The Contribution of Empirical Research to Law

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Abstract

Over the last decade empirical legal studies have become a popular subfield of legal research. Legal scholars have increasingly begun to employ social science research methods in their attempts to provide answers to research questions in the field of law. The goal of empirical legal research is to make a contribution to all subjects and phenomena that are of interest to law and for which no methods have previously been available. The use of empirical methods in legal science can lead to results that cannot be achieved by the methods of traditional law research. The ultimate aim of the approach is to contribute to a systematic understanding of our legal system based on empirical data. In this article I give an overview of the development of empirical legal studies as an independent subfield of legal research, followed by an introduction to two popular studies to illustrate the potential and limitations of this new field of research. I then discuss some controversial topics such as the widespread view that empirical research is objective and value-free, the relevance of methodological problems and the problem of over-simplification of the complexity of legal issues. I conclude with a look at future prospects for empirical legal research.

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1. Empirical Legal Studies

In empirical legal studies (ELS) research methods from the social sciences are used to examine research questions in the legal sciences in order to study the operative and functional aspects of the law and their effects.\(^{89}\) The increasing trend towards testing hypotheses and questions has been described as “the next big thing” in legal science,\(^{90}\) even as a revolution\(^ {91}\) whose significance has as yet been underestimated.\(^ {92}\)

In the United States of America the research approaches of the social sciences first began to take on greater significance in connection with legal realism. Legal realism grew up in the nineteen thirties and forties, mainly in the USA,\(^ {93}\) and was characterised especially by the use of interdisciplinary methods borrowed from the social sciences.\(^ {94}\) In legal realism it was, for example, assumed that judges’ decisions were determined not only by laws, precedents and general legal principles, but also by the judges’ social backgrounds and political convictions.\(^ {95}\) For example, social scientific methods were needed to be able to analyse judges’ verdicts from this viewpoint. Since these methods are often empirical, legal realism introduced the empirical paradigm into the legal sciences for the first time. However, these early empirical research efforts remained few and far between and thus legal realism fell short of its empirical potential. Because legal

\(^{89}\) Baldwin and Davis, 2003: 882.
\(^{90}\) Ulen, 2008: 73; George, 2005: 142.
\(^{91}\) Ho and Kramer, 2013.
\(^{92}\) Fortney, 2009: 2-3 cites Gordon, who describes empirical legal studies as the „most neglected and ridiculously undervalued as well as the most potentially fruitful branch of legal studies“. Gordon, 1993: 2085.
\(^{93}\) See for example, Baldwin and Davis, 2003: 882; Ulen, 2008: 900; George, 2005: 144. For more extensive information on this topic see also: Kritzer, 2010; Kritzer, 2009; Schlegel, 1995; Monahan and Walker, 2011.
\(^{94}\) Eisenberg, 2011: 1720.
\(^{95}\) Baldwin and Davis, 2003: 882.
realism brought the empirical approaches into the legal sciences and thus prepared a basis for their acceptance, it is seen as the trailblazer of empirical research in the legal sciences.\footnote{George, 2005: 144-145.}

