Legal Research Tools and Methods in Ethiopia

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1. Introduction

Like in any other discipline (science or profession), clarity on research methods is crucial for the study of law and its institutions. From terminology to its very existence, the subject of legal research methodology, which is mostly unheeded until recently, is debated. Close to home, legal research methodology, despite its potential in shaping the quality of legal scholarship, has not yet obtained sufficient clarity in the study of law. From confusion of 'legal research' with the study of legal citations to lack of academics interested in the area, legal research languishes in the shadows of substantive study of law. Unlike in other disciplines where research methods are taken seriously – in some cases being the very definition of the profession – law students, academicians, and practitioners have largely ignored issues of research methods in Ethiopia.

Generally two problems of legal research could be identified in Ethiopia. The first relates to the dearth of finding tools or law finders that are crucial in standard legal researches as carried out for instance in writing legal memorandum or pleadings. It is common knowledge among Ethiopian legal scholars that their doctrinal researches at present are not assisted by systematic tools of locating the law. Although there were beginnings to systematize the publication and the finding of Ethiopian laws such as the consolidation efforts of the 1970's, none of them resulted in permanent tools of legal research. Moreover, there is little consensus among legal scholars on the importance of law finding tools in Ethiopia. The second problem relates to the meaning and type of empirical legal research methods that should be applied in empirical legal scholarship. The introduction of a course on legal research methods, with recent reforms of law school curricula, might be evidence of the growing recognition of empirical legal research methods in

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Email: twondemagegn@yahoo.com. I am grateful to the two anonymous reviewers, who identified, among others, major structural flaws of the initial draft and helped in the enhancement of coverage and organization of the article. I am also indebted to students Rediate Mulugeta and Sousena Kebede of the School of Law, who have assisted me in carrying out a general empirical survey used for this article.

the study and practice of law. But telling from the content and organization of the textbook[1], (empirical) legal research methods are more obscured than elaborated. While criticizing the text is not the point of this article and as a matter of fact the text's efforts have to be acknowledged as pioneering empirical methods to Ethiopian law students, the textbook provides little assistance for actual undertaking of empirical legal research owing to its lack of clarity exemplified by ambiguities in terminologies and concepts of research methods.

Such problems surrounding significance and meaning of legal research in Ethiopia naturally call for exploration of the various issues of research methods, issues which will hopefully be taken up for further research and action by students, practitioners, and institutes of law. Hence exploration, it should be stated, is the objective of this article. As in the nature of exploratory research, instead of providing concrete solutions, the article aims at identifying issues concerning legal research in Ethiopia. In doing so, categories and definitions of legal research are borrowed from literature. For the purpose of comparison with other research methods, brief examination of doctrinal study and its methods is made. Since finding tools in doctrinal research require special attention, separate discussion of the topic is provided. Issues revolving around empirical legal research are also discussed at length for they stir debates in legal scholarship. The article also offers some clarification of terms "primary" and "secondary", which might mean different things based on the context in which they are used. After an outline of questions of concern in legal research methods in Ethiopia, the article will remark on law schools and legal methods including the issue of plagiarism, frequently encountered in term papers and theses. After some observations on rules of citation, the article will end with conclusions and recommendations to stakeholders in enriching legal research and in effect legal scholarship in Ethiopia.

The initial story should be told. Sometime ago, the writer was looking for an article he was told published in the Journal of Ethiopian Law (hereinafter JEL). The story did not include the year and volume of JEL - the source was a faint memory of the article. Naturally, the writer went to the Law Library (Addis Ababa University, hereinafter AAU), wondering how to retrieve the article. He was all but unsure if there were indices of JEL. The Library informed the writer that there was no index to JEL. What was then the natural course for the writer, or anyone for that matter? Naturally colleagues

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[1] Justice and Legal System Research Institute, Legal Research Methods: Teaching Material, (2009)

teaching the subject area should be of assistance but could not identify the article. The situation was unfortunate not least the writer could not find the article – may be the article never existed. But because there was and is no easy way of finding it: probably one had to start from the first Volume, first Number of JEL, which would be how many decades back? Or would it be a consolation if one knew that there are barely 25 volumes of JEL ever issued? But what struck the writer most was the wider picture: there was and still is no easy way of finding Ethiopian law– laws, legal articles, and any legal research output. And then the big question: should legal research tools such as finding tools, techniques, and methods not help legal scholars with these and similar issues? Ideas with empirical legal research forming part of this article came later.

Afterwards the writer consulted legal research materials and browsed books and periodicals online. For lack of local materials, the writer has to substantially depend on foreign materials accessible. The literature on legal research is rich, though as will be clear later, with varying meanings of the concept. But what is inspiring is if one so desired one can bite as much as one likes for legal research and scholarship in Ethiopia. Compared to complex and functional legal tools and methods developed elsewhere, the understanding and employment of legal research methods in Ethiopia are at their earliest. It is not to say that by now the Ethiopian lawyer should have had Ethiopian versions of Westlaw and LexisNexis. It is neither to suggest that the Ethiopian law student should have had half of her studies in empirical legal research methods.

Regarding the situation of legal research methods in Ethiopia, the article relies on personal observation of the writer and information gathered through conversations with colleagues and students. Moreover, to corroborate these sources of information, a general survey for the purpose of this article was carried out. The survey, the questions of which are annexed in the end, focused on types of legal research common among scholars and students of law, the use of law finders in doctrinal research, and methods applied to empirical legal research. In the survey, which is carried out at the School of Law, AAU, thirty-six research reports are investigated in terms of research tools and methods. Sixteen are articles published in JEL and twenty are theses and senior papers of graduate and undergraduate students of the School of Law. The findings are indicated in sections where the Ethiopian situation is explored. As it should be clear, the sample taken is not representative of legal research outputs in law schools let alone in Ethiopia. However, given the communality of legal research tools and methods in many jurisdictions, the writer believes that similar findings are expected in

legal studies in Ethiopia, in academics and in practice alike. Moreover, as is in the nature of exploratory research, which this article is, it should be the issues raised and not the findings that concern readers most.

2. Note on Terminology

At the outset, it is important to clarify the meaning of terms in this article. This is partly because one of the article's aims is to explain terms in methodology. A person interested in legal research might come across words like legal research methods, legal methodology, doctrinal research, non-doctrinal research, empirical legal research, research in law and how to find the law, just to name a few. These terms, as will be explained in subsequent paragraphs and sections, might have differing meanings, some of them identifying the conventional legal research, others meaning in the broadest sense, still others referring to different categories of legal research, and so on. For example, in Black's Law Dictionary, one finds *legal research* as "the finding and assembling of authorities that bear on a question of law,"[2] which mirrors the traditional legal research but oblivious to the nascent empirical legal research concerned more in what is happening in society than what books of law such as proclamations say or do not say.

To provide framework for later discussions, this article borrows an illuminating classification of legal research by Paul Chynoweth, who himself depended on the work of a Canadian report on legal education. According to him, legal research is classified into two: doctrinal legal research (which is also research in law) and interdisciplinary (sometimes called non-doctrinal or research about law). Based on their application, these two in turn are classified into two: applied and pure research. Joining them together, the classification will have four strands: in doctrinal research, which is about "formulation of legal 'doctrines' through the analysis of legal rules," there are two, one being *expository research* (an applied one and exemplified by black-letter law research used to write legal textbooks, treatises, articles or legal memorandums) and two being *legal theory research* (which is 'pure' and could be exemplified by researches in legal philosophy); and in interdisciplinary research there are *fundamental research* (pure research, example being theoretical researches in law and economics) and *empirical research* (applied one, example being an empirical research carried out with the aim of law reform). [3]

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[2] Bryan A. Garner (ed.), Black's Law Dictionary (7th ed., 1999)

[3] Paul Chynoweth, "Legal research", in Andrew Knight and Les Ruddock, Advanced Research Methods in the Built Environment (2008), p. 29

Any Ethiopian legislative measure could be taken to elucidate the classification. Consider the Disclosure and Registration of Assets Proclamation No.668 /2010, which roughly requires (Article 4), "any appointee, elected person or public servant shall have the obligation to disclose and register the assets under the ownership or possession of himself and his family; and sources of his income and those of his family." One question for a legal scholar might be if the Proclamation violated any constitutional right of an appointee such as the right to privacy of Article 26 of the Constitution of Federal Democratic Republic Ethiopia (FDRE) in asking the appointee to register her property, which might normally be considered as private. Despite the merit of the issue, a legal memorandum could be written on constitutionality of the parliamentary act, which will be a doctrinal research exposing constitutionality of one of the provisions of the Proclamation. It might also be that the prosecutor is indicting an appointee for failure to register, which is punishable under the Criminal Code. This again is an issue of doctrinal research, expository one. On the other hand, a legal philosopher might have interest in the parliamentary act and wonder if the government is morally justified in imposing a penalty of fee in preference to firing the appointee for example, which might be called legal theory research. Again it is possible that a legal scholar or a student of "law and economics" might raise a theoretical question if the legislation contributes to economic efficiency by deterring corruption, which will be a kind of research one might consider fundamental and interdisciplinary legal research. Again a legal researcher might inquire effects, if any, on the conduct of public officials of the passing of this particular legislation, e.g. whether corruption has dropped down since the adoption of the legislation, carrying out an applied interdisciplinary research.

