

HEINONLINE

Citation: 81 Ind. L.J. 141 2006

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Wed Jun 19 11:02:06 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0019-6665](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0019-6665)



Retrieved from DiscoverArchive,
Vanderbilt University's Institutional Repository

This work was originally published in
81 Ind. L.J. 141 2006

An Empirical Study of Empirical Legal Scholarship: The Top Law Schools[†]

TRACEY E. GEORGE^{*}

“For the rational study of the law[,] . . . the man of the future is the man of statistics and the master of economics.”¹

– Oliver Wendell Holmes (1897)

“[I]t is vitally important to determine whether the law is based on sound assumptions about how the world works and to what extent a particular law or process is achieving its stated objective and at what cost.”²

– N. William Hines, President of Association of American Law Schools (AALS) (2005)

Empirical legal scholarship (ELS) is arguably the next big thing in legal intellectual thought. ELS, as the term is generally used in law schools, refers to a specific type of empirical research: a model-based approach coupled with a quantitative method. The empirical legal scholar offers a positive theory of a law or legal institution and then tests that theory using quantitative techniques developed in the social sciences. The evidence may be produced by controlled experiment or collected systematically from real world observation. In either event, quantitative or statistical analysis is a central component of the project.

Empirical research in law is not new.³ Law professors, in the past, offered statistical studies on issues small, say parking violations in New Haven in the 1940s,⁴ and large, such as jury versus judge verdicts in criminal trials.⁵ Despite Holmes’s forecast, however, work of this type was uncommon in law schools through most of the last century.⁶ Few legal scholars published empirical studies in law reviews, the primary

[†] Copyright 2006 Tracy E. George. All rights reserved.

^{*} Professor of Law, Vanderbilt University. My thanks to the organizers of the Indiana Law Journal Symposium on The Next Generation of Law School Rankings, including Paul Caron, Rafael Gely, Bill Henderson, and Jeff Stake. I benefited from thoughtful comments by Paul Edelman, Ted Eisenberg, Chris Guthrie, Russell Korobkin, Bert Kritzer, Bob Lawless, Mark Lemley, Andy Morriss, Margo Schlanger, Michael Solimine, and symposium organizers and attendees. Judy Rose of the Law & Society Association and Tracie Thomas of AALS offered valuable data about their respective organizations. Sarah Krause, Swarna Vallurupalli, and Dawn Johnson provided excellent research assistance.

1. Oliver W. Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1920).

2. N. William Hines, President, AALS, Opening Speech at the AALS 2005 Annual Meeting (Jan. 2005).

3. Social scientists were conducting empirical studies of law and/or legal institutions throughout this period. I am interested here in law professors undertaking such work.

4. See Underhill Moore & Charles C. Callahan, *Law and Learning Theory: A Study of Legal Control*, 53 YALE L.J. 1 (1943).

5. See HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* (1966).

6. See Robert W. Gordon, *Lawyers, Scholars, and the “Middle Ground,”* 91 MICH. L. REV. 2075, 2085 (1993) (arguing that empirical research “remains to this day the most neglected and ridiculously undervalued as well as the most potentially fruitful branch of legal studies”).

forum for legal academic discourse. Doctrinal work dominated legal scholarly writings, and it still does.⁷ But ELS recently and dramatically has expanded in law reviews,⁸ at conferences,⁹ and among leading law faculties.¹⁰ William Hines, the current President of the Association of American Law Schools (AALS), has ordained ELS as the central theme of his tenure.¹¹ This paper evaluates law schools based on their place in the ELS movement and offers an essential ranking framework that can be adopted for other movements as well.

A scholarly movement ranking offers two contributions to law school rankings beyond merely providing intriguing substantive results: a quasi-prospective perspective and an intellectual-environment evaluation.¹² Most rankings of law schools are inherently retrospective. They are built on essentially lagged variables, including polls, incoming student qualifications, and graduating students' job and bar successes. Forty

7. See *id.* at 2100 (observing that “doctrine is still the staple commodity, even in the reviews edited at fancy schools that go in for the fancy new stuff”); Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323, 329 (1989) (“[T]wo forms of legal writing—doctrinal and theoretical—account for almost the entire corpus of legal scholarship. Only a tiny fraction is devoted to the gathering of *new* facts about how law actually operates and affects us.”) (emphasis in original); but see Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (criticizing legal scholarship for, among other things, a lack of attention to legal doctrine).

8. For example, the *University of Illinois Law Review* devoted its 2002 symposium to the topic. Symposium, *Empirical and Experimental Methods in Law*, 2002 U. ILL. L. REV. 791. See also Richard H. McAdams & Thomas S. Ulen, *Introduction to Symposium on Empirical and Experimental Methods in Law*, 2002 U. ILL. L. REV. 791, 791 (explaining the motivations for the symposium including the seeming increase in empirical methods in legal scholarship); Thomas S. Ulen, *A Nobel Prize in Legal Science: Theory, Empirical Work, and the Scientific Method in the Study of Law*, 2002 U. ILL. L. REV. 875, 909–14 (considering in more detail the claim of increased empiricism in law). ELS also will be the focus of *Vanderbilt Law Review's* upcoming symposium, “Crunching the Numbers on Empirical Legal Scholarship.”

9. The Law and the Social Sciences and Scholarship Sections of the AALS co-sponsored a program examining “New Approaches to Empirical Legal Research” at the 2001 Annual Meeting, and the AALS 2006 Annual Meeting will take ELS as its primary focus.

10. Harvard University, Northwestern University, the University of California at Los Angeles, and Washington University in St. Louis, among others, have ELS working groups, seminars, and/or centers. See *infra* note 40.

11. He selected the theme because it would continue AALS's effort to “solidify the claim that [it is] indeed THE learned society of scholars for the discipline of law in the United States.” N. William Hines, *The President's Message: Empirical Scholarship: What Should We Study and How Should We Study It?*, NEWSLETTER (AALS, D.C.), Feb. 2005, at 1–3 (emphasis in original).

12. I suppose it also *may* offer a third contribution: it encourages empirical legal scholarship. Or, more precisely, it encourages those activities—hiring social scientists and supporting publication in peer-reviewed, interdisciplinary journals—that I argue foster ELS. Cf. Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403, 417–22 (1998) [hereinafter Korobkin, *In Praise of Law School Rankings*] (arguing that the inclusion of faculty academic reputation in a ranking induces law schools to support scholarship); Russell Korobkin, *Ranking Journals: Some Thoughts on Theory and Methodology*, 26 FLA. ST. U. L. REV. 851, 857–60 (1999) (describing the incentives created by ranking academic journals).

percent of the *U.S. News & World Report* (“*U.S. News*”) ranking, for example, is based on surveys of senior members of law schools, firms, or courts.¹³ These respondents are likely to be disproportionately influenced by significant events, such as faculty publications or lateral hires, from the respondent’s formative years rather than recent ones.¹⁴ Students make application and enrollment decisions based on previous years’ published rankings. A school’s bar passage rate is related to the quality of graduating students, which in turn depends in part on the school’s ranking three or more years earlier. Law firms and other employers generally prefer to hire students from higher-ranked schools; accordingly, placement is a product of a school’s ranking at the time of the significant hiring decision (usually fall of the second year). Such a retrospective approach may provide information about where to find the best law students and thus would be sufficient to serve the purposes of the legal job market.¹⁵ But it is relatively insensitive to changes in a school’s intellectual life.¹⁶ The ELS ranking, by contrast, recognizes schools that are intellectual leaders in an emerging field.

