Muddle-headed lawyers? A Few Remarks on Brian Leiter's «Legal Positivism as a Realist Theory of Law»

Luca Malagoli *

Abstract

Commenting and discussing some thesis about American Legal Realism exposed in Brian Leiter's *Legal Positivism as a Realist Theory of Law* (2019), the article focuses on two main topics. First, I will try to highlight some connections of American Legal Realists with the philosophical scene of their time and, secondly, I will analyze (briefly) some aspects of Felix Cohen's functional jurisprudence that are maybe more philosophically interesting than Leiter's reading might induce to think.

Keywords: American Legal Realism. Pragmatism. Functionalism. Felix S. Cohen.

Foreword

Brian Leiter's essay is rich in themes, suggestions and ideas which deserve careful consideration and deep discussion-a task that, surely, can't be appropriately fulfilled in this brief commentary. So, leaving to more extended, detailed and in-depth analysis the central issues raised by the paper, I will focus only on a (relatively) lateral but not less interesting topic: the description of the American Legal Realism[1] proposed by professor Leiter.

More precisely, I will address two topics: 1) the connections of American Legal Realists with the philosophical scene of their time; 2) some aspects of Felix Cohen's functional jurisprudence that are maybe more philosophically interesting and less naïve than Leiter's less sympathetic reading might induce to think.

* Istituto Tarello per la Filosofia del Diritto, Dipartimento di Giurisprudenza, Università degli Studi di Genova, Via Balbi 30/18, 16126, Genova, Italia, *lcmalagoli@gmail.com*.

I would like to thank Pierluigi Chiassoni, Francesco Ferraro, Marco Segatti and Giovanni Tuzet for their very helpful comments to a first draft of this paper.

[1] Or, less ambitiously, some aspects of the reconstruction proposed by Leiter.

1. *Lawyers Have Been Talking Philosophy.* Exploring the Connections of American Legal Realists with the Philosophical Scene of Their Time

Discussing the differences between American Legal Realism and Scandinavian Legal Realism, professor Leiter affirms that «the major American Realists» (such as Karl Llewellyn, Jerome Frank, Herman Oliphant, Max Radin and others) «were law professors, lawyers and jurists, with no philosophical training and, rather obviously, no aptitude for or interest in philosophical questions[2]». Further in the paper[3], Leiter refers to American Legal Realists as "muddle-headed", alluding presumably to this lack of interest in and aptitude for philosophical questions.

The only exception, Leiter remarks[4], was Felix Cohen, who earned a philosophy PhD that, however, according to Leiter, «served him badly[5]» (a statement on which I will return in a short while).

On the one hand, the observation of professor Leiter is obviously true: there is little doubt that, first and foremost, by training and by professional choice, American legal realists were lawyers and their path, so to speak, was surely the law.

Still, on the other hand, the observation is a bit puzzling. Indeed, a long tradition of studies (from the classic works of Morton G. White[6], Wiener[7] and Patterson[8] to those of Summers[9], Thomas Grey[10], and Susan Haack[11]) insisted, in different measures and different ways, on the importance of the link between pragmatism and the very roots of the American Legal Realism. Indeed, as everybody knows, Holmes (regarded by American Realists as their most relevant antecedent) was a member of the celebrated Metaphysical Club[12], usually considered the birthplace of pragmatism.

But, Holmes aside, even for many of the jurists labelled as "realists" in the proper sense (Llewellyn, Radin, Cohen, etc.), the connection with pragmatism is often highlighted as a matter of course in the literature. A (relevant) case in point is

---

2 Leiter 2019: 5.
3 Leiter 2019: 23.
4 Leiter 2019: 5, n. 11.
5 Ibidem.
6 White 1947: 135-139 and, more extensively, White 1949.
7 Wiener 1949: 172-189.
8 Patterson 1953.
9 Summers 1982.
10 Grey 2014: 100-197.
11 Haack 2018.
12 About that membership, however, scholars have different opinions: if White, Wiener, and, more recently, Susan Haack highlighted Holmes' pragmatist side, Postema (Postema 2011: 47, n. 7, expressing skepticism about the "popular attempt" to read Holmes as a pragmatist) tends instead to relativize it. Nuanced are also the considerations of Thayer 1968: 50. A "middle-ground standpoint" can be found in Burrow 1994: 23-25.

the intellectual influence of John Dewey[13], whom, by the way, Fisher, Horwitz and Reed classified among the realists in their famous anthology[14].

