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AMS 311

May 10, 2019

**“Phases of Associated Life;”
Pragmatism, Community, and the Law.**

Pragmatist ideas nurture equality, democracy, and social harmony pulling people into action. This essay grows from John Dewey’s insistence that “Democracy is a form of government only because it is a form of moral and spiritual association” (Menand, p. 196)— a form of community. Our democracy is guided by laws, and we are citizens of a free society, but, following Dewey, our freedom should end where oppression of others begins. “Moral and spiritual association” entails such restraint. In a healthy democracy, people would restrain themselves not from fear of consequences or punishment but because of their moral values, their conscience, and their understanding of each citizen’s impact on society. It is our responsibility as a society to identify our moral values and to reform our legal system so that it reflects those values. If we understand democracy as a “moral and spiritual association,” then it is our responsibility to ensure justice and protection for all our communities. Applying Pragmatism to American law will benefit our society by promoting rehabilitation, reducing the prison population, and by enriching new lawyers' knowledge of the law. This essay explores the applicability of Pragmatism to the related efforts of law reform and the rebuilding of our communities.

Pragmatist ideas are valuable because they focus on the end result of an action. Let me give you one of my favorite examples to understand Pragmatism's meaning; in religion, pragmatists believe that religion is good only if it brings peace, moral values, love, and respect to the individual and the community. For pragmatists, this is the real importance of religion, not any kind of dogma. Pragmatism is constantly inviting us to create ideas and to put those ideas in action because great ideas without action are not meaningful.

Pragmatism also nurtures democracy. Democracy, according to Aristotle, "In reality it is laws which governs the state, and that the man, whether few or many, are but the instruments of the law." I believe laws rule democracy and that our freedom ends where oppression of others begins. However, Dewey goes beyond Aristotle's idea. Dewey said, "To say that democracy is only a form of government is like saying that home is a more or less geometrical arrangement of bricks and mortar; that the church is a building with pews, pulpit and spire." And that "Democracy is a form of government only because it is a form of moral and spiritual association" (Menand, p. 195, 196). Dewey's idea of democracy is broader, taking into account the individual's will, moral values, and spiritual association. In other words, in a healthy democracy, people do not restrain themselves from wrongdoing only because of the consequences or punishment. However, people restrain themselves from wrongdoing because of their moral values, spiritual association, and because they are conscious of their actions and their impact on society. Of course, there is no democracy without law.

In law, Pragmatism can benefit our legal system by taking into account the immediate and future consequences for both the individual and our society. Pragmatist ideas are inclusive, taking into consideration every individual, group, and community. According to Dewey, "society exists for and by individuals," (Menand, p. 192) this means that every individual has the same rights and responsibilities in society. Equality is valuable in our legal system. As stipulated in the United States *Constitution*, for example, the XIV amendment states, "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Of course, equality includes every member of our society, without discrimination of gender, race, age, religious association, political association, or social status.

Law, democracy, education, equality, freedom, culture, and religion are part of our society's structure. If one part of that structure is not working, then our structure is weak. I firmly believe that the values learned at home are the most important ones. Home is where we learn to love; we learn manners, follow customs, learn about our culture, and learn the difference between right and wrong. We develop an understanding of the world with the help of our parents and family members, which shapes our personality, spirit, ethics, and ultimately defines us and our behavior or actions in society. Home is not an arrangement of brick and mortar. According to Dewey, the other important part of our structure is education; once we have received moral values at home, we have to reinforce those values at school and apply them to our community with hope to be part of a harmonious society.

Now that we understand the benefits of pragmatic ideas in society, let us talk about our judicial system and how the law has been applied. Our prisons are overpopulated, mostly for crimes associated with drug possession, and in most cases, the individual learns more criminal behavior during prison than their previous crime knowledge. As Richard Posner says in *A Pragmatist Manifesto*, "We should study the effects on an inefficient state legal system on the state's welfare and the feedback effect on the legal system" (Menand, p. 427). It is our responsibility as a society to demand a legal system that works for each of us. It is our responsibility to make the necessary changes to ensure justice and protection for our communities. The creation of more prisons is not the answer, incarcerating a mom or a dad is not the answer, and giving more criminal knowledge to amateur criminals is not the answer.

Overpopulated prisons are a clear adverse outcome of our legal system. This should be alarming for our society because it destroys families, creates an economic burden to society, and exposes us to more crime. Sadly, the application of the law has become a number, a routine. As Ralph Waldo Emerson said, "So much of our time is preparation, so much is routine, and so much retrospect that the pitch of each genius contracts itself to a very few hours." We tend to become intellectually lazy, trapped in routine, not allowing our creativity to flourish, and restricting our judgment. That is deadly for the process of law.