Since the beginning of this century the main country in which empirical legal research has been practiced to any great extent is the USA.\footnote{Kritzer, 2009: 925; George, 2005: 141-142.} Today it has a wide forum\footnote{Eisenberg, 2011: 1713-1714.} in a number of journals with international repute,\footnote{For example the Journal of Empirical Legal Studies, the Journal of Legal Studies, the Journal of Law and Economics and the European Journal of Law and Economics.} academic societies\footnote{For example the Society for Empirical Legal Studies, the American Law & Economics Association, the European Association of Law and Economics} and university research centers.\footnote{For example the annual Conference on Empirical Legal Studies and the annual Conference of the European Association of Law and Economics.} It appears likely that its initial rapid growth will continue in the future.\footnote{Lindgren, 2006. Lindgren argues that among others the following developments will further contribute to the growing importance of empirical legal studies: the increasing training of legal scholars in statistical methods, the development of new statistical methods, the growing computing power to conduct statistical calculations, the growing availability of statistical datasets. Baldwin and Davis, 2003: 883 add to this list the growing number of law professors who do not only have a degree in law but also in the humanities or the social sciences.} The success of empirical methods in the legal sciences is partially due to the fact that it brings together scholars from several different disciplines who have been working independently of each other on different aspects of the legal system, e.g. the sociology of law (“Law and Society”) and the economic analysis of law (“Law and Economics”). This promotes interdisciplinary legal research.\footnote{Eisenberg, 2011: 1719-1720 and 1722-1724.}
The common goal of these different disciplines is to develop a systematic understanding of the legal system based on empirical data.\(^{105}\) The issues covered by this research are broad. The main focus is on analysing how legislators enact and implement legal regulations and how these regulations affect the behaviour of those to whom they are applied.\(^{106}\) Empirical legal research strives as far as possible to make a contribution to all issues and phenomena which, while they are of importance for lawyers, have not previously been empirically investigable because of the lack of methods.\(^{107}\)

The development of empirical legal research as an independent field of legal science is sometimes seen as a response to the fact that traditional scholars of legal doctrine neglected to do empirical research on the actual functioning of the legal system.\(^{108}\) On this view, as a result of the lack of empirical data on our legal systems, many of the theories, assumptions and prognoses on which traditional legal research has been based, either implicitly or explicitly,\(^{109}\) have been left without empirical support and therefore remain vague. Moreover, as a result of this neglect the actors involved in the legal system such as the courts, parties to actions, lawyers, political decision-makers and society in general are only insufficiently informed about the functional aspects of the legal system.\(^{110}\) Empirical legal research can be seen as an attempt to remedy this state of affairs.

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\(^{105}\) Eisenberg, 2011: 1720
\(^{106}\) Ulen, 2008: 74.
\(^{107}\) Suchman, 2006: 2.
\(^{109}\) Ho and Kramer, 2013: 1202
\(^{110}\) Eisenberg, 2011: 1736-1737

(2015) J. Juris. 32
2. Examples from Empirical Legal Studies

To give an impression of this area of research in what follows I will briefly present two studies from the domain of empirical legal research.¹¹¹

2.1 Example A: Donohue & Levitt - The Impact of Legalized Abortion on Crime

The article entitled "The Impact of Legalized Abortion on Crime" by John J. Donahue from Stanford University and Steven Levitt from the University of Chicago was published in the prestigious “Quarterly Journal of Economics."¹¹² The article, which attracted considerable attention, puts forward the provocative thesis that the fall in the crime rate in the USA in the 1980s and 1990s can be explained not only by the factors to which it is generally attributed, such as a rise in the number of prison sentences or an increase in the numbers of police,¹¹³ but above all by the legalisation of abortion in the 1970s. The article sparked off a lively controversy in both academic circles and popular science literature.¹¹⁴

Abortion had been prohibited in all states of the USA since the beginning of the twentieth century. Five federal states took the lead and legalised abortion in 1970. Finally, in 1973, in a landmark decision on the case of “Roe v. Wade”, the

