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Concluding Essay

EMPIRICAL LEGAL SCHOLARSHIP: OBSERVATIONS ON MOVING FORWARD

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AUTHOR—Howard J. Trienens Professor of Law and Professor of Psychology, Northwestern University Pritzker School of Law and Research Professor, American Bar Foundation. My thanks to Meredith McBride for inviting me to contribute a short concluding essay situating this inaugural annual empirical issue within the field of empirical legal scholarship.

Empirical legal scholarship was once a novel and contested participant in the legal academy. In the twenty-first century, it has emerged as an active and valued player. That is not to say that empirical research has replaced doctrinal scholarship, or even that an empirical perspective is uncontroversial as a foundation for conclusions about how the legal system ought to operate.[1] The current legal landscape, however, does reflect that empirical legal scholarship is now recognized as a legitimate contributor to our understanding of law and the operation and effects of legal institutions.

What are the signs of an environment friendly to empirical scholarship? One indicator appears in Professor Sarah Lawsky's report on entry-level tenure-track hiring between 2011 and 2018.[2] One in five candidates hired between 2011 and 2016 reported they had PhD degrees in non-law disciplines, primarily in fields that provide training in empirical research.[3] That percentage increased to 34% in 2017 and 36% in 2018.[4] Although these percentages are based on modest annual hiring numbers (hiring levels fell over this period from 155 in 2011 to 75 in 2018),[5] they suggest the value of

[1] Clare Huntington, *The Empirical Turn in Family Law*, 118 COLUM. L. REV. 227, 232 (2018) ("[E]mpirical evidence does not help decisionmakers prioritize competing values and thus should not play an outsized role.").

[2] Sarah Lawsky, *Entry Level Hiring 2018 - PhDs and Clinical Hires*, PRAWFSBLAWG (May 21, 2018), https://prawfsblawg.blogs.com/prawfsblawg/2018/05/entry-level-hiring-2018-phds-and-clinical-hires.html [https://perma.cc/W39M-5BEH]. The figures are based on self-reported data.

[3] *Id.*

[4] If those with PhD degrees in law are included, the corresponding levels are one in four between 2011 and 2016, 42% for 2017, and 48% for 2018. *Id.*

[5] *Id.*

a PhD on the academic legal market. A majority of those hired in 2018 also had clerkships or fellowships,[6] which are traditional indicators of preparation for the legal academy, so this group of new hires has a well-rounded profile. Whether or not these scholars focus on conducting empirical research, this cohort should be well-positioned to consider and critically evaluate the empirical work being produced in the legal academy.

Another marker of the appetite for empirical scholarship is reflected in its presence in law reviews and symposia. Studies conducted using a variety of methods and definitions of "empirical research" all find that empirical scholarship reported in law reviews has grown and appears to be continuing to grow.[7] Frequent symposia, including annual conferences, focusing on empirical scholarship have been held in the past twenty years.[8] Annual conferences include, for example, the Conference on Empirical Legal Studies (CELS), first held at the University of Texas Law School in October 2006. CELS held its thirteenth annual conference in 2018. The enthusiasm for empirical work has also generated specialized annual empirical legal conferences. In 2018, for example, Duke Law School held the ninth annual Empirical Health Law Conference, and Northwestern University Pritzker School of Law and Cardozo School of Law cohosted the fifth annual Roundtable on Empirical Methods in Intellectual Property. These examples suggest that empirical legal scholarship is not merely a temporary fad, but rather a more enduring investment by the legal academy.

The scholarship produced by this activity has not escaped criticism—much of which is targeted at the law review as a vehicle for empirical work. Critics often attribute weaknesses to the methods used to select which articles will be published in law reviews.[9] They point out that, unlike the research published in peer-reviewed scientific publications, articles

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[6] Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2018*, PRAWFSBLAWG (May 21, 2018), https://prawfsblawg.blogs.com/prawfsblawg/2018/05/spring-self-reported-entry-level-hiring-report-2018.html [https://perma.cc/4C5G-4EKB].

