

Foreword

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This is the first annual issue of the *Northwestern University Law Review* exclusively comprising empirical legal scholarship. We are thrilled to present a diverse group of Articles that show the breadth of contemporary legal empiricism. The selection process was not easy: we received seventy-six excellent submissions, sent twenty-two to peer review, and published five.

Why an empirical issue? We hope to accomplish two goals. First, we want to create a space for readers of law reviews—the educated legal public, with or without additional methodological or disciplinary training—to engage with empirical legal scholarship. The Articles in our issue present sophisticated empirics and grapple with questions of interest to a legal audience. Second, we want to create a space for empiricists themselves to take advantage of the law review format, including shorter publication timelines and the ability to reach audiences, such as courts and policymakers, who may read law reviews but not disciplinary scholarship. Consolidating all of the empirical articles we publish into one issue has allowed us to offer authors rigorous peer review and a dedicated editing process run by trained student editors.

We define “empiricism” ecumenically. Our issue welcomes pieces making use of any and all tools that enable observation, experimentation, and interpretation of primary experience—including qualitative, quantitative, and mixed methods—to illuminate and engage questions of legal interest. The *Law Review*’s approach to empiricism can perhaps best be understood inductively, through the articles we publish.

This issue includes five Articles spanning the spectrum of empirical legal scholarship. Jonathan H. Ashtor’s *Does Patented Information Promote the Progress of Technology?* tackles one of the biggest questions in intellectual property head-on with sophisticated modeling techniques. Lisa Bernstein’s *Contract Governance in Small-World Networks: The Case of the Maghribi Traders* uses small-world network theory to reevaluate the best-known example of successful private ordering in the economics literature. Anna Offit’s *Prosecuting in the Shadow of the Jury* draws on four years of ethnographic work in a U.S. Attorney’s Office to show how prosecutors’

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imagined sense of who jurors are and how they might evaluate the fairness of cases powerfully shapes not only prosecutors' professional and ethical identities but every step of their decision-making. Sarath Sanga presents *A New Strategy for Regulating Arbitration* by way of cutting-edge data science and machine learning techniques, showing just how pervasive arbitration has become in employment contracts. Finally, Issa Kohler-Hausmann, in *Eddie Murphy and the Dangers of Counterfactual Causal Thinking About Detecting Racial Discrimination*, breaks open the materialist–constructivist binary currently governing empirical approaches to race discrimination, and instead presents a thick ethical model that both retheorizes discrimination law and provides powerful new empirical tools to prove and ultimately combat race discrimination.

But this issue is only the first of what we hope will be many. We'd like to thank these five authors for their willingness to publish in this new and still experimental format, and the community of empirical legal scholars broadly for its enthusiastic response to this initiative. Particular thanks are due to the *Law Review's* Empirical Advisory Board—Shari Seidman Diamond, Peter DiCola, Ezra Friedman, Tonja Jacobi, Emily Kadens, Jonathan Koehler, Matthew Kugler, James Lindgren, Ajay Mehrotra, Janice Nadler, Destiny Peery, Sarath Sanga, David Schwartz, and Emerson Tiller—and to all of the faculty at Northwestern Law, the American Bar Foundation, and institutions across the country who served as peer reviewers for these articles. Finally, we are grateful to the 2017–2018 editorial board, led by Editor-in-Chief Arielle Tolman, who developed the original idea for this issue in conversation with *Law Review* faculty advisors Erin Delaney and James Pfander. We look forward to readers' thoughts, and to many excellent submissions in years to come.