

---

---

## WHY PRAGMATISM WORKS FOR ME

CATHARINE PIERCE WELLS\*

*I was part of the University of Southern California Law School community from 1984 to 1995. While I was at USC, I changed a great deal. Those who know me well know the personal side of those changes. This essay explores the intellectual side by tracing my growing interest in pragmatic legal theory.*

*It is a privilege and a pleasure to be a part of the Centennial Celebration. In addition to its many public achievements, USC has had a remarkable impact on the individual lives of its faculty, staff, and students. To me, it will always be a place that feels like home and a group of people who feel like family.*

There has been much recent discussion of pragmatism within the legal community. Yet there are few legal theorists who count themselves as adherents and the few who do can hardly be said to resemble one another. This may be because pragmatism is often portrayed as a kind of black hole in the philosophical universe. It is defined not by the weight of its theories but instead by the counterweight of its anti-theoretical teachings. Whatever the reason, pragmatism's lack of adherents has resulted in a number of misconceptions about its limitations. Among them are:

- 1) Pragmatism is banal in the sense that it only tells us to continue with our common sense practices.
- 2) Pragmatism is relativistic in that it reduces everything to viewpoint and perspective.

---

\* Professor of Law, Boston College Law School. B.A. 1968, Wellesley College; M.A. 1973, Ph.D. 1981, University of California, Berkeley; J.D. 1976, Harvard Law School.

3) Pragmatism undermines our idealism and does not help us to lead morally better lives.

One reason why these misunderstandings develop is that there are many different forms of pragmatism. But I think the deeper reason is that pragmatism—like the theories it endorses—must be read in the context of the practices that generate it and the goals it serves. Therefore, rather than pick apart the arguments and counterarguments among the various positions, I would like to share my experience with pragmatism and the meaning it has acquired in my life.

I first encountered pragmatism when I was a sophomore in college. One of the early assignments in my philosophy of religion course was a classic text of pragmatism, an essay by Charles Peirce called “The Fixation of Belief.”<sup>1</sup> The point of the assignment was to encourage us to think more deeply about the nature of belief. In the essay, Peirce draws a series of contrasts between belief and doubt: first, belief and doubt present themselves as markedly different sensations;<sup>2</sup> second, beliefs, unlike doubts, have a regular and decisive effect on human conduct;<sup>3</sup> and, third, doubt prompts us to inquire further whereas belief “is a calm and satisfactory state which we do not wish to avoid.”<sup>4</sup> These distinctions lead Peirce to suggest that the sole purpose of human inquiry is to go from the uncomfortable state of doubt into the more desirable state of stable belief. This suggestion is key because it establishes a basis for Peirce to argue that certain methods of conducting inquiry are preferable to certain others. Specifically, he considers four different methods of adopting beliefs—the method of tenacity,<sup>5</sup> the method of authority,<sup>6</sup> the a priori method,<sup>7</sup> and the

---

1. 5 CHARLES SANDERS PEIRCE, *The Fixation of Belief*, in COLLECTED PAPERS 223 (Charles Hartshorne & Paul Weiss eds., Harvard Univ. Press 1960) (1935).

2. “We generally know when we wish to ask a question and when we wish to pronounce a judgment, for there is a dissimilarity between the sensation of doubting and that of believing.” *Id.* at 229–30.

3. “The feeling of believing is a more or less sure indication of there being established in our nature some habit which will determine our actions. Doubt never has such an effect.” *Id.* at 230.

4. *Id.*

5. The method of tenacity “tak[es] as answer to a question any [that] we may fancy, and constantly reiterating [the belief] to ourselves, dwell[s] on all which may conduce to that belief, and learn[s] to turn with contempt and hatred from anything that might disturb it[.]” *Id.* at 233–34.

6. Under the method of authority, an individual subscribes to beliefs that are prescribed by church or state or some other institutional authority and isolates himself from those who entertain different beliefs. *See id.* at 235–36.

