The Importance of Ideals:
Debating Their Relevance
in Law, Morality, and Politics

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1. Introduction: The Three Main Theses

In the fairly recent past, in the last decade of the cold war era, refer-
ence to ideals evoked images of the stale ideologies of socialism and
communism and the failed utopianism that accompanied them. Ideals
did not have either theoretical or practical appeal. In some areas of
normative theory, however, the first strands of a reviving interest were
already forming. In ethical theory, Bernard Gert reasserted the category
of moral ideals as the main category apart from moral rules.[1] In legal
theory, Ronald Dworkin started to include the ideal of integrity next to
principles.[2] The attention for ideals has grown since, but, with some
exceptions, a systematic treatment of the role of ideals in law, morality,
or politics has been lacking.[3] Ideals are posited without questioning the
concept; they are lumped together with virtues and purposes without
recognition of their distinctive role.[4]

This book aims to give an impulse to this emerging academic debate
on ideals by providing a more systematic analysis of their role and their
characteristics. We hope to show the relevance of an ideal-oriented
approach in fields such as law, morality and politics. By including ideals

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[1] Bernard Gert, *Morality: A New Justification of the Moral Rules*, New York, Oxford University Press, 1988.

[2] Ronald Dworkin, *Law's Empire*, Cambridge, Mass., The Belknap Press, 1986.

[3] The exceptions being Nicholas Rescher, Philip Selznick, Ken Winston and Dorothy Emmet, who are discussed or referred to further on in this introduction.

[4] E.g. Dworkin, *Law's Empire*, pp. 176-178. The political philosopher Avishai Margalit calls the decent society and the just society ideals, merely as an after-thought, without making clear what the role of these concepts *as ideals* is; *The Decent Society*, Cambridge, Mass., Harvard University Press, 1996, pp. 281-284. The socio-legal theorist Roger Cotterrell subordinates values and aspirations to the concept of legal ideology; *Law's Community*, Oxford, Clarendon Press, 1995.

as a central category, one can more clearly perceive and better understand certain positive and negative aspects of the social world.

The central idea is a simple thesis:

Thesis 1: Ideals are important in social reality

Trying to grasp the meaning of social phenomena, a first step is to see that the relations between people within society have strong normative implications. People's expectations, their own behaviour towards others, their reactions to what others do, are all normatively laden. This is most clearly so in the fields of law, politics and morality: there the normative aspect of social relations is a central concern and at the core of action, discussion and thought. Political discussions on various subjects – such as a new tax system, the budget for health care, police measures to prevent terrorism – do not only concern deciding on the measures to prevent terrorism – do not only concern deciding on the allocation of government funds. They are about questions of the fairness of a flat or a progressive tax rate, of equal access to health care, of safety versus privacy in connection with police authority; in other words, they concern the values or ideals of fairness, equality, safety and privacy. Practical deliberation about what ought to be done most often proceeds with reference to ideals that can justify or counter a decision.

Although people involved in law or politics clearly act to further aims and talk in terms of values that motivate them or justify their aims and talk in terms of values that motivate them or justify their opinions, it is striking how little systematic attention is paid to ideals or values by theorists studying these fields. At the most, an ideal or value is taken as a given starting point, not as something that is in itself an interesting object of study. By contrast we defend the following thesis:

Thesis 2: In order to understand the normative dimension of social reality, ideals need to be an integral part of our descriptive theories

Understanding social reality in any meaningful way implies understanding the role of ideals in that reality. If the first thesis is accepted, if ideals are indeed a central factor in social reality and a determinant of the normative dimension of that reality, it follows that a description of a social phenomenon can only be correct and comprehensive if a description of the relevant ideals is included. This implies that a descriptive theory must include a category of ideals: in order to recognize and understand the role of ideals, the concept must be part of the theory used to describe and explain a social phenomenon. In other words, if ideals exist, a description is only correct if it includes them and this implies that they must be conceptualized first. This is a strong claim, because

the existence of ideals as an identifiable aspect of social practices may be doubted.

Moreover, there is another reason that justifies the attention paid to ideals. A description of ideals and the way they function can also be used for the critical assessment of normatively laden fields such as law and morality. The claim is then that an ideal-oriented theory is of more use for the evaluation of such fields: here, a descriptive theory of ideals is linked to a normative theory.

Thesis 3: Ideal-orientation is fruitful for the evaluation and guidance of practices in law, morality and politics

This means that understanding the role of ideals can help to formulate criticism of the use made of ideals, of the way they are interpreted and of the extent to which they are neglected or overemphasized. By means of this critical perspective on the role of ideals, proposals can be made both for guidance in a problem area and for a better implementation of ideals. Explicating ideals involved in legal or political practice is necessary for a well-informed evaluation of such practices. It is, however, an approach that connects ideals to specific topics in the fields of law, politics and morality, and it is only in connection with these specific topics that evaluation can be meaningfully done. Thus, it is not wholesale ideological critique, an unmasking of the neglect of ideals across the board or anything of the kind that is proposed; it is in the combination of guiding ideals with particular problems and discussions that ideal orientation works for a normative theory.

This view of ideals and ideal-oriented theory is typical in its propositions of jurisprudence that is sociologically informed. Stressing the connection between ideals and social reality as well as the combination of descriptive and normative theory, it takes a large part of its inspiration from the 'jurisprudential sociology' of the Berkeley School in sociology, in particular from the work of Philip Selznick.[5] In the field of the philosophy of law, it has a close affinity with the work of Lon Fuller. These are two theorists who have stressed, first, the role of an aspirational element in law, and second, the place of law in society. Although their

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[5] The term 'jurisprudential sociology' is taken from the title of an article by Philippe Nonet, 'For Jurisprudential Sociology', *Law & Society Review* 10 (1976), 525-545, in which he explains what he calls the 'Berkeley Program'. Works by Selznick on the sociology of law include *Law, Society and Industrial Justice*, New York, Russell Sage Foundation, 1969, 'The Sociology of Law', in David Sills (ed.), *International Encyclopedia of the Social Sciences*, New York [etc.], MacMillan & the Free Press [etc.], 1968, and Nonet and Selznick, *Law and Society in Transition: Toward Responsive Law*, New York, Harper & Row, 1978.

views were mostly developed in connection with the domain of law, they are not restricted to it, and especially Selznick has always given his ideas wider scope.[6]

Selznick sees key social phenomena, such as democracy, parenthood and law, as governed by ideals.[7] Such a phenomenon is a system in which people's behaviour, the norms they adhere to and the problems they perceive can best be understood in relation to the ideal towards which the system is oriented. Participants criticize and applaud actions and arrangements in terms of the overarching ideal: an election that was not truly democratic, a father falling short of being a good parent. It is this fact of the ideal orientation of people involved in a normative practice that requires a theorist who seeks real understanding to include ideals. The argument for a social theory including ideals is, first of all, empirical: because ideal orientation can be observed to play a part in people's lives, a description of social reality is lacking if it ignores ideals. Without attention for motivating ideals human behaviour cannot really be understood, because the meaning of what a person does would remain obscure.[8] Second, there is a, less explicit, normative argument: if a theory is to contribute to the criticism and improvement of social phenomena, it needs to acknowledge the concerns of those involved in the phenomenon. Any effective normative position needs to be in touch with the internal point of view.[9]