An ELS ranking also offers insights to the intellectual life at law schools. With any relatively new school of thought, there is interest in its development and sources. This ranking offers that information, highlighting new scholarly leaders. Moreover, a scholarship-based approach also may contribute indirectly to the intellectual richness of law schools. Rankings provide incentives to take actions to improve one’s position in that ranking.¹⁷ A ranking based on a school’s intellectual environment should encourage schools to produce legal scholarship, a valuable public good, and a ranking based on emerging ideas will create an incentive to be part of new fields.

13. The exception is the *U.S. News* practice of soliciting feedback from one newly tenured person. The other surveyed faculty members are the Dean, academic associate deans, and chair of faculty appointments—all typically filled by tenured professors in the profession more than ten years. See *Law Methodology*, in *AMERICA’S BEST GRADUATE SCHOOLS 2006* (2005), http://www.usnews.com/usnews/edu/grad/rankings/about/06law_meth_brief.php. Similarly, the surveyed “legal professionals” are a sample of law firm hiring partners, state attorneys general, and federal and state judges. *Id.* These lawyers are senior members of the profession.

14. Respondents will be inclined to recall information about a school’s scholarly output based on its consistency with their existing beliefs about that school’s intellectual reputation. Those beliefs begin to form early in a person’s professional career; thus, a person’s present opinion about a law school’s relative status will be highly correlated or even the product of her preliminary view.

15. See Korobkin, *In Praise of Law School Rankings*, *supra* note 12, at 409–14, 426 (1998). Korobkin explains how “rankings . . . coordinate the channeling of the most capable students to the most desirable legal employers.” *Id.* at 426.

16. Professors may make career decisions—for example, where to move—based at least in part on these same rankings. Thus, law school rankings affect the contribution of new blood to a school’s intellectual life. I think an intellectual-movement ranking (such as the ELS ranking), however, measures that effect more directly than rankings intended primarily for students.

17. Russell Korobkin, in his keynote address, argued that we can harness the positive power of law school rankings. He observed in his comments and in his published paper that scholarship is a public good unique to law schools. Therefore, rankings that encourage the production of this good are valuable. Russell Korobkin, Keynote Address, *Harnessing the Positive Power of Rankings: A Response to Posner and Sunstein*, 81 *IND. L.J.* 35, 44–45 (2006).

A law school's intellectual life and academic reputation depend in significant measure on the scholarly activities and status of the faculty.¹⁸ Academic reputations in turn often depend on participation in the leading debates of the day. The close connection between an individual scholar's success and her institution's status may be seen in the association of intellectual movements with particular law schools: legal process and Harvard, legal realism and Yale, law and society and Wisconsin, law and economics and Chicago, critical legal studies and Stanford. With which school will we associate empirical legal scholarship?

The present article proceeds in three parts. Part I offers an account of the rise of ELS in order to support, albeit briefly, my claim that ELS is the most significant emerging intellectual movement. Part II presents measures for law schools that foster and promote an intellectual movement, ELS in particular. Part III offers empirical findings as well as methodological details. I conclude with a consideration of how things may change over the next few years.

I. A BRIEF INTELLECTUAL HISTORY OF EMPIRICAL LEGAL SCHOLARSHIP

Law professors dating back to Holmes have looked to non-law disciplines to inform their analyses of legal questions. But while other academic fields increasingly adopted the scientific method during the twentieth century,¹⁹ law did not.²⁰ Non-law academic research in the physical and social sciences focused on formulating hypotheses and testing them against relevant data collected through observation and experiment. Most academic law writings, by contrast, concentrated on legal issues and evaluated them in the same way as judges writing opinions.²¹

Legal realism was the first movement likely to bring empiricism to law. Indeed many legal realists expected empirical research to reveal the true nature of law.²² These

18. Cf. Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1525–30 (2004) (examining trends in explicitly ranking law schools based on the performance of individual professors).

19. For an account of the rise of social *science* in American universities, see MARY O. FURNER, *ADVOCACY AND OBJECTIVITY: A CRISIS IN THE PROFESSIONALIZATION OF AMERICAN SOCIAL SCIENCE, 1865–1905* (1975); THOMAS L. HASKELL, *THE EMERGENCE OF PROFESSIONAL SOCIAL SCIENCE: THE AMERICAN SOCIAL SCIENCE ASSOCIATION AND THE NINETEENTH-CENTURY CRISIS OF AUTHORITY* (1977); DOROTHY ROSS, *THE ORIGINS OF AMERICAN SOCIAL SCIENCE* (1991).

20. See Hines, *supra* note 11, at 4 (remarking on “a near consensus [among prominent legal scholars in the mid-1990s] that there was a need for a much greater emphasis on empirical research in law”).

21. See Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1315 (2002) (explaining that law professors adopted, and continue to adopt, the “methods of argument and proof as found in judicial opinions” because they seek to affect judges and other influential lawyers).

22. See, e.g., KARL N. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* (1960). In this discursive, Toynbeeian text on testing the “method” of American legal realism, Llewellyn delineated and captured the primary themes of realism and provided descriptive accounts of different appellate courts to support the behavioral implications of these themes. See *id.* Law reviews devoted much space—sometimes entire issues—to such work. See, e.g., Symposium, *Empirical Approaches to Judicial Behavior*, 42 U. CIN. L. REV. 589 (1973);

scholars frequently did look to other disciplines for their studies, but very few engaged in observational studies.²³ The empirical ambitions of legal realism went unrealized. The realist revolution, however, did improve the chances for ELS by opening legal scholarship to the views of other academic fields.

Law and economics was one of the early heirs of realism and also appeared likely to lead to increased levels of ELS.²⁴ Legal scholars have embraced microeconomic theory, notably the rational actor paradigm, since at least the early 1980s,²⁵ but *most* of that work remained primarily theoretical. Law professors used economic theory to evaluate how rules could work, but they failed to test whether such rules led in fact to the hypothesized results. The resulting scholarship lacked empirical data to support foundational assertions or tests of essential hypotheses.²⁶

The law and society movement also grew in the post-realist legal academy. As Lawrence Friedman, a founder, explained, law and society participants “share[d] a commitment to explain legal phenomena (though not necessarily *all* legal phenomena) in terms of their social setting.”²⁷ The Law & Society Association embraced empirical scholarship of every conceivable type. The group started small, with 150 registrants at its first meeting in 1975, but more than doubled by 1985 to approximately 350 registrants and again by 1995 to approximately 800.²⁸ The Law & Society Association’s intellectual inclusiveness allows it to continue to grow in influence (more than one thousand people registered for the 2005 meeting), but prevents it from having

Symposium, *Social Science Approaches to the Judicial Process*, 79 HARV. L. REV. 1551 (1966). For a discussion of this period, see Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962–1987*, 100 HARV. L. REV. 761 (1987) [hereinafter Posner, *Decline*].

