

The importance of ideals

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1. Introduction

A plea for ideals may seem extremely naive and ill timed. We live in a time in which the end of ideology, indeed even the end of history, has been declared. In most West European countries, the socialist parties with their traditionally idealist inspirations seem to lack a coherent philosophy and are losing their electorate. In political philosophy, the grand utopian theories are said to have collapsed. And ideals like civic virtues seem to be without much practical appeal to the politicians and voters of today who care more about pragmatic solutions for problems such as budget deficits than about great ideals of a just society.

All this may be true, but we should beware of throwing out the baby with the bathwater. Grand theories may have collapsed, but as a result the need for ideals may even be stronger. Surely we can see tendencies in our society that make clear that the need for ideals is still felt. The concept of a sustainable society in the Brundtland Report is an ideal that has considerable appeal. Ideals of democracy and human rights are very important for many citizens in former communist and in developing countries. Moreover, we can still see people who are inspired by ideals in their personal lives.¹ The ideals may be less utopian and more modest, but it would be a mistake to deny completely the importance of ideals. The crisis of all-embracing ideologies makes it even more necessary to gain a deeper insight into the role ideals should play in society at large, and in the lives of individuals.

If ideals are somehow important in reality, philosophical theories should account for this. Both in descriptive theories that describe normative practices and in normative theories that are supposed to guide those practices, ideals should be recognized as important, albeit not central, elements. However, if we look at the situation in the various branches of modern practical philosophy, we see that ideals are very much neglected. Even so, there are counter-movements arguing for the recognition of something like ideals.

In the philosophy of law, rule-oriented theories of law and legal reasoning have long been dominant.² However, in the last three decades they have been strongly criticized by sociologists and philosophers of law.³ Their critique was usually linked to an attack on traditional legal positivism and on the positivist thesis of a strong separation between law and morals. The resulting debate led to more attention to those aspects of law that cannot easily be formulated in rules. As an alternative, Ronald Dworkin stressed the importance of legal principles. Others have tried to develop a theory of legal reasoning that is problem oriented or case oriented.⁴ Both alternatives to rule-bound reasoning can still be construed as forms of legal positivism, as especially some replies to Dworkin have shown.⁵ A sophisticated positivist theory of law as a system of decisions in cases, rules, and principles has, however, some important limitations. To get a better theory of law, it has been argued, we need to recognize ideals or aspirations as essential and inherent elements of law.⁶

In moral philosophy, theories that focus on rules and principles were, until recently, highly dominant.⁷ But there are countervailing tendencies. Especially in biomedical ethics, rule-oriented theories and what may be called principlism have been subject to strong criticism. Some authors have argued that we should revive casuistry, or at least turn toward case-bound reasoning.⁸ Though these approaches may indeed improve on rule- or principle-oriented theories, a search in another direction may be more fruitful. We need a theory of moral reasoning that explicitly recognizes ideals.⁹ The plea for a modern virtue ethics can at least partly be understood as such a reorientation toward personal ideals.¹⁰

In political philosophy, too, it has been argued that more attention to ideals is necessary. Criticisms of rationalistic calculative politics have shown that restricting political considerations to simple rules and principles and to rational, pragmatic decisions in concrete cases may lead to a moral decline in political practice.¹¹ An example of the need for ideals can be found in the appeal that communitarianism has: it fills the gap that resulted from the recent collapse of most neo-marxist and other utopian theories. Though the appeal to historic communities by conservative communitarians may be unattractive or even offensive to minorities, more liberal communitarians have argued for a political orientation on the basis of common ideals.¹²

Notwithstanding the anti-idealistic main current of modern philosophy, there is a countervailing movement that stresses the need for ideals in all three major fields of practical philosophy. My central thesis is that we can only neglect the importance of ideals at our peril. Only if we recognize the role of ideals in law and legal reasoning, can we get the best philosophical theory of law in terms of fit, quality and legitimacy. Analogous hypotheses will be defended for moral and political philosophy.

When discussing the role of ideals in each of these normative systems or practices, I will primarily focus on law for two reasons. The first is that the most interesting theories that have dealt with ideals have been developed by legal theorists like Lon L. Fuller and Philip Selznick. The second is that especially with regard to law there is a strong tendency to play down ideals and to stick to the rules. A good illustration is Frederick Schauer's rule-oriented theory that has greatest appeal in the context of law. If I can prove my point in the strongly rule- and case-oriented field of law, it will only be easier to make it plausible with respect to politics and morality.

