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### Enduring Hierarchies in American Legal Education

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## Legal Studies Research Paper Series

### Enduring Hierarchies in American Legal Education

Olufunmilayo Arewa, Andrew P. Morriss & William Henderson

Research Paper Number 269

UC IRVINE L. REV., forthcoming (2013)

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SCHOOL OF LAW

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*Legal Studies Research Paper Series No. 2013-141*

## ***Enduring Hierarchies in American Legal Education***

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# **ENDURING HIERARCHIES IN AMERICAN LEGAL EDUCATION**

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September 26, 2013

## ENDURING HIERARCHIES IN AMERICAN LEGAL EDUCATION

Olufunmilayo Arewa,<sup>\*</sup> Andrew P. Morriss<sup>\*\*</sup> & William Henderson<sup>\*\*\*</sup>

### Abstract

*Although much attention has been paid to U.S. News & World Report's rankings of U.S. law schools, the hierarchy it describes is a long-standing one rather than a recent innovation. In this Article, we show the presence of a consistent hierarchy of U.S. law schools from the 1930s to the present, provide a categorization of law schools for use in research on trends in legal education, and examine the impact of U.S. News's introduction of a national, ordinal ranking on this established hierarchy. The Article examines the impact of such hierarchies for a range of decision-making in law school contexts, including the role of hierarchies in promotion, tenure, publication, and admissions, for employers in hiring, and for prospective law students in choosing a law school. This Article concludes with suggestions for ways the legal academy can move beyond existing hierarchies and at the same time address issues of pressing concern in the legal education sector. Finally, the Article provides a categorization of law schools across time that can serve as a basis for future empirical work on trends in legal education and scholarship.*

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In the twenty-five years since *U.S. News & World Report* first ranked U.S. law schools, legal academics have debated whether or not the magazine’s law school rankings have created a problematic hierarchy among law schools,<sup>1</sup> with the competition for higher ranking often characterized as an unproductive “arms race”.<sup>2</sup> This debate rests in part on a false premise. The current hierarchy is not the product of *U.S. News* rankings, but instead merely the latest iteration of a long-standing, persistent hierarchy of American law schools that has endured through major changes in the market for lawyers, legal education, law professors, and legal scholarship. In this Article we use a wide range of evidence to document this persistent hierarchy. Schools have opened, changed position, changed names or university affiliations, or closed, and we show that relatively little movement has occurred between segments of the hierarchy since the 1920s.<sup>3</sup> Moreover, while the *U.S. News* rankings have brought the competition among schools for places within the hierarchy more into the open, the competition—including aspects similar to those decried today—long pre-dates the rankings.<sup>4</sup>

Understanding enduring law school hierarchies is important for four key reasons.

1. **Defining of Educational Goals.** The legal academy places considerable—and, we believe, overly great—weight on institutional prestige in everything from article placement decisions (by both editors and authors) to hiring, promotion, and tenure.<sup>5</sup>

<sup>1</sup> Cynthia Cotts, *Deans and Watchdogs Flunk U.S. News Law School Rankings*, NAT’L L.J., Mar. 2, 1998, at A13; Michael Sauder & Wendy Espeland, *Fear of Falling: The Effects of U.S. News & World Report Rankings on U.S. Law Schools*, Law School Admission Council Grants Report 07-02 (October 2007), <http://www.lsac.org/lisacresources/research/gr/gr-07-02.asp>, at 7 (“The vast majority of administrators we interviewed held negative views of rankings: Most believed that rankings were more harmful than beneficial to their particular schools as well as to legal education generally.”)

<sup>2</sup> Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES (July 31, 2005) available at [http://www.nytimes.com/2005/07/31/education/edlife/wellen31.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2005/07/31/education/edlife/wellen31.html?pagewanted=all&_r=0) (“Critics say law schools are engaged in an LSAT and G.P.A. arms race in which they exploit technicalities in U.S. News’s methodology.”).

<sup>3</sup> Despite the general stability of the hierarchy, schools can change their character. To take just one example, Catholic University rejected an effort by the Roman Catholic Church to shift Georgetown’s law school to Catholic in the 1890s because it thought the school of insufficient quality. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 76–77 (The Lawbook Exchange, Ltd. reprint 2001, original pub. 1983). Today, Georgetown is among the nation’s best law schools by any measure. *See, e.g., Best Law Schools*, U.S. NEWS AND WORLD REPORT, 2012 available at <http://premium.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (ranking Georgetown #13); Brian Leiter, *Top 70 Law Faculties in Scholarly Impact, 2007-2011* (July 2012) available at [http://www.leiterrankings.com/new/2012\\_scholarlyimpact.shtml](http://www.leiterrankings.com/new/2012_scholarlyimpact.shtml) (ranking Georgetown #18).

<sup>4</sup> Although law school hierarchies exist in the shadow of broader university hierarchies, this Article will focus to a significant degree on the impact of law school hierarchies and will not address issues related to university hierarchies that no doubt have an impact on law school hierarchies. Karen M. Morin & Tamar Y. Rothenberg, *Our Theories, Ourselves: Hierarchies of Place and Status in the U.S. Academy*, 10 ACME 58, 59 (2011) (discussing the impact of academic hierarchies on student educational motivations).

<sup>5</sup> Tracey George & Chris Guthrie, *In Defense of Author Prominence: A Reply to Crespi and Korobkin*, 26 FLA. ST. U. L. REV. 877, 881 (1999) (“The perceived prestige of law schools, law professors, law firms, and law reviews has

Yet, as Russell Korobkin argues, prestige competition can channel behavior in productive directions.<sup>6</sup> A clearer understanding of the hierarchy's nature can play a role in shifting competition toward more productive avenues.

2. **Effective Reform Efforts.** Understanding the enduring nature of the positional competition among law schools is essential to the ongoing law school reform efforts. Current debates over the role of *U.S. News's* rankings largely ignore the pre-existing competition and divisions among law schools. As a result, measures such as calls for schools to decline to participate in *U.S. News's* annual surveys<sup>7</sup> are based on the false premise that doing away with or changing a particular ranking will end the "arms race" of competition among schools for status.<sup>8</sup> For better or worse, the quest for status is endemic to lawyers and law professors.
3. **Labor Market Outcomes.** The law school hierarchy maps onto a parallel hierarchy on employment opportunities for law school graduates. As the U.S. legal academy wrestles with changes in the legal job market in the aftermath of the credit crisis and as the legal job market goes through structural changes,<sup>9</sup> understanding this hierarchy provides an essential realism on the job prospects of law school graduates.
4. **Better Understanding of Long-Term Trends.** If an enduring hierarchy is shaping the careers of lawyers and law professors, an accurate system of categorization is essential for tracking long-term trends in legal academia and the legal profession.<sup>10</sup> Our analysis provides the basis for variables that capture law school status across time, facilitating future research.

In Part I, we examine how the hierarchy came to be, focusing on the role of the American Bar Association (ABA) and Association of American Law Schools (AALS), historically the principal regulators of law schools. We also consider the key role played, both historically and at present, by market leaders in the law school sector, particularly Harvard Law School and other elite law schools, which were critical players in the dissemination of now dominant law school

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a profound impact on many of the educational and professional decisions that law students, lawyers, and law professors make.”).

<sup>6</sup> Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403, 417 (1998).

<sup>7</sup> See, e.g., Gary Simson, *Say 'enough' to U.S. News*, NAT'L L.J., July 28, 2008.

<sup>8</sup> Because law schools do in fact compete, we are unimpressed by attempts to claim that “every law school is special” and so rankings cannot succeed. See, e.g., *Annual Report of the Consultant on Legal Education to the American Bar Association* 44 (1993-94) (*U.S. News's* ranking “does not, and could not, measure many important factors in evaluating the quality of law schools”); Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421, 1427–28 (1995) (“Statistics about a law school may disclose its resources, its applicants, the backgrounds of its faculty members, and the profile of its graduates. But a law school's essence eludes statistical capture.”).

<sup>9</sup> William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 470–78 (2013) (describing problems caused by shifts in the job market).

<sup>10</sup> Our initial motivation for beginning this project was to construct a ranking of law schools over time for use in our study of trends in legal scholarship. With Peter Hook, we are engaged in analyzing trends in legal scholarship since the 1930s. Perhaps unsurprisingly for those familiar with legal scholarship, a short methodological section for that paper has now become this Article.

organizational, operational, and business models. In Part II, we assess the evidence from a variety of sources to divide American law schools into categories that we contend show an enduring hierarchy that applied from 1930 onwards. In Part III, we examine some consequences of this enduring hierarchy.

## I. HIERARCHICAL COMPETITION IN LEGAL EDUCATION

*U.S. News and World Report's* annual law school rankings play a significant role in American legal education. They have taken on independent meaning and play a critical role in law school identity and decision-making.<sup>11</sup> They have also played a fundamental role in shaping dominant law school organizational, operational, and business models. The influence of *U.S. News* rankings in legal education is evident in a broad range of law school activities and decision-making, including admission of students,<sup>12</sup> law school resource allocation decisions,<sup>13</sup> student selection of law schools to attend,<sup>14</sup> student post-graduation legal employment opportunities,<sup>15</sup> law professor publication decisions,<sup>16</sup> and even tenure decisions.<sup>17</sup> What is not

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<sup>11</sup> Michael Sauder & Wendy Espeland, *The Discipline of Rankings: Tight Coupling and Organizational Change*, 74 AM. SOC. REV. 63 (2009) [hereinafter Espeland & Sauder I]; Wendy N. Espeland & Michael Sauder, *Rankings And Reactivity: How Public Measures Change Social Worlds*, 113 AM. J. SOC. 1 (2007) [hereinafter Espeland & Sauder II]; Wendy Nelson Espeland & Michael Sauder, *Quantitative Authority and the Reflexivity of Rankings*, Paper presented at the Annual Meeting of the Law and Society Association, Chicago, IL (2004).

<sup>12</sup> Michael Sauder & Ryon Lancaster, *Do Rankings Matter? The Effects of U.S. News & World Report Rankings on the Admissions Process of Law Schools*, 40 LAW & SOC'Y REV. 105 (2006).

<sup>13</sup> Sauder & Espeland, *Fear of Falling*, *supra* note 1, at 10 (“One effect of the USN rankings consistently noted by administrators was that they put pressure on the school to redistribute resources in ways that would maximize their scores on the criteria used by USN to create the rankings.”).

<sup>14</sup> DEBRA J. SCHLEEF, *MANAGING ELITES: SOCIALIZATION IN LAW AND BUSINESS SCHOOLS* (2005); Alex Vorro, *Law School Applicants Value School Rankings Over Job Placement Rates*, INSIDE COUNSEL, June 21, 2012, <http://www.insidecounsel.com/2012/06/21/law-school-applicants-value-school-rankings-over-j> (describing 2012 Kaplan survey that found 86% of respondents said that *U.S. News* law school rankings are “very important” or “somewhat important” in deciding where to apply).

<sup>15</sup> William D. Henderson and Andrew P. Morriss, *What Law School Rankings Don't Say About Costly Choices*, NAT'L L.J., Apr. 16, 2008, <http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1208256428026&pos=atagance&slreturn=1> (“Based upon our combined 21 years of experience as legal educators and our empirical study of rankings, we think students rely on law school rankings as a rough guide to their future employment prospects.”); Ashley Post, *Justice Thomas Says Law School Rankings Cause Discrimination*, INSIDE COUNSEL, Sept. 25, 2012, <http://www.insidecounsel.com/2012/09/25/justice-thomas-says-law-school-rankings-cause-disc> (noting that Justice Thomas criticized rankings, stating that the obsession with rankings is perverse and causes discrimination against students who attend lower-tiered law schools).

<sup>16</sup> Sauder & Lancaster, *supra* note 12, at 105 (noting that law review student editor reliance on *U.S. News* can actually “create rather than simply reflect differences among law schools”); Erwin Chemerinsky, *Why Write?* 107 MICH. L. REV. 881, 881 (2009) (“As I observe my more junior colleagues, I realize that they are far more sophisticated than I was in working toward these goals. They spend far more time than I did in making strategic choices about topics that will lead to prominent placements and taking actions to gain recognition.”); Gregory E. Maggs, *Just Say No?*, 70 CHI.-KENT L. REV. 101, 104–05, 109 (1994) (noting, based on telephone survey with law review editors, that “the prestige of the author makes a big difference” in how journals treat authors and that “[l]aw journals all compete for the best articles . . .”).

<sup>17</sup> See Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 WIDENER L. REV. 947, 949 (2007) (noting role of journal placements in tenure decisions); David Monsma, *The Academic Equivalence of*



always recognized, however, is the extent to which these same hierarchies have long been a key feature of the legal academic landscape. Once this is recognized, we can see how the *U.S. News* rankings reconfirm and intensify existing conceptions of hierarchy rather than institute a fundamental change. In this section we describe factors that created and maintained this hierarchy over time.

#### A. *Creating the Twentieth-Century Model*

For much of their early history, American law schools had fundamentally different and far more diverse business models than law schools do today. Until the early twentieth century, almost all law schools primarily focused on training lawyers for local markets, did not require prior undergraduate study, emphasized practical training, and were largely staffed by practicing lawyers teaching part time.<sup>18</sup> The majority were independent trade schools<sup>19</sup> and the curriculum reflected the then-dominant apprenticeship model.<sup>20</sup> What became the dominant twentieth century law school model rejected most of these characteristic features of nineteenth century law schools and transformed legal education into an academic enterprise.

The academic approach did not have an initially strong competitive position relative to apprenticeships or proprietary schools.<sup>21</sup> Legal elites initially scorned law schools; in 1870 Oliver Wendell Holmes, Jr. called the Harvard Law School “a disgrace to the commonwealth of Massachusetts” that harmed the profession.<sup>22</sup> At the start of the twentieth century, most law schools were barely academic enterprises at all. Legal education historian Robert Stevens described the typical law school of the period as “much closer to the Lawrence Scientific School of Harvard or the Sheffield Scientific School of Yale, that is, to a technical school serving

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*Science and Law: Normative Legal Scholarship in the Quantitative Domain of Social Science*, 23 T.M. COOLEY L. REV. 157, 209 (2006) (those seeking tenure and promotion should publish in most prestigious journals); David A. Rier, *The Future of Legal Scholarship and Scholarly Communication: Publication in the Age of Cyberspace*, 30 AKRON L. REV. 183, 185 (1996) (stating that law reviews have become “key gatekeepers” in hiring, promotion, and tenure decisions). As we show below, law review prestige is largely derivative of the publishing school’s prestige. FOR ALL EXPLANATORY PARENTHETICAL PHRASES, BEGIN WITH A PRESENT PARTICIPLE. IF THIS IS SOMETHING YOU CARE ABOUT, YOU NEED TO SUGGEST CHANGES.

<sup>18</sup> See Lyman P. Wilson, *The Law Schools, the Law Reviews, and the Courts*, 30 CORNELL L. Q. 488, 499 (1945) (describing shift in faculties caused by adoption of the case method); Henry G. Manne, *How the Structure of Universities Determined the Fate of American Legal Education - A Tribute to Larry Ribstein* (unpublished manuscript on file with authors) (attributing rise of academic model to faculty interests).

<sup>19</sup> John Jay McKelvey, *The Law School Review 1887-1937*, 50 HARV. L. REV. 868, 868 (1937) (“In the year 1887 there were in the United States less than a dozen law schools of recognized standing.”)

<sup>20</sup> Anton-Hermann Chroust, 2 THE RISE OF THE LEGAL PROFESSION IN AMERICA 288 (1965) (19<sup>th</sup> century proprietary law schools “were actually nothing more than systematized and concentrated extensions of the old apprenticeship method, available to a larger body of students.”)

<sup>21</sup> Paul D. Carrington, *Hail! Langdell!*, 20 LAW & SOC. INQUIRY 691, 696–97 (1995) (noting that apprenticeships were the major method for training lawyers in the United States from colonial times through the nineteenth century).

<sup>22</sup> Arthur Sutherland, THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967 164 (1967) quoted in Roger C. Cramton, “*The Remarkable Institution*”: *The American Law Review*, 36 J. LEG. EDUC. 1, 3 (1983). Holmes wasn’t a fan of law reviews either. In the 1930s, “when a lawyer cited a law review in oral argument before the Court, Justice Oliver Wendell Holmes snapped back at the counsel that a law review is merely ‘the work of boys.’” Mark Thompson, *The Law Review Meets the Marketplace*, 13 STUDENT LAWYER 14, 18 (Dec. 1984).

undergraduates and usually with a second-class status”<sup>23</sup> than those universities’ academic departments. Many potential law students rejected academic legal training. The ABA estimated that approximately a fifth of the new attorneys each year were law school graduates as late as 1891.<sup>24</sup> The rapid expansion of formal legal education between 1890 and 1920 led to development of multiple models of legal education: the number of schools more than doubled and the number of students increased almost five times.<sup>25</sup>

During this same period, the ABA sought to professionalize the legal industry, including through reform of legal education.<sup>26</sup> The importance of education to this mission was evident from the ABA’s inception: the Committee on Legal Education and Admission to the Bar was one of the standing committees organized at the ABA’s formation, while the Section of Legal Education was the first ABA section created after the ABA introduced sections within its internal organization in 1893.<sup>27</sup>

The academic model was the triumph of a vision of legal education that emerged at Harvard Law School and a few other law schools in the late nineteenth century. It was built around the case method of teaching introduced by Harvard Dean Christopher Langdell.<sup>28</sup> Its expansion can be traced by examining the spread of the case method,<sup>29</sup> which was part of a broader effort at Harvard to apply “scientific” methods to the study of law.<sup>30</sup> By 1920, the case method had become the primary method of teaching at many law schools.<sup>31</sup> Around this same time, the “elite academic sector of the American legal profession was beginning to define itself as distinct from its practitioner wing.”<sup>32</sup> Over the first few decades of the twentieth century, the innovations introduced by Harvard were transformed into a form readily recognizable today. Flexibility was one key to the triumph of Langdell’s case method. It was adopted by many who were disconnected from, and in some instances antagonistic to, Langdell’s “scientific” vision.<sup>33</sup> The case method thus became a pedagogical norm that did not require justification.<sup>34</sup>

Under the academic model that emerged after Langdell, law schools began a

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<sup>23</sup> STEVENS, *supra* note 3, at 37.

<sup>24</sup> Report of the Committee on Legal Education, 14 ANN. REP. A.B.A. 301, 318 (1891).

<sup>25</sup> Barrie Thorne, *Professional Education in Law*, in EDUCATION FOR THE PROFESSIONS OF MEDICINE, LAW, THEOLOGY, AND SOCIAL WELFARE: A REPORT PREPARED FOR THE CARNEGIE COMMISSION ON HIGHER EDUCATION 101, 105 (Everett C. Hughes, ed. 1973).

<sup>26</sup> EDSON R. SUNDERLAND, HISTORY OF THE AMERICAN BAR ASSOCIATION AND ITS WORK (1953); JOHN C. SULLIVAN, AND JUSTICE FOR ALL? A DISSENTING OPINION OF THE AMERICAN LEGAL SYSTEM 1–3 (1989).

<sup>27</sup> SUNDERLAND, *supra* note 26, at 7, 21, 28.

<sup>28</sup> Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. R. 609, 615 (2009).

<sup>29</sup> Thorne, *supra* note 25, at 106 (“Although law schools are not as centrally and closely controlled as medical schools and vary more widely in standards of admission, they have concentrated around [the Harvard model] of training.”).

<sup>30</sup> Carrington, *supra* note 21, at 707–12.

<sup>31</sup> Douglas W. Lind, *An Economic Analysis of Early Casebook Publishing*, 96 LAW LIBR. J. 95, 110 (2004).

<sup>32</sup> G. Edward White, *The American Law Institute and the Triumph of Modernist Jurisprudence*, 15 LAW & HIST. REV. 1, 28 (1997).

<sup>33</sup> Carrington, *supra* note 21, at 739–41.

<sup>34</sup> *Id.* at 745 (“While those advocating the method seldom invoked the theory of Langdell, they also seldom troubled themselves to offer a thoughtful alternative explanation of their purpose.”)

transformation that encompassed faculty, curriculum, and students. For example, law schools shifted from an undergraduate to graduate-professional program, expanded their curriculum to three years, shifted law faculties from practice-oriented to a research focus,<sup>35</sup> and moved away from independent and proprietary schools to university-affiliated law schools.<sup>36</sup> With the active assistance of the ABA and the AALS, which was initially sponsored by the ABA,<sup>37</sup> this model spread rapidly and within a few decades was thoroughly diffused throughout the legal academy.<sup>38</sup> Its proponents argued that the changes were necessary to improve the quality of legal education,<sup>39</sup> others have less charitably characterized them as vehicles for excluding minorities, immigrants, and women from the legal profession<sup>40</sup> and driving up the price of legal services by restricting competition.<sup>41</sup> The shift was controversial from the start and is once again being

<sup>35</sup> ALFRED ZANTZINGER REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 314 (William S. Hein reprint 1987, original pub. 1928).

<sup>36</sup> These changes are thoroughly chronicled in Robert Stevens' LAW SCHOOL *supra* note 3.

<sup>37</sup> Association of American Law Schools, *A Bit of History: Report of the AALS Long Range Planning Committee* (1989), reprinted in THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES, v. 2 1169, 1170 (Steve Sheppard ed. 1999) ("In 1900, in order to promote greater participation in discussions about legal education by professors at 'respectable' schools, an ad hoc ABA committee invited thirty-five such law schools to join an organization that came to be known as the Association of American Law Schools. Thirty-two schools accepted and became charter members. . . . At the time, the thirty-two AALS member schools were training fifty percent of all U.S. law students."); SUNDERLAND, *supra* note 26, at 47–49 (noting that in 1914 the AALS "ceased to have any organic connection with the Bar Association which brought it into existence").

<sup>38</sup> Blaustein and Porter note that:

In 1923 the ABA published its first list of "approved" law schools. It contained the names of thirty-nine schools then complying with all the association's standards and nine additional schools which were expected to comply in the near future. It is significant to note that, of the thirty-nine approved institutions, twenty-seven had not been complying when the standards were adopted a scant two years before. Subsequent years saw AALS action stipulating numbers of teachers, minimum lawbook collections, and tightened standards in prelegal studies.

Albert P. Blaustein & Charles O. Porter, THE AMERICAN LAWYER: A SUMMARY OF THE SURVEY OF THE LEGAL PROFESSION 184 (1954). ABA-accreditation generally tracked AALS standards during this time. *See* STEVENS, LAW SCHOOL, *supra* note 3, at 119–21.

<sup>39</sup> *See* STEVENS, LAW SCHOOL, *supra* note 3, at 119 ("The ABA represented the most successful practitioners, and it was an elite committed to raising the standards of legal education generally.")

<sup>40</sup> *See* George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 134 (2003) ("Because black families have lower incomes and less wealth than most other groups, the high entry price that the ABA imposes is a filter, like the academic accreditation requirements, for eliminating blacks from the legal profession."); Robert Stevens, *The Nature of a Learned Profession*, 34 J. LEGAL EDUC. 577, 583 (1984) (noting the purpose of the extended period of education was to ensure the maintenance of the Anglo-Saxon male hierarchy); Andrew P. Morriss, *The Market for Legal Education & Freedom of Association: Why the "Solomon Amendment" is Constitutional and Law Schools Are Not Expressive Associations*, 14 WM. & MARY BILL OF RTS. J. 415, 424 (2005) ("the lack of deviation from the ABA and AALS-endorsed model of legal education is not the result of a competitive market for legal education.")

<sup>41</sup> *See* Harry First, *Competition in the Legal Education Industry (I)*, 53 N.Y.U. L. REV. 311, 332 (1978) ("Predicted anticompetitive conduct, organized by the AALS, has been rampant for more than seventy years.") [hereinafter First, Competition I]; Harry First, *Competition in the Legal Education Industry (II)*, 53 N.Y.U. L. REV. 1049, 1072–73 (1979) [hereinafter First, Competition II] (similar points).

challenged today.<sup>42</sup>

The case method was also cost-effective.<sup>43</sup> A single teacher could teach a large number of students, in contrast to medical and graduate schools, where lower teaching ratios were required.<sup>44</sup> As a result, until recent declines in applicants, law schools had frequently become revenue centers within universities and are often sources of revenue transfers to the rest of the universities of which they are a part.<sup>45</sup> This has led in a number of instances to disputes between law schools and university central administrations about uses of law school tuition revenues.<sup>46</sup>

Most importantly for our purposes, the development of the current model of legal education included features that facilitated the establishment of an enduring hierarchy. One reflection of this was that this shift toward a new model was more rapid at some schools than others. For example, even after widespread adoption of formal entrance requirements of some undergraduate course work, many schools continued to make exceptions out of “fear of losing students to other institutions in case too much was required.”<sup>47</sup> Even indicia that are today firmly associated with elite status (e.g. selectivity in admissions) turn out to vary considerably across time. For example, Harvard continued open admissions (“at least for affluent males”) into the 1920s; Yale did not become selective until 1926-27 when it began an admissions policy of admitting only students it thought could maintain a C average, and an aptitude test was first used for law school admissions by Columbia in 1928-29.<sup>48</sup> Nor did the advocates of change succeed in everything they attempted. For example, in the early twentieth century, the AALS made unsuccessful efforts to entirely eliminate night sections from schools with day programs.<sup>49</sup>

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<sup>42</sup> Shepherd, *Inefficient Racism*, *supra* note 40, at 105 (“The ABA forces one style of law training, at Rolls-Royce prices.”); Message from Dean Velvel, <http://www.msllaw.edu/Dean-Message.htm> (last visited July 19, 2005) (describing the Massachusetts’s School of Law’s approach to legal education).

<sup>43</sup> Carrington, *supra* note 21, at 748–49.

<sup>44</sup> *Id.* at 748.

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., Katherine Mangan, *Supporters Defend Law Dean Dismissed in Dispute Over Revenue*, CHRON. HIGHER EDUC., Aug. 1, 2011, <http://chronicle.com/article/Supporters-Defend-Law-Dean/128463/> (describing events leading to the dean of University of Baltimore School of Law being asked to resign following a dispute with the central university administration over uses of law school tuition revenue).

<sup>47</sup> Shepherd, *Inefficient Racism*, *supra* note 40, at 105.

<sup>48</sup> STEVENS, LAW SCHOOL, *supra* note 3, at 160–61. Berkeley accepted 70% of its applicants in 1954; by 1968 the acceptance rate had declined to 34%. STEVENS, LAW SCHOOL, *supra* note 3, at 221, n. 38. See also Cramton, *Remarkable Institution*, *supra* note 22, at 5 (“the era of open admissions” continued “even at the most prestigious law schools” until after the Second World War.)

<sup>49</sup> In 1912, for example, schools with day and night programs of equal duration were denied AALS membership. James M. Peden, *The History of Law School Administration*, in THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES, v. 2 1105, 1115 (Steve Sheppard ed. 1999); ROBERT J. KACZOROWSKI, FORDHAM UNIVERSITY SCHOOL OF LAW: A HISTORY 120 (Fordham 2012) (“The need for this change first arose when the ABA and AALS adopted a resolution in the early 1920s that required parttime and night law programs to be the equivalent of full-time programs, but they were to be offered over four years. . .”). Somewhat ironically, low status part-time programs (as night programs often were) later became a means of gaming the system to improve schools’ rankings. William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 INDIANA L. J. 163, 191 (2005) (showing how creation and expansion of part-time programs played a role in gaming).

Whatever their motives, elites within the profession and the academy successfully transformed American legal education. The AALS (which is dedicated to “improvement of the legal profession through legal education”<sup>50</sup>) and the ABA (which Reed calls “a group of leading practitioners”<sup>51</sup>), formed a “loose alliance” to drive the changes.<sup>52</sup> The organizations formed this alliance to persuade states to raise bar admission standards and to “assist those schools to realize their own ideals,” “compel other schools to conform”, and “create a condition of public opinion under which, even in default of action by the authorities in control of admission to the bar, prospective lawyers may be induced to attend schools represented in this movement rather than institutions of another and at present inferior type.”<sup>53</sup>

This alliance’s program built on a preliminary form of hierarchy. As early as 1914, Austrian scholar Josef Redlich had divided full-time American law schools into two groups and suggested that the lesser schools “have not the slightest significance from the point of view of scientific legal instruction”.<sup>54</sup> Similarly, Alfred Reed had found significant differences even as early as the second half of the nineteenth century, concluding that by then,

law schools, which previously had been very similar one to another, began now to be strung out in a serial line, as it were: at one end, those that were taking advantage of restrictive state regulations to make themselves as good as they knew how; at the other extreme, schools that profited by this freedom in another way and endeavored to do little more than to provide the training needed to pass superficial bar examinations.<sup>55</sup>

In part, Redlich’s and Reed’s categorizations reflected the growing distinction between academically-oriented and practice-oriented schools. By the 1920s, the ABA could divide schools into “approved” and “unapproved” categories, a distinction which “had no legal force” but which gradually became tied to bar admission.<sup>56</sup> Even at its start this hierarchy reflected more than a simple binary distinction.

Although the new model was not yet as dominant as it soon would be, distinctions soon arose within the group of “academic” schools as well.<sup>57</sup> Quite early, Harvard, Yale, and a few

<sup>50</sup> AALS Bylaws §1.2, [http://www.aals.org/about\\_handbook\\_bylaws.php](http://www.aals.org/about_handbook_bylaws.php) (“The purpose of the corporation [AALS] is the improvement of the legal profession through legal education.”).

<sup>51</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 376.

<sup>52</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 376.

<sup>53</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 376.

<sup>54</sup> REDLICH, *supra* note 38, at 70-71. See also James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT’L J. LEG. INFO. 1, 7 (2007), <http://scholarship.law.cornell.edu/ijli/vol35/iss1/5>.

<sup>55</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 13.

<sup>56</sup> Thorne, *supra* note 25, at 105-06.

<sup>57</sup> For example, Reed found that just seven law schools required three or more years of college education for all applicants, and just three more required it for applicants not in their undergraduate programs in 1920-21. Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 134. Reed documents an increase in minimum applicant requirements, and these figures increased to just eight and eleven, respectively, for 1925-1926. *Id.* The pioneers in expanding entrance requirements were Columbia and the University of Pennsylvania, both in 1888. Reed, PUBLIC PROFESSION, *supra* note 38, at 391. Fewer than a third of all

other schools, such as the University of Wisconsin, which had a well-established tradition of academic legal research,<sup>58</sup> and the University of Michigan, which was “the premier school in the Midwest” as early as the 1860s,<sup>59</sup> could be distinguished from the other academically-oriented schools. Distinctions among academic schools are evident in numbers of full-time faculty. When the AALS raised its required minimum of full-time faculty members to four and the minimum faculty-student ratio to 1 per 100 in 1924, “in spite of considerable opposition,”<sup>60</sup> a significant gulf already existed between the top and bottom of the resource hierarchy within the academic model: Harvard had seventeen full time faculty in 1925; Boston University (with a student body size just under half of Harvard’s) just six.<sup>61</sup>

Although the academic model soon became dominant, divisions remained. At its formation in 1900, the AALS had 32 charter members representing approximately half of U.S. law students.<sup>62</sup> Membership continued to distinguish more elite schools. Prof. Harry First summarized the 1967 AALS presidential address of Louisiana State University Professor Wex Malone as follows:

the AALS envisioned itself ‘as a club of the relatively select, the more prestigious, the higher quality schools,’ whose standards and ambitions were rapidly escalating. In view of the increasing number of applicants, quality law schools could afford to skim off the cream, select the best[,] leaving the rejected ones with only the prospect of admission somewhere else.’ The rejected ones, it was suggested, would become the ‘legal mechanics,’ not ‘drawn from the intellectual elite,’ who could handle ‘the oft recurrent problems of simple people with limited funds.’<sup>63</sup>

Aspirationally, at least, most schools sought to be part of the “cream.”<sup>64</sup> As the academic model’s dominance grew, the absence of AALS membership distinguished low status schools from the majority to a diminishing degree over time. By 2000, 184 law schools belonged to the AALS and just 22 ABA-accredited schools did not.<sup>65</sup> Hierarchy within the academic model now

three-year law full-time programs required at least two years of college in 1925-26, and even fewer among part-time programs. Reed, *PRESENT-DAY LAW SCHOOLS*, *supra* note 35, at 134.

<sup>58</sup> Stevens, *LAW SCHOOL*, *supra* note 3, at 79 (noting that Wisconsin “grew in national reputation” in 1890s-1900s).

<sup>59</sup> Stevens, *LAW SCHOOL*, *supra* note 3, at 78. Reed, *PUBLIC PROFESSION*, *supra* note 38, at 452. Redlich also singled out the University of Michigan, together with Wisconsin, Chicago, and Northwestern, as being of high caliber. Redlich, *supra* note 38, at 70.

<sup>60</sup> ESTHER LUCILE BROWN, *LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE* (NY: Russell Sage Foundation, 1938), at 105–06; Redlich, *supra* note 38, at 50–51.

<sup>61</sup> Figures taken from Reed, *PRESENT-DAY LAW SCHOOLS*, *supra* note 35, at 264.

<sup>62</sup> AALS, *What Is The AALS?*, <http://www.aals.org/about.php> (visited December 9, 2012).

<sup>63</sup> First, *Competition II*, *supra* note 41, at 1056 (quoting Wex).

<sup>64</sup> As Prof. Harry First described it, by the 1970s AALS membership was “no more than a designer label that gives a school (as one group of past AALS presidents put it) ‘an intangible *Je-ne-sais-quoi* sort of cachet.” First, *Competition II*, *supra* note 41, at 1072–73 (1979) [hereinafter “First, *Competition II*”] First also notes that “there are no real substantive differences between ABA and AALS standards.” *Id.* at 1073.

<sup>65</sup> AALS, *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions 2000-2001*, available at <http://www.aals.org/statistics/20002001.html> (visited December 9, 2012).

mattered more.

Almost everyone may have wanted to follow the academic model, but execution varied. In particular, resources mattered and the hierarchy was also reflected in tuition levels: Harvard, Yale, Columbia, and Pennsylvania were charging significantly higher tuition than the rest by the mid-1920s.<sup>66</sup> Reed also recognized the significance of faculty and dean compensation structures, noting the transition from law schools whose faculties (or, at least, deans) received the tuition and those where the university paid the faculties a salary and retained the tuition money itself.<sup>67</sup> Thus even before the ABA-AALS-driven changes in legal education became completely dominant, there was at least a tripartite division between elite academic schools, non-elite academic schools, and practice-oriented schools.<sup>68</sup>

In the same way, schools in the 1920s drew from different pools of students<sup>69</sup> and faculty.<sup>70</sup> The most elite schools may not have seen themselves in serious competition with the non-elites (or vice versa) for students or faculty in the first decades of the twentieth century, but serious price competition existed between academic schools and practice-oriented schools.<sup>71</sup> Using the ABA and AALS as regulatory vehicles, academic schools effectively quashed price

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<sup>66</sup> Reed, PRESENT-DAY LAW SCHOOL, *supra* note 35, at 405–513.

<sup>67</sup> Reed, PUBLIC PROFESSION, *supra* note 38, at 185 (noting the University of Pennsylvania made the transition in 1888, N.Y.U. in 1889, and Northwestern in 1891).

<sup>68</sup> In his history of legal education, Robert Stevens divided schools in the 1920s and 1930s into three similar categories: the elites like Harvard and Columbia, “the average state universities and smaller private schools” where a “modified Harvard case-method model” was used “on a lesser scale”, and the “many” where “legal education consisted, at most, of preparation for the local bar examination” through “a lecture-and-text system” and “a modified version of the case method, sometimes modified more because of the professors’ or students’ lack of competence than because of intellectual doubts about its desirability.” Stevens, LAW SCHOOL, *supra* note 3 at 157. A 1974 study argued that there were “roughly speaking two kinds of law schools—large schools and small schools,” with the distinction affecting the scope of curricular offerings and teaching loads. Peter deL. Swords & Frank K. Walwer, THE COSTS AND RESOURCES OF LEGAL EDUCATION: A STUDY IN THE MANAGEMENT OF EDUCATIONAL RESOURCES 6–7 (1974).

<sup>69</sup> For example, in his 1921 study, Reed divided law schools into four groups: schools with degree programs under three years (10% of law schools); “high-entrance, full time schools” (20%); “low-entrance full time” schools (requiring a single year of undergraduate preparation) (30%); and part-time schools (40%). Reed, PUBLIC PROFESSION, *supra* note 38, at 414-15. In his 1928 investigation of legal education for the Carnegie Foundation, Reed reaffirmed his 1921 report’s analysis by categorizing part-time law schools as “[c]heaped copies of the regular full-time model” and he divided the full-time schools into “high-entrance” and “low-entrance” categories. Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 305, quoting Reed, PUBLIC PROFESSION, *supra* note 38, at 402.

<sup>70</sup> Barbara H. Cane, *The Role of the Law Review in Legal Education*, 31 J. LEGAL EDUC. 215, 220 (1981) (“In their efforts to meet higher academic standards law schools increasingly followed Harvard’s lead and hired a faculty with strong academic credentials. All law faculties took on a similar look: they were dominated by non-practitioners, most of whom were trained on law review, many of whom were editors.”). Roger C. Cramton, *Demystifying Legal Scholarship*, 75 GEO. L. J. 1, 13 (1986) (noting “[t]here is now a national market for law teachers, and most new teachers attended one or another of the top-rated schools.”).

<sup>71</sup> Without the need to support libraries or reduce teaching loads to enable research, practice-oriented schools had a significant cost advantage over academic schools. As others have noted, the desire of the elites to spread the academic model was at least in part driven by academic schools’ desire to limit this price competition. First, *Competition I*, *supra* note 41, at 348. Note that from 1900-1920, AALS member schools lost market share to non-members. *Id.* at 347–48.



competition by having common standards imposed on all law schools. This regulatory pressure is evident in requirements of undergraduate pre-legal study and upgrading of faculties, libraries, and other resources.<sup>72</sup> These efforts narrowed the cost differential between elite and non-elite law schools. Academic law schools were successful in their efforts and, over time, even schools near the lower end of the law school hierarchy began to make considerable efforts to fit the academic model—motivated at least in part by ABA accreditation standards that require doing so.<sup>73</sup> This led to what a report for the Carnegie Commission on Higher Education characterized as “the illusion that law is a unified profession with all members sharing a common educational background.”<sup>74</sup>

Law schools’ transition to the twentieth century model was helped by the increasing demand for legal education and the ready availability of subsidized student loans that enabled law students to finance their law school education.<sup>75</sup> Because accreditation became the key to their graduates’ abilities to be admitted to the practice of law, particularly outside of the state where they obtained their degrees,<sup>76</sup> the successful effort by the ABA-AALS created a world in which the vast majority of law schools followed the twentieth century academic model.<sup>77</sup> By 1970, for example, an observer concluded that “[t]he curricula as well as the teaching methods of law schools are uniform,” with a “a set of courses, texts, and a style of teaching which vary little from school to school.”<sup>78</sup> A 1968 report from the AALS curriculum committee summarized legal education as follows:

in any given law school most of the students are doing the same thing: exactly the same thing in the first year, much the same in the second, and only marginally different things in the third year. . . . American legal education is characterized by the same courses, taught from the same books, by the same methods.<sup>79</sup>

<sup>72</sup> Stevens, *LAW SCHOOL*, *supra* note 23, at 37.

<sup>73</sup> American Bar Association, *Standards for Approval of Law Schools*, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2012\\_2013\\_aba\\_standards\\_and\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf); Shepherd, *supra* note 40, at 112 (“During the Depression the ABA was able to convince the federal and state governments to grant law licenses only to graduates of law schools that the ABA accredited. In 1923 no state required graduation from law school at all, much less from an ABA-accredited school. . . . Now almost all states require graduation from an accredited law school and exclude graduates of unaccredited schools from practice in both state and federal courts.”)

<sup>74</sup> Thorne, *supra* note 25, at 101.

<sup>75</sup> See Swords & Walwer, *supra* note 68, at 276 (noting that between 1955 and 1970, “loans, like scholarships, became a significant resource in financing law students’ education” and citing data from 3 case study schools that loans increased between 1,712% and 6,788% in constant dollars); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS 107–25* (Univ. of Chicago Press 2012); Phillip G. Schrag, *Failing Law Schools -- Brian Tamanaha's Misguided Missile*, \_\_\_ *GEO. J. ETHICS* \_\_\_ (forthcoming 2013), <http://ssrn.com/abstract=2179625>.

<sup>76</sup> Eighteen of 51 U.S. jurisdictions (states plus the District of Columbia) currently limit the bar exam to those who have graduated from an ABA-accredited law school. Section of Legal Education and Admissions to the Bar, American Bar Association, *COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS* (2011 ed.), Chart III.

<sup>77</sup> Cramton, *Demystifying*, *supra* note 70, at 13, n. 45 (discussing impact on local law schools of ABA accreditation standards requiring research support).

<sup>78</sup> Thorne, *supra* note 25, at 107, 110.

