
POLITICAL IDEOLOGY AND LAW SCHOOL RANKINGS: MEASURING THE CONSERVATIVE PENALTY AND LIBERAL BONUS

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INTRODUCTION

The U.S. News & World Report overall rankings (hereinafter “overall rankings”) are the gold standard for measuring law schools.¹ Since their inception in 1987, law schools have responded accordingly by altering their behavior to affect positive changes in their ranking,² sometimes even going so far as to falsely report data³ or coerce underachieving graduates to delay taking the bar exam.⁴ Increases in the rankings are touted, while decreases may result in the firing of a

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1. Jeffrey Harmatz, *US News & World Report Law School rankings: A Double-Edged Sword?*, LAW CROSSING, <https://www.lawcrossing.com/article/900012518/US-News-World-Report-Law-School-Rankings-A-Double-Edged-Sword/> (last visited Aug. 17, 2020) (“Regardless of its flaws, US News & World Report’s Top Law School rankings are the most popular and preferred law school rankings in the nation, and have become a legal industry institution.”).

2. Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229 (2006). Because of the role undergraduate grade point average (GPA) plays in the overall rankings, schools favor applicants from mediocre colleges with high GPAs over applicants from elite college with mediocre GPAs. *Id.* at 232. Likely in an effort to affect peer rankings, law schools spend “substantial sums” of money on promotional materials to send to other legal academics. *Id.* at 240. Law schools can increase their standing through accounting tricks, such as paying the greater university directly for their electricity expenditures from tuition dollars instead of having it deducted from the tuition. *Id.* at 241. While this produces no net difference, it increases the financial outlay on resources, which is a factor in the overall rankings. *Id.*

3. Katherine Mangan, *Villanova U. Reveals Its Law School Gave False Reports of GPA’s and Test Scores*, CHRON. HIGHER EDUC. (Feb. 6, 2011), <https://www.chronicle.com/article/Villanova-U-Reveals-Its-Law-126286>; Mark Hansen, *U of Illinois Law School Admits to Six Years of False LSAT/GPA Data*, A.B.A. J. (Nov. 8, 2011, 12:21 AM), https://www.abajournal.com/news/article/illinois_law_admits_to_six_years_of_false_lsat_gpa_data.

4. BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 151 (2019) (explaining that InfiLaw (owner of for-profit Arizona Summit Law school, Florida Coastal School of Law, and recently closed Charlotte School of Law) pays underperforming students not to take the July bar exam after graduating).

dean.⁵ Even the perceived value of a publication in a given law journal is affected by that school's ranking.⁶

U.S. News & World Report also conducts peer rankings, which are the result of surveys completed by law school deans.⁷ This Article reports the findings of a first-of-its-kind study designed to measure whether peer rankings are affected by a law school's ideological reputation. The extreme disparity uncovered—combined with consistent findings in studies that measure other forms of ideological bias in legal academia—make a strong case for a conservative penalty and liberal bonus in law school rankings. This Article concludes by proposing a simple solution to circumvent this particular manifestation of ideological bias.

LITERATURE REVIEW

Much research has been conducted into categories of diversity that are lacking in law schools, such as the race and gender of students and faculty and academic pedigree of faculty.⁸ It was not until 2015 that a robust analysis of law school ideological diversity was published (hereinafter “2015 study”).⁹ Before this, it was already well known that law school professors were disproportionately liberal—both when compared to the public at large and when compared to the overall legal profession.¹⁰ A study using 2013 data found that only 11% of law school professors were Republicans, compared to 82% who were Democrats.¹¹ Not only do conservatives find it difficult to gain admittance into legal academia, but those who do find that they are effectively barred from the more prestigious topics, such as constitutional law and federal courts, and are instead relegated to topics such as law and economics.¹²

5. Elie Mystal, *Some Students Want Their Deans Fired After Poor Showing in the U.S. News Rankings (and One Head That's Already Rolled)*, ABOVE L. (Mar. 14, 2013, 11:20 AM), <https://abovethelaw.com/2013/03/some-students-want-their-deans-fired-after-poor-showing-in-the-u-s-news-rankings-and-one-head-thats-already-rolled/> (“Every year, deans and assistant deans find themselves ‘pushed out’ of a job thanks to the U.S. News rankings.”).

6. Robert C. Bird, *Advice for the New Legal Studies Professor*, 29 J. LEGAL STUD. EDUC. 239, 251 (2012) (“The quality of a law review is roughly determined by the prestige of the law school in which the journal is housed.”).

