

# Legal Scholarship: A Corporate Scholar's Perspective

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## I. INTRODUCTION

There will never be an article about legal scholarship as good as the three paragraph article that Arthur Leff wrote in 1981.<sup>1</sup> Professor Leff elegantly settles the question of what legal scholarship is and why legal scholars (sometimes, though not always) do it.

"Legal scholarship is what legal scholars do."<sup>2</sup> Legal scholarship—unlike the scholarship in other fields—comes in such a wide range of types, styles, and methodologies that descriptions at lower levels of generalization than Professor Leff's necessarily turn out to be both under inclusive

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1. Arthur A. Leff, *Afterword*, 90 YALE L.J. 1296, 1296 (1981).

2. *Id.*

(leaving out important work that is of keen interest to lawyers and law professors) and over inclusive (capturing work that might better be described as economics, sociology, history, or anthropology).

Moreover, Professor Leff's succinct definition avoids the thorny problem of figuring out whether there is anything inherently coherent in the nature of legal scholarship. In other words, is legal scholarship a coherent intellectual field in its own right, or is it parasitic, dependent for its intellectual content on methodological tools borrowed from other disciplines such as economics, history, and statistics? Put another way, what, if anything, is distinctively "scholarly" about legal scholarship.

It turns out that figuring out why legal scholars do legal scholarship is significantly easier than determining what legal scholarship is in the first place. Legal scholars do legal scholarship for a multiplicity of reasons. Perhaps most of all, legal scholars hope to experience the pure aesthetic joy that comes from "those occasional moments when they say, in some concise and illuminating way, something that appears to be true."<sup>3</sup> Beyond that, legal scholarship also is about:

[G]etting promoted, illustrating the economic rationality of the common law, turning off the fishy stares of prolific colleagues, explaining to practitioners what article 9 *now* is all about, illuminating the necessary incoherence of the infrastructure of the late monopoly-capitalist state so as to hasten its eventual destruction. Whatever.<sup>4</sup>

Something vaguely defined as "doctrinal analysis" traditionally formed the core of legal scholarship. Over the years, this changed as law schools tried to make their way up the hierarchical ladder from the status of trade schools to professional schools and, finally, to the final rung of the academic ladder, the status of full partner in the enterprise of the modern American universities. The transition from trade school to professional school is complete, but law schools have yet to secure a permanent place on the campus of the American university. While it seems clear that there are no great law schools that are not attached to great universities, there are quite a few great universities (Cal Tech, MIT, and Princeton, for example) that thrive in the absence of a resident law school.

In addition to traditional, doctrinal scholarship, Judge Calabresi recently proposed a useful taxonomy articulating four rival approaches to legal scholarship, that have vied for dominance among legal scholars in recent years.<sup>5</sup> In addition to doctrinalism, the other approaches

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3. *Id.*

4. *Id.*

5. Guido Calabresi, *An Introduction to Legal Thought: Four Approaches to Law and to the Allocation of Body Parts*, 55 STAN. L. REV. 2113, 2113 (2003).

identified by Calabresi include: (1) the “Law and . . .” movement, (2) the Legal Process School, and (3) the Law and Status approach to legal scholarship.

I argue that only one of these, the “Law and . . .” approach, has succeeded in linking the enterprise of legal training with the larger enterprise of the university. To the extent that either the Legal Process School, or the Law and Status Approach has had success in forging ties between law schools and the larger enterprise of the university, it is because these other approaches borrow the interdisciplinary methodology of the “Law and . . .” approach, thereby effectively collapsing themselves into the “Law and . . .” approach.

Using my own field, corporate law, as its focal point, this Article argues that alternative approaches to legal scholarship, whatever their other merits, do not help connect the law school to other parts of the universities in which they are situated, and in fact actually alienate the law school from their more intellectually rigorous campus counterparts.

Part II of this Article discusses the various approaches to legal scholarship that exist, with particular focus on corporate law scholarship. Part III looks at the relationship between various law schools and the rest of the universities in which they are contained, arguing that those law schools with “Law and . . .” approaches to corporate law are better integrated in the universities of which they are a part. Moreover, I argue that the trend towards “Law and . . .” scholarship in law schools is an integral part of law schools’ efforts to find acceptance within the university community. University of Chicago and New York University (NYU) are good examples of the argument being made here. At the University of Chicago, an elite law school, “Law and . . .” scholarship long has dominated the intellectual agenda in corporate law. The law school is well integrated in the university, and is ranked, as an institution, at least as high as the university as a whole. By contrast, at NYU, “Law and . . .” scholarship competes with doctrinalism, which also, significantly is described by Calabresi as “Autonomism”. As a consequence, the law school is not well integrated in the university.