A theory such as Selznick's blurs the distinction between fact and value in two ways. Most importantly, the ideal is seen as part of social reality: it is itself a fact, maybe not directly observable but out there in society nonetheless. Second, such ideals are a starting point for norma- tive conclusions of the theorist: thus the boundary between the descrip- tive and the normative is blurred.[10] This is motivated by the idea that it is not enough to give a neutral description of a legal or political situation, but that a theorist should identify strengths and weaknesses and assess what is problematic and why.[11] Here we can recognize Selznick's back- ground of pragmatist philosophy, more specifically, of John Dewey's philosophy. Theoretical distinctions, such as the one between fact and value, are to be assessed according to their contribution to understand- ing, they should never be treated as absolute dogmas. Theory cannot be viewed as separate from practical concerns: it is itself a practical enter- prise and it should be connected to, and help solve, practical problems.[12]

Ideals, as Selznick says, are latent in reality.[13] They are rooted in existing situations as standards that accompany the development of any normative system. The ideal of good parenting arises naturally from the ties between a parent and a child: having a relationship with a child in a factual sense – feeding it, bathing it, attending to its needs – will cause a parent to value that relationship and to have a sense, however implicit, of what being a good parent means. Ideals are not added later on as a criterion of assessment, but are based in the practice to which they attach. Seeing ideals as internal standards that arise with the working of the system itself is an idea paralleled by the internal morality of law in Lon Fuller's thought.

Fuller saw law as a system governed by two sets of standards, inter- nal morality and external morality. The internal morality of law is characterized by an inherent connection to the idea of a legal system itself: gross violation of the criteria of internal morality makes a system fail to be law. Thus, a legal system cannot exist as law without fulfilling the criteria of law's internal morality. What is especially interesting is that Fuller saw morality as a combination of the requirements of duty and aspiration. There is a minimal way of being moral, obeying baseline rules, and there is an optimizing way, trying to achieve the best.[14] Fuller

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[6] Fuller was not only interested in the connections between law and morality, see *The Morality of Law* (New Haven, Conn., Yale University Press, 1969), but also in the broader subject of mechanisms of social order; see Ken Winston (ed.), *The Princi- ples of Social Order: Selected Essays of Lon L. Fuller*, Durham, N.C., Duke Univer- sity Press, 1981. Selznick's largest work, *The Moral Commonwealth* (Berkeley, Cal., University of California Press, 1992), is on social theory in general, of which law and justice are but a small part.

[7] See Philip Selznick, 'Sociology and Natural Law', *Natural Law Forum* 6 (1961), 84- 108. For a discussion of Selznick's work, see Sanne Taekema, *The Concept of Ideals in Legal Theory*, The Hague, Kluwer Law International, 2003.

[8] Selznick's arguments are directed especially against a behaviouristic social science; see the 'Rejoinder to Donald Black', *American Journal of Sociology* 78 (1973), 1266-1269.

[9] Cf. Dworkin, *Law's Empire*, pp. 13-14. For a discussion of the internal/external distinction, see Brian Tamanaha, *Realistic Socio-Legal Theory*, Oxford, Clarendon Press, 1997, pp. 153-195.

[10] A good example is Antonie Peters, 'Law as Critical Discussion', in Gunther Teubner (ed.), *Dilemmas of Law in the Welfare State*, Berlin/New York, De Gruyter, 1986, pp. 250-279.

[11] See Gertrude Jaeger and Philip Selznick, 'A Normative Theory of Culture', *Ameri- can Sociological Review* 29 (1964), 653-669.

[12] See John Dewey, *The Quest for Certainty*, in Jo Ann Boydston (ed.), *The Later Works, 1925-1953, Vol. 4*, Carbondale [etc.], Southern Illinois University Press, 1984.

[13] Selznick, 'Sociology and Natural Law', p. 90.

[14] Cf. the distinction made by Karl Llewellyn between the bare-bones and the questing aspect of law-jobs: 'The Normative, the Legal, and the Law-Jobs: The Problem of Juristic Method', *Yale Law Journal* 49 (1940), 1355-1400.

applied this distinction between duty and aspiration both to external morality and to internal morality. The internal aspirational morality is on a par with Selznick's governing ideals. What Fuller made explicit was the connection between ideals and basic rules. These are on the same scale: complete neglect of an ideal constitutes the violation of a duty, and there is no precise point at which we can say it is only the failure to reach an aspirational aim. This depends on the way the rules are formulated in a given legal system. Like Selznick, Fuller is interested in what makes a legal system work, and in the continuity between minimal functioning and a full-blown, good system of law. In such a perspective, getting a grasp of the ideals at work in a social system is implied in understanding the functioning of the phenomenon in any meaningful way.[15]

In the philosophy of law, Fuller's theory did not receive the attention and assent it might have had, and the strictly rule-oriented theory of his contemporary H.L.A. Hart became the benchmark for serious legal philosophy. It was only when Ronald Dworkin attacked Hart's theory that the debate on the nature of law as a system of rules was really opened.[16] Dworkin's distinction between rules and principles showed that a normative system such as law consists of different categories, rules and principles having a different character and function. For Dworkin, the main point was the different logic involved in the application of rules and principles: rules have an all-or-nothing character, meaning they are either applicable or not, while principles have a dimension of weight that allows principles to be more or less important for a legal case. In addition, Dworkin argued that principles soften the boundaries of the legal system: because the validity of principles is not based on any formal recognition, but on their importance regardless of their source, principles are both legal and moral. Dworkin argued convincingly that law comprises different kinds of standards, but here we would like to take the categorization one step further by distinguishing principles from ideals.

This can be connected to Robert Alexy's work on principles.[17] Alexy, elaborating Dworkin's distinction between principles and rules,

describes principles as having two aspects: a deontological aspect, functioning as a norm, and an axiological aspect, oriented towards a value. This leads him to define principles as *Optimierungsgebote*, norms requiring the optimal realization of a value. This definition makes room for a threefold set of standards, consisting of rules, principles and values or ideals.

