

LAW SCHOOL RANKINGS AND POLITICAL IDEOLOGY: MEASURING THE CONSERVATIVE PENALTY AND LIBERAL BONUS WITH UPDATED 2023 RANKINGS DATA

MICHAEL CONKLIN*

INTRODUCTION

In 2020, novel research was conducted to measure whether, and to what extent, conservative law schools are punished and liberal law schools are rewarded in the *U.S. News & World Report* peer rankings.¹ The study found a drastic conservative penalty and liberal bonus that amounted to a difference in the peer rankings of twenty-eight spots.² This Article updates the research using the latest political affiliation data and the most recent 2023 rankings data. The updated results produce an astounding thirty-two-place difference in the peer rankings attributable to political ideology. This increase from the 2020 research elicits discussion regarding the effects of recent societal changes in polarization and civility. This Article discusses how this disparity in the rankings may perpetuate a lack of ideological diversity in legal academia. The harm to professors, students, and society at large from such a lack of ideological diversity in law schools is discussed. Finally, this Article concludes by proposing a simple solution to circumvent this particular manifestation of ideological bias in legal academia.

I. LAW SCHOOL RANKINGS

The *U.S. News & World Report* overall rankings (hereinafter “overall rankings”) are based primarily on objective data, such as bar passage rate, employment rate, Law School Admission Test (LSAT) score, undergraduate grade point average (GPA), acceptance rate, and student–faculty ratio.³ They are also the standard for measuring American law school prestige.⁴ Law schools

* Powell Endowed Professor of Business Law, Angelo State University.

1. Michael Conklin, *Political Ideology and Law School Rankings: Measuring the Conservative Penalty and Liberal Bonus*, 2020 U. ILL. L. REV. ONLINE 178 (2020), <https://www.illinoislawreview.org/wp-content/uploads/2020/08/Conklin.pdf>.

2. *Id.* at 183.

3. Robert Morse et al., *Methodology: 2023 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 28, 2022, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

4. Jeffrey Harmatz, *US News & World Report Law School Rankings: A Double-Edged Sword?*, L. CROSSING (Mar. 19, 2013), <https://www.lawcrossing.com/article/900012518/US-News-World-Report-Law-School-Rankings-A-Double-Edged-Sword/> (last visited July 6, 2020) (“Regardless of its flaws, US News & World Report’s Top Law School rankings are the most popular and preferred law school rankings in the nation, and have become a legal industry institution.”).

have responded accordingly by altering their behavior in attempts to improve their rankings.⁵ The incentive to improve one's ranking is so strong that some law schools even go so far as to falsely report data⁶ and coerce underachieving graduates to delay taking the bar exam.⁷ Undesirable law school ratings frequently result in the firing of deans.⁸ Even the perceived value of a law journal is affected by that school's ranking.⁹

The *U.S. News & World Report* also provides peer rankings, which are the sole result of surveys completed by law school deans and select faculty regarding their perceptions of law schools.¹⁰ The existence of these two rankings—one mostly objective and one entirely subjective—allows for analysis on which schools have disproportionately high or low reputations based on what would be expected from their objective performances alone.

II. IDEOLOGICAL DIVERSITY AND LAW SCHOOLS

Problems with a lack of diversity among faculty and students in law schools have long been analyzed regarding the categories of race and gender.¹¹

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

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

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

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

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

10. Morse et al., *supra* note 3.

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

In 2015, the first robust analysis of law school ideological diversity was published in the *Harvard Journal of Law & Public Policy* (hereinafter “2015 study”).¹² But even prior to this landmark study, it was already well known that law school professors were disproportionately liberal—both when compared to the overall legal profession and the public at large.¹³ A study using 2013 data found that 82% of law school professors were Democrats, while only 11% were Republicans.¹⁴ And even once inside legal academia, conservative law school professors appear to be relegated to topics such as law and economics as opposed to the more prestigious topics, such as constitutional law and federal courts.¹⁵

