The Book of Law as "Creator" of Coherence. Some Remarks on Kelsen's and Troper's Concepts of "Legal Dogmatics" and "Legal Science"

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ABSTRACT: In this essay, I argue that Kelsen's and Troper's concept of legal science, as well as Troper's divide between legal dogmatics and legal science, are fundamentally flawed, for they fail to recognise the constitutive character of legal science's epistemic coherence.

KEYWORDS: Books of law; legal dogmatics; legal science.

TÍTULO: O livro jurídico como "criador" de coerência. Considerações sobre os conceitos de "ciência jurídica" e de "dogmática jurídica" de Kelsen e de Troper

RESUMO: No presente trabalho, sustenta-se que o conceito de ciência jurídica de Kelsen e de Troper, como a distinção de Troper entre a ciência jurídica e a dogmática jurídica, incorrem em erros fundamentais, por não reconhecerem, como deveriam, o caráter constitutivo da coerência epistémica proporcionada pela ciência jurídica.

PALAVRAS-CHAVE: Livro jurídico; dogmática jurídica; ciência jurídica.

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"aplicativas"; 6. Componentes históricos e comparativos da dogmática jurídica; 7. Dogmática jurídica como uma fonte do direito.

Introduction: on law books, legal science, and legal dogmatics

The concept of a law book is difficult to define. I am confident we will agree as to the first idea coming to our mind when we ask ourselves what a book is. The concept of a book relates to the idea of writing. A book is something that has been written. I am not as confident as to the second idea. Of all things that have been written, a book is something that is complete. A book is something that refers to the whole of its subject-matter. "L'idée d'un livre, c'est l'idée d'une totalité, finie ou infinie, du signifiant"[1].

If the concept of a book refers both to the idea of writing and to the idea of wholeness, then the concept of a law book, of any law book, is to relate to both ideas. The author of a law book, of any law book, aims at writing the whole of the law. There are, however, two ways of writing the law. In the first place, laws are written. The first words of the law are to be written by legislatures, or by the courts. Secondly, laws are re-written. The second words of the law are to be written by the courts, or by legal scholars.
It may well appear that writing is more important than re-writing the law. The first words of the law seem to be creative writing, and the second words of the law, the words the courts and the scholars are allowed to write, seems to be non-creative, representative writing. In spite of the fact that writing may appear to be more important than re-writing—in spite of the fact Derrida, for instance, describes representative writing, "l'écriture répresentative", as "déchue, seconde, instituée"[2]—, I will concentrate on the re-writing of the law. I will concentrate on the doctrinal study of the law [3]— i.e., on the concepts of legal dogmatics and legal science ("*Scientia juris*") [4].

The relationship between the concepts of legal dogmatics and legal science is controversial. For some authors, they are identical — legal dogmatics is legal science, in the strictest sense of the word science[5]. For some authors, they are different — legal

[1] J. Derrida *De la grammatologie* (Paris: Les éditions de minuit 1967) 30.
[2] J. Derrida *De la grammatologie* (fn. 1) 30.
[3] See, for a definition of legal doctrine, A. Aarnio *Essays in the Doctrinal Study of Law* (Dordrecht / Heidelberg / London / New York : Springer) 2011 ; A. Peczenik *Scientia Juris. Legal Doctrine as Knowledge of Law ans as a Source of Law* (Dordrecht : Springer) 2005 ; A. Peczenik *On Law and Reason* (Dordrecht : Springer) 2008.
[4] See, for a definition of legal dogmatics and legal science, A. Peczenik *Scientia Juris. Legal Doctrine as Knowledge of Law ans as a Source of Law* (fn. 3).
[5] See, for example, R. Alexy *Teoria da argumentação jurídica* (São Paulo : Landy 2001) 241.

dogmatics is the opposite of legal science[6]. I will concentrate on legal dogmatics. If there is a difference between legal dogmatics and legal science, I suppose there has never been a book of legal science.

1. Legal dogmatics as a system of statements on the meaning of the law

Dogmatics, with or without the adjective legal, is a word with many meanings. It may refer to an activity[7] or to the result of such an activity. In the following, I will refer to *legal dogmatics* as a result. I will refer to legal dogmatics as a *system of statements on the meaning of the law*[8]. In the first place, legal dogmatics is to be a system of statements—all statements are to be coherently inter-related[9]. Secondly, legal dogmatics is to be a system of statements on the meaning of the law[10].

