

LEGAL REALISM & JUDICIAL DECISION-MAKING

Vitalius Tumonis

Mykolas Romeris University, Faculty of Law,
Department of International and European Union Law
Ateities 20, LT-08303 Vilnius, Lithuania
Telephone (+370 5) 2714 669
E-mail: vitalius.tumonis@gmail.com

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Abstract. *The two grand theories of judging – legal realism and legal formalism - have their differences set around the importance of legal rules. For formalists, judging is a rule-bound activity. In its more extreme versions, a judge is seen as an operator of a giant syllogism machine. Legal realists, in contrast, argue that legal rules, at least formal legal rules, do not determine outcomes of cases. Legal realism has been misunderstood almost everywhere outside its birthplace – the United States. Continental legal theory, for one, views legal realism as practical, down-to-earth, hard-nosed school of thought which is opposed to the more “scientific” theories.*

The purpose of this article is two-fold. First, to show what legal realists really stood for - that contrary to the popular myth, they did not maintain that formal legal rules do not matter at all; that most of them considered legal rules to be important, only many of those rules are informal rules. Second, contrary to the popular understanding in Continental legal theory, legal realism by its nature was not an antiscientific theory of judging - in fact, it was either a first scientific theory of judging or at least its prototype.

Keywords: *judicial decision-making, theories of judging, legal realism, legal formalism.*

Introduction

The scholarly analysis of judging has historically revolved around this central question: how much of judicial decision-making depends on legal reasoning? Do judges, after finding the relevant facts of the case, consult legal rules and then arrive at their decision? Or maybe the equation that judicial decision-making is composed of merely facts and legal rules is just an illusion? What if instead of using legal rules to decide their cases, judges rather use those rules to justify their decisions and not to arrive at them? What if instead of using only statutory legal rules, judges often rely on policy principles not found in law books?

Any discussion of decision-making in contemporary courts, whether national or international, would be incomplete without the two grand theories of judging – formalism and realism. The antinomy between these two theories gave birth to most of the later empirical research and theoretical analysis.

Legal Realism, a movement that arose in 1920s and 1930s in the US, challenged the prevailing view that judges are rational decision-makers, who apply only legal rules found in law books to the facts of the case. Realists were a sundry group: there were more differences between some realists than between some realists and formalists. Overall, however, realists asserted that often judges make up their mind about the outcome even before they turn to legal rules; often they will use policy principles and make new law; some realists asserted that judge's personality has more impact than legal rules. After making a decision, judges will justify it with formal legal rules.

For legal formalists, on the other hand, legal rules and logical reasoning are central to judicial decision-making. In more extreme versions of legal formalism, legal rules are the Alpha and Omega – the beginning and the ending of judicial decision-making. Thus, a formalist idea of judging excludes intuitive decision-making, policy considerations, and a great number of other variables. As Judge Posner notes, “judges have convinced many people – including themselves – that they use esoteric materials and techniques to build selflessly an edifice of doctrines unmarred by willfulness, politics, or ignorance”.¹

Both of these theories have been misunderstood, especially legal realism. Very often, these two theories are oversimplified. For example, authors of one article thus describe two grand theories of judging:

According to formalists, judges apply the governing law to the facts of a case in a logical, mechanical, and deliberative way. For the formalists, the judicial system is a “giant syllogism machine,” and the judge acts like a “highly skilled mechanic.” Legal realism, on the other hand, represents a sharp contrast. ... For the realists, the judge “decides by feeling and not by judgment; by ‘hunching’ and not by ratiocination” and later uses deliberative faculties “not only to justify that intuition to himself, but to make it pass muster.”²

1 Posner, R. A. *How Judges Think*. Cambridge: Harvard University Press, 2008, p. 3.

2 Guthrie, C.; Rachlinski, J. J.; Wistrich, A. J. Blinking on the Bench: How Judges Decide Cases. *Cornell Law Review*. 2007, 93: 2.

This is an oversimplification no doubt. Not all formalists think of courts as giant syllogism machines; not all realists are in love with notions of judging by hunching. Legal realism has been misunderstood almost everywhere outside its birthplace – the United States. Continental legal theory, for one, views legal realism as practical, down-to-earth, hard-nosed school of thought which is opposed to the more scientific models of judging (which happen to be purely theoretical).

The purpose of this article is two-fold. First, to show what legal realists really stood for - that contrary to the popular myth, they did not maintain that formal legal rules do not matter at all; that most of them considered legal rules to be important, only many of those rules are informal rules. Second, contrary to the popular understanding in Continental legal theory, legal realism by its nature was not an antiscientific theory of judging - in fact, it was either a first scientific theory of judging or at least its prototype.

1. Legal Formalism

1.1. Notions of Formalism

Essentially, formalism refers to the view that judging is a rule-bound activity. Non-legal rules have little or no bearing on the outcomes of cases. Terms such as formalism, mechanical jurisprudence, legalism, and classical legal thought are often used interchangeably. Some commentators also use such terms as legal science or positivism when discussing formalism.³

The term new formalism is occasionally used to represent the view that judging is a rule-bound activity, which is not necessarily purely deductive or even logical, but a rule-bound and predictable nonetheless. Some scholars also distinguish between rule-formalism and concept formalism.⁴ Rule-formalists lay stress on clear rules and strict interpretation; concept-formalists emphasize principled and systemic coherence in all of the law.

One can sometimes come across more formalistic versions of formalism: the courts are huge syllogism machines, operating by mechanical deduction. In essence, it says that judging is a methodical and logical activity, primarily (or least sufficiently) deductive application of legal doctrines, principles, rules to the facts of the case. This view, at least in the United States, has never been strong; more often, realists used it a straw man fallacy. Yet, outside the US and especially in Europe, legal formalism has been the central theory of judging, albeit not always its extreme versions.

3 A theorist might object that there are fine theoretical distinctions between these terms; these distinctions, however, are irrelevant in this context.

4 Grey, T. C. Judicial Review and Legal Pragmatism. *Wake Forest Law Review*. 2003, 38: 478.

1.2. Legal Science

Reason is the life of the law; nay, the common law itself is nothing else but reason.

Sir Edward Coke

Formalism owes much of its existence to the notion of law as legal science. This school of thought views law as a rational, gapless, complete, and almost geometrical system. It is a self-encompassing system in a sense that all that is needed can be found within the system, within the legal rules.

