

Replies to Critics

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* I am extremely grateful to Maksymilian Del Mar, Grant Lamond, and William Lucy for devoting so much time and effort to commenting on my work. Their comments have helped me see my own book in a different light and have brought to the surface problems, assumptions, and implications of legal coherentism and my approach to it that I had not realized before, for which I am most grateful.

1. Del Mar on Coherence and Relational Ethics

In his comment, Del Mar objects to my interpretation of MacCormick's theory of coherence, and advances an alternative interpretation of this theory that differs in two significant respects from the interpretation I defend in *The Tapestry of Reason*. First, on Del Mar's view, coherence plays a role in MacCormick's theory broader than the role I assign to it. Second, according to Del Mar, in MacCormick's theory the limits to coherentist reasoning in law are set not by the allegedly greater role that MacCormick gives to consequentialist reasoning (as argued in my book), but rather by his meta-ethical commitments, more specifically, his value pluralism, grounded on respect for other persons. This respect for reasonable disagreement about matters of value (among judges) is one aspect of what Del Mar calls "relational ethics," encompassing, in addition to relations among judges on a panel, relations between judges and parties, present judges and judges of the past and the future, courts and other institutions such as legislatures and executives, and judges from different legal traditions. Del Mar claims that once we place coherence-based reasoning in the context of relational ethics, we come to see that there are important reasons for limiting the role of coherence (as MacCormick did, in Del Mar's view) and, furthermore, for valuing incoherence. Del Mar concludes his thought-provoking essay by raising some questions about the role that ethics and, more specifically, relational ethics, should have in the construction of a theory of legal reasoning and the way in which it might constrain the development of such a theory.

In my reply, I will not dispute Del Mar's critique of my interpretation of MacCormick's views on the scope of coherentist reasoning in law and the reasons why coherence should play a limited role in legal justification. Nor will I raise any

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objections to Del Mar's alternative interpretation of MacCormick's coherence theory. MacCormick's work is never ending, and we cannot but benefit from the advancement of diverse readings of his texts. I regret that MacCormick came across in *The Tapestry of Reason* mostly as an object of critique as he is a legal philosopher I deeply admire. He has the rare quality of always casting a reasonable outlook on things, an exceptional ability to present complex issues in a simple way, and a masterful capacity to show how sophisticated philosophical questions have a bearing on real, pressing, problems of everyday life, social life, and the life of the law. Instead of engaging in a conversation with Maksymilian Del Mar about MacCormick's views on the value and limits of coherence in law, I will focus on the broader lesson he draws about the potential relevance of relational ethics to legal reasoning and, more specifically, to coherence-based reasoning in law.

1.1. *Legal Reasoning and Relational Ethics*

Maksymilian Del Mar in his reply (as well as in other texts) puts forward an important thesis, to wit, that there is a critical relational dimension to legal argument, which theories of legal reasoning should account for, and this makes relational ethics highly relevant for constructing and evaluating a theory of legal reasoning.

I fully agree with Del Mar that there is an important connection between ethics and a theory of legal reasoning. In the book, I argued for the relevance of a theory of virtue ethics to a coherence theory of legal reasoning in that virtue constrains the kind of coherentist reasoning that may confer justification upon legal decisions. Ethics, of a virtue variety, is thus bound up with a theory of legal reasoning. Del Mar's point is about the connection between relational ethics, rather than virtue ethics, and legal argument, but these two kinds of ethical approaches are in my view not unrelated.

To begin with, there are some virtues the possession of which importantly contributes to improving the quality of relationships that is the core preoccupation of relational ethics. Among these virtues, a prominent subset is the virtues of communication. Del Mar emphasizes the relevance of several modes of expression and communication that enhance the quality of relations among judges, parties and advocates, such as expressions of doubt or the listing of alternative decisions. This dimension of communication is indeed critical to virtuous judgment and one that has been relatively neglected in virtue approaches to the subject. Virtuous adjudication requires the expression and communication of judgment in ways that show proper respect to other judges, the parties, and the citizens in general and that duly acknowledges the stakes of the decisions and the effects that such decisions have for the parties as well as for society at large. Another subset of virtues with a direct impact on the quality of relationships among judges, parties and advocates are the so-called "warmth virtues" (Worthington et al. 2015, 24) such as compassion, humility, and empathy. The possession of these virtues has an important effect on modes of expression and communication that courts use in their judgments. Compassionate, humble, and empathetic judges will exhibit an attitude of proper care and respect for the well-being of others, which significantly shapes the way in which judgment is expressed and communicated. Thus, a concern with the quality of relationships, which lies at the core of relational ethics, is also a mark of virtuous adjudication.

At a more fundamental level, there is a commonality of vision and objectives in both virtue and relational ethics in that, I would argue, both approaches to ethics are ultimately oriented towards the larger project of building a community in which people relate to each other in ways that acknowledge their status as equals, show proper care and respect for the other, and adopt an attitude of mutual cooperation. As I have argued elsewhere, virtuous adjudication is instrumental to building a fraternal society, as we may call a society structured around these kinds of relationships (Amaya forthcoming). Similarly, fraternity is a notion that figures prominently in some versions of relational ethics (Levinas 1991). Even though the idea of fraternity is not mentioned in Del Mar's discussion of relational ethics, his depiction of the way in which judges (should) relate to judges of the past, judges of the future, judges from other legal traditions, and the parties and advocates before them is one that exhibits the kind of cooperation, respect and care that define relationships within a fraternal community.

Hence, the claim that a theory of legal reasoning should be responsive to ethics, whether relational or virtue ethics, has far-reaching political implications. Exploring these implications would lead me far afield, and it is, in fact, a major objective of my current research on virtue approaches to legal reasoning. Here, I shall focus on examining the consequences that the connection between relational ethics and a theory of legal reasoning seems to have for coherentism, more specifically, for the kind of coherentism I outline in my book. Del Mar's claim that relational ethics should constrain the construction of a theory of legal reasoning has two major consequences for the coherentist theory of legal reasoning developed in *The Tapestry of Reason*: a) giving coherence a broad role in a theory of legal reasoning would endanger the quality of relations among judges, for it is incompatible with respecting the moral autonomy of others and reasonable disagreement about matters of value; and b) from the perspective of relational ethics, there are reasons for valuing incoherence as some modes of justification, expression and communication that increase incoherence may enhance the quality of relations. In what follows, I examine each of these claims in turn.