2. Kelsen's concept of legal science

Kelsen drew a sharp distinction between two kinds of statements on the law (= on the meaning of the law). In the first place, there are authoritative statements. They result from legal authority. Secondly, there are non-authoritative, scientific statements. They result from legal science.

2.1. Legal science as a system of descriptive, indicative statements

The function of legal authority is to create or produce the law, so that it can be known by legal science. The function of legal science is to reproduce the law that has been created, or "produced", by legal authority. Legal authority prescribes. It says what the world ought to be. Legal science describes, — and nothing else. It says what the world— what the legal world— actually is.

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[6] See, for example, M. Troper *A filosofia do direito* (São Paulo : Martins Fontes 2008) 76-77.
[7] See, for example, see, for example, R. Alexy *Teoria da argumentação jurídica* (fn. 5) or V. Forray "La possibilité d'une contre-théorie du contrat", in : *Jurisprudence — revue critique*, 2012, 191, 193.
[8] On the concept of legal dogmatics as a *system of statements on the meaning of the law*, see, for example, R. Alexy *Teoria da argumentação jurídica* (fn. 5) 241 or N. Jansen "Rechtsdogmatik im Zivilrecht", in: *EzR. Enzyklopädie zur Rechtsphilosophie*, in: WWW: < http://www.enzyklopaedie-rechtsphilosophie.net/neue-beitraege/19-beitraege/98-rechtsdogmatik-im-zivilrecht >.
[9] See R. Alexy, *Teoria da argumentação jurídica* (fn. 5) 244.
[10] See, for example, K. Larenz, *Metodologia da ciência do direito* (Lisboa : Fundação Calouste Gulbenkian 1997) or N. Jansen, "Rechtsdogmatik im Zivilrecht" (fn. 8).

Legal authority thus speaks in the form of normative, prescriptive statements, or prescriptions. Legal science thus speaks in the form of descriptive, indicative, statements[11].

2.2. Legal science as a system of descriptive, indicative statements on the whole of the law

Furthermore, legal science is a system of descriptive, indicative statements on the whole of the law (= on the law as a whole)[12].

Kelsen accurately drew a line between "immediate", or irreflexive, knowledge and "mediate", reflexive knowledge of the law.

"Immediate", irreflexive knowledge represents the law as something akin to chaos. The plurality of legal norms is no more than... a plurality of legal norms. In such a plurality, there would be no sense of order, or purpose.

"Mediate", reflexive knowledge represents the law as something closer to cosmos. From the plurality of legal norms, unity would eventually emerge. There would be a sense of order and purpose. The law would become a meaningful, significant whole — it would become a system (a legal system).

The difference between "immediate", irreflexive knowledge and "mediate", reflexive knowledge is legal science. "Immediate", irreflexive knowledge is empirical. "Mediate", reflexive knowledge is scientific. Legal science is to transform "immediate", irreflexive knowledge into "mediate", reflexive knowledge ; chaos into cosmos ; plurality into unity[13].

2.3. Legal science's concept of coherence

In such a system of descriptive, indicative statements on the meaning of the law, the concept of coherence refers to epistemic coherence, and to epistemic coherence only[14]. The criterion of epistemic coherence is pure reason, and the formal logic it

[11] See H. Kelsen, *Teoria pura do direito* (Coimbra: Arménio Amado 1979) 111-113 and M. Troper *A filosofia do direito* (fn. 8) 40.
[12] See H. Kelsen *Teoria pura do direito* (fn. 11) 112-113.
[13] H. Kelsen *Teoria pura do direito* (fn. 11) 112-113.
[14] On the concept epistemic coherence, see for example S. Bertea "Does Arguing From Coherence Make Sense ?" 19 *Argumentation* 2005, 433-466 ; S. Bertea "The Arguments from Coherence : Analysis and Evaluation" 25 *Oxford Journal of Legal Studies* 2005, 369-391.

encompasses — so, for instance, descriptive, indicative statements on the meaning of the law may not contradict themselves.

3. Troper's distinction between legal science and legal dogmatics

In keeping with Kelsen's concept of legal science as a aystem of descriptive, indicative, statements, Troper argues that legal dogmatics and legal science are different disciplines, for they have different objects and different methods.

In the first place, the object of legal science would be the valid norm, and the object of legal dogmatics would be the appropriate, applicable norm. Secondly the method of legal science would be description and the method of legal dogamtics would be the prescription of the appropriate norm.