Interestingly, while the law school at NYU has, in recent years, enjoyed an elite ranking, NYU as a whole has not. Of course, there are many reasons for the university’s lack of success relative to its law school, but the lack of connection between the law school and the rest of the university has not helped matters. This is all by way of making the point that, as law schools have made their way onto university

campuses, they have often, not surprisingly, had an effect (positive or negative) on their universities, and only rarely have they had no effect on their universities. In Part IV, I conclude that the nature and extent of this effect depends critically on the type of scholarship being done within the law school.

## II. APPROACHES TO LEGAL SCHOLARSHIP: A BRIEF RECAP

The “Law and . . .” approach to legal scholarship has clear and unambiguous connections to the rest of the university. Simply put, the phrase “law and” is completed by academic disciplines such as economics, philosophy, history, psychology, literature, anthropology, or “any other field or combinations of fields of study for guidance in developing a scholarly critique of the current legal landscape or of particular parts of it.”<sup>6</sup> The scholars who participate in the various “Law and . . .” movements link their work directly to the work of other university departments by unselfconsciously seeking to “find answers [to normative legal questions] in the social sciences.”<sup>7</sup> By contrast, the alternative approaches to law look inward, and thereby distance themselves from the universities in which they are situated.

The fact that these other approaches distance themselves from the universities in which they are situated does not necessarily mean that these approaches to law are normatively “bad” or undesirable. It means only that, to the extent that these approaches to law are fruitful, they do not rely on—or assist—the larger university enterprise. These rival approaches may be highly desirable for reasons endogenous to the law. For example, they may generate answers to important legal problems, connect the law school more closely with the legal profession, improve our understanding of the lawmaking process, or accomplish other important results not directly related to the enterprise of the university.

### A. Doctrinalism vs. “Law and . . .”

Doctrinalism self-consciously isolates the scholarly enterprise of the law school from the rest of the university by construing law as “autonomous and distinct from other fields of learning. . . . [It] can be carried out without reference to other disciplines or other sources of values.”<sup>8</sup> This approach to law, historically, was dominant in America, and is still the dominant approach in Germany, and other civil law countries such as Italy, where law schools are—interestingly—poorly

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6. *Id.* at 2120.

7. *Id.* at 2121.

8. *Id.* at 2115.

integrated with the universities with which they are vaguely associated. A particularly radical form of doctrinalism is Legal Formalism, which not only views law as an independent discipline, but asserts that law is a science with its own internal logic.<sup>9</sup>

Over time, Legal Formalism in its more extreme forms became tempered. It was difficult for Legal Formalism to recruit brilliant young scholars once alternatives emerged because it is boring and unambitious. The job of the doctrinal scholar is to explain what the law is, ceding the more interesting task of formulating the law entirely to others. While the goal of making the law “more coherent and predictable”<sup>10</sup> is laudatory, it is not a life work that would appear to appeal to the ambitious or to those in search of “making a difference.” Thus it is not surprising that first legal realism, and then interdisciplinary (“Law and . . .”) scholarship emerged as highly successful competitors to doctrinalism.

In addition, the emergence of interdisciplinary legal scholarship was a necessary condition to law schools’ recent emergence as full citizens in the university community. It is hard to imagine how such an emergence would have been possible without the connective tissue that the “Law and . . .” movement provides.

### *B. The Legal Process School*

As Judge Calabresi has observed, the Legal Process approach engaged in a “comparative institutional analysis” in which legal academics would “examine courts, legislatures, administrative agencies, executives, juries,” and other institutions involved in the production of law for the purposes of analyzing each and deciding which institution was best suited to make certain sorts of policy decisions.<sup>11</sup>

By focusing on institutional capability, the Legal Process school was less inward looking, and more scientific than doctrinalism. Ultimately, however, Legal Process scholars needed to have some framework or basis from which to opine on the relative merits of rival institutions as sources of legal authority. In other words, the Legal Process School was either going to be purely descriptive, or it was going to have to turn to outside disciplines such as sociology, economics, or public choice for

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9. Thomas C. Grey, *Langdell’s Orthodoxy*, 45 U. PITT. L. REV. 1, 9–31 (1983).