Just to quote some of those who defended the thesis of a strong relationship between realism and pragmatism, and, particularly, of John Dewey's momentous influence, Patterson[15], analyzing some of the major antecedents of American Legal Realism (such as the work of Holmes, Pound and Cardozo) claimed that «whether pragmatism influenced these emerging ideas about law more, or less, than it was influenced by them is a question for the biographer or the historian. The cultural matrix was there, and from it came both pragmatism in philosophy and pragmatism in law[16]».

Furthermore, Patterson observed that many of those who took part in «various movements known as legal realism were devote admirers of Dewey: and through their teaching and writing pragmatism has become an important influence in law[17]».

In an analogous (but more radical) way, Summers, precisely for the above-mentioned reasons, proposed to classify Dewey alongside the realists under the general label of "legal instrumentalism[18]", arguing that, although Dewey was the only professional philosopher among them, still his contributions to legal theory were highly influential[19]. A more complex perspective is offered by Twining, who, in his assessment of Dewey's influence on the work of one of the most prominent realists, Karl N. Llewellyn, observed that, for Llewellyn, Dewey was «both the model realist and a symbol of the unfulfilled promise of Legal Realism[20]».

According to Twining, Llewellyn had reservations about several of Dewey's ideas (such as his theory of value and his logic) but highly admired his cast of mind and his method[21], which he aspired to apply to jurisprudence. In order to describe the role that the intellectual figure of Dewey played for Llewellyn, Twining suggests that «rather as Jeremy Bentham aspired to become the Martin Luther of jurisprudence, Karl Llewellyn's private ambition was to be seen as its John Dewey[22]».

Of course, all these accounts can be criticized: for example, Patterson might have overestimated the influence of Dewey, or Summers' proposal can be regarded

13 See, for example, Kalman 1986: 15-16.

14 See Fisher, Horwitz, Reed 1993: 185-194.

15 Patterson 1940. Of the same author, an also useful contribution is Patterson 1953: 537-539 (tracking the origins of legal realism in pragmatism) and Patterson 1953: 486-500 (examining Dewey's thought and evaluating is contribution to legal thinking).

16 Patterson 1940: 176.

17 Patterson 1940: 177. For an example of Dewey's influence on relevant legal scholars of the period, see Kalman 1986: 50 (remarking the relevance of Dewey's influence on Thomas Reed Powell).

18 Summers 1982: 23.

19 Summers 1982: 24.

20 Twining 2002: 131, n.126.

21 Ibidem.

22 Ibidem.

(with at least some good reasons[23]) as partially misleading.

Still, it is difficult to deny that, however debatable, these readings do capture an important element of the intellectual atmosphere in which American Legal Realism arose.

In fact, even Benjamin Nathan Cardozo, who clearly was an attentive and qualified observer of the rising tide of American Legal Realism, noted that one the most significant features of what he called «the ferment of the present-days interest […] in problems of legal philosophy[24]» was the somewhat novel "cross-fertilization" – sometimes difficult, to be sure, but always fruitful– of lawyers and philosophers in dealing with such problems. The distinctive aspect of that "ferment", to Cardozo's eyes, was exactly the fact that «the lawyers […] have been talking philosophy, or what they thought was philosophy; but then on the other hand philosophers have been talking law, or what they thought that it was law[25]». Cardozo quoted Dewey and Morris Cohen as relevant examples of philosophers (among many others, he added) that were giving relevant contributions to legal theory[26].

