

MEASURING LAW FACULTY SCHOLARLY IMPACT BY CITATIONS: RELIABLE AND VALID FOR COLLECTIVE FACULTY RANKING

Gregory Sisk*

ABSTRACT: No single metric of faculty scholarly activity can fully capture every individual contribution. For that reason, evaluating a single professor's scholarly work requires a nuanced, multifaceted, and individually focused assessment. However, for a contemporary sketch of the collective scholarly impact of a law school faculty, citation measurements in the legal literature are both reliable and valid.

The new Heald-Sichelman study of citations in the HeinOnline database confirms the reliability of the multiyear results of the Leiter-Sisk Scholarly Impact Ranking based on the Westlaw journals database. Despite using a different law journal database, counting citations differently, including pre-tenure faculty, and even adding download statistics into the mix, the Heald-Sichelman ranking correlates powerfully at 0.88 with the most recent Leiter-Sisk ranking. An objective citation measurement is time-sensitive and corresponds to informed awareness of law school faculty developments around the country. A citation-based ranking thus is a valid, if imperfect, proxy for faculty scholarly impact on a national scale.

With appropriate qualifications and necessary adjustments, a citation-based ranking should be considered in any evaluation of the overall quality of a law school faculty. For the *U.S. News* ranking of American law schools, an up-to-date, citation-based ranking would have considerable merit as an objective forward-directed control to the subjective past-looking academic reputation survey.

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Nearly every law school faculty portrays itself as making a big difference, not only by teaching the future members of our legal profession, but through scholarly engagement.¹ I likely am one of the rare recipients who actually looks

*Laghi Distinguished Chair in Law at the University of St. Thomas School of Law (Minnesota). To those who kindly read an earlier draft, I thank Rob Anderson, Nikki Catlin, Chris Guthrie, Mark Hall, Michael Heise, Kristin Hickman, Gary Lucas, Lee Petherbridge, J.B. Ruhl, Scott Dodson, Rob Vischer, and Robin Fretwell Wilson—and of course thanks to Paul Heald and Ted Sichelman for their intriguing project and kind invitation to comment. None of these should be assumed to agree with everything—or anything—I've written here.

1. In this essay, I do not restate my oft-expressed position on the perennial debate about whether law professors should engage in scholarly research and whether such activities come at the expense of attentive and effective teaching of law students. I have previously written about why “a

(at least briefly) at the flood of letters, magazines, and postcards sent out each fall by law schools to the designated voters in the academic reputation survey component of the *U.S. News & World Report* law school ranking. Having perused these, I can attest that nearly every law school proudly proclaims its law professors stand out among the nation's best in their scholarly influence.

But, of course, not every law faculty can be a national leader in scholarly accomplishment. There are about 200 ABA-accredited law schools. Not all can plausibly be categorized as exemplary in national scholarly impact. Descriptions of the latest papers published or presented by the faculty, news about professors appearing as witnesses at a legislative or court hearing, and reports that faculty members have been interviewed by news reporters are common fodder for the alumni magazine. And these activities may well be worthy of celebration within that particular law school community. But such anecdotes do not directly translate into objective evidence of scholarly impact as a comparative collective measure with the many dozens of other law schools that can (and of course do) offer similar narratives of faculty accomplishments.

An objective comparative measure of scholarly impact could serve multiple purposes. First, such a metric provides one way for a law faculty to test whether it actually is succeeding as a scholarly group. Second, for faculty who are considering lateral moves and for candidates for faculty positions, a scholarly impact ranking offers important information on the strength of the scholarly culture that the individual has been invited to join. Third, for prospective law students who value a thriving intellectual community anchored by law professors whose work has achieved national prominence, such a ranking should be another factor in making the choice where to attend law school.

If law schools are to be graded against one another on a scholarly scale, we must develop an objective metric that places every law school's faculty into a common space. Importantly, the measure must estimate scholarly influence in a manner that is both reliable (that is, accurate and consistent) and valid (that is, appropriately demonstrates what it purports to show).