10. Calabresi, *supra* note 5, at 2117; Frederick Schauer, *Formalism*, 97 YALE L.J. 509, 540 (1988).

11. Calabresi, *supra* note 5, at 2123.

guidance. As Guido Calabresi has observed, those involved in the Legal Process school were required to choose between “turning inward (and mirroring the doctrinalists) or outward, and seeking exogenously in other disciplines a defense of the values and rights asserted (as would the protagonists of [the interdisciplinary] ‘Law and . . .’ approaches).”<sup>12</sup>

The former course would have cast the Legal Formalists alongside the doctrinalists as isolationists in the university setting. The latter course cast the Formalists with the “Law and . . .” scholars as pulling the law school together with the rest of the university. William Eskridge, Philip Frickey, and Daniel Rodriguez are exemplars of the latter form of scholarly pursuit.<sup>13</sup> They are legal formalists whose work grounds them firmly in the work of the rest of the university. However, their work is, in essence, “Law and . . .” scholarship. It is linked particularly closely to public choice, Positive Political Theory (PPT),<sup>14</sup> and Law and Economics. As such, when it is done in law schools, it connects the law school to the rest of the university.

### C. Law and Status

So far, it appears that doctrinalism is the only form of isolationist legal scholarship—that is, scholarship that isolates its scholars and the institutions in which they profess from the rest of the university. The Legal Process school often borrows tools from other disciplines, and when it does, it links up with the rest of the university, becoming another variant of “Law and . . .” scholarship. In some ways, the gravitational pull of other university departments is an even greater force on practitioners of the Legal Process school than other “Law and . . .” approaches. I say this because, like the Legal Process school, certain academic fields—particularly sociology, economics, and political theory—long have focused on the importance of institutions.

The methodology that Judge Calabresi has described as the Law and Status approach to legal scholarship is probably the most difficult approach to analyze.<sup>15</sup> This approach to legal scholarship looks at the

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12. *Id.* at 2127.

13. See generally WILLIAM N. ESKRIDGE, JR. & PHILIP P. FRICKEY, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY (2d ed. 1995); Daniel B. Rodriguez, *The Substance of the New Legal Process*, 77 CAL. L. REV. 919 (1989) (reviewing Eskridge and Frickey’s casebook).

14. Positive Political Theory (PPT) is a relatively new branch of political science that uses game theory and other methods of formal modeling to study political institutions and the production of government policy. See [http://www.igs.berkeley.edu/research\\_programs/ppt](http://www.igs.berkeley.edu/research_programs/ppt) (last visited Sept. 14, 2004); David Austen-Smith & Jeffrey S. Banks, *Social Choice Theory, Game Theory, and Positive Political Theory*, 1 ANN. REV. POL. SCI. 259–87 (1998).

15. A fascinating thing about the “Law and Status” movement is that it has

differential effects of legal rules on particular groups from a well defined (though often implicit) predetermined normative basis. For example, rules that benefit or harm certain groups—such as Native Americans, African Americans, women, or other historically disadvantaged groups—are singled out for praise or condemnation on the basis of these effects.<sup>16</sup>

For purposes of this Article, the critical point about the Law and Status approach to law is that it, like the Legal Process approach, can be doctrinal, and thus divorced from the university, or like the “Law and . . .” approach, interdisciplinary, and thus linked to the university. To turn again to Calabresi, the “Law and . . .” approach:

[M]ay point out, for example, how torts, taxation or property *doctrines* affect women differently from men. It may use sophisticated *economic analysis* to demonstrate these differences and their value consequences. It may then describe how power was used (and by *what institutions*) to bring that result about. And, finally, it may or may not leave open the question of whether the result is good or appalling either on the basis of more general legal topography or in terms of values derived from a particular “Law and . . .” analysis.<sup>17</sup>

In other words, Law and Status approaches to legal scholarship may link the law schools up with the rest of the university, or they may not, depending on whether the practitioners of these approaches rely on outside disciplines to inform their analysis of status and its role in the law.

Interestingly, it appears that the “status” movement may be an emergent academic approach outside of law schools. Recent sessions of the Modern Languages Association, a group of university professors, have focused on the role of status and the importance of status in law and politics in the United States and other countries. The role of women has been a particularly important aspect of this intellectual movement. While somewhat outside of the scope of this Article, which focuses on legal scholarship and the relations between law schools and their universities, it is interesting to note that these Law and Status scholars, while generally isolated from the rest of the university, often have close ties to law schools and to legal scholars.

