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On the Complexity of Ideas in America: Origins and Achievements of the Classical Age of Pragmatism Review Essays

Edward A. Purcell Jr.
New York Law School

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On the Complexity of "Ideas in America": Origins and Achievements of the Classical Age of Pragmatism

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LOUIS MENAND. *The Metaphysical Club: A Story of Ideas in America.* New York: Farrar, Straus, Giroux, 2001. Pp. 546. $27.00.

Few historians would disagree with the claim that the events surrounding the Civil War marked a decisive break in American national development, and few would deny that a major component of that break was the elaboration and spread of new ideas and attitudes about matters of the most fundamental importance: law, nature, science, religion, politics, psychology, philosophy, and social organization itself. In *The Metaphysical Club: A Story of Ideas in America,* Louis Menand reexamines the roots of those intellectual changes, their evolution through the late nineteenth and early twentieth centuries, and their long-term significance in American life and thought. "The Civil War swept away the slave civilization of the South, but it swept away almost the whole intellectual culture of the North along with it," he writes. "It took nearly half a century for the United States to develop a culture to replace it, to find a set of ideas, and a way of thinking that would help people cope with the conditions of modern life." Among its effects, that new culture and new way of thinking profoundly reshaped American views of law and the legal system. That long and complex "struggle" to find

Edward A. Purcell Jr. is Joseph Solomon Distinguished Professor of Law at New York Law School. He wishes to thank Richard Bernstein, William P. LaPiana, Frank W. Munger Jr., and Ann F. Thomas for helpful comments on an early draft, and Lisa Ornest for research assistance. An abbreviated excerpt of this review was published in April 2002 by H-LAW, the list-serv cosponsored by H-NET and the American Society for Legal History.

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such an acceptable new intellectual framework, Menand announces, is the subject of his book (p. x).

The Metaphysical Club is a superb achievement. It concentrates on four towering and familiar figures—Oliver Wendell Holmes Jr. (b. 1841), William James (b. 1842), Charles Sanders Peirce (b. 1839), and John Dewey (b. 1859)—while integrating along the way briefer accounts of the lives and contributions of more than a dozen other major pre– and post–Civil War thinkers.[1] More important, the book artfully synthesizes personal biography, family history, local culture, and individual psychology with broad currents of popular culture, generational tensions, international scientific and philosophic discourse, and the massive political and social transformations that came with three major developments: industrialism, America's expanding role in world affairs, and the onset of an ever more relentless modernism. The result is an absorbing narrative that is as captivating in its telling as it is illuminating in its content. Without sacrificing depth or detail, and without compromising the complexity or subtlety of his analysis, Menand gives us a lucid and insightful reexamination of the intellectual origins not just of "pragmatism" but of our modernist/postmodernist world.

I

The book is divided into five parts. Each of the first four focuses on one of Menand's four major figures, exploring his life and intellectual development into the first years of the twentieth century. The fifth part examines subsequent elaborations of the various ideas that the four thinkers advanced and seeks to trace their impact on American thought through the remainder of the century.

The deeper structure of the book is somewhat different, however, falling into three distinct sections. The first, comprising the three parts that deal with Holmes, James, and Peirce, is a sensitive and brilliant exploration of the complex social—and, especially, the local cultural and interpersonal—origins of the underlying concerns, ideas, ambitions, and strategies that evolved into that new "way of thinking" about "modern life," a way of thinking best characterized by the varieties of American pragmatism that articulated and embodied it. Here, Menand recreates the intellectual and cultural world of pre– and post–Civil War Boston and Cambridge, exploring the interrelated lives of an influential but nevertheless peripheral intel-

1. The book can usefully be read with Conkin 1968, which traces similar themes in American thought (such as an underlying moralism and an instrumental conception of ideas) from seventeenth-century Puritanism through early-twentieth-century pragmatism. Although the book scarcely mentions Holmes, it has long chapters on Peirce, James, and Dewey.

lectual elite in a time of deep sectional conflict and moral crisis.[2] Holmes, the ardent young abolitionist sympathizer and thrice-wounded Union officer, learns from the horrors of war to distrust and scorn moral absolutes and "certainties" of all types. James, the indecisive would-be scientist who refused to join the Union army and thereby missed "the defining experience of his generation" (p. 74), learns to satisfy his own emotional needs by exploiting the openness, uncertainty, and contingency that he finds in newly dominant evolutionary theory. Peirce, an intellectual prodigy whose life was scarred by a painful neurological disorder that led him to drug addiction and a career marked by erratic and self-destructive actions, learns from statistical theory that randomness does not necessarily mean disorder and that human knowledge is not a "mirror" of nature but the product of social consensus.

It is at the end of these three parts that Menand places his chapter on the eponymous "Metaphysical Club," the legendary and short-lived discussion group in Cambridge, Massachusetts, in the early 1870s that brought together many of the "founding fathers" of American pragmatism, not only Holmes, James, and Peirce but also such key, albeit less-well-known, figures as Chauncey Wright and Nicholas St. John Green.[3] "It was in the earliest seventies," Peirce recalled many years later, "that a knot of us young men in old Cambridge, calling ourselves, half ironically, half defiantly, 'The Metaphysical Club,'—for agnosticism was then riding its high horse, and was frowning superbly upon all metaphysics—used to meet" (p. 201). It was in the context of this group that Peirce explored the implications of the randomness of the universe and the contingency of human reasoning and there that he reached his conclusion about the "social" nature of human knowledge, one of pragmatism's foundation ideas and his "most important contribution to American thought" (p. 200).

Unfortunately, most of what actually transpired when the Metaphysical Club convened—propositions asserted and modified, the give-and-take

2. Menand's account of the cultural world of antebellum Boston and Cambridge might have profited from a broader definition of the relevant local elite. See, e.g., Konefsky 1988.

3. Wright was a "talented mathematician" (p. 206), philosopher, and conversationalist whom Menand calls the "pivotal figure" (p. 205) in the Metaphysical Club. He was an agnostic, a determined positivist, a devoted adherent of the theory of natural selection, and "one of the few nineteenth-century Darwinians who thought like Darwin—one of the few evolutionists who did not associate evolutionary change with progress" (p. 210). In moral theory, he was a "fairly complete" nihilist (p. 214).

Green, a student of Wright's and a close friend of both Wright and Holmes, was a lawyer who, after the war, became a law professor at Harvard and then Boston University. He was an early critic of "legal formalism" (p. 223) who stressed the "purposive character" (p. 225) of all human thought, especially the categories and doctrines of the law. In the early 1870s he wrote frequently for the *American Law Review*, a legal magazine that Holmes edited.

Both Wright and Green died relatively young, unrecognized, and with careers that seemed failures. Wright suffered a stroke and died in 1875 after a short and disastrous experience as a lecturer at Harvard. Green died the following year of an overdose of laudanum after leaving Harvard as the result of disagreements with the law school's new dean, Christopher Columbus Langdell. Wright was 45 years old, and Green 46.

of debate, the lambent (one would like to think) play of personality, intellect, and wit—is unknown. Consequently, scholars have had to infer the nature of the discussions from a limited number of documents written before and after— sometimes decades after—the actual events.[4] Given that uncertainty, the paucity of firsthand sources, the club's relatively brief existence, and the fact that Dewey himself did not participate, it becomes clear that the title, *The Metaphysical Club*, does not reflect the book's focus or content. Rather, the title is a primarily a metaphor symbolizing Menand's true subject, the probings and achievements of an informal and ongoing intellectual community, the brilliant if imperfect blending of the creative work of diverse and sometimes divergent thinkers that occurred over a long, extended period and in a variety of locations.

The book affirms the symbolic nature of its title when it discusses the club's demise. The chapter entitled "The Metaphysical Club," and the wider triptych that constitutes the book's first section, concludes with the club's disintegration as it first began to "pull apart" in the summer of 1872 and then collapsed in mid-decade with the premature deaths of both Wright (d. 1875) and Green (d. 1876).[5] Although attributable to a plethora of personal and individual factors, its end was also the result of an institutionalizing, professionalizing, and modernizing society. "In the end, the Metaphysical Club unraveled because Harvard University was reformed" (p. 230).

The book's second substantive section, the longest of the first four parts, begins with a discussion of Dewey's early education in Burlington, Vermont, but it soon broadens out—like Dewey"s own career and philosophy—from the local and personal to the national and public. Dewey was almost 20 years younger than Menand's other three major figures, and he was the progeny of significantly different intellectual and cultural traditions. Unlike the others, he was the product of small-town Vermont, the son of a Unionist storekeeper and a socially active but orthodox Congregationalist mother, far removed from the prestigious and interconnected intellectual circles of Boston and Cambridge.[6] Unlike the others, too, he was a product of the emerging modern American university system—secular, scientifically based, nationally oriented, and professionally directed—that had brought the reform of Harvard University and, with it, the destruction of the small,

4. "But just what they did is difficult to make out. The club had no secretary and no record of debate. As Peirce later wrote, the proceedings had all been in 'winged words.' We must consequently reconstruct the history of the club's ideas from very fragmentary evidence" (Kuklick 1977, 49). See generally Fisch 1964, 1954.

5. The club was reorganized in 1876 and continued—with quite different membership and an increasingly different philosophical orientation—until 1879, when it disintegrated (Kuklick 1977, 54–55).

