Coherence theories of law and adjudication have been very popular in the last decades. Although these theories significantly advance the case for coherentism in law, a number of problems remain open in the current state of the coherence theory in law. This paper attempts to develop a coherence-based model of legal reasoning, which addresses, or at least mitigates, these problems. This model has four main elements: a constraint satisfaction approach to coherence, an explanatory view of coherence-based legal inference; a contextualist approach to legal justification; and a conception of legal justification that importantly depends on the epistemic responsibility of subjects. I conclude this paper by exploring the implications of the version of legal coherentism proposed for a general theory of legal reasoning and rationality.
Influenced by the work of John Rawls in the field of Moral Philosophy, coherence-based theories of adjudication and legal reasoning have become relevant in the last three decades. Rawls argued that before reaching a decision, agents should achieve a Reflective Equilibrium between general principles and concrete judgments, in a way that both are mutually supported. However, most of the literature equates moral agents with judges and assumes a common law approach to adjudication. In contrast, this paper advances Ethical Reciprocity as an adaptation of the method of Reflective Equilibrium to the institutional and competitive context of adjudication. Moreover, the paper uses civil law concepts and techniques to adapt Equilibrium for the context of civil law jurisdictions. In this way, the paper proposes a rational framework for civil law judges to show that concrete judgments cohere with a relevant set of norms.

Legal Reasoning: The Hall of 7 Oddities

Iain Stewart

Legal reasoning, outwardly secure, is inwardly very odd - incoherent in at least seven fundamental ways, some of which derive from the attempt at complete security. These oddities will be identified from the standpoint of asking in what sense the dominant perspective on law, "legal positivism", is actually "positivist":

1. Value-freedom and cognitive independence: it is odd that, apparently, one can either accept the authority of law and fail to achieve cognitive independence or insist upon cognitive independence and fail to see anything as law.

2. The lions under the throne and positivist reality: it is odd to confine experience of law to its creation and application—to experience of it from the inside, excluding from consideration
experience of it from the outside, which as the most common experience of it should be an empiricist’s starting point.

3. Guns and arguments: it is odd that in most Jurisprudence power appears only as coercion.

4. “Moral” critique and the separability of law and morality: it is odd that, despite their separation of “is” and “ought”, legal positivists should be bothered about whether apparently legal norms that do not conform to some other type of norm, and to moral norms in particular, should even count as “law”—ordinarily the perspective of a believer in natural law.

5. Dozing with the enemy: it is odd that legal positivists have ignored that the name “positive law” originated in scholasticism; they may have adopted the concept so named without sufficient care.

6. Only one “natural law”: it is odd that legal positivists, knowing that ideas of natural law have been highly various, should treat them monolithically.

7. Nearly headless norms: it is odd that “legal positivism”, while avowing a commitment to empiricist reality, continues to recall some sort of suprahuman original lawmaker and struggles to find a substitute.

A more thorough positivism will be proposed. In the proposed concept of law, existing legal positivism will appear as still largely internal to law, so that these incoherences of legal positivism can be read as indicators of incoherences within legal thinking itself.
Assessing Overall Unfairness of Limitations on Fair Trial Rights in Summary Criminal Processes: A Remedy for Due-Process-Evading Justice

Dat T. Bui

In an era of preventive and administrative state, massive limitations on fair trial rights in summary criminal processes (for preventive measures, non-serious offences and regulatory offences) raise concerns about the extent of procedural rights ought to be designed for these procedures. Due to the nature of fair trial rights, overall balancing is the most meaningful sub-test among four sub-tests of proportionality analysis to assess the overall fairness of those limitations on procedural rights. However, it is acknowledged that applying a formulaic balancing process to a bundle of fair trial rights is an extremely thorny and even impossible task.

By examining the English and Vietnamese models of due-process-evading summary criminal processes, this article develops two analytical tools, acting as prerequisites for the formulaic overall balancing, to assessing overall (un)fairness of limitations on fair trial rights. First, apart from internal and external overall fairness, I develop reasoning about the two-stage overall fairness. Accordingly, I identify three models of two-stage process and analyse their suitability for different measures. Second, I suggest that it is crucial to determine the inviolable core of procedural due process, which is comprised of several absolute elements of the right to a fair trial.