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generated a large number of dedicated journals. See, for example, the *American Indian Law Review*, the *Asian Law Review*, the *Chicano-Latino Law Review*, *Hastings Women's Law Journal*, the *National Black Law Journal*, and other journals. See Calabresi, *supra* note 5, at n.63 (citing these and other law journals).

16. Calabresi, *supra* note 5, at 2127.

17. *Id.*

### III. LAW SCHOOLS AND THEIR UNIVERSITIES

The point of the above discussion has been to establish that legal scholarship, whether it be overtly “Law and . . .” or interdisciplinary manifestations of the Legal Process school or the Law and Status approach, closely links the law schools in which its practitioners operate together with scholars and departments in the rest of the university. By contrast, doctrinalism, whether in its unadulterated form or as a manifestation of the Legal Process approach or the Law and Status approach, is isolationist in nature. Thus, it stands to reason that law schools in which doctrinalists dominate will be relatively more isolationist than law schools in which interdisciplinary work is dominant.

TABLE 1

|     |            | 1980                                | 1990                | 2004                |
|-----|------------|-------------------------------------|---------------------|---------------------|
|     | Law School | Type of Scholarship                 | Type of Scholarship | Type of Scholarship |
| 1.  | Berkeley   | Traditional                         | Traditional         | Mixed               |
| 2.  | Chicago    | Interdisciplinary                   | Interdisciplinary   | Interdisciplinary   |
| 3.  | Columbia   | Traditional                         | Mixed               | Interdisciplinary   |
| 4.  | Cornell    | Traditional                         | Mixed               | Interdisciplinary   |
| 5.  | Duke       | Traditional                         | Traditional         | Traditional         |
| 6.  | Georgetown | Traditional                         | Traditional         | Mixed               |
| 7.  | Harvard    | Traditional                         | Mixed               | Mixed               |
| 8.  | Michigan   | Traditional                         | Interdisciplinary   | Interdisciplinary   |
| 9.  | NYU        | Traditional                         | Traditional         | Mixed               |
| 10. | Penn       | Interdisciplinary                   | Interdisciplinary   | Interdisciplinary   |
| 11. | Stanford   | Mixed                               | Mixed               | Interdisciplinary   |
| 12. | Texas      | Traditional                         | Traditional         | Traditional         |
| 13. | USC        | Traditional                         | Mixed               | Interdisciplinary   |
| 14. | Virginia   | Mixed                               | Mixed               | Interdisciplinary   |
| 15. | Yale       | Mixed                               | Interdisciplinary   | Interdisciplinary   |
|     |            |                                     |                     |                     |
|     | TOTALS:    | Traditional/Mixed/Interdisciplinary |                     |                     |
|     |            | 11/2/2                              | 6/5/4               | 4/2/9               |
|     |            | 74%/13%/13%                         | 40%/33%/27%         | 27%/13%/60%         |

Drawing on my own experience as a professor in the business law area, Table 1 reports my personal views of the type of scholarship in corporate law being done at three different points in time in fifteen well-known law schools. While I have randomly checked these categorizations with colleagues at various schools, all of whom wish to remain anonymous,



the results are my sole responsibility.<sup>18</sup>

Two observations are immediately evident from this table, which I again emphasize was constructed solely on the basis of my own observations. First, the dominant trend over time is away from traditional, doctrinal legal scholarship and towards interdisciplinary (“Law and . . .”) legal scholarship. By my estimate, in 1980, 74% of the schools in my sample were dominated by traditional legal scholarship in corporate law. By 2004, this figure had dropped to 27%. In 1980, fully 87% of the schools in the sample had either a traditional, doctrinal corporate law department, or they had a mixed department comprised of both a significant presence of interdisciplinary (“Law and . . .”) scholars and traditional legal scholars.

Second, to test the hypothesis developed in the previous section about links between law schools and universities, I examined the relationship between the most recent *U.S. News and World Report* law school rankings of those schools with mixed or traditional departments and the most recent *U.S. News and World Report* rankings of the universities connected with those law schools. This data is presented in Table 2. Here one finds several interesting results.