23. See generally LAURA KALMAN, *LEGAL REALISM AT YALE 1927–1960* (1986); JOHN HENRY SCHLEGEL, *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* (1995) (offering a careful examination of the role of empirical methodology in realist scholarship).

24. See, e.g., GUIDO CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* (1970); RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (1st ed. 1972).

25. For competing studies of the trajectory of law and economics, compare William M. Landes & Richard A. Posner, *The Influence of Economics on Law: A Quantitative Study*, 36 J.L. & ECON. 385, 424 (1993) (arguing that “the influence of economics on law” as reflected in citation trends “was growing at least through the 1980s”), with Robert C. Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI.-KENT L. REV. 23, 26–34 (1989) (concluding that law and economics, after a period of dramatic growth in the 1960s and 1970s, was in a period of “steady-state” by the 1980s), Owen M. Fiss, *The Law Regained*, 74 CORNELL L. REV. 245 (1989), and Morton J. Horwitz, *Law and Economics: Science or Politics?*, 8 HOFSTRA L. REV. 905 (1980) (claiming that the movement was in decline by the 1980s). More recently, Ellickson has concluded that “law and economics seems to have been slowly gaining yet more ground in law reviews, particularly during 1991–96,” based on various proxies such as references to game theory and human capital. Robert C. Ellickson, *Trends in Legal Scholarship: A Statistical Study*, 29 J. LEGAL STUD. 517, 524–25 (2000) [hereinafter Ellickson, *Trends in Legal Scholarship*].

26. See generally Russell Korobkin, *A Multi-Disciplinary Approach to Legal Scholarship: Economics, Behavioral Economics, and Evolutionary Psychology*, 41 JURIMETRICS J. 319, 320–23 (2001) (characterizing law and economics scholarship as primarily deductive).

27. Lawrence M. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763, 763 (1986).

28. See e-mail from Judy Rose, Law & Society Association, to Tracey E. George, Professor of Law, Vanderbilt University (July 7, 2005) (on file with author).

an intellectual framework. Today, it includes ELS as well as many other distinctive methods that share only a “context matters” perspective.

ELS as an intellectual movement does not and cannot include all legal academic work that makes empirical claims. Nearly all law review scholarship offers some statement about the real world, and thus has an empirical component.²⁹ Doctrinal work, for example, builds on the author’s account of existing law in order to propose the best legal solution to a question. ELS scholars, unlike doctrinalists, take a primarily positive approach and utilize the scientific method to evaluate the relevant evidence. But, unlike most social scientists, ELS scholars generally offer some connection between their positive results and normative alternatives. ELS has various strands: behavioral law and economics, judicial politics, positive political theory, experimental economics, and so on.³⁰

AALS is focusing its attention this year on ELS. AALS President N. William Hines has chosen as the theme for the 2006 AALS annual meeting “Empirical scholarship: what should we study and how should we study it?” And AALS has had a section devoted to social science technique since 1982, when it established the Law and the Social Sciences section “to promote communication among those persons who are interested in using the empirical techniques of the social sciences to study legal problems and institutions.”³¹

Robert Ellickson, in a recent citation analysis of trends in legal scholarship, found that “number crunching” is rising in law journals.³² He created a proxy to measure the number of articles reporting empirical results: inclusion of the words “statistical significance” (or some variant) or “Table 1.”³³ The number of articles with either term nearly doubled from 1982 to 1996.³⁴ However, the frequency of references to “empirical” or “quantitative” stayed constant during this time, leading Ellickson to conclude that scholars are increasingly likely to produce their own empirical research but not to cite such work by others.³⁵

29. Professors Lee Epstein and Gary King make this point effectively in an article arguing that because nearly all legal scholarship makes empirical claims, it must also satisfy basic inferential rules. Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1 (2002).

30. See, e.g., Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476, 1500 (1998) (explaining that whereas much of law and economics builds on a hypothetical rational actor, *behavioral* law and economics (BLE) considers whether real people behave consistently with the rationality assumptions and, unlike most law and economics scholars, BLE scholars test the predictions of their models).

31. *Proposed Bylaws of the Section on Law and the Social Sciences*, BYLAWS (Ass’n of Am. Law Sch., D.C.), June 1985, at 1, 1 (on file with author). Past chairs of the section have come from an array of law schools with three of the last ten from Cornell University (Professors Rachlinski in 2004, Heise in 2000 while he was at Case Western University, and Eisenberg in 1996). See e-mail from Tracie Thomas, Senior Meeting Manager, Association of American Law Schools, to Tracey E. George (Feb. 15, 2005) (on file with author).

32. Ellickson, *Trends in Legal Scholarship*, *supra* note 25, at 528–30 (analyzing data from Westlaw’s JLR database).

33. *Id.*

34. See *id.* at 528–29 & tbl.4.

35. *Id.* at 528.

I provide an approximation of the Ellickson figures on ELS to determine what has passed in the nearly ten years since his study ended.³⁶ Table 1 reports the results: the number of references to ELS phrases—*empiric*, *empirical*, *quantitative*, *statistically significant*, *statistical significance*, Table 1—continues to grow. (The last column is based on approximately two years' worth of journals, reflecting the lag in real, rather than printed, publication dates.)

Table 1. ELS references in law reviews: An Ellickson-based score

	1994–1996	1997–1999	2000–2002	2003–6/2005
<i>empiric!</i>	9003	10188	11245	9689
<i>quantitat!</i>	3462	3734	4177	3531
<i>statistic! significan!</i>	1363	1613	1825	1532
Table 1	2031	2237	2788	2384

NOTE: There is a small difference between my results for 1994–1996 and Ellickson's for the same period, which may be due to error from his use of a "deflator" to allow comparisons across time despite changes in the composition of JLR, or from the addition of documents from that time period after he ran his search. Frequently editorial boards publish volumes months or even years late, but their publication date remains the date printed on the volume rather than the actual date of release. This fact also makes it difficult to compare the most recent period (and last column) to earlier periods.

The phrase "statistical significance" and its variants may be the best proxy for ELS work because the expression is most likely to appear in articles that include quantitative analysis. (ELS work may refer instead to the particular test statistic used. Or the article may describe the concept in more meaningful terms for a lay audience and to avoid confusion with practical significance.) We can see yearly increases in "statistical significance" mentions from 1990 in figure 1.

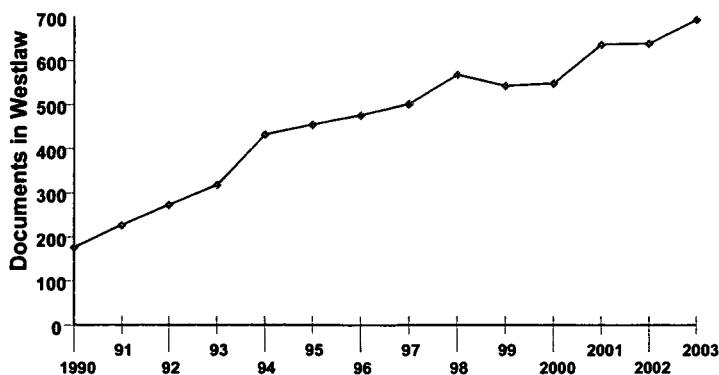


Figure 1. Number of references over time to "statistic! significan!" in Westlaw's JLR database.

