

## **Geoffrey Sykes**

### **“A Short Genealogy of ‘Realism’”: Peirce, Kevelson and Temporality.**

“In the revolution of modern legal thought it is provocative to see Peirce as a copula, if not as a catalytic force, in creating meaning in that ‘vast ocean of unforeseen consequences’”(1987: 78).

The revolution referred to by Roberta Kevelson is that of legal realism, also known as legal pragmatism, that mainly studies the law in terms of the behaviour of lawmakers, and also the social outcomes and utility of decisions. Legal realism, in association with utilitarianism, is arguably a major movement in twentieth century jurisprudence.

Kevelson regards the proto semiotic status of major various realist authors, such as Holmes, Llewellyn, Pound and Frank, in terms of the direct and indirect influence of Peirce. A semiotic of law based on Peirce could have been undertaken without making the above claim at all, but once made it has implications for many areas - in legal studies, legal semiotic, in her own work as well as that of Peirce. “Multifaceted Legal Realism, following Holmes and strongly influenced by Peirce, has been ... a revolution in legal reasoning” that is a correlate of the project in legal semiotics, which she claims Peirce to have “invented” (1998 :74).

My paper will argue that in developing her argument, Kevelson overlooks issues in temporality and historical analysis, interpretation and epistemology. Her own argument about legal realism presumes realist premises, and is influenced by contemporary, jurisprudential and conceptual premises. It appears to overlook possible major conceptual and personal differences between Holmes and Peirce, that can be seen to have crucial implications for any understanding of legal pragmatism based on Peirce.

My paper will insist on close, chronological study of historical events associated with the development of the so called Metaphysical Club of Harvard (1865-72), that will enable revision of the “short genealogy of ‘realism’” suggested by Kevelson. The method of close study, of chronological and discursive sequences of events, will be held in line with Peirce’s understanding of semiotic pragmatism, and his possible contribution to a semiotics of law. The rejoinder to Kevelson’s more post modern argument about history of legal jurisprudence can be seen to parallel a possible argument, about philosophy, law and language, that occurred between Peirce and Holmes.

This paper will fully concur with Kevelson about the significance, for legal studies, of any relationship between Peirce and Holmes, and also her own determined development of a semiotics of law. Yet it will seek to qualify her understanding of temporality, as a semiotic ground for both historical and legal analysis.