Of course, Leiter too recognizes[27] a pragmatist feature of legal realism, but only in the sense that what the realists sought to build up was a theory of adjudication that enables lawyers to predict what courts will do. In the paper presented at this seminar, professor Leiter affirms, in the same vein, that American Legal Realists «advanced no theses about the nature of law apart from these practical litigation-oriented concerns[28] […]».

This last sentence leads me to another point that, it seems to me, it is worth of attention.

Surely, it would be quite odd to deny the great attention given by American Legal Realists to the behavior of the courts, but this consideration must not lead to dismiss the broader theoretical ambitions of (at least) some of the major realists.

Of course, I have no space, here, for an extended analysis, but only for some hints.

On the one hand, if we follow Fisher, Horwitz and Reed in their commitment to a «generous definition of realism[29]» and we include Dewey in the group-portrait,

---

[23] For example, the label of "legal instrumentalism" seems somewhat too broad, including (diss putably) a jurist like John Chipman Gray, whose work (despite his friendship with Holmes and James: see Wiener 1949: 173) seems to have rather tenuous links with the pragmatist tradition.

[24] Cardozo 1932: 8. Cardozo's speech is also historically relevant because it represents his (not so lucky) attempt of mediation in the famous debate among Roscoe Pound and Llewellyn concerning the "realistic jurisprudence". For more details, see Kaufman 2000: 456-458.

[25] Ibidem.

[26] Ibidem.

[27] See Leiter 2007: 52. I have no space, here, to analyze the sophisticated assessment of pragmaa tism that professor Leiter gives in Leiter 2007: 46-52.

[28] Leiter 2019: 5.

[29] Fisher, Horwitz, Reed 1993: xv.

we can notice that he was engaged in other philosophical issues regarding the law other than adjudication an judicial reasoning, such as a deep criticism of the concept of sovereignty[30] (one of the corner-stones of Austinian jurisprudence) or the notions of "force" and "coercion".

More appropriately for the main themes of Leiter's paper Dewey even attempted to analyze the concept of "costume" via key-concepts of his theory of social activity (the concept of "inter-action" and that of "trans-action") and elaborated also elements for a theory of legal sources[31] based on such revised costumes. In this sense, maybe it would be an interesting theoretical experiment trying to imagine a "Deweyan rule of recognition" and how Dewey would have reacted to the Hartian perspective.

On the other hand, even if we adopt a narrower conception of American Legal Realism and we focus only on the authors classically labelled as realists (concentrating, for example, on Llewellyn), Twining highlighted in many occasions that one of the principal concerns of Llewellyn, from the early stage of his work, was to develop a general theory, a picture of law which he referred to as "working Whole View[32]", and a theoretical vocabulary which could bridge the divide between law and other social sciences, especially sociology and anthropology, but also economic and political science[33].

This concern was, according to Twining, one of the major sources of the "law-jobs theory" that Lewellyn developed along his whole career (from a paper of the late Twenties and from his contributions to legal anthropology to his last works) and restated many times[34].

2. *Just a Fashionable Idea?* Some Observations about Felix Cohen's «Preposterous» Functionalism

Finally, to conclude my remarks, I think worthwhile recalling, as I said before, some aspects of Felix Cohen's functional jurisprudence, which, it seems to me, might be a more philosophically interesting, and less naïve intellectual endeavor than Leiter's presentation might induce to think (but, of course, maybe this is only the proof of my own philosophical shortcomings).

As I remembered before, Leiter claims[35] that Cohen arguably adopts an indefen-

30 See Dewey 1894.
31 See Dewey 1941.
32 Twining 2002:158.
33 Ibidem.
34 Twining 2002: 157.
35 See Leiter 2019: 5, n. 11. Leiter refers also to the related discussion in Leiter 2007: 68-73. On that discussion, therefore, I will now concentrate my attention.

sible version of rule-skepticism[36]. But does he? Was really Cohen a naive supporter of conceptual rule-skepticism?