<sup>79</sup> Charles J. Meyers, *Report of the Chairman of the A.A.L.S. Committee on Curriculum*, PROCEEDINGS, A.A.L.S. 1968 ANNUAL MEETING, part 1, at 9 (1968).



Thus from the early twentieth century, however, the law school world was divided into clearly defined segments. This hierarchy set the stage for the evolution of the hierarchy within that group.

### B. *Establishing the Hierarchy*

Early twentieth century efforts to transform legal education created conditions under which an enduring hierarchy became embedded in legal education. This hierarchy expanded on the initial distinction between the small number of academic schools and the larger number of proprietary, practice-oriented schools as well as the existing distinctions among the academic schools. By beginning the process of largely eliminating proprietary, practice-oriented schools and pushing the vast majority of law schools into research universities, where the faculty engaged in “scientific legal instruction” and academic research, the new model left law schools with fewer dimensions upon which to compete and so changed the nature of competition among law schools, which thus came to be based on a narrow range of distinguishing features, particularly credentials of applicants,<sup>80</sup> resources,<sup>81</sup> and faculty prestige.<sup>82</sup> The norm was becoming—as Reed suggested in the 1920s that it should be—schools with a “scholarly law school dean” who would make them into a “‘nursery for judges’ that will make American law what American law ought to be”<sup>83</sup> through law reform and legal research activities.<sup>84</sup> As with the new teaching methods, the focus on full-time scholars was a Langdellian innovation.<sup>85</sup>

A focus away from practice in a direction that emphasized scholarship gave schools an additional dimension on which to compete. Reed found that schools that limited the teaching load for full-time faculty “deliberately placed at a moderate figure” the classroom teaching requirements (which he classified as from less than seven year-hours to nine year-hours in 1925-26) so as “to leave the instructor time for administrative or research work, or in a few cases for

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<sup>80</sup> See note 69 *supra*.

<sup>81</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 13. Reed believed university resources were important because “in a general way, the greater are the financial resources of a college or university, the greater is the likelihood that funds for the improvement of the relatively inexpensive law department are either already available or can be secured.” Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35 at 93.

<sup>82</sup> Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L. J. 739, 773 (1984-1985).

<sup>83</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 418. See also *Messages of Greeting to the U.C.L.A. Law Review*, 1 U.C.L.A. L. REV. 1, 6 (1953) (Message from Roscoe Pound saying law schools “do much, at least, of the work of a ministry of justice for the state”). Reed complained about the “extreme narrowness” of American legal education relative to European law schools, where “[t]he broad fields of economics and of government ... are ... regarded as essential components of a lawyer’s training.” Reed, PUBLIC PROFESSION, *supra* note 38, at 48-49.

<sup>84</sup> Lilly, *supra* note 8, at 1428-29 (noting transformation of law faculties in their progression “from the profession to the ‘Olive Grove of Academe’”).

<sup>85</sup> Thorne, *supra* note 25, at 145 (“The first specialists in teaching law were practitioners who took on apprentices and initiated lecture courses for cohorts of students. When full-time law schools developed, the typical professors were successful attorneys and judges who had proved themselves in legal practice. This tradition began to change at Harvard under Langdell, who initiated the practice of hiring recent law school graduates; Ames, who succeeded Langdell as dean, was the first to be hired as a teacher without practical experience as a lawyer.”).

law practice.”<sup>86</sup> By contrast, he noted that at some other (and lesser) schools “the average [teaching load] ran as high as thirteen hours [per week], while individual professors or deans can be found who carried fifteen, or even seventeen weekly hours of instruction.”<sup>87</sup> Thus from the 1920s and 1930s, a division already existed around scholarly activity among faculty based on resources.<sup>88</sup>

Increasing attention to scholarship was viewed by leading legal educators as a key means to law school improvement. Willard Hurst, for example, called for assigning “a preferred position in [law school] programs to promotion of basic research into the nature, functions, and working realities of legal order” as a “cure” for the “complacent and limited world” of legal education.<sup>89</sup> This norm of scholarship became established just as the number of law schools rapidly expanded: from 1910 to 1930, “the number of law schools increased from 124 to 180 with total law school enrollment growing from 19,498 to 46,751.”<sup>90</sup> The consequences of law school categories based on approaches to scholarship were evident as early as the 1940s. As Tulane Dean Paul Brosman wrote in his contribution to the 1947 Report of the AALS Committee on Aims and Objectives of Legal Education, even among those comparatively elite schools (relative to non-AALS members):

[t]he run-of-the-mill [AALS] member school is, under ordinary circumstances, relatively small in size, is located in a provincial university, is geared currently to the production of lawyers for the local private practice, tends to be insecure from a budgetary standpoint, is manned by an ill-paid and frequently over-worked faculty sometimes of modest performance potential, operates on a too narrow pre-legal educational margin, and is virtually dependent for its very existence on the professional approval of the community in and for which it functions.<sup>91</sup>

Complaints about resource scarcity became regular. For example, the ABA’s consultant on legal education reported with dismay that twenty-two schools were operating in 1954-55 on budgets of

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<sup>86</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 265. The tradeoff between devoting time to teaching and scholarship later became an issue in legal education outside of the elites that also helped to mark the hierarchy. For example, in 1975, Georgia law professor John Murray was complaining in print that professors were devoting too much time to writing bad articles and not enough to mentoring students. John F.T. Murray, *Publish or Perish-By Suffocation*, 27 J. LEGAL EDUC. 566, 566–67 (1975) (“My sole complaint is that the valuable contributions are hard to locate in the vast sea of outpourings added to the literature – not as a result of inspiration and concern, but because of coercion and tradition.”).

<sup>87</sup> Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 385.

<sup>88</sup> Robert L. Bard, *Legal Scholarship and the Professional Responsibility of Law Professors*, 16 CONN. L. REV. 731, 734 (1984) (arguing that there is a “quite direct” relationship between scholarship and faculty members’ individual prestige).

<sup>89</sup> J. Willard Hurst, *Research Responsibilities of University Law Schools*, 10 J. LEGAL EDUC. 147, 161 (1957). *See also* Law Schools and Professional Education: Report and Recommendation of the Special Committee for a Study of Legal Education of the American Bar Association 78, n. 191 (1980) (noting that as early as the mid-1960s, “professors at high resource schools tended to support a theoretical orientation to law . . .”).

<sup>90</sup> Swords & Walwer, *supra* note 68, at 34. Many of these schools were independent or proprietary schools. *Id.* at 36.

<sup>91</sup> Statement of Paul Brosman, *Report of the Committee on Aims and Objectives of Legal Education*, ASSOCIATION OF AMERICAN LAW SCHOOLS HANDBOOK, 124, 125–26 (1947).

less than \$60,000 per school and twelve were operating on less than \$50,000.<sup>92</sup> After these inspections “[o]ne observer expressed the view that the principal difficulties in legal education can all be traced to an insufficiency of funds” and concluded that “law schools must eventually come to be heavily subsidized.”<sup>93</sup> More money didn’t necessarily make a school “better”—as Howard Bowen notes in his analysis of higher education costs, richer institutions had a tendency to “apply their incremental expenditures to successively less important purposes”<sup>94</sup>—but it did enable it to compete more effectively for status.

Schools were competing for status, at least some of those belonging to the AALS, with its more stringent standards. Such schools sought to be “better”<sup>95</sup> and so distinguish themselves from their competitors. With the AALS providing clear standards with which to evaluate schools, law schools now had a road map on how to “improve.”<sup>96</sup> This road map focused on enhancing the research-orientation of the faculty by reducing teaching loads, increasing pay, expanding library resources, and improving student quality to allow more sophisticated teaching methods.<sup>97</sup> Proponents of this research-focused road map supported adoption of features that came to be characteristic of the dominant twentieth century law school model.<sup>98</sup> Unsurprisingly, widespread adoption of a single model led to a high degree of “sameness” among schools.<sup>99</sup>

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<sup>92</sup> The schools were Santa Clara, Georgia, Idaho, Valparaiso, Southern, St. Paul, Montana, North Carolina College, Ohio Northern, Salmon Chase, Franklin University, Toledo, Tulsa, Oregon, Willamette, South Carolina State, Texas Southern, Houston, Washington & Lee, William & Mary, Gonzaga, and Wyoming. John G. Hervey, *There’s Still Room for Improvement*, 9 J. LEGAL EDUC. 149, 155 (1956). See also Swords & Walwer, *supra* note 68, at 22 (noting that “total budgets” at many “small schools in 1955 in absolute terms were insubstantial.”).

<sup>93</sup> Albert P. Blaustein & Charles O. Porter, *THE AMERICAN LAWYER: A SUMMARY OF THE SURVEY OF THE LEGAL PROFESSION* 174 (1954).

<sup>94</sup> Howard R. Bowen, *THE COST OF HIGHER EDUCATION* 150–51 (1980).

<sup>95</sup> See *supra* notes 50 to 65 and accompanying text. See also Board of Editors, *Beginning the Second Fifty Years: A Glance at the First Fifty*, 51 U. COLO. L. REV. 5, 7 (1979) (discussing role of James Grafton Rogers who came as dean to the University of Colorado Law School from a position as dean at Denver University and then moved on to a faculty position at Yale Law School; noting Rogers “was determined that the University of Colorado Law School should receive national recognition”).

<sup>96</sup> Blaustein & Porter, *supra* note 38, at 181 (noting emphasis through early 1950s on “measurable standards: required years of study, years of law study, numbers of books in libraries, numbers of full-time teachers, etc.”).

<sup>97</sup> See, e.g., Blaustein & Porter, *supra* note 38, at 173–75 (describing criticism of legal education that more resources needed as well as “modernizing of old courses, the raising of qualitative standards for admission to and graduation from law schools, and higher requirements for membership in the bar” as well as that law schools be “heavily subsidized”).

<sup>98</sup> See, e.g., Hurst, *supra* note 89, at 156 (suggesting “thirty to forty” law schools “endow six to ten” positions focused heavily on scholarship by teaching just two or three hours per semester with a year of no teaching “every four or five years”. Remarkably, Hurst could be describing Yale and Harvard today).

<sup>99</sup> Hervey, *supra* note 92, at 150 (ABA adviser on legal education reports that after eight years of inspecting law schools that there is “a sameness about the schools which is shocking.”). See also Lilly, *supra* note 8, at 1436 (“the modern law faculty—at least at the major schools—is increasingly homogenous,” because of focus on theory not doctrine and exclusion of “those who have spent more than a few years in practice”); Swords & Walwer, *supra* note 68, at 125 (“generally speaking, the first-year program of a school will be about the same whatever its student/faculty ratio is.”). Nonetheless, a few schools sought to differentiate themselves. New York Law School was founded in 1891 by faculty who left Columbia because they did not want to use the case method. William P. LaPiana, *Just the Facts: The Field Code and the Case Method*, 36 N.Y.L.S. L. REV. 287, 287 (1991) (“Angered by the abandonment of the ‘Dwight Method’ of legal education in favor of the Harvard case method, the faculty of the Columbia Law School and many of its students withdrew en masse to the new institution.”). Suffolk Law School

Schools adopting the academic model focused on expanding production of academic legal scholarship: in the case of Harvard Law School, for example, the *Harvard Law Review*'s founding in 1887 “gave the faculty, and [James Barr] Ames [full professor of law at Harvard Law School from 1877 and dean from 1895-1910] in particular, a new outlet for their scholarship.”<sup>100</sup> From just a few law school-affiliated journals at the turn of the century, law reviews rapidly diffused throughout the legal academy: first “five of the nation’s then most prestigious law schools”<sup>101</sup> and then, by 1930, a total of forty-three,<sup>102</sup> or “all major law schools”,<sup>103</sup> had created them. Law reviews thus became “an accepted part of serious discourse on law either in the academy or the profession.”<sup>104</sup> Relatively little distinguished the type of

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was aimed at night students and also used texts rather than case materials. Cane, *supra* note 70, at 219. But these were exceptions rather than the norm. Cane, *supra* note 70, at 219 (“By 1917 the example of Harvard was ‘followed by every school of consequence in the country,’ both because of its observed success and the prodding of the American Bar Association and the American Association of Law Schools [sic]”, quoting Harvard Law School Association, Centennial History, at 70).

<sup>100</sup> Swygert & Bruce, *supra* note 82, at 773. See also Wilson, *supra* note 18, at 403 (more journals appeared because of “[t]he new thought that was stirring in the law schools” which “provided more to write about, and there were more law teachers to write about it”); M.H. Hoeflich & Lawrence Jenab, *The Origins of the Kansas Law Review*, 50 U. KAN. L. REV. 375, 377 (2002) (noting that Harvard Law Review, the first student-edited law review, was founded in 1887 as a vehicle to circulate the best legal scholarship and that within 50 years general agreement existed that first-rate law schools needed their own student-edited law reviews); Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 33–34 (1996), available at <http://www.uakron.edu/law/docs/closen.pdf> (noting that the first student-run legal periodical was the Albany Law School Journal in 1875, which was published for a year, and the second was the Columbia Jurist, which ended after approximately two years, but which motivated Harvard Law School students to create the Harvard Law Review in 1887)..

<sup>101</sup> Swygert & Bruce, *supra* note 82, at 779 (the five were Yale (1891), Pennsylvania (1896), Columbia (1901), Michigan (1902), and Northwestern (1906)). Some other schools also started journals in the 1890s but these did not survive. *Id.* at 780. The Dickinson School of Law also began a review in 1897, which survived, but which did not have the same academic focus. *Id.* at 780–82. The journal at Northwestern was founded under the deanship of John Wigmore, who had been a student editor at Harvard Law School. *Id.* at 785. Georgetown and the University of California began law reviews in 1912 while Dickinson’s journal moved toward the law review model in the 1910s.

<sup>102</sup> Douglas B. Maggs, *Concerning the Extent to Which the Law Review Contributes to the Development of the Law*, 3 SO. CAL. L. REV. 181, 181–82 (1929-1930).

<sup>103</sup> Cramton, *Remarkable Institution*, *supra* note 22, at 4. See also *Messages of Greeting*, *supra* note 83, at 5 (message from Roscoe Pound stating that “the transition [to the academic model] was complete” when the University of Pennsylvania merged the *American Law Register* into its law review).

<sup>104</sup> Cramton, *Remarkable Institution*, *supra* note 22, at 4. See also Frederick Evan Crane, *Law School Reviews and the Courts*, 4 FORDHAM L. REV. 1, 1 (1935) (law journal “has slowly and gradually developed into one of the chief functions of our law schools.”); Wilson, *supra* note 18, at 495 (“the critical function of the law reviews has been accepted as a proper part of the juristic process.”); *Messages of Greeting*, *supra* note 83, at 6 (Message from Roscoe Pound stating that “[i]nfluence of academic legal periodicals has grown steadily”); Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915, 915–16 (1953) (quoting Judge Cardozo that “[a]ny morning’s mail may bring a law review from Harvard or Yale or Columbia or Pennsylvania or Michigan or a score of other places to disturb our self conceit and show with pitiless and relentless certainty how we have wandered from the path.” and commenting “oh, ‘tis true, ‘tis true.”); Frank K. Richardson, *Law Reviews and the Courts*, 5 WHITTIER L. REV. 385, 389 (1983) (California Supreme Court justice saying to law review editors “[y]ou grade us, and we pay attention!”). But see Thompson, *supra* note 22, at 18 (noting that Oliver Wendell Holmes was reportedly annoyed when a student note “dissected an opinion he had written and pronounced it ‘well-reasoned.’”); Douglas Leslie, *An Interview with Judge Richard Posner*, VA. L. WKLY., Apr. 22, 1994, at 1, 4 (quoting Judge Richard Posner that “[j]udges don’t read

content published in these journals,<sup>105</sup> although some focused more on state or region-specific legal issues than others.<sup>106</sup> Observers attributed this high degree of similarity to imitation of the established elite schools.<sup>107</sup>

For both individual professors and law schools, scholarship became the path to mobility up the hierarchy.<sup>108</sup> Law schools developed “a supercilious attitude toward the practice of law”. As early as 1958 a study of the AALS directory found relatively few faculty with experience in practice.<sup>109</sup> Judge Richard Posner noted in 1994: “If you were giving realistic advice to a young law teacher, I think you would have to say that he or she should regard teaching as a subordinate activity and that tenure decisions and opportunities to move laterally will depend much more on scholarly achievement than on teaching quality.”<sup>110</sup> Although the emphasis on the type and amount of scholarship changed over the twentieth century—in the 1950s it was still possible to say that “Men can become professors at major law schools without any publications (other than their student work on the law review)” and do “very little writing, none of it ‘research’, or at any rate none of it regarded as a contribution to cumulative scientific endeavor”<sup>111</sup>—it is fair to say that it is the increasing relevance of Posner’s 1994 advice further “down” the hierarchy that is one of the main changes since that time.

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law review articles. That’s a myth. Anyone who thinks judges know or care what’s going on in the academy is naïve.”).

<sup>105</sup> Fred Rodell, *Farewell to Law Reviews*, 23 VA. L. REV. 38, 44 (1936-37) (law reviews similar because “they have all been sucked into a polite little game of follow-the-leader with the Harvard Law Review setting the pace.”); David P. Cavers, *New Fields for the Legal Periodical*, 23 VA. L. REV. 1, 1 (1936-37) (“Certainly the standardization of law reviews is no more striking than the standardization of the schools which have fathered them.”); Harold Marsh, Jr., *The Law Review and the Law School: Some Reflections About Legal Education*, 42 U. ILL. L. REV. 424, 425 (1947) (reviews as “alike ‘as peas in a pod.’”); Maggs, *Concerning the Extent*, *supra* note 102, at 183 (“In type of content the reviews differ little.”).

<sup>106</sup> See, Board of Editors, *supra* note 95, at 6 (noting that the first board of editors of the *Rocky Mountain Law Review* in 1928 “felt strongly that the focus of the *Review* should be the publication of articles concerning the development and study of legal problems common to the Rocky Mountain region.”); John E. Cribbet, *Experimentation in the Law Reviews*, 5 J. LEGAL EDUC. 72, 75 (1952) (noting some schools’ law reviews focus on “the problems of their respective jurisdictions”); Dawn Clark Netsch & Harold D. Shapiro, *100 Years and Counting*, 100 NW. U. L. REV. 1, 1 (2006) (describing original goal as “matters of special practical value to the Illinois bar.”).

<sup>107</sup> E. Joshua Rosenkranz, *Law Review’s Empire*, 39 HASTINGS L. J. 859, 917 (1987-1988) (“Every law review longs to be the *Harvard Law Review*.”); Arthur S. Miller, *A Modest Proposal for Changing Law Review Formats*, 8 J. LEGAL EDUC. 89, 89 (1955) (law reviews “largely patterned in slavish imitation of the standard set by the pioneering Harvard effort” producing “monotonous uniformity rather than originality”); Cribbet, *supra* note 106, at 75 (noting that schools are reluctant to focus their law reviews on local issues “probably on the theory that to [do so] consistently would mark them as *local* and *provincial* rather than *national* law schools.”).

<sup>108</sup> John S. Elson, *The Case Against Legal-Scholarship or, if the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343, 354 (1989) (“The importance of scholarship to the careers of law teachers is difficult to overestimate. Hiring, promotion, pay, collegial recognition, societal prominence, and intellectual satisfaction is mainly a function of the production of scholarship.”). *But see* Jonathan L. Entin, *The Law Professor as Advocate*, 38 CASE W. RES. L. REV. 512, 532 (1988) (publication requirements in law schools “strikingly modest compared to the standards applicable to faculty in most other disciplines.”)

<sup>109</sup> Irving F. Reichart, Jr. *The Future of Continuing Legal Education in LAW IN A CHANGING AMERICA* 174 (Geoffrey C. Hazard, Jr., ed. 1968).

<sup>110</sup> Leslie, *supra* note 104, at 3.

<sup>111</sup> David Riesman, *Law and Sociology: Recruitment, Training, and Colleagueship*, in *LAW AND SOCIOLOGY* (William M. Evan, ed., 1962).

Law professors have disproportionately come from elite schools, which has been another key path through which elite schools have influenced schools lower in the hierarchy as professors' "ideas about teaching law and legal education were formed at these elite schools."<sup>112</sup> Prestige became "the only game in town,"<sup>113</sup> another factor making scholarship a crucial part of the academic law school model.<sup>114</sup> The amount of scholarship certainly became voluminous: at least one new journal appeared annually between 1945 and 2011.<sup>115</sup> The usefulness of this expansion in quantity of legal scholarship to the profession and the courts has, however, regularly been the subject of heated debates.<sup>116</sup>

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<sup>112</sup> Cramton, *Demystifying*, *supra* note 70, at 13. Further evidence of this comes from a perceptive essay by Prof. Julius Getman, in which he discusses his early career as a professor in the course of advising how to write scholarly articles. Noting that in the mid-1960s when he was a professor at Indiana University in Bloomington, "a period during which many able people at first-rate law schools did little or no writing" because "the image of a successful law professor was that of a master teacher rather than a productive scholar," he felt that, "like many young professors who start teaching at any but the most prestigious law schools", that he was "isolated from the more general world of legal scholarship and envied those whose works seemed to call forth immediate response in the law reviews." Julius Getman, *The Internal Scholarly Jury*, 39 J. LEGAL EDUC. 337, 338–39 (1989).

<sup>113</sup> Cramton, *Demystifying*, *supra* note 70, at 14 ("academic prestige seems to be the only game in town"). *See also* Bard, *supra* note 88, at 731 ("Law school professors are obsessed by scholarship.").

<sup>114</sup> *See* Maggs, *Concerning the Extent*, *supra* note 102, at 184 ("The existence of law reviews affords to the law teacher a vehicle for his thought; induces him, and if his own school publishes a review sometimes pressure is brought upon him, to write and thus to study, acquire knowledge, develop his capabilities, and become a better instructor; affords him the opportunity to advertise his worth and thus, through offers of employment from schools other than his own, to improve his economic status or his prestige."); Clarence M. Updegraff, *Management of Law School Reviews*, 3 U. CIN. L. REV. 115, 120 (1929) (noting survey of law schools that showed that at 10 out of 27 schools "it is regarded as one of the academic duties of faculty members to write leading articles for the law review"); Cribbitt, *supra* note 106, at 80 (suggesting that a reason schools had general law reviews instead of symposium format reviews was to give their faculty an outlet for scholarship); James Lindgren, *Reforming the American Law Review*, 47 STAN. L. REV. 1123, 1127 (1995) (hereafter "Lindgren, *Reforming*") (noting that "top" law reviews can get "good" articles by selecting from those that "come over the transom" because they can choose from among "best" work). A more critical assessment of the impact of the focus on scholarship came from University of Georgia Prof. John Murray, who argued "we have people writing, not necessarily from inspiration, but because they are required to develop or maintain a scholarly reputation." Murray, *supra* note 86, at 567.

<sup>115</sup> Alena L. Wolotira, *From a Trickle to a Flood: A Case Study of the Current Index to Legal Periodicals to Examine the Swell of American Law Journals Published in the Last Fifty Years*, 31 Legal Reference Services Quarterly 150, 151 (2012).

<sup>116</sup> On their impact generally, the debate is a long-standing one. *See* Swygert & Bruce, *supra* note 82, at 789; Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 24 (1956) ("the law reviews are published primarily in order that they may be written" rather than read.); Murray, *supra* note 86, at 567 (many articles result "coercion and tradition" not from "inspiration"); Rodell, *supra* note 105, at 38 ("There are two things wrong with almost all legal writing. One is its style. The other is its content."); Alan W. Mewett, *Reviewing the Law Reviews*, 8 J. LEGAL EDUC. 188, 188 (1955) ("Few reviews are read; and although most are skimmed over in the hope of finding something worthwhile to read, some, perhaps, do not even have that honor conferred upon them."). A few commentators thought law reviews useful. *See, e.g.,* George B. Weisiger and Bernita L. Davies, MANUAL FOR THE USE OF LAW BOOKS 57 (4<sup>th</sup> ed. 1951) (praising law reviews for containing "a large part of the best work in legal history, legal analysis, comparative jurisprudence, and comparative legislation" and for being better than all textbooks "except those of the highest rank" on a page-by-page basis.); *See also* Vitiello, *supra* note \_\_, at 939 (differentiating between "practice oriented journals" which "hardly encouraged intellectually stimulating articles" but focus on "the oatmeal of blackletter law summaries that appeal to busy lawyers who believe that the bottom line is a fixed rule of law."); Jordan H. Leibman & James P. White, *How Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 397 (1989) ("Critics are correct that virtually no one reads issues of

The shift of legal education into universities also reinforced the existing hierarchy in several ways. First, universities themselves had a hierarchy.<sup>117</sup> Being attached to Harvard University positioned a law school quite differently from being attached to Suffolk University a few miles away from Harvard Yard. Through the 1930s, roughly half of Harvard University's expenses were covered by investment income, a level few other schools could ever hope to match.<sup>118</sup> No matter what a "lesser" law school might do, it would have trouble overcoming the prestige and resources attached to the top universities to which its "better" competitors were attached.<sup>119</sup> Second, the shift away from the proprietary model unmoored law schools from the profit motive, allowing the metrics of success to be largely defined by law school faculties.<sup>120</sup> Because those with greater prestige to begin with played a larger role in that definition, it is not surprising that this reinforced the existing hierarchy, although this began to cause comment in the 1970s.<sup>121</sup> Third, being part of universities oriented faculties toward both the competitiveness

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generalist law reviews as they do news magazines or even trade publications. That is not to say they are unused or lack influence. Rather they serve as reference material waiting quietly in libraries for scholars, judges, students, and practitioners who need help in solving legal problems and in selling their solutions to the world."); Scott M. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1097 (1986) (suggesting that "[t]he availability of a forum open to all works ensures the uniquely democratic and diverse nature of the American system of legal education."); Richardson, *supra* note 104, at 386–87 (California Supreme Court justice praising role of law reviews in "quietly providing light which helps keep the common law on the right trail" and "sharpening the law itself").

<sup>117</sup> See, e.g., Arthur M. Cohen, THE SHAPING OF AMERICAN HIGHER EDUCATION: EMERGENCE AND GROWTH OF THE CONTEMPORARY SYSTEM 106–07 (1998) (by 1900 research universities "had become a special group among American institutions" and noting their advantages in library size, endowments, enrollments, graduate degrees awarded, and funding); *id.* at 162–63 (describing growth of gap in income between "the prominent institutions and the rank and file of colleges"); Philip J. Cook & Robert H. Frank, *The Growing Concentration of Top Students at Elite Schools*, in STUDIES OF SUPPLY AND DEMAND IN HIGHER EDUCATION 121, 121–26 (NBER 1993), available at <http://www.nber.org/chapters/c6099> (discussing prestige hierarchies among universities generally).

<sup>118</sup> *Harvard's Money, con't*, HARVARD CRIMSON (Nov. 30, 1962) available at <http://www.thecrimson.com/article/1962/11/30/harvards-money-cont-psince-the-latter/> (visited December 9, 2012). Conti-Brown, *supra* note 68, at 704 (noting that university endowments have a value independent of "the financial wealth such funds represent. That is, rather than simply an accumulation of excess capital, an elite university's endowment represents a symbol of status and prestige, similar to the university's libraries, art museums, architecture, faculty, and the prominence of its alumni.") (citations omitted).

<sup>119</sup> See, e.g., Hurst, *supra* note 89, at 157 (noting that "research is an expensive business"). See also Gregory Preckshot, Comment, *All Hail Emperor Law Review: Criticism of the Law Review System and its Success at Provoking Change*, 55 MO. L. REV. 1005, 1010 (1990) (noting that Harvard's secondary journals have no trouble attracting contributors because "the name Harvard on the cover ensures more articles than space to print.").

<sup>120</sup> TAMANAHA, *supra* note 75, at 8 ("law schools are run for law professors."); Ryan C. Amacher & Roger E. Meiners, FAULTY TOWERS: TENURE AND THE STRUCTURE OF HIGHER EDUCATION 57 (2004) ("the lack of a profit measure makes it difficult for any nonprofit organization to know how it is doing").

<sup>121</sup> See Rosenkranz, *supra* note 107, at 859 ("The recent indictment of the American law school as a reproducer of illegitimate hierarchy leaves one wondering whether nothing remains sacred" and summarizing critical literature to date of article). Much of this criticism is associated with the political left. See also Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *The Politics of Law* (D. Kairys, ed. 1982); Jay Feinman, *The Failure of Legal Education and the Promise of Critical Legal Studies*, 6 CARDOZO L. REV. 739 (1985), and James C. Foster, *The "Cooling Out" of Law Students: Facilitating Market Cooption of Future Lawyers*, in GOVERNING THROUGH COURTS 177 (Richard A. L. Bambitta, et al., eds., 1981). But see Wendy Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 545 (1994) (agreeing that "There is an aristocracy in the law school world which can lead to undervaluing the work of outsiders" while

among universities<sup>122</sup> and the same measures of success used elsewhere in the universities, particularly prestigious publications.<sup>123</sup> But since a significant portion of publications was largely in student-edited journals published by those same institutions as the rise of the student-edited law review coincided with the twentieth century academic law school model,<sup>124</sup> this further reinforced the existing hierarchy.<sup>125</sup> Finally, Barrie Thorne notes that the shift “helped the schoolmen separate training from practice, buttressed the profession’s claim to a unique body of theory and abstract knowledge, and thereby gave the profession greater bargaining power in establishing a monopoly over a sphere of work.”<sup>126</sup>

Both authors and law reviews made decisions that reinforced institutional hierarchies. Authors used signals such as the “star” footnote to reinforce the hierarchy.<sup>127</sup> This reinforcement

arguing that non-elite school faculty can publish in elite journals). Our point is different—we are not critiquing the politics of the legal education hierarchy, but examining its existence and impact on legal education.

<sup>122</sup> Cohen, *supra* note 117, at 108 (“Competition with other institutions became a driving force” between 1870 and 1944).

<sup>123</sup> Rodell, *Farewell*, *supra* note 105, at 44 (law review articles written by “professors and would-be professors of law whose chief interest is getting something published so they can wave it in the faces of their deans when they ask for a raise, because the accepted way of getting ahead in law teaching is to break constantly into print in a dignified way.”); John E. Nowak, *Woe Unto You, Law Reviews!*, 27 ARIZ. L. REV. 317, 318 (1985) (arguing footnotes in law review articles are generally “unnecessary” and “a means of proving, whether or not it is true, that the author had spent a lot of time doing research for the article and deserves an even bigger raise from his dean”); Murray, *supra* note 86, at 567 (“bulk” of scholarship written “not necessarily from inspiration, but because [authors] are required to develop or maintain a scholarly reputation.”) Elyce H. Zenoff & Jerome A. Barron, *So You Want to Be a Law Professor?*, 12 J. L. & EDUC. 379, 386 (1983) (“a law school, as an integral part of a university, shares its obligations to advance as well as transmit ordered knowledge.”). See also Lindgren, *Reforming*, *supra* note 114, at 1125 (“Law faculties have joined the rest of the university. Many law professors see their job as writing articles and books *about* the law, rather than as writing articles and books that *are* the law (secondary commentary that might be given weight when more central authorities are lacking.”). On university-level focus on scholarship, see Cohen, *supra* note 117, at 127–28 (“Research was clearly the endeavor that marked the rise of the professoriate.”).

<sup>124</sup> Cramton, *Remarkable Institution*, *supra* note 22, at 2 (“The emergence of the student-edited law review coincides with the rise of the modern American law school about one hundred years ago.”); Rosenkranz, *supra* note 107, at 860–61 (“Except possibly for an increase in membership and proliferation, the law review has remained intact and unchanged for a century. And it is remarkably similar from one law school to the next.”); Kenneth F. Burgess, *Law Reviews and the Practicing Lawyer*, 51 NW. U. L. REV. 10, 10 (1956) (“The primary purpose of all law school reviews is not their service to the bar as such, but is their value as an integral part of the process of legal education.”); Hibbitts, *supra* note 108, at, at 640 (same). There is also a literature criticizing law reviews for reinforcing hierarchies through their treatment of “outsider” scholars. See, e.g., Jean Stefanic & Richard Delgado, *Outsider Scholars: The Early Stories*, 71 CHI.-KENT L. REV. 1001 (1996).

<sup>125</sup> Ellman, *supra* note \_\_, at 691–92 (noting early 1980s study found that faculty at “top law schools” publish “disproportionately in their own journals” and concluding that “the major law reviews publish the work of their own faculty disproportionately often.”); Olavi Maru, *Measuring the Impact of Legal Periodicals*, 1976 AM. B. FOUND. RES. J. 227, 245 (1976). (finding “high-impact journals cite each other to a much greater degree than they cite journals in other groups”; a “striking” disparity); Leonard, *supra* note 221, at 203 (law review citation rates affected by where its authors teach).

<sup>126</sup> Thorne, *supra* note 25, at 148.

<sup>127</sup> See Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1145–47 (1987) (describing “author’s note” as “the opportunity to consummate a cluster of self-serving goals” including “[c]rediting established leaders in the field for reading the manuscript” to give untenured authors “instant credibility” and “solidify and further expand establishment image.”) See also Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 383 (1989) (“With serious substantive review impossible [because of the



may have been partly due to the influence of the faculty as law reviews became faculty journals rather than legal profession journals.<sup>128</sup> A *Harvard Law Review* editor from 1962-63 later noted that the editors “kept a careful eye cocked on the Harvard faculty” for advice on what to publish and “[t]he review provided a prestigious outlet for many of the faculty’s articles, which we solicited from our favorites and published not from a sense of duty but because most of them were very good.” In part, this was because “[s]uch authors know their market—most professors in that era were former editors of the same review themselves. Some inbreeding of contributors was a price paid for quality.”<sup>129</sup> Even when the authors were not from the publishing institution, as early as the 1930s a commentator noted that contributors to each review came from “its own circle, small or large as the case may be.”<sup>130</sup> Journal membership has also traditionally been helpful in securing employment at large law firms.<sup>131</sup> Law reviews thus also reinforced the

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volume of submissions], authors’ credentials have assumed greater importance than they should in the evaluation process.”). Some have suggested this is because top schools’ faculties write better articles. See Gregory Scott Crespi, *Judicial and Law Review Citation Frequencies for Articles Published in Different “Tiers” of Law Journals: An Empirical Analysis*, 44 SANTA CLARA L. REV. 897, 917 (2004) (“filtering and sorting effects of the competitive editorial process” may put higher quality articles in higher tier journals).

<sup>128</sup> Cane, *supra* note 70, at 221 (quoting “the pragmatic observation of a law school dean” on the reason for law reviews: “The men on this side of the desk have been there; that’s why you have a law review.”) In addition, contributions to law reviews from practitioners and judges fell over time. See Judith S. Kaye, *One Judge’s View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 320 (1989) (“Another noticeable change in law reviews is that fewer contributions today are made by judges and practitioners. More articles are written by full-time academics.”). A 1966 survey found a higher percentage of articles by professors relative to attorneys and judges in journals published by schools with higher median LSATs. *The Law Review-Is It Meeting the Needs of the Legal Community?*, 44 DENV. L. J. 423, 452 (Table 10) (1967) (hereafter “*Meeting the Needs*”). The top median LSAT schools had 17.8% articles by faculty, the next group 13.1%, the third group 16.9%, and the bottom group 14.8%. (Roughly two thirds of all articles were published by students in all journals). *Id.* Professors were ranked as the most desirable authors by a wide margin among professors (73.7%), judges (36.6%), and attorneys (38.6%). *Id.* at Table 11. The 1966 survey found “no indication that the better reviews have different preferences for particular [types of] authors.” *Meeting the Needs, supra*, at 452. It also found that “not a single professor expressed a preference for attorneys as authors”. *Id.* at 453.

<sup>129</sup> Kester, *Faculty Participation in the Student-Edited Law Review*, 36 J. LEGAL EDUC. 14, 14–15 (1986).

<sup>130</sup> McKelvey, *supra* note 19, at 872. A countervailing pressure was for untenured faculty to publish outside their own institutions’ journals, “to demonstrate to tenure committees their capacity to compete successfully for space in journals that cannot be dismissed or discounted as ‘friendly’ to campus-based authors.” Leibman & White, *supra* note 116, at 395. More generally, Prof. James Lindgren offers a catalog of abuses in law reviews that show additional ways reviews might reinforce existing hierarchies. James Lindgren, *An Author’s Manifesto*, 61 U. CHI. L. REV. 527, 528–31 (1994) (items 1, 10, 13). Perhaps the most alarming is the account of how in a symposium issue

the editors of one journal kept cutting down the length of an article by a pair of contributors from a nonelite law school, claiming that the arguments weren’t worth publishing. Then by some strange process of osmosis, text cut from the pair’s submission began appearing in the manuscript of a famous professor from the editors’ home school. Apparently, the editors were pasting pieces of one manuscript into someone else’s.

*Id.* at 528.

<sup>131</sup> See, e.g., Thompson, *supra* note 22, at 20 (reporting that director of placement at Georgetown found large firm employers prefer law review students); Max Stier, et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors and Judges*, 44 STAN. L. REV. 1467, 1487–90 (1992) (noting importance of law review membership for clerkships and firm jobs).

institutional hierarchy through their role as a basis for post-graduation employment networks.<sup>132</sup>

Further, while law schools in the 1950s might not yet quite have been engaged in a full *U.S. News*’ style “arms race,”<sup>133</sup> they were competing vigorously.<sup>134</sup> Schools competed for the “best” students through merit scholarships, with a 1961 report finding that aid was distributed primarily based on academic merit (40%) or combined merit-need (40%) rather than need alone (20%).<sup>135</sup> By the end of the 1950s, financial aid was largely a “recruiting mechanism.”<sup>136</sup> Schools also competed for star faculty.<sup>137</sup> While the 1950s-1970s competition differs from the effort to maximize inputs that “count” in the *U.S. News* era,<sup>138</sup> the overall competition was remarkably similar: enhanced faculty reputations and “improved” student bodies. However, unlike today’s climate, the expansion in number of law students from the mid-1950s meant that all ranks of law schools could expand and increase tuition.<sup>139</sup> A survey of 124 schools found an average increase of 124% from 1955-56 to 1970-71, and a range of increases between 26% and 355%.<sup>140</sup> This growth allowed significant increases in faculty compensation at many schools.

<sup>132</sup> Cane, *supra* note 70, at 221 (discussing “old boy” network aspect of law reviews).

<sup>133</sup> Abiel Wong, Note, “Boalt-ing” Opportunity?: *Deconstructing Elite Norm in Law School Admissions*, 6 GEO. J. ON POVERTY L. & POL’Y 199, 239–40, 248 (1999).

<sup>134</sup> Not every school competed, of course. For example, in a paper for a national conference on legal education, the University of Alabama’s law dean noted the “real differences in types and functions” between “local” and “national” law schools, stating that “[c]ertainly it would be commonly agreed that Harvard is a national school, and it is equally clear that the Law School of the University of Alabama is a local school,” basing his distinction on Harvard’s drawing students from the country at large and Alabama getting “more than ninety percent” Alabama residents. LAW SCHOOLS LOOK AHEAD, *supra* note 98, at 131.

<sup>135</sup> Percentages calculated based on figures in Special Committee on Law School Administration and University Relations, Association of American Law Schools, ANATOMY OF MODERN LEGAL EDUCATION: AN INQUIRY INTO THE ADEQUACY AND MOBILIZATION OF CERTAIN RESOURCES IN AMERICAN LAW SCHOOLS (St. Paul, Minn.: West Publishing Co., 1961) 112 (hereafter “Special Committee”). The raw numbers are: merit only (273), merit and need (275), and need only (112). The Committee identified the “two great pressures” on law schools as “better students” and enabling students to afford school. *Id.* at 112. See also Swords & Walwer, *supra* note 68, at 266 (noting that among nine schools studied, the proportion of students who could have been given full aid based on total scholarship awards ranged between 0% and 19% in 1955-56 and 4% and 23% in 1970-71. Swords & Walwer, *supra* note 68, at 266, Table 7.

<sup>136</sup> Swords & Walwer, *supra* note 68, at 281.

<sup>137</sup> Elson, *supra* note 108, at 378 (“The most prestigious law schools benefit disproportionately because they can outbid lesser schools for faculty with more esteemed scholarly credentials. . . . The reciprocal linkages between law school prestige, faculty scholarship, student academic abilities, and job access have become so familiar and mutually advantageous to faculty, students, and practitioners that alternative visions of legal education are seldom considered.”).

<sup>138</sup> See, e.g., Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES (July 31, 2005) available at [http://www.nytimes.com/2005/07/31/education/edlife/wellen31.html?pagewanted=print&\\_r=0](http://www.nytimes.com/2005/07/31/education/edlife/wellen31.html?pagewanted=print&_r=0) (visited December 9, 2012) (describing how schools boosted categories of spending to improve *U.S. News* position through accounting moves).

<sup>139</sup> Swords & Walwer, *supra* note 68, at 54 (“Enormous growth in student enrollment and faculty size took place during the fifteen-year period from 1955 to 1970. In 1955, only 32% [of schools surveyed] . . . had enrollments above 250 students. By 1970, 85% had enrollments in excess of 250 students. . . . In 1955, the median faculty size was 9.5, and the average faculty size was 11.8 teachers; in 1970, the median faculty size was 20.3, and the average faculty size was 23.1.”). This was also a time of general university faculty expansion, with total higher education faculty growing from fewer than 150,000 in 1940 to 565,000 in 1975. Cohen, *supra* note 117, at 207.

