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SOME THOUGHTS ON THE MERITS OF PRAGMATISM AS A GUIDE TO ENVIRONMENTAL PROTECTION

JOEL A. MINTZ*

Abstract: Pragmatism, a philosophical movement that had considerable influence in the United States in the early twentieth century, has recently undergone an intellectual revival. In the 1980s, its precepts were applied to legal analysis and commentary by a diverse group of scholars who refer to themselves as "legal pragmatists." Moreover, a number of philosophers and legal scholars have attempted to apply pragmatic thought to ethical aspects of protecting the non-human natural world. This Article surveys and evaluates selected aspects of that varied, provocative body of scholarship. After summarizing the fundamental principles espoused by pragmatic thinkers, the Article focuses on the writings of two neo-pragmatic scholars, Keith Hirokawa and Daniel Farber, whose works provide useful illustrations of pragmatic approaches to environmental laws and policies. It also assays the overall benefits and shortcomings of pragmatic analysis, both as a tool for environmental policymaking and as an aid to advocates of needed improvements in environmental laws.

INTRODUCTION

Pragmatism, a philosophy that emphasizes action, experimentation, and a concern with what "works" in human experience, has undergone a revival in recent years. First conceived in the final decade of the nineteenth century, philosophic pragmatism was initially intended to provide an alternative to foundationalism, i.e., the view that there are innate and indubitable beliefs upon which knowledge must be based.[1] Traditional pragmatists, such as William James, Charles Pierce, John Dewey, Josiah Royce, and George Herbert Mead, viewed all human understanding as intrinsically fallible; they saw knowing as

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[1] *See* William James, *What Pragmatism Means*, *in* THE AMERICAN PRAGMATISTS 28, 31–32 (Milton Konvitz & Gail Kennedy eds., 1960).

an open-ended quest for greater certainty, grounded in practical experience, and motivated by a desire for successful actions.[2]

Traditional pragmatism had considerable influence in the first several decades of the twentieth century. Its intellectual significance waned in the 1930s and thereafter. However, beginning in the 1960s, pragmatism was revived by Richard Rorty and other "neo-pragmatists" and later, in the 1980s, by a diverse group of legal scholars who viewed themselves as "legal pragmatists." More recently, a number of philosophers and legal scholars have attempted to apply the precepts of pragmatic thought to the ethical aspects of protecting the non-human natural world and also, in at least a few instances, to the network of laws and policies intended to conserve the environment.[3]

In this Article, I shall attempt to survey and then evaluate selected aspects of that varied and provocative body of scholarship. In Part I, I will discuss, in greater detail, the fundamental principles espoused by pragmatic thinkers, including leading philosophical pragmatists, environmental pragmatists, and jurisprudential pragmatic scholars. Part II will include a discussion of relatively recent efforts to apply pragmatic analysis to environmental decisionmaking and the articulation of public policy. In that Part, I will focus on the writings of two neo-pragmatic scholars, Keith Hirokawa and Daniel Farber, whose works provide thoughtful, helpful illustrations of efforts to approach environmental laws and policies in pragmatic ways. Finally, in Part III, I shall assay the benefits and shortcomings of pragmatic analysis as both a tool for environmental policymaking and an aid to environmental proponents as they advocate needed improvements in environmental laws.

I. The Types, Methods, and Principles of Pragmatism: An Overview

As it has evolved, pragmatism has taken many forms and attracted a highly diverse set of supporters. In this section, I shall summarize, in brief form, the salient precepts of three distinct and significant types of pragmatic thought: philosophical pragmatism, environmental pragmatism, and legal pragmatism. Although, as we shall see, the precise dimensions of each of these partially overlapping schools of thought are controversial, this summary will focus on those core values and principles to which pragmatic thinkers seem most likely to subscribe.

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[2] *See id.* at 29–33.

[3] *See* discussion *infra* Part I.C.

A. *Philosophical Pragmatism*

Philosophical pragmatism, as initially articulated by William James and other early twentieth century academics, is, in one sense, an attitude or method of thought.[4] It emphasizes a focus on facts and consequences, as opposed to theories and principles.[5] As James explained it, pragmatism

> stands for no particular results. It has no dogmas, and no doctrines save for its method. . . . [I]t lies in the midst of our theories, like a corridor in a hotel. Innumerable chambers open out of it. In one you may find a man writing an atheistic volume; in the next some one on his knees praying for faith and strength; in a third a chemist investigating a body's properties. In a fourth a system of idealistic metaphysics is being excogitated; in a fifth the impossibility of metaphysics is being shown. But they all own the corridor, and all must pass through it if they want a practicable way of getting into or out of their respective rooms.[6]

In addition to being a method of thought—with sufficient flexibility to appeal to individuals who have divergent views in many respects, as noted above—philosophical pragmatism is also distinguished by its experiential, provisional, and pluralistic notion of truth.[7] In William James's words:

> Pragmatism . . . asks its usual question. "Grant an idea or belief to be true," it says, "what concrete difference will its being true make in any one's actual life? How will the truth be realized? What experiences will be different from those which would obtain if the belief were false? What, in short, is the truth's cash-value in experiential terms?"The moment pragmatism asks this question, it sees the answer: True ideas are those that we can assimilate, validate, corroborate, and verify. False ideas are those that we can not. That is the practical difference it makes to us to have true ideas; that, therefore, is the meaning of truth, for it is all that truth is known as.[8]

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[4] James, *supra* note 1, at 33.

[5] *Id.* at 31–32.

[6] *Id.* at 33.

[7] *Id.* at 34–36.

[8] William James, *Pragmatism's Conception of Truth*, *in* THE AMERICAN PRAGMATISTS, *supra* note 1, at 44, 46.

