

TOWARDS PRAGMATIC CONSERVATISM: A REVIEW OF SETH VANNATTA'S *CONSERVATISM AND PRAGMATISM IN LAW, POLITICS, AND ETHICS*

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At some point all writers come across a book they wish they had written. Several such books line my bookcases; the latest of which is Seth Vannatta's *Conservatism and Pragmatism in Law, Politics, and Ethics*.¹

The two words *conservatism* and *pragmatism* circulate widely and with apparent ease, as if their import were immediately clear and uncontroversial. But if you press strangers for concise definitions, you will likely find that the signification of these words differs from person to person.² Maybe it's not just that people are unwilling to update their understanding of conservatism and pragmatism—maybe it's that they cling passionately to their understanding (or misunderstanding), fearing that their operative paradigms and working notions of 20th century history and philosophy will collapse if *conservatism* and *pragmatism* differ from some developed expectation or ingrained supposition.

I began to immerse myself in pragmatism in graduate school when I discovered that its central tenets aligned rather cleanly with those of Edmund Burke, David Hume, F. A. Hayek, Michael Oakeshott, and Russell Kirk, men widely considered to be on the right end of the political spectrum even if their ideas diverge in key areas.³ In fact, I came to believe that pragmatism reconciled these thinkers, that whatever their marked intellectual differences, these men believed certain things that could be synthesized and organized in terms of pragmatism.⁴ I reached this conclusion from the same premise adopted by Vannatta: "Conservatism and pragmatism[] . . . are methods[] . . . guided by various common norms."⁵ As such, they can lead to different

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¹ SETH VANNATTA, *CONSERVATISM AND PRAGMATISM IN LAW, POLITICS, AND ETHICS* (2014).

² Based upon interactions with audiences at lectures and conferences, the reviewer acknowledges this claim as anecdotal and experiential.

³ VANNATTA, *supra* note 1, at 5–6, 19, 22–37, 45–47, 50–53, 67, 122–24, 167–77 (discussing Burke); *id.* at 6, 23, 34, 44–53, 90, 123, 145–46, 151 (discussing Hume); *id.* at 7–8, 105, 115, 121–25 (discussing Hayek); *id.* at x–xi, 7, 9, 73, 90–96, 106, 162, 180–88, 212–22 (discussing Oakeshott); *id.* at 22–23, 167–77, 182, 185, 187 (discussing Kirk).

⁴ *Id.* at 2–5.

⁵ *Id.* at 2.

political policies despite the consistently conservative character of their processes and techniques.⁶

James M. Albrecht stated in *Reconstructing Individualism* that pragmatism is accused of

contradictory sins: it optimistically overestimates the possibilities for reform, or it succumbs to a conservative gradualism; it is too committed to a mere, contentless method of inquiry that undermines the stability of traditional meanings, *or* its emphasis on existing means places too much weight on the need to accommodate existing customs, truths, and institutions.⁷

In other words, pragmatism is often reduced to *liberalism* or *conservatism*, overbroad, crude, and simplistic labels that do not aid our understanding of what pragmatism does or means.⁸ A little word confusion is harmless, but what *is* troubling and problematic is misrepresentation writ large, the distorting and obscuring of meaning for ideological purposes; when untutored or dogmatic minds accept as true and unchallengeable wrong ideas about pragmatism, then pragmatism rightly understood becomes the object of unwarranted disdain and reprobation.⁹ Because individuals such as C. S. Peirce and William James labored to exposit clear, serviceable, and rigorous theories of pragmatism, the fruit of their efforts should in all fairness be treated with more than passing derision or partisan reduction.¹⁰

⁶ Allen Mendenhall, *Pragmatists versus Agrarians?*, U. BOOKMAN (June 1, 2013), <http://www.kirkceter.org/index.php/bookman/article/pragmatists-versus-agrarians/> (“[T]he pragmatism of Peirce and James is not about sociopolitical or socioeconomic advancement. It is a methodology, a process of scientific inquiry. It does not address conservatism *per se* or liberalism *per se*. It can lead one to either conservative or liberal outcomes, although the earliest pragmatists rarely applied it to politics as such. It is, accordingly, a vehicle to an end, not an end itself.”).

⁷ JAMES M. ALBRECHT, *RECONSTRUCTING INDIVIDUALISM: A PRAGMATIC TRADITION FROM EMERSON TO ELLISON* 17 (1st ed. 2012).

