

COHERENCE IN POLITICAL DECISIONS BETWEEN INCOMPARABLE ITEMS

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ABSTRACT

This paper addresses the role of coherence in political decisions involving incomparable alternatives. Suppose that a legislature has to decide first between incomparable alternatives A and B and thereafter between incomparable alternatives C and D, where C and D are, respectively, essentially like to A and B. It is intuitive that, no matter what alternative (A or B) is chosen in the former case, choice between C and D should be coherent, so that, if alternative A first prevailed over B, C, which is essentially like A, ought to be preferred against D. After scrutinizing arguments by Joseph Raz and Ruth Chang favoring coherence in this sense, the paper shows, however, that the attractiveness of coherence in cases of political decisions between incomparable items is hard to endorse.

1. Introduction

This article assesses the importance of coherence in political decisions about incomparable alternatives.² Suppose that a court has to decide two essentially like cases involving public demonstrations for the decriminalization of marijuana. Suppose, also, that in both cases the court faces only two alternatives, ruling for protesters' right to free speech or outlawing protests in order to safeguard public safety, and that these alternatives are incomparable in what matters (whatever it is), that is, that neither is better than the other, nor are they equally good.³ In this scenario, it is intuitive that the court's position, no matter which, must be the same in both cases, that is, that the judges should either enforce the right to free speech of both groups of protesters or forbid demonstrations of both of them.

This work argues that the basis for a duty of coherence in the sense just displayed is more fragile than intuition suggests, testing arguments favoring coherence in cases of incomparability that are found in works by Joseph Raz and Ruth Chang. The paper is organized as follows. The first section contains some clarifications on the concept of incomparability and introduces a simple version of the argument supporting a duty to decide coherently cases involving incomparable alternatives. Section III focuses on one particular premise of that argument, the one according to which, if two items A and B are incomparable in what matters besides coherence and one of them is more coherent than the other, the more coherent item ought to be chosen. This section further mentions two additional premises that may be required in order to justify that assertion. Section IV works on the concept of coherence. It displays two conceptions of coherence, coherence as equal treatment to cases in which the values found in the alternatives are the same and coherence as equal treatment to essentially like cases. The section assesses if, and to what extent, these two conceptions of coherence really diverge. Section V discusses Raz's and Chang's arguments favoring coherence in political decisions between incomparable alternatives. Section VI summarizes the conclusions and finishes the work.

2. Presenting the argument

In the sense envisaged here, stating that alternatives A and B are incomparable means that neither A is better than B nor B is better than A nor they are equally good.⁴ 'Better', in turn, means better regarding

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² Throughout the text, I use the term 'incomparability' to refer to what is sometimes also called incommensurability.

³ Notice that the incomparability between alternatives involved in political decisions is assumed in the entire paper. Maybe there is no conceivable case in which political organs have to decide between incomparable items, what would make my whole argumentation obsolete. Whether there is or not such cases, however, is beyond my concern here.

⁴ The claim according to which comparability requires the validity of one of the three value relations mentioned above corresponds to what Chang (1997, p. 4) refers to as the 'trichotomy thesis'.

what matters to the choice, and 'what matters' is often constituted by a mix of values, such as, for example, the values of justice and deference to majority will. But if neither A is better than B nor B better than A, what allows saying that A and B are incomparable rather than just equally good? It is assumed below that incomparability may be verified through what is known as the 'small improvement' test (Raz, 1986, pp. 325-26). Take B+, an item better than B. If A and B were good to exactly the same extent, than B+, which is better than B, would also be better than A. This however, may not be the case. But if B+ is better than B but not better than A, the hypothesis that A and B are equally good is discarded, what leads to the conclusion that A and B are incomparable.

Instances of incomparability can stem from the fact that what matters to a given choice is constituted by a mix of distinct values and each of the opposed alternatives is a bearer of a distinct value pertaining to the mix. If what matters to a court having to decide about the right to demonstrate for the legalization of narcotic substances is justice and deference to majority will, it may be that alternatives faced by the judges are incomparable because, while one of them would render the court's decision just, the other conforms to the majority will. I state "may be" in order to not take sides here in the controversy about whether value pluralism entails incomparability.⁵ Many pluralists think it does not and, in order to support this claim, make use of 'nominal-notable' comparisons.⁶ Suppose that A and B are bearers of distinct values X and Y, respectively, but that while A is a notable bearer of X (that is, A possesses or advances X in a notable way), B is a just nominal bearer of Y (that is, B possesses or advances Y to a very low degree). It has been argued that in this case A and B are comparable: A is better than B.

It is time now to introduce the argument for coherence. Its central claim is that, when facing incomparable alternatives, political organs like legislatures and courts should rule for the more coherent alternative. Something close to this claim is found in a paper by Joseph Raz (1992), where he criticizes attempts to give coherence a prominent place in law and adjudication. Raz concedes, however, that coherence is relevant in cases in which 'there is a whole range of ways of mixing the different values, none of which is superior to others.' (1992, p. 312). This is one of the settings in which 'coherence comes into its own,' 'in which precedent acquires a natural force, where there is a reason to follow it even in countries which do not have a formal doctrine of precedent.' (1992, p. 313). A similar conclusion is reached by Ruth Chang (2009), although in this case the claim holds for choices in general, not only political ones. According to Chang, some choice situations call for 'self-governance', the 'rational activity of defining one's 'rational character' or 'rational identity' through choices' (2009, p. 146). When it comes to political decisions, the making up of a rational identity 'requires continuity and coherence not only in the decisions a society takes in the face of practical conflict, but also in the justifications to which it appeals in making those decisions.' (2009, p. 156). It should be noted that both Raz and Chang refer in these passages to decisions in which none alternative is better than the other.⁷ It can be assumed that the claim of incomparability results from an attempt to compare alternatives in what matters (whatever it is) *except coherence*. A simple version of the argument demanding for coherence in choices between incomparable alternatives is thus the following:

- (1) Items A and B are incomparable in what matters except coherence.
- (2) If items A and B are incomparable in what matters except coherence and one of the items is more coherent than the other, the more coherent item must be chosen.
- (3) A is more coherent than B.
- (4) A must be chosen over B.