7. The a priori method endorses beliefs that seem to be “agreeable to reason” without looking too closely at the empirical evidence. *Id.* at 238. Peirce gives as an example the notion that man always acts selfishly—“This rests on no fact in the world, but it has had a wide acceptance as being the only reasonable theory.” *Id.* at 241.

scientific method.<sup>8</sup> He concludes his argument with the observation that one of these methods—the scientific method—is superior to the others in that it produces a more stable set of beliefs.<sup>9</sup>

Even at nineteen, I recognized that the basis of Peirce's argument—the assertion that the sole purpose of inquiry is stable belief—was philosophically unorthodox. Most philosophers think about belief in terms of justification.<sup>10</sup> For them, the real questions about beliefs are questions about truth. Thus, they ask, "What counts as justified true belief? What is the relationship between such beliefs and facts in the external world?" By contrast, Peirce's questions seem practical and psychological. The answers might help you to live your life in a satisfactory way, but they do not come with an epistemological guarantee. Despite this, Peirce's approach appealed to me. One reason was its essential empiricism. When it came to belief, I instinctively trusted (a) my experience, (b) what I was told about the experience of others, and (c) my ability to draw inferences from what I saw and heard. Peirce's ideal of scientific inquiry depends upon these exact same sources. A second reason I was drawn to Peirce was the fact that he emphasized a point which seemed central to me—beliefs are not simply efforts to record the truth; they are constitutive of who we are and what we do. Peirce recognized this, and consequently urged that our method for selecting belief must be among our most important commitments: "The genius of a man's logical method should be loved and revered as his bride, whom he has chosen from all the world. . . . [He must] strive to be the worthy knight and champion of her from the blaze of whose splendors he draws his inspiration and courage."<sup>11</sup>

While this way of putting it might have seemed a little florid, I agreed with the underlying sentiment—the way we choose our beliefs is one of the defining facts of our lives.

---

8. It is important to understand that Peirce's conception of the scientific method is not necessarily linked to any of the formal conceptions that have been developed in the twentieth century. Rather, for Peirce, a scientific method is simply one that is based upon the facts in the sense that all hypotheses are subjected to the test of experience. *Id.* at 242–45.

9. He argues that the scientific method is superior because none of the other methods will produce stable beliefs given the psychological fact that humans have a social impulse that results in their doubting that which is not believed by others. The scientific method, on the contrary, relies upon a hypothesis that there are real things that may be discovered by repeated application of the scientific method. Thus, any doubts that arise may be resolved by a new application of the method. *Id.* at 242–44.

10. For example, Kant's distinction between *de jure* and *de facto*.

11. PEIRCE, *supra* note 1, at 247.

Perhaps the strongest reason why I was drawn to Peirce was that something in his account responded to my adolescent angst. I had taken philosophy personally and it had led me to question everything. The more I thought about it, the more it seemed that Plato was right: wisdom consists in understanding that we do not know most of what we think we know.<sup>12</sup> But, while I admired Plato's modesty, I also found it debilitating.<sup>13</sup> I was adrift at a time when the pressure to become purposeful was intense. As I then understood it, Peirce's pragmatism provided an alternative to the paralysis of philosophical skepticism. I could move forward with my life even though I had no window on absolute truth. All that was necessary was a realistic appraisal of my practical circumstances and a commitment to making the choices that best seemed to represent my current priorities.

After college, I went on to study philosophy. I went to Berkeley at the height of the Vietnam War. The campus was alive with big questions. Racial justice, civil disobedience, class struggle, pacifism and draft evasion were the constant subjects of campus discussion. The philosophy department, by contrast, was an oasis of quiet. Within its walls, great minds were occupied with smaller questions.

In the first part of the twentieth century, Anglo-American philosophy had generally adopted a new approach. The philosophers who espoused this approach believed that epistemological questions could not be answered in their most generalized form. They therefore decided to proceed on a smaller scale. For example, rather than asking "how do we really know anything?"—the question became "how can factual statements be justified in terms of logic and experience?"<sup>14</sup> Thus, philosophers turned their attention to language, and since natural languages themselves are quite complex, they looked behind language to its logical structure. The tradeoff seemed fair. In return for giving up philosophy on the grand scale, they hoped to achieve a coherent account of empirical science and, with it, reassurance that there existed a world of fact whose saliency would be apparent to all who bothered fairly to inquire.

---

12. "I am wiser than this man; neither of us really knows anything worth knowing, but *he* thinks he knows something when in fact he does not . . ." PLATO, *The Apology*, in THE TRIAL AND DEATH OF SOCRATES 29, 35 (John Warrington trans., J.M. Dent & Sons Ltd. 1963).