The article shares this classification, which is prevalent in legal research discourse. But in line with its objective of clarification of methodology specifically on similarities and differences in legal methods, the article takes two general categories of legal research: one is doctrinal research, the conventional legal research which coincides with the first general class in the previous classification and two is empirical legal research, the kind of research common in the social sciences.

This categorization might leave out one particular class that is usually called fundamental research about law such as 'law and economics', for instance asking if the Ethiopian law on trade practice is informed by rational choice theory. The intention is not to discard this sub-division as irrelevant to the study of legal research. After all "understanding" and "critique" of the law based on perspectives from economics, history, and so forth have always

figured in legal scholarship.[4] Rather its methodological issues could be generally merged with the doctrinal legal research. Intuitively, one can say, a legal researcher interested in such kinds of research could familiarize himself with theories and models of the discipline and deploy logic, critical analysis, deductive and inductive reasoning, which are available from traditional legal research, and carry out the study. On the other hand, since empirical legal research – the fourth kind – raises peculiar methodological challenges to students of law, it merited separate discussion.

It should be noted that the categories in this article as elsewhere owe their existence to their strength in elucidating methods in legal research. Other classifications and terminologies could be easily entertained and justified for various purposes. For example, in an informative collection of Research Methods for Law, editors identify for examination three major types of legal research, namely empirical legal research, international and comparative legal research, and doctrinal research.[5] While the classification in this article does not profess universality, for the purpose of this article the latter two could be combined under the doctrinal research category while the former retains its separate category. Again as will be commented upon later, there are writers who consider *law finders* as legal research methods. But they are mere tools helpful in a standard legal research to locate law and legal authorities and are not methods as such.

On use of terminology of 'method,' a point has to be made. Some legal scholars take *legal method* for *applied* theory or science of law. One might encounter a book on *legal methods* which elaborates schools of legal thought or theories of law such as legal positivism and critical legal studies. Of course, these theories have significantly influenced tools, techniques, sources, or generally methods of legal research. But their identification as methods or models should not be understood as methods in the social sciences or methods as used in this article. Here falls the adoption of the term 'methods' in a Symposium on Method in International Law resulting in an excellent guide in the study and practice of international law. As elaborated in the Symposium, the "link between a *legal theory* and a *legal method* is … one between the *abstract* and the *applied*."[6](Emphases added!) Hence legal

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[4] Philip C. Kissam, "The Evaluation of Legal Scholarship," 63 Wash. L. Rev. 221 1988, p. 236

[5] Mike McConville and Wing Hong Chui, "Introduction and Overview", in Mike McConville and Wing Hong Chui (eds.), Research Methods for Law, (2007), p. 3

[6] Steven R. Ratner and Anne-Marie Slaughter, "Appraising the Methods of International Law: A Prospectus for Readers, Symposium on Method in International Law", 93 Am. J. Int'l L. 291 1999, pp. 292 & 293. Organizers of the symposium

methods are equated with schools of legal thought or theories of law, except the practice orientation of methods. And that is also why the Symposium used terms like "positivist method".[7] Although such usage of the term 'legal methods' is common among legal scholars and has to be elaborated in Ethiopian context, this article does not employ 'method' in that sense.

3. Doctrinal Research and Methods

> *The task of the legal scholar was seen as being to extract a doctrine from a line of cases or from statutory text and history, restate it, perhaps criticize it or seek to extend it, all the while striving for "sensible" results in light of legal principles and common sense. Logic, analogy, judicial decisions, a handful of principles such as stare decisis, and common sense were the tools of analysis. The humanities and the social sciences were rarely mentioned.*
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> *Judge Richard A. Posner*
> *Legal Scholarship Today, 115 Harvard Law Review 1316 (2002)*

A note is in order before discussion of doctrinal research methods. Traditionally legal practice, study, and writing have been shy of using the term research methods in doctrinal scholarship. Contributing factors are many. One is that traditional approaches in law were different from methods in the social and natural sciences and hence the term method was considered unsuitable for legal studies.[8] This could be illustrated by the perception people had towards traditional legal research. Take for example crucial legal works such as treatises, legal encyclopedias, and restatements. For some, the undertakings to produce those legal writings were not legal researches simply because legal research is "the scientific study of law," which involves

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identify seven *methods* for appraisal: legal positivism, the New Haven School, international legal process, critical legal studies, international law and international relations, feminist jurisprudence, and law and economics. Many of these methods, which correspond with theories in international law, are adapted from general theories in law and are regarded as representing the "major methods of international legal scholarship."

[7] Ibid.

[8] See, for example, James Huffman, "Is the Law Graduate Prepared to do Research?", 26 J. Legal Educ. 520 1973-1974, p. 520, which says, "what the law schools and lawyers call legal research is not research at all as the term is understood by physical and social scientists. … Legal research, as taught in the law school course of that or similar appellation, is the technique of using legal source materials - cases, statutes, regulations, etc.- to determine what the law is."

the "formulation of ... propositions ... and ... verification by observation."[9] Hence according to such perception unless there are propositions and empirical investigations, a legal study cannot be considered as method. But this is not something all scholars have agreed with. The undertakings of doctrinal research which mainly comprise illumination of the law, holding positions, and giving reasons for legal inconsistencies have been considered "tremendously important research undertaking."[10]

The other contributing factor for reluctance in use of *research methods* in doctrinal studies has been lack of separate study in legal methodology with exceptions of studies in bibliography and finding tools, which instead of *methods* should be conveniently called tools assisting the carrying out of legal research.[11] As a matter of fact, methods in the study of law were dispersed in substantive courses. Methods of legal analysis, for example, are not considered separate studies of law instead being considered as skills students of law develop with the study of substantive laws. Methods or skills in legal scholarship are said to be learned at an "instinctive level through exposure to the process."[12] Another factor is lack of understanding among legal scholars on what amounted to methods. As Professor Ulen indicated, there is little consensus on what amounts to methods in legal inquiries.[13]

Coming to the topic of this section, doctrinal legal research – sometimes called research in law – is the traditional and standard form of legal research. Its main component of research is black-letter law, which is about "what the prevailing state of legal doctrine is."[14] Unlike empirical research, doctrinal

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[9] Hessel E. Yntema, "'Looking out of the Cave'—Some Remarks on Comparative Legal Research", in Alfred F. Conard (ed.), Conference on Aims and Methods of Legal Research (1957), p. 58-59

[10] Albert J. Harno, "Comments", in Alfred F. Conard (ed.), Conference on Aims and Methods of Legal Research (1957), p. 143

[11] On the teaching of legal bibliography as a subject in American legal education, see Frederick C. Hicks, "The Teaching of Legal Bibliography", 11 Law Libr. J. 1 1918. An Ethiopian law student may be amused of the idea of learning of bibliography as a course; but when he understands the existence of millions of legal materials to look for in carrying out a research, the student will be less so.

[12] Chynoweth, cited above at note 3, p. 35

[13] Thomas S. Ulen, "A Nobel Prize in Legal Science: Theory, Empirical Work, and The Scientific Method in the Study of Law", 2002 U. Ill. L. Rev. 875 2002, p. 881

[14] Karl N. Llewellyn, "Social Significance in Legal Problems" in Alfred F. Conard (ed.), Conference on Aims and Methods of Legal Research (1957), p. 27. The same definition applies to Chynoweth, cited above at note 3, p. 30, who identifies the concern of doctrinal research as "the discovery and development of legal doctrines for publication in textbooks or journal articles and its research questions" that "take

research relies on "reason and analysis" rather than data from outside sources and on theories that "presume to describe the world" rather than "hypothesis that have been subjected to empirical testing."[15]

According to Judge Edwards, the defining features of traditional legal research (the term he applies is "*Practical*" *legal scholarship*) are two: one, being *prescriptive* in analyzing the law to instruct attorneys in consideration of legal problems, to guide judges and decision-makers in their resolution of legal disputes, and to advise policymakers on law reform; and two, being *doctrinal* in attending to the various sources of law such as precedents and statutes that constrain or guide the practitioner and policymaker.[16] While the first point identifies the normative nature of standard legal research, the second explains the justification for the primary focus of doctrinal legal research on legal texts – both texts *of* the law, e.g. proclamations and texts *about* the law, e.g. journal articles.[17]

A cursory glance at doctrinal legal scholarship indicates the existence of crucial techniques and skills that could be explained under doctrinal research methods. Major methods include legal analysis, legal synthesis, methods of interpretation, and methods of legal reasoning. The aim of legal analysis, which is the principal tool in doctrinal legal research, is to "reduce, separate, and break down cases, statutes, and other legal materials into separate elements" and offer "explanations, interpretations, and criticisms of the elements of the case or statute analyzed."[18] Legal synthesis, on the other hand, aims at combining the "disparate elements of cases and statutes together into coherent or useful legal standards or general rules."[19] Another important category of skills or methods in doctrinal legal studies is the ability to exploit various methods of legal reasoning, which are mostly identified as deductive, inductive and abductive reasoning.[20] Methods of interpretation are also important tools in the undertaking of legal research. The familiar cannons of interpretation that have profound importance in doctrinal

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the form of asking 'what is the law?', which is different from "questions asked by empirical investigators."