2. The concept of ideals

Apart from the word "ideal," many authors use other words with often slightly different meanings, such as "purpose," "value," or "aspiration."¹³ I will not go into the differences and simply propose a stipulative definition. I suggest the following:

Ideals are values that are implicit or latent in the law, or the public and moral culture of a society or group that usually cannot be fully realized, and that partly transcend contingent, historical formulations, and implementations in terms of rules and principles.

In this definition, three elements are combined.¹⁴ Firstly, an ideal is not a direct action guide like norms, but is a value. Secondly, an ideal is future oriented and at the same time grounded in reality; it is an image of future states of affairs that are worthwhile and not irrational to strive for; it is not merely utopian. And thirdly, an ideal is often vague and cannot be completely grasped in a description or fully realized; it partly transcends every attempt to formulate and realize it.¹⁵

The definition largely conforms to common usage, where the word "ideals" combines the idea of a future-oriented project and a motivating source with an idea of something that may never be fully realized or even fully be grasped. But it is open to various criticisms. Firstly, the definition combines elements from two major traditions in philosophy that each present an attractive approach to ideals, but that seem irreconcilable. In the pragmatist tradition of Dewey and Selznick, we may describe ideals as values latent in the culture of a society, that are implicit in moral experience. In the neo-Kantian epistemological tradition, ideals may be described as transcendent values that we will never be able to formulate or realize completely.¹⁶ For a full and adequate theory of ideals we need to combine both dimensions, because some of the functions of ideals depend on their construction in pragmatist terms, and other functions on their construction in more neo-Kantian terms.¹⁷

Yet, there need not be a real contradiction here. The idea that an ideal partly transcends contingent formulations and implementations could be seen as referring to metaphysical claims about an ontological status of ideals in a Platonic sense. But this is not an unavoidable reading; I prefer a constructivist interpretation. We need not say that ideals exist as transcendent entities. It is enough, in our theory construction and in our practice, to postulate that there will always remain dimensions of the ideals that we try to formulate and realize, which transcend our attempts to do so. Ideals might be called theoretical constructs, or postulates, without any suggestion that the idea that ideals transcend our formulations implies an ontological status.

A second possible criticism of the definition concerns the distinction between ideals and principles. Is there really a difference between ideals and principles? Should we consider justice an ideal or a principle? Indeed, in many theories the distinction is blurred, as Dworkin's case shows.¹⁸ The concept of principle has become so broad that it has almost lost any concrete content. In Beauchamp and Childress's text on biomedical ethics, it is no more than a common name for a great diversity of considerations.¹⁹ In this situation we have two alternatives. We could say that principles do have this very broad range, and then try to deduce further mid-level and concrete-level principles from vague fundamental principles. The problem then is that these fundamental principles are overburdened: it seems artificial to say that from an abstract principle of respect for human dignity it is possible to deduce concrete rules of privacy.²⁰ The better alternative is to reserve the term principles for norms with a specific and clear content, though with a *prima facie* status, so that they may be overruled, and to use another term, "ideals," for the more fundamental, ambiguous values behind the principles.²¹

In the famous article in which he introduces the distinction between rules, principles, and policies, Ronald Dworkin acknowledges that sometimes rules and principles may play the same role, and that the distinction between principles and policies can be collapsed.²² Nevertheless, the distinction has uses which may be lost if thus collapsed. A similar point can be made with regard to the distinction between ideals and principles. It is usually possible to transform an ideal in the logical form of a principle; we may use the ideal of autonomy to formulate a principle of autonomy as "to respect and enhance the autonomy of other persons." But such a principle is little more than a container notion which, because of its vagueness and ambiguity, is of little practical use. Therefore, we had better regard autonomy as a value, as an ideal, and reserve the category of principles for more specific and less ambiguous standards, such as a principle of informed consent like: "A doctor is only allowed to administer a medical treatment if she has the free and informed consent of the patient."²³

3. Ideal-oriented theories

The next question is how, exactly, ideals play a role in philosophical theories. One way would be to see ideals as the foundations of normative theories, as the ultimate value from which all principles and rules and concrete judgments can be deduced.²⁴ A theory of virtue ethics could, in this way, be based on some ultimate, personal ideals. On the basis of distinctly legal ideals, we might try to develop a natural law doctrine. And a political theory could be built on the ideal of a good society.