13. Thirty-five years later, I have come to understand that this kind of skepticism is, in fact, extremely functional. It brings a kind of freshness to life and creates an openness to new experience, but at nineteen, it had a contrary effect by making everything seem pointless.

14. See generally RUDOLPH CARNAP, THE LOGICAL STRUCTURE OF THE WORLD AND PSEUDOPROBLEMS IN PHILOSOPHY (Rolf A. George trans., Univ. of Cal. Press 2d ed. 1969) (1928).

Unfortunately even these reduced goals proved elusive. The problem was that the attempt to describe the structure of empirical knowledge invariably seemed to end in disappointment, circularity,<sup>15</sup> and paradox.<sup>16</sup> By the time I entered graduate school, these disappointments had fostered an even more modest approach. Philosophers rarely embraced a comprehensive philosophical program. Instead they focused their analyses on individual aspects of human experience.<sup>17</sup> “Could one understand meaning as a form of intention?” some philosophers would ask.<sup>18</sup> Still others wonder whether one could derive an “ought” from an “is.”<sup>19</sup> To me, these questions were inherently interesting but their interest stemmed mostly from their complexity—they seemed more like crossword puzzles than philosophical pursuits. Like crossword puzzles, making progress was difficult and therefore somewhat satisfying. However, one could rarely solve the puzzle and, even when one could, the solution did not seem to offer deeper insights. Indeed, most of the philosophers I knew would have dismissed a perceived need for deeper insights as naïve and sophomoric, as signaling a lack of good philosophical judgment.

As an undergraduate, I had approached philosophy with a desire to learn the truth. Now, seven years later, I was ready to readjust my goals. What I needed from philosophy was not truth but rather a sensible and conscientious strategy for dealing with uncertainty. It was this realization that restored my interest in pragmatism. I decided to do a dissertation on Peirce. What interested me most was that he began with the recognition that the standard justifications for logical truth were circular.<sup>20</sup> At the same time, he seemed to be a steadfast supporter of the logical method. The pairing of these convictions puzzled me. How could he sustain his faith in

---

15. For example, the notion that logical truths are true by virtue of their meanings was shown to be circular when offered as an epistemological justification for logical truths. WILLARD VAN ORMAN QUINE, *Two Dogmas of Empiricism*, in *FROM A LOGICAL POINT OF VIEW: NINE LOGICO-PHILOSOPHICAL ESSAYS* 20, 30 (1980).

16. For example, Frege’s attempt to reduce arithmetic to logic was frustrated by a version of the liar’s paradox. See GOTTLÖB FREGE, *Frege on Russell’s Paradox*, in *TRANSLATIONS FROM THE PHILOSOPHICAL WRITINGS OF GOTTLÖB FREGE* 234–44 (Peter Geach & Max Black eds., 1956). The paradox was addressed but not satisfactorily resolved in Russell and Whitehead’s *Principia Mathematica*. ALFRED NORTH WHITEHEAD & BERTRAND RUSSELL, *PRINCIPIA MATHEMATICA* (1962).

17. At one graduate student party, an individual bumped into a table, knocking an ashtray to the floor. He then said “Excuse me!” apparently to the ashtray. What followed was a long and intense discussion of whether one could excuse oneself to an ashtray that was almost a stunning parody of many of our class discussions.

18. E.g., H. Paul Grice, *Utterer’s Meaning and Intentions*, 78 *PHIL. REV.* 147 (1969).

19. E.g., John R. Searle, *How to Derive “Ought” from “Is”*, 73 *PHIL. REV.* 43 (1964).

20. 5 PEIRCE, *Three Types of Reasoning*, in *COLLECTED PAPERS*, *supra* note 1, at 94, 108. See also QUINE, *supra* note 15.

a logical method even in the face of his clear understanding that it could not be justified in any straightforward way?<sup>21</sup> To try to answer this, I focused my analysis on Peirce's conception of logical truth. For Peirce, logic was a normative enterprise. Like ethics, it purported to tell us what we should do—logic in the narrow sense would dictate the rules for formal reasoning and logic in the broad sense would regulate our procedures for pursuing the truth. Peirce believed that insight about these logical requirements, like all knowledge, came from experience;<sup>22</sup> thus the key to understanding Peirce's views on logic was an analysis of his conception of experience and the way in which experience could be understood as potential support for logical claims. Intrigued, I began to study his views on phenomenology and normative science.<sup>23</sup>

