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Introduction
New Legal Realism: Law and Social Science in the New Millennium

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A mystery has persisted from the end of the Legal Realist era in the United States until the present day. How can it be that legal scholarship and training, while fully acknowledging law's place in society, proceeds along an almost willfully ignorant path in terms of available empirical research on this issue? How can knowledge about what law practice is really like be relegated, even now, to a marginal status (along with the social scientists and clinicians who bring this knowledge into law training)? Almost everyone would concede that law as it plays out on the ground, in real life, cannot be understood by just reading Supreme Court opinions – or any court's opinions. However, the core analyses in many law review articles still focus primarily on the texts of those opinions, and often proceed as if the mere fact that a judge has ruled means that the ruling will have certain effects in the world – for example, that criminal defendants who have been "given" certain rights by a court

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Just to clarify a possibly confusing issue of style in this volume: the editors are in general conforming to guidelines suggested by William Twining regarding capitalization (or not) of Legal Realism and New Legal Realism. The terms are capitalized when they refer to actual movements, people, texts, and ideas of a certain period of time. They are not capitalized when they refer to general concepts or forms of thought divorced from particular contexts. Twining uses "R/r" for ambiguous instances; the rest of us do not. In general, we found that the definite article "the" (as in the New Legal Realism) often signaled that authors were speaking of particular periods and movements, whereas use of "a" (a new legal realism) often signaled a general conception. (But of course, language use always generates ambiguity, so these guidelines don't capture everything.)

I would like to dedicate this chapter, and my work on these volumes, to my deeply respected colleague Stewart Macaulay. I cannot imagine the patience it has taken to remain cheerfully engaged in a legal scholarly discourse that has been so slow to embrace the realist teachings he knew, and began developing further, over a half-century ago – inspired in part by his contact with Karl Llewellyn at the University of Chicago. To be sure, his work on contract law has been central to one of the few ongoing successful points of fruitful conversation among these disparate traditions – but his kindness, care, patience, intellectual energy, and courteousness in pursuing this conversation within the world of the larger legal academy have set a standard that will be hard for future generations to equal.

will actually be accorded those rights in real life. Legal analyses still proceed on what everyone knows to be a fiction – that changing the words used in a legal opinion can automatically cause real change on the ground. For a long time now, social science scholarship has demonstrated that this is not true. For a brief period in the early twentieth century, the original Legal Realists made a dent in the consciousness of lawyers and legal scholars, asking them to think about how social context affects the delivery of law on the ground – and also about how real-world influences going far beyond doctrine might affect judges' decision making. At the same time, they pushed for legal education that took seriously how lawyers practiced in the real world, laying the groundwork for clinical education to develop. And yet, although their insights were broadly accepted, the central world of legal analysis soon returned to its accustomed, largely abstract form of scholarship and reasoning.

This volume is dedicated to tackling that persistent mystery, and even more to moving the interdisciplinary discussion envisioned by the original Realists forward into the new millennium. Despite so many advances in the interdisciplinary study of law since that time, the many studies of law-in-society conducted by trained social scientists continue to occupy a very marginal place in the thinking of legal experts, who often reinvent the wheel at a very basic level when they have to deal with sociocultural dimensions of law. With the full gamut of social science knowledge that is available, the legal academy (at least in the United States) – when it ventures into social science at all – seems to limit itself narrowly to single fields at a time (most notably, for a time, economics). This is all the more mysterious when one contemplates the range of social sciences upon which the original Legal Realists drew in their arguably successful early integration of social science into legal scholarship and teaching. And it is not the case that this early history ended without leaving an enduring legacy, for there have been vibrant law-and-society movements (not only in the United States but around the world) that have carried on the fully interdisciplinary tradition of the original Legal Realists for some time now. Is there any way, at this point in time, to create productive yet rigorous ways of bringing pertinent social science into legal training and analysis? Can we begin (because this process of integration really is, in so many ways, just at the beginning phase) to find successful ways to translate between law and social science?

