

# ARTICLES

## The Patterns and Implications of Political Contributions by Elite Law School Faculty

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### TABLE OF CONTENTS

INTRODUCTION . . . . .	1168
I. PRESENTATION OF DATA . . . . .	1172
A. METHODOLOGY . . . . .	1172
B. BASIC STATISTICS ON LAW PROFESSOR DONATIONS . . . . .	1175
1. The Contributions of Law Professors by Law School . . .	1175
2. Comparison of Law Professor Contributions with Those of Similar Segments of the Population . . . . .	1178
C. PATTERNS AMONG SCHOOLS . . . . .	1179
D. DONATIONS BY DEMOGRAPHIC GROUP WITHIN THE ACADEMY . . . .	1179
E. DONATIONS BY SUBJECT MATTER . . . . .	1180
F. INDIVIDUAL RECIPIENTS OF CONTRIBUTIONS . . . . .	1183
II. POTENTIAL OBJECTIONS TO THE METHODOLOGY . . . . .	1185
A. THE ACCURACY OF THE DATA COLLECTION . . . . .	1185
B. THE REPRESENTATIVENESS OF DONATING PROFESSORS . . . . .	1186
C. FEDERAL VERSUS STATE . . . . .	1187

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D.	DONATIONS AS INSTRUMENT OF PERSONAL BENEFIT RATHER THAN AS EXPRESSION OF IDEOLOGY . . . . .	1187
E.	DEMOCRATIC AND REPUBLICAN CONTRIBUTIONS AS A REFLECTION OF REAL IDEOLOGICAL DIFFERENCES . . . . .	1189
III.	THE EFFECT OF IDEOLOGICAL IMBALANCE IN THE ELITE LEGAL ACADEMY . . . . .	1190
A.	LAW PROFESSORS' JOINT PUBLIC STATEMENTS ON ISSUES OF PUBLIC CONCERN . . . . .	1191
B.	THE STOCK OF LEGAL IDEAS . . . . .	1193
C.	THE EFFECT OF IDEOLOGICAL IMBALANCE ON THE REPUTATIONS OF JUDGES . . . . .	1195
IV.	IDEOLOGICAL IMBALANCE AND VIEWPOINT DIVERSITY . . . . .	1198
A.	IDEOLOGICAL PREFERENCES COMPARED TO RACIAL AND ETHNIC PREFERENCES AS INSTRUMENTS OF VIEWPOINT DIVERSITY . . . . .	1198
B.	STUDENT VERSUS FACULTY VIEWPOINT DIVERSITY . . . . .	1201

#### INTRODUCTION

Through their submissions to the public and to the courts, law professors have attempted to shape many of the nation's most important recent legal decisions—the impeachment of President Clinton, judicial review of the 2000 presidential election, affirmative action, terrorism policy, and homosexual rights. Moreover, law professors regularly offer theories and ideas for other lawyers and judges to use in reforming and transforming the law. As Alexis de Tocqueville first observed almost two hundred years ago, lawyers are the “aristocrats” of American democracy<sup>1</sup>—far more politically influential than any other profession. Law professors play an important role in sustaining this “aristocracy,” acting as both its gatekeepers and its theorists.

The political leanings of law professors, particularly those at the legal academy's most prestigious and influential institutions, are thus important to both American law and American society as a whole. The political views of law professors have often been a subject of some suspicion among political conservatives, particularly among those who believe that the legal academy's political views are changing the trajectory of American law. Justice Antonin Scalia openly asserted in a prominent recent dissent that the ideology emanating from law schools is moving the American judiciary and the institutions of American

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1. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 282 (Henry Reeve trans., 1841).

society to the left on a variety of issues.<sup>2</sup>

Analyzing the political views of law professors is therefore timely and also comports with an important trend in contemporary legal scholarship—the use of empirical investigation to gauge ideological influences on legal decisionmaking. Scholars have increasingly argued that the partisan affiliations and ideological commitments of legal actors are key to explaining their behavior and their outputs.<sup>3</sup> For instance, a team led by Professor Cass Sunstein recently surveyed the partisan affiliations of federal appellate judges and showed that these affiliations are correlated with judicial decisions in certain categories of cases.<sup>4</sup> From these figures, they draw several normative conclusions—most notably the conclusion that ideological diversity on the federal bench is desirable, because diverse ideological views on an appellate panel result in more objective (or at least less ideologically extreme) judicial decisions.<sup>5</sup> Another recent study released by the American Judicature Society indicated that federal judges appointed by Republicans—particularly those appointed by President George W. Bush—are far more likely than Democratic appointees to reach “conservative” decisions in cases that involve civil rights and civil liberties.<sup>6</sup> Although empirical analysis has never been used to investigate how political ideology affects the behavior of law professors and the legal academy as a whole, turnabout guarantees fair play.

Accordingly, this Article is the first to publish data that both gauges the political views of elite law professors and begins to assess the effects of these views on the overall output of the legal academy. It analyzes eleven years of political campaign contributions of law professors at the top twenty-one schools as defined by the *U.S. News & World Report* 2002 survey.<sup>7</sup> The survey maps the ideological contours of “politically active” law professors in the legal academy, where a law professor is defined as “politically active” if he or she has made a federal campaign contribution of \$200 or more in individual years between 1992 and 2002.

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2. See *Romer v. Evans*, 517 U.S. 620, 652–53 (1996) (Scalia, J., dissenting) (discussing the “law school view” that “prejudices” against homosexuals must be “stamped out,” while “prejudices” against Republicans, adulterers, or even Chicago Cubs haters need not be).

3. See Thomas W. Merrill, *The Making of the Second Rehnquist Court: A Preliminary Analysis*, 47 ST. LOUIS U.L.J. 569, 590–601 (2003) (using ideological maps of Justices to explain their behavior); Frank B. Cross & Emerson H. Tiller, *Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals*, 107 YALE L.J. 2155 (1998) (demonstrating that ideological composition of courts of appeals often changes results in administrative law cases).

4. See Cass R. Sunstein, David Schkade & Lisa Michelle Ellman, *Ideological Voting on the Federal Courts of Appeals: A Preliminary Investigation* (Univ. of Chi. Law School, John M. Olin Law & Econ. Working Paper No. 198, 2003).

5. *Id.* at 45–47.

6. Robert A. Carp, Kenneth L. Manning & Ronald Stidham, *The Decision-Making Behavior of George W. Bush's Judicial Appointees: Far-Right, Conservative, or Moderate?*, 88 JUDICATURE 20, 25–27 (2004).

7. *America's Best Graduate Schools*, U.S. NEWS & WORLD REPORT, Apr. 9, 2001, at 60. As we explain below, we used the top twenty-one instead of twenty because of a two-way tie for twentieth place. See *infra* note 15 and accompanying text.

We stress that our study is only the modest beginning, not the end, of inquiry into the legal academy's ideology. For example, because of the time-consuming nature of data collection, we study only the elite schools. It would be helpful to have follow-up studies of other schools, particularly religious schools, to determine if the ideological composition of faculty differs elsewhere in the academy. Moreover, we looked only at federal campaign contributions because they were readily available across jurisdictions. Follow-up studies of party affiliations in jurisdictions where information about party affiliation is made publicly available would surely be useful as well. Finally, we looked at outputs only in terms of group letters signed and amicus briefs submitted. It would be useful to have studies done on law professors' influence on law reform, on their students in the classroom, and on the outputs of clinical education.

Nevertheless, within its necessarily limited compass, the results of our study are significant and, in some cases, dramatic. Almost three out of ten law professors in this study have made a political contribution in the years surveyed, and a majority of these have contributed more than once. Many of these law professors have made very sizable political contributions. The contributions of politically active law professors are overwhelmingly Democratic: 81% of law faculty members in the study who make political contributions contribute wholly or predominantly to Democrats, while 15% contribute wholly or predominantly to Republicans.<sup>8</sup> The partisan mix of politically active law professors differs substantially from that of citizens with similar income and education levels.<sup>9</sup> Some of the most prominent law schools have contribution patterns that are particularly Democratic. At Yale—the nation's top ranked law school—43% of professors contributed more than \$200 over the course of our study, and the ratio of Democrat to Republican faculty among those contributors is approximately twenty to one.

We also show that partisan affiliation seems to be an important factor in determining the likelihood that a law professor in the study will sign an "open letter" on an important legal issue, such as a letter opposing President Clinton's impeachment, a letter supporting his impeachment, or a letter criticizing the Supreme Court's decision in *Bush v. Gore*.<sup>10</sup> We found that, in each case, professors who contributed to the party favoring the result advocated in the letter signed the letter in a statistically significantly higher proportion than would have occurred if such letters represented a truly "unbiased" sample of politically active law professors.<sup>11</sup> This analysis generates the more general working hypothesis that political ideology is an important influence on the way law professors express themselves on at least some important legal issues.

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8. For a detailed discussion of our findings, see *infra* notes 15–33 and accompanying text.

9. For more on these comparisons, see *infra* notes 34–38 and accompanying text.

10. 531 U.S. 98 (2000) (*per curiam*).

11. All reported hypotheses are statistically significant to at least  $p=.05$ . Unless otherwise specified, all testing assumes a normal distribution, except for tests of small sample sizes, which assume a T distribution.

Part I of this Article presents our principal statistical findings. Besides looking at contribution patterns at specific schools, we analyze the contribution patterns of law professors within certain demographic groups and teaching disciplines. For example, while the contributions of politically active male and female professors are overwhelmingly Democratic, this pattern is even more pronounced for politically active female professors, with 95% percent of the latter giving either exclusively or predominantly to Democrats.<sup>12</sup> And despite the perception that “law and economics” is a “conservative” discipline of legal study, politically active “law and economics” professors substantially favor Democrats in their contributions. Ironically, despite arguments that it is economically irrational to contribute in the hope of influencing an election outcome, “law and economics” professors in our survey contribute to the same degree as law professors as a whole.<sup>13</sup>

Part II considers various possible objections to our methodology and results. For instance, we show that the ratio of Republican to Democratic contributors among politically active law professors in the study correlates extremely closely with previous estimates of partisan affiliation within the legal academy as a whole, thus suggesting that campaign contributions are reasonably good proxies for the overall party affiliation of the demographic groups analyzed in our survey.<sup>14</sup> We also show that, because of the growing ideological polarization of the parties, the disparity between Republican and Democratic campaign contributions reflects an ideological disparity. By showing that the campaign contributions of politically active law professors did not become more Republican (i) after the Republican takeover of Congress or (ii) during the administration of the current President Bush, we show that professors’ contributions for political or personal benefit have not skewed the ideological composition of contributions.

Part III considers how the liberal political ideology that appears to dominate the elite legal academy may manifest itself through the efforts of law professors to influence important political issues of the day. We first examine the role that political ideology generally plays in the tendency of law professors to sign “open letters” on important legal issues. We also look at the amicus briefs filed by professors in our study and consider more generally the degree to which the ideological composition of the legal academy creates a world where policymakers and judges have a rich stock of “liberal” intellectual ideas available to them, but a meager supply of “conservative” ones. Finally, we consider whether the dominant political ideology of the legal academy may bias academic ratings of Supreme Court Justices and, therefore, ultimately affect the behavior of those Justices.

Part IV investigates whether this apparent ideological imbalance in the

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12. See *infra* note 41 and accompanying text.

13. See *infra* notes 43–44 and accompanying text.

14. For a discussion of these surveys, see *infra* notes 58–60 and accompanying text.

faculties of elite law schools is consistent with the claims of many law schools that they pursue affirmative action purely for reasons of “viewpoint diversity.” To our knowledge, no school in our study that is publicly committed to the viewpoint diversity rationale for affirmative action has made any similar public commitment to improve viewpoint diversity within its faculty by promoting ideological diversity, in addition to ethnic and gender diversity. We emphasize that we are merely considering the implications of our statistical finding and are neither making policy recommendations nor commenting on the wisdom or constitutionality of affirmative action. While we do not advocate taking partisan affiliation into account in the hiring of legal faculty, we consider whether our data suggests that—in the interest of intellectual honesty and the pursuit of an ideologically diverse academic environment—the concept of “viewpoint diversity” should be broadened or revised by American law schools that have already decided to embrace the diversity concept.

## I. PRESENTATION OF DATA

### A. METHODOLOGY

We reviewed the federal campaign contributions made by law professors from the top twenty-one law schools. We ranked schools according to *U.S. News & World Report*’s 2002 ratings of “America’s Best Graduate Schools.”<sup>15</sup> We initially decided to review the top twenty schools but assessed twenty-one because of a tie in the rankings. We limited ourselves to these schools because of the time-consuming nature of collecting contribution data. We also believe that they exercise more influence on legal education and the legal profession than any other tractable set of twenty-one schools.<sup>16</sup>

We considered all full-time instructors who had the rank of assistant, associate, or full professor as of the 2001–2002 school year.<sup>17</sup> We excluded adjunct professors, as well as law professors drawn from practice for a single year, because we believe that such teachers do not wield the same influence as

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15. U.S. NEWS & WORLD REPORT, *supra* note 7, at 60. We recognize the inevitable arbitrariness in taking the top twenty schools (in this case, twenty-one because of a tie for nineteenth place) from *U.S. News & World Report*. But we believe there is substantial consensus that most of the schools here would be in any top twenty ranking. Nor is there any indication that the addition or subtraction of a few schools would change the results. As we indicate later, the ratio of politically active Republicans to politically active Democrats does not appear to differ substantially depending on the exact ranking of a school. *See infra* Part I.C.

16. For example, all nine of the current Supreme Court Justices went to one of the top twenty-one law schools. Warren Burger, appointed in 1969, was the last Supreme Court Justice not to attend one of the top twenty-one law schools. Our last lawyer Presidents—Nixon, Ford, and Clinton—went to Duke, Yale, and Yale law schools respectively. *See The White House, The Presidents of the United States*, at <http://www.whitehouse.gov/history/presidents/> (last visited May 23, 2004).

17. We used the Association of American Law School’s directory for 2001–2002 [hereinafter AALS DIRECTORY] as the database. Thus, we considered professors to be employed where they were during the 2001–2002 school year. A professor who had been at an elite school earlier, but had moved, is not counted in this survey. *See AM. ASS’N OF LAW SCHOOLS, 2001–02 DIRECTORY OF LAW TEACHERS* (2001).

full-time professors. We did not distinguish between clinical and research professors, both because some schools do not make such a distinction and because full-time clinical professors can also have a substantial effect on public policy. We did, however, exclude instructors and lecturers based on our judgment that such teachers often have substantially less influence on the intellectual climate at most law schools.<sup>18</sup> We also excluded professors who, according to the AALS record, had retired as of the 2001–2002 academic term. We did so both because many emeriti do less teaching and writing than their active counterparts and because we wanted to look at the *current* ideological composition of law school faculties, rather than their past composition.

For data on individual donations, we looked at [opensecrets.org](http://opensecrets.org), a website run by the Center for Responsive Politics.<sup>19</sup> This website includes, among other items, the information on federal campaign donations required to be disclosed under federal law.<sup>20</sup> We collected all donations over the 1992–2002 election cycles made to federal candidates, national political parties, and political action committees (PACs) that donate exclusively to one party or the other.<sup>21</sup> We cross-referenced these donations with the list of law professors we created. We did not include donations to state, local, or foreign campaigns or to political action committees that did not donate exclusively to candidates of one party or another.

