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Introduction

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Studying law globally is both necessary to understanding the arc of law and justice in the twenty-first century as well as a challenge to explore how law manifests itself across cultures, institutional arrangements, and economic contexts. While legal formalism still dominates the doctrinal study of law, the emergence of legal realism in the first quarter of the twentieth century opened up the study of law to a wider range of approaches, including those of social science. Today there is a healthy debate over the different approaches and meanings of legal realism, or what is now described as New Legal Realism (NLR). However, there is little doubt that our understanding of law in all its dimensions has been enhanced by the multidisciplinary contributions of social scientists and lawyers who have explored not only the logic of the law but also the multiple ways in which law manifests itself in society, whether local or global.

For a new legal realism, the understanding of law is rooted not only in an empirical knowledge of how law works in context but also in drawing attention to the relationship between the use of law and other ways of understanding and studying law, whether doctrinal or jurisprudential. Concerned with ensuring an open yet reflexive approach to the study of law, a new legal realism embraces a multidisciplinary approach yet remains concerned with ensuring a careful translation between law and empirical research. It is this concern that makes studying law globally such a challenge as well as an opportunity to understand the role law might play in achieving the goals of justice and stability sought by communities across the globe.

In order to think about what a new legal realist approach to studying law globally might help us to do, we must first reflect on what we understand new legal realism to be. Confronting this question, our colleague Alexandra Huneeus has suggested three possible ways of understanding what new legal realism might mean in the academy today, especially when we try to think of new legal realism as an approach to the study of law that is distinct from regular social science scholarship that focuses on understanding how law works in society. First, it might simply refer to sociolegal scholarship created by law professors; in Huneeus's words, "just as a gamer adopts an avatar to enter a virtual world, Law and Society scholarship appears in the legal

academy as NLR, an identity arguably better suited to the mores and palace wars of that peculiar world" (Huneeus 2014). Another possibility, she notes, is premised on the source of the questions that are asked. NLR scholars use empirical methods to answer questions that emerge from the practice of law rather than from debates in the disciplines of sociology, political science, or anthropology. Thus it is less vested in theory building for the social sciences and is rather more motivated by questions of practice, and in using social science methods to facilitate practice. The problem, as Huneeus points out, is that through the borrowing of methods, legal scholars are importing into their work the concepts and categories developed by means of social science theorizing. This requires greater attention to questions of translation between the research methods of law and of social science. It also requires greater attention to social science methodologies.

Finally, Huneeus identifies a third, more robust version of new legal realism. She argues that while the "borrowing and translation view" of NLR depicts legal scholarship as derivative – legal academics learn from social scientists how to pose and answer their questions through empirical inquiry – the challenge is whether, as Shai Lavi argues, it is possible to "bring the logic of other disciplines under the critical scrutiny of jurisprudence" (2011, 812). This third option seems to point toward an engagement with what Hanoch Dagan (2013) identifies as the normativity of legal realism. Even if we do not fully embrace the reincorporation of normativity, we might still distinguish a new legal realist approach from a purely social science approach to law in three ways: (1) it is a body of scholarship, usually based in law schools, driven primarily by problems that arise in legal practice; (2) it places a greater theoretical emphasis on doctrine and legal processes to explain legal outcomes, and it takes seriously law as a somewhat autonomous phenomenon not reducible to other social phenomena; and finally (3) it is a field of study sustained by constant dialogue between scholars working in law schools and social scientists. As such, it might be described, for the purposes of studying law globally, as one among many scholarly approaches to law that make up the broader Law and Society tradition.

In his book *Reconstructing American Legal Realism & Rethinking Private Law Theory*, Hanoch Dagan (2013) draws upon the early realists, including Oliver Wendell Holmes, Karl Llewellyn, Felix Cohen, and Benjamin Cardozo, to argue that the realists did not merely posit the interpretation of legal doctrine as indeterminate or ascribe legal meaning to the exercise of raw judicial power, but rather advanced a conception of law as an ongoing institution that accommodates three constitutive sets of tensions: "power and reason, science and craft, and tradition and progress" (Dagan 2013, 28). Repudiating the "equation of law with doctrine," this approach highlights the interconnections between an understanding of law that acknowledges both the coercive and the normative aspects of law – but also requires any understanding of law to be grounded in empirical knowledge of law in action.