36. The search for references to "empiric!" required that I search by individual years to overcome the 10,000 list limit in Westlaw. To locate documents citing "statistical significance" and its variants, I ran the following search in Westlaw's JLR database: date(>[year prior to beginning date] and <[year following ending date]) & (statistic! /1 significan!).

II. THE RANKING EQUATION

Several schools are highly visible in empirical legal scholarship.³⁷ The University of Chicago and Cornell University publish journals in the field.³⁸ Northwestern University, the University of Pennsylvania, and the University of Southern California (USC) routinely hire entry-level candidates with social science doctorates.³⁹ Harvard University, the University of California at Los Angeles (UCLA), and Washington University in St. Louis have working groups focused on ELS.⁴⁰ A ranking of a large

37. Interestingly, the present symposium could have served as an ELS meeting ground because many participants engage in ELS: Scott Baker, Paul Caron, Ted Eisenberg, Rafael Gely, Bill Henderson, Russell Korobkin, Andy Morriss, Michael Solimine, and so on.

38. The University of Chicago began publishing the *Journal of Law and Economics* in 1958 and the *Journal of Legal Studies* in 1972, and Cornell University started the *Journal of Empirical Legal Studies* in 2004.

39. Lawrence Solum reported on “Hiring Trends at 18 ‘Top’ American Law Schools” in his Legal Theory Blog. The data includes all professors who were hired between the 2000 and 2004 academic years and were still on a school’s faculty at the end of the period. (For example, Richard Brooks, who was hired by Northwestern University in 2000 and moved to Yale University in 2003, is included in Yale’s number but not in Northwestern’s.) He found that more than half of these hires at the University of Pennsylvania, the University of Southern California, Northwestern University, Stanford University, the University of Michigan, Columbia University, and Yale University held non-law doctorates (in descending order). Lawrence Solum, *Hiring Trends at 18 “Top” American Law Schools*, LEGAL THEORY BLOG, <http://lsolum.blogspot.com> (July 19, 2004, 11:24 EST).

40. Harvard’s Program on Empirical Legal Studies (PELS) promotes the use of “empirical analysis in legal scholarship and teaching. . . . PELS’ activities focus on four main areas: 1) The performance of the legal system. . . . 2) Health, safety, and environmental risks. . . . 3) Empirical analysis of work-family interactions. . . . 4) Original data development.” Harvard University, Program on Empirical Legal Studies, <http://www.law.harvard.edu/programs/pels/about.htm> (last visited Sept. 18, 2005). UCLA’s Empirical Research Group (ERG), “is a methodology-oriented research center at the UCLA School of Law. It specializes in the design and execution of quantitative research in law and public policy, and enables the law faculty to include robust empirical analysis in their legal scholarship.” UCLA School of Law, Empirical Research Group, <http://www.law.ucla.edu/home/index.asp> (follow “Centers & Programs” hyperlink; then follow “Empirical Research Group” hyperlink) (last visited Sept. 18, 2005); see also Rick Sander & Joe Doherty, *ERG: Empirical Research Group*, UCLA LAW MAGAZINE, Fall/Winter 2000–01, at 70, available at <http://www.law.ucla.edu/administration/publications/alumnimag2001/uclalaw2001pg68-77.pdf>. Washington University’s Workshop on Empirical Research in the Law (WERL)

is a group of Washington University legal and social science scholars that have worked to encourage and facilitate the proper use of empirical methods in legal studies, and of legal materials in social science work. . . . In order to facilitate better empirical research in the legal context, WERL leads a yearly mini-course on Conducting Empirical Legal Scholarship designed for scholars from across the country.

Washington University in St. Louis, Workshop on Empirical Research in the Law, <http://werl.wustl.edu> (last visited Sept. 18, 2005). For a similar program at Northwestern

number of schools requires systematic measures—or proxies—for the role of ELS at a school.

My scholarly movement ranking focuses on faculty because they are the source of a school's intellectual life. The advantages of a faculty-based as opposed to a program-based measure are as follows: (1) it reflects the amount of money committed to an intellectual activity because hiring requires salaries and benefits, whereas workshops do not necessarily mean money; (2) faculty reflect a *long-term* investment where centers do not (programs may come and go, but tenure is forever); (3) individuals are more likely to conduct relevant scholarship now and in the future because they have invested in educational development and skills; and (4) professors are the closest measure of intellectual environment.

I focus on faculty characteristics related to the intellectual output and environment of an institution, specifically those variables that affect the faculty's work and reflect it as well: education, institutional roles, and publications. Using these categories, I adopt several proxies for a strong ELS environment: professors with social science doctorates,⁴¹ professors with secondary appointments in social science departments, and publications in journals that publish empirical legal scholarship.

A. Educational Background and Training

Law professors with social science doctorates *usually* are better positioned to undertake empirical research than are other professors.⁴² Law schools generally do not

University, see Northwestern University School of Law, Empirical Legal Studies, <http://www.law.northwestern.edu/colloquium/empirical> (last visited Sept. 4, 2005).

41. Social sciences in the present study are anthropology (or cultural or social anthropology), economics (or agricultural economics), linguistics, political science (or government, politics, or political economy), psychology (or social psychology), sociology, and statistics. I also include some uncommon doctoral programs that rely on social science theory and methodology: the University of California, Berkeley Law School Ph.D. in Jurisprudence and Social Policy (JSP), the University of Pennsylvania Ph.D. in Criminology, and the University of Pennsylvania Wharton School Ph.D. in Business and Public Policy. See UC Berkeley School of Law, Jurisprudence and Social Policy: A Law and Society Doctoral Program, <http://www.law.berkeley.edu/academics/jsp> (last visited Sept. 4, 2005) ("The program promotes the study of legal and political institutions through the perspectives and methods of criminal justice, economics, history, philosophy, political science and sociology. The JSP program core faculty accordingly consists of humanists and social scientists who combine scholarship and teaching in their own disciplines with the study of law."); University of Pennsylvania Department of Criminology, Ph.D. in Criminology, <http://www.crim.upenn.edu/phd.htm> (last visited Sept. 4, 2005) ("Penn's 21st Century Ph.D. in criminology explores the frontiers between sociology and demography with medical, legal, neurological, genetic and psychological perspectives on crime and crime prevention."); Wharton Doctoral Programs, Business and Public Policy, <http://www.wharton.upenn.edu/doctoral/programs/business> (last visited Sept. 4, 2005) ("The Business and Public Policy program trains students to use economic tools to analyze problems in business and public policy. Students are also encouraged to draw on other social science perspectives (e.g. political science and decision sciences). The program seeks to prepare students for research careers.")

42. See Michael Heise, *The Importance of Being Empirical*, 26 PEPP. L. REV. 807, 817–18 (1999) (considering lack of training as one of the various explanations for the dearth of ELS); Craig A. Nard, *Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and the Profession*, 30 WAKE FOREST L. REV. 347, 362 (1995) (reporting, based on a telephone

teach courses in survey methodology, statistical analysis, or research design. Graduate social science programs do. Indeed, it would be nearly impossible today to get a doctorate in a social science without completing a mathematical methods sequence. (Masters programs, by contrast, do not necessarily require these courses.) Thus, a law school with a greater proportion of its faculty holding social science doctorates is more likely to produce ELS than a law school with a lower proportion.