Such an attempt to see ideals as the ultimate foundations of normative theory in law, morality and politics, let alone of descriptive theory, would be as extreme as completely neglecting the role of ideals.²⁵ Ideals are important, but so are principles, rules, and judgments in concrete cases. In normative reasoning we need each of these elements. In political, moral, or legal practice we sometimes refer to ideals, sometimes to rules or principles, and sometimes simply to concrete intuitions, case law, or political decisions. In more complex situations, we refer to considerations of various types.

If this is how the reality of our normative practices looks, then the idea of a reflective equilibrium is an obvious candidate both for modeling reality descriptively and for developing a normative theory. Of course, as a method for theory construction, reflective equilibrium is not uncontroversial, and it needs further refinement. Here I will simply presume that something like a wide reflective equilibrium is not only a sound model for descriptive theory, but also for normative theory.²⁶ In my experience, it functions fairly well for the description of legal, moral, and political thinking in complex cases, and it is also a useful model for constructive normative reasoning, both in making concrete decisions, and in building theories.

If we accept the basic idea of reflective equilibrium for moral, legal, and political theory, what role then should ideals play? My suggestion is that ideals should be seen as one of the five central elements of reflective equilibrium reasoning and of the resulting theory. Thus, we get a normative theory consisting of five elements: ideals, principles, rules, and concrete judgments, and information on the facts.²⁷ Theories in which ideals are incorporated as important elements may then be called ideal-oriented theories. This name does not imply that ideals have first place, but that they are explicitly recognized, alongside with other elements.

I can now reformulate my thesis: ideal-oriented theories are better than theories that focus on rules, principles, or concrete judgments, and that neglect ideals. But how can this thesis be tested and made plausible? What criteria do we have for choosing between various alternative theories?

Ronald Dworkin has suggested two criteria for theories of law: the dimension of fit and the dimension of political morality. The dimension of political

morality is ambiguous, and consists of two dimensions. On the one hand, if we focus on critical morality, we may ask which theory results in the highest quality of law. On the other hand, if we focus on positive morality, we may ask which theory has the highest legitimacy in the sense of being in conformity with positive morality, or of becoming in conformity with positive morality; there may be a dynamic, mutual process of adjustment here. It may sound strange, or seem to show a conservative bias, to include the dimension of positive morality, but in a thoroughly constructivist position it need not be. In the end, normative theories are meant to be of practical use: they must be able to inspire actors to action. If a theory sets norms that are far out of touch with the ordinary beliefs of the actors, it is unlikely that they will act in accordance with them. Law, morality, and politics are not simply abstract utopian theories of an ideal society with ideal people; they are meant for concrete societies with concrete people. Whether theories have the potential of being accepted by the general public or by a more specific group for which the theory is meant, is therefore a criterion to decide whether a theory is a good theory. This is not complete relativism: acceptance by the population is not the only criterion. But completely neglecting this dimension would be ivory tower philosophy.

Thus, there are three criteria for choosing from theories, apart from standard methodological ones of internal consistency and coherence. To decide which theoretical model is best, we should see:

1. which theory fits reality best;
2. which theory results in the highest quality of law, morality and politics;
3. which theory has the highest appeal and legitimacy to the population or group.

4. Ideal-oriented theories better fit reality

My first claim is that if we introduce ideals into normative reasoning and normative theories, these better fit the reality they are meant to describe and guide. We simply cannot deny that people refer to ideals like justice and the sustainable society in political and moral argument, or to ideals like democracy or the rule of law in legal arguments. This reference to ideals is not merely lip service: it can be shown that the best way to understand certain phenomena is to recognize that ideals are important. We may illustrate this for each of the three fields of law, morality and politics.

In law, rule-oriented and principle-oriented theories have difficulty in explaining changes in the judicial interpretation of the law. Simply referring to the open textures of the terminology used in them is not really convincing.²⁸ Once we recognize ideals, we can develop a much more convincing theory of

legal change. Because ideals transcend concrete formulation and implementation by way of principles and rules, they are open to continuous reformulation in the light of new circumstances.²⁹ Changes in the interpretation of law by courts can best be explained if we account for the fact that they try to realize certain legal ideals like justice and legality and, in doing so, continuously reinterpret them.³⁰ Thus ideals can be a source of dynamics in law.