In this volume, we bring together law professors and social scientists who approach this persistent puzzle from the perspective of "New Legal Realism" (NLR) – a project that springs largely from the law-and-society tradition but that adds a focus on translating between the worlds (and words) of, on the one hand, sociolegal researchers and scholars concerned with the practice of law and, on the other hand, legal professionals and more traditional legal scholars. In order to accomplish this translation, we first have to consider the interdisciplinary communication process itself: what challenges face those who wish to integrate knowledge of the social world into legal scholarship, training, and practice? And what approaches will create the best kinds of translations? Can we integrate the different

theories, epistemologies, and "facts" used in legal and social science research without doing damage to one or the other? This is a two-sided question: it will not suffice for social scientists to employ their own frames and perspectives without giving some serious thought to the distinctive approaches of those trained in law. Doctrinal analysis has persisted for some set of reasons that make sense to those trained in law. For example, doctrine is the language through which laws are made, interpreted, and communicated. One can no more ignore this language when dealing with law than one could attempt to discuss engineering while refusing to take mathematics seriously. Social scientists have too often moved from the well-documented fact that doctrine is frequently out of touch with the reality of law, to rejecting any consideration of doctrine at all.

Thus we have a dilemma on both sides of this interdisciplinary encounter, with scholars basically ignoring each other's perspectives even as they study the same legal phenomena from very different starting points. There are deep scholarly traditions behind each side, and so it seems quite plausible that each has a valuable contribution to make. The legal academy is at the very least paying lip service to the idea that it would be good to integrate social science into legal training and scholarship, and there are increasing numbers of trained social scientists who also have law degrees. Some of them are working to bridge the gap between "law in books" and "law in action" that worried earlier realists. For many reasons, a number of scholars have concluded that it is time to make another attempt at the original legal realist agenda of getting formal law and the "real world" (and in particular, the reality of law in action as it has been revealed by decades of social science) into conversation with one another.[1]

This is the first part of a two-volume set dedicated to explicating and pushing forward that broad agenda. Many things have changed in the worlds of legal and social science scholarship since the time of the original Realists, among them that we are more than ever aware of the connections of law and society that reach far beyond any one nation's borders. Scholars from North America and Europe have often proceeded in ignorance of the knowledge available from the rest of the world. That position is no longer tenable for serious scholarship on law, and our group of New Legal Realists has from the outset insisted on the centrality of global perspectives to their endeavor (see, e.g., Garth 2006; Shaffer 2008). While a number of the

[1] As Tamanaha explains in his chapter in this volume, the original Realists in essence captured and named a larger trend in legal thought occurring during their time. Not all of the people they identified as fellow travelers embraced the title, and many who were part of the larger trend carried on without much overt connection to the scholars pushing for the named official "Legal Realist" movement. In similar fashion, today's New Legal Realists capture and support a wider trend, following in the steps of our predecessors not only in topical interests but in the way we pursue the project as a whole. No formal membership cards are issued, no official organization is declared – and we do what we can to avoid announcing an official canon. Instead, the goal is to further thoughtful, substantive conversation, research, teaching, and writing. As Llewellyn stressed many years ago, this is a method, or set of methods, for studying law – long overdue and under-recognized as an important source for bringing legal education and scholarship into the realm of "law in action."

authors in this first volume take that lesson to heart, our second volume places it front and center throughout, underscoring the integral role of transnational knowledge and experiences for this generation's form of realism. Together, the two volumes present core themes and ideas from today's legal realist movement.

