

# The Present Situation and Trend of Legal Empirical Research

## -- Based on the Analysis of CNKI Journal Literature

Shujuan Chen

Anhui University of Finance and Economics Law School, 233030, China

### Abstract

By using the methods of keyword co-occurrence and author analysis to analyze the database of CNKI, it can be found that the number of legal empirical research papers has been on the rise in recent 20 years. Zuo Weimin, Liu Fangquan and others are high producing authors, and the high producing institutions are mainly the traditional universities (departments) such as "five schools and four departments". At present, legal empirical research in the field of criminal justice is relatively prosperous, and in the future, the focus of legal empirical research will mainly be on judicial reform, guiding cases, leniency of punishment for pleading guilty, and other topics. In order to solve the problems of legal empirical research, such as late start, unbalanced development of various disciplines, limited research materials and single research methods, it is necessary to further improve the understanding of legal empirical research, strengthen the construction of empirical research team, and strengthen the technical support of empirical research.

### Keywords

Legal Empirical Research; Literature Analysis; Research Trends.

### 1. Introduction

In the process of the start and development of modern legal system in Our country, we draw much lessons from the achievements of western jurisprudence. This model has strongly promoted the development of legal science in China. With the gradual improvement of China's legal system, there are many "acclimatization" phenomena to western reference. It is true that jurisprudence needs logic, but experience is also indispensable. If it cannot be established on the basis of practice, legal research may be divorced from reality and fall into the whirlpool of "fake problems", unable to cope with and solve the "real problems" in practice. To solve the "real problem" of jurisprudence is inseparable from empirical research.

The so-called empirical research refers to "the research method of empirical research and quantitative analysis in accordance with certain procedural norms"<sup>1</sup> In the course of the development of various legal disciplines in China, the analytical method of legal dogma occupies the mainstream core position. This method is based on the legal norms, takes the legal norms as the doctrine, focuses on the description and interpretation of the legal norms. Empirical research is based on legal practice and emphasizes quantitative analysis of experience. "Legal empirical research not only takes data collection as the basic framework, but also attaches importance to the judgment of the nature of various legal information, with specific methods including investigation, observation, literature analysis, experiment, etc."<sup>2</sup> At present, the law circle pays more and more attention to the positive research of law, the academic circle has organized many discussions on how to carry out the positive research. The topic of discussion is the importance of empirical research, empirical research methods and other issues, but there is no definite response to the current status of legal empirical research and what the focus of future research is. Through the analysis of the legal empirical research literature on CNKI in the

past 20 years, this paper summarizes the current situation of legal empirical research and predicts the future trend of legal research.

## 2. Current Situation of Empirical Research of Law

With the theme of "Empirical Research", "Empirical Analysis" and "Empirical Investigation", 5,058 Chinese journal papers from 2000 to 2019 were screened from eight sub-databases including jurisprudence, Constitutional and Administrative Law, Criminal Law and Civil and Commercial Law in the legal database of SOCIAL Science I of CNKIjournals. The valid data of 4551 papers were obtained after the removal of journal catalogue, preamble, subscription revelation and papers inconsistent with the subject. Excel software and CiteSpace citation analysis software were used for statistical and visual analysis of literature quantity, keywords, authors and research institutions.

### 2.1. Literature Statistics of Empirical Legal Research in the Past 20 Years

Statistical results show that from 2000 to 2019, the number of papers published in CNKI legal empirical research journals showed an overall upward trend. According to the change trend of the number of articles published in each year, the empirical research of law can be divided into three stages in nearly 20 years. In the first stage, from 2000 to 2004, the number of papers was significantly less and the growth rate was slow, indicating that the legal circle paid little attention to empirical research in this stage. The second stage was from 2005 to 2014, when the number of papers increased rapidly, indicating that the legal community gradually increased its emphasis on empirical research. In the third phase, between 2015 and 2019, the number of papers continued to rise, but the rate of growth leveled off. From the statistics of the number of papers, it can be seen that the heat of legal empirical research is constantly strengthening, but the current research has entered a plateau, and the overall number of papers is not enough to achieve a qualitative breakthrough.

### 2.2. Author Analysis

Run CiteSpace and select the author as the analysis object to analyze the data from 2000 to 2019. According to statistics, a total of 783 scholars have conducted empirical research on law in the past 20 years. According to the analysis of the top 20 prolific authors, Zuo Weimin of Sichuan University is the leader in the field of legal empirical research with 36 papers, and his empirical research direction is in the field of criminal litigation. Yao Ming, Jin Hai, Liu Fangquan, He Jiahong, Song Yinghui and other scholars published the following number of articles. In addition, Bai Jianjun, a scholar of Peking University, published a number of influential empirical papers in the field of criminal law. It is worth noting that among the top 20 prolific authors, 13 are in the field of criminal Procedure law, which shows that the empirical research in this field is flourishing, but also reflects the unbalanced development of empirical research among various disciplines of law. In terms of author cooperation, except for zuo Weimin, Song Yinghui, Gao Qicai and a few other scholars who have a certain cooperative relationship with other authors, the empirical research of legal science is mainly about each author "fighting alone", and the cooperation among authors is rare, let alone a fixed legal empirical research team.