Ever since Cartesian ideals of reasoning as deduction gained momentum, legal reasoning also became epitomized by deductive logic. In Anglo-Saxon legal world, Blackstone was one of the first who brought up the idea of law as rational science.⁵ This view eventually prevailed in the nineteenth century. In the twentieth century, the rise of analytical positivism in philosophy and many social sciences cemented the view of law as rational science. This was especially true in continental legal thinking.

Grant Gilmore, a noted American legal historian, thus described formalism as it appeared after the American Civil War:

The post-Civil War juridical product seems to start from the assumption that the law is a closed, logical system. Judges do not make law: they merely declare the law which, in some Platonic sense, already exists. The judicial function has nothing to do with the adaptation of rules to changing circumstances; it is restricted to the discovery of what the true rules of law are and indeed always have been.⁶

Eventually, Max Weber established the best-known definition of legal science. According to Weber, five postulates represent the legal science:

First, that every concrete legal case be the “application” of an abstract legal proposition to concrete “fact situation”; second, that it must be possible in every concrete case to derive the decision from abstract legal propositions by means of legal logic; third, that the law must actually or virtually constitute a “gapless” system of legal propositions, or must, at least, be treated as if it were such a gapless system; fourth, that whatever cannot “construed” rationally in legal terms is also legally irrelevant; and fifth, that every social action of human beings must always be visualized as either an “application” or “execution” of legal propositions, or as an “infringement” thereof, since the “gaplessness” of the legal system must result in a gapless “legal ordering” of all social conduct.⁷

5 Boorstin, D. J. *The Mysterious Science of Law: An Essay on Blackstone's Commentaries*. Chicago: University of Chicago Press, 1996, p. 20.

6 Gilmore, G. *The Ages of American Law*. New Haven: Yale University Press, 1977, p. 62. Some scholars noted that Gilmore probably exaggerated prevalence of this view in the US. A number of American commentators back in the nineteenth century agreed that it was a mere fiction and nothing else that courts only discover the law but don't make it. See Tamanaha, B. Z. *Beyond the Formalist-Realist Divide*. Princeton: Princeton University Press, 2010, p. 13–20.

7 Weber, M. *Economy and Society*. Roth, G.; Wittich, C. (eds.). Berkeley: University of California Press, 1978, p. 657–58.

Weber also noted that the notion of law as legal science accurately describes Continental law because it was largely a product of systematization. Yet, he also noted that it does not apply to common law. Weber pointed out that common law, by default, is developed in a piecemeal fashion. Common law courts adopt precedents in response to specific instances; they rarely consider how this may affect overall legal structure. Likewise, legislation in common law countries is often passed in response to specific events, not with a grandvision of legal system: “the concepts thus formed are constructed in relation to concrete events of everyday life, are distinguished from each other by external criteria.”⁸

1.3. Formalism and Mechanical Jurisprudence

If law is a rational science, then in a complete and gapless legal system judges need no recourse to external rules; solution to any case can be found within the system itself – a judge needs to use only rules of logic, primarily deduction. In such system, judges do not make law; there is no need to make law because the legal system is already complete, it is gapless.⁹ What judges have to do is discover and declare the law which has always been there. It is of course no surprise that this view gave birth to the idea of judges as oracles of law.¹⁰

Many non-formalists call this view of judicial decision-making a mechanical jurisprudence. Thus, Posner writes that:

Legalists decide cases by applying preexisting rules or, in some versions of legalism, by employing allegedly distinctive modes of legal reasoning, such as ‘legal reasoning by analogy.’ They do not legislate, do not exercise discretion other than in ministerial matters (such as scheduling), have no truck with policy, and do not look outside conventional legal texts - mainly statutes, constitutional provisions, and precedents (authoritative judicial decisions) - for guidance in deciding new cases. For legalists, the law is an autonomous domain of knowledge and technique.¹¹

1.4. Prevalence of Formalism

While such understanding of formalism has been with us for almost a century, some scholars recently pointed out that its prevalence in the US has been exaggerated.¹²

8 Weber, M., *supra* note 7.

9 Leiter, B. Positivism, Formalism, Realism. *Columbia Law Review*. 1999, 99: 1145–46.

10 Dias, R. W. M. *Jurisprudence*. 5th Edition. London: Butterworth’s, 1985, p. 151.

11 Posner, R. A., *supra* note 1, p. 7–8. Posner also continues: “The ideal legalist decision is the product of a syllogism in which a rule of law supplies the major premise, the facts of the case supply the minor one, and the decision is the conclusion. The rule might have to be extracted from a statute or a constitutional provision, but the legalist model comes complete with a set of rules of interpretation (the “canons of construction”), so that interpretation too becomes a rule-bound activity, purging judicial discretion.” *Ibid.*, p. 41.

12 Brian Tamanaha, in his recent treatise on formalism and realism, points out that: “Contrary to what Pound, Frank, and Gilmore [the proponents of legal realism] insisted, there is overwhelming historical evidence that *all lawyers knew* - as was often repeated - that judges made law. Pound and Frank relied on

Probably it is probably fair to say that American legal realists used American formalism as a straw man because “every account of the [American] legal formalists and their belief in mechanical jurisprudence has been written by legal realists.”¹³

Whatever is the case with American formalism, few would deny that formalism, or its various jurisprudential reincarnations, has prevailed in Europe and in the rest of the world following the civil tradition where,

[The judge] is a kind of expert clerk. He is presented with a fact situation to which a ready legislative response will be readily found in all except the extraordinary case. His function is merely to find the right legislative provisions, couple it with the fact situation, and bless the solution that is more or less automatically produced from the union. The whole process of judicial decision is made to follow the formal syllogism of scholastic logic. The major premise is in the statute, the facts of the case furnish the minor premise, and the conclusion inevitably follows.¹⁴

There were good reasons why American legal realists would quote their European counterparts to describe formalism.¹⁵

Few contemporary legal scholars espouse the extreme versions of formalism. Yet, the distinguishing characteristic of contemporary formalists is that they consider law and judicial decision-making as a rule-bound activity. They agree that judging is not a mechanical activity and judicial discretion is unavoidable. Yet, at the end of the day, how judges decide their cases depends on what legal rules dictate.¹⁶

2. Legal Realism: Birth and Development

2.1. Introduction to Realism

Legal realism was arguably the most important and controversial theory of judging in the history. And in general as well, there were few intellectual developments in law that have been as influential, controversial, and misunderstood. Its influence went far beyond as a theory of adjudication. As one legal theorist notes, even contemporary legal positivism owes much of its renewal to legal realism.¹⁷

German discussions of civil law systems, whereas Max Weber argued that common law systems were not formally rational legal systems. Jurisprudents in the United States were enamored with saying that “law is a science,” but practitioners rejected this idea and dismissed the notion that judging was a matter of pure logical deduction.” Tamanaha, B. Z., *supra* note 6, p. 44.