[7] *See, e.g.*, Shari Seidman Diamond & Pam Mueller, *Empirical Legal Scholarship in Law Reviews*, 6 ANN. REV. L. & SOC. SCI. 581, 594 (2010); Robert C. Ellickson, *Trends in Legal Scholarship: A Statistical Study*, 29 J. LEG. STUD. 517, 528 (2000); Tracey E. George, *An Empirical Study of Empirical Legal Scholarship: The Top Law Schools*, 81 IND. L.J. 141, 144 (2006); Marci Hoffman & Katherine Topulos, *Tyranny of the Available: Under-represented Topics, Approaches, and Viewpoints*, 34 SYRACUSE J. INT'L L. & COM. 175, 178–79 (2008).

[8] Diamond & Mueller, *supra* note 7, at 592 n.6 (listing sixteen law review symposia published between 2000 and 2009).

[9] For extreme expressions of this critique, see Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1133–34 (1995), and Richard A. Posner, *Against the Law Reviews: Welcome to a World Where Inexperienced Editors Make Articles About the Wrong Topics Worse*, LEGAL AFF., Nov.–Dec. 2004, at 57. For another example, see James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 540 (1994), arguing that "[t]he net effects of student editing are biased article selection and a tedious sameness in prose style, a style reduced to the level of third-year law students."

published in law reviews are traditionally selected and edited by law student editors who may or may not have any background in empirical research. In contrast, the editors of scientific journals[10] typically seek the advice of reviewers with expertise in the topic and analytic methods of the submitted article, filling in gaps that exist even in the most accomplished general editor's knowledge base. I do not know of a study that has systematically compared the methodological adequacy of empirical scholarship published in law reviews and non-law review journals, but it would not be surprising to find that the lack of specialized expertise and routine peer review would disadvantage law review editors in their relative ability to recognize important research questions and identify serious methodological weaknesses.[11] But isn't it possible for a law review to achieve the benefits of a standard peer-reviewed journal? Some efforts are being made in the legal academy to seek professional advice in making publishing decisions, but the contours of that process are not clearly specified.[12] In surveying the landscape, Professor Lynn LoPucki recently concluded that despite numerous calls for a change from student-edited law reviews to peer review, "no change is imminent."[13]

The editors of the *Northwestern University Law Review* decided to take on that implicit challenge. The aim of the *Law Review*'s empirical issue is to create a forum that can both capitalize on the intelligence and energy of law school editors and systematically reap the benefits of professional engagement. The student editors at Northwestern have attacked the omission of peer review directly. Using the model of a disciplinary journal, they sought professional advice on every manuscript they viewed as a potentially publishable article, roughly one-fourth of those submitted to this first annual issue. Each of these authors received prompt and detailed feedback on their

[10] "Scientific" disciplines refer to both the physical and social sciences, including, but not limited to, anthropology, archaeology, communication studies, economics, history, human geography, jurisprudence, linguistics, political science, psychology, public health, and sociology.

[11] Although some would disagree (for example, Lindgren, *supra* note 9), I am relatively confident that a comparison of the clarity of writing would on average give law reviews the advantage. Even when I resist the suggestions of the attentive and careful law review editors who edit the work I publish, I inevitably find that the review process makes me clarify what I mean to say. In contrast, the editors of most non-law review journals do a more cursory review of the prose.

[12] *E.g.*, *Article Submissions*, STANFORD LAW REVIEW, https://www.stanfordlawreview.org/submissions/article-submissions [https://perma.cc/TW8J-96ZL] ("It is our practice to subject submissions to peer review, albeit in a form amenable to the typical law review selection timeframes.").

[13] Lynn M. LoPucki, *Disciplinary Legal Empiricism*, 76 MD. L. REV. 449, 477 (2017). Professor LoPucki's prediction may be accurate in the sense that the student editors will retain final decision-making power, but peer review in other disciplinary domains vests final decision-making control in the general non-specialist editor, who is informed by peer review from specialized professionals.

submission.[14] As Empirical Articles Editor Meredith McBride indicates in the introduction to this issue, the response from scholars doing empirical work has revealed an appetite for this model. The five articles selected for the issue demonstrate the success of the result: the publications in this issue take a range of approaches, but all make significant contributions to legal scholarship.