We assessed contributions made to state campaigns for one election cycle (2000) for two limited purposes: first, to address the argument that, based on traditional Republican views of federalism, Republican-leaning faculty members are more likely to contribute to state political candidates and second, to permit direct comparisons of the contribution patterns of politically active law professors with comparable demographic subgroups of the American population. For state donations, we used [followthemoney.org](http://followthemoney.org), a website run by the Institute on Money in State Politics.<sup>22</sup> The website features a database of contributions made at the state level for all fifty states, searchable by specific donors.

We also reviewed the National Election Studies (NES) 2000 survey for

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18. For example, we have excluded from the study instructors who teach primarily legal writing because the great majority of schools in our study do not classify legal writing instructors as professors. We have also excluded a very few whose principal appointment is elsewhere in the university and whose connection to the law school, as suggested by their title and courses taught, is remote.

19. See Ctr. for Responsive Politics, *Your Guide to the Money in U.S. Elections*, at <http://www.opensecrets.org> (last visited Mar. 22, 2005).

20. Under federal campaign finance statutes, campaigns must disclose all donations over \$200 to the Federal Elections Commission and list donors by name and address. See 2 U.S.C. § 434(b)(3) (2000). Some donors also include their occupations.

21. We consulted the PACs' own descriptions of their patterns of donation.

22. See *Inst. on Money in State Politics, Follow the Money*, at <http://www.followthemoney.org> (last visited Mar. 22, 2005).

information on the contribution patterns of the American public.<sup>23</sup> NES conducts a biannual survey of the general public that aims to provide insight into voting-related behaviors. Specifically, we focused on variables such as who contributed, which parties they supported, and which specific demographic qualities—such as education level and income—these individuals possessed.<sup>24</sup>

While others have collected some limited data about the affiliation of those in the legal academy in general,<sup>25</sup> this study has five advantages over such surveys. First, it does not depend on self-reporting and is thus not affected by the errors characteristic of self-reporting.<sup>26</sup> Second, the study captures the total universe of politically active law professors in the top twenty-one schools (rather than a sample of all law professors), thus avoiding the statistical issues that sampling creates. Third, because campaign contributions over \$200 are publicly reported, the data are not anonymous, thus allowing us to make comparisons across schools and across legal specialties, as well as to cross-reference the data with other relevant lists such as professors' joint statements on matters of public concern.<sup>27</sup> Fourth, unlike declarations of political affiliation, monetary contributions allow us to gauge the intensity of the legal academy's partisanship by virtue of the size and frequency of contributions. Finally, the data includes the *recipients* of contributions, thus enabling us to make at least tentative judgments about the type of Republicans and Democrats contributing law professors tend to support. This provides another window into the ideology of these law professors.<sup>28</sup>

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23. See NAT'L ELECTION STUDIES, THE 2000 NATIONAL ELECTION STUDY [hereinafter NATIONAL ELECTION STUDY], available at <http://www.umich.edu/~nes/study pages/2000prepost/2000prepost.htm> (last visited May 23, 2005).

24. We excluded from our analysis any subject in the NES survey who failed to provide a valid response to any of the particular demographic characteristics we analyzed.

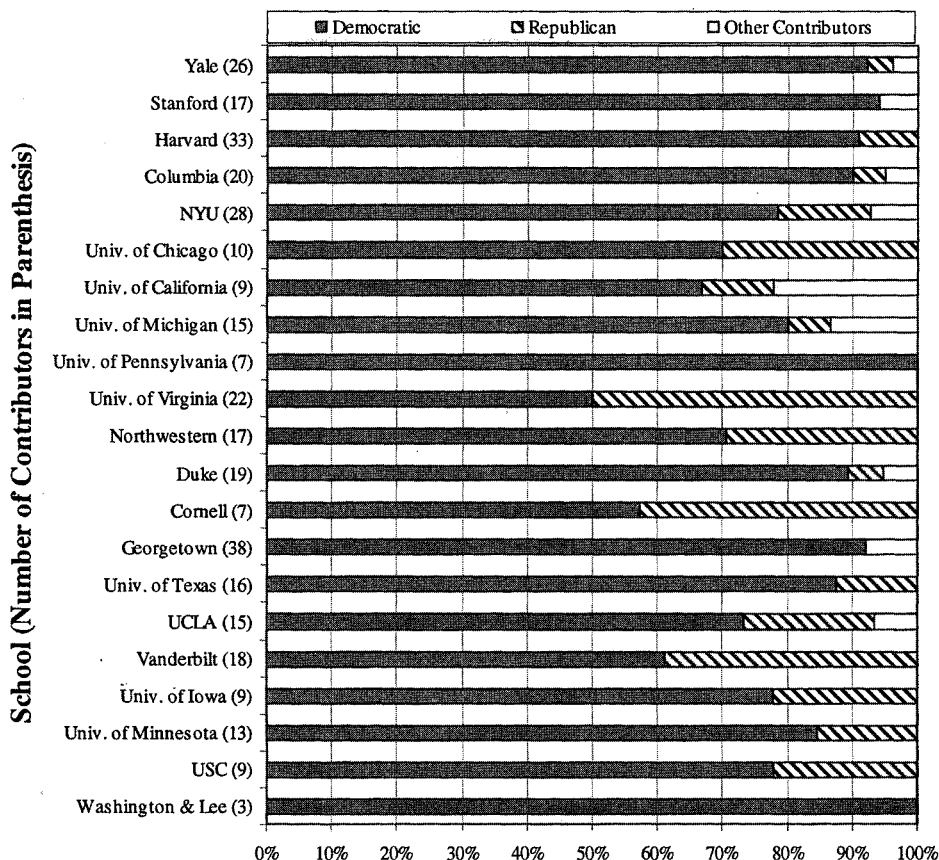
25. Professor James Lindgren has an unpublished survey of political affiliations that is mentioned *infra* notes 57–58 and accompanying text. Others have noted some data about the political ideology of law professors in passing. See *infra* note 59 and accompanying text.

26. Self-reporting may result in error because members of a group defined by one of the characteristics to be studied may be more likely to respond than members of another group, thus leading to their overrepresentation in the sample. See generally WILLIAM G. COCHRAN & GEORGE W. SNEDECOR, STATISTICAL METHODS 435–55 (8th ed. 1989).

27. See *id.* While the identities of federal campaign contributors are public (as is required by 2 U.S.C. § 434(b)(3)), we have decided not to publish or otherwise release the particular names of these contributors. Actually publishing the names of law professors in one place accessible to their peers in the profession would give contributors a prominence they had no reason to expect and which they might find embarrassing. In some cases, the sheer amount of donations may suggest that a particular professor is an individual of substantial wealth. Our purpose here is to contribute to the social science literature on law, not to embarrass any individuals or deter them from vigorous participation in the political process.

28. Our data set here is not the same as a preliminary data set which was relied on in an op-ed by two of the authors. See John O. McGinnis & Matthew Schwartz, *Conservatives Need Not Apply*, WALL ST. J., Apr. 1, 2003, at A14. The current data set covers more years of campaign contributions, uses more precise parameters, and has been checked more often. For further discussion of preliminary data, see *A Note on the Campaign Contribution Study*, at <http://www.law.northwestern.edu/faculty/fulltime/mcginnis/campaignstudy.pdf>.



**Table 1a: Contribution by School Rank**

#### B. BASIC STATISTICS ON LAW PROFESSOR DONATIONS

##### 1. The Contributions of Law Professors by Law School

In Table 1a and Table 1b, we provide an overview of our reported data.<sup>29</sup> We provide percentages of those who donate predominantly or exclusively to Democrats along with percentages of those who donate predominantly or exclusively to Republicans.<sup>30</sup> "Other" contributors include professors who do not donate predominantly to any party or who donate exclusively or predominantly to a third party such as the Green Party.

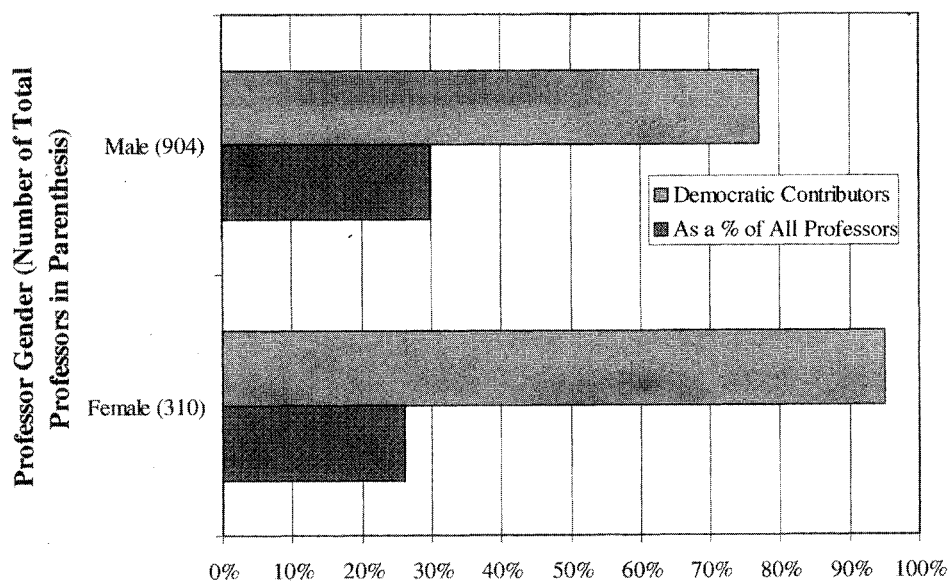
29. In Appendix Table I-A, we classify the percentage of professors contributing as follows: those exclusively donating to Democrats, those predominantly donating to Democrats, those exclusively donating to Republicans, those predominantly donating to Republicans, those donating more or less evenly to both parties, those donating to third parties or independents, and those making no donations.

30. We define a "predominant contributor" as one who gives at least twice as many contributions to one party as any other. Conveniently for us, no professor at the twenty-one schools donated predominantly to independent candidates.

**Table 1b: Democratic Contributor Rates**

<i>School</i>	<i>Exclusively and Predominantly Democratic Contributors (As a % of Contributing Professors)</i>	<i>School</i>	<i>Exclusively and Predominantly Democratic Contributors (As a % of Contributing Professors)</i>
Washington and Lee	100%	NYU	79%
Univ. of Pennsylvania	100%	Univ. of Iowa	78%
Stanford	94%	USC	78%
Yale	92%	UCLA	73%
Georgetown	92%	Northwestern	71%
Harvard	91%	Univ. of Chicago	70%
Columbia	90%	Univ. of California	67%
Duke	89%	Vanderbilt	61%
Univ. of Texas	88%	Cornell	57%
Univ. of Minnesota	85%	Univ. of Virginia	50%
Univ. of Michigan	80%		

Because those who give exclusively or predominantly to one party are most likely to be affiliates of that party, these percentages give us great insight into the composition of the faculty donors. We also provide median percentage of Republican and Democratic contributors for the schools. Table 1a provides

**Table 2: Contributing Professors by Gender**

contributions by school rank. Table 1b ranks schools by percentage of faculty who contribute either exclusively or predominantly to Democrats.<sup>31</sup>

The data make clear that a sizeable minority—roughly 29%—of all law professors in the twenty-one schools donated to federal campaigns in the last five election cycles. The ideological composition of politically active law professors also is clear: they are overwhelmingly Democratic, with about 81% of contributors making donations to Democrats and about 15% contributing to Republicans. Among all schools, the median rates of contribution are 79% Democrat and 13% Republican.<sup>32</sup> While these statistics reflect only politically active contributors at elite institutions, we show below that these figures appear to be fairly good proxies for political affiliation among all law professors.<sup>33</sup>

At Yale—arguably the nation's leading law school—over 40% of all professors made political contributions of at least \$200 during the term of our study, with the ratio of Democratic to Republican donors being approximately twenty to one. Other schools where fewer than 10% of politically active professors contribute to Republicans include Harvard, Stanford, Columbia, and Michigan.

There are exceptions: at Virginia, numbers of Republican and Democratic contributors are approximately equal. And it should be emphasized that some schools (such as Washington & Lee) have very few contributors to any party; thus, it is difficult to draw any inferences about the composition of politically active professors at such schools. Our study is therefore more robust in what it says about the elite legal academy as a whole than in what it reveals about the faculty at individual schools.

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31. We note that for the Stanford, Chicago, and Duke data, we made the decision to eliminate contributions to Tom Campbell, Barack Obama, and David Price respectively. Tom Campbell, a Republican, continued as a member of the Stanford law faculty even when he was a member of Congress. See <http://www.haas.berkeley.edu/faculty/campbell.html> (providing biographical details of Tom Campbell). Barack Obama, a Democrat, was a senior lecturer at the University of Chicago Law School who ran for Congress. See [http://phoenix.uchicago.edu/html/updates/letterfromted\\_oct.html](http://phoenix.uchicago.edu/html/updates/letterfromted_oct.html) (discussing Senator Obama's position as lecturer at the University of Chicago Law School). David Price, a Democrat and a sitting member of Congress, remains a political science professor at Duke. See <http://price.house.gov/Biography/> (providing biographical details of David Price). It was our judgment that political contributions to a colleague on the same faculty are as likely to be an expression of faculty collegiality as they are to be an expression of partisan affiliation and were therefore likely to make the Stanford, Chicago, and Duke numbers not comparable to numbers from other schools. Campbell and Obama also received contributions from law school professors who were not their colleagues, and we counted these contributions.

We do count contributions to individuals with more distant connections to professors in our study. These include Gene Nichol, Dean of the University of North Carolina School of Law and previously a professor and Dean of the University of Colorado School of Law during the time of our study, according to the *AALS Directory*.

32. The overall dollar amounts given to Democrats and Republicans are not very different from the percentages of professors who give either exclusively or predominantly to Democrats or exclusively or predominantly to Republicans. Democrats give 77% of all money donated, while Republicans give 22%. Thus, although a Republican contributor in our survey donates more money on average than his Democratic counterpart, the disparity is not dramatic.

33. See *infra* notes 57–59 and accompanying text.

## 2. Comparison of Law Professor Contributions with Those of Similar Segments of the Population

To compare the contributions of politically active law professors with the contributions of similar demographic groups in the overall population, we looked at the 2000 National Election Study.<sup>34</sup> Because the study does not distinguish between state and federal donations, we calculated state donations for the 2000 election cycle for law professors as well. The comparisons here are limited to that cycle, which suggests both (i) that law professors contribute to Democrats in a proportion much higher than the overall American population, and (ii) that law professors contribute to Republicans in a proportion much lower than the overall American population. Specifically, in the 2000 election cycle, law professors contributed to Democrats in over twice the proportion of other donating Americans (78% to 33%), while they contributed to Republicans in less than one-third the proportion of other contributing Americans (14% to 50%).<sup>35</sup>

Law professors' contributions are also more Democratic than those of Americans with comparable levels of education and income. According to the 2000 National Election Study data, 34% of Americans with advanced degrees contributed exclusively to Democrats and 49% contributed exclusively to Republicans.<sup>36</sup> These rates are significantly different from the contribution rates of law professors in the 2000 election cycle, which were 78% exclusively to Democrats and 14% exclusively to Republicans. Thus, in comparison to other Americans with advanced degrees, law professors within the study are much more likely to contribute to Democratic candidates and much less likely to contribute to Republican candidates.

