法學專書系列之九

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司法制度實證研究

黃國昌 主編

中央研究院 法律學研究所 籌備處

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Empirical Studies of Judicial Systems

2008

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出版序

「法學實證研究」(empirical legal studies)為近年來發展快速而極具前瞻性的法學研究方法。雖然，法學實證研究的重要性已廣受肯定，但因需投入大量心力，並需具備跨學科知識，致法律學者多裹足不前。有鑑於此，中央研究院法律學研究乃將「法學實證研究」定為六大重點研究領域之一，希望努力促使法學實證研究在台灣生根發展。

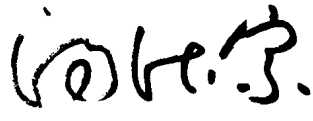
本所身為台灣最高學術研究機關之一員，在設所規劃時曾特別考量：國家未來發展的需求、前此法學教育與研究的缺陷、及如何與大學有效分工等因素，選定六大重點研究領域。籌備處成立四年以來，本所在「憲政體制與人權保障」、「行政管制與行政爭訟」、「科技發展與法律規範」、「法律思想與社會變遷」及「兩岸四地法律發展」等五項重點研究領域，已陸續舉辦了多次學術研討會，展現初步研究成果。去（2008）年6月21暨22日所舉辦的第一屆「司法制度實證研究」國際研討會(The 1st International Conference on Empirical Studies of Judicial Systems)宣示本所業已開始發展「法學實證研究」，設所規劃藍圖逐步實現！

本次研討會很榮幸邀請到兩位在法學實證研究領域望重士林的主題演說人——Theodore Eisenberg (Henry Allen Mark Professor of Law, Cornell Law School) 與 Kevin M. Clermont (James and Mark Flanagan Professor of Law, Cornell Law School)，及其他八位外國知名學者，不辭千里，前來與會。連同四位國內學者，總計發表論文十二篇，內容涵蓋司法制度諸多面向，不僅可供我國「司法改革」之參考，也為法學實證研究方法提供了示範。兩天會期計有三百位

各個領域的來賓與會，共同締造了台灣法學實證研究的歷史。開幕時並承本院翁院長啟惠博士與司法院賴院長英照博士親臨致詞期勉。

本書計收錄九篇論文及兩篇主題演說，乃研討會結束後，作者修改會議論文、正式投稿、經匿名審查、最後由本所出版委員會審議通過的結果，堪稱本所推動「法學實證研究」的初步成果。至盼本書之刊行能引發國內讀者對於「法學實證研究」的興趣，吸引更多學人投入此一新興研究領域，下次研討會時能有更多台灣本土的法律實證研究成果發表。

前述國際會議得以圓滿舉辦，及本書得以如期問世，首應感謝本所助研究員黃國昌博士之周詳策劃與持續努力。其間會議專案助理游毅然先生，及本所編輯助理葉欣怡小姐、陳妍小姐協力亦多，併此致謝。



湯 德 宗

研究員兼籌備處主任

2009 年 7 月

Preface

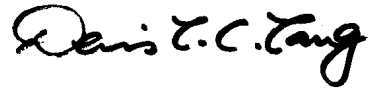
"Empirical Legal Studies" has been regarded as the most forward looking and rapidly developing approach to studies of the law in recent years. Despite of its importance, the unusual demand of continuous effort and interdisciplinary knowledge required to undertake this approach have discouraged many legal scholars from engaging in this field. This is precisely why the Institutum Iurisprudentiae, Academia Sinica (IIAS), has designated empirical legal studies as one of her six core research fields and is committed to fostering its development in Taiwan.

As a member of Academia Sinica, the most prestigious research institution in Taiwan, the Institutum Iurisprudentiae has vowed to undertake researches in fields that are fundamental for the cultivation and consolidation of legal culture in any given society, but in which ordinary law schools lack either sufficient resources or strong incentives to study. Based upon this criterion, the IIAS selected the six core research fields. Since her inauguration on July 1, 2004, the IIAS has hosted a good number of domestic as well as international conferences on our other five research fields, including Constitutional Structure and Human Rights, Administrative Regulations and Judicial Remedies, Law, Science and Technology, Jurisprudence and Social Change, Law Development in Taiwan, China, Hong Kong and Macau, as tangible reflections of our initial accomplishments in those areas. To add the final piece of the entire picture, the First International Conference on Empirical Studies of Judicial Systems was held on June 21 and 22, 2008.