3. What justification of premise (2) requires

Before examining if coherence really has the importance implied by the argument sketched above, it is worth rendering clear what exactly this importance is. Take again premise (2): If items A and B are incomparable in what matters except coherence and one of the items is more coherent than the other, the more coherent item must be chosen. In order to justify (2), two additional premises seem to be in order, namely:

⁵ There are two distinct issues, that of incomparability between values and that of incomparability between bearers of values. The latter is the one envisaged here.

⁶ See Chang (1997, pp. 14-15). For further references about the admission of nominal-notable comparisons among pluralists, see Grimm (2007, pp. 26-44).

⁷ Besides the cases of incomparability, Raz may also have in view those in which the alternatives are equally good. Chang (2009, p. 146), in turn, explicitly presents self-governance as a response to choice situations where none of the three traditional comparative relations (A is better than B, B is better than A, and A and B are equally good) holds between the alternatives.

(1a) Between two items A and B, the better one, all things considered, must be chosen.

(1b) If items A and B are incomparable in what matters except coherence and one of them is more coherent than the other, the more coherent item is, all things considered, the better one.

(1a) becomes irresistible thanks to the condition 'all things considered'. The only reason why a comparison pointing to the superiority of A over B may fail to establish the conclusion that A must be chosen over B is whether that comparison leaves aside something that matters to the choice between A and B. For example, the claim that A is fairer than B may not determine the choice of A over B if fairness is not the only value bearing on the decision. (1a), however, refers to a comparison regarding everything that matters. Thus, if A overpowers B in a comparison like that, it is inevitable to conclude that, from the standpoint of practical reason, A ought to be chosen, that is, that a preference for B over A would be irrational.

(1b), in turn, is a very ambitious premise. Its validity requires that, regardless of the value or values on the basis of which comparison between A and B takes place, the more coherent of the two items (even if just slightly more coherent) be also better than the other all things considered. In order to assert if coherence can play the role assigned to it by that premise, a more careful analysis of what 'coherence' means is in order.

4. What is coherence?

Consider a conception of coherence according to which, between incomparable alternatives A and B bearing the values X and Y, respectively, a decision is coherent if it favors the alternative possessing the value that most prevailed in antecedent choices between incomparable alternatives bearing the same values X and Y. If in antecedent choices involving values X and Y the alternatives bearing the value X were more often chosen, that it is coherent now, following this conception, to pick the alternative (A) where the value of X is found. I shall refer to coherence in this sense as *coherence between bearers of value*.

In order to enforce coherence between bearers of value, one must stipulate the set of past choices to be considered. When it comes to political decisions, the scope of choices to be taken into account may be chronologically limited or circumscribed to decisions made by the same court or governmental agency. It should be noticed, however, that those limits cannot be arbitrarily defined and that, in order to avoid arbitrariness, coherence according to the conception at stake may require having in view an enormous quantity of past decisions. On the other hand, this problem may be not as big as it seems, since coherence between bearers of value refers only to past decisions between *incomparable* items bearing the *same* values involved in the current decision. Maybe incomparability takes place not so often, or maybe it is not so usual to have to decide between alternatives bearing the same value of past choices' alternatives. For example, maybe what matters to a judicial decision is as in general distinct from what matters to a legislative one. If this is so, then coherence between bearers of value will not force a court to take legislative decisions into account when these decisions are not binding to the former, even if, from a certain standpoint, the issue now faced by the court is similar to issues solved in the past by legislative organs.

The biggest problem with coherence between bearers of values is simply that it may be not desirable. Suppose that there is a series of previous cases in which a court had to decide between incomparable alternatives bearing the values of freedom of speech and safety. In a vast majority of these cases (say, about 80%), the court took the alternative representing the value of free speech. Can you infer from this a reason for that, having to decide once more between the same values, judges opt for the value of free speech? Instead of coherence in this awkward sense, should not the court, providing that it comes always to decide between incomparable alternatives, look for some balance between the values in conflict and therefore rule now for the value that has been more often neglected in the past?

Take now a seemingly less ambitious conception of coherence according to which coherence requires exclusively that essentially like cases be treated alike. This sense of coherence applies to choices between pairs of incomparable alternatives but, unlike coherence between bearers of value, it postulates essential likeness between the choices rather than mere coincidence of the values involved. Thus, even if incomparable alternatives C and D bear the same values of the alternatives of a previous choice, A and B, coherence in the sense just introduced will not demand that choice between C and D be influenced by choice between A and B if the two cases are not essentially equal. Hereinafter, I shall refer to coherence in this second sense as *coherence between essentially like cases*.

