New Legal Realism, Legal Education and Legal Research in Brazil. What should we learn?

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Abstract: Brazil is the country that has the largest number of law schools - around 1.3 thousand - and a large amount of law graduates - around 830 thousand licensed lawyers and another 1.5 million unlicensed law graduates, according to the official statistics. Not only that, but also the number of law schools in Brazil is greater than the sum of all the other law schools around the globe (just as an idea, the United States has 205 law schools and Australia has as few as 36). Our numbers are impressive and give us an enormous research potential - at least in terms of "human resources".

However, there is consensus that legal education and legal research in Brazil is still poor and obsolete. The majority of law schools uses only the system of lectures as a standard for teaching. And most of the research is just a matter of analysis of the legal text without any support from empirical data. Certainly, there are other inputs that influence this negative scenario, for instance, the increasingly massification of the Brazilian universities into profitable business models - e.g. we have the largest educational holdings in the world. All these - and others - inputs will be more deeply analyzed throughout this paper.

In this sense, in legal education, the result is that only a small part of the Brazilian students achieve to be lawyers, as per around 80-90% of graduates fail the National Bar Examination. Even among those who pass, the legal knowledge is not exemplary. From the legal research standpoint, the results have also been disappointing.

The optimistic side is that whilst most of "mass schools" still suffer from anachronistic and

outdated methods, recently some legal schools and scholars are responding with innovative approaches for both legal research and legal education. Academic works in Brazil already counts with a decent number of empirical research (and at least one Legal Empirical Journal), one jurimetrics association (Brazilian Jurimetrics Association) and an increasing number of articles with interdisciplinary analysis. But one question still remain unanswered: are we in the right path?

Although Brazil has many particularities that must be taken into consideration to answer this important question, many of the problems we face are shared across the legal academy throughout the world. Failing teaching and research methods have been studied since at least the Legal Realism movement on the 1930s. One of the main "realistic" claim is that traditional legal education and research do not fit the reality of the ordinary world. The realists were probably right about the diagnosis of the problem. But how difficult would it be to get inspired from them in order to achieve a better legal education and research in Brazil? For that reason, the New Legal Realism ("NLR") movement, which is a more contemporary and "global" approach, appears to better address the question.

Therefore, this paper aims to study the Brazilian legal education and research from the New Legal Realism perspective. In the first part, it tries to better understand the legal education and research crisis. The second part is a brief understanding of the NLR movement and its main ideas and propositions, such as (i.) interdisciplinary translation between social sciences, (ii.) methodological rigor, (iii.) strong empirical research; and the use of a (iv.) "bottom-up approach" (such as the impact of the law on ordinary people) complimentary to the usual "top-down approach".

For the last part, this paper aims to study the challenge of the implementation of NLR views in Brazil trying to answer what are the desirable changes we want in our legal education and research. More than that, if the changes are possible regarding cultural, economic and operational challenges. The cultural challenges are mainly due to the different legal system we have - civil law as opposed to common law, the original background to NLR. The economic challenges would be to evaluate if the changes are not too expensive or at least attractive from the universities and research funding perspective. The operational challenges would

be defining what are the best strategies and steps we should take to start the change and to respond to the crisis in an adequate manner. Finally, the paper will try to understand some of the innovative approaches already taking place in Brazil and try to connect with the NLR movement.

Introduction

There is consensus that Brazil faces a legal educational crisis. More and more students decide to take law school, and the quality of the education is getting worse. The situation is getting so bad that MEC (the Brazilian government agency responsible for accepting new higher education courses) decided, in 2013, to reject and freeze all requests for opening new law schools in Brazil (ALCÂNTARA, 2013). Early in 2015, the possibility of establishment of new law schools is open again, but with more strict rules –at least, opening a new law school in Brazil is becoming more difficult each time(FOREQUE, 2015).

Currently there is potential for 221 thousand graduate students per year in law schools in Brazil[1]. Most of the students that graduate from law schools cannot even afford to pass the National Bar Exam ("Exame da OAB") – the average success rate is around 17% (FGV, 2014a). Without passing the exam, the newly graduated student can do almost nothing with his degree (even advising and counseling is forbidden without a Bar Number). However, the real problem is not only attached to the large number of law schools and law students. Even the high-end law schools, with less students, perform very badly when it comes to legal education and legal research as well (RIGHETTI, 2013).

In order to get a deeper figure about the problem, one approach taken by this article is to draw a picture of the legal system and link it with legal research and legal education. We believe that one of the reasons of the poor legal education in Brazil has to do with a legal system that is unreliable to be linked with the theory taught in our classrooms. The other approach is to use Legal Realism, and especially New Legal Realism ("NLR") to try to delineate some solutions and propose improvements on how the legal education in Brazil

[1] According to official statistics from education ministry (MEC)

should be.

Brazil is the country that has the largest number of law schools in the world - around 1.3 thousand - and a large amount of law graduates - around 830 thousand licensed lawyers and another 1.5 million unlicensed law graduates, according to the official statistics[2]. Not only that, but also the number of law schools in Brazil is greater than the sum of all the other law schools around the globe – just as an idea, United States has 205 law schools (according to ABA) and Australia has as few as 36 (FLINDERS UNIVERSITY, 2013).

Our numbers are impressive, and looking at the bright side, that give us an enormous research potential - at least in terms of "human resources". For instance, it is a legal requirement[3] for all Brazilian law schools students taking the last year to write a research monograph paper in order to receive the degree. This monograph paper usually has around 50 to 100 pages and every single student have to, at least, write one during its 5-year course. Since there are approximately 100 thousand law students graduating each year[4], we can imagine the resulting 100 thousand research papers per year. It is an incredible number, however, where are all those researches? Why most of them lack quality? Why does none of these researches become preeminent in international scenario? Probably the major answer for all these questions is linked to the very same fact that only 10% succeed at the Bar Exam. Legal education and legal research lack quality in Brazil. It is very difficult to say if the situation today is better or worse comparing with the last 10 or 20 years – we would need more studies to understand this, but, assuredly, the perception of people regarding the poor legal education is increasing.

However, where does this crisis come from? One of the goals of this article is to show that educational crisis is not only a crisis of the legal educational model *per se*, but beyond that, it is a crisis in legal system as a whole and legal research that reach all universities in Brazil. In this regard, this article will try to raise a debate about how the legal system can influence legal research and how legal research can influence legal education.