13 *Ibid.*

14 Merryman, J. H. *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*. 2nd Edition. Stanford: Stanford University Press, 1985, p. 36.

15 See e.g. Zane, J. M. German Legal Philosophy. *Michigan Law Review*. 1918, 16: 287.

16 See e.g. Ratnapala, S. *Jurisprudence*. Cambridge, Cambridge University Press, 2009, p. 95–96: positivists discover “law as it is” by consulting primary and secondary rules of the legal system; realists discover “law as it is” by looking beyond rules to the way courts actually reach their decisions.

17 *Ibid.*, p. 108–109:

Realism is a diverse school of thought and any attempts to homogenize it will distort more than simplify. When it comes to judicial decision-making, realists had two general theses.¹⁸ First, judges have a preferred outcome of a case even before they turn to legal rules; that preferred outcome is usually based on some non-legal grounds – conceptions of justice, attributes of litigating parties (government, poor plaintiff, racial group, etc), ideology, public policy preferences, judge’s personality, etc. Second, judges usually will be able to find a justification in legal rules for their preferred outcome. This is possible because the legal system is complex and often contradictory. Of course, occasionally a judge will come across a preferred outcome that just “won’t write”, but these are rare.¹⁹ Normally, however, judges will find some cases, statutes, maxims, canons, authorities, principles, etc, that will justify their preferred outcome.

2.1. Nineteenth Century Realists

2.1.1. Realists before Legal Realism

Most accounts of how legal realism came to exist start with Holmes or the birth of the movement in 1920s and 1930s. Yet, as some scholars showed, there were plenty of realists in the US even before the birth of realism: when “the legal realists arrived on the scene, realism about judging had circulated inside and outside of legal circles loudly and often for at least two generations.”²⁰ Francis Lieber, an eminent American lawyer of the mid-nineteenth century, noted that judicial decisions are rarely mechanistic; instead, experience and numerous other factors influence the outcome significantly.²¹

Likewise, William Hammond, a legal scholar who is considered a formalist, already in 1881 expressed a rather realistic attitude about law as a constraint on judging:

It is useless for judges to quote a score of cases from the digest to sustain almost every sentence, when every one knows that another score might be collected to support the

“[L]egal positivism owes a large debt to American realism that is rarely acknowledged. American realism jolted legal positivism out of its complacency by questioning widely held assumptions about the nature of rules. It should be remembered that Holmes exposed the weaknesses of the command theory of law long before Hart. Realism prompted the rethink of legal positivism that was brilliantly undertaken by scholars like Hart and Raz. It forced positivists to distance themselves from formalism and to reconsider the nature of legal language and judicial discretion.”

18 Schauer, F. *Thinking Like a Lawyer: A New Introduction to Legal Reasoning*. Cambridge: Harvard University Press, 2009, p. 138.

19 *Ibid.* As Schauer further observes, “thus, the realist-influenced lawyer will not only argue the case in terms that will appeal to actual basis of decision, but will also provide the judge with the legal doctrine, a “hook” on which to hang and justify the decision”.

20 Tamanaha, B. Z., *supra* note 6, p. 78.

21 Lieber, F. *Legal and Political Hermeneutics, or Principles of Interpretation and Construction in Law and Politics*. Boston: Little Brown, 1839, p. 236–237.

“... much depends upon a certain instinctive feeling, not derived from any course of reasoning, and inclination of our mind one way or the other, in nicely balanced cases, not from whim, but in consequence of long experience, and the effect of a thousand details on our mind, which details, although properly affecting a sound mind, can nevertheless not be strictly summed up.”

opposite ruling. The perverse habit of qualifying and distinguishing has been carried so far that all fixed lines are obliterated, and a little ingenuity in stating the facts of a case is enough to bring it under a rule that will warrant the desired conclusion. ... [T]he most honest judge knows that the authorities with which his opinions are garnished often have had very little to do with the decision of the court - perhaps have only been looked up after that decision was reached upon the general equities of the case. ... He writes, it may, a beautiful essay upon the law of the case, but the real grounds of decision lie concealed under the statement of facts with which it is prefaced. It is the power of stating the facts as he himself views them which preserves the superficial consistency and certainty of the law, and hides from carless eyes its utter lack of definiteness and precision.²²

2.1.2. Policy Principles and Judicial Philosophy

A number of other prominent commentators of that era shared the same concerns about judging that realists would voice up several decades later.²³ For example, Austin Abbott argued in 1893 that courts often rely on policy principles: “common law cases are decided upon principles of utility This is not the jurisprudence of a system of commands; it is the jurisprudence of common welfare wrought out by free reasoning upon the actual facts of life.”²⁴ Walter Coles noted that political ideology will often sway judges.²⁵ Christopher Tiedeman observed influence of judge’s personality more than thirty years before Jerome Frank did.²⁶ In a 1908 speech before the Congress, even President Theodore Roosevelt admitted that “the decisions of the courts on economic and social questions depend upon their economic and social philosophy.”²⁷

2.2. Holmes, Cardozo, and other Predecessors of the Movement

2.2.1. Oliver Wendell Holmes, Jr.

The birth of legal realism is largely credited to the jurist who probably would not consider himself a realist – Oliver Wendell Holmes, Jr. Holmes famously wrote that “the life of law has not been logic; it has been experience.”²⁸ Holmes essentially argued

22 Hammond, W. G. American Law Schools, Past and Future. *Southern Law Review*. 1881, 7: 412–413.

23 See generally Tamanaha, B. Z., *supra* note 6, p. 44–90.

24 Abbott, A. Existing Questions on Legal Education. *Yale Law Journal*. 1893, 3: 2.

25 Coles, W. D. Politics and the Supreme Court of the United States. *American Law Review*. 1893, 27: 182.

26 Tiedeman, C. G. Silver Free Coinage and the Legal Tender Decisions. *Annals of the American Academy of Political and Social Science*. 1887, 9: 205 (“while the legal reason is usually considered as controlling the judgment of the court, the judgment is really dictated by the conclusions of common sense”).