⁸ *Id.*; ALLAN C. HUTCHINSON, *EVOLUTION AND THE COMMON LAW* 104–05, 108 (2005) (distinguishing between conservative, liberal, and radical pragmatism in a careful manner, which irradiates this point); Jonah Goldberg, *On Pragmatism & Fascism: Part One*, NAT’L REV. (Apr. 27, 2009, 10:00 AM), <http://www.nationalreview.com/liberal-fascism/203906/pragmatism-fascism-part-one-jonah-goldberg> (describing an example of oversimplification of pragmatism as leftist); Peter Berkowitz, *Pragmatism Obama Style: Surprise, it’s Left-Wing*, WKLY. STANDARD (May 4, 2009), <http://www.weeklystandard.com/Content/Public/Articles/000/000/016/425yustu.asp?page=1> (overstating pragmatism’s affiliation with the left in light of Richard Rorty); Rich Lowry, *Bob McDonnell, Conservative Pragmatist*, NAT’L REV. (Oct. 22, 2009, 4:00 AM), <http://www.nationalreview.com/article/228458/bob-mcdonnell-conservative-pragmatist-rich-lowry> (describing a simplistic attempt at associating pragmatism and conservatism); John Osborn, *Pragmatic Conservatism at the Heart of Chief Justice’s Ruling to Uphold ACA Subsidies*, FORBES (June 25, 2015, 12:42 PM), <http://www.forbes.com/sites/johnosborn/2015/06/25/pragmatic-conservatism-at-the-heart-of-chief-justices-ruling-to-uphold-aca-subsidies/>.

⁹ See generally Thomas Short, *The Conservative Pragmatism of Charles Peirce*, 43 MOD. AGE 295 (2001) (regarding confusion about the meaning of pragmatism, the association of pragmatism with leftism, and the danger of misconstruing pragmatism in the vein of Richard Rorty).

¹⁰ See, e.g., William James, *Pragmatism*, in WILLIAM JAMES: WRITINGS 1902–1910 (1987); C. S. Peirce, *Some Consequences of Four Incapacities*, 2 J. SPECULATIVE PHIL. 140 (1868); C. S. Peirce, *The Fixation of Belief*, 12 POPULAR SCI. MONTHLY 1 (1877); C. S. Peirce, *How to Make Our Ideas Clear*, 12 POPULAR SCI. MONTHLY 286 (1878); C. S. Peirce, *What Pragmatism Is*, 15 MONIST. 161 (1905); C. S.

That has not been the case. Jonah Goldberg, syndicated columnist and senior editor at *National Review*, suggests in *Liberal Fascism* that “Deweyan Pragmatism” was peopled by men and women who not only “laid the intellectual groundwork of the New Deal and the welfare state” but also “thought that fascism sounded like a pretty good idea.”¹¹ Goldberg implied that Dewey’s wartime zeal was a pretext for socialism,¹² suggested that Dewey’s travels to the Soviet Union linked him to Bolshevism,¹³ associated pragmatism with a Nietzschean “call for overturning all traditional morality,”¹⁴ trumpeted the fact that Mussolini read and admired William James,¹⁵ scorned the “progressive-pragmatic tradition of William James and John Dewey,”¹⁶ and in various ways attempted to link Dewey, James, and pragmatism with fascism, police surveillance, statist progressivism, and the warrior spirit.¹⁷ Goldberg listed facts and then announced conclusions, chapter after chapter and page after page, skipping over any inconvenient analysis or careful, constant methodology and scribbling away like a zealous teenager lost in the rhizomes of Wikipedia, clicking from entry to entry and moving seamlessly through the mediated wisdom of the Internet, excited to be exploring serious ideas for the first time.¹⁸

Goldberg’s lack of scholarly method and credibility is well

PEIRCE, PRAGMATISM AS A PRINCIPLE AND METHOD OF RIGHT THINKING: THE 1903 HARVARD LECTURES ON PRAGMATISM (Patricia Ann Turrisi ed., 1997); C. S. Peirce, *Issues of Pragmaticism*, 15 MONIST 481 (1905); CHARLES SANDERS PIERCE, 5 COLLECTED PAPERS OF CHARLES SANDERS PIERCE: PRAGMATISM AND PRAGMATICISM (Charles Hartshorne & Paul Weiss eds., 1931). For representative work by Peirce and James on pragmatism, see William James, *Philosophical Conceptions and Practical Results*, 1 U. CHRON. 287 (1898).

¹¹ JONAH GOLDBERG, LIBERAL FASCISM: THE SECRET HISTORY OF THE AMERICAN LEFT FROM MUSSOLINI TO THE POLITICS OF MEANING 9 (2007).

¹² *Id.* at 106–07.

¹³ *Id.* at 102.

¹⁴ *Id.* at 107.

¹⁵ *Id.* at 51.

¹⁶ *Id.* at 168.

¹⁷ *Id.* at 28, 37, 51, 94, 98, 102, 106, 117, 149, 157, 176, 337, 423.