6. "The Burlington [Vermont] philosophy was Transcendentalist, but it was not Emersonian," Menand explains. It was "fundamentally conservative. It was about preserving institutions, not (like the Concord edition) about ignoring, debunking, or reinventing them. Its communitarianism was the communitarianism of the Christian communion, not the communitarianism of Brook Farm" (p. 250).

local, and private "Metaphysical Club" that had nourished Holmes, James, and Peirce. Dewey "reached maturity as a thinker at exactly the moment American social and economic life was tipping over into modern forms of organization, forms whose characteristics reflect the effects of size: impersonal authority, bureaucratic procedure, mass markets" (p. 236). Those differences proved crucial. "Unlike almost every other serious thinker of his time," Menand declares, Dewey "was at home in modernity" (p. 237).[7]

Also unlike Menand's other three thinkers, and most important for the future of pragmatism, Dewey turned to politics and social activism, in large part because his professional academic career took him to the University of Chicago in 1894, the year of the Pullman strike. There he met, among others, Jane Addams, the founder of Hull House, who exerted a compelling influence on the new chairman of the university's philosophy department. Addams not only pulled Dewey into the world of political and social reform, but she also convinced him that "the resistance the world puts up to our actions and desires is not the same as a genuine opposition of interests" (p. 313).[8] She persuaded Dewey, in other words, of the fundamental compatibility of human desires and interests when properly understood, and Dewey then set about for the next half century to use the tools of pragmatism to show how and why that principle could illuminate and resolve political and social problems of all kinds. Thus, Menand uses Dewey's career to explore the vital confrontation that occurred in the late nineteenth century between the philosophical ideas that were crystallizing into pragmatism and the multiplying challenges that came to America with industrialization and modernization. Throughout the section he skillfully weaves his earlier figures, especially James and Peirce, into the story of Dewey's intellectual evolution from the Christian-inspired "Burlington Philosophy" he learned as a young man, though his Hegelian phase in the 1880s, toward the socially oriented pragmatism that he began developing in the tumultuous context of the 1890s.[9]

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7. While Menand sees Dewey alone as being "at home in modernity," he identifies all four of his major figures as "modernists." They "helped to put an end to the idea that the universe is an idea, that beyond the mundane business of making our way as best we can in a world shot through with contingency, there exists some order, invisible to us, whose logic we transgress at our peril" (p. 439). As is often and perhaps necessarily the case, the terms "modernist" and "modernity" remain somewhat vague and elastic. "In modern societies," Menand explains at one point, "the reproduction of custom is no longer understood to be one of the chief purposes of existence, and the ends of life are not thought to be given; they are thought to be discovered or created. Individuals are not expected to follow the life path of their parents, and the future of the society is not thought to be dictated entirely by its past" (p. 399).

8. Menand quotes Dewey's letter to his wife, Alice, explaining the impact of Addams's insight: "I can see that I have always been interpreting the dialectic wrong end up—the unity as the reconciliation of opposites, instead of the opposites as the unity in its growth, and thus translated the physical tension into a moral thing." Menand notes that in place of the word "dialectic" Dewey had originally written "Hegelian" but had then crossed it out (p. 313).

9. For Dewey's earlier years, Menand draws on and extends the superb analysis in Coughlan 1975.

Finally, the book's third substantive section, its fifth part together with a brief epilogue, carries the history of pragmatism from around 1904 to the end of the twentieth century. It completes the story of the brief remaining careers of James (d. 1910) and Peirce (d. 1914) as well as the longer and more publicly visible careers of Holmes (d. 1935) and Dewey (d. 1952). Further, it introduces and evaluates some of the quartet's principal successors. Arthur Bentley, Franz Boas, Horace M. Kallen, Alain Locke, W. E. B. DuBois, Randolph Bourne, and Learned Hand are among those whose efforts receive particular attention. Finally, the last section seeks to identify the ways in which the ideas of Holmes, James, Peirce, and Dewey helped shape American thought through the rapidly changing world of the later twentieth century. Menand explores the variations that marked the distinct "pragmatisms" they developed, and he focuses on their contributions to democratic theory, to emerging ideas of political and cultural pluralism, and to expanding ideas of human freedom, especially those involving free speech and academic freedom. "The political system their philosophy was designed to support was democracy," he explains, and perhaps their greatest achievement was to help "make tolerance an official virtue in modern America" (p. 440).[10]

Unlike the book's earlier sections, the strength of the last part is its thematic unity, not its depth of analysis or insight into individual thinkers. Indeed, the last section is necessarily much thinner in its analysis and even somewhat arbitrary in its selection of issues and individuals. It is also unbalanced chronologically. While it discusses a few important developments in the 1920s and 1930s (such as the Supreme Court's First Amendment jurisprudence and early battles over academic freedom), it barely skims over the century's final six decades, ignoring in the process major phases in the continuing history of pragmatism in American thought.[11] Similarly, Menand gives little attention to the conflict between the naturalism and scientism that helped foster pragmatism and the traditional religions and religious ideas that still dominated popular culture (see, e.g., Conkin 1998).

II

Menand announces in his preface that Holmes, James, Peirce, and Dewey "were more responsible than any other group for moving American thought into the modern world" (p. xi). "Their challenge, as they perceived it, was to devise a theory of conduct that made sense in a universe of uncertainty" (p. 214). Acknowledging, indeed highlighting, numerous differences

10. "The value at the bottom of the thought of Holmes, James, Peirce, and Dewey," Menand asserts, "is tolerance" (p. 439).

11. This is particularly true with respect to the influence of Holmes and Dewey. See, e.g., Westbrook 1991; Duxbury 1995; Sebok 1997.

between the four,[12] he nonetheless isolates what he considers the intellectual core they shared, "their attitude toward ideas." What they "had in common was not a group of ideas, but a single idea—an idea about ideas."

> They all believed that ideas are not "out there" waiting to be discovered, but are tools—like forks and knives and microchips—that people devise to cope with the world in which they find themselves. They believed that ideas are produced not by individuals, but by groups of individuals—that ideas are social. They believed that ideas do not develop according to some inner logic of their own, but are entirely dependent, like germs, on their human carriers and the environment. And they believed that since ideas are provisional responses to particular and unreproducible circumstances, their survival depends not on their immutability but on their adaptability. (Pp. xi–xii)

Whether or not he has described a "single" idea, Menand captures many of the key assumptions behind pragmatism: that ideas are instrumental, socially created, environmentally dependent, and both changing and changeable.[13]

The Metaphysical Club, its author tells us, "is an effort to write about these ideas in their own spirit—that is, to try to see ideas as always soaked through by the personal and social situations in which we find them" (p. xii). Indeed, Menand's similes reinforce his methodology. Ideas are neither sacred nor transcendent but, rather, ordinary and entirely real-world phenomena, like "forks" and "germs." As attentive as the book is to ideas and their interconnections, it ultimately insists that their origin, evolution, and fate were determined by the way they did or did not "fit" with social needs and conditions.[14]

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12. E.g, "Holmes eventually lost sympathy with the views of his friend William James, which he thought too hopeful and anthropocentric. He never had much interest in Peirce" (p. 217). "[I]ndividualism and voluntarism were values fundamental to James's thought, and they were values despised by Peirce" (p. 363). "As James saw right away, he and Dewey came to pragmatism from nearly opposite philosophical directions" (p. 369). Holmes had "virtually no faith in the notion of individual human agency" (p. 66), while "[e]verything James and Dewey wrote as pragmatists boils down to a single claim: people are the agents of their own destinies" (p. 371).

13. Menand views the development of pragmatism positively, though not entirely uncritically. For a sharply contrasting view of the rationalizing, modernizing process in late nineteenth- and early twentieth-century thought, see Lears 1981. For general treatments of the philosophical origin and development of pragmatism, see Schneider 1963, chaps. 39–42; Kuklick 1977, especially chaps. 3–10 and 14–17.

14. Menand writes, for example, "Why, on a pragmatist account of ideas, did the idea of pragmatism arise? According to Peirce's version, pragmatism has to be explained as a necessary rung on the ladder to concrete reasonableness. For James and Dewey, though, no idea is necessary in that sense: a new idea is not the inexorable next link in a chain of prior ideas; it is a chance outgrowth, a lucky variant that catches on because it hooks people up with their circumstances in ways they find useful" (p. 369). See also, e.g., pp. 140, 194–95, 372–73, 440–42.

The major achievement of *The Metaphysical Club* is its subtle, complex, and modulated explanation of pragmatism's human origins.[15] Pragmatism, it declares, "was the product of a group of individuals, and it took its shape from the way they bounced off one another, their circumstances, and the mysteries of their unreproducible personalities" (p. 371). The book does not, in other words, limit itself to examining changes in philosophical schools, concepts, and arguments nor rest content with discussions of pragmatism's intellectual roots (in, for example, the rise of science and the spread of Darwinism) and fostering social context (such as industrialization, professionalization, and sharpening socioeconomic conflict). Nor does it suggest that personal elements—even such powerful factors as Holmes's devastating experiences in the Civil War and James's debilitating religious and psychological crises—were, by themselves, decisive. Rather, *The Metaphysical Club* attempts to integrate all those considerations, and many additional ones as well, into a comprehensive and finely grained analysis of the lived experiences of an extraordinary group of individuals and to show when, why, and how their varied needs, concerns, anxieties, and ambitions combined in the specific historical context of post–Civil War America to move their thoughts and feelings in certain new directions.