7. Robert Morse, Ari Castonguay & Juan Vega-Rodriguez, *Methodology: 2021 Best Law Schools Rankings*, U.S. NEWS (Mar. 16, 2020, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>. This should not be confused with the “Assessment score by lawyers and judges,” which is also a factor in the overall rankings. *Id.*

8. James C. Phillips, *Why Are There So Few Conservatives and Libertarians in Legal Academia? An Empirical Exploration of Three Hypotheses*, 39 HARV. J.L. & PUB. POL'Y 153, 158 (2015).

9. *See id.*

10. Adam Bonica, Adam Chilton, Kyle Rozema & Maya Sen, *The Legal Academy's Ideological Uniformity*, 47 J. LEGAL STUD. 1 (2018) (“We find that 15 percent of law professors, compared with 35 percent of lawyers, are conservative. This may not simply be due to differences in their backgrounds: the legal academy is still 11 percentage points more liberal than the legal profession after controlling for several relevant individual characteristics.”).

11. James Kindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J.L. & PUB. POL'Y 89, 144, 149 (2016).

12. Phillips, *supra* note 8, 162–63.

There is also evidence of anti-conservative bias in other areas of law school. Just one example is the internal communications from the editors of the *Harvard Human Rights Journal* that surfaced in 2012. They document an incident in which the editors expressed “major concerns” about how the author of a submitted paper was a conservative.¹³ These concerns about the author’s political ideology were deemed “enough to reject the article.”¹⁴

Against this backdrop, the 2015 study set out to determine if the disparity between liberal and conservative law professors was the result of discrimination or if there was an alternative, more benign explanation. The results of the study strongly point to the former over the latter. It demonstrated that conservative law professors are, on average, substantially more qualified than their liberal peers. They are 68.2% more likely to be former Supreme Court clerks, 24.1% more likely to have graduated from higher-ranked schools, and 5.4% more likely to have served on law review than their liberal counterparts.¹⁵ Conservative law professors also publish significantly more.¹⁶ Over the course of ten years, a conservative professor publishes, on average, four to eight more articles than liberal professors.¹⁷ Additionally, the scholarship from conservative law faculty is significantly more likely to be cited to, which is a leading measure of scholarly significance.¹⁸ These findings make a strong case that the best explanation for the ideological inequalities in law schools are the result of discrimination and not an alternative, benign explanations such as diminished qualifications, abilities, or desire to join academia on the part of conservatives.

METHODOLOGY

This study involves the overall rankings and peer rankings for the ten-year period from 2012 to 2021.¹⁹ These rankings were analyzed for the top ten conservative law schools and the top ten liberal law schools. For this conservative/liberal determination, The Princeton Review’s rankings, which are the result

13. Paul Caron, *The Secret Sauce for Law Review Placement: Letterhead, Citations, and Liberal*, TAXPROF BLOG (Sept. 13, 2012), https://taxprof.typepad.com/taxprof_blog/2012/09/the-secret.html. It is important to note that, although the *Harvard Human Rights Journal* deemed this author “incredibly conservative,” this assessment was based on his record of government service of clerking for a conservative judge and working at the White House under the Bush administration. *Id.* He also participated in public debate, at least one time writing something critical of a liberal Supreme Court justice. *Id.*

14. *Id.* The state of ideological bias in legal academia is likely also on display in how this event was described. The clear implications were downplayed as something that merely “suggests possible bias,” *id.*, and “possible evidence of bias against conservatives,” *A Look Inside the Law Review Sausage Factory—and Possible Evidence of Bias Against Conservatives*, ABOVE L. (Sep. 13, 2012), <https://abovethelaw.com/2012/09/a-look-inside-the-law-review-sausage-factory-and-possible-evidence-of-bias-against-conservatives/>. Some even suggested that it is a defense to such discriminatory behavior that “Hey, we’ve seen far worse emails coming out of [Harvard Law School]!” *Id.*

15. Phillips, *supra* note 8, at 183.

16. *Id.* at 195.

17. *Id.*

18. *Id.* at 200.

