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# Illusions of Degree: the instructive case of ‘coherence’.

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## Abstract:

This paper challenges the popular but undefended view that ‘coherence’ *is a matter of degree*. Deploying philosophy of language, logic and linguistics, the paper aims to show that coherence’s degree credentials are a striking illusion, thereby prompting two significant worries: (i) a specific concern about present misunderstanding and misuse of coherence; and (ii) a general concern about the misunderstanding and misuse of degree. This analysis encourages similar re-evaluation of degree claims made for other high-value concepts in law and beyond, whilst resolving some of the difficulties presently frustrating the successful deployment of coherence in legal theory, legal practice and public policy.

Keywords: Degree, Coherence, Concept, Meaning, Mistake.

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‘Finally, coherence is obviously, on any reasonable view, a matter of degree...’

Laurence Bonjour, *The Structure of Scientific Knowledge* (MIT 1985) 170.

‘Hence, coherence in law would be a matter of degree, whereas consistency would be a static notion in the sense that concepts of law can be more or less coherent but cannot be more or less consistent.’

Christophe Hillion, ‘Tous pour un, un pour tous! Coherence in the External Relations of the European Union’ in Cremona, M. (ed), *Developments in EU External Relations Law* (OUP 2008) 14.

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## 1. Introduction

‘Coherence is a matter of degree’. The idea is pervasive in law and beyond, and though sometimes proclaimed with bold assurance (*‘of course coherence is a matter of degree’*) the commitment mostly appears, without introduction, as an unexceptional component in some wider scheme (*‘the degree of coherence required for justification is...’*)<sup>1</sup>. Nowhere, though, do its proponents provide any careful analysis or defence of the idea that coherence *is* a degree concept<sup>2</sup>. Once noticed, this absence is striking, with the assumed degree credentials of COHERENCE<sup>3</sup> especially eye-catching in the context of the disagreement that otherwise typifies the literature elucidating the notion, across multiple disciplines and interests<sup>4</sup>. On the one point

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<sup>1</sup> For examples see section 3, below.

<sup>2</sup> The articulation by Hillion (above) well represents the nature and brevity of the analyses provided. I present examples of the oversight throughout the paper.

<sup>3</sup> From this point in the paper I adopt the philosophical practice of using small caps where mention is made of a concept *as a concept*; e.g., COHERENCE. Thus, COHERENCE does the work of ‘the concept of coherence’ throughout. This helps to distinguish occasions where the concept is deployed otherwise (e.g., ‘the coherence of the narrative...’) which retains regular lower-case expression. It will become apparent that this distinction is particularly important in the present case.

<sup>4</sup> For a representative sample in law alone over the last few decades see R Alexy and A Peczenik, ‘The Concept of Coherence and its Significance for Discursive Rationality’ (1990) 3 *Ratio Juris* 130-147; A Amaya, *The Tapestry of Reason: an enquiry into the nature of coherence and its role in legal argument* (Hart 2015); J Balkin, ‘Legal Understanding: The Legal Subject and the Problem of Legal Coherence’ (1993) 103 *The Yale Law Journal* 105; S Berteau, ‘The Arguments from Coherence: Analysis and Evaluation’ (2005) 25 *Oxford Journal of Legal Studies* 369, and ‘Looking for Coherence within the European Community’ (2005) 11 *European Law Journal* 154; A Fell, ‘The Concept of Coherence in Australian Private Law’ (2018) 41 *Melbourne University Law Review* 1160; J Hage, ‘Law and Coherence’ (2004) 17 *Ratio Juris* 87; B Jackson, *Law, Fact and Narrative Coherence* (Deborah Charles 1990); K Kress, ‘Coherence’ in Patterson, D. (ed.) *A Companion to the Philosophy of Law and Legal Theory* (Blackwell 1996) 533; N McCormick, *Legal Reasoning and Legal Theory* (OUP 1978), ‘The Coherence of a Case and the Reasonableness of Doubt’ (1980) 2 *Liverpool Law Review* 45, ‘Coherence in Legal Justification’ in A Peczenik et al (eds) *Theory of Legal Science* (Kluwer 1984), and *Rhetoric and the Rule of Law* (OUP 2005); J Morgan, ‘Tort, Insurance and Incoherence’ (2004) 67 *Modern Law Review* 384; J Raz, ‘The Relevance of Coherence’ in *Ethics in the Public Domain* (OUP 1994) 277; V Rodriguez-Blanco, ‘A Revision of the Constitutive and Epistemic Coherence Theories in Law’ (2001) 14 *Ratio Juris* 212; Schiavello, A. ‘On ‘Coherence’ and ‘Law’: An Analysis of Different Models’ (2001) 14 *Ratio Juris* 233; and E Weinrib, *The Idea of*

in issue, then, a wholly surprising consensus breaks out: COHERENCE is, *is obviously*, a matter of degree. However, I believe that on this one important point everyone is mistaken. Showing this, as I intend, turns out to rid us of much of the perceived slipperiness, elusiveness and opportunity for dispute that blights the coherence (and perhaps other conceptual) literature in the first place, so the paper is positioned to be helpful despite the critical nature of its approach.

## 2. The argument.

I have argued elsewhere, *contra* the literature, that COHERENCE is a simple and transparent notion<sup>5</sup>. I argue here, again *contra* the literature, that COHERENCE isn't a matter of degree. I will show that the plausibility of the view is superficial, with the attribution of degree to COHERENCE conveniently providing illicit cover for several uncomfortable, unresolved features of the legal and other coherence literature<sup>6</sup>.

I set out my argument in the following way. In section 3 I pick out COHERENCE as *a matter of degree* in literature that puts the notion to use in law and beyond. This preliminary section is intended chiefly to satisfy anyone who doubts that my criticism has a target. Those more interested in *degree* than COHERENCE might reasonably skip 3 and head straight to 4, perhaps proceeding with their own concept of interest in mind. At 4 I set out my argument by showing that COHERENCE is an absolute, non-gradable notion, and propose that the literature has assumed otherwise only because of a series of inadvertent but damaging philosophical mistakes and linguistic oversights. At 5 I show that the literature's commitment to COHERENCE as a matter of degree acts merely as the convenient cover noted above. This section emphasises and extends treatment given in section 4. At 6 I conclude, noting the relevance of my study to other high-value concepts in law, and mentioning briefly the relation of my analysis to adjacent jurisprudential and juristic concerns.

A final note is necessary. My analysis might be expected to begin with a claim about the meaning of COHERENCE, and then to argue against the concept's supposed degree credentials from that starting point. This would be possible, but I do not do it. My analysis is intended to show that *everyone's* preliminary commitment as users of COHERENCE is already to the concept as an absolute (i.e., non-relative), non-gradable notion. To this end I am happy for readers to keep their own use(s) of coherence in mind as they proceed through the argument; in fact, I encourage such a reading as a test of my claim. I hope the strategy also disarms the accusation that my thesis only works because I have erected an esoteric or misconceived idea of the

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*Private Law* (Harvard 1995). For critical comment see S Pethick, 'On the Entanglement of Coherence' (2014) 27 *Ratio Juris* 116-137.

<sup>5</sup> S Pethick, 'Solving the Impossible: The Puzzle of Coherence, Consistency and Law' (2008) 59 *Northern Ireland Legal Quarterly* 395; 'On the Entanglement of Coherence' (2014) 27 *Ratio Juris* 116; 'Harmony, Emotion and Law: Narcissus at COHERENCE's Pool' in C Faralli et al (eds) (2016) 9 *ISLL Papers* 101; 'Cohere, Coherent, Coherence: Law and the Lexicographer's Shakespeare' in FA Ribeiro and L Pimenta (eds) *Shakespeare and Cervantes: Dialogos a partir do Direito e Literatura* (Letramento 2016) 283.

<sup>6</sup> These features are (i) the awkwardness of the supposed conceptual vagueness of COHERENCE; (ii) the damaging entanglement of intension and extension in its articulation; and (iii) suppression of attention to the bright-line modality required to accomplish the work COHERENCE is called upon to deliver. In the present paper I emphasise iii) with special mention of COHERENCE in justification, though this will require attention to i) and ii) as matters proceed.

concept at the beginning, on which my argument then spuriously turns. I do make a claim about the meaning of coherence, but this later, and very briefly. Those wanting to read an extended analysis of the notion's meaning might read my (2014), to which this paper is natural counterpart. Neither there nor here do I propose the true or a timeless or a better meaning of COHERENCE: my ambition is to take COHERENCE just as we use it and show that we have casually, inadvertently or superficially proceeded to impute qualities to the notion at odds with the robust semantic commitments we demonstrate in its deployment, and which emerge quickly enough even on cursory reflection.

### 3. COHERENCE and Degree.

In philosophy William Roche opens his proposal for a probabilistic account of coherence with two questions: 'Is coherence *necessary* for (epistemic) justification, in that one's beliefs are justified only if one's belief system is coherent? Is coherence *sufficient* for justification, in that one's beliefs are justified if one's belief system is coherent?'<sup>7</sup> In engaging this project he takes his first desideratum to be that 'an adequate account of coherence should imply that coherence and incoherence come in degrees'<sup>8</sup>. Perhaps there should be little surprise in this; after all, Roche's ambition is to offer a notion of coherence 'defined (in large part) in terms of *probability* – a quantitative *probabilistic* account of coherence'<sup>9</sup>. As epistemic justification is a quantitative matter for probabilists such as Roche any account of COHERENCE useful to the thesis is likely to need the same characteristic, hence Roche's desideratum. If the relevant idea, of COHERENCE as degree, were confined only to probabilism it might be understood merely as an artefact of the larger thesis, to be accepted (by probabilists) or dispatched (by their opponents) according to the perceived merits of the wider idea. However, the view that COHERENCE is a matter of degree is not confined to probabilism, appearing across the literature on COHERENCE in law and elsewhere.