Menand's discussion of the personal and family backgrounds of his major figures, for example, is subtle and illuminating. Eschewing cursory summaries, he considers the lives, aspirations, and beliefs of friends, colleagues, and family members, suggesting the variety of influences they exerted. Not surprisingly, he focuses especially on the roles played by three unusually distinguished and accomplished fathers: the famous physician, scientist, and essayist, Oliver Wendell Holmes Sr.; the eccentric, antiestablishment religious seeker and writer, Henry James the elder; and the internationally recognized mathematician and Harvard professor, Benjamin Peirce. All three emerge as distinct and recognizable human beings, as active participants in their sons' developing lives, not as mere pasteboard figures standing in an essentially inert "background." Rather than "influencing" their sons in specific ways, the author seems to suggest, the three fathers had their greatest impact in orienting them toward certain basic values and intellectual concerns. Moreover, Menand is equally sensitive to the divisions that developed between the generations, and he also marks the extent to which the fathers were cut off from their sons by historical change, generational conflict, and idiosyncratic personal characteristics. Although Peirce remained loyal to his father's values and attitudes, James and Holmes drifted ever farther from those of their fathers. "The usual biographical practice has been

15. Although Menand draws on the work of such scholars as Philip Wiener and Max Fisch, who focused on more technical aspects of the "philosophy" that marked the Metaphysical Club, he concentrates on the individual character and personality of his four major figures and places their lives and evolving thought in a richer and more vital cultural context. See, e.g., Fisch 1986; Wiener 1949.

to assume continuity," he remarks of the relationship between the Jameses, "but the social history suggests rupture" (p. 84). Tracing a growing split between Holmes and his father, Menand generalizes the point:

> Holmes's rejection of the intellectual style of pre-war Boston mirrored a generational shift. To many of the men who had been through the war, the values of professionalism and expertise were attractive; they implied impersonality, respect for institutions as efficient organizers of enterprise, and a modern and scientific attitude—the opposites of the individualism, humanitarianism, and moralism that characterized Northern intellectual life before the war. (P. 59)

In exploring the complex ways in which ideas interact and evolve, Menand highlights a wide range of connections. In a relatively few scattered pages, for example, he suggests Emerson's role in the pre-war period and marks his continued, if diluted, significance in the post-war era. "Holmes's posture of intellectual isolation was, after all, essentially Emersonian," he points out (p. 68),[16] while noting further that pragmatism "shares Emerson's distrust of institutions and systems, and his manner of appropriating ideas while discarding their philosophical foundations" (p. 370).[17] More broadly, Menand joins those scholars who have recently emphasized the continuing and widespread influence of religion in nineteenth-century America. Protestant Christianity in its varying forms was an essential element in the upbringing of all his characters, even the few—such as the Holmeses—who seemed immune from its specific claims.[18] It was an unavoidable force field that helped shape their characters and beliefs even as they tried to reconceive its foundations or reject its authority. Dewey could not escape the social and moral imperatives of his religiously grounded upbringing and early education, and James wrestled for decades to keep the possibilities of rational faith safe from domination by the forces of determinism and materi-

16. Menand discusses at length Holmes's decision to leave the Union army in 1864—"before," as he wrote his father, "the campaign was over"—and his carefully conceived and articulated justification for his action: "If I am satisfied I don't really see that anyone else has a call to be otherwise—. . . . I am not the same man (may not have quite the same ideas) & certainly am not so elastic as I was and I *will not acknowledge the same claims upon me under those circumstances* that existed formerly" (quoted at p. 56; emphasis in original). The adamant assertion of the individual prerogative of choice in time of war suggests not only Emerson's influence but also similar actions by Holmes's contemporary Mark Twain and by two twentieth-century characters of almost mythic stature in American literature, Ernest Hemingway's Lieutenant Henry and Joseph Heller's Captain Yossarian.

17. Similarly, he notes that "[p]ragmatism belongs to a disestablishmentarian impulse in American culture—an impulse that drew strength from the writings of Emerson, who attacked institutions and conformity" (p. 89). See Conkin 1968, chap. 5.

18. For Holmes the religious residue appeared in later life largely as a continuing and powerful sense of duty. "It would be a momentarily pleasant and possibly a wholesome change to have two or three days come when I didn't quite know what to do," he wrote his younger friend Harold J. Laski in 1928. "There is always something and partly from temperament it generally presents itself in the light of a duty" (Howe 1953, 2:1081).

alism. "William James was, like his father," the author declares, "a kind of super-Protestant" (p. 88). For Peirce, "the burden of his life" was the need to understand how people could come to "know" an apparently random and chaotic world and to explain their process of knowing "in a form consistent with his belief in the existence of a personal God" (p. 200). Indeed, the author explains, "the splintering of American Protestantism into multiple religious and quasi-religious sects over the course of the [nineteenth] century—the Protestantization, so to speak of Protestantism—is part of the larger, more inchoate context out of which pragmatism emerged" (p. 89).

Menand is especially informative in his discussion of the scientific context in which his figures, particularly James and Peirce, matured. His discussion of the debates between Harvard colleagues Louis Agassiz and Asa Gray over Darwin's theory of natural selection brings new life and insight to a standard topic, and his account of James's participation in Agassiz's specimen-collecting expedition to Brazil in 1865 highlights James's ambivalent and changing views of science, truth, Darwin, and the role of human purpose in the world. Even more striking, the chapter called "The Law of Errors," tracing the development of statistical theory in the late eighteenth and early nineteenth century, provides an enlightening account of a series of scientific advances that informed the thinking of James and especially the two Peirces. Probability theory attracted them because it seemed capable of reconciling two fundamental and conflicting ideas, that life was marked by randomness and contingency and that a knowable order existed in nature. "The broader appeal of statistics lay in the idea of an order beneath apparent randomness" (p. 194). Statistics, moreover, exerted a particularly powerful appeal to James and Peirce, Menand suggests, because it offered a natural order that was scientifically knowable but still only "probabilistic" and not "deterministic."

Perhaps most unusual, *The Metaphysical Club* stresses the impact of slavery and racism on American life and, hence, on American thought. While few would question the general importance of either of those factors, their significance is often minimized or ignored in histories of the more elevated types of thought. Menand, however, highlights their constant presence and implies their pervasive importance. Scientific inquiry in the United States before and after Darwin, he shows, was driven in significant part by racist assumptions, shaping for example the work of such a distinguished practitioner as Agassiz, the dean of mid-nineteenth-century American science and the teacher of both James and Peirce.[19] Similarly, Holmes's

19. When "scientific" racism surged in the late nineteenth century, one of its leading scientific spokesmen was Nathaniel Southgate Shaler, the dean of the Lawrence Scientific School at Harvard. Shaler had been one of Agassiz's students, and he helped keep his teacher's ideas alive (Gossett 1963, 281). For a provocative analysis of the impact of racial issues on American legal and social thought in the late nineteenth century, see Richardson 2001.

father and grandfather, the Jameses, and the Peirces all accepted racist assumptions in one form or another, as did many of the epigone who enter the story as it reaches the late nineteenth and early twentieth centuries, including the labor leader Eugene V. Debs (whose American Railway Union did not admit blacks) and Dewey's cultural acolyte, Horace M. Kallen (whose idea of a national "melting pot" was based on the premise that individual character was determined by an "immutable" race factor). Indeed, Menand explores the "pluralist" implications of pragmatism by focusing on the way later thinkers, especially Kallen and Alain Locke, a black writer best known for his work on the Harlem Renaissance, used Dewey's work to attempt to deal with the problems of racial and ethnic division in American society. "Only in Dewey's conception does the specter of race completely disappear," the author maintains, because "he insisted that divisions are just temporary alignments within a common whole" (p. 407).

Given his emphasis on the pervasive reach of racist assumptions, it is surprising that Menand seems to find Holmes beyond their reach. While Holmes's father was both a white supremacist and an antiabolitionist, the nineteen-year-old son sided firmly and courageously with the abolitionists in the secession crisis of 1860 and, in the early years of the war, seemed convinced of the rightness of their cause. Although Holmes changed his mind about the abolitionists, Menand suggests that he did not change his thinking about racist ideas as such. He "had inherited none of his father's racial prejudice" (p. 26). Thus, when considering Holmes's later career on the United States Supreme Court, the author explains away several of the justice's opinions that exhibit a striking "indifference to the suffering" of "Southern blacks victimized by de facto discrimination." In those opinions, Menand suggests, Holmes was animated not by racist assumptions but by his general philosophy of life: a cold and callous fatalism that allowed "no sympathy for the weak" (p. 66).

Without questioning Menand's analysis of either Holmes's actions and beliefs in the early 1860s or the general nature of his later philosophy of life, it nevertheless seems likely that his Supreme Court opinions reflected the racist attitudes that became increasingly virulent after Reconstruction. Between the 1880s and the 1920s "scientific racism" and racial violence, including the widespread practice of maiming and lynching, flourished. Southern and border states methodically disenfranchised blacks and effectively legalized racial segregation and discrimination. In its employment practices the federal government followed suit, and the United States Supreme Court did almost nothing to stop or limit such actions. Indeed, it in effect approved many of them. In such opinions as *Giles v. Harris* (189 U.S. 475 [1903]) and *Bailey v. Alabama* (219 U.S. 219 [1911]) (Holmes, J., dissenting). Holmes himself joined the parade, showing so callous an "indifference" to the plight of Southern blacks that neither his generally deferential

constitutional jurisprudence nor his coldly fatalistic philosophy of life seems capable of explaining them fully.