Throughout higher education, counting of citations to faculty scholarly publications has been employed as an objective and valid snapshot of scholarly influence. Building on the pioneering work of Brian Leiter, I have led the triennial project over the past decade to rank law faculties on scholarly impact by citations in the legal literature found in the Westlaw journal database.² Now Paul

law faculty [should] maintain the traditional commitment to regular research and legal scholarship as a core academic responsibility." Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2015: Updating the Leiter Score Ranking for the Top Third*, 12 U. ST. THOMAS L.J. 100, 103 (2015) [hereinafter Sisk et al., *Scholarly Impact in 2015*]. I also have noted evidence that increased scholarly activity by law professors is correlated with stronger student evaluations of teaching. *Id.* at 107 (discussing Tom Ginsburg & Thomas J. Miles, *The Teaching/Research Trade-Off in Law: Data from the Right Tail*, 39 EVALUATION REV. 46 (2015)). In my most recent dissertation on the subject, I concluded "[f]ruitful scholarly cultivation rejuvenates the individual law professor and nourishes a lively academic community." Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2018: Updating the Leiter Score Ranking for the Top Third*, 15 U. ST. THOMAS L.J. 95, 101 (2018) [hereinafter Sisk et al., *Scholarly Impact in 2018*].

2. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1; Sisk et al., *Scholarly Impact in 2015*, *supra* note 1; Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2012: Applying Leiter*

Heald and Ted Sichelman have conducted a similar study of citations to law faculty work in the HeinOnline database. The Heald-Sichelman study published here powerfully replicates the results found over the past decade in our ongoing Leiter-Sisk rankings.³ Indeed, the timely and robust ranking of faculty impact by citation counts now commends itself to inclusion in the *U.S. News* comprehensive ranking of American law schools.

As I've emphasized previously, scholarly impact citation scores "are valuable only for what they depict and should not be mistaken as describing the whole of the academic cathedral."⁴ No single measure of faculty scholarly activity can fully capture every individual contribution. For that reason, evaluating a single professor's scholarly work requires a nuanced, multifaceted, and individually focused assessment.

By contrast, as a contemporary sketch of the collective scholarly impact of a law faculty, citation measurements are both reliable and valid. The new Heald-Sichelman study of citations in the HeinOnline database largely confirms the results of the Leiter-Sisk Scholarly Impact ranking based on the Westlaw journals database. This objective measurement is time-sensitive and corresponds to informed awareness of law school faculty developments around the country.

With appropriate qualifications and necessary adjustments, a citation-based ranking should be considered in any comparative assessment of the overall quality of a law school faculty. For the *U.S. News* ranking of American law schools, an up-to-date, citation-based ranking would have considerable merit as an objective forward-directed control to the subjective past-looking academic reputation survey.

I. CITATIONS AS A MEASUREMENT OF FACULTY SCHOLARLY IMPACT

Demonstrating large numbers of citations in the journals of our field to the author's published scholarly work is strong (but not irrefutable) evidence of a law professor's impact on legal scholarship.⁵ Legal scholarship should not be

Scores to Rank the Top Third, 9 U. ST. THOMAS L.J. 838 (2012) [hereinafter Sisk et al., *Scholarly Impact in 2012*].

3. Paul J. Heald & Ted Sichelman, *Ranking the Academic Impact of 100 American Law Schools*, 60 JURIMETRICS J. 1 (2019).

4. Sisk et al., *Scholarly Impact in 2012*, *supra* note 2, at 845.

5. For individual faculty members, high citations usually say something quite positive by way of inclusion, but low citations should not invariably be read as saying something negative by way of exclusion. What I mean is that high citation counts are strong evidence of a beneficial impact, while low citations are not so much *negative* evidence as the *absence* of evidence. A scholar whose work has not been recognized with citations in the legal literature should be expected to demonstrate valuable scholarly contributions in other ways. Moreover, even for an individual law professor who is highly cited, those counts alone may not be fully dispositive of scholarly quality and accomplishment. While collective citations have proven to be a decent proxy of scholarly impact for a law faculty as a whole, there occasionally may be individual professors who attain copious citations through string cites to articles making unremarkable but conventional observations or even whose writings are widely cited as an example of deficient analysis. As Michael Simkovic recently blogged, when considering faculty appointments or tenure, there is no substitute for actually reading the individual's scholarly work. Michael Simkovic, *Why We Need to Read Scholarship for Ourselves and Cannot Rely on Citation Counts Alone*, BRIAN LEITER'S L. SCH. REP. (July 10, 2019),

undertaken as a hobby merely for personal gratification but rather as a public act of intellectual engagement with an audience. “It is right and just, then, to ask whether anyone is reading what we have written.”⁶

Given the public intellectual nature of legal scholarship, most successful scholars will produce a body of work that is read and used by other scholars and thus garner ample citations in the legal literature. Still citations in law review articles are not the only game in town, and some fields of law generate more citations than others. Beyond citation counts, there are additional ways to evaluate individual law professor scholarly activity, beginning with a critical analysis of quality by reading the works themselves and including other concrete evidence such as receipt of book and article awards, publication in selective or peer-reviewed journals, placement of books with leading publishers, presentations at conferences and symposia, and invitations to serve as a reporter for an American Law Institute project.