[2] According to Brazilian Bar Association (OAB)
[3] Portaria-MEC n. 1.886/1994.
[4] According to Brazilian Bar Association (OAB)

After that, this article will try to bring a brief overview of the New Legal Realism (NLR) movement, its aspects and origins, dated back to the old Legal Realism of the 1930s. The (old) Legal Realism movement was deeply interested in legal education and in empirical research for law schools, but unfortunately, most of it is still unknown in Brazil among scholars. The New Legal Realism could be a better approach if we are willing to discard all the historicism (that has little practical aspect for us) and take advantage of the most advanced thinking about legal instrumentalism and reforms in legal education and, especially, in legal research.

Last, but not least, the article will examine in what aspects can the NLR initiatives help to illuminate the paths for a better legal education and research in the especial case of Brazil. This is not a simple task (and couldn't effectively be presented in one single article), but we aim to try to propose some of the steps we need to take and challenges we are going to face if we decide for a reform in legal education. We propose that a reform in legal education will face three challenges ahead: cultural, economic and operational.

It is also relevant to note that this paper is presenting some preliminary studies and researches related to a *currently in-progress research that is taking place at the University of São Paulo (Campus Ribeirão Preto) by the authors from Aug/2014 to Aug/2016.*

Legal System, Legal Research and Legal Education. A domino effect.

One can expect three advantages when choosing law as its major in Brazil. There are plenty of schools everywhere – it is easy to "physically" reach them; they are cheap – you can find schools in São Paulo for as low as USD 110.00/month (CAMASMIE, 2013)[5]; and they are easy – pretty much everybody can get into a university or can graduate without much effort). Many people believe that this is the root of the problem. Law school admits unprepared students with no basic skills from high school. Unprepared students can also easily graduate from law school without having to "prove" to anybody that they have any basic legal

[5] Considering 1.00 USD = 3.10 BRL

knowledge.

Of course, this distortion cannot be ignored, but this is not the only nor the main problem. Top-end are universities discussing legal education reform with the consensus that their education is below to what should be expected. What we do believe, on the other hand, is that even trying as hard as they can, universities are bound with a deficient legal system that prevent them connect theory with the reality of courts and legal profession. But how does the legal system affects the legal research?

Two factors related to the Brazilian Legal System justify the crisis in education and research in law. The first one is the (i.) judicial system in crisis (itself), with too many lawsuits with too little quality in its arguments or in its legal decisions. The second factor is that (ii.) governmental entities do not have the culture to make their proceedings of decision-making public, nor has the judiciary.

Legal System

Our judicial system is experiencing an increasing dispute culture in which any disagreement is ground for a lawsuit. To get an idea, there is a research work by Ramseyer and Rasmusen from Harvard School (2010) that compares litigation rates across some countries (Australia, Canada, France, Japan, UK and USA). We adapted the table that the authors created to include Brazil and compare with some numbers. From the six selected countries, four of them belong to the common law tradition and two belong to the civil law tradition (Japan and France). Brazil is also a civil law country, but that does not necessarily mean that we should only make comparisons between civil-law countries or between common-law countries. To compare the countries, the authors created rates of number of lawsuits per 100 thousand people;

number of judges per 100 thousand people; and number of lawyers per 100 thousand people. United States, as one could expect, leads the three ratios, except for the number of judges, which is higher in France.

There is no question that many objections can be raised regarding the numbers below because the roles of the judges and lawyers can deeply differ from one country to another. But what is interesting here is that we were able to add Brazil with official data,[6] and the numbers are quite impressive. We have close to three times more lawsuits than United States, and more per capita lawyers than all the countries presented. With both numbers, we can have an idea that Brazil is a high litigator country, but the number of Judges is slightly higher than the average of the other countries.

	Australia	**Canada**	**France**	**Japan**	**UK**	**USA**	**Brasil**
Suits per 100k people	1.542	1.450	2.416	1.768	3.681	5.806	**14.100**
Judges per 100k people	4	3,3	12,47	2,83	2,22	10,81	**8,53**
Lawyers per 100k people	357	26	72	23	251	391	**431**

With this multiplicity of lawyers and lawsuits in Brazil, the judiciary ultimately plays a very important role as a social regulator. However, we can make an additional analysis: considering that a lawsuit typically has, in Brazil, an average of 100 to 200 pages and each judge has an average of 1600 cases per year, this result in one case per hour for each judge, including writing down the sentence.[7] Obviously, this productivity rate is virtually impossible to obtain, so that some "techniques" are employed to help boosting judges productivity, as, for instance, the writing of sentences by judicial assistants, the use of pre-made templates, and grouping together similar cases to decide more than one case at once. These techniques are necessary to keep the pace of so many cases in queue to be decided. But still, the giant universe of lawsuits and sentences makes it very difficult to (i.) find some

[6] Official Judiciary Entity (CNJ) and Brazilian Bar Association (OAB)
[7] Considering 200 days per year, since that, in Brazil, judges have 60 days of paid leave per year.

(or any) tendency among trials; (ii.) a connection between the theoretical teaching in universities and forensic practice. Not only that, but the availability of decisions is troublesome and a great deal of them are decisions of formal aspects (i.e. if this or another court should judge the case, or if this or another type of lawsuit is the most appropriate for the case) and simply don't reach the core claim of the case. This could mean more than one lawsuit for each single case. Besides, the great amount of repetitive cases makes very hard to scholars to find interesting cases among the 28.2 million new cases that reach the courts every day.

Nevertheless, this is not the whole picture yet. There is also the issue of the administrative proceedings and its confidentiality. The "Access to Information Act"[8] of 2011 was an important step towards greater transparency of public acts to the population. However, the rule still seems to be the secrecy of the government acts and administrative proceedings.

Brazil is divided between Federal Government (1); States (26) and Municipalities (5570)[9]. Each of these has certain administrative autonomy, including autonomy regarding information disclosure. Small municipalities (which are the majority of them) generally do not have the concern to disseminate information properly. For instance, in the case of taxation, we have federal taxes (e.g. income tax); state taxes (e.g. vehicles taxes and inheritance taxes); and municipal taxes (e.g. real estate taxes). In the case of the real estate taxes, each of the 5570 municipalities have one specific law for the real estate tax, and each have autonomy to decide on how to collect and charge these taxes. In such cases, issues involving municipal taxes can bring a multitude of solutions that are not shared among different municipalities and among the taxpayers. The compilation of information for study in those cases is extremely difficult, if not impossible. And even in the situation that the information was disclosed, the effort to learn how to "find" the information for the 5570 different municipalities would be close to impossible. The "Access to Information Act" provides that all information should be available on the website, or, if not, the entity shall respond in 20 days[10] for individual claims for information (of all types). Tests were made,

[8] Law number 12.527/2011
[9] Brazilian Official Statistics Agency (IBGE)
[10] Law number 12.527/2011 – article 11

and only 69% of the requests are answered (VETTORAZZO, 2014). The "Access to Information Act" improves the scenario, but does not solve the problem.