### 2.3. Analysis of Institutional Cooperation

Run CiteSpace and select the sending organization as the analysis object. The analysis results show that from 2000 to 2019, a total of 436 institutions issued papers for empirical research on law, including 41 court systems, 47 procuratorial systems, and 5 law firms. The number of papers issued by practical departments accounted for one fifth. The statistics show that the institutions with the highest number of papers published are Southwest University of Political Science and Law, China University of Political Science and Law, East China University of Political

Science and Law, Sichuan University, Renmin University of China, Peking University, Zhongnan University of Finance and Economics, Wuhan University and so on. The Procuratorial system of Beijing ranked the top 10 with 50 publications, and was the only practical department in the top 20 productive organizations. In addition to Sichuan University, most of the top 10 high-yielding institutions are traditional law schools, which shows that traditional law schools (departments) attach higher importance to positive law. However, the legal prosecution is also an important force in empirical research. In addition, different from the low degree of collaboration among high-yielding authors, there are more associations between institutions and practice institutions, indicating that empirical research institutions have relatively frequent cooperation.

#### 2.4. Keyword Analysis

The frequency of keywords is positively correlated with the research intensity and the importance of the topic. Run CiteSpace and select keywords as analysis objects. After operation analysis, 315 keywords are obtained.

Through the analysis of the top 50 keywords with the highest frequency, it can be seen that in addition to empirical research and empirical analysis, there are no keywords with the frequency of more than 100, and only 3 keywords with the frequency of more than 50, indicating that the empirical research of law is relatively scattered, not high intensity, and not strong systematic. Keywords such as "judicial organs", "procuratorial organs", "criminal reconciliation", "minors", "defendants", "exclusion of illegal evidence" and "sentencing suggestions" appeared relatively frequently, which were closely related to criminal proceedings. The analysis results show that the keywords in the field of criminal litigation are closely related, which is consistent with the previous analysis of the prolific author. It indicates that the field of criminal litigation is relatively full of empirical research and has formed a certain system. In addition, the crime of duty, bribery, dangerous driving, victims, criminal justice, criminal policy and other key words are related to the discipline of criminal law. It can be seen that empirical research in the field of criminal justice is far more prosperous than other fields.

In addition to criminal justice, keywords in administrative law such as "local legislation", "administrative litigation", "administration by law", "administrative law enforcement" and "government information disclosure" have also formed a certain cluster, indicating that empirical research in this field has a certain effect. In the field of civil law, "intellectual property" appeared 37 times, with a high frequency, indicating that civil law scholars attach importance to empirical research on this topic. In addition, "damages" and "statutory compensation" are relatively frequent in the field of civil law empirical research.

At the same time, according to the key words for the first time in time, we can see that the empirical research on the new policy of law, law hot closely, such as the 2011 "drunk driving into the punishment", "dangerous driving" as keywords for the first time in 2012, the criminal procedure law overhaul in 2012, and "illegal evidence exclusion" as keywords in the first time.

### 3. Trend Analysis of Legal Empirical Research

With the help of Stness analysis, 64 popular research topics can be found from 2000 to 2019 through CiteSpace. With the help of stness analysis, 18 leading research topics can be found in 2019.

According to the statistics, judicial reform, judicial documents, local legislation, judicial review, prosecutorial supervision, and adjudication-centered research were ranked in the order of popularity. The hot topics of current empirical research on jurisprudence appear for the first time within the past five years, which indicates that empirical research pays close attention to

new things and new phenomena of jurisprudence. After the interpretation of The Supreme People's Court and The Supreme People's Procuratorate on Several Issues concerning the Application of The Law in Handling Corruption and Bribery Criminal Cases was issued in 2016, empirical studies on the crime of taking bribes gradually increased and became a research hotspot. After "drunk driving into the punishment", the number of dangerous driving crime cases remains high. The sentencing of dangerous driving crime and how to effectively govern it have always been the object of concern and discussion in the legal circle.

"Judicial reform," which was first mentioned in 2015, has been gaining popularity since then, and "Judication-centered," which ranked seventh. At present, the judicial reform of the court and procuratorial system has entered the deep water zone, with the initial results and problems gradually exposed. It can be predicted that the research heat of this topic will continue. The second theme is "Written Judgment". In 2014, the Supreme People's Court launched the publication of judicial documents, and the China Judicial Documents Disclosure Website became the largest platform for the publication of judicial documents in the world, which greatly expanded the channels of legal empirical research and provided rich data and content for legal empirical research. Empirical research using public judgment documents has become one of the main methods at present. The "guiding cases" are divided into civil guiding cases, criminal guiding cases and administrative guiding cases, which are significant for restricting judges' discretion and promoting judicial justice. Since its introduction in 2010, the system has been highly concerned by the society and legal circles and has become the object of empirical research in law. As a result of the guiding case constantly bring forth the new, it can be predicted that the research heat will continue unabated. As new systems and measures in judicial practice in recent years, the development and implementation of "environmental public interest litigation" and "leniency system of guilty plea" will inevitably become hot topics in future legal empirical research.