First, consistent with the thesis presented in this article, the difference between the average ranking of law schools with interdisciplinary programs in corporate law, and the average rankings of their universities was significantly narrower than the average ranking of either law schools with mixed departments or traditional departments. Law schools with interdisciplinary corporate law departments had an average ranking of 7.44, while their universities had an average ranking of 14.11.<sup>19</sup> By contrast, law schools with mixed departments had an average ranking of

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18. I also wish to observe that the categories I have chosen, “Traditional,” “Mixed,” and “Interdisciplinary” are themselves quite subjective. For example, I have categorized Yale Law School in 1980 as having a “mixed” corporate law group, on the strength of the presence of that great traditionalist (and my former professor) Joseph Bishop. See, e.g., Joseph W. Bishop, Jr., *Sitting Ducks and Decoy Ducks: New Trends in the Indemnification of Corporate Directors and Officers*, 77 YALE L.J. 1078 (1968). But at that time, Yale also had a towering law and economics scholar in the field of corporate law, Ralph Winter, whose article provides the intellectual basis for much of the subsequent law and economics work in corporate law. See Ralph K. Winter, Jr., *State Law, Shareholder Protection, and the Theory of Corporation*, 6 J. LEGAL STUD. 251 (1977). Hence, Yale, despite its reputation as a bastion of interdisciplinary scholarship, was, in my view, a mixed group in corporate law as recently as 1980.

19. Of course, the average university rankings are higher than the average law school rankings because the law schools selected will have the highest possible average ranking  $\{=\sum (1, 2, 3, 4, 5 \dots 15)/15\}$ , adjusted for ties.

TABLE 2

|            |                             | U.S. News<br>Law School<br>Ranking <sup>20</sup> | U.S. News<br>University<br>Ranking <sup>21</sup> | Spread:<br>University vs.<br>Law School                                   | Business<br>Week<br>Ranking <sup>22</sup> | Spread:<br>Business<br>School vs.<br>Law School                                |
|------------|-----------------------------|--|--|---|---|--|
| Berkeley   | Mixed                       | 13   | 21   | L+7   | 13  | 0  |
| Chicago    | Interdisciplinary           | 6  | 13   | L+7   | 2   | L-4  |
| Columbia   | Interdisciplinary           | 4  | 11   | L+7   | 7   | L+3  |
| Cornell    | Interdisciplinary           | 12   | 14   | L+2   | 11  | L+1  |
| Duke       | Traditional                 | 10   | 5  | L-5   | 9   | L+1  |
| Georgetown | Mixed                       | 14   | 23   | L+9   | 30  | L+6  |
| Harvard    | Mixed                       | 2  | 1  | L-1   | 3   | L+1  |
| Michigan   | Interdisciplinary           | 7  | 25   | L+18  | 8   | L+1  |
| NYU        | Mixed                       | 5  | 35   | L+30  | 15  | L+10   |
| Penn       | Interdisciplinary           | 7  | 5  | L-2   | 5   | L-2  |
| Stanford   | Interdisciplinary           | 3  | 5  | L+2   | 4   | L+1  |
| Texas      | Traditional                 | 15   | 53   | L+38  | 21  | L+6  |
| USC        | Interdisciplinary           | 18   | 30   | L+12  | 17  | L-1  |
| Virginia   | Interdisciplinary           | 9  | 21   | L+12  | 12  | L+3  |
| Yale       | Interdisciplinary           | 1  | 3  | L+2   | 14  | L+13   |
|            |                             | Average<br>Law School<br>Ranking                 | Average<br>University<br>Ranking                 | Average<br>Difference in<br>Ranking<br>(University<br>vs. Law<br>School): | Average<br>Business<br>School<br>Ranking  | Average<br>Difference in<br>Ranking<br>(Business<br>School vs.<br>Law School): |
|            | Average Overall<br>Ranking: | 8.4  | 17.6   | 9.2   | 11.4                                      | 3  |
|            | Interdisciplinary           | 7.44   | 14.11  | 6.67  | 8.88                                      | 1.44   |
|            | Mixed                       | 8.50   | 20.00  | 11.50   | 15.25                                     | 6.75   |
|            | Traditional                 | 12.50  | 29.00  | 16.50   | 15  | 2.5  |

8.50—close, but not as close to their universities' average ranking of 20. Finally, law schools with traditional corporate law departments had

20. *Top 100 Law Schools*, USNEWS.COM, at [http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank\\_brief.php](http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php) (last visited Sept. 8, 2004).

21. *National Universities—Doctoral: Top Schools (2004)*, USNEWS.COM, at [http://www.usnews.com/usnews/edu/college/rankings/brief/natudoc/tier1/t1natudoc\\_brief.php](http://www.usnews.com/usnews/edu/college/rankings/brief/natudoc/tier1/t1natudoc_brief.php) (last visited Sept. 8, 2004).