I. WHAT IS "NEW LEGAL REALISM"?

The term "new legal realism" is itself contested and in the process of development; the editors of this two-volume set have taken a particular stance on how the concept should be used. Sometimes referred to as the "big tent" approach, our vision of a new legal realism embraces the full gamut of social sciences (see Erlanger et al. 2005; Macaulay 2005; www.newlegalrealism.org (last accessed February 1, 2015)).[2] This contrasts with approaches that focus exclusively on one type of methodology or a single social science field. Our task, still underway, is to work across the boundaries of diverse fields to create a genuinely interdisciplinary form of legal knowledge, with careful attention to the epistemological and normative questions involved. The original legal realists who conducted social science research employed methods ranging from ethnography to quantitative analysis, and studied a range of legal phenomena. (To be sure, this was just one part of their opus, but clearly still deserving of attention.) In the intervening years, scholars from all of the social science disciplines have examined those aspects of law and more, advancing our understanding light-years beyond where it was in the first half of the twentieth century. Many of the scholars engaged in this more recent research have entered into discussions that cross disciplines as part of their participation in the law-and-society movement.

Viewed from this "big tent" perspective, interdisciplinary legal studies could provide an exciting meeting point within which disciplines that do not otherwise regularly interact can encounter one another. Like Robert Maynard Hutchins's vision of the university itself, in which departmental boundaries are to be overcome in service of a broader form of interdisciplinary understanding, the "big tent" New Legal Realism offers an exciting opportunity to transcend current limitations on knowledge.[3] And like the law-and-society movement from which it takes its inspiration, this "broad tent" view attempts to undercut battles for dominance and status that can distract scholars from genuine inquiry. No single field or methodology is preordained to be privileged as the best source of "answers" to legal problems or questions; instead, all methods and fields exist to be drawn on as needed in

[2] It bears noting that during his time as a Bigelow Fellow at the University of Chicago, Stewart Macaulay, a founding contributor to this New Legal Realist enterprise, learned from Llewellyn.

[3] Hutchins helped to introduce a set of "Committees" at the University of Chicago that bridged traditional departments, and also created a system of undergraduate teaching that brought colleagues from different departments together; this had the effect of stimulating interdisciplinary teaching and scholarship at an "unparalleled" level (Levine 2006, 53; see also Mayer 1993, 170–171). Interestingly, Hutchins was himself a former dean of the Yale Law School.

addressing particular questions. The questions and problems that need to be addressed can then become more important than any ongoing battles for dominance based in disciplinary pride.[4] On the one hand, the field of new legal realist studies so-conceived could offer the social sciences an opportunity to transcend disciplinary boundaries in service of more profound and accurate understandings of human social and cultural experience. Legal scholarship itself, with its own specializations in normative theory and the doctrinal language within which legal policy is expressed, would be counted as an important discipline in this disciplinary mix (see Fineman 2005). On the other hand, a "big tent" form of new legal realism would offer legal scholars and policy makers a chance to stop reinventing the social science "wheel" at less sophisticated levels, instead encouraging regular efforts at translation and new forms of interdisciplinary knowledge for law.

Other contenders for the "new legal realism" label have utilized much more narrow perspectives. Miles and Sunstein (2008), for example, limit "new legal realist" scholarship to the quantitative study of judicial behavior, omitting consideration of other new legal realist work.[5] This is a narrower scope than was even found among the original Realists, who despite a concentration on judicial behavior also ventured into other sites of law.[6] Our "big tent" approach would happily welcome

[4] The idea that we might transcend interdisciplinary jockeying for power undoubtedly reads as overly idealistic, given the social science research showing how ubiquitous such vying and politicking are in academic work. But if the structure and stated ideals of an intellectual field stress inclusion of multiple approaches and methods, there is at least a starting point that fosters collaboration rather than exclusion and competition.

And indeed, the history of the law-and-society field bears out the observation that such a stated goal can result in a demonstrably more plural, open, and diverse set of disciplines, methodological tools, and frames for inquiry – arguably the most truly "interdisciplinary" space for legal inquiry yet created. Other similar spaces can be found at a handful of sociolegal institutes for research that have strong ties to the law-and-society movement. Admittedly, the very openness of the law-and-society movement has led to a somewhat amorphous sense of the field against which a number have struggled in trying to set up a canon (with often controversial results). But the existence in this area of a set of peer-reviewed journals along with a wing of the National Science Foundation devoted to funding empirical research has arguably created an interdisciplinary space within which more rigorous interdisciplinary norms have been developing. It is this kind of space that the New Legal Realism seeks to encourage and expand upon – with the added dimension, again, of giving concerted thought to the problem of translation between the legal academy and empirical work on law.