Thus, turning to legal scholarship, Teemu Juutilainen offers a typical articulation of the idea that COHERENCE is a matter of degree, writing in the collection *Coherence and Fragmentation in European Private Law*:

Even in the context of national laws, however, coherence of the entire system is no longer seen as an attainable goal. Instead of such "total coherence", present-day systematisation efforts more modestly strive for "local coherence", that is, coherence within individual fields of law. For a still stronger reason, then, the multilevel system of Europeanisation of private law cannot be presented as a coherent whole. Nevertheless, it is important to note that coherence is always a matter of degree. In other words, with respect to any entity of law, coherence appears as a matter of "more or less", rather than as one of "all or nothing".<sup>10</sup>

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<sup>7</sup> W Roche, 'Coherence and Probability: A Probabilistic Account of Coherence' in M Araszkiewicz & J Savelka (eds), *Coherence: Insights from Philosophy, Jurisprudence and Artificial Intelligence* (Springer 2013) 59, 59.

<sup>8</sup> Ibid, 60.

<sup>9</sup> Ibid, 60.

<sup>10</sup> T Juutilainen, 'Coherence through Uniform Private International Law of Property' in P Letto-Vanamo and J Smits (eds) *Coherence and Fragmentation in European Private Law* (Sellier 2012) 101, 104, viz. Hillion (2008) quoted above.

Juutilainen offers nothing more in his paper on the idea that ‘coherence is always a matter of degree’. However, the few comments available still deserve scrutiny because a significant problem emerges in Juutilainen’s final sentences.

The problem is that Juutilainen first makes the strong assertion that coherence is always a matter of degree, before proceeding in the next sentence to recast this thought (‘in other words ...’) as the idea that, with respect to any ‘entity of law’, the concept appears as a matter of ‘more or less’. The difficulty lies in Juutilainen’s move from what is true of COHERENCE to what is true of the coherence of ‘any entity of law’. Juutilainen’s construction is ambiguous; he might intend that because COHERENCE is always a matter of degree it follows that the coherence of any entity of law is a matter of degree. Or he might imagine that things are the other way around – that the evidence from legal entities shows that COHERENCE is always a matter of degree. Plainly the first possibility is best, with the conclusion at least following from the premises, whereas in the second the conclusion overshoots its premises in a fairly obvious manner<sup>11</sup>. But Juutilainen’s wider remarks in the quoted passage only give support for the second reading, having to do with the difficulty of attaining coherence across entire legal systems, and commenting on *striving for* coherence even amongst localised parts. So either we are to imagine that this characteristic is the premise for Juutilainen’s (thereby erroneous) conclusion that COHERENCE is always a matter of degree, or we must accept that no support is given for the target proposition.

Picking out the spread of possibilities above is helpful in introduction because it usefully summarizes what is found in the rest of the literature. Here, more or less clearly, the idea that COHERENCE is a matter of degree either arises erroneously - as we shall see - from features of supposedly *cohering objects* that theorists happen to have in mind when bringing coherence into view, or the idea comes with no support at all. As Juutilainen’s commentary provides nothing further about COHERENCE as a matter of degree it is now helpful to build from a more detailed treatment.

As might be expected, the supposed relation of degree to COHERENCE is articulated more thoroughly in philosophical coherentist writing. Tomoji Shogenji’s treatment in his paper, ‘Why Does Coherence Appear Truth-Conducive?’<sup>12</sup>, is lauded and exemplary. In the first sentence of the abstract he lays claim to the relevant idea, writing of the ‘intuitively plausible view that a higher degree of coherence among independent pieces of evidence makes the hypothesis they support more probable’<sup>13</sup>. He continues to an example:

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<sup>11</sup> We need to exercise some caution here: Juutilainen’s remarks, read this way, fail to support the conclusion that coherence is *always* a matter of degree. But if his evidence is sound it does at least appear to show that coherence can *sometimes* happen to be a matter of degree.

<sup>12</sup> T Shogenji, ‘Why Does Coherence Appear Truth-Conducive?’ (2007) 157 *Synthese* 361. See also the equally well-known treatment given by Laurence Bonjour in *The Structure of Empirical Knowledge* (MIT 1985) at, e.g., 96-97.

<sup>13</sup> *Ibid*, 361.

Sarah is having persistent nausea and starts suspecting pregnancy. She goes over her life of the past several weeks and calls up memory of an activity that is conducive to pregnancy. Sarah visits a clinic and hears from the doctor that the preliminary test result indicates pregnancy.

Shogenji then comments:

Sarah is very well justified to believe in her pregnancy and an important part of justification seems to be the high degree of coherence among the independent pieces of evidence. If, for example, Sarah recalled no pregnancy-conducive activity or recalled only a very weakly pregnancy-conducive activity in the recent past, the pieces of evidence would be less coherent than in the original case, and Sarah would not be justified to believe in her pregnancy to the same degree as in the original case.<sup>14</sup>

I shall return to Shogenji's example and comments in section 5, his opening idea and illustration led here just to illustrate the presence of the view in question. Similar statements - of coherence as a matter of degree - are to be found throughout the philosophical literature, in Bonjour, Rescher, Haack, Lehrer, Ziff, Thagard and so on<sup>15</sup>. Unsurprisingly, they appear in the jurisprudential and wider legal literature as well, as we have already seen in Juutilainen<sup>16</sup>.

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<sup>14</sup> Ibid, 362.

<sup>15</sup> N Rescher, *The Coherence Theory of Truth* (OUP 1973), particularly the relevant discussion at 197-198; S Haack, 'The Unity of Truth and the Plurality of Truths' (2005) 9 *Principia* 87; K Lehrer, *Theory of Knowledge* (Routledge 1990), e.g., 108-9; P Ziff, *Epistemic Analysis* (D. Reidel 1984), and 'Coherence' (1984) 7 *Linguistics and Philosophy* 31; P Thagard, *Coherence in Thought and Action* (MIT 2000). Chang provides a recent capitulation of the view at which I take aim in H Chang, 'Operational Coherence as the Source of Truth' (2017) 67 *Proceedings of the Aristotelian Society* 103. He writes, "The linchpin in this whole way of thinking turns out to be the notion of coherence, whose meaning I have left quite vague in previous publications. It is the main thing I want to elaborate on in the rest of this paper. Coherence as I intend it goes beyond consistency between propositions; rather, it consists in various actions coming together in an effective way towards the achievement of one's aims. Coherence comes in degrees and different shapes, and it is necessarily a less precise concept than consistency, which comes well-defined through logical axioms" (at 107).

<sup>16</sup> See fn 4. The emergence of coherence as an express obligation can be seen in The EU's Treaty of Lisbon [2008] Arts.13(1) & 21(3), whilst theoretical attempts to clarify coherence are well represented in the vast literature associated with these provisions – see, for example, the EU's FRAME project: T Lewis, 'Coherence of human rights policymaking in EU institutions and other EU agencies and bodies', (2014) FRAME Deliverable 8.1, available at <https://fp7-frame.eu/wp-content/uploads/2016/08/06-Deliverable-8.1.pdf>. The FRAME document provides an exhaustive list of the deployment of coherence in EU human rights law to that point. Significantly, the term 'coherence', though present through almost all EU language editions of the Treaty, is replaced with 'consistent' in the English version – see H Lenk, 'Challenging the Notion of Coherence in EU Foreign Investment Policy' (2015) 8 *European Journal of Legal Studies* 6-20, at 8; C Gebhard, 'The Problem of Coherence in the European Union's International Relations' in C Hill, M Smith, & S Vanhoonacker (eds), *International Relations and the European Union (3rd ed)* (OUP 2017) 123, 105-6. Coherence also appears, e.g., in the explanatory preamble to a great number of UK statutes, and also occasionally in express provisions. For an example of the latter see the Youth Justice and Criminal Evidence Act 1999 c.23, Part II, Ch.1 (which, unusually, provides the specific referent of coherence through the relevant chapter at s.16(5)). In UK case law the term is widespread: for a recent use at the highest level see Lord Carnwath, *Whittington Hospital NHS Trust v XX* [2020] UKSC 14 [62-64]. And see also Lord Neuberger's apparent use of coherence as a matter of degree in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* (Article 19 intervening) [2011] EWCA Civ 43: "In my opinion, any sort of final coherence in relation to the scope and effect of section 18(1)(a) can only be provided by the Supreme Court, but I believe that, consistently with the spirit of the approach in *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* [2003] QB 679, the best way of applying the 'rather tangled' jurisprudence developed over the past thirty-five years, and ensuring maximum coherence (or maybe it is more realistic to say, minimum incoherence) is to hold that we have jurisdiction to hear the appeal in this case for the reasons given in paras 36–9 above."