In terms of contribution patterns by income, 44% of Americans with incomes between \$95,000 and \$199,999 per year contributed exclusively to Democrats in the 2000 election cycle, while 44% contributed exclusively to Republicans.<sup>37</sup> Again, these rates differed substantially from the contribution rates of law professors, which were 78% and 14%, respectively. Thus, in comparison to other Americans making between \$95,000 and \$199,999 per year, law professors are, again, much more likely to contribute to Democrats and less likely to contribute to Republicans.<sup>38</sup>

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34. See NATIONAL ELECTION STUDY, *supra* note 23.

35. See *infra* Appendix Table I-B.

36. See *infra* Appendix Table I-C.

37. See *infra* Appendix Table I-D. This is our best guess of category most closely equivalent to the range of law professor salaries in 2000. Some support for this estimate can be found in the salary survey of the Society for American Law Teachers. See *Equalizer*, Feb. 2004, at <http://saltlaw.org/EQ-Feb2004.pdf> (showing that median salaries of professors at Texas and Michigan are within this range). Certainly some law professors' salaries are higher, but we believe this estimate allows us to make rough demographic comparisons.

38. One group whose ideological profile may resemble that of law professors is university professors in general. See JENNIFER A. LINDHOLM ET AL., NORMS FOR THE 2001-2002 HERI SURVEY (2002) (surveying political views of university professors and finding the ratio of liberal to conservative

## C. PATTERNS AMONG SCHOOLS

Although we looked for contribution patterns among the law schools themselves, we discerned no geographic patterns; professors from law schools in one region of the country were not statistically more likely to give to Democrats or Republicans than professors from law schools in other regions.<sup>39</sup> This finding was consistent with individual contribution patterns, which suggest that law professors often contribute to candidates from outside their home region. Both sets of observations comport with the view that elite law professors are a cosmopolitan group not tied to any particular region—a notion supported by the fact that law professors at elite schools participate in a national labor market in which professors often move from one school to another.<sup>40</sup>

We also did not see any statistically significant difference in the tendency to give to Democrats and Republicans as we moved up in the hierarchy of elite schools. Professors from schools at all levels within our admittedly elite group tended to contribute predominantly to Democratic candidates. We did notice a tendency—although it was not statistically significant to a ninety-five confidence level—for the proportion of politically active faculty members to increase as one moved higher in the law school rankings. Since professors are likely to make more money at more elite schools and have access to more lucrative consulting opportunities, they are perhaps in a better position to make political contributions.

## D. DONATIONS BY DEMOGRAPHIC GROUP WITHIN THE ACADEMY

We also reviewed certain groups within the academy to see whether their ideological profiles differed from those of the overall academy. We considered female law professors and minority professors as demographic subcategories, using gender and minority status as listed in the *AALS Directory* (self-defined by individual professors themselves).<sup>41</sup> We divided professors by their date of birth, categorizing them into three groups: Pre-Baby Boomers, Baby Boomers, and Post-Baby Boomers. We also divided professors into subgroups categorized by the academic subjects they teach.

It is clear that, while the percentage of politically active female law professors is almost as high as the percentage of politically active male professors, politically active female professors are substantially more Democratic than their male counterparts (Table 2).

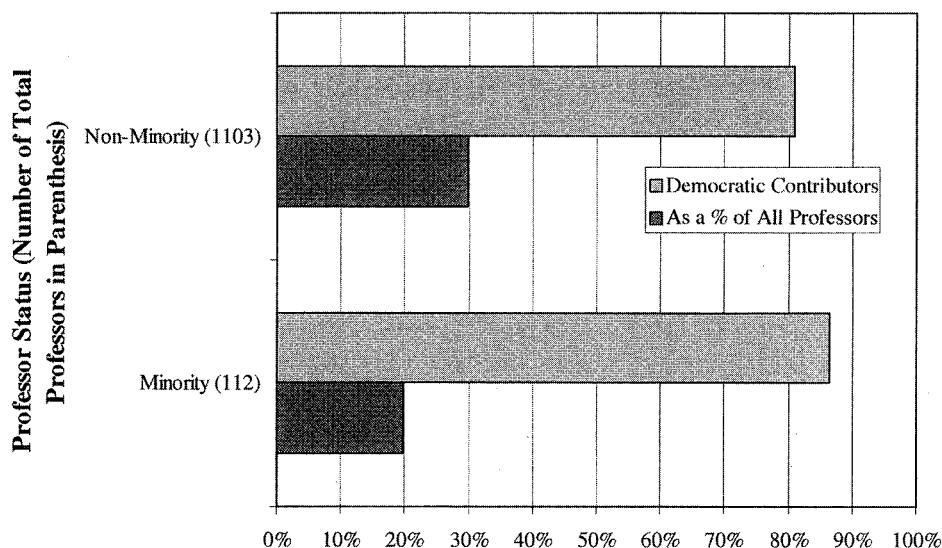
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professors to be three to one). Professors have, however, historically varied in their political views depending on the subject matter taught. See Everett Carl Ladd, Jr. & Seymour Martin Lipset, *Politics of Academic Scientists and Engineers*, 176 SCIENCE 1091, 1092 (1972) (showing that “natural scientists and engineers are consistently more [politically] conservative than social scientists and humanists”).

39. See *infra* Appendix Table I-E.

40. See Brian Leiter, *Educational Quality Rankings of US Law Schools: Law School Faculty Moves, 1995–2004*, at [http://www.utexas.edu/law/faculty/bleiter/rankings/faculty\\_moves.html](http://www.utexas.edu/law/faculty/bleiter/rankings/faculty_moves.html) (showing faculty movement among top law schools) (last visited Mar. 18, 2005).

41. See AALS DIRECTORY, *supra* note 17.

**Table 3: Contributing Professors by Minority Status**

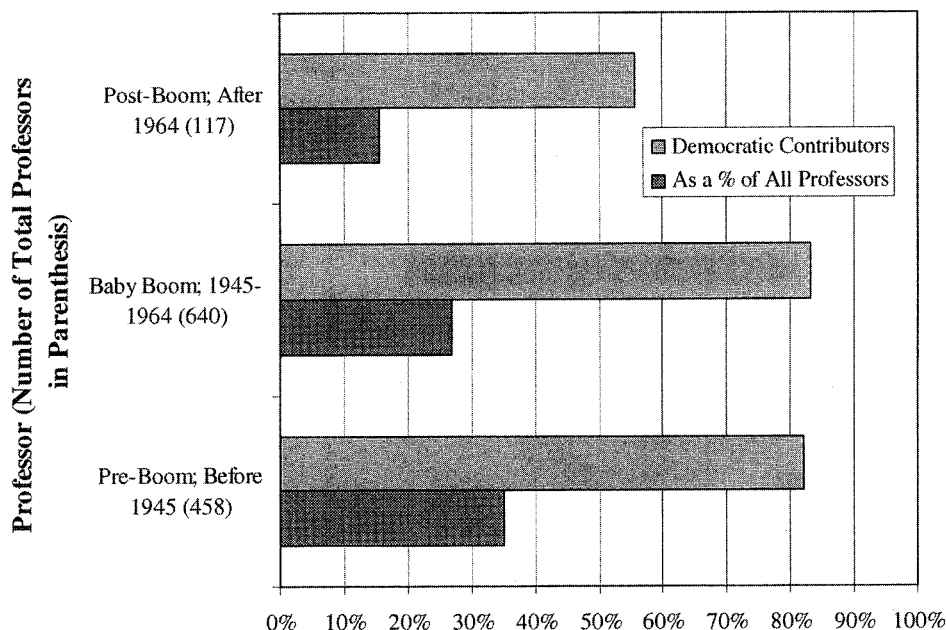
The contribution patterns of politically active minority professors show no statistically significant difference from those of politically active professors as a whole (Table 3).

Age cohort analysis yields some possible indications of future changes in the ideological composition of the legal academy (Table 4). The most liberal age cohort is Baby Boomers, followed by Pre-Baby Boomers. The difference here is not statistically significant. Politically active Post-Baby Boomers show a less pronounced Democratic affiliation that is statistically significant. Politically active Post-Baby Boomers, however, make up a much smaller proportion of their cohort than do politically active professors in other cohorts. As a result, the politically active Post-Baby Boomers may not be representative of Post-Baby Boomer professors as a group.

But this bit of data, if it does end up reflecting a trend, could be a harbinger of change. It could also be an indication that law professors are circumscribed in their ability to shape the ideological views of their successors. Or it could simply indicate the power of different external influences: Post-Baby Boomers may turn out to be not as liberal because they did not grow up in the politically polarizing era of the 1960s or are more conservative because their formative years were during an era of Republican political control. This is the part of our survey that would most benefit from updating in four to six years to determine whether the trend of this data continues.

#### E. DONATIONS BY SUBJECT MATTER

We also investigated contribution patterns among professors who teach different subjects. To group these professors, we employed different methodologies

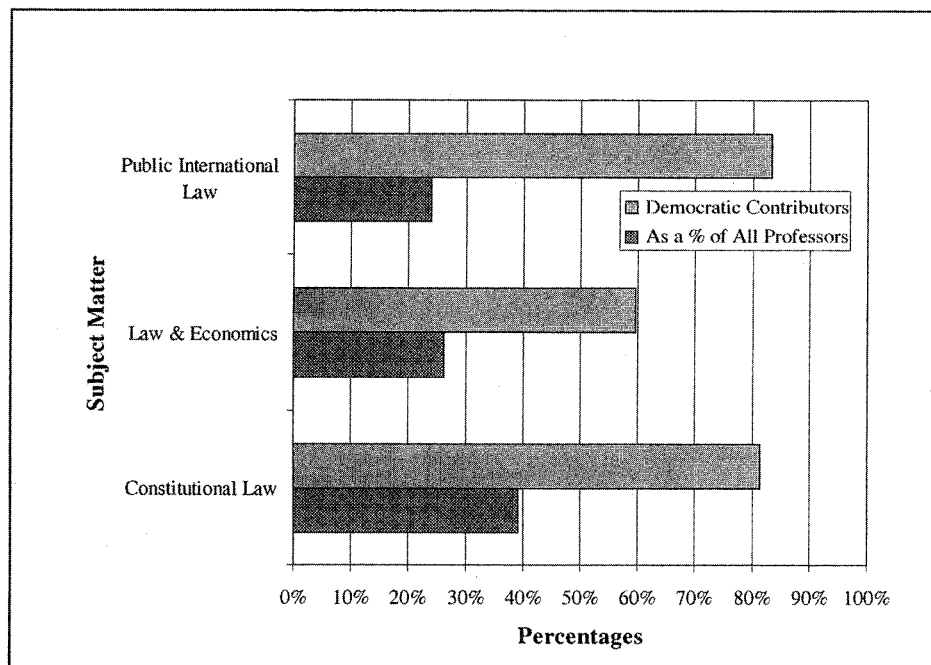
**Table 4: Contributing Professors by Age**

(Table 5). We separated out professors who taught subjects like antitrust and corporations that are predominantly populated by “law and economics” methodologies. We also added professors who are members of the American Law and Economic Association to ensure we included professors who pursue a “law and economics” approach more generally. As might be expected, politically active professors in these areas were less Democratic than the overall legal academy by a statistically significant amount. But “law and economics” professors still showed a strongly Democratic-leaning pattern of contributions—politically active Democrats outnumbered politically active Republicans by a margin of two to one.<sup>42</sup>

We also investigated whether “law and economics” professors would contribute less than the average professors. Professors attuned to “law and economics” might have been thought to internalize arguments often made by economists that their contributions would be unlikely to influence the outcome and therefore it was irrational to contribute.<sup>43</sup> Nevertheless “law and economics” professors contributed in about the same proportion as other professors. This finding may lend additional support to our conclusion (discussed below) that law professors are likely to contribute very often for expressive rather than instrumen-

42. See *infra* Appendix Table I-K.

43. See Lynn A. Stout, *Strict Scrutiny and Social Choice: An Economic Inquiry Into Fundamental Rights and Suspect Classifications*, 80 GEO. L.J. 1787, 1797 (1992) (discussing free-rider obstacles for citizens contemplating campaign contributions).

**Table 5: Contributions by Subject Matter**

tal reasons, making their contributions a reliable guide to their political sentiment.<sup>44</sup>

We investigated two other subject matter subgroups—constitutional law professors and international law professors—because of their political prominence. Constitutional law professors, in particular, tend to be among the most politically prominent in the legal profession.<sup>45</sup> As will be discussed in Part III, they may exercise influence through their criticism and exposition of Supreme Court opinions and influence over judicial reputations. We found that contribution patterns of constitutional law professors were not statistically different from the pattern of the study as a whole: 80% gave exclusively or predominantly to Democrats and 17% gave exclusively or predominantly to Republicans.

International law professors have not only prominence, but more direct influence over the law in their subject matter area.<sup>46</sup> For instance, customary international law—an important strand of international lawmaking—requires

44. See *infra* notes 62–63 and accompanying text.

45. We counted as a constitutional law professor any professor who taught any component of constitutional law, including civil rights, except for constitutional criminal procedure, which is generally identified as a subdiscipline of criminal law.

46. We counted as an international law professor any professor who taught international law, international human rights, or comparative law. We did not count professors who taught international transactions but not international law or international human rights as international law professors.



inferences from the practices of nation states to determine its content.<sup>47</sup> So-called “publicists” (who in the modern world are mainly law professors), are responsible for making those inferences and thereby have substantial influence over the content of customary international law.<sup>48</sup> Law professors are, of course, not the only publicists, but because of their number and the importance of the United States, American law professors probably play a more salient role in shaping international law, customary international law in particular, than publicists of any other nationality. We found that the contribution pattern of contributing international law professors also leaned Democratic: 83% gave exclusively or predominantly to Democrats and 17% gave exclusively or predominantly to Republicans. It may be desirable that architects of the norms of international law reflect the general views of, at least, their fellow citizens, so that their exercise of discretion in making inferences about the content of international norms will track the national will.<sup>49</sup> However, in the United States, at least the domestic political commitments of contributing international law professors in our study seem unrepresentative when compared with the overall U.S. population.<sup>50</sup>

#### F. INDIVIDUAL RECIPIENTS OF CONTRIBUTIONS

A more precise way of gauging law professors’ ideological preferences is to examine their contributions to individual legislative candidates, because such candidates often have more narrowly focused ideological identities than, for example, presidential candidates.<sup>51</sup> Donations to legislators who are actually elected are particularly informative because these candidates receive ideological “ratings” from political advocacy groups, such as the Americans for Democratic Action and the American Conservative Union. These ratings allow us to determine the kind of Democrats and Republicans to whom politically active professors among these schools contribute. We therefore list the top recipients of law professor contributions who were running for legislative office on the theory that legislators will provide a large political spectrum that can best match the donors’ exact ideological preferences. We then show the top five Republican and Democratic legislative recipients.