[5] And for a pointed insistence on this focus upon judicial decisions as a defining feature of legal realism, see Leiter (2013), who takes the extreme position of denying that the original Legal Realism included, as one important feature, a push for the use of social science to understand law. For a detailed explication of the importance of social science to legal realism in its first phase, see Schlegel (1995). Schauer's article "Realism Untamed" (2013) also points the way toward a new legal realism that would incorporate the study of law in everyday life into the core of legal analysis – albeit without any citation to the massive pertinent social science literatures that have already examined and elucidated some of the very topics which he views as unexplored. And Twining (this volume p. 127, fn. 23) lays out a clear explanation of the social scientific thread of the original realist movement. At the same time, Twining, in an argument with which I strongly agree, urges that we move beyond definitional debates based on the (purported) boundaries of any original legal realist project.

[6] And, to be clear, we would not consider the boundaries of the older Legal Realism to be decisive in charting a course for a newer form of legal realist inquiry, in any case.

the insights of researchers into judicial behavior – but would insist that they take other forms of disciplinary knowledge into account in assessing how courts operate and what their impact is on the wider society. And we would urge that "new legal realist" scholarship also consider law in legislatures, administrative agencies, police stations, and everyday life – all locations that the law-and-society tradition has explored. There are also other scholars who have pursued particular strands of a "new legal realist" project – but they have not employed an exclusionary or limited vision, and thus, from our point of view, they fit within the "big tent" NLR project just as easily as the wide variety of scholarly writings included within the original Legal Realism fit within that project.[7]

Within this "big tent," as within the original Realist project, there is also room for a variety of theoretical approaches. Publications from the first U.S. New Legal Realism conference in 2004 argued for incorporating forms of pragmatism, for a concept of recursivity between law and society, for the centrality of global dimensions, for a focus on law's role in supporting or contesting unjust hierarchies, and for attention to context as very important aspects of the new generation's legal realist project (see, e.g., Erlanger et al. 2005; Fineman 2005; Garth 2006; Gulati & Nielsen 2006; Luna 2005; Macaulay 2005; McEvoy 2005; Merry 2006; Mitchell 2005). Christopher Tomlins summarized "many aspects of what the New Legal Realism project portends":

> the combination of multiple methodologies, including both qualitative/interpretive and quantitative research; the insistence that empirical investigations combine "bottom-up" perspectives with "top-down" to generate a more complete picture of law and social world it inhabits; and the employment of empirical research to shed light on issues of importance to lawyers and policymakers. The last, in particular, is considered a core mission of the New Legal Realist project – the development of a sophisticated process of translation and exchange between law and social science. In this translation process, the goal is to create a positive agenda, building from but not ending with critique, through which the best learning from the social sciences can be brought to bear on legal problems without losing the nuances and priorities of either field. (2006, 795)

Tomlins also specifically notes NLR's "incorporation of pragmatist perspectives from multiple fields," so that NLR scholars "develop their new approach in large

[7] In an exciting development, there is currently a resurgence of legal realism among Scandinavian scholars, and a number of "big tent" U.S. scholars were in attendance at the initial European conference in 2012 (a description of the conference can be found at http://jura.ku.dk/icourts/calendar/2012/new-frontiers-of-legal-realism/ (last accessed October 18, 2015)). The European movement is more oriented toward traditional jurisprudential questions than is the U.S. movement (in keeping with some aspects of Scandinavian realism), but shares with a large number of U.S. New Legal Realists (especially those with law-and-society roots) a tendency to draw on the major strands of social theory undergirding fields such as sociology and anthropology both in Europe and the United States – using them to develop epistemologies for social scientific work with obvious debts to the work of Max Weber, Emile Durkheim, and more recent scholars like Pierre Bourdieu.