The 2015 study set out to determine if the great disparity between conservative and liberal law professors was the result of discrimination or if there was a more benign, alternative explanation. The results of the 2015 study strongly point to the former explanation over the latter. It found that conservative law professors are more qualified than their liberal peers. When compared to their liberal counterparts, conservative law professors were 68.2% more likely to be former Supreme Court clerks, 24.1% more likely to have graduated from higher-ranked schools, and 5.4% more likely to have served on law review.¹⁶ Conservative law professors also publish more, which is the most important factor in hiring and promotions.¹⁷ Over the course of ten years, conservative professors publishes four to eight more articles than liberal professors.¹⁸ And the scholarship from conservative law faculty is significantly more likely to be cited to, which is a leading measure of scholarly significance.¹⁹ These findings combine to make a strong case that the best explanation for law schools’ ideological inequalities is discrimination and not alternative, benign explanations such as diminished qualifications, abilities, or desire to join academia on the part of conservatives.

As discussed in the original 2020 Article on ideological rankings disparities, a series of internal emails from the *Harvard Human Rights Journal* that surfaced in 2012 demonstrate how the anti-conservative bias also infects legal scholarship.²⁰ The emails document an incident in which the journal editors expressed “major concerns” about how a submitted manuscript was from

12. *Id.*

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

14. James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J. L. & PUB. POL’Y 89 (2016).

15. Phillips, *supra* note 11, at 162–63.

16. *Id.* at 183.

17. *Id.* at 166.

18. *Id.* at 195.

19. *Id.* at 166.

20. Conklin, *supra* note 1, at 180.

a conservative author.²¹ The editors concluded that this was “enough to reject the article.”²² Such practices likely demonstrate why it is harder for conservatives to obtain faculty positions at law schools, as the ability to publish in top journals is the most significant qualification for aspiring law school professors.²³

III. METHODOLOGY

The original 2020 research used the overall and peer rankings from 2012 to 2021.²⁴ It measured the disparity between the subjective peer rank and the objective overall rank for the top ten conservative law schools and the top ten liberal law schools.²⁵ The Princeton Review’s ideological rankings were used for this conservative/liberal distinction.²⁶ This resulted in the following law schools used for the 2020 study:

Most Conservative

1. Ave Maria School of Law
2. Brigham Young University J. Reuben Clark Law School
3. Samford University Cumberland School of Law
4. George Mason University School of Law
5. Faulkner University Thomas Goode Jones School of Law
6. University of Alabama School of Law

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

22. *Id.* The state of ideological bias in legal academia is likely also on display in how this event was described. The clear implications were downplayed as something that merely “suggest[s] possible bias,” *id.*, and “possible evidence of bias against conservatives,” David Lat, *A Look Inside the Law Review Sausage Factory—and Possible Evidence of Bias Against Conservatives*, ABOVE THE L. (Sep. 13, 2012, 12:20 PM), <https://abovethelaw.com/2012/09/a-look-inside-the-law-review-sausage-factory-and-possible-evidence-of-bias-against-conservatives/>. Some even suggested that it is a defense to such discriminatory behavior that “Hey, we’ve seen far worse emails coming out of [Harvard Law School]!” *Id.*

23. LAWPROFBLOG, *Why do Law Professors Write Law Review Articles?*, ABOVE THE L. (May 9, 2017, 2:00 PM), <https://abovethelaw.com/2017/05/why-do-law-professors-write-law-review-articles/>.

24. Note that the 2021 rankings are published in 2020 and based on 2019 data. Christopher J. Ryan, Jr., *Of Law School Rankings, Disparity, and Football*, 110 GEO. L. J. ONLINE 19 (2021).

25. Conklin, *supra* note 1, at 181.

26. *Most Conservative Students*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=most-conservative-students> (last visited April 4, 2022); *Most Liberal Students*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=most-liberal-students> (last visited April 5, 2022).

7. Louisiana State University Paul M. Hebert Law Center
8. Mississippi College School of Law
9. Pepperdine University School of Law
10. University of Idaho College of Law

Most Liberal

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

While these are the ten most conservative and ten most liberal law schools, this does not mean that the ten conservative law schools are as far to the right as the ten liberal law schools are to the left. For example, a 2018 study found that of the top fifty law schools, Brigham Young University, Pepperdine, and Alabama were the most ideologically balanced.²⁷ And yet all three of these law schools were on either the 2020 or 2022 list of the ten most conservative law schools.