While some of these legislators (e.g., Barbara Boxer and Diane Feinstein),

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47. See, e.g., J. Patrick Kelly, *The Twilight of Customary International Law*, 40 VA. J. INT’L L. 449, 500 (2000) (describing process of customary international law formulation).

48. See Sean D. Magenis, *Natural Law as the Customary International Law of Self-Defense*, 20 B.U. INT’L L.J. 413, 424 n.57 (2002) (“The role of publicists is especially important in shaping international law because of the dearth of ‘black letter law’ on the subject.”).

49. For a discussion of the agency costs of unrepresentative formulators of customary international law, see John O. McGinnis, *The Appropriate Hierarchy of Global Multilateralism and Customary International Law: The Example of the WTO*, 44 VA. J. INT’L L. 229 (2003).

50. See Paul Stephan, *International Governance and American Democracy*, 1 CHI. J. INT’L L. 237, 246 (2000) (expressing concern that discoverers and interpreters of international law are not representative of other citizens).

51. In this table, we did not include legislators who were running for President such as John McCain or Bill Bradley, since the ideological range of presidential candidates tends to be narrower and thus is not as likely to capture the ideology of the giver as well as legislative contributions.

**Table 6a: Top Ten Legislative Recipients by Number of Contributing Professors**

<b>Legislator</b>	<b>Number of Contributors in 11 Years</b>	<b>ADA Rating (Year)</b>	<b>ACU Lifetime Rating</b>
Hillary Clinton (D)	19	95% (2002)	11%
Barbara Boxer (D)	17	90% (2002)	2%
Dianne Feinstein (D)	12	80% (2002)	12%
Harvey Gantt (D)	12	No Record	
Paul Wellstone (D)	12	99% (2000)	3%
Gene Nichols (D)	12	No Record	
Ralph Neas (D)	11	No Record	
Edward Kennedy (D)	8	100% (2002)	3%
Mike Taylor (D)	8	No Record	
Thomas Campbell (R)	6	20% (2000)	55%

**Table 6b: Top Six Democratic Legislative Recipients**

<b>Legislator</b>	<b>Number of Contributors in 11 Years</b>	<b>ADA Rating (Year)</b>	<b>ACU Lifetime Rating</b>
Hillary Clinton (D)	19	95% (2002)	11%
Barbara Boxer (D)	17	90% (2002)	2%
Dianne Feinstein (D)	12	80% (2002)	12%
Harvey Gantt (D)	12	No Record	
Gene Nichols (D)	12	No Record	
Paul Wellstone (D)	12	99% (2000)	3%

**Table 6c: Top Six Republican Legislative Recipients**

<b>Legislator</b>	<b>Number of Contributors in 11 Years</b>	<b>ADA Rating (Year)</b>	<b>ACU Lifetime Rating</b>
Thomas Campbell (R)	6	20% (2000)	55%
David Macintosh (R)	3	4% (1999)	99%
Spencer Abraham (R)	3	8% (2000)	86%
Dick Zimmer (R)	3	30% (1996)	68%
Kay Bailey Hutchinson (R)	2	0% (2000)	88%
Richard Lugar (R)	2	9% (2000)	79%

received most of their contributions from within their home state, most did not. This confirms that law professors are a nationally minded group that frequently gives to legislative candidates in states outside donors' personal residence. The data suggest that politically active Democratic law professors tend to give to candidates on the more ideologically liberal side of the Democratic spectrum while politically active Republicans are mixed between ideological conservatives and moderates.<sup>52</sup> As we discuss below, this ideological contrast provides some confirmation that law professors' contributions to Democrats and Republicans are fairly good markers for their ideological stances.<sup>53</sup>

## II. POTENTIAL OBJECTIONS TO THE METHODOLOGY

Surveys are often performed in ways that bias their outcomes. While we feel our numbers speak for themselves, we address the following objections to the way we have selected and analyzed the data in forming our survey: 1) the data collection process may not be 100% accurate; 2) the political views of the approximately 29% of professors who donate should not be projected onto the approximately 71% of professors who choose not to donate; 3) the study does not consider donations to state and local candidates, and Republicans may be more likely to donate locally than federally; 4) political donations are often based on desires for personal benefits, such as the passage of legislation favorable to oneself or a client, rather than ideology; and 5) while our study captures differences among politically active Republican and Democratic professors, this divergence does not map onto "real" ideological differences.

### A. THE ACCURACY OF THE DATA COLLECTION

As in all empirical studies, the data collection may contain errors. Of course, we have tried to minimize this kind of error by comprehensively checking the data on the amount of federal campaign contributions twice.<sup>54</sup> While there were some discrepancies between our assessments, they were few and, overall, insignificant.

A second objection is that the identity of each political contributor cannot be captured with 100% confidence. For example, if Pauline Oldham donated with no listed occupation, how can one be sure the donation came from a law professor named Pauline Oldham or from another person who, coincidentally, shared the same name? Several factors lead us to believe that this problem is more theoretical than real. First, all recorded donations state the city, state, and

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52. The contributions to Thomas Campbell, a law professor at Stanford during this study, are from schools other than Stanford. We cannot rule out the possibility, however, that his high number of contributions is more evidence of his good relations with fellow law professors than their ideological agreement with his positions.

53. See *infra* notes 58–59 and accompanying text.

54. Joseph Suh initially went through the contribution data and Benjamin Feuer checked it. The authors also engaged in some spot checking at various times throughout the process.

zip code of the donor, allowing us to narrow the geographic region in which to search. Second, a large percentage of law professors have put down their occupations on their donations. While sometimes a professor who donates multiple times will have listed his occupation on one donation, but not another, we can compare the two addresses to be sure we have the right donor. Finally, there is no reason to believe that any such mistakes would bias the overall results of the data in a Democratic or Republican direction.

Another source of possible bias is that Republicans might contribute less because of fear that their contributions would become known and lead to social or professional ostracization. We think this is unlikely to be a large effect. Only recently have organizations begun to publicize donations from specific sectors, like universities. As discussed below, contributions from professors in our study at the state level are given disproportionately to Democrats, and these donations are even more rarely publicized.<sup>55</sup>

#### B. THE REPRESENTATIVENESS OF DONATING PROFESSORS

It may be argued that data from politically active law professors in the schools in our study who contribute more than \$200 in a year are not representative of the politics of the professors who do not donate or who donate less than \$200 in a year. This point, narrowly considered, is completely correct. However, we have not used the political contributors among law professors to sample the political affiliations of “all” law professors. Instead, we presented data on the mix of “politically active” professors.<sup>56</sup>

Nevertheless, we have independent evidence for the common sense proposition that political contributions broadly track the political affiliations of the overall legal academy. In 1993, Professor James Lindgren delivered an unpublished speech to the National Association of Scholars, entitled “Is There Political Bias on Law Faculties?”<sup>57</sup> His conclusion, based on an unpublished survey of law professors at the top 100 schools, was that 80% of law professors were “Democrats” and 13% were “Republicans.”<sup>58</sup> These numbers closely mirror ours (81% exclusively and predominantly Democratic contributors and 15% exclusively or predominantly Republican contributors). Professor Deborah Merritt produced her own self-reporting survey of 823 professors who entered teaching between the fall of 1986 and the spring of 1991 that indicated that only about 10% of law professors identified themselves as “conservative” while 75%

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55. See *infra* note 60 and accompanying text.

56. See *infra* notes 59–60 and accompanying text.

57. See Michael C. Dorf & Samuel Issacharoff, *Can Process Theory Constrain Courts?*, 72 U. COLO. L. REV. 923, 947 (2001) (citing Lindgren study).

58. *Id.* Professor Lindgren based his conclusion on “a 1993–1994 survey of 710 law professors at the top 100 schools (66 percent response rate), weighted by race and gender figures from the 1996–1997 AALS database for those 100 schools.” See James Lindgren, *Conceptualizing Diversity in Empirical Terms*, 23 YALE L. & POL’Y REV. (forthcoming 2005).

identified themselves as liberal.<sup>59</sup>

Thus, given these studies and the common sense proposition that Republican law professors and Democratic law professors are not going to contribute at substantially different rates, we believe the burden is on others to explain why our donation data would not be broadly representative of the affiliations of those who do not donate.

#### C. FEDERAL VERSUS STATE

In our principal study we considered only contributions to federal as opposed to state and local elections. We did so because the data bank for federal elections went back further into past election cycles, was easier to use, and federal contributions (in our view) were more likely to represent ideological commitments. Nevertheless it might be objected that federal contributions are not representative of political contributions in general. Perhaps Republicans with strong commitments to traditional views of federalism donate primarily at the state level, or perhaps professors who donate to Democrats at the national level donate to Republicans on the state level.

We reviewed all state and federal contributions by the law professors surveyed for the 2000 election cycle to assess this contention. We found that of the professors who donated during that cycle, 78% donated exclusively or predominantly to state or federal Democrats and 14% donated exclusively or predominantly to state or federal Republicans.<sup>60</sup> This is very similar to our overall pattern of contributions at the federal level: 76% exclusively to Democrats and 13% exclusively to Republicans.<sup>61</sup> Thus, the partisan pattern of law professors' contributions at the state and federal level appears very much the same.

#### D. DONATIONS AS INSTRUMENT OF PERSONAL BENEFIT RATHER THAN AS EXPRESSION OF IDEOLOGY

Another criticism of this study is that it may be biased by contributions made by professors in order to obtain personal benefits rather than to express personal ideology. For example, perhaps some professors want a member of Congress to help their clients, their school, or themselves personally through legislative action, or perhaps some professors aspire to a position in the federal government. If so, then law professors may sometimes donate to help themselves personally, rather than to support those with whom they ideologically agree.<sup>62</sup>

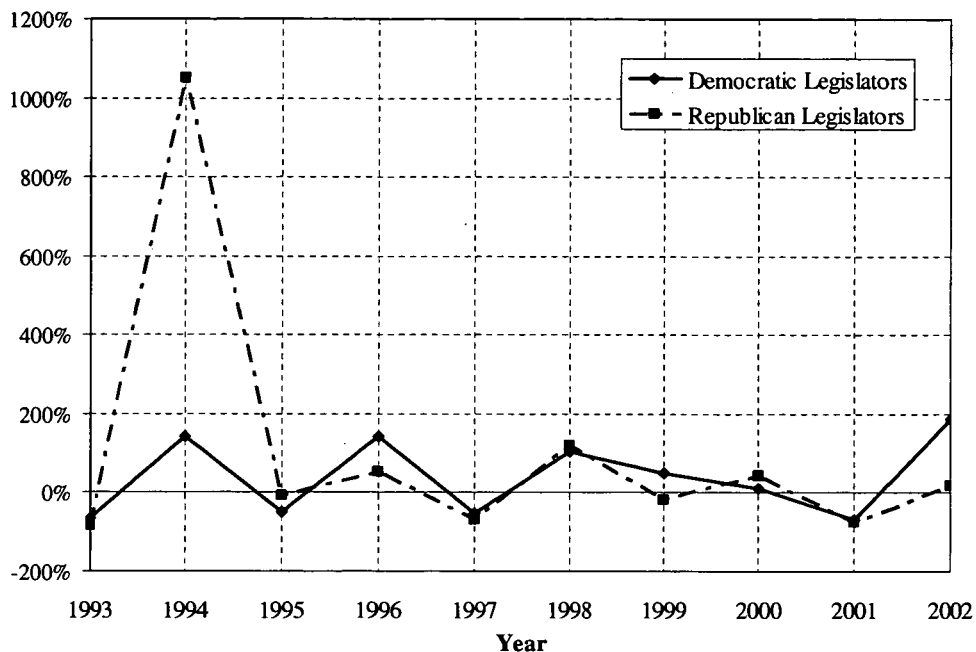
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59. See Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 780 n.54 (1998). Her survey of the political leanings of these professors was conducted in 1997. She does not report the percentage of professors who responded to the survey in general or to this question in particular.

60. See *infra* Appendix Table I-B.

61. See *infra* Appendix, Table I-A.

62. See Robert H. Sitkoff, *Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters*, 69 U. CHI. L. REV. 1103, 1112-13 (2002) (offering public choice analysis of why corporations donate to politicians).



**Figure 1: Percent Change in Professors Contributing to Legislative Recipients**

Thus the pattern of giving in the legal academy would presumably change (at least somewhat) depending on what parties are in power and thus are capable of providing more benefits.

We have found a way to use our data to attempt to show that any such “self-interested” contributions have not biased the ideological patterns revealed in our study. Our premise, supported by historical shifts in campaign contributions, is that if people donate out of pure self-interest they will more likely donate to members of the majority party: members of the majority party are more effective in moving matters through Congress and contributions to the party of the sitting President may facilitate political appointments.<sup>63</sup> But our data show no change in rates of giving to Democratic and Republican candidates despite the fact that during the years of our study control of Congress and the White House shifted from Democrats to Republicans. We illustrate this graphically by showing that the percentage change in Democratic and Republican contributions from year to year is generally similar regardless of which party controlled Congress (Figure 1). The one exception is that there is a spike

63. See E. Joshua Rosenkranz, *Faulty Assumptions in “Faulty Assumptions”: A Response to Professor Smith’s Critiques of Campaign Finance Reform*, 30 CONN. L. REV. 867, 874 (1998) (noting that after “Republicans gained control of Congress, PAC Contributions to Republicans surged from \$20 million to over \$40 million, while Democrats dropped from \$35 million to \$25 million”).

**Table 7: Effects of the 2002 Election Cycle on Contributing Professor Rates**

<b>Years</b>	<b>Measure</b>	<b>Contributing Professors</b>	<b><i>Exclusively and Predominantly Democratic Contributors</i></b>	<b><i>Exclusively and Predominantly Republican Contributors</i></b>
1992–2000	Average	27%	80%	15%
	Median	27%	78%	14%
1992–2002	Average	29%	81%	15%
	Median	28%	80%	13%

in Republican giving in the year before the 1994 election. But this does not undermine our thesis. Republicans were in the congressional minority that year. Unless donors could have predicted the quite unexpected Republican takeover of the House, their increase in contributions is likely to reflect anger over Clinton's performance in his first two years in office and/or anger over Democratic corruption scandals in Congress, rather than a hope for instrumental advantages from the majority party in Congress.

Second, we show that the contributions of the law professors in our study have not become more Republican with the election of George W. Bush (Table 7). This data strongly suggests that the fact that the sitting President happened to be a Democrat during most of the years of this study did not bias our data by providing law professors with more incentives to give to Democrats in the hope of obtaining (for example) an appointed position with the federal government.

#### E. DEMOCRATIC AND REPUBLICAN CONTRIBUTIONS AS A REFLECTION OF REAL IDEOLOGICAL DIFFERENCES

It might be argued that Republican and Democratic contributions do not capture ideological differences because the parties do not show strong fundamental ideological disagreements. This argument may have had some force in the 1950s, but recent decades have witnessed strong polarization in party activists, particularly on issues with legal resonance.<sup>64</sup> Democrats and Republicans have distinctive differences in views on areas such as minority rights and affirmative action, environmental protection, and social spending.<sup>65</sup> Divisions on these issues consistently track party affiliation.<sup>66</sup> For instance, 64% of Democrats favor a public health insurance plan while only 34% of Republicans do.<sup>67</sup>

64. See generally David C. King, *The Polarization of American Parties and Mistrust of Government*, in *WHY PEOPLE DON'T TRUST GOVERNMENT* (Joseph S. Nye et al. eds., 1997).