The number of social scientists on a law faculty is also evidence of a positive ELS environment for the *entire* faculty. Non-social scientists benefit from the presence of social scientists for informal interactions, such as advice on how to undertake an empirical project or what method would be appropriate, and for formal collaborations, such as co-authorship. While law professors are much less likely than social scientists to publish with co-authors, a trend toward increased collaboration can be seen in law schools.⁴³ Thus, the number of social scientists is a signal that a non-social scientist may be pursuing an empirical research agenda.

B. Institutional Role

Law professors with appointments in social science departments would seem more likely to be engaged in ELS research. Likewise, a law school with close ties to social science departments is more likely to support social science research. Such joint appointments are a signal of interdisciplinary spirit at the school as well as increased prospects for cross-fertilization. Of course, an appointment does not equate to activity in another department, nor does it require engagement in empirical scholarship. But, as a proxy, this measure tells us something about a school.

Law schools that extend secondary or courtesy appointments to social science professors also are more likely to be receptive to interdisciplinary work that includes empirical research and quantitative methods. However, such courtesy appointments in law are less significant than tenure-track appointments. For that reason, my measure focuses only on professors whose primary appointment is in law.

C. Scholarship

Evaluating law schools and other academic departments based on research output is a well-established practice.⁴⁴ Ranking schools based on scholarly production is both (relatively) appealing and familiar. By recognizing institutions based on scholarship,

survey of forty law professors selected at random from twenty schools, that nearly 90% thought “there is a lack or shortage of empirical research in legal scholarship,” and more than 80% of that group attributed the lack of research to “lack of training”).

43. See Tracey E. George & Chris Guthrie, *Joining Forces: The Role of Collaboration in the Development of Legal Thought*, 52 J. LEGAL EDUC. 559 (2002).

44. See, e.g., Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 427 (2000); Michael J. Ballard & Neil J. Mitchell, *The Good, the Better, and the Best in Political Science*, 31 PS: POL. SCI. & POL. 826 (1998) (ranking American university political science departments based on work in nine elite journals); Richard Dusansky & Clayton J. Vernon, *Rankings of U.S. Economics Departments*, 12 J. ECON. PERSP. 157, 157–65 (1998) (offering two publication-based rankings of American university economics departments).

the ranking encourages such work. Moreover, hiring and promotion depend heavily upon publication. Thus, we understand and believe in its relevance.

The first step is the selection of a measure of scholarly productivity. Most studies select a group of relevant publications and code work published there. I chose to follow this approach, focusing here on journals most likely to publish ELS: faculty-refereed, law and social science reviews.⁴⁵ Scholars have noted the tremendous expansion in the number of faculty-controlled law journals since 1970.⁴⁶ A number of refereed journals focus on the intersection of law and one or more social sciences. These journals typically have an editorial board that includes law professors and social scientists, and they publish work by both types of scholars. They also are more likely to publish collaborative work, which is a common feature of ELS.⁴⁷

III. THE FINDINGS

Collecting evidence is a difficult task. The researcher must make justifiable decisions about where to look, what to include and what to exclude, and how to treat the typical observation as well as the unusual one. These challenges, along with the time-intensive nature of data collection, impede much empirical research. The present study is no different. Unlike studies of criminal sentencing or consumer bankruptcies, law school ranking is a subject on which every law professor may claim to have some expertise. Thus, I proceeded with particular caution in defining and collecting the data. Errors, of course, remain. First I discuss the results for each factor, and then I offer an overall ranking.

A. The Data

The study includes the forty-one law schools ranked in the top 40 (and ties) in April 2004 by *U.S. News* in its “2005” ranking.⁴⁸ The relevant variables are based on

45. Rather than focusing on specific periodicals, I could have run searches in online periodical databases for articles that included terms associated with ELS (such as “statistical significance”) and were authored by a member of a law school’s faculty. I chose the periodical-based approach over the search-term approach for several reasons, the most important being the time required to undertake a search-term approach for the more than two thousand professors included in this study.

46. See, e.g., Roger C. Cramton, *The Most Remarkable Institution: The American Law Review*, 36 J. LEGAL EDUC. 1, 9 (1986) (“Empirical studies dealing with legal institutions or the legal profession also find their way increasingly into new specialized faculty-edited journals.”); Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813, 820 (1999) (“[M]any faculty have abandoned familiar doctrinal scholarship for new forms of scholarship particularly well-suited to publication in specialized reviews,” especially those with peer selection); Posner, *Decline*, *supra* note 22, at 779 (“[A]s the rise of faculty-edited law journals in the past three decades attests, the focus on scholarly publication at the academic frontier is gradually shifting from student-edited to faculty-edited, faculty-refereed journals.”).

47. George & Guthrie, *supra* note 43, at 566–68, 572–75.

48. *America’s Best Graduate Schools 2005*, U.S. NEWS & WORLD REPORT, Apr. 2005, at 22. I used this ranking both because it was the most recent one available at the time of my study

characteristics of a school's 2003–04 research faculty, defined to include any tenure-track, non-emeritus professor whose primary appointment is at the law school.⁴⁹ Professors who are based in another department are not included.⁵⁰ This step in the coding undoubtedly produced some undercounting and overcounting, but, as described in greater detail in the footnotes, I took several steps to minimize the error.

The first ranking considers social scientists on a law school's tenured faculty, listing all of the schools that made the top 10. Law schools are ranked in table 2 based on the proportion of tenure-track faculty with doctorates in social science fields.⁵¹ For comparison, the table also includes the average percentage across all forty-one schools in the study. Nine of the forty-one schools did not have a single social scientist with a tenured appointment in 2003–04.

Table 2. Top 10 faculties by percentage of social science Ph.D.s (2003–04 Faculty)

Rank	Law school	Percentage
1	University of California, Berkeley	33%
2-tie	George Mason University	24%
2-tie	Northwestern University	24%
4-tie	University of Pennsylvania	21%
4-tie	Stanford University	21%

and because it followed the academic year for which I could last get complete faculty data (2003–04).

49. Most schools follow the naming convention of “assistant professor” for nontenured members of the tenure-track faculty and “associate professor” or “professor” for tenured faculty. But enough variation exists to require examination. My research assistants compiled a list of all faculty listed with one of those titles in the 2003–04 AALS Directory at each of the forty-one law schools ranked in the top 40 (and ties) in the *U.S. News* 2005 ranking. The AALS Directory is appealing because the forms completed by schools are the same. However, it had too many false positives *and* false negatives to be the sole source of information. To obtain a more accurate final list, I revised the list based on faculty biographies posted on each school's website. I treated faculty who taught solely clinical courses or legal research and writing classes as non-tenure-track, absent contrary evidence that they were on the tenure-track faculty.