Coherence between essentially like cases calls for a definition of the conditions under which two choices are essentially like. For example, if essential likeness amounts to likeness of the values borne by the alternatives at stake, in such a way that choice between items A and B will be said essentially like to choice between items C and D if the values borne by A and B respectively are the same borne by C and D, coherence between essentially like cases collapses into coherence between bearers of value.

The conclusion that coherence between essentially like cases is a conception of coherence truly distinct from coherence between bearers of value requires, thus, an account failing to take identity of the values borne by the alternatives as a condition both necessary and sufficient to essential likeness. Let's consider, then, the claim that equality of borne values is not a sufficient condition for essential likeness, that is, that even if a pair of alternatives A and B encapsulates the same values X and Y of another pair of alternatives C and D, the choice between C and D can be essentially distinct from the choice between A and B. However, if the values borne by each pair of alternatives are the same, what could give rise to substantial unlikeness of the two choice scenarios?

A possibility is that, although the values borne by their alternatives are the same, two choices are not essentially like because what matters to each of them is not the same. Assuming that what matters to a choice is an essential part of what a choice is, choices between pairs of alternatives in which one of the alternatives bears the value of freedom of speech and the other the value of safety can be, in spite of the sameness of the values found in the alternatives, essentially distinct. It may happen that, in one of the cases, what matters is to achieve freedom to the greatest possible extent, while what matters in the other is equality.⁸A way to render coherence between essentially like cases into a conception of coherence narrower than coherence between bearers of value is thus by postulating that two choice situations are essentially like only if the values borne by the alternatives *and* what matters to the choice is the same.

Although sound in general as way to differentiate coherence between essentially like cases from coherence between bearers of value, the solution just considered seems inadequate when it comes to choices involving incomparable items. Even if choice between items A and B differs from choice between items C and D because what matters in the first case (e.g., promoting freedom to the greatest possible extent) diverges from what matters in the second (e.g., equality), stating that choices between A and B and C and D involve incomparable items implies that, however meaningful is the difference between what matters in each case, this difference is not enough to lead some of the alternatives to be better than its opposed. This a reason why a conception of coherence consisting of equal treatment to essentially like cases may have to ignore, in the circumstances just described, differences in what matters to the choice. Given that these differences are unable to eliminate incomparability and, thus, fail to determine the choice to be made, there seems to be no ground to reputed them enough to render choice scenarios essentially distinct.

Another way to resist the idea that mere sameness of the values borne by the alternatives suffices to turn two cases into essentially like ones involves comparison between alternatives belonging to different pairs. Take the pairs of incomparable alternatives A and B and C and D. The fact that A and B are incomparable between them (so as C and D) does not rule out transversal comparability, that is, comparability between items pertaining to different pairs. Although A and B are incomparable, A or B can be comparable to C and D. Such transversal comparisons might give rise to essential differences between choices.

Given the possibility of transversal comparisons, a proposal to narrow the scope of coherence between essentially like cases is the following. Assuming that, between incomparable alternatives A and B bearing respectively the values X and Y the chosen alternative is A, coherence does *not* require that, in a subsequent choice between C and D that also bear respectively the values X and Y the chosen alternative be C *as long as* C is worse than A *or* D better than B.

Although the qualification just added by the possibility of transversal comparison suffices to prevent coherence between essentially like cases from collapsing into coherence between bearers of value, one may wish to differentiate these two conceptions of coherence further. Essential likeness may be expected to be considerably narrower than sameness of borne values qualified by the occasional comparability between alternatives belonging to different pairs. Perhaps two cases as distinct as the one about the right to protest

⁸ The fact that alternatives bearing the values of liberty of expression and safety are evaluated according to their contribution to values such as freedom in general and equality does not mean that the contribution offered by each alternative is precisely quantifiable and, thus, does not contradicts the claim that such alternatives are incomparable.

for drugs decriminalization and that about the right to express skepticism regarding the holocaust should not be deemed essentially like just because the alternatives the court faces in each case are bearers of the same values and no transversal comparison is available. Coherence between essentially like cases may be thought to be a much more modest ideal demanding equal treatment to cases differing only in patently immaterial ways or whose differences (for example, the race of litigants) are of a kind one has a special reason not to want to exert any influence over the results. The right idea of coherence should not prevent, therefore, the value of freedom of speech to come ahead when it comes to demonstrations favoring legalization of marijuana and being pushed aside in another judgment involving holocaust denial. Coherence should forbid, by contrast, that two identical demonstrations for drugs decriminalization be differently treated, specially if protesters are black in one case and white in the other. There seems to be, in sum, a sense in which demonstrations supporting marijuana made by black people are essentially like demonstrations made by whites, a sense in which, however, a protest for decriminalization of drugs is not essentially like writing a book about the holocaust, even if the court ruling about the limits of freedom of speech in all of these cases happens to be a choice between incomparable alternatives bearing exactly the same values.

Yet it is not easy to explain the intuition behind all these last remarks. Consider the attempts made before to differentiate coherence between bearers of value and coherence between essentially like cases. The first one was to state that two choice situations are not essentially like if, although the values borne by the alternatives are the same, what matters to each choice is not. Second, it was also stated that two choices between incomparable alternatives may differ due to transversal comparability. Returning now to the examples of demonstrations for the legalization of marijuana and holocaust denial, let's assume that the cases are similar not only because they both involve the values of liberty of expression and safety, but also because what matters to them is the same (or differences in what matters are irrelevant). Let's assume, for example, that what matters to both judicial choices is to advance freedom to the most possible extensive extent, and that alternatives in each case are thus incomparable because, regarding what matters, it is not possible to assert that one alternative is better than the other, nor that they are equally good. Assume finally that no transversal comparison is possible, so that, after enforcing freedom of speech in the case of marijuana protesters, coherence cannot be let aside when deciding about holocaust denial on grounds that enforcing freedom of speech in the former case is more valuable than in the latter or that the value of safety in the holocaust case is greater than in the other one. When all these assumptions hold, one is allowed to ask: What is lacking for the two choice scenarios being essentially like?