In addition to the administrative jurisdiction of the municipalities and states, there are still hundreds of federal and municipal independent authorities, which may have their own proceedings of judgement. That means that despite of the 28.2 million lawsuits in the judiciary every year, there are many other administrative proceedings to which citizens, lawyers and scholars do not have access, and therefore they know little about what is the reality.

In the judiciary, there were some attempts to standardize decisions in order to avoid different decisions for the same cases. In this respect, Brazil is rivaling with common law systems. For example, the "Súmulas Vinculantes" (binding precedents) are short commands created by the Brazilian Supreme Court that must be followed by the entire judicial system – all judges are obliged to implement decisions in accordance with these precedents. There are still a small number of these binding precedents (37 only) but they seem to bring more legal certainty to the entire legal system.

Another pernicious consequence of the difficulty of understanding the Brazilian Judiciary is the lack of culture of conflict resolution outside the judiciary. As litigants are not sure about their rights, it is very difficult to the parties to know the aspects of the conflict in which they should transact and in what parts of conflict they should not, by the simple fact that it is very difficult to know what the courts will decide on a specific subject.

This then leads to a problem. What are we going to research in law schools? If, for a lawyer, that experiences the law practice it is very difficult to predict the outcome (or at least the behavior of the judges and courts) for a law professor, it is even worse. The insufficient solution so far: researching the abstract law. No references with real life, but only to written laws and to the mainstream cases that reach the Supreme Court.

Legal Research

Several problems affect the scientific research in Brazil. Some are related to the financing governmental programs and how the money invested in research and development is spent.

Others are more related to the structure of universities, especially those that offer law as a major. As already said, it is very easy for a student to be admitted in a law school and there is almost no incentive for developing legal research within the 5 years he spends in the university.

Besides these "structural" factors, we also believe that the legal system is also responsible for the poor legal research. The two reasons explained before are (i.) judicial system crisis with too many lawsuits with poor quality of decisions and arguments; and (ii.) obscurity from government entities to disclose information. These factors are decisive to create a difficulty to interconnect practice to theory and theory to practice. This difficulty was, since 1930, a claim from the legal realists.[11] The result is that legal research today is mostly based on theoretical books, which in turn are based on written laws or on other theoretical books. The legal practice and reality has no space in this chain of self-contained theory that gets each time more distant from reality.

Combining these two reasons, we have a situation in which is extremely difficult to achieve a more realistic approach of the law in Brazil. Even if we try, the legal system and administrative system are almost completely inaccessible to both the researcher and scholar who seek to approach the reality and praxis to legal research. Inaccessible because there are too many lawsuits and proceedings that makes it difficult to understand the "logic" or capture "trends" of the courts and of the system. It is also inaccessible because there is a culture of non-disclosure of data and administrative proceedings by government entities as well.

The research results are often taken for granted. After a research is complete, there is no usual scrutiny from other scholars to criticize or collaborate with the research. Usually when a piece of research is done, no additional comments, changes or dialogue happen. With this academic isolation, unfortunately research works stay outside of the intellectual circles (even international circles) that discuss legal matters.

[11] "*Let us look to economics and sociology and philosophy and cease to assume that jurisprudence is self-sufficient. It is the work of lawyers to make the law in action conform to the law in the book, not (…) eloquent exhortations to obedience of the written law*". (POUND, 1910, p. 35)

It is also interesting in the history of legal science that the movements and schools are often represented by only one person. We have the Historical School, by Savigny; Teleological Approach by Jhering; Doctrine of Free Law by HG. Kantorowicz; Living Law by Erlich; Normativism by Hans Kelsen, etc. (SILVA; MAIA; TEIXEIRA, 2007, p. 357–358). This shows that frequently science research – and especially judicial research – sometimes does not gives credit to the community of researchers, prevailing the isolation of author as argument of authority.

Legal Education

If legal research is not reliable to interconnect the practice to the theory, then the resources available to professors are limited within a classroom. Without research resources, the professor keeps teaching the written law in a passive manner.

The educational structure that is in use today is still the same that it was used when the first law school in Brazil was created, in 1827.[12] It is a passive system of lecturing – also imposing – where the professor is the center of attention inside the classroom and holder of all legal knowledge. The student must passively learn from his master, without much talk or ask. According to Bittar (2006):

> *The legal education is not structured with targets, but from some traditions intertwined to own practices of power, which was the objective of the graduates during the imperial period in Brazil. When we are talking about legal education, it does not mean a bright, well-structured and well-developed curriculum. Nor the pedagogical conceptions were the most advanced and effective from the point of view of the teaching and learning. (BITTAR, 2006, p. 6)*

The positive side is that, regarding legal education, the feeling is that most of the people involved in legal education agrees that this is an old-fashioned system that must be replaced. With so many development in the field of pedagogy and teaching techniques, there is no more room for the standard model of passive learning, listening to the professor read the

[12] This can be by comparing curriculum and methodologies of the law school of 1827 and the law schools today.

law and making some comments during the class.

Unfortunately, Brazil has not discovered more interactive methods for in-class education. We are now trying to apply the case method in *some* schools[13], while most of them still seems alienated from new approaches. We are still far away from the "realist" criticism of the case method (with all the empirical experience)[14]. There are at least four different methods (LING, 2006, p. 426–427) of in-class teaching that could be experimented in Brazil, which are: (i.) Lectures on Content and Logical Reasoning; (ii.) Socratic Method; (iii.) Case Study; and (iv.) Moot Court / Role-play. Beyond the regular classes, the universities can also have legal clinics as an approach for students to the legal practice.[15]

Another problem worth mentioning is the departmentalization of the learning. The law does not usually communicate with other areas of knowledge. In Finland, basic school abolished the subject division in classes. Instead of geography classes, they have a WWII classes with geography, history, physics and other subjects (GARNER, 2015). If this kind of interdisciplinary integration is being used with such different matters (such as physics and history) why do we keep law classes completely separated and insulated with its own assumptions? The law disciplines are interconnected in every aspect and separating it makes the learning even more distant from the reality.