19. Note that the 2021 rankings are published in 2020 based on 2019 data. *See* Morse et al., *supra* note 7.

of student surveys, were utilized.²⁰ The following are the twenty law schools utilized:

Most Conservative

1. Ave Maria School of Law
2. Brigham Young University J. Reuben Clark Law School
3. Samford University Cumberland School of Law
4. George Mason University School of Law
5. Faulkner University Thomas Goode Jones School of Law
6. University of Alabama School of Law
7. Louisiana State University Paul M. Hebert Law Center
8. Mississippi College School of Law
9. Pepperdine University School of Law
10. University of Idaho College of Law

Most Liberal

1. Northeastern University School of Law
2. American University Washington College of Law
3. University of Pennsylvania Law School
4. University of Oregon School of Law
5. University of Maryland School of Law
6. Brooklyn Law School
7. City University of New York School of Law
8. State University of New York University at Buffalo School of Law
9. University of Colorado School of Law
10. Vermont Law School Law Program

A peer deviation score for each law school in each year was calculated to measure how far—and in what direction—the peer ranking deviated from the overall ranking. In order to counterbalance problems with using only the difference or the percentage change, the following formula was implemented.²¹

20. *Most Conservative Students*, PRINCETON REV. <https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students> (last visited Aug. 17, 2020); *Most Liberal Students*, PRINCETON REV. <https://www.princetonreview.com/law-school-rankings?rankings=most-liberal-students> (last visited Aug 17, 2020).

21. The problem with only using the difference to measure how a given law school's peer ranking deviates from the overall ranking is that it would disproportionately weight changes in lower-ranked law schools. For example, if the #1 overall ranked law school received a peer ranking of #10, this would result in a -9 difference, the same score the #140 law school would achieve by being ranked #149 in the peer rankings. But clearly the #1 overall ranked law school receiving a #10 peer ranking is a far more significant deviation than the #140 law school receiving a peer ranking of #149.

Conversely, using only percentage change to calculate the peer rank deviation results in the opposite problem. For example, if the #2 ranked law school overall received a rank of #4 in the peer rankings, this would be a -100% deviation, the same deviation that would occur if the #50 overall law school was ranked #100 in the peer rankings. But clearly the latter is a more significant deviation than the former.

By weighting each of these two measurements equally, they cancel out the potential for disparate results in either the lower end or higher end extreme.

$$\text{peer deviation score} = \frac{(\text{overall rank} - \text{peer rank}) + \left(\frac{\text{overall rank}}{\text{peer rank}}\right)}{2} \times 100$$

An average peer deviation score for the ten-year period of 2012–2021 was then calculated for each law school.

It is important to note that this study utilized a dataset of the ten most liberal law schools and the ten most conservative law schools. However, this does not mean that the ten conservative schools are as far to the right as the ten liberal schools are to the left. For example, a 2013 study found that of the top fifty law schools, BYU and Pepperdine are the most ideologically balanced. And yet BYU and Pepperdine are both in the top ten most conservative law schools.

RESULTS

The average peer deviation score for the ten-year period for each law school is as follows (a negative number signifies a peer ranking that is higher—meaning worse—than the overall ranking):

Most Conservative

1. Ave Maria School of Law (N/A)[†]
2. Brigham Young University J. Reuben Clark Law School (−16.46)
3. Samford University Cumberland School of Law (−13.55)
4. George Mason University School of Law (−19.33)
5. Faulkner University Thomas Goode Jones School of Law (N/A)[†]
6. University of Alabama School of Law (−21.79)
7. Louisiana State University Paul M. Hebert Law Center (−11.97)
8. Mississippi College School of Law (N/A)[†]
9. Pepperdine University School of Law (−8.67)
10. University of Idaho College of Law (9.03)

Most Liberal

1. Northeastern University School of Law (−2.66)
2. American University Washington College of Law (24.74)
3. University of Pennsylvania Law School (−11.46)
4. University of Oregon School of Law (34.81)
5. University of Maryland School of Law (−0.09)
6. Brooklyn Law School (13.84)
7. City University of New York School of Law (7.96)

[†] These schools are ranked higher than #150 in the overall rankings. Because schools that rank in this category are not given an exact overall ranking, it is impossible to measure to what extent the peer ranking deviates from the overall ranking.

8. State University of New York University at Buffalo School of Law (0.10)
9. University of Colorado School of Law (7.35)
10. Vermont Law School Law Program (15.93)

For the conservative schools, the peer rank deviated on average -11.82 from the overall ranking. For the liberal schools, the peer rank deviated on average 9.05 from the overall ranking. The odds of ten randomly selected law schools averaging no more than -11.82 is less than 0.1% .²²

These highly disparate results are even more extreme than they first appear. This is because the peer rank is also included as the most important factor in the overall rankings.²³ Therefore, the difference between the overall rankings and the peer rankings are significantly mitigated. Once the peer assessment score is removed from the overall rankings,²⁴ even more extreme peer deviation scores emerge. The conservative penalty goes up to -15.76 and the liberal bonus goes up to 12.07 .