Whereas legal science adopts a theorethical stance as to the law, legal dogmatics adopts a pratical, an applicative stance (an "applikative Haltung"). It aims at regulating the procedure and the results of law's application[15]. Whereas legal science is a system of theorethical, descriptive statements on valid norms, legal dogmatics would be a set of normative, prescritive, or practical statements on practical norms. Legal science would describe valid norms — and nothing else. Of all valid norms, legal dogmatics would prescribe the appropriate one. Of all valid norms, legal dogmatics would prescribe the norm that should be applied to the case[16].

Legal science would fulfill its task by saying what the law is — what judges are allowed to do. It would, for instance, tell the judges: such a statute has the following, possible meanings: "a", "b", and "c". All of them are valid law. Legal dogmatics would fulfill its task by saying what the law ought to be — what judges ought to do. It would for instance, tell the judges: of all possible meanings of such a statute, you should choose "a". Even if all possible meanings of the statute ("a", "b", "c", and "d") are valid law, only one of them (e.g., "a") is appropriate law[17]. In the case of a new problem, for which no legal authority produced specific rules, legal dogmatics would advise the judge, proposing or recommending him how to decide[18].

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[15] C.-W. Canaris "Theorienrezeption und Theorienstruktur", in : Leses / Isomura (eds.), *Festschrift für Zentaro Kittagawa*, 59-94
[16] M. Troper *A filosofia do direito* (fn. 8) 33-81.
[17] M. Troper *A filosofia do direito* (fn. 8) 76.
[18] M. Troper *A filosofia do direito* (fn. 8) 77.

In adopting a theoretical stance, legal science does not depend from arbitrary, subjective, preferences; in adopting a pratical, applicative stance as to the law, by prescribing, proposing or recommending appropriate norms, legal dogmatics depends on arbitrary, subjective, preferences — such as, for example, arbitrary, and subjective, representations of principles and values.

Kelsen argues that the kind of activity I call legal dogmatics is (but) legal politics. From an objective and scientific point of view, all possible meanings of an authoritative, prescriptive statement are equal, for they have one and the same value. From a subjective (political) point of view, different possible meanings of an authoritative, prescriptive statement are different[19].

Whenever a legal scholar proposes, or recommends, the appropriate norm, he is either (i) preferring some of the possible meanings of a norm that has been brought into existence by any legal authority, or (ii) producing a norm that has been brought into existence by no legal authority. In both cases, what he or she is doing would not and could not be legal science.

In the first place, legal science would not be entitled to prefer one of the possible meanings of a legal norm, for all the norms produced by legal authority would be valid law. Secondly, legal science would not be entitled to produce legal norms, for none of the norms produced by legal science would be valid law. Whenever a legal scholar proposes, or recommends, the appropriate norm, what he is doing is legal politics. It may be good politics or it may be bad politics — even if it is good, it is only politics[20].

4. A critique of Kelsen's concept of legal science

I cannot accept neither Kelsen's and Troper's concept of legal science, nor Troper's distinction between legal dogmatics and legal science.

I do think they are both fundamentally flawed, for they are grounded upon a concept of coherence that cannot take into account the meaning of the legal concepts, principles and rules. Therefore, I cannot accept such a sharp distinction between the concepts of legal dogmatics and legal science.

[19] H. Kelsen *Teoria pura do direito* (fn. 11) 113.
[20] H. Kelsen *Teoria pura do direito* (fn. 11) 472-473.

4.1. On the constitutive character of legal science's epistemic coherence

Kelsen's concept of legal science faces a dilemma. In spite of the fact Kelsen accepts the idea that all science is constitutive—in spite of the fact he accepts the idea that all science, all knowledge produces its own object, by representing it a meaningful whole —, he does not accept the idea that legal science is constitutive—the idea that legal science produces the law.

In reconciling both statements, Kelsen distinguishes two kinds of legal production. Whereas the legal authority produces the law through acts of will, legal science would produce the law through acts of knowledge[21]. Whereas the legal authority produces the law in any practically relevant sense, legal science would produce the a law in a sheer theoretical sense[22].

The problem lies in the fact that the meaning of the law depends on its representation. It makes a difference whether the law is represented a meaningful whole, or not. Furthermore, it makes a difference whether the representation of unity of the law is supported by negative, logic coherence or by positive, teleological coherence ("integrity", "unity of principle" or "unity of value"). If the law was to be taken as a plurality of legal norms, legal science's task would probably be the one of stating all possible meanings of a given statute; setting the "frame" of valid law [23]. If, however, the law is to be seriously taken as unity, — if the law is to be taken as a meaningful whole—, legal science's task goes far beyond stating all possible meanings.

