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### Foreword: Theorizing Contemporary Legal Thought

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#### Citation Information

Justin Desautels-Stein & Duncan Kennedy, Foreword: Theorizing Contemporary Legal Thought, 78 Law & Contemp. Probs., nos. 1-2, 2015, at i, available at <http://scholar.law.colorado.edu/articles/39/>.

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Citation: 78 Law & Contemp. Probs. i 2015

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# FOREWORD

## THEORIZING CONTEMPORARY LEGAL THOUGHT

JUSTIN DESAUTELS-STEIN\*

DUNCAN KENNEDY\*\*

In the autumn of 2011, Justin Desautels-Stein and Pierre Schlag hosted a workshop in Boulder, Colorado, the subject of which was an essay Duncan Kennedy had published five years earlier, titled *Three Globalizations of Law and Legal Thought*.<sup>1</sup> In *Three Globalizations*, Kennedy developed a legal history travelling from “Classical Legal Thought” to “Social Legal Thought,” culminating in a kind of amalgam Kennedy described as “Contemporary Legal Thought.”<sup>2</sup> The bulk of the essay is concerned with the manner in which the classical and social modes globalized through various core-periphery dynamics. The Boulder group, however, brought the focus entirely to the dominance of Contemporary Legal Thought in the 1970s, tentatively explored in the final pages of Kennedy’s essay.<sup>3</sup> The task of the group was to workshop the concept as Kennedy had outlined it.

As the Boulder conversations began to spread towards Cambridge, energy was building towards another meeting, one with broader scope and personnel. In the summer of 2013, we organized a seminar under the auspices of David Kennedy’s Institute for Global Law and Policy, housed at Harvard Law School. This time, the subject was broader than Kennedy’s essay from 2006. The questions posed for the much larger group of participants were now more categorical: Is Contemporary Legal Thought a meaningful entity, something that might be likened to contemporary art? If so, what kind of history is this? What sort of jurisprudence? What, if any, methodological prerequisites are necessary in elaborating the construct “contemporary”? If there is such a thing as Contemporary Legal Thought, *where* is it, and in which directions does it migrate? Possibly of the most importance, what was to be gained in the

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1. Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850–2000*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* (David M. Trubek & Alvaro Santos eds., 2006).

2. *Id.*

3. *Id.* at 71.

conceptual purchase of “Contemporary Legal Thought?” The Harvard conversations were fruitful, yielding two symposia: the one published in this issue, the other in a special issue of *Law & Critique*.<sup>4</sup> Beyond Kennedy’s initial explorations, these publications provide a helpful beginning in the attempt to theorize Contemporary Legal Thought.

The participants in these conversations—thankfully—were hardly of one mind. Some, as in the articles included here by Chris Tomlins<sup>5</sup> and Jack Schlegel,<sup>6</sup> provide comradely critical readings of Kennedy’s *Three Globalizations*. Tomlins poses the question why, given that so much of Kennedy’s work has been historical, Kennedy has never been treated as a legal historian. As Tomlins says, “[Kennedy’s] work sits outside the legal-history canon; it has never been intellectually required of legal historians that they grapple with it, either in substance or method . . . . Among the generality of legal historians, its time may yet come.”<sup>7</sup> Interested in engaging with *Three Globalizations* as structuralist legal history rather than traditional intellectual history,<sup>8</sup> Tomlins agrees with much of Kennedy’s historical narrative.<sup>9</sup> His primary complaint comes in the context of Kennedy’s articulation of Contemporary Legal Thought. According to Tomlins, whereas Kennedy’s structuralism posited easily identifiable grammars in the first two “globalizations,” Contemporary Legal Thought is thoroughly disaggregated and unsynthesized, with “no emergent *langue* to transnationalize, only *paroles*.”<sup>10</sup> Tomlins, in contrast, suggests that Kennedy has in some measure lost sight of the ball. The ball is neoclassical economics.<sup>11</sup>

In his essay, Jack Schlegel picks up the ball and runs with it, though from a somewhat more familiar law-and-society perspective. After citing Kennedy’s suggestion that law and society interact in a mutually constitutive dialectic, Schlegel points to Kennedy’s systematic privileging of law’s structuring role.<sup>12</sup> “Kennedy is very good at legal analysis, especially the structural analysis of law, as well as at legal intellectual history.”<sup>13</sup> However, Schlegel laments, “[h]e seems not very interested in economic history.”<sup>14</sup> The problem, as Schlegel sees it, is that although Kennedy concedes that the causal arrows move in both directions, Kennedy consistently relegates the materiality of economic life to the outhouse.