[15] Shari Siedman Diamond, "Empirical Marine Life in Legal Waters: Clams, Dolphins, and Plankton", 2002 U. Ill. L. Rev. 803 2002, p. 805

[16] Harry T. Edwards, "The Growing Disjunction between Legal Education and the Legal Profession", 91 Mich. L. Rev. 34 1992-1993, p. 42

[17] Sharon Hanson, Legal Method & Reasoning (2nd ed., 2003), p. 1

[18] Kissam, cited above at note 4, pp 231 & 232

[19] Ibid.

[20] For explanation of these methods of reasoning, see Terence Anderson, David Schum, and William Twining, Analysis of Evidence (2nd ed., 2005), p. 56.

research include language use, especially in understanding the language of law that demands precision, formality, and generalization, textual interpretation, legislator's intent, historical consideration, comparative analysis, textual interpretation, and teleological construction.[21]

In deployment of these traditional legal research methods, stages of legal research undertakings are generally clear. In a standard doctrinal research, there is a legal situation, a legal researcher analyzes the problem by identifying the facts of the case and legal issues, locates relevant legal texts from primary and secondary sources (which could be a legislation, a case, a journal article, or a database), evaluates and updates, and finally applies the rules to the facts of the case.[22] All of these legal research activities are assisted by finding tools such as codes or consolidations of laws, chronological publications of laws, digests, authority finders, and indices.[23]

Finally it should be noted that like disciplines in humanities, doctrinal legal research is not preoccupied with empiricism and as such might largely ignore methods in empirical investigation.[24] Unlike researches in social and natural sciences, doctrinal research does not have lists of questions, questionnaire, observation, and experimentation in order to gather empirical data from outside. Hence its methods might differ and tempt some into denying the concept of methodology to doctrinal research. Again some might conveniently consider its methodologies as "techniques of qualitative analysis."[25] But whether called by the name methodology or not, they are complex and powerful techniques of traditional legal research that could match the esteem (if one cares!) of the often praised "scientific" methods in empirical scholarship.

4. Legal Research and How to Find the Law

With quick review of library catalogues with the title "legal research" in the School of Law (AAU), one uncovers materials on how to find the law, by varied names such as *how to find the law*, *practical guide to legal research*, and

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[21] For more on cannons of interpretation, see Matthias Klatt, Making the Law Explicit: The Normativity of Legal Argumentation (2008), p. 17.
[22] This exercise is mostly practiced in courses such as legal skills or legal writing. See Hanson, cited above at note 17, for more on legal argument construction, p. 207.
[23] Morris L. Cohen and Robert C Berring, How to Find the Law (8th ed., 1983), p. 377. See section 4 of this article for finding tools.
[24] Chynoweth, cited above at note 3, p. 37
[25] Ibid.

legal research handbook, all of them referring to finding tools.[26] In these legal research materials, legal research is portrayed as synonymous to finding the law, in effect identifying finding tools with legal research methods. First, it should be clear that finding tools are not legal research methods, and hence they should not be mistaken for the "qualitative skills" of the traditional legal research identified in the previous section. Rather, they are tools utilized to locate the provisions of the law. Second and the point of this section, it is hard to overemphasize the importance of finding tools in carrying out doctrinal research. Simply stated, finding tools simplify access to laws, without which doctrinal analysis is not possible. Quick and efficient finding of the law is hard to imagine without finding tools. One could suppose a situation where thousands of statutory rules and judicial precedents exist in a given legal system.[27] How could a lawyer find the law – statutory rule or a precedent – pertinent to the issue at hand from this bulk of legal materials? Whether one likes it or not, everyday activities of the legal researcher – in academics or practice – relate to finding the law and finding tools are crucial.

Major factors that determine the type and complexity of finding tools of traditional legal research include the characteristics of the law that basically mean the interaction between certainty and stability of the law, the legal system such as the existence or lack of *stare decisis* in the system, multiplicity of primary sources of law that might probably be the number of statutes, judicial opinions and other primary sources of law, forms and volumes of publication of laws such as the existence of official and unofficial practice of law reporting, principles of interpretation adopted in the system, court structures, prevailing classifications of laws, governance structure , e.g. unitary vs. federal structure, hierarchy of laws, existence of statutory compilation or codes, and the variety of secondary sources.[28] Below is a brief outline of finding tools, which are likely to be found in any given legal system.

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[26] The situation is not peculiar to an Ethiopian law school. For example, those who searched for "legal research books" in an Australian university found out that "legal research means finding the law." See Desmond Manderson and Richard Mohr, "From Oxymoron to Intersection: an Epidemiology of Legal Research", 6 Law Text Culture 159 2002, p. 160.

[27] In American legal system, they have millions of reported cases and statutes; hence it is difficult to imagine tasks of legal research without finding tools. See Cohen and Berring, cited above at note 23, for more on the enormity and complexity of American legal materials and finding tools.

[28] See Cohen and Berring, cited above at note 23, especially pp 2-5.

Finding Tools

As already explained in the previous paragraphs, for quick and efficient undertaking of legal research, doctrinal research has to employ *finding tools* – a term which includes consolidations, 'codes', digests, encyclopedias, catalogs, indices, tables, and computers that facilitate the access of law and legal materials to the legal researcher.[29] Although sources of laws might vary as variations in legal systems, the law is usually sought in statutes, precedents, and secondary sources of law. To find the law in such legal materials, the following tools are commonly applied.

Case Finders

In common law tradition where judicial precedents are sources of primary authority, case-finding – a process for locating judicial decisions[30]– is a crucial skill that determines the success of legal research. Owing to its importance, in the USA for example, legal research materials have given considerable attention to cases, forms of publication, and their finding tools.[31] Such might not be the case for Ethiopia where the principle of judicial precedent has limited application. In any case, however, in many common law countries, there are different approaches to case finders such as traditional case digest systems, table of cases, word indices, legal encyclopedias, restatements, computer based search systems, and various secondary materials such as casebooks. These tools are publications, either official or commercial, put to use by legal researchers to locate cases or precedents.[32]

Statute Finders

Most relevant finding tools to legal systems such as Ethiopia's whose primary source of law is statute or legislation are statute finders. These could be chronological publications, indices of laws, legal consolidations or 'codes' in common law countries, encyclopedias, indices of legal periodicals, textbooks, and treatises.[33]

Authority finders

Before the search for the law is complete, one need ensure the current status of the statutory rule or the precedent. Since a statute or a case might be

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[29] Ibid.

[30] Id, p. 99

[31] Id, p. 17

[32] Details on these and lessons from American finding tools and for comprehensive treatment of specific tools such as the West's American Digest System, Shepard's Citations, computer search services, etc are found in Cohen and Berring, cited above at note 23. Recent editions of this material might be more useful.

[33] Cohen and Berring, cited above at note 23, p. 13. A 'code' in common law tradition refers to a subject compilation of current statutes of a given jurisdiction.

repealed, reversed, modified or amended, this function of authority finders is valuable lest one argues based on repealed or reversed provision of the law, a disastrous scenario lawyers are always anxious to avoid. While legal systems have their own tools to find authorities, the America's *Shepard's Citations* are well known.[34] Shepard's Citations "trace the judicial history of every published decision, and the later legislative *and* judicial treatment of every enacted statute."[35]

5. Empirical Legal Research and Methods

> *For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.*
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> *Justice Oliver Wendell Holmes, The Path of the Law, 10 Harvard Law Review 457 (1897)*

Three advance notices: one, as should be understood from notes on classification, empirical legal research and research about law are not one and the same. For this article at least, the latter is broader and includes theoretical studies such as theoretical parts of the "law and society". This section of the article outlines the former. The latter part, i.e. the "law and" study, as remarked in the second section, does not raise radical methodological difficulty apart from traditional legal scholarship and hence its association with methods in doctrinal research. Therefore, apart from its contribution for the emergence of empirical research indicated later, it should be left out of this section.

Two, by empirical, reference is made to both quantitative and qualitative analysis. There is nothing new with this passing note. Black's Law Dictionary defines empirical as "of, or relating to, or based on experience, experiment or observation," irrespective of numerical or non-numerical nature of the function. Three, as Professor Diamond says, it is "misleading to view the categories of empirical and non-empirical as mutually exclusive."[36] Traditional doctrinal study usually requires empirical investigation. For

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[34] Ibid. *Shepard's Citations* is "a set of volumes, which for statutes, indicates every modifications effected by the legislature and cites every judicial opinion which has construed, applied, or even mentioned it. It also performs a similar function for judicial opinions, citing every case which has in any way commented upon a prior case, and indicating the effect of each such subsequent opinion upon the precedential authority of the cited case."