65. SAMUEL J. ELDERSVELD & HANES WALTON, JR., *POLITICAL PARTIES IN AMERICAN SOCIETY* 34 (2000).

66. *Id.*

67. *Id.*

So-called “morality issues,” such as stances toward abortion, the influence of religion in public life, and same-sex marriage are also reflected in the partisan divide.<sup>68</sup>

If this is true, the patterns that we discern in our study may not so much reflect “partisan” affiliations as much as “ideological” ones. Obviously, law professors with left-liberal ideologies tend to be Democrats and may be more disposed to support the political advancement of the Democratic Party. Similarly, law professors with right-conservative ideologies tend to be Republicans and may be more disposed to support the political advancement of the Republican Party. Indeed, there is some support for this theory in the patterns revealed by our study; the five top legislators to whom Democrats contribute are all generally considered ideologically “liberal” Democrats<sup>69</sup> and three of the five top legislators to whom Republicans donate are generally considered ideologically “conservative” Republicans.<sup>70</sup>

### III. THE EFFECT OF IDEOLOGICAL IMBALANCE IN THE ELITE LEGAL ACADEMY

In light of the strongly Democratic political affiliation of professors at elite law schools, we consider whether this affiliation affects the legal and academic positions taken by law professors. We first examine the views—“liberal” and “conservative”—advanced by law professors in “open letters” or statements on important legal issues, and conclude that such statements are more reflective of political affiliation than they are of any objective legal expertise. More subtly, we suggest that the dominant political affiliation of the American legal academy means that the public “stock” of innovative legal ideas will presumably be dominated by “liberal” ideas. Thus, when judges, legislators, and citizens come to the legal academy for ideas to organize and regulate society, they will find a shelf that is more amply supplied in some kinds of ideas than in others. An important caveat is that just because ideas are more amply supplied, it does not follow that they will be more influential. It is unclear from our study how much influence the larger number of liberal ideas has had. As discussed in Part IV, there is some reason to suspect that left-liberal ideas are less theoretically and politically powerful than they might otherwise be because they are rarely tested and improved through conservative challenge within the academy itself.

Finally, we suggest that the dominant political affiliation of the legal professorial elites may color other purportedly “objective” public expressions of expertise—such as academic “ratings” of judges and Supreme Court Justices—and, in turn, influence members of the judiciary to move the law politically leftward. We will address each of these different methods of institutional influence by the

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68. *Id.*

69. See *supra* Table 6b.

70. See *supra* Table 6c.



legal academy in turn.<sup>71</sup>

#### A. LAW PROFESSORS' JOINT PUBLIC STATEMENTS ON ISSUES OF PUBLIC CONCERN

We can statistically examine the influence of ideology on law professors by looking at letters that law professors signed on recent legal issues of great popular concern. We reviewed three letters, including a letter arguing that the impeachment of President Clinton was unconstitutional,<sup>72</sup> a letter supporting the legality of President Clinton's impeachment,<sup>73</sup> and a letter stating that *Bush v. Gore*<sup>74</sup> was contrary to the rule of law.<sup>75</sup> These letters all sought to influence public opinion and played a prominent part in the legal debate on these issues. For instance, President Clinton himself referred to the impeachment letter in his defense when he asked rhetorically, "[W]hy did nearly 900 constitutional experts say that they strongly felt that this matter was not the subject of impeachment?"<sup>76</sup>

Nationally, Democratic partisans held positions against impeachment and the Supreme Court's decision in *Bush v. Gore*, and Republican partisans held the reverse. The law professor letter on *Bush v. Gore*, however, presented itself less as a political statement than as an objective expression of apolitical expertise.

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71. We do not address another route by which law professor might exert legal influence—through teaching their students. One recent article has suggested that legal education does not change the political views of law students. See J.D. Droddy & C. Scott Peters, *The Effect of Law School on Political Attitudes: Some Evidence from the Class of 2000*, 53 J. LEGAL EDUC. 33 (2003). This article examined the ideological stances of 278 self-selected students at twenty-eight law schools between the beginning and end of their law school educations (from late 1997 to late 2000). *Id.* at 36–37. Despite the authors' claims that law schools did not affect law students' views overall, the study actually showed that students did become slightly more politically liberal—particularly on such policy issues as abortion and gay rights—and that this change was statistically significant. *Id.* at 43. At schools considered "top fifty" law schools, students also became more liberal on environmental regulation and affirmative action. *Id.* at 45. Thus, although Droddy and Peters argued that these changes in views were offset by the greater support for defense spending upon graduation, the data in this study show a drift towards traditionally liberal policy views on the kind of matters taught at law school.

72. See *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 374–83 (1998) (recording the law professors' letter).

73. The text of this letter was first published in the *Wall Street Journal*. See *Don't Let the President Lie with Impunity*, WALL ST. J., Dec. 10, 1998, at A22; see also [http://web.archive.org/web/20030816160756/http://adnetsolp2.adnetsol.com/ssl\\_claremont/Impeachment\\_statement.cfm](http://web.archive.org/web/20030816160756/http://adnetsolp2.adnetsol.com/ssl_claremont/Impeachment_statement.cfm) (providing text and list of signers).

74. 531 U.S. 98 (2000) (per curiam).

75. The text of this letter was first published as an advertisement in the *New York Times*. Law Professors for the Rule of Law, 554 *Law Professors Say: By Stopping the Vote Count in Florida, The U.S. Supreme Court Used Its Power to Act as Political Partisans, Not Judges of a Court of Law* [hereinafter 554 *Law Professors Say*], N.Y. TIMES, Jan. 13, 2001 at A7 (advertisement).

76. Remarks Prior to a Meeting with Labor Leaders and an Exchange with Reporters, 35 WKLY. COMP. PRES. DOC. 46–47 (Jan. 13 1999) (noting support of position from the letter of law professors as well as a letter from historians). The letter supporting the impeachment of President Clinton was published in the *Wall Street Journal*. See *supra* note 73. The letter opposing *Bush v. Gore* was published in the *New York Times*. See *supra* note 75; see also Tony Mauro, *High Court Justices Take Bush v. Gore for a Spin*, THE RECORDER, Feb. 12, 2001, at 3 (noting that advertisement was published on Jan. 13, 2001).

Indeed, the *Bush v. Gore* letter implied that it was written simply from devotion to the rule of law, stating, "By taking away power from the voters, the Supreme Court has tarnished its own legitimacy. As teachers whose lives have been dedicated to the rule of law, we protest."<sup>77</sup> The professor who organized the letter disclaimed any partisan or ideological motivation by claiming to a reporter "law professors are generally quite conservative."<sup>78</sup>

It is not surprising that the two letters advocating Democratic-aligned positions garnered large numbers of law professor signatures since our data suggest that, in absolute numbers, there are large numbers of Democrats in the legal academy.<sup>79</sup> In addition, there was a clear and discernable pattern among the contributing professors who signed each of these letters: letters that advocated outcomes supported by the Democratic Party were signed by a statistically disproportionately large number of Democratic contributors and the letter that advocated an outcome supported by the Republican Party was signed by a statistically disproportionately large number of Republican contributors. Politically active professors were more likely to sign a letter that reflected their particular political affiliations than to sign one that opposed it. Of the 111 politically active law professors in our study who signed at least one of the letters, only three took a position contrary to the view of the party to which he or she predominately contributed.<sup>80</sup>

It is also true that many of the signers of these letters lacked any particular expertise in the subject matter.<sup>81</sup> For instance, approximately 63, 67, and 78 percent respectively of all the professors at the surveyed schools who signed the anti-impeachment, pro-impeachment and *Bush v. Gore* letters did not teach constitutional law.<sup>82</sup> If we subtract from those figures those who wrote a constitutional law article in the last twenty years, still approximately 50, 56, and 69 percent respectively of the professors have little or no evidence of expertise in the legal area on which they were opining.<sup>83</sup>

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77. See 554 *Law Professors Say*, *supra* note 75.

78. See David Abel, *Bush v. Gore Case Compels Scholars to Alter Courses at US Law Schools*, BOSTON GLOBE, Feb. 3, 2001, at A1 (quoting Stanford Professor Margaret Radin).

79. See *supra* notes 72, 75 and accompanying text.

80. See *infra* Appendix Table I-M.

81. For a similar point, see RICHARD A. POSNER, *PUBLIC INTELLECTUALS: A STUDY OF DECLINE* 112 (2001).

82. See *infra* Appendix Table I-N. Here we count as teaching constitutional law anyone who lists in the *AALS Directory* a constitutional law subject, including civil rights but excluding criminal procedure, as a subject they teach or have taught. We do not limit the scope of our search to a subject taught in the 2001–2002 year. In contrast, in our demographic survey of subject matters, see *supra* notes 42–50 and accompanying text, we look at professors who taught the subject in 2001–2002, unless they taught no subjects at all in that year. That sorting tends to give us the professors who are most invested in a particular field, whereas the sorting here attempts to find professors who have any claim of expertise in the subject.

83. In assessing whether professors had written constitutional law articles, we looked at all articles written after 1986 that appeared on Lexis-Nexis. These numbers almost certainly overstate the amount of expertise, because they include as evidence of expertise articles that have no relation to the constitutional law issues at stake in impeachment or *Bush v. Gore*.

The conclusion from these observations seems clear: many professors—liberal and conservative alike—seem driven to sign “open letters” or statements on issues of public concern more by their political or ideological views than by their apolitical expertise in the subject matter.<sup>84</sup>

#### B. THE STOCK OF LEGAL IDEAS

“Open letters” are only a small part of the collective output of the legal academy, but we think that the apparent effect of political affiliation on the tendency to sign such letters is strong enough to suggest that ideological influence may shape law professor outputs more generally. One way of thinking about the ideological effect on this output is to understand law professors as generally engaged in the business of creating a new stock of legal ideas. In their most creative activities, law professors do not simply disseminate an opinion on a legal issue. Instead, they deploy their abilities to generate mechanisms of potential legal transformation, as when they translate ideas from the social sciences into the law or when they combine old legal doctrines into new forms. Of course, interested lawyers will make such efforts themselves, but one might believe that law professors, more insulated from clients and interest groups, would contribute a distinctively independent perspective that would command particular attention and persuasive force. For instance, law professors in articles and legal briefs can represent new ways to advance or defend a particular legal outcome. They can also generate concrete proposals for legal reform. While the effect of political affiliation and ideology on such outputs is harder to quantify than with “open letters” on issues of political concern, the extent of the ideological influence should be explored in other areas.

One important output of law professors in our study consists of amicus briefs filed in the Supreme Court. We have reviewed amicus briefs filed by the surveyed professors in the 2000–2001, 2001–2002 and 2002–2003 terms.<sup>85</sup> Law professors in our study filed approximately 104 amicus briefs in this period.

There was a noticeable lack of briefs defending conservative positions in particular areas of the law and in some of the most important cases to come before the Court. For instance, in criminal law and immigration area, all amici filed by professors in our study but one were against the government’s position,

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84. A debate has recently emerged in the legal literature about the utility and wisdom of law professors’ signing joint statements to provide their putative expertise on legal issues of public concern. Compare Neal Devins, *Bearing False Witness: The Clinton Impeachment and the Future of Academic Freedom*, 148 U. PA. L. REV. 165 (1999) (doubting scholarly bona fides of joint letters professors send on issues of public concern) with Cass R. Sunstein, *Professors and Politics*, 148 U. PA. L. REV. 191 (1999) (defending the letters as useful to public discourse). Those opposing the practice have suggested that law professors may often lack expertise on the subjects of the letters and thus mislead the public by giving the illusion of a scholarly political imprimatur to what are politically driven opinions.

85. We reviewed amicus briefs by looking in Findlaw. Because of the difficulty of assuring that we found every amicus brief with which a law professor in our study was associated, we stress that our numbers here are only approximate.

and that one was filed at the invitation of the Supreme Court itself.<sup>86</sup> In some of the most contentious cases of constitutional law, law professors from our study filed only on the left liberal side. Some important cases have multiple amicus briefs filed on one side and none on the other. In *Lawrence v. Texas*,<sup>87</sup> nineteen professors from our study filed six briefs in favor of recognizing consensual homosexual behavior as protected under substantive due process. In *Nevada Department of Human Resources v. Hibbs*,<sup>88</sup> an important federalism case, two briefs were filed on the side of federal power and none on the side of distributing power to the states. In *Brown v. Legal Foundation of Washington*,<sup>89</sup> two amicus briefs were filed against the takings claim on behalf of plaintiffs from whom the government extracted interest in small, commingled accounts on behalf of public interest causes. All of these cases had substantial arguments on both sides, but all law professors who took a public position in the litigation came down on one side—typically the one generally identified with the “liberal” position. There were no important cases with multiple briefs filed on the conservative side from law professors at elite schools and no briefs filed on the liberal side.

To be sure, in other important cases with multiple amicus briefs both sides were represented from professors in our sample. For instance, there were amicus briefs on both sides of the important Establishment Clause case—*Zelman v. Simmons-Harris*—challenging the use of school vouchers by religious schools.<sup>90</sup> In three other high profile cases, *Gratz v. Bollinger*,<sup>91</sup> *Grutter v. Bollinger*,<sup>92</sup> and *Bush v. Gore*,<sup>93</sup> both sides had *amicus* participation from professors in our study. *Whitman v. American Trucking Associations*<sup>94</sup>—involving both delegation issues and cost-benefit analysis issues—had a panoply of briefs approaching the case from a variety of angles. Such instances of multiple conflicting perspectives provide the Supreme Court with useful guidance and society with a public good—the vetting of both sides of an important legal issue from its most sophisticated academic theorists. A legal academy with greater ideological diversity would likely offer that advantage in a wider range of cases.

Law professors also influence the development of law through means other than amicus briefs, but this is harder to evaluate objectively. Another area for further study would be the influence of law professors on legal reform organiza-

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86. See <http://www.supremecourtus.gov/docket/00-1214.htm> (recording the invitation extended to Charles Fried for submission of a brief *amicus curiae* at the request of the Court in *Alabama v. Shelton*, 535 U.S. 654 (2002)).

87. 539 U.S. 558 (2003).

88. 538 U.S. 721 (2003).

89. 538 U.S. 216 (2003).

90. 536 U.S. 639 (2002).

91. 539 U.S. 244 (2003).

92. 539 U.S. 306 (2003).

93. 531 U.S. 98 (2000).