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4. *Special Issue: Perspectives on Contemporary Legal Thought*, 25 LAW & CRITIQUE (2014).

5. Christopher Tomlins, *The Presence and Absence of Legal Mind: A Comment on Duncan Kennedy’s Three Globalizations*, 78 LAW & CONTEMP. PROBS., nos. 1–2, 2015 at 1.

6. John Henry Schlegel, *Three Globalizations: An Essay in Inquiry*, 78 LAW & CONTEMP. PROBS., nos. 1–2, 2015 at 19.

7. Tomlins, *supra* note 5, at 3.

8. *Id.* at 8–9.

9. *Id.*

10. *Id.* at 9.

11. *Id.* at 11.

12. Schlegel, *supra* note 6, at 21–22.

13. *Id.* at 22.

14. *Id.*

This relegation is especially curious, since Kennedy is hopeful that his description of Contemporary Legal Thought will prove beneficial to the Party of the Left.<sup>15</sup> But how, Schlegel asks with Tomlins, can the story be of any real use so long as it refuses to engage with the so-called jurist's "absent antithesis," neoliberalism?

Justin Desautels-Stein continues in this vein, engaging the question of structuralist legal history alluded to by Tomlins, and how this mode of historiography navigates Schlegel's critique.<sup>16</sup> Desautels-Stein seconds Tomlins' suggestion that we take Kennedy's structuralism as the doing of history.<sup>17</sup> He begins with a brief summary of the influence of French structuralism on the "Harvard School" of legal structuralism, as well as the poststructuralist reaction that emerged in U.S. law schools by the 1980s.<sup>18</sup> Desautels-Stein then asks why legal structuralism never entered the legal history canon, and suggests that Robert Gordon's famous article *Critical Legal Histories* might provide a clue.<sup>19</sup> Gordon's article, published in 1984, targeted Kennedy's legal structuralism as—at that time—a most promising way of doing history. But this was not meant to be, and, as Tomlins mentions in his essay, structuralist legal history was off the scene by the 1990s. As Schlegel has argued, the brief carried in *Critical Legal Histories* for "indeterminacy located in contradiction" left little room for even the most sophisticated functionalist historians still working in the law-and-society tradition.<sup>20</sup> Desautels-Stein responds with a defense of structuralist legal history, and suggests that if we find Contemporary Legal Thought difficult to conceptualize, the fault lies in part with critical (poststructuralist) historicism and the manner in which it has arrested the historiographical imagination.<sup>21</sup>

Others, like William Simon,<sup>22</sup> Amy Cohen,<sup>23</sup> and Annelise Riles,<sup>24</sup> are less interested in challenging Duncan Kennedy's theory of legal history here, and instead look for more exemplary areas of law that have born witness to developments of an arguably "contemporary" character. In his article, for instance, William Simon takes a close look at the core doctrines of administrative law, and finds that the field is split between a backward-looking fixation on canonical interpretations of the Administrative Procedure Act, and

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15. *Id.* at 27–32.

16. See Justin Desautels-Stein, *Structuralist Legal Histories*, 78 LAW & CONTEMP. PROBS., nos. 1–2, 2015 at 37.

17. *Id.* at 39.

18. *Id.* at 45–46.

19. Robert Gordon, *Critical Legal Histories*, 36 STANFORD L. REV. 57 (1984).

20. John Henry Schlegel, *CLS Wasn't Killed by a Question*, 58 ALABAMA L. REV. 967, 975 (2007).

21. Desautels-Stein, *supra* note 16, at 56–59.

22. William H. Simon, *The Organizational Premises of Administrative Law*, 78 LAW & CONTEMP. PROBS., nos. 1–2, 2015 at 61.

23. Amy J. Cohen, *The Law and Political Economy of Contemporary Food: Some Reflections on the Local and the Small*, 78 LAW & CONTEMP. PROBS., nos. 1–2, 2015 at 101.