22. *2002 Rankings and Profiles*, BUSINESS WEEK ONLINE, at [http://www.businessweek.com/bschools/02/full\\_time\\_rank.htm](http://www.businessweek.com/bschools/02/full_time_rank.htm) (last visited Sept. 8, 2004).

rankings a full 16.5% different from their universities, compared with only 6.67% for “Law and . . .” departments and 11.5% for mixed departments.

Thus, consistent with the argument in this Article that law schools with interdisciplinary approaches to law bring their law schools closer to the universities in which they are situated—not only in intangible ways, but also in terms of ranking—law schools with interdisciplinary corporate law departments had rankings closer to those of the schools in which they are situated than schools with mixed departments or doctrinalist departments. Schools with mixed (i.e., some doctrinal scholars and some interdisciplinary scholars) corporate law departments are closer, on average, in their rankings to the rest of the university than schools with purely doctrinal corporate law departments, though not as close as law schools with exclusively interdisciplinary approaches.

Another finding that I regard as interesting, and perhaps worthy of future exploration is that law schools inhabited exclusively by traditional corporate law scholars are, on average, significantly better than their universities. For example, the University of Texas Law School is ranked 15 by U.S. News and World Report, while the University of Texas is ranked 38 places worse, at 53. A similar gap exists for New York University, a “mixed” department, in which the university is ranked at number 30, and the law school at number 5. Duke, the only other remaining purely traditional department after Texas, was five points better than the rest of the university, although there is some cause to doubt the validity of Duke Law School’s ranking given its relative lack of prominent legal scholars as compared with other top-ranked schools. In a recent survey of the most cited law faculty in the United States, for example, there were no Duke law professors among the top seventy-five.<sup>23</sup>

In any case, it appears that the decision by law schools to retain the doctrinalist nature of their corporate law departments may be quite rational: if, as in the case of the University of Texas, the university lags significantly behind the rest of the university in quality, it may not be efficient for the law school affiliated with that university to allocate resources to recruiting interdisciplinary scholars. And it may be relatively

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23. William Van Alstyne, ranked 76th, was the highest placement among the Duke Law School faculty. To compare, the University of Virginia only had one professor among the top seventy-five, but it had three among the top 120, whereas Duke had only one. See Brian Leiter, *Most Cited Law Faculty*, at [http://www.utexas.edu/law/faculty/bleiter/rankings02/most\\_cited.html](http://www.utexas.edu/law/faculty/bleiter/rankings02/most_cited.html) (2002).

TABLE 3

|            |                                | U.S. News<br>Law<br>School<br>Ranking <sup>24</sup> | U.S.<br>News<br>University<br>Ranking <sup>25</sup> | Spread:<br>University<br>vs. Law<br>School                                | Business<br>Week<br>Ranking <sup>26</sup> | Spread:<br>Business<br>School vs.<br>Law School                                  |
|------------|--------------------------------|---|---|---|---|--|
| Berkeley   | Mixed                          | 13  | 21  | L+7   | 13  | 0  |
| Chicago    | Interdisciplinary              | 6   | 13  | L+7   | 2   | L-4  |
| Columbia   | Interdisciplinary              | 4   | 11  | L+7   | 7   | L+3  |
| Cornell    | Interdisciplinary              | 12  | 14  | L+2   | 11  | L+1  |
| Duke       | Traditional                    | 10  | 5   | L-5   | 9   | L+1  |
| Georgetown | Mixed                          | 14  | 23  | L+9   | 30  | L+6  |
| Harvard    | Mixed                          | 2   | 1   | L-1   | 3   | L+1  |
| Michigan   | Interdisciplinary              | 7   | 25  | L+18  | 8   | L+1  |
| NYU        | Interdisciplinary              | 5   | 35  | L+30  | 15  | L+10   |
| Penn       | Interdisciplinary              | 7   | 5   | L-2   | 5   | L-2  |
| Stanford   | Interdisciplinary              | 3   | 5   | L+2   | 4   | L+1  |
| Texas      | Traditional                    | 15  | 53  | L+38  | 21  | L+6  |
| USC        | Interdisciplinary              | 18  | 30  | L+12  | 17  | L-1  |
| Virginia   | Interdisciplinary              | 9   | 21  | L+12  | 12  | L+3  |
| Yale       | Interdisciplinary              | 1   | 3   | L+2   | 14  | L+13   |
|            |                                | Average<br>Law<br>School<br>Ranking                 | Average<br>University<br>Ranking                    | Average<br>Difference in<br>Ranking<br>(University<br>vs. Law<br>School): | Average<br>Business<br>School<br>Ranking  | Average<br>Difference in<br>Ranking<br>(Business<br>School vs<br>Law<br>School): |
|            | Average<br>Overall<br>Ranking: | 8.4   | 17.6  | 9.2   | 11.4                                      | 3  |
|            | Interdisciplinary              | 7.20  | 18.0  | 10.8  | 9.5                                       | 2.30   |
|            | Mixed                          | 9.67  | 15.00   | 5.33  | 15.33                                     | 5.67   |
|            | Traditional                    | 12.50   | 29.00   | 16.50   | 15  | 2.50   |