Any answer to that question other than 'nothing' seems to contradict the way the two choice situations were just described. It could be said, for example, that the choices are not essentially identical because one involves an attempt to change the law, while the other does not; because one of them deals with speech that threatens a minority group, while the other does not; because one states a claim for reforming legislation that can be supported by sound arguments, while the other challenges history without any plausible reason, etc. Given the assumptions made above, however, none of these differences matters to court's choice, since not only what matters in each case but also the way freedom of speech (or its curtailment) contributes to what matters are the same. Freedom of speech and its denial contribute in the same way for what matters in both cases because, as assumed, the values borne by alternatives in each case are the same. Thus, it is immaterial that liberty of expression is in one case directed at changing the law while in the other it is not, since the value represented by such liberty (and, thus, the way it contributes to what matters to the decision) remains constant in both cases. But if this and other differences like the above mentioned do not affect what matters to choice or the way each alternative contributes to what matters, it seems unavoidable to conclude that they simply do not matter, and thus that the two choice situations are, in spite of those differences, essentially the same.

It seems by now that one must subscribe to at least one of two alternative claims. The first claim is skeptical about the way choices like those involving the right to demonstrate against drugs criminalization and holocaust denial were above depicted. It is skeptical, more precisely, about the odds that two so dissimilar cases will confront alternatives bearing exactly the same values. The flaw of the analysis made above, following this claim, is to have as their point of departure a too rough conception of values rendering it unable to perceive that, behind the misleading unity conveyed by terms like 'freedom of speech' or 'safety', there lies a huge quantity of distinct values. Once those values are rightly discriminated, one is led to recognize that coincidence of the values borne by alternatives of very dissimilar choice settings is fairly unlikely, and thus that coherence between essentially like cases is, even if not much narrower than

coherence between bearers of value, not so demanding as my previous discussion suggests. Although an evaluation of this claim hangs on an account of how values should be discriminated and is, thus, beyond the scope of the present work, it is worth noticing that the persuasiveness of the conclusion that identity between the values borne by alternatives of difference choices is rare hangs on the number of existing values.

A distinct conclusion, and maybe the only one available to those convinced that the total number of existing values gives little support to the claim that coincidence of bearers of value in very different settings is unlikely, is that the intuition about the narrowness of coherence is false, as this intuition stems from differences between choices whose importance, after analysis, turns out to be none. The claim, in other words, is that the belief that two political decisions involving protests against criminalization of drugs have more in common between them than with a third decision about holocaust is misleading. Once the analysis is restricted to what matters, political choices about public demonstrations favoring drug decriminalization resemble each other as much as they resemble another choice involving the right to deny the holocaust.

5. Why coherence? The arguments of Raz and Chang

This section turns to the arguments advanced by Raz and Chang in support of coherence in cases of incomparability.

5.1 Coherence in Raz

Raz acknowledges that coherence matters when, thanks to value pluralism, a decision has to be made between incomparable alternatives. Reasons for this are:

First, adhering to the chosen solution is necessary for it to work in all cases where its benefits depend on social coordination. It is often also necessary for the efficient operation of bureaucratic institutions. Where a person can decide one way one day and the opposite way the following day (in matters in which there is no overriding reason to decide one way or the other), an institution may well be thrown into considerable confusion and chaos if it is allowed to do so. (Raz, 1992, p. 313).

Although Raz only mentions one, this passage contains two discernible arguments. They will be referred to in the following as the *coordination argument* and the *efficiency argument*.

Second, ordinary rule of law considerations come into play. Only by adhering to one coherent policy can the law be made widely known and its application predictable. (Raz, 1992, p. 313).

Call this third argument the *rule of law argument*.

Let's examine each argument in turn. It is usual to say that a coordination problem takes place whenever someone's best move in a given situation hangs on other agents' behavior. The decision to traffic on an avenue in a given direction, for example, can be someone's best move so far as other drivers follow the same direction. Provided that coordination problems are of that kind, the key for solving them, put simply, is information about others' behavior. Once informed about the direction other drivers will take, I can assert whether going through an avenue in a given direction is or not the optimal course of action to me. Consider then, in light of these last remarks, the claim that 'adhering to the chosen solution is necessary for it to work in all cases where its benefits depend on social coordination.' Apparently, this claim alludes to the fact that certain political decisions are able to solve coordination problems. Very often, knowing if a given course of action is optimal depends upon information that can be provided by decisions of that genre, as, for example, administrative acts establishing traffic rules. In some of those cases, the argument goes, social decisions will only be a reliable source of information if they are coherent. This may be particularly the case of judicial decisions, since the information these decisions are able to offer includes information about what judges will do in the future, but judicial decisions will only be a reliable source of that information if courts show deference for past decisions.

