.

The rules (6.1)–(6.3) extend the scope of discourse and thus are connected with criteria 9 and 10 of coherence.

4.3.3 Robert Alexy's Principles of Rationality

Alexy's system of rationality rules is thus complex. Later, however, he has formulated the following six principles, underpinning the rules (Aarnio, Alexy and Peczenik 1981, 266 ff.)

1. The principle of *consistency* demands that statements uttered in a rational debate must be logically consistent (free of contradiction). This is, of course, a demand of L-rationality, cf. the rule (1.1). It is also a minimum requirement of coherence.
2. The principle of *coherence* requires that statements uttered in a rational debate must constitute a coherent system. I have already indicated the connections between several rules of practical rationality and coherence.
3. The principle of *generality* claims that, in a rational debate, the like must be treated alike. Generality is also a criterion of coherence. I have already mentioned its connection with several rules of rational discourse.

The following principles, 4 and 5, concern the relation between different participants in the discourse. But they have also some connection with coherence.

4. The principle of *sincerity* demands that one tells the truth {cf. rule (1.2)}. Understood broadly, it also claims that one does not use violence {cf. the rule (2.3)}.

This principle expresses the idea that a perfectly rational debate is entirely determined by reasons, and thus S-rationality. It also provides support (and hence coherence) between two levels: that of belief and that of speech.

5. The principle of *testability* demands that each speaker can test reasons, supporting views of other participants.

In this way, the principle is related to support, that is, to S-rationality, and hence to coherence.

6. The principle of *goal-rationality (efficiency)* in practical sphere has a special character. It comprises two requirements: efficiency of communication between people {cf. the rules (1.4), (2), (3.2)–(3.4) and indirectly (6.2)–(6.3)}, and efficient fulfilment of the goals, established in the debate {cf. the form (4.2)}.

Cf. the rules and forms (1.4), (5.1.3), and indirectly (4.1)–(4.3), (2)–(2.3), (3.1)–(3.2) and (3.4).

4.3.4   Robert Alexy's Rules For Rational Legal Discourse

Alexy regards legal reasoning as a kind of practical reasoning because it answers practical questions, concerning what one should or may do (Alexy 1989, 16 and 212 ff.). He considers, however, legal reasoning as a *special* case, since its goal is not to show that a normative statement, e.g., a judicial decision, is absolutely reasonable, but only that it is reasonable within the framework of valid law. (*See*, however, section 5.4 infra on the relations between the law and morality).

At the same time, he points out that legal reasoning aims at rationality (cf. Alexy 1989, 214 ff.). Whoever performs legal reasoning, tries to give reasons supporting his conclusions. Everybody expects that legal conclusions are thus supported. The courts have an extensive duty to justify their decisions. Finally, such expressions as "the court hereby sentences A to ten years in prison, although no reasons support the decision" are strange, that is, constitute conceptual anomalies. Of course, all this contributes to coherence of legal reasoning.

Alexy elaborated the following forms and rules for the rational legal discourse.

1. Rules and forms of the so-called internal justification (cf. Alexy 1989, 221 ff.) are the following.

There are two forms of the internal legal justification, simple subsumption and chain subsumption. This problem may be omitted here. Let me merely refer to the examples already given in section 1.2.1 supra.

Alexy formulates the following rules for internal legal justification:

(J.2.1) At least one universal norm must be adduced in the justification of a legal judgment.

(J.2.2) A legal judgment must follow logically from at least one universal norm together with further statements.

(J.2.3) Whenever it is open to doubt whether a given rule covers the considered case, a rule must be put forward which settles this question.

(J.2.4) The number of decompositional steps required, is that number which makes possible the use of expressions whose application to a given case admits no further dispute.

These rules state precisely the idea that legal reasoning must be supported by general rules, and thus conform to a criterion of coherence (cf. section 4.1.5 supra).

2. Rules and forms of the so-called external justification (cf. Alexy 1989, 230 ff.) concern questions of evidence and interpretation.

Alexy assumes that some rationality rules may govern questions of evidence but he does not formulate such rules.

Alexy's forms of interpretation are the following.

At first, he correctly points out that semantical reasons may support the conclusion that one must (J.3.1), must not (J.3.2) or may (J.3.3) accept a given interpretation. Then, he deals with "genetic" interpretation in the light of the intention of the "historical" lawgiver (J.4.1 and J.4.2). Finally, he discusses "teleological" interpretation which helps one to establish the purpose of the rule objectively, independently of the intention of the "historical" lawgiver (J.5).

Alexy assumes that some reasoning forms govern historical, comparative and systematical interpretation but he does not formulate such forms. However, he formulates the following rationality rules for the optimal legal interpretation.

(J.6) Saturation - that is a full statement of reasons - is required in every argument which belongs among the canons of interpretation.

(J.7) Arguments which give expression to a link with the actual words of the law, or the will of the historical legislator take precedence over other arguments, unless rational grounds can be cited for granting precedence to the other arguments.

One can perhaps doubt universal validity of this rationality rule. Some legal scholars, *inter alia* Per Olof Ekelöf, propose interpretation methods incompatible with it, cf. section 7.4 infra. Although these methods are controversial, one cannot simply label them as irrational.

(J.8) Determinations of the relative weight of arguments different in form must conform to weighing rules.

(J.9) Every possibly proposable argument of such a form that it can be counted as one of the canons of interpretation must be given due consideration.

Rules (J.6), (J.8) and (J.9) have a relation to the criteria of coherence, discussed in the section 4.1.4 supra.

Alexy's rationality rules for the optimal reasoning in legal dogmatics are, what follows.

(J.10) Every dogmatic proposition must be justified by recourse to at least one general practical argument whenever it is subjected to doubt.