A first consideration for the editors of Northwestern's empirical issue was to decide what to include under the rubric of empirical legal scholarship, a nontrivial decision because the definition of "empirical scholarship" is not unambiguous. At one extreme, some researchers recognize as empirical scholarship only scholarship that uses statistical techniques and analyses.[15] Others expand the boundaries to include attempts to analyze data for "more than anecdotal purposes, whether or not the analysis is quantitative,"[16] or, most broadly, they equate empirical scholarship with research "based on observations of the world—in other words, *data*, which is just a term for facts about the world."[17] This first empirical issue of the *Northwestern University Law Review* explicitly reflects a definition of empirical legal scholarship that is more eclectic than the quantitative constraint some would impose. However, the articles included in the issue also demonstrate a concern with systematic data collection that goes far beyond the mere collection of observations about the world that others would include. The definition operationalized by the articles in this issue is more akin to a characterization of empirical scholarship as involving "the systematic organization of a series of observations with the method of data collection and analysis made available to the audience."[18]

STRENGTHENING EMPIRICAL LEGAL SCHOLARSHIP

Even if we accept that empirical legal scholarship has been gathering steam and attracting wider interest from legal scholars, how can the academy foster the production and publication of high-quality scholarship as we move forward? That is, if empirical legal scholarship is to consist of more than collecting facts, what strategies will facilitate substantive success? Below I

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[14] In full disclosure, I am a member of the *Law Review*'s Empirical Advisory Board and acted as a reviewer for one of the articles published in this first issue.

[15] Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819, 821.

[16] Russell Korobkin, *Empirical Scholarship in Contract Law: Possibilities and Pitfalls*, 2002 U. ILL. L. REV. 1033, 1035.

[17] Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 2–3 (2002).

[18] Shari Seidman Diamond, *Empirical Marine Life in Legal Waters: Clams, Dolphins, and Plankton*, 2002 U. ILL. L. REV. 803, 805.

describe several key markers of a healthy empirical research enterprise, indicators that are reflected in the articles appearing in this issue.

A. Transparency

Armchair-based claims arising from intuitive or purely theory-based assumptions, however brilliant or insightful, are the antithesis of conclusions based on empirically grounded evidence.[19] The distinction is that we may agree that a non-empirical claim is accurate (e.g., "The United States is advantaged by the free speech provisions of the First Amendment"), but without inserting and measuring specific indicators that operationalize what is meant by "advantaged" and designing a study that tests the claim as operationalized, there is no way to evaluate the accuracy of the claim beyond checking for agreement with the views of other scholars. And even if we find consistency, all of those sources may be inaccurate, but there is no way to know. One alluring, but problematic, characteristic of nonempirical claims is that they are challenging to resist because it is hard to produce contrary evidence as opposed to mere disagreement. In contrast, an empirical claim is vulnerable to contrary evidence.

We have a variety of tools and methodological criteria that enable us to probe and challenge the trustworthiness of empirically based claims. As with nonempirical claims, evidence that results replicate across sources is an important cue to the robustness of a claim. Consistency across studies, particularly those showing convergent validity by producing similar results from studies using different methodological approaches, is one source of support, but it is not the only one. A piece of good empirical scholarship not only presents the results but also reveals as fully as possible the methods used to obtain those results.[20] Disclosure can take several forms, depending on the nature of the data collection. When an author justifies an empirical claim based on an original dataset the author has developed, greater detail is required because the reader has no reference point other than the article itself. Thus, the report of a brief online experimental study can and should provide an appendix containing the full text of the scenarios that respondents viewed. Where space is limited, the reader can be directed to a website that contains that information. For example, Francis Shen provided both sources in a study

[19] This distinction is not new. *See, e.g.*, Paul E. Meehl, *Law and the Fireside Inductions: Some Reflections of a Clinical Psychologist*, 27 J. SOC. ISSUES 65, 66 (1971).