To accurately measure the deviation between the overall rank and the peer rank, the 2020 study designed the following formula, which was also used in this 2022 update²⁸:

peer deviation score

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

By incorporating both the difference and the percentage change, this formula mitigates the variances that would result from only using one method or the other.²⁹

This updated study added the latest two years of rankings (2022 and 2023), which results in a rankings data set from 2012 to 2023. Also, the updated conservative/liberal law school top ten lists were utilized. The revised lists used for this 2022 update removed Samford and Pepperdine from the conservative

27. Bonica et al., *supra* note 13, at 14.

28. Conklin, *supra* note 1, at 182.

29. *Id.* at 181 n.21.

top ten and replaced them with Texas Tech and Regent.³⁰ For the liberal list, Pennsylvania, Maryland, Brooklyn, State University of New York, and Vermont were replaced with Washington University; George Washington University; University of California, Irvine; University of California, Berkeley; and New York University.³¹

IV. RESULTS

A. Original Study

In the original 2020 study, the average peer rank deviation for the conservative schools was -11.82 spots from the overall ranking.³² The average peer rank deviation for the liberal schools was 9.05 from the overall ranking.³³ This resulted in a net difference between conservative and liberal schools of 20.87 spots in the rankings. The odds of randomly selecting two groups of ten that average these two levels of disparity or worse is less than 0.003% , or roughly one in $33,000$.³⁴

As explained in the original 2020 research, the difference between the objective peer rankings and the subjective measures in the overall rankings is even more disparate than the -11.82 and 9.05 numbers show.³⁵ This is the result of how the peer rank is also included in the overall rankings formula and is heavily weighted at 25% .³⁶ This functions to significantly mitigate the difference between the peer rankings and the objective factors of the overall rankings.³⁷ When this is accounted for by backing out the peer score from the overall score, an even greater disparity emerges. The conservative penalty goes up to -15.76 , and the liberal bonus goes up to 12.07 , resulting in a net difference of 27.83 spots in the rankings.³⁸

30. *Most Conservative Students*, *supra* note 26.

31. *Most Liberal Students*, *supra* note 26.

32. Conklin, *supra* note 1, at 183.

33. *Id.*

34. *Id.* Note that the 2020 research only calculated the probability of achieving a score of -11.82 or less for one group of ten randomly selected law schools. It did not also factor in the odds of concurrently randomly selecting a second group of ten averaging 9.04 or more. Based on the same computer simulation with $100,000$ occurrences, this produces the two probabilities of 0.0008 and 0.03119 , respectively. Applying the multiplication rule probability, the odds of both of these occurring in the same sample is 0.00002495 , or 0.002495% .

35. *Id.*

36. Morse et al., *supra* note 3.

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

38. Conklin, *supra* note 1, at 183.

B. Updated Study

Utilizing the same methodology but with updated rankings and ideological lists, an even greater disparity was found than that from two years prior. The conservative penalty increased to -14.41 , and the liberal bonus increased to 9.62 . After applying the same correction from the 2020 study to control for how the peer ranking is included in the overall rank, the final result is a -19.21 conservative penalty and a 12.83 liberal bonus. This results in a net 32.04 difference in the peer rankings. The odds of a disparity this great being the result of random chance is about 0.0004% , or roughly one in $250,000$.³⁹

V. DISCUSSION

The results of this updated research are consistent with the 2020 study that it expands on. It is also consistent with the 2015 study on ideological discrimination in law school faculty hiring. In all three of these studies, the results were extreme in the disparities found, and there is little room for any legitimate non-discriminatory explanation. This section includes potential non-discriminatory explanations for how the disparate result found in this study came about. Such potential explanations include law journal quality, effectiveness of promotional materials, faculty quality, willingness to game the system, and how there are more elite law schools in the liberal group. Unfortunately, none of these explanations are a reasonable candidate to explain any disparity, much less the extreme thirty-two-place difference in the rankings. This section also provides a discussion regarding why the rankings disparity is increasing, the harms of a lack of ideological diversity, and an analogy to an unrelated employment discrimination hypothetical to demonstrate the severity and obviousness of ideological discrimination in legal academia.