¹⁸ The theory of the rhizome comes from GILLES DELEUZE & FELIX GUATTARI, A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA (Brian Massumi trans., Univ. of Minn. Press 1987). For some of Goldberg’s breezy, categorical, and sweeping claims, see GOLDBERG, *supra* note 11, at 1 (referring to the character types “[a]ngry left-wingers” and “corporate fat cats” as fascist without specifying actual people who meet this description). *Id.* at 5–6 (implying that pragmatism was militaristic and thus appealed to Mussolini, associating Nazism with Afrocentrism, and accusing unspecified leftists of conflating Zionism and Nazism); *id.* at 9–10 (accusing the American left of adopting Italian fascism while Stalin rose to power, supporting Stalinism and Nazism); *id.* at 38–43 (discussing the alleged fascism of the French Revolution as a precursor to fascism during World War I); *id.* at 53–77 (comparing Hitler and Nazism to the American left); *id.* at 82–93 (discussing Woodrow Wilson, progressivism, Nazism, Christianity, Teddy Roosevelt, Darwin, evolution, the Republican Party, and nationalism); *id.* at 93–106 (attributing supposed fascism in America to the teachings of Nietzsche and William James and claiming that American progressives demonstrated an affection for Nazi Germany and Italian fascism); *id.* at 238–40 (suggesting that the Civil Rights Movement and liberal reforms of the 1960s led to fascist street riots, increased rights to criminals, and “the pre-fascist logic of the Bismarckian welfare state”); *id.* at 243–83 (linking the contemporary American left to racism, eugenics, Nazism, jingoism, xenophobia, and the Ku Klux Klan); *id.* at 392 (referring to unnamed “smug, liberal know-nothings, sublimely confident of the truth of their ill-informed prejudices,” without naming those alleged prejudices); *id.* at 397–99 (suggesting that Patrick Buchanan leaned toward leftist fascism rather than populist conservatism).

documented,¹⁹ but the reach of his influence extends far, especially, if not exclusively, within conservative circles.²⁰ *Liberal Fascism* hit the top spot on the New York Times Bestseller List in 2008, and Goldberg continues to churn out articles for popular media that recycle comically misguided and dangerously absurd notions of philosophical pragmatism.²¹ A different narrative unfolds in the hands of a gentle, meticulous scholar. Vannatta, an associate professor of philosophy at Morgan State University who has no axe to grind and no agenda to push, doesn't name names, but he must have had people like Goldberg in mind when he wrote about "the incoherence of the conservatism referred to by the media and by the disconnection of the everyday meaning of pragmatism from its philosophical origins"²² Vannatta does not hector readers with refutations of Goldberg (and similar critics) whose claims about pragmatism should not be taken seriously except as objects of study in their own right, i.e., as evidence of what is wrong in the marketplace of conservative letters. The political right should take note of Vannatta's book, however, because, in his words, "conservatives would benefit by looking more closely at the work of the classical American pragmatists."²³

Why? Where do pragmatism and conservatism intersect? What does

¹⁹ See, e.g., David Neiwert, *Jonah Goldberg's Bizarro History*, AM. PROSPECT (Jan. 8, 2008), <https://prospect.org/article/jonah-goldbergs-bizarro-history-0>; Austin Bramwell, *Goldberg's Trivial Pursuit*, AM. CONSERVATIVE (Jan. 28, 2008), <http://www.theamericanconservative.com/articles/goldbergs-trivial-pursuit/>; Eric Alterman, *Conservative Cannibalism*, NATION (Feb. 21, 2008), <http://www.thenation.com/article/conservative-cannibalism>; David Oshinsky, *Heil Woodrow!*, N.Y. TIMES (Dec. 30, 2007), <http://www.nytimes.com/2007/12/30/books/review/Oshinsky-t.html>; Michael Tomasky, *Jackboots and Whole Foods*, NEW REPUBLIC (Mar. 12, 2008), <http://www.newrepublic.com/article/books/jackboots-and-whole-foods>; David Gordon, *Fascism, Left and Right*, MISES DAILY (Jan. 31, 2008), https://mises.org/library/fascism-left-and-right#_ftnref2.

²⁰ *The National Review*, for which Goldberg is editor-at-large, had a total, paid, and verified circulation of 137,681 as of December 31, 2014, according to the Alliance for Audited Media. *Total Circ. for Consumer Magazines*, ALLIANCE FOR AUDITED MEDIA (Dec. 31, 2014), <http://abcas3.auditedmedia.com/e/circ/magtitlesearch.asp>. Goldberg is a fellow at the American Enterprise Institute. See *Jonah Goldberg*, AM. ENTERPRISE INST. (Sept. 2, 2015), <https://www.aei.org/scholar/jonah-goldberg/>. He is also a New York Times Bestselling Author. See *Best Sellers*, N.Y. TIMES (May 27, 2012), <http://www.nytimes.com/best-sellers-books/2012-05-27/hardcover-nonfiction/list.html>.

²¹ To be fair, Goldberg demonstrates occasional cautiousness in *Liberal Fascism*. For example, he states,

The relationship between Pragmatism and conservatism is a bit more complicated. William James was a great American philosopher, and there is much in his work that conservatives admire. And if by Pragmatism you simply mean realism or practicality, then there are a great many conservative pragmatists. But if by Pragmatism one means the constellation of theories swirling among the progressives or the work of John Dewey, then conservatives have been at the forefront of a century-long critique of Pragmatism. However, it should be said that both James and Dewey are thoroughly American philosophers whose influence in a wide range of matters defies neat categorization along the left-right axis.