In support of his claim that Holmes "inherited none of his father's racial prejudice," Menand relies inter alia on a letter from Holmes to his friend Harold J. Laski, dated 5 November 1926, in which Holmes described himself as a young man in 1860:

> I was a pretty convinced abolitionist and was one of a little band intended to see Wendell Phillips through if there was a row after the meeting of the Anti-Slavery Society just before the war. How coolly one looks on that question now—but when I was a sophomore I didn't like the nigger minstrels because they seemed to belittle the race. I believe at that time even *Pickwick* seemed to me morally coarse.[20]

The quotation does testify to a humane and antiracist sensibility in 1860. With respect to Holmes's attitude in later years, however, the letter suggests something rather different. First, of course, there is his use of the racial epithet, common in the 1920s but nevertheless still indicative of racial insensitivity at best. Second, the reference to his disapproving view of *Pickwick* "at that time"—coming from an older man who remarked on the pleasure of reading "French novels"—suggests that Holmes may well have been telling Laski that his earlier views about race, like his earlier views about literature, had changed. Finally, the very next sentence in the letter seems to confirm that suggestion. "'Now his nerves have grown firmer,' as Mr. Browning says, and I fear you would shudder in your turn at the low level of some of my social beliefs" (Howe 1953, 2:893). Contrary to Menand's claim, then, it seems more plausible that Holmes, too, had succumbed to the increasingly legitimated racism that marked post-Reconstruction America.[21] As G. Edward White concluded in his biography of the justice, Holmes's opinion in *Bailey* seems inconsistent with his more general jurisprudential ideas and, ultimately, explicable only "on notions of white supremacy" (White 1993, 340; see also, e.g., pp. 333–43; Novick

20. The letter is summarized at p. 26 and cited at p. 451 n.9.

21. In the same year that Holmes wrote the letter to Laski, he joined a unanimous Supreme Court opinion upholding the validity of a racially restrictive housing covenant that was challenged under the Fifth, Thirteenth, and Fourteenth Amendments (*Corrigan v. Buckley*, 271 U.S. 323 [1926]). In fairness to both Menand and Holmes, however, one should note that the latter's famous opinion in *Moore v. Dempsey*, 261 U.S. 86 (1923), expanding the reach of the federal writ of habeas corpus in a case involving badly abused Southern blacks, could be used to support Menand's claim. Other factors, however, weigh against that interpretation: First, Holmes had taken his position on habeas corpus eight years earlier in a similar case involving a Jewish petitioner, *Frank v. Mangum*, 237 U.S. 309, 345 (1915) (Holmes, J., dissenting); and, second, the record in *Moore* showed such utterly outrageous abuses of legal processes at the state level that even a flat-out racist could have recognized a denial of due process. For an illuminating discussion of *Frank* and *Moore*, see Freedman 2001, part 3; for the Court's more general treatment of racial issues in the early years of the twentieth century, see *Vanderbilt Law Review* 1998.

1989, 257–59 and n.16 at 458–59). Menand's more benign view to the contrary may be yet another example of the power of Holmes's personal, stylistic, and intellectual charisma to captivate his readers.

III

While Menand does not explain the precise ways in which racist thinking influenced the origins of pragmatism, he does identify quite clearly the impact that two closely related phenomena—abolitionism and the reaction against it, especially in the postwar years—had on pragmatism's subsequent development. From the beginning James held an ambivalent and somewhat hostile view of abolitionism (pp. 73–75, 87, 146–47), he points out, while Peirce was wholly antagonistic, sharing his father's sympathies for both slavery and the South (pp. 160–62). Holmes, who began the war as a committed abolitionist sympathizer, gradually came during and after his army service to share their negative views of abolitionism.[22]

In developing his central thesis, Menand offers Holmes as his pure case type. The justice harbored an "intense dislike" for people who claimed to know with certainty what was true or right, and his "standard example in criticizing the reformist mentality was the abolitionists" (p. 62). Holmes made the point clearly to Laski in 1927. "The abolitionists as I remember used to say that their antagonists must be either knaves or fools," he announced. "I am glad I encountered that sort of thing early as it taught me a lesson" (Howe 1953, 2:942). The "lesson" was fundamental to Holmes's philosophy. As Menand describes it, "abolitionism came to stand in his thought for the kind of superior certitude that drives men (frequently men other than the ones who are certain) to kill one another" (p. 62). Thus, abolitionism taught Holmes that "certainty," and all forms of "absolute" belief, led to violence and destruction.

Consequently, Menand argues, the lesson of abolitionism and the Civil War led Holmes to work his way toward a new skeptical and anti-absolutist theory of democracy. Holmes recognized that all human beings, himself included, were willing to fight and kill for what they believed right, but he also realized that all such beliefs were socially and culturally contingent. "He only thought that rightness and wrongness are functions of the circumstances in which our lives happen to be embedded" (p. 63). Thus, two contradictory conclusions seemed to follow. One was that "people are justified in defending what they have become accustomed to" (p. 63); the other was that "the friends of the status quo have no greater claim to the principles of justice and fairness than its enemies do" (p. 64). Holmes resolved this theo-

22. Unlike Holmes, neither James nor Peirce served in the Union Army, though two of James's brothers and one of Peirce's maternal cousins did (pp. 73–74, 162).

retical and practical conflict, the author argues, by recognizing and embracing the pacific potential of skeptical tolerance, democratic government, and civil liberties. "What prevents the friction between competing conceptions of the way life should be from overheating and leading to violence is democracy." Thus, the example and consequences of abolitionism provoked a powerful reaction that inspired a new pragmatic theory of democracy. Holmes's "fundamental concern," Menand declares, "was almost always to permit all parties the democratic means to attempt to make their interests prevail" (64). He joined the other founding pragmatists in helping to shape a compelling set of equations that came to define the contours of social evil—abolitionism, certainty, absolutes, intolerance, inequality, violence, and war. Those equations, in turn, inspired a second and contrasting set that defined the social good—compromise, skepticism, relativism, tolerance, equality, democracy, and peace.

Thus, Menand finds in Holmes, and in his other three major figures, the intellectual origins of the "relativist theory of democracy" that came to prominence and received its fullest and most self-conscious elaboration in the middle third of the twentieth century.[23] The theory was implicit in late-nineteenth-century pragmatism, he maintains, and it was the reason for pragmatism's growing and widespread appeal in the decades around the turn of the century. Absolutes and certainties of all varieties led only to oppression and violence. Only the open, tentative, tolerant, and relatively egalitarian processes of democracy—underwritten by the truth that all human beliefs are relative and that none of them, therefore, was capable of rationally justifying its forceful imposition on nonbelievers—could bring long-term social cooperation, harmony, and progress. Indeed, Menand restates his argument in the language of the later twentieth-century relativist theory, equating the rejected absolutes with dreaded "ideologies." "The belief that ideas should never become ideologies—either justifying the status quo, or dictating some transcendent imperative for renouncing it—was the essence of what they taught," he declares. "In many ways this was a liberating attitude, and it accounts for the popularity Holmes, James, and Dewey (Peirce is a special case) enjoyed in their lifetimes" (p. xii).

Menand pushes his argument further, offering a provocative hypothesis to explain why pragmatism also succeeded at the end of the nineteenth century in becoming America's new *progressive* public philosophy. "The fear of violence," he suggests, "is possibly at the bottom of the whole matter of

23. See Purcell 1973, especially chaps. 11 and 13. Menand's discussion of Wright, for example, foreshadows the reasoning behind Reinhold Niebuhr's Protestant neo-orthodox version of the relativist theory: "When he [Wright] used the word 'uncertainty,' he meant *our* uncertainty—just as when Laplace used the word 'probability,' he was referring not to events themselves, but to our imperfect knowledge of them" (p. 222). Menand, however, suggests a gulf, rather than a continuity, between pragmatism and Niebuhr's neo-orthodox political theory. Compare Purcell 1973, 154–56, 243–46.

pragmatism's 'fit'" (p. 373). His argument proceeds, in effect, through three steps. First, in the 1890s the United States "was a society fractured along many lines: The South against the North, the West against the East, labor against capital, agriculture against industry, borrowers against lenders, people who called themselves natives against new immigrants" (p. 374). Thus, strife from a variety of sources threatened to engulf the nation and produce social chaos. Although many Americans saw the need to address the serious problems that industrialism had produced, they were frightened by rhetoric and actions that seemed likely to provoke social violence and possibly even another civil war.

Second, during the Pullman strike Debs frightened many Americans by reminding them of the extremism and intolerance of John Brown. Debs's actions "looked like the behavior of a fanatic, and precisely because it was the behavior of a person firmly committed to principle." Those people "thought they had seen commitment to principle of that type before: abolitionism" (p. 373). Consequently, a major strain of popular thought came to equate late-nineteenth-century political protest movements with midcentury abolitionism. That political/ideological merger compounded the general fear of social conflict, melded the nation's underlying racism with an opposition to the politics of social protest, and discredited broad proposals for social and economic reform.

> For many white Americans after 1865, the abolitionists were the century's villains—not only because they were thought to have been responsible for the war, but because they and their heirs were thought to have been responsible for the humiliation of the South during Reconstruction. They had driven a wedge into white America, and they did it because they had become infatuated with an idea. They marched the nation to the brink of destruction in the name of an abstraction. (P. 373)

Thus, in spite of substantial potential support for various types of moderate social reforms, a wary and deeply suspicious public recoiled from political and social protest.