In his catalogue of the faults of Conceptual Rule Skepticism[37], Leiter (following Hart) affirms that, in defining the concept "law" in terms of prediction of "what a court will hold", this perspective leads to a manifestly ridiculous reconstruction of judicial reasoning. For example, according to Conceptual Rule Skepticism, a judge[38] who must decide the question whether a franchisor can terminate a franchisee in Connecticut with less than sixty days' notice, would be engaged in a bizarrely Hamletic monologue: "What do I think I will do[39]?".

But, if we consult Cohen's work[40], we find, in truth, a more complex picture.

Considering, for example, a legal question such as "is there a contract?", Cohen makes clear that, when the realist *lawyer* asks such a question, she is indeed concerned with the actual behavior of courts, and she is trying to evaluate a number of factors in order to predict that behavior, such as ascertaining what courts are likely to pass upon a given transaction and its consequences, the elements in this transaction that will be viewed as relevant and important by these courts, the way in which those courts dealt with similar transactions in the past, the respective weight of the forces that tend to compel judicial conformity to the precedents that appear to be in point and, on the other hand, of the forces that, instead, tend to evoke new judicial treatment for the transaction in question, et cetera.

However, when a *judge* considers the question "is there a contract?", while writing her opinion, Cohen emphasizes[41] that she is not attempting to predict her own behavior: she is, indeed, raising the question of whether liability should be attached to certain acts, or not.

Indeed, according to Cohen, when a judge decides a case, far from being involved in the above mentioned Hamletic and quite absurd monologue, she is concerned with a complex value judgment, assessing and evaluating various elements such as the expectations based upon past decisions, the stability of economical transactions, the maintenance of order and simplicity in the legal system[42]. So, when deciding a case, the judge considers «the social context, the background of the precedent, the practices and expectations, legal and extra-legal, which have grown

[36] «Conceptual Rule-Skepticism is a claim about the nature of law, i.e., that it consists only in what courts say or in predictions of what courts will do». Leiter 2019: 10. At page 11, Cohen is defined as «arguably, a Conceptual Rule-Skeptic».

[37] See Leiter 2007: 69-72.

[38] Leiter 2007: 70.

[39] Leiter 2007: 70.

[40] Cohen 1960: 65.

[41] Cohen 1960: 67.

[42] Ibidem.

up around a given type of transaction[43]».

But, leaving aside his reconstruction of legal reasoning, there are other aspects of Cohen's theses that seem to put in doubt the charge of conceptual legal skepticism. Examining the "definition of law[44]" as "prophecies of what courts will do in fact" delivered by Holmes, Cohen states in clear words[45] that he is not very much interested in verifying if this definition is either true or false. What is relevant, form him, is the *usefulness* of the definition. Cohen's approach, so, seems to be heuristic, rather than descriptive or analytical[46]. Also in other writings, Cohen restated many times that, in his perspective, the value of a theory (not only in law, but also in other fields) consist in its aptness to put useful questions, in order to focus the critical attention upon facts and issues formerly considered unimportant, uninteresting, self-evident or even indecent[47].

So, rather than "disproving" or refuting other theories or advancing a comprehensive, self-sufficient and ultimate "definition" of law, the aim of Cohen's theory seems to be, in a typically realist fashion, to highlight questions and aspects neglected by other theories such as «how do rules of law work? Are certain rules of law, so-called, merely ritual observances which have no verifiable relation to the decisions of judges who recite them? To what extent are laws actually obeyed? […]. What are the social mechanisms and institutions that makes certain rules of law effective and leave others dead letters? When rules of law are obeyed or disobeyed, what conse-

---

43 Ibidem.

44 Assuming that it was really meant as a definition: for a discussion concerning various interpree tations of Holmes' *bad man*, see Twining 1973 (especially 279-280).