difficult to recruit “Law and . . .” scholars to corporate law departments of weak universities because interdisciplinary scholars will be far more

24. *Top 100 Law Schools*, *supra* note 20.

25. *National Universities—Doctoral: Top Schools*, *supra* note 21.

26. *2002 Rankings and Profiles*, *supra* note 22.

sensitive to university rankings than traditional legal scholars who will be inclined to focus more on law school rankings.

I also looked at the gap between the respective rankings of universities' law schools and their business schools. Interestingly, a very similar pattern holds true. Law schools with interdisciplinary corporate law groups show rankings closer to the ranking of their schools' business schools than other law schools. The average difference between the rankings of law schools with interdisciplinary corporate law groups and their business schools is 1.44%. The average difference between law schools with mixed corporate law groups and their business schools is 6.75%. The average difference between law schools with traditional corporate law groups and their business schools is 2.5%.

To some extent, these results are driven by the inclusion of NYU in the sample as a mixed school, given the large difference between the ranking of NYU Law School and the rest of New York University. However, this difference does not drive the result completely. For example (see Table 3), even after taking NYU out of the group of "mixed" corporate law faculties, and adding it to the list of Interdisciplinary (Law and . . .) faculties, I find that interdisciplinary faculties are still on average, closer to their business schools (2.30% different) than either mixed (5.67%) or traditional (2.50%) faculties. However, when NYU is recategorized as an interdisciplinary corporate law faculty, the remaining mixed corporate law faculties (Berkeley, Georgetown, and Harvard) are, on average, closer in ranking to the rest of their universities than other faculties. Mixed and interdisciplinary faculties however, are still far closer to their universities (at average differences of 15% and 18%, respectively), than traditional faculties (with an average difference of 29%).

#### IV. CONCLUSION: THE LAW SCHOOLS' "GRAVITATIONAL PULL" ON THEIR UNIVERSITIES

It also is interesting to note that only three law schools (Chicago, Penn, and USC) in the sample ranked worse than the business schools within their universities, and all of these schools have interdisciplinary law school corporate faculties.<sup>27</sup> This makes sense, at least from the law

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27. Two business schools among the top fifteen, MIT's Sloan School, which ranked sixth, and Dartmouth College's Amos Tuck School of Business, which ranked tenth, were located in a college or university without a law school. The fact that some

schools' perspectives. If you are running a law school that is relatively worse than the business school in your university, it would be a smart strategic move to leverage the quality of your business school by forging closer ties with the business school. Having an interdisciplinary law school corporate faculty is the obvious strategy for accomplishing this objective.

By contrast, an apparently random selection of law schools, Duke (traditional), Harvard (mixed) and Penn (interdisciplinary) is ranked worse than the universities with which they are associated. This, however, is not particularly meaningful. The difference between these schools and their universities disappears when we adjust the list of universities to account for the fact that several top fifteen universities (Princeton (2), MIT (5), Cal Tech (8), Dartmouth (9), Johns Hopkins (14), and Rice (16)) do not have law schools, and one top university, Washington University (11), does not have a top fifteen law school. Adjusting for this (by subtracting seven from each *U.S. News* university ranking to account for the seven schools without law schools in the top fifteen), Duke, Harvard, and Penn, of course, continue to be ranked worse than their universities (since once a university starts out better than its law school, the adjustment being made improves the university's ranking and magnifies the difference between the law school and the university). Cornell, whose university moves up seven places from #14 to #7, moves ahead of Cornell Law School, which is ranked twelfth.