Richard Rorty takes a relatively similar view.[9] In his introduction to *Consequences of Pragmatism*, Rorty states that "a pragmatist theory about truth . . . says that truth is not the sort of thing one should expect to have a philosophically interesting theory about. For pragmatists, 'truth' is just the name of a property which all true statements share."[10] Rorty believes that there is little of significance to be said about this common property of true statements.[11] He thus feels that the Platonic tradition, with its emphasis on fixed, *a priori* notions of Truth and Goodness, has "outlived its usefulness."[12]

John Dewey, another highly influential pragmatist, expressed his theory of truth in like fashion.[13] Dewey wrote, "Truth is a collection of truths; and these constituent truths are in the keeping and testing as to matters-of-fact."[14] For Dewey as well, knowledge was to be grasped from the concrete particulars of experience, rather than logically deduced by abstract reasoning or transcendentally revealed.[15]

Another closely related common feature of philosophical pragmatism is its firm rejection of rigid canons and dogmatic beliefs.[16] As James put it, as an intellectual approach pragmatism is "a mediator and a reconciler. . . . She has, in fact, no prejudices whatever, no obstructive dogmas, no rigid canons of what shall count as proof. She is completely genial. She will entertain any hypothesis, she will consider any evidence."[17]

In keeping with this doctrinal flexibility, philosophical pragmatism puts considerable emphasis upon indeterminacy and the limitations of human understanding.[18] As Kelly A. Parker has noted, for the pragmatist "[t]here is an irreducible pluralism in the world we encounter. There is [also] the idea (supported by contemporary physics) that indeterminacy and chance are real features of the world. Change, development and novelty are everywhere the rule."[19]

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[9] *See* RICHARD RORTY, CONSEQUENCES OF PRAGMATISM, at xxiv–xxvi (1982).
[10] *Id.* at xiii.
[11] *Id.*
[12] *Id.* at xiv.
[13] JOHN DEWEY, EXPERIENCE AND NATURE 128–29 (Eugene Freeman ed., 2d ed. 1971).
[14] *Id.* at 332.
[15] *See id.* at 5–9.
[16] *See* James, *supra* note 1, at 43.
[17] *Id.*
[18] *See* Kelly A. Parker, *Pragmatism and Environmental Thought*, *in* ENVIRONMENTAL PRAGMATISM 21, 25 (Andrew Light & Eric Katz eds., 1996).
[19] *Id.*

Pragmatic notions of ethics also emphasize change, development, and pluralism.[20] Pragmatists generally reject universally valid ethical theories.[21] Pragmatists believe that as the world evolves, and human societies grow and change, new kinds of ethical dilemmas emerge.[22] To solve them, people need to develop new methods of understanding what is right and wrong.[23]

As Kelly Parker has written:

> Pragmatism maintains that no set of ethical concepts can be the absolute foundation for evaluating the rightness of our actions. . . . [Instead, t]he aim of ethics is not perfect rightness . . . but rather creative mediation of conflicting claims to value, aimed at making life on the planet relatively better than it is.[24]

Pragmatic ideas regarding ethics are further manifested in the area of social and political thought.[25] For John Dewey and other pragmatists, social and political institutions exist (or should exist) to provide for the needs of individuals.[26] The worth of projects is to be judged by the extent of their conformity to social needs.[27] Moreover, since human needs and social circumstances are frequently in flux, social institutions need frequent reform.[28] This can be best accomplished where diverse individuals participate actively and regularly in public affairs, so that society as a whole may take advantage of their diverse experience and intelligence.[29]

Finally, in its social outlook and elsewhere, philosophical pragmatism places an especially high value on experimentation.[30] For pragmatists, "[b]ecause the public consists of a vast plurality of people and things valued, and because the world is changing at every moment, the ways and means of best providing for the individual and common good have to be experimentally determined."[31] Rather than being measured

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[20] *Id.* at 26.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Parker, *supra* note 18, at 26–27.

[25] *See id.*

[26] *Id.* at 27.

[27] *See id.*

[28] *See id.*

[29] *See* JOHN DEWEY, THE PUBLIC AND ITS PROBLEMS 202–03 (1927); *see also* Parker, *supra* note 18, at 28.

[30] Parker, *supra* note 18, at 27.

[31] *Id.*

against some objective, impersonal set of abstract criteria, social projects are to be tested by their human consequences and their fulfillment of practical social needs.[32] What works is what benefits people; what benefits people can often be determined by thoughtful experimentation with new and untried social institutions and arrangements.[33]

B. *Environmental Pragmatism*

Environmental pragmatism is a relatively new direction in modern philosophy.[34] A product of the late 1980s and 1990s, it attempts to connect the precepts and methods of philosophical pragmatism to the solution of real environmental issues.[35]

The most comprehensive collection of essays by environmental pragmatists may be found in *Environmental Pragmatism*, edited by Andrew Light and Eric Katz.[36] In their introduction to this work, Light and Katz accurately observe that environmental pragmatism refers to "a cluster of related and overlapping concepts," as opposed to a single view.[37] They note that it may take at least four distinct forms:

> (1) examinations into the connection between classical American philosophical pragmatism and environmental issues; (2) the articulation of practical strategies for bridging gaps between environmental theorists, policy analysts, activists, and the public; (3) theoretical investigations into the overlapping normative bases of specific environmental organizations and movements in order to provide grounds for the convergence of activists on policy choices; and (4) general arguments for theoretical and meta-theoretical moral pluralism in environmental normative theory.[38]

What all of the environmental pragmatist approaches share, however, is a rejection of the view that "adequate and workable environmental ethics must embrace non-anthropocentrism, holism, moral monism, and, perhaps, a commitment to some form of intrinsic value."[39]

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[32] *See id.*

[33] *See id.* at 28.

[34] *See generally id.*

[35] *See* Andrew Light & Eric Katz, *Introduction* to ENVIRONMENTAL PRAGMATISM, *supra* note 18, at 1, 5.

[36] *See generally* ENVIRONMENTAL PRAGMATISM, *supra* note 18.

[37] Light & Katz, *supra* note 35, at 5.

[38] *Id.*

[39] *Id.* at 2–3.

For Kelly Parker, the principal insight of environmental pragmatism is that "the human sphere is embedded at every point in the broader natural sphere, that each inevitably affects the other in ways that are often impossible to predict, and that values emerge in the ongoing transactions between humans and environments."[40] Parker defines environment as "the field where experience occurs, where my life and the lives of others arise and take place."[41] He believes that pragmatism commits us to treating all places where experience unfolds, i.e., all environments, with "equal seriousness."[42] Moreover, under Parker's pragmatic approach, people are encouraged to "restructure our social institutions" so that the public is afforded "a real voice in determining the kinds of environments we inhabit."[43]

Like Parker, Sandra B. Rosenthal and Rogene A. Buckholz also emphasize the organic unity of the individual embedded in his or her environment.[44] To them, human beings are biological creatures, part of, and continuous with, nature.[45] In light of this, the philosophical argument over anthropocentrism is meaningless since no real line may be drawn between human and environmental well-being.[46] Rosenthal and Buckholz see the "*systematic* focus" of pragmatism as being on "science as *method*, or as lived through human activity, on what the scientist *does* to gain knowledge."[47] Humans exist in the world as active experimenters who create knowledge and formulate ethical values by integrating "potentially conflicting values and viewpoints."[48]

Another leading environmental pragmatist, Bryan G. Norton, also advocates a pluralistic approach.[49] In Norton's opinion:

> [T]he goal of seeking a unified, monistic theory of environmental ethics represents a misguided mission, a mission that was formulated under a set of epistemological and moral assumptions that harks back to Descartes and Newton. . . . The search for a "Holy Grail" of unified theory in environmental

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[40] *Id.* at 21.