A. Law Journal Quality

There is some evidence to suggest that a law school's flagship law journal may affect its peer ranking while not directly contributing to the overall ranking.⁴⁰ Flagship law journal prestige is a convenient proxy for deans who may not have the time or inclination to analyze the nuanced aspects of the 189 law schools they are tasked with ranking.⁴¹ Indeed, there does exist a high correlation between a law school's flagship journal's rankings in the

39. This is based on the same computer simulation from the 2020 study. It calculated 100,000 randomly selected groups of ten. Only fourteen were equal to or less than -14.41 , and 289 were equal to or greater than $100,000$. Applying the multiplication rule probability this results in 0.00014×0.0289 , which equals 0.000004 , or 0.0004% .

40. Alfred L. Brophy, *The Relationship Between Law Review Citations and Law School Rankings*, 39 CONN. L. REV. 43, 55 (2006) ("The findings suggest that law reviews are schools' ambassadors to the rest of the legal academy. Much of what people at other schools know about a school's academic orientation may come from the articles and notes published in the school's law journals.").

41. *Id.*

Washington & Lee Law Journal Rankings and its peer rank.⁴² The ranking of a law school's flagship journal is also an effective predictor of the law school's future overall ranking.⁴³

Analyzing the flagship law journals from the twenty law schools used in this 2022 study finds no evidence to support the claim that any of the peer rankings disparity is attributable to deviations in law journal quality relative to the overall ranking of the law school. When comparing the overall ranking of conservative and liberal law schools to the quality of their flagship law journals, the results are nearly identical.⁴⁴ The average ratio of overall ranking to impact factor for the conservative law schools is 199.6, while the liberal law schools average 195.0. And when comparing the average ratio of overall ranking to the Washington & Lee Law Journal Rankings Combined Score, the conservative law schools average 8.54, while the liberal law schools average 8.63.

B. Promotional Materials

Due to the importance of the overall rankings, and how the peer rankings contribute significantly to the overall rankings, some law schools distribute promotional materials to deans in an effort to improve their peer rankings.⁴⁵ Therefore, part of the disparity uncovered in this study could be accounted for if the liberal schools engaged in this practice while the conservative schools did not. It is beyond the scope of this research to investigate the extent to which each of the twenty law schools in this study engage in sending out promotional materials. But it is highly unlikely that there would be a significant difference in this area since all law schools have the same incentive to engage in the practice. Furthermore, the effect of these promotional materials is likely minimal and, as some have suggested, possibly even non-existent.⁴⁶ Therefore, this is unlikely to explain any significant portion of the extreme disparity found in this study.

C. Faculty Quality

Despite *U.S. News & World Report's* plans to implement quality of faculty scholarship as a factor in the overall rankings prior to the COVID-19 pandemic,

42. *Id.* at 48.

43. Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 UNIV. COLO. L. REV. 35, 35 (2007) ("Thus, . . . if one wants to know where a law school is heading, . . . one should spend some time studying the scholarship its primary law review publishes.").

44. To properly perform such an analysis, one must first formulate the ratio so that the two variables are positively related, instead of inversely related. This is accomplished by simply subtracting the law school's overall ranking by 190 (total number of law schools plus one) and then multiplying by -1 . This converts the ranking so that the higher the number, the better the law school. This is necessary to compare to the flagship journal's impact factor and combined score, for which a higher number indicates a higher quality journal.

