Facts Neglected: The Possible Role of Social Science in Legal Reasoning

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Abstract

While great attention has been in recent years paid to empirical studies in Taiwan's legal academy, the use of scientific evidence in the studies *of* law from what Ronald Dworkin called the "internal point of view" is still scant. The forefront of the new fashion is rather limited to the studies *about* law from the "external point of view." The reason behind this unfounded disparity is due largely to, this article argues, *an* untenable brand of the distinction between "fact" and "law" and a misunderstanding about the *is-ought* problem. The misconception that questions of law cannot be answered (externally justified) by "fact" but "law" itself has infected the reception of the concept of "legislative fact" in Taiwan. The "legislative fact" is in Taiwan understood and treated merely as the "object" of the constitutional review just like a legislation that is under review. The focus of legal scholars in discussing the concept of "legislative fact" is therefore limited to the problem of whether and to what extent it is justifiable to substitute judicial judgment of facts for that of the legislature. The function of "legislative fact" to *externally justify* a legal norm is, however, entirely ignored. This article uses the J.Y. Interpretation No. 584 as an example to illustrate that the current problem of making use of empirical evidence in legal reasoning is not that those who do so commit naturalist fallacy, but that they very often fail to follow some basic logic rules. More importantly, they fail to recognize the function of empirical studies to *externally justify* a legal norm, for example, a new conception of equal protection, which this article argues is the real answer to what has bewildered the Justices in the case of

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