50. Schools use different title conventions for professors with secondary appointments in law. Some schools identify them as “courtesy,” “joint,” or “secondary,” while others do not. In order to avoid bias resulting from superficial differences, I looked at other indicators of a professor's primary tenure home, including the biography posted on the law school's website *and* the other department's website, the professor's participation in administrative positions within a department or school, the professor's mailing address, and the classes taught. An argument can be made that even secondary appointments in law may reflect active engagement in empirical legal scholarship at the law school; however, a secondary appointment simply is not as meaningful as a full-time or initial hire who earned tenure in the law school. Indeed, most social science faculty with an appointment in the law school do not also have tenure in that school. I recognize that this is not always the case. But the requisite coding requirements necessitate a measure that is correct in most cases. Contacting each professor was not feasible nor necessarily as reliable.

51. For a list of social science fields, see *supra* note 41.

Rank	Law school	Percentage
6	University of Southern California	19%
7	University of Wisconsin	17%
8-tie	Cornell University	16%
8-tie	University of Michigan	16%
10-tie	Columbia University	15%
10-tie	University of Illinois	15%
	<i>Mean for all 41 law schools</i>	9%

The second ranking focuses on law professors with secondary appointments in social science departments, and lists the top ten schools during the 2003–04 academic year. This ranking reflects the environment both at the law school and in the college of arts and sciences. A positive relationship between schools and departments within a university would seem a prerequisite to significant numbers of joint appointments. Not surprisingly, law schools with social scientists are much more likely to have professors with secondary appointments in social science departments. The proportion of social scientists is highly correlated with the proportion of social science courtesy appointments (correlation coefficient = .81).

Table 3. Top 10 faculties by percentage of social science secondary appointments (2003–04 faculty)

Rank	Law school	Percentage
1	University of Southern California	16%
2	Northwestern University	15%
3	University of California, Berkeley	12%
4	University of Illinois	9%
5	George Mason University	8%
6-tie	University of Pennsylvania	7%
6-tie	University of Wisconsin	7%
8-tie	Cornell University	6%
8-tie	University of Michigan	6%
8-tie	Yale University	6%
	<i>Mean for all 41 law schools</i>	3%

The third ranking is based on publication in leading American reviews. I selected journals based on the following criteria: whether the subject matter includes law and at least one social science, whether the articles are peer-reviewed, whether both law professors and social scientists publish in the journal, whether both law professors and

social scientists serve as editors and referees, and whether the journal is part of a legal citation index or legal database.⁵² The resulting database includes information on all authors of articles published between 2000 and 2004 in thirteen publications:

- *American Law and Economics Review* (ALER)⁵³
- *Behavioral Sciences & the Law* (BSL)⁵⁴
- *Journal of Law, Economics & Organization* (JLEO)⁵⁵
- *Journal of Empirical Legal Studies* (JELS)⁵⁶
- *Judicature*⁵⁷
- *Justice System Journal*⁵⁸
- *Law & Human Behavior* (LHB)⁵⁹

52. I considered adding others to this list but did not do so because they fell short on one of these criteria. For example, I dropped *Studies in Law, Politics and Society* from the study based on the conclusion that it is more akin to an annually edited book than a submission-driven journal.

53. The American Law and Economics Association publishes the *American Law and Economics Review* semi-annually. The ALER seeks to distinguish itself from other law and economics journals by offering work that is both scholarly and accessible to nonscholars. Princeton Economics Professor Orley Ashenfelter and Seventh Circuit Judge Richard Posner serve as editors. See American Law and Economics Review, About the Journal, <http://www3.oup.co.uk/jnls/list/alecon/scope/> (last visited Sept. 4, 2005).

54. *Behavioral Sciences & the Law* is “a peer-reviewed journal which provides current and comprehensive information from throughout the world on topics at the interface of the law and the behavioral sciences.” Wiley, Description: Behavioral Sciences & the Law, <http://www.wiley.com/WileyCDA/WileyTitle/productCd-BSL.html>. Published five times per year, BSL’s current editor is Buffalo Law Professor Charles Patrick Ewing. See *id.*

55. The *Journal of Law, Economics & Organization* publishes work from many social science fields because “organization” is read broadly “to include scholarship drawing on political science, psychology, and sociology” and as a result the journal is, as the publisher claims, “an interdisciplinary exercise.” OUP Journals, The Journal of Law, Economics, and Organization, <http://www.oxfordjournals.org/jnls/list/jleorg/about.html> (last visited Sept. 4, 2005). Yale Law Professor Ian Ayres is JLEO’s present editor. See *id.*

56. Cornell Law School publishes *The Journal of Empirical Legal Studies* “to encourage and promote the careful, dispassionate testing of empirical assumptions.” Journal of Empirical Legal Studies, <http://www.blackwellpublishing.com/journal.asp?ref=1740-1453&site=1> (last visited Sept. 4, 2005). Law professors Theodore Eisenberg, Michael Heise, Jeffrey Rachlinski, and Stewart Schwab, and statistics professor Martin Wells serve as co-editors. See *id.*

57. *Judicature* is a journal of empirical scholarship by lawyers and social scientists examining the administration of justice. American Judicature Society publishes *Judicature* six times per year from its relatively new home at Drake University Law School. See American Judicature Society, Information about *Judicature*, http://www.ajs.org/ajs/publications/ajs_judicature.asp (last visited Sept. 4, 2005).

58. The National Center for State Courts publishes scholarship on courts and court administration in the semi-annual periodical the *Justice System Journal*. The articles draw on social science methods but are intended for an audience that includes practitioners as well as scholars. National Center for State Courts, Submissions to Justice System Journal, http://www.ncsconline.org/D_Comm/Services/Submissions/JSJ1.htm (last visited October 10, 2005).

59. The American Psychological Association’s psychology and law division (the American Psychology-Law Society) publishes *Law and Human Behavior* six times per year. It is “a

- *Law & Policy*⁶⁰
- *Law & Society Review*⁶¹
- *Law & Social Inquiry*⁶²
- *Supreme Court Economic Review (SCER)*⁶³
- *The Journal of Law & Economics (JLE)*⁶⁴
- *The Journal of Legal Studies (JLS)*⁶⁵

The list includes journals covering several social science fields as well as those focusing on only one field in addition to law. Law and economics scholars should hold a slight edge in the ranking because ALER, JLE, and SCER all actively seek to publish

multidisciplinary forum” for research on “the relationships between human behavior and the law, our legal system, and the legal process,” and has published articles by scholars in numerous fields including law, psychology, sociology, and political science. *See* Law and Human Behavior, Description, <http://www.springeronline.com> (follow “North America” hyperlink; search “search” for “Law and Human Behavior”; then follow “Law and Human Behavior” hyperlink) (last visited Sept. 4, 2005).

60. The University of Buffalo Baldy Center for Law & Social Policy publishes *Law & Policy* which seeks “[a]rticles [that] draw upon social science to examine the role of law in public policy both in the U.S. and abroad, and may involve applied analyses of relevant data or creative theoretical overviews reconceptualizing problems or policies.” The Baldy Center for Law and Social Policy, *Law & Policy*, <http://www.law.buffalo.edu/baldycenter/lawandpolicy.htm> (last visited on October 10, 2005).