Third, and finally, pragmatism made its general public appearance, offering a rhetoric and a method that promised to dispel the deep fears of social violence while at the same time resolving the obvious social problems that demanded remedy. Above all else, it preached social harmony and a rejection of political violence. Dewey was himself "a singularly irenic personality" (p. 373), Menand notes, and he offered the nation a philosophy of peace, cooperation, and reasonableness that was rooted in the fundamental belief he had learned from Jane Addams "that antagonism is unnecessary, that it is based on a misunderstanding of one's best interests, and that it leads to violence" (p. 373): "In a time when the chance of another civil war

did not seem remote, a philosophy that warned against the idolatry of ideas was possibly the only philosophy on which a progressive politics could have been successfully mounted" (p. 374).

Thus, pragmatism succeeded in popular political thought because it "fit" the special needs of those turn-of-the-century Americans who were sympathetic, actually or only potentially, toward the reform causes that coalesced under the banner of progressivism. By offering a harmonious and tolerant approach to social reform, pragmatism offered an appealing and effective alternative to the melded image of abolitionism/radicalism. It diagnosed and articulated the key flaw—moral absolutism and its consequent political violence—that many Americans saw in abolitionism/radicalism, and it proposed "peaceful" and "cooperative" methods for reform that were sharply distinguished from the kinds of "absolute" and "abstract" plans that social "fanatics" like Brown and Debs advocated and then backed with violence. James and Dewey, the author explains, "spoke to a generation of academics, journalists, jurists, and policy makers eager to find scientific solutions to social problems, and happy to be given good reasons to ignore the claims of finished cosmologies" (p. 372). Dissipating the specter of abolitionism/radicalism and galvanizing a new professional middle class, philosophical pragmatism merged with political progressivism, establishing in the process the nation's new public political philosophy of reform.

Menand takes his thesis "a little farther." As the racial assumptions of whites led them to fear and scorn the abolitionists, so the linkage between abolitionism and social "radicalism" tended not only to discredit reformist ideas but also to discredit with particular force any reformist proposals that seemed to imply racial equality. The "price of reform in the United States between 1898 and 1917," he explains, "was the removal of the issue of race from the table" (p. 374). To secure the social cooperation and good will that Dewey promised, in other words, Americans had to abandon any effort to include blacks in their harmonious progressive society. Thus, Menand suggests, the public triumph of the twin reformist movements— philosophical pragmatism and political progressivism—was linked to a continuing and nearly ubiquitous white racism that helped determine the limits of both.

Menand's thesis is plausible even if not entirely persuasive. He seems right in claiming that the intellectual origins of the relativist theory of democracy can be traced—certainly, at least, for Holmes—to the reaction against abolitionism and the emergence of pragmatism, but he overlooks much of the significance of the theory's long gestation during the early and middle years of the twentieth century. Although Dewey articulated the relativist theory's basic assumptions shortly after the turn of the century, for example, he did not settle on its specific applicability to various national governments—including that of the United States—until the rise of Nazism in the middle of the 1930s (Purcell 1973, 200–202). Similarly, while

Holmes has commonly been portrayed as a major theorist of democracy, his personal attitude toward democratic government was highly qualified at best. More important, although Holmes formulated a philosophy of life that implied a theoretical justification for democratic government, he did very little to elaborate that personal philosophy as a general theory of American democracy. That job was done for the most part by others, surely borrowing from Holmes and exploiting his judicial opinions and reputation, but nevertheless expanding his philosophy into an explicit and morally prescriptive theory of democracy and then popularizing it broadly in the arena of public discourse (Purcell 1973, 207–10.)

Indeed, even in the area of free speech, where Holmes did have a significant impact, his contributions were somewhat less than Menand suggests. Holmes's ideas about free speech were highly traditional until World War I, and they changed not only as a result of government prosecutions brought under the Espionage Act but, more important, as a result of sustained pressure and flattery by his progressive admirers.[24] Ironically, in fact, much of his reputation as a pathbreaking defender of the First Amendment was based on a clever and designing misinterpretation by civil libertarians of his early World War I free speech opinions—initially written, it should be noted, in cases where he upheld convictions for unlawful speech. Indeed, his friend and judicial colleague Louis Brandeis, a very different kind of "pragmatist" with a very different kind of personal philosophy, probably deserves far more credit than Holmes for reshaping the Supreme Court's First Amendment jurisprudence (Purcell 2001, 263–76).

With respect to his thesis about why pragmatism became the nation's "progressive" philosophy, Menand adds a useful insight that helps explain a complex evolution. He claims, of course, little more than that, twice characterizing his suggestion as only "possibly" correct (pp. 373, 374). Numerous factors—ranging from the prescriptive contours of American culture to the kinds of practical demands that Americans placed on their governments—contributed to pragmatism's formation and appeal as a "progressive" philosophy. Menand's thesis, however, advances our understanding by identifying a particular set of cultural and political connections that helped inform and expedite the process. Surely the relative tranquility and optimism of the

24. Menand misses much of the historical dynamic, for example, in this passage: "When Holmes emerged as a consistent judicial defender of economic reform and of free speech, he became a hero to progressives and civil libertarians—to people like Louis Brandeis, Learned Hand, Walter Lippmann, and Herbert Croly" (p. 66). The statement ignores the fact that it was many of those very "progressives and civil libertarians" who in the first instance helped induce Holmes to alter his First Amendment views and to make his jurisprudence more speech protective. Further, the statement ignores the fact that those same "liberals and civil libertarians" worked methodically for their own purposes to create the public image of Holmes—misleading at best—as a justice who was "liberal" and "progressive" (White 1993, chaps. 10–12; Smith 1986, chaps. 1–2; Gunther 1994, 151–70; 1975). For illuminating discussions of Holmes's place in the development of First Amendment jurisprudence during the same years, see Rabban 1997; Graber 1991.

"Progressive Era" contrasted sharply with the anger and conflict that marked the decade of the 1890s, and the combined force of a fear of violence, yearning for harmony, and need for reform may well have shaped philosophical pragmatism to "fit" the emerging politics of progressivism.[25]

Still, however, qualifications seem necessary. The religious roots of progressivism, which Menand himself emphasizes, gave much of the movement a highly moralistic tone that often suggested intolerance and even some form of absolutism. It seems highly doubtful, for example, that many of the progressives who sought to "save" and "uplift" the lower orders or to "Americanize" non-Protestant immigrants were truly "relativists" and "pluralists" in Menand's "pragmatic" sense. Indeed, considerable evidence indicates that some progressives found moral inspiration, not fault, in the example of pre–Civil War abolitionism.[26] Moreover, to the extent that pragmatism became the philosophy of progressivism, it underwent an evolution of its own and probably did not enjoy its period of greatest political influence until the New Deal brought yet another variety of "progressivism" into American politics.

Menand's claim that racism shaped and limited both the philosophy and politics of progressive reform is plausible and richly suggestive. It is well established that many progressives were uninterested in, if not explicitly hostile to, claims of racial equality, and it is equally well known that reformers—especially in the South—abandoned African Americans in order to unify whites and generate electoral coalitions capable of victory.[27] To this picture Menand adds an additional consideration: that through the melded image of abolitionism/radicalism, racist attitudes helped discredit all programs or movements that proposed to substantially change American society and, hence, may have been a factor in ensuring that the program of progressive reform remained politically moderate and institutionally conservative.

Finally, while Menand seems justified in concluding that pragmatism "dominated American intellectual life for half a century," he overstates the matter when he claims that it "seemed to go into almost total eclipse" (p.

25. For a broader, international approach to the intellectual origins of pragmatism and progressivism, see Kloppenberg 1986.

26. See, e.g., Crunden, who argues that "most progressives tended to find their historical roots in abolitionism, the Union, and the North in the Civil War" (1982, 171). See McPherson 1975. Jane Addams grew up in an abolitionist family that was loyal to Lincoln, the Union, and the northern war effort. Throughout her later life, however, she advocated reconciliation and pacifism, not force or fervor (see, e.g., Elshtain 2002, 212–13). Even if many progressives did find moral inspiration in abolitionism, they often failed to direct their efforts toward supporting the cause of African Americans. See note 27 below.

27. "Most white reformers of the Progressive Era had little interest in black Americans. If they thought about race at all, they tended to agree with Southern whites that black people were racially inferior, morally deficient, and politically unqualified—that blacks themselves were the main cause of the 'race problem'" (Fairclough 2001, 70). See, e.g., Hale 1999; Link 1992; Woodward 1951.