GOLDBERG, *supra* note 11, at 434 n.22. That he relegates this caution to a footnote, leaving the more tendentious passages for the text proper, suggests a willingness to sacrifice academic rigor for commercial success. Such a willingness is not bad in itself, but it does problematize Goldberg's claims by undermining his credibility. The existence of this footnote raises the specter of ghost authorship or editorial intervention because it so glaringly contradicts Goldberg's dogged attempts to link James and Dewey to fascism.

²² VANNATTA, *supra* note 1, at 1.

²³ *Id.* at 4.

pragmatism offer conservatives? First, Vannatta argues that, as a methodology, pragmatism concerns itself with the situated, the embedded, the contextual, the experiential, the fallible, the social, and the customary.²⁴ Chief among its concerns are lived experience, which parallels conservative skepticism regarding “rationalism in ethics, politics, and law”²⁵ (the target of Oakeshott’s philosophy),²⁶ an eschewal of “the false universalism of *a priori* thinking” and a turn towards “localized, contextual, and experiential inquiry”;²⁷ and a concentration on the aesthetic dimensions of experience, as exemplified in the works of Burke, Hume, and Kirk.²⁸ Like the pragmatist, “[t]he conservative attends to custom, habit, experience, even prejudice, not first principles, in moral, political, and legal inquiries.”²⁹

Second, conservatives and pragmatists are “attendant to the temporal and historical dimensions of our collective experience” and “emphasize the way historical inquiry intrudes upon and is a necessary part of moral, legal, and political questions.”³⁰ This facet of conservatism is linked with a hesitance to embrace grand abstractions, totalizing metanarratives, and fixed teleology as sound calculi for centrally planning institutions and for directing human behavior using the coercive mechanisms of government.³¹ This facet of conservatism is also expressed in Kirk’s fourth canon of conservative thought: “Faith in prescription and distrust of ‘sophisters, calculators, and economists’ who would reconstruct society upon abstract designs. Custom, convention, and old prescription are checks both upon man’s anarchic impulse and upon the innovator’s lust for power.”³² Despite his famous disclaiming of conservatism,³³ Hayek followed Kirk in opposing “Cartesian rationalism”³⁴ and entered into Kirk’s cognitive and discursive field, promoting in *The Constitution of Liberty* “a modest and even humble creed, based on a low opinion of men’s wisdom and capacities and aware that within the range for which we can plan, even the best society will not satisfy all our desires.”³⁵ Hayek acknowledged “the fact that man’s mind is itself a product of the civilization in which he has grown up and that it is unaware of much of the experience which has shaped it—experience that assists it by being embodied in the habits, conventions, language, and moral beliefs which are

²⁴ *Id.* at x, 2–3, 6, 8–9, 17, 23, 33, 41, 45, 50, 52–53, 61–62, 67, 76, 81–82, 85, 88–89, 93, 97–98, 100, 105–06, 115, 117, 120, 123–25, 151, 156, 162, 164, 173, 175, 179, 187, 191, 200, 202, 207, 210, 213–19, 222, 247.

²⁵ *Id.* at 3.

²⁶ See generally MICHAEL OAKESHOTT, *RATIONALISM IN POLITICS AND OTHER ESSAYS* 5–42 (1991).

²⁷ VANNATTA, *supra* note 1, at 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 2, 6–8, 23–24, 28–29, 34–35, 42, 53, 65, 98, 106–07, 120, 124–25, 161, 164, 168, 172, 184–85, 187, 190–91, 201, 204, 207, 209, 220, 222.

³² RUSSELL KIRK, *THE CONSERVATIVE MIND: FROM BURKE TO ELIOT* 9 (7th rev. ed. 1995).

³³ See F. A. HAYEK, *THE CONSTITUTION OF LIBERTY* 519–33 (11th ed. 2011).

³⁴ *Id.* at 110.

³⁵ *Id.* at 54.

part of its makeup.”³⁶ Accordingly, Hayek was a pragmatic conservative who realized that custom and experience shaped but did not determine the political and ethical beliefs of a social network or community.³⁷

Conservatism defies ready definition or easy explanation because, Vannatta says, echoing Oakeshott, “conservatism” is a “disposition.”³⁸ Vannatta qualifies that “conservatism can be cashed out politically, religiously, socially, and economically without a univocal meaning,” since conservatives of different stripes have at various times “advocated preserving all types of political structures, religious institutions, and economic relationships.”³⁹ Conservatism is not a cookie-cutter template or a ten-step program but a complex field of operation and mode of thought in which human activity is held to established standards and subject to modest and workable adjustments in keeping with changed circumstances. Vannatta makes it clear that the conservatism he implements and advances for purposes of his argument has little to do with politicians, political parties, and partisan gamesmanship that place a premium on vote tallies and sound bites.⁴⁰ Readers looking for validations of the antics and optics of Fox News and the activities and policies of the Republican Party should consult a different book.