45 Cohen 1960: 62-63.

46 It may be useful to point out that this kind of approach seems to share many similarities with some considerations of a classical pragmatist such as William James: «What now is a *conception*? It is a *teleological instrument*. It is a partial aspect of a thing which for our purposes we regard as its essential aspect, as the representative of the entire thing. In comparison with this aspect, whatever other properties and qualities the thing may have, are unimportant accidents which we may without blame ignore. But the essence, the ground of conception, varies with the end we have in view. A substance like oil has as many different essences as it has uses to different individuals. One man conceives it as a combustible, another as a lubricator, another as a food; the chemist thinks of it as a hydrocarbon; the furniture-maker as a darkener of wood; the speculator as a commodity whose market price today is this and tomorrow that. The soap-boiler, the physicist, the clothes-scourer severally ascribe to it other essences in relation to their needs.» (James 1879: 318-319). On this topic, see also Thayer 1968: 139, n. 12.

47 Cohen 1960: 77. In order to make his point, Cohen quotes many examples form history of science (such as Galileo's question regarding the speed of falling of bodies, compared to the natural philosophers interest for notions like "the perfect motion"), from history of political philosophy and economics (such as the influence of Marx even on non-socialist historians, that learned from his work to pay attention to elements such as the relationship between events or institutions and the prevalent system of production and distribution at the time and place) and from history of mathematics and logic (the advance achieved by Lobachevski and Riemann, investigating the consequence that follow from geometric assumptions other than those of Euclid).

quences actually follow from such conduct[48]?». To sum it up, the point of Cohen's approach seems to be a better and more articulated understanding of law-in-action.

In this perspective, so, judicial decisions can be studied as «a product of social determinants, and an index of social consequences[49]», without attempting to substitute all the different "definitions" that other views, with other aims and moving from different questions[50], can fruitfully develop[51]. Cohen, indeed, far from being a rough reductionist, seems to have a very keen sense of the complexity of the legal phenomena, and, so, his approach is open to the cooperation with other approaches, in order to reach a more comprehensive and synoptic vision of those phenomena[52]. In fact, Cohen remarks that there is a mutual interdependency among his approach and lines of inquiry such as those of analytical and historical jurisprudence[53]: in this sense, apparently there are no reasons for which his approach can't be compatible even with a line of inquiry like that of Hart.

To conclude this short defense of Cohen's philosophical reputation, let me add few words concerning a last (but not least) point-namely, Cohen's functionalism.

In his (quite severe) criticism of Neil Duxbury's *Patterns of American Jurisprudence*, Leiter affirms that, among various «examples of "fashionable" ideas that have swept American legal scholarships[54]» presented by Duxbury without the necessary critical examination, there is also «Felix Cohen's preposterous legal functionalism[55]».

In light of what I said before, it seems to me that the adjective "preposterous" might be a bit too harsh. Moreover, the description of functionalism as «a fashionable idea […]» that a law professor «lifts from some other discipline, applies to law and then pronounces a "theory[56]"» is perhaps somewhat unfair.

Indeed, it is true that Cohen adopted functionalism from debates in other disciplines, especially social sciences and, especially, anthropology. In fact, one of

48 Cohen 1960: 79.

49 Cohen 1960: 70.

50 Taking into consideration just one example, Cohen points out that the questions from which he starts his research are very different from those of which analytical jurisprudence has been concerned (such as: «What is the nature or structure of law?») or from those considered by historical jurisprudence (such as: «How as law developed?»). See Cohen 1960: 79.

51 Cohen 1960: 55.

52 «Legal philosophy is not a bad play in which each actor clears the stage by killing off his predecessors. Rather is legal philosophy, like philosophy generally, a great cooperative exploration of possible perspectives through which life's many-faceted problems can be viewed». Cohen 1960:154. See also this passage: «Obviously, [functionalism] is not the *only* way of gathering useful information, and, obviously, it is largely dependent upon the results of classificatory or taxonomic investigation, genetic or historical research, and analytical inquiries» (Cohen 1960: 55).