438) after World War II and then reemerged "suddenly" with the end of the cold war (p. 441). In offering those conclusions, he abandons his effort to explore complexity and applies too rigidly his pragmatic premise that ideas succeed when they "fit" a particular context.[28] On the one hand, Holmes, Dewey, and other intellectuals associated with pragmatism and "relativism" began to come under sustained attack not after World War II but before it. By the middle 1930s, in fact, critics were gathering both momentum and adherents for their charges that pragmatists and legal realists had undermined democratic values and prepared the way for Nazi and Communist totalitarianism. The last half of the decade was a time of acute crisis, uncertainty, and transition that left its clear imprint on the war and cold war decades. "The fundamental tragedy of the 1930s was not that men raised the wrong issues or failed to supply satisfactory answers," Richard H. Pells has written, "but that the political and psychic wounds of the decade's final years virtually paralyzed an entire generation of intellectuals" (Pells 1973, 368; see, e.g., Purcell 1973, 139–217; White 1973; Ross 1991, 390–476; Novick 1988, 168–278). On the other hand, while it is true that pragmatism as a distinct philosophical movement did fade badly at midcentury, it is equally true—and even more important—that the basic epistemological and methodological assumptions that underwrote pragmatism remained vibrant and influential throughout the war and cold war decades. Although the 1950s witnessed a "religious revival," American intellectuals remained predominantly naturalistic and scientific in their orientation. Pragmatism may well have "rejected" the "behaviorism implicit in the early twentieth-century version of the functionalist model" (p. 370), for example, but its approach and promises also helped inspire many of the various "behaviorist" and "behavioralist" approaches that surfaced throughout the later twentieth century.[29] Indeed, the ideas that animated pragmatism were critical in reshaping American democratic theory for the precise purpose of meeting the political and ideological challenges of the cold war itself (Purcell 1973, chaps. 11, 13).[30] Similarly, both the "subjectivist" and "communitarian"

28. At one point he suggests that the process was almost automatic: "And once the Cold War ended, the ideas of Holmes, James, Peirce, and Dewey reemerged as suddenly as they had been eclipsed" (p. 441). For his more general argument, see pp. 438–42.

29. Similarly, tracing the evolution of ideas about academic freedom and free speech that followed in pragmatism's wake, Menand notes that "the problem of legitimacy continually arises" (p. 431) in a society with no "immutable principle" to guide or ground it. "The solution has been to shift the totem of legitimacy from premises to procedures" (p. 432). Accepting his point, that general shift in a variety of fields from principle to procedure, from fundamental truth to useful methodology, suggests once again the continuing and pervasive force through the middle decades of the twentieth century of the ideas that were gathered, shaped, and popularized by American pragmatism.

30. For an example of the complexities involved, see Tsuk 2001.

strains of pragmatism fed into the intellectual ferment that roiled and transformed American thought beginning in the 1960s (Purcell 1983).[31]

Elsewhere, Menand does note that ambiguities in pragmatism allowed it to contribute to a range of diverse intellectual movements capable of succeeding in a variety of historical contexts. In the "bigger intellectual picture" its results are "equivocal" (p. 370).[32] Indeed, in spite of his admiration for the work of his four major figures, he ends on an uncertain note. "Whether this nineteenth-century way of thinking really does have twenty-first century uses is not yet clear." We are, he concludes, "a long way from 1872" (p. 442).

IV

While *The Metaphysical Club* focuses on general intellectual developments, it illuminates a number of issues of special concern to those interested in law, legal and political theory, and legal and constitutional history.

A

Perhaps most obvious, the book identifies some of the ways in which the founders of the Metaphysical Club helped create the intellectual world that eventually gave birth to the law and society movement.[33] The group's ideas implied the need for socially oriented and multidisciplinary approaches to legal study, and Green and Holmes made that conclusion explicit. The club's two lawyer members began explaining for their professional audience the extent to which things formally denominated "legal" were inextricably related to an infinite range of diverse and complex phenomena, most of which seldom if ever appeared in nineteenth-century judicial opinions, treatises, casebooks, or classroom discussions.

Nicholas St. John Green, who was both a practitioner and a teacher, was one of the first legal writers to launch a methodical attack on legal "formalism," by which he meant "the belief that legal concepts refer to something immutable and determinate" (p. 223). In developing his approach, Menand explains, Green was adapting Wright's critique of Herbert Spencer's evolutionary synthesis and applying it to legal issues. In particular, Green focused on the problem of causality, emphasizing that the concept of

31. For examinations of the "communitarian" strain among pragmatist and progressive intellectuals, see, e.g., Wilson 1968; Wilson 1990.

32. Menand accepts two basic criticisms of pragmatism as a philosophy: that it takes human interests and desires for granted without sufficiently analyzing or explaining them, and that it lacks an adequate theory of moral judgment (p. 375).

33. For the history of the law-and-society movement, see Garth and Sterling 1998; Trubek 1990.

a "chain of causation" was only a metaphor and that the legal concept of "proximate cause" had no place or meaning in the world of modern science. Rather, the distinction between "remote" and "proximate" cause was merely a verbal device that the law adopted to mask a policy-based judgment as to the point where it would begin to impose liability (pp. 223–25). Thus, following Peirce and Wright, Green stressed that such legal ideas were not meaningless or arbitrary but rather purposive and practical. They were intellectual tools whose value depended on how well they allowed people to identify relevant facts, classify them into workable groups, and impose liability where it was socially convenient and desirable. Their utility, in other words, depended on neither logic nor a correspondence with "nature," but on their ability to facilitate human action and fulfill human purposes.

Green's critique of formalism and legal causality would eventually became widely accepted and helped inspire ever-broadening social and cultural approaches to the study of law (see, e.g., Horwitz 1982, 201–13). It moved legal analysis from words and concepts to real-world forces and events, and it literally reached out to bring the entire world within its purview. The "entire cause" of any effect, Green wrote in 1870, consisted in "all" the factors that helped produce it, including "each and every surrounding circumstance." Those innumerable factors were "mutually interwoven with themselves and the effect, as the meshes of a net are interwoven" (p. 224). From those embryonic insights—law as purposive and practical, legal concepts as utilitarian constructs, the human world as interrelated and complex, and causality as an all-encompassing range of factors—most of the ideas that have driven law and society scholarship easily flow forth.

If Green is a relatively distant and unknown forebear of law and society scholarship, Holmes is a more immediate and much-heralded progenitor whose broad contributions to American law, jurisprudence, and scholarship have been widely recognized. Stressing the importance of practical consequences over doctrinal logic and emphasizing the salience of social and cultural factors, Holmes was a major force in turning American legal thought toward empiricism, positivism, and utilitarianism. In two famous and frequently quoted statements, he articulated ideas that would ultimately bear fruit in the law and society movement. The first introduced his 1881 classic, *The Common Law*:

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. (1963 [1881], 5)

The second appeared in his 1897 essay, "The Path of the Law": "You see how the vague circumference of the notion of duty shrinks and at the same time grows more precise when we wash it with cynical acid and expel everything except the object of our study, the operations of the law" (1952 [1920], 174). The two statements assert fundamental premises that have inspired numerous interrelated lines of fruitful empirical and socially oriented scholarship.

Menand tracks the depth and continuing vitality of Holmes's ideas to the fact that his jurisprudence was thoroughly modernist and even, daresay, postmodernist.[34] Holmes suggested that legal disputes and judicial decisions involve "a kind of vortex of discursive imperatives" for which no center exists. Those conflicting imperatives—justice, vengeance, logical consistency, practical convenience, political and social values, ideas of proper cost allocation, and the need to adapt to changes in underlying cultural and material conditions—compete for influence, subject only to the law's "single meta-imperative": that the judge manages "not to let it appear as though any one of these lesser imperatives has decided the case at the blatant expense of the others" (p. 339). Holmes was the first theorist to fully understand and articulate the thoroughly radical idea that law was like "an unpredictable weather pattern," Menand concludes. "It was Holmes's genius as a philosopher to see that the law has no essential aspect" (339). That, in a sense, may be the most apt and succinct statement of the premise that underlies law and society scholarship at its most incisive and sophisticated.

Menand is less helpful in addressing a related but equally well-known issue, Holmes's relationship to legal "formalism" and its reputed archdeacon, Christopher Columbus Langdell, the dean of the Harvard Law School. On the positive side, Menand does distinguish the two figures without portraying them as either stereotypical opposites or mortal enemies. He notes that Langdell's idea of science—unlike Holmes's—was "plainly pre-Darwinian" because it assumed "that behind the variety of actual judicial opinions there was an ideal order" (p. 341), and he duly notes that Holmes criticized Langdell and his book on contracts for its narrowly doctrinal and logical method (see Holmes 1880; 1963 [1881], 239–40; but see id. at 261–62). At the same time, however, he points out that Holmes also praised Langdell and that Langdell hired Holmes after hearing the latter's lectures that were subsequently published as *The Common Law* (pp. 341, 347).[35] He notes, too, the basic but nevertheless important point that Holmes did "not say that there is no logic in the law" but only "that logic is not responsible for what is living in the law" (p. 341).

34. Menand uses the former term but not the latter.

35. G. Edward White concluded that "it is clear that Holmes had considerable respect for Langdell's intellect" (1993, 197).

On the other side, however, Menand once again seems too indulgent with Holmes. First, his emphasis on Holmes as a modernist and pragmatist leads him to overlook important similarities between Holmes and Langdell and to underplay the extent to which the author of *The Common Law* was himself a rather "high" prescriptive theorist (LaPiana 1994, chap. 6).[36] In that classic work, for example, Holmes referred easily and confidently to such things as "the true theory of contract" and "the true limits of tort" (1963 (1881], 238, 223).[37] Second, Menand's sense of Holmes's "genius" tends to minimize two important characteristics of his jurisprudence. One is the extent to which Holmes's thinking changed over the years, especially during the last two decades of the nineteenth century (e.g., Horwitz 1992, 31–71; White 1993, 253–55; but see, e.g., Pohlman, 1984). The other is the extent to which Holmes's thinking was rooted in ideas that were in relatively common circulation among legal writers in Europe and America (see, e.g., Cosgrove 1987; Gordley 1991, 161–213; White 1993, 149–52, 179–95; Reimann 1992, 72–114). Indeed, as a number of recent scholars have shown, Holmes's desire for intellectual distinction led him systematically to minimize or ignore the ways in which he drew on the ideas of others.[38] Third, Menand overlooks the strategic element in Holmes's relationship to Langdell. It seems likely, for example, that Holmes purposely moderated and masked his more critical views of Langdell for practical reasons, quite possibly to strengthen his chances for a Harvard professorship (Reimann 1992, 92–95). It seems equally likely that Holmes inflated Langdell's reputation far beyond the intrinsic worth of the dean's writings and the scope of his intellectual influence precisely because he recognized quite early that Langdell could serve as a near perfect foil to highlight his own realism and learning and, above all, his own intellectual power and originality.