94. 531 U.S. 457 (2001).

tions. For instance, law professors regularly serve in important positions, such as reporters to restatements generated by the American Law Institute ("ALI"). At least anecdotally, their influence on the ALI seems approximately consistent with the dominant political affiliation of the legal academy. A recent ALI report suggested that the definition of family be transformed so that it was not centered on marriage or even the union of man and woman.<sup>95</sup> Whatever the merits of this proposal, few would dispute that this apparent expression of apolitical legal expertise aligns broadly with the views of many ideological liberals. The proposal was (unsurprisingly) immediately denounced by political conservatives.<sup>96</sup>

Finally, law professors can generate new legal frameworks altogether. For instance, Professor Catharine MacKinnon, now of the University of Michigan Law School, elucidated the concept of sexual harassment before that concept was well limned in law. Some have described her influential analysis as largely responsible for creating this area of the law.<sup>97</sup> Thus, while the dominant political affiliation of the legal academy may shape the position the legal academy takes on issues of political concern, it may also occasionally have a long-term effect by creating a richer future supply of legal ideas with a politically liberal orientation.<sup>98</sup>

#### C. THE EFFECT OF IDEOLOGICAL IMBALANCE ON THE REPUTATIONS OF JUDGES

An even more important, albeit harder to calculate, effect of the political affiliation of the American legal academy may be its diffuse influence on judicial elites. By diffuse influence, we mean influence exercised outside specific legal issues raised by Congress, the Supreme Court, or even specific projects of legal reform. This influence is exercised through teaching and dissemination of opinions about legal actors and legal decisions in the course of law professors' work. Here, we look at the possible ways such influence affects Supreme Court decisions.

Professor Klarman has persuasively argued that the substantive content of judicial review tends to reflect the elite values of the age.<sup>99</sup> It would seem

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95. See Robert Pear, *Legal Group Urges States to Update Their Family Law*, N.Y. TIMES, Nov. 30, 2002, at A1 (discussing ALI's plan drawn up by law professor to update family law by extending alimony and property rights to cohabiting couples; proposal attacked as a radical weakening of marriage).

96. *Id.*

97. See Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1115 (1996).

98. One interesting question is whether the rise of so-called "think tanks" have counterbalanced any ideological imbalance in the stock of legal and policy ideas generated by the legal academy. Many prominent members of the Democratic Party recently have suggested that the large number of "conservative" think tanks have given Republicans a political and policymaking advantage in the marketplace of policy ideas. See Matt Bai, *Wiring the Vast Left-Wing Conspiracy*, N.Y. TIMES, July 25, 2004, § 6 (Magazine), at 30.

99. See Michael J. Klarman, *What's So Great About Constitutionalism?*, 93 NW. U. L. REV. 145, 189-92 (1998).

reasonable to hypothesize that elite law professors have a not insubstantial power to shape these values. This is not an ideological point about the left: If law professors' values were conservative today they would exercise predominantly conservative influence, as they perhaps did in the Gilded Age.<sup>100</sup> It is also a point about influence at the margin. Justices are screened through a political appointments process and influenced by many elites, and their views are unlikely to be transformed by any one segment of the bar or general population—even one as legally articulate as the elite legal academy.

One specific vector by which the academy exercises influence on constitutional law is through its assessment and reassessment of the reputations of members of the judiciary. This argument rests on two causal links. First, that the predominant ideology of the legal academy shapes the academic reputation of judges and in particular Supreme Court Justices. Second, that Justices' concern over their reputations influences to some degree the content of their legal decisions and opinions. Accordingly, through their future assessment of Justices, law professors can influence the current course of the law without ever arguing in Court. We address the plausibility of each link in turn.

Substantial evidence supports the premise that law professors' ideological views influence their evaluations of Justices of the Supreme Court. Professor William Ross has reviewed academic ratings of past Justices of the Court and detected ideological bias.<sup>101</sup> Ross reviewed various surveys of law professors, jurists, students, and lawyers that asked them to rank the "best" Supreme Court Justices. In his review, Ross argued that many of the Justices were boosted in their rankings because of their association with liberal decisions.

Since most leading scholars favor judicial deference to the legislative branch of government in economic matters and judicial activism in cases involving personal liberties, it is not surprising that so-called "liberal" justices are more highly ranked than what might be called "conservative" justices. . . . The Pederson-Proviser list of the top ten justices reads like an honor role of liberal heroes: . . . Holmes and Brandeis, who railed against substantive economic due process and wrote eloquent dissents in favor of free speech; and Warren, Brennan, Black, and Douglas, who expanded the scope of civil liberties and espoused judicial activism on behalf of embattled minorities.<sup>102</sup>

It is arguable that an ideologically balanced group of law professors would produce a significantly different all-time top ten list of Supreme Court Justices. Justice William O. Douglas, whose erratic jurisprudence is widely acknowl-

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100. The leading law professor of that era, Thomas Cooley, was a strong supporter of *Lochner*-style jurisprudence. See Stephen A. Siegel, *Lochner Era Jurisprudence and the American Constitutional Tradition*, 70 N.C. L. REV. 1, 111 n.528 (1991).

101. See William G. Ross, *The Ratings Game: Factors that Influence Judicial Reputation*, 79 MARQ. L. REV. 401 (1996).

102. Ross, *supra* note 101, at 406. Chief Justice John Marshall is also on the list of the top ten and Ross thinks him a liberal as well, but this characterization is open to dispute.

edged, is a particularly surprising choice.<sup>103</sup> As further evidence of the possible influence of legal academy ideology on the Pederson-Proviser list, Ross noted that practicing lawyers chose a larger number of “conservative” Justices as great Justices than law professors did.<sup>104</sup> Another example Ross pointed to is that in the 1993 Blaustein Mersky Survey, Justice Clarence Thomas ranked third to last of all Supreme Court Justices (at the time, Justice Thomas had been on the Court for only two years). As Professor Ross notes, “it is difficult to use any measure other than politics to account for the very low ranking.”<sup>105</sup>

Of course, concern for reputation is only one of many factors influencing the jurisprudence of individual judges. However, judges and Justices are only human, and it seems reasonable to believe that the prospect of an enhanced reputation—with or without the quantitative support of “rankings”—gives the legal academy some degree of influence over members of the judiciary. Judge Richard Posner has suggested that life-tenured judges have an interest, among others, in maximizing their judicial reputations.<sup>106</sup> This interest would seem to be strongest with Justices because their reputations are likely to be more widely discussed and endure longer than most judges. If so, Justices are likely to alter their jurisprudence, at least at the margins, toward what they would expect members of the legal academy to prefer. Given the apparent political affiliation of so many members of the legal academy, such alterations would presumably be in a politically “liberal” direction.<sup>107</sup> This theory may partially explain the

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103. See Richard A. Posner, *The Anti-Hero*, THE NEW REPUBLIC, Feb. 24, 2003, at 27 (reviewing BRUCE ALLEN MURPHY, *WILD BILL: THE LEGEND AND LIFE OF WILLIAM O. DOUGLAS* (2003)) (discussing evidence of Douglas’s deficiencies as a jurist); see also Bernard Wolfram et al., *DISSENT WITHOUT OPINION: THE BEHAVIOR OF JUSTICE WILLIAM O. DOUGLAS IN FEDERAL TAX CASES 136* (1975) (criticizing Douglas for failing to explain his dissents in many tax cases and writing “careless” opinions in many others).

104. Ross, *supra* note 101, at 407 (noting disparities between judgments of lawyers and judges).

105. *Id.* Sometimes it is argued that Thomas’s voting with Scalia, particularly in the early years, showed a lack of independence that cast doubt on his judicial adequacy. This criticism appears unjustified: agreement by two Justices on a jurisprudential approach discredits neither Justice. It certainly did not discredit Justices Brennan and Marshall, whose agreement in their last decade on the court regularly exceeded that of Scalia and Thomas. Compare *The Supreme Court, 1989 Term—The Statistics*, 104 HARV. L. REV. 359, 368 tbl.2 (1990) (providing statistics on frequency of agreement of Brennan and Marshall in the 1980s), with *The Supreme Court, 1991 Term—The Statistics*, 106 HARV. L. REV. 378, 378 tbl.1 (1992), and *The Supreme Court, 1992 Term—The Statistics*, 107 HARV. L. REV. 372, 372 tbl.1 (1993) (providing statistics on frequency of agreement of Scalia and Thomas in their first two years on the Court). Nor was the controversy over Thomas’s confirmation a principled basis to rate him poorly for his work as a Justice. The point is not that Thomas should have been rated highly for his first years on the Court, but that he had done nothing on the Court to warrant the extraordinarily low rating.

106. See Richard A. Posner, *What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)*, 3 SUP. CT. ECON. REV. 1 (1993) (suggesting that judges are interested in maximizing reputation, among other things).

107. See Frederick Schauer, *Incentives, Reputation, and the Inglorious Determinants of Judicial Behavior*, 68 U. CIN. L. REV. 615, 627–28 (2000) (suggesting that Justices care about their reputation in the academy). It might be argued that the long-term reputations of judges depend on future generations of academics whose outlook is hard to predict. But institutional biases can often be notoriously long-lived and self-perpetuating. Even if the current apparent political imbalance among the members

tendency of some modern Justices to move left as they age.<sup>108</sup>

#### IV. IDEOLOGICAL IMBALANCE AND VIEWPOINT DIVERSITY

We end by suggesting that the apparent lack of political or ideological diversity at elite American law schools may have implications for the professed use of affirmative action at these schools to further “viewpoint diversity.” In doing so, we emphasize that we do not, in this paper, comment or take a position on the wisdom or the constitutionality of race-based affirmative action. Nor do we advocate as an independent matter that law schools take tangible steps to hire more conservatives onto their faculties. Instead, we make a narrow but still important point in suggesting that law schools that offer “viewpoint diversity” as a justification for affirmative action, but are unwilling to take such steps to hire conservatives, are perhaps using a convenient and selective definition of “viewpoint diversity” that may itself be ideologically driven. We also suggest that true viewpoint diversity within law school communities is advanced (at least) as much by ideological diversification as it is by ethnic diversification and that, in this respect, faculty diversity is as valuable as student diversity. We support each of these propositions in turn.

##### A. IDEOLOGICAL PREFERENCES COMPARED TO RACIAL AND ETHNIC PREFERENCES AS INSTRUMENTS OF VIEWPOINT DIVERSITY

The viewpoint diversity rationale for race-conscious admissions policies posits that certain underrepresented minorities need to be given greater representation to make sure that all students benefit from exposure to a wide variety of viewpoints.<sup>109</sup> The argument for viewpoint diversity has been well expressed as follows:

The viewpoint function of diversity derives from a relationship between the identity of the speaker and what she is likely to say. People with different racial identities have different experiences and thus view the world differently. Different experiences and ideas help promote and sustain academic environments as robust marketplaces of ideas—marketplaces shaped by dis-

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of the legal academy is a short-lived one, it seems only commonsensical to imagine that a good reputation is best enjoyed while a judge or a Justice is still alive.

108. Justice Blackmun is the most famous recent case of a Justice moving to the left over the course of his career. See LINDA GREENHOUSE, *BECOMING HARRY BLACKMUN* (2005). But other Justices have moved left as well. See Andrew Martin, Kevin Quinn & Lee Epstein, *The Median Justice of the Supreme Court*, N.C. L. REV. (forthcoming 1995), at <http://epstein.wustl.edu/research/medianjustice.html> (arguing that the Court has moved left as O’Connor has moved left).

109. See Timothy L. Hall, *Educational Diversity: Viewpoints and Proxies*, 59 OHIO ST. L.J. 551 (1998) (discussing argument that educational diversity rationale for affirmative action uses race as a proxy for distinctive viewpoint).



agreement and debate. In an educational setting, disagreement and debate help remedy incorrect assumptions and generate new ideas.<sup>110</sup>

Advocates of affirmative action in *Grutter v. Bollinger*,<sup>111</sup> the recent affirmative action case arising from the University of Michigan Law School, echoed this claim. For instance, the American Law Deans Association “fully endorse[d] the compelling interest in diverse experiences and perspectives in the classroom.”<sup>112</sup> Indeed, many of the elite schools examined in our study stress the importance of viewpoint diversity to justify their admission practices.<sup>113</sup>

In *Grutter*, Justice O’Connor concluded that the benefits of affirmative action are “important and laudable” because “‘classroom discussion is livelier, more spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds.’”<sup>114</sup> Although these benefits were cited in the context of the different viewpoints that students of different races and ethnicities bring to the classroom,<sup>115</sup> diversity of political affiliations would seem at least as important to diversity of viewpoint.<sup>116</sup> Political affiliation has been shown to account for larger “viewpoint cleavages” than (for example) membership in different racial and ethnic groups.<sup>117</sup> Political affiliation, after all, is inherently about espousing a viewpoint, whereas race is simply correlated

110. Devon W. Carbado & Mitu Gulati, *What Exactly is Racial Diversity?*, 91 CAL. L. REV. 1149, 1159–60 (2003) (reviewing ANDREA GUERRERO, *SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION* (2002)).

111. 539 U.S. 306 (2003).

112. Brief of Amicus Curiae American Law Deans Association at 4, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02–241).

113. The Deans at ten of the elite schools in this study signed a brief supporting the University of Michigan, in which they stated, “[i]f a sprawling democratic republic as diverse and divided as 21st century America is to flourish, it must develop some common spaces where people from different segments of society can come together to learn how others live, how others think, and how others feel. Our Nation’s law schools should continue to have the freedom to be such a space.” Brief of Amici Curiae Judith Areen, Katharine Bartlett, Michael Fitts, Anthony Kronman, David Leebron, Saul Levmore, Richard Revesz, Kathleen Sullivan, Lee Teitelbaum, and David van Zandt—in their individual capacities as Deans of, respectively, Georgetown University Law Center, Duke Law School, University of Pennsylvania Law School, Yale Law School, Columbia Law School, University of Chicago Law School, New York University Law School, Stanford Law School, Cornell Law School, and Northwestern University School of Law—in support of Respondents at 11, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02–241).

114. *Grutter*, 539 U.S. at 330 (citation omitted).

115. One other prominent argument in Michigan, perhaps appropriately named the downstream diversity argument, suggests that diversity among the student body will redound to society’s benefit by helping individuals of different races into different leadership positions. See *Grutter*, 539 U.S. at 333 (alluding to such arguments). As we discuss below, one could make analogous arguments for faculty hiring of conservatives, which can be expected to improve public discourse by making arguments more principled and less result-oriented. See *infra* notes 131–132 and accompanying text.

116. See Alan J. Meese, *Bakke Betrayed*, 63 LAW & CONTEMP. PROBS. 479, 503–04 (2000) (noting that other groups besides ethnic minorities are greatly underrepresented on campuses).

117. See PETER H. SCHUCK, *DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE* 163 (2003).

with viewpoints about law and policy.<sup>118</sup> As we have discussed above, while parties are not monolithic in their viewpoints, party affiliations at least predict clusters of viewpoints.<sup>119</sup> Compared to Democrats, Republicans tend to favor lower levels of government spending, less market regulation, and lower and less progressive taxes. On cultural issues, Republicans tend to oppose, *inter alia*, abortion, affirmative action based on race, and a strict separation between church and state. In the context of the law, political affiliation is suggestive of the stances that law professors will take on important legal issues, as our review of open letters on political subjects suggests. Indeed, in the context of judicial decision-making—a relatively close analogy to the kind of issues addressed in the legal academy—partisan identification makes substantially more difference to the positions judges take than race or gender.<sup>120</sup>

It may be argued that, unlike ideology-based affirmative action, race-based affirmative action comes in the context of historical discrimination against underrepresented minority groups.<sup>121</sup> However true that may be as a factual matter, the viewpoint diversity rationale for race-based affirmative action does not depend on this historical context. Rather, the diversity rationale is forward looking, seeking to improve the institution for the future rather than rectifying injustices of the past.<sup>122</sup> Assuming that law schools are sincere in justifying their race-based affirmative action policies in terms of viewpoint diversity, these policies would be socially valuable and constitutional even in the absence of historical discrimination.<sup>123</sup>

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118. It may be argued that an important difference between racial diversity and ideological diversity is that members of racial minorities often have had personal experiences (most obviously experiences of racial discrimination) that allow them to make unique contributions to a classroom discussion. We are unsure that this argument necessarily implies that race is superior to ideology as a proxy for individual viewpoint. However, even if it does, we suggest that, like race, ideology is frequently intertwined with personal experience. For example, a person's conservative ideology may arise from a past religious conversion or from being the past victim of a violent crime. We also note that using race as a proxy for viewpoint carries some risk of stereotyping; members of minority groups, like everyone else, possess a variety of beliefs. See Paul Butler, *Affirmative Action and the Criminal Law*, 68 U. COLO. L. REV. 841, 853 (1997). Presuming that a political conservative possesses a core set of viewpoints or beliefs does not create this risk.