The meaning of a single legal norm depends, at least up to a certain extent, from local coherence[24]. Every single legal norm is to make sense as a component of a branch of the legal system. Local coherence depends, at least up to a certain extent, on global coherence[25]. Every branch of the legal system is to make sense as a component of the legal system as a whole.

4.2. On the teleological character of legal science's epistemic coherence

[21] H. Kelsen *Teoria pura do direito* (fn. 11) 112-113.
[22] H. Kelsen *Teoria pura do direito* (fn. 11) 113.
[23] H. Kelsen *Teoria pura do direito* (fn. 11) 463-473.
[24] On the concept of local coherence, see for example S. Bertea "The Arguments from Coherence : Analysis and Evaluation" (fn. 14) 439: "In a local notion of coherence, the chosen solution gets connected with the components of a given branch of the legal system".
[25] On the concept of global coherence, see for example S. Bertea "The Arguments from Coherence : Analysis and Evaluation" (fn. 14) 439: "In a global concept of coherence, the chosen solution gets connected with the legal system as a whole".

Furthermore, local coherence and global coherence depend on principles and values. The law is to be interpreted as speaking with one voice[26].

Dworkin speaks about "integrity"[27]. Raz speaks about "unity of principle"[28]. Dworkin and Raz agree to speak about (some) "unity of value"[29].

It might be argued that in contemporary, democratic, and pluralistic societies there is no such a thing, and there be no such a thing, as "unity of principle", or "unity of value" — principles are plural, and so are values.

In spite of the fact principles are plural, and values are plural, I suppose it may be argued there is "unity of principle" and "unity of value".

I would argue there is "unity of principle", or "unity of value", inasmuch as it is possible to understand the law as the expression of a rational and reasonable commitment of the legal authority to a scheme of principles and values. There is "unity of principle", or "unity of value", inasmuch as it is possible to understand the whole of the law as the expression of a rational and reasonable balancing of the principles and values the law is committed to.

In such a rational and reasonable balance a few requirements are to be met: all relevant principles and values are to be taken into account in every single act; all relevant principles and values are to be satisfied in the largest possible extent; no arbitrary preferences for persons are permitted, and no arbitrary preferences for principles, or values, are permitted [30].

It should come at no surprise that the basic requirements for the law to be understood as "unity of principle", or "unity of value", correspond to the basic requirements of practical reason, or practical reasonableness[31].

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[26] See, for example, J. Dixon "Interpretation and Coherence in Legal Reasoning", in : Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), in: WWW: < http://plato.stanford.edu/archives/sum2014/entries/legal-reas-interpret/ >.
[27] See, for example, R. Dworkin *Law's Empire* (Cambridge (Masschussetts) / London: Harvard University Press 1986).
[28] See, for example, J. Raz "The Relevance of Coherence" 72 *Boston University Law Review* 1992, 273-321
[29] See, for example, R. Dworkin *Justice for Hedgehogs* (Cambridge (Massachussetts) / London: Harvard University Press 2011) and J. Raz "A Hedgehogs Unity of Value", in: WWW: < http://ssrn.com/abstract=2441858 >.
[30] See J. Finnis *Natural Law and Natural Rights* 2nd edition (Oxford : Oxford University Press 2011) 59-133.
[31] On the basic requirements of practical reasonableness, J. Finnis *Natural Law and Natural Rights* (fn. 30)100-133.

Legal science, so as to describe the meaning of the law, is to describe the meaning of the principles and values on which the law depends. In every relevant system of descriptive, indicative statements on the meaning of the law, the concept of coherence is to go far beyond pure reason, and the formal logic it encompasses. On the one hand coherence is as matter of pure, theoretical reason. The law may not contradict itself. On the other hand, coherence goes far beyond formal logic. It is a matter of practical reason. It refers to principles and values — it is, so to speak, a matter of principle[32].

5. A critique of Troper's distinction between legal science and legal dogmatics

5.1. On the practical, "applicative" character of the scientific statements

It follows from the representation of the law as a meaningful whole that one, or some, of the possible meanings of a given statute are to be preferred.

Whenever the case falls within the scope of application of a given statute, legal norms result from the meaning of such a statute. It is objective, and scientific to say that norms which fit the understanding of the legal system as a coherent whole are to be preferred to the norms which do not. Whenever the case does not fall within the scope of application of any given statute, for there is a gap, legal norms result from the meaning of the legal system. It is objective, and scientific to say that norms which fit the understanding of the legal system as the result of a rational and reasonable balance between principles and values, are to be preferred to the norms which do not.