36. Grant Gilmore made one of the most determined efforts to link Holmes and Langdell in his influential essay *The Death of Contract* (1974). Gilmore's views are severely criticized in Pohlman 1984, 145–53.

37. Ironically, Holmes's book was subject to a laudatory but nevertheless quite critical review by Albert Venn Dicey, shortly to be appointed Vinerian Professor at Oxford, who termed Holmes himself a legal "theologian" for the way he synthesized and defended common law doctrines (see White 1993, 185–88).

38. Menand does note that "Holmes was never keen to acknowledge the influence of other people on his views" (p. 216). Others have put the point much more forcefully. "Holmes' inadequate citation of those writers who influenced his ideas, not only those he characterized as opponents but those whom he simply ignored, has deprived scholars of the opportunity to locate Holmes' 'evolutionary' approach in the writings of his contemporaries," concluded one of his most thorough biographers. The justice gave the "misleading impression" that his writings were more original than they were, and he was "loath to acknowledge [intellectual] obligations or influence" (White 1993, 152; see Pohlman 1984; Reimann 1992, 71–114).

B

This book will be equally intriguing to students of legal or political philosophy. The question whether and to what extent Holmes was actually influenced by the Metaphysical Club and its "pragmatism" has long provoked disagreements. Holmes himself provided little illumination on the subject and, in fact, habitually minimized or denied his intellectual debts to others. He was consistently cavalier when discussing anyone who was proposed as a possible "influence" on him, and he surely adopted a dismissive attitude when asked about the work of Peirce and James (Pohlman 1984, 163–64; Novick 1989, 426–27 n.4; and see, e.g., letter from Oliver Wendell Holmes Jr. to William James, 24 March 24, in Lerner 1943, 415–17). "I don't think there is much" in the "pragmatic" element of James's philosophy, he told Laski in 1916, adding curtly that "judging the law by its effects and results did not have to wait for W.J" (letter from Oliver Wendell Holmes Jr. to Harold J. Laski, 15 Sept. 1916 in Howe 1953, 1:20).

More than half a century ago, in his highly regarded study *Social Thought in America*, Morton White suggested, cautiously but plausibly, "that the closeness of Peirce, James, and Holmes in their youth as well as the 'practical' character of Holmes' definition of the law suggests a very strong cultural and intellectual tie between our most distinctive philosophy and our most distinctive philosophy of law" (White 1947, 62). To many scholars, such vague and coincidental connections seemed insufficient. "If there are important concrete similarities between Holmes and the pragmatists that indicate Holmes's commitment to pragmatism and explain his predictive theory of law, then why not describe them?" H. L. Pohlman challenged in arguing that Holmes's jurisprudence was rooted not in American pragmatism but in English utilitarianism. Whether or not such connections existed, "Holmes's membership in the Metaphysical Club is not to the point," he continued. "The biographical fact alone clearly cannot bear the weight of the argument" (Pohlman 1984, 164). Over the decades a number of scholars have attempted to identify and elaborate such specific connections, often focusing on Holmes's "practical" orientation and his "prediction" theory of law (e.g., Fisch 1942; Wiener 1949).[39] Others have either expressed doubt that any substantial connections existed or rejected such purported connections altogether (Howe 1963, 75; White 1986; Hollinger 1992, 216–28; Pohlman 1984, 144–77).

In *The Metaphysical Club* Menand largely ignores Pohlman's call for a showing of specific and technical philosophical connections and embraces White's approach, adding details and nuances that go well beyond the latter's briefer and more general observations. As already discussed, Menand

39. More recent treatments include Millar 1975; Grey 1989; Hantzis 1988. See also Duxbury 1995, 128.

focuses on a variety of social, cultural, political, and geographical connections and on a similar, though general and relatively widely shared, set of epistemological concerns and assumptions. Simply because the connections were predominantly personal and situational, he implies, does not mean that they were not real and substantial. Beyond limning that vital if imprecise connection, however, Menand does not undertake the difficult task of trying to show that Holmes was specifically "influenced" either by the meetings of the Metaphysical Club or by any specific philosophical arguments that its members advanced. In fact, he notes that "Holmes was probably not a frequent participant" in the club's discussions (p. 216) and suggests further that some of Holmes's characteristic ideas had been forming before the club held its first meeting in 1870 (p. 217).

Moreover, to the extent that there was any "influence," Menand suggests that it most likely came from Wright, the hardline positivist and moral skeptic, not from Peirce or James.[40] He maintains, at least, that Wright was the "pivotal figure" (p. 205) in the Metaphysical Club. "In the dispute between James and Chauncey Wright—the dispute over whether our wishes and desires have any effect on the business of the universe," he declares, "Holmes sided, unequivocally, with Wright" (p. 337).[41] Moreover, he notes that Holmes, contrary to his usual practice, "never had trouble acknowledging Wright's [influence]." Whatever the influence Wright exerted, however, it apparently occurred on a general level and lay for the most part in reinforcing Holmes's preexisting tendencies rather than moving him in any new intellectual direction. Holmes, the author tells us, with his typical causal explanation, "identified with Wright's positivism: it suited perfectly his own disillusionment" (p. 217).

Further, Menand concedes not only that there may have been little specific influence but also that profound differences existed between Holmes and the pragmatists. Most obviously, Holmes accorded much less respect to human life and exhibited little or no faith in the powers of "creative intelligence" to remake social structures. He harbored a coldness, skepticism, and pessimism that distinguished him clearly from Peirce, James, and Dewey. "Holmes would never have called himself a pragmatist," the author acknowledges, because "he associated the term with a desire to smuggle religion back into modern thought under a pseudo-scientific cover" (p. 432).

40. If any of the other members of the Metaphysical Club had an "influence" on Holmes, Menand would apparently nominate Green for the role. He notes, at least, that "Green wrote frequently for the *American Law Review*, articles much admired by his friend and editor Wendell Holmes" (p. 223). On at least one occasion, Holmes linked himself and Green as "outsiders" whom Peirce had treated "with contempt or at least indifference" (letter from Oliver Wendell Holmes Jr. to Felix Frankfurter, 19 March 1929, in Mennel and Compston 1996, 237).

41. Menand continues: Holmes "came to think James incurably soft-hearted, and James, in response, came to think Holmes repellently hard-headed" (p. 337).

Beyond exploring their personal relationships, their acceptance of the same "single idea" about ideas (p. xi), and their parallel efforts to understand a common and rapidly changing world, Menand ultimately bases his identification of Holmes with the pragmatists on the claim that—in spite of everything else—they were united on the core issues that were most fundamental to America and its twentieth-century future. Their differences, he insists, should not obscure the decisive similarities. Holmes's "belief that life is an experiment, and that since we can never be certain we must tolerate dissent, is consistent with everything James, Peirce, and Dewey wrote," he declares. "What Holmes did not share with those thinkers was their optimism" (pp. 432–33). In other words, on the level of hopefulness, they differed, but in their most fundamental conclusions of political philosophy they were one. The unity of Holmes and the pragmatists lay in their demand for intellectual tolerance and their commitment to what they saw as its essential political corollary, the desirability and worth of an open, democratic, and relatively egalitarian society.

In supporting this conclusion Menand invokes a telling, if slender, tie between Holmes and Dewey. Although the justice dismissed the work of James and Peirce, he somewhat surprisingly recognized Dewey—the most hopeful, socially oriented, systematically democratic, and politically active of the pragmatists—as a kindred intellectual spirit. Holmes read and reread Dewey's "most wide-ranging philosophical book," *Experience and Nature*, and concluded "with growing pleasure" that he had found "a philosopher whose conception of existence seemed to match his own." Although the book was "incredibly ill-written," Holmes wrote, it nonetheless conveyed "a feeling of intimacy with the universe that I found unequaled." His conclusion, notwithstanding the typically backhanded quality he gave it, was arresting and revealing. "So methought God would have spoken had He been inarticulate but keenly desirous to tell you how it was." Dewey, the author adds, made the relationship reciprocal, terming the justice "one of our greatest American philosophers" (p. 437).

Thus, Menand does not try to answer the question of Holmes's relationship to pragmatism and the Metaphysical Club in narrow or technical terms but rather on a broad level that resonates to the highest reaches of American law, intellectual life, and political culture. His answer—satisfying or not—is clear and fundamental. Moreover, it is also particularly important because Holmes's thinking has become central to American philosophy and jurisprudence. Since the early decades of the twentieth century, Holmes has been elevated to the status of an American icon, and both his jurisprudence and his general "philosophy" of life have been savagely criticized as well as lavishly praised. Exploring the nature of his thought and its relationship to other major figures and their ideas, then, involves nothing less than identifying and defining what is good and what is bad in the history of American

law, philosophy, and politics.[42] Ironically, Menand overlooks what may be the most compelling historical argument for linking Holmes and Dewey under the banner of modern American democratic ideals. In the late 1930s and 1940s, when the United States faced an unprecedented crisis, confronted by the spread of "totalitarianism" and then swept into a frightening world war, it was to those two thinkers—Holmes and Dewey—that most American intellectuals turned in seeking a philosophical defense for their badly beleaguered democratic ideals and values (Purcell 1973, 206–17).