Although principles have an open character compared to rules, they are still fairly specified norms of conduct within reach of those applying them. Such straightforward application is not possible in the case of ideals: these are even more open-ended and beyond immediate realization. Unlike principles, the meaning of ideals is not directly clear: they often remain implicit. In addition, we cannot grasp the meaning of ideals completely; there is always a surplus of meaning. These two characteristics, the unrealizability of ideals and the impossibility to formulate them completely, are the reason for including them as a third category of normative standards. It also means, however, that the role of such standards in practical pursuits is limited and should be seen in conjunction with principles or rules. This is clearest in legal examples: judicial decisions, for instance, have to be justified by reference to concrete elements of the legal system in order to be legitimate and to safeguard legal certainty. For judges, therefore, a direct reference to ideals in the motivation of their decision is usually uncalled for. This does not mean that they do not play a role in deliberation nor that they are absent from the implicit background of the decision. It does mean that they cannot stand alone as the justification for a judicial decision. Thus, ideals are better suited as tools to understand longer-term developments: they make it easier to see changes and continuities in, for instance, a legislative tradition or a political debate. It does not mean they are irrelevant to practical concerns: especially at times and in areas where new rules or principles still need to be developed, an ideal may serve to point in the right direction.

Going into the differences between ideals and principles has already brought out some of the characteristics of ideals.[18] We use the following

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15   For more extensive discussions of Fuller, see Kenneth I. Winston, 'The Ideal Element in a Definition of Law', *Law and Philosophy* 5 (1986), 89-1211; the special issue of *Law and Philosophy* 13 (1994) 3, edited by Kenneth Winston; and Willem Witteveen and Wibren van der Burg (eds.), *Rediscovering Fuller: Essays on Implicit Law and Institutional Design*, Amsterdam, Amsterdam University Press, 1999.

16   See, esp., *Taking Rights Seriously*, Cambridge, Mass., Harvard University Press, 1978, pp. 14-80.

17   Robert Alexy, 'Rechtsregeln und Rechtsprinzipien', *ARSP Beiheft* 25 (1985), 13-29.

18   We are interested in ideals as a conceptual category, not as a linguistic term. Although we prefer the term ideals, others have used terms such as purposes, values, virtues or aspirations to express similar ideals. For 'purpose', see W.A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*, Cambridge, Cambridge University Press, 1991, and Nonet and Selznick, *Law and Society in Transition*; for 'value', see Selznick, *Moral Commonwealth*, and John Rawls, esp. in some of his later work such as 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs* 14 (1985), 223-251; for 'virtue', see Alasdair MacIntyre, *After Virtue*, Notre Dame, Ind., University of Notre Dame Press, 1981, Dworkin, *Law's*

conception of ideals. Ideals are best understood as values that are usually not completely realizable. They are usually implicit in legal, moral and political practices and are often difficult to formulate exactly. They function as points of orientation for these practices and can thus play a role in motivating action and in justifying decisions and opinions.[19]

In normative theory, recognition of the role of ideals is basically recognition of room for improvement. In the ideas of Selznick and Fuller this is apparent; they argue for continuing clarification of the direction in which, for instance, a legal system should move. Selznick stresses the governance of law by the ideal of legality, the progressive reduction of arbitrariness, and thereby opposes a technocratic approach of law. The tendency in law and policy of focusing on specific regulations and the efficiency of their operation involves a blindness to the larger values involved.[20] Similarly, Fuller warns against the meagreness of seeing the internal standards of law simply as basic rules: it should not be forgotten that such standards keep pointing towards perfection, and our legal system will be a bare one if that impetus is overlooked.[21]

It is this aspect of ideal-oriented theory that connects with a strand in moral philosophy that takes up the subject of ideals. Nicholas Rescher, for instance, regards the following as the main function of ideals: the positive influence their pursuit has on human action; they motivate people to take an extra step.[22] Other authors make similar points. Ideals not only stimulate our imagination but also have a practical function in our life – they motivate us to act and even to make sacrifices.[23] Some psychologists go further and hold that the realistic pursuit of ideals may improve the quality of our life; some even regard the commitment to ideals as constitutive of our personal identity and of the meaning of our life. Even if, in our view, the latter claim is too general and too strong, a more moderate version seems to grasp an important dimension of human life. The pursuit of ideals often is part of the identity of persons and may provide them with a purpose in life and, especially if the expectations are realistic and hence frustration for not completely reaching the ideals is limited, may contribute to a happy and good life.[24]

In this respect, however, we should again be careful not to overstate the case for ideal orientation. An exclusive focus on ideals would be as detrimental as an exclusive focus on specific rules. The main thing to worry about is the single-minded pursuit of one ideal; this may cause the neglect of negative effects for other values and a failure to assess the means used to achieve it. Therefore, an ideal-oriented theory should be attuned to a plurality of ideals and be aware of possible conflicts and necessary trade-offs between them.[25] Additionally, the context is important for the appropriateness of advocating ideals. There are many situations in which the main problem is the disregard of basic rules; in such a context ideal orientation may be completely out of place.

Ideals are best regarded as one of the elements in a theory of normative practices, not superior to, but on a par with, other elements. A convincing theory of morality, politics or law needs to pay attention to the normative standards – that is, rules, principles and ideals – in relation to concrete judgments in specific situations and to the relevant facts.[26] Our standpoint is not that ideals should be regarded as the foun-

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Empire; Selznick, *Moral Commonwealth*, and S. Macedo, *Liberal Virtues*, Oxford, Clarendon Press, 1990; for 'aspiration', see Fuller, *Morality of Law*.

[19] This view on ideals is a combination of elements found in Rescher and Selznick. For more elaborate discussions of the concept of ideals see Wibren van der Burg, 'The Importance of Ideals', *Journal of Value Inquiry* 31 (1997) 1, 23-37; Taekema, *Concept of Ideals in Legal Theory*.

[20] Selznick, *Moral Commonwealth*, pp. 55-56.

[21] A field in which the importance of aspirations has been recognized is that of the professional ethics of lawyers. Pleas for renewed attention for ideals of the legal profession are made by Anthony Kronman, *The Lost Lawyer*, Cambridge, Mass., The Belknap Press, 1995, and Mary-Ann Glendon, *A Nation under Lawyers*, Cambridge, Mass., Harvard University Press, 1994. Cf. also David Luban, 'Rediscovering Fuller's Legal Ethics', in Witteveen and Van der Burg, *Rediscovering Fuller*, pp. 93-225; and Wibren van der Burg, 'The Morality of Aspiration', in Witteveen and Van der Burg, *Rediscovering Fuller*, pp. 169-192.

[22] See Nicholas Rescher, *The Validity of Values: A System of Pragmatic Idealism, Volume II*, Princeton, N.J., Princeton University Press, 1993, esp. pp. 129-139. Cf. also Dorothy Emmet, *The Role of the Unrealisable: A Study in Regulative Ideals*, New York, St. Martin's Press, 1994; Gert, *Morality*; Lisa Bellantoni, *Moral Progress: A Process Critique of MacIntyre*, Albany, N.Y., SUNY Press, 2000.

[23] See Gert, *Morality*; Bellantoni, *Moral Progress*; Nathan L. Tierney, *Imagination and Ethical Ideals: Prospects for a Unified Philosophical and Psychological Understanding*, Albany, N.Y., SUNY Press, 1994.