1.2. Coherence and Respect

A theory of legal reasoning that is responsive to the demands of relational ethics imposes—in Del Mar's view—limits to the role that coherence may play in legal reasoning. Coherentist reasoning should be restricted because giving too broad a role to coherence would have a negative impact on the relations between judges in that it would endanger the respect for other persons as moral autonomous agents who may reasonably disagree about matters of value.

This argument in support of giving coherence a limited role in legal reasoning starts from the assumption that coherence-seeking aims to explain conflict away. This assumption, however, is not well grounded. Coherentist reasoning is not directed at making conflict disappear: Quite the contrary, conflict provides the occasion for engaging in coherentist reasoning. Coherence reasoning, as Susan Hurley persuasively argued, rather than showing conflict to be merely apparent, gives us a way to proceed in the face of conflict (Hurley 1989, 261). It is *because* there is conflict that we need to engage in coherentist reasoning in the first place. One may grant that coherentist reasoning need not assume the view that conflict is

not real, but merely apparent, but reject the claim that coherentist reasoning gives us a good way to deliberate about cases in which there is genuine normative conflict. Why should coherence-seeking be the appropriate way of dealing with, often severe, normative conflict?

A distinction between intra-personal and inter-personal coherence may be useful in order to examine the force of the objection that coherence is in tension with respect for other people, including their conflicting normative commitments, even if coherentist reasoning allows for genuine value conflict. At both levels, intra-personal and inter-personal, I would argue, coherence methods provide a good way to reason about cases which involve normative conflict, and, more important for the purposes of meeting Del Mar's objection, a form of reasoning that properly expresses respect of others. Coherence is a constitutive constraint on self-interpretation and the interpretation of others. We seek to understand ourselves and others as coherent, unified agents, and in so doing we treat them as persons, that is, as moral agents rather than as "wantons" who take their preferences as given and have no interest in deliberation (Frankfurt 1971). In seeking coherence we aim to determine who we are in a way that is responsive to the different values to which we are committed (Hurley 1989, 262–3). In this sense, the attribution of coherence to other people (and self-attributions of coherence), far from endangering the recognition of moral autonomy, is, on the contrary, a possibility condition for treating them as persons (Davidson 2001, 221–2). In short, a concern for coherence does not undermine respect for other people but provides the basis for that respect. The point also applies to interpersonal rather than intrapersonal conflict: The search for coherence is as much a constitutive constraint on community identity as it is on individual identity. Just as we seek to interpret ourselves and others as individuals who determine their own identity by seeking coherence among the relevant conflicting reasons, so too do communities determine the kind of community they are (and want to be) by seeking coherence in processes of collective deliberation. A concern for coherence could only be foregone by abandoning the aspiration of being a community that seeks to determine itself in a way that is responsive to its conflicting interests and values in the first place.

There are, nonetheless, important constraints on coherence-seeking in both individual and collective deliberation. A concern for a certain degree of coherence is a constitutive interpretation of ourselves and others as moral agents, but this does not mean that we should seek coherence out of the diverse and conflicting values that apply in an unconstrained way. As argued in the book, the pursuit of coherence is constrained in that only the kind of coherence resulting from virtuous action is valuable. In individual deliberation, coherence does not seem to be valuable when it is obtained in epistemically irresponsible ways, such as by suppressing relevant evidence, ignoring relevant alternatives, manipulating evidence in a way that allows the agent to stubbornly stick to previously held views, failing to gather evidence out of laziness, or cowardly avoiding subjecting one's views to criticism. Similarly, in collective deliberation, coherence should be constructed over the course of decision-making against a background of epistemically responsible action. Coherence that is achieved by suppressing other people's views, failing to take them seriously, or insulating one's views from the criticism of one's peers is not epistemically valuable.

It is critical to note that constraining coherence-seeking by requiring virtuous behavior when dealing with normative conflict in interpersonal deliberation does not result in eliminating the possibility of disagreement.¹ The responsibilist version of coherence put forward in *The Tapestry of Reason* is compatible with disagreement for—as I have argued elsewhere—there might be disagreement among the virtuous (Amaya 2012, 61–2). The virtuous deliberator will have the capacity to determine the right answer when there is one, but the theory of optimal coherence is not committed to the thesis that there is one right answer.² A coherentist approach to legal reasoning that gives virtue an important role not only provides a method to deal with conflict in a way that properly expresses respect for other people with whom one disagrees, but it is also compatible with acknowledging that such disagreement might be irresolvable. Thus, there need not be a tension—*pace* Del Mar—between giving coherence a broad role in legal reasoning and honoring a commitment to value pluralism.

1.3. *On the Value and Limits of Incoherence*

Del Mar points to a set of reasons for valuing incoherence in legal reasoning from the perspective of relational ethics. First, the increase in incoherence that results from introducing some modes of expression and communication that are not necessary to justify a decision but that provide resources for future courts, such as expressions of doubt, listings of alternative decisions or offering hypothetical examples, enhance the quality of the relations between present and future courts. Second, the introduction of legal ideas and techniques of one legal tradition into another one increases the level of incoherence of a legal tradition, but it may also have a beneficial effect on the quality of the relations between judges and advocates of different legal traditions. In both cases—i.e., relations between present and future judges within a legal system and between judges from different legal systems—improvement in the quality of the relations in a diachronic framework may result from synchronic incoherence.

Del Mar's suggestions about the value of incoherence from the perspective of relational ethics are extremely interesting. I fully agree with Del Mar that incoherence may be valuable. However, this does not call into question the adequacy of coherentism about justification and, more specifically, legal justification, as there is room for a certain amount of incoherence within a coherence theory of legal reasoning. In *The Tapestry of Reason* I did not provide a detailed analysis of the notion of incoherence, but in several places in the book I pointed to the role that it may play in a coherence theory of justification.

Some proponents of coherentist approaches to practical reasoning—discussed in Chapter 7 of the book—have argued that there are reasons for pursuing only a limited degree of coherence in our practical systems. For instance, according to Richardson, a certain degree of coherence is critical for both intrapersonal and interpersonal coordination. However, the argument from coordination only

¹ The issue of whether the version of coherentism defended in the book is committed to the view that there is always one right answer is dealt with in detail in Lamond's commentary and discussed in my reply below.