Recognizing the problems of both a purely assimilationist approach in which the study of law is merely incorporated into the different disciplines within social science and an inward turn in which an understanding of law is built upon the logic of legal processes or the craft of lawyers, Dagan argues for a revitalization of legal theory as a genus of jurisprudential approaches to the study of law as a "set of coercive normative institutions" (2013, 93) within which legal realism is an important species of legal theory. Given the expansion of methodologies and the embrace by social scientists of the study of legal phenomena, we would argue that the distinctive contribution of a new legal realism is its emphasis on multidisciplinarity, its openness to multiple methods, and a recognition of the importance of theory in the fields of both social science and law. The uniqueness of the new legal realist approach is its close attention to the translation between law and empirical research so that both lawyers and social scientists recognize and appreciate the complex interactions among different empirical approaches to understanding law and traditional legal approaches – as well as the institutional and normative dimensions of law in action. Studying law globally only adds additional layers of complexity to this endeavor. This collection does not simply use social science methods to address problems of legal practice, but includes many chapters by social scientists using social science theory and methods to understand law in a global context. Thus it embodies the new legal realist ideals of interdisciplinary communication and translation that take seriously the concerns, theories, methods, and core questions of both law and the social sciences.

The initial legal realist movement of the early twentieth century argued that it was insufficient to study law through doctrine, and urged a mode of understanding that stretched to the social life of courtrooms and everyday practices outside the law (Macaulay 2005; Tamanaha 2016, in Volume I). This analytic approach was revolutionary at the time, transforming the way law was understood. It is even more important today. As the international dimension of law grows in importance, it is valuable to see law as a set of practices with histories, habitual ways of doing things, and systems of cultural meaning. While this was always true of national legal systems, in the contemporary era these practices, habits, and meanings are often radically plural. They may emerge from distinct legal and cultural traditions, or from quite different assumptions about the role of law and the state. Colonialism pitted such diverse systems against each other, forcing them to coexist, always within the framework of unequal power (Sharafi 2007; Benton 2002; Chanock 2001; Merry 2000; Shamir 2000). Such plurality is now enhanced by development-linked legal reforms, military takeovers and the imposition of new legal orders, transnational legal regimes from trade agreements to international criminal courts, embedded sovereignties such as indigenous or ethnic communities, and overarching legal norms such as human rights. In all of these fields of contestation among systems of law, analyzing the historical, cultural, and social systems that constitute them is essential to understanding what kind of law exists. Doctrine will not explain why

some laws are followed and others resisted or how compromises are reached between local systems of ordering and national and transnational ones. As the chapters in this book indicate, specific situations vary greatly in the way confrontations take place among various ideas of what law is and what its norms are.

The new legal realist perspective not only is attentive to pluralism and diversity; it also asserts the importance of historical, contextual, and sociocultural approaches to understanding how law works. The term "empirical" is sometimes claimed to refer only to quantitative studies of law that focus on economic or psychological modes of analysis, but in the new legal realist frame, empirical research covers a broad array of quantitative and qualitative approaches to knowledge. For example, in order to understand the way law produces order and disorder in the Sudan, as Massoud shows in his chapter, it is necessary to trace its colonial and Islamic origins and the contemporary intersections with human rights law. In another example, Merry shows in her chapter that countries react differently to the admonitions of human rights treaty committees depending on the sphere of social life and law that is being criticized. When human rights committees critique practices that are strongly supported culturally and/or are politically essential, such as Turkey's insistence that Kurds are not a minority, they are energetically resisted by countries. At the same time, the same country may readily acknowledge the need for more education for its people.

Our version of a new legal realism examines the relationship between law and culture. Law embodies cultural principles and reflects them, while the procedures and practices of law articulate and construct culture. In the context of an increasingly interrelated transnational society, law can take on new importance as an index of culture and peoplehood: as a way to assert identity and difference. This role of law is particularly visible in the efforts of small, relatively powerless indigenous communities to control their own legal systems as a way to assert sovereignty. The persistence of systems of normative ordering within ethnic communities is another example. Conversely, forcibly transforming a society's legal system, as the United States did in Iraq after ousting Saddam Hussein, is a powerful tool to change the society itself. These examples show the importance of a longitudinal approach to analyzing law that incorporates historical analysis, of analyzing the plurality and complexity of law under conditions of contemporary globalization and struggles over sovereignty, and of the need for a cultural analysis that recognizes the link between normative orders and a community's definition of itself. This is not a narrow paradigm of analysis, but instead an open set of questions, methods of research, and possibilities of explanation.