In filling "apparent" gaps, by means of analogy or teleological extension, lawyers are but applying the principle according to which *comparable situations must be treated in the same way*. In filling "hidden" gaps, by means of teleological reduction, lawyers are but applying the principle according to which *non-comparable, different situations, must not be treated in the same way, unless such treatment is objectively justified*. It goes without saying that, in assessing whether the situations are *comparable* or *non comparable*, as well as in assessing whether their treatment is *objectively justified* or *unjustified*, the scheme of the legal principles and values applies.

5.2. On the scientific character of practical, "applicative" statements

[32] See R. Dworkin *Uma questão de princípio* (São Paulo: Martins Fontes 2000).

Troper argues that legal dogmatics' self-description as a rational, and scientific, system of pratical, "applicative", statements rests upon a few assumptions. Legal dogmatics assumes that legal authorities are rational and reasonable. It assumes that the law is coherent, or at least that judges are capable of rationally deciding the contradictions. It assumes that the law is complete, or at least that judges are capable of rationally filling the gaps[33].

The problem would lie in the fact that legal dogmatics' assumptions would be false. In the real world—in the world as we know it—, legal authorities are neither reasonable, nor rational. The law is neither coherent, nor complete.

I would suggest, however, that Troper's critique of legal dogmatics fails to recognise that legal dogmatics' assumptions are *postulates*[34] —that they are theoretical hypotheses, beyond demonstration, whose value lies in the fact they are necessary for the subject to comply with their duties[35].

I do think judges are under a duty of coherence[36]. I draw from Rawls and Habermas' in assuming that "the only regulations and ways of acting that can claim legitimacy are those to which all who are possibly affected could assent as participants in rational discourses"[37]. If the legal system is coherent, it may be rationally acceptable by all who are possibly affected; if, however, the legal system is not coherent, it may not. The assumptions that legal authorities are reasonable, that law is coherent, and that law is complete are necessary for the judges to comply with their duty of coherence.

If legal dogmatics assumptions are necessary for the judges to comply with their duty of coherence—i.e., if they are postulates—, then they are beyond discussion. Even if they are "false", they are necessary.

6. Legal dogmatics' comparative and historical components

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[33] M. Troper *A filosofia do direito* (fn. 8) 75-76.
[34] See, for the concept of practical and theoretical postulates, I. Kant *Logique* (Librairie philosophique de Ladrange : Paris 1862) 166-168.
[35] I. Kant *Logique* (fn. 34) 167.
[36] See, for a demonstration, N. Bobbio *Teoria do ordenamento jurídico* 6th. edition (Brasília : Editora Universidade de Brasília 1995) 110-114.
[37] J. Habermas *Between Facts and Norms. Contributions to a Discours Theory of Law and Democracy* (Cambridge (Massachussetts): The MIT Press 1996) 458.

I would like to argue that the principle according to which legal science transforms the law applies both to comparative legal science and to historical legal science[38]. Comparative legal science and historical legal science transform the meaning of the law by opening up the "frame" of the possible meanings of a given statute. Some of the possible meanings are apparent, and some of them are not. It is up to comparative, as well as to historical legal science, to open doors[39]. Whenever there is such a "frame", that is, whenever a case fall within the scope of application of a given statute, comparative legal science and historical legal science provide the judge with arguments for discovering and justifying the meaning that best fits the scheme of principles and values the law is commited to. Whenever there is no such a "frame", that is, whenever the case does not fall within the scope of application of any given statute, comparative legal science and historical legal science provide the judge with arguments for reasonably, and rationally, filling the gap. It was already so in ancient legal systems, as in contemporary "closed" legal systems. It is even more so in contemporary, "open" legal systems, where judges aim at finding "internationally useful interpretations of national law"[40].

It follows that, for legal doctrine to be legal doctrine, and for legal dogmatics to be legal dogmatics, they must be at once fully comparative and fully historical. It may well be the case that the law, or at least legal doctrine and legal dogmatics, could and should be recognized "as an inherently comparative process, as opposed to a single, universal corpus of rules"[41].