[20] Promises of confidentiality required for access may on occasion limit the researcher's ability to disclose some features of the data collection.

of racial bias in which he asked participants to read short vignettes about criminal defendants and assess the mental states of defendants.[21]

When the author is analyzing results from an existing dataset, the author should provide enough information to direct the reader to that source and describe how the data obtained from it were analyzed. This form of transparency is reflected in the detailed descriptions of the datasets used in this issue by Jonathan Ashtor[22] and Sarath Sanga.[23] Ashtor, studying the relationship among the information content of a patent's disclosure, patent validity, and technological impact, began with a dataset of patent cases in which a decision on liability or infringement was rendered at trial or on summary judgment in U.S. federal district courts between 2004 and 2011.[24] His article describes the source of his dataset and specifies the basis on which cases were not included in his analysis (i.e., in which rulings did not address validity).[25] Similarly, Sanga studied the pervasiveness of employment arbitration by drawing contracts from the set of required filings submitted to the Securities and Exchange Commission by all U.S. public companies between 1996 and 2016.[26] He provides the publicly available source of the filings and describes the selection criteria he used—the SEC's unique code that identifies material contracts—to identify the relevant 800,000 contracts he analyzed.[27]

The optimal version of the author's description of the dataset supplies the reader with sufficient information to replicate the results (if they are replicable). Indeed, the failure of attempts at replication has recently raised serious doubts about some of the empirical findings in psychology and other fields.[28]

This ideal level of disclosure that enables follow-up research to precisely replicate the results of the earlier study has some limits. When a researcher must promise confidentiality as a condition of access, as in this issue's ethnographic study in a prosecutor's office by Anna Offit,[29] transparency must take a different form. Documenting fully the

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[21] Francis X. Shen, *Minority Mens Rea: Racial Bias and Criminal Mental States*, 68 HASTINGS L.J. 1007 app. B (2017), *available at* http://www.fxshen.com/Shen_2017_MinorityMensRea_AppendixB-ScenarioText.pdf [https://perma.cc/NK9X-G39U] (presenting the full text of experimental scenarios).

[22] Jonathan H. Ashtor, *Does Patented Information Promote the Progress of Techology?*, 113 NW. U. L. REV. 943 (2019).

[23] Sarath Sanga, *A New Strategy for Regulating Arbitration*, 113 NW. U. L. REV. 1121 (2019).

[24] Ashtor, *supra* note 22, at 963–66.

[25] *Id.*

[26] Sanga, *supra* note 23, at 1150–51.

[27] *Id.*

[28] *See* Ed Yong, *Bad Copy*, 485 NATURE 298 (2012).

[29] Anna Offit, *Prosecuting in the Shadow of the Jury*, 113 NW. U. L. REV. 1071 (2019).

characteristics of the site and the methods of data collection, and acknowledging the features of the setting and its occupants that may be situation- or institution-specific, can enable future researchers to test the boundaries of the reported findings. Offit, for example, reports that the U.S. Attorney's Office she studied was located in a district that contained a mix of rural and urban counties with a caseload that was "characteristic of offices in numerous federal jurisdictions across the country,"[30] but she also signals that the office conformed to a stricter internal policy on disclosures to grand jurors than that mandated by the Department of Justice[31] and explicitly invites further research in state, as opposed to federal, prosecutors' offices to test the more general applicability of her findings.[32]

B. Acknowledging Limitations

It is very tempting to look past limitations in interpreting what the results of any empirical study can reveal. Like confirmation bias, which leads all of us, including scholars as well as police investigators, to look for evidence supporting our initial hunch or hypothesis,[33] we have a natural tendency to draw larger implications from our own empirical findings—an incentive to view what we have produced as more important than the data on their own warrant. This tendency can lead legal scholars (and law review editors) to look for and promote larger implications of the work they submit and accept for publication than the findings actually justify. Restraint and humility are worth cultivating, as few studies can cover all bases and address all potential weaknesses. Acknowledging potential limitations of empirical findings and cabining what implications can be confidently drawn are hallmarks of trustworthy reporting. For example, in reporting on her observations of the behavior of prosecutors and her interviews with them, Anna Offit describes how prosecutorial decision-making occurs in the shadow of prosecutors' expectations about what a jury would do with a case.[34] She explicitly resists the temptation to claim that the contours of the expectations she identifies (e.g., how a jury will react to the character of witnesses, defendants, and victims) describe what jurors actually do.