The history of the due process clause in the U.S. Constitution provides an example. Some people would say that in the law on due process, the most fundamental level is formed by a principle of due process. But if that were true, then the principle has changed almost beyond recognition in the two hundred years after it was introduced into the Constitution. Since then, it has been construed as having many far-reaching implications, including, for instance, a freedom of abortion as protected in *Roe v. Wade*. It would be absurd to hold that all this was originally implied in the constitutional provision of due process, or in an original principle of due process. It is better to say that each of the context-relative formulations of principles of due process in constitutional interpretation are attempts to formulate and grasp the meaning of the ideals behind these principles in a changing world.³¹

Kenneth Winston and Philip Selznick have gone even further by claiming that we cannot understand the phenomenon of law, if we neglect the fact that law includes certain ideals. Definitions of law that omit the presence of ideals are branded as “myopic realism.”³² The teleological factor, the constant striving towards an ideal, toward what Selznick called a master ideal of legality, is a distinctive element of law.

When presenting moral arguments, people do in fact appeal to personal ideals, or to general ideals like the ideal of solidarity. And this is not simply a rationalization: the best way to understand certain moral phenomena is to see them, at times, as essentially ideal oriented. Nicholas Rescher has argued that only if we recognize the role of ideals in morality can we explain the existence of moral dilemmas.³³

An example may be found in the moral standard of a good medical doctor or health care professional.³⁴ We may try to define a morally good doctor as a doctor who acts according to accepted principles of biomedical ethics. But even a detailed elaboration of these principles would not suffice to grasp completely what we mean by the standard of a good doctor. The standard of a good doctor is not only defined by minimum rules and principles, but also by aspirations of excellence. The good doctor is an ideal that may be interpreted differently in different circumstances, but always has some aspects that partly transcend the minimum standards of rules and protocols. At the same time, we cannot give a full moral analysis of the profession on the basis of ideals alone: we also need rules, principles and case-oriented arguments.

In politics, ideals of a sustainable society, democracy, and justice are an important part of the political discourse. Of course, in political debate there is much window dressing for plain interest politics, but at the same time the rhetoric of ideals is extremely strong. Moreover, important elements of political theory and practice cannot be understood without acknowledging that they are partly ideal oriented.

Democracy is a good example. Even in its definition, reference to ideal elements can hardly be left out.³⁵ We may try to formulate a number of democratic principles and rules, and hold that these norms together are the essence of democracy. Elements would be majority rule, free elections with equality of vote, and minority rights. But then we would encounter two major problems. The first problem is that even with the most detailed and complex collection of principles and rules we would still have the feeling that we did not fully grasp the concept of democracy; it would still not provide us with an adequate guideline for new situations, such as the introduction of democracy to the workplace. The second problem is that we must either construe a very minimal content to “democracy,” or, if we want to add more substantive principles like proportional representation or formal recognition of civil rights, accept that countries not fully satisfying these principles and rules are not democracies. The first strategy would mean that we would have to include too many countries which are generally considered to be undemocratic merely because formal elections are held and other minimal criteria are met. The second strategy would rule out too many systems usually held to be democracies. It would imply, for example, that either the United States or the Netherlands are not democracies and that before 1900 there were no democracies at all because women were not allowed to vote.

However, once we distinguish between the fundamental ideal of democracy and context-relative attempts to implement it in principles and rules, these problems disappear. We may say that both the United States and the Netherlands have tried to develop democratic systems in the light of their specific cultural and historical contexts. And we know that though we will never be able to fully grasp the ideal of democracy, our context-relative attempt to realize the ideal as fully as possible is not faulty for that reason alone. It then makes sense that different countries can be more or less democratic, because they more or less approach the ideal.

The conclusion may be that, for our theories of law, morality, and politics to meet a criterion of fit, we should recognize the importance of ideals. But this is only a very general conclusion. Ideal orientation is a matter of degree; only more detailed studies can show us the aspects that explain or justify differences in degree.

5. Ideal-oriented theories result in a higher quality of law, morality and politics

Ideals may be responsible for an important part of the dynamics in judicial interpretation, and thus for a higher quality. If law is partly oriented toward ideals, the judiciary may feel more free to reflect on the reinterpretation of ideals in the light of new technological or social circumstances.³⁶ Dworkin's idea of law working itself pure is clearly more feasible in a legal system that is strongly ideal oriented than in a legal system that is strongly rule oriented. Ideals must be constantly reinterpreted in the face of the facts, and thus may be the basis for a constant reassessment of legal practices and a constant amelioration of law. In a dynamic society, this is important to keep law in pace with social developments. Similarly, if ideals are more central in legislative discussions and if they are formulated more explicitly in laws, this may lead to more responsive laws, and to laws that can more adequately deal with future developments.

