Connecting thinkers in the classical American grain with other traditions, whether with phenomenology, existentialism, Native American thinking, feminism or even postmodernism, is crucial toward not only demonstrating the rich, multi-faceted appeal of American philosophy, but also understanding its deep heritage. Sadly, throughout the second half of the twentieth century, American University philosophers/scholars predominately ignored this, their own philosophical heritage, with the result that many interpreters still buy into the vicious myth that American philosophy is fundamentally derivative of Europe and England. While The Primal Roots of American Philosophy will not by itself, correct this myth, it can and should motivate discussion toward that end.

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Holmes’ 1897 essay, The Path of the Law, is widely considered one of the great early expressions of philosophical pragmatism in American legal scholarship. As such, it has served as an inspiration for succeeding generations of legal scholars, not just for those who consider themselves pragmatists, but also for legal positivists, legal realists, law-and-economics scholars, and others. Yet, despite its tremendous influence, Holmes' essay has shown itself remarkably resistant to ready understanding. It seems to proceed upon contradictions: At one point, Holmes wonders aloud “whether it would not be a gain if every word of moral significance could be banished from the law altogether” (339). The law, he claims, is simply the prediction of what courts will do in fact. Morality has nothing to do with it. “If you want to know the law and nothing else,” he goes on in a famous passage,

you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct . . . in the vaguer sanctions of inner conscience (335).

Having staked out this, what seems to be, radical positivist position, however, he turns to profess his deep respect for the law “as the witness and external deposit of our moral life”
(334-35), describing its history as “the history of the moral
development of the race” (335).

Holmes adopts what seems to be a similarly inconsistent
position with respect to the role of logic in the law. Here, as
elsewhere, he debunks the notion that law is derived through a
process of logical deduction from first principles. “The life
of the law,” as he stated in the famous opening passage of The
Common Law, “has not been logic; it has been experience.” Yet,
in his own argument and analysis, both as a scholar and a judge,
Holmes relied heavily on forms of logic - not just analogical
reasoning but other forms of logical reasoning as well. How can
these apparent contradictions be explained? Where does Holmes
stand?

Answering these questions has proved to be more difficult
than might have been thought. Holmes’ mind at work does not
lend itself readily to easy categorization. Legal scholars who
have sought to come to terms with Holmes through his performance
in The Path of the Law—to wrestle into submission the seemingly
discordant ideas expressed there—have often ended up,
consequently, saying more about their own preoccupations and
vanities than about Holmes himself. There have been exceptions:
one thinks of the perceptive and nuanced treatment of Holmes’
thought that one finds reflected in the 1951 debate between Mark
DeWolfe Howe and Henry Hart in the pages of the Harvard Law
Review. But for the most part, American legal scholars have
found in Holmes’ essay, and in his other writings, what they
have wanted to find there: either some strand of support for
their own contemporary jurisprudential projects or a point of
contrast against which the superiority of their own projects
might be advantageously viewed.

The essays in the volume under review here, the latest
edition in the prestigious Cambridge Studies in Philosophy and
Law series, are in keeping with this tradition. Originally
presented as papers at a conference held at the University of
Iowa School of Law in centennial observance of Holmes’s original
performance, they represent efforts by some of America’s leading
legal scholars to shed light on his famous essay, to assess its
influence, and “to discuss one or another of its themes in the
light of current thinking” (1). The papers vary enormously in
focus and quality. What they largely demonstrate, however, is
the remarkable capacity of Holmes’ essay to hold the mirror to
its readers.
If one is seeking illumination of Holmes' own thought, by far the best essay in the volume is Thomas Grey's *Holmes on the Logic of the Law*. Grey explains how Holmes' expressed distrust of claims made for the role of deductive logic in the law can be reconciled with his own embrace of other forms of logic in his scholarly and judicial writings - and he does so, to his credit, in terms that are not alien to Holmes' own intellectual world. Grey's essay stands in marked contrast in this respect to Scott Brewer's highly technical effort to appropriate Holmes to his own project of making explicit the logical form of nondeductive modes of argument in judicial reasoning and in legal scholarly analysis. Other essays also shed helpful, though occasional, and somewhat less disciplined, light on Holmes' thought. One thinks in particular of essays by Catherine Wells, Sanford Levinson, and Brian Letter examining possible influences upon Holmes of, respectively, William James, Ralph Waldo Emerson, and Thucydides.

Stephen Perry's *Holmes versus Hart* explores in a serious and disciplined way the implications of Holmes' "bad man" theory for us - but does so, significantly, by explicitly relegating concern with what Holmes himself may have thought to a position of secondary importance. "Holmes' own intentions . . . ," Perry announces, "are simply beside the point. The crucial question is, surely, whether or not we can construct an intelligible and coherent jurisprudential theory from his various aphorisms and pronouncements about the nature of law" (160).

From here, it is pretty much down hill - at least as far as any serious effort to understand Holmes' own thought is concerned. *Law as a Vocation* represents Robert Gordon's attempt to superimpose upon Holmes and his performance a set of superficial social and historical categories - with predictably reductive results. And it is difficult to see why Martha Nussbaum's essay, *Why Practice Needs Ethical Theory*, was included in the volume. Nussbaum barely notices Holmes' presence at the party, and then apparently only as a formality, so preoccupied is she with explaining her own position on ethical theory.

If unevenness in quality of the essays included here is one defect with this volume, the other is the lack of a solid introductory essay locating Holmes' performance in the larger context of his career, the development of his thought, and the intellectual life of the period. That is not to say there is not a great deal to engage the interest - but the interest lies
largely, as indicated above, not in what these essays have to say about Holmes, but in what they have to say about the preoccupations of contemporary American legal scholarship.

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i. Holmes originally presented *The Path of the Law* as an address at the dedication of the new hall of the Boston University School of Law on January 8, 1897. It was published the following year in the Harvard Law Review. The essay is included as an appendix to the volume under review. Page references are to that appendix.