<sup>140</sup> Swords & Walwer, *supra* note 68, at 255, Table 3. Private university tuition generally was growing in this period. Cohen, *supra* note 117, at 187.

Between 1955 and 1970, faculty compensation at the 90 schools in one survey grew between 30% and 100%, with a median increase among 115 schools of 65%.<sup>141</sup> Median salaries in 1970-71 correlated strongly with student credentials in 1963,<sup>142</sup> a further sign that the hierarchy was being reinforced. The more recent increases in tuition to fund status competition<sup>143</sup> are thus not the first use of this tactic.

With competition increasing for both “good” students and professors in the 1960s and 1970s, law schools began demanding increased scholarship from faculty (at least, pre-tenure).<sup>144</sup> This led to greater emphasis on perceived journal “quality,”<sup>145</sup> which was largely based on faculty views of the quality of student editors, and which is also tied to overall law school reputation.<sup>146</sup> Law review publishing practices also led to complaints that the elite journals favored elite schools’ faculties, a practice that further reinforced the hierarchy.<sup>147</sup>

Within the increasingly homogenous approach to legal education fostered by the ABA-AALS alliance, law schools came to differ significantly in their relationships to the bar. With the rise of the elite law firm and the division of practice into two hemispheres of elite and non-elite firms, the destinations of graduates differed from school to school.<sup>148</sup> Graduates of elite schools have typically had better job opportunities in the elite practice hemisphere than have graduates of less elite schools. The elite hemisphere, which is populated by large law firms and other players, has significantly higher pay levels than is the case outside of this hemisphere. This bi-modal employment pattern for law school graduates reflects fundamental characteristic features of the legal profession that have consequences for law school hierarchies as well.<sup>149</sup>

<sup>141</sup> Swords & Walwer, *supra* note 68, at 62.

<sup>142</sup> We used data reported by Swords and Walwer from their survey of 105 schools and reported as averages of groups of five within quartiles (to anonymize the data). Swords & Walwer, *supra* note 68, at 296. We then tested for correlation between 1963 median LSAT scores and 1970 median faculty salaries. The correlation coefficient was 0.903.

<sup>143</sup> Tamanaha, *supra* note 75, at 132 (“Competition for ranking all but forced schools to increase tuition as long as others were going up.”)

<sup>144</sup> The AALS adopted standards requiring faculty publish in 1959. Stanley E. Harper, Jr., *Caution, Research Ahead*, 13 J. LEGAL EDUC. 411, 411 (1961). Hibbitts, *supra* note 108, at 640 (“As competition for good students and good professors increased, and as legal educators took an interdisciplinary turn which brought them under the influence of more research-oriented arts and humanities departments, law schools increasingly required that members of their faculties produce a substantial quantity of respectable written work—generally two or three law review articles to obtain tenure, and several more to obtain promotion.”); Getman, *supra* note 112, at 339 (noting that “The renewed commitment of law schools throughout the country to scholarly excellence” has meant that “Junior faculty who produce articles that would have been considered adequate at the most elite schools a decade or so ago are now denied tenure at schools of traditionally more moderate reputation but expanding ambition.”).

<sup>145</sup> Michael Vitiello, *Journal Wars*, 22 ST. MARY’S L. J. 927, 929 (1991) (noting that some faculties had developed “prescribed lists of acceptable journals in which junior faculty are advised to publish to assure their promotion and tenure.”).

<sup>146</sup> CITATION NEEDED. Well, no it isn’t. This is our analysis. But if you must cite something you could point to this, that links it to US News: <http://thelegalwatchdog.blogspot.com/2013/02/law-review-publishing-in-search-of.html>

<sup>147</sup> Hibbitts, *supra* note 108, at 641–42 (summarizing critiques).

<sup>148</sup> See Theodore P. Seto, *Where Do Partners Come From?* 62 J. LEGAL EDUC. 242, 244 (2012).

<sup>149</sup> John P. Heinz, Robert L. Nelson, Rebecca L. Sandefur, & Edward O. Laumann, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE CHICAGO BAR* (Univ. of Chicago Press 2005); John P. Heinz & Edward Laumann,

At the same time as legal scholarship was becoming more important in the academy, it became less connected to the concerns of practicing lawyers and judges and more of an internal dialogue within the legal academy.<sup>150</sup> This increased the distance between the elite and non-elite schools, as the emphasis on more theoretical work began to favor academic credentials like Ph.D.s over practice experience.<sup>151</sup> Reduced teaching loads at higher levels of the hierarchy meant those schools' faculties produced more scholarship,<sup>152</sup> reinforcing their claim to elite status. Varied factors likely account for legal scholarship trends. Law school professors with Ph.D.s have reinforced trends toward interdisciplinary scholarship. Candidates with Ph.D.s may also have significant advantages relative to those with J.D. degrees. These relative advantages are increasingly evident in the law school faculty hiring practices.<sup>153</sup> The increased distance between legal scholarship and legal practice also reflects increased recognition of interdisciplinary legal scholarship, which is also reinforced by the increasing number of law professors with advanced degrees in other disciplines.<sup>154</sup>

Yet, at this juncture, it is worth asking whether an elite law school's status was based on increased production of scholarship, or alternatively, a privileged place in the labor market based on the stickiness of historical hiring patterns? From the early twentieth century onward, the nation's corporate law firms favored so-called national law schools. Initially, the attraction was undergraduate education as an admissions requirement plus instruction from a full-time

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CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 59–60 (Am. Bar Found. 1982) (noting that the legal profession is divided into “two broad types of lawyers: those serving corporations and those serving individuals and individuals' small businesses” and noting that “[t]o the extent that practitioners of the most elite forms of corporate law graduated from the same few law schools, while personal injury or criminal lawyers studied at less prestigious, local law schools, ‘old school tie’ networks may increase the social distance between these types of practice.”). See also Thorne, *supra* note 25, at 152 (“in the origins and destinations of their student bodies, law schools vary tremendously, more than medical schools and graduate schools of arts and sciences. . . . The stratification of the legal profession parallels the stratification of law schools.”).

<sup>150</sup> See *supra* note 116.

<sup>151</sup> Tom Ginsburg & Thomas J. Miles, *Empiricism and the Rising Incidence of Coauthorship in Law*, 2011 U. ILL. L. REV. 1785, 1795 (2011) (noting “More and more entry-level [legal teaching] candidates have PhDs in social sciences like economics or political science.”). Trends toward interdisciplinary legal scholarship and the increasing number of law faculty with Ph.D.s have received considerable attention. See, e.g., Jane B. Baron, *Interdisciplinary Scholarship as Guilty Pleasure: The Case of Law and Literature*, in LAW & LITERATURE 21 (Michael D.A. Freeman & Andrew D.E. Lewis, eds. 1999), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=904228](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=904228); Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. LEGAL EDUC. 471 (2004); David A. Hollander, *Interdisciplinary Legal Scholarship: What Can We Learn from Princeton's Long-Standing Tradition?*, 99 L. LIBR. J. 771 (2007); Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962–1987*, 100 HARV. L. REV. 761 (1987); Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113 (1981); Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 YALE J.L. & HUMAN. 155 (2006).

<sup>152</sup> Tamanaha, *supra* note 75, at 41–42 (elite teaching quite a bit less; everyone teaching less to some degree).

<sup>153</sup> TAMANAHA, *supra* note 75, at 58 (noting that nearly one-third of the faculty at top 13 law schools and one-fifth of professors at law schools ranked between 14 and 26 have Ph.D.s, while 66 faculty members at law schools ranked in the top 26 have Ph.D.s but no J.D.)

<sup>154</sup> See, e.g., Northwestern Law, *JD-PhD* available at <http://www.law.northwestern.edu/academics/jdphd/> (“There is a growing trend among top law schools to hire faculty who have PhDs as well as law degrees.”). This corresponds with our view of hiring data based on our experiences as chairs and members of our various institutions over the years.

scholar—a superior education compared to a night program in the local chapter of YMCA.<sup>155</sup> Over the succeeding decades, however, as the joint efforts of the ABA and AALS produced relative uniformity on entrance requirements, curricula, and scholarly focus, the educational advantages of national law schools were essentially mandated through all of legal education. Yet, the business rationale for national law schools switched from one of academic preparation to a law firm’s ability to signal its elite status.<sup>156</sup> Further, particularly after 1970, the corporate bar exploded in size.<sup>157</sup> Between 1978 and 2008, the average firm in the National Law Journal (NLJ 250) grew from 102 to 535 attorneys—a five-fold increase.<sup>158</sup> As a result, the national law schools solidified an enormously powerful market position in terms of entrée to the most lucrative entry-level law firm jobs.<sup>159</sup>

This gradual, decades-long market lock-in of corporate law firm jobs by national law schools gradually diminished, if not completely eliminated, the incentive of leading law schools to compete on basis of educational quality or innovations. The privileged market position also enabled legal academics at leading schools to focus on scholarship unmoored from the practicing bar, thereby setting the fashions for the rest of the legal academy. By reducing the range of competition, the academic model’s increasing dominance meant schools were able to compete on fewer dimensions. By pushing legal education into research universities, the ABA and the AALS increased the distance between academic lawyers and the concerns of the bench and bar. As parts of universities, law faculties gave greater emphasis to an increasingly insular scholarship divorced from the concerns of the bar.

We think this academic model helped create an important shift in the legal academy, one that the arrival of *U.S. News*’ extended rankings of schools in the 1990s accelerated. Until relatively recently, it appears that schools’ reputations within particular regions played a much larger role in determining their overall prestige. Thus, for example, “[r]egardless of school,” students at six law schools surveyed about their choice of law school in 1968-70 “cited the law school’s quality, the geographical area of the school, a desire to practice in the school’s state, and the school’s prestige” and “notions of quality and prestige appear[ed] premised more on nebulous general school reputation than on specific knowledge.”<sup>160</sup> Given this regional

<sup>155</sup> See STEVENS, *LAW SCHOOL*, *supra* note 3, at [redacted]. See also William D. Henderson, How the “Cravath System” Created the Bi-Modal Distribution, Legal Profession Blog, July 18, 2008, [http://lawprofessors.typepad.com/legal\\_profession/2008/07/how-the-cravath.html](http://lawprofessors.typepad.com/legal_profession/2008/07/how-the-cravath.html); William D. Henderson, Part II: How Most Law Firms Misapply the “Cravath System”, Legal Profession Blog, July 29, 2008, [http://lawprofessors.typepad.com/legal\\_profession/2008/07/part-ii-how-mos.html](http://lawprofessors.typepad.com/legal_profession/2008/07/part-ii-how-mos.html).

<sup>156</sup> William D. Henderson, *Law Firm Strategies for Human Capital: Past, Present, Future*, in *STUDIES IN LAW, POLITICS, AND SOCIETY* (Austin Sarat, ed., 2011).

<sup>157</sup> See generally MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS* (1991); Marc Galanter & William D. Henderson, *The Elastic Tournament: The Second Transformation of the Large Law Firm*, 60 *STAN. L. REV.* 816 (2008).

<sup>158</sup> See William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 *GEO. J. LEG. ETHICS* 1395, 1396 (2009) (reporting data on changes in law firms during the last 30 years).

<sup>159</sup> William D. Henderson & Andrew P. Morriss, *What Law School Rankings Don't Say About Costly Choices*, *NAT'L L. J.*, Apr. 16, 2008 (documenting that large firm jobs are overwhelming funneled to Top 20 law schools were

<sup>160</sup> Robert Stevens, *Law Schools and Law Students*, 59 *VA. L. REV.* 551, 625 (1973). The six schools were Boston College, the University of Connecticut, the University of Iowa, the University of Michigan, Stanford University, and

orientation of many students, many law schools would have accurately seen their primary competitors as other schools within their regions rather than the elite schools. The increasing emphasis on scholarship, however, put these schools in competition with schools across the nation in a new way. The University of Iowa might lose only a very few potential students to Harvard and none at all to the University of Florida, but its faculty could lose slots in the most prestigious law reviews to Harvard and Florida's faculties – and schools could be compared on such a basis. The competition was muted because students were still focused on “nebulous general school reputation” and so did not have easy access to the increasingly national scholarly competition. However, when *U.S. News* offered an increasingly national ranking in the early 1990s that incorporated peer reputation, a direct channel emerged for academic prestige to influence student choice. And since academic reputation numbers appear to be highly correlated over time for most schools,<sup>161</sup> the initial national hierarchy solidified to some extent.

Paradoxically, however, legal scholarship has come to constitute a peculiar hybrid form of scholarship that has also become curiously removed from scholarship norms generally prevalent at academic research institutions.<sup>162</sup> For example, unlike other scholarly disciplines in which peer-reviewed journals distributed by commercial publishers are more prevalent, legal scholarship is typically published in student-edited law reviews.<sup>163</sup> The move of legal education into the research university had significant pedagogical consequences as well. By removing the profit motive that was predominant at proprietary, practice-oriented schools and shifting legal

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Yale University. *Id.* at 557, n. 20. Similarly, a study of law students in 1961 found a high degree of stratification in where students went to law schools, with the top eight nationally (defined by median LSAT above 572) drawing on a quite different pool of students than the sixteen schools with LSAT medians between 485 and 471, and the hundred schools with median LSAT scores below 485. Seymour Warkov & Joseph Zelan, *LAWYERS IN THE MAKING* 53-64 (1965).

<sup>161</sup> See Jeffrey Evans Stake, *The Interplay between Ranking Criteria and Effects: Toward Responsible Rankings*, 82 *IND. L. J.* 229 (2005).

<sup>162</sup> Pierre Schlag, *Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening (a Report on the State of the Art)*, 97 *GEO. L. J.* 803, 820 (2009) (“We are not like other departments. Philosophy might become intellectually sterile. Sociology might hit a dead-end. Classics might run out of texts. And if so, the university will cut budgets, withhold lines, invest elsewhere. Grants will dry up. But the discipline of law is relatively immune to such corrective actions: its necessity, its continued existence, is secured not so much by the value of its intellectual achievements but by the requirements of the organized bar. We legal academics never have to justify that what we know is a valuable thing.”); Richard Posner, *The State of Legal Scholarship Today*, 97 *GEO. L. J.* 845, 850 (2008) (“But in the current, “normal science” era of law (as of literature, philosophy, and classics), there are more law professors than there are good scholarly topics that they are capable of addressing”); David L. Gregory, *The Assault on Scholarship*, 32 *WM. & MARY L. REV.* 993, 995 (1991) (discussing misperceptions about mediocre legal scholarship), <http://scholarship.law.wm.edu/wmlr/vol32/iss4/5>; Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 *HARV. L. REV.* 926, 926 (1990); Deborah L. Rhode, *Legal Scholarship*, 115 *HARV. L. REV.* 1327, 1331 (2002) (comparing legal scholarship to scholarship in other fields, noting “[b]aldly stated, the uncomfortable fact is that too much of the legal scholarship now produced is of too little use to anyone.”).

<sup>163</sup> Bruce Ryder, *The Past and Future of Canadian Generalist Law Journals*, 39 *ALTA. L. REV.* 625, 626 (2001) (noting the fact that characteristic features of the American model of law review include “beginners being responsible for editing a scholarly journal without substantial faculty involvement” and distinguishing the Canadian law review model from some of the “distinctly absurd features of the dominant American model”); George L. Priest, *Triumphs or Failings of Modern Legal Scholarship and the Conditions of its Production*, 63 *U. COLO. L. REV.* 725, 726 (1992) (noting that “[a]ll law journals are subsidized in some way: most by the law schools at which they are published”).

education into the research university, the twentieth century law school model freed law faculties to pursue enhancements to their status and rewards rather than to focus on whether they were effectively training lawyers.<sup>164</sup> These trends combined to create a relatively stable hierarchy among law schools over time. We now turn to documenting the hierarchy.

## II. CATEGORIZING LAW SCHOOLS ACROSS TIME

The previous section argued that an enduring hierarchy exists in American legal education. In this section we place schools within this hierarchy.

### A. *Constructing Categories*

We used data from Alfred Reed's 1920s study to assemble a list of the "best" law schools in the 1920s by state.<sup>165</sup> We used this list to begin the examination of other sources to see which schools were "elite" across time, as described in more detail below.<sup>166</sup> In the late 1970s, then-Yale Dean Harry Wellington said that just "a dozen or so university law schools in the

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<sup>164</sup> TAMANAHA, *supra* note 75, at 52–53 (“[O]ur pay is excellent, the stress is low, the hours are whatever we want them to be, we have no boss, and our job security is well nigh impregnable.”); Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105 (2010-2011); *but see* Jay Sterling Silver, *The Case Against Tamanaha's Motel 6 Model of Legal Education*, 60 UCLA L. REV. DISC. 52 (2012), <http://www.uclalawreview.org/?p=4036>.

<sup>165</sup> In a few cases, we counted more than one school in a state (California, Illinois, Louisiana, and New York) where there were multiple schools with similar data as well as a large group of schools with lesser credentials. The list included: University of Alabama, University of Arkansas, University of California at Berkeley, Stanford, University of Colorado, Yale, Catholic University, University of Florida, University of Georgia, University of Iowa, Northwestern University, University of Chicago, University of Illinois, Indiana University-Bloomington, University of Kansas, Louisiana State University, Tulane University, Harvard University, University of Michigan, University of Minnesota, University of Missouri at Columbia, Washington University, University of Nebraska, University of North Carolina, Columbia University, New York University, Western Reserve University, Ohio State University, University of Oklahoma, University of Oregon, University of Pennsylvania, University of South Carolina, University of South Dakota, University of Tennessee, University of Texas, University of Washington, and University of Wisconsin.

<sup>166</sup> These include: Reed, *Public Profession*, *supra* note 38; Edwin R. Embree, *In Order of Their Eminence: An Appraisal of American Universities*, THE ATLANTIC 652–64 (1935) (reviewing universities rather than law schools); Charles D. Kelso, *The AALS Study of Part-Time Legal Education* (AALS, 1972 Annual Meeting Proceedings, Part One, Section II); Peter M. Blau & Rebecca Zames Margulies, *The Reputations of American Professional Schools*, 6 CHANGE 42 (Winter 1974/1975); Charles D. Kelso, *Adding Up the Law Schools: A Tabulation and Rating of Their Resources*, 2 LEARNING AND THE LAW 38 (1975); *The Carrter Report on the Leading Schools of Education, Law, and Business*, 9 CHANGE 44 (Feb. 1977); Jack Gourman, THE GOURMAN REPORT: RATINGS OF AMERICAN COLLEGES 1967–68 Edition (Washington, D.C.: Continuing Education Institute, Inc., 1967); Jack Gourman, THE GOURMAN REPORT: A RATING OF AMERICAN AND INTERNATIONAL UNIVERSITIES (National Education Standards, 1977); Chesly Manly, *Greatest Schools in Nation – A New Survey by Tribune*, CHICAGO SUNDAY TRIBUNE (April 21, 1957). In addition, we used the *U.S. News & World Report* rankings of law schools from their inception through 2009. We also used two histories of Supreme Court clerks: ARTEMUS WARD & DAVID L. WEIDEN, *SORCERERS' APPRENTICES: 100 YEARS OF LAW CLERKS AT THE UNITED STATES SUPREME COURT* (NYU Press 2006) and TODD C. PEPPERS, *COURTIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK* (Stanford University Press 2006).



country . . . can properly claim to be more than trade schools.”<sup>167</sup> We think the data show more nuanced distinctions among schools across the enduring law school hierarchy.

Drawing on this data, we looked for patterns to support a categorical ranking. We realize that these various assessments and rankings often use inconsistent methodologies. While aware of the danger that combining a series of arbitrarily weighted noisy measures yields only more noise (which is one of the serious problems with the *U.S. News* ranking itself), we believe that this data taken as a whole provides a sufficient basis to support our categorizations. Our data would not support an ordinal ranking of schools; it does support classification into a limited number of categories that reflect the enduring hierarchies.

Of course, categorizing schools ultimately requires some line drawing, which in turn requires compromises based on inadequacies in data. To construct our categories, we take a series of snapshots across decades, relying on varied criteria.<sup>168</sup> Despite potential limitations, including those outlined above, we think our various measures can provide a defensible, robust categorization across time. To create our categorical ranking across time, we examined sixteen types of data:

1. Resources;
2. Establishing general and specialized journals;
3. Scholarly impact of journals and faculties;
4. Judicial citation to scholarship;
5. Author prestige in school journals;
6. Library usage surveys of journals;
7. Specialty journal rankings;
8. Hiring of law deans;
9. Hiring of law faculty;
10. Graduates’ membership in the American Law Institute and service as ABA president;
11. Various efforts at law school rankings;
12. AALS membership;
13. ABA-approved status;
14. Establishment of Visiting Assistant Professor (VAP) programs;
15. Law firm partner statistics; and
16. Establishment of an Order of the Coif chapter.

Not all data are available for all periods for all law schools. Our data is also not measured consistently over time. But since we are not attempting to construct an ordinal ranking, the most

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<sup>167</sup> Yale Law Report, Winter 1978-79 at 7–8, quoted in Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1118 (1981).

<sup>168</sup> Compare, e.g., Kelso, *Adding Up*, *supra* note 166, at 39 (comparing schools based on resources and explicitly disclaiming making quality judgments, in 1975) with Gourman, *supra* note 166 (comparing schools based on opaque methodology and making quality judgments, in 1977).



serious dangers of mixing difficult-to-compare measures into an arbitrary index (as *U.S. News* does) are avoided.

### 1. Resource Assessments.

Prior to the 1970s, most studies of legal education focused on differences in resources devoted to scholarship rather than on constructing formal rankings. Investigations into legal education at different times consistently documented differences in resources. For example, using data from the 1940s and 1950s, an AALS committee concluded in 1961 that “much is left to be desired today in the research environment provided by the bulk of American law schools” because of a “deplorable” lack of opportunities for faculty to do research.<sup>169</sup> This committee concluded that the “primary cause” of the problem was “the lack of full opportunity to produce on the part of the teachers themselves.”<sup>170</sup> Among the problems the committee identified were “pitifully small amounts of resources” for research at “most” schools, including none at 40 schools surveyed; inadequate subsidization of publications; lack of book publication opportunities; failure of university presses to publish law books; inadequate libraries; “wholly inadequate” leave policies; and the “rather tragic” failure of law schools to support publication of classroom materials.<sup>171</sup> The committee concluded that “[t]he bulk of research activity is clearly concentrated in a relatively few schools”,<sup>172</sup> unfortunately without being so crass as to name the schools. Another large-scale study of U.S. law schools that compared schools in 1955 and in 1970 suggested that larger schools not only had broader curriculums but their faculty “tended to carry somewhat lighter teaching loads than those at the small schools.”<sup>173</sup> Schools that were larger in 1955 had higher average faculty salaries than smaller schools; in turn, a study suggested, this helped attract better applicants.<sup>174</sup> Again, however, this study did not identify schools by name.

The fragmentary data the 1961 AALS committee was able to collect on research support spending in 1940-41 compared to 1956-57, showed a widening absolute gap, with spending increasing from \$30,000 to \$269,029 at one school and from \$3,000 to \$40,000 at another.<sup>175</sup> Total research spending reported by the forty-six schools with such expenditures was “nearly \$1,000,000” of which one school alone spent \$269,029, over 25% of total research spending for all forty-six schools. The top three schools accounted for 50% of the total, and the top eight schools spent 75% of total research spending.<sup>176</sup>

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<sup>169</sup> Special Committee, *supra* note 135, at 396–97.

<sup>170</sup> Special Committee, *supra* note 135, at 396–97.

<sup>171</sup> Special Committee, *supra* note 135, at 361, 375, 391–96.

<sup>172</sup> Special Committee, *supra* note 135, at 375.

<sup>173</sup> Swords & Walwer, *supra* note 68, at 6–7.

<sup>174</sup> Swords & Walwer, *supra* note 68, at 64 (“One explanation for the concomitance of high enrollments in 1955 and Fourth Quartile [in resources] status may be that in the early 1950s, when applicants for law school were not as numerous as they are today [1974], the Fourth Quartile schools with the largest amount of resources and more highly paid faculties attracted the most applicants and were able to have high enrollments while maintaining the quality of the entering class.”).

<sup>175</sup> Special Committee, *supra* note 135, at 376.

<sup>176</sup> Special Committee, *supra* note 135, at 375.

These relatively early assessments document the continuing concern over resources for scholarship as a key factor distinguishing law schools. Although we recognize that more inputs do not always yield better outputs, we think trends in resources do provide a means of separating various degrees of ‘haves’ from the ‘have-nots’ over time. A resource focus fits well with both Reed’s earlier assessments and the later efforts based on asking deans and faculty to rank law schools. Both Kelso’s 1967-68 and 1974-75 assessments relied on “resource” indices that included number of students, full-time faculty, student-faculty ratio, and library volumes. The 1967-68 assessment also included hours taught; the 1974-75 assessment included student-library volumes and faculty-library volumes ratios, which Kelso suggested “tell something about a school’s potential commitment to an extensive research program.”<sup>177</sup>

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<sup>177</sup> Kelso, *Assessing*, *supra* note 166, at 40. Kelso did not report salary data but noted that results from using it were “consistent” with his 1974–75 results. *Id.* at 41.

**One important measure of focus on law schools' academic mission is the size of the library collection. Particularly before electronic resources became prevalent, large research library collections would have been a major factor in creating and reinforcing the hierarchy. Library collections are a good measure of a research orientation, because larger collections would have primarily benefited faculty doing academic projects rather than students in regular courses. Library resources among law schools increasingly diverged across time. By the 1950s, a considerable difference existed between the top schools (100,000 volumes or more at twenty-two schools) and bottom (22,500 volumes at the smallest AALS member school; the median was 44,000).<sup>178</sup> Similarly, in their 1974 study Swords and Walwer found that library size varied greatly in the 1950s, finding that almost 80% of law school library collections were under 60,000 volumes in 1955 but only 30% were in 1970.<sup>179</sup> We also used data from a 1967 ABA pre-law handbook that collected data on accredited U.S. law schools for 1966.<sup>180</sup> Library size, among the 121 schools reporting data, ranged from 18,000 to 1,081,560 volumes, with a median of 55,377 and mean of 93,060 (standard deviation of 117,950). A library of under 60,000 volumes in 1970 was thus a negative indication of elite status; having one over 60,000 in 1966 was a positive indication of elite status.**

#### TABLES

Table 1 reports the schools in each category.

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<sup>178</sup> Special Committee, *supra* note 135, at 448. Focusing on library resources is particularly appropriate, since the library was at the heart of the Langdellian model as Langdell had termed them "to us what the laboratory is to the chemist or physicist, what the museum is to the naturalist." Harvard Law School Association, CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 1817-1917 97 (1918).

<sup>179</sup> Swords & Walwer, *supra* note 68, at 16. The average size for all schools studied was 57,200. *Id.* The increase between 1955 and 1970 was attributable, at least in part, to the AALS' adoption of a standard in the late 1960s requiring a library of at least 60,000 volumes by 1975. *Id.* at 200.

<sup>180</sup> Association of American Law Schools, PRE-LAW HANDBOOK, PART TWO: ACCREDITED LAW SCHOOLS IN THE UNITED STATES (1967).

A second measure of schools' commitment to the academic model was the level of teaching required of faculty. The 1966 survey found teaching loads, among the 116 schools reporting data, that ranged from 4 to 13 hours per week, with a median of 6 and mean of 6.5 (standard deviation 1.3).<sup>181</sup>

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<sup>181</sup> We used the midpoint for schools that reported a range (e.g. 5.5 for "5 to 6"). A few schools had data for only one of the two measures: North Carolina Central had no data for library collection; Fordham, Golden Gate, Indiana (Indianapolis), Montana, New York Law School, Richmond, and St. Louis had no teaching data.

Table 2 divides schools based on their relative teaching loads.

Paying for libraries and low teaching loads required money. We examined tuition levels for 1970. Tuition served as a marker of elite status during the post-World War II legal education boom. Between 1955 and 1970, “the number of students seeking admission to law schools far outstripped the spaces available.”<sup>182</sup> In 1955, private school law tuition ranged from \$500 to \$1000; by 1970, the range was \$1,500 to \$2,500. The comparable shift for public school in-state tuition was from \$0 - \$400 in 1955 to \$300 - \$750 in 1970; for out-of-state tuition the ranges were \$400 - \$800 to \$900 - \$1,900.<sup>183</sup> Based on the assumption that more elite schools could charge more during periods of expanding demand, we counted higher tuition in 1970 as a marker of more elite status, controlling for whether a school was public or private. Moreover, since by 1970, tuition revenue “at most law schools” has exceeded the direct cost of providing legal education,<sup>184</sup> higher tuition would provide greater revenue to subsidize the pursuit of status. Table 3 sorts schools by tuition categories.

We did not use tuition as a marker for elite status during later time periods, however. Tuition levels have risen significantly in more recent time periods, which as Brian Tamanaha describes has been a key mechanism for the current wave of law school status competition.<sup>185</sup> Even lower status schools have increased their tuitions to stratospheric heights, and law schools have been generally more willing to discount tuition to large swathes of the student body than reduce tuition sticker prices.<sup>186</sup> When low status schools like Thomas Jefferson School of Law (2012 *U.S. News* ranking in the bottom tier, LSATs 138-153, UGPA 2.76-3.26) have a list price of \$41,000 while Harvard (2012 ranking 3, LSATs 171-176, UGPA 3.78-3.97) has a list price of less than \$8,000 more (\$48,786), tuition levels have become a less reliable signal of eliteness.<sup>187</sup> Instead, we used alternative measures related to law school direct expenditures. Law schools report to the ABA their total direct expenditures. Although relying on expenditure data is somewhat problematic, particularly with respect to comparing public and private schools, these data provide another measure by which to distinguish schools.<sup>188</sup> Table 4 lists expenditure data for 1998-99 and 2007-08, periods for which we could obtain data and which predate the current law school fiscal stresses. We separate private and public schools and assume that schools with more resources are more elite than schools with fewer resources. Because it took time for schools to realize the importance of *U.S. News* rankings and of the impact of the figures they reported in

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<sup>182</sup> Swords & Walwer, *supra* note 68, at 24.

<sup>183</sup> Swords & Walwer, *supra* note 68, at 22.

<sup>184</sup> Swords & Walwer, *supra* note 68, at 23.

<sup>185</sup> TAMANAHA, *supra* note 75, at 126–127.

<sup>186</sup> Elie Mystal, Second-Tier Law Schools Shrink As They Stubbornly Keep Tuition High, Above the Law (Sept. 26, 2013), available at <http://abovethelaw.com/2013/09/second-tier-law-schools-feel-the-squeeze-as-they-stubbornly-keep-tuition-high/>.

<sup>187</sup> Statistics from the 2012 *U.S. News* ranking.

<sup>188</sup> See Cohen, *supra* note 117, at 251 (discussing different patterns of financing public and private colleges and universities). Resource assessments are inherently problematic as measures of quality because they measure inputs rather than outputs. Such a measure would reward inefficient and wasteful spending equally to productive spending on improving student skills.

these categories,<sup>189</sup> later dates are better representations of elite status. We separately examined public and private schools.

## 2. Establishing Journals.

Over time, journal publication came to be an increasingly significant part of competition among law schools.<sup>190</sup> Once student-edited law reviews became commonplace, their existence was no longer a marker of status.<sup>191</sup> We focused on the period between 1920 and 1930, when considerable variation still existed among law schools with respect to journals, and later periods when studies examined journal quality. In 1930, of 67 AALS members, 37 published law reviews and 30 did not.<sup>192</sup> We therefore counted a school as more elite if it published a law review in 1930.

Simply having a law review was no longer an elite marker by the 1950s, as progressively many more journals were established (36 in 1936, 50 in 1937, 76 in 1952, 102 in 1966, 182 in 1979, and more than 400 in 2000), sparking additional criticism of “too many” law reviews and unsolicited advice to “marginal” journals to close.<sup>193</sup> (The number of law review articles published in academic legal journals expanded from under 4,000 in 1930 to over 25,000 in 2000.)<sup>194</sup> We therefore counted the late establishment of a law review (establishing one after

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<sup>189</sup> See, e.g., Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES (July 31, 2005) (describing how the University of Illinois reported commercial value of computerized legal research services rather than actual cost).

<sup>190</sup> See, e.g., Richard H. Lee, *Administration of the Law Review*, 9 J. LEGAL EDUC. 223, 224 (1956) (a goal of having a law review is “prestige for the law school, a not unworthy end in this day of the press release and the public relations office.”).

<sup>191</sup> Havighurst, *supra* note 116, at 24 (“Since such a publication [law review] is regarded as a necessary adjunct of legal education, without it a school would lose status.”); McKelvey, *supra* note 19, at 882 (from 1890 to depression, “a steady increase occurred in the number of such reviews until it seemed as though every school in the United States would be a participant in this field.”); Miller, *supra* note 107, at 89 (“It is doubtless too late to raise the question of whether publication of several dozen law reviews serves any really useful purpose.”); Hervey, *supra* note 92, at 151 (“there are too many law school reviews” which were “established without any demonstrated need;” “at least half” could be abolished); Mewett, *supra* note 116, at 188 (new law school “feels that it must get on with the worthless roundabout of reputation-building’ through the publication of its own law review). When UCLA somewhat belatedly began its review in 1953, the inaugural issue included the comment by Berkeley Dean William Prosser that now “[n]o major law school is now without its law review.” *Messages of Greeting*, *supra* note 83, at 2. Certainly by the 1970s, the proliferation of journals meant that hosting a single journal or even just a few was no longer a mark of elite status. See Thomas G. Brown, *The University of Colorado Law Review: Fifty Years of Quality*, 51 U. COLO. L. REV. 2, 3 (1979) (noting that more than fifty new law journals had started since 1970, making the total over 350, and terming this “a bit much”). As one defender of law reviews noted, however, the expansion in court opinions, statutes, and administrative rules and decisions was even greater. See John Paul Jones, *In Praise of Student-Edited Law Reviews: A Reply to Professor Dekanal*, 57 UMKC L. REV. 241, 244 (1989).

<sup>192</sup> Maggs, *Concerning the Extent*, *supra* note 102, at 181.

<sup>193</sup> Hibbits, *supra* note 108, at 634, 639 (numbers of journals); Cane, *supra* note 70, at 220 (journal numbers); and calculation by authors based on our dataset of articles indexed by the *Index to Legal Periodicals*. Law reviews also got longer.

<sup>194</sup> Calculation by authors based on our dataset of articles indexed by the *Index to Legal Periodicals*. Law reviews also got longer. Harvard’s grew 34% in length from 1954 to 1984. Preckshot, *supra* note 119, at 1010.

1950 or more than 5 years after a school opened if the school opened after 1950) as a marker of the lack of elite status.<sup>195</sup>

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<sup>195</sup> For example, New York Law School did not publish a law review until 1954; Suffolk University until 1967; and Northeastern University until 2009. Cane, *supra* note 70, at 220.

Table 5 summarizes this data.

In 1967, the *Denver University Law Review* published a survey of all law reviews in the *Index to Legal Periodicals* in calendar 1965.<sup>196</sup> The results produced a ranking of 102 law reviews on a 0-100 scale (with journals scoring between 30.0 and 85.5).<sup>197</sup> It also grouped law reviews by the median LSAT scores of their 1963-64 entering classes into five categories.<sup>198</sup> We combined these two measures of quality in

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<sup>196</sup> *Meeting the Needs*, *supra* note 128, at 428. Over 4100 articles were analyzed and the legal community surveyed about the journals. *Id.* at 428–29.

<sup>197</sup> *Meeting the Needs*, *supra* note 128, at 430, Table 1. This table is reproduced in Appendix [1](#).

<sup>198</sup> *Meeting the Needs*, *supra* note 128, at 432, Table 2. This table is reproduced in Appendix [2](#).



**Table 6.**<sup>199</sup> We ranked schools that scored at the top of both categories as more elite than those that ranked highly in just one category; thus schools toward the upper left are ranked as more elite than those toward the lower right.

Once a law review became *de rigueur*, more elite schools began to have *multiple* law reviews. Tracey George and Chris Guthrie label this “sudden, rapid, and widespread increase” in the number of these journals “the most significant development in legal academic publishing in the second half of the twentieth century.”<sup>200</sup> By 1990 forty percent of schools publishing a review had two or more student-edited journals,<sup>201</sup> with 131 student-edited specialty journals and 21 faculty-edited specialty journals, which almost matched the number of general student-edited journals (163).<sup>202</sup> Twelve schools published student-edited journals that accounted for a sixth of the total number of all such reviews;<sup>203</sup> Harvard, Yale, and Columbia collectively published 26 student-edited specialty journals by 1999.<sup>204</sup> In part, this was a result of the push for more egalitarian journal selection processes that began in the 1960s;<sup>205</sup> in part it reflected student interest in specific topics or alternative approaches to legal scholarship.<sup>206</sup> It also reflected a strategy of differentiation by the schools.<sup>207</sup> Although many faculty view specialty journals as “second-rate operations that are staffed by students who could not qualify for student-edited flagship law review staff membership”, that publish “articles that are not of high enough quality to appear in flagship law reviews,”<sup>208</sup> we nonetheless think specialty journals are significant markers of aspiration to elite status. We therefore looked for early creation of specialty, student-edited journals in addition to the “flagship” review. The number of specialty journals grew dramatically after 1990; relatively few schools had such journals before 1980.<sup>209</sup> We counted schools that created an affiliated specialty journal in 1980 or earlier as more elite and those that did so between 1981 and 1990 as elite to a lesser extent.<sup>210</sup>

<sup>199</sup> This is a rough approximation of how *U.S. News* ranks schools since the journal rankings are dominated by professors and so are similar to the peer reputation survey (15%) and the LSAT rankings mirror the median LSAT component of *U.S. News* (15%).

<sup>200</sup> George & Guthrie, *Empirical Evaluation*, *supra* note 204, at 814.

<sup>201</sup> Preckshot, *supra* note 119, at 1010.

<sup>202</sup> Wolotira, *supra* note 115, at 157 (giving numbers of journals indexed in the Current Index to Legal Periodicals).

<sup>203</sup> Preckshot, *supra* note 119, at 1010. Harvard alone had eight, which collectively published 5,000-6,000 pages per year. *Id.*

<sup>204</sup> Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 *Fl. St. U. L. Rev.* 813, 815 (1999).

<sup>205</sup> See Jennifer L. Carter, *The Rise and Rise of the Specialty Journals at Harvard Law School*, Harvard Law School Student Scholarship Series, Paper 12, [http://lsr.nellco.org/harvard\\_students/12](http://lsr.nellco.org/harvard_students/12) at 10–13 (describing creation of *Harvard Journal on Legislation* as both motivated by ideology and democratizing journal selection).

<sup>206</sup> See, e.g., Thompson, *supra* note 22, at 19 (reporting that *Rutgers Women’s Rights Law Reporter* sought not to be “a typical, boring law review” and that *Wisconsin Women’s Law Review* “decided on a consensus mode of management” rather than “the hierarchy of a traditional law review.”)

<sup>207</sup> Wolotira, *supra* note 115, at 158.

<sup>208</sup> Gregory Scott Crespi, *Ranking Environmental Law, Natural Resources Law, and Land Use Planning Journals: A Survey of Expert Opinion*, 23 *WM. & MARY ENVTL. L. & POL’Y REV.* 272, 287 (1998).

<sup>209</sup> Wolotira, *supra* note 115, at 157.

<sup>210</sup> Specialty journals created 1980 or earlier: American University, Arizona State University, Boston College, CUNY Brooklyn, California Western, Case Western Reserve University, College of William & Mary, Columbia University, Cornell University, Duke University, Fordham University, George Washington University, Georgetown University, Hamline University, Harvard University, Indiana University (Bloomington), Lewis & Clark College, Loyola Marymount University, Loyola University Chicago, New England School of Law, New York University,

Table 7 summarizes our data on law school specialty journal creation (omitting those schools with zero journals that meet our criteria).<sup>211</sup> In addition to specialty law journal markers of elite status, we also counted being among the 12 schools publishing a sixth of all reviews as an additional indicator of elite status. These are listed in

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Northwestern University, Rutgers University (Newark), Samford University, Seton Hall University, Southern Methodist University, St. John's University, Stanford University, Suffolk University, Syracuse University, Temple University, Tulane University, University of Buffalo-SUNY, University of Alabama, University of Baltimore, University of California (Hastings), University of California (Berkeley), University of California (Davis), University of California (Los Angeles), University of Denver, University of Georgia, University of Houston, University of Iowa, University of Maryland, University of Miami, University of Michigan, University of Mississippi, University of Missouri-Kansas City, University of Montana, University of New Hampshire, University of New Mexico, University of North Carolina, University of Notre Dame, University of Pennsylvania, University of South Carolina, University of Texas, University of Utah, University of Virginia, Vanderbilt University, Washington University in St. Louis, and Widener University.