We were honored to have many distinguished empirical legal scholars from around the world attend this Conference. Two eminent professors in empirical studies from Cornell Law School, Theodore Eisenberg, Henry Allen Mark Professor of Law, and Kevin M. Clermont, James and Mark Flanagan Professor of Law, both delivered keynote speeches. In addition, twelve papers covering a wide range of issues concerning judicial systems were presented by eight foreign scholars and four domestic researchers. These papers not only provided useful references for the judicial reform currently undertaken in Taiwan, but also effectively demonstrated methods of conducting empirical legal research. This Conference was also privileged to invite Dr. Chi-Huey Wong, President of Academia Sinica, and Honorable In-Jaw Lai, Chief Justice and President of the Judicial Yuan, to give the opening remarks. More than three hundred people from a variety of different fields participated in this Conference, making this Conference the greatest event in empirical legal studies in Taiwan.

After revision of the conference papers, submission for consideration of publication, and a peer review process, nine papers, along with the two keynote speeches, were accepted and collected in this book. The publication of this book marks the initial accomplishment of IIAS's commitment to promote empirical legal studies in Taiwan. We sincerely hope that in the wake of this publication more people will become interested in empirical legal studies and concomitantly more empirical works from Taiwan's legal community will be presented at our next conference.

The task of organizing such a splendid international event in Taiwan and publishing this book eventually required long and strenuous effort. My highest gratitude and sincerest congratulations go to my dear colleague, Prof. Dr. Kuo-Chang Huang. The Institute also owes special thanks to the project assistant, Winston Yu, and the editing assistants Hsin-I Yeh and Yen Chen.



Dennis Te-Chung Tang
Director & Professor of Law
July 2009

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Summary Judgment Rates Over Time, Across Case Categories, and Across Districts:

An Empirical Study of Three Large Federal Districts

Keynote Address

Theodore Eisenberg & Charlotte Lanvers*

Contents

* Eisenberg is Henry Allen Mark Professor Law, Cornell Law School; Lanvers is Skadden Fellow, Disability Rights Education & Defense Fund, Inc. We thank Kevin Clermont for comments.

Abstract

Prior research on summary judgment hypothesizes a substantial increase in summary judgment rates after a trilogy of Supreme Court cases in 1986 and a disproportionate adverse effect of summary judgment on civil rights cases. This article analyzes summary judgment rates in the Eastern District of Pennsylvania (EDPA) and the Northern District of Georgia (NDGA), for two time periods, 1980-81 and 2001-02. It also analyzes summary judgment rates for the Central District of California (CDCA) for 1980-81 and for other civil rights cases in the CDCA in 1975-76. The combined sample consists of over 5,000 cases. The three-district sample for 1980-81 had an overall summary judgment rate of 4.5%. The summary judgment rate increased from 6.5% to 7.0% in the two-district EDPA and NDGA sample from 1980-81 to 2001-02, a statistically insignificant difference. The pattern was inconsistent across case categories. For contract, tort, and a residual category of other noncivil rights cases, there was no evidence of a significant increase in summary judgment rates over time. Interdistrict differences were not dramatic in these three areas except that NDGA had a higher rate of summary judgment in tort and contract cases than did EDPA. The most striking effect was the approximate doubling—to almost 25%—of the NDGA summary judgment rate in employment discrimination cases and a substantial increase in the NDGA summary judgment rate in other civil rights cases. Subject to the limitation that both time periods studied are removed in time from the Supreme Court's 1986 summary judgment trilogy, the only strong evidence in this study of a post-trilogy increase is in NDGA employment discrimination cases. Civil rights cases had consistently higher summary judgment rates than noncivil rights cases and summary judgment rates were modest in noncivil rights cases.

I. Introduction

Summary judgment is one of the most important methods of pretrial disposition in U.S. federal courts. Rule 56 of the Federal Rules of Civil Procedure authorizes summary judgment in whole or in part when the record in a case establishes that a party is entitled to judgment as a matter of law. Entitlement to judgment as a matter of law requires that there be no material facts at issue that must be resolved at trial. Courts render summary judgment without trial and based on the conclusion that, "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact ... ."[1] Although summary judgment was often regarded as an ineffective procedural device until the Supreme Court expanded its availability in the summary judgment trilogy of 1986,[2] it has since been labeled the "device of greatest interest in modern times ... ."[3]

As a prominent feature of the civil procedure landscape, summary judgment has been blamed or credited with important developments. Marc Galanter has documented the striking decline in trial rates since the 1960s[4] and summary judgment has been said to contribute to that decline. Well-informed sources, including Judge Richard Posner and others, have identified summary judgment as a source of the decline of

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1 FRCP Rule 56(c).

2 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). For a thorough list of articles suggesting summary judgment's historical ineffectiveness, see Joe S. Cecil et al., *A Quarter-Century of Summary Judgment Practice in Six Federal District Courts*, 4 J. EMPIRICAL LEGAL STUD. 861, 865 n.10 (2007).

3 KEVIN M. CLERMONT, LITIGATION REALITIES REDUX (forthcoming).

4 *See* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004).