² On this point, see my reply to Grant Lamond below.

supports a moderate degree of coherence for, in Richardson's view, we also value diversity in our lives and there are important benefits associated with flexibility in planning. Similarly, claims Richardson, the argument from happiness—which establishes that there is an important relation between coherence and happiness and unity of the self—supports only a limited degree of coherence, given that a demand for strong coherence does not sit well with our conception of happiness. Thagard and Millgram also argue that even though it is desirable for practical inferences to maximize the coherence of one's system of ends and values, there are limits to the degree of coherence that should be pursued. The reason is that increasing coherence increases fragility as well: If everything fits together, the whole system may collapse when something goes wrong. Thus, there are probably limits to the desirability of deliberative coherence.

From an epistemic rather than a practical point of view, there also seem to be important reasons for valuing incoherence. Thagard—whose coherence theory is discussed in Chapter 4 of the book—lists incoherence among the factors that contribute to the generation of the set of elements that is relevant to justification. That is, failure to achieve a coherent interpretation sometimes gives rise to new hypotheses and evidence that may help us restore the desired coherence. The incoherence of one's accepted views—as in cases of explanatory anomalies—may motivate not only the discovery of new hypotheses and evidence but also radical changes in view, such as those that are involved in scientific revolutions. Similarly, perceived incoherence in one's moral stance may also prompt the revision of one's system of moral beliefs and even more drastic and all-encompassing changes in one's moral views, as DePaul—whose coherence theory is discussed in Chapter 8 of the book—has persuasively argued. Tolerance of a certain degree of incoherence in our systems of beliefs may also further the aims of inquiry. Sometimes it is preferable to accept a new scientific theory even if it has certain inconsistencies rather than having no theory at all or sticking to a previously held theory that has less explanatory value even if it is perfectly consistent.

In the legal and political domain, incoherence also plays a significant epistemic role. A certain degree of incoherence—as argued by Lariguet—may be beneficial in that it enables us to see certain features the perception of which a coherent structure may block, such as an asymmetry in the legal and political treatment of certain social classes, the existence of irresolvable value conflicts, the transformative power of radical changes or the value of dissent (Lariguet 2010). Just as incoherence in one's system of beliefs may propel modifications in one's system of beliefs and, in extreme cases, even the replacement of one's scientific theory or moral outlook, incoherence in the legal and political order may also be beneficial in that it reveals aspects of that order that appear to be in need of reform or, more radically, it may lead to political action aimed at putting in place alternative ways of conceiving the social order. In this sense incoherence is an important tool for imagination, as much in the legal and political realm as in other realms.³

Thus, incoherence plays a vital role in that it signals potential problems in one's systems of beliefs, scientific theories, moral views, and legal and political systems. It also plays an important motivational role in leading us to revise and even replace

³ On incoherence as a device of imagination, see Del Mar 2017.

those systems. In both its revelatory and motivational function, incoherence is ultimately at the service of coherence as the major and minor revisions prompted by the recognition of incoherence lead to establishing a more coherent (and therefore better justified) system of beliefs and practical commitments.

There are limits, however, to the benefits associated with incoherence. These limits derive from the constitutive role that coherence plays in individual and social identity. Incoherence ceases to be a positive force when it becomes an accepted feature of one's system of beliefs and practical commitments rather than an opportunity for improvement. Individual and social identity would be seriously compromised if incoherence were to become an element we learn to live with, instead of a force that drives us to revise and improve our views. Here again the notion of epistemic responsibility (which I have argued is a critical component of a coherence theory of justification) is relevant. The enhancement of coherence that results from blatantly ignoring the alerts triggered by incoherence is not epistemically valuable. Epistemic responsibility demands that agents make an effort to detect potential sources of incoherence and revise—even radically if needed—their beliefs in light of them. Incoherence, if massive, is also unintelligible, for it is only against a background of coherence that it is possible to attribute incoherent propositional and practical attitudes (Davidson 2004a). The above-mentioned arguments to the effect that incoherence may contribute to epistemic and practical reasoning in a significant way in different contexts only support a certain degree of incoherence. The same goes for Del Mar's argument about the potential of incoherence to improve the quality of relationships in contexts of legal reasoning. Beyond a certain point, incoherence threatens individual and social identity. In sum, only a certain amount of incoherence which, once appreciated, leads to revision rather than plain acceptance, contributes to rational agency at both the individual and the collective level.

To conclude, Maksymilian Del Mar brings to light the importance of relationships between norm-generating units to legal reasoning and thus the need to appreciate the relevance of relational ethics to a theory of legal reasoning. The claim that legal reasoning should be responsive to legal ethics does not question, as argued, the adequacy of a coherence theory of legal reasoning of the kind advanced in this book. First, coherence does not endanger the respect we ought to show to others with whom we disagree, but seeking and attributing coherence to others is rather an expression of our respect for them as autonomous agents. Second, given that a certain amount of synchronic incoherence, if managed in an epistemically responsible way, leads in a diachronic perspective to enhancing coherence, the coherence theory of justification can properly account for the benefits associated with incoherence. Furthermore, there are important connections between relational ethics and the notion of virtue that I have claimed is an important component of coherentism. Thus, Del Mar's claim that we need to appreciate the relational nature of legal argument, I would contend, does not pose a challenge to the version of legal coherentism defended in the book, but rather it positively contributes to enriching the theory of legal reasoning of which this theory is meant to be a part.

2. Lamond on Coherence and the Ambitions of Theory

In his critical essay, Lamond calls into question the propriety of the ambitions of the coherence theory of legal reasoning defended in *The Tapestry of Reason*. I single

out three ways in which, in Lamond's view, the theory outlined in the book is overly ambitious: (a) it aims to deliver a unitary theory of both normative and evidential reasoning in law; (b) it is meant to provide a decision procedure as well as a criterion of correctness; and (c) it seeks to offer a rational method for solving value conflicts. The result is not only an exceedingly ambitious theory, but also a highly idealized theory that does not seem to be responsive to what Lamond nicely calls "the circumstances of law," namely, the fact that "[l]aw involves a series of compromises and concessions to human limitations and to the need for social coordination and co-operation," and to the fact that "for the law to be morally worthwhile it must also be practically workable." Lamond's point that the fact that the ambitions of the theory come at the cost of unworkable idealization, if correct, would be highly detrimental to my project, the main aim of which is to provide a theory of legal reasoning that has the potential to ameliorate legal practice. In what follows, I shall take up the challenge of showing that the theory's "drive for unity and comprehensiveness" does not, however, make it inapplicable under the non-ideal conditions of legal practice.