The law school at USP in Ribeirão Preto has the advantage (that only few others have) of being a full-time education for its students. In this regard, there is more time for integrating different subjects and experimenting new approaches for teaching and learning. However, in other law schools, unfortunately a great part of the students work during the day and study at night (from 7pm to 11pm), which leaves no motivation and free time to try new methodologies.

From a regulatory perspective, a Law Course in Brazil must meet some minimum requirement instituted by MEC as following[16]. The course should take at least 5 years with students performing at least one piece of research (Course Conclusion Research Work –

[13] We must keep in mind that the case method *dates back to 1870* with Langdell's methodology.
[14] The Realists were critics in relation to the langdellian case method (FERREIRA, 2011, p. 101).
[15] Legal Clinics was one of the improvements in legal education that Jerome Frank believed in (FRANK, 1933).
[16] Portaria-MEC n. 1.886/1994

"TCC") and an internship of at least four semesters. The subjects are divided by three axis. The axis are the following: (i.) *Fundamental Axis*: Political Science (with theory of state); Economics; Philosophy (general, jurisprudence and ethics); Introduction to Law; Sociology and Sociology of Law. (ii.) *Professional Axis*: Administrative Law; Private Law; Commercial Law; Constitutional Law; International Law; Criminal Law; Procedural Law; Labor Law and Tax Law. (iii.) *Practical Axis*: Integration of theory and practice of educational activities and development of internship activities. Internship: 300 hours minimum and minimum duration of four semesters.

From Legal Realism to New Legal Realism: an educational approach

The New Legal Realism movement, such as the Old Realism, proposes a legal education improvement approach. Unlike the Old Realism, however, the New Legal Realism is more suited to the world today as it take advantage of the development of research in other areas such statistics, economics and other social sciences, as well the technological resources that are available today in order to improve legal research and legal education.

(Old) Legal Realism

The "old" Legal Realist Movement, which flourished on the 1930s, is regarded as being one of the most influential movements of the history of American legal thought (LEITER, 2002). At the same time, however, HLA Hart's later criticism in his "The Concept of Law" (HART, 2009, p. 184) created a culture of perceiving the Legal Realism as being a "jurisprudential joke" (LEITER, 1997, p. 270). That happened especially by the fact that the legal realists are credited with the "prediction theory", or the "decision theory". For this theory, law would be simply what an official (judge) says so. For instance, it would not matter if a statute says X. As long as the courts decisions say Y, law would be Y. However, what would happen when the decision was not made yet? In this case Realists answer would be that law is the *prediction* of what officials and judges would decide.

That created a very fruitful debate among realists and non-realists regarding the concept of law. However, very few realists in fact wanted to define what was the concept of law. Its main authors did not believe that Legal Realism was designed as a theory of law. According with

Llewellyn,

> *"So that I am <u>not</u> going to attempt a definition of law. Not anybody's definition; much less my own. A definition both excludes and includes. It marks out a field. It makes some matters fall inside the field; it makes some fall outside. And the exclusion is almost always rather arbitrary" (LLEWELLYN, 1930, p. 432).*

According to Brian Leiter (2002), the misinterpretation of Legal Realism occurs mainly because of the "*frankfication*[17]" of the Realism. Everybody took too serious the "*Law and Modern Mind*", which probably had one of the most radical views of Legal Realism. Or even, "The Path of Law" (HOLMES, 1897), where the prediction theory is exalted:

> *I wish, if I can, to lay down some first principles for the study of this body of dogma or systematized prediction which we call the law, for men who want to use it as the instrument of their business to enable them to prophesy in their turn, and, as bearing upon the study, I wish to point out an ideal which as yet our law has not attained* (HOLMES, 1897, p. 2)

If Legal Realism was credited (unfairly) as a "jurisprudential joke" as per being a theory of law, we cannot say the same about their attempts to improve the legal education system in the US. The Legal Realism was less of a "theory of law" and more of an instrumental view of the law – and especially a view of the law education and educational reform.

Llewellyn was probably the main figure of the emergence of Legal Realism and one of the most influential scholars regarding legal education. According to Ferreira (2011, p. 123), there are three main writing of Llewellyn about legal education: *The Bramble Bush* (1930), *On What is Wrong with So-Called Legal Education* (1935) and *The Place of Skills in Legal Education* (1945). Such works are critical writings about the legal education of the time, that is, dealing with the failure of the Langdell's case method. These writings were even able to influence the teaching and research methodology of the main schools of United States. While the Legal Realism as theory of law (especially after HLA Hart criticism) succumbed due to

[17] Brien Leiter states that much of the criticism of the realist movement has its correspondence only to Jerome Frank's more radical thoughts.

lack of adherence, the legal education criticism remains until today as a modern approach. Ferreira even believes that realist authors like Wesley Hohfeld, Walter Wheeler Cook and Karl Llewellyn were more important for legal education than to the theory of law (FERREIRA, 2011).

Legal Realism is also known as a movement that amplified a so-called *legal instrumentalism* – which sees Law as an instrument to ends, especially social ends. As we can see, in one of the articles that inaugurates Legal Realism ("*Some Realism about Realism: Responding to Dean Pound*"), Karl Llewellyn states that:

> *They [Realists] view rules, they view law, as means to ends; as only means to ends; as having meaning only insofar as they are means to ends. They suspect, with law moving slowly and life around them moving fast, that some law may have gotten out of joint with life. This is a question in first instance of fact: what does law do, to people or for people? In the second instance, it is a question of ends: what ought law to do to people, or for them? But there is no reaching a judgment as to whether any specific part of present law does what it ought, until you can first answer what it is doing now.* (LLEWELLYN, 1931, p. 1223)

Jerome Frank, another of the main actors in Legal Realism puts great effort in the thought of the subject of legal education. In his "*Why not a Clinical Lawyer-School?*" Jerome Frank believed that students should not understand the legal practice and legal theory as separated things:

> *The student should learn that "legal rights and duties" are inextricably intertwined with litigation, that, for instance, there is no such thing as "the law of torts" as distinguished from decisions in lawsuits, and that the so-called rules and principles of torts are only some among the many implements employed by lawyers in their efforts to win lawsuits".* (FRANK, 1933, p. 918).