24. Annelise Riles, *From Comparison to Collaboration: Experiments with a New Scholarly and Political Form*, 78 LAW & CONTEMP. PROBS., nos. 1–2, 2015 at 147.

a forward-looking, experimentalist mode of regulation. Simon suggests that, whereas the backward, canonical doctrines enjoy the lion's share of prominence in legal education, the more experimentalist, "performance-based" orientation best reflects the situation in Contemporary Legal Thought.<sup>25</sup>

Explicitly following Kennedy's scheme, and also in conversation with Simon's case for experimentalism, Amy Cohen looks to food law and finds a productive foil in the periodizing work of Harriet Friedmann and Philip McMichael.<sup>26</sup> Among the reasons for looking to food, Cohen suggests, is that "the production, provisioning, and cooking of food likewise encode basic human attitudes about the market, the state, law, technology, and sociocultural relations. As such, changes in the language of food—like changes in the language of law—reflect and require changes in these and other overlapping systems."<sup>27</sup> Cohen notes that, in focusing on this language of food, an obscured dimension of democratic experimentalism bubbles to the surface. Whereas contemporary food movements are increasingly urging decentralization, diffusion, and experimentalism in food markets, Cohen argues that legal theorists like Simon and Charles Sabel seem to reserve their interests in experimentalism for institutions of the state. In this, Cohen joins Tomlins and Schlegel in suggesting that the market's role in the theorization of Contemporary Legal Thought seems curiously absent.<sup>28</sup>

In her contribution, Annelise Riles explores Contemporary Legal Thought in the contexts of comparative law and anthropology of law. Riles argues that these fields have transformed in recent years, shifting away from an older core of premises and towards a newer model of "collaboration"<sup>29</sup> that may have something in common with the "performance-based" modes discussed by Simon. Also like Simon, Riles's claim is that this collaborative model has already displaced the older platform of "comparison," a platform increasingly undermined in "an era of cultural hybridity and interconnectedness and in the aftermath of anthropological critiques of the culture concept."<sup>30</sup> As a result, Riles suggests that "we are all already collaborators, in all the possible senses of the term, and hence that a response to collaboration cannot simply be critique from outside—it must entail doing something with and within this template."<sup>31</sup> But what does this contemporary transition imply? Why care? For an answer, we see again a turn to the market. Riles argues that, in the older mode of comparative law and legal anthropology, the concept of "comparison" was crucial for the operation of the price mechanism in a market society. She writes:

Comparison played a very practical role in market transactions. How could

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25. See generally Simon, *supra* note 22.

26. Cohen, *supra* note 23, at 104–17, 130–31.

27. *Id.* at 102.

28. Though now the target is Simon's theory, and not Kennedy's.

29. See generally Riles, *supra* note 24.

30. *Id.* at 163.

31. *Id.* at 166–67.

arbitrageurs profit on the difference between the price of oil in one market or another without a comparative understanding of the legal, cultural, and economic institutions that determined price in each place to begin with?<sup>32</sup>

But in the aftermath of the financial crisis, this market model has given way to another, and it is here that the high stakes of Contemporary Legal Thought come into view—a new vision of market society marked by “a loss of faith in the coordinative power of price, or the ability of liberal legal institutions (tended by professional lawyers) to produce a well-functioning market . . . .”<sup>33</sup> In this contemporary vision, “collaborative” markets cross “what were once different scales of social life . . . . The effect is that what were once two different spheres of activity—the descriptive (the province of the academy) and the institutional (the so-called “real world”)—have collapsed into one another.”<sup>34</sup> It is this new world, Riles concludes, that generates an image of the legal academy, and legal education, as hopelessly out of touch with the “new normal.”<sup>35</sup>

Riles’s notion that Contemporary Legal Thought is knowable through the critique of older modes of legal reasoning resonates well in Pierre Schlag’s powerful encounter with Wesley Hohfeld.<sup>36</sup> In Schlag’s analysis, however, the target shifts. Whereas Simon, Cohen, and Riles focus on discrete fields of law, Schlag sets his sights on those persistent types of legal error shot through the entire terrain of Contemporary Legal Thought.<sup>37</sup> Schlag’s purpose, however, is not merely to show that so-called postrealist modes of legal reasoning remain deeply confused (though this is one of his goals, for sure). But it is rather to use Hohfeld to produce a toolkit for new thinking, new ways in which the “intellectual, economic, and political” dimensions of law might be imagined. As Schlag writes, situating Hohfeld in Contemporary Legal Thought “opens up worlds of legal possibilities (of choices to be made in fashioning legal regimes) that we would otherwise likely pass by.”<sup>38</sup>

Schlag’s proposal that we take Hohfeld as a platform that might enable “exploitation of the cracks that apt criticism is able to open in the consciousness of time” finds sympathy in the broad jurisprudential treatment found in Paulo Barrozo’s<sup>39</sup> final article. For Barrozo, the critique of Contemporary Legal Thought (or what Barrozo prefers to call “idealizing reflective-equilibrium”) is imprisoned by a nineteenth-century amalgamation of “utopian rationalism,” “consequentialist historicism,” and popular will.<sup>40</sup> In the light of this “Great

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32. *Id.* at 165.