2.1. The Ambition to Provide a Unified Theory of Normative and Evidential Reasoning in Law

Lamond doubts that a comprehensive theory of legal reasoning that covers reasoning about both questions of fact and questions of law is intuitively plausible. Given the important differences that there are between both domains, it is, Lamond argues, unclear that both evidential reasoning and normative reasoning should fit into the same general framework. Lamond points out two key differences between reasoning about the law and reasoning about the facts that, arguably, make the project of developing a unified theory of legal reasoning questionable. First, whereas in the domain of facts, a true proposition is a proposition that corresponds to some facts that are independent of our beliefs, in the domain of law, a true proposition is one that follows from the appropriate method of reasoning. Second, there is an important difference in the status of the data from which reasoning proceeds between the domain of facts and the domain of law. In the case of factual propositions, no individual piece of evidence is foundational in the sense that it is immune to rejection. In contrast, in the case of propositions of law, reasons from authority do seem to be foundational in just this way.

Indeed, there are disanalogies between reasoning about questions of law and reasoning about questions of fact. Most importantly, the truth of empirical propositions is best conceived along realist lines, whereas constructivism is the most plausible account of the truth of normative propositions. As argued in my book, this is an important difference between the factual and the normative domain that a theory of reasoning needs to take into account. There is thus no disagreement between Lamond's position and mine on this point (although we do disagree, as I will argue in a moment, on the relevance that this difference has for the development of a theory of legal reasoning). Our positions differ however on the alleged difference in the status of the data employed when reasoning about questions of fact and questions of law.

Lamond argues that, unlike the data used in evidential reasoning in law, legal sources enjoy a foundational status in normative reasoning in law. The version of

legal coherentism that I defend is, as Lamond recognizes, discriminatory, in that it is not committed to granting equal status to all elements within the system but it assigns a priority in being accepted to some subset of elements, in the case of reasoning about questions of law, reasons from authority. This, however, as argued in the book, does not sneak in a foundationalist element within the theory because (a) those reasons might be revised and even rejected on the grounds of incoherence with the rest of the elements within the legal system; and (b) the justification for the discriminatory principle that gives a special status to those reasons is a matter of coherence with second-order beliefs about the weight that some kinds of normative elements have within the system. In this sense, authority reasons play a role in the justification of normative statements analogous to the role that evidence plays in the justification of factual statements: Both kinds of reasons enjoy a privileged status (justified on grounds of coherence) and thus have a priority in being accepted, but they may, nevertheless, be rejected if coherence overwhelmingly requires it.

Lamond further objects to the foregoing analogy on the grounds that whether reasons from authority enjoy a special status and whether they may be revised or rejected is a matter that depends on "their use by the judiciary collectively, rather than coherence with the rest of the practice." Critically, this use might make it the case that some subset of elements should be treated as fixed points. Thus, Lamond flags a conventionalist understanding of the nature of law against the coherentist account of the legal practice. To be sure, I cannot enter the deep waters of the debate over the appropriateness of the conventionalist approach to law to which coherentism is meant to be an alternative, which is what a thorough response to Lamond's objection would require. However, my response to Lamond's claim that foundationalism might well be the best account of normative reasoning in law given that legal practice, rather than coherence, is ultimately what determines the status that reasons from authority enjoy and such practice might establish the non-revisability of such reasons would begin by arguing that a) what the legal practice is does not seem to be separable from what the beliefs that the practitioners hold about the very same practice are, thus, it is at the very least questionable that appealing to the practice is an anti-foundationalist strategy; and (b) practitioners' beliefs that some aspects of the practice of law are beyond revision are self-defeating in that isolating some aspects of the legal practice from revision would make it impossible for the law to achieve the goals it is meant to achieve. On this point, law is again no different from science (and, more generally, normative reasoning is no different from evidential reasoning). Should scientific practice designate some specific beliefs as immune to revision, it could hardly accomplish the goal of advancing scientific theories that plausibly approximate the truth. Similarly, if legal practice isolates some aspects of the practice from revision, law could hardly achieve the goal of establishing a social order that has a plausible claim to moral legitimacy.

There is, thus, no relevant difference in status between the input to reasoning about facts and norms in law. Still, there is, as noted, a major difference in the nature of the truth of evidential propositions and propositions of law. This difference, however, does not call into question the possibility of developing a unitary account of reasoning for both questions of law and questions of fact. Lamond claims that, given that evidentiary facts exist independently of our beliefs about

them, whereas legal facts are constituted by our reasoning, “it would be surprising” if the method of reasoning appropriate to justify both kinds of statements were to turn out to be the same. It is however all but surprising that one and the same theory of justification may be applicable to both domains. In fact, coherence theories of justification have been proposed and plausibly defended in hard-core empirical domains, such as science, and hard-core normative domains, such as ethics. Thus, the fact that there is an important difference in the nature of truth between factual and normative propositions does not seem to pose any obstacle to developing a unitary approach to the justification of both.

Moreover, a unified theory for both factual and normative reasoning is, I would argue, highly desirable. There are at least three reasons why a unified theory for reasoning about both questions of fact and questions of law may be (contrary to what Lamond sustains) “preferable to two theories that treat these quite different domains in their own terms.” First, there is a logical equivalence between problems of interpretation and problems of classification (MacCormick 1994, 94–6). The procedural differences existing between questions of law and questions of fact provide space for maneuver to legal decision-makers, who may recast, if need be, one sort of problem into another. This legal technique is greatly facilitated by a model of reasoning that is applicable to both reasoning about facts and reasoning about law. Second, in some legal systems the decision-making power on both questions of facts and questions of law is allocated to the same institutional bodies and even in systems, such as the common law, in which fact-finding and the application of law is assigned to different institutions, there are many cases in which both tasks are entrusted to the same institution. A unitary approach to legal reasoning about both facts and law is well positioned to enable and give an account of this feature of legal practice. Last, a unified model for reasoning about both evidential and normative reasoning in law (as much as in other domains) is grounded on a conception of reason that properly takes into account the many connections that there are between practical and theoretical reasoning and the many ways in which reasoning about what to believe and reasoning about what to do are similar in structure. Ultimately, such a conception of reason (and the unitary approach to factual and normative reasoning it grounds) is at the service of a view of persons as unified agents, which sharply contrasts with views (which I find deeply unsatisfactory) that dissociate the way in which individuals, and more specifically, legal decision-makers, conduct themselves in their epistemic and practical affairs.