Specialty journals created 1981-1990: Boston University, Catholic University, Emory University, Florida State University, George Mason University, Hofstra University, Loyola University of New Orleans, Marquette University, Ohio State University, Pace University, Pennsylvania State University, Quinnipiac University, Santa Clara University, St. Louis University, Thomas M. Cooley School of Law, University of Akron, University of Arizona, University of Cincinnati, University of Colorado, University of Florida, University of Kentucky, University of Minnesota, University of Missouri (Columbia), University of Oregon, University of Pittsburgh, University of San Francisco, University of the Pacific, University of Wisconsin, Villanova University, and Yeshiva University (Cardozo). Source: Wolotira, *supra* note 115, at Appendices A and B.

<sup>211</sup> We used Wolotira, *supra* note 115, Appendices A and B to calculate the numbers. We attributed both student-edited and faculty-edited journals to schools since the signal being sent was of a desire to become known for excellence in a field. We also attributed the *Journal of Legal Studies* and the *Journal of Law and Economics* to the University of Chicago, even though those journals had no student involvement or formal affiliation with the law school because of the close identification of those journals with Chicago.

Table 7 as well.

### 3. Ranking School-Affiliated, General Journals on Scholarly Impact.

Several surveys have ranked law journals, generally focusing on student-edited ones. We use these rankings as reflections of the prestige of the publishing law school, which we consider a reasonable assumption in light of the rapid turnover of student editors. A number of journal ranking studies have relied on citation analyses, looking to courts, journals, or both.<sup>212</sup> We examined all of the major citation studies we identified which used sufficiently broad samples of journals to aid in the overall ranking.<sup>213</sup> While a study of a limited subset of articles found that courts and scholarly writings in law cite different articles, it did find a common practice of citing articles written by professors at “similarly prestigious universities.”<sup>214</sup> We therefore examine both types of citation studies. In this section we report scholarly citation ratings; the next discusses judicial citation studies. Although citation studies as a measure of scholarly quality are controversial,<sup>215</sup> considerable evidence exists that citation studies reflect the hierarchy of legal education.<sup>216</sup> Because we are attempting to measure that hierarchy, they are well-suited to our purposes.

Librarian Olavi Maru performed a citation analysis of one year’s worth of the journals listed in the November 1972 issue of the *Index to Legal Periodicals*. Maru found that approximately 50% of citations, after adjusting for the number of pages published, were to just 23 journals (“high-impact”), another 25% to 48 more journals (“medium-impact”) and the remainder to 207 journals (“low-impact”).<sup>217</sup> Of the high-impact group, the *Harvard Law Review* accounted for almost a tenth of citations, and *Harvard*, *Yale*, and *Columbia* together accounted

<sup>212</sup> Citation counts have been criticized as biased toward elite journals; for our purposes this is not a problem as we are interested in using them to define “elite” journals. Stier, et al., *supra* note 131, at 1474 (“[A]lmost all citation-counting surveys are dominated by articles appearing in ‘elite’ law reviews (or, in the case of citations of particular journals, by the ‘elite’ journals themselves.)”). Russell Korobkin argues they lead to a focus on “citability” which is “associated rather closely with scholarly value,” although they form “a far from perfect basis for ranking journals.” Russell Korobkin, *Ranking Journals: Some Thoughts on Theory and Methodology*, 26 FLA. ST. U. L. REV. 851, 865 (1998). Among other problems, he notes that subject matter influences citation patterns, with articles on equal protection more likely to be cited than articles on bankruptcy. *Id.* at 869.

<sup>213</sup> We thus excluded Crespi, *Tiers*, *supra* note 208 (examining only citations to 15 journals); Deborah J. Merritt & Melanie Putnam, *Judges and Scholars: Do Courts and Scholarly Journals Cite the Same Law Review Articles?*, 71 CHI.-KENT L. REV. 871 (1996) (examining a limited subset of articles); Theodore Eisenberg & Martin T. Wells, *Ranking and Explaining the Scholarly Impact of Law Schools*, 27 J. LEGAL STUD. 373 (1998) (examining 32 law schools reputation based on citation to faculty work, selecting schools based on *U.S. News* academic reputation rankings and “eclectic” choices).

<sup>214</sup> Merritt & Putnam, *supra* note 213, at 893, 897.

<sup>215</sup> James Cleith Phillips & John Choon Yoo, *The Cite Stuff: Inventing a Better Law Faculty Relevance Measure* (September 3, 2012). UC Berkeley Public Law Research Paper No. 2140944, available at: <http://ssrn.com/abstract=2140944> or <http://dx.doi.org/10.2139/ssrn.2140944>.

<sup>216</sup> See, e.g., J.M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 849 (1996) (giving as maxims one to three for maximizing citations “(Make sure that you have already) Attend(ed) Harvard, Yale, or the University of Chicago Law Schools”, “Publish all of your articles in the *Harvard Law Review*, the *Yale Law Journal*, or the *University of Chicago Law Review*”, and “Take a job as an assistant professor at the Harvard, Yale, or University of Chicago Law Schools.”).

<sup>217</sup> Maru, *supra* note 125, at 232.

for almost 20%.<sup>218</sup> Table 8 lists those schools having a high impact or medium impact student-edited general law journal together with the impact factors calculated in the study. We ranked schools as more elite if they scored in either the high-impact or medium-impact category. Professor Richard Mann examined articles published in the 1978-1979 publication year and counted court and journal citations in the 1984 volume of *Shepard's Law Review Citations*.<sup>219</sup> He then ranked journals by their frequency of journal and judicial citations per 1,000 pages published as well as by total citations. Mann found seven student-edited journals to be in the "impact groups" in all four categories: Chicago, Columbia, Georgetown, Harvard, Hastings, Hofstra, Virginia, and Yale.<sup>220</sup> He also ranked fifty-four journals, the top twenty-three of which provided 43.4% of all journal citations and 45.2% of all judicial citations. We therefore counted being in the top 4 impact group as the strongest sign of eliteness; being in Mann's top 23 but not in the top category as a less strong sign of eliteness and being in the remainder of the top 54 as a weaker sign of eliteness.

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<sup>218</sup> Maru, *supra* note 125, at 240.

<sup>219</sup> Richard Mann, *The Use of Legal Periodicals by Courts and Journals*, 26 JURIMETRICS J. 400 (1986).

<sup>220</sup> Mann, *supra* note 217, at 411.

Table 9 lists the journals in the top two groups.

In a study of a sample of 211 randomly selected articles from academic law reviews published in 1986, Prof. James Leonard used Z-scores, a statistical technique examining deviation from the mean in terms of standard deviations, to identify journals with large scholarly impact.<sup>221</sup> Based on his sample, he found ten student-edited journals out of 314 with positive scores of 1.96 or greater, the cut off for statistical significance.<sup>222</sup> He also found that 21 journals accounted for just over half of all citations; 65 for just over three-quarters. We therefore counted presence in the group of 10 as the greatest sign of eliteness, in the remainder of the group of 21 as a lesser signal, and in the group of 44 as the weakest signal. Table 10 lists the results.

A second way to measure journal impact is to look at which journals publish articles that are regularly cited. In addition to individual studies of journal impact, broader studies of journal impact have also been done. Fred Shapiro, a law librarian at New York Law School, has compiled three cross-journal lists of heavily cited law review articles.<sup>223</sup> Shapiro found such measures were highly correlated with “judgments of scholars by their colleagues” in other fields.<sup>224</sup> Shapiro’s reliance on different sources of citations has led to differences among his various studies.<sup>225</sup> Table 11 - Shapiro Article Citation Studies, which combines the results of his three studies, counts schools affiliated with authors (if the author was a legal academic as of the time of publication) and journals (if student-edited) for Shapiro’s three primary lists of articles, as well as the annual rankings for 1990-2009 included in his 2012 study.

In a 1983 survey, Prof. Ira Ellman examined 23 law journals (selected based on a 1976 study of journals with the most citations) and coded all articles published between September 1979 and June 15, 1982.<sup>226</sup> Based on a variety of different measures, Ellman found that nineteen

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<sup>221</sup> James Leonard, *Seein’ the Cites: A Guided Tour of Citation Patterns in Recent American Law Review Articles*, 34 ST. LOUIS U. L.J. 181 (1990).

<sup>222</sup> Leonard, *supra* note 221, at 19293. When adjusted for page counts, Virginia dropped off the list. *Id.* at 194.

<sup>223</sup> Fred R. Shapiro, *The Most Cited Law Review Articles of All Time*, 110 MICH. L. REV. 1483 (2012) (hereafter “Shapiro, *All Time*”); Fred R. Shapiro, *The Most-Cited Law Reviews*, 29 J. Leg. Stud. 389 (2000) (hereafter “Shapiro, *Most Cited 2000*”); Fred R. Shapiro, *The Most Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996) (hereafter “Shapiro, *Revisited*”); Fred R. Shapiro, *The Most Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985) (hereafter “Shapiro, *Most Cited*”). Landes and Posner offered some methodological critiques of Shapiro’s approach. See William M. Landes & Richard A. Posner, *Heavily Cited Articles in Law*, 71 CHI.-KENT L. REV. 825 (1996); Fred R. Shapiro, *Response to Landes and Posner*, 71 CHI.-KENT L. REV. 841 (1996). While these critiques raise important methodological points, we find Shapiro’s analyses to be important markers for eliteness. We wish someone would do the study Landes and Posner outline; until someone does, Shapiro’s studies are the best available alternative.

<sup>224</sup> Shapiro, *Most Cited*, *supra* note 223, at 1542 (noting “seven major studies linking citedness with ‘peer judgments, which are widely accepted as a valid way of ranking scientific performance.’”) (quoting E. Garfield, CITATION INDEXING-ITS THEORY AND APPLICATION IN SCIENCE, TECHNOLOGY, AND HUMANITIES 241 (1979).)

<sup>225</sup> The 1985 ranking excluded pre-1947 articles. Articles in interdisciplinary journals not covered by *Shepard’s* were also excluded. The 1996 ranking used the more comprehensive *Social Sciences Citation Index*, which included encompassed older articles but did not count pre-1956 citations. The 2012 ranking combined citations found in a search of Hein Online’s database of legal periodicals and citations from the *Web of Science*, the successor to the Social Sciences Citation Index, and included citations back to 1900. Shapiro, *All Time*, *supra* note 223, at 1486–87.

<sup>226</sup> Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEGAL EDUC. 681, 681 (1983). Although there is potentially a degree of circularity in defining “elite” schools based on “elite” journals,

schools stood out in terms of scholarly productivity.<sup>227</sup> He also listed a second tier of schools based on pages per faculty member.<sup>228</sup> We use these two groups as signals of eliteness and report the results in Table 12.

A 1985 study by Swygert and Gozansky examined publications between 1980 and 1983 for tenured faculty listed in the 1980-81 AALS directory.<sup>229</sup> The study computed a composite ranking by combining the average productivity of senior faculty with the percentage of senior faculty publishing in the study period. It reported those schools at or above the median. We broke these into three groups, which are listed in Table 13.<sup>230</sup> Group 1 consists of schools that ranked 1-22; Group 2 of schools ranked 24 to 43; Group 3 of schools ranked 45 to 69. All other schools are not ranked. We consider falling into Group 1 as the strongest marker of elite status, with declining eliteness in Group 2 and Group 3.

Washington and Lee University School of Law has constructed a ranking of law journals based on citations in both law journals and court opinions since 2004.<sup>231</sup> These rankings cover a rolling eight years of citations, thus focusing on current citations. We used the “combined” rankings for 2004 to 2011. We derived four groups of law reviews from these rankings: tier 1 (schools with journals ranked 50.0 and above in impact for at least five of the eight years); tier 2 (schools with journals ranked 25.0 to 49.9 in impact for at least five of the eight years); tier 3 (schools with journals ranked from 15.0 to 24.9 in impact for at least five of the eight years); and tier 4 (schools with journals ranked below 15.0 for at least five of the eight years). The results are in

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where the measure of “eliteness” of the journals is the school publishing the journal, Ellman’s reliance on the citation measure for the journals solves the problem sufficiently for us to have confidence that his results are not dictated by the choice of journals.

<sup>227</sup> Ellman examined pages, articles, and footnotes as measures of outputs and took into account faculty size and in-house and outside publications. These were (in order of outside pages per professor): Chicago, UCLA, Illinois, Northwestern, Yale, NYU, Virginia, Pennsylvania, Harvard, Berkeley, USC, Stanford, Minnesota, Wisconsin, Duke, Texas, Michigan, Columbia and Cornell. *Id.* at 692. (The same 19 schools were the top of the list, in a different order, when all pages were counted.)

<sup>228</sup> The schools on that list that were not among the 19 were (in order): Arizona State, Rutgers-Camden, Vanderbilt, Boston University, Pittsburgh, Yeshiva-Cardozo, Georgia, Kentucky, Tulane, American, Davis, Nebraska, Georgetown, Ohio State, Iowa, Pace, Notre Dame, Oregon, Colorado, Arizona, Richmond, Case Western Reserve, Indiana, Vermont Law School, University of Detroit, and North Carolina. Ellman, *supra* note 226, at 688, Table 4.

<sup>229</sup> Michael I. Swygert & Nathaniel E. Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEGAL EDUC. 373 (1985). The methodology is described in detail on pages 376-380.

<sup>230</sup> Swygert & Gozansky, *supra* note 229, at 389, Table 5. For a critique of their study, see David H. Kaye & Ira Mark Ellman, *The Pitfalls of Empirical Research: Studying Faculty Publication Studies*, 36 J. LEGAL EDUC. 24 (1986).

<sup>231</sup> The 2011 ranking is available at <http://lawlib.wlu.edu/LJ/index.aspx>. Older rankings are available at <http://lawlib.wlu.edu/LJ/indexOlderYears.aspx>. The methodology is described in detail at <http://lawlib.wlu.edu/LJ/method.asp#methodology>. Of course, the Washington and Lee division is arbitrary in certain respects, as different break points might have been chosen. Nonetheless, we think it divides the universe of journals relatively cleanly. In addition, it puts sixteen schools in the top tier (which parallels the stable top 14 in the *U.S. News* rankings), and then creates two sets of roughly 30 schools in the next two tiers.

Table 14.

The *Chicago-Kent Law Review* conducted several studies of faculty scholarship in the late 1980s and early 1990s.<sup>232</sup> For the 1989 study, the *Review* counted citations in *Shepard's Law Review Citations* 1986 bound volume and most recent supplement to articles published in general, student-edited law reviews published in 1980-81 through 1982-83.<sup>233</sup> For the 1990 survey, the *Review* added the 1983-1984 publications.<sup>234</sup> For the 1995 study, the *Review* used a combination of *Shepard's* and *Social Sciences Citation Index* data and a broader universe of journals including some faculty-edited journals and one specialty student-edited journal.<sup>235</sup> In all three cases, the journal used this data to compile a list of the leading law reviews (fifty for the first two; forty for the final survey). The top twenty journals from these lists were then used to create a list of articles. The authors of these articles were then ranked based on the number of articles (and sometimes pages) in the top ten law reviews from the initial list. We derived three measures of eliteness from this data. First, we compiled a list of the schools publishing the top twenty law reviews used to generate the article universe. Second, we compiled a list of schools publishing the general, student-edited journals which made the initial cut for "top" law reviews based on frequency of citation exclusive of the top 20. Third, we compiled a list of the most productive schools based on the average articles per faculty member. These results are reported in

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<sup>232</sup> Executive Board, *Chicago-Kent Law Review Faculty Scholarship Survey*, 65 CHI.-KENT L. REV. 195 (1989); Janet M. Gumm, *Chicago-Kent Law Review Faculty Scholarship Survey*, 66 CHI.-KENT L. REV. 509 (1990); Colleen M. Cullen & S. Randall Kalberg, *Chicago-Kent Law Review Faculty Scholarship Survey*, 70 CHI.-KENT L. REV. 1445 (1995). In addition, a survey by Profs. James Lindgren and Daniel Seltzer used similar data to identify the most productive faculties and professors. See James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI.-KENT L. REV. 781 (1996).

<sup>233</sup> Executive Board, *supra* note 232, at 202.

<sup>234</sup> Gumm, *supra* note 232, at 515.

<sup>235</sup> Cullen & Kalberg, *supra* note 232, at 1446-49.

Table 15.

University of Haifa Prof. Ronen Perry has constructed a citation-based ranking using citation data for 1998-2005 and weighting both the number of citations and impact factors.<sup>236</sup> His results correlate highly with *U.S. News* rankings.<sup>237</sup> The scores in Perry's rankings had a median of 17.3, a mean of 24.1, and a standard deviation of 20. We counted as the strongest signal of eliteness scoring 77.5 and above, as a weaker signal scoring 57.5 to 77.4, and as the weakest signal scoring 37.4 to 57.4 (from one standard deviation above the mean to two). We counted as a negative signal scoring below the mean. Table 16 lists schools based on their journal scores.<sup>238</sup>

For more recent measures of scholarly quality, we relied on Prof. Brian Leiter's rankings of law school quality from 2005 to 2012. We consider Leiter's ranking to be the "gold standard" for current scholarly rankings. The Leiter rankings provide measures of quality based on a variety of measures including Supreme Court clerkship placement, faculty membership in the American Academy of Arts and Sciences, student quality data, where current faculty went to school, where "prestigious" firms hire, where the most cited faculty teach, where the faculty with the most downloads are, and scholarly impact.<sup>239</sup> We looked for schools that repeatedly appeared in the top thirty (where reported) in these rankings.<sup>240</sup> We then tallied how many times a school

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<sup>236</sup> Ronen Perry, *The Relative Value of American Law Reviews: Refinement and Implementation*, 39 CONN. L. REV. 1 (2006). See also Ronen Perry, *The Relative Value of American Law Reviews: A Critical Approach to Ranking Methods*, 11 VA. J. L. & TECH. 1 (2006).

<sup>237</sup> Perry, *Refinement*, *supra* note 236, at 28–29.

<sup>238</sup> Perry, *Refinement*, *supra* note 236, at 19–25.

<sup>239</sup> An index to Leiter's multiple rankings is at *Brian Leiter's Newest Rankings*, <http://www.leiterrankings.com/new/index.shtml>.

<sup>240</sup> We selected the following Leiter rankings:

- 1) Brian Leiter, *Top 70 Law Faculties in Scholarly Impact, 2007-2011, July 2012*, available at [http://www.leiterrankings.com/new/2012\\_scholarlyimpact.shtml](http://www.leiterrankings.com/new/2012_scholarlyimpact.shtml);
- 2) Brian Leiter, *Top Producers of Law Teachers at the Leading Law Schools Since 1995* (Jan. 31, 2011), available at [http://leiterrankings.com/new/2011\\_LawTeachers.shtml](http://leiterrankings.com/new/2011_LawTeachers.shtml);
- 3) Brian Leiter, *So with 60,000 votes on paired comparisons of 60 law schools...* (Jan. 15, 2011), available at <http://leiterlawschool.typepad.com/leiter/2011/01/so-with-60000-votes-on-paired-comparisons-of-60-law-schools.html>;
- 4) Brian Leiter, *Top 25 Law Faculties in Scholarly Impact, 2005-2009* (n.d.), available at [http://www.leiterrankings.com/new/2010\\_scholarlyimpact.shtml](http://www.leiterrankings.com/new/2010_scholarlyimpact.shtml);
- 5) Brian Leiter, *Top 10 Law Faculties in Scholarly Impact, 2005-2008* (Feb. 19, 2009), available at [http://www.leiterrankings.com/faculty/2008faculty\\_impact.shtml](http://www.leiterrankings.com/faculty/2008faculty_impact.shtml);
- 6) Brian Leiter, *Where Current Faculty Went to Law School* (March 17, 2009), available at [http://www.leiterrankings.com/jobs/2009job\\_teaching.shtml](http://www.leiterrankings.com/jobs/2009job_teaching.shtml);
- 7) Brian Leiter, *The Top 15 Schools From Which the Most "Prestigious" Law Firms Hire New Lawyers* (Oct. 13, 2008) available at [http://www.leiterrankings.com/jobs/2008job\\_biglaw.shtml](http://www.leiterrankings.com/jobs/2008job_biglaw.shtml);
- 8) *Top 35 Law Faculties Based on Scholarly Impact, 2007* (Sept. 1, 2007), available at [http://www.leiterrankings.com/faculty/2007faculty\\_impact.shtml](http://www.leiterrankings.com/faculty/2007faculty_impact.shtml);
- 9) , Brian Leiter, *Brian Leiter's Most Downloaded Law Faculties, 2006* (March 6, 2007) available at [http://www.leiterrankings.com/faculty/2007faculty\\_downloads.shtml](http://www.leiterrankings.com/faculty/2007faculty_downloads.shtml);
- 10) Brian Leiter, *Brian Leiter's Rankings of Law Schools by Student Quality, 2006* (n.d.) available at [http://www.leiterrankings.com/students/2006student\\_quality.shtml](http://www.leiterrankings.com/students/2006student_quality.shtml);
- 11) Brian Leiter, *Faculty Quality Based on AAAS Membership, 2006*, December 2006, available at <http://www.leiterrankings.com/faculty/2006aaasmembership.shtml>;



appeared in the top 30 (or fewer, if Leiter did not rank to 30 or more). Table 17 lists the results.

#### **4. Ranking School-Affiliated, General Journals on Judicial Impact.**

From the earliest days of the twentieth century law school model, legal academics have been interested in the impact of their scholarship on courts.<sup>241</sup> We therefore use legal opinion citation studies as a measure of eliteness, with more frequent citation for a journal associated with a school a marker for a greater degree of eliteness. However, citation studies pose a methodological problem—courts do not often cite law review articles. For example, a 1930 survey found just 161 law review articles and 27 law review comments cited in 80 cases out of approximately 30,000 decisions issued by 850 judges (just 61 of which cited a law review).<sup>242</sup>

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12) Brian Leiter, *Brian Leiter's Best Law Schools for the "Best" Jobs in Law Teaching*, July 25, 2006, available at [http://www.leiterrankings.com/jobs/2006job\\_teaching.shtml](http://www.leiterrankings.com/jobs/2006job_teaching.shtml);

13) Brian Leiter, *Faculty Quality Based on Scholarly Impact, 2005*, April 2006, available at [http://www.leiterrankings.com/faculty/2005faculty\\_impact\\_cites.shtml](http://www.leiterrankings.com/faculty/2005faculty_impact_cites.shtml) (median numbers); and

14) Brian Leiter, *Supreme Court Clerkship Placement, 1991 through 2005 Terms*, Jan. 16, 2006, available at [http://www.leiterrankings.com/jobs/1991scotus\\_clerks.shtml](http://www.leiterrankings.com/jobs/1991scotus_clerks.shtml).

<sup>241</sup> See, e.g., Maggs, *Concerning the Extent*, *supra* note 102.

<sup>242</sup> Maggs, *Concerning the Extent*, *supra* note 102, at 188.

Table 18 lists results of multiple citation studies, including the top five schools from the 1930 survey. At least some commentators thought that this level of citation was evidence that “the impact of law reviews on judicial decision-making was well recognized” by the mid-1920s.<sup>243</sup> We opted to count low volumes of citations as indicators of eliteness because such citations are the only observable evidence of the influence an article might have on courts. Chester Newland’s survey of October Term U.S. Supreme Court cases between 1924 and 1956 ranked the top fifteen legal periodicals based on Supreme Court opinion citations; 13 were student-edited law reviews, which are listed in

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<sup>243</sup> Swygert & Bruce, *supra* note 82, at 788. *See also* Nirenstein, *supra* note 106, at 36 (“With increasing frequency” law reviews “cited by judges, and sometimes extracts are quoted.”); Palmer D. Edmunds, *Hail to Law Reviews*, 1 JOHN MARSHALL J. PRACT. & PROC. 1, 1 (1967) (quoting Cardozo in 1923 that “hardly less notable” than the “words of Williston and Wigmore” were “the studies in smaller fields which are made month by month in the columns of the reviews”).

Table 18.<sup>244</sup> Neil Bernstein's study of the U.S. Supreme Court's 1965 term found court citations in 23 law reviews, but to more than one article in just 10 journals and more than 10 cites in just one.<sup>245</sup>

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<sup>244</sup> Chester A. Newland, *Legal Periodicals and the United States Supreme Court*, 7 U. KAN. L. REV. 477, 482 (1959). The other two journals were *Law & Contemporary Problems* (32) and the *A.B.A. Journal* (14). *Id.* Some of the difference in rank order is likely due to differences in page counts.

<sup>245</sup> Neil H. Bernstein, *The Supreme Court and Secondary Source Material: 1965 Term*, 57 GEO. L. REV. 55, 67 (1968). The survey suggested that "the only plausible explanation for this overwhelming preference for Harvard is a conspiracy in restraint of trade among the Justices' law clerks." *Id.* at 67. *See also* Stier, et al., *supra* note 131, at 1474 (attributing dominance of elite reviews in Supreme Court citation counts to clerks being likely to cite their own schools' journals).

Table 18 summarizes this study. Wes Daniels's study of citations to secondary sources for the 1900, 1940, and 1978 October Terms of the U.S. Supreme Court found just thirteen law journals cited in 1940, with the *Harvard Law Review*, *Yale Law Journal*, and *Columbia Law Review* accounting for over half the citations. Ninety-seven journals were cited in 1978, with twelve journals accounting for over half of the citations.<sup>246</sup> Table 19 summarizes the Daniels citation results.

John Scurlock's 1964 study focused on criminal law cases and examined citations to secondary sources in roughly 100 early 1960s criminal law opinions from the courts of California, Missouri, and New York (states that the author considered representative), the U.S. Supreme Court and a nationwide sample of 188 court opinions in five subject areas then hotly debated.<sup>247</sup> We counted the number of citations to general student-edited law review journals.

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<sup>246</sup> Wes Daniels, *Far Beyond the Law Reports*: Secondary Source Citations in United States Supreme Court Opinions, October Terms 1900, 1940, and 1970, 76 L. Libr. J. 1, 15 (1983). See *id.* Appendix 2, at 30–31 for the complete list.

<sup>247</sup> John Scurlock, *Scholarship and the Courts*, 32 UMKC L. REV. 228 (1964). The five areas were blood tests, breath tests, radar, insanity, and sexual psychopathy.

Table 18 reports the reviews cited by at least two of the three state courts; at least twice by the national sample; and four or more times by the United States Supreme Court. Using these minimal screens eliminated idiosyncratic cites to a single article or based on the location of the state court (e.g., the Missouri Supreme Court cited to the *Missouri Law Review* during the sample period, but no other courts did).

Prof. Louis Sirico, Jr. and Jeffrey Margulies's 1986 study examined U.S. Supreme Court citations to law reviews in opinions issued in the October Terms in 1971-73 and 1981-83.<sup>248</sup> As in the earlier study, it found overwhelming dominance by a small number of journals with the top ten in each period accounting for over half of the citations, with a long tail of infrequently cited journals (the bottom half accounted for approximately 10% of total citations).<sup>249</sup> Sirico extended the study to the 1991-93 and 1996-98 periods with similar results.<sup>250</sup> We counted as more elite those schools with journals that were in the top ten in all four periods, then those in three of the four, then in two of the four periods.<sup>251</sup> The top journals' dominance of Supreme Court citations was considerable across all four periods.<sup>252</sup> This reinforces our decision to count only the top citation counts as contributing toward identifying eliteness. Since the Court cited primarily recent articles,<sup>253</sup> these measures focus on elite status in the 1971-1999 period.

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<sup>248</sup> Louis J. Sirico, Jr. & Jeffrey B. Margulies, *The Citing of Law Reviews by the Supreme Court: An Empirical Study*, 34 UCLA L. REV. 131 (1986).

<sup>249</sup> Sirico & Margulies, *supra* note 248, at 135.

<sup>250</sup> Louis J. Sirico, Jr., *The Citing of Law Reviews by the Supreme Court: 1971-1999*, 75 IND. L. J. 1009 (2000) (hereafter "Sirico, 1971-1999").

<sup>251</sup> Sirico noted a decline in citations even to these journals, particularly for the *Harvard Law Review*. Sirico, 1971-1999, *supra* note 250, at 1013.

<sup>252</sup> Sirico, 1971-1999, *supra* note 250, at 1014 (noting bottom 50% of journals cited accounted for 9.03% in 1971-73, 10.4% in 1981-83, 11.09% in 1991-93, and 16.97% in 1996-98, while top 10% accounted for 58.36%, 56.84%, 52.69%, and 47.97% respectively).

<sup>253</sup> Sirico, 1971-1999, *supra* note 250, at 1015.

Table 18 summarizes these results. Sirico and Beth Drew studied court of appeals citations to law review articles in 100 opinions from each of the eleven numbered circuit courts of appeals.<sup>254</sup> They found that the circuit courts cite law review articles less often than the U.S. Supreme Court, finding just 221 citations in the 1200 opinions.<sup>255</sup> Of the 85 journals cited, 45 were cited just once, 17 just twice, and 6 just three times.<sup>256</sup> These results are summarized in

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<sup>254</sup> Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Courts of Appeal: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051 (1991).

<sup>255</sup> Sirico & Drew, *supra* note 254, at 1052.

<sup>256</sup> Sirico & Drew, *supra* note 254, at 1058-59, Appendix I.

Table 18. We counted toward eliteness only those general, student-edited journals cited at least four times, giving greater weight to those cited ten or more times. Since the courts of appeals cited primarily recent articles,<sup>257</sup> this counted toward eliteness for the period close in time to the study.

### 5. Ranking School-Affiliated, General Journals on Author Prestige Impact.

Robert Jarvis and Phyllis Coleman<sup>258</sup> ranked almost all of the student-edited, general law reviews<sup>259</sup> from the first half of the 1990s,<sup>260</sup> based on author prestige using a scale they devised. Table 20 reports the top 25, 26-50, and bottom 61 law reviews based on this ranking. We count being in the top 25 as a strong signal of eliteness, in the 26-50 as a weaker signal, 51-100 as a neutral signal, and being in the bottom 61 as a negative signal.<sup>261</sup>

We also use Scott Finet's evaluation of the citation impact of law reviews.<sup>262</sup> Finet surveys published studies of the citation impact of law reviews and *Shepard's Law Review Citations* to develop a composite list of law review citation impact.<sup>263</sup> Table 21 reports the top 50 law reviews in the Finet composite ranking. We consider a listing in the top 25 of the Finet composite ranking as a strong signal of eliteness and 26-50 to be a weaker signal.

### 6. Library Rankings of School-Affiliated, General Journals

Law library studies of journals used to make subscription and retention decisions are another means of ranking journals. Cameron Allen's 1969 survey examined eight different bases for determining which journals to hold in duplicate copies.<sup>264</sup> We think three of these provide measures that correlate with eliteness: "grade" on the AALS 1954 journal list, the number of *Index to Legal Periodicals* subscribers who also subscribed to the journal, and the total number of citations in *Shepard's*. The list of journals included on the AALS 1954 list was made by the AALS Special Committee on Library Collection based on a poll of 85 law school libraries and grouped into "A", "B," and "C" groups depending on how frequently respondents reported a

<sup>257</sup> Sirico & Drew, *supra* note 254, at 1055-56.

<sup>258</sup> Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews: An Empirical Analysis based on Author Prominence*, 39 ARIZ. L. REV. 15 (1997).

<sup>259</sup> They included ABA approved schools' law reviews which were: 1) student-edited; 2) at least five years old; 3) appeared at least semi-annually; 4) were general; 5) not limited to symposia or other special issues; 6) did not print only student authored articles; and 7) was published in English. This excluded the law reviews of CUNY, UDC, Franklin Pierce, Chicago-Kent, George Mason, Golden Gate, Lewis & Clark, Mercer, Northeastern, Roger Williams, Texas Wesleyan, Thomas Jefferson, Louisville, Wyoming, Widener, and the Puerto Rican law schools. Jarvis & Coleman, *supra* note 258, at 16, n.5.

<sup>260</sup> Jarvis & Coleman, *supra* note 258, at 16, n.8 (journal years 1990-1994 or 1991-1995 used depending on journal's production schedule).

<sup>261</sup> Data from Jarvis & Coleman, *supra* note 258, at 19-24, Table II.

<sup>262</sup> Scott Finet, *The Most Frequently Cited Law Reviews and Periodicals*, 9 LEGAL REFERENCE SERV. Q 227, 227 (1989).

<sup>263</sup> *Id.* at 237-38.

<sup>264</sup> Cameron Allen, *Duplicate Holding Practices of Approved American Law School Libraries*, 62 LAW LIBR. J. 191 (1969).

journal to have “recognized worth.”<sup>265</sup> We count being in the “A” group as a strong sign of eliteness and the “B” group as a weak sign. The publisher of the *Index*, H.W. Wilson, sent *Index* subscribers an “Open Letter to *Index* to Legal Periodicals Subscribers, 1966-1967,” which listed the number of *Index* subscribers who subscribed to each title the *ILP* indexed.<sup>266</sup> The number of subscribers to student-edited, general law journals ranged from 1,268 (*Harvard Law Review*) to 174 (*Tulsa Law Journal*). The median number of subscribers was 292; the mean was 334.4; the standard deviation was 168.6. We counted subscribers above one standard deviation from the mean as a strong signal of eliteness and subscriber numbers between the mean and one standard deviation above as a weak signal. Similarly, we use the number of *Shepard’s* citations to the journal (44 journals analyzed; maximum 13,655; minimum 429; median 1506; standard deviation 2349.9) to find a strong signal (more than one standard deviation from the mean) and a weak signal (between the mean and one standard deviation). Table 22 summarizes these measures.

A 1978 study by Nancy Johnson, a law librarian at the University of Illinois, ranked 275 law journals based on frequency of use by patrons between March and May 1977.<sup>267</sup> The survey found a high degree of correlation with Maru’s study based on citation counts, particularly among the most highly ranked journals on both lists.<sup>268</sup> Table 23 groups the results of the Johnson survey into three categories: academic law journals used 75 or more times, those used 50-74 times, and those used 25-49 times. The results show a strong Midwestern bias and so we do not weight by the number of uses, but we do count use more than 25 times as an indication of eliteness.<sup>269</sup> The survey also concluded that the top 100 journals in terms of use constitute a “collection of legal periodicals but suggests eliminating some “fringe” journals from the list.”<sup>270</sup> We also gave lesser weight to schools publishing a journal on that list.<sup>271</sup>

Margaret Goldblatt reported on a twelve-month study of journal usage between March 29, 1982 and March 28, 1983 conducted by the Washington University law library.<sup>272</sup> In addition to surveying actual use of the current, unbound issues of the journals, the librarians also surveyed the Washington University faculty about those journals “fairly consistently containing articles which have been interesting or important to teaching or research.”<sup>273</sup> We combine these

<sup>265</sup> Allen, *supra* note 264, at 194.

<sup>266</sup> Allen, *supra* note 264, at 195.

<sup>267</sup> Nancy P. Johnson, *Legal Periodical Usage Survey: Method and Application*, 71 LAW LIBR. J. 177 (1978). The methodology is described at 178–79.

<sup>268</sup> Johnson, *supra* note 267, at 185 (15 of top 25 on both list, correlation falls out of top 25).

<sup>269</sup> This includes the top 26 student-edited general law journals; Johnson’s table lists 32 journals in this category but we deleted bar journals and non-student-edited and specialty journals.

<sup>270</sup> Johnson, *supra* note 267, at 183.

<sup>271</sup> These schools are: Brooklyn, Missouri (Columbia), Vanderbilt, North Carolina, St. Louis University, Kentucky, Oklahoma, Duke, Georgia, Nebraska, Rutgers (Newark), Marquette, Cincinnati, Case Western Reserve, Iowa, Tennessee, Arkansas (Fayetteville), Boston University, Baylor, Catholic, Howard, Tulane, Pittsburgh, Southwestern, Miami, George Washington, Indiana (Indianapolis), New England, Ohio State, Seton Hall, Valparaiso, Washington & Lee, Cleveland State, Dickinson, Temple, Buffalo, Houston, Maryland, Oregon, San Diego, Syracuse, Loyola (Chicago), Suffolk, and Kansas. Johnson, *supra* note 267, at 179-180, Table 1 and 183, Table 2.

<sup>272</sup> Margaret A. Goldblatt, *Current Legal Periodicals: A Use Study*, 78 LAW LIBR. J. 55, 56 (1986).

<sup>273</sup> Goldblatt, *supra* note 272, at 65.



measures in Table 24 showing those general student-edited journals that ranked above and below the median in usage and which were identified by at least three faculty members.

Kincaid Brown reported a survey by the University of Michigan law library of eighteen measures of journal citation from earlier studies and derived an average ranking.<sup>274</sup> Using these studies, the library then divided scholarly journals into three categories of currently published journals.<sup>275</sup> Higher category journals were held in greater numbers. Table 25 lists the schools affiliated with the general, student-edited journals in the top two categories, which we used as signals of eliteness.

## 7. Ranking Specialty Journals

We examined two rankings of specialty law journals. Prof. Gregory Crespi ranked environmental/natural resources/land use and international law journals by surveying faculty experts in those fields.<sup>276</sup> Profs. Tracey George and Chris Guthrie ranked specialty journals (including faculty edited ones) generally by using author prestige based on articles published from January 1990 to January 1998.<sup>277</sup> These rankings are substantially correlated within the subfields analyzed by Crespi, despite their differences in methodology.<sup>278</sup>

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<sup>274</sup> Kincaid C. Brown, *How Many Copies are Enough? Using Citation Studies to Limit Journal Holdings*, 94 LAW LIBR. J. 301 (2002). The prior studies relied upon are *Concerning the Extent*, *supra* note 102; Newland, *supra* note 244; Maru, *supra* note 125; Daniels, *supra* note 246; Sirico & Margulies, *supra* note 248; Sirico & Drew, *supra* note 254; Sirico, *1971-1999*, *supra* note 250; Shapiro, *Most Cited*, *supra* note 223; Mann, *supra* note 217; Executive Board, *supra* note 232; Cullen & Kalberg, *supra* note 232; Gumm, *supra* note 232; and Leonard, *supra* note 221.

<sup>275</sup> Brown, *How Many Copies*, *supra* note 274, at 307. A fourth category of “practice-oriented, current awareness, or nonlaw journals” and a fifth category of no longer published journals were also used.

<sup>276</sup> Crespi, *Environmental* *supra* note 208; Gregory Scott Crespi, *Ranking International and Comparative Law Journals*, 31 INT’L LAW. 869 (1997).

<sup>277</sup> George & Guthrie, *Empirical Evaluation*, *supra* note 204, at 826–29 (explaining methodology).

<sup>278</sup> George & Guthrie, *In Defense*, *supra* note 5, at 885 (similar rankings for 2/3rds of international journals and on top 5 environmental journals).

Table 26 lists the number of journals affiliated with a school in the George and Guthrie study in the top 25 and top 50 out of the 100 ranked in the study.<sup>279</sup> George and Guthrie found that “specialized reviews published by the elite law schools are disproportionately represented at the top of the ranking” but that non-elite schools also published prestigious specialty reviews.<sup>280</sup> We therefore think that having a journal in the top 25 suggests an investment in excellence in a particular field, which correlates with efforts to achieve eliteness for schools outside the highest elite ranks; journals in the top 50 are a weaker signal of success in sending this signal.

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<sup>279</sup> Data from George & Guthrie, *Empirical Evaluation*, *supra* note 204, at 831, Table 4.

<sup>280</sup> George & Guthrie, *Empirical Evaluation*, *supra* note 204, at 835.

Table 27 compares the schools producing the top specialty journals in the two fields examined by Crespi.<sup>281</sup> Having a top journal in either field is a signal of eliteness; having a top journal in both is a stronger signal.

## 8. Law Dean Hiring.

Where deans come from is also a signal of eliteness: “a handful of schools are the largest producers of deans.”<sup>282</sup> Hiring a dean from an elite school signals ambition. Using various years of the AALS *Directory of Teachers*, which include biographical data and listings of deans, we constructed a dataset of U.S. law deans. Using this data we then looked for the schools from which deans of *other* schools received their law degrees, which we term “source schools,” and for schools hiring deans providing more than 50 dean years from the top 10 schools (those which provided deans to other schools who served a total of more than 200 dean-years, other than themselves), which we term “climbers.” Table 28 provides summary information on the dean hiring.<sup>283</sup> We consider status as a “source school” to be a strong marker of elite status. Schools providing more than 200 dean-years are a strong signal of eliteness than schools providing more than 100 dean-years. We count status as a “climber school” to be a weaker marker of elite status.

## 9. Law Faculty Hiring.

Producing law faculty is also a sign of eliteness. We identified two surveys of law faculty schools of origin. A 1980 analysis of those teaching in 1975-76 found that 58.9% held J.D. degrees from just twenty schools.<sup>284</sup> These schools correlated highly with schools’ entering class median LSAT.<sup>285</sup> Similarly, a 1991 study found that thirteen schools dominated the production of law faculty in the 1988-89 AALS Directory, producing half of those listed in the directory.<sup>286</sup> Another twelve schools produced an additional 12.9% of listed faculty.<sup>287</sup> Table 29 combines the results of these two studies. We counted schools in the top rank of source schools for both periods as more elite and schools either in the second tier for both or in the top rank for one and second rank for the other as a weaker signal of eliteness. Because “law teachers in fact control

<sup>281</sup> Data from Crespi, *International*, *supra* note 276, at 874, Table 1; Crespi, *Environmental*, *supra* note 208, at 280, Table 1. Since several journals in the two rankings are not published by law schools, these are omitted.