Peer review provides an important check on the tendency to overclaim, whether explicitly or implicitly. It can do more than screen out submitted manuscripts that make unrealistic claims. It can also call on an author to

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[30] *Id.* at 1088.

[31] *Id.* at 1091.

[32] *Id.* at 1088.

[33] Robert J. MacCoun, *Biases in the Interpretation and Use of Research Results*, 49 ANN. REV. PSYCHOL. 259, 269 (1998).

[34] Offit, *supra* note 29.

produce additional data to support a claim. For example, Mary Rose, Marc Musick, and I submitted a manuscript to the *Journal of Empirical Legal Studies* describing a survey of a random sample of Texas respondents that included questions on their lifetime experience with the jury system.[35] We found, after controlling for age, no underrepresentation of African Americans or other minorities on whether the respondent reported having ever served on a jury. Reviewers (and the authors) were somewhat surprised at this finding, and the editor and reviewers wondered whether it would generalize beyond the Texas sample covered in this survey. We were able to respond with supplemental data from a Field Poll survey conducted in California that included a question on lifetime jury service and replicated the finding, providing the needed evidence to demonstrate that the initial finding was not idiosyncratic.[36]

The authors of a peer-reviewed empirical article typically explicitly acknowledge, and reviewers and editors often require them to specify, limitations on their claims. Authors, for example, may specify that the data have weaknesses that the reader should consider in crediting the results or at least in concluding that the results will generalize to other populations or situations. In the Rose et al. article, we acknowledged some potential idiosyncrasies of Texas with respect to some of the characteristics we found were significant predictors of jury service (e.g., state nativity)[37] and pointed out distinctions between aggregate and trial-specific results: "[A]lthough race did not predict individuals' lifetime jury participation, these results do not address the objections to unrepresentative panels and biases in the selection process that are legally and morally illegitimate even when they cancel each other out."[38] These specifications not only provide a more accurate characterization of the results but also offer guidance to scholars who may build on the results in designing future research, as well as provide a warning to policymakers who might be inclined to take empirical findings into account. Law review authors and editors should recognize that acknowledged limitations do not detract from the genuine advance in knowledge an article may contain.

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[35] Mary R. Rose, Shari Seidman Diamond & Marc A. Musick, *Selected to Serve: An Analysis of Lifetime Jury Participation*, 9 J. EMPIRICAL LEGAL STUD. 33, 38 (2012). As a coauthor, I had access to the exchange between the authors and editor, in addition to copies of the reviews.

[36] *Id.* at 45–47.

[37] *Id.* at 51.

[38] *Id.* at 50.

C. Taking Measurement and Design Seriously

It is tempting in the day of big data simply to greet eagerly a readily available dataset that includes a large sample and many measures, and to neglect a careful evaluation of the data collection that produced this easily accessible data. Similarly, a standard methodology used in prior research may offer a comfortable path to designing a new study without having to reinvent the wheel. Questions about the construct validity of a measure as designed (e.g., Does speed of responding reflect the confidence level of the respondent?) as well as evidence about the accuracy of the initial data entry require attention from authors, reviewers, and editors. Issa Kohler-Hausmann in this issue revisits standard ways of conceptualizing and measuring racial discrimination, including the widely accepted research designs used to detect discrimination.[39] She thus raises questions about both the definition and the measurement of discrimination. In particular, she points out the incompleteness of what we can learn about discrimination from audit studies that attempt to hold all factors except race constant (e.g., Devah Pager's audit study matching job applicants on age, race, physical appearance, and general style of self-presentation to study the effects of race and felony drug convictions on willingness to hire similarly qualified job applicants).[40] She urges a more context-based understanding of racial (and gender) discrimination that takes into account social meanings.[41] Such critical looks at design and measurement are crucial to building a robust foundation for empirical legal scholarship.