Moreover, the contents of legal ideals may be a reason to assume that law will be better if it is more strongly oriented toward ideals. Lon L. Fuller has convincingly argued that a quest for fuller realization of the ideals of legality will result in better law.³⁷ More explicit recognition and support for those ideals will, therefore, result in a higher quality of law. Anthonie Peters has made a similar point concerning the democratic ideal of "law as critical discussion," which he considers to be an ideal internal to law itself.³⁸ Not only may the ideals of legality and democracy be regarded as internal to law, other ideals have also been legally recognized. In those countries that have explicitly recognized the ideal of respect for human dignity, for instance in a Bill of Rights, there is usually, as the result of the internal dynamics of law, an inherent tendency in law toward a progressive realization of these rights.

We may generalize these points. Because the ideals that are inherent in law embody positive values, and because ideals as such are an important factor in the dynamics of law, a stronger orientation toward those ideals will result in better law. However, we should be cautious. A stronger orientation toward ideals need not always result in higher quality. Openness to social change may also imply vulnerability to social decay.³⁹ And the dynamics toward certain legal ideals may also result in loss of legal security, simplicity, and quality with respect to other ideals.⁴⁰ And lastly, we may be mistaken in regarding something as a valuable ideal.⁴¹ Perhaps the ideal of a very broadly interpreted constitutional freedom of speech is not really a good ideal, or is so only in certain circumstances.

In morality, ideals may also be an important factor of dynamics in adjusting norms to changing circumstances or new technology. They may also be a factor in critically assessing and improving our moral opinions. For example,

the recognition of ideals in reflective equilibrium models of moral reasoning is necessary to counterbalance a methodological conservatism that is inherent in those models.⁴² Moreover, the contents of some moral ideals may be a further factor of critical reflection on our positive morality. The most important ideal here is that in most western positive moralities there is an inherent quest for critical morality: an openness for critical reassessment based on a claim that our positive morality is not simply a historically grown set of norms but should also be universally justifiable.

However, orientation toward ideals need not always be a good thing. Rescher argues that adopting unrealizable goals may sometimes be counterproductive because they may deter people from making any effort at all.⁴³ The introduction of ideals in moral theory and practice therefore may result in a higher quality, but only under certain conditions.

In politics, lastly, a constant reorientation toward the ideal of democracy may be necessary to see, for example, what democracy means in an age of a rapidly developing information technology. So, the dynamic aspect of ideals may be an important factor in politics as well. Orientation toward ideals seems to be of special importance in politics, because it constitutes a necessary correction of a political system in which power and interests are the dominant factors. Orientation toward certain common ideals may help to build support for policies that are necessary, but are contrary to the interests of powerful interest groups. If politics is only conceived in terms of a strategic zero-sum game it may be impossible to implement certain policies that are necessary, or at least highly desirable. Reforms of the health care system, and giving adequate support to the poor in one's own country and in foreign countries may be examples of this need for ideal orientation. The contents of certain ideals are important here as well. The ideal of democracy is important to keep alive a critical and self-reflective dimension in politics, which makes policies open for critical debate.

Again, the appeal to ideals in politics may have risks as well. It may foster an unrealistic attitude, resulting in disastrous policies. Utopian idealism may hinder open and critical discussion, and foster fanaticism and unwillingness to compromise, both in moral debates and in political debates.

6. Ideal-oriented theories can be more legitimate

My third claim is that ideal-oriented theories can be more legitimate in the sense of being acceptable to the public. The main reason is that they result in a higher quality of law, morality, and politics, which usually will be a reason for the public to accept them. But an additional argument may be found in those ideals, common to law, politics, and morality alike, that stress

due process, democracy, and *herrschaftsfreien Diskurs*. These ideals are all oriented towards participation of the public in decision-making. Participation will sometimes lead to a higher acceptance because decisions are based on a participant's opinions, or give due recognition to her opinions and interests, and sometimes because the participant feels that at least she has had her say, even though she was unable to convince the majority of participants. Participation is also guaranteed by rules and principles. But it is essential that the ideals always form a critical reference point from which to judge and revitalize democratic practice. Thus, the dynamics introduced by ideals, combined with the contents of ideals like democracy, may make law and politics more legitimate.⁴⁴

Moral arguments may also be more acceptable to the public if they are more ideal oriented. One of the standard criticisms on principle-oriented and rule-oriented forms of biomedical ethics is that they are too rigid and not sensitive enough to the context. Ideal-oriented theories may be more context sensitive, because they allow for context-dependent interpretations and for open discussions about what interpretation is the best in a specific situation. Therefore, ideal-oriented theories of morality may lead to moral arguments that are more easily acceptable to the public.