Vannatta has arranged this work in three parts divided into chapters. The two chapters that make up Part I provided much of the context for the rest of the book, outlining in broad strokes the relationship between conservatism and pragmatism and comparing the thought of such figures as Burke, Hume, Hobbes, Locke, Rousseau, Paine, Kant, Bentham, and Mill.⁴¹ Vannatta revealed in Part I that pragmatist teachings are redolent of the political doctrines of restraint and rootedness and of experiential and practical knowledge against abstract and utopian projection.⁴² If conservatism inheres in the manifest tendencies of social communities for forming habits, patterns, customs, and institutions, then pragmatism is conservative by responding and deferring to these tendencies rather than stamping them out or dismissing

³⁶ *Id.* at 75. For more on Hayek and pragmatism, see Richard Posner’s summary of Hayek’s jurisprudence. Richard A. Posner, *Kelsen versus Hayek: Pragmatism, Economics, and Democracy*, in *LAW, PRAGMATISM, AND DEMOCRACY* 250, 250–91 (2003).

³⁷ VANNATTA, *supra* note 1, at 121–25.

³⁸ *Id.* at 2; *see also* OAKESHOTT, *supra* note 26, at 168 (Opening his essay, Oakeshott writes, “[m]y theme is not a creed or a doctrine, but a disposition. To be conservative is to be disposed to think and behave in certain manners; it is to prefer certain kinds of conduct and certain conditions of human circumstances to others; it is to be disposed to make certain kinds of choices. And my design here is to construe this disposition as it appears in contemporary character, rather than to transpose it into the idiom of general principles”).

³⁹ VANNATTA, *supra* note 1, at 2.

⁴⁰ *Id.*

⁴¹ *Id.* at 22–37 (discussing Burke); *id.* at 44–46 (discussing Hume); *id.* at 13–15, 18–19, 33 (discussing Hobbes); *id.* at 13–23, 25 (discussing Locke); *id.* at 15–19, 21, 23, 26 (discussing Rousseau); *id.* at 19–22 (discussing Paine); *id.* at 17–19, 42–43 (discussing Kant); *id.* at 39–41 (discussing Bentham); *id.* at 41–42 (discussing Mill).

⁴² *See generally id.* at 23–53. Vannatta develops the anti-utopian characteristics of pragmatism and conservatism later in the book. *See, e.g., id.* at 64, 73, 184, 190–91, 195, 199, 201, 206, 215.

them out of hand. History and tradition are indispensable to the pragmatic mindset.⁴³ Pragmatic conservatism is free of foregone conclusions and unyielding doctrinal restrictions; it is open to revision, skeptical of abstract platitudes, and marked by historicism and inquiry. Burke and Hume are perhaps the best representatives of what conservative pragmatism looks like in the context of political theory. George Santayana, a figure who rounded out early versions of Kirk's *Conservative Mind*, stands as an icon for the marriage of the conservative tradition of Burke and Hume with pragmatism's focus on synthetic systems of communal inquiry, practical dependence on the knowledge of our predecessors, and functional principles of synechism or historical continuity.⁴⁴

Part II mapped the concept of history and historical inquiry as it has descended from thinker to thinker in the pragmatist canon, as it were, and traces an index of influence, from science to positivism to postmodernism or neopragmatism, from which and for which pragmatist historicism and historiography have been put to work.⁴⁵ Part III, however, is the most important section for students and practitioners of the law because it accents the legal elements of pragmatism and describes their significance to common-law adjudication. Justice Holmes is a pivotal force here.⁴⁶ My own work has substantiated Vannatta's claim that "Oliver Wendell Holmes, Jr. shows us how pragmatism and conservatism intersect methodologically with respect to legal theory and practice."⁴⁷ My enthusiasm for Vannatta's take on Holmes stems, in part, from my concurrence with his contention that "Holmes, in his reaction against formalism in legal theory, applied Peirce's pragmatism"; that "Holmes's moral philosophy revealed the sentimentalism and skepticism of rationalism resonant in the work of Hume and Burke"; and that Holmes's "judicial theory was governed by pragmatism's conservative norms."⁴⁸

Vannatta highlights the resemblance of Holmes's jurisprudence with

⁴³ *Id.* at 51 ("Insofar as we inherit the dictates of morality naturally and unreflectively from the past, we should not cut ties with the past. Without this inheritance, Peirce tells us we are left only to be victims of our passions. But his warning is not against the influence of passions in morality, but rather the severing of morality from the past by reason. Reason, as we have seen in the radicalism of Paine, cares nothing for the past, which has no right to bind us. But as we saw in Burke's prescient warnings about revolutionary innovations in government founded on the abstractions of reason, cutting ties to past inheritance can cause us to be victim to the passions of the day.").

⁴⁴ *Id.* at 49.

