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EMPIRICAL METHODS
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Empirical Methods in Law

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**To Patti, Thomas, Rebecca, and Rachel
R.M.L.**

**To Grant, Dale, and Jake
J.K.R.**

**To Julia, Ted, Christina, and Tim
T.S.U.**

Preface

Several years ago we began talking about the fact that empirical studies seemed to be becoming a larger part of legal scholarship. While the empirical study of legal topics is not new, there was nowhere in the traditional law school curriculum where one could learn empirical techniques so as to be an intelligent consumer or a proficient creator of empirical work. Eventually, these discussions came to an end similar to that of many such faculty discussions: we decided we should co-teach a course on the subject. We thought that such a project ought not to entail more than the usual trauma of putting together a new course. Moreover, we three use empirical techniques as a central part of our scholarship. So, in the terminology in which one of us is wont to think, there was a demand for the course, and we could readily supply the materials and expertise to satisfy that demand. How wrong we were!

We explored different ways of teaching the class, such as simply surveying empirical research and using the particular examples as occasions for teaching empirical research techniques. But that proved unsatisfactory. First, the energetically emerging empirical legal literature could not be easily organized into a coherent survey of empirical techniques. And second, when we tried using existing examples of empirical legal research as the occasion for teaching techniques, we found that we were spending much more time on the techniques than on the articles, which defeated the purpose of using the articles as springboards into the subject matter of the course. Third, just as the articles often required knowledge of the empirical techniques they used, they often also required a knowledge of (or at least an interest in) the subject they were about. Either one had to have a very specialized seminar dealing in a narrow subject or expect students to deftly discuss issues as diverse as the death penalty one week and then corporate governance the next.

We then explored the possibility of moving away from the practical anchor of the existing literature in favor of focusing more on teaching the empirical techniques, but that refocusing presented a different set of challenges. First, we had no doubt that law students would revolt at overly technical presentations of such topics as probability theory, inferential statistics, and regression analysis. And our students made it clear that our instinct was correct. One student even dropped the course after a particularly memorable exegesis from one of us about the differences between joint and conditional probability. There is a famous dictum among European lawyers — *Iudex non calculat* (Lawyers do not calculate), and our American students contend that they were promised that there would be no math in law school. These considerations meant that if we intended to focus on the techniques of empirical research, we had better find law-student friendly methods of doing so. So, we looked

for other people's writings — such as portions of practitioners' manuals, chapters of textbooks in statistics and econometrics, "how to" articles for nonspecialists, striking general magazine expositions that made sense for the general reader of complex statistical procedures and findings, and the like — that we could distribute (with permission) as our class materials.

The second challenge of refocusing our course was that finding other people's writing on empirical research (along the lines that we just outlined) proved far more difficult than we had imagined it would be. We could not find a comprehensive textual treatment of the materials that was satisfactory given our goals for the course. Moreover, even finding bits and pieces from other texts or manuals or articles to weave together proved to be frustrating and ultimately unsuccessful. For example, most advanced undergraduate texts on statistics cover some of the material that we were looking for, but the treatment was frequently too technical or was directed at a non-law audience — for example, directed at business students using examples that would not resonate as well with law students.

There was a third challenge of refocusing our course that we had not anticipated but proved to be the final, insurmountable hurdle to using existing materials to teach law students empirical methods. This was that the temper of our own course at the University of Illinois College of Law had evolved into something that no existing materials adequately captured — a focus on the very practical, law-oriented nature of our course.

In the planning for our course, we had struggled with setting exactly the right tone. That consisted, in large part, of identifying our audience and addressing that audience appropriately (a lesson that is at the heart of Chapter 13). We viewed the polar extremes as being (1) teaching a course that would equip law students to become future academics who would perform empirical research or (2) teaching a course that would equip law students to be informed consumers of empirical work.

We thought that these were very different methods of going forward and would necessitate very different styles of presentation and methods of coverage. We decided to err on the side of writing for our readers to be informed consumers. But maintaining a distinction between educating consumers and teaching about actually doing empirical research proved to be more difficult than we had anticipated. In the end, we decided that there really was not much difference between these two extremes, so far as teaching the class was concerned. While we tried to maintain a nontechnical tone in our explanation of the statistical tools and used as many examples from the law as we could find, we also required our students to form teams and to do their own empirical project during the semester. In a sense, this was an application of the first two-thirds of the instruction that physicians receive about how to learn a new medical procedure — "Watch one; do one; teach one."

All of these attempts to strike the right tone and to find existing materials that furthered our goals finally taught us a clear lesson — we needed to write this book.

And over the course of several years of writing *Empirical Methods in Law* we have made some interesting discoveries. One of the most important is that none of us could have written this book alone. The authors of every co-authored book say similar things, but we have very clear and special reasons for so proclaiming. We have

come to the study of empirical methods by very different paths. One of us is a Ph.D. psychologist and lawyer; another is a lawyer who first teamed with knowledgeable co-authors and then taught himself empirical methods to pursue topics in his area of interest that almost no one had done before; and one is a Ph.D. economist. These three paths taught us very different empirical skills. Although there is overlap, psychology and economics use different empirical techniques, and the tools that the autodidact had picked up were tailored to addressing the particular research questions in which he was interested. If just one or a pair of us had written this book, it would have had very different coverage and would have been, as a result, much less instructive. And we can all testify that in one of the great continuing mysteries of the academic enterprise, we have learned a great deal from teaching together and from working through the material in this book.

This book about empirical methods in legal research is, fittingly, an experiment. It is an experiment in communicating the technical details of empirical research in a relatively nontechnical manner while being mindful of the precautions and pitfalls of doing that research. It is also an experiment in being comprehensive about the many steps involved in undertaking an empirical research project in law. While there are many superb comprehensive manuals of empirical research in other academic disciplines, many of which we cite in our bibliographies, we believe that this is one of the first attempts to provide a broad textual treatment of the subject—taking the reader through the entire process of posing an empirical research question, deciding on the method or methods by which to pursue that research question, gathering and coding the data, analyzing the data, and then communicating one's results—with an emphasis on legal research.

We have deep hopes that the material here will find an audience among readers in many different countries; among professors and students, practitioners and judges; and among specialists in many different areas of the law.

Robert M. Lawless
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Thomas S. Ulen

Champaign, IL
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