27 Tamanaha, B. Z., *supra* note 6, p. 72.

28 Holmes, O. W., Jr. *The Common Law*. New York: Dover Publications, [1881] 1991, p. 1. In his later years, while on the bench of the US Supreme Court, he also remarked that “a page of history is worth a volume of logic”. *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

that changes in law (at least judge-made law) were not due to logic or pre-existing law; instead, policy preferences or personal experiences of judges mattered more.

Holmes also famously stated in his dissenting opinion that “general propositions do not decide concrete cases”.²⁹ Many commentators consider this statement as his realist position that general rules of law will never decide actual cases. It seems, however, that this may have been an exaggeration as Holmes himself believed that specific legal propositions can determine how judges decide their cases.³⁰

It is probably fair to say that Holmes’ views were not iconoclastic by the later standards. It might be also true that many of his ideas were voiced by a previous generation of jurists. However, his prominence as a scholar and the Justice of the US Supreme Court helped to spread his ideas in all legal circles.

2.2.2. Cardozo

Like Holmes, Cardozo was not only an outspoken legal commentator but also a prominent judge. Thus, his position probably gave his views additional credibility. Compared to later realists, Cardozo was far from a revolutionary freethinker. His main treatise published in 1921 - *The Nature of the Judicial Process* – shows that most of his views rather moderate. He observed that in most cases, there are clear legal principles, which dictate the outcome. Yet, often a clear legal answer does not exist; in such cases, Cardozo thought, the judge should promote social ends; and here, Cardozo admitted, a judge may be tempted to substitute his view for that of the community.³¹ Grant Gilmore observed that “Cardozo’s hesitant confession that judges were, on rare occasions, more than simple automata, that they made law instead of merely declaring it, was widely regarded as a legal version of hard core pornography.”³² Gilmore probably exaggerated Cardozo’s impact,³³ but we should not make the opposite mistake of underrating Cardozo’s impact.

2.2.3. Other Predecessors

In addition to Holmes and Cardozo, there were a number of smaller contributions to the emerging legal realism. Theodore Schroeder, for example, was one of the first to analyze the psychology of judicial decision-making. He noted that “judicial opinion necessarily is the justification of the personal impulses of the judge” and that “hat the character of these impulses is determined by the judge’s life-long series of previous experiences, with their resultant integration of emotional tones”.³⁴ While his observations

29 *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting).

30 Schauer, F., *supra* note 18, p. 126.

31 Cardozo, B. *The Nature of the Judicial Process*. New Haven: Yale University Press, 1921, p. 136–37, 170.

32 Gilmore, G., *supra* note 6, p. 77.

33 Tamanaha, B. Z., *supra* note 6, p. 21.

34 Schroeder, T. *The Psychologic Study of Judicial Opinion*. *California Law Review*. 1918, 6: 89.

would not impress contemporary psychologists, at that time this was a novel outlook on judicial decision-making.

Max Radin, already in 1925, argued that judges do not process facts and legal rules logically or rationally. Essentially, he argued that judges respond to the clusters of fact situations (the so-called situation type of judging) - judges make instant decisions once a “generalized situation of this sort is in the judge’s mind and is immediately called up”.³⁵ He further remarked that judge’s mind works like that in great many situations and could hardly work otherwise.³⁶ In his subsequent writings, Radin noted that how judges classify events depends on “their training, their prejudices, their conscious or unconscious interests, their philosophy, their aesthetic learnings, or even by the chance circumstances surrounding the particular learning.”³⁷ Of course contemporary scholars of judgment and decision-making would depart from Radin’s model; and yet, his observations came very close to what contemporary research psychologists know about intuitive judgment and heuristic processing.

2.3. Birth of the Movement: Hutcheson and Frank

2.3.1. Hutcheson

In 1929, Joseph Hutcheson, a federal judge, published a seminal article in which he explained his own judging model.³⁸ As other realists, he loathed formalistic model where a judge determines the relevant facts and then consults lawbooks (statutes or cases) to determine the outcome. Hutcheson argued that judges first make up their mind about the outcome and only then turn to law books to look for justification of their decision. In essence, judges use “hunches” or intuitive decision-making first, and only then look for justifications in the statutes or caselaw. Although Hutcheson’s contributions to the field were scanty, the view of judicial-decision making as an intuitive process of hunches became a signature of judicial decision-making in the realistic tradition.

2.3.2. Jerome Frank

One year after Hutcheson’s article appeared, Jerome Frank published his “Law and the Modern Mind”.³⁹ If there ever was a radical version of legal realism, then Jerome Frank was it. Like other realists, Frank doubted judges’ ability to make decisions on the basis of general categories or general rules. Like many other eminent realists,

35 Radin, M. The Theory of Judicial Decisions: Or How Judges Think. *American Bar Association Journal*. 1925, 11: 357.

36 *Ibid*.

37 Radin, M. Legal Realism. *Columbia Law Review*. 1931, 31: 824.

38 Hutcheson, J. C., Jr. The Judgment Intuitive: The Function of the ‘Hunch’ in Judicial Decision. *Cornell Law Journal*. 1929, 14: 274.

39 Frank, J. *Law and the Modern Mind*. New York: Tudor, 1930.

Frank himself was an eminent federal judge. Frank thought that troubled psychological development is responsible for legal formalism.

According to Frank, the judge's preferred outcome precedes the inquiry into legal rules: "Judicial judgments, like other judgments, doubtless, in most cases are worked out backward from conclusion tentatively reached".⁴⁰ Frank was also one of few realists who was preoccupied not only with "legal rules realism", but also with "fact finding realism" – a judge will usually accept only that evidence which will support his or her preferred outcome: "A judge, eager to give a decision which will square with his sense of what is fair, but unwilling to break with the traditional rules, will often view the evidence in such a way that the facts' reported by him, combined with those traditional rules, will justify the result which he announces".⁴¹

Frank was also the only major realist who thought that judge's personality plays a more important role than legal rules. Legal rules, for Frank, were in general not important. Furthermore, he considered that rational element in law is an illusion. Frank argued that judicial outcomes depend on many factors, most of which can be extra-legal: judge's personality, political preferences, mood, racial views, etc.

On the other hand, Frank pointed out that a judge, after arriving at the conclusion, can consult with the general rules and principles to see if it is acceptable. So in a sense, Frank did not say that legal rules do not matter; instead, his point was that they were not leading to the decision, but they could provide guidance to a conscientious judge as a check-up.⁴²

Frank and later realists have been ridiculed by saying that how a judge decides a case depends on what "the judge had for breakfast."⁴³ (Frank himself, apparently, never said such thing). Of course, this ridicule sets up realists for a straw man fallacy. Frank and other realists never maintained that it all comes down to what "the judge had for breakfast". Yet, he wouldn't deny that it might influence the decision. Although later criticized for his attachment to psychoanalytic school (and he also argued that judging ability would be greatly enhanced if judges underwent extensive psychological treatment), his views were well-know and to some extent influential.