45. Stake, *supra* note 5, at 240.

46. Andrew P. Morriss, *Legal Education Through the Blurry Lens of US News Law School Rankings*, 20 GREEN BAG 2d. 253, 257 (2017).

the overall rankings still do not take this factor into account.⁴⁷ Regardless, increasing the quality of faculty scholarship would likely result in improved peer rankings but would have no impact on the overall rankings beyond the 25% weighting of the peer score in the overall rankings. Therefore, high-quality faculty scholarship could potentially explain a positive disparity between peer rankings and overall rankings. However, the data reveal that this potential explanation is counterproductive, as faculty scholarship makes the peer rankings disparities found in this study even less likely, not more likely. This is because, as mentioned from the 2015 study, conservative law professors are disproportionately *better* scholars, not worse.⁴⁸

D. Willingness to Game the System

One could theorize that it is not the peer rankings that are unjustifiably low for the conservative law schools and high for the liberal law schools but rather that the peer rankings are accurate and that it is the overall rankings that are unjustifiably high for the conservative law schools and low for the liberal schools. This would be highly unlikely given that the overall score is primarily the result of objective measures—and is, therefore, neither artificially high nor low but exactly what the objective measures produce. However, law schools sometime attempt to game the system to make these objective measures better than would otherwise be the case. The following are all examples of what law schools have done in an effort to improve their overall rankings:

- Pay underperforming graduates to not take the July bar exam, which results in an increased bar passage rate⁴⁹
- Temporarily hire unemployable graduates to increase the employment rate of graduating students⁵⁰
- Prefer potential students with high undergraduate GPAs from mediocre colleges as opposed to potential students with mediocre GPAs from exceptional undergraduate colleges in order to improve the law school's selectivity score⁵¹
- Pay the larger university directly for the law school's electricity expenditures from tuition dollars instead of having it deducted directly from the tuition, thus increasing the reported per-student financial outlays of the law school⁵²

47. *US News & World Reports Scholarly Impact Project*, HEIN ONLINE, <https://help.heinonline.org/kb/us-news-world-reports-scholarly-impact-project/> (last visited April 3, 2022).

48. Phillips, *supra* note 11, at 195–201. (Conservatives publish at significantly higher rates and their research is cited to at significantly higher rates.)

49. BARTON, *supra* note 7, at 151.

50. David Lat, *In Defense of Law Schools Hiring Their Own Graduates*, ABOVE THE LAW (Mar. 28, 2013, 6:06 PM), <https://abovethelaw.com/2013/03/in-defense-of-law-schools-hiring-their-own-graduates/>.

51. Stake, *supra* note 5, at 232.

52. *Id.* at 241.

- Blatantly falsify GPA and LSAT scores from entering students to increase the selectivity score⁵³

If a significant number of law schools engaged in these practices, then law schools who did not would have artificially lower overall rankings by comparison. Therefore, if the conservative law schools used in this study did not engage in these practices, but most other law schools did, this would provide a non-discriminatory reason why their peer ranks are less than their overall ranks.

While this objection is logically sound, it would be difficult to prove, as law schools are unlikely to go public with their involvement in such practices. Therefore, this alternative explanation for the peer rankings disparity found in this study is largely unprovable. Regardless, there is no reason to believe that liberal law schools are more likely to engage in these practices that game the system than conservative law schools. And even if this unlikely circumstance were true, the first four practices listed above would not come close to explaining the thirty-two-place difference between peer rankings and overall rankings. The fifth practice mentioned above—that of blatantly falsifying data—could result in extreme disparities, but it would be all but impossible for multiple law schools to get away with falsifying the data to such an extreme extent over the course of a twelve-year period.

E. More Elite Law Schools in the Liberal Group

In considering the law schools that make up the ten most conservative and the ten most liberal lists, it quickly becomes apparent that the liberal list is, on average, higher in both the overall and peer rankings. For the updated 2022 top-ten lists, there are five liberal law schools in the top twenty-five overall and peer rankings and none from the conservative list in the top twenty-five. But this is in no way a benign explanation for the disparities found in this research. This is because the ultimate starting point of a law school's overall rank is irrelevant when measuring how its peer rank deviates from this starting point. What matters is the upward or downward deviation in the peer rankings from the overall rankings.

