A pragmatic approach to legal philosophy

This work is an attempt to address a kind of pragmatic attitude in legal philosophy. A very common dichotomy in this field includes positivists, who believe in science of legal interpretation, and skeptics, who believe reason has little utility in legal matters. Pragmatists like Oliver Wendell Holmes Jr. rise above this opposition and show a pluralistic attitude, seemingly too skeptical or cynical, but actually conscious of their role in the intellectual interaction. Not everyone can cover the range of topics Holmes covered, but he and classical pragmatism in general exemplify the plastic nature of reason and the importance of different attitudes in the process of enriching shared knowledge.

Legal philosophy was once dominated by rationalism and the search for the best method to interpret the law. Even though such attitude still exists, a shift happened in the last decades. The need of a comprehensive approach in cultural matters weakened most forms of rationalism in philosophy of law. After failed attempts to reduce legal interpretation to the method of natural sciences, less demanding versions of legal reasoning took place. The ways to achieve rational agreement, especially in modern pluralistic societies, are fluid; they flirt with uncertainty, fallibilism, pluralism and aesthetics.

This is why pragmatism has something to say in this debate.  It takes a special mind to willingly accept flow and change without becoming irrational, particularly in a topic like law, in which certainty is cherished. Oliver Holmes is an exponent of a special approach: his vision of law is on the verge of indifference or skepticism, but he never skips the technical abilities required to discuss topics like judicial restraint, which is the limitation of the creative power of the judge in the name of security and predictability. Justice Holmes is regarded not only as a great legal pragmatist but also as one of the best, if not the best judge in United States history.

I am interested here in his pluralistic and experimental view of knowledge, law and philosophy, specially because it shows a very pragmatic aesthetical quality. Aesthetics in John Dewey’s pragmatism is not the theory of beauty, but the core of experience. I propose that an aesthetic view of the legal system allows the legal philosopher to understand the intricate process of interchangeable and dynamic forces composing the law. Training and attitude enables the researcher to expand the limits of his knowledge and experience better than a purely technical approach or a system of abstract methods. Holmes' legal expertise carries much of his pluralistic view of the world.

Several times Holmes discusses his attitude directly. In a letter written to Sir Frederick Pollock in 1906, he says "I always start my cosmic salad by saying that all I mean by truth is what I can't help thinking and that I have no means of deciding whether my can't helps have any cosmic worth. They clearly don't in many cases."   
  
Also to Pollock, in 1908, he writes, "I always think of a remark of Brooks Adams that the philosophers were hired by the comfortable class to prove that everything is all right."   
  
Before these letters, in a work called "Law in science and science in law" (1899), he wrote, "If we have satisfied ourselves that our pursuits are good for society, or at least not bad for it, I think that science, like art, may be pursued for the pleasure of the pursuit and of its fruits, as an end in itself."

These passages may not represent the entirety of Holmes' work, but testify an educated indifference that marks a special kind of intelligence. The "cosmic salad" is not Holmes' side-project: it is a core part of his pluralism and a piece of the helpful role pragmatism plays in philosophy. The importance of pragmatism, as I see, is not the method *per se*, because there are already enough methods. What makes pragmatism important is a special kind of attitude, an open-minded and pluralistic approach. Pragmatism is at its best as a can opener, not as the can itself .

The pragmatist indifference does not give answers or creates systems. However, since philosophy, democracy, law, history and art are intersubjective and nuanced fields, that attitude is a reasonable approach to these complex issues. Knowledge fields are better in motion. A grain of skepticism, pluralism and laissez-faire is important to a proper collective understanding of dynamic fields like law, history or politics.

In accepting a pragmatic pluralism, a legal philosopher can better accept truth and justice as aesthetic concepts mirroring the balance between different forces at play. As such, those ideas may and will change. A good system of philosophy grasps one moment of the forces; a good pragmatic inquiry, in turn, understands the stream of theories and expands their possibilities. So a pragmatic approach is more suitable to legal and social philosophy, particularly when addressing the issues of modern democracies.