<sup>282</sup> Jagdeep S. Bhandari et al., *Who Are These People? An Empirical Profile of the Nation's Law School Deans*, 48 J. LEGAL EDUC. 329, 331 (1998) (empirical study of deans).

<sup>283</sup> Overall, we found that schools often hire deans from their own faculties, and even when they do not, the source school is frequently from the same geographic region. This reinforces our sense that hiring a dean from one of the major source schools is a signal of ambition worth counting as a sign of eliteness.

<sup>284</sup> Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. BAR FOUND. RES. J. 501, 507 Table 2 (1980). These schools were: Harvard, Yale, Columbia, Michigan, Chicago, NYU, Georgetown, Texas, Virginia, Berkeley, Pennsylvania, Wisconsin, Northwestern, Stanford, Iowa, Illinois, Minnesota, Cornell, Duke and George Washington. Fossum, *Law Professors*, *supra* note 211, at 507.

<sup>285</sup> Fossum, *Law Professors*, *supra* note 211, at 514–15.

<sup>286</sup> Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 194, 227 Table 27 (1991). These are: Harvard, Yale, Columbia, Chicago, Michigan, NYU, Virginia, Berkeley, Georgetown, Wisconsin, Texas, Pennsylvania, and Stanford.

<sup>287</sup> *Id.* These are Tulane, Boston College, Cornell, Illinois, Mississippi, Ohio State, Duke, UCLA, George Washington, Hastings, Iowa, and Northwestern.

the only institutions that can be considered central institutions of the legal profession,<sup>288</sup> we consider this an important factor.<sup>289</sup>

### **10. Elite Law Reform and Bar Leadership.**

Membership in elite bar organizations is also a sign of eliteness. As many bar activities occur at the state or local level, however, they do not allow either easy comparison or data collection. To measure bar leadership, we examined membership in the American Law Institute (ALI) and presidency of the ABA. The ALI was formed in 1923 as part of what G. Edward White terms a response to “a crisis for the elite sectors of the American legal profession.”<sup>290</sup> As White notes, “[t]he composition of the Institute, the selection process for its members, the self-conscious links forged in that process between elite law faculties, elite practitioners, and judges, and the identification of the Institute with a project to reshape the common law were efforts to clarify and to reinforce status criteria and status distinctions within the legal profession.”<sup>291</sup> Membership in ALI thus signifies that a lawyer has attained a high level of achievement within a state’s bar. Because of the relationship between elite law schools and bar elites, having more alumni become affiliated with ALI is a signal of eliteness. This is not a perfect measure, of course, as ALI membership is more likely for those living near its Philadelphia headquarters.

Using the American Law Institute’s 50<sup>th</sup> Anniversary Directory, which listed all members from the ALI’s first 50 years, Robert Marshall of the University of Alabama Law Library matched members to biographical information that showed the law school attended. He was able to identify U.S. law school data for 1,699 of the 2,302 individuals listed in the directory. (Based on our review of the data, we consider it likely that many of those for whom there was no U.S. law school listed did not receive a law degree at all or did not receive a law degree from a U.S. law school.) The median number of graduates listed as members of the ALI was four, the mean was 10.9, and the standard deviation was 46.15. We therefore count as the strongest marker for elite status having above 56 ALI members, as a less strong marker having from 11-55 members, and as the weakest marker having 5- 11 members. Table 30 lists the law schools in each group; numbers in parentheses indicate the number of members.

The other national measure of bar leadership is alumni serving as ABA presidents. As with judicial citation to law reviews, this is a “tip of the iceberg” measure. We counted the school affiliation of ABA presidents from the organization’s founding in 1878 to 2011. Just six schools provided more than five presidents, which we used as the strongest marker of elite status, two to five presidents as a lesser marker, and one president as the weakest marker. These six schools are listed in Table 31.

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<sup>288</sup> Fossum, *supra* note 211, at 503.

<sup>289</sup> Unfortunately, there is relatively little literature on law faculty. See Fossum, *supra* note 211, at 548–54 (summarizing literature through 1980).

<sup>290</sup> White, *supra* note 32, at 2.

<sup>291</sup> White, *supra* note 32, at 3.

## 11. Rankings.

Different sources have attempted law school rankings at different points in time to identify the “best” law schools, despite considerable hostility to the enterprise from law schools themselves.<sup>292</sup> These rankings are primarily from the period after World War II, with no rankings of law schools between Reed’s 1920s rankings and the mid-1950s.<sup>293</sup> The first post-war ranking was by the *Chicago Sunday Tribune*, which did a survey-based assessment of “top” law schools in 1957.<sup>294</sup> It reported the top 10 law schools as Harvard, Chicago, Yale, Columbia, Michigan, California (Berkeley), Wisconsin, NYU, Illinois, and Northwestern.<sup>295</sup> The survey was based on a variety of factors, including the number of graduates in *Who’s Who in America*, admissions standards, physical plant, and others.

Multiple editions of the *Gourman Report* ranked law schools, as well as other parts of higher education in 1977, 1980, 1993, and 1997.<sup>296</sup> The Gourman rankings were heavily criticized for their mysterious methodology and data collection methods.<sup>297</sup> Nonetheless, the guides had influence and reflect perceptions of elite status. The Gourman rankings grouped schools into five categories based on numerical scores. Table 32 lists schools in the top two categories of the rankings in the 1977 and 1993 editions; schools not in the top two in either are omitted.

Surveys of deans, magazine readers, and faculty yielded lists of “Top-Ranked” law schools in 1973,<sup>298</sup> 1974,<sup>299</sup> 1976,<sup>300</sup> and 1979.<sup>301</sup> These pre-*U.S. News* surveys mirror the *U.S. News* rankings in a number of important respects. The methodology of these rankings is similar to that still used by *U.S. News* for its peer ranking (which makes up 15% of the total ranking).

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<sup>292</sup> See, e.g., Zenoff & Barrow, *supra* note 123, at 395 (“Apparently, there is no desire to rank all law schools. In fact, there is some hostility toward the idea.”).

<sup>293</sup> Scott van Alstyne, *Ranking the Law Schools: The Reality of Illusion?*, AM. B. FOUND. RES. J. 649, 653 (1982).

<sup>294</sup> Manly, *supra* note 166, at 9.

<sup>295</sup> The presence of five Midwestern schools suggests some greater focus on the area than outsiders might agree was appropriate. Manly, *supra* note 166, at 9.

<sup>296</sup> Earlier editions did not rank law schools. See, e.g., Jack Gourman, THE GOURMAN REPORT: RATINGS OF AMERICAN COLLEGES xi (1967) (ranking covers Agriculture, Architecture, Business Administration, Education, Engineering, Forestry, Fine Arts, Letters and Sciences (some- times called Liberal Arts), Nursing and Pharmacy.). (Van Alstyne incorrectly states that the 1967 edition covered law schools. Van Alstyne, *supra* note 293, at 655.)

<sup>297</sup> See Jeffrey Selingo, *A Self-Published College Guide Goes Big Time, and Educators Cry Foul*, CHRON. HIGHER EDU. (Nov. 7, 1997) available at <http://web.archive.org/web/20071215111105/http://chronicle.com/free/v44/i11/11a00101.htm> (summarizing critiques).

<sup>298</sup> Peter M. Blau & Rebecca Zames Margulies, *America’s Leading Professional Schools*, 5 CHANGE 21, 24 (November 1973). The schools listed were Harvard, Yale, Michigan, Columbia, and Chicago.

<sup>299</sup> Blau & Margulies, *Reputations*, *supra* note 166, at 44. The schools listed were Harvard, Yale, Michigan, Columbia, Chicago, Stanford, Berkeley, NYU, and Pennsylvania. *Id.*

<sup>300</sup> *The Popular Vote: Rankings of the Top Schools (A Staff Report)*, 6 JURIS DOCTOR 17, 18 (Dec. 1976).

<sup>301</sup> William S. Strong, *The Top Ten Law Schools*, 133 TOWN & COUNTRY 69 (Aug. 1979). The top ten were: Berkeley, Chicago, Columbia, Harvard, Michigan, NYU, Pennsylvania, Stanford, Virginia, and Yale. These surveys are comprehensively critiqued in van Alstyne, *supra* note 293, at 656–59.

Table 33 aggregates these surveys. (The number in the *Juris Doctor* column refers to how many of the four separate rankings it provided the school was listed in.)<sup>302</sup> We counted as a strong signal of eliteness to score 6 or 8 in our totals; a weaker signal was to score 5 or fewer. Not surprisingly, then, the results of the “Top-Ranked” law school rankings were virtually identical to the first *U.S. News* law school ranking in 1987, which relied entirely on a survey of deans.<sup>303</sup> The publication of the “Top-Ranked” law school listing prompted an uproar similar to more recent controversies over the *U.S. News* rankings.<sup>304</sup> Indeed, “the dean of a major law school led an active movement through the Association of American Law Schools to discourage cooperation” with one of the surveys.<sup>305</sup> The University of Rochester produced a photocopied “Law School Locator” in the 1980s, which provided LSAT and UGPA data on law schools.<sup>306</sup> The 1980-82 edition listed 32 “top” schools.

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<sup>302</sup> The survey provided “Academic Quality” and “Employment Value” surveys of both deans and readers.

<sup>303</sup> *Brains for the Bar*, U.S. NEWS & WORLD REP., Nov. 2, 1987, at 72 (listing the top 20 law schools based on a survey of 183 law school deans that asked them to rank the nation’s ten best law schools).

<sup>304</sup> Blau & Margulies, *Reputations*, *supra* note 166, at 42 (noting that first publication “received a great deal of attention, which continues to this day”).

<sup>305</sup> *Carrter Report*, *supra* note 166, at 45.

<sup>306</sup> Van Alstyne, *supra* note 293, at 664 (describing and reporting on 1980-82 data).

Table 34 summarizes this data. A 1990 “Insider’s Guide” provided a list of the “top 15” law schools.<sup>307</sup> Table 36 lists these.

In addition to the pre-*U.S. News* rankings, our analysis also draws on the twenty-five years of *U.S. News* rankings.<sup>308</sup> We are well aware of the many methodological issues that exist with respect to these rankings,<sup>309</sup> and acknowledge that resting judgments on small distinctions in ranking would not be a reliable measure of quality.<sup>310</sup> Despite these concerns, however, long-term trends in broad relative positions reflect at least perceived hierarchy (albeit one that is influenced by the rankings themselves)<sup>311</sup> that reflects both reputation and resources. For example, if we consider only the ways reputation and resources directly enter the *U.S. News* rankings, these include: the two surveys of reputation among academics (15%) and practitioners (12.5%), average per capita expenditures (two categories, 9.75% and 1.5%), total number of library volumes (0.75%). These total 39.5% of the overall score.<sup>312</sup> *U.S. News*’s distinctions between Harvard (#3 in 2012) and Georgetown (#13 in 2012) may be meaningless (and we think they largely are). However, the distinction between first tier and fourth tier laws schools reflects real differences in both perceived hierarchy and relative resources, as does the distinction between the first and second tiers, if not at the margin then certainly between the top slice of the first tier as compared to the bottom slice of the second.<sup>313</sup> Because the top 14 has been remarkably stable over time, we counted it as a separate tier. We used top 14, 15-25, 26-50, and 51-100 as the categories; we omitted schools ranked in the top 100 fewer than nine times. In addition, *U.S. News*’ first ranking of law schools in 1987 was a pure reputation survey that produced a list of the ten top schools. Data containing *U.S. News* results are listed in Table 35 and Table 36.

<sup>307</sup> Cynthia L. Cooper, *THE INSIDER’S GUIDE TO THE TOP FIFTEEN LAW SCHOOLS* (1990).

<sup>308</sup> *U.S. News* rankings first appeared in 1987 and then annually beginning in 1990. Henderson & Morriss, *Student Quality*, *supra* note 49, at 167.

<sup>309</sup> Indeed, two of us have written about the rankings, including the problems. See Henderson & Morriss, *Student Quality*, *supra* note 49; Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in U.S. News & World Report Law School Rankings*, 83 *IND. L.J.* 791 (2008); William D. Henderson & Andrew P. Morriss, *The New Math of Legal Education*, 12(9) *THE YOUNG LAWYER* 1 (July 2008).

<sup>310</sup> See, e.g., Stephen P. Klein & Laura Hamilton, *The Validity of the U.S. News and World Report Rankings* 12 (Association of American Law Schools, 1998) (a 1998 study commissioned by the Association of American Law Schools (AALS), “90% of the overall differences in ranks among schools can be explained solely by the median LSAT score of their entering classes.”); William D. Henderson, *Can Stanford Be #1 in the US News Rankings? The Data*, Legal Profession Blog (July 31, 2010) available at [http://lawprofessors.typepad.com/legal\\_profession/2010/07/can-stanford-be-1-in-the-us-news-rankings](http://lawprofessors.typepad.com/legal_profession/2010/07/can-stanford-be-1-in-the-us-news-rankings) (explaining how Stanford could become ranked first, ahead of Harvard and Yale, by spending more, even if spending was wasteful).

<sup>311</sup> Stake, *supra* note 161 (demonstrating how changes in overall rankings subsequently are associated with statistically significant upticks in reputational scores the following years, suggesting that rankings may drive the direction of key input variables).

<sup>312</sup> See Brian Leiter, *The U.S. News Law School Rankings: A Guide for the Perplexed* (May 2003) available at <http://www.leiterrankings.com/usnews/guide.shtml>.

<sup>313</sup> In addition, many other researchers have used *U.S. News* rankings as a proxy for reputation. See Crespi, *Tiers*, *supra* note 127, at 903 (using the “notorious” *U.S. News* rankings to place schools in reputational tiers).

## **12. AALS membership.**

Table 37 lists AALS membership dates for certain ABA-accredited law schools. We viewed early membership in the AALS as a significant marker for elite status. Schools that were charter members of the AALS made an early commitment to the emerging twentieth century law school model. New schools that quickly joined also signaled quality. By mid-century, however, AALS membership was no longer a means of separating the top from the rest but a means of separating the bottom from the rest. We therefore used charter membership, joining before 1930, joining before 1940, and joining rapidly as a positive indication of eliteness. We used not being an AALS member in 1960, 1980, and 2000 as a negative indication of eliteness.

## **13. ABA approved status**

Between 1950 and 1970, a number of schools that were not ABA-accredited in 1950 achieved ABA accreditation.<sup>314</sup> During this time period, although the total number of law schools remained nearly the same, the number of total accredited schools increased significantly due to a larger number of schools becoming fully or provisionally accredited and a decrease in the number of unaccredited schools.<sup>315</sup>

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<sup>314</sup> Swords & Walwer, *supra* note 68, at 44–45.

<sup>315</sup> *Id.* at 44.



Table 38 lists time frames for law school accreditation. We consider accreditation prior to 1950 and accreditation within ten years of the initial establishment of a law school to be strong indications of elite status.

#### **14. Fellowships and Visiting Assistant Professor Programs**

Table 39 gives data concerning Fellowships and Visiting Assistant Professor (VAP) programs. Law schools have adopted VAP and fellowship programs in increasing numbers in recent years. These programs give aspiring legal academics the opportunity to have a one or two year visiting position during which they typically have an opportunity to write law review articles and, in some instances, refine teaching skills.<sup>316</sup> Some early VAP and fellowship programs targeted practicing lawyers who might not have time to write while practicing law.<sup>317</sup> VAP programs have, however, become commonplace in recent years.<sup>318</sup> Further, as Professor Michael Madison notes, fellowship programs have become increasingly targeted at improving law school brand reputation in the academic market:

As it got institutionalized the fellowship got flattened, that is, it lost its distinctive character. Across the country, distinctive VAP and fellowship programs (Chicago, Columbia, for example) begat copycats that likewise lacked distinctiveness. The goal wasn't necessarily to create training space for candidates on their way to the market; the goals included promoting the school's brand in a market for scholars, and hiring cheap teachers.<sup>319</sup>

Using data from a number of sources,<sup>320</sup> we assembled a list of VAP Programs. We consider the creation of a VAP program, particularly when they were first adopted, as a marker of elite status. They can be regarded as effort by elite law schools to assist their graduates in the legal academic job market and to promote their brand reputation in the legal academic market. Some elite law schools, particularly Harvard and Yale, offer a number of opportunities available only to their own graduates.<sup>321</sup>

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<sup>316</sup> Lucinda Jesson, *So You Want to Be a Law Professor*, 59 J. LEGAL EDUC. 450, 453 (2010) (“Your competition may come from one of the burgeoning fellowship and visiting assistant professor programs which groom recent graduates for the academy. Most will not have your experience, but they will have an inside track on what faculties are looking for in the job talk.”).

<sup>317</sup> Michael Madison, *The Real Problem with Law Teaching Fellowships*, Madisonian.net Blog, Dec. 5, 2007, <http://madisonian.net/2007/12/05/the-real-problem-with-law-teaching-fellowships/> (visited Jan. 13, 2013) (discussing the author's experience as a Climenko Fellow at Harvard Law School).

<sup>318</sup> David Bernstein, *Fellowships for Aspiring Law Professors*, Volokh Conspiracy Blog, Feb. 16, 2012, <http://www.volokh.com/2012/02/16/fellowships-for-aspiring-law-professors-2/> (“The growth of these fellowships has been quite remarkable. I managed to scrounge one in 1994 at Columbia, but that one was funded specifically for me for that year only, and it was unusual in those days to do a fellowship before entering the academy. Now, it's commonplace, almost expected unless a candidate has a Ph.D. in a law-related subject area, and maybe even then.”).

<sup>319</sup> Madison, *supra* note 317.

<sup>320</sup> We assembled data about VAP Programs available from a number of different sources, including VAP Program lists from 2005-2012 on Paul Caron's Taxprof Blog, as well as information on law school websites and other sources. *See, e.g.*, *Fellowships for Aspiring Law Professors* (2012-13 Edition), [http://taxprof.typepad.com/taxprof\\_blog/2012/09/fellowships-for-aspiring.html](http://taxprof.typepad.com/taxprof_blog/2012/09/fellowships-for-aspiring.html); Harvard Legal Theory Forum, *Index of Legal Academic Fellowships*, <http://blogs.law.harvard.edu/hltf/jobs/>.

<sup>321</sup> For example, Yale Law School, the clear market leader in the academic job market, offers a number of fellowship programs, some of which are available only to Yale Law School graduates. *See, e.g.*, <http://www.law.yale.edu/intellecualife/bernsteinfellowships.htm>; <http://www.law.yale.edu/academics/coverfellowships.htm>; <http://www.law.yale.edu/intellecualife/coverlowensteinfellowship.htm>; [http://www.law.yale.edu/documents/pdf/CDO\\_Public/Heyman\\_Federal\\_Public\\_Service\\_Fellowship\\_Announcement\\_2013.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/Heyman_Federal_Public_Service_Fellowship_Announcement_2013.pdf); [http://www.law.yale.edu/documents/pdf/Alumni\\_Affairs/holtzmann\\_fellowship.pdf](http://www.law.yale.edu/documents/pdf/Alumni_Affairs/holtzmann_fellowship.pdf), <http://yaleisp.org/2011/09/fello>

Table 39 indicates law schools that have had more than five separate Fellowship and VAP programs in recent years. We regard the total number of VAP programs offered by a law school as a significant marker of elite status. Further, early adoption of a VAP program is also a significant marker of elite status.

### **15. Law Firm Partner Feeder Schools**

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[wships-2/](#);  
[http://www.law.yale.edu/documents/pdf/CDO\\_Public/International\\_Court\\_of\\_Justice\\_Trainee\\_Position\\_13-14.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/International_Court_of_Justice_Trainee_Position_13-14.pdf);  
<http://www.law.yale.edu/intellecualife/limanfellowships.htm>,[http://www.law.yale.edu/documents/pdf/CDO\\_Public/2011\\_McCarthy\\_gen.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/2011_McCarthy_gen.pdf);  
<http://www.law.yale.edu/givetoyls/lectures&fellowships.htm>,[http://www.law.yale.edu/documents/pdf/CDO\\_Public/cdo-yhsacademicfellowships.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/cdo-yhsacademicfellowships.pdf); [http://www.law.yale.edu/documents/pdf/CDO\\_Public/RuebhausenSouthAsia.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/RuebhausenSouthAsia.pdf),  
[http://www.law.yale.edu/documents/pdf/CDO\\_Public/SFALP.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/SFALP.pdf);  
[http://www.law.yale.edu/documents/pdf/CDO\\_Public/PCAfellowship.pdf](http://www.law.yale.edu/documents/pdf/CDO_Public/PCAfellowship.pdf).

Table 40 identifies the law schools that are the principal sources of partners for large law firms. We regard primary source law schools for law firm partners as a significant marker of elite status. The source schools for partners at large law firms track existing hierarchies of law schools to a significant degree. In 2012, Professor Theodore Seto undertook an empirical analysis of law firm hiring patterns.<sup>322</sup> He identified the top feeder law schools for over 48,000 partners at the largest 100 *National Law Journal* law firms (NLJ 100).<sup>323</sup> Seto ranked law schools according to their status as sources of partners for NLJ 100 law firms. Seto focused on NLJ 100 firms because they are more likely to be firms of national scope.<sup>324</sup> Because Seto did not control for class size, his analysis is biased toward schools with larger enrollments and gives such schools a higher rank.<sup>325</sup> This led Professor Robert Anderson to use law school enrollment data between 1986 and 2003 to adjust the Seto rankings to account for class size.<sup>326</sup> Further, the Seto data includes graduates since 1985, which as Professor Anderson points out, is likely not reflective of the student composition of law schools in recent years.<sup>327</sup> Both the Seto and Anderson rankings strongly replicate other law school hierarchies. Both lists are dominated by highly ranked law schools. In addition to elite schools, non-elite schools in major legal markets, such as New York, Chicago, and Los Angeles, also ranked high. We count presence in the top 30 of the Seto or Anderson list generally as markers of elite status, giving greater weight to presence on the top 30 of the Anderson list.

## 16. Establishment of an Order of the Coif Chapter

The Order of the Coif is an American legal honor society, created in 1902.<sup>328</sup> To be a member requires that “[t]he faculty must be not only dedicated and effective teachers but also productive scholars of works of quality.”<sup>329</sup> There are currently 82 member schools. We counted as elite all schools with chapters, giving greatest weight to schools that established their chapters prior to 1940, less weight to those established between 1941-1970, still less to those established between 1971-2000, and least to those after 2000. Table 41 lists the schools.

### B. *The Categories*

The dramatic changes in the legal education industry (if not in the education itself) across the twentieth century make such our classification particularly challenging. Any effort to impose a single categorization, as we do here because analyzing trends across time requires it, is bound

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<sup>322</sup> Seto, *supra* note 148, at 244.

<sup>323</sup> Seto, *supra* note 148, at 243.

<sup>324</sup> Robert Anderson, Bloated is Better for Law School Rankings, Witnesseth Blog, Dec. 14, 2012, <http://witnesseth.typepad.com/blog/2012/12/bloated-is-better-for-law-school-rankings.html> (visited Jan. 13, 2013).

<sup>325</sup> Robert Anderson, *A Last Word on the Seto Rankings*, Witnesseth Blog, Dec. 23, 2012, <http://witnesseth.typepad.com/blog/2012/12/a-last-word-on-the-seto-rankings.html> (visited Jan. 13, 2013) (“The failure to control for class size provided a rankings boost for larger schools simply for being larger, distorting the results from the top school to the bottom school.”).

<sup>326</sup> Seto, *supra* note 148, at 243.

<sup>327</sup> Anderson, *supra* note 324.

<sup>328</sup> The Order of the Coif, *History*, at <http://www.orderofthecoif.org/COIF-history.htm>.

<sup>329</sup> The Order of the Coif, *Criteria and Procedures for Establishing a Chapter of the Order of the Coif*, at <http://www.orderofthecoif.org/COIF-membership-app.htm>.

to be imperfect. We hope that this initial categorization will be refined over time, in part by our continuing analysis and also through the efforts of others. These initial categorizations reflect clusters of elite status based on indicia of eliteness described in this paper.

As a starting point, we divided U.S. law schools into seven categories, which we use individually and in larger groupings for analysis.<sup>330</sup> These categories are:

**Established Elite:** California (Berkeley), Chicago, Columbia, Harvard, Michigan, NYU,<sup>331</sup> Pennsylvania, Stanford, Virginia, Yale

**Rising Elite:** Cornell, Duke, Georgetown, Minnesota, Northwestern, Texas, UCLA, USC

**Declining Elite:** Boston University, Case Western, Indiana (Bloomington), Iowa, North Carolina, Wisconsin

**Regional Elite:** Alabama, Arizona, Arizona State, Boston College, Buffalo, BYU, California (Davis), California (Hastings),<sup>332</sup> Cardozo, Cincinnati, Colorado, Connecticut, Emory, Florida, Fordham, George Washington, Georgia, Illinois, Notre Dame, Ohio State, Pittsburgh, Rutgers (Newark), SMU, Temple, Tulane, Washington University, University of Washington, Utah, Washington and Lee, William and Mary, Vanderbilt

**Rising Regional:** Schools listed in Appendix A.

**Regional:** Schools listed in Appendix B.

**Local:** Schools listed in Appendix C.

Law schools in the “Established Elite” elite category include schools that regularly appear at the top of the list in a wide range of rankings. For example, many of these schools are included in the list of the “best” schools derived from the 1928 Reed report and repeatedly labeled as elite

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<sup>330</sup> We excluded the Puerto Rican law schools, which we believe are non-comparable to other U.S. law schools because of differences in curricula and other factors.

<sup>331</sup> Although NYU lagged cross-town rival Columbia in the early decades of the twentieth century in key areas such as maintenance of a part-time program, we opted for the higher category given NYU’s strong performance by virtually all measures of eliteness in recent decades. *See* Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at 308–09.

<sup>332</sup> The University of California, Hastings College of the Law had a troubled early relationship with the university system – Reed notes that Judge S.C. Hastings “lived to regret” the “carelessly drawn act” he persuaded the California Legislature to pass and which established Hastings with an independent Board of Directors and prevented the University from exerting control over the school. Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35 at 86; Reed, PUBLIC PROFESSION, *supra* note 38, at 186 (noting “embarrassment to the university authorities” caused by Hastings “in recent years”). Overcoming this took time and is one reason Hastings’ early reputation was not equal to its more recent reputation.

schools by Stevens in his history of legal education as elite schools prior to World War II.<sup>333</sup> The “Established Elite” category includes, but is not limited to, the schools that have collectively supplied the majority of U.S. Supreme Court clerks across time.<sup>334</sup> While Harvard and Yale stand out even in this group with respect to clerks, the other schools included within the “Established Elite” still outperformed those not included by most measures of elite status.

In addition to considering AALS membership status, which was a factor for placement in the Established Elite category, albeit not a determinative one, we generally restricted the Established Elite category to schools that also ranked highly in two or more of the categorizations of law schools done in the 1950s to 1970s. While some of these schools’ position as elite institutions developed later than Columbia, Harvard, or Yale developed theirs,<sup>335</sup> these higher academic standards and greater resources distinguished them well before World War II from schools that began their rise to the elite ranks later in the century.

We did not include in this group schools that were a pioneer in one or more aspects of early twentieth century legal education but which are not recognized in other ways as belonging to the elite. A number of schools made early efforts to rise in quality. For example, Tulane and Cincinnati acquired “Harvard men” for their faculties and using the case method of teaching in the 1890s-1900s during a time period when adoption of the case method was relatively slow (12 of 92 law schools in 1902; just over 30 in 1907).<sup>336</sup> Similarly, Stevens identified Western Reserve<sup>337</sup> as first in the wave to require a college degree for entrance,<sup>338</sup> Alabama, Montana, Notre Dame, and Southern California as early case method adopters;<sup>339</sup> Cornell and North Carolina as in the group having appointed salaried faculty before 1904;<sup>340</sup> and Iowa as having both an early affiliation with a university and playing a role in the push for higher standards in the early twentieth century. The results of efforts by a number of schools falling outside of the Established Elite category were not consistently recognized as early as they were for the schools in the Established Elite category. Stevens’s account of the case method’s spread suggests that the early adopters were those who hired Harvard-trained faculty. Although that might be read as a

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<sup>333</sup> See, e.g., STEVENS, LAW SCHOOL, *supra* note 3, at 115 (discussing the creation of the ABA Section on Legal Education: “To placate the AALS, the ABA at once staffed the council with the pillars of the academic legal establishment—the deans of Harvard, Wisconsin, Minnesota, Columbia, and Northwestern.”); STEVENS, LAW SCHOOL, *supra* note 3, at 213 (Berkeley, Wisconsin, Minnesota, and Virginia “were already seen as national law schools by the 1930s”).

<sup>334</sup> We derived this from the data reported in Ward & Weiden, *supra* note 166, and Peppers, *supra* note 166. Stevens also notes that Yale lost “a number of its faculty” to New Deal agencies. STEVENS, LAW SCHOOL, *supra* note 3, at 141. We consider this a mark of elite status as well.

<sup>335</sup> In many respects, Harvard is in a category of its own in the early twentieth century. See, e.g., STEVENS, LAW SCHOOL, *supra* note 3, at 41 (“In the fifty years from 1870 to 1920, one school [Harvard] was intellectually, structurally, professionally, financially, socially, and numerically to overwhelm the others.”). Schlegel dates even Yale’s status as an “elite” institution to only 1927. John Henry Schlegel, AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE 477 (2011). Stevens says Yale (and Johns Hopkins’ Institute for the Study of Law) became “the frontiers of legal education” by 1930, STEVENS, LAW SCHOOL, *supra* note 3, at 139.

<sup>336</sup> STEVENS, LAW SCHOOL, *supra* note 3, at 60–61, 64.

<sup>337</sup> *Id.* at 73.

<sup>338</sup> *Id.* at 37.

<sup>339</sup> *Id.* at 191.

<sup>340</sup> *Id.* at 71–72, n.90.

signal of desire to join the elite at that time,<sup>341</sup> we viewed these steps as insufficient on their own to justify classification across a longer period when no other indicia of successful attainment of elite status also appeared. Collectively, the schools in this category include all of the nine universities with law schools among those rated as “great universities” by a 1930s ranking<sup>342</sup> and thirteen of the nineteen law schools to score in the top category in the two 1960s rankings.<sup>343</sup>

The second elite category, “Rising Elite”, includes schools that did not score as highly in pre-1960s rankings but which steadily improved their status beginning in the 1940s through the 1960s. Capturing the set of schools whose position improved over time is important to take into account the major shift in American higher education which took place beginning in the 1950s when “[p]ropelled by funds for research, a number of public and private universities grew large and prestigious.”<sup>344</sup> Because their position changed over time, these schools may be qualitatively different from the schools in the Established Elite category. The Rising Elite category also reflects the expansion of perceptions of eliteness to law schools outside of core schools on the Atlantic Seaboard. As Esther Brown’s 1948 report for the Russell Sage Foundation noted, the time from 1939 to Pearl Harbor was

a period of fertility and development in the schools visited, especially in the Middle States, but also in parts of the Southeast and along the Pacific Coast. Leadership in legal education was no longer centered primarily on the Atlantic Seaboard. ‘The Great Eastern schools’ were, in fact, momentarily weary or disorganized and were waiting to get their breath for a renewed effort.<sup>345</sup>

The Rising Elite category includes the schools Stevens notes “gained increasing respect” in the 1950s (e.g., UCLA and Texas).<sup>346</sup> It also includes those schools consistently recognized in Leiter’s more recent scholarly rankings but not in earlier sources or rankings.

The third elite category, “Declining Elite,” includes schools that were once elite but which may no longer meet the criteria for elite status. Many of these schools had a similar standing to Established Elite schools at the beginning of the twentieth century. For example, all of the schools in the Declining Elite category were AALS Charter Members, other than North Carolina, which joined the AALS in 1920. A number of schools in this category, including Case

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<sup>341</sup> The adoption of the case method was significant: Langdell not only innovated in terms of pedagogy, but he also shifted the subject matter taught to “national” from “local or severely practical law.” Reed, PUBLIC PROFESSION, *supra* note 38, at 411. Redlich made a somewhat different point in 1914, arguing that the case method was transformed over time from merely a method of teaching and became “a far-reaching change in the general conception of the nature and purpose of legal education.” Redlich, *supra* note 38, at 25.

<sup>342</sup> Embree *supra* note 166.

<sup>343</sup> GOURMAN 1960s & KELSO 1960s. The remaining schools are included in the “Rising Elite” or “Regional Elite” categories.

<sup>344</sup> Cohen, *supra* note 117, at 195.

<sup>345</sup> ESTHER LUCILE BROWN, LAWYERS, LAW SCHOOLS AND THE PUBLIC SERVICE (NY: Russell Sage Foundation, 1948) at 9–10.

<sup>346</sup> STEVENS, LAW SCHOOL, *supra* note 3, at 213.

Western and Iowa, which used a version of the case method prior to Langdell at Harvard,<sup>347</sup> were at times at the forefront of legal education reform efforts.<sup>348</sup> Although schools in the Declining Elite category were once similar to schools in the Established Elite and Rising Elite categories, the status of many of these schools is now more consistent with schools that we place in the “Regional Elite” category.

The placement of schools in the Declining Elite and Rising Elite categories reflects the most significant perceptible shift to date in enduring law school hierarchies during the course of the twentieth century. Even with this shift, however, the status of most schools in the hierarchy has endured and changed little over time. The extent to which these trends will continue over time remains uncertain.

The fourth elite category, “Regional Elite,” includes schools that have not reached the top ranks of legal education nationally, as reflected in national rankings, U.S. Supreme Court clerkships, and other markers of eliteness, but which are dominant within their regions. These schools are not in one of the other elite categories, are consistently in the *U.S. News & World Report* top 100 rankings between 1992 and 2009, and meet two or more additional criteria.<sup>349</sup> The Regional Elite category demarcates the bottom edge of the elite prestige category. Categorization of schools below Regional Elite schools is somewhat challenging, in part because categorizations of prestige status may not be useful for distinguishing schools that are not elite. For example, Brian Leiter’s rankings focus on distinguishing the elite from the remainder of law schools. As a result, although his rankings are helpful in identifying elite schools, his rankings proved less helpful in distinguishing schools below the top ranks.

“Rising Regional” schools are those not included in any of the above categories but which were identified in Roger Williams University School of Law’s analysis of faculty productivity outside the *U.S. News* Top 50 and are not new schools.<sup>350</sup> “Regional” schools are those not included in one of the preceding categories and which consistently scored in the top 100 over the course of the *U.S. News* ranking system.<sup>351</sup> This is an imperfect measure but one

<sup>347</sup> Carrington, *supra* note 21, at 735–36.

<sup>348</sup> See *supra* notes 29 to 46 and accompanying text.

<sup>349</sup> These criteria include: (1) Admissions Criteria Rating II in Reed’s 1928 classification (reflecting schools that required one to two years of college as an entrance requirement); (2) “A” resource ranking in the Kelso 1963-64 or 1967-68 ranking; (3) Rated above 4.0 (of 5.0) in the 1977 Gourman Report ranking; (4) Mentioned by Stevens as a school which “came into national prominence” during the 1960s; and (5) “Flagship” status within a state public university system (“Flagship” status goes to the primary campus in the highest level state university system or the one or two most elite schools among all state universities within a state (e.g. Berkeley within the University of California system, Austin within the University of Texas system). This category is disproportionately made up of public schools, partially an artifact of our design of the category but also a reflection of the role public schools have played in states with smaller private educational sectors. (The public/private divide had a regional component, with public schools much less important in the eastern states.). Reed, PRESENT-DAY LAW SCHOOLS, *supra* note 35, at Appendix, Table 18, 560; STEVENS, LAW SCHOOL, *supra* note 3, at 213, 198.

<sup>350</sup> Roger Williams University School of Law, *Per Capita Productivity of Articles in Top Journals, 1993-2010, Law Schools Outside U.S. News Top 50*, available at <http://law.rwu.edu/faculty/faculty-productivity>. The two schools that did not benefit from their inclusion on the Roger Williams list were Chapman and Florida International.

<sup>351</sup> “Consistently ranked” means at least 12 of the 17 rankings in total or was so ranked in at least 9 of the



which recognizes the greater reputational capital that a school possesses if it maintains a position out of the third and fourth tier of *U.S. News*. The distinction between “Rising Regional” and “Regional” produces the most surprises in relative rankings, but we think the placement success of faculties at lower ranked law schools sends a reasonable signal of the schools’ ambitions. While this rests on a relatively recent emphasis, we think the category can be used productively. “Local” schools are those not included in one of the preceding categories.

These last two categories (Regional and Local) rely most heavily on the *U.S. News* results. While *U.S. News* is far from perfect, and covers only a fraction of the period we are studying, to fall below the top 100 on a regular basis over seventeen years is a reasonable basis for a distinction. Note that we are not making a quality judgment about the schools’ faculties today, only grouping them to allow comparisons with other schools over time. Thus New York Law School, whose faculty’s publication record today exceeds that of many highly ranked schools,<sup>352</sup> is classified as a bottom tier school because that reflects its historical position in the hierarchy despite its faculty’s current productivity.

The data from all our tables are combined in a spreadsheet, available at [website]. This data can be used with our ranking categories, or to construct alternatives.

### III. CONSEQUENCES OF LAW SCHOOL HIERARCHIES

Legal education in the United States is going through a period of turmoil, and law schools are currently grappling with a broad range of challenges. Such challenges include changes in the structure of employment markets for law school graduates,<sup>353</sup> questions about law school veracity in reporting accurate post-graduation employment figures,<sup>354</sup> verified examples of law

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13 rankings published before 2006. This gives greater weight to the pre-2006 rankings, as is appropriate since our data on publications ends in 2005. These schools did *not*:

- (1) consistently rank in the third and fourth tiers of the *U.S. News* ranking system between 1993 and 2009; or
- (2) rank in the third or fourth tiers at least two thirds of the time when ranked and otherwise unranked between 1993 and 2009.

The following schools occasionally fell below the top 100 but did not do so regularly: Baylor University, Catholic University of America, George Mason University, Georgia State, Hofstra, Indiana University – Indianapolis, Lewis & Clark, Louisiana State University, Loyola (Los Angeles), Marquette University, Northeastern University, Seton Hall University School of Law, St. John’s University, SUNY Buffalo, Syracuse University, University of Denver, University of Hawaii, University of Houston, University of Louisville, University of Mississippi, University of Montana, University of Nebraska, University of Oklahoma, University of Pittsburgh, and University of South Carolina.

<sup>352</sup> Based on Morriss’s review of NYLS scholarship and comparison to other schools.

<sup>353</sup> James G. Leipold, *The Changing Legal Employment Market for Recent Law School Graduates*, THE BAR EXAMINER (Nov. 2010), [http://www.ncbex.org/uploads/user\\_docrepos/790410\\_Leipold.pdf](http://www.ncbex.org/uploads/user_docrepos/790410_Leipold.pdf); William D. Henderson, *Why the Job Market is Changing*, NAT’L JURIST (Nov. 2010), at 20, <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist1110/#/20>;

<sup>354</sup> Paul Campos, *Served: How Law Schools Completely Misrepresent Their Job Numbers*, NEW REP., Apr. 25, 2011, <http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown>; Debra Cassens Weiss, *ABA Weighs Required Disclosure of Law School Job Stats, More Rigorous Reporting*, ABA J., Oct. 19, 2010, [http://www.abajournal.com/news/article/aba\\_weighs\\_required\\_disclosure\\_of\\_law\\_school\\_job\\_stats\\_more\\_rigorous\\_report/](http://www.abajournal.com/news/article/aba_weighs_required_disclosure_of_law_school_job_stats_more_rigorous_report/); Law School Transparency, <http://www.lawschooltransparency.com/>.

schools reporting incorrect data that improved *US News and World Report* ranking status,<sup>355</sup> oft stated concerns about the adequacy of legal education in light of the career paths of most law school graduates,<sup>356</sup> and persistent questions about the backgrounds, preparation and roles of law school professors in the education process.<sup>357</sup>

The turmoil in legal education is particularly evident in public commentary about law schools. Concerns about the state of legal education in the United States are certainly not new. For many years, varied commentators have noted a number of failings in the academic model. For example, Edward Rubin notes:

Here we are, at the beginning of the twenty-first century, using a model of legal education that was developed in the latter part of the nineteenth. Since that time, the nature of legal practice has changed, the concept of law has changed, the nature of academic inquiry has changed, and the theory of education has changed. Professional training programs in other fields have been redesigned many times to reflect current practice, theory, and pedagogy, but we legal educators are still doing the same basic thing we were doing one hundred and thirty years ago . . . Few contemporary legal educators even attempt to offer a rationale for this situation. . . . Any systematic demonstration that such an outdated approach to legal education develops skills that are central to the very different world of modern legal practice would be interesting to see, but no such demonstration has been offered.<sup>358</sup>

Rubin attributes this to faculty self-interest: “Apparently, the primary indication that law schools are not ‘broke’ is that they have managed to place themselves astride the entrance to a highly prestigious, influential, and lucrative profession, and thus can teach whatever they want and maintain their economic viability.”<sup>359</sup> This echoes Brian Tamanaha’s

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<sup>355</sup> Martha Neill, *ABA Raps Villanova re Inaccurate Admission Data, Says Law School Must Post Censure Online*, ABA J., Aug. 15, 2011, [http://www.abajournal.com/news/article/abas\\_legal\\_ed\\_section\\_sanctions\\_villanova](http://www.abajournal.com/news/article/abas_legal_ed_section_sanctions_villanova); ABA Letter of Censure to President Donohue and Dean Gotanda of Villanova University, Aug. 12, 2011, <http://www.law.villanova.edu/Resources/News/August%202011/ABA%20Public%20Censure.aspx>; University of Illinois, Press Release, College of Law profile data inquiry identifies discrepancies in three additional years, Sept. 28, 2011, <http://www.uillinois.edu/our/news/2011/Sept28.law.pdf> (reporting results of investigation of median Law School Admissions Test and grade point average data reported by the University of Illinois College of Law and finding discrepancies between actual and reported data in four of the last ten years that “improved the Law School Admissions Test (LSAT) and GPA information describing the enrolled classes of 2011 through 2014.”).