Thus we find COHERENCE proposed as a matter of degree in work by Peczenik, Alexy and Peczenik, MacCormick, Raz, Berteau, Kress, Carbonell, Amaya, Araszkiewicz and Savelka<sup>17</sup> and many, many others. Alexy and Peczenik's treatment is helpfully illustrative in mapping the supposed relation of COHERENCE to, amongst other things, justification. The authors comment that '...one can say that coherence is a central element of a fully-fledged concept of justification, rationality, and correctness'<sup>18</sup> and then proceed to embed the notion that COHERENCE is a matter of degree throughout their detailed articulation of COHERENCE in the paper. Thus they write of the concept:

The main idea or the concept of coherence can be expressed as follows: the more the statements belonging to a given theory approximate a perfect supportive structure, the more coherent the theory.<sup>19</sup>

This formula is then repeated, replacing 'perfect supportive structure' with a list of other features, each promoting *more coherence* in its own way; for example: '*Ceteris paribus*, the greater the number of reciprocal empirical relations between statements belonging to a theory, the more coherent the theory'<sup>20</sup>.

More recently, Amalia Amaya has commented on and deployed Alexy and Peczenik's core idea in her authoritative and nuanced monograph on coherence and law, *The Tapestry of Reason*. Turning to Alexy and Peczenik's view of the main idea of coherence (i.e., at 131, quoted above) she writes of their thesis, 'Thus, the degree of coherence of a theory is a matter of the degree of perfection of its supportive structure'<sup>21</sup>. The core idea then runs through her own exposition, Amaya writing of the 'degree of coherence that may be required for legal justification'<sup>22</sup>, of 'how much coherence is required for legal justification'<sup>23</sup>, and 'the degree of coherence that is sufficient for legal justification'<sup>24</sup> when promoting her own idea of coherence in use in legal reasoning.

In light of the prevalence of the idea in question it is hardly surprising to find it in the work of the legal theorist that, more than any other, is taken to be seminal by those writing in the subject area. Thus COHERENCE appears as a matter of degree in Neil MacCormick's early writings (1978, 1981, 1984), and is reflected in his more recent and compendious restatement of his earlier ideas on COHERENCE, in *Rhetoric and the Rule of Law* (2005). Here we find a series of statements addressing the idea directly, MacCormick writing, for example, that 'Complete consistency is not a necessary condition of coherence, since unlike consistency, coherence can

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<sup>17</sup>Alexy and Peczenik (fn.4); Araszkiewicz and Savelka (fn 4); Berteau (fn 4); F Carbonell 'Coherence and Post-Sovereign Legal Argumentation' in AJ Menéndez and JE Fossum (eds) *The Post-Sovereign Constellation: Law and Democracy in Neil D. MacCormick's Legal and Political Theory* (ARENA 2008) 109; Kress (fn 4); MacCormick (fn 4); A Peczenik *On Law and Reason*, 2<sup>nd</sup> ed (Springer 2009); Raz (fn 4).

<sup>18</sup> Fn 4, 144.

<sup>19</sup> Fn 4, 131.

<sup>20</sup> Fn 4, 138.

<sup>21</sup> Amaya (fn 4), 23-24.

<sup>22</sup> Ibid, 528.

<sup>23</sup> Ibid, 528.

<sup>24</sup> Ibid, 529.



be a matter of degree'<sup>25</sup>. I shall return later to MacCormick's deployment of COHERENCE as a matter of degree, treating it in section 5 alongside several other examples drawn from the literature referenced in this section. It will there become clear that none of the theorists concerned articulates what is meant by degree, with this central topic now requiring further examination.

#### 4. The Oversight.

Notwithstanding admittedly strong appearances to the contrary, my claim is that COHERENCE - COHERENCE just as we deploy it, in all instances - happens to be an absolute, non-gradable notion<sup>26</sup>. Which is to say, COHERENCE is not a matter of degree. Of course, when we think of the coherence of a narrative, or of a legal system or of an undergraduate essay, or perhaps even of foreign policy across EU member states<sup>27</sup>, my view will likely seem counter-intuitive and implausible, because these subjects are all pretty obviously matters of degree. But we need to tread carefully, for only a little interrogation is required to show even here that the target assumption is a mistake. To make my case I will need to dispose of the two most vivid and plausible reasons that might be imagined for the orthodox claim. These have such immediate hold over us that together they quite reasonably account for the assumption across disciplines, interests and uses. They are, first, the idea that as narrative coherence, or EU foreign policy coherence, etc., is a matter of degree, so COHERENCE is a matter of degree; and, second, that as we soundly and intelligibly speak of '*more* coherence', and of '*less* coherence', then coherence's degree credentials are unimpeachable and established from the outset. I begin my criticism with this second idea and, after an excursion through related points, conclude the section with an attack on the first.

##### 'More' and 'Less'.

I contend that COHERENCE is an absolute, non-gradable notion. But as we routinely speak and write of '*more* coherence' and '*less* coherence' and assess matters as '*more* coherent' and '*less* coherent' and so on, it might seem that my central thesis can be rebutted immediately: whatever the attribution of degree amounts to it is plain that COHERENCE possesses it in some way. However, logicians, philosophers of language and linguists are likely to note at this point that such reasoning is the site of some notorious errors (concerning wholes and parts, enumeration, fallacies of division and composition and so on), and to counsel that much work has to be done beyond the bald association with '*more*' or '*less*' to establish that a relevant concept *is* a matter of degree.

After all, WATER is not a degree concept, even though we can ask for *more water* in the jug or *less water* in the bath. Certainly, *amount* of water can be assessed in degree terms, with greater or lesser quantities of it to be had, but this would not lead us to record, *pace* Juutilainen's

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<sup>25</sup> Fn 4, 190.

<sup>26</sup> This, regardless of whether readers commit to semantic realism, anti-realism, ordinary language philosophy, or whatever.

<sup>27</sup> E.g. Gebhard (fn 16).

remark on COHERENCE in section 3, that ‘*water* is always a matter of degree’. Similarly, we readily speak of ‘more death’ and ‘less death’ (and of ‘more deaths’ and ‘fewer deaths’) without committing ourselves to the view that DEATH is a matter of degree. And presumably I can ask for more apples or (turning to enumeration) for five apples, or (turning to division) for just half an apple, without putting APPLE into jeopardy as a degree concept. So even at this rudimentary level the relation between quantification, enumeration, division and concept must be approached with caution if we are to be sure of our ground. Of course, these opening remarks do not overthrow the idea that COHERENCE is a matter of degree, but they show that careful work needs to be done on the attribution of degree if we are to get clear on what is at stake in the coherence (and other) literature. Bluntly, the intelligibility of ‘more’ and ‘less’ with a specified concept offers no evidence one way or the other that the notion in question is a degree concept. For that we need to dig deeper.

### Scalar Degree Concepts.

To begin to build a more robust articulation of degree, recall that probabilists such as Roche imagine that coherence *comes in* degrees, perhaps as temperature, weight, length and so on come in degrees (contrast APPLE, DEATH, PREGNANT). In fact, TEMPERATURE, WEIGHT, LENGTH and like concepts are sometimes called ‘exemplary degree concepts’<sup>28</sup> because they are concepts whose extension always locates on a relative degree scale (a scale ‘*of degrees*’ in the case of temperature). The scalar nature of these concepts allows measurement using a numerical or other specific, dedicated but always relative scale for that predicate (your car is *5m* long; this rock weighs *2kg*). In short, exemplary degree concepts are linear, relative, graded, transitive and scalar. These ideas require further clarification because, as we are about to see, some of these features are strikingly at odds with those of another set of concepts that are also taken to be matters of degree.

First note, then, that for scalar degree concepts the commensurability of different degree scales is a function of the commensurability of the predicates they quantify. This idea is illustrated by the lack of propositional content - or truth-aptness - in attempts to relate incommensurable predicates; e.g. ‘I am heavier than my house is old’; ‘I am taller than he is warm’ (contrast the evident truth-aptness in relating different *scales* for the same predicate: e.g., ‘180cm is *shorter than* 6 feet’). Linearity is captured by the transitivity that is characteristic of gradable predicates: if I am less than 6 feet tall, and you are not, and Simon is taller than you, then Simon is taller than me. It is worth emphasising that a graded linear scale need not be plotted according to precise numerical measurement to satisfy the idea of a gradable predicate; the notions *less heavy*, *heavier* and *just as heavy* would be sufficient to furnish a comprehensive linear scale of heaviness, so long as the notions related to (i.e., were relative to) the same point – that particular rock over there, for example. Regardless of numerical precision, all gradable scalar predicates pick out measurement along some sort of linear relative scale, and this

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<sup>28</sup> E.g., M Morzycki, ‘Degree Modification of Gradable Nouns: Size Adjectives and Adnominal Degree Morphemes’ (2009) 17 *Natural Language Semantics* 175; M Morzycki, ‘The Several Faces of Adnominal Degree Modification’ in J Choi, EA Hogue, J Punske, D Tat, J Schertz, and A Trueman (eds) *Proceedings of the 29<sup>th</sup> West Coast Conference on Formal Linguistics (WCCFL)* (Cascadia Press 2012) 187.

measurement, regardless of epistemic difficulties, is truth apt across the full scope of the relevant predication. This last point is significant in what follows.