In addition, it is very interesting that Frank's suggestions and criticisms remain actual even after 70 years:

> *"Law teaching needs to be integrated with the social sciences. The law student*

> *should be taught to see the inter-actions of the conduct of society and the work of the courts and lawyers. The usual law school curriculum largely omits such teaching. It relies on prelegal courses in the so-called social sciences. The result is that the law student is graduated with the vaguest recollections of this pre-legal work, an insufficient feeling of the inter-relation between law and the phenomena of daily living and an artificial attitude towards "Law" as something totally distinct and apart from the facts."* (FRANK, 1933, p. 922)

The central idea in legal education reform proposed by the Realists is that universities should teach their students that law should be instrument, as means to ends. According to Singer (1988), Legal Realism was a form of instrumentalism or functionalism, since the realists sought to understand the legal rules in terms of its social consequences. To better understand how the law works in the real world, they tried to standardize the law and the social sciences, believing that by doing so, they could reform the legal system and achieve efficiency and social justice (SINGER, 1988, p. 468–469).

The realistic instrumentalism was also reflected in the theory of legal education of 1930s. Authors such as Llewellyn, Cook, Pound, Holmes, Bigelow and Lewis, among others, are noteworthy for trying to conceive the idea of a scientific study of law (TAMANAHA, 2014, p. 36). To achieve this goal, according to the realists, law school should not only teach legal doctrine but two other perspective: (i.) a theoretical perspective of law as a social institution; and (ii.) empirical research and teaching, using qualitative and quantitative techniques to a better understanding of what is the law in the real life. In fact, these two perspectives are one of the main approaches of the NLR as well.

New Legal Realism

Despite the legal realist's claims that Law should relate with other social sciences, most of the old realists did not implemented, in practice, their rhetoric.[18] That is one of the reasons that the movement called New Legal Realism flourished. It captures the most important

[18] One exception was Underhill Moore, which performed a strenuous empirical research with parking habits in New Haven. Unfortunately, his research was not well accepted by other scholars (MOORE; CALLAHAN, 1943; SCHLEGEL, 1980).

essence of the "old" Legal Realism and tries to put in practice in contemporary years. And the timing is perfect. While the legal realist claimed for empirical research, they did not have the instruments, methods and techniques available to do so (MACAULAY; MERTZ, 2014, p. 2–3). While they claimed for an instrumentalism, they did not have interdisciplinarity as we have today (take as an example of how great is the influence the Law and Society Movement).

There is some criticisms related to the new Legal Realism movement. Brian Leiter wrote: "*some commenters have already pointed out; it is not entirely clear what this project has to do with American Legal Realism. I'd like to suggest an answer: essentially nothing*." (LEITER, 2006). Although we do not agree with Leiter's conclusion, it is not the aim of this article to get inside the discussion of what is the "nature" of NLR movement. We are more interested in how can NLR help legal education in Brazil. For that, we are going to take a brief look at the four main claims of NLR movement[19]: (i.) Interdisciplinary translation between social sciences; (ii.) Methodological Rigor; (iii.) Strong Empirical Research; (iv.) "Bottom-up" Approach.

New Legal Realism - Interdisciplinary translation between social sciences:

The first claim of the NLR movement is a proper translation between different law and other social sciences. The idea of translation is that interdisciplinarity is based on rigorous methods from other sciences. It is not enough that different disciplines connect with each other, one picking up different aspects of other to use as a new approach. Social translation means more. The communication between disciplines should be taken seriously, with *"scholars consciously attempt to translate the categories or predicates of one discipline into another, while carefully pointing to areas that (somewhat like idiomatic language) do not translate well, or maybe, at all"* (ERLANGER *et al.*, 2006, p. 341).

There has always been some resistance in Brazil to accept other subjects to be studied and understood by legal scholars. For instance, the movement of Law and Economics has little significance in Brazil and the same happens with the movements of Law and Development and Law and Society. The discussion of Interdisciplinarity has just initiated, and already has

[19] Many articles about NLR bring these four claims of the movement. One of them is "Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism" (SUCHMAN; MERTZ, 2010)

heated debates. The first (and maybe already overcome) is the debate about what should be studied by the law. This debate polarizes between those who oppose and those who are in favor of the relationship between law and other disciplines. The oppositionists believe that the object of law study should be "propositional" and normative, thus, empirical activity (which is essentially "descriptive") would not be part of the "study of law" and should therefore be included as study of social sciences or economics - but never the law. We believe that this intense debate in understanding what the legal scholar must study and learn is does not provide much practical benefit.[20] However, despite all criticism, how can we think of a translation in practice?

A first problem that prevents an effective translation is the legal language and legal jargon. The law in Brazil created its own language, very formalistic often mixing Latin and old terms. Although supposedly this is not a problem for those who are in the legal field (in fact, many other countries deal with the same problem), the language barrier can be highly impeditive to other sciences scholars willing to understand the law. The language should be as complex as necessary to account for the complexity of the matter – thus, it is clear that when drawing up a contract, a certain formality is required to account for the complexity of the contract. Still, the language should be direct, clear and objective.

Translation does not mean picking up findings from other social science literature and simply “plug them into our legal theories” (MACAULAY, 2006, p. 1186). Working from other findings, from other social sciences could be a very dangerous activity where one could easily fall into misinterpreting, overgeneralizing or oversimplifying the matter. It is important that the legal researcher understand at least the methodology of the selected work (or partner with somebody who does), to try a more adequate translation to the legal field.

The problem proposed by NLR as "adequate translation" does not occur only between different areas of knowledge, as, for instance, law and economics. It also occurs between different legal concepts across different countries. It is extremely painful to bring concepts of United States legal system to Brazil, because not only there is the language barrier, but also because institutionally the law is different in Brazil compared to the USA. For instance,

[20] A fierce debate about the objectives of law research can be found in “*O que é Pesquisa em Direito*” (NOBRE, 2005)

there is great difficulty in understanding an American paper that is illustrated with practical examples not only because of the language, but because in each example (e.g. income tax), there is another translation barrier which is *how things work in practice*. We do not believe this is only due to the difference between common law and civil law, but because there is, among all countries, institutional differences. A practical illustration: this present article made reference to an American research paper regarding the litigation ratios across different countries (RAMSEYER; RASMUSEN, 2010). It is very difficult to properly evaluate the results[21] because each country works in a specific manner. For instance, Brazil judiciary is separated between *Military Justice*, *Electoral Justice*, *Labor Justice*, *Federal Justice* and *States Justice*. In order to evaluate the litigation rate in Brazil, one must count the lawsuits in each of these jurisdictions. But what about the United States? How does the legal organization affect the ability from a Brazilian scholar to understand and evaluate the litigation rates?

