

## EDITORIAL

# Special Issue on Pragmatism and Legal Education – Editorial

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This special issue is devoted to exploring the connections between the philosophy of pragmatism and the practices of legal education. The main idea underlying the issue is that pragmatism can be a fruitful base for criticizing and improving legal education. The contributions to the Special Issue take up different strands of pragmatist thought and apply this to a range of features of legal education. In this introduction, we provide a short background on pragmatist theory and a brief summary of the articles. The origins of this special issue lie in a special workshop on legal pragmatism during the 29th World Congress on Philosophy of Law and Social Philosophy in Lucerne, Switzerland. We would like to thank Michal Stambulski for co-organizing the IVR special workshop and coordinating with the authors for this special issue.

American pragmatism is most widely known for its theory of truth. Although many philosophers maintain that true beliefs are justified because they ultimately depend on irrefutable foundations, pragmatists maintain that these foundations are unattainable. True beliefs are justified in virtue of their practical consequences. In this view, scientific methods should be used to test which beliefs best guide our actions. One of the founding fathers of American pragmatism, John Dewey, captures this point well in *Reconstruction in Philosophy* when he argues that: '[t]he hypothesis that works is the *true* one; and *truth* is an abstract noun applied to the collection of cases, actual, foreseen and desired, that receive confirmation in their works and consequences' (Dewey, 2008, 169-170). Pragmatists agree on the anti-foundational and experimental nature of knowledge, but disagree on whether objective truths can be reached (Bernstein, 2010, 106-113). Pragmatists in the objectivist camp, such as, for example, Dewey, maintain that objective truth exists because we use human inquiry to reach agreement on which beliefs best guide our actions. Pragmatists in the relativist camp, on the other hand, emphasize that the notion of objectivity should be abandoned given the fact that our beliefs are inherently contingent and subjective. For instance, Richard Rorty takes a relativist stance when he argues that we should not aim to establish which beliefs are objectively true, but consider which beliefs help us to foster solidarity in a community (Rorty, 1990, 22). On this basis, pragmatism also provides a theory of law. Law is seen as part of the social environment and a practice which should be evaluated on the basis of its consequences (Dewey, 1998b). It needs to be responsive to the prob-

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lems of its time (Nonet & Selznick, 1978). Pragmatism warns against over-emphasis of legal certainty and strict rules, because law needs to contribute to problem-solving.

Pragmatist thought has also contributed to many other fields of philosophy, such as, for example, the theory of education.<sup>1</sup> Dewey, for instance, emphasizes that education should not be narrowed down to the teaching of a well-thought-out curriculum, nor should teachers solely aim to cultivate the individual's interests and prior experiences. Instead, we should reject a sharp distinction between these two approaches and aim for a broader understanding of education (Dewey, 1998a). In this view, education should develop students into democratic citizens who are able to think critically. In *Art, Science and the Poetry of Justice – Pragmatist Aesthetics and Its Importance for Law and Legal Education*, Wouter de Been further explores this broader understanding of education to argue that science and art are intricately linked. Dewey maintains that science and art are both aimed at understanding the world around us. This means that no sharp distinction can be made between scientific experience on the one hand and aesthetic experience on the other hand. Although Dewey's perspective on art has not become dominant in the field of aesthetics, elements of his work have resurfaced in other disciplines, such as, for example, somaesthetics, social theory and legal theory. De Been focuses on the latter discipline to explain what a pragmatist aesthetics entails for legal education. De Been argues that a pragmatist aesthetics cultivates an ethos in which lawyers imagine how legal concepts may be adapted to better fit the practice of law. Including law and disciplines in the legal curriculum may stimulate this ethos, in addition to encouraging students to obtain hands-on experience in applying the law in real-life situations.

In *Space and Socialization in Legal Education: A Symbolic Interactionism Approach*, Karolina Kocemba also relies on a broad understanding of education to explore how law students are socialized in academia to become lawyers. Relying on insights from symbolic interactionism, a social theory that has been heavily influenced by American pragmatist thought, she maintains that it is important to investigate the broader context in which law students are socialized.<sup>2</sup> In her contribution Kocemba focuses on how law students perceive the space in which they conduct their studies. She argues that the space of a law school may be organized in such a way that students internalize a hierarchy between lawyers and non-lawyers. No sense of community is established within the law school, or between the law school and society. The emphasis on hierarchy can also go hand in hand with a very strict view on how legal rules should be applied in concrete cases. Based on an empirical pilot study, Kocemba explores how students in a Polish law school experience the use of space in their institution, and points out how a different use of space can foster the development of a different kind of lawyer.

In the two final contributions of this special issue, the authors explore how legal education can integrate elements from pragmatist thought. In *Teaching Com-*

1 For an insightful historical account of the contributions of American pragmatism to contemporary philosophy, see Misak, 2013.

2 On the influence of pragmatist thought on symbolic interactionism, see Joas and Knöbl, 2009, pp. 124-129.

*parative Law, Pragmatically (Not Practically)*, Alexandra Mercescu discusses what a pragmatist approach to the teaching of comparative law entails. She argues that comparative law courses offer students a critical and undogmatic perspective on law. Students are encouraged to study law through the lens of other legal systems, and in some cases other disciplines, and consider how legal rules reflect normative and ideological commitments. In *Law Schools and Ethics of Democracy*, Michal Stambulski returns to the main pragmatist argument about education and uses this to confront current practices of legal education. He also addresses the critique that legal education disciplines students to be passive subjects rather than active members of the legal community. Stambulski argues that using the ethics of democracy as proposed by pragmatism is a good way of restructuring the law school curriculum, because this implies pluralism, openness to criticism and a sense of community. He sees promise in the use of Socratic dialogue, law clinics and moot courts, because these educational forms allow students to take an active role and to take the perspective of others. If done well, these institutions foster the pragmatist idea of inquiry as driven by practical concerns and as a democratic effort.

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