As demonstrated, the potential non-discriminatory explanations are ineffective at explaining the existence of a thirty-two-place disparity between conservative and liberal law schools. Furthermore, any other attempt to provide a non-discriminatory explanation faces a daunting uphill battle. This is because any such explanation would have to overcome the strong evidence against anti-conservative bias in other areas of legal academia, as shown in the 2015 study.⁵⁴

F. Interpretations of the Increased Disparity Finding

The result of this updated study not only demonstrates that the extreme disparity between conservative and liberal law schools remains in existence but

53. Mangan, *supra* note 6.

54. See Phillips, *supra* note 11.

also demonstrates that the disparity has increased in recent years. While ultimately unquantifiable, it is interesting to consider possible explanations for this trend. This is likely the result of the simplest explanation, that political polarization is increasing in America.⁵⁵ This consistent trend may have experienced a steep increase since the 2020 study was conducted, as views on the COVID-19 pandemic were highly politically polarizing.⁵⁶ A number of other recent events demonstrate increased polarization. The events on January 6, 2021, at the Capitol was a stark demonstration of increased polarization. Harvard Law School students responded by acquiring more than 200 signatures calling for a ban on hiring former Trump administration officials.⁵⁷ And while the Black Lives Matter movement was established in 2013, the movement gained media attention starting in 2020 with controversial protests.⁵⁸

This updated study understates the magnitude of recent increases in ideological discrimination in peer rankings. This is because this updated study does not begin where the 2020 study left off. Instead, it uses the same starting point of the 2020 study, which is the 2012 rankings that came out in 2011. Therefore, the increase in ideological discrimination attributable to recent increases in political polarization are greatly mitigated by the breadth of the time period used. The last two years make up only 17% of the data used to calculate the average disparity. While the findings of this study regarding ideologically discriminatory rankings are conclusive, the cause-and-effect relationship between a general increase in political polarization in society and anti-conservative bias in peer rankings is more speculative.

G. Harm from Lack of Ideological Diversity

The original 2020 study discussed how punishing and rewarding law schools in the rankings for their political ideologies likely perpetuates discrimination against conservative law professors.⁵⁹ But this problem affects far more than just aspiring conservative law professors. The negative externalities of such ideological discrimination also infect legal education and

55. Levi Boxell, Matthew Gentzkow & Jesse M. Shapiro, *Cross-Country Trends in Affective Polarization* (Nat'l Bureau of Econ. Rsch., Paper No. 26669, 2021), https://www.nber.org/system/files/working_papers/w26669/w26669.pdf.

56. See, e.g., Thomas B. Edsall, *America Has Split, and It's Now in 'Very Dangerous Territory'*, N.Y. TIMES (Jan. 26, 2022), <https://www.nytimes.com/2022/01/26/opinion/covid-biden-trump-polarization.html>.

57. Emmy M. Cho, *Harvard Law Students Call on School to Refuse to Hire Former Trump Officials*, HARV. CRIMSON (Feb. 17, 2021), <https://www.thecrimson.com/article/2021/2/17/his-petition-trump-officials/>.

58. *Black Lives Matter: A Timeline of the Movement*, COSMOPOLITAN (Apr. 21, 2021, 9:56 AM), <https://www.cosmopolitan.com/uk/reports/a32728194/black-lives-matter-timeline-movement/>.

59. With the importance of law school rankings, law school deans are heavily incentivized to hire and promote faculty who will help, not hinder, their advancement in the rankings. Under the current rankings system and the severe conservative penalty, this would include discriminating against conservative faculty.

the practice of law.⁶⁰ And this type of systemic harm is naturally perpetuated because “teachers tend to recreate the system they know best—the one that produced them.”⁶¹

Lack of ideological diversity in the law school classroom and in legal scholarship functions to provide an inferior legal education.⁶² Six circuit courts have a majority Republican-appointed judges.⁶³ A majority of district courts have either a majority of Republican-appointed judges or an equal number of Democrat-appointed and Republican-appointed judges.⁶⁴ Even after President Biden’s first Supreme Court appointment, there will still be a majority of Republican-appointed justices.⁶⁵ Therefore, law students pay a high price for not being exposed to conservative thought. And liberal students are likely harmed to an even greater extent than conservative students since conservative students are more likely to seek out conservative legal voices outside of the classroom.⁶⁶ This is of paramount importance, as understanding the best arguments from the conservative side will better equip liberals to argue for liberal causes.⁶⁷ Finally, only being exposed to one side of nuanced issues hinders the ability of liberal students to modify their positions in light of a fair assessment of the strongest arguments from both sides.