As Posner says in his *Pragmatist Adjudication* essay, "The pragmatic judge must bear in mind at all the times that he is a judge and that means that he must consider legal materials and arguments that are or can be brought to bear upon the case" (Posner, p. 433,

434) This means, to get to a verdict based on a thought-out process where everything is taken into account and where the judge is forced to think, not just apply existing rules. Each case is unique, the circumstances, the reasons, and the consequences of a crime are different; therefore, the judge has the responsibility to consider all those variables, before reaching a verdict. In my view, judges can benefit from pragmatic thinking when applying the law. Posner argues in *Pragmatist Adjudication*, “A pragmatic judge always tries to do the best he can do for the present and the future, unchecked by any felt *duty* to secure consistency in principle with what other officials have done in the past” (Posner, p.424) Law is the application of rules to impart justice to benefit our society, not a blind routine. Following pragmatist principles, the law should not be applied by the letter. It should be applied by a judgment of each particular case, taking into account the circumstances involving the crime and how the final sentence will affect that individual who will affect our society.

Our perception of the law, crime, and justice is narrow and individualistic. We do not demand change, because we are too worried about trying to protect ourselves and loved ones from crime. However, is that a practical approach to fighting crime? Is that realistic? Can we just protect ourselves and loved ones and forget about society? NO. As members of society, we have the responsibility to use our democratic government to demand changes and to ensure a brighter future for our young ones. In some sense, we are running away from dangerous cities, running away from bad communities, and running away from segregated neighborhoods. Reacting from fear, not thinking in a pragmatist manner, will increase injustice, crime, discrimination, and community disassociation. Should we keep on

running, or should we confront the problem? Running away and individualistic thinking it will not ensure our safety; it will not lower crime, and it will not benefit our society.

As a society, we have changed our perception of crime, justice, and the application of the law; this is dangerous because we have standardized the outcomes of our legal system seeing punishment as justice. Nevertheless, punishment is not the answer; we need to promote rehabilitation. So, is incarceration an opportunity for rehabilitation, or is it a school of crime? What are the benefits for society to incarcerate drug addicts? Is our society safer when those individuals are released? We do not need more prisons; we need rehabilitation programs to bring back in track those struggling in our society, and we need help from each member of our community to reform not to discriminate. Thinking along pragmatist lines can help us embrace rehabilitation before punishment for misdemeanors of drugs, alcohol, or petty crimes. Unfortunately, it seems like we have given up on the idea of the greater good. As Emerson says, "Our life is not so much threatened as our perception." Our actions depend on the lenses we are looking through.

Perception should be diverse in our legal system because the cases are diverse. This is why it is important to have a diverse group of judges on the bench with different life experiences and backgrounds so they can be more sensitive to different cases presented to them. Posner recommends in *A Pragmatic Manifesto*, "Of course persons of a different race or sex from that of most judges may have relevant life experiences that contribute to the moral and intellectual diversity at the bench, but this is also true for individuals of different religious and professional backgrounds, different temperaments, different health, and even

different hobbies" (Menand, p. 423). Judges are the link between the individual's incarceration and freedom, a difficult and important decision that deserves attention, reflection, and knowledge. That decision will affect the individual and affect our society.

Besides diversity, our future lawyers should have a broad knowledge of the law because it is the future of our legal system, the future of young lawyers, future judges, and, more importantly, our society's future. For Posner, this is an issue that should be addressed with urgency. Posner says in *A Pragmatic Manifesto*, "little effort is made to equip the law student who may one day become a law professor with the skills, knowledge, and attitudes requisite for studying the causes of law, the direct and indirect consequences of the law on behavior, the experience of other nations with law, and the scientific laws of the legal system" (Menand, p. 434). Knowledge can be acquired through life experience and education, which is why our future lawyers should be well-equipped with knowledge involving every aspect of the law and life experience. Law school should provide this knowledge, but according to Posner, this is not happening. A splash of Pragmatism would help too.

The importance of education, according to Dewey, "is the connection of the acquisition of knowledge in the school with activities, occupations, carried on in a medium of associated life" (Menand, p. 218). Then, it makes sense to connect the knowledge acquired in school with our moral values and life experiences; those are the main components for a just judge and future lawyer. As Oliver Wendell Holmes explains, *Lecture I: Early Forms of Liability*, "In order to know what it is, we must know what it has

been, and what intends to become” (Menand, p.137). We should understand the value of law and learn from previous positive and negative outcomes of the law to make corrections and promote success. People applying the law should have a vast amount of knowledge, moral values, compassion, and determination to help us thrive.

To think about the law only as a set of rules to apply punishment is faulty. Rehabilitation, lower incarceration rate, and better-equipped lawyers can be achieved by embracing pragmatist ideas in our legal system. Pragmatist ideas advocate for equality, democracy, and social harmony, all applicable to law. It is our responsibility as a society to identify our moral values and reform our legal system to reflect those values. If we understand democracy as a “moral and spiritual association,” then it is our responsibility to ensure justice and protection for all our communities.

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