119. See *supra* Part II.E.

120. See Tracey E. George, *Court Fixing*, 43 ARIZ. L. REV. 9, 37 (2001) (noting that policy preferences as captured by the party of the President who appoints the judge are strongly related to the judges' decisions. Personal characteristics like race and gender are only weakly related to their decisions.).

121. See Fran Ansley, *Diversity of Opinions*, 68 U. COLO. L. REV. 1001, 1012 (1997) (explaining reasons she is not interested in trying to hire conservatives or Republicans as faculty colleagues to create ideological diversity).

122. See Arnold H. Lowey, *Taking Bakke Seriously: Distinguishing Diversity From Affirmative Action in the Law School Admissions Process*, 77 N.C. L. REV. 1479, 1479–80. (1999) (distinguishing diversity from remedial affirmative action).

123. Finally, it might be argued that a decision of state universities to take political views, as opposed to racial or ethnic identities, into account in their admissions or hiring decisions would violate the First Amendment. This contention would be powerful if not for *Grutter*. There, the Court held that state universities should receive deference in running their academic affairs, see *Grutter v. Bollinger*,

Some might contend there is a difference between ethnic diversity and ideological diversity in that professors can pretend to adopt conservative viewpoints but they cannot pretend to be of minority ethnicity. We fail to see that this is a relevant difference, given the ideal of creating an atmosphere of diverse viewpoints.<sup>124</sup> Regardless of their ethnicity, professors can make the arguments made by many minorities about legal situations. White professors can, for instance, press issues of racial profiling, even if they are not minorities and have never experienced its injustice. These professors may not make the arguments on racial profiling with the same passion and authenticity as they would if they were minorities, but the same can be said about liberals' ability to express conservative viewpoints.

#### B. STUDENT VERSUS FACULTY VIEWPOINT DIVERSITY

We also suggest that having a law faculty with diverse viewpoints is as important—indeed is more important—than a law student body with diverse viewpoints. Before discussing this point, we note that it may not be relevant to the many faculties that pursue faculty diversity<sup>125</sup> and do so on a viewpoint diversity rationale. For such faculties, the important question would be whether ideological diversity can contribute as much to viewpoint diversity as racial or ethnic diversity.

In any event, we suggest that if one agreed with the rationale of viewpoint diversity and had to choose between faculty diversity and student diversity, faculty diversity might be more important. Faculties set law school curricula and determine what should be taught in each class. In almost all law school classes, they speak far more than any individual student and often speak more than all students collectively. Beyond the classroom, they are responsible for inviting the most distinguished academics to workshops, symposia, and other engagements, which themselves generate policy discussions on campus for the benefit of students.<sup>126</sup>

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539 U.S. 306, 330 (2003), and that given this deference their decision to seek diversity could be a compelling state interest satisfying strict scrutiny under the Fourteenth Amendment. *Id.* If diversity is a compelling interest in the educational context for the Fourteenth Amendment, why is it not compelling for the First Amendment? In any event, most elite law schools as private institutions are not governed by the First Amendment.

124. The ability to pretend to embrace a viewpoint without actually espousing it may create a practical obstacle to implementing a program of affirmative action based on ideology. It is conceivable that if affirmative action for conservatives and Republicans became prevalent, liberal and Democratic candidates would pretend to be conservative and Republican. But such pretense would carry substantial risks of making worse arguments than one would if one wholly believed them. If this pretense turned out to be a serious problem, law schools could focus on the lateral market for hiring, seeking professors with a clear track record of ideas in advance of the new policy.

125. See AM. ASS'N OF LAW SCHOOLS, BYLAWS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS § 6-3(c) available at <http://www.aals.org/bylaws.html> (as amended January 5, 2004) ("A member school shall seek to have a faculty, staff and student body which are diverse with respect to race, color and sex.").

126. It might be argued that full-time faculty create only part of the law school experience. Adjunct faculty and even partners at the firms where students clerk for the summer also have influence. Perhaps

Moreover, increased ideological diversity in law schools would not just benefit law students.<sup>127</sup> Politically liberal faculty members would have the benefit of facing more in-house critiques of their arguments from ideologically diverse viewpoints. Liberal-oriented legal arguments would improve if they were taken on more demanding “test runs” from conservative faculty members. Greater ideological diversity in the legal academy thus may improve the theoretical and political power of liberal professors’ legal arguments even as it makes their life less insular. Thus, paradoxically, liberal law professors who want to make their ideas more influential in the wider world should be rationally most interested in hiring more conservatives.

Ideological diversity might also improve a law school’s contribution to public discourse—one of the principal public goods that law schools provide to society at large. Recent scholarship on the judiciary provides an intriguing analogy that suggests that public actions of faculty members, including their scholarship, might become more principled and less partisan and result-oriented if more Republicans and conservatives were colleagues. Professors Frank Cross and Emerson Tiller have shown that judges sitting on panels composed of all Democrats or all Republicans are much less likely to apply legal doctrines like *Chevron* and constitutional standing as “honestly” as judges sitting on panels with mixed partisan composition.<sup>128</sup> They call this the “whistleblower” effect<sup>129</sup> and suggest that panels of appellate judges be structured to assure that there are mixed perspectives.<sup>130</sup> Similarly, one might expect legal scholarship to be more “objective” and less result-oriented if a greater number of conservative professors were present to engage on a daily basis the liberal viewpoint that currently appears to dominate elite American law schools.<sup>131</sup>

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these people are more conservative and thus counterbalance the lack of ideological diversity among the full-time law faculty. However, there is no evidence that adjuncts and law partners are necessarily “conservative.” Also, full-time faculty members are in a far better position to disseminate broad political and philosophical ideas; indeed, it is what they do for a living.

127. Some might suggest that diversity within law school faculties is not necessary to perform the social function of producing the best possible scholarship for public use. So long as an equilibrium sustains conservative schools as well as liberal schools, the conservative schools will be available to supply distinctly conservative ideas. Even if one dismisses the advantage of having in-house critics at law schools, the problem with this theory is that there are no schools that seem to lean to the conservative side in our survey. While there are undoubtedly a few such schools in the entire legal academy, their academics lack the prestige and resources to compete on an equal footing in gaining an audience for their ideas.

128. See Emerson H. Tiller & Frank B. Cross, *A Modest Proposal for Improving American Justice*, 99 COLUM. L. REV. 215 (1999); see also Sunstein, Schkade & Ellman, *supra* note 4.

129. Tiller & Cross, *supra* note 128, at 228–32.

130. *Id.* at 234.

131. It might be thought that hiring preferences for conservative faculty may have some costs. In close cases, at least, ideology could be a dispositive factor that results in hiring a faculty member who is less strong as measured by other criteria. But of course, such costs are an inherent consequence of any variety of affirmative action and can be controlled, as with race-based affirmative action, by considering ideology a mere “plus factor” in a “holistic” and “individualized” review of a faculty candidate. See *Grutter v. Bollinger*, 539 U.S. 306, 334–36 (2003). Another possible cost is that ideology-based affirmative action might detract from the model of the legal scholar as a disinterested

Another advantage of an ideological diversity program would be to avoid unconscious discrimination against conservatives by faculties with few or no conservatives. Our data, of course, do not show discrimination, and undoubtedly many factors, such as conservatives' relative enthusiasm for market society, contribute to the gross ideological imbalance. Nevertheless, there is always a danger that a faculty will behave in part like a social club and prefer to interact with those with who will reinforce its self-image as a group of politically and morally reasonable and sound citizens. Moreover, it is only natural to be readier to find fault with ideas with which we disagree than those with which we are sympathetic. Ideological diversity on a faculty provides insurance against ideological conformity in the hiring process.

One possible counterargument would be to acknowledge that ideological diversity would be more valuable among faculty than among students, but to argue that compromising standards among faculty would be more harmful than compromising standards among students. But just as those who favor viewpoint diversity for affirmative action argue that it can be pursued without taking unqualified students, it would seem that hiring conservative professors can be accomplished without hiring unqualified professors. Perhaps schools would find that as a proportion of law teachers, there are fewer qualified conservatives than there are qualified law students of different ethnic and racial backgrounds as a proportion of potential law students, but that can hardly be settled unless law schools committed to diversity undertake a rigorous program of outreach. This would include at the very least a program of trying to assure that there are substantial numbers of conservatives and Republicans represented at faculty workshops and as visiting faculty members.

To reiterate, we are not arguing that the ideological imbalance among elite law schools mandates that any law school undertake such a program. But we do suggest that law schools that have few conservatives, but are publicly committed to the proposition that viewpoint diversity should be a goal in the hiring or admissions process, may open themselves to charges of intellectual inconsistency and special pleading.<sup>132</sup>

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seeker of truth if the selection process views professors through the prism of political perspective. Again, however, the viewpoint diversity argument for race and ethnicity also undercuts the disinterested scholar model since it suggests that race and ethnicity will aid the law schools by enriching scholarship through expanding the viewpoints and experience that scholars bring to the enterprise.

132. It does not necessarily follow that opponents of diversity, generally conservatives, should use the data as the basis of a call to action. In general, conservatives have greater confidence in market forces. If conservative ideas are not reflected in law schools, those with greater confidence in the market might believe that think tanks and other institutions should arise to propagate them. Indeed, it is quite possible, as discussed above, that conservatives gain some advantages from the apparent liberal domination of the legal academy, because it makes the liberal ideas developed there more insular and less able to thrive in the rigors of the real political and policy world. In any event, it would be a substantial violation of conservative principles for the government itself to require ideological diversity on law school campuses or otherwise interfere with hiring or curriculum.

### **APPENDIX I: DATA TABLES**

This appendix contains our data, including contribution and demographics research as well analyses of these findings.

For all tables in this Appendix, contributions by Duke University professors to David Price, by Stanford University professors to Thomas Campbell, and by University of Chicago professors to Barack Obama have been excluded.

In a small number of cases, the party affiliation of the contribution recipient was unknown. Most likely, this is a result of candidates who ran once in a small election and who lost or withdrew before a particular election's primary. Thus, there are a few professors who were contributors without records of any recipients. This results in very slight anomalies as when there are 19 contributors overall for Duke, but only 18 contributors when categorized by categories of recipients.

In Tables I-B, I-C, I-D, we do not break out percentages of professors or population who contribute to third parties because these are not relevant to our comparisons.

The authors would like to thank Paul Tzur for his invaluable help with these tables.

**Table I-A: Number of Contributing Law Professors**

<i>School</i>	<i>U.S. News Ranking (2004)</i>	<i>Contributing Professors (Num/% of Reviewed Faculty)</i>	<i>Exclusively Democratic Contributors (Num/% of Contributing Professors)</i>	<i>Exclusively Republican Contributors (Num/% of Contributing Professors)</i>	<i>Exclusively Independent Contributors (Num/% of Contributing Professors)</i>	<i>Multi-Party Contributors (Num/% of Contributing Professors)</i>	<i>Mostly Democratic Contributors (Num/% of Contributing Professors)</i>	<i>Mostly Republican Contributors (Num/% of Contributing Professors)</i>
Yale	1	26 43%	21 81%	1 4%	0 0%	1 4%	3 12%	0 0%
Stanford	2	17 40%	16 94%	0 0%	0 0%	1 6%	0 0%	0 0%
Harvard	3	33 41%	29 88%	3 9%	0 0%	0 0%	1 3%	0 0%
Columbia	4	20 29%	16 80%	1 5%	0 0%	1 5%	2 10%	0 0%
NYU	5	28 29%	21 75%	4 14%	0 0%	2 7%	1 4%	0 0%
Univ. of Chicago	6	10 29%	7 70%	3 30%	0 0%	0 0%	0 0%	0 0%
Univ. of California	7	9 15%	6 67%	1 11%	0 0%	2 22%	0 0%	0 0%
Univ. of Michigan	7	15 21%	12 80%	1 7%	0 0%	0 0%	0 0%	0 0%
Univ. of Pennsylvania	7	7 15%	5 71%	0 0%	0 0%	0 0%	2 29%	0 0%
Univ. of Virginia	7	22 29%	11 50%	9 41%	0 0%	0 0%	0 0%	2 9%
Northwestern	11	17 28%	10 59%	3 18%	0 0%	0 0%	2 12%	2 12%
Duke	12	19 43%	15 79%	0 0%	0 0%	0 0%	2 11%	1 5%
Cornell	13	7 21%	4 57%	3 43%	0 0%	0 0%	0 0%	0 0%
Georgetown	14	38 40%	32 84%	0 0%	2 5%	1 3%	3 8%	0 0%
Univ. of Texas	15	16 25%	13 81%	2 13%	0 0%	0 0%	1 6%	0 0%
UCLA	16	15 25%	11 73%	2 13%	0 0%	1 7%	0 0%	1 7%
Vanderbilt	17	18 43%	10 56%	6 33%	0 0%	0 0%	1 6%	1 6%
Univ. of Iowa	18	9 19%	7 78%	2 22%	0 0%	0 0%	0 0%	0 0%
Univ. of Minnesota	18	13 24%	11 85%	2 15%	0 0%	0 0%	0 0%	0 0%
USC	18	9 19%	7 78%	2 22%	0 0%	0 0%	0 0%	0 0%
Washington and Lee	18	3 9%	3 100%	0 0%	0 0%	0 0%	0 0%	0 0%
<b>Totals (Num)</b>	-	<b>351</b>	<b>267</b>	<b>45</b>	<b>2</b>	<b>9</b>	<b>18</b>	<b>7</b>
<b>Average</b>	-	<b>28.9%</b>	<b>76.1%</b>	<b>12.8%</b>	<b>0.6%</b>	<b>2.6%</b>	<b>5.1%</b>	<b>2.0%</b>
<b>Median</b>	-	<b>28.3%</b>	<b>77.8%</b>	<b>12.5%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>

**Table I-B: Comparison of 2000 Election Cycle Professor Federal and State Contributors to NES 2001 Survey Data**

<b>Total Contribution Data</b>	<b>Total Number of Respondents</b>	<b>Contributors (Num/% of Reviewed Population)</b>	<b>Democratic Contributors (Num/% of Contributing Population)</b>	<b>Republican Contributors (Num/% of Contributing Population)</b>	<b>Multi-Party Contributors (Num/% of Contributing Population)</b>
Professors (Combines Federal and State Data)	1215	216 17.8%	168 77.8%	30 13.9%	11 5.1%
NES Election Data	1551	143 9.2%	47 32.9%	72 50.3%	10 7.0%