53 Cohen 1960: 79.

54 Leiter 2007: 100.

55 Ibidem.

56 Ibidem.

his starting point is the work of the anthropologist Bronislaw Malinowski[57], from whom he quoted a definition of functionalism: «Modern anthropology concentrates, above all, on what is now usually called the function of a custom, belief or institution. By function we mean the part which is played by any one factor of a culture within the general scheme[58]».

But it is also true that, like Llewellyn[59], Cohen seems to have moved a step further Malinowski and the "first-days" functionalism, understanding at least some of the problems that the sociologist Robert K. Merton will brilliantly outline later in his seminal *Manifest and Latent Functions*[60] (1949). For example, Cohen observes[61] that, sometimes, the formula "functional approach" «is used to designate a modern form of animism, according to which every social institution or biological organ has a "purpose" in life, and is to be judged good or bad as it achieves or fails to achieve this "purpose[62]"».

Here, Cohen seems to identify (partially, at least) and criticize some fallacies analogous to those dealt with by Merton[63], such as the postulate of universal functionalism (the idea that all institutions, customs, etcetera must have functions) and the postulate of functional unity of society (i.e. strong integration: the society considered like a biological organism). Hence, his reframing of functionalism[64] avoiding, for example, any direct reference to the "whole society". Besides, Cohen seems to understand that to attribute a "purpose" to an institution or a custom is misleading, because it conflates and confuses subjective "aims, purposes, intentions" with social "consequences". Finally, Cohen seems to detect the ideological commitments that such versions of functionalism can hide.

---

57 Who, by the way, was also an influence for Talcott Parsons, one of the fathers of functionalism in sociology. See Stepién 2016: 40.

58 Malinowski (1934), quoted in Cohen 1960: 58, n. 65. In her important work, Laura Kalman (see Kalman 1986: 17) observes that, except for Lewellyn, realist did not find anthropology relevant and Cohen, despite his admiration for functional anthropology, ultimately ignored it. Indeed, he didn't engage in field-study such as that of Llewellyn; however, the work of authors such us Boas, Lowie and, indeed, Malinowski was regarded by him as very relevant. On these aspects of Cohen's thought, see Tuori 2017: 809-810.

59 Hoebel-Llewellyn 1941. See also the interesting considerations proposed by Twining 2002: 192, n. 44.

60 In Merton 1968: 73-138.

61 Cohen 1960: 47.

62 Ibidem.

63 Twining 2002: 192, n. 50.

64 See Cohen 1960: 80. Considered as a philosophy «functionalism may be defined as the view that a thing does not have a "nature" or "essence" or "reality" underlying its manifestations and effects apart from its relations with other things; that the nature, essence, or reality of a thing *is* its manifestations, its effects, and its relations with other things; and that, apart from these, "it" is nothing, or at most a point in logical space, a possibility of something happening». Considered as a method, functionalism «may be summed up in the directive: "if you want to understand something, observe it in action».

Of course, it would be really "preposterous" and ludicrous to maintain that the intuitions and insights of Cohen, or Llewellyn's more elaborated theoretical reflections, fully anticipated the analyses and conclusions of Merton's work: surely, they did not. Both, however, can be interpreted as contributing (in different measures, to be sure) to a tradition of social science which starts from authors such as Malinowski, was developed by Parsons[65], has been enriched and refined by Merton and then discussed with various perspectives by authors such as Goffman, Giddens, Geertz and Turner, among others[66].

So, if it was a fashion, it was, after all, a lasting and significant one in American social sciences.

References

Burrow, J.W. (1994). *Holmes in His Intellectual Milieu*, in R.W. Gordon (ed. by), *The Legacy of Oliver Wendell Holmes, Jr.* (1994) Stanford, Stanford University Press, 17-30.

Cardozo, B.N (1932). *Jurisprudence*, in M.E. Hall (ed by) *Selected Writings of Benjamin Nathan Cardozo*, (1947), New York, Fallon Publications.

Cohen, F.S. (1960). *The Legal Conscience. Selected Papers of Felix S. Cohen* (ed. by Lucy Kramer Cohen), New Haven, Yale University Press.