33. *Id.* at 154.

34. *Id.* at 156.

35. *Id.* at 178–81.

36. Pierre Schlag, *How To Do Things with Hohfeld*, 78 *LAW & CONTEMP. PROBS.*, nos. 1–2, 2015 at 185.

37. *Id.* at 192–201.

38. *Id.* at 192.

39. Paulo Barrozo, *The Great Alliance: History, Reason, and Will in Modern Law*, 78 *LAW & CONTEMP. PROBS.*, nos. 1–2, 2015 at 235.

40. *Id.* at 236–40.

### Alliance,” Barrozo argues that

contemporary law and legal thought are best understood in light of three experiences: the entrance of the will of the masses onto the political stage of Western nations via institutionalized (primarily through the expansion of franchise and relaxation of eligibility requirements to hold office) and noninstitutionalized (often revolutionary) processes; the reconvergence of rationalist and historicist legal philosophies after two generations of considerable polarization; and, finally, the increased momentum that various versions of positivism, pragmatism,<sup>41</sup> and reflective-equilibrium idealism in law gained from the previous two experiences.

The unfortunate result is that, whether we are working with Kennedy’s schematic of the “three globalizations,” Simon’s democratic experimentalism, or Schlag’s refurbished toolkit of legal reasoning, Contemporary Legal Thought remains trapped in “the good offices of the moral imaginary of the Great Alliance.”<sup>42</sup> And until the bigger picture of the Alliance is addressed, Barrozo concludes, we remain in chains as we struggle to imagine what Contemporary Legal Thought might become.

This sample of work from the Boulder and Harvard conversations is certainly eclectic, but we do see in it two common themes, one obvious, the other less so. The first theme concerns the role of the market in these theorizations of Contemporary Legal Thought. For Tomlins and Schlegel, Kennedy’s legal structuralism dismisses neoliberalism at precisely the moment it ought to be receiving greater attention. In Tomlins’ article, the critique comes at the level of the *langue*—that is, from within the structure of legal argument itself. For Schlegel, in contrast, the idea is that the *langue*, however it might be characterized, is left bare without the thick economic contexts the theory demands. In a different register, Simon theorizes Contemporary Legal Thought, and here in the particular field of administrative law, largely by way of an analogy to market performance. Building off articles like his *Toyota Jurisprudence*,<sup>43</sup> Simon argues for a reconceptualization of public law doctrine by way of analogy to innovations taking place in the market. Cohen pushes back on Simon, in something like the way Tomlins and Schlegel push on Kennedy, asking why the role of the market is not taken more seriously within the context of legal thinking about *private* law. Again, in a different register, Annelise Riles asks a similar question, highlighting the hidden market assumptions in the contemporary shifts in comparative law and legal anthropology.

The second theme is hinted at in Riles’s article, and in the articles from Schlag and Barrozo as well, though we believe the theme’s undercurrents run through the whole symposium. This theme concerns the notion that Contemporary Legal Thought is knowable as a distinctive moment in which the jurist experiences a loss of faith. But a loss of faith in what, exactly, and how is it

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41. *Id.* at 239.

42. *Id.* at 248.

43. William H. Simon, *Toyota Jurisprudence: Legal Theory and Rolling Rule Regimes*, in *LAW AND NEW GOVERNANCE IN THE E.U. AND THE U.S.* (Gráinne de Búrca & Joanne Scott, eds., 2006).



to be distinguished from other moments of crisis in the history of legal thought? In our view, since at least the Civil War, and at least in the United States, there have been recognizable styles of legal argument.<sup>44</sup> These familiar styles are somehow different from the styles in which a lawyer or judge or legal academic might argue today. This “contemporary” difference, whenever it might be situated, is traceable to the jurist’s experience of a decline in the internal coherence of legal argument—not in an actual decline<sup>45</sup>—which in turn generates a distinctive, and contemporary, style of legal reasoning.