2.4. Birth of the Movement: Pound & Llewellyn

2.4.1. Roscoe Pound

If Hutcheson and Frank presented more radical views of judging, Pound and Llewellyn could be considered centrists. Roscoe Pound, like Holmes, scorned the strict reliance on logic, legal rules, and scientific law which is characterized by certainty and reason. He thought that such notions of law are responsible for fixed conceptions

40 Frank, J., *supra* note 39, at 101.

41 *Ibid.*, at 135.

42 *Ibid.*, at 131.

43 Kozinski, A. What I Ate for Breakfast and Other Mysteries of Judicial Decision Making. *Loyola Los Angeles Law Review*. 1993, 26: 993.

where premises become stiff. Like Holmes, he argued that courts should develop law by relying on public policy preferences. Already in his notable 1908 article, he assaulted the notion of “mechanical jurisprudence” (and it was he who coined that term in the same article).⁴⁴ In his address to the American Bar Association in 1906, Pound disdained mechanical application of legal rules: “The most important and most constant cause of dissatisfaction with all law at all times it be found in the necessarily mechanical operation of legal rules.”⁴⁵ So for Pound, in addition to legal rules, policy reasons and techniques for deriving doctrines play equally important role.⁴⁶

2.4.2. Karl Llewellyn

Karl Llewellyn was arguably the most influential realist. He also presented the version of legal realism that perhaps could lay claim for an established theory of law and judging. Like other realists, Llewellyn scoffed at the idea that judging is a rule-bound activity, where a judge proceeds downward from legal rules to the outcome of the case: “[W]ith a decision already made, the judge has sifted through these ‘facts’ again, and picked a few which he puts forward as essential - and whose legal bearing he then proceeds to expound”.⁴⁷

For Llewellyn, formal rules – “the paper rules” or “pretty playthings” - have little effect on what judges actually do. Llewellyn, however, argued that judges do use some rules in their decision-making, only these rules are largely non-formal rules. These are the rules that judges would not find in a law book. Such general rules could be policy preferences like “maximize efficiency”, “let win the poorer party in a civil litigation” or “uphold any outcome which fosters free market competition”. In addition to policy preferences, other factors determine the outcome: legal knowledge, legal indoctrination, approval of peers, the collaborative nature, institutional constraints.⁴⁸ Unlike Frank, Llewellyn did not deny that there is a rational element in law.⁴⁹ Llewellyn also disagreed with Frank that judge’s personality plays a crucial role in judging.⁵⁰

Llewellyn’s one of the most famous contributions to the legal realism was to demonstrate the ambivalence of legal rules. Llewellyn used a fencing metaphor: “thrust” and “parry” of dueling cannons - for every canon of interpretation that said one thing, there was a “dueling” canon that said just the opposite.⁵¹ For example, the canon of *in pari materia* says that statutes dealing with the same subject should be interpreted so as to be consistent with each other, but another canon provides that later statutes supersede

44 Pound, R. Mechanical Jurisprudence. *Columbia Law Review*. 1908, 8: 605.

45 Pound, R. Address to the American Bar Association. *American Law Review*. 1906, 40: 729.

46 Pound, R. The Theory of Judicial Decision. *Harvard Law Review*. 1923, 36: 945–946.

47 Llewellyn, K. *The Bramble Bush: On Our Law and Its Study*. New York: Oceana, 1930, p. 38.

48 Llewellyn, K. *The Common Law Tradition: Deciding Appeals*. Boston: Little Brown, 1960.

49 Llewellyn, K. Some Realism about Realism-Responding to Dean Pound. *Harvard Law Review* 1931, 44: 1230.

50 *Ibid.*, p. 1242–1243.

51 Llewellyn, K. Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed. *Vanderbilt Law Review*. 1950, 3: 395.

earlier ones. One canon provides that extrinsic aids to interpretation, such as legislative history, are irrelevant when the language of the statute is clear on its face; another canon, however, says that even the plain language of a statute should not be applied literally if such an application would produce a result divergent from what the legislation intended.

In his later years, Llewellyn seems to have adopted even more moderate position. In “The Common Law Tradition”, he noted that judges do follow accepted doctrinal techniques, provide a right legal answer, and achieve just results. They also want to earn approval of their legal audience.⁵² Moreover, he observed that institutional factors, like collegiality, also minimize individual inconsistencies.⁵³

2.5. Originality of Legal Realism

2.5.1. European Realism

Legal Realism, by and large, was an original school of thought. There were, however, several attempts to promote similar view even before the movement. In the late nineteenth century and to some extent in the early twentieth century German Free Law School (Freirechsschule) expressed similar ideas.⁵⁴ François GénY, a famed French scholar, in his “Science and Technique in Positive Private Law”, published from 1914 to 1924, also argued for a “free scientific research.”⁵⁵ GénY wanted to use sciences such as sociology, economics, linguistics, and philosophy to discover origins of rules. Overall, it seems that this European Legal Realism had little impact on European lawyers.⁵⁶

2.5.2. Scandinavian Realism

Legal Realism (also known as American Legal Realism) should be distinguished from its Scandinavian counterpart which had little concern for studies of judicial decision-making and legal reasoning.⁵⁷ Scandinavian realists like Alf Ross, Axel Hagerstrom, and Karl Olivecrona thought that law should be analyzed through the prism of social empirical sciences. Scandinavian realists wanted to explain scientifically how the law changes human behavior. American Realists, while also devoted to empirical research, were mostly preoccupied with the studies of judging, legal reasoning, and judge-made law.

52 Llewellyn, K. *The Common Law Tradition: Deciding Appeals*. Boston: Little Brown, 1960, p. 20.

53 *Ibid.*

54 See Schauer, F., *supra* note 18, p. 124–125 .

55 Geny, F. *Science et technique en droit privé positif*. Paris: Recueil Sirey, 1915-1924. Also available at <<http://www.archive.org/details/scienceettechniq01genyuoft>>.

56 As Johnston points out, “the impression remains that European Legal Realism has not had a profound effect on the way that European international lawyers actually deal with their lawyerly tasks.” Johnston, D. M. *The Historical Foundations of World Order: The Tower and the Arena*. Leiden: Martinus Nijhoff Publishers, 2008, p. 114.