2.2. *The Ambition to Provide a Decision Procedure and a Criterion of Correctness*

Lamond claims (correctly in my view) that the theory I present in *The Tapestry of Reason* is meant to be “a method for ascertaining the legally correct solution which is also the method that should be deployed by legal decision-makers.” In Lamond’s view there is, however, a problem for the theory that stands in the way of providing us with both a criterion of correctness and a decision-procedure, namely, there seems to be “a tension between the ‘psychological plausibility’ of the account of epistemic responsibility and its characterization in terms of an ‘ideal agent.’” Even though, he admits, the ideal of an epistemically responsible agent satisfies the

demand that “ought implies can” and, unlike Dworkin’s Hercules, it requires neither super-human powers nor the capacity to consider the totality of relevant considerations, it is unrealistic, for although it is conceivable that judges could possess and display the epistemic virtues, it does not seem that one could reasonably expect them to do so.

Whether or not judges possess the virtues required for epistemically responsible legal decision-making is, of course, an empirical matter. The problem (for my theory) is not whether judges possess and exercise the epistemic virtues, but rather the important issue is whether the success of the theory as both a criterion of correctness and a decision procedure depends on the possession (or lack thereof) of the epistemic virtues on the part of the judiciary. My claim is that it does not. Although, of course, it would be highly desirable for judges to be epistemically virtuous, I would argue that the issue of whether the theory provides a plausible criterion of rightness and a useful decision-procedure does not depend on whether or not judges in fact turn out to be epistemically virtuous.

The coherence theory of justification outlined in the book provides a normative criterion for evaluating the justification of judicial decisions that is independent from the virtuous/vicious epistemic character of decision-makers. The criterion of rightness that I articulate and defend in *The Tapestry of Reason* is counterfactual: It distinguishes between justified and unjustified decisions on the grounds of whether this is a decision that *could* be the outcome of epistemically responsible coherence-based legal reasoning. It is not a condition of justification of a legal decision that it was actually the result of epistemically responsible coherentist reasoning, let alone that it be taken by an epistemically responsible legal agent (who might or might not have reasoned virtuously in a given case). Thus, the suitability of the proposed criterion of correctness does not depend on whether one may reasonably expect legal decision-makers to possess and display epistemic virtues.

The appropriateness of the coherence theory as a decision procedure does not depend on whether legal decision-makers may be expected to be epistemically virtuous. The normative standard embedded in the virtuous judge has, as Lamond concedes, direct normative relevance, in the sense that that it does not oblige us to achieve what is unattainable, thus satisfying the naturalistic constraint that “ought” implies “can.” In this respect, the ideal of a virtuous judge significantly differs from the Dworkinian ideal, in that it does not idealize away from our cognitive capacities. The ideal of the virtuous judge not only has direct normative relevance, but also indirect normative relevance, because it defines an epistemic ideal towards which we ought to strive, and as such it plays a critical role in regulating (and improving) our reasoning processes. On this point, it also differs significantly from normative ideals that abstract away from our cognitive limitations. An ideal that is far removed from the abilities and skills that judges may possess cannot play a substantial role in guiding practice. Indeed, the rational way to proceed and reason about cases of a being that has more potent logical and reasoning abilities may be quite different from the rational way to proceed and reason about cases for us, given the kind of capacities and skills that we may have. The ideal of an exemplary judge—that is, a judge who possesses and displays epistemic virtues—insofar as it has capacities recognizably similar to ours fulfils an important function in

regulating and improving judicial practice. Such a regulatory function may be performed even if judges are not virtuous, for all judges may come to possess some virtues to a greater extent than they actually do.⁴ Thus, the normative ideal embedded in the virtuous judge has the potential to guide and ameliorate legal practice by providing us with a normative ideal that we all (in becoming more virtuous than we are) approximate, in becoming more virtuous than we are.

To conclude, the virtuous judge provides a normative ideal that is suitable for us, given our cognitive limitations, and the normative relevance of which does not depend on the virtuous character of actual decision-makers. Far from there being a tension between the psychological plausibility of the normative model proposed and the fact that epistemic responsibility is an important component thereof, the naturalistic and responsibilist dimensions of the model (contrary to Lamond) go hand-in-hand and mutually reinforce each other.

2.3. *The Ambition to Enlarge the Scope of Reason in Law*

Lamond raises some questions about the book's "ambition to enlarge the 'scope of reason' in legal decision-making." First, he questions whether a coherence-based approach to legal reasoning provides a scope for reason in law that is wider than rule-based theories. Second, he is uncertain about whether the ambition of expanding reason's domain within the law commits the theory of coherence-based reasoning defended in the book to the view that there is always one right answer. Does a coherence approach to legal reasoning really enlarge the scope of reason in law? If so, are there any limits to the enterprise of rationalizing legal practice?

The ambition to enlarge the domain of reason in law is the animating force that drives the development of the coherence model of legal reasoning that I advance in the book and, as I argued there, more generally, the coherentist project across disciplines. There is a commonly transited route that goes from formalism to skepticism. The argument goes as follows: It starts by endorsing a formal approach to rationality, which reduces rules of reasoning to formal rules, such as rules of deductive logic, rules of induction, and so on and then, from the non-applicability of these rules to certain domains or certain problems, it concludes that such domains/problems fall beyond the scope of reason and are therefore the object of opinion, rather than knowledge. Skepticism about the possibility of justifying conclusions about these problems/domains is thus grounded on formalism about the nature of reason and rationality.