To my great good fortune, writing the dissertation taught me more than I had bargained for. I learned, for example, what it meant for a pragmatist to deny the distinction between fact and value.<sup>24</sup> I also became acquainted with the notion of phenomenology and learned to examine the content of consciousness with a critical eye. As a result, I began to understand that reality was not a collection of hard facts. While reality might seem like a snapshot of things in an external world, I learned that it was actually a creature of social interpretation and construction. It is not enough to say "I saw it with my own eyes" because what is "seen" is

---

21. *The Fixation of Belief* had purported to answer this question in terms of the practical need for stability, but that answer is not entirely satisfactory. One objection is that the empirical basis of Peirce's claim is not clear. The second is that the whole strategy seems to rest upon a circle:

Peirce defines true belief as that which would be held by an ideal community of truth seekers after an indefinitely long period of applying a scientific method. At the same time, he argues that one should use a logical method because it leads to the truth. This is circular—truth is defined as the outcome of a method and the method is endorsed because it produces the outcome. In this circle, anything will count as logical so long as one is willing to call its outcome truth.

Catharine Wells Hantzis, *Peirce's Conception of Logic: The Phenomenological Bases of Normative Science* 18 (1981) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with author).

22. With respect to mathematical logic, Peirce believed that the answer was that the truth or falsity of logical statements could be seen in diagrammatic representations of logical relations. With respect to logic in the broader sense, Peirce believed that its lessons were found in experience if we could include our experience of pleasures and pains as part of cognition. *Id.* at 145–57.

23. For a fuller discussion of these terms, see Catharine Wells Hantzis, *Peirce's Conception of Philosophy: Its Method and Its Program*, 23 *TRANSACTIONS OF THE CHARLES S. PEIRCE SOCIETY* 289 (1987).

24. See Catharine Pierce Wells, *Pragmatism, Feminism, and the Problem of Bad Coherence*, 93 *MICH. L. REV.* 1645, 1652 (1995).

already processed by language and culture as well as by our own preexisting expectations and desires.<sup>25</sup>

These lessons about reality may seem very abstract but they did, in fact, have a practical effect on my life. In analyzing a situation, I stopped my repeated references to the law of the excluded middle. I began to experience life more seamlessly. I developed a stronger eye for context and detail. I began to appreciate the power of narrative and to listen more carefully when people told their stories. Most importantly, I stopped looking for foundations and understood the virtues of being adrift. I pictured myself floating down a river. I imagined that I had a rope and could moor my boat whenever I pleased. Sometimes I would pull up on solid ground for food or for rest. And indeed, stopping was fine, but I also had to remember that the only way to get on with my journey was to cast loose and return to the drift.

After philosophy, I studied law. Law seemed to be the perfect career for an ex-philosopher with a pragmatic bent. Good lawyers do not obsessively adhere to a single theory. Instead they try to keep their minds free so that they are receptive to various ways of formulating the issues.<sup>26</sup> Law is pragmatic in the sense that there is no end and no beginning to its analysis. Every legal problem begins somewhere in the middle. Problems arise in a practical context against a preexisting background of legal definitions and arguments. Lawyers work on legal problems in all directions at once. They work backward by researching the practical context. They also work forward by retelling the story so as to propel it towards its desired conclusion. And, while they look towards the past to honor precedent, their eye is also on the future as they seek to reinterpret and challenge existing legal categories.

---

25. For Peirce, theories create expectations about what we are about to experience, and these expectations affect our experience by making us quick to perceive those aspects that match our expectations and slow to process unexpected data. Or at least that is how I interpret the following passage:

[We] perceive what we are adjusted for interpreting, though it be far less perceptible than any express effort could enable us to perceive; while that, to the interpretation of which our adjustments are not fitted, we fail to perceive although it exceed in intensity what we should perceive with the utmost ease, if we cared at all for its interpretation.

PEIRCE, *supra* note 20, at 115. See also Catharine Wells Hantzis, *Legal Innovation Within the Wider Intellectual Tradition: The Pragmatism of Oliver Wendell Holmes, Jr.*, 82 NW. U. L. REV. 541, 571 n.150 (1988).

26. To my delight, an opponent once charged me with being “result oriented” by which I think he meant that I was pursuing a point only because it would help my case. Did he think he was less pragmatic? Would his client have been satisfied if he had put aside the adversarial system and dedicated himself to the search for abstract truth?