part through practicing it" (2006, 795–796). Early foci for this research program included studies of discrimination, transnational/global law, and poverty (Symposium 2005; Symposium 2006) – as well as discussions of how law teaching might be changed to incorporate more real-world learning about law in action (see, e.g., Erlanger et al. 2005, 359–360; Trubek 2005). These foci are not accidental, as they reflect a "bottom-up" perspective that is not only about method (i.e., begin by studying law in "real life" drawing on empirical research), but also about theoretical and topical priorities. If we only study appellate courts, we miss how law actually works in people's lives – and we miss how everyone except the most elite professionals interact with law. By contrast, this New Legal Realism pushes researchers to also examine the workings of law in the lives of people at the bottom and middle of the social hierarchy, and to incorporate what we learn into our theories. Emulating most of the social sciences, New Legal Realist work of this kind uses theory to guide empirical work, and empirical findings to guide theory.[8] In this way, theory can be informed by law "on the ground," and it can be truly grounded in the experiences of those who are ruled by law rather than just by those who formulate it. At the same time, it takes doctrine seriously as a key language through which law works.

We are excited to include in this volume scholars who are not only tuned in to empirical research, but who are also concerned with legal pedagogy, doctrine, and theory. Scholars like William Twining, Stewart Macaulay, Brian Tamanaha, and Robert Gordon – early advocates for the importance of realist scholarship to standard jurisprudential questions – join researchers from across a broad range of backgrounds who are engaging in this shared conversation. Thus the anthropologists in this volume all have law degrees, and bring their interdisciplinary backgrounds to bear on everything from pedagogy, to the intricate language and contexts of battles over copyright doctrine, to empirical legal methods. Epistemology, doctrine, and theory are also intertwined with pedagogy and empiricism in chapters by scholars with legal and sociological training like Ann Southworth, Catherine Fisk, and Bryant Garth – as well as with strong clinical and critical theory backgrounds like Ann Shalleck and Jane Aiken. Qualitative work on the legal profession is brought into conversation with quantitative research, with statistician and lawyer Katherine Barnes ably translating across multiple spheres to accomplish this. And we abandon neither legal doctrine nor theory (of multiple kinds) as we move to our empirical examples – whether examining the law governing inheritance of land with Thomas Mitchell, or the battles over accountability during the financial crisis with Alex Tham, or copyright law with Hadi Nicholas Deeb. The New Legal Realist concern

[8] Interestingly, the Critical Legal Studies movement drew on forms of social theory that are also part of the traditions of disciplines such as sociology and anthropology – but without attention to the grounded empirical research programs that those theories generated in these social sciences. When Empirical Legal Studies emerged in a later generation, it tended to draw on empiricism without social science theory. New Legal Realists offer to both fields a chance for added insight based on combining social science theory and empiricism – but also with an eye to the distinctive imperatives of legal theory as well (see Macaulay and Mertz 2013; Suchman and Mertz 2010).

with the sensitive questions surrounding translation into and out of the languages of law receives careful consideration in the hands of leading scholar of translation studies David Bellos, polymath sociolegal scholar Kim Lane Scheppele, and innovative legal theorist Mary Anne Case. And there are many more interlocutors in this growing "big tent" conversation.