⁴⁵ See generally *id.* at 57–101.

⁴⁶ See generally *id.* at 126–44.

⁴⁷ *Id.* at 126. For my discussion of Holmes and conservatism, see Allen Mendenhall, *Justice Holmes and Conservatism*, 17 TEX. REV. L. & POL'Y 305 (2013). For my work on Holmes and pragmatism, see Allen Mendenhall, *Pragmatism on the Shoulders of Emerson: Oliver Wendell Holmes Jr.'s Jurisprudence as a Synthesis of Emerson, Peirce, James, and Dewey*, 48 S.C. REV. (2015). See Allen Mendenhall, *Oliver Wendell Holmes Jr. is the Use of Calling Emerson a Pragmatist: A Brief and Belated Response to Stanley Cavell*, 6 FAULKNER L. REV. 197 (2014); see also Allen Mendenhall, *Dissent as a Site of Aesthetic Adaptation in the Work of Oliver Wendell Holmes Jr.*, 1 BRITISH J. AM. LEGAL STUD. 517 (2012); Allen Mendenhall, *Holmes and Dissent*, 12 J. JURIS. 679 (2011).

⁴⁸ VANNATTA, *supra* note 1, at 126.

Peirce's pragmatism, and in particular with Peirce's conception of truth.⁴⁹ Holmes was a pragmatist, Vannatta explains, because:

[He] reasoned from the particulars of experience toward general principles, rejecting the purely formal deduction of conclusions from formal propositions. He was skeptical of invoking as universal *a priori* premises to begin his arguments. His concept of truth[] . . . echo[ed] Peirce's description of truth as the opinion to be held by an indefinite amount of communal inquiry. . . . [H]e avoided appeals to moral principles too far removed from our experience. His ethical principles were contingent, reflecting one's cultural conditions, and emerging from the felt problems of one's environment.⁵⁰

Finally, "the meaning of his moral principles, the meaning of legal principles such as rights and duties, and the meaning of law itself are to be found in their effects, or in the prediction of their effects."⁵¹ Yet Holmes also "echoes Burke as he allows for manners, an aesthetic category, to take the form of duty and act as the counterbalance for the darker side of the evolutionary life struggle" of humans seeking to achieve the type of world they wish to live in.⁵² Much ink has been spilled over Holmes's pragmatism, but Vannatta's chapters on Holmes are valuable, concise introductions to the subject, offering a more philosophically demanding counterpart to Louis Menand's biographical treatment of Holmes and pragmatism in *The Metaphysical Club*.⁵³

Arguing that "a conservative norm governs the manner in which we undergo and prescribe reform,"⁵⁴ Vannatta finds himself in accord with Albrecht, who asserted that "pragmatism's enduring political appeal lies precisely in its balanced insistence on both the possibility and difficulty of reform—a balance that, again, reflects the mutually transforming interaction between human nature and its enviroing conditions posited by a pluralistic model of experience."⁵⁵ Albrecht tracked such pluralism to the political thought of William James, stating, "A pluralistic universe is one in which human ideas and actions can help realize new possibilities, but such possibilities must emerge from existing conditions and overcome the inertia of existing customs and institutions."⁵⁶ This line recalls Kirk's conservative

⁴⁹ *Id.* at 112–14, 126–28, 132, 135, 137–39, 141, 143, 164, 217.

⁵⁰ *Id.* at 127–28.

⁵¹ *Id.* at 128.

⁵² *Id.* at 149.

⁵³ See generally LOUIS MENAND, *THE METAPHYSICAL CLUB* (1st ed. 2001).

⁵⁴ VANNATTA, *supra* note 1, at 3.

⁵⁵ ALBRECHT, *supra* note 7, at 17.

⁵⁶ *Id.*

approach to reform as set out in his sixth canon of conservatism:

Recognition that change may not be salutary reform: hasty innovation may be a devouring conflagration, rather than a torch of progress. Society must alter, for prudent change is the means of social preservation; but a statesman must take Providence into his calculations, and a statesman's chief virtue, according to Plato and Burke, is prudence.⁵⁷

Without referencing Providence, but also without denying or refusing Providence, Vannatta rearticulates Kirk's vision in terms of "the ontological conservatism of nature," which transforms institutions "as organisms transform themselves – not all at once."⁵⁸ Change is important for conservatives, in other words, but it must be gradual, incremental, and imitative and carried out through tested and tried practices and methodologies, attentive to our human capacity for error and miscalculation.⁵⁹ According to Hayek, "no statement of an ideal that is likely to sway men's minds can be complete: it must be adapted to a given climate of opinion, presuppose much that is accepted by all men of the time, and illustrate general principles in terms of issues with which they are concerned."⁶⁰ Hayek recognizes that "we must always strive to improve our institutions" even if "we can never aim to remake them as a whole"⁶¹

In my view, these points are so basic and obvious that to insist on them seems superfluous as a matter of argumentation. As a matter of strategy and tactical scope, however, Vannatta is right to reiterate the already apparent, underscoring the leading theories of Burke, Hume, and Hayek.⁶² In light of the inflammatory portrayals of pragmatism that proliferate in conservative magazines and journals (a problem that extends beyond Goldberg), Vannatta must overcompensate to serve as an effective corrective.⁶³ This reviewer is

⁵⁷ KIRK, *supra* note 32, at 9.