This is important because in the interdisciplinary and empirical research, a rich analysis is the comparison/peer analysis. One of the possible peer analysis is the comparison between different countries. For instance, if we take the Human Development Index, Brazil has a HDI of 0.744. What does this number tell by itself? Barely nothing. On the other hand, if we say that we are position number 79 among a group of 187 countries[22], this information tells a lot more. Therefore, the "institutional" barrier is a factor that not only hinders the translation between different sciences but also between different countries.

The first step towards mitigating this institutional barrier, speaking in terms of Brazil, is greater institutional transparency of public bodies. Some initiatives already call for greater transparency. For example, it is virtually impossible to know how much you pay in taxes on a *bottle of water*. This information is not available, and the calculation is so intricate (depends on a series of taxes) that even tax lawyers are not able to make them without more elaborate research. If some economist wants to know what would be the effect of a regulatory norm of taxes in Brazil, it cannot, because the institutional barriers are virtually insurmountable. NLR accounts for that in some way: empirical studies could help to decrease this lack of

[21] The original paper itself raises many objections in regard of the institutional differences between the countries.
[22] Source: http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components

transparency. In the case of the bottle of water, recently many organizations (NGOs also) are researching and providing these information. Therefore, in the case of the bottle of water, because of these initiatives we know that around 44% of its price is refers to taxes.

New Legal Realism – Methodological Rigor

In Brazil, the issue of methodological rigor plays an extremely important role because of the 'traditional' research method. The traditional research in law in Brazil follows a certain "flowchart". As a first step, the researcher browse through the legislation and what the written laws have to say about a certain matter. Secondly, the researcher seeks judicial decisions made by courts. Lastly, the researcher seeks doctrinal opinion. At a first sight, it looks like a fine methodology for researching. However, the problem is that in most of the cases, there is no methodological accuracy in these steps and it is frequent that the researcher is willing to "prove" a point. For instance, if you look for researches about lowering the minimum age for criminal responsibility (now this is a quite intense debate in Brazil) from 18 to 16 years, there are two types of legal research: one from those who support the age reduction and one from those who support maintaining the age of 18 as the minimum age for criminal responsibility. Researchers seek then the constitutional principles justifying that the age should be lowered or raised, as well as case law and doctrine that validate their thesis. Research in law then becomes defending one side or another, and takes the form and content of a lawsuit petition. The researchers, therefore, act as lawyers, rather than researchers. They do not seek to test their hypothesis of research, but only to validate it.

Other factor that is not desirable is that argument of authority usually have excessive weight in legal research. In the research as we are used to, opinions about the subject made by an expert can justify by itself the hypothesis of the research. The abolition of the argument of authority (or reduction to an extremely subsidiary level) also seems to be essential to a more rigorous methodological research. In many cases, there is always arguments of authority that legitimize contrary positions. If so, which of the arguments then is more reliable? What authority is more authority stating opinions?

In addition to both problems presented, there is also little rigor with other methods. In

qualitative research, there are only few attempts to address modern methods that differ from the “flowchart” legislation-decisions-doctrine. For instance, on the rare occasions when interviews are used as a research technique, it is hard to find any consideration regarding "how" the interview should be conducted. If for certain type of subjects, it should be open or closed questions, if it should be conducted face to face or by phone or email, if gestures or other nonverbal languages should also be "captured" by the interviewer. The same analogy is true for other types of qualitative research such as ethnography, case study and document analysis. Today, in Brazil, other social sciences - such as psychology or sociology - already perform these types of researches in a very good way. It would be desirable that legal schools could “import” these techniques to the legal field.

Regarding quantitative methods, the situation looks even worse. First, because there is no contact of law students with basic statistical methods. Most of them do not even know how to use an excel spreadsheet. Sampling techniques, data collection and creating variables are almost non-existent in law. There are some initiatives in this area, as well – but also incipient. These include the Brazilian Association Jurimetria and the Journal of Empirical Legal Studies as an example. These initiatives have to be applauded, but still they are in a distant reality from over a thousand law schools existing in Brazil.

We do not claim that all researches should be conducted on an empirical basis. Even when research is not empirical, it is not performed rigorously. A literature review in Law, as already mentioned, brings only arguments of authority that validates the hypothesis, and we hardly see systematic and serious bibliographic research in literature. Positions contrary to the hypothesis are often discarded without even being cited at the research work.

One of the reasons for that is that research methods are not taught in the classrooms. We do not have proper methodology classes, but only classes about how to construct citations and references using ABNT[23], the default format of research in Brazil. The methodology classes taken here are more about the formal aspects of writing the “TCC” (Course Conclusion Research Work) especially addressing formatting issues rather than research techniques.

[23] ABNT is standard Brazilian pattern for referencing and citations (similar to the APA).

New Legal Realism – Strong Empirical Research

Empirical research is gathering more supporters in Brazil. Again, it is still far from ideal. Some universities are proposing to encourage students and researchers to engage in empirical research law. The initiatives are still incipient, but the results are very good so far.

Macaulay (2006) brings the idea of empirical research for the contract law in the US. For the author, contract scholarship focus only "on the top of the pyramid", which are the Supreme Court's decisions. Occasionally, scholarship takes "glances at the intermediate appellate courts and at a few reported opinions of trial judges". (MACAULAY, 2006, p. 1163)

Regarding judicial decisions, there is a great (underestimated) research potential that is the study of the electronic databases of cases. Today it is getting easier to have access to all the lawsuits filled in Brazil because of the electronic proceedings now being a standard in most of the country. The constitutional principle of publicity states that all proceedings should be public. It means that in theory, anyone can have access to any proceeding, at anytime (except those protected by judicial secrecy, most of them in family law). In the State of São Paulo, for example, a lawyer can see all the proceedings (and all the documents) filled over the internet. What seems to be the paradise for any empirical researcher of judicial decisions actually is not simple as it looks. There are still some limitations for the research. First, you cannot search by "category" (e.g. Family law). This is only possible in the appellate decisions (and most of them are not digitally available yet). Second, because the appellate decisions database does not include the compilation of all lawsuits, but just a few pre-selected (by a court internal department) that "choose" what decisions will show up on search database and what decisions will not. Hopefully these limitations are to be overcome in the coming years, creating an unimaginable potential for legal research.