The efficiency argument can be easily understand with help of an example. Suppose that someone has two paths available to go to work, and that these paths are incomparable in what matters (which may be fastness, environmental beauty, or some mix of both). The efficiency argument states that, in circumstances

like this, picking the same route every day will reduce costs. By driving always through the same way, the agent will probably end up getting to know this way better, thus becoming able to cover it faster. A similar intuition holds regarding political decisions. So, for example, two norms about environmental licensing may constitute incomparable alternatives because while one of them is more demanding and thus safeguards natural resources to a greater extent, the other favors economic growth and employment. But even if the alternatives are incomparable, it is likely that enforcing always the same norm will reduce costs of environmental agencies and firms.

The rule of law argument stresses the role of coherence for legal norms to become known and their application predictable. The argument thus seems to imply, first, that lack of coherence makes law changes more frequent. Even if new laws apply only to future cases, their content usually takes time to become widespread, what renders constant changes an obstacle to knowledge the rules. When it comes to judicial decisions, inconsistency becomes more troubling due to the fact that these decisions commonly apply *ex post facto*. Thus, lack of coherence in judicial decisions not only undermines certainty about legal norms (to the extent that knowledge about the law hangs on uniformity of judicial decisions) as turns the enforcement of these norms unpredictable.

The point is to verify if Raz's arguments supporting coherence are persuasive when applied to choices involving incomparable alternatives. More precisely, the issue is whether coordination benefits, efficiency, legal certainty and predictability are able to determine that, between otherwise incomparable alternatives, the more coherent alternative ought to be chosen. Before focusing, however, on incomparability cases, it is worth noticing that none of the arguments mentioned above ascribes to coherence an intrinsic value. The attractiveness of coherence is up on its being in fact related to some of the values (coordination benefits, efficiency, etc.) to which each argument alludes. By failing to attribute to coherence an intrinsic value, Raz's arguments thus become vulnerable to challenges directed not at coherence in itself but at the values it is taken to advance. To the extent, for example, that the value of coherence stems from the certainty and predictability achieved through coherent decisions, arguments pointing to the downsides of certainty and predictability become also arguments against coherence.

On the other hand, rendering the value of coherence contingent to the relation between coherence and other values avoids the inconveniences of the broadness of concepts of coherence such as coherence between bearers of values and coherence between essentially like cases. Even if coherence is as encompassing as these conceptions suggest, that lack of intrinsic value reduces coherence's moral appeal to cases in which deciding coherently really promotes some of the values to which coherence is attached. Thus, even if two choices are essentially equal, arguments like Raz's only require that they be decided coherently when doing so offers some coordination benefit or advances the values of efficiency, legal certainty and predictability.

Let's consider now the particular case of choices between incomparable alternatives. As understood here, Raz's arguments about the relevance of coherence in these cases have the following structure: Take two pairs of alternatives, A and B and C and D, referring to successive choices. Between A and B, the chosen alternative was A. Like A and B, C and D are incomparable in what matters except for one or more of the values (coordination benefits, efficiency, legal certainty and predictability) achieved through coherent decisions. One or more of these values matter, nevertheless, to choice between C and D. What matters to choice between C and D, consequently, is made up by a value or combination of values unrelated to coherence *plus* one or more values that coherence helps to satisfy. Thus, assuming that A have being previously chosen turns C into a more coherent alternative than D, the conclusion is that, taken into account *all* that matters to choice between C and D, C is better than D.

This argument would surely be a compelling one whether, instead of incomparable, alternatives C and D were equally good in what matters except coherence. If C and D were equally good in this sense, the fact that C is more coherent than D and that coherence (or one or more of the values advanced through it) matters to choice between C and D would grant C the tiny advantage it needs to overcome D. This would hold regardless of the weight possessed by the value or values of coherence in the whole mix of values mattering to the choice and also regardless of how notably these values are borne by C. As C is, by hypothesis, exactly as good as D in all other respects, it is enough that the value or values of coherence have some minimal importance to the choice between these alternatives and that C bears these values to a minimally significant higher degree than D.

The case is considerably distinct when it comes to a decision facing alternatives that, rather than equally good, are incomparable in what matters except coherence. On this, remember that the way whereby incomparability is verified is the small improvement test, a test according to which two items are said incomparable if none is better than the other and if there is a third item which is better than one of the first two items but not better than the other. Alternatives C and D being incomparable, thus, means that a third item better than C is perhaps not better than D. What Raz's arguments in defense of coherence entail, however, is exactly a third option which, although surely better than one of the alternatives of a given pair, may not be, thanks to incomparability, superior to the other. Assume once more that C and D are incomparable in what matters except for the value or values of coherence, and that one or more of these values matter to choice between them. This renders comparable the alternatives C, an alternative belonging to a world where choice between C and D is not anteceded by choice between A and B and where, thus, C is not more coherent than D (nor otherwise), and C+, the same alternative as C but in a world where choice of A over B already took place. C and C+ are comparable because, by definition, they are equally good respecting all that matters except coherence, and, from the viewpoint of coherence, C+ is better than C. Yet given the fact that C and D are incomparable, superiority of C+ over C does not entail superiority of C+ over D.

On the other hand, asserting incomparability between C and D does not rule out the conclusion that C+, which is superior to C, is also superior to D. What the above remarks demonstrate is only that Raz's arguments are flawed if they are read as containing the claim that, between alternatives that are incomparable all respects except coherence, the more coherent one is necessarily better than the other. Yet perhaps Raz should be taken instead as advancing the less ambitious claim that in some cases of incomparability (not necessarily all) the values of coherence make the more coherent alternative better than the other. The argument supporting coherence would thus be rephrased in the following way:

(1) Items A and B are incomparable in what matters except coherence.