[24] On the basis of his empirical research, the psychologist Mihaly Csikszentmihalyi (*Flow: The Psychology of Optimal Experience*, London, Harper Collins, 1990) argues that happiness and a good life require an attempt to transcend personal restrictions and expand one's own limits (or in words that Csikszentmihalyi does not use, but fit well into his view, to pursue ideals). A similar point is made by Irving Singer, *The Creation of Value*, Baltimore, Md., and London, Johns Hopkins University Press, 1996.

[25] In legal philosophy, one of the most interesting theories of the tension between values (or ideals) is that of Gustav Radbruch, *Rechtsphilosophie*, in A. Kaufmann (ed.), *Gustav Radbruch Gesamtausgabe Band 2*, Heidelberg, Müller Verlag, 1993; see esp. pp. 302-307.

[26] In our view, the best theoretical approach combines pragmatism with a constructivist version of reflective equilibrium. See Wibren van der Burg and Theo van Willigen-

dation of normative theory, but that they are elements with a prima facie weight equal to all other elements.[27] As it was indicated in the discussion of ideals and basic rules, each is necessary, and it depends on the problem or field at hand which becomes more prominent.

2. Three Additional Theses

These remarks lead us to some additional, more specific theses. Ideals are not always equally relevant. If we want to study social reality, we need an eye for variation. Our general idea is that ideals play some role in social reality, but this is still a very general statement. Their role is not always equally important, and it is certainly not always the same. For the study of some phenomena, we can easily neglect ideals; for others we would miss essential dimensions if we were to do so. A strong orientation towards ideals is not always beneficial either; idealism has had very positive results, but it has also resulted in unproductive projects and social disasters. So we should try to develop more specific insights regarding the relevance of ideals.

We may identify three issues for which ideals are especially important: the phenomena of pluralism (and underlying unity), of controversy and debate, and of development. Our descriptive claim is that if we want to study these phenomena, attention for ideals is usually highly fruitful. And in a more normative approach our claim is that if we want to respond to these phenomena, we must do justice to the role of ideals in order to act effectively and adequately. Below, we will briefly discuss each of them and connect the role of ideals in these three phenomena to the characteristics that were mentioned above. This will provide a general theoretical explanation for the question why ideals are relevant to those phenomena. A more elaborate discussion of these roles of ideals will be given in various articles in this volume, where they will also be illustrated with the help of materials from concrete case studies. We suggest the following more specific theses.

Thesis 4: Ideals are key elements in pluralism

Ideals can be used to explain the existing pluralism of normative practices in two ways: because ideals may give rise to a plurality of interpretations and because a plurality of ideals may exist. First, broad pluralism may exist with regard to ideas and practices connected to the same ideal. Because ideals have a surplus of meaning, going beyond attempts to formulate their meaning and implications, they are open to different and even conflicting interpretations. This scope for pluralism increases when we add that they are not completely realizable. This leaves an even greater variation not only in emphases on different and sometimes conflicting aspects of the same ideal, but also in different and sometimes conflicting ways to try to realize those aspects. Once we acknowledge that people orient their actions and their thoughts at least partly towards ideals, then we become aware that this introduces a major source of ambiguity and controversy – in other words, a source of continuing pluralism – in social interaction.[28]

We may illustrate this with the existing diversity with regard to democratic institutions.[29] Although many states are democracies, they differ in institutional structure and political culture. And different political parties offer different views of what democracy is and how it should be implemented. For example, in the Netherlands some political parties argue that the introduction of a referendum is a democratic requirement, whereas others claim that it would conflict with the basic characteristics of the Dutch democratic institutions. These differences can be regarded as the result of emphasizing different aspects of the democratic ideals. Democratic ideals may even lead to conflicting requirements within one system of belief. On the one hand, democracy requires that every political party is free to propagate its ideas, but if these ideas are anti-democratic, democracy may also require that measures are taken against this party. The problem of tolerance of the intolerant remains such an intangible dilemma precisely because both mutually exclusive alternatives are based on the same ideals of liberal democracy.

Second, pluralism in practice may be connected to a plurality of ideals. Disagreeing social groups or individuals are often committed to different or conflicting ideals, and in this sense ideals may be a source

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burg (eds.), *Reflective Equilibrium: Essays in Honour of Robert Heeger*, Dordrecht, Kluwer Academic Publishers, 1998, and Taekema, *Concept of Ideals in Legal Theory*.

[27] We thus take an anti-foundationalist position with regard to the role of ideals, similarly to that of Lon Fuller, Ronald Dworkin and John Rawls. For a different view, see Rescher, *Validity of Values*, p. 192.

[28] For the suggestion that ideals are a source of pluralism (as well as of dynamics), see Philip Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford, Clarendon Press, 1997, p. 146.

[29] Cf. A. Ross, *Why Democracy?*, Cambridge, Mass., Harvard University Press, 1952, for the related suggestion that democracy can best be understood in connection with an ideal-type.

of pluralism in society. In Western societies, there are widely varying ideals of marriage, such as same-sex marriage, polygamous marriage and traditional heterosexual monogamous marriage. Which ideal of marriage should the political institutions support?

These examples suggest that ideals do not give rise merely to superficial pluralism. In the case of interpretations of one ideal, the pluralism at stake is not (at least not always) that of a common clear core of meaning and only some differences in the penumbra.[30] It is more pervasive. Existing democracies differ on essential characteristics such as whether or not they have a written constitution, a presidential system or a monarchy, proportionate representation or a district system. These are the core elements of democratic systems. Ideals may even give rise to tragic conflicts because of the pluralism within one system of thought, such as in the dilemma of toleration of the intolerant.[31] In the case of different ideals, the pluralism involved can be one of different world views or perspectives of which the ideals concerned are part. In such cases, pluralism is serious or even radical: different ideals are connected to different understandings of normative practices and their meaning. One of the areas in which this is apparent is in the education system: there is a plurality of opinion about the values which are to be taught in public education. Should the display of a crucifix in the classroom be forbidden? Conflicts about such questions demonstrate different ideals of church and state.

Again we should be careful here. Ideals are, in our view, not the main source of pluralism. Social conditions, historical developments, personal psychological characteristics, et cetera, are all part of the explanation of pluralism. Ideals merely offer a part of the explanation.

The other side of the insight that different interpretations of one ideal are a source of pluralism is that such an ideal may also be a source of unity behind pluralism. If we look at the details of the institutions, we find little in common between the British and the Dutch systems of democracy. But when we look at the more general ideals, we find that many of these are shared. Similarly, there are many forms of friendship;

but a large part of the diversity disappears when we look at the shared ideals behind this variation. Again it is not the full explanation; it would be naive to suggest that behind every variation there is always one common ideal. But it is often easier to find commonalities at the level of ideals than at the level of concrete problems or specific rules.

