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Introduction

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The theme of this book is empirical assessment of the performance of legal institutions. While quantitative methods have been used in social sciences for decades, they did not arrive in legal studies until around the beginning of this millennium. Nonetheless, empirical methods attained prominence in legal academia in one decade. The Society for Empirical Legal Studies (www.lawschool.cornell.edu/sels/) organizes an annual conference with presenters from all corners of the world. Many law faculties, from the US to Europe to Asia, including my home institution at Academia Sinica (www.iias.sinica.edu.tw/en), have established research centers for empirical legal studies (www.els.iias.sinica.edu.tw). Despite the outpouring of empirical scholarship, practitioners of quantitative legal analysis find that there are not many monographs that weave together empirical works. Granted, leading scholars, such as Lee Epstein, Richard Posner, William Landes, Cass Sunstein, Tom Ginsburg, Ian Ayres, have published empirics-centered books; and I have very recently published a book on takings compensation from an empirical perspective. Still, the number of published empirical books is not a good indication of the influence of the quantitative approach in law. And a majority of the existing books focus on judicial behaviors in the US. That is, only one branch, only one country.

This edited volume, with nine original book chapters by scholars around the world, has a different approach. This book aims to demonstrate to legal practitioners, policymakers, and scholars who are still not familiar with the power of the empirical approach in law, how it is useful in analyzing a variety of legal issues, not just judicial behaviors. Indeed, local legal institutions (such as the federal constitutional structure in South Africa) and global phenomena (such as the proposals to reform the medical malpractice liability system in many countries) alike can be studied with a quantitative approach. In addition, this volume also shows that empirical legal methods are not a US-centric approach. The jurisdictions covered here are diverse—from Argentina to Israel, from South Africa to Taiwan. North and South America, Africa, East Asia, and the Middle East are all represented in the book. Indeed, the chapter by Jerg Gutmann, Bernd Hayo, and Stefan Voigt studies the judicial review systems in 100 countries over 55 years. Readily available data may be hard to come by outside the US, but empirical lawyers are proud of creating the data they need. The chapter contributed by Yoav

Dotan demonstrates how patience and hard work (coding 10 percent of 20 years of files in court archives) can produce new and useful data to analyze important legal issues—in Dotan's case, judicial activism in the highest court of Israel.

This book is unified by its diversity. Apart from the jurisdictions studied, the legal institutions examined in the book also vary. Several chapters look into different levels of judicial systems. Two chapters study the highest court of Israel. Daniel Chen, Susan Yeh, and Alberto Araiza's contribution examines the influence of the courts of appeal in the US. My chapter focuses on the court of first instance in Taiwan. Gutmann, Hayo, and Voigt's chapter involves the constitutional courts of many jurisdictions. John Donohue, Dan Ho, and Patrick Leahy's and David Abrams's contributions touch on the police and other law enforcement agencies. Jennifer Arlen's work examines private institutions such as managed care organizations and hospitals. Dan Rubinfeld's mathematical model illuminates how South African politicians play the "hostage game."

Traditional jurisprudence has challenged empirical legal scholars with normative questions. The essence of empirical legal analysis is to use social scientific methodology to tackle *positive* issues. Traditional lawyers, however, care mostly about *normative* issues—what should be done. The transition from "is" to "ought to" (or, in German, "sein" to "sollen") is of course a serious and difficult issue. In this volume, several contributors demonstrate the usefulness of empirical scholarship in shaping legal policies and dealing with normative questions. David Abrams, drawing on his own empirical works and those of others, explores how long criminals should be incarcerated, concluding that the optimal length of sentences depends on the cost of crime. Jennifer Arlen, backed by recent empirical evidence, challenges the classic model that relies on the analogy of accidents to analyze malpractice liability, and criticizes the reform proposals based on contractual liability. Arlen contends for a new medical malpractice theory that justifies the oft-criticized medical liability system, which she deems vital to the effective operation of health care market. Perhaps few empirical works can match the real-world relevance and significance of Robert Inman and Dan Rubinfeld's study on the democratic transition and federal structure of South Africa. As one of a series of works on South Africa's constitutional structure, their chapter asks a very basic question: given the fact that elites/whites are the minority and non-whites are the majority, why is the democratic transition there viable? Their insights are that the fruits of improved resource allocation and higher growth have been shared by all parties. Moreover, the elite's endowed human capital, the concentration of whites in one province, and the federal constitutional structure, taken together, contribute to the stable transition.

A myth outside the empirical legal study circle is that only the fanciest quantitative methods can produce reliable and/or publishable results. This unfortunate misunderstanding may have prevented many legal scholars from conducting empirical studies. As this book emphatically shows, while there is nothing inherently wrong about state-of-the-art econometric methodologies, the soul of an empirical legal study is a legally relevant factual question that has

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been unduly ignored or explicitly presumed. To take examples from the book chapters in this volume:

The chapter by Ted Eisenberg, Talia Fisher, and Issi Rosen-Zvi uses descriptive statistics and Fisher's exact tests to tease out, among other things, the profound effects of the case selection mechanism in Israel's high court. One of the co-authors, Ted Eisenberg, is revered as the "grandfather" of empirical legal studies, and yet his works often employ the most basic and intuitive tools (like a two-way scatter plot) to dissect complicated legal issues.

The chapter on the determinants of constitutionally safeguarded judicial review, authored by three economists, employs chi-square tests and correlation coefficients (both of which could be learned by any lawyer in a five-day workshop, I suppose). Their "plain vanilla" tools reveal that, for example, the geographical location of a country is significantly related to its implementation of judicial review in its constitution.

My chapter uses college-level logistic regression models and several carefully crafted figures to demonstrate the major determinants in judicial decisions to remove or preserve boundary-encroaching buildings.

Those who would like a taste of sophisticated econometric models should read Chen, Yeh, and Araiza's careful study on the effect of federal appellate court rulings in the US on competition in the media market and the variety of programming. These authors use differences-in-differences analysis and two-stage least squares regression models to sort out the otherwise elusive real-world effects of judicial decisions.

Finally, Donohue, Ho, and Leahy offer a cautionary tale for empirical scholars. They reexamine a natural experiment conducted by other empiricists. The moral of their study is that, contrary to myth, fancy approaches are *not* always reliable. Empirical lawyers should be careful when designing their empirical strategy and interpreting the results. In addition, more detailed data and institutional knowledge, while both difficult to acquire, are often necessary to tell a credible story. It is often said that a picture is worth a thousand words. A thousand could be the median, mean, mode of a picture's expressiveness. As an empirical scholar, I am keenly aware of the variances in the expressiveness of figures. In my assessment, the seven figures in Donohue, Ho, and Leahy's chapter are worth at least one million words (standard errors available upon request). Anyone who wonders how to visualize their empirical results should study the layout of their graphs, which are simple, clear, powerful, and often innovative.

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