Sarath Sanga's study of arbitration contracts provides an elegant example of what norms of transparency and attention to measurement can add to that foundation.[42] His empirical analysis of the contracts in his study reveals that employment contracts are common, and are disproportionately likely to contain arbitration clauses, relative to the other fourteen types of contracts he examined.[43] He used machine coding to identify the arbitration contracts, but he did not stop there: he conducted a human-coded audit of a sample of randomly selected contracts in his dataset to ensure that the arbitration clauses were successfully identified by the machine procedure.[44]

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[39] Issa Kohler-Hausmann, *Eddie Murphy and the Dangers of Counterfactual Causal Thinking About Detecting Racial Discrimination*, 113 NW. U. L. REV. 1163 (2019).

[40] *Id.* at 1208 (discussing DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION (2007)).

[41] *Id.* at 1205–06.

[42] Sanga, *supra* note 23.

[43] *Id.* at 1151 tbl.2.

[44] *Id.* at 1151.

They were (99.3% were successfully coded).[45] The attention to measurement reflected here also revealed an important obstacle that a machine-coded approach may encounter. His attempt to identify noncompete provisions in the contracts did not succeed in reliably identifying those contracts.[46] He suggests that the specificity of a category will determine how susceptible it is likely to be to machine-coding: the most specific and the most general categories are the easiest to identify, whereas the midlevel categories are harder, but more important. By presenting this example of a failed measurement effort and discussing its implications, Sanga sets the agenda for scholars who want to advance methods of capturing concepts not currently subject to easy machine-coding.

D. Multiple Methods

When results from different empirical studies using different measures and research designs converge, our confidence in the reliability and validity of the results appropriately increases. For example, in studying jury composition in civil trials in Arizona, I, along with my colleagues Mary Rose and Beth Murphy, found a substantial representation of jurors with relevant occupational expertise (e.g., a nurse in a malpractice case, an engineer in a vehicular tort case).[47] Was this idiosyncratic? Simply a matter of bad lawyering? According to popular belief, attorneys for one side or another inevitably remove such jurors. We followed up with a survey of the members of a prestigious group of experienced trial attorneys and asked about the composition of the jury in their last trial and the nature of the case. We replicated our finding that "expert" jurors were not systematically removed, and in some cases appeared to be favored.[48] In retrospect, we think we have an explanation for the result: jurors with case-relevant substantive expertise are retained when both parties believe that the facts favor them.

Within one investigation, a researcher can also take advantage of multiple methods to build a model of the behavior at issue and test its consistency from different vantage points. In her study of prosecutorial decision-making, with Institutional Review Board approval, Anna Offit conducted semi-structured interviews with 133 Assistant U.S. Attorneys, and also participated in jury selection proceedings and case preparation meetings, allowing her to observe prosecutor behavior and discussions about jury

[45] *Id.*

[46] *Id.* at 1152.

[47] Shari Seidman Diamond, Mary R. Rose & Beth Murphy, *Embedded Experts on Real Juries: A Delicate Balance*, 55 WM. & MARY L. REV. 885, 890 (2014).

[48] *Id.* at 900–02.

selection and related case preparation in their natural context.[49] This research strategy enabled her to use the observations as a check on what prosecutors were telling her in the interviews and to use the interviews to check on the meaning of the behavior she was seeing. The result is a rich description of patterns in the beliefs, and variations in belief, that prosecutors express about imagined jury behavior as an ethical resource in deciding the fairness of prosecuting a case.

In some fields, journals expect that a manuscript will report on multiple studies. If the separate studies replicate key findings using the same method, the additional research findings provide evidence for the *reliability* of the results. If the separate studies replicate key findings using different methods, this replication in addition supports the *validity* of the findings. Such multistudy manuscripts may entail significant extra cost, however, particularly when the cost of the original data collection for one study is high. Few law schools currently provide the infrastructure to support the multistudy activities that are the norm in the traditional laboratory environments in the sciences. As a result, manuscripts that contain cross-study replication in empirical legal scholarship may be less common than in some other fields, unless the methodology used is a brief vignette administered to online respondents[50] or draws on easily accessible data sets.