¹¹¹ For a comprehensive overview of the different topics that have been treated by empirical legal studies scholars see Cane and Kritzer, 2010.
¹¹³ Other frequently cited factors are: growth in the number of police personnel, the introduction of improved police strategies, the decline of the crack epidemic, the increase in economic growth and a general increase in expenditure on security measures such as watchmen and alarm systems. See Donohue and Levitt, 2001: 379-380.
¹¹⁴ It shall be noted that the research results of Donohue and Levitt were conversely discussed and that the review of their results is still ongoing. However, it would go beyond the scope of this article to depict the entire discourse in detail. At this point it shall only be noted that Donohue and Levitt’s study is generally regarded as sophisticated and methodologically sound. See Lawless, Robbennolt, et al., 2010: 12-14. For criticism on their study see the relevant literature: Joyce, 2004; Donohue and Levitt, 2004; see also Lott and Whitley, 2007; Foote and Goetz, 2005; Reyes, 2007.
¹¹⁵ For a popular scientific summary of Donohue & Levitt's research see Levitt and Dubner, 2007.
Supreme Court of the United States made abortion legal across the whole of the United States.\textsuperscript{116} Following the legalisation there was a dramatic increase in the number of abortions carried out in the USA.\textsuperscript{117} Donohue and Levitt argue that those women who decide in favour of an abortion are particularly often, also those whose children would have had an increased risk of becoming criminals, if they were born. These women usually have one or more of the following characteristics: they are very young, black, unmarried, single mothers or poor or a combination of these. After the legalisation of abortion in 1970 fewer and fewer unwanted children of mothers with these characteristics were born. This led to a fall in criminality from 1992 onwards, in those years in which the criminal careers of the children of this cohort would have reached their climax – which is typically between the ages of 18 and 24.\textsuperscript{118}

In order to give weight to their argument Donohue and Levitt presented empirical data that they had analysed by both descriptive and inferential statistical methods. Statistical analyses were necessary in order to demonstrate that the effect on criminality of legalising abortion was not merely a correlation, but that there was a causal connection. A correlation is a simple association between two variables, which does not, however, show whether one variable is the cause of another.\textsuperscript{119} An (imaginary) example would be the connection between high temperatures and shark attacks. When the temperature rises, the number of reported shark attacks also increases. In this case it would be wrong to conclude that the high temperatures were the cause of the shark attacks. A more plausible

\textsuperscript{116} Roe v. Wade, 410 U.S. 113 (1973). In its ruling the Court argued that the right to a privacy guaranteed by the constitution also includes a woman’s decision as to whether she wishes to have a pregnancy terminated or not. It was referring to the mental and physical harm that a woman suffered when a federal state refused her the right to abortion.

\textsuperscript{117} Donohue and Levitt, 2001: 384-385.

\textsuperscript{118} Donohue and Levitt, 2001: 381-382 & 386-389; see also Levitt and Dubner, 2007: 272.

\textsuperscript{119} Lawless, Robbenolt, et al., 2010: 289-291.
explanation would be that this is simply a correlation. In fact, when the weather is good more people go swimming in the dangerous areas and that is the reason why more people are attacked at these times. An example of a true causal connection is lung cancer resulting from smoking. Today this causal connection is considered proven due to the following factors. There is a moderate, but stable association between smoking and lung cancer (smokers suffer from lung cancer more frequently than non-smokers), the time sequence that fits (first one begins to smoke, then one gets lung cancer) and, in addition, no other or better explanation has been found for this association.\textsuperscript{120} Using statistical methods such as regression analysis, which is frequently employed, the connections between several variables can be tested at once. By employing such methods,\textsuperscript{121} Donohue and Levitt were able to examine the association between criminality and abortions while at the same time controlling for other possible factors that could have an influence on the crime rate. By means of a suitable research design and supporting theoretical considerations possible causal relationships can be identified.\textsuperscript{122}

Donohue and Levitt’s statistical analysis supports the hypothesis that the legalisation of abortion played a decisive role in the fall in criminality in the USA. One justification given by the authors for their claim was that the five states which legalised abortion before the others were also the first to experience a fall in crime rates.\textsuperscript{123} The crime rate also fell further in those states which had higher

\textsuperscript{120} Agresti and Finlay, 1997: 356-359.
\textsuperscript{121} Donohue and Levitt used panel analysis to analyse their data. This method is particularly suitable for the kind of data they had collected.
\textsuperscript{122} However, it must be pointed out that causal connections cannot be demonstrated by means of statistical analyses alone. Further theoretical and logical considerations or suitable experiments are needed, however, these are difficult to carry out in the social sciences and economics, particularly in the area of research addressed here. See Backhaus et al., 2008: 53.
\textsuperscript{123} Donohue and Levitt, 2001: 395-399.
abortion rates. Interestingly, the number of arrests\textsuperscript{124} did not fall consistently in all cohorts, but only in those born after the legalisation of abortion.\textsuperscript{125} Donohue and Levitt substantiated their claim that the above association is a causal one in particular by showing that there was no connection between the frequency of abortions and the crime rate before the cohorts affected by the legalisation of abortion reached an age at which young people chiefly become criminals. Moreover, the general decrease in the crime rate was almost completely attributable to the fall in the crime rate in the cohorts affected by the legalisation of abortion. Only small changes in crime rates were found for the cohorts born before legalisation.\textsuperscript{126}