### Vague Degree Concepts.

TEMPERATURE, WEIGHT and LENGTH are, then, exemplary degree concepts, but what of other concepts that we typically think of as being matters of degree – FOGGY, for example, or COURAGEOUS or BALD? Just like the exemplary degree concepts these concepts present *in degrees*, but they differ from the exemplary degree concepts in a significant way. They are vague concepts, in which *intensional* indeterminacy results in a lack of truth-aptness for the predicated property in inevitable borderline cases, regardless of our epistemic clarity in looking at the matter in question. Hence baldness or fog creeps up on us by degrees, as the vagueness of the predicate leaves it impossible to say *when* BALD (FOGGY, etc.) becomes satisfied as we move through the borderline cases<sup>29</sup>. The distinction between exemplary degree concepts and vague degree concepts deserves emphasis: it isn't just that the vague concepts are vague and the others are not; it is that the vague concepts are vague and the gradable scalar predicates are sharp - *truth-apt sharp*, in fact. So BALD and TEMPERATURE are both matters of degree, but in the former the notion of degree articulates a *lack* of the truth-aptness that characterises degrees of the latter<sup>30</sup>.

The distinction drawn above is important: we impute degree to both sets of concepts, but are able to do so *precisely because* the vague concepts are vague<sup>31</sup>, and the non-vague concepts are truth-apt, and often quantifiably, sharp. Significantly, then - this with emphasis - degree applies in virtue of the intensional vagueness of the former and the extensional sharpness of the latter. The jurisprudential red flag is obvious: this scope (it isn't ambiguity: DEGREE carries the same meaning in both cases) could result in logical and philosophical error because vague concepts (or even concepts just perceived to be vague) might appear sharpened by the mere attribution of degree. *Pace*, perhaps, COHERENCE.

### Absolute Concepts and COHERENCE.

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<sup>29</sup> Notably, the resultant extensional difficulties persist even under trichological attempts to apply scale to the phenomenon - hence the Hamilton-Norwood *scale of baldness*, asserting 7 types in ascending order, turns out to be 'unreliable' at each supposed boundary: see M Guarrera, P Cardo, P Arrigo, A Reborá 'Reliability of Hamilton-Norwood Classification' (2009) 1 Int J Trichology 120.

<sup>30</sup> To see this another way, note that the sorites paradox only takes hold in relation to the vague concepts.

<sup>31</sup> In my comments concerning vagueness and degree I do not intend to call to mind the extensive and sophisticated philosophical literature that has recently been generated on truth and vagueness (see, e.g., T Williamson, *Vagueness* (Routledge 1994); R Sorenson, 'Vagueness' (1997) in Stanford Encyclopaedia of Philosophy <https://plato.stanford.edu/entries/vagueness/>, & R Sorenson, *Vagueness and Contradiction* (Clarendon 2001). This philosophical literature makes a number of claims, such as Williamson's that there are no vague concepts, just our epistemic incapacity in knowing where modal satisfaction arises. In *Vagueness and Degrees of Truth* (OUP 2013), Nicholas Smith considers truth as a matter of degree, as have others who attempt to reconcile vague concepts and logic. My interest and criticism is much more rudimentary, concerning the ways in which degree comes to be imputed to concepts merely through superficial association, thereby palliating – undeservedly – the call for a clear account of the notion in question. In this vein legal theorists and others might recall Roy Sorenson's caution that "Normally, the point of declaring something to be a borderline *F* is to renounce any further effort to discover whether it is an *F*" (2001, 8).

In review then, we routinely refer to concepts as matters of degree in at least two ways, using degree in description of gradable scalar predicates (TEMPERATURE) and also concepts whose application yields inevitable uncertainty or contention at a borderline (BALD). But of course, there may be some concepts whose stipulated, technical application is a matter of degree as a gradable scalar predicate, but whose ordinary application can always yield contention at a borderline (e.g., FOGGY<sup>32</sup>). And then there are predicates that are not matters of degree at all, for not every concept or notion is a matter of degree. PREGNANT is a well-worn example, but others come just as readily to mind: DEAD; COMPLETE; UNIQUE; TRUE and so on. Yet as we saw earlier, many of these absolute predicates still admit what appear to be graded adjectival and adverbial modifiers such as ‘more’ and ‘less’ (and also ‘slightly’, ‘nearly’, ‘partly’, ‘mostly’, etc.). This reminds us to remain cautious, prompting further enquiry into a concept at issue, and so a return to COHERENCE is now due.

Over the next several paragraphs my argument concerning COHERENCE draws on aspects of logic, philosophy of language and linguistics in making the case against the orthodox view. We can clear some ground simply enough, with a consideration of COHERENCE under the rubric offered by linguistics. The case from linguistics is merely circumstantial, depending upon general observations from our language use across cases, but as the ‘degree’ view of COHERENCE appears itself to arrive from unexamined features of its use in natural language we might reasonably begin here.

#### COHERENCE and Linguistics.

We can start by focusing immediately on a central question - whether COHERENCE fits a relative or absolute linguistic typology. Here recourse can be made to its fit with ‘-for a’ propositions that characterise relative degree predicates through their shifting relative, contextual markers (e.g., tall *for a 10-year old*). But now we quickly see that COHERENCE is a poor fit. We simply do not say that an argument ‘coheres *for* inductive reason’, or that a painting in oil ‘coheres *for a* painting’. Physicists do not declare of two observed light waves that they cohere *for a* phenomenon in optics. Through these and countless other examples it is not that the ‘-for a’ clause renders the proposition at issue unintelligible; rather it is superfluous, in the manner of a container being ‘empty for a bucket’, or a pet being ‘dead for a dog’. Empty is empty, dead is dead, and coherent is coherent, regardless of subject, context or relative standard. The same cannot be said of TALL, EXPENSIVE or LARGE. For COHERENCE, then, the prospect begins to emerge that its predication is not a relative matter. We can have coherent inductive reason, coherent artwork, narratives that cohere, and plans that cohere with other plans, just as we can have empty buckets, dead pets, doors that are locked and propositions that are consistent with each other, with the idea beginning to form that each of these predicates is *absolute*, whether empty, dead, locked, consistent or coherent.

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<sup>32</sup> See the UK’s Met Office: <https://www.metoffice.gov.uk/weather/learn-about/weather/types-of-weather/fog/difference-mist-and-fog> (accessed 26/10/2024). *Technically* it’s fog, not mist, if visibility is less than 1000m.

Though scarcely compelling so far, fortunately it is possible to further settle the standing of COHERENCE as an absolute predicate, at least as far as the linguists' typology is concerned. We can see this in multiple ways. For example, the predication of a relative adjective always allows for still *more* of the predicated property (or less) just because – unlike absolute concepts – the relative concepts are open-ended. Thus, I might state that the car *is expensive*, but could always imagine it *be more expensive* still. In contrast, I could not intelligibly state that the glass *is full* and then claim that it *could be fuller*. COHERENCE behaves like the absolute predicate FULL here, and not like EXPENSIVE. So, if light waves *are* coherent, they couldn't be *more* coherent; where a poem coheres as a sonnet, it is not possible for it to cohere *more* as a sonnet; if an equation *is* coherent, it is not possible for it to be *more* coherent than it is. This is because FULL and COHERENT are absolute predicates<sup>33</sup>.

Recourse to negation and antonym also supports the linguistic conclusion that begins to emerge above, that COHERENCE is an absolute predicate. This is because in the case of absolute predication negation directly implies the antonym. For example, 'the door is not closed' implies that 'the door is open'; 'the table is not wet' implies that 'the table is dry'. Similarly with COHERENCE: 'the argument is not coherent' implies 'the argument is incoherent'; 'the artwork is coherent' implies that 'the artwork is not incoherent'. This bivalent implication does not hold for relative predicates: 'the car is not expensive' does not imply that 'the car is inexpensive'; 'Michael is not tall' does not imply that 'Michael is short'. So it would appear, once again, that COHERENCE is an absolute predicate – in step, unsurprisingly, with its closest conceptual associates, ADHERENCE and INHERENCE. These understandings clear the way for consideration of the central question that still stands in front of us, and which I have so far kept in the margins: if absolute, is COHERENCE an absolute gradable, or absolute non-gradable predicate?

### Absolute Gradable Predicates.

In linguistics absolute predicates are sometimes separated into two types – non-gradable and gradable<sup>34</sup>. So, there are absolute non-gradable predicates (e.g., UNIQUE; TRUE; PREGNANT; ALIVE; CONSISTENT; WOODEN; CHEMICAL; INVARIANT), and absolute gradable predicates (OPEN; CLOSED; CLEAN; EMPTY; FULL), though there is a certain amount of dispute concerning this latter type<sup>35</sup>. There is at least general consensus that absolute gradable predicates, though similar to relative predicates insofar as they are gradable, are distinct from these because they

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<sup>33</sup> It may seem that I have missed something here, because we might reasonably consider a narrative (or plan, or artwork) to be coherent, yet always imagine it more coherent still. Perhaps we might even be tempted to propose two kinds of coherence, one absolute (mathematical coherence; light-wave coherence, etc.) and one relative (artwork coherence; policy coherence...). However, I show later in this section that we should firmly resist the temptation.

<sup>34</sup> E.g., C Kennedy, 'Vagueness and Grammar: the semantics of relative and absolute gradable adjectives' (2007) 30 *Linguist Philos.* 1; C Kennedy & L McNally, 'Scale Structure, Degree Modification, and the Semantics of Gradable Predicates' (2005) 81 *Language* 345.