[35] Id, p. 250

[36] Diamond, cited above at note 15, p. 805

example, it is through empirical investigation that the existence of a law could be ascertained. As Professors Epstein and King identify in their excellent work on empirical legal research, a "large fraction of legal scholarship [in the US] makes at least some claims about the world based on observation or experience."[37] In a similar tone, Professor George, who has carried out an empirical research of empirical legal scholarship, states "nearly all law review scholarship [which is the mouth piece of the traditional legal research] offers some statement about the real world, and thus has an empirical component."[38]

Legal realism[39] is believed to have initiated empiricism in law, with legal realists' expectations that empirical research revealed the "true nature of law."[40] But these did not mean that legal scholars immediately scrambled to undertake empirical legal research. Instead legal realists looked in other disciplines for empirical findings.[41] The subsequent development of the "Law and" movement such as "law and economics" might have also increased the chances of empirical legal scholarship.[42] Although scholars carrying on "law and society" research varied in methods, they were all committed to methods outside the law and to understanding of the law in terms of its social context.[43]

Unlike non-empirical legal scholarship which is usually concerned with how legal institutions "ought to behave," the concern in empirical legal studies is usually about the actual behavior of the law and its institutions.[44] In a typical empirical legal study, the empirical legal scholar offers a *hypothesis* of a law or

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[37] Lee Epstein and Gary King, "The Rules of Inference", 2002 The University of Chicago Law Review, Vol. 69 No. 1, p. 3. In the article, the authors adapt "the rules of inference used in the social and natural sciences to the special needs, theories, and data in legal scholarship."

[38] Tracey George, "An Empirical Study of Empirical Legal Scholarship: The Top Law Schools", 2005 Indiana Law Journal 81(1), p. 146. This article interestingly assesses "law schools based on their place in the ELS [empirical legal scholarship] movement and offers an essential ranking framework that can be adopted for other movements as well."

[39] Legal Realism is a theory that says "law is based, not on formal rules or principles, but instead on judicial decisions that should derive from social interests and public policy." Garner, cited above at note 2

[40] George, cited above at note 38, p. 144

[41] Id., p. 146

[42] Ibid.

[43] Lawrence M. Friedman, "The Law and Society Movement," 38 Stan. L. Rev. 763 1985-1986, p. 763

[44] Diamond, cited above at note 15, p. 806

legal institution and then tests that hypothesis using quantitative and qualitative techniques developed in the social and sometimes natural sciences. The evidence may be amassed by laboratory experiment such as simulated judges or collected systematically from real world observation such as the actual observation of treatment of children in schools to identify elements of discrimination, field researches such as on implementation of a certain legislative act, case studies, e.g. studying court cases of an issue with documents and interviews with plaintiffs and defendants, and archival analysis, e.g. review of all cases of the Cassation Division of the Federal Supreme Court with a sentence of life imprisonment.[45]

5.1 Methods for Empirical Legal Scholarship

There are various methods developed by social and natural sciences. A look at the outline of a textbook on social science research displays helpful insights on methods of empirical research. In a standard social science research, the following terms and concepts frequently appear: research topic, research question, hypothesis, quantitative/qualitative research, research proposals, research objectives, research design, experimental research, descriptive/correlational research, literature review, population, random/non-random sampling, data gathering, interview/questionnaire, FGD (focus group discussion), experiment, survey, observation, data analysis, statistics, SPSS (Statistical Package for the Social Sciences), internal/external validity, triangulation, ethnography, variables, replication, research ethics, and research report. [46] Many of these terms expectedly are new to the traditional legal scholar. But these are some of the concepts one has to use when setting out to perform empirical investigation. The question is: should the legal scholar take these concepts in methods and their interrelationship in the social sciences and apply them to empirical legal research?

One thing is clear. The traditional legal scholarship does not have a complete list of methods to carry out empirical legal research. Hence, it is argued, "legal scholarship needs to rely on other methodologies" to obtain empirical data vital to understand "the forces that act upon the legal system and of the

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[45] See Diamond, cited above at note 15 for explanation of some of the forms of empirical legal research.

[46] This is to incidentally mention terms/concepts one encounters and there is no intention here whatsoever to discuss methods in social sciences as applied to legal research. They are left for future research tasks. For those interested in social science methods, there are easily accessible books online and just googling will result in valuable research books.

impact of legal decisions."[47] What remain is which methods to select for adaptation to empirical legal scholarship. "The most useful fields," Professor Rubin points out, are those "whose subject matter overlaps with that of law and legal scholarship," providing economics, political science, and sociology as illustrations.[48] Different legal writers have also introduced various methods from other disciplines.[49] For example, Professor Harcourt introduced to legal studies correspondence analysis, a method that "integrates in-depth qualitative interviews with an experimental free associational component, map analysis of the interviews."[50]

5.2 Why Empirical Research Methods to the Lawyer

A question might be asked as to why law students who are likely to engage in traditional legal research as judges, for example, should be concerned with methods of empirical legal research. Two general categories of answers are identified: the lawyer as the 'consumer' and the lawyer as the 'producer' of empirical research.[51]

As the consumer of empirical scholarship, courts have always resorted to empirical evidence from other disciplines such as the social sciences. It is possible to mention frequently cited US Supreme Court case of Brown v. Board of Education, in which the Court utilized researches from the social sciences and determined "separate educational facilities are inherently unequal."[52] Although no empirical data is available to the writer to tell the situation of use of scientific findings in Ethiopian courts, a point could be made using the concept of expert testimony in the Criminal Code. Article 51

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[47] Edward L. Rubin, "Law and the Methodology of Law", 1997 Wis. L. Rev. 521 1997, p. 521

[48] Id., p. 565

[49] For a comprehensive adaptation of research methods to empirical legal scholarship, especially aimed for use by legal scholars and explained with the help of actual empirical legal researches in connection with amassing data, summarizing data, making descriptive or causal inferences, replication, and research design (research questions, hypothesis, measurement, estimation, recording the process, identification of population, sampling) see Epstein and King, cited above at note 37.

[50] Bernard E. Harcourt, "Measured Interpretation: Introducing the Methods of Correspondence Analysis to Legal Studies", 2002 U. Ill. L. Rev. 979 2002

[51] For brief explanation on being a consumer and producer of research, see Scott W. Vanderstoep and Deirdre D. Johnston, Research Methods for Everyday Life: Blending Qualitative and Quantitative Approaches (2009).

[52] Cohen and Berring, cited above at note 23, p. 556

provides for expert testimony.[53] Specifically sub-article three says "on the basis of the expert evidence the Court shall make such decision … In reaching its decision it shall be bound solely by *definite scientific findings* and not by the appreciation of the expert as to the legal inferences..." (Emphasis added!)

An issue might arise as to the sub-article's implied assumption that scientific findings are always definite. As a matter of fact the main criticism for use of empirical data for legal decision making is that empirical evidence presented to courts is usually "flawed and unhelpful."[54] Again, the sub-article does not state the criteria for the Court to determine whether the finding is scientific or not.[55] This point is more relevant to the discussion here. What if there are competing scientific findings in the area under consideration? Reasonably, the Court has to apply the criteria of methods to appreciate competing findings. As Professor Meares indicated, "courts, with absence of training in empiricism, are not capable of dealing with complicated and sometimes conflicting social science data."[56] This argument applies to all participants in law and legal institutions: practitioners, academicians, policy makers, and legal researchers.

Moreover the complete understanding of law and the legal system is difficult without the help of empiricism. The traditional legal scholarship usually considered law as "self- contained system that... works like a syllogism" with abstract principles and legal rules "combined with … facts … leading deductively to legal outcomes."[57] However, in reality as explained by law and society movement, law is "far from a closed system of logic" and "is tightly interconnected with society."[58]

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[53] The Criminal Code of the Federal Republic of Ethiopia, 2004, Art. 51, Proc. No. 414/2004

[54] Tracy L. Meares, "Three objections to the Use of Empiricism in Criminal Law and Procedure – and Three Answers," 2002 U. Ill. L. Rev. 851 2002, p. 854

[55] For example the US Supreme Court has identified four criteria for expert testimony to be considered as scientific which are associated with possibility of falsifiability of the theories, publication of the methods in peer-reviewed journals, existence of known rate of error, and methods generally accepted in the scientific community concerned. Ulen, cited above at note 13

[56] Meares, cited above at note 54

[57] Kitty Calavita, Invitation to Law & Society: An Introduction to the Study of Real Law, (2010), p. 4

[58] Id, p. 5

Overall as often asserted, most of a lawyer's work involves factual issues "rather than great abstract issues of law," requiring the ability to find and use facts.[59] This in effect requires mastery of methods of empirical research which would permit the assessment of accuracy and validity of data.

Equally important, as producer, a lawyer needs methods to produce empirical legal scholarship. As already outlined in previous sections, legal scholars have been carrying out empirical research. What was missing in those research works has been the observance of methods of empirical study. Even in Ethiopian research practices at law schools, it is common to encounter researches on "the law and the practice" – for example, consider a research topic which reads "Freedom of Information in Ethiopia: the Law and the Practice."[60] Although it seems on the face doctrinal research, such researches have elements in empirical investigation. How does the researcher know the practice? Obviously, through empirical investigation of the behavior of institutions and individuals involved. Without the knowledge and proper utilization of methods in empirical investigation, the researcher is unlikely to accurately describe the practice. Hence systematic usage of methods is required to accept findings that claim to represent reality.

Another practical reason might be, unlike in the past, many students and practitioners of law are being called up on, out of necessity in most cases, to carry out empirical investigation. For example, many investigative researches on the implementation of human rights laws in Ethiopia are being carried out by lawyers. Moreover, a few graduates of law are also shunning the traditional practice of law preferring to engage in other undertakings requiring skills in empirical research. In all these activities, methods in empirical research are very important.