By contrast, especially at the collective faculty level, a citation ranking is a valid, if imperfect, proxy for scholarly impact on a national scale. As I’ve explained previously, when “applied to a law faculty collectively, a citation-based measure has the distinct advantage of capturing a significant part of such individual faculty achievements in a manner that places all legal scholarship in the same measurement space.”⁷

Throughout higher education, the citation count “is a well-established—and the most objective—measure of quality, both in legal scholarship and other disciplines, including economics.”⁸ In the legal academy, the citation-based Leiter-Sisk Scholarly Impact Scores have become “second among law school rankings in prominence, beneath only the *U.S. News* ratings.”⁹

To be sure, “one would expect scholarly impact to be an imperfect measure of academic reputation and/or quality,” but “an imperfect measure may still be an adequate measure.”¹⁰ When citation count rankings are used for comparative purposes at the macro level across entire law school faculties, “it is only necessary that citation frequency correlates with objective quality, not that it perfectly reflects quality.”¹¹

Depending on the database from which citations are drawn, references to work by legal scholars in outside journals may be omitted. Whether looking to

<https://leiterlawschool.typepad.com/leiter/2019/07/why-we-need-to-read-scholarship-for-ourselves-and-cannot-rely-on-citation-counts-alone-michael-simko.html> [https://perma.cc/4NRD-LFN7].

6. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 103.

7. *Id.* at 105.

8. Albert H. Yoon, *Editorial Bias in Legal Academia*, 5 J. LEGAL ANALYSIS 309, 314–15 (2013) (citations omitted).

9. Vikram D. Amar, *What a Recently Released Study Ranking Law School Faculties by Scholarly Impact Reveals, and Why Both Would-Be Students and Current/Prospective Professors Should Care*, JUSTIA:VERDICT (Aug. 3, 2012), <https://verdict.justia.com/2012/08/03/what-a-recently-released-study-ranking-law-school-faculties-by-scholarly-impact-reveals-and-why-both-would-be-students-and-currentprospective-professors-should-care> [https://perma.cc/M75S-A4JH].

10. Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451, 470 (2000).

11. Theodore Eisenberg & Martin T. Wells, *Ranking and Explaining the Scholarly Impact of Law Schools*, 27 J. LEGAL STUD. 373, 377 (1998).

the Westlaw database on legal journals (as we have in the Leiter-Sisk approach) or the HeinOnline law journal collection (as does the Heald-Sichelman approach), citations garnered by a law professor in the journals of other disciplines are not generally included. For that reason, our prior ranking studies have been criticized for undervaluing interdisciplinary work.

We believe there is merit in having a measure for our own discipline, which is reflected in the law journals of our field that in turn are those most likely to be read by other legal scholars. Moreover, given our primary purpose in ranking law schools based on the collective impact of the entire faculty, that the work of some individuals may not be fully captured by this measure should wash out over the broad comparison. Importantly, citations in the legal literature to interdisciplinary work published elsewhere should be registered as marks of scholarly impact among legal scholars.¹² And while I suggest it is more judiciously valued as a self-standing study rather than as blended into a general ranking of scholarly impact in the legal field, a recently completed ranking of law professor citations in non-law journals is a welcome addition.¹³

In actuality, prominent interdisciplinary legal scholars do not appear to be at a disadvantage in our approach and often stand out as making a significant impact within the journals of our field.¹⁴ Robert Anderson recently explored this issue by comparing the Leiter-Sisk rankings of law schools with the percentage of faculty at a law school that hold a Ph.D.¹⁵ He found our scholarly impact citation measure derived from the Westlaw law journal database did not “appear to penalize schools with many interdisciplinary scholars compared to schools with fewer.”¹⁶ Indeed, his evaluation indicated the opposite.¹⁷

Others have suggested that citation rankings disfavor women and minorities, with white males racking up higher citations. As Heald and Sichelman note, no study has demonstrated such a tendency in the legal field and, indeed, the limited evidence indicates female law professors generate more citations.¹⁸ Even if empirical evidence were adduced beyond speculation or anecdote, it would have to be adjusted for seniority before reaching any conclusion. Unremarkably, more senior scholars who have built a larger portfolio of work and had a longer period to develop a reputation are more likely to be cited. Today’s senior scholars reflect the faculty demographics of an earlier period. And, in any event, if such a gender or racial disparity were found in recognition of scholarly

12. See also *infra* Section III.A.

13. See generally J.B. Ruhl et al., Total Scholarly Impact: Law Professor Citations in Non-Law Journals (Sept. 10, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3451542>.