<sup>35</sup> For example, see the discussion in S Toledo and G Sassoon, 'Absolute vs. Relative Adjectives – Variance Within vs. Between Individuals' (2011) 21 *Proceedings of SALT* 135.

are closed at a maximal or minimal limit<sup>36</sup>. So where EXPENSIVE (relative) is open, allowing that ‘an expensive object’ could always be more expensive still, FULL (absolute gradable) is closed at a maximal threshold, so a full bucket cannot be fuller. Yet FULL remains gradable because we can ask, e.g., for a bucket that is two-thirds full, or is less full, or wish that the bucket were a little bit fuller than it is. This is not like asking for something that is - to contrast the first instance - two-thirds apple, because in the latter case we could only have in mind a compound object possessing one-third non-apple content, which doesn’t make APPLE a gradable concept. Similarly, we wouldn’t assess a plan as *a third coherent*, save in the case that we meant, for example, a first section of three is coherent. There is no sense to ‘a third coherent’ outside an individual assessment of parts of a compound object. Of such an object we might loosely say that it is a bit coherent, but this implies neither that COHERENCE is gradable nor that it is vague<sup>37</sup>, with the equivocal use of ‘bit’ here referring to a part, rather than lowly location on a linear, graded scale: it is the (one third) bit that is coherent. In contrast, *two thirds full* does not present us with an object of parts, two thirds of which are full, as fullness here simply lies on one continuous, gradable scale, right up to the closed, maximal amount. Which is just to notice that the absolute FULL is a gradable predicate, whereas the absolute COHERENT is non-gradable. In fact, through all intelligible instances COHERENCE behaves like the absolute non-gradable APPLE (and WATER; DEATH, etc.), rather than the gradable FULL, OPEN, CLEAN and like concepts, and that is because COHERENCE, on the linguistic account, simply isn’t gradable.

So much for the linguists’ morphology, which though arresting is scarcely conclusive. Under it any claim that COHERENCE is a relative predicate can reasonably be excluded, whilst circumstantial linguistic typology at least makes better sense of our commitments to the concept as a non-gradable rather than gradable absolute notion, though plainly more is needed to make out my claim – particularly as some of the linguists’ distinctions might appear quite friable. Fortunately, recourse to philosophical logic and philosophy of language offers the further defence that is now needed.

### An Error of Reason.

My claim is that COHERENCE is an absolute non-gradable notion, but I am aware that plausible reasons still suggest otherwise, going beyond the concept’s association with ‘more’ and ‘less’, and beyond association with quantifying, emphasising, dividing or enumerating modifiers or adjectival phrases. For this reason I must now turn to dispose of the most powerful reason still standing for the supposition that coherence is a matter of degree. This is the idea that as narrative coherence or EU foreign policy coherence or the coherence of legal reasoning (or whatever) is a matter of degree, so it follows - so it is *obvious* - that COHERENCE is a matter of degree.

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<sup>36</sup> It is this dynamic that explains the asymmetric intelligibility of ‘this area is slightly *dangerous*’ (closed at an upper limit) c.f. ‘this area is slightly *safe*’ (closed at a lower), whereas intelligibility flips if we substitute ‘perfectly’ for ‘slightly’ in these examples. See, e.g., Kennedy & McNally (fn 34); Kennedy (fn 34).

<sup>37</sup> On the distinction in linguistics see C Qing & M Franke, ‘Gradable Adjectives, Vagueness, and Optimal Language Use: A Speaker-Oriented Model’ (2014) 24 Proceedings of SALT 23.

It is worth meeting the point head on for, bluntly, such an inference is without foundation. Just because ‘complete mess’ is vague, it doesn’t follow that COMPLETE is vague. Just because ‘perfect beauty’ is contentious it doesn’t follow that PERFECT is contentious. That ‘secure bank’ can refer to a financial institution or a topographical feature gives me no reason to conclude that SECURE is ambiguous. And so on, with COHERENCE supplement to these other absolute predicates: just because a coherent meteorological pattern emerges only by degrees, it doesn’t follow that COHERENCE is a gradable predicate. It isn’t, and to imagine otherwise, however plausible it might seem at first glance, is to commit a fallacy of ambiguity. Formally the fallacy in question is one of division, but the central difficulty can emerge just as easily in amphiboly. We see the former where qualities of the whole are imputed to the parts (‘complete mess’ is vague, so both MESS *and* COMPLETE are vague) and the latter if we ask - for example - ‘what perfection means for art’, and imagine our enquiry digs into a special (perhaps degree) meaning of PERFECT, rather than into the attributes ART must possess to satisfy the commonplace absolute predicate<sup>38</sup>. It is easy to confuse our ontological anxieties about a subject with semantic concerns about its predicate, and it will often seem less trouble to cast matters this way. Yet so destructive are these fallacies here that they deserve further emphasis.

Consider the case. PERFECT is an absolute concept (meaning faultless; flawless) and presents this way across multiple instances (think ‘perfect score’; ‘perfect circle’). Yet when the subject it governs is vague or otherwise prone to intensional and extensional anxieties (--artwork’; --performance’; ‘--knowledge’; ‘--cake’) then PERFECT can assume a gradable cast by association. We might even be tempted to put matters that way, writing of the degree of perfection of a work of art, where the idea would simply not occur to us when thinking of a perfect score in a sport (‘the degree of perfection of the score...’). The same phenomenon occurs where the subject of perfection is difficult to achieve, or is hotly contested, or is a subjective matter, and so on. If the temptation seems doubtful, whether for PERFECTION or COHERENCE, we have already met the phenomenon in Section 3, Amaya bringing matters to a point where she writes, ‘the degree of coherence of a theory is a matter of the degree of perfection of its supportive structure’<sup>39</sup>. But PERFECT is not a degree notion, and neither is COHERENCE, and the degree character of vexed, vague or contentious subject-predicate terms (coherent theory; perfect supportive structure) is not evidence for either proposition.

In short, think ‘policy coherence’ (as many have<sup>40</sup>) and COHERENCE is perceived as a matter of degree just because ‘policy’ is vague. But if I am right then we should also expect to find instances of coherence predication where COHERENCE does *not* appear as a matter of degree, and these would be found where the subject of coherence predication is not itself a degree matter. So it is also important to acknowledge that where the topic is the coherence of light

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<sup>38</sup> Fallacies of accent and equivocation can be added to the list without too much effort: consider ‘means’ for the latter and for the former contrast emphasis on *what perfection means* for art v. *what perfection means for art*.

<sup>39</sup> Fn 4, 23-4. And see the Preamble to the Constitution of the United States of America, proclaiming the ambition to form ‘a more perfect union’.

<sup>40</sup> E.g., *EU Report on Policy Coherence for Development* (‘PCD’), European Commission; Brussels, SWD (2013) 456 final.

waves, or the coherence of a set of sentences under the rubric ‘propositions in English’, or a poem’s coherence with the sonnet form and so on, then - as my thesis suggests - COHERENCE no longer retains a gradable cast.

However, something doesn’t yet add up in my analysis. For we do not routinely or habitually construe the absolutes COMPLETE or INVARIANT or UNAVOIDABLE as degree concepts even where their application ranges over vague, contested or ambiguous subjects. Why, then, should COHERENCE suffer so much in this way? The answer to the puzzle is straightforward: the mistake is made routinely with COHERENCE but seldom with UNAVOIDABLE, COMPLETE, INVARIANT, etc. because theorists are doubtful only about the meaning of the former concept. We rarely make the mistake with COMPLETE, because we are already sure what COMPLETE means, and that it is absolute. In contrast, COHERENCE has been ready prey for the mistaken imputation just because theorists are unsure exactly what it amounts to in the first place<sup>41</sup>. Moreover, like two drunken sailors leaning against each other for balance (a motif familiar at least to epistemic coherentists) construing COHERENCE as a matter of degree seems to palliate the elusiveness of the concept - precisely because it appears to remove the obligation to provide sharp-edged, modal conditions for the concept’s correct application. This is an important point that deserves special emphasis, and might be extended more generally to other contested concepts beyond COHERENCE itself. But regarding COHERENCE I contend that the universal supposition is wrong anyway: COHERENCE is neither vague nor elusive, and this further undermines the idea that COHERENCE is a degree concept, supplement to its linguistic morphology.

It remains, then, to answer what COHERENCE is more positively. My contention, expressed in detail elsewhere, is that COHERENCE happens just to mean ‘sticking together’, this understanding sufficient by itself to account for the concept’s use in every instance<sup>42</sup>. Though subject to numerous adjectives and adverbs, ‘sticking together’ is an absolute predicate, and truth-apt in every case. There is no borderline, middle ground - even though vagueness and degree plainly intrude in the ordinary way where *the subject* to coherence predication is vague and contested. Moreover, when we talk about sticking together ‘weakly’ or ‘strongly’, we are not modifying the concept or quantifying it on a degree scale. Rather we are providing auxiliary information about the property, where ‘weakly sticking together’ implies, e.g., ‘likely to stop sticking together sometime soon’ or ‘requiring little intervention to come apart’. And so on. There is nothing esoteric about any of this: ‘weak coherence’ just works like ‘fast car’

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<sup>41</sup> The sight of a predatory tiger, emerging by degrees from the undergrowth, neither warrants nor even stimulates the hopeful view that ‘predatory’ and ‘tiger’ are just matters of degree. It is pretty obvious that EMERGING is the degree concept here. But so it is, too, in the phenomenon mentioned earlier, of a coherent meteorological pattern *emerging by degrees* from the data - though now uncertainty about COHERENCE and the vagueness of ‘meteorological pattern’ conspire illicitly to allow ‘coherent’ to assume a degree cast by association.