It should be noted here that empirical legal scholarship could be carried out by students from social sciences with their tools and techniques in empirical research, depriving any urgency to the engagement of law students. It is also quite possible that empirical legal scholarship is "open to participants from the social sciences," the principal reason being law schools' traditional reluctance to train empirical scholars.[61] However, "non-lawyers have the distinct disadvantage of often not understanding legal doctrine or the state of

[59] Cohen and Berring, cited above at note 23, p. 517

[60] Freedom of the Mass Media and Access to Information Proclamation,2008, Proc. No 590, Neg. Gaz. Year 14, No. 64

[61] Mark Suchman, "Empirical Legal Studies: Sociology of Law, or Something ELS Entirely?" Amici 2006 13(2), pp 1-4

the law" to carry out empirical legal scholarship.[62] By studying methods in empirical research, the lawyer will exploit the advantage of understanding the contours of law and its institutions.

5.3 Areas for Empirical Legal Scholarship

Theoretically speaking, almost all areas of law are candidates to empirical investigation. Although evidence of increased empirical legal research is found across numerous areas of legal scholarship, its development within particular areas is said to be uneven.[63] Regarding legal institutions, for example, studies about court attitudes are common in empirical studies in the USA, resulting in interesting insights in judicial behavior. For example, a systematic analysis of appellate court behavior indicated that defendants have substantial advantage over plaintiffs on appeal.[64] Regarding doctrines, examples are abundant. Professor Korobkin in the USA, for example, carried out review of empirical researches in contract law, which dealt with various issues including contracting practices of parties, experimental studies of contracting behavior (using hypothetical parties), and opinions of contracting parties about contract law.[65]

5.4 Shortage of Empirical Legal Research

While there are a number of legal issues that could be subjected to it, empirical legal scholarship has not matched the volume of traditional legal scholarship. Some writers speculated on reasons for the shortage of empirical legal research. One is the traditional perception that law by itself is the "servant of the legal profession," interested in "expository, doctrinal or black-letter tradition" instead of empirical investigation.[66] Others include lack of theoretical work that could stimulate a demand for empirical work and lack of training necessary to carry out empirical investigation.[67] A hard work required for empirical legal scholarship, a fear of embarrassment of

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[62] Theodore Eisenberg, "Why Do Empirical Legal Scholarship?", 41 San Diego L. Rev. 1741 2004, p. 1741

[63] Michael Heise, "The Past, Present, and Future of Empirical Leal Scholarship: Judicial Decision Making and the New Empiricism", 2002 U. Ill. L. Rev. 819, p. 825

[64] Kevin M. Clermont and Theodore Eisenberg, "Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ from Negotiable Instruments", 2002 U. Ill. L. Rev. 947

[65] Russsell Korobkin, "Empirical Scholarship in Contract Law: Possibilities and Pitfalls", 2002 U. Ill. L. Rev. 1033

[66] Paul Chynoweth, "Editorial", International Journal of Law in the Built Environment, 2009 Vol. 1 No. 1 pp 5-8

[67] Ulen, cited above at note 13, p. 914. The article suggests ways and methods for the scientific study of law.

falsification by replication (a possibility in empirical scholarship), lack of prestige for empirical legal research, and lack of institutional incentive are all identified as contributing to the shortage of empirical studies in law.[68] Other reasons provided for neglect of empirical legal scholarship include the inconvenience of going out of the library, inability to control data from the field, uncertainty of findings, and constraints in resources and time.[69] "Lack of an adequate market for those who become trained personnel" has also been long identified.[70]

6. 'Primary' and 'Secondary' Sources

Another point of ambiguity in the study of legal research methods has been the meanings of these terms as used in law and elsewhere. Before a brief outline, one initial distinction has to be made. Primary *source* is no primary *legislation*. The terms *primary* and *secondary* used together with the term *legislation* simply identify the hierarchy of institutions issuing the laws. In English legal system, for example, primary legislation or simply statute is a legislation issued by the Parliament while secondary legislation (delegated legislation or subordinate legislation) is issued by authorized lower organs.[71] In the federal context of Ethiopia, proclamations would be primary legislations while regulations and directives fall under the category of secondary legislations.

6.1 'Primary' and 'Secondary' Sources in Doctrinal Legal Research

In doctrinal legal research, the terms primary and secondary refer normally to sources of *law*. Hence they are about the binding nature of the 'authority' under consideration. Primary sources of law, which have binding nature, might be statutes and judicial opinions, assuming the latter are also binding in the given legal system. In Ethiopian context, primary sources include proclamations, regulations, and directives. On the other hand, secondary sources of law, which mostly cite or analyze primary sources, do not have the binding force as statutes. However, depending on their quality, they may have persuasive power in supporting legal arguments presented based upon primary sources of law.[72] In the category of secondary sources of law fall legal encyclopedias, treatises, civil law commentaries, textbooks,

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[68] Michael Heise, "The Importance of Being Empirical" 26 Pepp. L. Rev. 807 1998-1999, pp. 816-824

[69] Peter H. Schuck, "Why Don't Law Professors Do More Empirical Research?", 39 J. Legal Educ. 323 1989, pp. 333 & 334

[70] Llewellyn, cited above at note 14, p.14

[71] Hanson, cited above at note 17, p. 40

[72] Cohen and Berring, cited above at note 23, p. 14

restatements, legal dictionaries, or periodical articles, which are helpful for their explanation of concepts, terminology, rules, and summaries of primary sources of law.[73] In continental legal tradition such as in Ethiopia where there is limited application of the principle of judicial precedent, court decisions are also good secondary sources of law.

6.2 'Primary' and 'Secondary' in Empirical Legal Research

Taking the example of empirical scholarship in other disciplines, this classification has to depend on how the data is obtained. First-hand data collected by the researcher is considered primary data, while information obtained from reports made available by other researchers or interested people would be secondary data. Hence from this, data obtained by observation, experiment, archival analysis, etc by the legal researcher herself will be primary data and the source primary source of data. Other data obtained by reviewing research reports, books, encyclopedias, dictionaries, directories, abstracts, etc would be secondary data and the source secondary source of data.

7. Legal Research in Ethiopia

As indicated in the introductory section, issues and assertions on the state of Ethiopian legal research methods are based on personal observations[74], exchanges of ideas with colleagues teaching law, legal practitioners and students, and an empirical survey. Having noted this, in this paragraph, issues helping the reader appreciate the gravity of concerns in legal research tools and methods in Ethiopia are raised. General questions first: where is the Ethiopian jurisprudence found – the state of the law, the books, the journals, the cases, and the authorities? Or in terms of the scholar, do academicians and practitioners of law in Ethiopia quickly and efficiently navigate their way out of all constitutions, proclamations, regulations, directives, and policies of the State every time they encounter a legal issue? Less general: does the Ethiopian legal researcher have bibliographies or indices identifying materials to understand national jurisprudence? A specific one: how many law review journals are published in Ethiopia and is there a device or tool – such as a periodical index – to systematically retrieve and consume any of the articles in those journals? A question on use of resources: is there any way of

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[73] Id, p. 433

[74] Among others, two years back, the writer taught legal research methods to students of the School of Law (AAU). Students' home assignments and class discussions focused mostly on types of research of selected undergraduate papers, what factors made them so, whether the papers combined features of other research types, what law finding tools were available to the student, etc.

finding out whether any Ethiopian law article or a book has ever assisted in court litigations or policy making? A question on practice: what is the situation and utility of empirical legal scholarship in Ethiopia? Having raised general questions, additional questions, many of them rhetorical, are raised where necessary under categories of doctrinal and empirical research.

7.1 Doctrinal Research

What finding tools do Ethiopian legal scholars have for primary sources of law? From the writer's observation, there are not many finding tools in Ethiopia that could be used in doctrinal legal research. This question has also been part of the survey conducted at the School of Law. To begin with, one could say that the question may not necessarily be answered by looking at mere research reports since there is no obligation under rules of citation to specify how one finds the law except that the law is cited. Although that is mostly true, clues could be found in the introductory and bibliographic parts of research reports. For lack of Ethiopian finding tools, however, no Ethiopian consolidations, law finders, and encyclopaedias were identified in the research reports investigated. Still Ethiopian journals, books, *Negarit Gazeta*s, and cases cited in the investigated articles and papers could be taken as finding tools although their principal aim in the reports is serving as sources of laws, ideas, arguments and authorities.

Owing to nature and lack of systematic organization of these sources, however, their services as finding tools are very much limited. Regarding Ethiopian journals and books, they are not systematically indexed and hence there is little guarantee that they are either comprehensive or up to date. Rightly, it has become natural for law schools, associations and institutions to have their own periodicals. Again, to the delight of legal scholars, many books on topics such as contract law, criminal law, labour law, and company law are being published. But there are not similar efforts to index those articles and books or to prepare bibliography based on systematic identification of topics and sub-topics. Moreover, chronological publications of laws – mainly *Negarit Gazeta* that is invariably used in all legal researches – do not promise ease of subject access to legal rules.

