BOOK REVIEWS:

PRAGMATISM IN LAW AND SOCIETY, Michael Brint and William Weaver, eds. Boulder: Westview Press, 1991. xii plus 400 pp. $18.95 paperback, $55.50 cloth.

This is a landmark collection of nineteen essays that address, both retrospectively and prospectively, the constructive and critical contribution of pragmatism to contemporary legal theory and practice. It is, on the whole, provocative, constructive, and, without doubt, essential reading for anyone interested in the resurgence of pragmatism in contemporary legal debates. Seven of the essays are drawn from the 1990 "Symposium on the Renaissance of Pragmatism in American Legal Thought," held at the University of Southern California Law Center. It is worth noting also that this collection of essays is the first volume in the "New Perspectives on Law, Culture, and Society" series of Westview Press. Other titles include Feminist Legal Theory, Wittgenstein and Legal Theory, The Philosophy of International Law, and In Whose Name? Feminist Legal Theory and the Experience of Women.

Pragmatism in Law and Society is divided into two parts. The first twelve essays address the general question: What difference does pragmatism make to law and society? The remaining seven essays address more specific uses of pragmatism in judicial decision making and constitutional interpretation. The authors included in this collection form a diverse cast whose concerns and backgrounds cut across traditional disciplinary boundaries. They are, in order of appearance, Thomas Grey, Richard Posner, Stanley Fish, E.D. Hirsch Jr., Richard Rorty, Lynn Baker, Cornel West, Margaret Radin, Joan Williams, Jean Elshtain, Milton Fisk, Hilary Putnam, Martha Minow, Elizabeth Spelman, Catharine Wells, Sanford Levinson, Daniel Ortiz, Steven Knapp, David Hoy, and Ronald Dworkin. Since it is impossible to do justice to all of these essays in a short review, my strategy here is to employ a kind of sampling which I hope conveys some sense of the whole.

The first essay by Grey, "What Good is Legal Pragmatism?", offers a brief sketch of pragmatism and its relation to contemporary legal problems. Grey's account seeks to balance the historicist impulses of pragmatism with its no less important instrumentalist impulses. He then shows the cash value of these theoretical musings in terms of their effect on discussions concerning discriminatory verbal harassment policies on college campuses. His thoughtful approach offers us several hints on how to undercut abstract theory/practice debates and relocate critical work within concrete contexts where it can be most helpful.

Along these lines another one of the best pieces in this
Like Grey, she attacks the notion that we need a comprehensive Hegelian theory before we can engage in effective critique. Instead, she starts with concrete problems surrounding women's empowerment, commodification of sexuality and reproductive capacity. She insists that fruitful investigations of such questions should yield results that are provisional in nature, designed to achieve the best balance for present circumstance, and open to change in light of future developments (129). The most striking theoretical challenge she makes to the classical pragmatist tradition consists in raising deep suspicions over steadfast adherence to a coherence notion of truth. The problem, Radin points out, is that a system of beliefs can be both coherent and bad, which victims of racism and sexism well know (136). The solution her work points towards, however, does not require regression to transcendence, but rather increased effort to hear the voices of the oppressed.

The second, third, fifth, and nineteenth essays continue debates involving Posner, Fish, Rorty, and Dworkin. Posner's answer to the question "What has pragmatism to offer law?" is that pragmatism offers law a tool to dispense with bad metaphysics and formalism while allowing for the application of more potentially profitable tools (like economics and statistics) for enabling social engineering. He stops short of saying that pragmatism endorses such methods, instead it merely clears the way for their application. Indeed, on Posner's view, pragmatism is at best a grand-theory inhibitor.

Fish, in "Almost Pragmatism," agrees roughly with Posner's anti-metaphysical, anti-rational, and anti-foundational view of law (55), but wants to push Posner even further down the road away from philosophical criticism of practices by insisting that there is "no benefit to be derived for practice from the pursuit of theory or anti-theory" (79-80). Ironically, it seems as though Fish guarantees this result theoretically by rendering legal practice discrete and autonomous in such a way that "it" can only effect itself and placing all meaningful discussions of theory or philosophical criticism on the "outside." There is much here to explore concerning the nature of the autonomy Fish ascribes to legal practice and its all too clean separation from other practices, including theory.

Rorty, in his essay "The Banality of Pragmatism and the Poetry of Justice," continues in the vein of Contingency, Irony, and Solidarity insisting on the dividends of visionary thinking (95) and the limits of "method." While he hails what he sees as the complete victory over formalism, he laments the lingering attachments pragmatists still feel toward method: "New pragmatists wish Dewey, Sidney Hook, and Ernest Nagel had not insisted on using this term [method] as a catchphrase, since we are unable to provide anything distinctive for it to denote" (91). For his part, Dworkin, in "Pragmatism, Right Answers, and True Banality," expresses a degree of impatience with the criticism he continues to receive at the hands of pragmatists. He thinks pragmatists,
like Rorty, are still taking his "one right answer" thesis to be some sort of metaphysical postulate as opposed to the simple assertion that in legal practice, even in hard cases, it turns out that one answer can be said to be more reasonable than another (367).

These debates will no doubt continue and certainly nothing one reads here resolves the issues in question but this collection of essays goes a long way towards mapping the terrain. In an important, albeit limited way, this book not only describes recent developments in the dialogue between pragmatism and law but plays some role in that development itself. The "importance" of this role depends on the future. A turn towards locating discussions of critical inquiry within the felt demands of actual concrete problems is making itself manifest in at least some of these essays. What remains to be seen is how this is taken up -- not whether pragmatic philosophy can be made more practical for law but whether legal practice can be made more philosophical, thereby yielding "better," "more satisfying," outcomes.

Michael Sullivan
Vanderbilt University


Bad ideas, someone once said, die a slow death in academe. But then, perhaps bad ideas are merely untimely, broken, or less fertile than good ideas, but of some value, nonetheless.

Were the ideas of Charles Morris bad ideas, merely broken or less fertile, or were they "good" ideas? The question plays heavily in reading this recent publication of Morris's dissertation (under the direction of George Herbert Mead). The question is not an easy one, for the editor (Achim Eschbach) of the volume praises Morris's scholarship, suggesting that he is an original thinker whose works must not be ignored (x, xi). Max Fisch reveres the work of Morris, as do many others in the field. After all, it was Morris who divided semiotic (the study of signs) into the syntax, semantics, and pragmatics, used extensively by many in linguistics. (Howard Gardner incorrectly attributes this division to Charles S. Peirce, p. 57 The Unschooled Mind.)

Dewey, on the other hand, argues vehemently against one of Morris's later works, suggesting that he is wrongheaded. Dewey ends the essay with a classic line for any scholar of Peirce: "'Users' of Peirce's writings should either stick to his basic pattern or leave him alone." (Later Works, 15:152).

In the same critical vein, the editor (Eschbach) ends his preface of Morris on a very negative note, advising that Morris's dissertation is of far less value than the first portion of the