(2Raz) If items A and B are incomparable in what matters except coherence and one of them is more coherent than the other, the more coherent item must be chosen whenever coherence renders this item better than the other.

(3Raz) A is more coherent than B and, because of coherence, is better than B all things considered.

(4) A must be chosen.

In what concerns the additional premises

(1a) Between two items A and B, the better one, all things considered, must be chosen.

(1b) If items A and B are incomparable in what matters except coherence and one of them is more coherent than the other, the more coherent item is, all things considered, the better one.

(1a) stays, whereas (1b) is abandoned.

In the less ambitious version just introduced, the argument is sound. One should wonder, nevertheless, how often premise (3Raz) holds. There are reasons to suspect it does not hold very often. Observe, first, that the arguments offered by Raz not only display coherence as a value contingent to other values, as also sometimes presents the relation between coherence and these other values as a relation based on predictions. This happens, for example, when the desirability of coherence hangs on the coordination benefits coherent decisions facilitate, as well as when coherence is deemed able to decrease administrative costs. This entails that some proclaimed advantages of coherence must have their value discounted by the fallibility of the predictions on which they draw.

Second, it should be taken into account that many political decisions between incomparable items are decisions facing alternatives bearing fundamental values, such as life, freedom of speech, environmental protection, etc. Remind, further, that incomparability is attested by a third item being better than one of two alternatives (none of them being better than the other) but not better than the other one. In order to be comparable to one of the alternatives of a given pair, this third item is likely a bearer, although to a different degree, of the same value of the alternative to which it is comparable. Under these conditions, asserting that coherence gives place to comparability means asserting that the value or values of coherence affect choice in a way that even an increase in the presence of some of those fundamental values involved is unable to do. It requires assuming, for example, that between two alternatives A and B bearing, respectively, the values of environmental protection and economic growth, the coherence of one of the alternatives produces an effect (i.e. comparability) that even improved versions of A and B advancing to a greater extent environmental values and economic activity are unable to trigger.

Third, the hypothesis that coherence renders comparable alternatives that are in all other respects incomparable is weakened by coherence's disvalue. Such disvalue is related, first, to some negative effects of coherence. Marmor (2005, p. 35), for example, views coherence as an obstacle to discovering the upsides of courses of action that are constantly forgone. Second, it is also possible that the 'values' of coherence are sometimes no values at all, as their realization in some circumstances turns out to be harmful. It has been claimed, for example, that legal certainty and predictability are not always desirable.⁹

This section concludes, in sum, that even when coherence adds value to one of the components of a pair of alternatives that are incomparable in all that matters except coherence, this does not necessarily render the more coherent alternative better than the other one. It is a feature of incomparability that a third option will sometimes be better than one of two incomparable alternatives but not better than the other, and there is no reason to think that the advantage granted by coherence to one of the alternatives of a given pair will not be, sometimes, an advantage of this sort. Raz's arguments favoring coherence as a tiebreaker in cases of incomparability become indisputable only when understood as conveying the more modest claim that the more coherent alternative should be chosen *as long as* the value or values of coherence turn it into the better alternative all things considered. The issue this interpretation of Raz's defense of coherence gives rise to is that of knowing how often coherence triggers comparability where before there was incomparability, and the section enumerates reasons to suspect that this does not happen very often.

A possibility until now neglected is to reconstruct Raz's arguments without the additional premises (1a) and (1b). The demand for coherence in cases of incomparability would then be understood as a claim not attached to the assumption that coherence renders comparable alternatives that are in all other respects incomparable; the more coherent alternative would be chosen, therefore, in spite of the fact that coherence does not make it better than the other alternative. Raz, however, gives no hint of how such an assertion could be supported. Chang's argument favoring coherence, by contrast, entails a claim exactly like that.

5.2 Coherence in Chang

It has to be first mentioned that the role of coherence in Chang is circumscribed to only one of three possible structures of conflict. For Chang (2009, pp. 142-145), structures of conflict are given by choice situations where the alternatives faced are either equally good, incomparable or on a par, and it is only in this last case that a rational response to conflict, self-governance, implies a duty, although not unconstrained, of coherence. Here, notwithstanding (and against, thus, Chang's explicit stipulation), Chang's reasons in support of coherence will be taken as also applicable (at least) to cases of incomparability. By doing so, my analysis will therefore assume that either Chang's attempt to demonstrate that some cases thought as cases of incomparability are truly cases of parity fails, or that, even if parity indeed exists as a fourth comparison relation (besides 'better than,' 'worse than' and 'equally good'), the consequences of parity for practical rationality are not, contrary to what Chang has argued, distinct from those of incomparability.¹⁰ In the following, thus, I shall employ the term 'incomparability' in a sense that includes Chang's parity.

Another introductory remark is that Chang treats separately intrapersonal and interpersonal choices and that, although her analysis of the two species of choices is to a great extent the same, my focus will be exclusively on interpersonal choices, the class of choices to which political decisions belong. Chang's particular concern, when referring to interpersonal choices, is indeed with the issues 'involving members of a polity or civil society who disagree over political matters' (2009, p. 147) and the decisions about those issues made by public authorities like legislatures and courts.