⁵⁸ VANNATTA, *supra* note 1, at 3.

⁵⁹ *Id.* at 3, 10, 25, 85, 91, 113, 137, 166, 173–74, 183, 185, 211, 213, 217.

⁶⁰ HAYEK, *supra* note 33, at 47.

⁶¹ *Id.* at 124.

⁶² See VANNATTA, *supra* note 1, at 22–37 (discussing Burke); *id.* at 44–46 (discussing Hume); *id.* at 7–8, 121–24 (discussing Hayek).

⁶³ See Pat Buchanan, *The Obama Doctrine*, CREATORS, <http://www.creators.com/opinion/pat-buchanan/the-obama-doctrine-e91da58d41.html> (last visited Mar. 29, 2016) ("Obama is in that tradition of ruthless American pragmatism," which includes breaking foreign policy ties with traditional allies of the United States); see also Matthew Continetti, *A Ruthless Pragmatism*, WKLY. STANDARD (Apr. 29, 2009, 11:47 AM), http://www.weeklystandard.com/weblogs/TWSFP/2009/04/a_ruthless_pragmatism_1.asp?page=1# (implying that President Obama's championing of the Affordable Care Act was pragmatic); Paul Mirengoff, *A Pragmatic Heresy*, WKLY. STANDARD (Feb. 8, 2006), <http://www.weeklystandard.com/Content/Public/Articles/000/000/006/687lbnmqo.asp> (associating pragmatism with the National Center for Neighborhood Enterprise). These examples use the term "pragmatism" in a way that is foreign to the classical pragmatism of C.S. Peirce, William James, and John Dewey. For additional examples of incorrect or negative portrayals of pragmatism in conservative publications or by conservative authors, see Jonah Goldberg, *A Pragmatic Look at Obama's Pragmatism*, TOWNHALL (Sept. 30, 2009), http://townhall.com/columnists/jonahgoldberg/2009/09/30/a_pragmatic_look_at_obamas_pragmatism/page/full (treating Obama as a pragmatist because he allegedly changed his mind about the War in Afghanistan).

unaware of any standing refutations of Vannatta from a conservative perspective. Those may materialize in due course if his book is given the attention and publicity it deserves. I do not mean to underrate the importance and effectiveness of what Vannatta has accomplished merely to point out that his impressive argument will invite opposition as all impressive arguments do.

If there is a drawback it is that Vannatta neglects to expound on the decisive role of William James in guiding pragmatist methodology,⁶⁴ but the pragmatist canon is too wide and intricate for each member to receive worthwhile treatment in a book that covers such a broad range. Still, James is an early progenitor of pragmatism, second behind only Peirce, and to give him short shrift seems shortsighted, especially in view of his relationship with and influence on pragmatists like Holmes, who figure prominently in Vannatta's argument.⁶⁵

Vannatta has achieved the signal merit of instantiating the practices he describes. He shows himself to be a pragmatist even as he writes critically about pragmatism.⁶⁶ "We proceed in our inquiries as meliorists," he says, "whose hope is checked by a healthy skepticism and a realization of the tragic shortfalls of . . . conservative progress."⁶⁷ This account of pragmatic conservatism emphasizes "the way our social knowledge is distended temporally, inherited through habit, custom, and tradition, but fallible and thus capable of reconstruction through inquiry guided by embodied and social intelligence, not just abstract reason."⁶⁸ Thus conceived, pragmatic conservatism is not a refractory enterprise or a closed system of belief. It is perfectly in keeping with Albrecht's proposition that pragmatism offers a

balanced view of the possibilities for reforming human nature, affirming that our most primal human impulses can be trained and redirected into new habits, while also insisting that the task of education is daunting—that remaking personality requires a commitment to reforming the full range of social conditions that shape the habits of character.⁶⁹

Albrecht might prefer the term *moderate* to *conservative* if forced to assign categories. He remarks, for instance, "In stressing the plasticity and

⁶⁴ VANNATTA, *supra* note 1, at 127 (acknowledging that, Vannatta states, "*Conservatism and Pragmatism* does not read pragmatism through the lens of William James"). Therefore, the inattention to James is not a result of oversight.

⁶⁵ Vannatta is careful to distinguish Holmes and James. *Id.* at 126–27.

⁶⁶ *Id.* at 223.

⁶⁷ *Id.* (explaining the author's use of the first-person plural "we," Vannatta appears to include himself among the conservative pragmatists: "We produce data showing problems, and we generate works of art which stir the emotions and call humanity to a consciousness of social ills and sympathy for its victims. We proceed in our inquiries as meliorists, whose hope is checked by a healthy skepticism and a realization of the tragic shortfalls of such conservative progress").