For example, Victoria Nourse and Gregory Shaffer, providing their own summary of a "big tent" version of the field, argue that New Legal Realism "is a response to 'new formalism' that derived from neo-classical law and economics. New legal realists are not anti-economics . . ., but they are challenging the new formalism's assumptions about the individual, the state, and judging, as well as its approach to legal scholarship" (2009, 61). In a comprehensive synthesis of the varieties of current research that reject formalist approaches, Nourse and Shaffer argue for a "dynamic realism" that gives more attention to the way "[l]aw cycles recursively between society and legal institutions over time, which is why empirical inquiry is essential to understanding law's actual operation" (2009, 130). In this, they echo Arthur McEvoy's earlier NLR article, which stressed "the new realism's characteristic emphasis on multicausal, nonlinear, reciprocating, recursive interactions between law, the environment in which it works, and the ideas that people have about it" (2005, 434).[9] Nourse and Shaffer, however, integrate work outside of the sociolegal tradition as well, in a bold program that includes scholarship from the new governance, micro-institutional, and feminist traditions.

In addition to scholars already mentioned who were early advocates explicitly calling for "big tent" forms of new legal realism in legal scholarship, legal scholar Hanoch Dagan also began to push for renewed thought about realism in legal studies some years ago.[10] In his article "The Realist Conception of Law," Dagan sounds the kind of practical note that Tamanaha, in this volume, identifies with Llewellyn (and that is similarly stressed in Twining's chapter):

> My reconstruction of this realist legacy is not intended as a piece of intellectual history. I am not concerned here with tracing the intellectual roots of realist ideas, with evaluating legal realism as a historical movement, or with assessing the

[9] Like Nourse and Shaffer, McEvoy (2005) proceeds from examples of scholarship in a new realist vein to formulate his own synthesis; unlike them, he comes to a conclusion that fits with more postmodern approaches to studying law. By contrast, Nourse and Shaffer "worry that, while the academy indulged for the past twenty years in postmodern skepticism about law's 'hollow hope,' those who had no qualms about the use of law as power took the field, openly embracing the power to torture" (2009, 127). McEvoy, however, would resist this definition of postmodernism; interestingly, he draws on work by Nourse as well as by Christine Desan, Thomas Mitchell, Guadalupe Luna, Mario Barnes, and Beth Quinn to demonstrate a new form of research on law, which he dubs "postmodern" (2005, 437–453). Central characteristics of this work, in McEvoy's view, distinguish it from modernist research: "it elides the modernist distinctions between particular and general, between fact and theory. . .. All of it highlights recursive, reciprocating relationships between individual agency, environment, and consciousness. . .. In pursuit of questions that are distinctive to our own, disequilibrated times" (2005, 453–54).

[10] Other early calls for a new legal realism include Cross (1997) and Mertz (1998).

> scholarship of any given realist scholar. Instead, my purpose is to present a useful interpretation of legal realism, drawing out from the realist texts a vision of law that is currently relevant – indeed, valuable. (Dagan 2007, 609)

Dagan draws from realism a set of core tensions animating the institution of law, which he summarizes in three oppositions: power and reason, science and craft, and tradition and progress (2007, 610). He makes a strong argument for a scholarly program that balances these tensions rather than selecting only one part of the picture. Thus the reasoning and justification that occur through legal doctrine neither exhaust the entire picture of how law works, nor is this tension an entirely superfluous cover-up for dynamics of power that operate within and through law. Law can understand and respond to the social world better when it draws on social science – and yet the craft of lawyering will always be more than a mechanical application of that social science, given its necessary engagement with norms and morality. Finally, the pull of past legal decisions can never be entirely disregarded, and yet it is indubitably the case that law is dynamic, always in flux as it responds to a changing world. Rather than pitched battles as to whether one side of each duality is the more important, Dagan issues a plea for a balanced overview that holds onto these central tensions. Here, he has much in common with Nourse and Shaffer's dynamic realism, as well as with the "big tent" realists' emphasis on balancing (bottom-up with top-down methods and subjects of study, sociological with doctrinal studies, empirically-based skeptical caution with "legal optimism"; see Erlanger et al. 2005).[11]