In the domain of law, rule-based approaches to legal reasoning, which are a key component of legal positivism, have precisely the effect of reducing the scope of reason in law so that all issues and questions that cannot be solved by the application of law are also issues that cannot be addressed by the force of reason, but are rather the object of political contest, individual preferences or subjective value. As Lamond argues, one could hold that when there is no rule that is applicable, or there is uncertainty as to how a rule should be interpreted, the court should still be guided by reason. But this amounts critically to replacing the view according to

⁴ The point about the potential of the normative ideal embedded in the virtuous judge to guide and regulate practice remains even if it were the case that many judges could not become anything like exemplary judges. I further discuss this issue in Amaya 2013, 435–6.

which legal reasoning is rule-based with a view that recognizes the role that rules play in legal reasoning but does not claim that legal reasoning should be reduced to rule-application. A coherentist approach is one such view. As developed in my book, a coherentist approach may give reasons from authority a privileged place in legal justification and thus recognize that rule application is an important part of legal reasoning. However, a coherentist approach does not rest content with the view that law's reasons run out in cases in which there are no applicable rules, or it is doubtful whether the rule applies to the particular case, the interpretation of the application rule is unclear, there seem to be several rules competing for application, or the application of a seemingly clear rule leads to absurd or outrageous outcomes. In these cases, coherence reasoning provides the resources to give an answer that is not only backed up by reason but also constrained by the law.

A legitimate question arises at this point: Are there any limits to this project of expanding reason's domain within the law? Is it committed to the view that reason determines a uniquely best decision? Lamond claims that it is not entirely clear from the book whether "the theory of coherence-based reasoning is committed to the view that it always leads to a *single* justified proposition of law." I regret that I did not express my views on this point more clearly in the book, for it is an important issue which distinguishes my own coherence theory from other coherentist approaches, most importantly, Dworkin's. According to the version of legal coherentism I defend in the book, a legal decision is justified iff it could be the outcome of epistemically responsible coherence-based reasoning. This view, as mentioned earlier, leaves open the possibility for ties, as epistemically responsible legal decision-makers might disagree about which decision is more coherent, and therefore best justified. Nothing in the theory precludes disagreement among the virtuous: If there is one right answer, the virtuous legal decision-maker will be able to identify it, but there might be cases in which there is no single justified proposition of law (McDowell 1998).

The coherentist approach to legal reasoning defended in the book—as Lamond has clearly seen—is an ambitious theory. It is meant to apply to both reasoning about facts and reasoning about law, it seeks to provide not only a criterion of correctness, but also a decision procedure, and it aims to expand the scope of reason in law. Let me finish my reply to Lamond's comment by discussing an ambition that the theory does *not* have: that of revising practice. Lamond asks whether the proposed theory of legal reasoning may be described as a rational reconstruction of practice or whether it is meant to be revisionary, i.e., a theory that argues that "irrespective of current practice, judges ought to reason about the law in a particular way, because only on this basis would their conclusions be justified." What, Lamond asks, is the relationship between existing legal practice and the theory being defended?

The theory of coherence advanced in the book is meant to be both descriptive and normative. It does not seek to provide a normative model from scratch, but rather the aim is to develop a normative model that grows out of ordinary forms of reasoning and, more specifically, of legal reasoning. It does not aim to provide a theory that replaces the plurality of forms of reasoning by coherence inference. On the contrary, it seeks to offer a normative model that is capacious enough to make room for the diversity of arguments that are characteristically used in legal

practice, even if, admittedly, it does not examine differences between legal systems as maybe it should have.⁵ I had not thought of the notion of “deep structure” as a notion that could describe the model being proposed until Lamond suggested it in his essay—which is curious, given that I have a background in linguistics. . . but I think that the notion might be useful to explain the relationship between existing practice and the normative model defended in the book.

The normative model being proposed is highly abstract, and grounded on a conception of coherence as constraint satisfaction. A diversity of elements and different justificatory relations can be accounted for by using the constraint satisfaction framework. As argued in the book, I think that the flexibility of the constraint satisfaction approach to coherence gives it a distinctive advantage over theories of coherence that are less liberal as to the kind of inference patterns and forms of argument that can be taken into account within the theory, such as, for instance, analogical approaches to coherence or deductive approaches to coherence. The constraint satisfaction approach to coherence allows for a variety of elements and relations to play a role within the theory, even if the ultimate source of justification is their coherence-enhancing role. In this sense, it might be useful to view the constraint satisfaction mechanism that is coherence-producing as a kind of deep structure that unifies the diversity of our justificatory practices.

To conclude, the theory being proposed does not aim to promote a radical revision of legal practice by imposing an alien form of reasoning, but rather it seeks to reveal the basic structure of coherence-driven legal inference, which is characteristic of much legal reasoning, and establish the conditions under which it yields justified decisions. In addition, the constraint-satisfaction approach to coherence, as some empirical studies have shown, has a good claim to psychological plausibility. The empirical backup of the model is critical to advance the objective of providing a naturalized normative theory, that is to say, a theory that duly takes into account our cognitive makeup. Ultimately, the ambition of the theory is that of providing a model of rationality that works for us in the peculiar “circumstances of law.” This is indeed an ambitious project and I would rest content if I took one step in the direction of constructing such a theory.

3. Lucy on Coherence and the Autonomy of Law

Lucy’s comment bears on the issue—a perennial one in legal scholarship—of law’s autonomy. As applied to the construction of a coherentist theory of adjudication, the issue is whether it is plausible to endorse a unitary approach to the nature of coherence and the role it may play in reasoning in different contexts, including law, or whether, on the contrary, coherentist reasoning in law is autonomous, given that legal reasoning is different from other forms of reasoning. On the debate over the autonomy of law, Lucy sides with those who vindicate the value of studying

⁵ Del Mar objects to coherentism on the grounds that it fails to acknowledge and balance the plurality of modes of justification, expression and communication, which is critical for constructing a theory of legal reasoning that properly takes into account the relational dimension of legal argument. The objection, however, can be met, I would argue, by versions of coherentism, such as the version I put forward in my book, which use a concept of coherence that is broad enough to make room for the variety of legal arguments.

law “from the inside” and “only occasionally” ventures beyond law’s specific domain and regrets what legal philosophy has become, namely, a discipline that approaches law “in the broad general terms of general philosophical discussion” of which *The Tapestry of Reason* is a clear example.

More specifically, Lucy claims that my book endorses the following two assumptions:

- a. Understanding the nature of coherence in adjudication in law requires a general interdisciplinary theory of coherence in the light of which law may be understood.
- b. The law’s indigenous theoretical understanding of itself is either non-existent or not worthy of exploration.