In this regard, the good beginnings of indexing that was carried out by the School of Law at the early days of JEL's publication deserve mention here. During those good times for legal scholarship, the Journal's editors had indices for JEL's articles both by authors and subject, indices of cases cited,

and table of laws cited.[75] It was unfortunate those good starts were just that. From recent efforts, *ad hoc* bibliographies such as the Bibliography on Ethiopian law by Peter H. Sand and Muradu Abdo are quiet encouraging.[76] Still with unmatched importance as a finding tool so far, the electronic copy of federal laws compiled by Digital Ethiopia PLC is worth noting.[77]

Coming to other findings, issues could arise as to the existence of tools that assist legal researchers in ascertaining the state of the law in Ethiopia. It is common knowledge among academics and practitioners that there is no as such a systematic tool to identify the present state of the law. There is also little in the survey findings that indicate the availability of such a tool to the legal researcher. In the absence of such systematic tool, it is common among legal scholars to depend on their personal skills to discover the state of the law by searching through volumes of *Negarit Gazet*. It is also natural for Ethiopian legal scholars to depend on common knowledge to determine the state of the law. For example, researchers on constitutional law might benefit from the public knowledge that the FDRE Constitution has never been amended and hence the text is the state of the law. How far personal skills and common knowledge of the state of the law would be useful for the present day sophisticated Ethiopian lawyer facing an increasing number of constitutions, proclamations, regulations, directives, authoritative judicial and quasi-judicial decisions, and legal publications?

Keeping with constant changes in laws is crucial. The legal scholar has to be able to easily identify if a legal rule for a case is operational, repealed or modified. Presently, *ad hoc* and private compilations, e.g. 'as amended', at law schools are common. But one could also imagine of something similar to Shepardizing[78] to Ethiopia. In tracing the state of the law, it should be noted, the Consolidation works of the 1970's by the School of Law were admirable.[79]

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[75] Reference is made here to Journal of Ethiopian Law, Vol. IV No. 2 (1967) and Vol. VI No. 2 (1969).

[76] Peter H. Sand and Muradu Abdo, "A Bibliography on Ethiopian Law", Journal of Ethiopian Law, Vol. XXIII No. 2, (2009), pp. 204-244

[77] Digital Ethiopia PLC (Federal Negarit Gazeta from 1995 to 2006, CD-ROM, 2007)

[78] *Sheprdizing* is a way to determine the subsequent history of a case by using Shepard's Citators or similar means. Garner, cited above at note 2. It is a hypothetical equivalent to Ethiopia of a publication that sytematically reports the subsequent history of each provision of every Ethiopian legislation, which might be a legislative repeal, amendment, judicial development or interpretation.

[79] Faculty of Law of Haile Sellassie I University, Consolidated Laws of Ethiopia: An Unofficial Compilation of National Laws in Effect as of September 10, 1969, Volumes I & II (1972)

However, their relevance today is little more than historical for the legal researcher engaged in everyday doctrinal research.

More questions could be posed not only about tools but the content of the law itself. How can a legal scholar or a lawyer with an actual case, for example, locate federal administrative directives in Ethiopia, which are mostly left unreported, especially considering the total absence of consolidations of directives with annotations and subject indices? In this connection, websites of government organs such as the National Electoral Board of Ethiopia and the Ethiopian Revenues and Customs Authority, if sustained, are good beginnings in ensuring ease of access of laws, directives and forms in their areas of responsibility. By providing their sectoral policies, proclamations, regulations, directives, programs, and strategies, websites of many other sectoral offices have already become very useful in undertaking legal research.

Issues also routinely arise regarding laws of regional states. How does one discover laws of national regional states, for example laws of Oromia National Regional State, especially where comparative legal analysis is carried out? This is not a mere theoretical question. For example, law students frequently encounter difficulties of finding family codes of national regional states for their assignments in family law. The same applies to their studies in land law. More important is the necessity of accommodating the country's federal system of governance in legal research and scholarship. It may not be the time or will never be to contemplate the issuance of uniform laws for adoption by regional states, owing to limited legislative mandates of national regional states; but there are still areas on family law, land administration, constitutions, and even practices on which comparative works could flourish. Legal studies as a result will have a few more reasons to attempt consolidations of laws of regional states thereby ensuring ease of access of regional laws at national level.

Out of curiosity, do legal researchers profit out of tools, if any, that systematically organize and report legislative history of say parliamentary acts, which are usually necessary in works of interpretation? It is stating the obvious to say that doctrinal legal researches in Ethiopia usually rely to varied degree on preparatory materials. In the surveyed research reports, appeal to preparatory works is common. However, accessibility of these works poses a challenge. For the study of constitutional law, for example, accessibility of minutes of the Constitutional Assembly – especially physical and language accessibility – is in doubt. The same applies to the jurisprudence on constitutional law in Ethiopia as determined and elaborated

by constitutional review organs, the principal being the House of Federation (HoF) of FDRE. At present, studies on constitutional law in Ethiopia substantially depend on comparative analysis of foreign and international materials. But such studies have to progress towards domestic interpretation and application of the Constitution mainly by the HoF.[80] In this regard, the Journal of Constitutional Decisions, which publishes decisions of the HoF regarding constitutional 'interpretation' and 'questions' is praiseworthy.[81]

With the interpretation power of the Cassation Division of the Federal Supreme Court, it is now high time to think of devising systematic ways of case reporting for the Court's interpretative decisions.[82] The legal researcher might think of 'restatement' of interpretations by extracting interpretative rules found in the Court's judgments. Considering the bilingual nature of federal laws, there should also be an attempt to have official or unofficial translation of the Court's interpretative decisions. In this regard, the publications of the Federal Supreme Court containing judgments of the Cassation Division classified under major topics such as civil procedure, jurisdiction, contract, and commercial law and its website containing cases and federal proclamations are impressive.[83]

To end this section with an emerging contribution of private individuals for the doctrinal study of law through the use of information technology is appropriate. At present, few private Ethiopian websites and blogs have

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[80] Constitution of the Federal Democratic Republic of Ethiopia, 1995, Articles 62, 83, & 84, Proc. No 1, Neg. Gaz. Year 1 No. 1. The House of Federation is empowered to interpret the Constitution with the assistance of its advisory organ, the Council of Constitutional Inquiry.

[81] Office of the House of Federation, Journal of Constitutional Decisions, Vol. 1, No. 1, Hamle 2000 (E.C.)

[82] In publications of cases, in addition to Ethiopia's experience, one could take lessons from case reporting in common law traditions. For example, in case reporting in the USA, components of a case include a caption (with names of parties, docket number, attorneys), and syllabus and head-notes (a summary or digest of a point of law decided by the court, opinion, and holding and dicta). See Cohen and Berring, cited above at note 23, pp 26-34.

[83] Other headings used in case publications of the Court include family, execution, criminal law, property, extra-contractual liability, labour, bank and insurance, customs and taxes, agency, intellectual property and miscellaneous others. The website of the Supreme Court (http://www.fsc.gov.et/) is the most elaborate from those of other government offices in providing federal laws and the Courts' judgments and useful for legal research as long as it is accessible all the time and sustainable.

popped up. Some of them are owned and administered by practicing lawyers, others by academicians and some by postgraduate students. Their typical features include commentaries on recent legislations, opinion on controversial legal issues, some allowing participation of guests, and some with legal news. Interestingly, some of them supply federal laws and directives. Four of them selected with the help of Google Search deserve mention here[84]: http://chilot.me/, a legal blog which supplies proclamations, regulations, directives, teaching materials, some journal articles and student papers; http://ethiopianlaw.com/blog, which provides brief articles on variety of legal issues both in Amharic and English and a newsletter to subscribers; http://www.ethiopian-law.com/, which, though in its early stage, is a promising one in terms of breadth of coverage and organization of topics; and http://www.abyssinialaw.com/index.php/home, which provides legal news and allows other bloggers to lead discussions on topics of their choice.

These and other similar websites, as long as they comply with ethical standards of the profession, have to be congratulated. One major disadvantage of these websites and blogs has to be acknowledged, however. As is the case with other blogs, writings and commentaries appearing in those websites are not peer-reviewed and hence difficulties arise in assessing the quality of opinion and positions expressed in those electronic sources.

7.2 Empirical Research

The situation of empirical legal scholarship in Ethiopia is one area that methods of legal research have to focus. From the survey, it is easy to see that empirical legal researches are carried out routinely. While the number of empirical legal researches in journal articles is small (the ratio is 1 to 15), the number of empirical researches by students especially at graduate level is impressive. Seven out of ten legal researches in the masters program are empirical while at undergraduate level it is 4 out of 10. Three hypotheses might be made to explain the disparity: one is availability of a research fund, which empirical researches need, to postgraduate students while the fund is very small to undergraduate students, and almost null for publications in JEL. Two, postgraduate students have in their curriculum empirical research methods while there is little guidance on similar methods to contributions for

[84] In the selection of these four blogs and websites, the writer used two queries 'Ethiopian legal blog' and 'Ethiopian legal website', one after the other, in Google Search. The first three search results were identified for both queries, resulting in four of the websites identified here. The websites were checked for content and ownership as they stood on the 25th of July 2012.

JEL. The third explanation is availability of time allocated outside the library. While students are given time with mandatory requirements, for example a full semester for graduate students, writers for JEL might have little time to spare for many of contributors are engaged in teaching or practice that involves full-time.