Dewey, J (1894). *Austin's Theory of Sovereignty*, «Political Science Quarterly», 9, 1, 31-52.

Dewey, J. (1941). *My Philosophy of Law*, in Aa.Vv., *Credos of Sixteen American Scholars*, Boston, Julius Rosenthal Foundation Northern University, 73-85.

Fisher, W.W., Horwitz, M.J., Reed, T.A. (1993). *American Legal Realism*, New York-Oxford, Oxford University Press.

Grey, T. C. (2014). *Formalism and Pragmatism in American Law*, Leiden-Boston, Brill.

Haack, S. (2018). *The Pragmatist Tradition: Lesson for Legal Theorists*, «Washington Law Review», 95, 18, 1049-1082.

Hoebel, E.A.-Llewellyn. K.N. (1941). *The Cheyenne Way. Conflict and Case Law in Primitive Jurisprudence*, Norman, University of Oklahoma Press.

James, W. (1879). *The Sentiment of Rationality*, «Mind», 4, 15, 317-346.

[65] About the debate concerning the extent of Malinowski's influence on Parson's thought, see Stépien 2016: 40.

[66] Ibidem.

Kalman, L. (1986). *Legal Realism at Yale 1927-1960*, Chapel Hill and London, The University of North Carolina Press.

Kaufman, A.L. (2000). *Cardozo* (1998), Cambridge-London, Harvard University Press.

Leiter, B., (2007). *Naturalizing Jurisprudence. Essays on American Legal Realism and Naturalism in Legal Philosophy,* Oxford, Oxford University Press.

Leiter, B. (2019). *Legal Positivism as a Realist Theory of Law*, to appear in P. Mindus and T. Spaak (eds.), *The Cambridge Companion to Legal Positivism*.

Merton, R. K., (1968). *Social Theory and Social Structure* (1949, 1957), New York-London, The Free Press-Collier MacMillan Publishers.

Patterson, E.W. (1940). *Pragmatism as a Philosophy of Law*, in Aa.Vv., *The Philosopher of the Common Man. Essays on Honor of John Dewey to Celebrate His Eightieth Birthday*, New York, G.P. Putnam's Sons, 172-204.

Patterson, E.W. (1953). *Jurisprudence. Men and Ideas of the Law*, Brooklyn, The Foundations Press.

Postema, G.J. (2011). *Legal Philosophy in the Twentieth Century: the Common Law World* in *A Treatise of Legal Philosophy and General Jurisprudence. Voll. 11* (principal editor E. Pattaro), Dodrecht, Heidelberg, London, New York, Springer.

Summers, R.S. (1982). *Instrumentalism and American Legal Theory*, Ithaca, Cornell University Press.

Stepién M. (2016). *Malinowski's Multidimensional Conception of Law: Beyond Common Misunderstandigs*, in Stepién, M. (ed. by), *Bronislaw Malinowski's Concept of Law*, Springer, 39-54.

Thayer, H.S. (1968). *Meaning and Action. A Critical History of Pragmatism*, Indianapolis- New York, The Bobbs-Merrill Company.

Twining, W. (1973). *Bad Man Revisited,* «Cornell Law Review», 58, 2, 275-303.

Twining, W. (2002). *The Great Juristic Bazaar. Jurists' Texts and Lawyers' Stories,* Aldershot-Burlington, Ashgate-Dartmouth.

Tuori, K. (2017). *American Legal Realism and Anthropology*, «Law and Social Inquiry», 42/33, 804-829.

White, M.G. (1947). *The Revolt Against Formalism in American Social Thought of the Twentieth Century*, «Journal of the History of Ideas», 8, 2, 131-152.

White, M. G. (1949). *Social Thought in America: The Revolt Against Formalism*, New York, Viking.

Wiener, P.P. (1949). *Evolution and the Founders of Pragmatism*, Cambridge, Harvard University Press.