Finally, Donohue and Levitt used their calculations to quantify the effect of the legalisation of abortion on the crime rate more exactly. They predicted that an increase of 100 abortions in 1,000 live births would lead to a decrease of roughly 10\% in the crime rate in the respective cohort group. They estimated that the crime rate was 15-20\% lower in 1997 than would have been the case if abortion had not been legalised, but that after that point the legalisation was the reason for up to 50\% of the fall in the crime rate recorded in the USA since the 1990s. This drop in the crime rate led to a fall in expenditure of roughly 30 billion dollars a year. This and the increase in the number of criminals incarcerated as a further factor explain most of the fall in the crime rate. Since roughly half of the crimes in the USA are committed by a member of cohorts born before the legalisation of abortion, the effect described is likely to continue to rise even further in the years to come. If the other conditions remain constant, the legalisation of abortion will lead to a sustained annual reduction in the crime rate

\textsuperscript{124} In this additional calculation the number of arrests was entered as a proxy for the crime rate.
\textsuperscript{125} Donohue and Levitt, 2001: 407-413.
\textsuperscript{126} Donohue and Levitt, 2001: 382.
of 1% in the next decade. In conclusion, Donohue and Levitt point out that their study militates neither in favour of nor against abortion (see “3.1 Objectivity and Value Neutrality”, below) and that the same effect could probably be achieved by alternatives to abortion such as improved birth control or better environments for the children at the greatest risk of becoming criminals.

2.2 Example B: Becker and Elias - Introducing Incentives in the Market for Live and Cadaveric Organ Donations

Trade in organs is prohibited in the USA, Germany and most other countries of the world. In their article "Introducing Incentives in the Market for Live and Cadaveric Organ Donations" Nobel laureate Gary S. Becker of the University of Chicago and Julio Jorge Elias of the University at Buffalo argue in favour of abolishing this prohibition and introducing financial incentives for live organ donations. Donations of live organs are generally possible for kidneys, where

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127 Note that Donohue and Levitt’s study was published in 2001.
129 Becker and Elias, 2007: 3. Becker and Elias name India in the 1980s and early 1990s and Iran from 1988 onwards as exceptions. In regard to the prohibition in Germany see also: § 17, § 8 subpara. 1 sent. 2 and § 8 subpara. 3 sent. 2 of the German Transplant Act. See also Seidenath, 1998: 253 “The provisions of the Transplant Act are (...) explicitly against the permitting anonymous live organ donations as was discussed in the proceedings on the draft bill. The main reason for this is the associated increased risk of prohibited trade in organs which must be avoided at all costs” (translation from German by author). According to § 8, subpara. 1, sent. 2 of the German Transplant Act “[t]he removal of a kidney, part of a liver or other non-regenerable organ (...) shall only be permissible for the purpose of transferring it to first- or second-degree relatives, spouses, registered life partners, fiancés/fiancées or other persons who are obviously in an especially close relationship with the donor.” (translation from German by author). It is thus also questionable as to whether the “New England Program for Kidney Exchange” described by Becker and Elias would be legal in Germany, in which donor/recipient couples who are incompatible engage in exchanges of organs with other couples. See Becker and Elias, 2007: 20-21. However, Seidenath argues that such donations might be legal in Germany. The donor/recipient couples are “companions in misfortune” and may develop a close, heartfelt relationship with each other. Seidenath, 1998: 255-256.
130 Becker and Elias, 2007; see also Becker, 2009.
they account for 50% of donations, and for livers, where they account for approx. 8% of the total number of donations.\textsuperscript{131} Becker and Elias’s main argument is that legalising the purchase and sale of organs would lead to organ donations’ being made not only by close relatives for altruistic motives, but also by anonymous third persons for financial motives. As a result the supply of live organ donations on the human organ market would improve, while the overall costs of an organ transplant would rise by only approx. 12%. The waiting time for a transplant, which is currently several years, would be shortened and thus the suffering and the number of deaths among those waiting would be reduced.\textsuperscript{132}