These insights about how ideals constitute both plurality and unity can also be used in normative theory. It is not to be avoided that normative theories are, despite aspirations and claims of universality, always contextually and culturally biased. They emphasize elements that in specific historic and economic situations are relevant and neglect others that seem less relevant. Some of the pluralism (and controversy) between different normative views and theories may thus be understood as emphasizing different aspects of common ideals. We can use this insight to deal with new situations. We may enrich our normative theories by going beyond the concrete rules and principles to the underlying ideals and see how they fit into new circumstances and which new rules and principles would be justified in the light of both these ideals and the different circumstances. For example, democracy should mean something different in the context of universities or companies than in the political realm; yet it need not be completely irrelevant in those contexts. Rather than merely transplanting some specific procedures (such as "one man, one vote") in contexts where they do not belong, we should try to develop a plurality of democratic institutions for different contexts. Democracy within the university need not imitate political democracy, but it should be developed in the light of the same fundamental ideals of democracy, and be applied to the specific context of an institution where education and research are the primary values but do not exclude the relevance of democratic ideals either.

In the case of different and conflicting ideals, making use of underlying ideals as a source of unity is often impossible. In some cases, our interpretation of conflicting ideals may be reconstructed to show that they refer back to a more abstract ideal. Often, however, different ideals will be embedded in different systems of thought without a unifying underlying ideal. Then, explicating the relations between different ideals is still useful, but it may be more fruitful to focus on specific issues instead of the underlying ideals. What a focus on ideals can do is lay bare the connections between different ideals and the interdependence of meaning between them, although this may only improve our understanding of what is at stake without pointing towards a solution.[32]

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[30] As in H.L.A. Hart's idea of the open texture of language, which can explain pluralism and controversy in the penumbra of the meaning of concepts, but which does not explain controversy with regard to the core of concepts; cf. H.L.A. Hart, *The Concept of Law*, Oxford, Clarendon Press, 1961, p. 124.

[31] Bert van den Brink (*The Tragedy of Liberalism*, New York, SUNY Press, 2001) argues that liberalism gives rise to tragic conflicts, because the liberal ideal on the one hand requires the protection of liberal values and on the other hand requires doing justice to the views of non-liberal citizens and thus tolerating their non-liberal practices. See also his contribution to this volume.

[32] Cf. Gustav Radbruch's description of the connections between the three different values of the *Rechtsidee* which both require and contradict each other. According to him, such contradictions are unavoidable even within one system of thought.

Thesis 5: *Ideals are key elements in controversy and debate*

The next thesis is closely connected with the role of ideals in pluralism. We can often understand normative debates as debates between different interpretations of the same ideal or as debates in which the parties put the emphasis on different ideals. Understanding the role of underlying ideals in such debates may, moreover, not only provide a better understanding, for example why agreement is so difficult to reach, but also provide a strategy for solving the controversy, or even for stimulating debates where they are desired.

Ideals are often a source both of pluralism and of underlying unity in systems of thought and in practices. It is this double characteristic which accounts for their function in debates. Ideals may sometimes provide a common frame of reference, a common starting point in a discussion or in a pluralist practice, but they may also be strongly divisive, for example, if one party focuses on the ideal of equality and the other on freedom. Their emotive appeal may be essential in situations where, e.g., national unity is required and in cases where political leaders try to rally support for certain political groups and parties. Therefore, appeals to shared ideals are often made in political debates to get a positive emotive response and thus assent from the audience, which may be the political community at large but also a specific subgroup.

That ideals may constitute a common framework and thus enable discussion can be observed in various contexts. Appeals to the fundamental ideals of a legal order, such as legality, due process or human rights are made in court to argue for or against legal claims.[33] In situations where the legal doctrine is unclear or ambiguous, an appeal to the underlying purpose or values is often made by both parties to a legal discussion. Similarly, in public debates in which parties seriously try to convince each other rather than merely affirm their own position in front of the public forum, we sometimes observe that parties refer to certain shared ideals and try to establish that their view does justice to those ideals. The emotive appeal that ideals such as justice and democracy have adds power to the rational argument and makes it less easy for the opponent to simply ignore the argument.

The opposite observation that ideals can sometimes be divisive factors and make controversies more insoluble is also connected with their emotive appeal. People are reluctant to give up or revise their cherished ideals and there is no pressing need for revision because ideals cannot

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[33] Usually, the term 'ideals' is avoided, probably because it implies the – in our view incorrect – connotation that they are not yet part of positive law and therefore not authoritative.

be directly refuted by empirical reality. The fact that reality does not match the ideals need not be a reason to abandon (the interpretation of) those ideals. This is most clearly visible when initially open doctrines have been transformed into closed ideologies. Ideals are often elaborated in ideological systems of thought; for example, ideals of freedom have been elaborated in a number of liberal and libertarian doctrines. Sometimes these doctrines have become ideologies; they have become immune against criticisms and empirical testing and revisions. The history of Marxism-Leninism provides a good example of such an ideological immunization against any revision in the light of the facts or of different views. This risk of ideological immunization is inherent in a strong commitment to ideals.[34] In those cases, debates often seem futile, because they are merely a repetition of ideological stances, and do not offer any chances that those views are changed or adapted as a result of the debate. The fact that people often strongly identify with their ideals and with their ideologies based on those ideals makes an open debate even more problematic.

Ideals thus may play a number of roles in debates and controversy. Understanding these roles offers various cues for more normative purposes. Sometimes explaining a position in terms of the underlying ideals may help to bridge (part of) the divide between adversaries. Seeing in which ways the adversary position is based on the same ideals as the ones one holds oneself may at least help to appreciate the position of the adversary. In some cases, it may show a way out of the controversy, because if both aim at the same ideal, the discussion may focus on which interpretation of the ideal is the most suited for the concrete situation and which is the best way to approach the ideal.

Even in the case of highly ideological debates, such an approach may be fruitful. Understanding the mechanism of the creation of ideologies may also show the way to reopen debates, namely by showing that there may be other interpretations of the original ideals and other ways to realize them in the light of the changing historical circumstances. Thus even in cases of ideological stalemate, understanding the role of ideals may be a contribution to reopening the debate.