⁶⁸ *Id.* at 106.

⁶⁹ ALBRECHT, *supra* note 7, at 17.

educability of human impulses and habits, the value of pragmatism lies—as it typically does—in avoiding the opposing extremes of more absolutist or essentialist visions.”⁷⁰ But isn’t this the kind and degree of moderation that illustrates the conservative disposition of Burke and Oakeshott? One recalls Dewey’s dictum that “the new idea must be generated out of the old”⁷¹ and Emerson’s maxim that “the new in art is always formed out of the old,”⁷² statements of reform that recommend history and tradition as guiding forces for human action.

Conservatism and Pragmatism in Law, Politics, and Ethics is the most definitive treatment of pragmatism and conservatism to date. It neutralizes inflammatory and misleading accounts, such as Goldberg’s, that are more about indictment and accusation than accuracy or context. The term *pragmatism* and its associations have undergone so much damage and debasement that their connection to methodological and dispositional conservatism might have been lost to everyone but diligent scholars.⁷³ Vannatta has only begun the process of recovering a proper understanding of pragmatic conservatism. Besides James, he neglects work on Santayana, who identified as “the luckless American who is born a conservative”;⁷⁴ Clarence Irving Lewis, who reportedly quipped, “I am an intelligent liberal – that is to say, a conservative”;⁷⁵ and Sidney Hook, who rounded out his career as a fellow at the conservative Hoover Institution at Stanford University.⁷⁶ There

⁷⁰ *Id.*

⁷¹ John Dewey, *An Introductory Word*, in *THE METAPHYSICS OF PRAGMATISM* I (1927).

⁷² Ralph Waldo Emerson, *Essay XII: Art*, in *ESSAYS AND LECTURES* 431 (Joel Porte ed., 1983).

⁷³ See generally SIDNEY HOOK, *PRAGMATISM AND THE TRAGIC SENSE OF LIFE* ix (1974) (citing from the author’s introduction: “The strange notion prevails among those who misread Peirce and Dewey that because any assertion of fact or value may be challenged to submit its credentials to further test, we therefore can possess no firm knowledge about anything. Equally bizarre is the assumption that the experimentalist believes that we can or should experiment in human affairs in the same manner or with the same methods and techniques employed in the natural sciences”). See *id.* at ix–x (correcting a prevailing misunderstanding about the pragmatic notion of truth: “Technically, pragmatism was developed as a theory of meaning and then as a theory of truth. In its broadest sense as a philosophy of life, it holds that the logic and ethics of scientific method can and should be applied to human affairs. This implies that one can make warranted assertions about values as well as facts. It recognizes that the differences in the subject matter of values requires the use of different methods of inquiry, discovery, and test in ascertaining objective knowledge about them. Most daring and controversial of all, pragmatism holds that it is possible to gain objective knowledge not only about the best means available to achieve given ends—something freely granted—but also about the best ends in the problematic situations in which the ends are disputed or become objects of conflict”); see also Susan Haack, *Vulgar Pragmatism: An Unedifying Prospect*, in *RORTY & PRAGMATISM: THE PHILOSOPHER RESPONDS TO HIS CRITICS* 126–47 (Herman J. Saatkamp, Jr. ed., 1995). For a more recent denunciation of the distorted forms of pragmatism espoused by Richard Rorty, see Susan Haack, *Vulgar Rortyism*, in 16 *THE NEW CRITERION* 67 (1997).

⁷⁴ GEORGE SANTAYANA, ET AL., *THE GENTEEL TRADITION IN AMERICAN PHILOSOPHY AND CHARACTER AND OPINION IN THE UNITED STATES* xxiv (James Seaton ed., 2009).

⁷⁵ CHARLES HARTSHORNE, *THE DARKNESS AND THE LIGHT* 307 (1990).

⁷⁶ See generally CHRISTOPHER PHELPS, *YOUNG SIDNEY HOOK: MARXIST AND PRAGMATIST* 2 (Cornell Univ. Press ed., 2005) (“Hook spent the Reagan years as a senior research fellow at one of the country’s two top conservative think tanks, the Hoover Institution on War, Revolution, and Peace in Stanford, California, where his files grew thick with complimentary letters from such high-ranking Reagan officials as William Bennett, Pat Buchanan, Jeane J. Kirkpatrick, Lynne Cheney, and Edwin Meese, as well as foreign policy hawks Henry Kissinger and Zbigniew Brzezinski. Ronald Reagan himself sent warm greetings for Hook’s eightieth birthday party in 1982 and a holiday card in 1984.”).

is more labor to be done in Vannatta's wake, but Vannatta must be credited for nudging the conversation back within the appropriate sphere and for elevating the discourse about pragmatism back to the plane of sense and civility. If conservative interest in pragmatism grows, as it should and probably will, then Vannatta will be at least partially responsible.