14. As discussed further below, see *infra* note 34, the Heald-Sichelman approach by using the HeinOnline law journal database has the unfortunate effect of excluding even those interdisciplinary works published in outside journals that are cited in the American legal literature.

15. Robert Anderson, *Some Preliminary Contrarian Thoughts on the US News Proposal to Rank Based on Scholarly Impact*, WITNESSETH (Feb. 14, 2019), <https://witnesseth.typepad.com/blog/2019/02/us-news-to-rank-based-on-scholarly-impact.html> [<https://perma.cc/SF47-D844>].

16. *Id.*

17. *Id.*

18. See Heald & Sichelman, *supra* note 3, at 38 (citing Christopher Anthony Cotropia & Lee Petherbridge, *Gender Disparity in Law Review Citation Rates*, 59 WM. & MARY L. REV. 771 (2018)).

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work, the answer would not be to blind ourselves but rather to lay out the problem concretely for transparent discussion and possible resolution.

II. CONFIRMING THE RELIABILITY OF CITATION-BASED RANKING OF LAW FACULTIES

The most important and encouraging attribute of the new Heald-Sichelman citation ranking based on HeinOnline is its remarkable correlation with the Leiter-Sisk Scholarly Impact Ranking based on Westlaw. Our ranking studies use different law journal databases that in turn employ different datapoints to collect citations (article versus author).¹⁹ Our studies differ somewhat in the categories of faculty scholars that are included. And Heald and Sichelman have departed from the singular focus on citation counts found in the Leiter-Sisk approach to supplement their new ranking with download statistics. Notwithstanding these potentially significant variations, both studies arrive at mostly the same ending point.

In statistical terms, “reliability” of a method refers to the accuracy and consistency of the measurement, as demonstrated across time and by replication. If the Heald-Sichelman study did nothing else, it has strongly confirmed the reliability of citation measurements for comparison across law faculties.

Specifically, Heald and Sichelman report a correlation of 0.88 with the most recent of our Leiter-Sisk rankings.²⁰ I set out here several positive illustrations that confirm the remarkable parallels in our citation-count results, as compared with the *U.S. News* academic peer reputation ranking:²¹

Law School	Heald-Sichelman Citation Rank ²²	Leiter-Sisk Scholarly Impact Rank ²³	<i>U.S. News</i> Peer-Assessment Ranking ²⁴
Vanderbilt	10	10	16
University of California-Irvine	9	12	27
George Washington	17	16	27
George Mason	30	19	51

19. See *infra* Part III.

20. Heald & Sichelman, *supra* note 3, at 32.

21. Hofstra likely should be included in this positive comparison as well, because it ranks at #49 in the Leiter-Sisk Scholarly Impact Ranking, which is far above its *U.S. News* academic survey rank of #101. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 133. Heald and Sichelman omit Hofstra but plan to include it in the future. Heald & Sichelman, *supra* note 3, at 7 n.15.

22. Heald & Sichelman, *supra* note 3, at 24–25.

23. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 97–98.

24. *Id.* at 132–34.

University of St. Thomas (Minn.)	29	23	127
San Diego	37	36	64
Brooklyn	40	44	71
Chicago-Kent	43	44	71

What is notable about these largely correlated citation-count rankings is that they contrast markedly with how these law schools have been ranked by *U.S. News* both overall and in its academic peer survey.²⁵ Many more examples may be found by comparing the 2018 results of the Leiter-Sisk Scholarly Impact Ranking²⁶ with the Hein-Only Rankings by Heald and Sichelman.²⁷

As discussed in the next part of this essay, there are potentially significant differences between these citation rankings. Nonetheless, as Heald and Sichelman conclude—and this is the headline news from this new citation ranking—“quantitative rankings are quite robust to changes in approach” and are reliably reproducible by different researchers and over time.²⁸

III. COMPARING THE HEALD-SICHELMAN AND LEITER-SISK APPROACHES TO CITATION RANKING

Paul Heald and Ted Sichelman have mined a new source for scholarly citation data—HeinOnline—that holds much promise for solidifying our understanding of patterns of scholarly engagement and influence in the discipline of law. While HeinOnline collects law journals and other legal sources, it previously has not been readily accessible for outside researchers who wish to collect comparative and large-scale data. To classify citations to scholarly works, HeinOnline asks individual legal scholars to prepare profiles that identify those published works they have authored. But many, perhaps most, law professors have not done so, making HeinOnline a nonstarter for researchers comparing scholarly impact rates across the legal academy. By gaining inside access to HeinOnline data, Heald and Sichelman have been able to move past this obstacle and build a broad dataset of faculty citation counts, well beyond the subset of faculty with a formal HeinOnline profile.

