

Preface

“There are some books that refuse to be written,” Mark Twain once commented. “They stand their ground year after year and will not be persuaded. It isn’t because the book is not there and worth being written—it is only because the right form of the story does not present itself.” This is one of those books. It resisted being written for many years. Eventually the recalcitrant material fit into a coherent narrative. Whether it is also the “right form” will be for the readers to judge.

One of the reasons I kept going all this time is my affection for its topic: Legal Realism and Pragmatism. These two movements are emblematic of the kind of America that got me interested in the field of American studies when I first became a student. They express an iconic American can-do optimism that is still infectious and that still speaks to us from the beginning of the last century. This sprightly optimism should by no means be equated with simplemindedness or naïveté. On the contrary, Pragmatism and Legal Realism are some of the most sophisticated intellectual currents of American Modernism. Nor should we be deterred by the ripe old age of these movements. In a way it is a boon that these theories no longer relate directly to the issues of today; that they are no longer partisan positions in ongoing struggles. As the poet Thomas Gunn once wrote about his examples, his “sad captains”:

True, they are not at rest yet,
but now that they are indeed
apart, winnowed from failures,
they withdraw to an orbit
and turn with disinterested
hard energy, like the stars.

Pragmatism and Legal Realism still shine with this “disinterested hard energy.” They offer no advice on how to deal with Al Qaeda, on whether to adopt the flat tax, on what to do about immigration, or on how to reform the welfare state. Yet they do express a sensibility, a way of looking at problems that is still important. It is this sensibility that I have tried to recapture in this book.

I was lucky to receive support from a great many people in writing this book. First of all, I would like to mention the motley crew of the *Pioneer Group*. I was part of that diverse group of academics for most of its existence. Wibren van der Burg, Margreth de Bonth, Timon Oudenaarden, Caroline Raat, Peter Blok, Bert-Jan Wolhuis, Marc Hertogh, Anton Vedder, Roland Pierik, Maarten van Dijck, Bert van den Brink, Sanne Taekema, and Willem Witteveen have all contributed to my research with their comments and discussions. I would also like to thank William Twining for his stern and fair remarks, as well as the two reviewers Hanoch Dagan and John Henry Schlegel, who have greatly improved the book with their thoughtful comments. Finally, I would like to thank my wife, Catherine, and my children, Max and Anna, simply for being there.

LEGAL REALISM REGAINED