Our use of legal coherence has little to do with jurisprudential debates about objectivism and the rule of law.<sup>46</sup> The idea is not that, in the context of Contemporary Legal Thought, legal rules are no longer capable of determining right answers in a way that they could in some bygone time. Rather, we mean to situate legal coherence in phenomenological terms: it is the experience of the jurist that we’re after—the way the jurist feels, sees, and makes her way through the work of legal argument—and not a description of law or a legal system existing beyond or somehow outside of that jurist’s work. Thus, coherence (hopefully) emerges as the jurist approaches the real world work of making legal arguments and justifying the legal conclusions that are meant to be necessitated by those arguments.<sup>47</sup> In a coherent legal medium, the jurist believes, the experience of legal necessity will be forthcoming. In this sense, there are two modes in which the jurist experiences legal necessity.<sup>48</sup> In the first, the jurist’s faith in the legal materials is “precritical,” meaning legal necessity is expected to emerge by virtue of the social world’s natural and nonideological coherence. In the second, the jurist’s faith is “postcritical,” meaning legal necessity is experienced *despite* the jurist’s suspicion that the very notion of

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44. For an analysis that predates the Civil War, see DUNCAN KENNEDY, *THE RISE AND FALL OF CLASSICAL LEGAL THOUGHT* (Beard Books, 2006); Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 *BUFF. L. REV.* 205 (1979). Paulo Barrozo’s work stands outside much of the other articles in this issue in the sense that Barrozo extends his analysis deeper into the early nineteenth century. His theory also condenses much of what has happened since in his fascinating portrayal of an intellectual alliance between rationalism and historicism. Barrozo explains that a “Great Alliance in law between reason, history, and the political will of the masses in the nineteenth century has ever since provided the conceptual and ideological conditions for the many ups and downs in the history of legal positivism, pragmatism, and reflective equilibrium idealism.” Barrozo, *supra* note 39, at 240.

45. For further discussion, see DUNCAN KENNEDY, *A CRITIQUE OF ADJUDICATION (FIN DE SIÈCLE)* (Harvard University Press, 1997); Justin Desautels-Stein, *Pragmatic Liberalism: The Outlook of the Dead*, 55 *B.C. L. REV.* 1041 (2014); Duncan Kennedy, *The Hermeneutic of Suspicion in Contemporary American Legal Thought*, 25 *LAW & CRITIQUE* 91 (2014).

46. See Justin Desautels-Stein, *The Judge and the Drone*, 56 *ARIZ. L. REV.* 117 (2014); Duncan Kennedy, *Freedom and Constraint in Adjudication: A Critical Phenomenology*, 36 *J. LEGAL EDUC.* 518 (1986).

47. See generally Kennedy, *Hermeneutic*, *supra* note 45, at 126 (“a given actor (or jurists in general) experiences the argument for a particular answer to a question of legal interpretation to be so strong that there is no plausible argument against it.”); Desautels-Stein, *supra* note 45; Justin Desautels-Stein, *Back in Style*, 25 *LAW & CRITIQUE* 141 (2014).

48. See Kennedy, *Hermeneutic*, *supra* note 45. For a similar analysis in the context of international legal thought, see Justin Desautels-Stein, *Chiastic Law in the Crystal Ball: Exploring Legal Formalism and its Alternate Futures*, 2 *LONDON REV. INT’L L.* 263 (2014).

necessity is—particularly when it counts—ideologically fraught. Contemporary Legal Thought is of the postcritical type.

But now comes the obvious question: If we concede that the speaker of Contemporary Legal Thought is somehow attentive to ideological error while at the very same time is nevertheless committed to the experience of legal necessity in her *own* work, how might one account for such a situation? And further, if Contemporary Legal Thought actually is a widespread phenomenon, why don't we know about this collective crisis of legal identity? It's a good question. Here are two possible explanations.

For Duncan, the social psychology of Contemporary Legal Thought is helpfully characterized as a type of "projective identification."<sup>49</sup> This is a mechanism whereby an individual projects an inner conflict onto others, and in the process of condemnation, the accuser absolves oneself of the conflict. In some cases, this experience is fairly conscious, though it isn't necessarily devious. For example, some jurists recognize the experience of being handed a legal assignment only to find at the end of it that they have been unable to personally establish a moment of legal necessity. Time has run out, you have to produce an answer, and yet, you're not convinced. Nevertheless, the client or supervisor needs your direction, so you steadily convince yourself that one of the possible routes is the necessary route. But which route will that be? Good chance it will be the more ideologically acceptable one.

Or consider another familiar example, where an assignment leaves open the question of whether to devote a lot or a little of resources to countering a legal rule of first impression. The question of how much to expend in the work is often a measure of time and will, or, to put it differently, the question of how we approach a legal question has much to do with our choice of work path. And the choice of work path is hardly neutral. But in the day-to-day explanations to supervisors and clients, our justifications for how we conducted the research will surely be dressed as entirely neutral.