Both assumptions, Lucy claims, can be questioned. Assumption (a) is grounded on the further (disputable) assumption that a theory, in order to qualify as such, should be general. However, whereas generality is regarded as a value in scientific theorizing, it is only if we accept the naturalist tenet according to which philosophy’s task is exactly aligned with the natural sciences that we should also regard it as a virtue that theories ought to exhibit in the context of the humanities and the social sciences. Assumption (b) is plainly false: There is obviously an indigenous self-understanding of the law which is neither defective nor unworthy.

Given that both assumptions (a) and (b) are wrong, concludes Lucy, there seems to be no reason why we should—as I do in the book—examine philosophical approaches to coherence in order to understand the nature and role of coherence in law. Furthermore, this philosophical analysis may have harmful consequences as “the more general our theories become, the less light they might cast on the specific domain in which we are interested.” In place of an interdisciplinary methodology, Lucy proposes the following methodological injunction: “Philosophical accounts of law should begin with the problems of that domain as registered by those whose conduct, beliefs and practices constitute that domain” (Lucy 2017). If this method is adopted, then “there would be no guarantee that a philosophical account of some domain or some aspect thereof would have much resonance beyond that domain” (ibid.). Specificity is, therefore, in Lucy’s view, as good as we can get.

In what follows, I examine each of the assumptions that provide the starting point for Lucy’s criticism.

3.1. *On the Virtue of Generality*

In Lucy’s view, the fact that generality is (wrongly) regarded as a valuable feature of theories in the social sciences and the humanities results from an improper application of ideas pertaining to the natural sciences to other realms, which is backed up by a move to naturalism. Indeed, one of the driving motivations of *The Tapestry of Reason* and a theme that runs all through the book is that scientific models of rationality should not be applied indiscriminately to other realms—hence my critique of formal models of legal normative reasoning in Chapter 1 as well as my critique of Bayesianism in Chapter 2. In fact, coherence theories have been proposed as much in law as in domains other than law as a plausible alternative to both skeptical approaches to reasoning and rationality and, interestingly for the

purpose of this reply, formal approaches (i.e., approaches that take logic, probability theory, and so on to provide the normative principles of reasoning and rationality). Thus, I could not agree more with Lucy in his critique of the inappropriate application of scientific models to the humanities and the social sciences and the costs of the allurements that these models provoke in these disciplines. It does not follow from this, however, that I share Lucy's views about the value of generality and his analysis of why it is thought to be valuable in domains other than science.

Indeed, we are often beguiled by scientific ideas because of the authority and respect they confer upon us. However, as I hope to have made clear in the book, I find this attraction pernicious. It has distracted us from developing, first of all, models of rationality and inquiry that seek the degree of precision that is appropriate for the subject matter.⁶ It has propelled efforts to put forward numerical models of unquantifiable phenomena, preventing us from engaging in serious qualitative, substantive, analysis. However, the fascination for science and the desire to validate one's discipline by showing it to be amenable to the scientific method is in my view not the reason why generality is regarded as a value in non-scientific contexts.

In Lucy's view, it is a move to naturalism, by which he means the exact alignment of philosophy to the natural sciences, that has led us to value generality as a virtue of our theories. To begin with, Lucy's understanding of naturalism is but one way in which it may be understood, and definitely not the way I find most plausible and that I endorse in my book. Naturalism, as a methodological stance, does not require that one align oneself with science, but rather, it requires that one take answers to empirical questions as relevant for answering normative questions. It is not grounded on a view that takes science as an exemplary discipline that we all have to emulate. Instead, it is based on the view that the empirical and the normative should not be severed in the way it was in the twentieth century. In fact, it is quite an old view: It was the way of doing philosophy before the analytical turn took over. This view is based on the idea (to which Lucy may object) of the unity of knowledge, so that what we learn when doing psychology is not irrelevant to philosophical inquiry, or what we learn about reasoning when doing brain imaging is not irrelevant for studying reasoning from a philosophical point of view. It is also (and I am saying things that go far beyond what I may be able to develop in detail if pressed) to claim that there is unity of agency, that is to say, that there cannot be a significant distinction between what we believe when exercising epistemic agency and what we do as moral agents.

When Lucy asks: "Why should we think it a virtue that our account of the justification of legal decisions has something in common with accounts of the justification of scientific beliefs?" the answer, in my view, would not be because law should be aligned with science (and therefore we are going astray if our theory of legal justification is anything like the theory of justification in science), but rather because claiming that the two accounts have nothing in common and are independent from each other would imply a segmented view of knowledge and the self. As agents we have interests, capacities, ways of reasoning, and reasons why we find it important that we justify our beliefs and actions to others and these do

⁶ Aristotle *Nicomachean Ethics* 1094a–b12.

not vary depending on the kind of inquiry we are engaged in. We face the empirical and the normative world and make decisions about what to believe and what to do with the tools we have. It would be anomalous, given this view about humans as unified agents with a specific physical, cognitive and affective complexion, that we should justify beliefs about science in a way that has nothing in common with the way we justify beliefs about the law.⁷ Arguably, it would be a flaw in rationality (or integrated personality) to claim, for instance, that when it comes to justifying scientific beliefs, their coherence with scientific theories is relevant, whereas when it comes to justifying moral beliefs, there is no reason why we should care about whether they cohere or fail to cohere with our moral theories.⁸

This is not to say that there are no domain-specific features that should be taken into account when developing a theory of justification. I believe that there are, and I have done my best to give an account of domain-specific features of coherence-based legal reasoning in the book. One of the main components of the coherence theory of legal reasoning that I articulate and defend in the book is a view of coherence as constraint satisfaction, which was originally developed by Paul Thagard. I have modified Thagard's theory in important respects in order to adapt it to the legal domain. More specifically, I introduced modifications at the three main levels constituting the theory, namely, the kinds of coherence that are relevant to justification, the elements over which the coherence calculation proceeds as well as the relevant constraints. Furthermore, there are important differences in the way in which coherence justifies not only between contexts, but also within a given field of inquiry. My coherentist model aims to take this variation into account by contextualizing the coherentist standards of justification at three levels, namely, the size of the set of elements coherence with which confers justification, the threshold of justification, and the set of relevant alternatives that ought to be considered before picking the most coherent one as justified.