In addition to these three, inaccessibility of legal materials could arguably be another factor that poses a challenge to empirical legal research in Ethiopia. Ease of access, for example in terms of language and physical accessibility, to decided cases by Ethiopian courts is crucial in empirical investigation of judicial practices. From this it is logical to suspect that difficulty of access is one reason why empirical researches of court practices usually study a couple of cases and profess empiricism. In one of the research reports investigated, for example, only three cases were studied to show the practice. As already indicated, the publication of cases by the Federal Supreme Court is one step forward towards organized system of case reporting, providing an opportunity to researchers to study the practice of the Supreme Court.

Another point worth noting of empirical research in Ethiopia is about methods that suit empirical legal scholarship. Here it should be noted that considering the curricula of legal research methods both at graduate and undergraduate levels, the tendency is to adapt social science research methods to empirical legal studies. That should raise little objection. However, the full integration of those methods as suiting legal issues and topics has yet to come. The finding, as outlined in the next section, from the research reports studied is that there is little to indicate the existence of strict observance of empirical methods in empirical legal studies.

Regarding topics for research, there seems to be no limit on doctrines and institutions that could be subjected to empirical scholarship. Commercial law, the judiciary, intergovernmental issues in the context of Ethiopian federal system, land, institutional frameworks, international law, human rights law, finance, customary law, family law, and administrative tribunals were all subjected to empirical investigation in the research reports examined. What probably are missing topics from the small number of researchers examined are reform-oriented researches that are based on empirical studies and interdisciplinary researches like law and sociology. While there are reform oriented researches, they are based on comparative studies of international and foreign experiences and hence mostly doctrinal studies. In interdisciplinary studies likewise, there is little evidence showing the interest of legal scholars in carrying out researches on law and economics or law and sociology in Ethiopian context.

8. Law Schools and Research Methods

As already indicated, the introduction of empirical research methods to Ethiopian law schools at undergraduate level is a welcome phenomenon.[85] Postgraduate students of law are also taking research methods as a mandatory preparatory module at AAU. That seems to be the reason why, as commented earlier, empirical studies are greater in number than doctrinal studies at postgraduate level. But in light of rules of empirical research methods, students' works are far from valid. Although small deployment of empirical methods might lure many of traditional legal academics not trained in empirical research, students' empirical works are mostly fraught with methodological errors such as using unrepresentative samples, failure to identify population of the study, and use of improper tools and techniques. These errors are happening on the face of students' admission that their works are empirically carried out with empirical methods.

In the surveyed research reports which are considered empirical, students have failed to identify the population of their study, the methods of their sampling, and other necessary elements in methods. Even in those cases where interviewees are identified, little information is given for the reader to assess the authoritative nature of statements by interviewees. In a couple of cases, blanket identification of interviewees as 'authorities concerned' is made. But such wholesale assertions mean little to the reader in examination of the persuasive nature of statements made. Moreover, there is little indication in the empirical studies as to reasons, if any, in limiting any given sample size. For example, in one empirical study to which a point is made above, three cases were the only cases for the study, which offers no explanation as to why the research is limited to these three. This is not to say that three cases are not in any way enough for empirical studies. It could be that three cases are the only cases in the country or in some way they are representative of the whole set of relevant cases, in either case three would be the right size for the study. But in the instant research report, the reader is not told if any justifiable reasons existed to take the three as a representative sample. This brings up the next issue of disclosure.

One crucial point that should be underlined regarding students' empirical legal research is the importance of disclosure. Often students performing empirical legal research, like their counterparts in doctrinal research, are

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[85] In the US they have already started ranking law schools based on empirical research. Whatever rationale and merits it has, such ranking implies the significance of empirical legal scholarship in the status of law schools. On such ranking, see George, cited above at note 38, p. 150.

reluctant to disclose every step and details of the process of their legal research. None of the empirical researches investigated for this study have full disclosure of methodology. Some of them do not have any part in methodology, except postgraduate students, who have allotted a section on methodology. From those having a section on methodology, many do not provide information on their sampling techniques, how representative the size of the sample is, features of the sample selected, or list of questions for data gathering. This absence or lack of disclosure is not a good sign for empirical studies. Unlike in doctrinal research, "publicity and transparency in empirical inquiry play a crucial role" to verify the reliability of the findings.[86] Disclosure for empirical research is like presenting documentary evidence and witnesses to a court of law. Without observance of the norms of disclosure, empirical findings are usually rejected in similar ways a court rejects claims without evidence. What is important here is "methods and results underlying empirical claims must be made public in detailed, [and in] reproducible terms."[87] Hence students undertaking empirical legal scholarship are duty bound to disclose the details of the process of their research; hence supervision of such works has to enforce this duty.

As far as empirical research works of students are concerned, there are two choices: either law schools should let students do empirical research in which case the schools have to strictly enforce the rules on methods in empirical research lest their researches are superficial and findings flawed; or deny students where they are not willing or able to observe rules of empirical

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[86] Gregory Mitchell, "Empirical Legal Scholarship as Scientific Dialogue", 83 N.C. L. Rev. 167 2004-2005, p. 180

[87] For common rules of disclosure, the content, and format, see Id., pp. 202 and 203. For example, disclosures of primary purpose of the investigation, statement of the problem, the phenomena to be described, and/or specific hypotheses or theoretical propositions to be tested, the larger body of empirical inquiry (comparable to literature review), disclosure of sufficient information to allow another investigator to evaluate methods and verify results, including disclosure of research design employed and a description of all variables studied, description of the sample of observations, the procedure for collecting data, including sampling techniques and the identity of any archives used in the research, relevant distinguishing characteristics of different data sources, time period during which observations were obtained from survey, experimental, and/or field research, data sources that did not provide complete data or that had to be eliminated after initiation of the study, explanation as to why complete data could not be obtained, description of any apparatuses, instruments, or other tangible materials employed in the study, step-by-step description of the procedure employed in execution of the research, the data collected and the results of statistical analyses conducted on the data are identified as subjects of disclosure.

research in which case they should limit themselves to the traditional legal research and analysis.

Issues of plagiarism at law schools also deserve some attention here. In today's scholarship, owing to ease of access of materials, concerns of plagiarism have been voiced among academicians. Those concerns have already permeated law papers – law theses and assignments. Plagiarism means roughly "presenting the ideas or data of others as his or her own."[88] This trend has to be countered and remedial measures have to be put in place. Since ignorance of what amounted to 'plagiarism' is said to be the principal factor for the commission of the offence, clear instructions have to be given on plagiarism in courses such as legal research methods. Moreover, while it will not be a magic wand, systematic organization and retrieval of Ethiopian legal materials with the help of finding tools might deter plagiarism. For example, if all law schools share topics and themes of legal research outputs including students' theses and legal periodicals, detecting plagiarism in legal writings would be much easier.

9. Rules of Citation

Another important point in any research undertaking is the use of rules of citation. To create uniformity among legal scholars, close to study of law, different rules of citation were issued typical of them being the Blue Book in the USA. One undesirable attitude in Ethiopian legal research in this regard is the mistaking of rules of citation for legal research methods. Although the rules are part of rules of methods that should be followed in research reporting, they are small, still necessary, part of research writing. Again another undesirable attitude is the lack of attention accorded to rules of citation in Ethiopian legal studies.

Two points could be raised here. One is whether the Ethiopian legal scholarship has rules of citation, including for use in court pleadings. The other issue is whether those rules are mandatory. For the first, there seems to be no consensus on rules of citation applicable to all law schools, let alone legal scholarship. Even it is not clear which rules of citation each school or department of law recommends for use by its students. The example of the School of Law (AAU) is instructive. It is not unusual to find law students of the School submitting the final draft of their thesis confessing, when asked, their ignorance of the Rules of Citation of the Faculty of Law.[89] That might

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[88] Vanderstoep and Johnston, cited above at note 51, pp 19&20

[89] Faculty of Law, Book of Citation of the Faculty of Law (1965, unpublished). To the writer's knowledge, there has not been any attempt to update and popularize this

arguably be attributed to students' lack of diligence. But are these Rules, which have not been updated, mandatory for papers submitted to the School and if yes on what basis? This brings one to the second issue. Are there compulsory rules of citation in legal scholarship in Ethiopia, referring to the Blue Book or any other standard citation guide? While court-sanctioned rules of citation are not unusual in some jurisdictions for memorials or pleadings presented to courts, the Ethiopian lawyer need not ironically identify the legal rule in pleadings before courts, let alone sources and proper citations.[90] Should this trend continue or should at least law schools be encouraged to provide express guidance on rules of citation for legal research, with continuous updating of these rules? The citation guide of JEL in this regard should be commended.

10. Conclusions and Recommendations

The question in doctrinal legal research is not whether the traditional lawyer has methodology or not. Although legal scholars do not usually call them methodology, there are powerful instruments of logic, rules of interpretation, legal analysis and synthesis, and deductive and inductive reasoning for research works in doctrinal legal scholarship. These are the instruments and skills that legal scholars mostly need in their everyday activities as practitioners and academics of law. However, a noticeable challenge in

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valuable Book of Citation. Nevertheless, this Book has been a useful guide in terms of content and form of citation for students of law. It has also significantly contributed to the 'rules of citation' section of the present undergraduate teaching material on legal research methods (cited above at note 1). The Book of Citation provides comprehensive guidance on forms of citation for materials such as books, journal articles, newspapers and magazines, judicial decisions, codes, legislations, and consolidations. If the Book is updated to take account of, among others, the present state of legal publications in Ethiopia, the existence of federal and regional laws and courts, and electronic sources, it could be very useful in setting standards of citation for legal scholarship in Ethiopia.