From the above analysis, it is clear that there has been a symbiotic relationship between the aspiration of law schools to be part of the broader university project and the growth of interdisciplinary studies. This is especially true at law schools where being part—and sometimes, as in the case of Chicago or Yale, a leading part—of the university to which they belong appears to be institutionally important, not only to the law school itself, but to the university as a whole, due to the high esteem in which the law school is held. Where universities want to connect their law schools with the rest of their universities, they must promote interdisciplinary work because such interdisciplinary work is the only way to connect the intellectual life of a law school with the intellectual life of the rest of the university. It is unsurprising, therefore, that one observes the greatest scholarly focus on interdisciplinary studies in the law schools situated in strong universities. In other words, as is so often the case, the direction of the causal connections being studied is difficult to sort out. Does interdisciplinary work cause a law school to be great?

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schools had business schools but no law schools makes the spread in the rankings artificially higher, since, if the business school rankings were recalculated to omit these schools, then the average ranking of each business school would be higher.

Perhaps, but perhaps not. If we view universities as rationally self-interested, it may be the case that universities that have great law schools promote interdisciplinary work in those schools in order to allow departments outside of the law school to leverage the law school's intellectual strength and scholarly reputation. In other words, it may not be the case that law schools featuring excellent interdisciplinary work just happen to be, for some as yet unarticulated reason, consistently stronger than the universities in which they are contained.

Another way to test this hypothesis, of course, would be to look at the way that corporate law and other courses are taught at free standing universities, such as William Mitchell, or at law schools like Georgetown, Northwestern, and Stetson where there is considerable physical distance between the campus of the law school and the campus of the university.

I predict that, at schools where there is less focus on interdisciplinary studies in the law schools, the links between the law school and the rest of the university would be more tenuous. A logical extension of this reasoning would be that in law schools with no attached university, or with its affiliated university departments far away on another campus, the difficulties in attracting strong interdisciplinary scholars would be greater and the value added by such scholars would be significantly reduced. As a result, it would be expected to see less interdisciplinary work on such campuses.

To say that the relationship between interdisciplinary work and the links between law schools and universities is symbiotic also suggests that it is difficult to identify which way the causal link between law school-university ties and interdisciplinary work runs. It is possible that the growth in interdisciplinary work led to closer law school-university ties. It is just as likely that the promotion of law school-university ties led to the explosion in interdisciplinary work. It is also entirely conceivable that, in some schools, the causal connection ran from the promotion of university ties to the growth in legal scholarship, while in others, the opposite is true.

In my field, corporate law, the "Law and . . ." movement dominates. This has not always been the case. As Table 1 indicates, schools such as Harvard that were dominated by traditional legal scholars as recently as two decades ago are now dominated by Law and Economics scholars. A few others, such as Duke and NYU, either remain doctrinal in orientation, or else they are populated by heterogeneous groups of "Law and . . ." scholars and doctrinalists.

To this point, this Article has taken, or tried to take, a positive, rather than a normative, approach to the issue of interdisciplinary studies. It might be argued, as I have heard from practitioners, that legal scholars tend to deprecate the value of traditional, doctrinal scholars. To the contrary, the task of treating like cases alike, closely reading statutes, pursuing legislative history, abjuring personal values, and rigorously surveying the legal landscape in search for a coherent canon in a particular case is a difficult and worthwhile endeavor. Furthermore, since law schools have as their core function the education and training of future lawyers, one cannot overemphasize the high value to be placed on teaching such black letter law courses as well as skills classes, which generally are regarded as doctrinal in nature.

Moreover, even if one were to take the view, as many do, that “Law and . . .” scholarship is normatively preferable to traditional doctrinal scholarship, the virtues of diversification suggest that having a diversified array of offerings including, but not limited to, doctrinal and “Law and . . .” offerings might be the preferred strategy for a law school as a means to attract and maintain top quality students and faculty.

Finally, perhaps the most interesting finding in this Article is data consistent with the hypothesis that law schools maximize along the vector of quality, subject to the (limiting?) constraints imposed by the universities in which they are situated. It appears rational, in other words, for law schools lucky enough to be situated in great universities to stress interdisciplinary work. In particular, it seems like a good idea for law schools in universities with outstanding business schools to stress law and economics in their corporate law curricula. It may also be the case that law schools such as Northwestern or William Mitchell, which are not physically nearby (Northwestern) or affiliated with (William Mitchell) a major research university, should stress doctrinal approaches to law or clinical legal studies.

My own view of legal scholarship is that quality, followed by quantity, both are far more important than genre. Determining what institutional environment is most likely to generate high quality and productivity should determine the particular style of legal scholarship that dominates the intellectual environment at a particular law school.