RESEARCH

Empirical legal scholarship: re-establishing a dialogue between the academy and the profession
C A Nard
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
J S Slorach
Nottingham Law School Limited, 1996
[See Practical Training]

TEACHING METHODS & MEDIA

Simulations: an introduction
J M Feinman
45 *J Legal Educ* 4, December 1995, pp 469-479

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

entire course is built around lawyering activities and the needs of a client.

The design of a simulation course is a challenging activity and it is necessary to ensure certain factors are considered. It is imperative that the goals of any simulation course be clearly defined before embarking on its design.

The format of a simulation encompasses the elements of the design. This includes the fact situation(s) to be used in the simulation. The role of the student must be determined: is the student playing the role of a litigator or an advisor to the client? Whether students should work as a team and the end product of the simulation exercise must also be considered in designing the course.

The amount of time devoted to the simulation exercise will depend on whether the course coverage is diminished by the simulation. Ways around this problem are to use the simulation to convey substantive material, use more efficient classroom learning techniques or adopt the attitude that no course ever completely covers its subject and that a simulation will not overly exacerbate the problem.

The course designer will generally be responsible for conducting the simulations. However, using practitioners and student assisted teaching is an option. The extent of research required to complete the simulation will depend on whether legal research is considered to be a goal of the course. The course designer must also make decisions on the amount of prior preparation students are to do, the opportunity for students to reflect on the course, and how to measure student performance for assessment and grading purposes. Evaluation can be a direct assessment of performance, a subsequent assessment of the knowledge or skills acquired through the simulation, or both. The final consideration is the institutional context. This will involve the allocation of resources to the course, the suitability of the course in the curriculum as a whole and the concurrent demands on students' time.

Use of simulations in a first-year civil procedure class
R G Vaughn
45 *J Legal Educ 4*, December 1995, pp 480-486

Simulations have long been used to teach civil procedure. The simulations described are designed to teach the content of civil procedure rather than to develop litigation skills. They are used to advance and enhance the presentation of the subject. They are low-maintenance vehicles, requiring no extraordinary commitment from the instructor or the students.

Most simulations involve members of two 'law firms' consisting of three-quarters of the class. The remaining students act as judges, bailiffs, judicial clerks and members of legislative committees. One group of simulations used concerns motions such as a motion to dismiss for lack of personal jurisdiction and a motion to compel discovery. A second group of simulations requires the drafting of a complaint. Students also participate in a simulation of a legislative hearing.

Most of the instructor's time is spent preparing the problems and simulations. In most simulations, only a few students participate and the rest play a central role in evaluating the performance. The simulations are designed around the prescribed text and research outside the text is unnecessary and in fact discouraged.

Student feedback is, on the whole, good, especially in relation to the settlement negotiation exercise. Many students comment that the simulations allow the rules to be put into context. One student described the need for contextualisation of the rules stating: 'It's like trying to understand basketball by reading the referee's manual.'

Simulations assist in framing the various topics within a course and enhance the course structure. Simulations offer an alternative to the traditional style of law school learning, thereby breaking the monotony created by a single teaching methodology.

Limited time simulations in business law classes
L L Dallas
45 *J Legal Educ* 4, December 1995, pp 487- 497

A limited survey has indicated that simulations may use more class time than their effective learning value justifies, that they are less effective for substantive learning than they are for skills training and that they create administrative difficulties and require substantial preparation. However, these reservations will fade as teachers become more familiar with simulations. The author's use of simulations did not eventuate as a conscious effort, but out of a