The Jurisprudence of Style

In the contemporary domain of American legal thought, there is a dominant conception in which lawyers and judges craft their argumentative practice. More colloquially, this is called “thinking like a lawyer.” Despite the widespread popularity of this conception, it is rarely described in detail, much less given a name. Justin Desautels-Stein tells the story of this curious absence in American Legal Thought, and why that story matters. Drawing upon and updating the work of Harvard Law School’s first generation of critical legal studies, Desautels-Stein develops what he calls a jurisprudence of style. In doing so, he uncovers the intellectual alliance, first emerging at the end of the nineteenth century and maturing in the last third of the twentieth century, between American pragmatism and liberal legal thought. Applying the tools of legal structuralism and phenomenology to real-world cases in areas of contemporary legal debate, this book develops a practice-oriented understanding of legal thought.

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Cambridge Historical Studies in American Law and Society

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The Jurisprudence of Style

A Structuralist History of American Pragmatism and Liberal Legal Thought

JUSTIN DESAUTELS-STEIN

University of Colorado
For Amy
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Acknowledgments

This book has its beginnings in a law school class with Roberto Unger. The name of the course was Contemporary Legal Analysis, a survey of Unger’s book What Should Legal Analysis Become? Never before had I found a course either so confusing or so enriching. It was one of those classes that forever changes the way you put the world together, as this book attests. At the same time, I was taking a course on rational choice theory with Amartya Sen, in which he introduced the class to Richard Posner’s work on pragmatism and economics. A short while later, David Kennedy showed me a draft for his forthcoming Dark Sides of Virtue, a work of another pragmatist variety. Further still, Unger ended his course with an ode to William James. Pragmatism, it seemed, was everywhere a Cambridge fog. It was this amorphous and plentiful pragmatism that sparked my first interest in James, Dewey, and Rorty, and their legacies in law. I am grateful for my teachers’ willingness to put up with all of those early questions.

After graduation, my interests in pragmatism continued with David Kennedy’s ongoing support. His Institute for Global Law and Policy was an early and lasting site for intellectual warfare of the best kind, and I’m sure that my work was bettered with his generosity. After arriving in Boulder, I was lucky to find in Pierre Schlag, Jack Schlegel, and William Simon a trio of commentators who seemed willing to read just about anything I’d send their way. This was, and still is, deeply appreciated. Over the past few years a new and formidable influence on my approach has been that of Chris Tomlins. His theorization of legal history and all of his work in the Law as…symposia have been tremendous and a real benefit to my intellectual development. Last in this list of signal figures is Duncan
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