<sup>356</sup> See, e.g., WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (San Francisco: Jossey-Bass, 2007).

<sup>357</sup> Ashby Jones, *Are Law Professors Just Plain Lazy?*, WALL ST. J. LAW BLOG, Feb. 3, 2010, <http://blogs.wsj.com/law/2010/02/03/are-law-professors-just-plain-lazy/>; Ursula Furi-Perry, *When Law Professors Slack, the Students Suffer*, NAT’L JURIST (Feb. 2010), <http://www.nationaljurist.com/content/when-law-profs-slack-students-suffer>; Nicole Black, *Law Schools Failing Their Clientele*, DAILY RECORD, Oct. 19, 2009, <http://nylawblog.typepad.com/files/dr-10.19.09.pdf>.

<sup>358</sup> Rubin, *What’s Wrong*, *supra* note 28, at 610–11 (citations omitted).

<sup>359</sup> Rubin, *What’s Wrong*, *supra* note 28, at 610–611 (citations omitted).

explanation for the current status of legal education.<sup>360</sup>

Calls for legal education reform have become more urgent in the post-credit crisis era largely as a result of the adverse impact of the crisis on a wide range of law firms.<sup>361</sup> During this time, a number of law firms went out of business,<sup>362</sup> while layoffs of and paycuts for law firm support staff, associates and partners have become commonplace.<sup>363</sup> The reduction in law firm employment levels has led to a large number of former law firm associates with diminished employment prospects,<sup>364</sup> as well as a significant reduction in employment opportunities from traditional sources of employment for recent law graduates.<sup>365</sup> This reduction in employment opportunities, combined with “staggering” increases in the cost of legal education in the years prior to the credit crisis, significant increases in law student debt loads,<sup>366</sup> and widespread law school failures to disclose accurate statistics about law graduate employment opportunities, have

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<sup>360</sup> TAMANAHA, *supra* note 75, at 8 (“No one tells law professors what to do. Law professors are superior to students and served by the staff. They are the leading personages inside the law school and sometimes prominent outside as well.”).

<sup>361</sup> Nathan Koppel, *Recession Batters Law Firms, Triggering Layoffs, Closings*, WALL ST. J., Jan. 26, 2009, <http://online.wsj.com/article/SB123292954232713979.html>.

<sup>362</sup> Heller Ehrman, an international law firm, dissolved in 2008 after 118 years in operation, while Dewey & LeBoeuf, at one point one of the largest law firms in the world, collapsed in 2012. Other firm failures during this time period included Thelen LLP and Thacher Proffitt & Wood LLP. Tom Abate & Andrew S. Ross, *Heller Ehrman Law Firm To Dissolve Friday*, SAN FRANCISCO CHRON., Sept. 28, 2008, <http://www.sfgate.com/business/article/Heller-Ehrman-law-firm-to-dissolve-Friday-3193215.php>; James B. Stewart, *Dewey’s Collapse Underscores Law Firms’ New Reality*, N.Y. TIMES, May 5, 2012, <http://www.nytimes.com/2012/05/05/business/deweys-collapse-underscores-a-new-reality-for-law-firms-common-sense.html?pagewanted=all>; *Another Victim Of Credit Crunch: Thelen Law Firm Faces Closure*, WASH. POST, Nov. 2, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/02/AR2008110201894.html>.

<sup>363</sup> Koppel, *supra* note 361 (“Pay cuts and layoffs are becoming commonplace. This month, Clifford Chance laid off more than 70 lawyers in London; Cooley Godward Kronish LLP fired 50 lawyers and 60 other staffers; and Akin Gump Strauss Hauer & Feld LLP let go of 65 staff members across the U.S.”); Jennifer Smith, *Layoffs Threaten Law-Firm Partners*, WALL ST. J., Jan. 7, 2013, at B1; Staci Zaretsky, *Nationwide Layoff Watch: California Dreamin’ of Unemployment Benefits*, Above the Law (Sept. 26, 2013), available at <http://abovethelaw.com/2013/09/nationwide-layoff-watch-california-dreamin-of-unemployment-benefits/>.

<sup>364</sup> Jennifer B. Lee, *Unemployed and Struggling Lawyers Seek Solace*, N.Y. TIMES, June 16, 2009, <http://cityroom.blogs.nytimes.com/2009/06/16/unemployed-and-struggling-lawyers-seek-solace/>; Ben Wolfgang, *Unemployed Lawyers Sue Schools Over Promises Of Jobs*, WASH. TIMES, June 17, 2012, <http://www.washingtontimes.com/news/2012/jun/17/unemployed-lawyers-sue-schools-over-promises-of-jo/>

<sup>365</sup> Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 14, 2012, <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html>.

<sup>366</sup> Steven M. Davidoff, *The Economics of Law School*, N.Y. TIMES Deal Professor Blog, Sept. 24, 2012, <http://dealbook.nytimes.com/2012/09/24/the-economics-of-law-school/>; TAMANAHA, *supra* note 75, at 108 (noting that resident tuition at public law schools increased “a staggering” 820 percent between 1985 and 2009, from \$2,006 to \$18,472 (with a 543 percent increase for nonresidents from \$4,724 to \$30,413), while tuition at private law schools increased to \$7,526 to \$35,743); William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can’t Pay Bills*, ABA J., Jan. 2012, [http://www.abajournal.com/magazine/article/the\\_law\\_school\\_bubble\\_how\\_long\\_will\\_it\\_last\\_if\\_law\\_grads\\_cant\\_pay\\_bills/](http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/) (“In 2010, 85 percent of law graduates from ABA-accredited schools boasted an average debt load of \$98,500 . . . . In contrast, only 68 percent of those grads reported employment in positions that require a JD nine months after commencement. Less than 51 percent found employment in private law firms.”).

led to significant criticism of dominant law school economic and pedagogical models.<sup>367</sup> The term “law school bubble” is frequently used to describe the combination of factors influencing the legal education milieu, including issues relating to dominant education models, student employment opportunities, student debt levels, and inadequate law school disclosures.<sup>368</sup> Discussions about the law school bubble reveal the depth and breadth of criticism leveraged against law schools and the dominant legal education model. Several law schools have been sued for misleading disclosures about post-graduate employment statistics.<sup>369</sup>

### A. *The Impact of U.S. News Rankings*

*U.S. News* rankings are inextricably linked to any consideration of dominant legal education models. Their influence has been both broad and narrow. With a few notable exceptions, the magazine’s rankings have not fundamentally reshaped existing law school hierarchies. Rather, the pre-*U.S. News* hierarchies have remained virtually unchanged in the *U.S. News* era. The rankings have nonetheless continued to play a critical role in an increasingly contested legal education terrain. Further, the *U.S. News* rankings have significantly influenced how law schools perceive and run themselves.

#### 1. Impact on the Existing Hierarchy

*U.S. News* rankings have not fundamentally changed the overall hierarchy; they have profoundly reshaped the internal operation of many law schools in ways that critics of the rankings suggest have been detrimental.<sup>370</sup> Although some consequences of the law school ranking competition, such as reduced student/faculty ratios, are likely positive, many law schools spend considerable effort gaming *U.S. News* rankings. This is in large part as a consequence of this “arms race” that has characterized law schools’ responses to *U.S. News* rankings. The implications of these strategies have contributed to the development of a “terrible dynamic” in which bad behavior by law school administrators is rewarded rather than punished in the marketplace.<sup>371</sup>

<sup>367</sup> See, e.g., TAMANAHA, *supra* note 75; Inside the Law School Scam, <http://insidethelawschoolscam.blogspot.com/> (blog of law Professor Paul Campos); Law School Transparency Project, <http://www.lawschooltransparency.com>.

<sup>368</sup> See The Best Colleges, *The Law School Bubble*, available at [http://www.thebestcolleges.org/law\\_school\\_bubble/](http://www.thebestcolleges.org/law_school_bubble/); Steven M. Davidoff, *The Economics of Law School*, N.Y. Times (Sept. 24, 2012) (noting law schools are “regularly being called a scam or a bubble”); Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, (Aug. 14, 2013), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2250585](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250585) (calculating the economic value of a law degree and finding a positive net present value).

<sup>369</sup> Joe Palazzolo & Jennifer Smith, *Law School Wins in Graduate Suit*, WALL ST. J., March 22, 2012, <http://online.wsj.com/article/SB10001424052702303812904577295953094033504.html>; Karen Sloan, *Plaintiffs Take Law School Fraud Cases to New York’s Highest Court*, NAT’L L.J., Feb. 19, 2013, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202588733671&et=editorial&bu=National%20Law%20Journal&cn=20130220nlj&src=EMC-Email&pt=NLJ.com-%20Daily%20Headlines&kw=Plaintiffs%20take%20law%20school%20fraud%20cases%20to%20New%20York%207s%20highest%20court&slreturn=20130121184633>.

<sup>370</sup> See Sauder & Espeland, *supra* note 13.

<sup>371</sup> William D. Henderson & Andrew P. Morriss, *How the Rankings Arms Race Has Undercut Morality*, NAT’L JURIST, March 2011, at 10,

*U.S. News* rankings have had a profound impact on internal law school operations because they are relatively transparent and can be manipulated by law schools. In addition, the regulatory environment within which law schools operate is quite lax,<sup>372</sup> which means that few significant penalties exist for law schools that fudge or even flagrantly lie in their attempts to improve their *U.S. News* rank.<sup>373</sup> Audit processes and law school disclosure about key determinants of *U.S. News* rankings, including post-graduation employment rates, are woefully inadequate. Penalties for law schools that lie about measures such as student quantitative measures are typically imposed at a later date by the ABA, not *U.S. News*, and are publicized in ways that are frequently far less visible than the rankings themselves.<sup>374</sup>

## 2. From Categorical to Ordinal Rankings

The internal law school impact of *U.S. News* rankings is closely related to the way in which rankings are calculated. Although the details have changed over time, *U.S. News* has generally employed a rankings methodology that combines input measures (e.g., direct expenditures), reputation surveys among academics and lawyers, entering class statistics, and post-graduate bar and employment outcomes. Over time, the magazine has extended the ordinal rankings from a small number of schools to the vast majority of schools. For example, in 1987 it listed only the top twenty, in 1990 and 1991 ranked the 25 “best law schools,” in 1992 it listed all 175 law schools, ordinally ranking just the first 25; and in 1996 the magazine ordinally ranked 50 schools, dividing the rest into three additional tiers.<sup>375</sup> By 2012, the magazine

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<http://www.napla.org/conf2011/presentations/National%20Jurist%20Rankings%20Article,%20Mar%202011.pdf>. See also TAMANAHA, *supra* note 75, at 83-84 (giving structural explanation for schools’ bad behavior).

<sup>372</sup> Joel F. Murray, *Do U.S. Law Schools That Report False or Misleading Employment Statistics Violate Consumer Protection Laws?*, 15 J. CONS. & COMM. L., [http://www.jtexconsumerlaw.com/V15N3/V15N3\\_Professional.pdf](http://www.jtexconsumerlaw.com/V15N3/V15N3_Professional.pdf)

<sup>373</sup> Two recent examples of bad behavior by the University of Illinois College of Law and Villanova University School of Law, led to relatively minor penalties from the ABA. See, e.g., Jennifer Smith, *ABA Fines University of Illinois Law School for Publishing False Data*, W.S.J. (July 24, 2012) (describing sanctions for multiple years of false reporting); Martha Neil, *ABA Raps Villanova re Inaccurate Admission Data, Says Law School Must Post Censure Online*, ABA JOURNAL (Aug. 15, 2011) (reporting sanctioning of school for reporting inaccurate data). ABA Letter of Censure, *supra* note 355 (outlining ABA sanctions against Villanova); Council of the Section of Legal Education and Admissions to the Bar of The American Bar Association, *University of Illinois College of Law—Censure*, June 2012,

[http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/2012\\_june\\_u\\_illinois\\_public\\_censure.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2012_june_u_illinois_public_censure.authcheckdam.pdf).

<sup>374</sup> See, e.g., Elie Mystal, *Villanova Might Need a Kiss from Mommy Since the ABA Slapped Their Wrist Wreally Wreally Hard*, Above the Law (15 Aug. 2011) available at <http://abovethelaw.com/2011/08/villanova-might-need-a-kiss-from-mommy-since-the-aba-slapped-their-wrist-wreally-wreally-whard/> (“These are pretty serious findings against the school. You’d expect the punishment to be severe... unless you’ve actually been paying attention to how the ABA operates. If you are an ABA watcher, you know that this is an organization that thinks wrists are for slaps, not for cuffs.”); Richard J. Montauk, *HOW TO GET INTO TOP LAW SCHOOLS* (5<sup>th</sup> ed. 2011) (noting that “the [same] deans [who criticize *U.S. News* rankings] themselves often play up these same rankings whenever they are not about to be quoted in the press.”); Steven R. Smith, *Deaning’s Seven Deadly Sins*, available at <http://law.utoledo.edu/students/lawreview/volumes/v36n1/Smith%20B.htm> (describing “touting” as “the practice of proclaiming that rankings are misleading, arbitrary and unreliable, and then trumpeting or calling attention to a good ranking. At best this is intellectually dishonest. ... Touting is not rare. I have in my office the ‘Pile of Shame’ of law school publications and web sites that tout.”).

<sup>375</sup> Henderson & Morriss, *Student Quality*, *supra* note 49, at 167 (describing evolution of rankings).

ordinally ranked 146 schools, with the remainder in a single unranked tier.<sup>376</sup>

In the pre-*U.S. News* era, law school hierarchies were to a significant degree categorical rather than ordinal. As a result, the edges of categories were less clearly defined. By the end of the twentieth century, an ordinal ranking had become predominant. The transformation of a collection of regional markets with a thin layer of “national” law schools on top did not come solely from *U.S. News*, of course. Roger Cramton traces it to “the enormous increase in the demand for legal education which began in the 1960s,” arguing that this increase in demand led to “[a] more national market in legal education” in which “each school [had] students who represented a fairly narrow band of admission credentials (which were almost invariably quantified as an index combining LSAT and undergraduate grade point average).”<sup>377</sup>

This is not to say that *U.S. News*’ rankings have not had an important impact: the creation of clearly defined numerical rankings has been an important innovation. As a consequence of creating clearly defined numerical rankings, existing notions about hierarchy solidified and the intensity of competition increased.<sup>378</sup> This combination of reconfirmation and intensification is what has prompted widespread attempts by law schools to game the *U.S. News* rankings in effort to ascend in the rankings.<sup>379</sup> Because the exact position of a school in the *U.S. News* rankings is not set in stone, the successful efforts of some schools in shifting position within the existing hierarchy become object lessons for other schools in the law school arms race. This has led to pervasive gaming behavior by law schools in an attempt to change ranking outcomes.<sup>380</sup> Few schools have made lasting shifts within the hierarchy, however.<sup>381</sup>

The primary impact of the introduction of an ordinal ranking has been to focus attention on the national aspects of the legal education market. Unfortunately, this competition is artificially restricted by the ABA standards and adoption of the academic model that embodies them. Moreover, the market for law professors is a national one, as is much of the market for legal scholarship. Family concerns or lifestyle preferences may limit particular candidates to particular regions, but overall both the entry-level market (coordinated through the AALS’s

<sup>376</sup> *Best Law Schools*, 2012 edition, *supra* note 3.

<sup>377</sup> Cramton, *Remarkable Institution*, *supra* note 22, at 6. Demand for legal education grew dramatically from the mid 1950s to 1970.

Number of LSAT candidates		Number of Enrolled 1L students in the following year	
11,755	1955-56	16,711	1956-57
23,800	1960-61	17,698	1961-62
45,268	1965-66	26,720	1966-67
107,147	1970-71	37,724	1971-72

Source: Swords & Walwer, *supra* note 68, at 280.

<sup>378</sup> Espeland & Sauder II, *supra* note 11, at 20 (“Rankings are a powerful engine for producing and reproducing hierarchy since they encourage the meticulous tracking of small differences among schools, which can become larger differences over time.”).

<sup>379</sup> See, e.g., Henderson & Morriss, *Student Quality*, *supra* note 49, at 193–97; Morriss & Henderson, *Measuring Outcomes*, *supra* note 309, at 803–05.

<sup>380</sup> Sauder & Espeland, *supra* note 13, at 13–14.

<sup>381</sup> See William D. Henderson, *How to Increase Your Law School’s Academic Reputation*, The Legal Whiteboard (Nov. 19, 2012) available at <http://lawprofessors.typepad.com/legalwhiteboard/2012/11/how-to-increase-your-law-schools-academic-reputation.html> (discussing relative lack of movement in academic reputation scores over time).



annual Faculty Recruitment Conference) and the lateral market are national markets. Similarly, while an article on a particular state's legal development is not likely to attract attention outside the state in question, such articles are also unlikely to be written by faculty seeking national attention for their work. It is unlikely that many law schools today would subsidize a flagship journal focused on local issues (as the University of Colorado did with the *Rocky Mountain Law Review* from 1928 to 1962 (when the journal became the *University of Colorado Law Review*), or the University of Wyoming did with the *Land and Water Law Review* (until the journal became the *Wyoming Law Review* in 2001).

Markets for law students and for new graduates, however, are less national in scope. Not only do firm-school ties play important roles, but also local ties of new hires are often relevant to their potential success as future rainmakers. Moreover, while many law students are able to choose among schools in multiple locations as schools seek LSAT and UGPA scores above their medians, family concerns and spousal employment prospects constrain the competition. And the ties built during law school to classmates who will refer cases and collaborate in the future make attending a law school that fosters such ties a relevant consideration for those who know they want to live in a particular area.

A national ordinal ranking cannot capture such considerations. Regional comparisons are thus important as well, but have been swamped by the focus on *U.S. News's* overall rankings. For example, a student considering attending a law school in Ohio would rank Ohio law schools based on their 2012 *U.S. News* rankings as: Ohio State (#39), Case Western (#67), Cincinnati (#69), Akron (#119), Cleveland Marshall (#129), Toledo (#129), Capital (unranked), Dayton (unranked), and Ohio Northern (bottom tier). But a student planning to practice in Cleveland might consider as relevant Cleveland Marshall's dominance in the local judiciary<sup>382</sup> as relevant information, as well as the relative price tags of Ohio's nine law schools (whose sticker prices in 2012 ranged from \$19,864 (Cleveland-Marshall) to \$42,564 (Case Western) for in-state students).<sup>383</sup> Similarly, even a firm hiring a new graduate in one of its Ohio offices might consider the ties a graduate from an Ohio school had to classmates to be valuable compared to a graduate of a more highly ranked law school outside the region. To the extent the current crisis or reforms like Prof. Samuel Estreicher's "Cardozo-Roosevelt" plan to allow 2Ls to take the bar exam without completing their J.D. degrees<sup>384</sup> force law schools to develop and communicate a case that they add value rather than merely sorting students by grades, LSAT, and UGPA, a renewed focus on regional competition may emerge. This might lead back to a more categorical ranking in which the designation "regional elite" becomes both relevant and highly sought after.

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<sup>382</sup> See Cleveland Marshall College of Law, *Prospective Students*, <https://www.law.csuohio.edu/prospectivestudents> (noting that 70% of judges in Ohio courts in Cuyahoga County are CM graduates).

<sup>383</sup> *Find the Best Law Schools*, <http://law-school.findthebest.com/d/d/Ohio>.

<sup>384</sup> Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U.J. LEG. & PUB. POL'Y 599 (2012); Daniel B. Rodriguez & Samuel Estreicher, *Make Law Schools Earn a Third Year*, N.Y. TIMES, Jan. 19, 2013, <http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html>; Peter Lattman, *Obama Says Law School Should Be Two, Not Three, Years*, N.Y. TIMES DEALBOOK BLOG, Aug. 23, 2013, <http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/>.

## B. *The Role of Institutional Prestige in the Legal Academy*

Rankings have a significant influence on a broad range of internal and external constituencies. From an internal perspective, hiring, promotion, and tenure decisions often involve consideration of where prospective candidates attended law school. Student employment opportunities are often circumscribed by virtue of the ranking of the law schools students attend. Employers of such students pay close attention to ranking in the recruiting process. Prospective students pay close attention to law school rankings in determining which law schools to apply to and attend. We now turn to how awareness of the hierarchy may help improve such decisions.

### 1. Strategies for Hiring, Promotion, and Tenure

Rankings influence hiring, promotion, and tenure decisions at law schools.<sup>385</sup> Existing faculty fret about rankings.<sup>386</sup> Prospective law school professors weigh rankings in making decisions about where to teach.<sup>387</sup>

We think law schools would benefit from a larger dose of empiricism in hiring, promotion, and tenure decisions. Basing such decisions on clear metrics may serve as an antidote to the effects of enduring hierarchies. Even without addressing larger questions like how to balance greater practice experience against advanced degrees, benchmarking could improve decision making. For example, we have each often heard—and believe to be common—hiring and promotion and tenure standards described in terms of “X number of top 25 (or top 40 or top 50) journal placements.” Not only do we think that placement is at best a limited signal of quality, given the widespread concerns over “insider bias” in journal placement and most law reviews’ failure to use methods like blind submission to address such issues, but the relative success rate of different subject matters in top journals varies widely. Our preliminary results from our subject matter trends study show that constitutional law is more heavily represented in “top” journals (however defined) than commercial law, bankruptcy, tax, torts, or property (among others).<sup>388</sup> If journal placement is to be a key metric used in these decisions, the presence or absence of particular topics is relevant to the decision. As a result, a torts or commercial law

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<sup>385</sup> Richard E. Redding, “Where Did You Go to Law School?” *Gatekeeping for the Professoriate and its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 594 (2003) (finding in empirical study that “where a faculty candidate went to law school may trump his or her subsequent scholarly, professional, and teaching accomplishments, and that most law teachers graduated from a handful of elite law schools.”). This type of hiring pattern reinforces enduring hierarchies, which replicate themselves through networks of law professor hiring patterns. Daniel Martin Katz, Joshua R. Gubler, Jon Zelner, Michael J. Bommarito II, Eric Provins, & Eitan Ingall, *Reproduction of Hierarchy? A Social Network Analysis of the American Law Professoriate*, 61 J. LEGAL EDUC. 1, 8–9 (2011), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1352656](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1352656) (using network analysis to identify dominance of an isolated number of institutions in the broader network of the legal academy, noting “the aggregation of all individual-level decisions by law hiring committees converges not upon a cluster of institutions but rather upon two institutions—Harvard and Yale”).

<sup>386</sup> See Korobkin, *In Praise*, *supra* note 5, at 404 (noting faculty concern). Lindgren & Seltzer, *supra* note 232, at 805.

<sup>387</sup> See Korobkin, *In Praise*, *supra* note 5, at 21–22.

<sup>388</sup> See also Balkin & Levinson, *Win Cites*, *supra* note 216, at 845 (“The economy of citations confirms and establishes the types of articles and subject matters that produce higher citation counts and greater academic attention, with all that goes with such attention.”).



article in a top 25 journal might be a more powerful signal than a free speech article in the same journal.

Further, if personnel decisions are to be based on scholarship, they ought to be structured to emphasize peer reviews of faculty scholarship and make use of objective criteria such as citation counts and SSRN downloads. Of course, these are not perfect measures either and so reviews need to be nuanced and make use of a broad spectrum of appropriately benchmarked criteria. Producing such benchmarks is a role that the AALS could coordinate, providing a public good for its members. An annual publication of the number of pages and articles in a range of journals by subject matter, as well as broad studies of citation counts would materially improve law schools' abilities to evaluate scholarship. Broader use of Washington & Lee's impact ratings would also push journals to modify their criteria for article acceptance.

## 2. Strategies for Publication Decisions

Patterns of legal scholarship reflect the continuing impact of enduring hierarchies that continue to shape decisions by legal scholars, law schools, and student-edited law reviews. Law schools' research output is closely related to prestige.<sup>389</sup> As a result, despite the fact that faculty research often does not directly benefit students, law schools spend significant resources subsidizing faculty research.<sup>390</sup> As Brian Tamanaha notes, "Law schools at every level (except for unaccredited schools) allocate significant resources to faculty scholarship today because that is the prevailing norm of what it means to be a legitimate law school."<sup>391</sup> Law school faculty may be rewarded in a number of ways for successful placement of their writings in law reviews associated with law schools with a higher rank. At times the rewards are financial: some law schools give bonuses to faculty with placement in law reviews of highly ranked schools.<sup>392</sup> Successful article placement may lead to significant career benefits, in promotion and tenure decisions, as well as greater ability to make lateral movements to more highly ranked schools.<sup>393</sup> At a minimum, successful placement may give a law professor significant reputational benefits, which may help in future placements and even citation counts.<sup>394</sup>

The benefits of higher ranked placement of articles has led many law professors to expend significant time and energy in strategizing about ways to achieve a better placement for

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<sup>389</sup> Edward Rubin, *Should Law Schools Support Faculty Research?*, 17 J. L. & CONTEMP. PROB. 139, 149 (2008) ("research output is closely connected to the law school's prestige"); Korobkin, *Ranking Journals*, *supra* note 212, at 853 ("rankings can create incentives for journal editors to select certain types of manuscripts. . . . [T]he journal editors' desire to select certain types of manuscripts can create incentives for authors seeking publication in those journals to produce those types of manuscripts.").

<sup>390</sup> See generally Rubin, *Faculty Research*, *supra* note 389, at 149. See also Korobkin, *In Praise*, *supra* note 5, at 422 (noting that if potential students and employers stopped paying attention to scholarship because rankings did not value it, schools that produced scholarship would drop out of top rankings).

<sup>391</sup> TAMANAHA, *supra* note 75, at 18.

<sup>392</sup> *Id.* at 50.

<sup>393</sup> *Id.* at 43–44.

<sup>394</sup> Korobkin, *Ranking Journals*, *supra* note 212, at 857–60 (discussing author incentives).

articles.<sup>395</sup> In our experience, discussions about article placement sometimes take on more importance than conversations about article substance and quality. Placement of articles, however, not surprisingly tends to replicate existing hierarchies, and faculty at more highly ranked schools and those with strong network connections to faculty at highly ranked schools are generally believed to have greater ability to place articles at more highly ranked law reviews.<sup>396</sup>

In addition to issues related to placement, rankings have influenced legal scholarship in ways that have reinforced the disjunction between legal scholarship and teaching within the legal academy.<sup>397</sup> This has led to regular, harsh criticism of both law reviews and legal scholarship from a wide range of commentators.<sup>398</sup> Law schools' excessively ranking-focused orientation has meant that scholarly output has gradually supplanted professional training as the primary focus of law school activity.<sup>399</sup> Yet, unlike other academic disciplines, legal scholarship is subject to minimal "supply-side" constraints because law journals serve institutional purposes beyond the advancement of legal scholarship. Most are staffed by student editors who work long hours for no pay in exchange for the experience and credentials that journal membership supplies.<sup>400</sup> Further, even if a law journal operates at a deficit, a sponsoring law school may be willing to subsidize its operation to maintain perceived external benefits for students and/or provide the faculty with a vehicle for symposia that could bring attention to the law school.<sup>401</sup> Therefore, from the perspective of the law schools, the influence of publications in student-edited journals on outside (i.e., "demand-side") constituencies, such as practitioners, lawyers, or other scholars, may not be a significant consideration.

The "supply-side" system of legal scholarship has been increasingly questioned in recent years, in part because it is expensive. Over the last several decades, the cost of a legal education

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<sup>395</sup> Ronen Perry, *The Relative Value of American Law Reviews: A Critical Appraisal of Ranking Methods*, 11 VA. J.L. & TECH. 1, 4 (2006), available at [http://www.vjolt.net/vol11/issue1/v11i1\\_a1-Perry.pdf](http://www.vjolt.net/vol11/issue1/v11i1_a1-Perry.pdf) ("[S]cholars who wish to publish a paper in an American law review probably ask themselves what the best possible forum for their masterpiece will be. Sure enough, the choice is very frequently limited.") Reforming placement processes also attracts attention. See, e.g., Stephen R. Heifetz, *Efficient Matching: Reforming the Market for Law Review Articles*, 5 GEO. MASON L. REV. 629 (1997) (proposing a fee-based matching system).

<sup>396</sup> Sauder & Espeland, *supra* note 13, at 22 ("We cannot confirm with our data the impression that rankings influence publishing, but some evidence supports this view. . . . [S]everal current editors with whom we did discuss this issue strongly agreed that the school reputation of submitters shaped the chances of manuscripts getting accepted in their journal. . . . They believe that it is standard practice at most law reviews to use institutional reputation as a signal of the manuscript's quality, and they agree that rankings shape their views of an institution's reputation.").

<sup>397</sup> Rubin, *Faculty Research*, *supra* note 389, at 155.

<sup>398</sup> See, e.g., Hibbitts, *supra* note 108, at 629 ("Criticisms of the law review have historically tended to come in waves, each wave larger and more powerful than the last."); Cramton, *Remarkable Institution*, *supra* note 22, at 8 ("The extraordinary proliferation of law reviews, most of them student edited and all but a handful very erratic in quality, has been harmful for the nature, evaluation, and accessibility of legal scholarship.").

<sup>399</sup> David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998).

<sup>400</sup> Korobkin, *Ranking Journals*, *supra* note 212, at 854 (noting that the most important external reward stemming from journal work is that journal editors "are viewed as the elites of the law student world").

<sup>401</sup> Priest, *supra* note 163, at 726 (noting that "[a]ll law journals are subsidized in some way: most by the law schools at which they are published").

has risen much faster than inflation, and a significant component of that cost is the increased infrastructure and reduced teaching loads required to support faculty research.<sup>402</sup> These increases in law school tuition are part of a broader pattern of significant increases in university tuition levels across the board.<sup>403</sup> Because much legal scholarship is never cited by a court or another scholar,<sup>404</sup> a number of commentators have suggested that scarce resources should be diverted from scholarship, at least at some law schools, to other areas, including skills training for students or tuition remission.<sup>405</sup>

Subscriptions for physical volumes of individual journals have plummeted in recent years.<sup>406</sup> Increasingly, consumers of legal scholarship access scholarly works via electronic distribution channels, both through commercial publishers such as EBSCO, HeinOnline, Lexis, and Westlaw, as well as through alternative open access models, including Berkeley Electronic Press (bepress), the Social Science Research Network (SSRN), and blogs.<sup>407</sup> As these alternative means of creating, presenting, and distributing legal scholarship have increased, we think the legal academy needs to rethink its single-minded focus on a particular type of scholarship as the major metric of scholarly success. Faculties and deans need to have discussions about the costs and benefits of scholarship at their schools. Our view is that there are more than the optimal number of articles and journals and less than optimal thought given to the purpose of legal scholarship. This discussion needs to take place within a broader discussion of the future of legal education, of course. We think the future holds a world in which law schools choose different strategies generally and different approaches to production of scholarship in particular. Some may emphasize interdisciplinary work, some may focus on legal theory, some may deemphasize scholarship in favor of teaching, and some may focus on doctrinal work related to the jurisdictions where their students get jobs.

Individual faculty cannot, of course, change without considerable risk to their careers. What they can do is construct their own benchmarks for their work and present those to their

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<sup>402</sup> Richard Allen Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y. L. SCH. L. REV. 465, 482–84 (2005).

<sup>403</sup> *Cost of College Degree in U.S. Soars 12 Fold: Chart of the Day*, Bloomberg.com, Aug. 15, 2012, <http://www.bloomberg.com/news/2012-08-15/cost-of-college-degree-in-u-s-soars-12-fold-chart-of-the-day.html>.

<sup>404</sup> Thomas A.C. Smith, *The Web of Law*, San Diego Legal Studies Research Paper No. 06-11 (2005a), draft available online at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=642863](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=642863); Thomas A.C. Smith, *A Voice, Crying in the Wilderness, and Then Just Crying, The Right Coast*, July 13, 2005, <http://therightcoast.blogspot.com/2005/07/voice-crying-in-wilderness-and-then.html> (weblog).

<sup>405</sup> American Bar Association, *Legal Education and Professional Development—An Educational Continuum*, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap (July 1992) (commonly known as the “MacCrate Report”).

<sup>406</sup> Ross E. Davies, *Law Review Circulation*, GREEN BAG ALMANAC & READER 164 (2009); Ross E. Davies, *Law Review Circulation 2011: More Change, More Same*, 1 J. LEGAL METRICS (2012) (noting that no major law review had more than 2,000 paying subscribers, with the *Harvard Law Review* declining from more than 10,000 to 1,896.)

<sup>407</sup> Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797, 808–812 (2006) (discussing ways in which information dissemination has changed with the advent of electronic legal information services, including through new publication models such as SSRN and bepress); Lawrence B. Solum, *Download It While Its Hot: Open Access and Legal Scholarship*, 10 LEWIS & CLARK L. REV. 846, 854–856 (2006) (analyzing the shift of legal scholarship from the old world of law reviews to open access legal blogs).

colleagues. If a school has not yet taken account of field-related differences in publications, a day with Westlaw or Lexis and the AALS directory will allow any professor to create his or her own benchmarks for how scholarship in his or her fields fare in different types of journals. Passing such data on to colleagues (and appointments and promotion and tenure committees) can jump start the conversation. Similar data is relatively easy to construct for job applicants. Based on our experiences and conversations with other faculty, we think such benchmarks would be broadly welcomed as useful information.

### 3. Strategies for Employers

Enduring hierarchies have a significant impact on hiring decisions by legal employers. Law school rank plays an important role in employer decisions about where to undertake on-campus interviews (“OCI”). Large national law firms will typically focus OCI activities at more highly ranked schools. Smaller firms and local offices of large firms may also conduct a broader screen for interviewing at schools in their local area. More campus OCI is associated with higher employed at graduation rates for law students.<sup>408</sup> Most employers of law school graduates consult *U.S. News* rankings.<sup>409</sup> Not surprisingly, graduates of top ranked law schools receive a disproportionate share of overall OCI jobs.<sup>410</sup> Post-law school graduation employment patterns thus also serve to replicate persistent law school hierarchies.

Hiring the top 25% of the top 10 law schools’ classes remains a low short-term risk strategy for many legal employers – the “no one ever was fired for buying IBM” approach. Other partners at large law firms are unlikely to complain when the firm announces the hiring of the top graduates from Harvard or Columbia (unless the partners went to Yale). But this is a time of considerable disruption in the legal marketplace, and not just for graduates.<sup>411</sup> A potentially enormous opportunity exists for employers to cut their costs and improve their outcomes by hiring people who have skills such firms need who did not go to the top schools. A similar opportunity exists for law schools outside the top of the hierarchy to discover ways to communicate real skills delivery ability to persuade employers to consider their graduates. The size of the market opportunity is large; the long term (or perhaps just medium term) risks of not innovating are growing. We believe schools that find ways to innovate and firms that are early adopters of different hiring strategies are likely to gain competitive advantages. After all, IBM ended up selling its laptop business to Lenovo and market leaders in the electronic device industry dominated by the personal computer are not the same market leaders evident in the electronic device industry of today that is increasingly dominated by mobile devices such as smartphones and tablets. The personal computer arena has included companies with different strategies and levels of success at different times, including Dell, Hewlett-Packard, Microsoft, and Apple. However, past and present market leaders in the personal computer sector are increasingly challenged by companies that have taken advantage of market opportunities in

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<sup>408</sup> Morriss & Henderson, *Measuring Outcomes*, *supra* note 309, at 791.

<sup>409</sup> NALP Foundation, *The Use And Influence Of Law School Informational Resources* (2004).

<sup>410</sup> Paul Campos, OCI, Inside the Law School Scam Blog, July 30, 2012, [http://insidethelawchoolscam.blogspot.com/2012/07/oci\\_30.html](http://insidethelawchoolscam.blogspot.com/2012/07/oci_30.html) (analyzing 2011 NALP data, noting that “Students at the very top schools snap up more than their share of OCI jobs, leaving less for everyone else.”).

<sup>411</sup> See Henderson, *Blueprint*, *supra* note 9, at 470–79.

mobility and successfully innovated in the mobile sector, including Google, Microsoft, and Apple. “Buying IBM” or even Blackberry or Dell is thus no longer a dominant option as a strategy for purchasing electronic devices, and a similar transformation may be underway in legal services.<sup>412</sup>

#### 4. Strategies for Prospective Students

Enduring hierarchies also have a significant impact on prospective students. Law school ranking is an important factor for many prospective students in determining where to apply to law school.<sup>413</sup> This focus on ranking by many prospective law school students reflects the narrow range upon which law schools compete and the limited information many prospective students have. It also is the result of an implicit view by employers that the sorting function of law school admissions is the critical contribution of legal education rather than the actual education received.<sup>414</sup> As Russell Korobkin notes, despite regular complaints from firms about the lack of practical skills in entry-level hires, these anecdotes “never seem to result in the complaining employer ending its practice of hiring from these ‘impractical’ institutions.”<sup>415</sup> Rather than focusing on questions related to the substance of the education they might receive at different law schools, the law school’s ordinal ranking has become a primary means by which students distinguish law schools and make significant life decisions about which law schools to attend. This reflects the continuing impact of enduring hierarchies that have to a significant degree become self-replicating.

As others have noted, the current climate and collapse of applications makes this a terrific time to be an applicant to law schools.<sup>416</sup> One response would be for applicants to simply trade up—a LSAT/UGPA combination that was good enough for a school ranked in the 50-75 *U.S. News* range may now get a scholarship in 25-49. We think such a strategy would be a mistake. Applicants to law schools today have a great deal more information from a wide range of sources than did applicants 10 years ago. We think prospective students (who have often already engaged in a careful analysis of whether they want to go to law school at all) ought to ask schools the following questions as part of their deliberative process and then make their decisions based in

<sup>412</sup> See Henderson, *Blueprint*, *supra* note 9, at 479–90 (describing potential transformations of legal market by new firms); Richard Susskind, *THE END OF LAWYERS?* 37–38 (2008) (same).

<sup>413</sup> Sauder & Espeland, *supra* note 13, at 28 (“Nearly all administrators agree that students use the rankings as a source of information for deciding where to apply to law school and, eventually, which school to attend.”); Korobkin, *In Praise*, *supra* note 5, at 407–08 (“There is not much doubt that many students do pay attention to law school rankings” and do so because they are aware of the perceived implications for employment).

<sup>414</sup> Korobkin, *In Praise*, *supra* note 5, at 409 (“The most prestigious legal employers wish to hire the highest quality law students, and these students tend to wish to work for the most prestigious legal employers, or at least keep open the option of doing so. . . . ‘High quality’ students, therefore, need a way to signal their quality to employers that cannot be imitated by ‘lower quality’ students.”). Korobkin argues convincingly that the “available data on law school enrollment and employer recruiting is remarkably consistent with the theory that rankings serve a coordinating function, efficiently channeling students into post-law school employment.” *Id.* at 410. And, he also notes, that “Every law professor who is not hopelessly delusional knows that the relative quality of a student’s legal education is likely to have only a very marginal effect on her success in the practice of law.” *Id.* at 415.

<sup>415</sup> Korobkin, *In Praise*, *supra* note 5, at 411.

<sup>416</sup> Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES (Jan. 30, 2013); Jonathan D. Glater, *In Lean Times for Law Schools, an Opportunity*, N.Y. TIMES (Dec. 5, 2012).

part on the answers. (Of course, other factors, from fine weather, or a national championship football team, or proximity of Thai restaurants—dimensions on which our respective schools excel—also might play a role.)