[41] *Id.* at 29.

[42] *Id.*

[43] Light & Katz, *supra* note 35, at 31.

[44] Sandra B. Rosenthal & Rogene A. Buckholz, *How Pragmatism* Is *an Environmental Ethic, in* ENVIRONMENTAL PRAGMATISM, *supra* note 18, at 38, 45.

[45] *Id.* at 40.

[46] *Id.*

[47] *Id.* at 39.

[48] *Id.* at 42.

[49] Bryan G. Norton, *Integration or Reduction: Two Approaches To Environmental Values, in* ENVIRONMENTAL PRAGMATISM, *supra* note 18, at 105, 105.

> values has not progressed towards any consensus regarding what inherent value in nature is, what objects have it, or what it means to have such a value.[50]

Norton's expressed preference is for the integration of multiple values on three "scales" of human concern and valuation: (1) locally developed values that reflect the preferences of individuals; (2) community values that protect and contribute to human and ecological communities; and (3) global values, which express a hope for the long-term survival of our species.[51] As Norton views it:

> A good environmental policy will be one that has positive implications for values associated with the various scales on which humans are *in fact* concerned, and also on the scales on which environmentalists think we *should* be concerned if we accept responsibility for the impacts of our current activities on the life prospects and options—the "freedom"of future generations.[52]

One particularly provocative aspect of environmental pragmatic thought is its desire for compatibilism, i.e., a philosophical framework within which competing environmental theories may be compatible in practice.[53] Andrew Light is an advocate for this view.[54] Light contrasts the views of social ecologists and materialists, such as Murray Bookchin and Herbert Marcuse,[55] who view environmental degradation as presupposed by a capitalist economy, and ontologists, including "deep ecologists" like Arne Naess,[56] whose focus is on reform of the self, and one's relationship with the non-human world, as expressed in individual identity.[57] To harmonize these mutually antagonistic schools of environmental thought, Light proposes a pragmatic "principle of tol-

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[50] *Id.* at 106.

[51] *Id.* at 127–28.

[52] *Id.* at 131.

[53] Andrew Light, *Compatibilism in Political Ecology*, *in* ENVIRONMENTAL PRAGMATISM, *supra* note 18, at 161, 161.

[54] *See id.*

[55] *See id.* at 162–69 (discussing MURRAY BOOKCHIN, RETHINKING SOCIETY: PATHWAYS TO A GREEN FUTURE (1990); HERBERT MARCUSE, ONE DIMENSIONAL MAN (1972); Andrew Feenberg, *The Bias of Technology*, *in* MARCUSE: CRITICAL THEORY AND THE PROMISE OF UTOPIA (Robert Pippin et al. eds., 1988)).

[56] *See* Light, *supra* note 53, *in* ENVIRONMENTAL PRAGMATISM, *supra* note 18, at 165 (discussing Arne Naess, *The Shallow and the Deep, Long Range Ecology Movements: A Summary*, 16 INQUIRY 95, 95–100 (1973)).

[57] *Id.* at 162–69.

erance."[58] Under it, theorists and practitioners are required to communicate a "straightforward public position" that endorses the considerations on which they agree, and the practices best suited to meeting their mutually desired goals, while leaving some questions that divide them to private dispute.[59]

As Light sees it, "environmental pragmatists are not wedded to any particular theoretical framework from which to evaluate specific problems, but [they] can choose the avenue which best protects the long-term health and stability of the environment, regardless of its theoretical origin."[60] For Light and other environmental pragmatists, the "truth" of various environmental theories is thus not always important in environmental practice.[61] Instead, "the appropriateness of any one theory in a particular case is contingent on historical, cultural, social and resource conditions."[62]

C. *Legal Pragmatism*

Just as environmental pragmatism is an effort to apply pragmatic notions to the solution of environmental problems, legal pragmatism infuses the methods and principles of pragmatic thinking into legal theory.[63] This attempt has taken many, sometimes conflicting, forms. As Richard A. Posner has noted, "the core of pragmatism or the pragmatic temper or outlook is vague enough to embrace a multitude of philosophies that are profoundly inconsistent at the operating level . . . including a multitude of inconsistent jurisprudences."[64] One unifying factor of legal pragmatism, however, is its antipathy to legal formalism, i.e., the notion that legal questions may be answered solely by an inquiry into what Posner has described as "the relation between concepts and hence without need for more than a superficial examination of their relation to the world of fact."[65]

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[58] *Id.* at 170.

[59] Andrew Light, *supra* note 53, at 170–71.

[60] *Id.* at 172.

[61] *Id.* at 177.

[62] *Id.* Some aspects of Light's arguments are drawn from RICHARD RORTY, CONTINGENCY, IRONY AND SOLIDARITY (1989).

[63] *See* Richard A. Posner, *What Has Pragmatism To Offer Law?*, 63 S. CAL. L. REV. 1653, 1661 (1990).

[64] *Id.*

[65] *Id.* at 1663.

Legal pragmatism has its roots in the writings of Oliver Wendell Holmes, Jr.[66] As a young man in Boston, Holmes had engaged in lengthy conversations with William James and Charles S. Peirce regarding the then still new philosophy of pragmatism.[67] These discussions had a profound influence on Holmes's legal thinking which, in many instances, applied pragmatic ideas to legal institutions and theories.[68]

In *The Common Law,* for example, Holmes argued that "the life of the law has not been logic, it has been experience."[69] In Holmes's view, "[t]he 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 a good deal more to do than the syllogism in determining the rules by which men shall be governed."[70]

Holmes also argued that the object of legal study is "the prediction of the incidence of public force through the instrumentality of the courts."[71] He defined a "legal duty" as "nothing but a prediction that if a man does nor omits certain things he will be made to suffer in this or that way by judgment of the court."[72] Moreover, Holmes's stated notion of truth, and of the value of democracy, discussion, and social consensus, was also quite consistent with the positions of James and Dewey.[73] Thus, for Holmes, "[t]he ultimate good desired is better reached by free trade in ideas–[and] the best test of truth is the power of the thought to get itself accepted in the competition of the market."[74]

Holmes's pragmatic jurisprudence was developed further by Benjamin Cardozo in *The Nature of the Judicial Process.*[75] This study of the realities of judge-made law rejected the Blackstonian theory of "pre-existing rules of law which judges found but did not make."[76] Instead, even though "the bulk and pressure of rules" hedge the judge in to a

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[66] Oliver Wendell Holmes, *The Path of the Law, in* THE AMERICAN PRAGMATISTS, *supra* note 1, at 143, 144.

