



Measuring empathy in undergraduate law students: Examining the factorial validity of the Jefferson Scale of Empathy - Law Students (JSE-LS)☆



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ABSTRACT

Several scholars have hypothesised a link between empathy and a range of important outcomes for law students including well-being, mental health and the development of effective client-lawyer relationships. However, few studies have examined these claims empirically. Empirical investigation of empathy among law students requires effective methods of measuring empathy. The present study sought to examine an instrument designed specifically to measure empathy among law students – the Jefferson Empathy Scale - Law Students (JSE-LS). The study involved examining the internal consistency and factor structure of the instrument using a sample of 276 Australian undergraduate law students. The study found that a four-factor solution was optimal for the dataset. Two of the factors were readily interpretable with previous literature, however the remaining two factors were unstable, suggesting the need for further revision of the instrument. Recommendations for revising the JSE-LS to better measure empathy are discussed.

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1. Introduction

In the past decade empathy has received considerable attention from legal education scholars and legal practitioners (Daicoff, 2012; Douglas, 2012; Gerdes, Segal, Jackson, & Mullins, 2011). The hypothesised causal links between empathy, mental health, and “effective lawyering” have motivated the development of methods and processes specifically designed to increase empathy levels in law students including teaching empathy (Gallacher, 2012; Gerdy, 2008; James, 2005). However, despite the plethora of material linking empathy and better “lawyering” (Daicoff, 2012; Douglas, 2012; Gerdes et al., 2011) and indirect evidence linking empathy and mental health issues, Only a single study has examined the measurement of empathy in law students (Williams, Sifris, & Lynch, 2016). The lack of research on this topic is concerning given that, in many cases, the empirical evaluation of empathy in legal education is premised on the ability to accurately measure empathy. The present study sought to evaluate the only known instrument for measuring empathy in law students – the Jefferson Scale of Empathy - Law Students (JSE-LS).

1.1. The role of empathy in law school education

Traditional conceptions of effective lawyering focus on a narrow range of legal skills including a good knowledge of the law; the ability to craft an effective argument (competent legal reasoning), and often, the ability to translate an argument to effective oration (Australian Law Reform Commission, 1999). While the importance of these traditional lawyering skills remains uncontroversial, there is a growing awareness amongst academics and practitioners that good “lawyering” requires a more holistic and nuanced assessment of the essential skills which make effective lawyers (Abenzoza & Arjona, 2017; American Bar Association, 1992; Collins, 2015; Jones, 2017; Kift, 1997; Larcombe, 2016; Weisbrot, 2002). These non-traditional skills include problem-solving, appropriate written and oral communication with legal and non-legal audiences, counselling of clients, negotiation, collaborating with colleagues and importantly maintaining a positive working relationship with the client (American Bar Association, 2013; James, 2008). The importance of these non-traditional skills in developing curriculum for law graduates, are specifically recognised in the ‘Threshold Learning Outcomes for Law in Australia’ (Australian Learning and Teaching Council, 2010). Under these guidelines, law schools are encouraged to bed into the curriculum methods and processes which will allow graduates to enhance and develop skills empowering

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them to communicate effectively, appropriately and persuasively with diverse audiences and in a variety of ways (Australian Learning and Teaching Council, 2010).

Empathy is thought to play an important role in the development of a number of abilities associated with effective legal practice. Empathy can be useful for lawyers and judges in: (1) developing communication skills and facilitating rapport between lawyer and client (Barkai & Fine, 1983; Duffy & Field, 2014) or judge and litigant (Duffy, 2011; Mack & Roach Anleu, 2011); (2) effective persuasion and influencing behaviours common in adversarial (Montgomery, 2008) and non-adversarial processes (Douglas & Coburn, 2009; Freiberg, 2007; King, 2008) and (3) sound legal analysis and decision-making (Gerdy, 2008; Weisbrot, 2002). Lawyers who are more empathetic may be more likely to uphold professional standards (Christian & Alm, 2014).

Empathy has also been proposed as a factor involved in the maintenance of good mental health and wellbeing throughout law studies and as a professional (Kift, 1997; Sifris, Williams, & Kordouli, 2015). This is of particular interest to legal professionals and educators, as over the past decade or so a number of studies have been published evidencing that law students and members of the legal profession have higher rates of mental health issues than the general population (Kelk, Medlow, & Hickie, 2009; Skead & Rogers, 2014, 2015). Consequently, attempts have been made to design strategies and interventions aimed at building resilience in law students and improving their mental health and wellbeing (Bergin & Pakenham, 2014; Larcombe, Finch, & Sore, 2015; Larcombe, Tumbaga, Malkin, Nicholson, & Tokatlidis, 2013; Lester & Antolek-Saper, 2011; O'Brien, Tang, & Hall, 2011; Sheldon & Krieger, 2007; Skead & Rogers, 2014; Waters, 2016). Calls for a more explicit engagement with emotion and empathy in the legal curriculum have often coincided with appeals for a less-adversarial curriculum which is generally more comprehensive than a conventional legal curriculum and which has interdisciplinary input from the social sciences (Douglas & Batagol, 2010; Douglas & Coburn, 2009; King, 2008; King, Freiberg, Batagol, & Hyams, 2014).