- (1) What specific steps has a school taken to provide its graduates with skills? How are those steps different from what the law school did in the past? How are they different from what other schools are doing?
- (2) What distinguishes this law school from other law schools with similar applicant qualifications? (Do not accept vague platitudes like “we prepare lawyers to be leaders in the 21<sup>st</sup> century” as a response.) Ask for specific comparisons to the other schools under consideration and press for answers that relate the school’s claimed advantages to your career goals.
- (3) What will be the monthly debt payment after completing the J.D. program with the aid package being offered? What percentage of the last few years’ graduating class are now earning salaries that allow making such a payment in a J.D.-required or J.D.-preferred job? What percentage is not? What percentage of recent graduates has not responded to surveys on this topic?
- (4) What are the law school placement rates – including with clerkships, large firms, public interest, and the particular areas of interest to the student?

A focus on these types of issues has the potential to disrupt the existing hierarchy and introduce forms of competition, which would benefit students, the profession, and society.

#### CONCLUSION

Enduring hierarchies reflect deeply embedded perceptions of prestige that are reinforced throughout the legal academy and legal profession more generally. These hierarchies make perception a reality and contribute to a fabric within the legal academy and legal profession that continues to replicate itself. Enduring hierarchies implicate a broad range of standard practices, procedures and assumptions evident in the actions of various actors, including law schools, legal employers, and prospective students. The current turmoil in the legal academy and legal profession offers an opportunity to reexamine and attempt to correct the most negative consequences of these enduring hierarchies. Although no single fix or cure is likely to “solve” the most pressing problems of legal education, a multifaceted approach that focuses on enabling greater innovation within legal education will be necessary. The circumstances in which law schools find themselves today are far from unique and are connected to changes in the education industry more generally.<sup>417</sup> Legal education, however, is distinguished in important respects from other educational contexts by virtue of its regulation. Law schools have hidden behind the

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<sup>417</sup> See, e.g., Andrew Martin, *U.S. Colleges Hit by Drop in Fees and Enrollment*, INT’L HERALD TRIB., Jan. 11, 2013, at 15; Ruth Simon, *For Newly Minted M.B.A.s, A Smaller Paycheck Awaits*, N.Y. TIMES, Jan. 7, 2013, at A1; David Segal, *High Debt and Falling Demand Trap New Vets*, N.Y. TIMES, Feb. 23, 2013, available at <http://www.nytimes.com/2013/02/24/business/high-debt-and-falling-demand-trap-new-veterinarians.html>.

protective wall of ABA accreditation that restricted their competition to a few dimensions. *U.S. News*'s ordinal ranking disrupted this comfortable existence by forcing schools into a national competition in which not everyone could be at the top of the heap.

Given the likely persistence of these deeply rooted hierarchies, greater variation in regulatory approaches would be beneficial. More stringent regulation of questionable law school practices would ameliorate the more egregious aspects of law school “arms race” practices. At the same time, the current regulation of law schools continues to be problematic. As a result, more flexible regulation of law schools and law school accreditation processes in ways that encourage greater innovation and experimentation in legal education would be an important first step toward greater regulatory flexibility. Innovative new approaches should produce more differentiation among law schools and foster competition based on a broader range of criteria than exists at present.<sup>418</sup> Differentiation could be based on multiple criteria, including price, length and organization of degree programs, modes of training, types of resources and library materials, and other factors. Because legal education does not exist in a vacuum, the current regulation of legal practice is also something that should be seriously discussed as part of any legal education reform process, including in relation to unauthorized practice of law statutes.<sup>419</sup> Sens. Barbara Boxer and Tom Coburn have begun to pressure the Department of Education and the American Bar Association on these issues;<sup>420</sup> more attention needs to be paid to how the current accreditation and federal funding affect innovation in legal education. The total dependence of many law schools on federal student loan financing is also likely to bring increased regulatory attention, particularly as data on comparative default rates becomes available to federal policy makers and regulators. A variety of changes, from the marginal (the publication of more transparent employment data) to the dramatic (e.g. introducing competitive accreditation as exists for many undergraduate programs or allowing 2Ls to take the bar exam without completing their J.D. degrees) could dramatically unleash innovation.

New approaches in legal education should also be based on an ethos of absolute transparency. The widespread misrepresentations by law schools about student post-graduation employment statistics, UGPA, and LSAT scores suggest that stricter regulation of some aspects of law school operations might be advisable. Given prominent failures in law school self-regulation to date, an externally imposed disclosure and external audit process are something to consider seriously. Direct reporting of relevant law school statistics from authoritative sources may also be an alternative. The penalties for misrepresenting statistics need to be harsh enough

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<sup>418</sup> The need for greater diversity in law school models has been suggested by a number of people, including Brian Tamanaha and Brian Leiter. *See, e.g.,* TAMANAHA, *supra* note 75; Brian Leiter, Four Changes to the Status Quo in Legal Education That Might Be Worth Something, March, 15, 2012, <http://leiterlawschool.typepad.com/leiter/2012/03/four-changes-to-the-status-quo-in-legal-education-that-might-be-worth-something.html> (“Higher education in America includes [research universities and teaching colleges](#) (the latter placing less emphasis on research); law schools need the same division of labor, so that we have some law schools that are Harvard and Chicago, and some law schools that are Oberlin and Reed. How to bring it about is the really hard part, but changes to ABA accreditation rules could surely help.”).

<sup>419</sup> Schrag, *supra* note 75, at 27–28 (discussing the implications of unauthorized practice of law statutes for current discussions about law school failures).

<sup>420</sup> Letter to U.S. Department of Education, Oct. 14, 2011, available at [http://www.coburn.senate.gov/public//index.cfm?a=Files.Serve&File\\_id=2a4a251c-f0c2-4d98-bf63-b9c5a0862053](http://www.coburn.senate.gov/public//index.cfm?a=Files.Serve&File_id=2a4a251c-f0c2-4d98-bf63-b9c5a0862053)

to discourage gaming and other behaviors that result in less than transparent law school disclosures. Deans and university officials, and not just ‘rogue’ admissions officers, need to lose their jobs, accreditation needs to be at risk, and tighter external controls on schools that commit fraud should follow discovery of deliberate misreporting of data.

Finally, clear and transparent outcome metrics should be a significant focus of regulation, with less focus on inputs such as faculty compensation, employment terms, and the size of libraries. Outcomes such as graduation rates, employment rates, and bar passage rates both in the short-term and long-term, should be a significant gauge by which the performance of law schools is measured and compared. Greater focus on outcomes rather than inputs has potential to lead to greater diversity in approaches to legal education. Outcome measures should emphasize value added, not just binary measures or inputs. For example, the LSAT is highly correlated with MBE scores,<sup>421</sup> and a comparison of the predicted and actual performance of a school’s graduates on the MBE would be one measure of value added.

Greater transparency may encourage the development of multiple rankings of law school that permit law schools to develop customized and flexible legal training frameworks. Transparency will also enable students to make decisions based on more substantive criteria relevant to their particular preferences and personal circumstances. At the end of the day, one antidote to predetermined enduring hierarchies may be a multiplicity of rankings that measure different criteria that may be customized to suit varied audiences and circumstances.

As law professors, we think legal education has an important role to play in the American legal system and society more broadly. As law professors at three schools that have embraced different strategies for responding to the crisis in legal education, we think diversity in approaches is key to discovering how legal education can thrive in the future. Enabling a diverse range of responses to the current crisis requires getting beyond the hierarchy that has endured for almost 100 years.

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<sup>421</sup> Susan M. Case, *The Testing Column: Identifying and Helping At-Risk Students*, THE BAR EXAMINER (Dec. 2011) 30, 30 (MBE scores correlated at 57% with LSAT).



## TABLES

**Table 1 - Library Collections 1966 and 1970**

Collection over 60,000 volumes in 1966 <sup>422</sup>	Alabama, Albany, Boston College, Boston University, Buffalo, California (Berkeley), Case Western, Chicago, Colorado, Columbia, Cornell, Duke, Emory, Florida, Fordham, George Washington, Georgetown, Harvard, Howard, Illinois, Indiana (Bloomington), Indiana (Indianapolis), Iowa, Kansas, Kentucky, Loyola (LA), LSU, Maine, Miami, Michigan, Minnesota, Missouri (Columbia), Missouri (Kansas City), Nebraska, New Mexico, North Carolina, Northwestern, Notre Dame, NYU, Ohio State, Pennsylvania, Pittsburgh, Rutgers (Newark), SMU, St. John's, St. Louis, Stanford, Temple, Texas, Tulane, UCLA, USC, Utah, Vanderbilt, Villanova, Virginia, Washington, Washington Univ., Wayne State, Wisconsin, Yale
Collection under 60,000 volumes in 1970 <sup>423</sup>	Baltimore, Birmingham, Capital, Chase, Chicago-Kent, Creighton, Detroit, Duquesne, Florida State, Golden Gate, Gonzaga, Idaho, Loyola (New Orleans), Mercer, McGeorge (Pacific), Mississippi, NYLS, Ohio Northern, Richmond, Samford (Cumberland), San Diego, South Texas, Southern, Southwestern, Texas Southern, Texas Tech, Toledo, Valparaiso, Wake Forest, Washburn, Washington & Lee, Wyoming,

<sup>422</sup> Data from Association of American Law Schools, PRE-LAW HANDBOOK, PART TWO: ACCREDITED LAW SCHOOLS IN THE UNITED STATES (1967).

<sup>423</sup> Data from AALS & LSAC, Prelaw handbook: The Official Guide to Law Schools 1971-1972 (1971). Schools that did not list a volume count were assumed to have collections under 60,000.

Table 2 - Teaching Loads, 1966, 1999, & 2008<sup>424</sup>

	1966	1999	2008
> 1 s.d. below	California (Berkeley), Chicago, Columbia, Cornell, Denver, Harvard, Indiana (Bloomington), New Mexico, Pennsylvania, Rutgers (Camden), Rutgers (Newark), Vanderbilt, Washington	Boston College, Brooklyn, BYU, California (Berkeley), Colorado, Columbia, Cornell, Duke, Florida, George Washington, Georgetown, Harvard, Illinois, Loyola (LA), Minnesota, NYU, Ohio State, Pennsylvania, Stanford, Tulane, UCLA, USC, Vanderbilt, Villanova, Virginia, Washington University, Yale	BYU, California (Berkeley), Cardozo, Cincinnati, Colorado, Columbia, Cornell, Duke, Florida Coastal, Fordham, George Mason, George Washington, Harvard, Houston, Illinois, Indiana (Bloomington), Loyola (LA), Memphis, Michigan, Northwestern, NYU, Pennsylvania, San Diego, Seton Hall, Stanford, UCLA, USC, Vanderbilt, Washington University, William and Mary, Yale
1 s.d. below to mean	Alabama, Albany, Arizona, Boston University, Buffalo, Case Western, Chase, Cincinnati, Colorado, Connecticut, Creighton, Drake, Duke, Florida, Georgetown, Georgia, Gonzaga, Hastings, Houston, Howard, Illinois, Iowa, Kansas, Kentucky, Louisville, Loyola (New Orleans), LSU, Maine, Marquette, Mercer, Miami, Michigan, Minnesota, Mississippi, Missouri (Columbia), Nebraska, North Carolina, North Dakota, Northwestern, NYU, Ohio State, SMU, South Carolina, Southern California, Stanford, Temple, Texas, Tulane, Tulsa, UCLA, Utah, Valparaiso, Villanova, Virginia, Wake Forest, Washburn, Washington University, Wayne State, Willamette, Wisconsin, Yale	Alabama, Arizona State, Arkansas (Fayetteville), Arkansas (Little Rock), California (Davis), California (Hastings), Cardozo, Case Western, Chicago Kent, Drake, Emory, Fordham, Georgia, Georgia State, Hawaii, Houston, Indiana (Bloomington), Indiana (Indianapolis), John Marshall (IL), Lewis & Clark, Loyola (New Orleans), Marquette, Michigan, New England, North Carolina, Northwestern, Notre Dame, Pepperdine, Rutgers (Camden), Rutgers (Newark), Santa Clara, San Diego, Seton Hall, St. John's, St. Louis, Stetson, Temple, Tennessee, Texas, Tulsa, Utah, Valparaiso, West Virginia, Whittier, William & Mary	Alabama, Arizona, Arizona State, Arkansas (Fayetteville), Arkansas (Little Rock), Boston College, Buffalo-SUNY, California (Davis), California (Hastings), Capital, Case Western, Chapman, Chicago Kent, Connecticut, CUNY, DePaul, Duquesne, Emory, Florida, Georgetown, Georgia, Georgia State, Hawaii, Indiana (Indianapolis), Kentucky, Lewis & Clark, Loyola (Chicago), Loyola (New Orleans), Maryland, McGeorge, Miami, Minnesota, North Carolina, North Carolina Central, North Dakota, Notre Dame, NYLS, Ohio State, Pepperdine, Pittsburgh, Rutgers (Camden), Santa Clara, Seattle, South Carolina, Southern University, St. Louis, Temple, Texas, Texas Southern, Texas Wesleyan, Tulane, Utah, Valparaiso, Virginia, Wake Forest, Washington & Lee, Wyoming

<sup>424</sup> 1999 and 2008 data do not include schools on the quarter system.

<p>Mean to 1 s.d. above</p>	<p>Arkansas (Fayetteville), Boston College, California Western, Catholic, Cumberland, Duquesne, Emory, Fordham, George Washington, Golden Gate, Idaho, Indiana (Indianapolis), Loyola (Chicago), Maryland, Missouri (Kansas City), Montana, Notre Dame, NYLS, Ohio Northern, Oklahoma, Richmond, Santa Clara, South Dakota, South Texas, St. Louis, Toledo, Washington &amp; Lee, Wyoming</p>	<p>Albany, American, Arizona, Boston University, Capital, Catholic, Chapman, Cleveland State, Cooley, Creighton, Dayton, Denver, DePaul, Detroit Mercy, Duquesne, Florida Coastal, Florida State, George Mason, Gonzaga, Hamline, Hofstra, Iowa, Kansas, Kentucky, Loyola (Chicago), LSU, Maine, Maryland, McGeorge, Memphis, Miami, Mississippi, Mississippi College, Missouri (Columbia), Missouri (Kansas City), New Mexico, North Carolina Central, Northern Illinois, Northern Kentucky (Chase), Nova Southeastern, NYLS, Ohio Northern, Oklahoma, Oklahoma City, Oregon, Pace, Pennsylvania State, Pittsburgh, Regent, Richmond, Roger Williams, Samford (Cumberland), San Francisco, Seattle, SMU, South Carolina, South Texas, Southern, Southern Illinois, Southwestern, St. Mary's, St. Thomas (FL), Suffolk, Syracuse, Texas Wesleyan, Vermont, Wake Forest, Washburn, Washington and Lee, Western New England, Willamette, William Mitchell, Wisconsin, Wyoming</p>	<p>Albany, American, Appalachian, Ave Maria, Brooklyn Law, California Western, Catholic, Cleveland State, Creighton, Dayton, Denver, Detroit Mercy, Drake, Faulkner (Jones), Florida A&amp;M, Gonzaga, Hamline, Hofstra, Idaho, Iowa, John Marshall (IL), Kansas, Louisville, LSU, Marquette, Mercer, Michigan State, Mississippi, Mississippi College, Missouri (Columbia), Nebraska, New England, New Hampshire (Franklin Pierce), New Mexico, Ohio Northern, Oklahoma, Oklahoma City, Oregon, Pennsylvania State, Regent, Richmond, Roger Williams, Samford (Cumberland), San Francisco, SMU, Southern Illinois, Southwestern, Stetson, Suffolk, Syracuse, Tennessee, Touro, Tulsa, Villanova, Washburn, Wayne State, West Virginia, Western State, Whittier, Willamette, William Mitchell, Wisconsin</p>
<p>1 s.d. above ^</p>	<p>Akron, American, Baylor, Brooklyn, Chicago-Kent, Cleveland State, Detroit Mercy, Franklin Pierce, Loyola (LA), Memphis, Penn State (Dickinson), Pittsburgh, San Diego, Southern, St. John's, St. Mary's, Suffolk, Texas Southern, William &amp; Mary, William Mitchell</p>	<p>Akron, Baltimore, Campbell, CUNY, Golden Gate, Howard, Idaho, Louisville, Mercer, Montana, Nebraska, New Hampshire (Franklin Pierce), North Dakota, Quinnipiac, South Dakota, Texas Tech, Thomas Jefferson, Toledo, Touro, UDC, Wayne State, Widener</p>	<p>Akron, Baltimore, Barry, Boston University, Campbell, Cooley, Florida International, Florida State, Golden Gate, Howard, John Marshall (Atlanta), Maine, Missouri (Kansas City), Montana, Northern Illinois, Northern Kentucky (Chase), Nova Southeastern, Pace, Quinnipiac, Rutgers (Newark), South Dakota, South Texas, St. Mary's, St. Thomas (FL), Texas Tech, Thomas Jefferson, Toledo, UDC, Vermont, Western New England, Widener</p>

**Table 3 - Tuition Levels (1971-72)**

		Tuition		
		Below mean	Mean to 1 std. dev. above mean	$\geq 1$ std. dev. above mean
Public <sup>425</sup>	Arizona, Arkansas (Fayetteville), Colorado, Connecticut, Florida, Florida State, Georgia, Houston, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Memphis, Missouri (Columbia), Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Southern, Tennessee, Texas, Texas Southern, Texas Tech, Utah, Washington, West Virginia, Wyoming	Alabama, Arizona State, Buffalo, California (Berkeley), Cincinnati, Cleveland State, Davis, Hastings, Indiana (Bloomington), Iowa, Minnesota, Mississippi, Missouri (Kansas City), Pittsburgh, South Texas, UCLA, Virginia, William & Mary, Wisconsin	Akron, Michigan, Ohio State, Penn State (Dickinson), Rutgers (Camden), Toledo	
Private	Baltimore, Baylor, Birmingham, Brooklyn, California Western, Chicago Kent, Creighton, Detroit, Duquesne, Emory, Golden Gate, Gonzaga, Loyola (Chicago), Loyola (LA), Loyola (New Orleans), Marquette, Mercer, Northeastern, NYLS, Richmond, Samford, San Diego, Seton Hall, Southwestern, St. John's, Stetson, Tulsa, Valparaiso, Villanova, Wake Forest, Washburn, Wayne State	Albany, American, Boston University, Capital, Case Western, Catholic, Drake, Duke, Fordham, George Washington, Georgetown, Harvard, Hofstra, McGeorge, Miami, Notre Dame, Ohio Northern, Santa Clara, SMU, St. Louis, Tulane, USC, Vanderbilt, Washington University, Willamette	Boston College, Chicago, Columbia, Cornell, Denver, Northwestern, NYU, Pennsylvania, Stanford, Syracuse, Washington & Lee, Yale	

<sup>425</sup> Data from the 1970 PreLaw Handbook, reporting 1971-72 tuition. Where tuition was reported per unit, calculated based on 1/3 of required hours per year. Schools are counted as public only if they report a discount for residents.

**Table 4 – Direct Expenditures 1998-99 & 2007-08**

	Public		Private	
	1998-99	2007-08	1998-99	2007-08
≥1 std. dev. above mean	Albany, California (Berkeley), California (Hastings), Connecticut, CUNY, Illinois, Iowa, Michigan, Minnesota, New Mexico, North Carolina, Texas, UCLA, UDC, Virginia	Albany, Arizona, California (Berkeley), California (Hastings), Connecticut, CUNY, Illinois, Iowa, Maryland, Michigan, Minnesota, Penn State, Texas, UCLA, Virginia	Chapman, Chicago, Columbia, Cornell, Duke, Harvard, Howard, Northwestern, NYU, Pennsylvania, Stanford, USC, Washington & Lee, Yale	Brooklyn, Chicago, Columbia, Cornell, Duke, Emory, Harvard, Northwestern, NYU, Pennsylvania, Stanford, USC, Vanderbilt, Yale
< 1 std. dev. above mean	Alabama, Arizona, Arizona State, Arkansas (Fayetteville), Buffalo,, California (Davis), Colorado, Florida State, Georgia, Hawaii, Indiana (Bloomington), Louisville, Maryland, Northern Illinois, Penn State (Dickinson), Rutgers (Newark), San Francisco, Southern Illinois, Tennessee, Utah, Washington, William & Mary	Alabama, Arizona State, Arkansas (Fayetteville), California (Davis), Colorado, Georgia, Georgia State , Hawaii, Indiana (Bloomington), LSU, Maine, Michigan State, New Mexico, North Carolina Central, North Carolina, Rutgers (Newark), San Francisco, Southern Illinois , Tennessee, UDC, Utah, William & Mary, Wisconsin	Boston College, Boston University, Brooklyn, BYU, California Western, Cardozo, Case Western Reserve, Catholic, Chicago Kent, Cincinnati, Detroit Mercy, Emory, Fordham, Hofstra, John Marshall (IL), Mercer, Northeastern, Notre Dame, NYLS, Pace, Pepperdine, Quinnipiac, Regent, Roger Williams, SMU, Southern, Southwestern, St. John's, Stetson, Syracuse, Touro, Tulane, Vanderbilt, Vermont, Villanova, Wake Forest, Washington University	American, Baylor, Boston College, Boston University, California Western, Cardozo, Case Western Reserve, Chapman, Chicago Kent, Cincinnati, Fordham, George Washington, Lewis & Clark, Loyola (Los Angeles), McGeorge, Northeastern, Notre Dame, NYLS, Ohio State, Pace, Pepperdine, Quinnipiac, San Diego, Santa Clara, Seton Hall, Southwestern, St. John's, Stetson, Syracuse, Thomas Jefferson, Touro, Vermont, Wake Forest, Washington & Lee, Washington University, Whittier, William Mitchell
< 1 std. dev. below mean	Akron, Arkansas (Little Rock), Cleveland State, Florida, George Mason, Georgia State, Houston, Idaho, Indiana (Indianapolis), Kansas, Kentucky, LSU, Maine, Michigan State,	Akron, Arkansas (Little Rock), Baltimore, Buffalo, Cleveland State, Florida State, George Mason, Houston, Idaho, Indiana (Indianapolis), Kansas, Kentucky, Louisville, Mississippi,	American, Baylor, Campbell, Capital, Cooley, Creighton, Dayton, Denver, DePaul, Drake, George Washington, Golden Gate, Gonzaga, Hamline University, Lewis & Clark, Loyola (Los Angeles), Loyola	BYU, Campbell, Capital, Catholic, Cooley, Creighton, Dayton, Denver, DePaul, Drake, Duquesne, Franklin Pierce, Golden Gate, Gonzaga, Hamline University, Hofstra, Howard, John Marshall

	Public		Private	
	1998-99	2007-08	1998-99	2007-08
	Missouri (Columbia), Missouri (Kansas City), Montana, Nebraska, North Carolina Central, North Dakota, Northern Kentucky (Chase), Oklahoma, Oregon, Pittsburgh, Rutgers (Camden), South Carolina, South Dakota, Toledo, Washburn, Wayne State, West Virginia, Wisconsin, Wyoming	Missouri (Columbia), Missouri (Kansas City), Montana, Nebraska, North Dakota, Northern Illinois, Northern Kentucky (Chase), Oklahoma, Oregon, Pittsburgh, Rutgers (Camden), South Carolina, Texas Southern, Texas Tech, Toledo, Washburn, Washington, Wayne State, West Virginia, Wyoming	(Chicago), Loyola (New Orleans), Marquette, McGeorge, Miami, New England, New Hampshire (Franklin Pierce), Nova Southeastern, Ohio Northern, Ohio State, Oklahoma City, Richmond, Samford, San Diego, Santa Clara, Seattle, Seton Hall, South Texas, St. Louis, St. Mary's, St. Thomas (FL), Suffolk, Temple, Texas Wesleyan, Thomas Jefferson, Tulsa, Valparaiso, Western New England, Western State, Whittier, Widener, Willamette, William Mitchell	(IL), Loyola (Chicago), Loyola (New Orleans), Marquette, Memphis, Mercer, Miami, Mississippi College, New England, New Hampshire (Franklin Pierce), Nova Southeastern, Ohio Northern, Oklahoma City, Regent, Richmond, Roger Williams, Samford, Seattle, SMU, South Texas, Southern, St. Louis, St. Mary's, St. Thomas (FL), Suffolk, Temple, Texas Wesleyan, Tulane, Tulsa, Valparaiso, Villanova, Western New England, Western State, Widener, Willamette
≥1 std. dev. below mean	Baltimore, Mississippi, Texas Southern, Texas Tech	Florida, South Dakota	Duquesne, Memphis, Mississippi College	Detroit Mercy

**Table 5 - Establishment of General Law Reviews**

	Schools
Establishment of a law review by 1930	California (Berkeley), Boston University, Case Western, Chicago, <sup>426</sup> Chicago-Kent, Cincinnati, Columbia, Cornell, Denver, Dickinson (later Penn State), Georgetown, Georgia, Harvard, Illinois, Indiana (Bloomington), Iowa, Kentucky, Maine, Marquette, Michigan, Minnesota, Mississippi, Missouri (Columbia), New York University, North Carolina, Northwestern, Notre Dame, Oregon, Pennsylvania, St. John's, Temple, Tennessee, Texas, USC, Virginia, University of Washington, Wisconsin, Yale
Establishment of a law review after 1930 but within five years of school opening	Arizona, Brigham Young, Cardozo, Hofstra, Pepperdine
Establishment of a law review after 1930 more than ten years after a school opened	Akron, Albany, Alabama, American, Arizona State, Arkansas (Fayetteville), Arkansas (Little Rock), Baylor, Boston College, Brooklyn, Buffalo, California (Davis), California (Hastings), California Western, Capital, Catholic, Chicago-Kent, Cleveland State, Colorado, Connecticut, Creighton, Detroit, DePaul, Drake, Duke, Duquesne, Emory, Fordham, Florida, George Mason, George Washington, Golden Gate, Gonzaga, Hawaii, Houston, Howard, Idaho, Indiana (Indianapolis), John Marshall, Kansas, Louisiana State, Loyola (Chicago), Loyola (Los Angeles), Loyola (New Orleans), Maryland, Memphis, Mercer, Miami, Michigan State, Mississippi College, Missouri (Kansas City), Montana, New England, New York Law, New Mexico, North Carolina Central, Northern Kentucky, Nova Southeastern, Ohio Northern, Ohio State, Oklahoma, Oklahoma City, Pacific (McGeorge), Penn State (Dickinson), Pittsburgh, Rutgers (Camden), Rutgers (Newark), Samford, San Francisco, Santa Clara, Seton Hall, SMU, South Carolina, South Dakota, St. Louis, St. Mary's, South Texas, Southern University, Southwestern, Stanford, Stetson, Syracuse, Thomas Jefferson, Toledo, Tulane, UCLA, Utah, Valparaiso, Vanderbilt, Wake Forest, Washburn, Washington and Lee, Washington University, Wayne State, West Virginia, Western New England, Whittier, Widener, Willamette, William & Mary, William Mitchell, Wyoming

<sup>426</sup> Chicago, Illinois, and Northwestern shared a single law review at this stage. Maggs, *Concerning the Extent*, *supra* note 102, at 181. We credit all 3 schools.

Table 6 - Denver Law Journal (1967) Survey

	Law Review Quintile	LSAT Groupings				
		Class A	Class B	Class C	Class D	Class E (no information)
Journal Groupings	1st	California (Berkeley), Chicago, Columbia, Cornell, Fordham, Harvard, Michigan, NYU, Pennsylvania, Stanford, UCLA, Virginia, Wisconsin, Yale	Minnesota, Temple, Texas	Washington & Lee		California (Hastings), Duke, Washington
	2nd	Georgetown, Northwestern, Washington University	George Washington, Illinois, Notre Dame, Ohio State, Pittsburgh, Southwestern, Vanderbilt	Iowa, Marquette, Maryland, North Carolina, St. John's	Arkansas (Fayetteville), NYLS, West Virginia	Tulane
	3rd	Boston College, Southern California	Dickinson, Florida, Indiana (Bloomington), Rutgers (Newark), St. Louis, Utah	Kansas, Syracuse, William & Mary	Drake, Mercer, South Carolina, Tennessee, Washburn, Wyoming	Nebraska
	4th		Denver	Boston University, Idaho, Oregon, Villanova, Wayne	Cincinnati, Detroit, Howard, Montana, Oklahoma, Tulsa	Missouri (Columbia), Willamette



	Law Review Quintile	LSAT Groupings				
		Class A	Class B	Class C	Class D	Class E (no information)
	5th		Albany, Buffalo, Maine, San Diego, Santa Clara, Case Western	Alabama, American, Arizona, Brooklyn, Duquesne, Houston, Missouri (Kansas City), Loyola (LA), North Dakota, South Texas		Baylor, Cleveland State

Table 7 - Specialty Journal Creation

	Pre-1981	1981-1990	1/6th		Pre-1981	1981-1990	1/6th		Pre-1981	1981-1990	1/6th
Akron		1		Hamline	1	1		Penn State		1	
Alabama	1			Harvard	6	3	X	Pennsylvania	2		
American	1			Hastings	2	1	X	Pittsburgh		1	
Arizona State	1			Hofstra		1		Quinnipiac		1	
Berkeley	3		X	Houston	1			Rutgers (Newark)	2		
Boston College	2		X	Indiana (Bloomington)	1			Samford	1		
Boston University	1	2	X	Iowa	1			San Diego		1	
Brigham Young		1		Lewis & Clark	1			San Francisco		1	
Brooklyn	1			Loyola (Chicago)		1		Santa Clara		1	
Buffalo	1			Loyola (LA)	2			Seton Hall	1		
California Western	1			Loyola (New Orleans)		1		SMU	2		
Cardozo		3		Marquette		1		South Carolina	2		
Case Western	2			Maryland	1			St. John's	1	1	
Catholic		1		McGeorge		1		St. Louis		1	
Chicago	2			Miami	1	1		Stanford	2	1	
Cincinnati	1			Michigan	2			Suffolk	1		
Colorado		1		Minnesota	1	1		Syracuse	1		
Columbia	5	3	X	Mississippi	1			Temple	1	2	X
Connecticut		1		Missouri (Columbia)		1		Texas	2	1	
Cornell	1			Montana	1			Tulane	2	1	
Davis	1			New England	1			UCLA	1	1	X
Denver	2			New Hampshire	1			Utah	1		
Duke	1			New Mexico	1			Vanderbilt	1		
Emory		2		North Carolina	1			Villanova		1	
Florida		2		Northwestern	2			Virginia	2	2	X
Florida State		1		Notre Dame	2	1	X	Washington & Lee	1		
Fordham	2	2		NYU	4		X	Washington University	1		
George Mason		1		Ohio State		1		Widener	1		
George Washington	2			Oklahoma	1			William & Mary	2		
Georgetown	3	3		Oregon		1		Wisconsin		2	
Georgia	1			Pace		2		Yale	1	4	X

**Table 8 - Maru (1976) Journal Impact Study**

Impact	Schools
High	Harvard (3.04), Yale (2.16), Columbia (1.66), Chicago (1.21), Pennsylvania (1.21), Northwestern (1.08), California (Berkeley) (0.93), Michigan (0.93), Stanford (0.82), Cornell (0.80), NYU (0.74), Virginia (0.69), Texas (0.68), Minnesota (0.63), Georgetown (0.61) <sup>427</sup>
Medium	Southern California (0.58), UCLA (0.55), Vanderbilt (0.53), Oregon (0.52), Illinois (0.51), George Washington (0.51), Boston University (0.50), Duke (0.50), Iowa (0.50), Colorado (0.49), Wisconsin (0.48), Temple (0.45), Florida (0.44), Tulane (0.44), Ohio State (0.44), Indiana (Bloomington) (0.43), Hastings (0.42), Louisiana (0.41), Fordham (0.41), St. John's (0.40), Southwestern (0.40), Washington University (0.40), Cincinnati (0.40), Rutgers (Newark) (0.39), Pittsburgh (0.39), Arizona (0.38), Notre Dame (0.38), Villanova (0.36), Buffalo (0.35), Brooklyn (0.35), Kansas (0.34), Syracuse (0.32), Tennessee (0.32), North Carolina (0.31), Wayne (0.27), Case Western Reserve (0.27), Washington (0.26), NYLS (0.25), Nebraska (0.25) <sup>428</sup>

<sup>427</sup> Maru, *supra* note 125, at 243, Table 3 (excludes the following journals: *Supreme Court Review*, *Law and Contemporary Problems*, *ABA Journal*, *Journal of Law and Economics*, *Journal of Criminal Law, Criminology and Police Science*, *Harvard Civil Rights-Civil Liberties Law Review*, *American Journal of International Law*, and *Business Lawyer*).

<sup>428</sup> Maru, *supra* note 125, at 243-44, Table 3 (excludes *Journal of Taxation*, *Tax Law Review*, *Boston College Industrial and Commercial Law Review*, *American Journal of Comparative Law*, *Taxes-The Tax Magazine*, *Journal of Urban Law*, *Labor Law Journal*, *Antitrust Bulletin*, and *New York University Institute on Federal Taxation*).

**Table 9 - Mann (1986) Study Results**

Category	Schools Publishing Journals
In all top 4 impact groups	Chicago, Columbia, Georgetown, Harvard, Hastings, Hofstra, Virginia, Yale
Top 23 in citations but not in top 4 impact group	California (Berkeley), Duke, Indiana (Indianapolis), Louisiana, Pennsylvania, Southwestern, Stanford, Syracuse
Top 54 but not top 23	American, Boston College, Boston University, Cincinnati, Colorado, Cornell, DePaul, Drake, Emory, Indiana (Bloomington), Iowa, Kansas, Kentucky, Miami, Michigan, Minnesota, North Carolina, Northwestern, Notre Dame, NYU, Ohio State, Oklahoma, St. Louis, St. Mary's, Texas, Utah, Vanderbilt, Villanova, Wayne, Wisconsin

**Table 10 - Leonard (1990) Citation Study**

	Schools Affiliated with General, Student-Edited Journals on List
10 highest z-scores	California (Berkeley), Chicago, Columbia, Harvard, Michigan, Pennsylvania, Stanford, Texas, Virginia, Yale
2 <sup>nd</sup> tier	Cornell, Duke, Minnesota, NYU, Pittsburgh, UCLA, Vanderbilt, Wayne, Wisconsin
3 <sup>rd</sup> tier	Akron, Alabama, American, Arizona, Boston College, Boston University, Buffalo, California (Davis), California (Hastings), Capital, Case Western, Cincinnati, Dayton, Emory, Fordham, George Washington, Georgetown, Georgia, Hofstra, Indiana (Bloomington), Maryland, Mercer, Miami, Missouri (Columbia), North Carolina, Northern Kentucky, Northwestern, Notre Dame, Ohio State, Oregon, Rutgers (Newark), San Diego, Santa Clara, Southern California, St. John's, St. Louis, Tennessee, Tulane, Washburn, Washington, Washington & Lee, Washington University, West Virginia, William & Mary

**Table 11 - Shapiro Article Citation Studies**

School	Shapiro 1985 <sup>429</sup>			Shapiro 1996 <sup>430</sup>						Shapiro 2000 <sup>431</sup>	Shapiro 2012 <sup>432</sup>		
	Most cited, published in			All-time list			1982-1991 list				All time	1990-1999	2000-2009
	1950-59	1960-69	1970-1977	Publishing review	Author affiliation	Author degree	Publishing review	Author affiliation	Author degree				
American								2					
Boston College													1
Boston University				1			1	4		*	1		
Buffalo				1			1						
California (Berkeley)		1		3	4	2	3	2	6	+	1	2	1
Chicago			1	3	10	13	6	15	11	+	1	2	1
Cincinnati										*			
Colorado								3					
Columbia	1			5	5	7	7	6	3	+	5	5	4
Cornell										+			
Duke					2		2			+		1	
Fordham										*			
George Washington					2					*			
Georgetown								4		+			3
Harvard	7	6	8	42	22	41	30	15	33	+	36	8	10
Hastings										*			
Hawaii								3	3				
Illinois										*			
Indiana			1	1						*	1		

<sup>429</sup> Shapiro, 1985 Cal L Rev.

<sup>430</sup> Shapiro, 1996 Chicago Kent.

<sup>431</sup> Shapiro, 29 JLS.

<sup>432</sup> Shapiro, 110 Mich L Rev.

School	Shapiro 1985 <sup>429</sup>			Shapiro 1996 <sup>430</sup>						Shapiro 2000 <sup>431</sup>	Shapiro 2012 <sup>432</sup>		
	Most cited, published in			All-time list			1982-1991 list				All time	1990-1999	2000-2009
	1950-59	1960-69	1970-1977	Publishing review	Author affiliation	Author degree	Publishing review	Author affiliation	Author degree				
(Bloomington)													
Iowa										*			
Iowa													1
Maryland							1						
Michigan			1				6	5	2	+	4	6	3
Minnesota		1	1	3	2	3		5		*	3		1
Mississippi											1		
Northwestern							1	3		*	1		2
Notre Dame										*			
NYU				1		2	1		3	+	1	1	1
Pennsylvania	1	1		4			3			+	3	1	
Pittsburgh										*			
Southwestern		1											
Stanford			1	5	7	5	9	6		+	10	8	3
Texas	1						1			+		1	2
UCLA				1	4		2	4	2	+	2	3	1
USC							3	4	3	+			
Vanderbilt										*	1	1	1
Virginia							3	2		+	1	2	4
Wisconsin					3			4		*			
Yale	2	6	5	18	18	23	16	11	29	+	18	9	7

Note: Schools with a "1" are excluded by the author from the affiliation and degree rankings.

+ Top 50% of ranking

\* Bottom 50% of ranking by impact factor

**Table 12 – Ellman (1983) Journal Rankings**

Rank	
Top 10 on both pages and non-in house pages	Chicago, Harvard, Illinois, Northwestern, Pennsylvania, UCLA, Virginia, Yale
	California (Berkeley), Columbia, Cornell, Duke, Michigan, Minnesota, NYU, Stanford, Texas, USC, Wisconsin

**Table 13 - Swygert & Gozansky (1985) Senior Faculty Composite Rankings**

Group	
1	California (Berkeley), California (Davis), Chicago, Columbia, Cornell, Georgia, Harvard, Illinois, Kansas, LSU, Michigan, Missouri (Kansas City), Northwestern, NYU, Pennsylvania, South Carolina, Stanford, Buffalo, Tulane, UCLA, Virginia, Washington & Lee, Yale
2	American, Boston College, Boston University, California (Hastings), Connecticut, DePaul, Emory, Indiana (Indianapolis), Iowa, Mercer, Miami, Minnesota, Missouri (Columbia), Notre Dame, Rutgers (Newark), SMU, Syracuse, Texas, Texas Tech, Tulsa, USC, Vanderbilt, Washington
3	Albany, Arizona State, Arizona, Catholic, Detroit, Duke, Florida, Florida State, Fordham, George Washington, Georgetown, Idaho, Indiana (Bloomington), New Mexico, North Carolina, North Dakota, Ohio State, Oklahoma, Richmond, Tennessee, Toledo, Washington University, Wayne State, Wisconsin, Wyoming

**Table 14 - Washington & Lee Impact Rankings**

Tier	Schools
<b>1</b>	California (Berkeley), Chicago, Columbia, Cornell, Georgetown, Harvard, Michigan, Minnesota, Northwestern, NYU, Pennsylvania, Stanford, Texas, UCLA, Virginia, Yale
<b>2</b>	American, Arizona, Boston College, Boston University, Brooklyn, California (Davis), California (Hastings), Cardozo, Cincinnati, Colorado, Connecticut, DePaul, Duke, Emory, Florida, Fordham, George Washington, Houston, Illinois, Iowa, North Carolina, Notre Dame, Ohio State, Southern California, Vanderbilt, Wake Forest, Washington & Lee, Washington University, William & Mary, Wisconsin
<b>3</b>	Akron, Alabama, Albany, Arizona State, Brigham Young, Buffalo, Case Western, Catholic, Chicago-Kent, Florida State, Georgia, Hofstra, Kansas, Lewis & Clark, Loyola (Chicago), Loyola (Los Angeles), Miami, Michigan State, Missouri (Columbia), Nevada, Oregon, Penn State, Pepperdine, Pittsburgh, Richmond, Rutgers (Newark), San Diego, Santa Clara, Seton Hall, SMU, South Carolina, St. Louis, Tulane, Utah, Villanova, Washington
<b>4</b>	All others



**Table 15 - Chicago-Kent Faculty Productivity Surveys**

	1989 <sup>433</sup>	1990 <sup>434</sup>	1994 <sup>435</sup>
Top 20 Journals	Boston University, California (Berkeley), Chicago, Columbia, Cornell, Georgetown, Harvard, Michigan, Minnesota, Northwestern, NYU, Ohio State, Pennsylvania, Southern California, Stanford, Texas, UCLA, Vanderbilt, Virginia, Yale	California (Berkeley), Chicago, Columbia, Cornell, Harvard, Iowa, Michigan, Minnesota, Northwestern, NYU, Pennsylvania, Southern California, Stanford, Texas, UCLA, Vanderbilt, Virginia, William & Mary, Wisconsin, Yale	California (Berkeley), Chicago, Columbia, Cornell, Duke, Georgetown, Harvard, Michigan, Northwestern, NYU, Pennsylvania, Southern California, Stanford, Texas, UCLA, Vanderbilt, Virginia, Yale
Top 10 Most Productive faculties	Chicago, Columbia, Harvard, Illinois, Michigan, Northwestern, Southern California, Stanford, UCLA, Yale	Boston University, Chicago, Columbia, Emory, Harvard, Iowa, Northwestern, NYU, Stanford, Yale	Chicago, Colorado, Columbia, Cornell, Georgetown, Harvard, Northwestern, Pennsylvania, Texas, Yale
11-20 Most Productive Faculties	Boston University, California (Berkeley – also in top 10), Cornell, Duke, Emory, Iowa, Rutgers (Camden), Texas, Virginia	California (Berkeley), Cardozo, Cornell, Duke, Illinois, Michigan, Rutgers (Camden), Southern California, UCLA, Virginia	California (Berkeley), Boston University, Cardozo, Iowa, Michigan, Minnesota, NYU, Southern California, Stanford, Virginia
21-30 Most Productive Faculties	Cardozo, Chicago-Kent, Colorado, Georgetown, Minnesota, Pennsylvania, Pittsburgh, Rutgers (Newark), Vanderbilt, William & Mary	American, Chicago-Kent, Minnesota, Pennsylvania, Pittsburgh, Rutgers (Newark), Texas, Tulane, William & Mary, Wisconsin	American, BYU, Chicago-Kent, Connecticut, Duke, UCLA, Vanderbilt, Washington & Lee, William & Mary, Wisconsin
31-40 Most Productive Faculties	California (Davis), DePaul, George Washington, Georgia, Indiana (Bloomington), Ohio State, SMU, Tulane, Washington University,	Davis, Florida, Georgetown, Kansas, NYLS, Ohio State, SMU, Utah, Vanderbilt Vermont	Buffalo, Emory, Indiana (Bloomington), Illinois, Maryland, Miami, NYLS, San Francisco, Tulane, Western New England

<sup>433</sup> Executive Board, *supra* note 232, at 204, Table I; 208, Table III.