[67] Mark DeWolfe Howe, *Introduction* to OLIVER WENDELL HOLMES, THE COMMON LAW, at xiii (Little Brown 1963) (1881).

[68] *Id.*

[69] Holmes, *supra* note 66, at 143 (citing OLIVER WENDELL HOLMES, THE COMMON LAW 1 (Little Brown 1963) (1881)).

[70] *Id.*

[71] *Id.* at 144.

[72] *Id.* at 145.

[73] *See* DEWEY, *supra* note 13, at 129; James, *supra* note 1, at 31–32.

[74] Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

[75] BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (Yale Univ. Press, 1971) (1921).

[76] *Id.* at 131.

considerable extent, "[i]nnovate, however, to some extent he must, for with new conditions there must be new rules."[77] Moreover, within the narrow range of choice, the judge's duty is a Deweyan one: to search for social justice.[78] Thus, Cardozo opined, "when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment."[79]

After Holmes and Cardozo, and a more than thirty-year period of quiescence, legal pragmatism underwent a revival that paralleled, and was influenced by, the neo-pragmatism of Rorty, Fish, Davidson, Putney, and others. The intellectual vigor of that revival, as well as the extent of its breadth and diversity, is well displayed in a *Symposium on the Renaissance of Pragmatism in American Legal Thought,* (the Renaissance Symposium) published in the September, 1990, issue of the *Southern California Law Review.*[80] In the remainder of this section, I shall treat a sampling of the numerous ideas extolled and debated in this important Symposium.

Thomas Grey's article in the Renaissance Symposium[81] is, in part, a discussion of the poet Wallace Stevens, suggesting that Stevens was "a poetic *pragmatist* philosopher—the kind of theorist who constantly puts into question the status of theory itself and its relation to practice."[82] Nonetheless, the Grey piece is replete with interesting observations respecting legal pragmatism. Thus, for example, Grey takes the view that "[i]n law, pragmatism mediates between 'realist' positivistic and instrumentalist conceptions of law on the one hand, and 'idealist' legal theories that stress the role of history, ideology, language, and the 'social construction of reality' on the other."[83] He also states, "I am convinced that pragmatism is the implicit working theory of most good lawyers."[84]

Martha Minow and Elizabeth Spelman employ pragmatic principles as the basis for an examination of what people mean when they

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[77] *Id.* at 137.

[78] *Id.*

[79] *Id.* at 150.

[80] *Symposium on the Renaissance of Pragmatism in American Legal Thought,* 63 S. CAL. L. REV. 1569 (1990).

[81] Thomas C. Grey, *Hear The Other Side: Wallace Stevens and Pragmatist Legal Theory,* 63 S. CAL. L. REV. 1569, 1570 (1990).

[82] *Id.* at 1570.

[83] *Id.* at 1571.

[84] *Id.* at 1590.

say, "'[y]ou must see it in context.'"[85] Citing Dewey and other pragmatists, they note that human judgment must be exercised in a wide variety of practical contexts and that, "[i]n a fundamental sense, the contemporary call to context is a reminder of the human relationships within which we exercise our reason."[86] For Minow and Spelman, insight comes "not from turning away from human relationships in search of some essential form of reason, but instead from encountering the differences among people, the critical perspectives afforded by the facts of our differences, and the struggle to move between contexts in the search for temporary solutions to our problems."[87] In their view, the question is: what context matters, or what context should we make matter for the moment? Moreover, they observe, "in many contemporary political and legal discussions, the demand to look at the context often means a demand to look at the structures of power, gender, race, or class relationships, or the effects of age and physical vulnerability on people's abilities to protect themselves."[88]

For Richard Posner, pragmatic jurisprudence connotes "a rejection of a concept of law as grounded in permanent principles and realized in logical manipulations of those principles, and a determination to use law as an instrument for social ends."[89] Commenting upon the revival of this approach to legal theory, along with the rise of neopragmatic philosophy more generally, Posner notes the apparent failure of alternative philosophies such as logical positivism as well as "a growing recognition that the strengths of such alternatives lie in features shared with pragmatism, such as hostility to metaphysics and sympathy with the *methods* of science, as distinct from faith in the power of science to deliver final truths."[90]

Posner argues that, in interpreting statutes, legal pragmatists tend to ask which of the possible resolutions to the problem at hand has the best consequences. Pragmatists, he states, "are interested in using the legislative or constitutional text as a resource in the fashioning of a pragmatically attractive result."[91] Interpretation, for them, is thus the use of a text in aid of an outcome.

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[85] Martha Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597, 1597 (1990) (citations omitted).

[86] *Id.* at 1648.

[87] *Id.* at 1649–50.

[88] *Id.* at 1651.

[89] Posner, *supra* note 63, at 1670.

[90] *Id.* at 1660.

[91] *Id.* at 1664.

Posner also contends that "economic analysis and pragmatism are thoroughly and . . . fruitfully compatible."[92] He notes the respect with which Pierce, Dewey, and other pragmatists viewed the scientific method; and he suggests that economic approaches to the law are equally deserving of pragmatic respect and deference.[93]

Finally, Margaret Jane Radin approaches legal pragmatism from the perspective of a feminist.[94] She argues that pragmatism and feminism have much in common. Both approaches share a commitment to finding knowledge in the particulars of experience.[95] Both view truth as provisional, ever-changing, and "hammered out piecemeal in the crucible of life and our situatedness."[96] Both reject the dichotomy between theory and practice, and both understand that political consciousness may only exist if there is "shared meaning arising out of shared interactions with the world."[97]

For Radin, a "feminist middle way" would suggest that both men and women are morally inclined toward both care and justice, and that "neither women nor men should impoverish themselves with the conventional categories of femininity or masculinity."[98] She also believes that, for feminists, pragmatism recommends that "sometimes one of the opposing modes of thought is appropriate, and sometimes the other, and no theory—only situated judgment—will tell us which one to adopt and when."[99]

II. The Application of Pragmatism to Environmental Law and Policy: Two Recent Examples

Given the renewal of interest in both philosophical and legal pragmatism, as well as the recent effort to focus pragmatic principles on environmental issues, it was, perhaps, inevitable that attempts would also be made to consider—and reconsider—environmental laws and policies in the light of pragmatic methods and precepts. This section of this paper considers two such attempts. The first, Daniel A.