61. *Law & Society Review*, the journal of the Law & Society Association, publishes “work bearing on the relationship between society and the legal process” and “concerned with the cultural, economic, political, psychological, or social aspects of law and legal systems.” *Law & Society Review*, Journal of the Law & Society Association, <http://www.lawandsociety.org/review.htm> (last visited Sept. 4, 2005). Herbert Kritzer, Professor of Political Science & Law at the University of Wisconsin, serves as editor of the quarterly publication. *See id.*

62. The American Bar Foundation (ABF) publishes *Law & Social Inquiry*. The quarterly journal features work that furthers the ABF’s mission: the creation of “objective empirical research on law and legal institutions.” The American Bar Foundation, <http://www.abf-sociolegal.org/index.html> (last visited Sept. 4, 2005). Northwestern University Law Professor Jack Heinz and University of Chicago History Professor William Novak currently serve as the journal’s editors. *See id.*

63. *Supreme Court Economic Review* “is an interdisciplinary journal that seeks to provide a forum for scholarship in law and economics, public choice and constitutional political economy.” George Mason University School of Law, *Supreme Court Economic Review*, <http://www.law.gmu.edu/econ/scer.html> (last visited Sept. 4, 2005). SCER is edited by faculty at the George Mason University School of Law. *See id.*

64. The University of Chicago edits *The Journal of Law & Economics*. The twice-yearly journal “publishes research on a broad range of topics including the economic analysis of regulation and the behavior of regulated firms, the political economy of legislation and legislative processes, law and finance, corporate finance and governance, and industrial organization.” *The Journal of Law & Economics*, Description, <http://www.journals.uchicago.edu/JLE/brief.html> (last visited Sept. 4, 2005).

65. *The Journal of Legal Studies* is one of two faculty-edited journals of law and social science at the University of Chicago (JLE is the other). JLS “is a journal of interdisciplinary academic research into law and legal institutions. It emphasizes social science approaches, especially those of economics, political science, and psychology, but it also publishes the work of historians, philosophers, and others who are interested in legal theory.” *The Journal of Legal Studies*, Description, <http://www.journals.uchicago.edu/JLS/brief.html> (last visited Sept. 4, 2005).

such work. Two of the journals are in the law and psychology field (BSL and LHB). The remainder cover more than one social science field.

These journals generally perform well in evaluations in which they are included.⁶⁶ (Neither ALER, started in 1999, nor JELS, introduced in 2004, is old enough to be included in available rankings of legal publications. But they merit inclusion in the ELS ranking because they specifically seek empirical work and have published prominent ELS scholars.) Fred Shapiro ranked specialized law reviews based on a journal's total citations from 1981 to 1997 in the *Social Sciences Citation Index* (SSCI), which includes both social science and legal periodicals, and based on a journal's per-article average ("impact factor").⁶⁷ Chris Guthrie and I ranked 285 secondary law journals, including three journals in the present study, based on the status of their authors in the 1990s.⁶⁸ Unlike those two sources, Jim Lindgren and Daniel Seltzer ranked all law journals combined (general subject and specialized) and reported the top 40 based on SSCI data.⁶⁹

Table 4. Journal rankings

Journal	Shapiro citations	Shapiro impact factor	Law faculty status	Lindgren & Seltzer citations
<i>Behavioral Sciences & the Law</i>	22	11	N/A	—
<i>Journal of Law, Economics & Organization</i>	5	4	N/A	—
<i>Judicature</i>	14	29	N/A	—
<i>Justice System Journal</i>	—	—	N/A	—
<i>Law & Human Behavior</i>	1	3	N/A	29
<i>Law & Policy</i>	—	—	N/A	—
<i>Law & Society Review</i>	2	6	N/A	—
<i>Law & Social Inquiry</i>	13	12	N/A	37
<i>Supreme Court Economic Review</i>	—	—	8	N/A

66. The journals also do well in studies outside of law. For example, JLEO is ranked 48th and JLE 49th in a ranking of 159 economic journals. Pantelis Kalaitzidakis, Thanasis Stengos & Theofanis P. Mamuneas, *Rankings of Academic Journals and Institutions in Economics*, 1 J. EUR. ECON. ASS'N 1346, 1349 tbl.1 (2004).

67. See Fred R. Shapiro, *The Most Cited Law Reviews*, 29 J. LEGAL STUD. 389 (2000). Eight of the eleven journals included in that study did well in Shapiro's ranking, which only included the top 30 journals in each ranking. Of the three journals that did not make the top 30, SCER was hindered by its late entry during this period: it began regular, annual publication in 1995.

68. See George & Guthrie, *supra* note 43. Of academic authors, elite law school professors earned the most points for a journal in the study; thus, periodicals, like JLE, that routinely publish social scientists fared relatively poorly. We excluded journals that were not affiliated with a single law school.

69. See James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI.-KENT L. REV. 781 (1996).

Journal	Shapiro citations	Shapiro impact factor	Law faculty status	Lindgren & Seltzer citations
<i>The Journal of Legal Studies</i>	3	1	4	10
<i>The Journal of Law & Economics</i>	4	2	below 100	15

A law school receives credit for every article published between 2000 and 2004 by a professor who is on its faculty in 2003–04. If an author was at law school A in 2000 when she published an article, but she was at law school B in 2003, then the article is attributed to law school B. The idea behind this ranking is to ask where each school stands today with respect to ELS and, in particular, the school's recruitment and retention of ELS scholars. An argument can also be made for including faculty based on their institution at the time of publication, but I ultimately rejected this approach. Table 5 includes a per capita adjustment to the number of total publications.

Table 5. Top 10 law schools by per capita publications in peer-reviewed law and social science journals

Rank	Law school	Per capita	Percentage in school's journal(s) (listed)
1	University of Chicago	1.03	73% (JLS, JLE)
2	Cornell University	0.65	50% (JELS)
3	Harvard University	0.43	
4	University of Pennsylvania	0.40	
5	George Mason University	0.38	50% (SCER)
6	University of Southern California	0.33	
7-tie	University of California, Berkeley	0.31	
7-tie	Yale University	0.31	
9	Northwestern University	0.30	
10	Stanford University	0.26	
	<i>Mean</i>	<i>0.16</i>	

NOTE: Publication totals are attributed to 2003–04 faculties.

B. ELS Ranking

The overall ranking is based on the mean position of each law school in the three categories. This unweighted score treats each category equally. One could argue that a certain category is more important than others and thus should be weighted accordingly, but I choose to include the categories unweighted. (Motivated readers can create their own weighted rankings using the information in the appendix.)