---

---

Law also made me see another side of pragmatism. The question of “what works” in the law is not a momentary thing. A good lawyer does not just do what seems expedient in any given ten-minute time frame. To the contrary, he or she must find solutions that work not just for now but also for next week, next month, or even next year. Participation in the legal world requires respect for the longer term. It requires a kind of rule-based pragmatism that progressively challenges legal solutions while not overrunning the common-sense tradition that they represent. Seeing this made me understand something important about pragmatism. If pragmatism searches for “what works,” it must be understood that “what works” is a relative concept. We do not know “what works” until we answer other questions: What are our goals? What is the time frame? And what values must be preserved? In short, pragmatism cannot tell us what to do unless we first examine our hearts to determine who we are and what is the perceived significance of the activity in question. While pragmatism relieves us of the need for metaphysical justification, it also requires us to become clear about our culture and about our own identities within that culture.

When I first came to USC in 1984, I was excited by the challenge of an academic life. I had received many job offers but choosing USC had been an easy decision. Everyone I had met during my interview seemed incredibly intelligent and engaged. The first question in an office interview was always: What are you interested in? As the afternoon wore on, I was increasingly impressed with the level of discussion. It seemed like I left each forty-five minute session with increased insight and enthusiasm. I was equally struck by the human qualities of the people I met. They were thoughtful, kind, and, contrary to academic stereotype, respectful to one another. They were also very, very funny. The interview left me confident that USC would be a terrific place to begin my new career.

As it turned out, I was not wrong about USC. It was just that the process of transition and adjustment was much more difficult than I had thought it would be. Geographically, atmospherically, intellectually, and culturally, Boston and Los Angeles could not be further apart. In addition, I had not quite understood how few women were on the faculty<sup>27</sup> and how that fact alone would leave me feeling isolated and vulnerable. But the most surprising development for me was the creeping realization that I had no familiarity with the dominant mode of analysis in the intellectual world

---

27. During the first year, there were three other women on the faculty: Peggy Radin was visiting at Harvard, Judith Resnik was increasingly occupied with projects outside the law school, and Noel Ragsdale was teaching exclusively in the clinic.

I had entered—what USCers of the time referred to as “normative theory.” I was stunned. I had spent five years in a top philosophy graduate school, I had studied law at Harvard, and I had spent eight years practicing law. Still I had not been adequately prepared to do the kind of legal theory that was the bread and butter of law school life.

Normative theory, I learned, was a particular method for analyzing legal questions. The method had several defining characteristics. First, it aspired to be interdisciplinary. Legal analysis was paired with economics, philosophy, psychiatry, religion, or some other nonlegal discipline so that questions about legal policy became a matter of academic debate rather than doctrinal convenience. Second, the analysis had to be normative; descriptive disciplines like legal history<sup>28</sup> or empirical social science<sup>29</sup> were disfavored. Third, it was theoretical in a particular way. In daily life, we use local theories to help us with specific tasks. For example, we might have theories about how to lower our golf scores, about improving the quality of our drinking water, or about how to make judicial decisions. But this was not what was meant by “normative” theory. Normative theory had a more systematic agenda—legal questions were not to be resolved in an ad hoc way. Instead, they had to be examined within the confines of a unified theory of the whole world—a global, as opposed to a local, normative theory. Thus, normative economists might rely upon utilitarian theories as a kind of global justification for their efficiency analysis or a corrective justice theorist might appeal to the writings of Aristotle,<sup>30</sup> Rawls,<sup>31</sup> or Kant to argue that questions of fairness should determine the outcome of tort cases.<sup>32</sup>

My initial difficulties with normative theory stemmed partly from the fact that it was unfamiliar to me. During law school, I learned from teachers who were occupied with casebooks and law reform rather than the intricacies of normative theory. Further, even though I had studied philosophy, my field of specialization had been logic and epistemology; my

---

28. For years, all attempts at hiring legal historians had been unsuccessful. The conventional wisdom was that it was hard to find a historian who did normative theory. Instead, historical work was frequently characterized as “one damn fact after another.”

29. I do not mean to overlook the fact that some of the work in law and economics did have empirical aspects. Matt Spitzer, for example, undertook several empirical studies, and Alan Schwartz was always masterful in using empirical data to support his theoretical economic arguments.