Certainly, such an appeal to shared ideals is not always productive. Analysis of the underlying ideals may show that parties to a debate appeal to conflicting ideals (or to conflicting sides of the same ideal). An appeal to ideals may then prove to be counterproductive, and even reinforce the existing antagonism. This will happen most frequently

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[34] See Melvyn L. Fein, *The Limits of Idealism: When Good Intentions Go Bad*, New York [etc.], Kluwer Academic/Plenum, 1999.

when the positions are strongly ideological in character. In such situations, it may be helpful to focus on concrete problems and find compromises on those rather than trying to search for consensus at the level of general ideals. However, there is also the possibility of reflecting on the different ideals and trying to construct new ideals that are acceptable to both parties. Such an approach would fit into the idea of frame reflection as suggested by Schön and Rein.[35] A good example is the attempt made by Sophie van Bijsterveld to construct a new ideal of human rights protection in the European Union to bridge two seemingly opposed ideals.[36]

The insights into the role of ideals in debates may also be used in legislative strategies. In societal fields and practices with great variation and change, such as medical practice, detailed regulation is often impossible and ineffective. In such situations, legislators may switch from the level of rules and guidelines to the more abstract level of principles and ideals. They may choose to lay down the more fundamental ideals and principles. This may serve two functions.[37] First, they may express the basic commitments of the political community. And second, they may serve as common points of orientation for a discussion about how to interpret and implement these ideals in varying contexts and for the actual implementation. Such a focus may fit into communicative approaches to legislation as suggested by Bart van Klink and Willem Witteveen.[38]

Thesis 6: Ideals are key elements in enabling development

The third theme which we want to highlight is the role of ideals in change. Ideals are important factors in enabling change.[39] There are various explanatory elements for this role. First, ideals are never completely realized. This means that there is always a gap between our ideals and reality which gives us a reason to improve it. Second, ideals have a surplus of meaning and can never be exhaustively formulated in moral, legal or political doctrines. This means, for example, that even if there is a strong institutional support for a legal doctrine on privacy or environmental law in authoritative legal texts, it can always be criticized and amended with an appeal to those dimensions of the underlying ideals that have not yet been fully recognized. Ideals thus constitute a resource for criticism, they provide for a critical perspective that highlights the respects in which social practices or our normative views and doctrines could be improved.

Second, and in line with this, they provide points of orientation and inspiration for new directions. As they are not yet fully realized, we can use them for guidance in deciding which direction to take in further development. If our current legal system does not protect human rights adequately, we should find ways to do better. If our current rules and principles do not offer guidance for dealing with new technological problems such as biotechnology, the ideals of the legal system, with their surplus of meaning, may suggest (authoritative) directions in which we could search for solutions. Ideals always provide the possibility of breaking open our legal and moral doctrines and offer points of reflection and discussion to find solutions for new problematic situations.[40]

Third, we noted above that ideals may promote debate and open discussion. They stimulate discussion, whether in the legal context, the political institutions or the public at large, both about what is wrong and about how it can be improved. Thus they offer not only cognitive resources for criticism and guidance, but also actually stimulate social mechanisms of discussion that may lead to practical change, in law, in public policies or in everyday life.

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35 D.A. Schön and M. Rein, *Frame Reflection: Toward the Resolution of Intractable Policy Controversies*, New York, Basic Books, 1994.

36 Cf. S.C. van Bijsterveld, 'Grundrechte in der Europäischen Union: Über Ideale und Wertvorstellungen', in K.H. Kästner, K.W. Nörr und K. Schlaich (eds.), *Festschrift für Martin Heckel*, Tübingen, Mohr Siebeck, 1999, pp. 707-724. She argues that so far the debate on human rights protection in the European Union has been dominated by two seemingly antagonistic views. One ideal is that of a unifying Europe; the other that of respect for the free citizen. Her suggestion is that we can see the two ideals as connected and mutually supportive if we focus on the ideal of a balanced and integrated society, in which the antagonism between state and citizen is replaced by a more complex network of relations between state, individual and society.

37 See Wibren van der Burg and Frans W.A. Brom, 'Legislation on Ethical Issues: Towards an Interactive Paradigm', *Ethical Theory and Moral Practice* 3 (2000), 57-75, and Wibren van der Burg, 'The Expressive and the Communicative Functions of Law', *Law and Philosophy* 20 (2000), 31-59.

38 See Bart van Klink and Willem Witteveen, 'Is Soft Law Really Law?', *RegelMaat* (1999), 126-140.

39 This connection of ideals with processes of change may be found in Nonet and Selznick, *Law and Society in Transition*, in Rescher, *Ethical Idealism*, in Emmet, *Role of the Unrealisable* and in Bellantoni, *Moral Progress*. See also Wibren van der Burg, 'Ideals and Ideal Theory: The Problem of Methodological Conservatism', in Van der Burg and Van Willigenburg, *Reflective Equilibrium*, pp. 89-99.

40 See for example Sophie van Bijsterveld, *The Empty Throne: Democracy and the Rule of Law in Transition*, Utrecht, Lemma, 2002.

Fourth, ideals have an emotive appeal. People often are committed to them, engage in the project of realizing them. People may make sacrifices for them; they may even be prepared to die for the cause of democracy or dedicate their lives to the cause of social justice. Rules usually do not have this strong emotive appeal. If people have such a commitment to ideals, this may be an important impetus for social change. Without social movements like the Civil Rights Movement or leaders such as Nelson Mandela, strongly committed to ideals of justice, social developments would certainly have been different.

We should explicitly remark here that this emotional dimension need not always be beneficial. Idealistic movements are often committed to immoral causes or may be prepared to sacrifice too much for the good cause.[41] A commitment to ideals may lead to blindness for the costs and for other values, it may even lead to ruthless axioms such as that the end justifies the means. But even if we abhor the ends or the means of such groups, we cannot deny the force of ideals in bringing about social change.

This analysis may suggest that ideals are unchanging, eternal elements in our changing practices and systems of thought. And indeed, most of our ideals have a long history and have lived through many different cultures and interpretations. They are the more stable and enduring elements of our moralities, of our law or political systems. The ideals of democracy and human rights have proven to be more enduring than the continuously changing ways in which they have been interpreted in constitutional provisions (at least in countries where the constitution may be changed), legal rules and political practices. Nevertheless, in a pragmatist view, ideals may be relatively more stable and enduring but certainly not eternal and unchanging.[42] New ideals such as those of privacy or biological diversity may emerge, old ideals such as that of the full-time housewife as a role model for women may fade or be explicitly abandoned. Even if their role in change is largely due to their relatively

stable and more general character, this does not imply that ideals are completely unchanging.

A good example of how ideals play a role in legal dynamics is offered by the European Convention on Human Rights. The European Court explicitly and repeatedly declared that the Convention is a living instrument which must be interpreted in the light of present-day conditions. In its case law, the European Court has continuously expanded the scope of human rights protected by the Convention. This process of progressive clarification and implementation has been made possible by the fact that the Convention is phrased in very broad and vague terms. These terms, however, are not merely vague – as such they would not provide much guidance. Both the rights and the exception clauses refer to fundamental ideals of human rights and democracy, which are open to continuous reinterpretation in the light of changing circumstances and changing ideas.