57 Ratnapala, S., *supra* note 16, p. 109–116; Alexander, G. S. Comparing the Two Legal Realisms - American and Scandinavian. *American Journal of Comparative Law*. 2002, 50: 131.

2.5.3. Novel Contributions of Legal Realists

Some scholars argue that legal realism brought nothing new to the understanding of judicial decision-making. For example, some scholars noted that preceding legal generations made similar observations about judging even before realists came to the scene.⁵⁸ But almost all major scientific discoveries or ideological movements were preceded by “observations” similar to the new theories. Likewise, it is true that preceding generations of lawyers made similar observations as the legal realists; however, observations are not enough.⁵⁹ It even might be that the genius of the realists was not in the discovery of their doctrinal and philosophical outlooks, but in their crystal articulation. Whatever it is, it is easy now to underrate their contribution. One can only wonder then, if the movement brought nothing new, why the awareness of the legal community and general public was so much different than before?

2.6. Realists: Radicals or Reformers?

Realists are often portrayed as radical skeptics. It seems that all they did was doubted the existing theoretical models of judging. This view is flawed. Realists primarily wanted to increase certainty and predictability of law by clarifying the real nature of judging.⁶⁰

2.6.1. Rule of Law and Legal Education

Realists attacked the view that judging is merely the logical application of legal rules and principles. But few realists thought that legal rules and principles play no role; most realists thought that legal rules play an important role, but it is shared with non-legal rules and other factors. As one scholar observed, the realists “pointed to the role of idiosyncrasy in law, but they believed in a rule of law - hence they attempted to make it more efficient and more certain.”⁶¹ One of their primary goals was also a reform of legal education; one of their contributions was an introduction of clinical legal education, now available at almost every American law school (and still rare in European law schools).

2.6.2. Social Reforms

Realists called for social reforms and they wanted law to serve as an instrument for social action; to achieve this, realists thought, interrelationship between legal rules and policy objectives had to become more intimate. But realists thought that social legal reforms would be vain unless one could understand what really drives judicial

58 Tamanaha, B. Z., *supra* note 6, p. 67–90.

59 For example, some seven hundred years before Newton’s law of universal gravitation, a medieval Arab scientist and polymath Alhazen observed that magnitude of acceleration depends on the gravity of a distance. But obviously one needs more than an observation to get the full credit.

60 Tamanaha, B. Z., *supra* note 6, p. 94.

61 Kalman, L. *Legal Realism at Yale, 1927-1960*. Chapel Hill: Univ. North Carolina Press 1986, p. 231.

decision-making. Thus, realists also vouched for empirical method in law. Although now empirical research has become the norm, it was certainly not back then.⁶²

2.7. Realism as the First Scientific Theory of Judging

In some legal circles, especially European academia, realists represent a practical, down-to-earth school of thought which is opposed to a “scientific” law of theoretical models. This is in part because most prominent realists were practitioners, mostly eminent judges; thus, a movement originated by practitioners could hardly be epitomized by scientific theories. So continental theorists often lampoon realists for their view that what matters is not what legal rules say, but prediction of what courts will actually do.

2.7.1. Requirements for Scientific Theory

In this context, most critics not only misunderstand realists, but also misunderstand what a scientific theory is. Philosophers of science agree that a scientific theory can be judged by how well it performs two functions: explanation and prediction.⁶³ Thus, Hawking notes that, “[a] theory is a good theory if it satisfies two requirements. It must accurately describe a large class of observations on the basis of a model that contains only a few arbitrary elements, and it must make definite predictions about the results of future observations.”⁶⁴ Although some philosophers of science argued that the requirement of prediction should be less rigorous for social sciences,⁶⁵ most still think that both criteria apply equally to social sciences.

If a theory can only explain a phenomenon, but cannot predict it, it will be abandoned (in a perfectly rational world at least). Otherwise, one could claim that “it happened because that was in accordance with the higher power” can be considered a scientific theory because it can explain everything from earthquakes in Haiti to startling judicial decisions, but only after it happens. Likewise, a physicist, who can explain past events but cannot predict under what conditions it will happen, has no scientific theory.

2.7.2. Legal Realism & Prediction of What Courts Will Do

Realists likely thought along these lines but did not articulate their underlying idea that way. Realists might have challenged their formalist counterparts that if judging is all about facts of a case plus legal rules, then a formalist would have no problem predicting judicial outcomes having been told only facts of the case and given unlimited access to law books.

62 Schlegel, J. H. American Legal Realism and Empirical Social Science: The Singular Case of Underhill Moore. *Buffalo Law Review*. 1980, 29: 195.

63 Schick, T. (ed.). *Readings in the Philosophy of Science: From Positivism to Postmodernism*. California: Mayfield Publishing, 2000, p. 5–120.

64 Hawking, S. *A Brief History of Time, The Updated and Expanded Tenth Anniversary Edition*. New York: Bantam Books, 1996, p. 19.

65 See generally Martin, M.; McIntyre, L. C. (eds.). *Readings in the Philosophy of Social Science*. Boston: MIT Press, 1994, p. 37–156.

A realist, armed with contemporary scientific methodology, could even have assembled a group of first-class lawyers and provided them with facts of large sample of cases and asked them predict the outcome, and even better - the reasoning of the court. Subjects would not know anything about personality of the judge, judicial locale and its prevailing social and cultural norms, parties of the case (unless relevant to the legal rules), emotional appeals that lawyers made during the hearing, how tired judges were, etc – only facts and formal legal rules. A control group could be given only facts of cases and asked to make predictions without having access to formal rules, or it could even be asked to predict randomly, perhaps by flipping a coin. The control group, or at least its experienced decision-makers – i.e. those who flip a coin - in a sufficiently large statistical sample would correctly predict on average fifty percent of outcomes (in terms of wins and losses). The question would be if the lawyers, making their predictions only on the basis of legal rules, could predict significantly better than the control group.

Although the realists never conducted such experiment, for most of them the answer was clear – a lawyer knowing just plain facts and legal rules could predict barely better than random luck, i.e. fifty percent. Thus, a realist would say that formalist scientific theory of judging is either incomplete or altogether wrong because it can only explain past events but cannot make definite future predictions.