Having thoughtfully and diligently created a new approach to scholarly impact ranking, Paul Heald and Ted Sichelman understandably believe they have built a better mousetrap.²⁹ From that conclusion, however, I must dissent. Not surprisingly, perhaps, I do not agree that our Leiter-Sisk approach is inferior. As

25. *Id.* at 130–31; Heald & Sichelman, *supra* note 3, at 32–34.

26. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 97–98.

27. Heald & Sichelman, *supra* note 3, at 23–27.

28. *Id.* at 32, 39.

29. “Build a better mousetrap, and the world will beat a path to your door,” is, as *Wikipedia* notes, a revised version of a quotation from Ralph Waldo Emerson. *Build a Better Mousetrap, and the World Will Beat a Path to Your Door*, WIKIPEDIA, https://en.wikipedia.org/wiki/Build_a_better_mousetrap_and_the_world_will_beat_a_path_to_your_door [<https://perma.cc/TQ4Y-EZHU>].

outlined below, the Heald-Sichelman method is better in some ways than the Leiter-Sisk approach but also worse in other ways.

Any approach exclusively moored to HeinOnline will carry certain drawbacks.³⁰ Most notably, because HeinOnline counts citations only to articles already included in its own database, citations in law journals to non-HeinOnline sources, such as books and non-field journal articles, are omitted altogether. In addition, Heald and Sichelman have made methodological choices that may be questioned. For example, the Heald-Sichelman approach mutes the signal of change sounded by current citations by allocating half of the weight to all-time citations from past decades. Moreover, Heald and Sichelman go beyond citation counts in HeinOnline to fold in statistics on downloads of articles from the Social Science Research Network.

Nonetheless, the Heald-Sichelman and HeinOnline approach has great potential, especially by including all citation information for articles, which is not gathered by other ranking approaches. And Heald and Sichelman plan ongoing revisions, which may overcome those present shortcomings in the future.

Importantly, all of the differences in methodology make the commonality in outcomes between the Leiter-Sisk and Heald-Sichelman rankings all the more remarkable. In the end, that deep accord is the point to be most powerfully highlighted and to which I return in the next part by making the case for incorporation of citation-based ranking into the *U.S. News* law school ranking.

A. While Leiter-Sisk Includes Citations in Law Journals to All Sources, Heald-Sichelman Excludes Citations to Books and Non-Law Journals

Gary Lucas has well said “[n]o citation count is perfect,” and “various databases . . . differ[] in scope of coverage.”³¹ For our Leiter-Sisk triennial rankings, we have found the Westlaw law journals database to be consistently reliable for name searches of individual law professors. Rather differently, the HeinOnline database used by the Heald-Sichelman study is limited not only to citations *in* the law journals included in that dataset, but also limited to citations *to* those same law journals. Because the HeinOnline counts are compiled by references to specific articles, citations to other works by a named law professor are not credited.

30. After I wrote the initial draft of this paper, similar criticisms of the HeinOnline approach to citation-rankings were outlined by the board of directors for the Society for Empirical Legal Studies in an open letter to *U.S. News*. See generally Letter from Bd. of Dirs., Soc’y for Empirical Legal Studies, to Robert Morse, Chief Data Strategist, U.S. News & World Report (Oct. 28, 2019), <https://www.lawschool.cornell.edu/SELS/upload/SELSHeinOnlineOpenLetter10-28.pdf> [<https://perma.cc/W5US-KGP2>] [hereinafter Letter from SELS Bd. of Dirs. to Robert Morse] (arguing the HeinOnline metric “has three principal problems: (1) it is biased against interdisciplinary legal scholarship; (2) it omits all book manuscripts and chapters; and (3) it systematically undervalues the academic contributions of junior scholars, which would inhibit law schools from recruiting diverse faculties”).

31. Gary M. Lucas, Jr., *Measuring Scholarly Impact: A Guide for Law School Administrators and Legal Scholars*, 165 U. PA. L. REV. ONLINE 165, 166–67 (2017) (discussing various databases, including Westlaw, Google Scholar, and HeinOnline).