E. The Promise of Collaboration

Scholars often tout the benefits of collaboration and predict that increased collaboration will accompany the rise of empirical scholarship in the legal academy.[51] In light of these claims, it may be surprising that all five of the articles in this inaugural empirical legal scholarship issue of the *Northwestern University Law Review* are single-authored publications. The absence of multiauthor publications in this issue, as compared with the coauthorship rate in the seventeen articles published in the two issues of the *Journal of Empirical Legal Studies* (*JELS*) in the second half of 2018, presents a stark difference. Only four of the seventeen published in *JELS* were sole-authored, five had two authors, and eight had three authors. Although this is a comparison based on small samples, there are a few reasons why the pattern may be more than a fluke. First, three of the five authors in this issue of the *Law Review* have both JD and PhD degrees, bringing both legal and nonlegal disciplinary expertise to their work, and

[49] Offit, *supra* note 29, at 1084–88.

[50] Krin Irvine, David A. Hoffman & Tess Wilkinson-Ryan, *Law and Psychology Grows Up, Goes Online, and Replicates*, 15 J. EMPIRICAL LEGAL STUD. 320, 320–21 (2018).

[51] Jeffrey J. Rachlinski, *Evidence-Based Law*, 96 CORNELL L. REV. 901, 908 (2011); Diamond, *supra* note 18, at 817.

perhaps reducing the need for collaborators. Second, as is common in legal scholarship, all of the authors in this issue offer thanks to a number of other scholars who provided input on the work or to participants at workshops where they presented a draft of the manuscript. This scholarly tradition at law schools, which in my view is highly desirable, is not the norm outside the legal academy, where papers submitted for publication are less likely to be circulated or workshopped in advance of publication. A third possible explanation is that three of the authors whose work appears in this issue are relatively junior scholars in the academy. Despite the synergy that collaboration can stimulate, faculties all too often use the easy way to identify a scholar's contributions: they give disproportionate weight to sole-authored publications. That bias continues to be an obstacle to collaboration. We will have to wait to see what the future holds, but if the legal academy wants empirical legal scholarship to flourish, it would do well to adopt a friendly posture toward collaboration to accompany its welcoming stance toward JD–PhD training. Although transaction costs are associated with any collaboration, the extra years of JD–PhD schooling impose costs as well. Collaboration by researchers with different disciplinary backgrounds as well as interdisciplinary training in a single scholar can maximize the vision reflected in empirical legal scholarship.

CONCLUDING OBSERVATIONS

The scholarship represented in this first annual empirical issue of the *Northwestern University Law Review* reflects the wide range of methods that can be used to study law and legal institutions—from ethnography (Offit) to machine-coded archival analysis (Sanga), from secondary analysis of historical materials using a new theoretical perspective (Bernstein) to a creative combination of information on the same cases obtained from multiple sources (Ashtor). Despite the diversity of these methodological approaches, all of these articles have one crucial feature in common: they use those methods to tackle important empirical questions. Similarly, in the fifth article, Kohler-Hausmann wrestles with central conceptual and methodological issues that arise when we attempt to define and measure discrimination. In an age of easy low-cost access to many types of data, it may be tempting to let ease of data collection guide the nature of the research, to gather low-hanging fruit readily available on trivial topics. The articles published in this issue represent a very different, albeit more laborious, question-driven form of inquiry.

By enlisting professional peer review, the editors of this inaugural empirical issue of the *Law Review* have addressed directly a key criticism that has traditionally undermined the quality, and perceived quality, of

empirical work published in student-edited law reviews. The enthusiastic scholarly response from those submitting manuscripts for consideration, and from the reviewers who provided feedback to the authors and editors, bodes well for the future. Serious empirical research is hard, and it takes a genuine community to produce an issue like this one. The investment pays off in the quality of the result.