According to Chang, a rational response to choices involving incomparable alternatives is self-governance, 'the rational activity of defining one's 'rational character' or 'rational identity' through choices made in the face of practical conflicts.' (2009, p. 146). Comparing what self-governance entails to intra and interpersonal choices, she explains:

⁹See Korobkin (2000, pp. 51-52). Korobkin affirms that the greater the certainty about a right, the higher the probability of the 'endowment effect', an exaggerated evaluation of a good by the agent to whom this good is granted. As an obstacle to the occurrence of transactions, the *endowment effect* may thus be deemed an undesirable consequence of legal certainty. See also Baker, Harel and Kugler (2004) presenting an experiment confirming the hypothesis that an increase in the predictability of the content and enforcement of a sanction reduces its deterrent effect.

¹⁰ On the idea of parity and its implications for practical rationality, see Chang (2002; 2005, pp. 345-47). For criticisms challenging both the existence of parity and the particular consequence for practical reason Chang ascribes to it, see Boot (2009).

Self-governance in the intrapersonal case is a matter of 'taking a stand' and 'getting behind' an alternative. It is the activity of 'making' one's own rational identity. I suggest that the analogue of this activity in the interpersonal case can be understood deliberatively. When the structure of social conflict is given by parity, society can respond rationally by 'taking a stand'. But taking a stand in the social case is a matter of confronting the deliberative question 'What kind of society should we be?' (Chang, 2009, p. 155).

Although without describing in more detail the deliberation that self-governance needs in order to take place, Chang states clearly that a society falls short to self-govern when each of its decisions is made independently of the others. Coherence, in this sense, is a condition of self-governance

(F) or a society to self-govern in a way that involves *making* its own rational identity, I suggest that it needs to confront the self-reflective question *self-consciously as a collective body*. This is because making one's own rational identity requires continuity and coherence not only in the decisions a society takes in the face of practical conflict, but also in the justifications to which it appeals in making those decisions. Those justifications will concern the value of being a society with a certain rational character, and the justification in one decision must mesh coherently with the justification in another decision, even if the 'meshing' involves a change in the direction of the society's rational character. (Chang, 2009, p. 156).

It is worth noticing that Chang's argument in support of coherence avoids ascribing to the latter the consequence of rendering comparable alternatives that are in other respects incomparable. Sound or not, Chang's account on the relevance of coherence dispenses with the claim that the more coherent alternative must sometimes be chosen by being superior to the other. Rather for Chang the demand for coherence has its place in choices involving alternatives that remain incomparable in spite of the fact that one of them is more coherent than the other. This is made patent when Chang explicitly argues for a view of practical reason which, instead of being circumscribed to actions that are guided by reasons, includes self-governance as the activity of modeling self-identity before conflict situations.¹¹ When action guided by reasons and self-governance are contrasted in this way, it becomes clear that self-governance cases are those in which reason fails to determine the choice of one of the alternatives, thus leading to the conclusion that the importance of coherence in self-governing choices is not linked to the superiority of the more coherent alternative over the other.

According to Chang, therefore, the domain of practical reasoning goes beyond cases in which one of the alternatives is better than the other. Even when none alternative is better than the other, choice may be rational in the sense of a self-governing choice, and it is the nature of self-governance, rather than the stand of the conflicting alternatives, what asks authorities to treat political choices as linked choices aiming at offering a general answer to the basic issue of political self-identity.

At this point, it could be objected that arguments related to self-governance in the sense meant by Chang are unable to confer any relevance to coherence in choices between incomparable items. This is because it is impossible to state that coherence matters to a given choice without acknowledging that coherence affects the relative weight of the choice alternatives. Furthermore, the claim that reason forces to choose the more coherent alternative must follow from the admission that such alternative is better than the other, so that stating that the more coherent alternative must be chosen implies assuming that coherence has turned the alternatives comparable. The present objection contradicts Chang's thesis about practical rationality, treating as being beyond the latter's domain choices between alternatives that are all things considered incomparable (or, in Chang's parlance, 'on a par'). Answering to this challenge is, however, beyond the scope of this article; thus, in the following analysis, I shall let the objection aside and assume that Chang is right when she argues for including choices between incomparable alternatives under the umbrella of practical reason, thus rendering feasible to recognize importance to coherence as a rational predicate of those choices without postulating comparability between the alternatives and superiority of the more coherent alternative over the other one.

¹¹Chang (2009, p. 147): 'A person who works out the reasons she has and then acts on them is not a fully fledged rational agent; after all, a sophisticated machine could successfully perform these tasks. What makes humans distinctively rational is our ability in the face of conflict to take a stand and put ourselves behind certain alternatives.'

Let's assess, now, in what precisely consists the imperative of coherence that a society must comply with in order to self-govern. According to one interpretation, this imperative refers only to the way a decision is justified and, thus, has nothing to do with the content of the decision properly speaking. If, between incomparable alternatives A and B, A is more coherent than B, the choice of B is notwithstanding allowed as long as, when choosing B, the political organ makes reference to the past decisions or series of decisions rendering A more coherent option than B. When reaching its decision, this organ should expressly admit that the question 'What kind of society should we be' got for one or several times before the answer 'A kind of society that prefers A to B;' once this is acknowledged, however, the same organ would be free to bring in a change in the character of the society at issue, a change whereby the latter will start to become a kind of society that prefers B to A. If this is the sense in which self-governance needs coherence, then coherence under Chang's view fails to provide a reason, even a weak one, to treat essentially like cases in the same way. So understood, coherence is no more than a sort of awareness of the past, an explicit recognition of the way society has managed before the problem it faces again now.

