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Ethnography in the Realm of the Pragmatic: Studying Pragmatism in Law and Politics

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Introduction

Many have said that the current theoretical moment is characterized by a renewed interest in pragmatism in various forms. From law to anthropology, from science and technology studies to philosophy, the epistemological and political conflicts that characterized the academy in the 1980s seem to have given way to widespread agreement on pragmatic grounds. This pragmatist turn draws on and claims to synthesize a wide range of philosophical work, from phenomenology to practice theory and poststructuralism. In legal studies in particular, pragmatism is the new ubiquity (e.g. Coleman 2001; Cotter 1996; Farber 1995; Grey 2003). A pragmatist orientation is what unites the political left and right of the legal academy; it is that shared language of law and economics (Posner 2003) and cultural approaches to law (Kevelson 1991).

As a philosophical tradition, pragmatism means many things to many people, but William James offers one working definition: "The pragmatic method . . . is to try to interpret each notion by tracing its respective practical consequences. What difference would it practically make to anyone if this notion rather than that notion were true?" (James 2000:194). This anti-foundationalist stance and methodological eclecticism has proven particularly appealing to legal scholars. The conservative judge and legal theorist Richard Posner, for example, has written that the uses of pragmatism are "to knock ambitious legal theories" (Posner 1995:395) and that "the greatest value of pragmatism lies in preventing the premature closure of issues rather than in actually resolving them" (Posner 1995:397).

But the ubiquity of pragmatism is not just a theoretical trend. And here, American legal knowledge partakes of a wider cultural milieu. As the contributions by Valverde and Burns demonstrate, a more mundane and everyday kind of pragmatism also pervades the institutions and practices of American law. An anthropologist of America might argue that the attribution of a positive normative valence to a series of approaches to life characterized as "being pragmatic" or "thinking pragmatically" — whatever their relationship to the philosophical tradition by the same name — is a defining characteristic of American society in the twentieth century.

With the globalization of American values in the postwar era, the moral empowerment of pragmatism, in its mundane institutional and elite philosophical forms, has also become a characteristic of the self-consciously "global" knowledge

practices of international organizations, social movements, and the “Rule of Law.” “Thinking pragmatically” is what American lawyers self-consciously export under the guise of American-style rule of law: American lawyers often claim that unlike lawyers in many other countries, they are not tied to legal dogma and hence they “make the deal happen” by abandoning formal legal concepts in favor of a more “solution-oriented approach” to legal problems. This proselytizing seems to have met with some success (cf. Merry 2000), whether it is Japanese financial regulators who insist that a more modern, advanced form of regulation is one that is agnostic about deep political issues and instead focuses on the “task at hand” of “solving real world problems” (Riles forthcoming 2003), or Palestinian activists whose publications and performances for outside observers seek to demonstrate their pragmatic approach to politics (Jean-Klein 2002), the subjects of the anthropology of law and political processes are often deeply committed to pragmatic thinking—in either its high theory or its more mundane versions.

All this would suggest that pragmatic knowledge, in all its forms and guises, might be a subject of particular interest to political and legal anthropologists. Hence, this symposium aimed to think about pragmatism ethnographically: its goal was to make this new ubiquity accessible as an ethnographic object in its own right. As the articles that follow demonstrate, the subject of pragmatic knowledge transcends the boundaries between “political” and “legal” anthropology and goes much further to bring political and legal anthropology into dialogue with wider debates in the anthropology of science, religion, and knowledge.

One special theoretical and methodological twist associated with taking on pragmatism as an ethnographic subject in its own right is that many anthropologists (e.g. Geertz 2000; Rabinow 2003; Rosen 1999) and socio-legal scholars (e.g. Alberstein 2001; Brint and Weaver 1991; Dickstein 1998; Morales 2001; Tamanaha 1997) may share their informants’ commitment to pragmatism. As Deneen notes in his essay in this symposium, American anthropology has a long tradition of engagement with the pragmatist philosophical tradition, and many contemporary anthropologists explicitly or implicitly draw their insights from the pragmatist tradition (cf. Miyazaki forthcoming 2004). When pragmatism becomes the ethnographic terrain, therefore, the relationship between anthropologists and their subjects becomes more one of sameness than of difference. Here, the subjects are “theorizing” alongside their anthropological interpreters, reading some of the same texts, orienting themselves toward similar political, ethical, or theoretical problems. As a result, new questions emerge: How does an ethnography of pragmatism differ from say, a pragmatic anthropology? What does anthropology contribute to critical analyses of theories such as pragmatism that is different from social theory itself? What defines ethnography as opposed to social history or textual analysis? How do we differentiate subject and object, informant and anthropologist in conditions of epistemological sameness? Should we?

And indeed, when the subject is pragmatism, ironies abound since, as Deneen suggests, in some guises this tradition celebrates its happy abandonment of distinctions between fact and value, subject and object, but in other guises it reasserts a hard scientism that echoes the most strident positivist stances of social science. Here, I only echo questions that abound in debates among many anthropologists now working in the fields of law and politics (e.g. Brenneis 1999; Greenhouse 2002; Holmes 2000; Maurer 2002; Riles 2004; Strathern 1999).

With this larger problem in mind, the impetus of this symposium was the emerging interest of anthropologists working in diverse locales and institutional contexts in finding a vocabulary for thinking about a series of concrete analytical forms we encounter again and again, in different guises in the field—forms that up to now had not risen to the level of “anthropological subjects” in the way immigration, or the state, or dispute resolution might be. These include, for example, an orientation toward means/ends reasoning: a commitment to both instrumentalism and anti-foundationalism—and a desire to creatively combine the two such that neither takes precedence over the other; a normative commitment to the position that the “real world” is “messy”; a willingness to place individual human agency at the center of one’s analysis (whether it is one’s social theory or one’s strategy for a social movement). The goal of the symposium was to produce an ethnography of these analytical forms, and the commitments—normative and aesthetic—they generate. Participants were interested, for example, in the ideas about these practices that their indigenous practitioners, from the academy to the United Nations, deploy, in the relationship between these ideas and ideas about “idealism,” “utopian impulses,” or “ideationalism” in their various forms. We were interested in the consequences, in different locales, of the uses of these forms of knowledge—for what can be said and what cannot be said, for example, or for conceptions of agency, time, or justice.