Again, these insights into how ideals may play a role in change may also be used for normative and practical purposes. For example, if moral and legal norms are still unclear and evolving, it may be unwise to lay down strict legal rules that would frustrate further development. In such cases, it may be a good suggestion to choose for more interactionist and communicative legislative strategies. Formulating only the basic ideals as a common framework of reference that is open to further normative evolution and stimulates discussion may then be a sound strategy.[43]

These three themes are not meant to be exhaustive. There are many phenomena which can be fruitfully explored with special attention for the role of ideals. Ideals are, for example, central to professional ethics; we cannot understand issues such as the emphasis on professional autonomy if we do not recognize the fact that professions are partly oriented towards professional ideals.[44] Taking the role of ideals in law seriously may lead to fresh perspectives on eternal debates such as that between legal positivism and natural law.[45] It may also shed light on more concrete debates on the role of the judge in political issues, the development of international environmental law,[46] or on controversies

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[41] Cf. Isaiah Berlin, 'The Pursuit of the Ideal', in *The Crooked Timber of Humanity*, Princeton, N.J., Princeton University Press, 1990, pp. 1-19. A highly critical analysis of the negative consequences of uncritical idealism may also be found in Fein, *Limits of Idealism*. Fein also emphasizes the combination of a strong emotional attraction and a lack of critical reflection in the light of reality, both inherent risks of idealism, as the main cause for derailment. We are, however, less pessimistic than Fein about the possibilities to cope with these risks.

[42] The main pragmatist criticism is Dewey's; see his *Reconstruction in Philosophy*, in Jo Ann Boydston (ed.), *The Middle Works, 1899-1924, Volume 12*, Carbondale [etc.], Southern Illinois University Press, 1988. The Platonist idea that ideals are eternal has, of course, been criticized by other philosophical traditions as well. For a Whiteheadian view largely similar to ours, see Bellantoni, *Moral Progress*.

[43] Cf. Van der Burg and Brom, 'Legislation on Ethical Issues'.

[44] Cf. Wibren van der Burg *et al.*, 'The Care of a Good Caregiver: Legal and Ethical Reflections on the Good Health Care Professional', *Cambridge Quarterly of Health Care Ethics* 3 (1994), 38-48.

[45] Taekema, *Concept of Ideals in Legal Theory*.

[46] Jonathan Verschuuren, *Principles of Environmental Law: The Ideal of Sustainable Development and the Role of Principles of International, European and National Environmental Law*, Baden-Baden, Nomos, 2003.

regarding the rule of law in semi-autonomous government agencies. We believe that a whole range of interesting issues may still be fruitfully explored with an eye for ideals combined with an eye for variation. The essays in this volume are a first attempt to demonstrate the importance of such an approach.

3. The Contributions to This Volume

What these authors have in common is an approach, a perspective, rather than a theory. They all support the general idea that attention for ideals may help us to understand social reality better. The focus on ideals has certainly proven fruitful, not only in the specific themes of this book, but also in our much wider research programme in the past years. However, beyond this common core, the authors have widely varying interests and hold different views regarding the precise role of ideals. Some focus on the role of ideals in dynamics, others on their role in debates. Some are very positive about the advantages of focusing on ideals, others are more sceptical, because with regard to their objects of research the additional value of focusing on ideals is limited. Some authors highlight the negative aspects of the role ideals have, whereas others are more positive about the contributions that ideal-orientation and idealism may have for social problems. And finally, some authors share the editors' pragmatist inclinations, whereas others have different philosophical backgrounds.

This variation is not something we deplore; it is rather what we aspire for. Social reality is highly diverse and it would be a surprise if ideals were to play the same role in every context. We need a pragmatist eye for variation here as well. For philosophical analysis, the most useful conception of ideals may differ from those which prove most helpful for studies in positive law or in empirical sociology. In our view, we have only begun to explore the wide variation with regard to the role of ideals in various sectors of social reality. Therefore, in line with the three themes identified earlier, we could also regard the study of ideals also as an ideal-oriented project. The full understanding of the importance of ideals is our ideal. But we are still far from understanding what this really implies, let alone from realizing it. As a result, there is much room for pluralism, and for a continuous development of our views. But most importantly, there is still much need for open discussion. The authors of this volume greatly enjoyed their internal discussions, and we hope that the publication of this book will stimulate further pluralism, further discussion and further development.

Sanne Taekema discusses the conceptual groundwork of a theory of ideals. If we claim that ideals need to be an integral part of our descrip-

tive theories, what concept of ideals should be defended and in what way does that concept relate to understanding the normative dimension of social reality? According to Taekema, the best theory about ideals and social reality is a pragmatist theory, which sees ideals as complex and dynamic values rooted in social practices. She argues that ideals should not be seen as essentially abstract notions or universal human values, but as guiding standards to everyday problems. They are not purely subjective either, because they are rooted in experience and can be justified by a method of inquiry. The central ideals of important practices are complex values with continuing relevance over time. The way in which such ideals operate is illustrated in many of the other chapters.

Embracing a pragmatist theory of ideals and their role in society implies a broader theory of what social science is and what the right approach to researching law or politics is. That question is dealt with in the chapters by Wouter de Been and Marc Hertogh. De Been traces the theoretical roots of pragmatist social science back to the early pragmatists and shows how important the notions of purpose and ideal orientation are in their views. More specifically, he argues that the contemporary uses made of pragmatism in legal and social science neglect the purposive nature of pragmatist theory to their detriment. Pragmatism is reduced either to a positivistic model in which human relations are viewed deterministically or to a view of knowledge as situated and generated by practice without substantive claims. Such contemporary views forget that pragmatist theorists wanted to use social science to change policy, arguing that inquiry needs to embrace conscious change and experiment in order to progress. Ideals are creatively reimagined by theorists as part of their attempts to shape society by law and policy. This also means that a pragmatist theory, according to De Been, combines descriptive and normative aims, claiming that social science should be purposive and ideal oriented.

It is precisely the combination of descriptive and normative aims that is rejected by Marc Hertogh: he underscores the importance of paying attention to ideals without the normative presuppositions of the social scientist himself. Hertogh criticizes the blurring of the boundary between empirical research and normative claims by the pragmatist sociologist Selznick and sketches an alternative view of empirical research of legal ideals inspired by the sociology of Eugen Ehrlich. In a bottom-up approach, the different views of people about the ideal as they see it in everyday practice are the basis for what Hertogh calls the 'living *Rechtsstaat*'. In a case study, officials working in a residential area are shown to emphasize other values of the *Rechtsstaat* than are usually seen as the core of this ideal by jurists. Hertogh shares the pragmatist

view of ideals as constructive, pluralistic and pragmatic: he sees ideals as constructed by people in response to social situations as they try to deal with them. However, in his view, the pluralism of ideals can be more easily detected and charted with a non-normative approach: it is not a question of assessing whether people act according to a preconceived ideal of the *Rechtsstaat*, but of discovering what ideal of the *Rechtsstaat* they hold dear.