[90] For example, consider the Civil Procedure Code that allows the submission of pleadings without the necessity of citation of law let alone 'rules of citation.' In the Civil Procedure Code, Articles 80 and the following, which require pleadings to be as near as may be to the appropriate Form, no legal arguments are mandated let alone references and citations. Mention to the Federal Court Advocates' Code of Conduct Council of Ministers Regulations No. 57/1999 (Article 7.1) may also be made: An Advocate shall have the obligation, after evaluating the facts and evidences of the case, to assist his client reach on the proper decision by giving him explanation based on the law as to the possible result or alternative results of the matter, and the type and scope of representation that must be assumed to obtain the desired result. Although legal explanation has to be given, there is no reference to citation or the exact source of law to be identified to the client.

doctrinal legal scholarship in Ethiopia exists and it is the absence of finding tools, either to find the law or literature on Ethiopian laws and institutions.

It should be admitted that it is neither necessary nor desirable to have complex finding tools like in the American system. The volumes and kinds of laws and the Ethiopian legal system do not yet justify such a complex scheme in the study and practice of law. But still, one should agree, statutory materials and their updates are not easy to locate. There are no consolidations, little subject access to legislations especially secondary legislations, no systematic way of tracing later history of statutory provisions, and so on. Statutes are not all. There are interpretations and practices produced by institutions and scholars that should be investigated and studied. One has to be able to easily trace these sources through finding tools such as indices of legal periodicals and digests of court cases. The task of devising such tools awaits Ethiopian legal scholars.

Since "contemporary legal scholarship has become pluralistic in its values, purposes, methods, and perspectives," [91] legal studies have already embraced empirical research methods. The natural path is adaptation of research methods in the social sciences and humanities. But the adaptation should be systematic and well informed. Simple copying of methods without testing their relevance and application to legal doctrines and institutions has to be discouraged. An 'empirical' legal scholarship of interviews with a couple of judges or authorities with no due regard, for instance, to 'population' of the study and 'representative sampling' is 'mediocrity' in empiricism and hence efforts have to be exerted to incorporate valid empirical methods in legal studies.

It is here natural to raise the question of responsibility of tackling urgent issues of Ethiopian legal scholarship identified in this article. Is it the responsibility of law schools, legal academics, practitioners, or the government to tackle any of the issues and concerns expressed in this article? Law schools – especially research and publication units – might have interest in taking the initiative to devise networks among all stakeholders in ensuring systematic publications of all primary and secondary legislations including directives, notices, and standard forms, systematic reporting of current developments in the law, and systematic organization of indices of Ethiopian legal periodicals, and indices of law student research papers. Law schools could also encourage publication of books like traditional commentaries, which should integrate the practice to develop national jurisprudence on

[91] Kissam, cited above at note 4, p. 252

various subjects of law. Since law schools have little resources to carry out either of these activities, they should be encouraged to seek financial assistance from outside. These same activities could be carried out by bar or lawyers' associations, which might at the same time extend technical and financial assistance to law schools.

The Government's role in these undertakings should not be underestimated. For example, without government's involvement, timely publication and retrieval of administrative directives, rules, policies and notices is difficult. The role of the House of Peoples' Representatives in official consolidations of federal proclamations is unavoidable. Again technical support from government organs such as the Justice and Legal System Research Institute (JLSRI) should be counted on.[92] Among government organs, the legal mandate of the Ministry of Justice in consolidation of federal and regional laws is also crucial. The Ministry of Justice, which also controls the JLSRI, has the powers and duties, among others, to "undertake legal reform studies and carry out the codification and consolidation of federal laws; collect Regional State laws and consolidate same as necessary."[93]

In the end two general concerted efforts are called for: one relates to finding tools namely to assess the situation of finding tools in Ethiopia, carry out their comparative analysis in varied jurisdictions, determine the necessity or desirability of those tools to Ethiopia, and offer concrete suggestions for action; and two relates to empirical legal research namely to assess the state of empirical legal scholarship in Ethiopia, carry out comparative analysis of empirical methods among jurisdictions and disciplines, determine the promise of empirical methods to the development of legal scholarship, and offer concrete suggestions for action.

Note, Instructions and Questions for the Survey

Note

The survey, carried out with the help of two students at the School of Law, is made to assess principal features of legal research at the School of Law of

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[92] Justice and Legal System Research Institute Establishment Council of Ministers Regulations, 1997, Reg. No. 22, Neg. Gaz. Year 4 No. 8. Given its legislative powers and duties such as undertaking legal studies with a view to consolidating, updating and making laws accessible, publishing and distributing legal information, and undertaking studies necessary for the promotion of legal education (Article 5), the Institute, in cooperation with law schools, would be the ideal place to tackle many of Ethiopian legal research issues raised in this article.

[93] Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010, Article 16 (2)

Addis Ababa University. Three categories of research were identified: researches published in the Journal of Ethiopian Law, researches by postgraduate students (as a requirement for LLM), and researches by undergraduate students (as a requirement for LLB).

Note for the Student

Dear Student:

These questions are prepared to survey legal research tools and methods used at the School of Law, Addis Ababa University. Two important concepts (doctrinal and empirical or non-doctrinal legal research), which are useful in making the survey, are indicated. Once you take note of the concepts, you may proceed with the survey.

1. **Doctrinal Research** is the conventional legal research, which might try to formulate legal doctrines through analysis of legal rules; which might try to clarify the law; and which focuses on black-letter law concerned with the prevailing state of the law, etc.

2. **Empirical Legal Research** is a kind of research common in the social sciences. Unlike doctrinal legal research, the concern in empirical legal studies is usually about the actual behavior of law and its institutions. In a typical empirical legal study, the empirical legal scholar offers a *hypothesis* of a law or legal institution and then tests that hypothesis using quantitative and qualitative techniques developed in the social sciences. The evidence may be gathered by laboratory experiment or collected systematically from real world observation (such as the actual observation of treatment of children in school to identify elements of discrimination), field researches (such as on implementation of a certain legislative act), case studies (e.g. studying court cases of an issue with documents and interviews with plaintiffs and defendants), etc.

Instructions

1. Randomly select 5 theses (or senior papers) for each year from those submitted in the last 3 years. Overall you will select 15 senior papers. You could simply pick the first 5 in a given list or you could take every 10 until you have 5 for each year or whatever is convenient for you. What is important is you have to do it ***randomly***. Do not under any circumstances intentionally select or discard any thesis of the year under consideration. [Similar instructions were given to all the three categories of research reports. The instructions for graduate and undergraduate researches are almost identical. For publications in the Journal of Ethiopian Law, this instruction reads: Randomly select 5 issues of JEL or you could simply take the last 5 issues of JEL. The study should be limited to articles (and

not book/case reviews or opinion). Each issue is likely to have 4 or 5 articles and answers to questions below should be limited to each one of them]

2. Afterwards, identify/write down:

   a. Topic of the thesis; and

   b. Whether it is doctrinal or empirical [you might need to go through the thesis quickly to identify this point or you may as well need to first answer questions 3 or 4 before you come to the conclusion that the thesis is doctrinal or empirical];

   c. If you find the paper to be doctrinal, you would answer questions under number three (3) and if you find the paper to be empirical, you would answer questions under number four (4) below.

3. If the thesis is doctrinal:

   a. Does the author use ***Ethiopian (Ethiopian only!)*** *legal research tools* such as consolidations, encyclopaedias, CDs, case finders or digests, etc? If yes, identify the kind of tool or tools the thesis is using. [You could look for legal research tools in the bibliography and footnotes];

   b. Does the thesis mention how the author became aware of the law or judicial decision? For example, does the paper cite a newspaper or magazine to locate a certain legislation or court decision?

   c. Does the author mention how s/he came to the conclusion that the law s/he analyzes is the authority or *the state of the law* at a given time? That is, how does the author know if the law is not repealed or amended?

   d. Does the author use ***foreign*** legal research tools such as consolidations, encyclopaedias, CDs, case finders or digests, etc? If yes, identify any one or two of such foreign legal research tools!

4. If the thesis is empirical, identify the following:

   a. Does it have a part in the first chapter or in the introduction discussing methodology or methods? [Clues could be found in use of terms like primary and secondary sources, interview and

questionnaire, taking samples, random/non-random sampling, etc.]

b. Does the author detail the kind of interview, questionnaire, focus group discussion or any other kind of empirical investigation s/he has carried out?

c. Does the author provide a list of questions s/he used to gather data? [This is usually found at the end of the thesis as annex.]

d. Does the author detail how many respondents/interviewees s/he selected for the research?

e. Related to'd', what are the justifications for the selection in terms of size and qualities of respondents/interviewees? [For example, does the author provide explanation as to how and why s/he selected the number of people for interview or response? Another example, does the author use any kind of statistical formula in the selection of the respondents?]

f. Does the author detail the sampling technique such as random and/or non-random sampling and why?

g. Does the author provide background of the study population or the sample or the people s/he studied? [The subjects of the study could be courts, judges, public prosecutors, etc.]

Dear Student:
You could provide any information or opinion you think is relevant to the study.
I thank you for taking your time in carrying out the survey.