Michael McCann, in his Preface to our two-volume set, argues strongly that New Legal Realism's integration of theory with empiricism sets it apart from other efforts to integrate social science into law schools, urging that NLR's greater "attention to epistemology and analytical theory" is a key to how it differs from Empirical Legal Studies (ELS) or Law-and-Economics (L&E) – along with NLR's inclusive methodological approach (this volume, xv). (Thus NLR would welcome the strongest empirical work from allied traditions such as ELS and L&E, while the same could not be said of those movements). He also points to NLR's signal insistence on empiricism done with the high standards that come with careful attention to the *process of translation between different disciplinary traditions*.[12] Like Mertz and Barnes, in their contribution to this volume, McCann casts doubt on stark divisions

[11] Because of its interest in comparing the underpinnings and relationships among different disciplines, NLR invites a connection with scholarship in the field of Science Studies.

[12] In an admittedly abbreviated format, I earlier made a case for a somewhat similar balancing of tensions in formulating a "moderate" social constructionism for sociolegal studies (perhaps able to "overcome stale oppositions in a single bound!" Mertz 1994a, 974; see also Mertz 1994b). Among the tensions addressed were: law as imposition of raw power versus law as vehicle for resistance, interpretive/idealist versus materialist approaches, law as source of constraint versus vehicle of creativity, stasis versus change in law, empirical versus theoretical approaches; at the same time I pointed out how work in this sociolegal tradition was often able to achieve a working synthesis of apparent opposites such as structure and action, epistemological skepticism and empiricism, critique and traditional social

between "quantitative" and "qualitative" methods, pointing to the complex interpenetration of methods and epistemologies to be found in leading empirical studies of law. And like many "big-tent" NLR scholars, he stresses the importance of "relational, contingent, context-sensitive, or process-based understandings of law" (this volume, xv).

We invite you to keep these and other formulations in mind as you peruse these volumes, assessing how the practices of NLR fit within proposed definitions for our emerging field. Looking to what scholars *do* when they engage in New Legal Realist studies is an approach that takes seriously the pragmatist idea that we should allow practice to guide theory, as well as vice versa. Here theory and practice develop in an interactive process. Some of us involved in New Legal Realism have been resistant to any attempt to offer lists of canonical writings or declare one single dominant definition, preferring instead to work within the somewhat loose framing that also characterized the older American Legal Realists. In Tamanaha's chapter in this volume, we find a set of extremely apt quotations and (resistance to) definitions from an acknowledged leader among the older Realists: Karl Llewellyn. Among my own favorites are Llewellyn's admission that the ideas of the original realists had long been in common circulation (just as have the ideas motivating today's realists); that there never was a clearly defined group at the center of this famous jurisprudential movement; that in naming the movement, he and others sought simply to make ideas that had been vaguely floating around the legal academy more "fruitful"; and that legal realism was "nothing more" than a method: "What realism was, and is, is a method, nothing more, and the only tenet involved is that the method is a good one. 'See it fresh,' 'See it as it works' – that was the foundation of any solid work, to *any* end" (Llewellyn 1960, 510). Llewellyn then adds functional questions to his list ("what is it for?"; "how has it been working?"), and concludes that realism is "a technology. That is why it is eternal. The fresh look is always the fresh hope. The fresh inquiry into results is always the needed check-up" (Llewellyn 1960, 510). Note that a technology used by Llewellyn in his own empirical work with Hoebel was ethnography, although he also embraced work done by others using other methods.

Rather than attempting a single overall programmatic statement for NLR (and in a vein sympathetic to that stated by Llewellyn), the editors of this two-volume set hope that you will take the work in these volumes, and the work referred to by our authors, as examples of a new form of legal realism in action. In other words, we look to the practices we would identify as included in the NLR tradition, and we invite you to join our conversation. A key point of that conversation is to provide better access to the extensive knowledge about the law in action that already exists – and that is currently emerging. And, still more to the point, what can be done to translate that knowledge into forms that speak to pressing legal issues? In any case, regardless

science method, law as neither entirely determinate nor indeterminate, and more (see, e.g., Mertz 1994a, 972–975 and accompanying footnotes; Mertz 1994b).