Once again, ideal-oriented approaches may have risks as well. The ambiguity of ideals and the fact that each interpretation is inherently open for discussion may lead to a feeling that judicial decisions are merely subjective preferences. The quest for ideals in politics may be divisive instead of integrative. And arguments based on ideals in morality may be too far from reality to have any acceptable implications in real society.

7. Ideal-orientation as a cyclical process

The conclusion so far is that the introduction of ideals in reflective equilibrium models of normative reasoning usually leads to better theories. But ideal orientation is a matter of degree, and ideal-oriented theories are not always better, but only under certain conditions. Therefore, when we study ideals it is essential to take account of context and historical setting.

An ideal-oriented approach is probably most fruitful in those fields that are highly dynamic. Ideals provide for an orientation for the future and openness for reinterpretation in the light of changing circumstances; the relevance of these characteristics is highest in situations of rapid change. We may therefore assume that the relevance of ideal-oriented approaches is higher in the context of the politics of law than in the context of the application of law. This does not mean that in the context of adjudication the relevance is nil, but mainly that often the appeal to ideals can be more explicit and direct in the context of

legislation, and in those dynamic fields of law where the judiciary is highly involved in the politics of law.

There is a dialectical relationship between ideals on the one hand, and principles and rules of positive law on the other. In relatively static domains of law with a long-standing history, most of the central ideals are usually embodied in rules or principles. In some more settled parts of civil law, the ideal of justice has now largely been enacted in rules of positive law, often in the form of precedent law. In more recently emerging and dynamic fields, positive law is less fully elaborated or adequate, and there is a greater distance between ideal and reality. Thus, the importance of ideals has a cyclic character. At the beginning of the nineteenth century, after the great Napoleonic codifications, there was little need for ideals in the civil laws of many states in Europe, because most of the important ideals, as understood at that time, had been incorporated in the new Civil Code. In later decades, the partial inadequacy or injustice of certain domains of civil law became clear, and ideals of justice became more important. Examples are labor law and other fields of social law that have evolved from traditional civil law.

For political and moral ideals, similar cyclical processes due to a dialectic of ideal and reality can be discovered. The importance of the ideal of democracy is greatest when a society is, in some respect, far away from it. In the sixties, political institutions throughout the Western world were seen as defective. This resulted in a renewed reflection on the ideal of democracy, leading to various proposals for institutional reform. Now that some of these proposals have been realized, the ideal of democracy has less critical force and becomes, at least in the Western world, less important again in political argument.

With autonomy, a similar tendency can be seen. At the time this ideal was largely neglected in the medical practice, it was an important inspiring ideal on which ethical theories of informed consent could be built. Now that medical practice has largely incorporated the most direct implications of the ideal of autonomy, other ideals or practical necessities come to the fore, even to the extent that some of the initial changes in opinion and practice are being reversed. Emphasis on autonomy is sometimes of little use, or even a hindrance to good treatment of severely handicapped babies or psychiatric patients. A new provisional balance has thus to be struck between the ideal of autonomy and the ideal of good care.

The idea of a cyclical process applies, in fact, also on a more general level. The concern for ideals as such goes through similar cyclical processes. In the sixties, there was much criticism on society; far-reaching ideals and ambitious ideologies were helpful in formulating this criticism. But then some of the implications of these criticisms were incorporated in most Western societies, and the need for orientation towards ideals became less; the ideologies even

became counterproductive and suspect. Now the tide is turning again: we have seen the limits of Reaganomics and Thatcherism, and begin to rediscover the importance of ideals. But the memory of the all-embracing ideologies of the sixties is still vivid enough to make us critical of these grand ideals, while it encourages a reorientation toward more modest ideals.