Remarkably, despite the abundance of literature emphasising the importance of empathy in legal practice and calling for empathy training in law school, no known empirical research has been conducted to validate the claim that empathy levels influence performance of any sort in law students. In fact, empirical research on law and empathy appears to be restrained to a single study which examined the level of empathy in law students as compared with nursing students (Wilson, Prescott, & Becket, 2012). This study found that levels of empathy were slightly lower in law students relative to nursing students.

Some educators have incorporated empathy training into their law school curricula but it is still in its early stages and has not been empirically evaluated to date (Douglas & Coburn, 2009; Gallacher, 2012; Gerdy, 2008). The value of empathy training rests on a) the extent to which they actually result in improvements in empathy and b) the extent to which improvements in empathy cause improvements in core legal skills that they are hypothesised to influence. However, as noted above, there is an absence of published research examining these relationships. It is possible that some may argue that research in other contexts (e.g. medical school) demonstrates that empathy can be taught and that research has shown relationships between empathy and skills analogous to those used by lawyers, this proposition must be demonstrated empirically (Hojat, Michalec, Veloski, & Tykocinski, 2015). Findings from the social sciences rarely if ever attain the status of scientific "laws", where relationships can be assumed to operate in similar ways across time and circumstance. As such, empirical research in the specific context of law school is required to garner evidence of the purported role of empathy in law school education.

Having established the importance of conducting empirical research on empathy in law students, it is important to outline briefly the assumptions which underlie the conduct of empirical research in this area. Empirical research in psychology rests on a number of foundational assumptions. First, and perhaps most crucially, the notion that

the concept of empathy can be clearly defined (Torgerson, 1958). Second, the notion that current methods of measuring empathy provide consistent results that relate to observable behaviour in a manner consistent with the definition of empathy. (Borsboom, Mellenbergh, & van Heerden, 2004).

1.2. The concept of empathy

The definition of empathy had been the focus of considerable research (Deutsch & Madle, 1975; Elliot, Bohart, Watson, & Greenberg, 2011; Hastorf & Bender, 1952; Snow, 2000). Consistent with much of the field of psychology the attribute under question has a number of competing technical definitions as well as a definition that corresponds to its use in everyday discourse. The "everyday" definition of empathy is normally presented along the lines of an ability "to understand and share the feeling of another" (Simpson & Weiner, 2017). Thus, the everyday definition suggests that empathy involves at a minimum two mental abilities, understanding feelings and sharing them.

Researchers have, for the most part, defined empathy in a way that does not deviate considerably from the everyday definition. In line with the everyday definition, technical conceptualisations of empathy also suggest that the term encompasses multiple abilities (Price & Archbold, 1997). Some theorists divide the concept of empathy into "cognitive" empathy – the ability to understand someone else's perspective, and "affective" empathy – the ability to share another person's emotional response to a situation (Decety & Jackson, 2006; Jolliffe & Farrington, 2006; Reniers, Corcoran, Drake, Shryane, & Vollm, 2011). Others have argued for a tripartite model, in which empathy is characterised by an initial involuntary affective response, followed by voluntary cognitive process that allows perspective taking, and then finally conscious decision-making informed by the first two processes (Henderson, 1987). To date, neither definition of empathy has been invalidated on the basis of empirical evidence or conceptual analysis. However, far more evidence has been garnered in support of the dual process model of "cognitive" and "affective" empathy.

There are a number of consistent threads that run through the various technical definitions of empathy. Firstly, empathy can be said to be a multidimensional attribute involving multiple abilities. Secondly, empathy involves, at a minimum, the ability to recognise and appropriately differentiate another person's emotions and the ability to share another person's emotional response to a situation. While the issue of definition remains, and will likely remain for some time, contentious, the current definitions provide enough detail to permit some tentative hypotheses to emerge around measurement of empathy.

1.3. Measuring empathy in law students

A considerable number of seemingly valid and reliable instruments have been developed to assess levels of empathy in the general population (Jolliffe & Farrington, 2006; Kourmoussi et al., 2017; Lawrence, Shaw, Baker, Baron-Cohen, & David, 2004). These include the Empathy Quotient (Lawrence et al., 2004), the Toronto Empathy Questionnaire (Spreng, McKinnon, Raymond, & Levine, 2009), and the Interpersonal Reactivity Index (Davis, 1983). Each of these instruments has been shown to possess evidence of validity and various studies have demonstrated that scores are related to empathetic behaviour in a way one would expect if the instrument were actually measuring the definition of empathy employed by the test developers. For example, Lawrence et al. (2004) found that lower scores on the Empathy Quotient (EQ) were associated with poorer performance on the Eyes Task, a non-verbal test of mental inference, a result consistent with low "cognitive" empathy.

While these tools could be usefully employed to measure empathy among law students, their subject matter may be too general to provide useful information. For example, it may be the case that participants could display high levels of empathy generally, but low levels of

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