For this same reason, ideological discrimination is harmful to society at large because people who hire lawyers may rely on the overall rankings of their law schools as a proxy for lawyer quality.⁶⁸ Therefore, an ideologically discriminatory factor in the overall rankings is counterproductive because most people would likely prefer to hire a lawyer who is familiar with—and therefore better equipped to address—conservative arguments and conservative judges.

60. See Phillips, *supra* note 11, at 158.

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

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

63. There are Republican-appointed majorities in the Third, Fifth, Sixth, Seventh, and Eighth Circuit Courts of Appeals. See *Current Federal Judges by Appointing President and Circuit*, BALLOTPEdia, https://ballotpedia.org/Current_federal_judges_by_appointing_president_and_circuit (last visited Apr. 10, 2022).

64. There are thirty-five Republican-appointed majorities, sixteen tied Republican-Democrat-appointed judges, and forty Democrat-appointed majorities on district courts. See *id.*

65. Currently, Alito, Roberts, Thomas, Gorsuch, Kavanaugh, and Barrett are Republican-appointed, and Sotomayor, Kagan, and Breyer are Democrat-appointed. When Breyer leaves the bench at the end of the 2021–2022 term and is replaced by Ketanji Brown Jackson, the number of Republican-appointed and Democratic-appointed Justices will remain the same.

66. See Jeremy A. Frimer, Linda J. Skitkab & Matt Motylb, *Liberals and Conservatives Are Similarly Motivated to Avoid Exposure to One Another’s Opinions*, 72 J. EXPERIMENTAL SOC. PSYCH. 1 (2017).

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

68. See 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, 596 (2003).

In this way, including peer assessment scores in the overall rankings contributes to hiring-market inefficiencies.

H. Employment Discrimination Analogy

To demonstrate the extreme nature of the disparities uncovered in this research, imagine the following hypothetical analogy of employment discrimination: A business with 189 employees gives raises and promotions based on a combination of an overall score from objective employee performance and a subjective ranking score. Research finds that for the ten most devout Muslim employees, their subjective ranking is, on average, nineteen spots below where one would expect it to be based on their objective employee performance. Furthermore, for the ten most Christian employees, their subjective ranking is thirteen spots above where one would expect it to be based on their objective employee performance. Further imagine that while the employees who make up these two top-ten lists vary from year to year, the drastic disparity against Muslims and for Christians remains the same. And finally, imagine that emails surface demonstrating that when the Muslim employees attempt to conduct the training that is required for promotions, they are sometimes prevented from doing so based on their religion.

A hypothetical person being made aware of such extreme evidence of discrimination would have no reasonable choice but to acknowledge its existence. Such a person is, of course, free to hope and wish against the odds for some as-of-yet unknown, benign explanation of the evidence to emerge. But until such an explanation comes along, the conclusion that pervasive discrimination is involved is the only logical conclusion. Likewise, the evidence for ideological discrimination in legal academia is more than enough to overwhelm even the most skeptical observer who honestly considers the evidence. Such a person is free to hope and wish for some as-of-yet unknown, benign explanation to emerge. But until it does, the conclusion that pervasive discrimination is involved is the only logical conclusion.

VI. PROPOSED SOLUTION

If there is a silver lining to be found in this research, it is the existence of a simple and effective solution. Peer review scores should be excluded as a factor in the overall rankings. Even disregarding their discriminatory effect, peer rankings as a factor in the overall rankings makes little sense. Most prospective law students likely care far more about small class sizes, minimizing debt, campus amenities, passing the bar, and acquiring a job upon graduation. Therefore, student-faculty ratio, average student debt, per-pupil spending, bar passage rates, and employment rates should be emphasized in the overall rankings. While all of these factors are currently present in the overall rankings formula, the peer assessment score is weighted more than any of

them.⁶⁹ Furthermore, there already exists a lawyers and judges assessment score that contributes to the overall score.⁷⁰ The average law student likely finds this metric far more significant, as lawyers and judges hire many more law school graduates than do law school deans.