This volume brings together scholars from across the academy – historians, lawyers, and social scientists – whose work is deeply rooted in an empirically informed understanding of the terrain of law in order to demonstrate how a new legal realist approach is able to inform our understanding of law across the globe. Using multiple methods, including ethnography, comparative historical

analysis, interviews, and participatory research, these contributions reflect the combined value of interdisciplinary and mixed methods applied reflexively and with close attention to issues of translation between law and empirical research. While the individual chapters cover subject matter as distinct as constitutionalism, human rights, legal pluralism, and the regulation of international finance and trade, they are all grounded in deeply empirical understandings of legal institutions and practice in these different realms. At the same time, they do not flinch from exploring the normative implications of this understanding, nor do they assume that their individual methods are the sole means of understanding the law in their different domains. It is this reflexive openness and awareness of the difficulties of translation between social science and law, as well as between law and legal institutions in different contexts, that has become the hallmark of the new legal realist approach.

Studying law globally in the twenty-first century requires us simultaneously both to embrace the processes of globalization, in which law has played a significant role, as well as to understand how law and legal institutions continue to be rooted in local practices and contexts. To this end we have divided the contributions to this volume into four sections focusing on: the globalization of law, the global transfer of norms, global institutions and the changing roles of legal professionals, and finally, global justice. While this is not a comprehensive set of lenses through which to study law globally, these different foci do identify different realms or locations in which the practice and hence study of the global dimensions of law may be framed.

The first section, on the globalization of law, incorporates studies that focus on the complex interactions among traditional international law, national rules, and a comparative perspective on the rules and roles of law. This initial section provides a broad perspective on the historical and continuing interactions among global rules, norms, and local agency. Martin Chanock's chapter on postcolonial African constitutionalism explores the relationship between global developments and ideas – including colonialism, decolonization, modernization (of both the capitalist and socialist varieties), the Cold War, and neoliberalism – and the struggle to build an African constitutionalism that is rooted in the embrace of the rule of law by African societies and not imposed from above. Sally Engle Merry, in her chapter on human rights monitoring, deploys an ethnographic analysis of the content of expectations, the political and economic situation of the countries under investigation, and the willingness or resistance of a country to accept treaty obligations, as a means of exploring forms of quantification and the use of indicators in the global management of human rights and legal globalization more generally. Susan Sell's chapter explores the dynamic interplay among domestic politics, international institutions, and state and nonstate actors in the production of global rules protecting intellectual property. Together these three chapters provide a deeply contextualized yet broad overview of the globalization of law, highlighting the multifaceted character of a process that is central to any understanding of global law.

Section II on the global transfer of norms recognizes that as law travels globally, scholars are uncovering many tacit ways that unrecognized norms are also being exported and imported. In this section, the contributors explore the diffusion of norms through the interaction of local and global rules. In their chapter, Carol Heimer and Jaimie Morse explore the transnational diffusion of norms through a rich comparative ethnography of HIV clinics in the United States, South Africa, Thailand, and Uganda, highlighting how law moves simultaneously across two boundaries as it moves from the global north to the global south and from legal arenas into medical settings. Mark Fathi Massoud's chapter on Islamic law and human rights in Sudan explores the local experiences of the poor and marginalized as they are confronted with the imposition of different legal orders, whether state-imposed forms of Islamic law or the norms of international human rights as offered by nongovernmental organizations responding to humanitarian crises. Sindiso Mnisi Weeks, in her chapter, uses a focus on the interaction between vernacular and state law and courts in two traditional rural communities in South Africa, exploring a broader context of social relationships, values, politics, and economics in order to understand how justice and security are accessed and negotiated in a context in which both indigenous law and human rights are legally recognized and celebrated. These three chapters offer rich and compelling examples of the interaction of global and local norms and demonstrate how the diffusion of norms over multiple boundaries may be fruitfully explored to understand the mechanisms, processes, and impacts associated with legal globalization.

The third section explores what roles institutions, conceived and functioning at a global or regional level, are playing in shaping law and regulating activities – from the flow of capital to the trade in goods – as well as the policy and practice options available to states. While there is strong empirical evidence of the global harmonization of law – the conscious adoption of identical or nearly identical rules – this section also explores the changing role of judges and lawyers in international and local contexts. Gregory Shaffer's chapter reflects on the distinction between the new and old legal realisms as well as the realism of the international relations literature to highlight the value of a new legal realist approach to international law. Using the example of his own work on the World Trade Organization, Shaffer concludes that a new legal realist approach takes international law seriously but also demonstrates a healthy skepticism regarding the social forces, inequalities, and ideological factors that pervade this field by relying, for its own evaluations, on an empirically grounded understanding of the relevant institutions and processes.