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[92] *Id.* at 1669.
[93] *Id.* at 1668–69.
[94] *See generally* Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699 (1990).
[95] *Id.* at 1707.
[96] *Id.*
[97] *Id.* at 1708.
[98] *Id.* at 1718.
[99] *Id.*

Farber's book, *Eco-Pragmatism*,[100] applies pragmatic notions to questions of environmental policy-making in the face of scientific uncertainty concerning the scope of environmental problems, and to conflicts between environmental goals and economic costs. The second, a law review article by Keith Hirokawa,[101] employs environmental pragmatism for a wholly different purpose, i.e., challenging the effectiveness of radical criticism as a strategy for reforming environmental law.

A. *Farber's Eco-Pragmatism*

In *Eco-Pragmatism*, Daniel Farber attempts to come to grips with several often-asked, highly significant, and intrinsically difficult questions of environmental law and policy. He focuses squarely on: when environmental values should be sacrificed in the interest of other pressing social concerns, such as economic needs; how we should decide whether imposing an environmental rule is worthwhile; how much people should be expected to sacrifice today for a better environment in future years; and when, in a context of scientific uncertainty as to the extent of environmental risk, we should wait for more information before taking regulatory action.[102]

To answer those questions, Farber draws upon a number of pragmatic approaches and insights.[103] Contrasting the extreme viewpoints of cost-benefit advocates and environmental zealots, both of whom believe that environmental decisions should be based on single overriding values—either of economics or environmentalism—Farber proposes a pragmatic middle-way in which "economic analysis is useful but not controlling."[104]

In the pragmatic tradition, Farber focuses on a concrete example of the kinds of policy problems he has chosen to confront: the well-known case of *Reserve Mining Co. v. United States*.[105] There, the Eighth Circuit was faced with a case involving a massive discharge of asbestos in Lake Superior.[106] Although asbestos was known to be carcinogenic when airborne, it was then unclear whether it posed any health risk in

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[100] Daniel A. Farber, Eco-Pragmatism (1999).

[101] *See generally* Keith Hirokawa, *Some Pragmatic Observations About Radical Critique in Environmental Law*, 21 Stan. Envtl. L.J. 225 (2002).

[102] Farber, *supra* note 100, at 3.

[103] *See id.* at 9.

[104] *Id.*

[105] 514 F.2d 492 (8th Cir. 1975).

[106] *Id.* at 500–01.

drinking water.[107] On the other hand, a judicial decision to close the industrial source of the discharge, and eliminate any further possible risks, would have resulted in an immediate loss of thousands of jobs and hundreds of millions of dollars.[108] After a close analysis of this case and its broader implications, Farber notes that both economic and environmental values have something to contribute to the sound resolution of environmental policy questions.[109] For much of the remainder of his book, he assays the respective roles which they should play.

In Farber's view, we need to draw on both democratic public values and private economic interests in formulating environmental policies.[110] In his words:

> Without appealing to public values environmental regulations could not long enjoy general support based purely on the calculus of competing private interests. But without recognizing private interests as legitimate, environmental regulations may provoke unmanageable resistance from those paying the price and are likely to be seen by society as a whole as too draconian to be acceptable.[111]

Farber argues for the inclusion of an environmental "baseline" in policymaking, i.e., a rebuttable presumption in favor of environmental protection.[112] He advocates a "feasibility approach" to regulation, noting that:

> Although feasible in some sense of the word, achievement of an environmental goal may sometimes involve costs that are grossly disproportionate to any plausible benefit. Thus, cost-benefit analysis may serve as a useful backstop for feasibility analysis to handle these situations. We should always begin, however, with a presumption in favor of protecting the environment except when infeasible or grossly disproportionate to benefit.[113]

As Farber sees it, cost-benefit analysis should aid, not control, regulatory decisions by functioning as a resource to prevent mis-

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[107] *Id.* at 506–07.
[108] *Id.* at 536.
[109] FARBER, *supra* note 100, at 35.
[110] *Id.* at 58.
[111] *Id.*
[112] *Id.* at 94.
[113] *Id.*

guided decisions.[114] He proposes that "when even an environmentally sensitive analysis—using a high value of life, conservative risk estimates, and a low discount rate for further benefits—shows that regulation is clearly unwarranted, we ought to think very carefully about whether a regulation really is a feasible response to a significant risk."[115] Outside of these situations, however, we should avoid making "hard social decisions on spreadsheets."[116]

Daniel Farber repeatedly stresses the importance of creating environmental policies and institutions that can "endure over the long haul."[117] He declares that "my goal is not to undermine environmental values, but to implement them in a way that we can expect to endure, as opposed to heroic efforts that are likely to fade after a few years. Environmental protection is a marathon, not a sprint."[118]

Finally, in summarizing his contentions, Farber proposes four "guidelines for environmental policy" that, in his view, derive from eco-pragmatism:

> When a reasonably ascertainable risk reaches a significant level, take all feasible steps to abate it except when costs would clearly overwhelm any potential benefits. Meanwhile, take prudent precautions against uncharted, but potentially serious, risks.
>
> Take a long-range view. Use low discount rates, maintain the responsibility of the current generation to ensure a liveable future, and treat the preservation of nature as an opportunity for long-term social saving.
>
> Keep in mind the uncertainty surrounding many environmental problems. Adopt coping strategies such as burden-shifting rules, postponement of irreversible decisions, and (when appropriate because of new information) deregulation.
>
> Overall, keep a sense of balance, while maintaining a firm commitment to environmentalism. Don't put economists in charge of the regulatory process, but take their views seriously as a reality check on overzealous regulation.[119]

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[114] *Id.* at 123.
[115] Farber, *supra* note 100, at 116.
[116] *Id.* at 123.
[117] *Id.* at 199.
[118] *Id.* at 13.
[119] *Id.* at 201–02.