C

For legal and constitutional historians *The Metaphysical Club* offers a rich and thoughtful discussion of intellectual developments that were crucial to the evolution of American law and jurisprudence. More specifically, it casts light on three distinct issues that legal historians have frequently addressed.

First, and most generally, it confirms a familiar, if nonetheless fundamental, lesson. Although addressing a different historical period and different substantive issues, it shows exactly what Jack Rakove showed in his excellent book, *Original Meanings*: that historical phenomena—whether ideas and events, or legal enactments and opinions—are deeply and inextricably embedded in a complex and profoundly human context (Rakove 1996). Examining the role that science and religion played in pre–Civil War struggles over slavery, for example, Menand observes "that nothing like a pattern emerges." He concludes shrewdly:

> Scientific and religious beliefs are important to people; but they are (usually) neither foundational premises, backing one outcome in advance against all others, nor ex post facto rationalizations, disguising personal preferences in the language of impersonal authority. They are only tools for decision making, one of the pieces people try to bundle together with other pieces, like moral teachings and selfish interests and specific information, when they need to reach a decision. (P. 145)

The relationship between human behavior and formal norms and decisions, he suggests, is complex, varied, individual, and only imperfectly knowable. Thus, any theory that posits an objective, knowable, and specifically directive "original intent" as a general basis for interpreting the Constitution must ultimately be unsatisfying and nugatory. It must either rely for purposes of expedience on assumptions that are simplified, tractable, and to

42. E.g., "Holmes's persistent popularity among 'realists' and 'pragmatists' in the twentieth century is a comment on the moral hollowness of contemporary liberalism" (Lears 1981, 124). For highly critical views of Holmes, see Rogat 1964; Alschuler 2000.

some extent arbitrary, or it must rest content with results that are vague, nondeterminative, and ultimately inadequate to the theory's prescriptive claims.

Menand also demonstrates, however, as Rakove did equally, that the proper lesson to be drawn from a recognition of historical complexity is double-edged. If historical inquiry can seldom provide answers to specific and fairly contested constitutional questions, it can nevertheless yield its own rich and salient harvest. When thoroughly researched and deeply informed, when sensitive and exacting, and when fair and honest, it can yield the kind of profound insights and deep understanding that underwrite sound practical judgment and, on occasion, even inspire wisdom about the conduct of human affairs.

Second, the book highlights the fact that a fundamental element in the intellectual transformation that occurred during the nineteenth century was a radical reconception and redefinition of "science" itself. Commenting on Gray's triumph over Agassiz in their debate about Darwinism, for example, Menand points to the nature of the divide that separated the two distinguished figures. "Gray understood something that Agassiz did not, which was that there were new rules for scientific argument" (p. 126). Gray "was thinking in terms of relations and probabilities," while Agassiz "was still thinking in terms of types and ideas."[43] It was Gray's new understanding, subsequently developed by Peirce and then transferred into legal theory by Green and Holmes, that swept the field in the twentieth century, while Agassiz's understanding came to seem outmoded, rationalistic, and even obscurantist (pp. 222–26).

Recognizing the nature of the gulf between the two makes it easier to understand the analogous change that transformed American legal thought after Green and Holmes. In particular, it helps clarify the nature and reality of the oft-proclaimed "legal science" that so many nineteenth-century legal writers practiced. Twentieth-century legal scholars have often been reluctant to credit their forebears with being "legal scientists," but Menand helps us understand why those nineteenth-century writers so conceived of themselves, how later generations came to understand the term "science" in such a new and radically different way, and why, consequently, those later gener-

43. Menand nicely explains further why Gray, advancing beyond Agassiz's understanding of science, nevertheless remained a nineteenth-century mind. "Like many other nineteenth-century scientists (including Darwin's English champion Thomas Huxley), Gray had interpreted Darwin phenomenalistically: he took natural selection to be an explanation of phenomena, not an account of final causes. In Gray's view, science was only concerned with the things we experience; it left questions about ultimates, questions like whether God exists or life has a purpose, where it found them. . . . But Darwin did not believe he had left questions about ultimates where he had found them, and he eventually wrote *The Variation of Plants and Animals under Domestication* (1868) to show why Gray was wrong: because nothing in the process by which organisms evolve can be explained by a theory of design" (p. 127).

ations had difficulty understanding the nature of nineteenth-century "legal science."[44]

Finally, *The Metaphysical Club* also suggests the "thick" and intertwined roots of the cultural commitment to individualism, the "free market," and private contract that marked mid- and late-nineteenth-century America. By showing that human behavior in the aggregate conformed to certain patterns, Darwinism and statistical theory seemed to coincide in showing "that things regulated themselves."[45] That conclusion, in turn, "was taken to confer a kind of cosmic seal of approval on the political doctrines of individualism and laissez-faire" (p. 194). Racist assumptions cemented the consensus. Huxley and others helped formulate "a theology for the postslavery era" by arguing that natural selection showed that the "white man" was superior to the black and that he could "wash his hands" (p. 195) of any responsibility for racial inequalities. Thus, a powerful matrix of ideas, attitudes, interests, and existing "human arrangements" generated a deep and widespread belief in a particular and culturally defined concept of individual freedom. "Nineteenth-century liberals believed that the market operated like nature," Menand explains, "because they had already decided that nature operated like a market" (p. 195).

For legal and constitutional historians, the point seems clear. "Classical legal thought," "laissez-faire constitutionalism," and the general jurisprudence of the Supreme Court in the late nineteenth and early twentieth centuries did not flow directly from the language of the Constitution, the original intent of its framers, or the categories and methods of the common law (see generally Wiecek 1998). Rather, those legal phenomena were complex cultural products. They resulted from many of the forces that Menand identifies as well as many others that lie beyond the scope of his work, including traditional ideas of individualism and free will, the collapse of Reconstruction, the politics of judicial appointment, the emergence of an ethnically diverse industrial work force, the rise and triumph of large-scale corporate capitalism, and the changing nature, structure, and social composition of the legal profession itself.

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44. While Menand suggests the ways in which Holmes, James, Peirce, and Dewey were "modernists" who shaped the twentieth-century world, he also stresses the gulf that separates them from their early-twenty-first century descendants. "[I]t is worth trying to see how almost unimaginably strange they and their world were, too" (p. 442). For an excellent discussion of nineteenth-century "legal science," see LaPiana 1994. For a more general discussion of American legal thought from the late nineteenth century to the late twentieth century, see Duxbury 1995.

45. Menand's analysis relies on a complex combination of factors, and he specifically rejects the long-discredited—though sometimes still repeated—claim that "Social Darwinism" was widespread among late nineteenth-century businessmen. "What looks like Social Darwinism in the businessmen of Pullman's generation was generally just a Protestant belief in the virtues of the work ethic combined with a Lockean belief in the sanctity of private property. It had nothing to do with evolution" (p. 302). See, e.g., Wyllie 1959; Bannister 1979.

Those intertwined jurisprudential phenomena, furthermore, were the result of conscious and individual human purposes as well as cultural presuppositions. Menand offers as evidence of his claim about the influence of classical economic theory an opinion of William Howard Taft, then a federal circuit judge, sentencing one of the leaders of the Pullman strike to a six-month prison term for contempt (*Thomas v. Cincinnati, New Orleans & Texas Pacific Railway Co. v. Phelan*, 62 F. 803 [C.C. S.D. Ohio 1894]). He cites Taft's reasoning that the strike by Debs's American Railway Union against the Pullman Company was unlawful because it involved actions by "workers with no 'natural relation' (as Taft called it) to Pullman" (p. 300)—that is, by workers who were not themselves employees of the company. While the opinion shows the influence of classical economic theory, it also suggests Taft's own individual values and biases. Other opinions that he wrote establish more unequivocally the nature of those personal views and their influence on his jurisprudence, and they show further that Taft was no mere captive of established economic theory and doctrinal logic. As important as those factors were in shaping and sustaining his views, they did not alone determine the nature or results of his jurisprudence. His other opinions show, in fact, that Taft was an able legal craftsman who could and did purposefully manipulate legal concepts to achieve the specific social results he desired (see Purcell 1992, 109–12; see generally Post 1998). That important if unsurprising conclusion is, of course, consistent with two of Menand's basic pragmatic premises: Individuals act to serve purposes, and each individual has a unique life experience and, consequently, may think, decide, and take action in his or her own distinct and even singular way.

The Metaphysical Club thus highlights one of the fundamental problems in contemporary American jurisprudence: the meaning, nature, and reality of "the rule of law." An acute challenge to legal and constitutional theory, the problem of "the rule of law" now presents equally a challenge to contemporary American politics and institutions. The broadest significance of *Bush v. Gore* (531 U.S. 98 (2000)), after all, is that the Supreme Court of the United States had a breathtaking opportunity to demonstrate that "the rule of law" existed and worked; that legal principles and practices did, in fact, limit and channel judicial judgment; that law and politics were, indeed, distinct and contrasting arenas. And yet, when taken to the mountaintop, it succumbed. Thus, Menand's basic premises—and the premises of pragmatism—seem once again both incisive and well founded. We would, indeed, seem to be living in the world that the classical age of pragmatism helped create and shape.

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