8. Conclusions

We may expect ideal-oriented theories to be better theories of law, morality and politics, with respect to three dimensions: the dimension of fit, the dimension of quality, and the dimension of legitimacy. We must further analyze, however, in what way exactly, due recognition of ideals contributes to better theories and to better law, morality, and politics. This will give us a more profound and sophisticated insight into the conditions under which orientation towards ideals in each of these practices may have desirable or undesirable effects. As orientation toward ideals is a matter of degree, this will also give us a deeper insight into the exact role that we should accord to ideals.

I illustrated my central thesis on each of the three fields of practical philosophy. Why not stick to only one field in this article? One reason is that comparative studies of law, morality, and politics often are heuristically very fruitful. Phenomena that are most clearly understood in the context of law may, guided by the experience in the study of law, then also be discovered in the contexts of morality, and politics. Moreover, law, politics, and morality are not completely separate phenomena. Thus an ideal-oriented approach to law will influence the ways we look at morality and politics. And finally, if we look at law, morality, and politics from a more ideal-oriented perspective, this will also shed new light on the relations between them, and on various theoretical problems connected to these relations.

Some theoretical problems may be solved, or at least be better understood when using ideal-oriented theories. An example is the problem of political obligation and civil disobedience. Regarding both morality and politics as ideal-oriented phenomena may give us a better understanding of the unavoidable tensions between citizen and state, and at the same time present a fruitful theoretical perspective for normative theories of civil disobedience.

An ideal-oriented approach may be important for other debates as well. The debates between liberals and communitarians may be fruitfully analyzed, and partly brought to a solution, once we think of liberals as oriented toward certain ideals rather than as defined by certain particular rules and ideological tenets. Similarly, once we see law as a phenomenon which is oriented toward certain ideals, this insight will give new perspectives on the debate between natural law and legal positivism.⁴⁵

Notes

1. “In the sphere of human endeavour we cannot properly explain and understand the reality about us without reference to motivating ideals.” N. Rescher, *A system of pragmatic idealism*, vol. II: *The validity of values* (Princeton: Princeton University Press, 1993), p. 138.
2. Major proponents of these rule-oriented models are Kelsen, Hart, and more recently, Schauer.
3. Important critics are Shklar, Selznick, and Dworkin.
4. Two are Viehweg and Esser.
5. D. Lyons, “Moral aspects of legal theory,” in M. Cohen (ed.), *Ronald Dworkin and contemporary jurisprudence* (London: Duckworth, 1984), pp. 49–69; E. Ph. Soper, “Legal theory and the obligation of a judge: The Hart/Dworkin dispute,” in Cohen, (ed.), *Ronald Dworkin and contemporary jurisprudence*, pp. 3–27.
6. Major advocates of the importance of ideals are Fuller, Selznick and Peters. See on Fuller esp. K.I. Winston, “The ideal element in a definition of law,” *Law and Philosophy*, 5 (1986): 89–111.
7. For rule-orientation see R.B. Brandt, *A theory of the good and the right* (Oxford: Clarendon, 1979); B. Gert, *Morality: A new justification of the moral rules* (New York: Oxford University Press, 1988). For principle-orientation see T.L. Beauchamp and J.F. Childress, *Principles of biomedical ethics* (New York: Oxford University Press, 1994).
8. A.R. Jonsen and S. Toulmin, *The abuse of casuistry* (Berkeley, Calif.: University of California Press, 1988); T. van Willigenburg, *Inside the ethical expert* (Kampen: Kok Pharos, 1991).
9. N. Rescher, *Ethical idealism: An inquiry into the nature and function of ideals* (Berkeley, Calif.: University of California Press, 1987); N. Rescher, *The validity of values*.
10. A. MacIntyre, *After virtue* (Notre Dame, Ind.: University of Notre Dame Press, 1981); S. Macedo, *Liberal virtues* (Oxford: Clarendon Press, 1990).
11. S. Hampshire, *Morality and conflict* (Oxford: Blackwell, 1983).
12. P. Selznick, *The moral commonwealth: Social theory and the promise of community* (Berkeley, Calif.: University of California Press, 1992); W.A. Galston, *Liberal purposes: Goods, virtues, and diversity in the liberal state* (Cambridge, U.K.: Cambridge University Press, 1991); M. Walzer, “The communitarian critique of liberalism,” *Political Theory*, 18 (1990): 6–23; Macedo, *Liberal virtues*.
13. The word “ideal” is used by R. Dworkin in *Taking rights seriously* (Cambridge, Mass.: Harvard University Press, 1978) and *Law’s empire* (London: Fontana, 1986); see also P. Selznick “Sociology and natural law,” *Natural Law Forum*, 6 (1961): 84–108; Rescher, *Ethical idealism*; K.I. Winston, *Op. cit.*; and A.A.G. Peters, “Law as critical discussion,” in G. Teubner (ed.), *Dilemmas of law in the welfare state* (Berlin: De Gruyter, 1986), pp. 250–279.
14. For the importance of these three elements of the concept of ideals, see W. van der Burg, *Het democratisch perspectief* (Arnhem: Gouda Quint, 1991), p. 24. Most of these elements are also suggested by Rescher, *Ethical idealism*, and *The validity of values*. Only the idea that an ideal is somehow grounded in reality is not found in Rescher, but in Selznick; see also J. Rawls, “Justice as fairness: Political not metaphysical,” *Philosophy and Public Affairs*, 14 (1985): 223–251 and Dworkin, *Law’s empire*, p. 409.
15. Cf. Rescher, *The validity of values*, pp. 130 and 137; P. Nonet and P. Selznick, *Law and society in transition: Toward responsive law* (New York: Harper & Row, 1978), pp. 47–48.
16. Cf. Rescher, *The validity of values*, pp. 131.
17. Both Rawls and Dworkin seem to combine neo-Kantian and pragmatist approaches to ideals.
18. In *Law’s empire*, Dworkin is partially making a shift away from principles to ideals, but he is not really consistent in this.