An empirical approach to the *Rechtsstaat* is also central to the article by Caroline Raat. She uses the method of narrative analysis to uncover the values implicit in organizational cultures of housing foundations. She argues that the ideal of the *Rechtsstaat* is as relevant to private organizations in a position of power, such as agencies dealing with the allocation of houses, as it is to government. Sociological research regarding such organizations can show whether their culture has the moral commitment to values connected with the *Rechtsstaat* which is necessary for a responsible exercise of power. Raat's analysis of the stories told within a particular housing foundation reveals the sense of responsibility and justice shared by the employees, but also shows the danger of preferential treatment which may threaten the ideal of equality. More than Hertogh, she uses her empirical material to draw normative conclusions: to trust the responsible attitude of street-level workers and focus on the internalization of the ideal of the *Rechtsstaat* instead of using traditional legal norms.

The ideal of the *Rechtsstaat* or the rule of law is a highly complex one, allowing a variety of interpretations. The possibility of new interpretations and the inevitable divergence between ideal and actual practices create a challenge for legal scholars and courts. Willem Witteveen argues that a simple conversion of the ideal into a set of rules and doctrines is attractive but inadequate. He criticizes the Dutch Supreme Court's doctrinal interpretation of the rule of law in the *Pikmeer* cases as unpersuasive, lacking constructive potential and failing to provide normative guidance. A convincing approach to the ideal of the rule of law needs to combine idealism and realism. Each of these perspectives brings its own focus to a problematic case, at the same time calling for the other perspective. Realizing that the ideal of a balance of powers can never be completely attained leads to a realist consideration of actual power relations; the realist notion of prudential self-binding of the government extends easily to an idealist understanding of reciprocity. Thus, the two perspectives are complementary: both are necessary for a convincing interpretation of the rule of law in a democratic polity. Witteveen finds a basis for this attitude of realist idealism in the works of various authors and, perhaps surprisingly, especially of authors labelled as realist, including Machiavelli and Llewellyn.

The theses that ideals are important to understand pluralism and debate are addressed by Bert van den Brink and Roland Pierik in the context of political philosophy. Both authors discuss and systematize plurality of opinion in political debates with the help of ideals, but do so at different levels of abstraction. Van den Brink focuses on the debate about political philosophy which can be analysed as being about different ideals of doing political philosophy. He argues that there are different substantive ideals which focus on certain aspects of philosophy and entail different approaches to philosophy and different answers to the questions political philosophers pose. He highlights two ideals: political philosophy *sub specie aeternitatis*, an impartial perspective aiming to formulate general principles of practical reasoning, and political philosophy as hermeneutical perspectivism, not separating philosophical from political issues and confronting opinions with each other. The ideal of hermeneutical perspectivism embraces plurality because critique consists in the confrontation of different views and theories. This makes it possible to recognize the ability of individuals to engage in criticism and makes room for their creativity; these are substantive ideals that are obscured by the perspective of eternity. In stressing individual creativity and the continuity between philosophy and political practice, Van den Brink extends the pragmatist ideas put forward by Taekema and de Been.

Roland Pierik applies the ideal-oriented approach to a debate in contemporary liberalism. The ideal of equality can be used to clarify the debate between liberal egalitarians and multiculturalists because it shows where they are in agreement and where they differ. Pierik sees the concept of equality as equal respect and concern as an ideal which underlies a range of more specific conceptions of equality. The liberal egalitarian Ronald Dworkin defends a distributive conception of equality: government's distribution of resources should be sensitive to the choices of individuals and insensitive to their endowments. That conception of equality is challenged by multiculturalists who focus on the inequalities resulting from group characteristics. Although the differences between these positions are on some points substantial, an ideal-oriented approach provides a common frame of reference and thus offers a possibility to bridge the differences. Pierik reinterprets multicultural criticism as an argument for recognizing social endowments as a ground for redistribution within liberal theory.

Wibren van der Burg uses the ideal-oriented approach to clarify the debate on the relationship between law and morality. He shows that there are two different models of law, the product and the practice model, which conceptualize law and its connection to morality in a particular way, seeing law as a set of norms and concepts or as a dimen-

sion of interaction, respectively. Law is essentially ambiguous in that we can only understand it fully if we use both models. According to Van der Burg, the problem with the debate between natural law and legal positivism is that it largely ignores law as a practice: both positions focus on law as it supposedly really is and overlook the insight that law is constantly being constructed. In order to construct a defensible third, interactionist position, we should take law as a practice seriously as well and recognize ideals as a bridge not only between the two models, but also between legal and moral discourses. Interactionism therefore leads to the idea of a relative autonomy of law, in which part of the legal development may be attributed to ideals. Like Witteveen and Van den Brink, Van der Burg's article is an argument for perspectivism: for the method of switching between two models, which are both necessary but not commensurable.

The thesis that ideals enable development is dealt with in a fairly abstract manner by Van der Burg, but it is also interesting to see whether there is any evidence supporting the thesis when we look at particular fields or problems. The chapters by Blok and Verschuuren and Oudenaarden both address the thesis with regard to legal development, and both come to the conclusion that there is indeed a significant role for ideals in legal development. Their assessment of this influence of ideals is rather different, however. Peter Blok sketches the enormous influence of the ideal of privacy in the development of data protection law. The literature and the legislation and adjudication dealing with the problem of protecting personal data have analysed it in terms of a threat to privacy. According to Blok, this ideal orientation has expanded the legal meaning of privacy from protecting a private sphere to including fair dealing with data, and enabled a discussion on an abstract level showing the connections between different problems, which all turned out to have some relation to privacy. The abstraction involved has had a downside, however, which for Blok is reason to be sceptical about the appropriateness of ideal orientation in law. The invocation of the abstract ideal has not been combined with what Selznick would call an eye for variation. Consequently, it has obscured the diversity of underlying reasons to be concerned about data processing and made it difficult to solve the problems with an appeal to already available legal instruments not directly connected with the ideal of privacy.

Jonathan Verschuuren and Timon Oudenaarden are also cautious in their conclusions about the positive effects of ideals on legal development, but, unlike Blok, they do not see the solution as a matter of choice between abstract ideals and concrete rules. They emphasize the need for a combination of ideal orientation with legal principles and institutional support. In their analysis of international environmental law they focus on two influential ideals: sustainable development and biodiversity. They show how these ideals have stimulated the discussion about new regulation and have enabled international actors to formulate a common purpose in order to start joint action. They argue that it is important to distinguish between enabling legal development and providing guidance. According to Verschuuren and Oudenaarden, ideals facilitate development because their open character stimulates discussion, but the same openness makes that they provide limited, if any, guidance for the choices to be made when new environmental rules need to be adopted. Another advantage of the open character of ideals is that local and regional circumstances can be taken into account when steps towards implementation are taken. Even if ideals do not provide direct guidance, they can influence legal development indirectly. A careful analysis of international environmental law demonstrates how intermediate steps, such as formulating principles of sustainable development and adopting a framework convention on biodiversity, may be useful mechanisms to realize environmental ideals.

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