<sup>434</sup> Gumm, *supra* note 232, at 517, Table 1; 520, Table III.

<sup>435</sup> Cullen & Kalberg, *supra* note 232, at 1454, Table III; 1460, Table IX.

	1989 <sup>433</sup>	1990 <sup>434</sup>	1994 <sup>435</sup>
	Wisconsin		
41-50 Most Productive Faculties	American, Brooklyn, Case Western, Connecticut, Florida, Hofstra, Kansas, North Carolina, Northeastern, San Francisco	Case Western, Colorado, Cincinnati, George Washington, Indiana (Bloomington), Maryland, North Carolina, Oregon, Washington University, Western New England	California (Davis), Case Western, Cincinnati, George Washington, Georgia, Kansas, Rutgers (Camden), Rutgers (Newark), SMU, Wake Forest

**Table 16 - Perry Journal Ranking**

Group	Schools
More than 3 s.d. above mean	Columbia, Cornell, Harvard, NYU, Stanford, Virginia, Yale
2 to 3 s.d. above mean	California (Berkeley), Chicago, Duke, Michigan, Minnesota, Northwestern, Pennsylvania, Texas, UCLA, Vanderbilt
1 to 2 s.d. above mean	Arizona, Boston College, Boston University, California (Davis), Colorado, Emory, Fordham, Georgetown, Illinois, Indiana (Bloomington), Iowa, North Carolina, Notre Dame, Ohio State, Southern California, William & Mary
Below mean	Appalachian, Arkansas (Fayetteville), Arkansas (Little Rock), Ave Maria, Baltimore, Barry, Brandeis (Louisville), Campbell, Capital, Cleveland State, Cooley, Cumberland, Dayton, Denver, Detroit Mercy, Duquesne, Florida Coastal, Georgia State, Golden Gate, Gonzaga, Hamline, Hawaii, Howard, Idaho, John Marshall, Jones (Faulkner), Lincoln, Louisiana, Loyola (New Orleans), Maine, McGeorge, Memphis, Mercer, Michigan State, Mississippi, Mississippi College, Missouri (Columbia), Missouri (Kansas City), Montana, Nevada, New England, New Hampshire (Pierce), New Mexico, New York City University, North Carolina Central, North Dakota, Northern Illinois, Northern Kentucky, Nova, NYLS, Ohio Northern, Oklahoma City, Oklahoma, Pace, Penn State, Pepperdine, Quinnipiac, Regent, Roger Williams, Seattle, Seton Hall, South Dakota, South Texas, Southern Illinois, Southern, Southwestern, St. John's, St. Mary's, St. Thomas, Stetson, Suffolk, Syracuse, Texas Southern, Texas Tech, Texas Wesleyan, Thomas Jefferson, Toledo, Touro, Tulsa, UDC, Valparaiso, Vermont, Washburn, Wayne, West Virginia, Western New England, Western State, Whittier, Widener, Willamette, William Mitchell, Wyoming

**Table 17 - Leiter Rankings**

Times in Top 30 <sup>436</sup>	Schools
6 or more	Boston University (6), California (Berkeley) (14), Chicago (14), Columbia (14), Cornell (8), Duke (12), George Washington (8), Georgetown (11), Harvard (14), Illinois (9), Michigan (13), Minnesota (9), Northwestern (11), NYU (14), Pennsylvania (12), Stanford (14), Texas (11), UCLA (10), Vanderbilt (8), Virginia (12), Yale (14)
2-5	Arizona (2), Boston College (2), California (Davis) (2), Brigham Young (2), Cardozo (3), Colorado (2), Emory (5), Fordham (3), George Mason (3), Iowa (3), North Carolina (2), Notre Dame (2), Ohio State (2), Southern California (4), Washington and Lee (2), Washington University (4), Wisconsin (2)

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<sup>436</sup> In some instances, the Leiter rankings contain fewer than 30 ranked schools.

Table 18 – Studies of Citations by Courts

		Schools publishing reviews
Maggs (1930): 5 Journals most often cited by courts <sup>437</sup>		Columbia, Harvard, Michigan, Pennsylvania, Yale
Newland (1959) study of U.S. Supreme Court's 1924-56 decisions <sup>438</sup>	Cited more than 100 times	Columbia (176), Harvard (399), Yale (194)
	Cited 14-99 times	California (15), Cornell (32), George Washington (14), Georgetown (15), Michigan (65), Minnesota (23), Northwestern (47), Pennsylvania (23), Texas (17), Virginia (29),
Berstein study of U.S. Supreme Court citations to student work in 1965 Term <sup>439</sup>	One Citation	American, Duke, Florida, George Washington, Illinois, Miami, Michigan, Notre Dame, Texas, Tulane, UCLA, Utah, Vanderbilt
	More than one citation	Yale (7), Pennsylvania (6), Chicago (5), Georgetown (4), Stanford (3), Virginia (3), Columbia (2), New York University (2), Northwestern (2)
	More than 10 citations	Harvard (21)
Scurlock (1964) study <sup>440</sup>	California, Missouri, and New York citations (cited by at least two of the three state courts)	Brooklyn (3), California (Berkeley) (6), Columbia (5), Cornell (5), Harvard (15), Michigan (3), Pennsylvania (5), Southern California (2), Yale (6)
	U.S. Supreme Court citations (four or more citations)	Columbia (5), Harvard (9), Minnesota (4), Pennsylvania (4), Virginia (5), Yale (5)
	National sample citations (two or more citations)	Buffalo (2), Chicago (6), Fordham (2), Georgetown (2), Harvard (2), Indiana (Bloomington) (2), Iowa (4), Kentucky (2), Marquette (2), Michigan (2), Minnesota (2), North Carolina (2), Pennsylvania (2), Southern California (2), Virginia (2), Yale (2)

<sup>437</sup> Maggs, *Concerning the Extent*, *supra* note 102.

<sup>438</sup> Newland, *supra* note 244.

<sup>439</sup> Bernstein, *supra* note 245.

<sup>440</sup> Scurlock, *supra* note 247.

Sirico studies of journals cited in top ten for X of four periods, 1971-1999 <sup>441</sup>	4	Chicago, Columbia, Harvard, Michigan, Stanford, Virginia, Yale
	3	California (Berkeley), Pennsylvania
	2	NYU
Sirico & Drew: Court of Appeals citations in 1989 <sup>442</sup>	Cited 10 or more times	Chicago (10), Columbia (14), Harvard (34),
	Cited 4-9 times	Boston University (4), California (Berkeley) (4), Duke (5), Fordham (4), Michigan (5), NYU (4), Pennsylvania (4), Seton Hall (6), Texas (7), Vanderbilt (5), Virginia (6), Yale (6)

**Table 19 - Daniels Citation Study Results**

	<b>Student-edited journals among journals accounting for over 50% of total citations</b>	<b>Additional student-edited journals cited two or more times</b>
<b>1940 Term</b>	Harvard Law Review (7), Yale Law Journal (6), Columbia Law Review (4)	Illinois Law Review (2), <sup>443</sup> Michigan Law Review (2), University of Pennsylvania Law Review (2)
<b>1978 Term</b>	Harvard Law Review (40), Yale Law Journal (19), University of Chicago Law Review (12), University of Pennsylvania Law Review (12), Michigan Law Review (11), Columbia Law Review (10), California Law Review (9), Virginia Law Review (9), Minnesota Law Review (7), NYU Law Review (7)	Cornell Law Review (5), Fordham Law Review (5), Stanford Law Review (5), Georgetown Law Journal (4), UCLA Law Review (4), Boston University Law Review (3), George Washington Law Review (3), Iowa Law Review (3), Northwestern University Law Review (3), Wisconsin Law Review (3), Brigham Young University Law Review (2), Duke Law Journal (2), Emory Law Journal (2),  Indiana Law Journal (2), Mercer Law Review (2), Ohio State Law Journal (2), Temple Law Quarterly (2), Texas Law Review (2), University of Colorado Law Review (2), Vanderbilt Law Review (2), Washington University Law Quarterly (2)

<sup>441</sup> Sirico, *1971-1999*, *supra* note 250; Sirico & Margulies, *supra* note 248; Sirico, *1971-1999*, *supra* note 250.

<sup>442</sup> Sirico & Drew, *supra* note 254.

<sup>443</sup> Credit to the University of Illinois, Northwestern University, and the University of Chicago, which jointly produced the *Illinois Law Review* from 1906 to 1933.

**Table 20 - Jarvis & Coleman Ranking**

Category	Schools Affiliated with Journals
Top 25	Brigham Young, California (Berkeley), Chicago, Columbia, Cornell, Duke, Emory, Georgetown, George Washington, Harvard, Illinois, Michigan, Minnesota, Northwestern, NYU, Pennsylvania, Stanford, Texas, UCLA, USC, Vanderbilt, Virginia, Washington University, William & Mary, Yale
26-50	Arizona, Boston College, Boston University, Buffalo, California (Hastings), Case Western, Florida, Fordham, Georgia, Houston, Indiana (Bloomington), Iowa, Miami, North Carolina, Notre Dame, Ohio State, Rutgers (Newark), San Diego, Temple, Tennessee, Tulane, Utah, Washington & Lee, Washington, Wisconsin
101-161	Akron, Albany, Arkansas (Little Rock), Baltimore, Baylor, California Western, Campbell, Capital, Cleveland State, Cooley, Cumberland, Dayton, Detroit Mercy, Drake, Florida State, Gonzaga, Hamline, Hawaii, Howard, Idaho, Loyola (Chicago), Marquette, McGeorge (Pacific), Memphis, Michigan State (Detroit College of Law), Mississippi College, Mississippi, Missouri (Kansas City), New England, New Mexico, North Carolina Central, North Dakota, Northern Illinois, Northern Kentucky, Nova, Ohio Northern, Oklahoma City, Pace, Pepperdine, Quinnipiac, Richmond, San Francisco, Santa Clara, South Dakota, South Texas, Southern Illinois, Southern, St. John's, St. Mary's, St. Thomas, Suffolk, Texas Southern, Touro, Tulsa, Valparaiso, Vermont, Washburn, Western New England, Whittier, William Mitchell

**Table 21 – Finet Composite Ranking**

Category	Schools Affiliated with Journals <sup>444</sup>
Top 25 (in order)	Harvard, Yale, Columbia, Pennsylvania, Michigan, Chicago, Virginia, NYU, California (Berkeley), Cornell, Hastings, Minnesota, Texas, Georgetown, Stanford, Northwestern, Iowa, Vanderbilt, Louisiana, Tulane, USC, UCLA
26-50 (in order)	Wisconsin, Duke, George Washington, Southwestern, Syracuse, Indiana (Bloomington), Notre Dame, Illinois, Ohio State, North Carolina, Boston University, Fordham, Wayne State, Miami, Boston College, Rutgers (Newark), Buffalo, Washington University, Pittsburgh, St. John's, Villanova, Oregon

<sup>444</sup> This listing omits the following journals listed in the Finet Composite Ranking (rank of omitted journals follow the journal name in parentheses): *Business Lawyer* (8), *ABA Journal* (12), *Law and Contemporary Problems* (13), *American Journal of International Law* (44), *Labor Law Journal* (46), and *Judicature* (47).

**Table 22 - Allen (1969) Measures**

AALS 1954 List	ILP Subscribers	> 1 s.d. above mean	<i>Shepard's</i> cites Mean to 1 s.d. above	Below mean or not included
A	> 1 s.d. above mean	Columbia, Harvard, Yale	Michigan	
	Mean to 1 s.d. above			
B	> 1 s.d. above mean	NYU, Pennsylvania,	California (Berkeley), Chicago, Cornell, Virginia	
	Mean to 1 s.d. above		Minnesota, Northwestern, Texas	
C	Mean to 1 s.d. above		Stanford, Vanderbilt	George Washington, Georgetown, Illinois, Indiana (Bloomington), Iowa, North Carolina, Notre Dame, Tulane, USC, Wisconsin

**Table 23 – Johnson Illinois Library Survey (1977)**

Number of Uses	Journals
Used 75 or more times	Harvard Law Review (145), Northwestern University Law Review (76), University of Illinois Law Forum (135), Yale Law Journal (92)
Used 50-74 times	California Law Review (51), Columbia Law Review (55), Michigan Law Review (52), University of Chicago Law Review (70), University of Pennsylvania Law Review (57), Virginia Law Review (56)
Used 25-49 times	Chicago-Kent Law Review (33), Cornell Law Review (25), DePaul Law Review (48), Fordham Law Review (33), Georgetown Law Journal (34), Hastings Law Journal (28), Indiana Law Journal (35), Minnesota Law Review (32), New York University Law Review (27), Notre Dame Lawyer (42), Southern California Law Review (34), Stanford Law Review (44), Texas Law Review (27), UCLA Law Review (27), Washington Law Review (28), Wisconsin Law Review (30)

**Table 24 - Goldblatt Usage Survey (1986)**

	Identified by at least three faculty members	Identified by fewer than three faculty members
Above median in usage	California (Berkeley), Columbia, Fordham, Harvard, Michigan, NYU, Yale	Washington & Lee
At or below median in usage	Boston College, Boston University, Cornell, Duke, George Washington, Georgetown, Illinois, Iowa, Northwestern, Notre Dame, Pennsylvania, Southern California, Stanford, Texas, UCLA, Virginia, Washington University, Wisconsin	Arizona, Chicago, Hastings, Minnesota, Seton Hall, Vanderbilt

**Table 25 - Brown Michigan Library Study (2002)**

Category	Schools Affiliated with Journals
1	Columbia, Harvard, Michigan, Pennsylvania, Yale
2	California (Berkeley), Chicago, Cornell, Duke, George Washington, Georgetown, Hastings, Iowa, Minnesota, Northwestern, NYU, Southern California, Stanford, Texas, UCLA, Vanderbilt, Virginia, Wisconsin



**Table 26 - George & Guthrie Specialty Journal Ranks**

School	Number of top 25 specialty journals	Number of top 26-50 specialty journals	School	Number of top 25 specialty journals	Number of top 26-50 specialty journals
Alabama	1	0	Iowa	1	0
American University	1	0	Marquette	1	0
Boston University	1	1	Michigan	0	2
California (Berkeley)	0	2	Minnesota	1	0
Chicago	2	0	Missouri	0	1
Columbia	1	2	Northwestern	0	1
Connecticut	1	0	NYU	2	1
Cornell	1	1	Ohio State	0	1
Case Western	0	1	Rutgers (Camden)	0	1
George Mason	1	0	Texas	0	1
George Washington	0	1	USC	1	0
Georgetown	1	3	Virginia	1	1
Georgia	1	0	Widener	1	0
Harvard	3	2	William & Mary	1	0
Indiana (Bloomington)	0	1	Yale	1	2

**Table 27 - Crespi Specialty Journal Rankings**

	Top 25 International	Not Top 25 International
Top 20 Environmental	Columbia, Harvard, NYU, SMU, Stanford, Tulane, Virginia	Boston College, California (Berkeley), Duke, Florida State, Lewis & Clark, Montana, New Mexico, Oregon, Pace, UCLA, Utah, William & Mary, Wyoming
Not Top 20 Environmental	American, Cornell Northwestern, Denver, Duke, Fordham, George Washington, Georgetown, Georgia, Michigan, Texas, Vanderbilt, Yale	Not calculated

**Table 28 - Source & Climber Schools for Deans**

	Hired deans serving 50 or fewer dean years from top source schools (other than self)	Hired deans serving more than 50 dean years from top schools (other than self)
Provided more than 200 dean-years	Georgetown, Harvard, Texas, Virginia, Yale	Chicago, Columbia, Michigan, Northwestern, Pennsylvania
Provided more than 100 dean-years	California (Berkeley), Duke, Illinois, Iowa	Minnesota, NYU, Stanford, Wisconsin
Provided more than 50 dean-years	Boston College, California (Hastings), Case Western, Catholic, Cincinnati, Denver, Fordham, Indiana (Bloomington), Kentucky, Mississippi, North Carolina, Pittsburgh, UCLA, USC	Baylor, Cornell, Florida, George Washington, Kansas, Ohio State, Washington University, Wayne State
Provided 50 or fewer dean-years	Not calculated	Emory, Idaho, Loyola (Chicago), New Mexico, Santa Clara, South Texas, SMU, Syracuse, Temple, Tulane, Utah, West Virginia

**Table 29 - Faculty Source Schools**

		1988-89	
		Top producers (cumulative 50%)	Second tier producers
1975-76	Top producers (cumulative 50%)	California (Berkeley), Chicago, Columbia, Georgetown, Harvard, Michigan, NYU, Pennsylvania, Stanford, Texas, Virginia, Wisconsin, Yale	Northwestern
	Second tier producers		Cornell, Duke, George Washington, Illinois, Iowa, Minnesota
	Not ranked		Boston College, California (Hastings), Mississippi, Ohio State, Tulane, UCLA

**Table 30 - ALI Member School Affiliations**

Group	Schools
> 56 members	Columbia (103), Harvard (504), Pennsylvania (87), Yale (104)
11-55 members	Boston University (15), California (Berkeley) (20), Chicago (27), Cornell (20), Florida (16), George Washington (27), Georgetown (13), Georgia (11), Illinois (19), Iowa (15), Michigan (53), Minnesota (16), Missouri (Columbia?) (13), North Carolina (11), Northwestern (21), NYU (20), Pittsburgh (37), South Carolina (17), Stanford (29), Texas (35), Tulane (20), Virginia (52), Washington & Lee (12), Washington University (17), Wisconsin (31)
5- 11 members	Alabama (9), Albany (6), Arizona (7), Arkansas (Fayetteville?) (5), Baltimore (9), Buffalo (5), Case Western (9), Catholic (6), Cincinnati (6), Colorado (9), Drake (5), Duke (8), Emory (9), Fordham (8), Indiana (Bloomington) (7), Louisiana State (10), Marquette (8), Maryland (6), Montana (6), Nebraska (6), Notre Dame (7), SMU (5), St. John's (5), Temple (6), USC (6), Utah (5), Vanderbilt (5), Washington (7), West Virginia (8)

**Table 31 - ABA President Source Schools**

More than 5 presidents	Columbia (8), Florida (6), Harvard (16), Michigan (6), Washington & Lee (6)
2 to 5 presidents	Alabama (2), Albany (2), Baylor (2), Boston College (2), Chicago (2), Duke (2), Georgetown (2), Maryland (2), NYU (3), Oklahoma (2), Pennsylvania (4), Texas (3), Virginia (2)
1 president	Arkansas, California (Berkeley), Case Western, Catholic, Cincinnati, Colorado, Cornell, Cumberland, Detroit, Georgia, Iowa, Kentucky, Miami, Minnesota, Mississippi, Montana, North Carolina, Northwestern, St. Louis, SMU, Transylvania, Tulane, USC, Wisconsin, Washington & Lee

**Table 32 - Gourman Report Rankings**

		1993 Edition	
		“Very Strong”	“Strong”
1977 edition	“Distinguished”	California (Berkeley), Chicago, Columbia, Cornell, Duke, Harvard, Michigan, Northwestern, NYU, Pennsylvania, Stanford, UCLA, Vanderbilt, Yale	
	“Strong”	California (Hastings), Georgetown, Minnesota, Notre Dame, Texas, Virginia	Albany, Boston University, Buffalo, Fordham, George Washington, Illinois, Indiana (Bloomington), Iowa, Loyola (Los Angeles), Marquette, McGeorge, North Carolina, Ohio State, SMU, Tulane, USC, Utah, Washington, Wisconsin

**Table 33 - 1970s Reputation Surveys**

School	Survey					
	Blau & Margulies (1973)	Blau & Margulies (1974)	<i>Juris Doctor</i> (1976)	Ladd & Lipset (1977)	Strong (1979)	Total
Berkeley		X	4	X	X	7
Chicago	X	X	4	X	X	8
Columbia	X	X	4	X	X	8
Duke			1			1
Georgetown			2			2
Harvard	X	X	4	X	X	8
Michigan	X	X	4	X	X	8
NYU		X	4		X	6
Pennsylvania			4	X	X	6
Stanford		X	4	X	X	7
Texas		X	2			3
Virginia			4		X	5
Yale	X	X	4	X	X	8

**Table 34 - Rochester 1980-82 Locator Data**

		Median LSAT	
		700-750	650-700
Median UGPA	3.75-4.00	Chicago, Harvard, Stanford, Yale	--
	3.50-3.74	California (Berkeley), Columbia, Cornell, Duke, Michigan, NYU, Pennsylvania	BYU, California (Davis), California (Hastings), Colorado, Florida, George Washington, Georgetown, Illinois, Iowa, Minnesota, Northeastern, Northwestern, Texas, UCLA, USC, Virginia, Washington University (?), Wisconsin
	3.25-3.49	--	Boston College, Boston University, Connecticut, North Carolina, Rutgers (Newark), Vanderbilt, William & Mary

**Table 35 - U.S. News Ranks over Time**

	18 or more times	13 to 17 times	9 to 12
Ranked 1-14	California (Berkeley) (24), Chicago (24), Columbia (24), Cornell (23), Duke (24), Georgetown (24), Harvard (24), Michigan (24), NYU (24), Northwestern (23), Pennsylvania (24), Stanford (24), Virginia (24), Yale (24)	None	None
Ranked 15-25	George Washington (22), Minnesota (23), Notre Dame (18), Texas (22), UCLA (23), USC (24), Vanderbilt (23)	Emory (13), Illinois (16), Iowa (15), Washington and Lee (16)	Boston College (10), Boston University (10), Washington University (11)

	18 or more times	13 to 17 times	9 to 12
Ranked 26-50	Arizona (18), Brigham Young (19), California (Davis) (19), Colorado (18), Georgia (19), Indiana (Bloomington) (19), Ohio State (19), Wake Forest (19), William and Mary (19)	Alabama (13), California (Hastings) (17), Connecticut (14), Florida (16), Fordham (17), North Carolina (15), Tulane (17), Utah (15), Wisconsin (17)	American (9), Boston College (12), Boston University (9), George Mason (12), Maryland (12), SMU, (10), University of Washington (12)
Ranked 51-100	None	None	Baylor (9), Brooklyn (10), Cardozo (10), Case Western (9), Catholic (10), Chicago Kent (10), Cincinnati (10), Denver (10), Florida State (10), Georgia State (10), Hawaii (10), Houston (10), Indiana (Indianapolis) (10), Kansas (10), Kentucky (9), Lewis & Clark (10), LSU (10), Loyola (Chicago) (10), Loyola (Los Angeles) (10), Miami (10), Missouri (10), Nebraska (10), New Mexico (10), Northeastern (10), Oklahoma (10), Oregon (10), Pepperdine (9), Pittsburgh (9), Richmond (10), Rutgers (Camden) (10), Rutgers (Newark) (10), St. John's (10), San Diego (10), Santa Clara (9), Seattle (10), Seton Hall (10), Temple (10), Tennessee (10), Villanova (10)



**Table 36 - 1989 & 1990 Reputation Rankings**

1989 <i>U.S. News</i> survey	Top 10	Berkeley (7), Chicago (6), Columbia (4), Duke (12), Harvard (1), Michigan (3), NYU (9), Penn (10), Stanford (4), Virginia (8), Yale (1)
	11-20	Cornell (15), Duke (12), Georgetown (13), Illinois (17), Minnesota (19), Northwestern (16), Texas (11), UCLA (14), USC (17), Wisconsin (20)
Cooper <i>Insider's Guide</i> Top 15 (1990)		California (Berkeley), Chicago, Columbia, Cornell, Duke, Georgetown, Harvard, Michigan, NYU, Pennsylvania, Stanford, Texas, UCLA, Virginia, Yale

**Table 37 - AALS Membership**

Date Joined AALS	Schools
Charter AALS members <sup>445</sup>	Boston University, California (Hastings), Case Western, Cincinnati, Colorado, Columbia, Cornell, Drake, George Washington, Harvard, Illinois, Indiana (Bloomington), Indiana (Indianapolis), Iowa, Kansas, Maine, Michigan, Minnesota, Missouri (Columbia), NYU, Northwestern, Ohio State, Pennsylvania, Pittsburgh, Stanford, Syracuse, Tennessee, Washington University, Wisconsin, Yale
Joined AALS before 1930 <sup>446</sup>	Alabama, Arkansas (Fayetteville), California (Berkeley), Chicago, Creighton, Denver, DePaul, Emory, Florida, Georgetown, Idaho, Kentucky, Louisiana State, Loyola (Chicago), Marquette, Mercer, Mississippi, Montana, Nebraska, North Carolina, North Dakota, Notre Dame, Oklahoma, Oregon, Richmond, Saint Louis, SMU, South Carolina, South Dakota, Texas, Tulane, USC, Utah, Vanderbilt, Virginia, Washburn, Washington and Lee, Washington, West Virginia, Wyoming
Joined AALS between 1930 and 1940	Arizona, Baylor, Boston College, Buffalo, Detroit, Duke, Fordham, Georgia, Howard, Brandeis (Louisville), Loyola (Los Angeles), Loyola (New Orleans), Maryland, Missouri (Kansas City), Penn State, San Francisco, Santa Clara,

<sup>445</sup> The AALS included 32 charter members at its formation. *Minutes of the First Annual Meeting, 1900–1901* A.A.L.S. PROC. 1, 3–4 (1900-1901). Two charter members, Baltimore Law School and Buffalo Law School, are not listed as charter members in current AALS member listings. [http://www.aals.org/about\\_memberschools.php](http://www.aals.org/about_memberschools.php) (visited Feb. 12, 2013); Charles P. Norton, *The Buffalo Law School*, 1 GREEN BAG 421 (1889).

<sup>446</sup> We did not include the following schools in this list: (i) Pennsylvania State, which joined the AALS from 1912-1924 but which later resigned, and which merged with the Dickinson School of Law in 1997, Jacques Steinberg, *Penn State Merges with Dickinson Law*, N.Y. TIMES, Jan. 22, 1997, <http://www.nytimes.com/1997/01/22/us/penn-state-merges-with-dickinson-law.html> and (ii) Catholic University of America School of Law. NOTE RE CLOSING

Date Joined AALS	Schools
	Stetson, Temple, Valparaiso, Wake Forest, William and Mary
Joined AALS after 1940 but within 10 years of opening	Arkansas (Little Rock), Arizona State, Brigham Young, California (Davis), Cardozo, Drexel, Florida State, Florida International, Hofstra, Nevada, New Mexico, Pace, Pepperdine, Quinnipiac, Seattle, Seton Hall, Texas Tech, UCLA, Villanova
Non-AALS members in 1966 <sup>447</sup>	Akron, Brooklyn, California Western, Capital, Cleveland State, Florida A&M, Golden Gate, Gonzaga, Houston, John Marshall, Maine, Memphis, New York Law, North Carolina Central, Northern Kentucky, Oklahoma City, San Diego, Southern, South Texas, Suffolk, Texas Southern, Tulsa, William Mitchell
Non-AALS members in 1980 <sup>448</sup>	Baltimore, Brigham Young, Campbell, Capital, Cardozo, Cooley, Dayton, District of Columbia, Hamline, Hawaii, Memphis, New Hampshire, New England, North Carolina Central, Northern Illinois, Northern Kentucky, Nova Southeastern, Oklahoma City, Pace, Quinnipiac, Southern Illinois, Southern, South Texas, Texas Southern, Vermont, Western New England, Whittier, Widener, William Mitchell
Non-AALS members in 2000 <sup>449</sup>	Campbell, Chapman, City University, Cooley, Florida Coastal, Memphis, New Hampshire, North Carolina Central, Oklahoma City, Regent, Roger Williams, Saint Thomas (Minnesota), Southern, Texas Southern, Texas Wesleyan, Thomas Jefferson, UDC

<sup>447</sup> This list includes law schools listed in the *1967 AALS Directory of Law Teachers*, that were ABA accredited but which were not AALS member schools. 1967 AALS DIRECTORY L. TCHRS. 21-29 (1967).

<sup>448</sup> This list includes law schools listed in the *1980-1981 AALS Directory of Law Teachers* that were ABA accredited but which were not AALS member schools. 1980-81 AALS DIRECTORY L. TCHRS. 1137-1139 (1980-1981) (listing as of October 1980).

<sup>449</sup> This list includes law schools listed as non-member Fee-Paid Schools in the *2000-2001 AALS Directory of Law Teachers*. 2000-2001 AALS DIRECTORY L. TCHRS. 207-222 (2000-2001).



Law School	ABA Accreditation Date									ABA Accreditation within 10 Years of School Establishment
	Before 1931	1931-1940	1941-1950	1951-1960	1961-1970	1971-1980	1981-1990	1991-2000	2001-2010	
Catholic	X									
Chapman								X		X
Chicago	X									
Chicago-Kent		X								
Cincinnati	X									
CUNY							X			X
Cleveland State				X						
Colorado	X									
Columbia	X									
Connecticut		X								
Cornell	X									
Creighton	X									
Dayton						X				X
Denver	X									
DePaul	X									
Detroit		X								
Drake	X									
Drexel									X	X
Duke		X								
Duquesne				X						
Emory	X									X
Florida	X									
Florida State					X					X
Florida International									X	X
Fordham		X								
George Washington	X									
George Mason						X				X
Georgetown	X									
Georgia	X									
Georgia State							X			X

Law School	ABA Accreditation Date									ABA Accreditation within 10 Years of School Establishment
	Before 1931	1931-1940	1941-1950	1951-1960	1961-1970	1971-1980	1981-1990	1991-2000	2001-2010	
Golden Gate				X						
Gonzaga				X						
Hamline						X				X
Harvard	X									
Hawaii						X				X
Hofstra						X				X
Houston			X							X
Howard		X								
Idaho	X									
Illinois	X									
Indiana (Indianapolis)			X							
Indiana (Bloomington)	X									
Iowa	X									
John Marshall				X						
Kansas	X									
Kentucky	X									
LSU	X									
Lewis and Clark					X					
Louisville (Brandeis)		X								
Loyola (Chicago)	X									
Loyola (Los Angeles)		X								
Loyola (New Orleans)		X								
Maine					X					X
Marquette	X									
Maryland		X								
McGeorge (Pacific)					X					





Law School	ABA Accreditation Date									ABA Accreditation within 10 Years of School Establishment
	Before 1931	1931-1940	1941-1950	1951-1960	1961-1970	1971-1980	1981-1990	1991-2000	2001-2010	
Santa Clara		X								
Seattle								X		
Seton Hall				X						X
South Carolina	X									
South Dakota	X									
Southern				X						X
South Texas				X						
USC	X									
Southern Illinois						X				X
SMU	X									
Southwestern					X					
Stanford	X									
Stetson		X								
Suffolk				X						
Syracuse	X									
Temple		X								
Tennessee	X									
Texas	X									
Texas Tech					X					X
Texas Wesleyan								X		X
Toledo		X								
Thomas Jefferson								X		
Touro							X			X
Tulane	X									
Tulsa			X							
Utah	X									
Valparaiso	X									
Vanderbilt	X									
Vermont						X				X
Villanova				X						X





**Table 39 – Fellowships and VAP Programs**

Total Fellowship and VAP Programs	Schools
More than 5	Columbia, Georgetown, Harvard, NYU, Northwestern, Stanford, UCLA, Yale
Less than 5	Alabama, Arizona, Arizona State, Boston University, Brooklyn, California (Berkeley), California Western, Chicago, Chicago-Kent, Connecticut, Cornell, Denver, Duke, Florida, Fordham, George Mason, George Washington, Houston, Illinois, Indiana (Bloomington), Iowa, Louisiana State, Loyola (Chicago), Loyola (Los Angeles), Loyola (New Orleans), Memphis, Michigan, Penn State, Pennsylvania, Seattle, Stetson, Temple, Tennessee, Texas, Thomas Jefferson, Tulane, Wake Forest, University of Washington, Washington University, Wisconsin

**Table 40–Law Firm Partner Feeder Schools**

Seto Rankings			Anderson Rankings (Adjusts Seto Rankings for Class Size)	
Rank	Law School	Partners in NLJ 100 (raw numbers)	Rank	Law School
1.	Harvard	946	1.	Chicago
2.	Georgetown	729	2.	Northwestern
3.	NYU	543	3.	Harvard
4.	Virginia	527	4.	Columbia
5.	Columbia	516	5.	Virginia
6.	George Washington	447	6.	Pennsylvania
7.	Michigan	444	7.	NYU
8.	Chicago	426	8.	Stanford
9.	Texas	384	9.	Yale
10.	Northwestern	365	10.	Michigan
11.	Pennsylvania	329	11.	Georgetown
12.	Boston Univ.	317	12.	Cornell
13.	Fordham	306	13.	Duke
14.	California (Berkeley)	287	14.	Vanderbilt
15.	UCLA	257	15.	California (Berkeley)
16.	Yale	253	16.	George Washington
17.	Stanford	240	17.	Notre Dame
18.	California (Hastings)	233	18.	Illinois
19.	Duke	219	19.	Boston University

Seto Rankings			Anderson Rankings (Adjusts Seto Rankings for Class Size)	
Rank	Law School	Partners in NLJ 100 (raw numbers)	Rank	Law School
20.	Boston College	213	20.	UCLA
21.	Cornell	204	21.	Boston College
22.	Vanderbilt	186	22.	Texas
23.	Illinois	183	23.	USC
24.	American	179	24.	Fordham
25.	Loyola (Los Angeles)	162	25.	Washington University
26.	Miami	160	26.	Loyola (Chicago)
27.	Temple	160	27.	Emory
28.	Notre Dame	159	28.	Washington & Lee
29.	Florida	154	29.	Villanova
30.	Loyola (Chicago)	154	30.	William & Mary

**Table 41 – Order of the Coif Chapters**

Established	Schools
1940 or earlier	California (Berkeley), Case Western Reserve, Chicago, Cincinnati, Cornell, Duke, George Washington, Illinois, Indiana (Bloomington), Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, Northwestern, Ohio State, Pennsylvania, Pittsburgh, Southern California, Stanford, Texas, Tulane, Virginia, Washington, Washington University (St. Louis), West Virginia, Wisconsin, Yale
1941-1970	Alabama, Arizona, Boston College, California (Hastings), California (Los Angeles), Colorado, Drake, Florida, Louisiana State, New York University, Southern Methodist, Syracuse, Tennessee, Utah, Vanderbilt, Villanova, Washington & Lee
1971-2000	Arizona State, Brigham Young, California (Davis), Cardozo, DePaul, Emory, Florida State, Fordham, Georgetown, Georgia, Houston, IIT-Chicago Kent, Loyola (Los Angeles), McGeorge, Miami, New Mexico, Rutgers (Newark), San Diego, South Carolina, Texas Tech, Toledo, Wake Forest, Wayne State, William & Mary, Wyoming,
After 2000	American, Pepperdine, Richmond, Santa Clara, Seton Hall

**APPENDICES**

**APPENDIX A**

**Rising Regional Law Schools**

American  
Denver  
Hofstra  
LSU  
Miami  
St. Louis  
Syracuse  
Tennessee  
Villanova

**APPENDIX B**  
**Regional Law Schools**

Albany  
Chicago-Kent  
Drexel  
George Mason  
Kansas  
Kentucky  
Loyola (Los Angeles)  
Marquette  
Maryland  
New Mexico  
Penn State  
Pepperdine  
Rutgers (Camden)  
Seton Hall  
South Carolina  
St. John's

**APPENDIX C**  
**Local Law Schools**

Akron, Uni. of, C. Blake McDowell Law Center  
Antioch School of Law / UDC  
Appalachian School of Law  
Arkansas at Little Rock, Uni. of, William H. Bowen Sch. of Law  
Arkansas, Fayetteville, Uni. of, Leflar Law Center  
Atlanta's John Marshall Law School  
Ave Maria School of Law  
Baltimore, Uni. of, Sch. of Law  
Barry University Dwayne O. Andreas School of Law  
Baylor Uni. Sch. of Law  
Brooklyn Law Sch.  
California Western Sch. of Law  
Campbell University School of Law  
Capital Uni. Law Sch.  
Catholic University of America School of Law  
Chapman University School of Law  
Charleston School of Law  
City University of New York Law School at Queens College (CUNY)  
Cleveland State University, Cleveland-Marshall College of Law  
Creighton University School of Law  
Cumberland School of Law of Samford University  
De Paul University College of Law  
Detroit College of Law / Michigan State  
Drake University Law School  
Duquesne University School of Law  
Elon University School of Law  
Faulkner University Thomas Goode School of Law  
Florida A&M University College of Law  
Florida Coastal School of Law  
Florida International University College of Law  
Florida State University College of Law  
Franklin Pierce Law Center /New Hampshire  
Georgia State University College of Law  
Golden Gate University School of Law  
Gonzaga University School of Law  
Hamline University School of Law  
Howard University School of Law  
Indiana University Law School, Indianapolis  
John Marshall Law School, Chicago, Illinois  
Liberty University School of Law  
Lincoln University School of Law



Lincoln University School of Law  
Loyola University School of Law, Chicago  
Loyola University School of Law, New Orleans  
McGeorge School of Law, University of the Pacific  
Mercer University Law School  
Mississippi College School of Law  
New England School of Law  
New York Law School (NYLS)  
North Carolina Central University, School of Law  
Northeastern University School of Law  
Northern Illinois University College of Law  
Nova University Center for the Study of Law  
Ohio Northern University College of Law  
Oklahoma City University School of Law  
Oral Roberts University  
Pace University School of Law  
Phoenix School of Law  
Quinnipiac University School of Law  
Regent University School of Law  
Roger Williams University School of Law  
Saint Thomas (Minnesota)  
Salmon P. Chase College of Law (Northern Kentucky)  
Santa Clara University School of Law  
South Carolina State College School of Law  
South Texas College of Law  
Southern Illinois Univ. School of Law  
Southern University Law Center  
Southwestern University School of Law  
St. Mary's University of San Antonio School of Law  
St. Thomas University School of Law  
Stetson University College of Law  
Suffolk University Law School  
Texas Southern University / Thurgood Marshall  
Texas Tech University School of Law  
Texas Wesleyan University School of Law  
Thomas Jefferson School of Law  
Thomas M. Cooley Law School  
Touro College  
University of Dayton School of Law  
University of Detroit College of Law (Detroit Mercy)  
University of Hawaii  
University of Houston Law Center  
University of Idaho College of Law  
University of La Verne College of Law

University of Louisville School of Law  
University of Maine School of Law  
University of Memphis Cecil C. Humphreys School of Law  
University of Mississippi School of Law  
University of Missouri-Columbia School of Law  
University of Missouri-Kansas City School of Law  
University of Montana School of Law  
University of Nebraska College of Law  
University of Nevada, Las Vegas  
University of North Dakota School of Law  
University of Oklahoma Law Center  
University of Oregon School of Law  
University of Puget Sound School of Law / Seattle University  
University of Richmond  
University of San Diego School of Law  
University of San Francisco School of Law  
University of South Dakota School of Law  
University of Toledo College of Law  
University of Toronto, Faculty of Law  
University of Tulsa College of Law  
University of Wyoming College of Law  
Valparaiso University School of Law  
Vermont Law School  
Wake Forest University School of Law  
Washburn University School of Law  
Wayne State University Law School  
West Virginia University College of Law  
Western New England College School of Law  
Western State University College of Law  
Whittier College School of Law  
Widener University School of Law  
Willamette University College of Law  
William Mitchell College of Law