19. Beauchamp and Childress, *Op. cit.*
20. For this problem, see Van Willigenburg, *Op. cit.*
21. Here I use the definition of principles as originally introduced by Dworkin, *Taking rights seriously*, p. 22–28.
22. Dworkin, *Op. cit.*, p. 22 and 28.
23. This principle has a *prima facie* character and in some cases it may be overruled; therefore, it is a principle and not a rule.
24. This would be a model similar to that developed by Rescher in *The validity of values*, p. 192.
25. For a similar criticism on regarding the morality of aspiration as the foundation of all morality, see L.L. Fuller, *The morality of law* (New Haven, Conn.: Yale University Press, 1969), p. 10.
26. The idea of a wide reflective equilibrium has been at the core of the ethics research program at Utrecht University for the past years. See Van der Burg, *Op. cit.*; T. van Willigenburg and F.R. Heeger, “Rechtfertigung moralischer Urteile: ein Netzmodell,” *Zeitschrift für Evangelische Ethik*, 35 (1991): 88–95.
27. Four of these elements have the same names in law, morality and politics. Only the element of concrete intuitions in morality has different analogues in politics and law.
28. Cf. Van der Burg, *Op. cit.*, p. 124.
29. Cf. Nonet and Selznick, *Op. cit.*, p. 48.
30. Selznick, *Op. cit.*, p. 103.
31. Cf. Nonet and Selznick, *Op. cit.*, for a dynamic analysis of due process, in terms of the values at stake in procedural protection.
32. Winston, *Op. cit.*, p. 104; Selznick, *Op. cit.*
33. Rescher, *Ethical idealism*, p. 123. See also Rescher, *The validity of values*, p. 135.
34. For this example, see W. 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.
35. For a more thorough analysis, see Van der Burg, *Het democratisch perspectief*. The idea that democracy can only be defined in relation to an ideotype is developed by A. Ross, *Why democracy?* (Cambridge, Mass.: Harvard University Press, 1952), p. 86.
36. Nonet and Selznick, *Op. cit.*, p. 80 ff., stress the role of purpose and principle in dealing with change.
37. Fuller, *Op. cit.*
38. Peters, *Op. cit.*
39. Nonet and Selznick, *Op. cit.*, warn against the danger of regression of responsive law to repressive law, because the former is a highly precarious ideal.
40. Cf. Radbruch’s idea that the three central legal values of *Gerechtigkeit*, *Rechtssicherheit*, and *Zweckmäßigkeit* are in constant competition, and that we should never lay too much emphasis on one of them at the cost of the other two central values.
41. Rescher, *Ethical idealism*, p. 123 ff.
42. Van der Burg, *Het democratisch perspectief*, ch. 1.
43. Rescher, *Ethical idealism*, pp. 16 and 123.
44. Cf. Nonet and Selznick, *Op. cit.*, p. 91.
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