**Table I-C: Comparison of 2000 Election Cycle Professor Federal and State Contributors to NES 2000 Data of Citizens Who Have Earned Advanced Degrees**

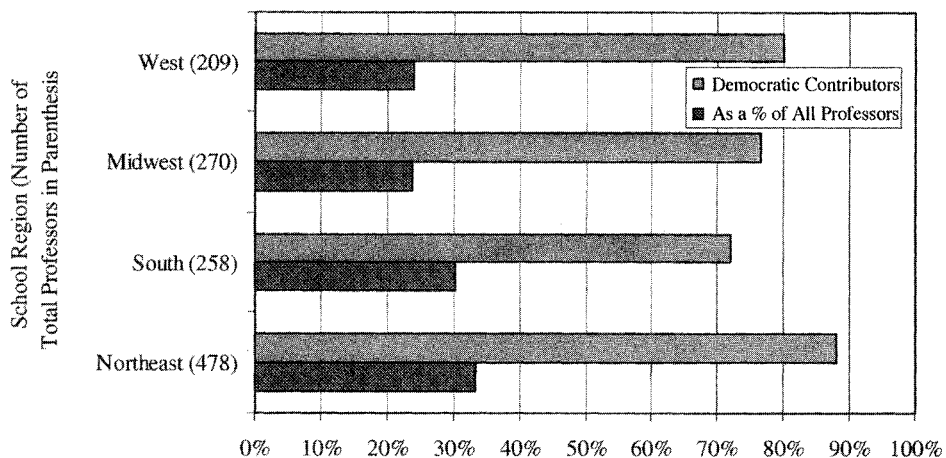
<b>Contributors with Advanced Degrees</b>	<b>Total Number of Respondents</b>	<b>Contributors (Num/% of Reviewed Population)</b>	<b>Exclusively Democratic Contributors (Num/% of Contributing Population)</b>	<b>Exclusively Republican Contributors (Num/% of Contributing Population)</b>	<b>Multi-Party Contributors (Num/% of Contributing Population)</b>
Professors (Combines Federal and State Data) (All Professors Have Advanced Degrees)	1215	216 17.8%	168 77.8%	30 13.9%	10 5.1%
NES Election Population with an Advanced Degree	168	35 20.8%	12 34.3%	17 48.6%	2 5.7%
NES Election Population with No Advanced Degree	1379	108 7.8%	35 32.4%	55 50.9%	8 7.4%



**Table I-D: Comparison of 2000 Election Cycle Professor Federal and State Contributors to NES 2000 Data of Citizens Earning \$95,000–\$199,999**

Contributors Earning \$95,000–\$199,999	Total Number of Respondents	Contributors (Num/% of Reviewed Population)	Exclusively Democratic Contributors (Num/% of Contributing Population)	Exclusively Republican Contributors (Num/% of Contributing Population)	Multi-Party Contributors (Num/% of Contributing Population)
Professor Combines Federal and State Data (All Professors Earn \$95,000–199,999)	1215	216 17.8%	168 77.8%	30 13.9%	10 5.1%
NES Election Population Earning \$95,000–\$199,999	42	9 21.4%	4 44.4%	4 44.4%	1 11.1%
NES Election Population Not Earning \$95,000–\$199,999	958	89 9.3%	27 30.3%	47 52.8%	7 7.9%

**Table I-E: Contributing Professors by School Location**



**Table I-F: Demographic Data of All Professors at Reviewed School<sup>133</sup>**

<i>School</i>	<i>School Location</i>	<i>Number of Reviewed Faculty</i>	<i>Males (Num/% of Reviewed Faculty)</i>	<i>Minority (Num/% of Reviewed Faculty)</i>	<i>Pre-Boom; Before 1945 (Num/% of Reviewed Faculty)</i>	<i>Baby Boom; 1945-1964 (Num/% of Reviewed Faculty)</i>	<i>Post-Boom; After 1964 (Num/% of Reviewed Faculty)</i>
Yale	Northeast	60	47 78%	8 13%	24 40%	34 57%	2 3%
Stanford	West	43	34 79%	5 12%	17 40%	24 56%	2 5%
Harvard	Northeast	80	64 80%	7 9%	37 46%	35 44%	8 10%
Columbia	Northeast	68	50 74%	7 10%	23 34%	41 60%	4 6%
NYU	Northeast	95	69 73%	9 9%	42 44%	49 52%	4 4%
Univ. of Chicago	Midwest	35	26 74%	3 9%	8 23%	21 60%	6 17%
Univ. of California	West	60	46 77%	7 12%	20 33%	31 52%	9 15%
Univ. of Michigan	Midwest	73	55 75%	2 3%	22 30%	37 51%	14 19%
Univ. of Pennsylvania	Northeast	47	37 79%	6 13%	13 28%	29 62%	5 11%
Univ. of Virginia	South	75	61 81%	5 7%	33 44%	32 43%	10 13%
Northwestern	Midwest	60	41 68%	3 5%	27 45%	25 42%	8 13%
Duke	South	44	34 77%	3 7%	17 39%	23 52%	4 9%
Cornell	Northeast	33	25 76%	4 12%	11 33%	19 58%	3 9%
Georgetown	Northeast	95	65 68%	13 14%	39 41%	52 55%	4 4%
Univ. of Texas	South	65	51 78%	6 9%	29 45%	31 48%	5 8%
UCLA	West	59	41 69%	5 8%	17 29%	31 53%	11 19%
Vanderbilt	South	42	30 71%	6 14%	11 26%	28 67%	3 7%
Univ. of Iowa	Midwest	47	33 70%	4 9%	14 30%	31 66%	2 4%
Univ. of Minnesota	Midwest	55	38 69%	3 5%	23 42%	27 49%	5 9%
USC	West	47	34 72%	3 6%	23 49%	20 43%	4 9%
Washington and Lee	South	32	23 72%	3 9%	8 25%	20 63%	4 13%
<b>Total (Num/%)</b>	-	<b>1215</b>	<b>904</b>	<b>112</b>	<b>458</b>	<b>640</b>	<b>117</b>
<b>Average</b>	-	<b>57.9</b>	<b>74.4%</b>	<b>9.2%</b>	<b>37.7%</b>	<b>52.7%</b>	<b>9.6%</b>
<b>Median</b>	-	<b>59</b>	<b>74.3%</b>	<b>9.2%</b>	<b>38.6%</b>	<b>52.5%</b>	<b>9.1%</b>

133. At the time of data collection, the ages of 83 of the 1200 professors reviewed were unknown. These 83 professors are therefore not counted in the age cohort data.

**Table I-G: Contributing Professor Patterns by Gender**

<i>Gender</i>	<b>Female</b>	<b>Male</b>	<b>Unknown</b>	<b>Total of Professors</b>
<i>Contributing Professors (Num/% of Reviewed Faculty in Demographic)</i>	81 26.1%	270 29.9%	0 0.0%	351 28.9%
<i>Exclusively Democratic Contributors (Num/% of Contributing Professors)</i>	75 92.6%	192 71.1%	0 0.0%	267 76.1%
<i>Exclusively Republican Contributors (Num/% of Contributing Professors)</i>	3 3.7%	42 15.6%	0 0.0%	45 12.8%
<i>Exclusively Independent Contributors (Num/% of Contributing Professors)</i>	0 0.0%	2 0.7%	0 0.0%	2 0.6%
<i>Multi-Party Contributors (Num/% of Contributing Professors)</i>	0 0.0%	9 3.3%	0 0.0%	9 2.6%
<i>Mostly Democratic Contributors (Num/% of Contributing Professors)</i>	2 2.5%	16 5.9%	0 0.0%	18 5.1%
<i>Mostly Republican Contributors (Num/% of Contributing Professors)</i>	1 1.2%	6 2.2%	0 0.0%	7 2.0%
<i>Total Professors in this Demographic (Num/% of All Reviewed Faculty)</i>	310 25.5%	904 74.4%	1 0.1%	1215

**Table I-H: Contributing Professor Patterns by Minority Status**

<i>Minority Status</i>	<b>Minority</b>	<b>Non-Minority</b>	<b>Unknown</b>	<b>Total of Professors</b>
<i>Contributing Professors (Num/% of Reviewed Faculty in Demographic)</i>	22 19.6%	329 29.8%	0 0.0%	351 28.9%
<i>Exclusively Democratic Contributors (Num/% of Contributing Professors)</i>	18 81.8%	249 75.7%	0 0.0%	267 76.1%
<i>Exclusively Republican Contributors (Num/% of Contributing Professors)</i>	3 13.6%	42 12.8%	0 0.0%	45 12.8%
<i>Exclusively Independent Contributors (Num/% of Contributing Professors)</i>	0 0.0%	2 0.6%	0 0.0%	2 0.6%
<i>Multi-Party Contributors (Num/% of Contributing Professors)</i>	0 0.0%	9 2.7%	0 0.0%	9 2.6%
<i>Mostly Democratic Contributors (Num/% of Contributing Professors)</i>	1 4.5%	17 5.2%	0 0.0%	18 5.1%
<i>Mostly Republican Contributors (Num/% of Contributing Professors)</i>	0 0.0%	7 2.1%	0 0.0%	7 2.0%
<i>Total Professors in this Demographic (Num/% of All Reviewed Faculty)</i>	112 9.2%	1103 90.8%	0 0.0%	1215

**Table I-J: Contributing Professor Patterns by Age**

<i>Age</i>	<b>Pre-Boom; Before 1945</b>	<b>Baby Boom; 1945–1964</b>	<b>Post-Boom; After 1964</b>	<b>Unknown</b>	<b>Total of Professors</b>
<i>Contributing Professors (Num/% of Reviewed Faculty in Demographic)</i>	145 38.5%	172 26.9%	18 15.4%	16 19.8%	351 28.9%
<i>Exclusively Democratic Contributors (Num/% of Contributing Professors)</i>	110 75.9%	136 79.1%	10 55.6%	11 68.8%	267 76.1%
<i>Exclusively Republican Contributors (Num/% of Contributing Professors)</i>	15 10.3%	20 11.6%	7 38.9%	3 18.8%	45 12.8%
<i>Exclusively Independent Contributors (Num/% of Contributing Professors)</i>	2 1.4%	0 0.0%	0 0.0%	0 0.0%	2 0.6%
<i>Multi-Party Contributors (Num/% of Contributing Professors)</i>	5 3.4%	3 1.7%	1 5.6%	0 0.0%	9 2.6%
<i>Mostly Democratic Contributors (Num/% of Contributing Professors)</i>	9 6.2%	7 4.1%	0 0.0%	2 12.5%	18 5.1%
<i>Mostly Republican Contributors (Num/% of Contributing Professors)</i>	4 2.8%	3 1.7%	0 0.0%	0 0.0%	7 2.0%
<i>Total Professors in this Demographic (Num/% of All Reviewed Faculty)</i>	377 31.0%	640 52.7%	117 9.6%	81 6.7%	1215

**Table I-K: Contributing Professor Patterns by Area of Expertise**

<i>Area of Expertise</i>	<b>Constitutional Law</b>	<b>Law &amp; Economics</b>	<b>Public International Law</b>	<b>Total of Professors</b>
<i>Contributing Professors (Num/% of Reviewed Faculty in Demographic)</i>	71 38.2%	47 26.1%	24 23.8%	— 28.9%
<i>Exclusively Democratic Contributors (Num/% of Contributing Professors)</i>	54 76.1%	27 57.4%	17 70.8%	— 76.1%
<i>Exclusively Republican Contributors (Num/% of Contributing Professors)</i>	11 15.5%	13 27.7%	4 16.7%	— 12.8%
<i>Exclusively Independent Contributors (Num/% of Contributing Professors)</i>	0 0.0%	0 0.0%	0 0.0%	— 0.6%
<i>Multi-Party Contributors (Num/% of Contributing Professors)</i>	2 2.8%	3 6.4%	0 0.0%	— 2.6%
<i>Mostly Democratic Contributors (Num/% of Contributing Professors)</i>	3 4.2%	1 2.1%	3 12.5%	— 5.1%
<i>Mostly Republican Contributors (Num/% of Contributing Professors)</i>	1 1.4%	2 4.3%	0 0.0%	— 2.0%
<i>Total Professors in this Demographic (Num/% of All Reviewed Faculty)</i>	186 15.3%	180 14.8%	101 8.3%	—

**Table I-L: Contributing Professor Patterns by Letter Signing**

<i>Signed Letters</i>	<i>Bush v. Gore Letter</i>	<i>Anti-Impeachment Letter</i>	<i>Pro-Impeachment Letter</i>	<i>Total of Professors</i>
<i>Contributing Professors (Num/% of Reviewed Faculty in Demographic)</i>	32 27.1%	78 48.4%	7 77.8%	— 28.9%
<i>Exclusively Democratic Contributors (Num/% of Contributing Professors)</i>	30 93.8%	73 93.6%	2 28.6%	— 76.1%
<i>Exclusively Republican Contributors (Num/% of Contributing Professors)</i>	1 3.1%	0 0.0%	5 71.4%	— 12.8%
<i>Exclusively Independent Contributors (Num/% of Contributing Professors)</i>	0 0.0%	0 0.0%	0 0.0%	— 0.6%
<i>Multi-Party Contributors (Num/% of Contributing Professors)</i>	0 0.0%	3 3.8%	0 0.0%	— 2.6%
<i>Mostly Democratic Contributors (Num/% of Contributing Professors)</i>	0 0.0%	2 2.6%	0 0.0%	— 5.1%
<i>Mostly Republican Contributors (Num/% of Contributing Professors)</i>	0 0.0%	0 0.0%	0 0.0%	— 2.0%
<i>Total Professors in this Demographic (Num/% of All Reviewed Faculty)</i>	118 9.7%	161 13.3%	9 0.7%	—

**Table I-M: Letter-Signing Contributors of Opposite Affiliation**

<i>Signed Letters</i>	<i>Bush v. Gore Letter</i>	<i>Anti-Impeachment Letter</i>	<i>Pro-Impeachment Letter</i>
<i>Total Professors in this Demographic</i>	118	161	9
<i>Contributing Professors</i>	32	78	7
<i>Contributors of Opposite Affiliation</i>	1	0	2

**Table I-N: Proportions of Letter-Signers Who Do Not Teach Constitutional Law**

<i>Signed Letters</i>	<i>Bush v. Gore Letter</i>	<i>Anti-Impeachment Letter</i>	<i>Pro-Impeachment Letter</i>
<i>Letter-Signers Who Do Not Teach Constitutional Law (Num)</i>	92	102	6
<i>Letter-Signers Who Do Not Teach Constitutional Law (%)</i>	78.0%	63.4%	66.7%
<i>Letter-Signers Who Do Not Teach Constitutional Law But Have Significant Constitutional Law Publications</i>	10	21	1
<i>Letter-Signers Who Do Not Teach Constitutional Law But Have Significant Constitutional Law Publications (%)</i>	8.5%	13.0%	11.1%
<i>Total Letter-Signers (Num)</i>	118	161	9