<sup>42</sup> See my (2014). The concept is found in use as both a property and relation and, as might be expected from etymology and language use, is natural counterpart to adherence and inherence - as intimated earlier. Tellingly, then, we are able to present the full complement: asymmetrical external sticking - *adherence*; asymmetrical internal sticking - *inherence*; and symmetrical sticking - *coherence* - both internally as property and externally as relation. As far as I can see, anything imputed to COHERENCE beyond these elements can quickly be identified as contingent double-counting from other features of the instances used to bring COHERENCE into view.



or ‘hungry elephant’, whilst ‘more’ and ‘less’ coherence simply means - and can only mean - that within a certain domain there is a preponderance or lack or relatively greater or lesser number of instances of the property in question. By contrast assumptions about coherence’s degree status are explained universally through the oversights I identify.

#### The COHERENCE literature.

The following section, 5, takes up the heavy work of showing the mistakes I pick out are non-trivial in the literature, so as precursor it is worth closing this section with a return to the literature itself. For this reason I now locate my analysis in relation to work by two of the most significant commentators on law and coherence – Neil MacCormick and Aleksander Peczenik. Let us consider first Peczenik’s *On Law and Reason*<sup>43</sup>. The choice has significance because Peczenik’s idea presents, for a number of reasons, one of the best challenges to the view I propose in this paper, that COHERENCE isn’t a matter of degree.

In an illuminating passage Peczenik comments,

Criteria of coherence make the concept of coherence more precise. The criteria are related to each other. The degree of coherence depends on weighing them up and balancing them against each other. The following discussion of these criteria constitutes one conception of coherence. Since the concept of coherence is vague and contested, it is possible to conceive of coherence in different ways.<sup>44</sup>

Peczenik’s idea, repeating his work with Robert Alexy some two decades earlier<sup>45</sup>, presents a severe test for my argument because he moves beyond a sparse statement that COHERENCE is a matter of degree (routine in the literature), to advance a conception in which the degree of coherence is founded with apparent precision upon weighing and balancing multiple, carefully drafted ‘criteria of coherence’. Peczenik’s view thus seems to pick out in meticulous detail the idea of COHERENCE as a matter of degree, thereby providing the test of my thesis mentioned.

Let us start by calling on the introductory idea of coherence produced by Peczenik as precursor to his more detailed treatment. Thus he comments that,

The main idea or the concept of coherence can be expressed in the following way. The more the statements belonging to a given theory approximate a perfect supportive structure, the more coherent the theory.<sup>46</sup>

But plainly, *on its face*, this (and in fact each subsequent criterion of Peczenik’s<sup>47</sup>) constitutes but a part-account of what features are required for *a more coherent THEORY*. After all, what has ‘statements that approximate a perfect supportive structure’ got to do with the coherence

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<sup>43</sup> Peczenik, (fn 17).

<sup>44</sup> Ibid, 133.

<sup>45</sup> Alexy and Peczenik, fn 4.

<sup>46</sup> Fn 17, 132.

<sup>47</sup> Fn 17, ch.4 beginning at 4.1.2: ‘*Ceteris paribus*, the greater the number of reciprocal empirical relations between statements belonging to a theory, the more coherent the theory’, and so on.

of light waves, or the coherence of a work of art? Yet Peczenik states in forthright manner that his ‘criteria of coherence make *the concept of coherence* more precise’ (my italics). This is the mistake identified above, in which Peczenik proceeds without any defence against, explanation for, or even mention of, the threat that he is confusing contingent aspects of COHERENCE’S specific extension (here to THEORY) with claims about the meaning of COHERENCE itself. As his criteria can be read together - with perfect sense - as a summation of one idea for the making of exemplary THEORY, and make no sense as an elucidation of COHERENCE beyond the exceptionally partial, stipulated or esoteric, I think it is clear that the mistake has been made. This is something that readers can check for themselves. But it remains only half the story, for we still need to account for Peczenik’s treatment of coherence as a matter of degree (‘the degree of coherence depends on...’). Under my analysis this mistake follows naturally from the first. Thus, COHERENCE appears as a degree concept in Peczenik’s account simply because the satisfaction of his real object, ‘coherent theory’, *is* a matter of degree. But that’s only because the satisfaction of THEORY is a matter of degree, just because THEORY is vague. So, more of each Peczenik criterion appears to give us a *greater degree of coherence* simply because we cannot say with any modal crispness what conditions must obtain for *THEORY* to be satisfied. Were we to have clear modal conditions for THEORY (etc.), COHERENCE would not present as a matter of degree at all, *pace* coherent sonnet, or coherent sentence, and so on. So, as suggested in the last section, we *perceive* COHERENCE to be a relative, degree concept in Peczenik’s hands because of features of the object that is subject to coherence predication, and not because of qualities possessed by COHERENCE itself.

Peczenik presents us with an illustration of two features that run through the literature on my analysis, with his view needing (under his own account) to be read down as but *one conception of* COHERENCE merely because (according to my account) it fails to fit other *instances of* the concept, whilst his attribution of degree to COHERENCE simply recasts the vagueness of the cohering object he has primarily in mind, regardless of his attempt to make the target concept more precise through provision of detailed criteria. Notably Peczenik writes that ‘Since the concept of coherence is vague and contested, it is possible to conceive of coherence in different ways’, but the matter is entirely the other way around. COHERENCE presents as vague and contested *because* theorists have conceived of it in different ways, and that’s just because they have conceived of it with their own assorted vague and unsettled objects in mind, or with their peers’ very different conceptual commitments to those same objects in mind (e.g., ‘legal system’, ‘judicial reason’). And that’s all. Just one further point need be made in this section regarding coherence’s career as a degree concept. This concerns the strange phenomenon in which COHERENCE is merely *announced* as a matter of degree, but is then treated as crisply bivalent in what follows.

#### Phantom Degree Attribution.

The relevant phenomenon can be discerned in the writing of MacCormick (2005). In a comment that has become influential he writes early on in his chapter ‘Coherence, Principles and Analogies’:

Complete consistency is not a necessary condition of coherence, since unlike consistency, coherence can be a matter of degree. A story can be coherent on the whole and as a whole, though it contains some internal inconsistencies...<sup>48</sup>

It is useful to look carefully at this subtle comment. In it the target proposition is merely deployed in support of another claim about COHERENCE, that ‘complete consistency’ is not necessary for the concept’s satisfaction. The passage does not constitute an *argument for* COHERENCE as a matter of degree. However, MacCormick’s illustration concerning story-coherence might be taken as evidence for the proposition, so it is helpful to focus on that.

MacCormick illustrates his wider claim with the idea that ‘A story can be coherent on the whole and as a whole, though it contains some internal inconsistencies...’. First consider the twin claims i) that a story can cohere ‘on the whole’, and ii) that a story can cohere ‘as a whole’. Taking ii) first, plainly there is sense to the idea that stories (good stories) might cohere *as a whole*. This idea might be contrasted with the idea that less well-made stories might cohere only in parts, or not at all. There is no reason here to infer or assume that COHERENCE is a matter of degree. But then, matters are the same when looking at i); i.e., a story can be coherent *on the whole* – for simply compare other absolutes: e.g., ‘the witness testimony *was true* on the whole’. This is just a function of parthood. So the evidence for degree of COHERENCE, if any, must instead come in the larger, composite idea that *though it contains some internal inconsistencies* a story’s coherence may be preserved i) on the whole, and ii) as a whole. However, i) can quickly be dismissed as evidence of degree as we have just seen. We are then left with the more striking ii), that a story can be ‘coherent as a whole, though it contains some internal inconsistencies’. But this is now a matter of philosophical logic, in which there are two forks, neither sympathetic to MacCormick’s ambitions. In the first place, it is conceivable (following my earlier analysis) that the illustration merely shows something about ‘story’, rather than ‘coherence’. The idea is that *coherent stories* can accommodate some internal inconsistencies - simply because *stories* can accommodate internal inconsistencies. To see the appeal of this reading of the passage, consider the awkwardness of the illustration with a different topic-subject: e.g., ‘A *mathematical theorem* can be coherent as a whole, though it contains some internal inconsistencies’. This no longer works, and that’s because MacCormick’s observations are really contingent on ‘story’, not COHERENCE. But even if they were about the target notion there still remains a problem: either there *is* an internal, conceptual relationship between ‘coherent as a whole’ and a requirement of consistency, or there *isn’t*. If there is, then MacCormick’s coherence-claim about the story is wrong in the first place. If there isn’t, his claim does nothing to establish that coherence ‘can be a matter of degree’ because consistency wouldn’t be necessary for coherence. So the target proposition, expressed by MacCormick in the passage, is either inferred in error on the basis of an exemplar instance (‘coherent story’) or comes with no support at all (*pace* Juutalainen, as we saw earlier). But this is only part of the phantom attribution.

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<sup>48</sup> MacCormick (fn 4), at 190.

Already doubtful, the idea that coherence is a degree concept then drops out of MacCormick's deployment of the notion as his analysis proceeds. Thus he comments:

We might say that a set of rules are coherent if they all satisfy or are instances of a single more general principle (at 192);

'Coherence' can then be at least partially satisfied by a system that relates rationally to what those responsible for determining its content regard as values (at 202);

For once it is articulated in this way, the procedure works from individual instances to explanatory or justificatory generalizations of these, then returns to the now coherently connected decision about the current problem (at 209);

And on into the next chapter:

...But this depends on our being able to comprehend activities and projects as coherent series or congeries of actions or acts linked together under some purpose or value or normative framework (at 216);

The story of the case *R v Smith* has to be presented and accepted as a story about a murder trial that happened in 'the real world', not a merely credible and coherent account of the world as it possibly was (at 220).