However, despite the possibilities, there is still little research that go deep into the real lawsuits analysis, and when they go, they are just a compilation of simple descriptive statistics of means and standard deviations (in the case of quantitative analysis). Few more complex assessments are performed in Brazil, but the trend is increasing for this type of research as more information is being released to the researchers. We still have a long path to reach the ideal of case-based empirical research. Macaulay (2006) states the importance

of empirical research:

> *"We may, for example, want a rule that will promote efficiency. We may fashion an argument that rational actors will respond to a rule in a way that we say is efficient. However, whether the rule actually promotes efficient behavior is an empirical question that will turn on the law in action, rather than on the assumed paradigm. We need an accurate empirically informed picture of how law is working on the ground if we are to assess whether it actually promotes efficiency." (MACAULAY, 2006, p. 1164–1165)*

One of the proposals of our research at USP Ribeirão Preto (regarding NLR in Brazil) is to take a deep look into the existing studies that claim themselves "empirical". There is an interesting paper that analyzes legal empirical researches conducted in the United States, by Epstein and King (2002, p. 6), and the conclusion is that empirical initiatives and Studies should be applauded, however "*the current state of empirical legal scholarship is deeply flawed*". Probably the same is happening in Brazil, but we still do not have any "empirical studies" on "empirical studies". In their work, Epstein and King (2002, p. 116–133) named some interesting steps that worth mentioning in order to make empirical research more reliable in law schools. The steps are: (i.) offer courses in empirical studies for law students; (ii.) enhance opportunities for faculty to conduct high-quality empirical research - and then disseminate it quickly; (iii.) Encourage Employers to hire students with empirical training; (iv.) move to an alternative of scholarly journal management; and (v.) develop standards for data archiving.

New Legal Realism – "Bottom-up" Approach

The bottom-up approach is the study of law not in relation to factors that influence the creation and decision-making of law (top-down approach). By the opposite, the bottom-up approach studies the influence that creation and decision-making of law affect the society. The analysis is less about how judges decide, and more about the impact of decisions made by judges in the lives of ordinary people.

In Brazil, the usual study of law is based on the very top of the pyramid, analyzing statutes

and the abstractness of the written codes. Little is said about the real impact of the law to people – through new laws or through courts decisions. This type of study is not a simple study to do. As most of the bottom-up approaches are regarding the statement "*what is the impact of X on people?*" the study is mainly inferential, and inferential statistics in social sciences is hard to access. Many variables influence the results in social sciences and arriving at the plain conclusion that "*Because of X, then Y happened*" is more difficult than it might appear.

The reason for this absence in legal research is not the lack of interest, but the lack of "technology" enough in order to carry out these type of researches. Causal inferences needs serious empirical research with the help from the development new statistics techniques in order to produce credible outcomes.

Concluding Remarks and The Next Step: economic, cultural and operational challenges.

As our research project is still in progress, being conducted at USP – Ribeirão Preto, the conclusions presented, though, are partial ones. There are several challenges that a legal education and legal research reform faces. The first limitation that this article brought is that legal education and legal research are attached with the country's legal system. There are serious limitations in performing an educational reform without a legal system that is more open and transparent. That is not the only problem. Challenges are to be faced in economic, cultural and operational spheres.

Regarding *economic* considerations, Brazil has a very particular law education model that should be taken in consideration for a comprehensive reform throughout legal schools. We can today identify three types of entities that run law schools (FGV, 2014b): (i.) public schools (run by Federal Government – federal universities; States – state universities; and Municipalities – municipal universities); (ii.) for-profit private profit schools; (iii.) non-profit private schools. Public schools are responsible for 16% of the law schools, while private accounts for 84%. For-profit law schools are responsible for 41.6% of all schools in the country. The three major education companies (*Anhanguera, Kroton and Estacio*), only themselves, are responsible for 121 law schools (around 10% of the total). Last year, Kroton

and *Anhanguera* merged to form the world's largest private for-profit education company.[24] The question is: How to implement educational reforms in a model that has a strong presence of private companies aiming profit? This question is a very difficult one. Unless the demand of the legal schools market change drastically (i.e. students demanding more learning quality before they apply for a law school), there is no clear path for implementing these reforms. Probably one way would be implement these initiatives into the public schools and demand a more strict regulation from MEC. This is not an easy solution as well. Public universities are striving for more resources lately, and some of these reforms demand more funding.

That is because of the fact that empirical research is more expensive than traditional bibliographic and literature research. Tamanaha states that (TAMANAHA, 2014, p. 37), "law schools are professional schools and empirical research requires specialized training, time and financial support". For-Profit schools are striving to reach more students and to reduce costs, and their target audience is not sensible to quality, but to price. In addition, taking in consideration that serious empirical research also requires time, it conflicts with the fact that most of the students (of the for-profit units) work during the day and study during the night.

In respect to *cultural considerations*, the first concern that pops up is the common law x civil law dichotomy. This argument is usually raised to prevent consideration from other experiences abroad. It is important that we understand that there is no such a thing as a static group of "common law countries" and a static group of "civil law countries", and many believe there is not much difference between both systems (DAINOW, 1966, p. 434). Each of the system has its peculiarities and differences. However, the differences should not been conceived as a barrier. The opposite: the differences should be a good way to compare two systems and propose improvements to each other.

One interesting case about "cultural resistance to change" is the digital proceedings in courts. When the national act of electronic filling was approved[25], many criticized the changes that would take place. Today, there is a consensus that digital lawsuits improved and facilitated the access to justice. Not only that, but Brazil is ahead of many countries regarding digital

[25] Law number 11.419/2006

electronic filing. Since around 2010, many courts (including the Supreme Court) are accepting only digital filing. In São Paulo today, all civil and labor lawsuits are electronic, and all of the country should be exclusively digital in the next years. Considering that all digital lawsuits and petitions are publicly available, this generates a new paradigm in law research and an easier access to information. Considering empirical research, new opportunities will arise better than ever the bond between law in books and law in action may be possible.

The *operational* difficulty would be to enumerate the steps we should take from now on. It is impossible to believe that scholars in law school will become statistics or social sciences experts. However, in some extent, people are today less afraid of numbers and data statistics.[26] The New Legal Realism sounds to be a good framework to support the legal reform needed in Brazil. However, many scholars still do not even know the "old" Legal Realism properly – and it is even worse with NLR. How to advance in reforms, then? In fact, the question here is not strictly follow a specific intellectual movement – such as NLR. We do not need to be New Legal Realists. Nevertheless, NLR doubtless is a good start to get inspired and learn from the very same problems from abroad.