Table 6. Complete ELS rankings

ELS	Law school	ELS	Law school
1-tie	University of California, Berkeley	22-tie	Boston University
1-tie	George Mason University	22-tie	University of Virginia
1-tie	Northwestern University	24	University of Minnesota
1-tie	University of Southern California	25-tie	Fordham University
5	University of Pennsylvania	25-tie	University of North Carolina
6	Cornell University	25-tie	University of Texas
7-tie	University of Chicago	25-tie	Washington University in St. Louis
7-tie	Stanford University	29-tie	College of William & Mary
7-tie	Yale University	29-tie	Georgetown University
10	University of Michigan	31	University of California (Hastings)
11	University of Wisconsin	32-tie	University of Alabama
12	University of Illinois	32-tie	Boston College
13	University of Iowa	32-tie	University of Georgia
14-tie	Columbia University	35-tie	George Washington University
14-tie	Emory University	35-tie	Wake Forest University
14-tie	Harvard University	37-tie	Brigham Young University
17	University of California, Los Angeles	37-tie	University of California, Davis
18-tie	New York University	37-tie	University of Notre Dame
18-tie	Vanderbilt University	37-tie	University of Washington
20	Indiana University—Bloomington	37-tie	Washington & Lee University
21	Duke University		

The ELS ranking, on the whole, is consistent with expectations. Each of the four schools tied for the top spot has followed an explicit yet distinctive path that leads to greater ELS work. The University of California at Berkeley started a law school doctorate in jurisprudence and social policy in 1977, which in turn led to the hiring of numerous social scientists to work in the program.⁷⁰ Henry Manne brought both his Law and Economics Center and its scholarly focus to George Mason University in 1986 when he became law dean, and the school's intellectual life continues to reflect Manne's ideas with a record number of economists on its faculty and publications in

70. See University of California, Berkeley, JSP Program, <http://www.law.berkeley.edu/jsp/> (last visited Sept. 4, 2005).

ELS journals.⁷¹ David Van Zandt, Dean of the Northwestern University School of Law, forecasts that “[t]he research faculty of the future law school will be composed largely of academics with a strong disciplinary training in one of the social sciences . . . who are also well-trained lawyers,” and the law school has devoted significant resources to hiring social scientists.⁷² The University of Southern California Law School has established productive relationships with social scientists in other USC departments and at other Los Angeles universities through a remarkable number of joint appointments and two separate centers: the USC-Cal Tech Center for the Study of Law and Politics, and the Center for Law, Economics and Organization.⁷³

The ELS Ranking does include a few surprises, however. The University of Chicago and Washington University in St. Louis, in particular, do not fare as well as expected. The University of Chicago is considered the home of law and economics, and publishes ELS journals; yet few law professors held social science doctorates and/or social science secondary appointments in 2003–04. While it does well on the publication measure, nearly three-quarters of its publications are in the school’s two journals: the *Journal of Law & Economics* and the *Journal of Legal Studies*. Washington University in St. Louis has an active empirical workshop series and several prominent social scientists—such as Lee Epstein, Jack Knight, and Andrew Martin—who hold appointments in law but work primarily in other departments. Yet only one social scientist was based at the law school in 2003–04, only one law professor held a courtesy position in a social science department, and none of its law professors published a paper in the thirteen journals of law and social science during the last five years.

The ranking, of course, has flaws. First, any data collection includes some mistakes due to measurement error. There are several sources of possible error in this study: I may have missed articles, incorrectly classified faculty, or overlooked graduate degrees. And published information may be inaccurate. I attempted to limit these mistakes through redundancy: A research assistant and I independently coded each law school and we used multiple sources of information for each school. But errors will remain.

Second, the scores are static. Each school’s position is based on its faculty in the 2003–04 academic year, but nearly every school in the study gained and/or lost a faculty member over the last year. Several schools gained social scientists since the end of my study period. Yale University and Emory University, in particular, likely would move up several spots in an updated ranking based on recent hires. Moreover, the University of Pennsylvania, the University of Southern California, and Northwestern

71. See Henry G. Manne, *An Intellectual History of the George Mason University School of Law* (1993), <http://www.law.gmu.edu/econ/history.html>. I was a visiting professor at George Mason University in the spring of 2000.

72. David E. Van Zandt, *Discipline-Based Faculty*, 53 J. LEGAL EDUC. 332, 335 (2003). In the interest of full disclosure, I was a member of the Northwestern law faculty from 2001 through 2004, and I personally benefited from Dean Van Zandt’s vision. He granted me a year-long sabbatical to begin work on a political science doctorate shortly after I joined the law school.

73. See University of Southern California, USC-Cal Tech Center for the Study of Law and Politics, <http://lawweb.usc.edu/cslp/> (last visited Oct. 10, 2005); USC Center for Law, Economics and Organization, <http://lawweb.usc.edu/cleo/> (last visited Oct. 10, 2005).

University have hired remarkable numbers of social scientists into entry-level posts. We should see these schools rise in the publication ranking as these new, ambitious scholars publish their work.

CONCLUSION

Rankings can be fun. They provide us interesting information in an easily digested form. But, they only tell us a limited amount about any particular school. Thus, I caution, as any ranker should, that the ELS ranking is not a definitive statement on ELS work at American law schools. But it is a place to start.

Appendix. Alphabetical list of included law schools with ranks

Law Schools (<i>in alphabetical order</i>)	U.S. News Rank	ELS Rank			OVERALL
		Ph.D. (1)	Secondary (2)	Publications (3)	
University of Alabama	40*	33*	22*	27*	33*
Boston College	29*	33*	22*	27*	33*
Boston University	23*	22*	22*	18	23
Brigham Young University (BYU)	34*	33*	22*	34*	37*
University of California, Berkeley	13	1	3	7*	1*
University of California, Davis	33	33*	22*	34*	37*
University of California, (Hastings)	38*	22*	22*	33	31
University of California, Los Angeles	16	14*	15*	20	16
University of Chicago	6	12	11	1	7*
Columbia University	4	10*	22*	13	14*
Cornell University	12	8*	8*	2	6
Duke University	10*	24*	15*	21	21*
Emory University	23*	20*	15*	16	17
Fordham University	34*	24*	22*	27*	25*
George Mason University	38*	2	5	5*	1*
George Washington University	20*	28*	22*	34*	35*
Georgetown University	14	28*	22*	26	29*
University of Georgia	31*	33*	22*	27*	31*
Harvard University	2	20*	22*	3	14*
University of Illinois	27*	10*	4	18	12
Indiana University–Bloomington	40*	16	15*	25	20

Law Schools (<i>in alphabetical order</i>)	U.S. News Rank	ELS Rank			OVERALL
		Ph.D. (1)	Secondary (2)	Publications (3)	
University of Iowa	23*	14*	15*	12	13
University of Michigan	7*	8*	8*	11	10
University of Minnesota	19	18*	22*	27*	24
New York University	5	18*	20*	15	18*
University of North Carolina	27*	26*	22*	23*	25*
Northwestern University	10*	2	2	9	1*
University of Notre Dame	20*	33*	22*	34*	37*
University of Pennsylvania	7*	4*	6	4	5
University of Southern California	18	6	1	6	1*
Stanford University	3	4*	11*	10	7*
University of Texas	15	26*	22*	23*	25*
Vanderbilt University	17	17	11*	27*	18*
University of Virginia	9	28*	20*	13	21*
Wake Forest University	34*	28*	22*	34*	35*
University of Washington	34*	33*	22*	34*	37*
Washington & Lee University	23*	33*	22*	34*	37*
Washington University in St. Louis	20*	28*	11*	34*	25*
College of William & Mary	29*	33*	22*	21	29*
University of Wisconsin	31*	7*	6	16	11
Yale University	1	13	8*	7*	7*

NOTE: * indicates ties