7. Legal dogmatics as a source of the law

[38] I will not consider the case where different legal systems are committed to fundamentally different principles, or to fundamentally different values. Whenever I realise, for instance, that there has been a legal system where contract "must be a concretization and materialization of the national-racial [*völkisch*] order", and freedom of contract must be granted to the national comrades [*Volksgenossen*], and to the national comrades only, "against the backdrop of the national order, and which will thus be interpreted more or less strictly, in accordance with the requirements of national life [*Volksleben*], and which can never be exercised other than in harmony with the national-racial [*völkisch*] order" (K. Larenz, *apud* Ch. Joerges "History as Non-History: Points of Divergence and Time Lags Between Friedrich Kessler and German Jurisprudence", in: 42 *The American Journal of Comparative Law* 1994, 163-193),— whenever I realise that there has been such a system, I do not find any relevant arguments for supporting any kind of statement on the meaning of the present, valid law.

[39] Vanderlinden, apud P. Glenn, "Aims of Comparative Law", in: Jan M. Smits (ed.), *Elgar Encyclopedia of Comparative Law* (Cheltenham: Edward Elgar 2006) 57, 59.

[40] G. Schulze "Grundfragen zum Umgang mit modernisierten Schuldrecht — Wandel oder Umbruch im Methodenverständnis", *Jahrbuch Junger Zivilrechtswissenschaftler* 2001, 167, 175.

[41] See, for example, P. Glenn, "Aims of Comparative Law" (fn. 38) 64.

In ascribing legal science constitutive value, I support the contemporary reconstruction of the classical theory on the creation of the law (the so-called doctrine of sources)[42]. I fundamentally agree with Aarnio and Peczenik in defining source of law as "*any* argument, in support of which the interpretative standpoint is either *found* (context of discovery) or *justified* (context of justification) as legally valid"[43]. Furthermore, I fundamentally agree with Aarnio and Peczenik in distinguishing three types of sources of the law — strongly binding, weakly binding, and permitted sources[44].

Strongly binding, or "must sources", are necessary for the judgement to be justified. Weakly binding, or "should sources", are necessary for the judgement to be fully justified. If the judge wishes to depart from weakly binding sources, or "should sources", he is under a duty to justifiy his decision. Permitted sources, or "may sources", are not necessary. Even without permitted sources, or "may sources", the judgement is fully justified. If the judge wishes to depart from permitted sources, he is under no duty at all.

In civil law systems, statutes are "must sources" and precedents "should sources". In keeping with Aarnio's and Peczenik's definition of the sources of law, legal doctrine or legal dogmatics has a place in the theory of sources. The problem lies at classifying legal doctrine, or legal dogmatics, as weakly binding or permitted source — as "should source" or "may source". Aarnio and Peczenik suggest it is a permitted source, a "may source"[45]. Alexy suggests it is a weakly binding source, a "should source"[46]. I suppose the duty of coherence is a strong argument in favour of classifying legal doctrine, or legal dogmatics, as a weakly binding source of the law. "Legal doctrine [...] gains authority because [it is] *pro tanto* well informed, coherent, and just." [47]

For legal doctrine to be coherent, and just, it ought to take into account the principles and values the law is committed to. In many, if not all cases, such principles are constitutional principles. For legal doctrine to be well informed, it ought to take into account all comparative and historical perspectives. The book of law must be all of that: constitutional, comparative, and historical. It must be fully coherent, fully rational, and

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[42] On the significance of such a doctrine, see, for example, A. Aarnio *Essays in the Doctrinal Study of Law* (fn. 3) 147 : "The significance of the DS doctrine [= doctrine of the sources of law] lies in the fact that there is no other way to define what is "legal" and to separate it from "non-legal" in the adjudication or in DSL [= the doctrinal study of law]".
[43] A. Aarnio *Essays in the Doctrinal Study of Law* (fn. 3) 147.
[44] A. Aarnio *Essays in the Doctrinal Study of Law* (fn. 3) 148.
[45] A. Aarnio *Essays in the Doctrinal Study of Law* (fn. 3) 151 and 160, and A. Peczenik *On Law and Reason* (fn. 3) 268.
[46] R. Alexy *Teoria da argumentação jurídica* (fn. 5) 249.
[47] A. Peczenik *Scientia Juris. Legal Doctrine as Knowledge of Law ans as a Source of Law* (fn. 3) 17.

fully reasonable. Peczenik argues that legal dogmatics "converts reason into authority"[48]. I would suggest that legal dogmatics at once converts authority into reason, and reason into authority. In giving the law its "best presentation", as Peczenik says, legal dogmatics transforms the law into something better.

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[48] A. Peczenik *Scientia Juris. Legal Doctrine as Knowledge of Law ans as a Source of Law* (fn. 3) 17.