These differences, however, do not mean that coherentist reasoning in law is autonomous. Coherentist reasoning cannot be compartmentalized according to discipline any more than any other kind of reasoning can. There is an important sense in which coherence-based inference may be characterized in a unified way. Even if the kinds of coherence, the elements, and the constraints are domain-specific, the general structure of the theory and the way in which coherence inference is performed (i.e., the kind of constraint satisfaction mechanism at work) are the same across contexts. Such a general approach—as I argue in Chapters 4 and 10 of the book—is not only appealing from a normative point of view, but it also has a good claim to psychological plausibility. Thus, the normative and descriptive virtues of the general model, at the very least, I would argue, cast doubts on Daya's claim (which Lucy would presumably endorse) that "there is no unitary 'coherence' as many have supposed. Rather there are coherences each of a distinct type belonging to realms autonomous and independent in their nature" (Lucy 2017).

⁷ The objection (as well as my reply to it) is importantly related to Lamond's objection against the ambition to provide a unified theory of legal reasoning for both evidential and normative statements, which is discussed above.

⁸ For the claim that irrationality is importantly related to a kind of divided mind or multiplicity of the self, see Davidson 2004b, 198, n. 2.

Differences in reasoning across domains do not detract either from the value that generality has when it comes to theorizing in any field. In the case of coherence reasoning, the interdisciplinary analysis conducted in the book has allowed me—and I hope readers too—to see that there is a commonality in the structure of coherentist justification, the motivation of coherence theories, and the challenges facing coherentism in different fields. This broader lesson about the value and limits of the coherence theory of justification in different fields can help us to better understand, I believe, the nature and reach of the coherentist project in law. The interdisciplinary approach to coherence also reveals the extent to which—*pace* those who claim the law to be autonomous—the proposal and evolution of coherentist approaches to legal justification are not happy (or unhappy) occurrences in the history of legal thought, but rather they respond to profound changes in views about the feasibility of providing knowledge with secure foundations, the place of logic in a theory of reasoning, the relationship between the normative and the empirical, the interrelation between emotion and cognition, and the importance of subjects to processes of interpretation and justification. I could have studied legal coherentism in isolation, but this would have made it difficult to appreciate the extent to which coherence theory is responsive to major changes in perspective on reasoning and rationality across domains and this, in its turn, provides us, I believe, with a more in-depth understanding of coherence theories of law and adjudication.

3.2. *On Law's Self-Understanding*

I am not committed to anything like Lucy's second assumption, that law's self-understanding is defective. The starting point of my investigation is coherence theory in law, and I devote the first two chapters of my book to examining coherence theories about both normative and evidential reasoning in law. However, according to Lucy, appearances are misleading and despite the fact that the first part of my book deals entirely with legal coherentism, this does not show that I reject assumption (b). The reason is that I conclude my discussion of coherence theories by showing that these theories present some problems. This alone would hardly tell against my account. Clearly, Lucy does not intend to endorse a reverential attitude towards legal theory that would legitimize any account of coherence or any other notion developed within the confines of the discipline. The problem arises not because I see unresolved issues in the current state of the coherence theory in law—that could be nothing but a sign of healthy self-critique—but because of the nature of the problems that I claim beset coherence theories of law and adjudication. These problems, in Lucy's view, are not "issues of concern to those *within* the practice and the discipline." In short, what Lucy finds objectionable in my discussion of coherence theories is that I do not abide by his methodological injunction, that is, that the problems that philosophical accounts of law should be concerned with are the problems perceived by "those whose conduct, beliefs and practice" constitute the domain.

I see a serious problem with Lucy's methodological recommendation. If followed, it would deprive philosophical analyses of law of their critical bite by reducing the kind of problems that are in need of examination and that can properly be said to fall within the scope of philosophical theories to those that

participants regard as problems. Furthermore, this methodological instruction would prevent philosophical inquiry from delivering what is one of the main goods that it is meant to achieve, namely, to reveal as problematic what is viewed by many as unproblematic, to question beliefs, ways of conduct, and practices that are regarded as a given within a particular discipline and accepted unexamined, and to raise doubts about aspects and features of the practice that are taken by those working in the discipline to be beyond the pale of criticism or even considered to be as constitutive features of the practice. The methodological injunction would also have the unfortunate consequence of severely constraining the exercise of imagination that philosophical inquiry involves at its best. In other words, it would restrict thought experiments that would suggest alternative ways in which practice may be conceived—should we be able to change what philosophical inquiry reveals to be problematic—and it would prevent us from depicting what the practice could look like—should we be able to make fundamental changes on settled aspects of practice.

Any discipline provides its practitioners with some kind of lens through which to see the world, a conceptual map by which to make sense of it, and the tools and abilities necessary to find their way within it. This explorer's toolkit is indeed useful. It does help those working within the discipline to see the relevance of problems which others are not able to detect from the outside. It is a critical part of legal education—or education in any other discipline—to acquire that outlook. It is highly valuable to make the point of view of the discipline one's own but, in turn, it is also limiting. Thus, there might be a reason after all to see the law from the "heights" as Lucy puts it, to wit, to see what one cannot see from within the forest. This is not to say that legal cases and analysis are of no help (I wish I had used more of them in the monograph). But it is to deny that a general account—as Lucy claims—can't illuminate the specific. It is also to deny that the specific does not have resonance—as Lucy puts it—beyond the relevant domain. Good philosophical analysis, I believe, is neither exclusively bottom-up nor ground-up, but rather (in a coherentist fashion!) it works both ways and it is meant to have implications for both the specific domain under analysis and other fields of knowledge. In this, if I may say so, good philosophy is like good art: Both have the effect of casting light on what we all share that is anchored to an incisive look at the specific.

In *The Tapestry of Reason* I tried to engage in this dialectic between the general and the specific by showing how a) the analysis of coherentism in a number of different domains illuminates the workings of coherence within law; and b) the analysis of coherence in law leads us to draw broader lessons about coherentism in general. More specifically, on my proposal, it led me to modify coherentism in order to give an account of the relevance of epistemic responsibility for coherentist justification. I may not have succeeded in putting this dialectic to work, I may have leaned towards generality, but this book results from a genuine effort to engage in interdisciplinary work, in the belief that the law is no more autonomous than any other discipline, that knowledge may be advanced by integrating different viewpoints, and that something valuable may be achieved when we disregard the disciplinary boundaries that artificially segment our objects of inquiry.

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