On the other hand, would it be possible to make more accurate predictions if we incorporate into a scientific theory of judging not only legal rules, but also personality of the judge, policy principles prevailing at that time and that place, judicial ideology, emotional components of the case, characteristics of the litigating parties, etc? For the realists, the answer to this question was a resounding yes. And contemporary empirical studies confirm this. For example, Posner has observed, based on empirical studies, that “the outcome of [US] Supreme Court cases can be predicted more accurately by means of handful variables, none of which involves legal doctrine, than by a team of constitutional law experts.”⁶⁶

Thus, the realist agenda was to study actual decision-making until one can make confident predictions about judicial decisions. Once these factors would be incorporated into the theory of judging, such theory could be called a scientific theory. It is a paradox that the realists rebelled against the idea of law as legal science, but their agenda, at its core, was more scientific than anything that had come before them.

2.8. Legacy of Legal Realism

2.8.1. Decision-making vs. Justification

One of the most important contributions of legal realism was to establish a clear division between actual decision-making and judicial opinions (i.e. written judgments).⁶⁷

⁶⁶ Posner, R. A., *supra* note 1, p. 19.

⁶⁷ One of clearest articulations came from philosopher John Dewey, who was not a legal philosopher proper. Dewey clearly articulated the difference between actual judicial decision-making and judicial opinion as a public justification of the decision:
“Courts not only reach decisions; they expound them, and the exposition must state justifying reasons.

For realists it was perfectly natural that judges used formal rules to justify their decisions. No one could expect judges to declare that they arrived at the decision by following the hunch or because of their personality makeup and personal preferences (or even policy analyses). Neil MacCormick, a distinguished contemporary legal reasoning scholar, deftly illustrated this distinction:

Why does the judge not make his reason explicit by granting Mrs. McTavish her divorce just because she has a ravishingly pert retroussé nose? Because such are not accepted as good reasons within the system for sustaining claims or granting divorces. Whether sincerely advanced or not, only those arguments which show why x ought to be done are reasons for demanding that it be done, or doing it.⁶⁸

Some prominent judges likewise admitted the distinction between actual decision-making and justification. US Supreme Court's Chief Justice Charles Evan Hughes once admitted that “[a]t the constitutional level where we work, ninety percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections”.⁶⁹

Jerome Frank went even further by arguing that, “Those judges who are most lawless, or most swayed by the ‘perverting influence of their emotional natures or more dishonest, are often the very judges who use most meticulously the language of compelling mechanical logic.”⁷⁰

Of course, it does not mean that how judges decide a case and how they justify it never coincides. It is certainly possible. For example, sometimes judges explicitly mention judicial philosophy that drove their decision. In such case, decision-making and external judicial reasoning might overlap. Yet, just because they might overlap, it does not mean that one is a good indicator of the other.

Not all legal scholars, however, have accepted this distinction. Some scholars, especially representatives of Critical legal studies, argued that style of judicial opinions reflects the actual reasoning of judges; thus, judicial opinions couched in formal, legalistic style reflect this kind of thinking.⁷¹

Overall, however, now probably even hardcore legal formalists would not deny that judicial opinions do not reflect the actual judicial reasoning.⁷²

... The logic of exposition is different from that of search and inquiry. In the latter, the situation as it exists is more or less doubtful, indeterminate, and problematic with respect to what it signifies. It unfolds itself gradually and is susceptible of dramatic surprise; at all events it has, for the time being, two sides. Exposition implies that definitive solution is reached, that the situation is now determinate with respect to its legal implication. Its purpose is to set forth grounds for the decision reached so that it will not appear as an arbitrary dictum, and so that it will indicate a rule for dealing with similar cases in the future”.

Dewey, J. *Logical Method and the Law*. *Cornell Law Quarterly*. 1924, 10: 24. See also Wasserstrom, R. A. *The Judicial Decision: Toward a Theory of Legal Justification*. Stanford: Stanford University Press, 1961.

68 MacCormick, N. *Legal Reasoning and Legal Theory*. Oxford: Clarendon Press, 1978, p. 15–16.

69 Cited in Douglas, W. O. *The Court Years: 1939-1975 - The Autobiography of William O. Douglas*. 3rd. ed. New York: Random House, 1980, p. 8.

70 Frank, J. *Law and the Modern Mind*. New York: Tudor, 1930, p. 137–38.

71 Kennedy, D. *Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940*. *Research in Law and Society*. 1980, 3: 3.

72 Of course, this is not meant to suggest that judicial opinions are unimportant.

2.8.2. Demise of the Movement and its Influence

American legal realism, as a self-identified movement, disappeared within a few decades after its rise, but not its influence. Several decades after realism faded, the new emerging field of Critical Legal Studies was built on the foundations of legal realism. Also, legal realism provided a foundation for a jurisprudential school which for several decades now has dominated legal analysis in the US and is rapidly spreading in other countries and international legal scholarship: economic analysis of law.

It would be a gross overstatement to say that legal realists were right about everything. Contemporary empirical studies show that legal realists were right about many things, but also wrong about many others. For example, legal realists generalized from judicial-decision making to law in general, while we know now from studies on the selection effect in economic analysis of law that legal rules applied in courts are more ambiguous than legal rules in general.⁷³

Conclusions

The two grand theories of judging have their differences set around the importance of legal rules. For formalists, judging is a rule-bound activity. In its more extreme versions, a judge is seen as an operator of a giant syllogism machine. Most formalists, however, don't subscribe to the more extreme views of judging as merely deductive active, but they nonetheless still regard formal legal rules as central to judicial decision-making.

The legal realists, however diverse they were in many other respects, had a twofold claim. First, legal rules, at least formal legal rules, do not determine outcomes of cases. Most realists agreed that legal rules play some role in judicial-decision making, but all realists argued that other rules and factors play much more important role. And a judge, influenced by other rules and other factors, will make a decision before consulting law books. In essence, judges act like attorneys who first determine their client's position and then look for legal materials to support that position. Second, after deciding on other grounds than solely legal rules, judges will be able to justify the decision with formal rules because one can usually find competing legal grounds for almost any position.

73 The selection effect, one of the concepts developed in economic analysis of law, says that disputes settled in courts, and especially higher courts, are not typical disputes. First, many cases are settled even before any lawsuit is filed. In litigation, there are many incentives to settle the dispute before it reaches the court. An individual, a corporation, or a State would be foolish to litigate a dispute where the odds are clearly stacked against it. Thus, if a case goes to the court, it indicates that both parties feel that legal rules provide at least some chance for them to win; so parties in a sense preselect disputes that revolve around ambiguous rules or ambiguous facts. The selection effect opens up the higher one goes. Thus, it will operate even more strongly in appellate courts than it does in trial courts. The second aspect of the selection effect is that we should not infer anything definite about law in general from the law as it is litigated in the courts. See Priest, G. L.; Klein, B. The Selection of Disputes for Litigation. *Journal of Legal Studies*. 1984, 13:1; Eisenberg, T. Testing the Selection Effect: A New Theoretical Framework with Empirical Tests. *Journal of Legal Studies*. 1990, 19: 337.