Another interpretation, by contrast, refuses to reduce the role of coherence to justification. Even if the rational activity of self-governance allows for changes and thus does not require that a society gives always the same answers to the question 'What kind of society should we be?' raised by incomparable alternatives, too frequent oscillations in the way this question is answered would preclude the construction of self-identity. Following this interpretation, thus, incoherent decisions must not occur on a daily basis.¹²

The problem with this last interpretation is that it renders the request for coherence found in Chang's account of self-governance untenable. To see why, let's return to the analysis made above about the concept of coherence. This analysis showed that coherence in the sense of treating essentially like cases alike is probably not substantially distinct from coherence between bearers of value or, in other words, that asking for essentially like cases being treated alike amounts to ask for not significantly less than equal treatment to cases in which the values borne by the alternatives are the same. Let's then assume, now, that coherence as an inherent feature of self-governance is coherence between bearers of value or something close to this. Understood in this way, can coherence be really deemed a condition to political self-governance? Contemporary societies constantly face choices between pairs of alternatives bearing the same opposed values, as the values of freedom and safety or environmental protection and industry expansion. Why would be wrong if, before incomparable alternatives bearing values like these, a society defines itself as a kind of society that *sometimes* prefers to sacrifice freedom in order to have a bit more of safety and sometimes the opposite, or that *sometimes* takes risks to the environment in order to allow for industrial progress and sometimes the opposite? In what is a society that acts in this way less rational than another which, confronting similar choices, opts always for the same fundamental value over the other one?

To make the point clearer, what I am arguing here is that a society that searches for some sort of compromise when faced with choices between incomparable alternatives bearing fundamental values seems to be at least as rational as another one that constantly prefers the alternative bearing one of the values in opposition, but that the suggestion that self-governance as a rational response to conflict situations requires deciding coherently (and not just being aware of past choices) contradicts this. Coherence as a component of self-governance entails that a society having sometimes to decide between freedom and safety be predisposed to opt for the alternative bearing one of these values just because this is the way similar dilemmas were solved in the past. But a society with such predisposition is no more rational than another one whose political organs deliberately alternate their preference for the values at issue when confronting incomparable alternatives.

It might now be objected that coherence assumed by self-governance is far less demanding than the above example implies and, consequently, that it does not lead to the conclusion that a society whose successive choices reveal a compromise between fundamental values is irrational. On this, however, the remarks made above about the difficulties of distinguishing coherence in the sense of treating essentially like cases alike and coherence as equality of treatment to cases in which the values borne by the alternatives are the same should be reminded. It should be noticed, further, that coherence is, according to Chang, a condition of self-governance and, as such, a value constitutive of practical rationality. The status of coherence in Chang, thus, is that of something possessing intrinsic value, what contrasts Chang's account with Raz's defense of

¹² This latter interpretation is confirmed by the passage (2009, p. 156) where Chang states that 'making one's own rational identity requires continuity and coherence *not only in the decisions a society takes in the face of practical conflict*, but also in the justifications to which it appeals in making those decisions' (emphasis added).

coherence as just a means to achieve other values. This difference is crucial because, under Raz's view, the normative strength of coherence can be circumscribed to the instances in which coherence actually contributes to the realization of some of the values to which it is related, while in the case of Chang coherence, being valuable in itself, must be either embraced with all its consequences or otherwise rejected.

6. Conclusion

This work raises doubt about the importance of coherence in political decisions between incomparable or incommensurable alternatives. In what concerns Raz's arguments, it is observed, first, that the advantages flowing from coordination, efficiency, legal certainty and predictability does not necessarily turn two items that are incomparable in what matters except coherence into comparable items. Raz's defense of coherence only becomes compelling, in consequence, when reduced to the more modest claim that coherence *may* render comparable two alternatives which are otherwise incomparable. There are, however, reasons to suspect that coherence does not have this implication very often.

Chang's arguments in support of coherence are distinct in that they do not imply stating that coherence gives rise to comparability between alternatives that are in other respects incomparable (or, as Chang prefers, on a par). Rather she argues, first, that the impossibility of asserting the superiority of one of the alternatives does not leave choice out of the reach of practical reason. Chang further claims that a rational response to such cases is self-governance, the making up of political self-identity through successive answers to the question "What kind of society should we be?" Self-governance, in turn, requires coherence.

More specifically on the role played by coherence in self-governance, two interpretations are above considered. The first states that 'coherence', as employed by Chang in that context, is not about decisions properly speaking, but only about the way they are justified by political organs. Following this interpretation, coherence as a feature of self-governance would only require that a certain recognition of past choices be present in current decisions. Another interpretation, by contrast, views coherence as a value governing the content of choices, deeming too frequent changes of political path incompatible with political self-governance. Although more in line with Chang's writings, I argue that this second interpretation turns coherence into an indefensible ideal. Taking into account that coherence in the sense of treating essentially like cases alike is not rather distinct from coherence as equal treatment to cases where the values borne by the alternatives are the same ('coherence between bearers of value'), accepting this second interpretation entails endorsing the untenable claim that a political society whose decisions between items bearing fundamental and opposed values (as such, e.g., the values of freedom and safety or environmental protection and economic growth) show alternate preference for the values at issue is less rational than another one whose political organs are bound to choose the alternative bearing the same value already privileged in previous choices.

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