

RESEARCH

Empirical legal scholarship: re-establishing a dialogue between the academy and the profession

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30 *Wake Forest L Rev* 2, 1995, pp 347-367

The gap between the profession and the legal academy continues to widen. Consequently, the profession feels as if it has been abandoned due to the inapplicability of legal scholarship to the bench and the bar. There has been a lack of empirical study, that is, scholarship based on statistical data, from which one can draw conclusions and formulate policies. Empirical scholarship is a window through which the pathologies of the law can be viewed. Judges, practitioners and legislators should know the societal effects of their decisions and actions. The legal academy is well positioned to provide this type of information, which would in turn serve to bridge the gap by addressing the question, how is the law doing?

The validity of an idea is found in its results, not its sacredness, and the way to measure results is through empirical research. Empirical research begins with an observable problem. Whatever form of investigation used in the research is not of great consequence but the final analysis must refer back to direct experience. In this way an empirical enquiry starts and finishes with the direct experience. Such enquiry is known as the philosophy of pragmatism and was prevalent in the late 1800s.

In the early twentieth century, Pragmatism challenged the

Langdellian notion that law was an exact science based on objective rules. The Pragmatists focused on the affect that law was having on society and the importance of empirical research in measuring it. The Pragmatists begat the Legal Functionalists and in turn the Legal Realists who finally laid the notion of Langdell's legal science to rest. The Legal Realists were succeeded by the Law and Society Movement with its charter of explaining and describing legal phenomena in social and societal terms. Whilst empirical research will indicate what might be wrong, the follow-up question, what do we do now?, creates a separate problem of its own.

Given the usefulness of empirical scholarship to the law, one is left asking why there has been so little of it in the legal academy. A telephone survey of 40 American law professors found that 87.5% thought there was a lack of empirical research in legal scholarship and 82.5% of those believed that this was due to a lack of training in the empirical method. This is of no surprise as law schools are not designed to teach the empirical method. Other reasons stated for the lack of empirical research were that it was not viewed favourably for tenure and was too labour intensive.

The author then suggests ways in which empirical study of the law may be brought into the law school. Requiring law students to take a course in empirical or statistical methodology during their first year would be a step in the right direction. An advanced course could then be offered as an elective for those students who want to build upon the first year course. Faculty must be

encouraged to emphasise the sociological impact of the law. Empirical data could be used to indicate the affect that a change in the law has had on the incidence of drink driving. Law schools should hire professors who express an interest in empirical research and sponsors should provide grants for empirical research.

The Legal Practice Course: benefits in practice

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Nottingham Law School Limited, 1996

[See Practical Training]

TEACHING METHODS & MEDIA

Simulations: an introduction

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This article sets the scene for the ensuing symposium on simulations that is reported in the December 1995 issue of the *Journal of Legal Education*. Simulations are a low-cost way of teaching the requisite skills and values called for in the MacCrate Report.

Simulations sit between doctrinal hypothetical learning, epitomised by a preoccupation with the law and devoid of the concept of a client, and law clinics, which deal primarily with clients. A continuum of simulations exists and ranges from 'doctrinal problems', where the student is typically asked to advise a hypothetical person in relation to a hypothetical fact situation, to 'simulation courses', where the