And so on. In these examples and others objects are coherent or not; there is no reason to suppose that COHERENCE is a matter of degree in any of them. Moreover, in a reflection of MacCormick's discussion of consistency above, COHERENCE is a notion that can be 'partially satisfied' according to the presence of stipulated conditions, and is 'satisfied' on the presence of others. But 'partially satisfied concept', like 'partially eaten apple', doesn't make COHERENCE a degree concept. In fact, MacCormick does not deploy the idea of degree at all in his predication of coherence in the examples above, whether as graded relative predicate or vague concept, reserving reference to degree for his use of coherence in relation to a very particular project, to which attention must now turn.

## 5. Degree as Cover.

Quite reasonably, the above analysis might be considered mere fiddling with verbal distinctions while important work remains to be done elsewhere. In a footnote I indicated earlier that treating COHERENCE as a degree concept provided convenient cover for three troublesome and unanswered features of the literature, but even the first two of these might seem peripheral to any pressing concerns in law and legal reasoning. The three uncomfortable features of the coherence literature were (i) the awkwardness of COHERENCE's supposed conceptual vagueness; ii) endemic elision of intension and extension in its articulation; and (iii) suppression of attention to the bright-line modality required to accomplish the work the concept is claimed to deliver. But what of it if the supposed vagueness of COHERENCE re-emerges in the idea that the notion is a 'matter of degree'? And what of it if the degree cast of some admittedly hazy notions (policy for development, common law reason, etc.), are attributed to COHERENCE itself when attention focuses on the deployment of the notion in those spheres? Surely we can simply adjust our accounts accordingly and proceed as before, only now with

our conceptual dividing lines in smarter shape. There are robust answers to all these challenges<sup>49</sup>, but in this section I shall concentrate my defence on the third awkward feature, particularly as attention to it helps to throw light on the damage caused by the other two.

In opening illustration of the problem we can retain the focus on Neil McCormick's essay 'Coherence in Legal Justification' (1984) and its revised form in *Rhetoric and the Rule of Law* (2005)<sup>50</sup>. In the paper and later book McCormick uses the fictional Sherlock Holmes story *Silver Blaze*<sup>51</sup> to show how narrative coherence provides 'a test as to the truth or probable truth of propositions about unperceived things and events' for, as he concludes arrestingly, 'Such a test justifies beliefs'<sup>52</sup>. *Silver Blaze* is perhaps better known as the case of *The Dog that Didn't Bark*. In the story Police Inspector Gregory arrests a suspicious-looking stranger for the disappearance from its stable of a valuable racehorse and the murder of its trainer, but Holmes elicits information that the stable dog didn't bark, concluding - under the idea that dogs bark at strangers - that the crime was committed by someone who was known to the dog. McCormick writes:

"The dog did not bark" and "a stranger took the horse" are not mutually contradictory. Yet if, as a generalization, dogs bark at strangers, then, under this common-sense principle, the dog's not barking becomes incompatible with a stranger's taking the horse, unless there is some further explanation, or some relevant exception to the common-sense generalization.<sup>53</sup>

In deploying narrative coherence, McCormick's central idea is that Holmes's account of events is *more coherent* than the police account, and that this greater coherence accounts for the superiority of Holmes's conclusion. But this is a mistake. The police conclusion - that a stranger committed the crimes - is manifestly coherent, even if mundane ("sudden criminal happening" and "sudden appearance of suspicious-looking stranger" are coherent, even narratively coherent, just as they stand). And it is not coherence that leads Holmes to his preferred conclusion; instead he simply asks a further question, and the response to *this* creates a new narrative element - that is, creates a new story. Perhaps the police explanation does not cohere with the new set of narrative elements (flatly, it doesn't), but this indicates nothing about the coherence - nor supposed 'relative coherence' - of the police's former reasoning<sup>54</sup>.

McCormick's chief difficulty is that Holmes's conclusion simply *isn't justified*, because if we know one thing from the great detective's intervention in the story it is that further facts can come to light that cause us to change our minds about who we think did it. (McCormick even acknowledges as much when considering the case, advising us that our conclusions must be 'tentative' because of, amongst other things, the 'incompleteness of information derived from

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<sup>49</sup> See my 2008 & 2014, both fn 5.

<sup>50</sup> Both, fn 4.

<sup>51</sup> A Conan Doyle, 'Silver Blaze' in *The Memoirs of Sherlock Holmes* (George Newnes 1894).

<sup>52</sup> Fn 48, 226 n.12.

<sup>53</sup> Fn 48, 225 n.12.

<sup>54</sup> See (2008; 2014).

perception'<sup>55</sup>.) So a key aspect of detection, here as elsewhere, is to know when we can *safely stop asking questions*. Obviously an aspect of any justificatory test is at what point a critical proposition can be taken to be justified (e.g. the stranger did it; the stranger didn't do it), but as we have seen, there is no notion of completeness available for the detection in question – certainly there isn't on the facts of *Silver Blaze*.

However, one obvious way in which the deployment of coherence can *seem* to fit its supposed justificatory purpose is if coherence is taken to be a matter of degree. The reason is simple: if COHERENCE is a matter of degree then, in Jonathan Dancy's phrase, we appear to allow 'the requirement of completeness quietly to be dropped'<sup>56</sup>. In fact, if COHERENCE is treated as a matter of degree it would seem to follow that completeness, or the satisfaction of necessary and sufficient conditions, or any other conceivable, modal bright line simply *ought* to be dropped, as inappropriate. In this way an apparently benign, undefended assumption can appear to yield a solution to the problem of justification, for at a stroke appeal to *more coherence* appears to give stronger justification, and *less coherence* provides weaker justification, just in step with Shogenji's 'intuitively plausible view that a higher degree of coherence among independent pieces of evidence makes the hypothesis they support more probable'.

The note above is significant in light of MacCormick's apparent idea that coherence - coherence appealed to in degree terms (he writes of 'enhancing' and 'weakening' coherence on the facing page<sup>57</sup>) – distinguishes the two stories. But in a reflection of the wider literature, MacCormick's influential argument only appears convincing because, i) he keeps the relevant subjects of coherence predication vague (they are, when drawn crisply, Gregory's account v. Holmes's account); and ii), by adducing coherence, in vague terms, as a matter of degree. Once COHERENCE is delivered (correctly, according to me) in absolute non-gradable terms the persuasive force of MacCormick's thesis collapses immediately: with coherence as a non-gradable concept Holmes's thesis would be preferred only if Gregory's was *not coherent*, which Gregory's manifestly is. In short, Holmes doesn't command *more coherence* than Gregory in *Silver Blaze*, he simply has more evidence. Understood this way, COHERENCE provides no cover at all<sup>58</sup>.

Confusion over COHERENCE as a degree concept seems prevalent in the *philosophical* literature

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<sup>55</sup> Fn 48, 225.

<sup>56</sup> J Dancy, *An Introduction to Contemporary Epistemology* (Blackwell 1985). At 111, in a section entitled 'What is coherence?', Dancy writes: 'First, it seems that the requirement of completeness can quietly be dropped. This is because the need for completeness is already accounted for in the search for a higher degree of mutual explanatoriness. And it is just as well, as there is no really clear notion of completeness available here'.

<sup>57</sup> Fn 48, 224, the Holmes story appearing in the main text and as a long footnote on 225.

<sup>58</sup> Many works might be considered under this same analytical rubric. For example, Ernest Weinrib's interesting articulation and deployment of COHERENCE warrants further study. In *The Idea of Private Law* (fn 4) Weinrib's presentation of COHERENCE has the characteristics of an absolute, non-gradable notion (unsurprising as he relates it to wholes and unities), yet precisely where the notion appears in normative, justificatory use Weinrib invokes the idea of 'extent' in a way that is equivocal on the key question - for example, at 35, 42 and this at 45: "It is not the presence or absence of this or that desirable feature that is decisive for the assessment of a juridical relationship, but the extent to which all of its features cohere."

that concerns justification, too. Recall Shogenji's example introduced earlier, in Section 3. The example was of Sarah and her speculation about pregnancy. Shogenji later has this to say about the example (it is necessary to produce a long passage):

In our story Sarah initially has only one piece of evidence for pregnancy (perception of persistent nausea), but soon the second piece of evidence emerges (memory of a pregnancy-conducive activity), which is coherent with the first piece. It seems obvious, intuitively, that their coherence is truth-conducive, especially when we think of an alternative scenario where Sarah had the same perceptual evidence (perception of persistent nausea) but could not recall any pregnancy-conducive activity in the recent past. The memorial evidence would then be incoherent with the perceptual evidence, and this would make Sarah dismiss the hypothesis of pregnancy. Whether the pieces of evidence are coherent or not does make a difference in the confirmation of the hypothesis. The *degree* of coherence is also relevant. If Sarah only recalled a very weakly pregnancy-conducive activity in the recent past, the memorial evidence would be less coherent with the perceptual evidence than in the original case. This would make her less confident about her pregnancy than in the original case...

These counterfactual considerations leave no doubt that the degree of coherence between the new and old pieces of evidence affects the confirmation of the hypothesis.<sup>59</sup>

If I am right, most of the problems and mistakes picked out in the paper are on full view in this passage.