When the lack of ideological diversity is understood, it becomes highly peculiar how little law schools devote to the topic when compared to other categories of inequalities, such as racial imbalances. After all, focusing on the race of faculty and students is a rather circuitous method of achieving increasing diversity of opinion. Even worse, using race as a proxy for increasing diversity of opinion perpetuates harmful stereotypes. This is because implicit in the logic that increasing minority professors will increase diversity of ideas is the belief that different races necessarily think differently, which is at the heart of much white supremacist advocacy.⁷¹

Even if the issue of ideological discrimination were absent, there is still good reason to remove peer rankings as a factor in the overall rankings. This is because the peer assessment rankings are affected by the objective factors already measured in the overall rankings. If a law school significantly improves its former student bar passage rates and entering student credentials, it is more likely to receive improved rankings from voting deans.⁷² Therefore, the peer assessment score and the other factors, such as the bar passage rate and entering student LSAT scores, are collinear terms.⁷³ In statistics, it is prudent to remove at least one of two collinear terms. And here, it is clearly the best practice to remove the one that is subjective and perpetrates harmful discrimination.⁷⁴ One final benefit to using objective factors instead of peer rankings in the overall rankings is that peer rankings are a lagging indicator.⁷⁵ Changes in objective factors, such as entering LSAT scores, immediately impact the rankings, while peer rankings are far less responsive.⁷⁶

CONCLUSION

This Article produces a strong, cumulative case for the existence of ideological discrimination in law school in general and, more specifically, in the peer rankings. The conclusion of ideological discrimination is further

69. For example, the bar passage rate is weighted only 3%, while the peer assessment score is weighted 25%. See Morse et al., *supra* note 3.

70. See *id.*

71. See Michael E. Ruane, *A Brief History of the Enduring Phony Theories That Perpetuates White Supremacy*, WASH. POST (Apr. 30, 2019, 11:38 AM), https://www.washingtonpost.com/local/a-brief-history-of-the-enduring-phony-science-that-perpetuates-white-supremacy/2019/04/29/20e6aef0-5aeb-11e9-a00e-050dc7b82693_story.html.

72. Although, these factors do affect the peer rankings on a delayed timeframe. See Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 500 (2017).

73. Ryan, *supra* note 24, at 25–26.

74. See *id.*

75. See Ryan & Frye, *supra* note 72, at 506.

76. See *id.* at 503.

strengthened when the results of this research are considered in tandem with the compelling evidence of ideological discrimination in hiring law professors⁷⁷—a decision in which law school deans also play a significant role. Because peer rankings are the leading factor in the overall rankings, this anti-conservative bias also inflicts a conservative penalty there as well, although less severe.

While the magnitude of ideological bias discovered in this study may be surprising, the notion that law school deans—consciously or otherwise—apply a conservative penalty and liberal bonus when ranking law schools is not surprising. The political ideologies of law school deans are likely comparable with those of law school faculty—which are highly disproportionately liberal.⁷⁸ Political ideology is a significant factor that affects how people interpret information.⁷⁹ Just as a conservative may view a liberal law school with heightened skepticism, it appears liberal law school deans view conservative law schools in this same way. Recent polarizing events such as the January 6 Capitol insurrection, COVID-19, and the Black Lives Matter movement are ideal candidates for why this ideological bias has increased since the 2020 study.

This Article documents the harm to conservative professors, law students, and society at large from ideological bias in law school rankings. Fortunately, there is a simple solution to the problem. Removing the peer score from the overall rankings calculation will reduce such harm while providing the benefits of better informing prospective law students, reducing inefficiencies in the hiring market, and contributing to greater ideological diversity in law schools and legal scholarship.

77. See Phillips, *supra* note 11.

78. See generally Bonica, *supra* note 13.

79. See, e.g., Jennifer Jerit & Jason Barabas, *Partisan Perceptual Bias and the Information Environment*, 74 J. POL. 672, 672 (2012) (“[P]eople perceive the world in a manner consistent with their political views. The result is a selective pattern of learning in which partisans have higher levels of knowledge for facts that confirm their world view and lower levels of knowledge for facts that challenge them.”).