In their article, the authors also take an explicit stand on value issues and make normative arguments. However, in what follows I shall not further address this part of the authors’ argument, but focus on their empirical statements. In their empirical analysis Becker and Elias do not use inferential statistics, i.e. stochastic models, but instead calculate on the basis of descriptive statistics how much it costs to achieve an adequate supply of organs for the constantly increasing number of transplant recipients.\textsuperscript{133}

According to the authors’ calculations, in order to close the gap between supply (organ donors) and demand (transplant recipients) the financial incentive for the donor or a kidney would have to be roughly $15,000 and that for the donor of a

\textsuperscript{131} Becker and Elias, 2007: 4. Becker und Elias argue that even if trade in organs were legalised, the majority of donations would still take place post mortem. Nonetheless, the price of all organs would be oriented towards the market for live organs. Live organs have decisive advantages over organs donated post mortem. For example, there is then no urgency for the transplant to be carried out. Thus it would be possible to select the donors who are best as regards blood group, state of health, etc. This would raise the recipients’ chances of survival. See Becker and Elias, 2007: 16-20.
\textsuperscript{132} Becker and Elias, 2007: 3; see also Becker and Elias, 2007: 6-7 and 14-16.
\textsuperscript{133} Becker and Elias, 2007: 4-8.
liver about §35,000. The calculations are based on three elements: compensation for the risk of death, compensation for the time lost during recovery and compensation for the risk of a reduced quality of life. In what follows these considerations are briefly illustrated, taking the calculation of the price of a kidney as an example. The calculation for financial compensation for donating a liver is carried out along the same lines. The statistical risk of dying as a consequence of a kidney transplant is approx. 0.1%. Statistically the value of the life of a young United States citizen with an annual income of approx. $35,000 is $5,000,000. An appropriate amount for financial compensation for the risk of mortality would thus be $5,000. The financial compensation for the time lost during recovery is calculated on the basis of the income lost. For a person with the above-mentioned characteristics and an average recovery period of four weeks it is about $2,700. According to Becker and Elias the most difficult thing to work out is, what is a fitting financial compensation for the risk of impaired quality of life. They give a “generous” estimate of $7,500. This figure is the product of a 1-2% risk of experiencing non-fatal harm during transplantation and the reduction in quality of life estimated on the basis of comparable empirical data for loss of sight and amputations. Thus calculated, $15,200 is a suitable financial incentive for donating a kidney. Becker and Elias tested this calculation by comparing it with prices in other countries in which the donation of live organs is or used to be permitted or are carried illegally. They come to the conclusion that their estimates are within an appropriate range.

\[135\] $5,000,000 \times 0.001 = $5,000.
Becker and Elias argue that compared to the overall costs of a transplant, which are around $100,000 for a kidney and $175,000 for a liver, these additional costs are almost negligible. The demand for organs might nonetheless fall slightly as a result of the increase in price. However, the supply of organs would definitely improve and thus the acute shortage of donated organs would be overcome. As a result the total number of transplants would rise by approx. 44%. Becker and Elias therefore conclude that establishing a free organ market is the best way to reduce the suffering of people waiting for a transplant. However, for a number of reasons the authors believe that trade in organs will not be legalised in the foreseeable future. In their view, the strong existing criticism of such a practice cannot be overcome. However, in view of the many lives that could be saved by this practice, Becker and Elias do not consider this criticism convincing.