30. E.g., Jules Coleman, *Moral Theories of Law: Their Scope and Limits: Part II*, 1 *LAW & PHIL.* 371 (1982).

31. E.g., George P. Fletcher, *Fairness and Utility in Tort Theory*, 85 *HARV. L. REV.* 537 (1972).

32. E.g., Ernest J. Weinrib, *Legal Formalism: On the Immanent Rationality of Law*, 97 *YALE L.J.* 949 (1988).

understanding of ethics and jurisprudence was superficial at best. But a lack of familiarity was not the only problem. My philosophical training had led me to be skeptical about grand theory. I was well equipped to analyze its failures but poorly prepared to extol its virtue. Nor could I take seriously the suggestion that Kant's categorical imperative—the most abstract of normative claims—could provide a just foundation for resolving legal cases.<sup>33</sup>

My greatest difficulty, however, had to do with the need for authenticity. Becoming a scholar was not as easy as finding something intelligent to say about some piece of the community discussion. More commitment was needed. Alan Schwartz said it best: “The first and most important thing is to find your own voice.” I understood this. It meant that I had to say what I really wanted to say and that I needed to address questions that really concerned me. But the demand for authenticity together with the emphasis on global theory ran counter to everything I thought I knew about philosophy and law. Philosophy had taught me to be wary of disconnected abstractions. Conversely, law had taught me the value of situated analysis. Thus, I had no real interest in grand theories and their application to law. What I was interested in was two-fold: first, what our legal practices implied about our cultural identity, and second, whether our cultural aspirations were well served by our legal practices. These interests placed me at odds with the standard conception of normative theory.<sup>34</sup>

Once again, pragmatism came to the rescue. While pragmatism is not a full-blown normative theory, its anti-theory theorizing is a direct response to the demand for global theory. Pragmatism is often characterized as being anti-foundational, and this characterization can be understood in a number of ways. First, it refers to the fact that pragmatists are thoroughgoing empiricists and therefore find traditional epistemological questions nonsensical.<sup>35</sup> Second, it reflects the pragmatic conception of meaning. For the pragmatist, no individual statement has meaning except in the context of a wider theory and, thus, there are no separable truths that can serve as a foundation for the rest of the theory. Third, it refers to the perspectivism that is the heart of a pragmatic philosophy. The pragmatist

---

33. See Catherine Pierce Wells, *Tort Law as Corrective Justice: A Pragmatic Justification for Jury Adjudication*, 88 MICH. L. REV. 2348, 2373–75 (1988).

34. In terms of the standard theory, I was looking at things backward by taking legal practices on their own terms and seeing what they entailed by way of underlying values.

35. If one truly believes that all knowledge comes from experience, it makes little sense to ask questions such as: What is the relationship between what we experience and some form of “external” (i.e., nonexperiential) world?

recognizes that all observations are relative to a perspective. They are relative to the time and place where they occur—A sees something from the front while B sees it from behind—and to the set of prior beliefs and attitudes that are held by the observing party—A may judge the President’s conduct as a Republican while B may judge it as a Democrat. These three aspects of pragmatism raise a formidable bar to the notion of a “unified theory of the whole world.” Since theories can only be propounded from within the human situation, they must always be partial and tentative. But, even though pragmatism denies the possibility of a global normative theory, one cannot dispute its philosophical pedigree. Those who developed pragmatism were well schooled in the European philosophical tradition. They had carefully read (and meant to oppose) the writings of philosophers such as Aristotle, Descartes, and Kant. And pragmatism not only represented a respectable philosophical position, it was also one that had been influential in the development of American law.<sup>36</sup> Thus, I was able to “find my own voice” by expounding my understanding of pragmatism as a philosophical position, by exploring its connection to twentieth century legal thought, and by applying it to contemporary legal problems. This approach allowed me to do work that counted as acceptable legal scholarship and, at the same time, genuinely expressed my own views about legal theory.