B. *Hirokawa's Rejection of Radical Environmentalism*

In contrast with Daniel Farber, who employs pragmatism as a means of harmonizing environmental protection with other societal needs, Keith Hirokawa attempts to put pragmatism to an entirely different use. He views environmental pragmatism as a distinct and entirely desirable antidote to radical critiques of the current regime of environmental law.[120] To Hirokawa, the conceptual scheme that underlies radical environmental theories undercuts their normative force. Moreover, he asserts, deeply held views alone are "ill-equipped to achieve progress in environmental law."[121]

To make his case, Hirokawa describes four distinct paradigms of environmental theory: John Locke's traditional anthropocentric theory of property, Aldo Leopold's "land ethic," ecofeminism, and deep ecology.[122] As Hirokawa describes it, Locke's property theory rests on the notion that one could acquire an ownership interest in land and other natural resources by making use of that land. Socially beneficial goods are to be produced by altering the land in some fashion. Moreover, in an unused state, land has little or no intrinsic value.[123]

Even though Locke's property theory does not specifically support environmental law, Hirokawa contends that "environmental law nonetheless operates in the context of, and subject to, the pervasiveness of the property paradigm."[124] In sharp contrast with Locke's view, Hirokawa suggests, are "alternative environmental theories" that include humans, but within ethical systems that exclude human values.[125]

Leopold's land ethic, for example, is bottomed on the normative notion that "'[a] thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.'"[126] Ecofeminists contend that human dominance over nature stems from a "patriarchal insistence" on "property rights that institutionalize harsh, oppressive treatment."[127] They favor a reconsideration of our treatment of nature and a rejection of the logic of

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[120] Hirokawa, *supra* note 101, at 227.
[121] *Id.*
[122] *Id.* at 233–40.
[123] *Id.* at 233–35.
[124] *Id.* at 233.
[125] *Id.* at 236.
[126] Hirokawa, *supra* note 101, at 237 (quoting ALDO LEOPOLD, A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE 224–25 (spec. commemorative ed. 1989)).
[127] *Id.* at 238.

domination of the nonhuman world.[128] Similarly, proponents of deep ecology dispute the premises of Locke's property paradigm.[129] Instead, they take the view that the life and well-being of all entities have intrinsic value, and believe that the view of humans as separate from, and superior to, the rest of nature is culturally based, erroneous, and misguided.[130]

For Hirokawa, each of these alternative paradigms is too sweeping and impractical to provide a sound normative basis for environmental laws. He states: "[u]nfortunately, in attacking the accepted tenets of ownership, proponents of radical environmental critiques may argue themselves off the negotiating table and render their insights ineffective."[131]

In lieu of these defective radical paradigms, Hirokawa proposes a pragmatic approach based upon "a little flexibility toward what might be termed 'truth,'" and "persuasion, not stubborn dogmatism."[132] Arguing that "revolutionary ideals can be presented in light of dominant beliefs, rather than in spite of them,"[133] Hirokawa states that "pragmatism offers a means by which paradigm opponents can find common ground and potentially agree on environmental policies and laws."[134] In conclusion, he claims:

> The challenge is to continue the progress and find better environmental solutions that both effect a change in the way we treat the environment and are practical enough to be adopted by our legal system. In taking up this challenge, it is imperative that loyalties to the goals of environmental protection include a willingness to modify, or even discard, radical environmental theories in an effort to secure far-reaching results.[135]

III. Does Pragmatism "Work" for Environmental Law?

Can pragmatism serve as a sound and workable theoretical basis for environmental law? To what extent do its methods and precepts

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[128] *Id.*
[129] *Id.* at 239–40.
[130] *Id.* at 239.
[131] *Id.* at 240. Notably, Hirokawa is also highly critical of Richard Delgado's critique of the public trust doctrine. *See id.* at 240–47.
[132] Hirokawa, *supra* note 101, at 255.
[133] *Id.* at 257.
[134] *Id.* at 258–59.
[135] *Id.* at 281.

provide reliable, predictable guidance to environmental policymakers? How successful have environmental legal pragmatists been thus far in applying pragmatic approaches to the resolution of actual environmental problems?

This section of this article is concerned with these questions. I shall begin to respond to them by setting forth what I see as the unique advantages and limitations of a pragmatic approach to environmental law. I will then assay the work of Daniel Farber and Keith Hirokawa, outlined in the preceding sections, as examples of the ways in which legal pragmatism does—and does not—provide workable and satisfying solutions to environmental legal and policy dilemmas.

A. *The Pros and Cons of Environmental Legal Pragmatism*

To this observer, pragmatism—and more specifically the methods and attitudes of pragmatic thought—has a good deal to recommend it as a theoretical underpinning for public environmental decision making. As much as any problems that arise in the arena of public policy, environmental problems tend to be factually complex.[136] They often involve technically complicated issues of science and engineering, a multiplicity of institutional actors and commitments, rapid-paced changes in technologies and knowledge regarding their consequences, and far-reaching economic, social, and political consequences.[137] In the face of this, pragmatism's insistent focus on particular facts, consequences, and workable solutions, along with its skepticism as to grand theories and fixed, dogmatic notions, appears to be a good environmental fit.

Of equal use and benefit—at least potentially—is the role of pragmatic thinking as what William James referred to as "a mediator and reconciler" of conflicting notions regarding environmental theo-

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[136] *See, e.g.,* Hallstrom v. Tillamook County, 493 U.S. 20, 32 (1989) (acknowledging, in a Resource Conservation and Recovery Act case, that "complex environmental and legal issues involved in this litigation have consumed the time and energy of a District Court and the parties for nearly four years").

[137] *See* Turner T. Smith, *Environmental Law-Old Ways and New Directions*, 27 LOY. L.A. L. REV. 1077, 1090 (1994).

> [M]any . . . truly difficult environmental problems-deforestation, ozone depletion, resource depletion, transboundary air and water pollution, and global warming-are global or at least regional and multijurisdictional in nature. Not only are the factual issues themselves complex and challenging, the need for collective, coordinated multijurisdictional response makes the political problems enormous.

Id.

ries, priorities, and tactics.[138] Environmental advocates often find themselves in sharp disagreement with respect to these matters. Regrettably, they often expend scarce resources pursuing disputes with one another.[139] With its intrinsic ideological flexibility, its pluralism, and its non-dogmatic focus on the overall "consequences" of environmental decisions, pragmatism does indeed have the potential of providing a "middle-ground" on which disagreeing environmentalists may choose to stand in the interest of achieving agreed-upon, environmentally-protective ends.[140] To the extent that its methods are adopted, those who value environmental protection may well be encouraged to put aside, or at least deemphasize, their disagreements, and "keep their eyes on the [environmental] prize."[141] Moreover, they may approach their decision making with regard to organizational political tactics in terms of the realistic consequences of those tactics in furthering environmental values and favorable results.