In his chapter, Sol Picciotto explores the regulatory construction of the offshore financial system and tax avoidance, especially by multinational corporations, to highlight the tangled interactions of national and international laws. Picciotto uses the personal odyssey of a whistle-blower and the wider systemic context of the post–financial crisis battles to combat bank secrecy, for understanding the interplay of agency and structure in the development of legal and social institutions. Sida Liu's

chapter on the legal profession in China uses a national case study to explore how the changing role of lawyers reflects the engagement of China with global markets and norms. Liu argues that since its revival in the 1980s the Chinese legal profession has been transformed from state bureaucrats into market brokers and political activists – and that while the three roles coexist, it is the interaction among them that is shaping the future of the profession in China. Through their exploration of the role of global institutions, the harmonization of rules, and the agency of lawyers in an era of global law, the authors in this section demonstrate how an empirically grounded understanding of legal institutions and participants provides both clearer understandings and alternative normative and institutional examples that might be fruitfully deployed in debates over the future of legal processes, institutions, and lawyers at both the international and the national levels in a constantly changing global context.

Finally, the fourth section recognizes that achieving justice has become both an emblem of the new century as well as an increasingly complex problem as different forms of justice, from international criminal liability to local forms of amnesty and reconciliation or transitional justice, vie for global recognition and acceptance. Contributors to this last section explore efforts to achieve justice in the global context, from the local performance of justice to the creation of global institutions and the diffuse practices of transitional justice. In her chapter on the irreconcilable goals of transitional justice, Bronwyn Leebaw contrasts the ambitious goals of transitional justice institutions with the tension created by the dual roles of law in regulating violence on the one hand and legitimating power on the other. Leebaw argues that a better understanding of this tension will shed light on the central aspirations of transitional justice institutions and practices to condemn past violations while simultaneously providing a path to reconciliation by conflating political compromise and stability with the establishment of a political community based on principles of human rights and the rule of law. Instead, Leebaw contends that it is important to root any understanding of transitional justice in an empirical understanding of the role of particular transitional justice institutions and the political dynamics associated with their often irreconcilable goals.

In her chapter, Alexandra Huneeus uses the experience of the Inter-American Court to inform the debate over the future of the International Criminal Court (ICC), demonstrating how a particular set of techniques of oversight and supervision may provide a path through which the ICC might evolve its complementarity regime to address some of the criticisms the court now faces but also to foster increased accountability for international crimes at the national level. Richard Wilson completes this volume with his chapter on the relationship between law and social science in the context of international criminal tribunals by exploring the evolution of the legal framework of criminal accountability for direct and public incitement to commit genocide. Focusing on the issue of causation in the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR), Wilson

demonstrates how the insistence on causation in international criminal law's formulation of the crime of "incitement to commit genocide," based on a model of causation developed by the International Military Tribunal and the ICTR that has been discredited by four decades of social science research, was the product of the difficulty the jurists – prosecutors and judges – had in proving the special intent required to commit genocide. In demonstrating how organizational culture can dramatically transform legal thinking in these contexts, Wilson argues that a legal realist approach holds the promise of "unearth[ing] the ways in which international criminal court decisions result as much from the quotidian dimensions of the law – the courtroom conventions, rules of procedure and evidence, and assumptions and beliefs of legal actors – as they do from the black letter of the law and established legal reasoning."

Whether from the perspective of historians, lawyers, or social scientists, the contributors to this volume demonstrate how the study of law globally may be advanced through the conscious embrace of a new legal realist approach. Consistent with the realist ethos, there is no attempt to claim a singular approach but rather a recognition of the complexities of translating the social, political, economic, and institutional contexts as they are elucidated by different social science methodologies into an understanding of law as an ongoing institution that accommodates, as Dagan notes, three constitutive sets of tensions: power and reason, science and craft, and tradition and progress. By paying close attention to the issues of translation – between social science and law, across boundaries, and within the realm of international law – these new realist perspectives on the studying of law globally make an important contribution to the broader law-and-society tradition by opening up the relationship between the normative claims of global law and more contextual and social scientific understandings of the role of law as it moves across boundaries of professions, states, and disciplines.

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