It is worth noting that more than half of the popular research topics are related to criminal procedure and criminal law. It can be seen that the hot spots of current empirical research of law and the future research trend are still concentrated in the field of criminal justice.

## **4. Problems and Improvement of Legal Empirical Research**

### **4.1. Problems Existing in Empirical Research of Law**

Firstly, research started late and developed imbalanced. According to statistics, the total amount of legal database literature in the same period is more than 948,000, while only 4551 legal empirical literature, accounting for less than 1%, reflecting the overall development level of empirical research is not high. Compared with criminal justice, civil and commercial law, administrative law, jurisprudence and other disciplines have fewer scholars participating in empirical research. On the other hand, the empirical research on procedural law is more prosperous, while the empirical research on substantive law is relatively weak. The reason may be that the research method of legal dogma is more likely to succeed in substantive law...<sup>3</sup>In addition, the development of legal empirical research is unbalanced in various institutions. Ordinary law schools do not attach much importance to empirical research, and the input and output are at a low level.

Secondly, there are limitations in the research materials. "Empirical research is to use data to speak, and use statistical methods to carry out quantitative research as far as possible, especially regression analysis, to reveal the correlation and even causal relationship between phenomena, so as to show the practice, reveal the reasons behind the phenomenon, so as to prove, falsified or put forward relevant theories"<sup>4</sup>. Different from the empirical study of individual cases or typical cases, the empirical study of jurisprudence must be based on the analysis and research of a large number of data, and the error should be reduced as scientifically

as possible in the research process, only in this way can "generalize the whole" and reflect the "whole picture" of legal operation. Through the analysis of legal empirical research literature in the past 20 years, it can be seen that the legal empirical research in China is mainly based on "small data", and there are few "big data" research on the whole sample. The reason is that "small sample" is easy to obtain, the analysis method is relatively simple, and the technical threshold is not high, while "big data" analysis has high technical requirements for data crawling, cleaning and statistical methods, so it is seldom carried out. At present, our country's law net empirical research data sources to the written judgment, a magic weapon of Peking University, Peking University and Italy is given priority to, such as database, prosecution documents publicly but due to the written judgment rate is not high, some procedural matters even no publicly available data, only exists in the case-handling organ within the case management system, led to the empirical study of law is difficult to fully put to good use.

Thirdly, the research method is relatively single. Scientific selection and application of research methods is very important for carrying out legal empirical research. Empirical study is given priority to with descriptive analysis of the current law, this paper summarizes the focus on the external characteristics of legal data, and the correlation of internal contact for reflect the legal data analysis, causal analysis, model analysis and other methods are used less, the reason is that the latter method of statistical analysis, statistical software using the demand is higher, by the professional study hard to master.

#### **4.2. Improvement of Legal Empirical Research**

The first is to improve the understanding of the importance of legal positive research. Strengthen the education and guidance of legal empirical research, increase research input, and promote the development of empirical research in procedural law department and substantive law department. Strengthen communication with statistics, computer science, sociology, economics and other disciplines, pay close attention to the domestic and foreign legal empirical research trends, fully learn from mature empirical research methods.

Secondly, pay attention to the construction of legal empirical research team. The empirical study of law requires the knowledge of statistics, computer and other disciplines, but there are few relevant courses in the current law teaching system. In order to comprehensively improve the level of empirical research of legal researchers, we should start from the source of legal education and include statistics, data analysis, computer programming and other courses in the curriculum of law, to cultivate interdisciplinary legal talents. Establish legal empirical research team and strengthen division of labor and cooperation. In addition, we should also mobilize the enthusiasm of practical departments and strengthen the strength of legal empirical research.

Thirdly, strengthen the technical guarantee of legal empirical research. Abundant legal data is the basis of empirical research of law, so the rate of disclosure of legal information should be further improved. The construction of legal database will facilitate the data acquisition of empirical research. In addition, the technical support for legal research should be strengthened, and artificial intelligence, machine learning and other technologies should be strengthened to remove the technical obstacles of legal empirical research.

### **5. Conclusion**

Law is a practical subject, so legal research must focus on reality. At present, the legal system of socialism with Chinese characteristics has been formed, and it is realistic to construct China's native legal theory. This requires legal research to be based on the practice of Chinese rule of law, pay attention to specific problems, explore and master the practical problems in legal practice. Therefore, we must attach importance to the empirical research of jurisprudence. Although the current legal empirical research is still in its infancy and weak, many scholars have

carried out active exploration. It can be predicted that more and more scholars will devote themselves to the empirical research, and the empirical research of law will flourish and develop.

## References

- [1] Bai Jianjun. On empirical analysis of law [J]. *China Law*, 2000(4): 29-39.
- [2] Song Yinghui. The influence of empirical method on the legal research of Criminal procedure in China [J]. *Legal Research*, 2012(5):6-9.
- [3] Zuo Weimin. A New Paradigm Revolution -- Interpretation of Chinese Legal Empirical Research [J]. *Tsinghua Law School*, 2017(3): 45-61.
- [4] Zuo Weimin. Challenges and Responses: Several interpretations on empirical research of law [J]. *China Law Review*, 2018 (6): 64-72.