Another potential environmental benefit of pragmatism—with its insistence on social justice and the accomplishment of social ends—is that judicial adherence to its methods appears likely to increase the likelihood that environmental statutes will be afforded pro-environmental interpretations in the courts. Oliver Wendell Holmes, Jr.'s legal pragmatic idea of the judge as interstitial legislator, shaping the law consistent with prevalent moral and political theories,[142] is certainly consistent with this interpretative possibility, as is Benjamin Cardozo's notion of the judge as the guardian of morality, reason, good conscience, and social justice.[143] Richard Posner's staunch insistence on the superiority of practical reasoning over the rigidity of legal formalism[144] also appears to have this same benefit for environmental proponents.[145]

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[138] *See* James, *supra* note 1, at 43.

[139] Perhaps the environmental movement fits the old saw, as the only army on earth that shoots its own wounded.

[140] As noted previously, Andrew Light's essay, *Compatibalism in Political Ecology*, provides a useful hypothetical example of how this set of reconciliation may be accomplished on the plane of environmental theory. *Supra* note 53, at 170–71.

[141] *See id.*

[142] *See* Holmes, *supra* note 66, at 143.

[143] *See* CARDOZO, *supra* note 75, at 137.

[144] *See* Posner, *supra* note 63, at 1663–64; *see also* Richard A. Posner, *Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution*, 37 CASE W. RES. L. REV. 179, 180–86 (1987).

[145] For a discussion of some ways in which "green" strategy interpretation may be accomplished, see generally Joel A. Mintz, *Can You Reach New "Greens" If You Swing Old "Clubs"?: Underutilized Principles of Statutory Interpretation and Their Potential Applicability in Environmental Cases*, 7 ENVTL. LAW. 295 (2001). The suggestions that I advanced in that

Moreover, pragmatism places a high value on experimentation and innovative problem solving. In view of the inherent complexity of environmental problems, as well as the legislative "gridlock" that has characterized environmental law since the early 1990s—particularly at the federal level—these aspects of pragmatic theory seem especially well suited to contemporary environmental policymaking. Although environmental law contains notable examples of bold, large-scale innovations—from technology-forcing requirements to emissions trading regimes[146]—it is relatively devoid of small-scale pilot projects carefully designed to test the efficacy of particular technologies or regulatory techniques under controlled conditions. Those relatively inexpensive experiments, which hold the promise of eventual environmental improvements on a broader scale, are very much consistent with the pragmatic method.[147]

Finally, one of the clear lessons of the past several decades of environmental policymaking is that a great many environmental problems tend to be long-lasting and persistent.[148] There is a genuine need for the solutions to those dilemmas—and the institutions that foster and accomplish such solutions—to be equally stubborn and long-lasting.[149] In the pragmatic writings of Daniel Farber, institutional solutions of precisely that sort are emphatically—and appropriately—favored.[150] Regrettably, such long-range solutions are all too rarely contended for by environmental legal writers.

Notwithstanding these significant actual or potential benefits for environmental protection, however, pragmatism is not necessarily a panacea for the environmental cause. Despite its apparent virtues,

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article seem, at least to me, more likely to be adopted under a pragmatic judge than one with a formalist orientation. They are, however, consistent with either approach.

[146] The Clean Air Act, for example, contains both technology-forcing requirements and emissions-trading programs.

[147] For a suggestion as to one possible use of environmental pilot programs (in "cooperative" environmental compliance assistance programs), see Joel A. Mintz, *EPA Enforcement and the Challenge of Change*, 26 Envtl. L. Rep. (Envtl. L. Inst.) 10,538, 10,541–43 (Oct. 1996).

[148] *See* FARBER, *supra* note 100, at 133–62. One example is the deterioration of Lake Tahoe's crystalline transparency from rapid, uncontrolled development in the region, which was at issue in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*. 535 U.S. 302, 307–08 (2002).

[149] *See* FARBER, *supra* note 100, at 133–62. The Lake Tahoe problem provided one such solution: California's and Nevada's mutual pact to control development in the Tahoe region and preserve Lake Tahoe's beauty, which was also at issue in *Tahoe-Sierra Preservation Council*. *See* Tahoe Regional Planning Compact, 1968 Cal. Stat. 998; 1968 Nev. Stat. 4.

[150] *See* FARBER, *supra* note 100, at 179–98 (suggesting "decentralization," in the form of markets and federalism, of environmental decisionmaking).

pragmatic theory also has several limitations as a possible guide to environmental policymaking. One such limit has been well-expressed, albeit in a more generalized fashion, by Thomas Grey:

> Theories that make their mark in the world tend to be bold, sweeping and dramatic—it is their drama that wins them an audience. . . . Over the clatter and squeak of practical affairs, a theory will be better heard if it offers either the bang-bang of intellectual entertainment or the trumpet call of spiritual uplift. . . . Accordingly, pragmatist theory, that modest theory of the middle way, will often be rejected.[151]

For all its practicality, its sensitivity to facts, and its recognition of both the need for innovation and the importance of social needs, pragmatism lacks a certain marquee value, at least in the sense noted by Grey.[152] While workable and forthright, pragmatic methods seem destined never to hold appeal for those environmental supporters who seek a more emotionally stirring, intellectually flamboyant, normative theory.[153]

Moreover, as a result of its self-conscious focus on experiential learning and experimentation, as well as its tendency toward a pluralistic, tentative notion of "truth," pragmatism alone seems unlikely to provide "right answers" to a good many disputed environmental questions. "Social justice" and "social needs" are abstract, malleable concepts that may give little concrete guidance to participants in certain environmental disputes. Similarly, pragmatism's rejection of fixed, abstract notions of right and wrong, while flexible and useful in some contexts, may also risk falling into what the editors of the Renaissance Symposium call "the quicksand of relativism."[154]

Finally, as Richard Rorty and other pragmatists have themselves observed, pragmatic thought has been the subject of other attacks as well. As Rorty notes and discusses in *Consequences of Pragmatism*, in the early twentieth century, traditional pragmatism was criticized on the one hand by Platonists and transcendentalists—who argued that there was more to the notion of "truth" than pragmatists accepted—and, on the other hand, by "empiricists" and "positivists," who argued that the

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[151] Grey, *supra* note 81, at 1591.

[152] *See id.* at 1590–92.