In summary, the main challenge ahead of us is to figure out what is the "law in action" in Brazil. So much money is wasted with legal opinions and litigation just because the parties do not have – and how could they have? – Better information from the legal system. We don't have much information at all. Using Macaulay (2006) allegory as Law being a kind of map, our "legal" charts are outdated and cannot guide us properly. It looks just like the same as the old charts from XIX century. But we do have *satellites* today! Why not use them to plot better charts to help people's lives? That should be the objective of a NLR approach in Brazil.

Through legal education is that one society ensures the presence of perennial ethical values in the conduct of individuals and especially of the government. Through legal education is that social life can be ordained according to a hierarchy of values, in which the supreme position is for those who give human life meaning and purpose (DANTAS, 2009).

[26] Despite that, it is, each day, more usual the presence of teachers and students that hold other degrees or experience in other social sciences areas (MACAULAY, 2006, p. 1172)

References

ALCÂNTARA, Diogo. *MEC suspende abertura de cursos de direito : ' Está fechado o balcão '*.

BITTAR, Eduardo C. B. *Estudos sobre Ensino Juridico: pesquisa, metodologia, diálogo e cidadania*. 2. ed. São Paulo: Atlas, 2006.

CAMASMIE, Amanda. Os preços de 20 faculdades de Direito em São Paulo e Rio de Janeiro. *Money Guru*, 2013. , p. 2–.

DAINOW, Joseph. The Civil Law and the Common Law: Some Points of Comparison. *The American Journal of Comparative Law*, v. 15, n. 3, p. 419, 1966. Disponível em: <http://www.jstor.org/stable/10.2307/838275>.

DANTAS, Francisco Clementino de San Tiago. A Educação Juridica e a Crise Brasileira. *Cadernos FGV Direito RIO*. [S.l: s.n.], 2009. .

EPSTEIN, Lee; KING, Gary. The Rules of Inference. *University of Chicago Law Review*, v. 69, n. 1, p. 1, 2002. Disponível em: <http://www.jstor.org/stable/1600349?origin=crossref>.

ERLANGER, HS *et al.* Is It Time for a New Legal Realism? *Wisconsin Law Review*, 2006. Disponível em: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=896762>. Acesso em: 6 jul. 2014.

FERREIRA, Daniel Brantes. *Realismo Jurídico Norte-Americano : Uma contribuição para o ensino jurídico.* 2011. 175 f. PUC-Rio, 2011.

FGV. *Exame de Ordem em Números*. . [S.l: s.n.], 2014a.

FGV. *Observatório do Ensino do Direito*. . [S.l: s.n.], 2014b.

FLINDERS UNIVERSITY. *Flinders Law School Review 2013*. . [S.l: s.n.], 2013.

FOREQUE, Flávia. MEC passa a exigir nota maior para novos cursos de direito. *Folha de São Paulo*, 2015.

FRANK, Jerome. Why Not a Clinical Lawyer-School? *University of Pennsylvania Law Review and American Law Register*, v. 81, n. 8, p. 907, 1933. Disponível em: <http://www.jstor.org/stable/3308391?origin=crossref>.

GARNER, Richard. Finland schools : Subjects scrapped and replaced with “topics” as country reforms its education system. *Independent*, 2015.

HART, HLA. *O Conceito de Direito*. São Paulo: Editora WMF Martins Fontes, 2009.

HOLMES, Oliver Wendell. The Path of the Law. *Harvard Law Review*, v. 10, p. 457–478, 1897. Disponível em: <http://www.jstor.org/stable/10.2307/1342108>.

LEITER, Brian. American legal realism. *U of Texas Law, Public Law Research Paper*, n. 042, 2002. Disponível em: <http://www.jstor.org/stable/984667>. Acesso em: 17 set. 2014.

LEITER, Brian. Rethinking Legal Realism: Toward a Naturalized Jurisprudence. *Tex. L. Rev.*, v. 267, 1997. Disponível em: <http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tlr76&section=18>. Acesso em: 6 jul. 2014.

LEITER, Brian. The So-Called "New Legal Realism Project". 2006.

LING, Mao. Clinical Legal Education and the Reform of the Higher Legal Education System in China Clinical Legal Education and the Reform of the Higher Legal Education System in China. v. 30, n. 2, 2006.

LLEWELLYN, Karl N. Some realism about realism: Responding to Dean Pound. *Harvard Law Review*, v. 1, p. 1222–1264, 1931.

MACAULAY, Stewart. Contracts, New Legal Realism, and Improving the Navigation of The Yellow Submarine. *Tulane Law Review*, v. 80, p. 1161–1195, set. 2006.

MACAULAY, Stewart; MERTZ, Elizabeth. Legal Realism as legal theory: ten theses. [S.l: s.n.], 2014. p. 1–42.

MOORE, Underhill; CALLAHAN, Charles. Law and Learning Theory: A Study in Social Control. *Yale Law Journal*, v. 53, p. 1–136, 1943.

NOBRE, Marcos. *O que e Pesquisa em Direito?* São Paulo: Quartier Latin do Brasil, 2005.

POUND, Roscoe. Law in books and law in action. *American Law Review*, v. 44, p. 13–36, 1910.

RAMSEYER, JM; RASMUSEN, E. Comparative Litigation Rates. *Harvard Law School Discussion Papers*, v. 681, p. 1–43, 2010. Disponível em: <https://www.law.harvard.edu/programs/olin_center/papers/pdf/Ramseyer_681.pdf>. Acesso em: 6 jul. 2014.

RIGHETTI, Sabine. Por que as universidades brasileiras vão tão mal nos rankings internacionais ? *Folha de São Paulo*, 2013.

SCHLEGEL, John Henry. American Legal Realism and Empirical Social Science: The singular case of Underhill Moore. *Buffalo Law Review*, v. 29, p. 195–323, 1980.

SILVA, Artur Stamford Da; MAIA, Alexandre; TEIXEIRA, João Paulo Allain. Pesquisa em Direito e a Superação das Escolas-de-um-so. Uma professia às avessas? *180 Anos do Ensino Jurídico no Brasil*. Campinas: Millenium Editora, 2007. p. 343–365.

SINGER, Joseph William. Legal Realism Now. *California Law Review*, v. 76, p. 465, 1988.

SUCHMAN, Mark C.; MERTZ, Elizabeth. *Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism*. *Annual Review of Law and Social Science*. [S.l: s.n.]. , 2010

TAMANAHA, Brian Z. *Legal Realism in Context*. *Washington University in St. Louis School of Law*. [S.l: s.n.], 2014.

VETTORAZZO, Lucas. Lei de Acesso atende 69 % dos pedidos. *Folha de São Paulo*, 2014.