3. The Contribution of Empirical Research to Legal Science

The above examples demonstrate that using empirical methods in the legal sciences can lead to insights that cannot be achieved by the methods of traditional legal research. This section addresses the limits of empirical research. However, for reasons of space this analysis must be restricted to some individual central aspects.

3.1 Objectivity and Value Neutrality

In the above example “The Impact of Legalized Abortion on Crime” Donohue and Levitt assume the following position on the moral, i.e. normative issues of their research:

"In attempting to identify a link between legalized abortion and crime, we do not mean to suggest that such a link is 'good' or 'just,' but rather, merely to show that such a relationship exists. In short, ours is a purely positive, not a normative analysis, although of course we recognize that there is an active debate about the moral and ethical implications of abortion. (...) While falling crime rates are no doubt a positive development, our drawing a link between falling crime and legalized abortion should not be misinterpreted as either an endorsement of abortion or a call for intervention by the state in the fertility decisions of women."\footnote{141}

Economists and empiricists working in the legal sciences frequently adopt the view, which originated in the natural sciences, that empirical research is objective and can thus be value-free.\footnote{142} However, it is highly doubtful whether it is really possible in the context of economics and the social sciences to explain, analyse and interpret data in a value-free way. If we assume that it is not possible, this empiricist view reduces the value of empirical research for institutions, decision-makers and politics.\footnote{143} This may also apply to the legal sciences since this view may result in a neglect of moral and ethical issues. Empirical research data would then be of little use to legal scholars.\footnote{144} Thus the support provided by empirical research for finding solutions to normative issues, which requires a weighing-up of philosophical and ethical arguments, is limited.\footnote{145}

3.2 \textit{Qualitative and Quantitative Research Approaches}

Since empirical legal studies are mainly US-based, it uses almost exclusively quantitative research methods, i.e. methods which are used to analyse statistical

\footnote{141} Donohue and Levitt, 2001: 382-383 and 415.\footnote{142} Friedman, 1953: 3; see also Sen, 1981.\footnote{143} Hausman and McPherson, 2006.\footnote{144} Hausman and McPherson, 2006: 291-308.\footnote{145} Lawless, Robbennolt, et al., 2010: 21.
data.\textsuperscript{146} To date qualitative research methods, which are widespread in the social sciences in Europe and are employed to evaluate data from sources such as texts and audio and video and other forms of visual material, have not played such an important role.\textsuperscript{147} One reason for this neglect is that in the USA empirical legal studies are closely allied to the economic analysis of law ("Law and Economics"). This movement originated in economics which, unlike other social sciences, does not use qualitative research methods on principle, since they are seen as being too "soft", i.e. not sufficiently objective. Since in Europe the sociology of law has traditionally played an important role, its quantitative orientation may have constituted an additional barrier to the spread of empirical analysis in Europe.\textsuperscript{148}

The methods of the qualitative research approach are also closer to doctrinal legal research than quantitative methods.\textsuperscript{149} They are oriented towards interpretation and are therefore highly suitable for lawyers who wish to do empirical work but have no formal training in quantitative research methods.\textsuperscript{150} The fact that qualitative research methods are only rarely employed in empirical legal studies are also regrettable from the point of view of content. Qualitative methods make a good complement to quantitative methods as they can be used for different approaches and issues. For example, they are employed to further develop new research hypotheses so that they can be tested with strictly formalised quantitative methods. Qualitative methods are also suitable where quantification is not possible, e.g. for ethical and moral ideas. In such cases participant observation, interviews and analysis of documents can be used to

\textsuperscript{147} Baldwin and Davis, 2003: 891-892; see also Bauer and Gaskell, 2000; Diehl, 2006.
\textsuperscript{148} Posner, 1997: 5-6.
\textsuperscript{149} MacConville and Chui, 2007: 21-23; see also Webley, 2010.
\textsuperscript{150} Flick, 2011.
arrive at a “thick description” and generate knowledge.\textsuperscript{151} These and other strengths give reason to hope that in future these methods will become more widely used in the legal sciences.