[153] *See id.*

[154] Foreword, *Symposium on the Renaissance of Pragmatism in American Legal Thought*, 63 S. CAL. L. REV., at i, viii (1990). For a spirited defense of pragmatism against charges of relativism, see RORTY, *supra* note 9, at 166–69.

results of natural science—"facts about how spatio-temporal things worked"—was all the "truth" there was.[155] More recently, according to Rorty, "neo-pragmatism" has been dismissed as: (1) at odds with modern notions of language; (2) insensitive to the importance of traditional problems of ethics, metaphysics, and epistemology; and/or (3) tending to the removal of philosophy, as an autonomous discipline, from Western intellectual culture.[156] Not surprisingly, philosophical pragmatists have attempted to defend pragmatic thought against each of these charges.[157] They may well have succeeded in doing so. Nonetheless, environmentalists and environmental lawyers who seek security and comfort from a jurisprudential approach built on universally accepted philosophical foundations will surely find less than they hope for in environmental legal pragmatism.

B. *Farber, Hirokawa, and the Pragmatic Tradition*

In light of these intrinsic strengths and weaknesses of pragmatism as an environmental legal theory, how should the neo-pragmatic writings of Daniel Farber and Keith Hirokawa be assayed? In my view, by integrating pragmatic principles with a good deal of common sense and sound judgment, both authors have contributed in a useful manner to the literature of environmental law.

Daniel Farber's ambitious, articulate, and successful book, *Eco-Pragmatism,* illustrates many of the strengths, as well as, perhaps, a few of the drawbacks, of a pragmatic approach to environmental law and policy. His synthesis of economic and environmental approaches is careful, sensitive, innovative, and well-grounded in specific "real world" examples.[158] Similarly, Farber's ideas for balancing the duty of presently living persons towards future generations are subtle, thoughtful, and well-taken.[159]

Eco-Pragmatism breaks new ground by focusing on the importance of providing a *permanent* foundation for environmental preservation, and on building institutions with a genuine capability for making wise decisions. Those conclusions are too rarely advanced.

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[155] *See* RORTY, *supra* note 9, at xiii–xliv.

[156] *Id.* at xxi–xxiii (citing, among others, Dummett, Cavell, and Heidegger as theorists who represent these respective criticisms).

[157] *See generally id.* (defending pragmatism against its several detractors).

[158] FARBER, *supra* note 100, at 9–10.

[159] *See id.* at 11–14.

Moreover, Farber's strategies for coping with scientific uncertainty seem sensible and workable.[160] Their adoption would certainly go a long way towards allaying the political concern, among elected officials and others, that no matter what they do, environmentalists are never satisfied.

In reading Farber's book, one is struck by the difficulty of determining how much of its success is a result of its author's periodic invocation of pragmatic notions, and how much *Eco-Pragmatism* "works" because of Daniel Farber's extraordinary abilities as a legal scholar. As noted previously, as a result of its intrinsic flexibility, its experimentalism, and its pluralism, pragmatic analysis sometimes fails to yield specific, predictable, and unavoidable solutions to policy disputes. Thus, for example, Farber's incisive discussion of the appropriate secondary role of cost-benefit analysis in environmental policy-making[161] seems more a matter of his own creativity and analytical skill than a uniquely "pragmatic approach."

Nonetheless, *Eco-Pragmatism* is clearly a work that was inspired by—and improved as a result of—pragmatic thinking. Farber's skillful invocation of pragmatic methods and options, as well as his careful adherence to pragmatism's admittedly general and non-specific principles and attitudes, serves to focus and advance his measured and persuasive contentions regarding environmental policies. His book adds much to environmental legal thought.

Although much narrower in scope than Eco-Pragmatism, Keith Hirokawa's essay on radical critiques in environmental law is, in some respects, no less ambitious. As discussed above, under the banner of pragmatism, and for the purpose of achieving "far-reaching results," Hirokawa attempts to synthesize environmental moral theories. He criticizes several such theories, which he terms "radical critiques," as being insufficiently persuasive to foster progress in environmental law.[162]

More in spite of its pragmatic orientation than because of it, in my view, Hirokawa's article succeeds in part, yet falls short in other respects. Hirokawa is quite correct that pragmatic thought has the potential to be what William James referred to as a "reconciler" of disparate normative theories.[163] Indeed, as Andrew Light demonstrated in his interesting essay on compatabilism, pragmatism has the

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[160] *Id.* at 9–14.
[161] *See id.* at 94.
[162] Hirokawa, *supra* note 101, at 227.
[163] James, *supra* note 1, at 43.

potential to play a valuable mediative role in disputes between environmental materialists and ontologists.[164]

In his discussion of radical environmentalism, however, Hirokawa appears to abandon this insight. Rather than calling upon radical environmentalists to coalesce with environmental pragmatists and others to achieve agreed-upon ends, Hirokawa asks them to "modify, or even discard" their theories.[165] In doing so, he appears to place environmental pragmatists in the role of the opponents to ecofeminists, deep ecologists, and followers of Leopold and Delgado, rather than as their potential allies in a broad, metaphilosophical coalition in pursuit of environmental goals.

Hirokawa's invocation of pragmatism seems sound and well-intended. Some of his ideas about the limited practical appeal of alternative environmental theories may also have merit. Nonetheless, his rather sharp and startling rhetorical dismissal of those environmental theorists with whom he disagrees tends to weaken his own arguments. Though Hirokawa may have been right in choosing pragmatism as the framework for stating his contentions, his dismissive, divisive conclusions represent a disappointingly unfruitful use of pragmatic methods and traditions.

CONCLUSION

Even though it is not a normative "theory for all seasons," pragmatic thought has much to add to contemporary discourse regarding environmental laws and policies. Pragmatism's stress on concrete facts, flexibility, experimentation, and practical, workable solutions to real-world problems, combined with its clear preference for democratic consensus-building and social justice, appears to provide a sensible intellectual framework for innovation and reform in environmental decision-making at all levels.

Undoubtedly, pragmatism lacks universal intellectual appeal. Some will believe that it is too cautious and modest a theory to be helpful in the rough and tumble of environmental debate. Others are troubled by its non-dogmatic approach to "truth" and "ethics," and/or its perceived insensitivity to the importance of metaphysical issues and grand philosophical conversations. Nonetheless, as Farber's *Eco-Pragmatism* so marvelously illustrates, pragmatism has the potential to furnish a durable and useful set of intellectual tools for analyzing

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[164] Light, *supra* note 53, at 162–69.
[165] Hirokawa, *supra* note 101, at 281.

knotty environmental policy issues. In the hands of a gifted legal scholar—like Daniel Farber—those tools have already crafted a powerful, balanced, wise, and far-sighted set of proposed environmental policies. Their potential for further good use, to similar laudable ends, is vast indeed.