DISCUSSION

As with the 2015 study on faculty ideology discrimination, the results of this study are extreme in the disparities found and leave little room for a non-discriminatory explanation. While it is beyond the scope of this research to emphatically prove the presence of ideological bias in the peer rankings, a very strong case is made. The conclusion of ideological discrimination is further strengthened when the results of this research are considered in tandem with the compelling evidence of ideological discrimination in hiring law professors²⁵—a decision in which law school deans also play a significant role. It is difficult to even posit a non-discriminatory explanation.²⁶

While the magnitude of the results from this study may be surprising, the notion that law school deans—consciously or otherwise—apply a penalty when ranking conservative law schools and a bonus when ranking liberal law schools is not surprising. The political ideologies of law school deans are likely consistent with those of law school faculty—highly disproportionately liberal. Political ideology is a significant factor that affects how people interpret information.²⁷ Just as conservatives may view a liberal law school with increased

22. This is based on a computer simulation that ran 100,000 simulations of randomly selected groups of ten. In only 81 of those 100,000 was the average less than or equal to -11.82 .

23. Morse et al., *supra* note 7.

24. U.S. News & World Report does not provide the scores for each factor that makes up the overall ranking. However, since the weight of the peer assessment score in the overall rankings is known (25%), the effect of removing it from consideration can be calculated by simply multiplying the difference between the overall rankings and the peer rankings by a factor of 1.33.

25. See Phillips, *supra* note 8.

26. It is important to note that this result is not a function of how the ten liberal law schools are, on average, more elite than the ten conservative law schools. This research is designed to analyze the extent to which the peer review rankings deviate from the overall rankings, regardless of where that initial starting point is.

27. See, e.g., Jennifer Jerit & Jason Barabas, *Partisan Perceptual Bias and the Information Environment*, 74 J. POL. 672 (2012) (“[P]eople perceive the world in a manner consistent with their political views. The result

scrutiny, it appears liberal law school deans view conservative law schools in this same way.

PROPOSED SOLUTION

Addressing the hiring and publishing ideological biases in legal academia is a complex endeavor that would inevitably lead to enforcement difficulties and negative externalities. Fortunately, the ideological bias in rankings discovered in this research has a clear solution with no significant disadvantage. Because of the high levels of ideological bias likely present in the peer rankings, and the importance of promoting ideological diversity, peer review scores should be excluded as a factor in the overall rankings.

The presence of the peer assessment score as a factor in the overall rankings makes little sense. The majority of prospective law students likely only care about the opinion of their law schools in as far as it reflects their ability to pass the bar and acquire a job. This is better measured by bar passage rates and the assessment score of judges and lawyers—who hire far more first-year attorneys than law school deans. Inexplicably, the peer assessment score is weighted 67% more than the assessment score from judges and lawyers in the overall rankings.²⁸ And the peer assessment score is weighted 1250% more than the bar passage rate.²⁹

Punishing and rewarding law schools in the rankings based on political ideology is problematic in that it likely perpetuates discrimination against conservative law professors.³⁰ But even setting aside the ethical considerations, there are strong pragmatic reasons for promoting ideological diversity in legal academia. And therefore, there are strong reasons for excluding the influence of a measure that significantly punishes an already marginalized group.

Lack of ideological diversity is detrimental to legal education. It infects every aspect of legal academia, including pedagogy, hiring preferences, curriculum, and culture.³¹ It also helps perpetuate this harm for years to come because “teachers tend to recreate the system they know best—the one that produced them.”³²

is a selective pattern of learning in which partisans have higher levels of knowledge for facts that confirm their world view and lower levels of knowledge for facts that challenge them.”)

28. Morse et al., *supra* note 7. The peer assessment score makes up 25% of the overall rankings, while the assessment score by lawyers and judges makes up 15%. *Id.*

29. *Id.* The bar passage rate makes up 2% of the overall rankings while the peer assessment score makes up 25%. *Id.*

30. Law school deans whose jobs may be contingent on the rankings are heavily incentivized to hire faculty who will benefit, rather than hinder their advancement in the rankings. In the current manifestation of the overall rankings, which place a heavy weight on peer assessment score, this would include discriminating against conservative faculty.

31. Phillips, *supra* note 8, at 158.

32. James M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 541 (1995).

Ideological inequality is also relevant in legal academia because law professors are afforded the luxury of publishing legal research. Since liberal professors are more likely to publish liberal scholarship and conservative professors are more likely to publish conservative scholarship,³³ the current inequality in political ideology of law professors helps ensure that legal scholarship is artificially slanted to the left.³⁴

When the lack of ideological diversity is understood, it becomes highly peculiar how little law schools focus on that inequality when compared to racial inequality. After all, focusing on the race of students and faculty is a rather circuitous method of achieving the end goal of increasing diversity of ideas. Even worse, focusing on race as a proxy for increasing diversity of ideas functions to perpetuate harmful stereotypes. Implicit in the logic that increasing minority professors will increase the diversity of ideas is the belief that different races necessarily think differently.