3.3 Methodological Problems and Over-Simplification of the Complexity of Legal Issues

Like all interdisciplinary research approaches, research in empirical legal studies requires a high level of specialised knowledge of the various different scientific disciplines. The fact that legal scholars need to acquire the methodological know-how of the social sciences\textsuperscript{152} and social scientists the detailed knowledge that legal scholars have of the functioning of the legal system\textsuperscript{153} results in two main problems for empirical analysis. These are the methodological problems of empirical research and the problem of reducing legal complexity. Both problem areas are briefly described below.

Methodologically, empirical legal studies have been criticised for being of lower-than-average quality, although it can be doubted whether the standards of other forms of (interdisciplinary) research are actually any higher. The reasons for such methodological problems vary. They frequently arise from the incorrect use of methods adopted from the social sciences or from flawed research designs. In order to counteract these problems empirical legal studies needs to develop its own methodological discourse.\textsuperscript{154} In the long term this could promote a sustainable awareness of methods and thus improve the quality of empirical analysis. Some of the traditional publications of legal science, e.g. in the USA the student-edited law journals, and in Europe edited volumes, may not really be

\textsuperscript{151} Geertz, 1973.
\textsuperscript{153} Baldwin and Davis, 2003: 883.
\textsuperscript{154} Eisenberg, 2011: 1730-1731.
suitable for ensuring the methodological quality of the empirical studies submitted for publication.\textsuperscript{155}

Another criticism frequently levelled at the empirical legal approach is that they reduce the complexity of legal issues.\textsuperscript{156} Such reduction is foreign to classical legal scholars, since it is not required for their traditional methods. However, if behaviour of relevance to law is to be investigated with sufficient methodological rigour in empirical studies it is often unavoidable. Thus the decision as to to what extent basic legal conditions should be taken into account in an empirical study is of substantial importance. If the legal facts are over-simplified in the interests of methodological stringency, the results of such research can have little relevance for legal science. In order to avoid this it is necessary first to present the legal issue to be examined in its full complexity. Only then can the complexity be reduced as required. Care must be taken to fully inform the recipient of the research results of this reduction.\textsuperscript{157} If the complexity is reduced in accordance with these requirements this usually satisfies the demands of legal science, particularly since it is rare for the results of empirical research to replace legal discourse; as a rule they merely provide an additional perspective.

Finally, it is important to be aware that there are areas of legal science in which such reductions in complexity are difficult and where an investigation by means of quantifying methods is challenging. Even technically well-implemented empirical projects may fail, if issues that cannot be quantified are more or less uncritically functionalised. However, the above introduced examples show that well carried out empirical research can also contribute novel and enriching

\textsuperscript{155} Chambliss, 2008: 26-28.
\textsuperscript{156} Baldwin and Davis, 2003: 883.
\textsuperscript{157} Faust, 2006: 849-850.
perspectives to fields of the law where the subject matter is of an ethical and moral nature. It is the task of discourse in legal science to then critically assess the value of such research results.

4. Future Directions

In continental Europe empirical legal research is currently less widespread than in the English-speaking countries and many obstacles to its gaining more acceptance still need to be overcome. Legal scholars who have no basic knowledge of the empirical research methods required may initially find it disturbing that the utility and scope of such research efforts in the legal sciences have often not been sufficiently clearly defined.\textsuperscript{158} Moreover, since it is often seen as being closely linked to economics, legal scholars sometimes think that empirical legal studies are theoretical and abstract, naively functionalist or politically conservative. Today these preconceptions can no longer be considered justified.\textsuperscript{159} Empirical analysis can contribute to a systematic, empirically based understanding of our legal system. It can therefore be assumed that it will play an increasing role in the future, not only in the English-speaking countries but also in continental Europe and other non-English-speaking countries.

\textsuperscript{158} Hull, 1989: 915.

\textsuperscript{159} Klerman, 2002: 1167.
References