Tom Grey once described pragmatism as “freedom from theory-guilt.”<sup>37</sup> I have certainly found this to be true. To the extent that it was my own internal voice that demanded the formulation of broader and broader theories, pragmatism has been an effective antidote. But the notion of “theory guilt” overlooks the fact that demands for theory are not entirely internal. Scholarly communities often have distinct ideas about what counts as useful theorizing and these ideas have real clout in determining who should be allowed to participate in academic life. Most recently, for example, there has been considerable discussion of whether Critical Race Theory, Feminist Theory, and other forms of narrative scholarship are sufficiently “theoretical” to play a role in legal scholarship.<sup>38</sup> Thus, the

---

36. Oliver Wendell Holmes, Jr., for example, had close ties to the American pragmatists. See Hantzis, *supra* note 25, at 553. See also Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 STAN. L. REV. 787 (1989). Another example is the fact that the writings of American pragmatist philosopher John Dewey were quite influential in the legal community during the 1930s and 40s. In addition, many of our best-known legal theorists—men like Cardozo, Llewellyn, and Frankfurter—espoused pragmatist ideas even if they did not explicitly label themselves as such.

37. Thomas C. Grey, *Hear the Other Side: Wallace Stevens and Pragmatist Legal Theory*, 63 S. CAL. L. REV. 1569, 1569 (1990).

38. E.g., DANIEL FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997).

demand for theory often excludes people who have original and challenging things to say. This is not theory guilt; it is theory coercion. It is not hard to see how this coercion works. It relies upon a demand that legal questions be ordered in a certain way. Grey describes the typical way in which such a requirement is imposed: “We cannot proceed with X until we have an adequate theory of Y, where X is a socially constituted practice and Y is an academic subject or theoretical topic.”<sup>39</sup> As a result of such orderings, we listen to those who purport to have an adequate theory of Y—even though there may be no truly adequate theory of Y—and do not listen to those who dispute the need for a theory of Y or who feel that theories of Y are inevitably just dogmatic reiterations of prevailing ideology. When pragmatism takes the form of a general theory, it can be very helpful in alleviating this form of theory coercion. By operating as a theory about the practice of academic discourse, it opens the discussion by releasing participants from the need to answer questions that beg the question of their own relevance.

Once one is freed from the demands of global theory, however, it is not quite clear what happens next. Certainly, some pragmatists join with the more extreme forms of post-modernism in rejecting all forms of abstract theorizing. There are, however, other possibilities. The claim that all human knowledge is partial and tentative does not necessarily entail the understanding that all human knowledge is useless. To the contrary, I believe that a correct understanding of pragmatism opens the door to a spirited interrogation of the empirical world. If all knowledge is partial, then we must be eclectic and pluralistic in our appreciation of individual theories. Law and economics, for example, may not be a “unified theory of the whole world” but surely it brings us a number of important insights.

The lesson of pragmatism is not that we should ignore these insights, but that we should not let them parade under the banner of ultimate truth. Further, if all knowledge is tentative, then I believe we should understand that fact as a kind of challenge to our empirical activism. Pragmatism helps us to resist dogmatism in all its forms; it reminds us that we should not allow our feelings of certainty to become an arrogant refusal to reopen old questions. Finally, I believe that pragmatism gives us something that is especially important to law. Because law attempts to mediate among individual people and their interests, the pragmatic emphasis on viewpoint

---

39. Grey, *supra* note 37, at 1569. One example of this kind of ordering is the way in which feminist theorists were frequently prevented from discussing gender differences until they offered a theory as to whether such differences were innate or learned. Since questions of nature and nurture are generally unanswerable, the effect of these interruptions was to silence an important set of discussions.

---

---

seems particularly helpful. The fact that everything is relative to viewpoint does not necessarily mean that discussion is fruitless. Different viewpoints do not necessarily create an irreducible chasm between each viewer. Remember the story of the blind men and the elephant. It seems to me that the moral of the story should be this. We should not stop talking in the face of seemingly irreconcilable differences. Instead, we should listen all the harder, work at opening our minds, and become resourceful in our attempts to find a theory that will mediate the differences.<sup>40</sup> For law, these kinds of efforts are particularly important. Too often, American law has listened only to a dominant voice and ignored the rest. To the extent that we embrace ideals of fairness and democracy, this kind of inattention must stop. We must find a way to mediate among differing perspectives and thus to make our legal system truly inclusive of those who live within its grasp.

---

40. For example, the six blind men might develop a theory about positionality and strangely shaped creatures that would be faithful to each of their experiences. As pragmatists, we would not say that such a theory is an exhaustive description of an ultimate reality, but we would say that it is sufficient for these circumstances.