Although the legal realists are often depicted as a movement that pushed a radical agenda and approached judging unscientifically, their ultimate goals were in fact the opposite: to increase certainty and stability of rule of law by uncovering real driving forces behind judicial decisions and make the study of judicial decision-making more scientific by embracing the empirical method. Although the legal realism as a self-identified movement was short-lived, its impact has been hefty and long-lasting.⁷⁴

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74 Its strong impact was felt not only in domestic legal systems, but in international arena as well. Douglas Johnston nicely summarized this development in his *summa* on the history of international legal order:

[T]he perspective of *legal formalism*, was generally accepted by Western jurists in 1905, even those on the common law side of the tracks within the Anglo-American legal cultures. However, as the United States became the dominant world power in the first half of the 20th century, the emergence of a cultural divergence within the international law community became increasingly evident. Thereafter, as American lawyers became influential in virtually all sectors of world order, the legal formalist ideal of Europe would have to contend with a very different model of law shaped by the inclusiveness of *American legal realism*. The depth of this cultural divide is now a matter of lively debate on both sides of the Atlantic.

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SPRENDIMŲ PRIĖMIMAS TEISME IR TEISINIS REALIZMAS

Vitalius Tumonis

Mykolo Romerio universitetas, Lietuva

Santrauka. Teisinių taisyklių svarba yra pagrindinis dviejų didžiųjų teisminių sprendimų priėmimo teorijų – teisinio realizmo ir teisinio formalizmo – skirtumas. Anot formalistų, teisėjai vadovaujasi loginiu mąstymu, kad priėtų prie sprendimo nuo teisinių taisyklių iki bylos baigties. Kraštutinėse formalizmo versijose teisėjo funkcijos panašios į didelės silogizmo mašinos operatoriaus. Dauguma formalistų nesilaiko požiūrio, jog teisėjavimas yra viso labo deduktyvus darbas, tačiau nepaisant to, dauguma formalistų laiko, jog formalios teisinės taisyklės yra teisminių sprendimų priėmimo svarbiausia dalis.

Teisiniai realistai, nepaisant jų įvairiapusiškumo, įrodinėjo dvejopą tezę. Pirmiausiai, teisinės taisyklės, bent jau formalios teisinės taisyklės, nenulemia bylos baigties. Dauguma realistų sutiko, jog teisinės taisyklės vaidina tam tikrą vaidmenį teisminiame sprendimų priėmimo, tačiau visi realistai įrodinėjo, jog kitokios taisyklės ir kitokie veiksniai vaidina daug svarbesnį vaidmenį. Atitinkamai teisėjai, paveikti kitų taisyklių ir kitų veiksnių, paprastai priims sprendimą dėl bylos baigties dar iki tol, kol jie nustatys taikytinas formalias teisines taisykles. Iš esmės teisėjai veikia panašiai kaip advokatai, kurie pirmiausiai nustato kliento poziciją ir tuomet ieško teisinių taisyklių, kurios palaikytų tą poziciją. Antra, priėmę sprendimą kitu pagrindu nei formalios teisinės taisyklės, teisėjai beveik visuomet sugebės pateisinti tą sprendimą formalių taisyklių pagrindu; tai įmanoma, nes teisinėje sistemoje dažnai yra konkuruojančios taisyklės, taikytinos tai pačiai situacijai.

Apskritai, vienas iš svarbiausių teisinio realizmo palikimų yra supratimas, jog teisminiai sprendimai (nutartys, nuosprendžiai) paprastai neatspindi tikrojo teisminių sprendimų priėmimo. Dabar šį požiūrį pripažįsta dauguma mokslininkų, net ir nepritariančių kitiems teisinio realizmo teiginiams.

Skirtingi teisės realistai akcentavo skirtingus veiksnius, turinčius įtakos sprendimų priėmimui. Kai kurie realistai teigė, jog teisėjų asmenybė yra svarbiausias veiksnys; kiti akcentavo nuojautos svarbą; dar kiti akcentavo išvystytą intuityvų atsiliepimą į tam tikras faktų grupes. Apskritai, dauguma realistų neneigė teisinių taisyklių svarbos; tačiau teisinės taisyklės, anot realistų, yra ne išimtinai formalios teisinės taisyklės, aptinkamos formaliuose teisės šaltiniuose. Anot realistų, neformalios taisyklės yra lygiai tokios pat svarbios, o gal net svarbesnės; dauguma šių taisyklių yra instrumentalistiniai principai, atspindėti kiekvieno teisėjo teisminėje filosofijoje.

Nors teisės realizmas yra dažnai vaizduojamas kaip judėjimas, palaikęs kraštutines pozicijas ir nagrinėjęs teisėjavimą nemoksliskai, tačiau jo tikrieji tikslai buvo visiškai priešingi: sustiprinti teisės stabilumą ir aiškumą nustatant tikruosius veiksnius, lemiančius teismų sprendimus, ir nagrinėti sprendimų priėmimą empiriniu metodu. Ir nors teisės realistai neartikuliavo savo judėjimo tokiu būdu, tačiau jis galėtų būti laikomas pirmąja moksline teisė-

javimo teorija lyginant su visomis kitomis prieš tai buvusiomis teorijomis. Teisinis realizmas, kaip sąmoningai save identifikavęs judėjimas, gyvavo neilgai, tačiau jo poveikis buvo stipus ir ilgai trunkantis.

Reikšminiai žodžiai: *teisminis sprendimų priėmimas, teisėjavimo teorijos, teisinis realizmas, teisinis formalizmas.*

Vitalius Tumonis, Mykolo Romerio universiteto Teisės fakulteto Tarptautinės ir Europos Sąjungos teisės katedros lektorius, socialinių mokslų (teisės krypties) daktaras. Mokslinių tyrimų kryptys: teisinis argumentavimas, teisminis sprendimų priėmimas.

Vitalius Tumonis, Mykolas Romeris University, Faculty of Law, Department of International and European Union Law, Lecturer, Doctor of Social Sciences (Law). Research interests: legal argumentation, judicial decision-making.