Law school rankings play an integral role in the market for law school graduates.³⁵ Including an ideologically discriminatory factor in these rankings is not only unnecessary but counterproductive. This is because most employers would likely prefer to hire a lawyer who is familiar with—and therefore better equipped to address—conservative arguments. Therefore, including peer assessment scores in the overall rankings contributes to hiring-market inefficiencies.

A majority of United States Supreme Court justices³⁶ and federal appellate judges³⁷ are Republican-appointed. Therefore, it is detrimental to law students to not be exposed to conservative thought. And this likely harms liberal students more than conservative ones. Conservative law students may seek out conservative voices outside of the classroom, but liberal law students are unlikely to do so.³⁸ Liberal law students who graduate without being exposed to conservative thought will likely be at a disadvantage in their careers where they will be arguing in front of conservative judges. Understanding the best arguments from the

33. See Adam S. Chilton & Eric A. Posner, *An Empirical Study of Political Bias in Legal Scholarship*, 44 J. LEGAL STUD. 277 (2015).

34. Note that this is not inconsistent with the finding that conservative law professors publish at greater rates. This is because if the number of conservative law professors is kept artificially low, scholarship will likewise be artificially slanted to the left when compared to what it would otherwise be if there were more conservative law professors.

35. Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L.J. 791, 791 (2008) (“The U.S. News & World Report annual rankings play a key role in ordering the market for . . . entry level lawyers.”).

36. Brett Kavanaugh, Neil Gorsuch, Samuel Alito, John Roberts, and Clarence Thomas were appointed by Republican presidents. Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan were appointed by Democratic presidents.

37. Madison Alder, *Majority of U.S. Appeals Courts Have GOP-Appointed Edge (2)*, BLOOMBERG L. (Nov. 20, 2019, 11:46 AM), <https://news.bloomberglaw.com/us-law-week/majority-of-u-s-appeals-courts-now-have-gop-appointed-edge>.

38. Jeremy A. Frimmer, Linda J. Skitka & Matt Motyl, *Liberals and Conservatives Are Similarly Motivated to Avoid Exposure to One Another's Opinions*, 72 J. EXPERIMENTAL SOC. PSYCH. 1 (2017).

conservative side will better equip them to argue for the liberal side.³⁹ Additionally, receiving unbalanced information on controversial and nuanced issues hinders liberal students' abilities to modify their positions in light of a fair assessment of the strongest arguments from both sides.

Beyond the ideological bias issue, there is a good reason to remove peer rankings as a factor in the overall rankings. This is because peer assessment rankings are impacted by the objective factors already measured in the overall rankings, such as entering student credentials and former student bar passage rates.⁴⁰ In this sense, the peer assessment factor and the entering student LSAT and GPA factors are collinear terms.⁴¹ It is prudent statistical practice to remove at least one of the two collinear terms. And, in this instance, the ideal term to remove is the subjective one.⁴² Additionally, peer rankings are highly time-invariant.⁴³ Meaning, while changes in admissions, bar passage rates, and student-to-faculty ratios are immediately reflected in next year's overall rankings, peer rankings are far less responsive to actual changes.⁴⁴

CONCLUSION

This study produced strong evidence for the existence of a conservative penalty and liberal bonus in law school peer rankings. Because these rankings are the leading factor in the overall rankings, this results in a similar conservative penalty and liberal bonus there as well. This finding is consistent with other research on ideological bias in legal academia. Fortunately, there is a simple solution to the problem of ideological bias in law school rankings. Removing the peer score from the overall ranking calculation will better inform prospective law students, reduce inefficiencies in the hiring market, and contribute to greater ideological diversity in law schools and legal scholarship.

39. Roger Clegg, *Toward Intellectual Diversity in Law School*, MINDING CAMPUS (Nov. 7, 2014), <https://www.mindingthecampus.org/2014/11/07/toward-intellectual-diversity-in-law-school/>.

40. Although, these factors affect the peer rankings on a delayed timeframe. See *infra* note 43.

41. Christopher J. Ryan, Jr., *Of Law School Rankings and Football*, 1 DISPARITY L.J. (forthcoming 2020) (manuscript at 6), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3606008.

42. *Id.*

43. Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 500 (2017).

44. *Id.*