The process of projective identification kicks in as a way of stabilizing these apparently contradictory sensibilities. As we mentioned above, in the context of Contemporary Legal Thought a jurist is more critically self-aware than at any point in American legal history. With this awareness, the experience of legal necessity (and an attendant faithlessness in legal coherence) becomes amazingly expensive. But we want coherence, and in order to get it, legal consciousness limits the solvent of critique to others, and resurrects the possibility of legal necessity for the self through the process of projective identification. It is important to emphasize, however, that this isn't merely a case of easy self-deception. In the contemporary mode, the jurist is "postcritical," where "ontological instability is denied: in the actor's case felt necessity is real necessity, and in the other's case, claimed necessity is mere error."<sup>50</sup> It isn't the

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49. See Kennedy, *Hermeneutic*, *supra* note 45, at 124.

50. *Id.* at 132.

contemporary jurist's faith in coherence fighting for supremacy; it is rather the jurist's ineradicable sense of self-doubt endlessly projected elsewhere. And in the process of the projection, the coherence of the legal medium is restored, however chimerically.

For Justin, in contrast, in order to make visible the structure of Contemporary Legal Thought, one must begin by selecting a language-system with which to think about Contemporary Legal Thought. That language-system is "liberal legalism." Next, we can ask: what does a loss of faith in legal coherence mean in the context of liberal legalism (i.e. loss of faith in what exactly)? For contemporary legal thinkers, it is a loss of faith in the ability of liberal legalism's prior grammars to "get the job done." This phrase is purposefully vague, but powerfully effective in capturing what is so distinctive about Contemporary Legal Thought. In this view, Contemporary Legal Thought is best understood as an encounter between liberal legalism (and its discredited modes of legal reasoning) and the "everyday workability" of legal pragmatism.<sup>51</sup> Legal pragmatism is easy to misunderstand for the reason that it is associated with so many different kinds of pragmatism. It has only the barest of connections with the philosophical pragmatism conjured up by William James, John Dewey, or Richard Rorty, and has much more in common with what Tom Grey has called "freestanding" pragmatism.<sup>52</sup> What's more, there are several varieties of legal pragmatism, as represented in the contrasting dispositions of Richard Posner and William Simon. Despite the cacophony, it is the freestanding "get the job done" pragmatism that dominates the field, and which is relevant here.

As mentioned above, Contemporary Legal Thought is postcritical in the sense that it comes subsequent to the assaults on the classical and social experiences of legal necessity. The contemporary jurist is a highly sophisticated critic. And yet, the loss of faith experienced by the contemporary jurist isn't in legal coherence writ large; it is a loss of faith only in the classical and social experiences of legal necessity. The contemporary jurist, in this view, is *deeply* faithful—a believer in the likelihood of successfully oscillating between zombified modes of legal reasoning. At first glance, such faith makes no sense at all. If the contemporary jurist is truly postcritical, how does she have faith in modes of reasoning that have been so relentlessly subject to critique? Again, it isn't these modes of reasoning that are the object of her faith, since she knows of the abuse of formal deduction as well as the abuse of social conceptualism—it is at the altar of eclectic problem-solving and towards the glory of ad hoc rightness that the contemporary jurist worships. It is pragmatism itself, threaded in the grammar of liberal legalism, that both hides the specter of legal incoherence and enlivens the jurist to the experience of legal necessity. In this sense, the structure of Contemporary Legal Thought hides in the everyday

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51. *Id.*

52. See Thomas Grey, *Freestanding Legal Pragmatism*, 18 *CARDOZO L. REV.* 21 (1996).

grammar of pragmatic liberalism.

Though we don't see quite eye-to-eye on the best way to theorize Contemporary Legal Thought—either in the registers of “Projective Identification” or “Pragmatic Liberalism”—we agree that Contemporary Legal Thought involves a distinctive loss of faith, and that *something* is working quite effectively to mediate the effects of that loss on the typical jurist. The question is, once we become increasingly familiar with the methods of Contemporary Legal Thought—the methods that are ours—what happens next? In the collection of articles included here, it is mostly the former question at issue: What is Contemporary Legal Thought, and how are we to know? The question of what happens next will have to wait, for now.<sup>53</sup>

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53. See, e.g., THE CAMBRIDGE COMPANION TO CONTEMPORARY LEGAL THOUGHT (Justin Desautels-Stein & Christopher Tomlins eds.) (forthcoming 2016).