

Impossible to decide: When are the given reasons sufficient?

Why do lawyers, judges, legislators & legal scholars need reasons for Legal Reasoning & how can those Reasons be recognized?

Looking at four different topics, there are different findings for legal reasoning.

- The different subject matters of law and their respective discourses ask for reasons to be given, as to which reasons might enter the discourse and which cannot. **Law itself** can decide on this topic as well as an **interdisciplinary dialogue** need to be employed.
- For jurisprudence to be a science, **scientific methods** are necessary: Not merely within jurisprudence, but tested against different sciences as well as the **theory of science**.
- The reasons given over time can show the **development of law and jurisprudence**. Historical insight may thus give reasons, yet only those of time and an **is**. They cannot be that of an **ought**. As **auxiliary means**, such as the historical or philosophical sciences, these insights can be taken into account.
- Leading peaceful lives in a bigger society via law (peace under the law) is the purpose of law and justice. It is to be achieved by an **equal application of the law**, which yet again can only be achieved via **transparency & accountability**. These need not only **subsumtion** and the rules of **logic**, but as well **methods** regarding **interpretation** and **argumentation**, ensuring **transparency and accountability**.
- The problem of **subjectivity** remains. While it is ruled in procedural law (very own conviction as the judge deems it to be true or untrue) there is no such understanding regarding law's other subject matter: **texts**. The rules of **methodology** on any subject matter can push **subjectivity** back into ever smaller spaces. However they can never eliminate them.

IV. Law's purposes

1. Private addressees of the law
 - Law as structuring & behavioral order
 - rights & will, freedom & self-empowerment
 - "persuasive power" & individualized coercion
 - legal rules as Kantian Hypothetical Imperatives – facts & legal consequence
 - protected interests of others & the legal community as a whole
2. National institutions: courts as an example
 - process of the recognition of entrenchment or intersubjective normative realities, leading to **transparency** → **necessity of scientific method** convincing parties & any other reader
3. The judge as hermeneutical subject
 - judges as hermeneutical subjects: subjective & objective legal interpretation
 - no method could ever eliminate subjectivity
 - to lead peaceful lives in a bigger society via law – peace under the law – an equal application of the law is needed, that can convince parties & any other reader
 - for this purpose transparency & accountability are necessary
 - These can only be achieved by certain scientific methods, e.g. subsumtion, methodology, interpretation, argumentation – any reasons given need serve these purposes

I. Law's subject matter

1. Legal (scientific) discourses on
 - a) texts (of a law, contracts, decisions, spoken words, verbalization of non-verbal resources)
 - b) facts deemed relevant by 1.a), connecting text & facts in resource: very own conviction as the judge deems it to be true or untrue
2. Discourses at court/by authorities, executing the law, producing new texts for the discourses in 1
3. Discourses while legislating producing new subject matter for 1. & 2.

Which reasons might enter the discourse & which cannot and should not?
For some, rules can decide, which can be relevant reasons. For others, an interdisciplinary dialogue, including the theory of science & hermeneutics, need to be employed



II. Law's form – legal science

1. What is science?
2. Law as legal science
 - no clear conditions are as to when the „giving or taking reasons“ is scientifically sufficient
 - judicial Hermeneutic is probably the most concerned with the interpretation of legal texts & the recognition of facts in procedural law with its & its subjectivity
 - reasons & their requirements are developed within the discipline of legal science: legal methodology with regard to law's subject matter: texts (1.a) & facts (1.b), as necessitated by the rules in legal syllogism
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III. Law's development in time

1. direct and indirect normative consequences throughout history
2. legal science as humble servant & self-conscious heretic
 - legal science seeks to obtain general statements
 - insights on the conditions of systems formation: patterns of thought & the elements of dogmatics & their application
3. varied interrelationships with the processes of authority
 - Who are the authors of law's subject matter (texts, facts) and the methods applied?
 - What reasons are given in general for the interpretation of law & recognition of facts?
 - use of new vocabulary in a dialogue with other disciplines, with recourse to extra-judicial, especially philosophical – preconceptions

The reasons given over time can show the development of law & legal science. These are only those of time and an **is**. They cannot be that of an **ought**. What can be seen is, that auxiliary means, such as the historical or philosophical sciences are and must be taken into account

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Dr. iur. Verena Klappstein M.A., LL.M.

When are they sufficient?

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