The authors of the articles that follow are scholars from diverse fields, including law, history, science and technology studies, philosophy, political theory, and theology. Although anthropologists Dominic Boyer, Iris Jean-Klein, Hiro Miyazaki, and Annelise Riles contributed papers to the live symposium that preceded this issue, from the start the relative absence of anthropological attention to pragmatism as an *object* of ethnographic attention demanded the involvement of “para-ethnographers” (Holmes and Marcus in press) from other fields. All of the participants in the symposium approached pragmatism laterally, as it were—they are interested in breaking open this set of knowledge practices by striking it with knowledge of other, diverse kinds. For Burns and Hamner, the point of tension is their own lived experience as lawyer and theologian, respectively. For Parker and Deneen, the context of intellectual history, and its own wider political context, serves as a tool for bringing pragmatism into view as a subject in its own right. Valverde’s juxtaposition of different venues of legality, from the statute to the municipal court to the American Supreme Court opens up elements of legal

“knowledge practices,” as she calls them, independent of the substance of particular legal argument. All of the participants are self-consciously unfaithful to the boundaries between philosophy and the social practice of knowledge that a philosopher might take as disciplinary common-sense. Or rather, that boundary itself becomes a topic of investigation as they ask, what *is* the relationship between pragmatism as a philosophical movement and “thinking pragmatically” in different settings? These approaches may provide interesting resonances for anthropologists interested in approaching theory as an ethnographic object of its own.

The symposium opens with a debate about politics and religious faith. Political theorist Patrick Deneen’s essay describes early-twentieth-century pragmatist debates about the character of democracy. His concern is to explore the “scientific spirit” of pragmatist theories of democracy. His careful genealogy of these debates demonstrates how this scientific spirit is deeply religious in character. This leads Deneen back to contemporary pragmatism’s own ambivalent relationship to faith and faithlessness, and the consequences of the particular kind of “democratic faith” at work in pragmatism for present-day politics.

Theologian and historian Gail Hamner follows on similar themes, but from a different point of view. She too sees in American pragmatism a deep faith-like commitment, and she argues that the cultural milieu of the “Puritan imaginary” helps to explain the deep fascination with pragmatism in the United States in the twentieth century. But her own interest is in the points of continuity and tension between this commitment and European “praxis philosophy” (in particular, Marxian philosophy). Using a vignette from an overheard cocktail party conversation among Marxian academics, she tacks back and forth between Puritan, pragmatist, and Marxian imaginaries and ends with a call to Marxians to embrace their own faith-like commitments as the engine of their knowledge.

Hamner’s evocation of the historical and intellectual parallels between American and Continental philosophy sets the stage for historian and legal scholar Kunal Parker’s complex account of the uses of history in the importation of pragmatist ideas into the law. Parker’s subject is the historical imagination of legal pragmatism’s ancestral figure, Justice Oliver Wendell Holmes. Parker traces how Holmes’s notion of the path of the law as “not logic but experience” drew upon an understanding of experience prevalent in American pragmatism that, he argues, emerged out of a deep anxiety among American intellectuals about their intellectual status vis à vis the European canon. Parker’s close reading of Holmes points to some ways pragmatism was transformed by its incorporation into legal knowledge. In its form, Parker argues, Holmes’s reasoning shares much with the “theological approaches” to law it sought to displace, and this form ultimately ensured that appeals to “experience” outside the law did not transform but reinscribe the practice of legal knowledge itself.

Like Parker’s essay, social theorist Mariana Valverde’s account of the legal definition of “urban blight” is concerned with legal knowledge, and like Parker,

Valverde draws attention to the legacy of American Legal Realism, and its debts to pragmatist philosophy. Valverde opens with the observation that unlike science, as described by science and technology studies, the law does not wish to be modern. In contrast, it consists of an eclectic and pragmatic mix of modern and premodern knowledge practices that even assimilate easily into themselves pragmatism's supposed enemy—legal formalism. Like Parker, Valverde draws attention to questions of form in the practice of legal reasoning such as “the epistemology of the list” at work in municipal codes.

Legal scholar and philosopher Robert Burns closes the symposium. Burns's concrete subject is the “American trial as a set of truth practices,” which, like Valverde, he understands as a “lived plurality.” But in this essay, his concern is primarily with method. Specifically, he asks the delicate and subtle question of what kind of academic description might prove “adequate to the kind of validity that the trial achieves.” Burns's retrospective account of his own intellectual and ethnographic journey across philosophical and anthropological literatures and in and out of the courtroom leads him back to the phenomenological philosophical tradition in an effort to salvage the pragmatist concern with practice from its tendency to devolve into instrumentalism.

A number of surprising themes emerged from our discussions. These included the character of faith, the nature of legal form, and the uses of temporality, as well as the engaging intractability of questions of method. Ultimately, the symposium did not by any means answer all the questions it raised, and I believe we only half-achieved our goal of treating pragmatism as an ethnographic subject. But the difficulties we encountered in thinking ethnographically about pragmatism—the struggles to resist slippages into defending or critiquing pragmatism, the urge to devolve into definitional questions, the struggle about how to talk about methodological innovations across disciplinary divides—are perhaps in themselves most telling insights for wider anthropology of political and legal knowledge.

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