To begin, Shogenji's early treatment of COHERENCE does not suggest that it is a degree concept, writing that the original memorial evidence 'is coherent' with the original perceptual evidence, and noting that if the memorial evidence were of no pregnancy-conducive activity, this 'would then be incoherent with' the perceptual evidence. Indeed, this incoherence would thereby 'make Sarah dismiss the hypothesis of pregnancy', commenting that 'Whether the pieces of evidence *are coherent or not* does make a difference in the confirmation of the hypothesis' (my italics). This treatment does not accord well with the idea that COHERENCE is a relative, graded or vague concept, though Shogenji depends upon the middle idea in the remainder of the quoted paragraph. Moreover, the early remarks do not make sense as they stand.

For example, where Sarah recalls no pregnancy-conducive activity Shogenji claims that this new memorial evidence 'would then be incoherent with the perceptual evidence', but offers nothing more to explain why the two pieces of evidence are *incoherent* with each other. This is important, because it is difficult to conceive on what grounds they might fail to cohere (and so difficult to imagine what Shogenji takes COHERENCE to consist in). The pieces of evidence are 'persistent nausea' and 'no pregnancy-conducive activity'. If Shogenji does have an idea that would help us to see the incoherence, he does not give it in the paper, and so we are left to speculate. The most obvious response is that they are incoherent alongside the hypothesis mooted in the example, that Sarah is pregnant. So, 'persistent nausea', 'no pregnancy-conducive activity', and 'Sarah is pregnant' are incoherent when taken together. But these propositions plainly don't go well together because they are, under Shogenji's own *ceteris paribus* conditions, *inconsistent* (i.e., an absolute) with each other, with the attribution of incoherence appearing to add nothing to this picture. As Shogenji's notion of coherence is

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<sup>59</sup> Fn 12, 367.

therefore left without helpful content it is necessary to turn to his idea of coherence as a matter of degree, as he himself does in the passage.

In the passage Shogenji emphasises the idea of degree of coherence (italicising it) and comments on the relevance of the idea to Sarah's confirmation of the hypothesis (i.e., that she is pregnant). To make out his view Shogenji stipulates a counterfactual case in which Sarah can recall 'only a very weakly pregnancy-conducive activity in the recent past', asserting that in this case 'the memorial evidence would be less coherent with the perceptual evidence (i.e. her persistent nausea) than in the original case'. His conclusion – with Sarah – is that '[t]his would make her less confident about her pregnancy than in the original case'. But it is not any lesser *degree of coherence* that prompts Sarah now to doubt that she is pregnant; rather, she is less confident in her belief that she is pregnant because one of the reasons she had for believing is now *weaker* than before. This, in short, is that she now recalls only *weakly* pregnancy-conducive activity, rather than the *strongly* pregnancy-conducive activity of the former example. So if Sarah is now less confident that she is pregnant, this can be accounted for just in her possession of one weaker reason for believing herself to be so.

There is nothing at all in Shogenji's commentary that indicates coherence is a matter of degree, or that coherence plays any role whatever in the 'confirmation of the relevant hypothesis' – despite Shogenji's express claim to the contrary ('These counterfactual considerations leave no doubt that the degree of coherence between the new and old pieces of evidence affect the confirmation of the hypothesis'). Moreover, Shogenji's treatment illustrates the set of problems and mistakes that I pick out through the paper. Thus he asserts COHERENCE as a matter of degree, but fails to give content to the idea. He treats COHERENCE as a matter of degree, but also treats the notion as absolute, writing of *whether or not* it is satisfied, and he moves between these two without explanation or comment. His understanding of COHERENCE seems to depend upon matters contingent to it, taking it by turns to be absolute or a degree concept according to the instance of its application. Finally, he invokes *COHERENCE as a matter of degree* as a feature that 'affects the confirmation of the hypothesis', without explaining how this confirmation is to be achieved, or explaining what role the supposedly greater or lesser quantity (?) of coherence has to play in this regard.

When Shogenji mentions 'more' or 'less' coherence we have as little reason to think the concept a matter of degree than if he had claimed 'more truth' or 'less truth'. Certainly the idea of degree of coherence does no epistemic, justificatory or confirmatory work in his example, despite his claim to the contrary in the passage quoted. And in fact, Shogenji finally accedes to the same conclusion, though for different reasons. Following a lengthy formal proof he observes, in a concluding section, that whilst coherence appears to be truth-conducive, 'under the condition of evidential independence, the degree of coherence is simply a function of the individual strengths of the pieces of evidence' (reasoning that it is therefore – *contra* the



literature - ‘entirely consistent with the foundationalist view of epistemic justification’). This is part right, and in light of the premise is as much as his formal proof could show. Under my *conceptual* analysis, however, ‘degree of coherence’ simply does not exist, to be consistent with foundationalism or anything else. It is chimera, deployed without detail or explanation in apparent aid of processes of proof, explanation, confirmation and so on, but always with an empty content, beguiling the unwary into imagining that problems of knowledge, justification and so on have thereby been solved.

## 6. Concluding Remarks.

First, *coherence*. I hope to have shown that COHERENCE is an absolute, non-gradable notion, notwithstanding the intelligibility of appeals to ‘more’ or ‘less’ coherence, or to the intelligibility of subject-predicate terms such as ‘coherent legal system’ as legitimate matters of degree<sup>60</sup>. The last two sections of this paper have argued that the imputation to COHERENCE of degree acts as illicit but convenient cover for present difficulties. Hence: (i) theorists concerned to promote coherence in high-value subject areas find problems of its supposed conceptual vagueness palliated by degree, as degree avoids the need to provide modal bright-line conditions for the satisfaction of the predicate. Unlike TEMPERATURE and other exemplary degree concepts, however, under this conceptual rubric we still don’t know what these putative degrees are degrees *of*, with ‘degree’ portioned out in mysterious, impressionistic, or even mystical ways<sup>61</sup>. For the same reason the imputation to COHERENCE of degree also obscures (ii), the inattention to intension and extension that causes commentators to imagine COHERENCE to be slippery, vague and elusive in the first place. And degree also provides convenient cover (iii), for the inability of COHERENCE to accomplish, e.g., the justificatory work imagined for it, because the lack of necessary *and sufficient* conditions, apparently sanctioned by degree, denies the completeness that is necessary for the application to take hold. In short, treated as degree COHERENCE is left shapeless and unable to perform the duties imagined for it, whilst obscuring these deficiencies under cloak of a term that, equivocally, also applies to matters that in other instances are extensionally, measurably and helpfully sharp.

Second, *degree*. Though the phrase “...is a matter of degree” is scattered liberally throughout legal academic literature, common law judgment and elsewhere, there should now be serious concern about its present deployment. Worries run from the prospect that the attribution might, unnoticed, imply several very different things in relation to the subject in question (it does), thereby opening up the possibility of equivocation and mistake (duly realised), to the prospect that degree is so poorly grasped that its predication to subject is simply an error to begin with (*pace* COHERENCE). Attendant legal anxieties include the worry that the attribution does little

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<sup>60</sup> And if scepticism remains, then at least to have made out my case with sufficient cogency that a burden of rebuttal now falls on those wishing to maintain the received view.

<sup>61</sup> J Sinclair, *Corpus, Concordance, Collocation* (OUP 1991), 102.

more than provide an inadvertent but convenient cover for conceptual - and so legal - imprecision, cover for judicial activism in general and for unwarranted evasion of appellate scrutiny of judgments in particular<sup>62</sup>, and cover for any number of poorly supported justificatory claims in judicial reasoning and academic literature. For these reasons we need to be cautious where imputations of degree are concerned. The stakes are high. The concerns already introduced are only magnified by the concepts that are subject to degree attribution. Through no coincidence these include the most contested in law, politics and public policy such as privacy and autonomy<sup>63</sup>, for the imputation of degree to concept at once appears to resolve (in fact, remove) the felt obligation to ascertain agreed-upon sharp modal boundaries for a concept's correct application through cases. Plainly, this presents an immanent threat to the robust protection properly due citizens under the law.

Perhaps PRIVACY, AUTONOMY and others are degree concepts, perhaps not. Those important questions have not been the focus of the present study. What *can* be said as a result of this enquiry is that a line can be put through coherence 'as a matter of degree' wherever it appears. Coherence is not a degree concept, though the idea appears casually as a misdirected and unexamined keystone in apparent solution to problems of justification, conceptual anxiety and findings of fact and norm in judicial reason. If I am right about any of this, major reassessment of the target literature is now due.

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<sup>62</sup> The legal consequences of degree attribution are identified expertly by W.A. Wilson in the paper that, together with the work of Wilson's colleague at Edinburgh, Neil MacCormick, motivates the present study and to whom I am greatly indebted – see WA Wilson, 'Questions of Degree' (1969) 32 *Modern Law Review* 361-376. For recent common law acknowledgment of the consequences of degree, see, e.g., Clarke, LJ in *Assicurazioni Generali SPA v. Arab Insurance Group (B.C.A.)* [2002] EWCA Civ 1642 [16], writing of conclusions of fact at first instance: "They involve an assessment of a number of different factors which have to be weighed against each other. This is sometimes called an evaluation of the facts and is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and, in my opinion, appellate courts should approach them in a similar way." And see Lord Hoffman in *Biogen Inc v Medeva PLC* [1996] UKHL 18 [54] "When the application of a legal standard such as negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from the judge's evaluation."

<sup>63</sup> For *privacy* see, e.g., N Richards, *Why Privacy Matters* (OUP 2022), e.g., at 22-34; for *autonomy* see, e.g., D Magnus, 'Philosophical Bases for Self-determination in Criminal Law' (2018) 104 *Archives for Philosophy of Law and Social Philosophy* 421.