By the inherent nature of the HeinOnline approach, books by legal scholars that are cited in the law journals are ignored—a shortcoming Heald and Sichelman regret.³² In sharp contrast, the law professor-targeted searches in Westlaw employed by the Leiter-Sisk approach encompass all works by law professors that draw citations in the law journals. In other words, best-selling books on legal controversies, academic books on legal theory and practice, and legal treatises³³ are added to the tally when cited in the Westlaw journal database used by Leiter-Sisk. But they are omitted altogether by the HeinOnline approach used by Heald-Sichelman.

Similarly, while both the Leiter-Sisk Westlaw method and the Heald-Sichelman HeinOnline method focus on citations within the legal literature, a citation to a law professor's work published in the journals of another discipline is still counted for Leiter-Sisk but ignored for Heald-Sichelman.³⁴ If an interdisciplinary law professor publishes in another discipline's subject journal but that work then makes a mark on the legal literature by being cited in a legal journal, the name search in the Westlaw database conducted under the Leiter-Sisk approach rightly will give full credit to that citation. But because HeinOnline gathers citations only to those articles included within its own database, a citation in a legal journal to an interdisciplinary scholar's work published elsewhere disappears (or really never appears at all).

Indeed, blog posts by law professors are included in the Leiter-Sisk approach, which Heald and Sichelman see as a flaw.³⁵ While reasonable people can disagree on this point, I'd argue that when a blog post by a law professor is sufficiently salient to prompt a formal citation in a law review article, it likely has made a genuine scholarly impact. Indeed, this essay both discusses in the text and cites in the footnotes a blog post that makes a contribution to our understanding of the validity of citation count ranking.³⁶ Keep in mind we are not talking about direct inclusion of blog posts in the database itself, which is an unfortunate feature of some other databases (such as Google Scholar). Rather, our study focuses directly on a database of American law journals on Westlaw. Thus, when counted in Leiter-Sisk, a citation to a law professor's blog post has already been mediated—arguably validated—by being referenced in the substantive content of a published scholarly writing. A blog post is most likely to be cited in a published scholarly work when that blog post has made a distinctive intellectual contribution, albeit in an abbreviated fashion and nontraditional venue.

32. Heald & Sichelman, *supra* note 3, at 4.

33. As the author of two recent additions to the classic West Academic hornbook series, I confess a personal interest in ensuring such citations be counted in evaluating scholarly impact. *See generally* GREGORY C. SISK ET AL., *LEGAL ETHICS, PROFESSIONAL RESPONSIBILITY, AND THE LEGAL PROFESSION* (2018); GREGORY C. SISK, *LITIGATION WITH THE FEDERAL GOVERNMENT* (2016). But I need not rely on selfish motivations, as scholarly books and treatises have always and universally been regarded as part of the corpus of American legal scholarship.

34. Heald & Sichelman, *supra* note 3, at 9–10.

35. *Id.* at 3.

36. *See supra* notes 15–17 and accompanying text.

In sum, the omission of citations to multiple venues of legal scholarship in the HeinOnline approach is a significant drawback, especially in an era in which book publishing and interdisciplinary research is emphasized by many law school faculties. While, as noted above, there is a strong correlation between our two citation-ranking studies, what difference remains may be attributable in part to the exclusion in HeinOnline to citations to so many other scholarly sources. Even if, as is likely, this variation does not significantly distort the results, which are so robust at the faculty-wide level, it will stick out as a sore thumb to the critics.

B. Heald-Sichelman Weights Equally All-Time Citations Reaching Back Decades, While Leiter-Sisk Focuses on Contemporary Citations

Given the tremendous and distinctive value of updated citation-based ranking in offering a contemporary picture of scholarly influence, I question the decision by Heald and Sichelman to include all-time citation counts in their ranking. Indeed, they confer the same weight to these historical counts as they give to the counts gathered in the most recent year of their study (2016). In this way, I submit, a clear view of the present is partially obscured by the mists of the past.

To be sure a citation count based on a single year might be problematic. Heald and Sichelman explain that using only citations for a particular year could be “anomalous for any given school, then that school could be ranked higher or lower than it would have been if we had used a longer window.”³⁷ But there is a sensible middle here, without delving into relative antiquity.

In our Leiter-Sisk approach, we use a rolling period of the previous five years for conducting our citation counts.³⁸ In this way, we work to avoid a misleading report that focuses too narrowly on an arbitrarily short time period (such as a single year), as it might miss deeper patterns of scholarly impact that unfold over a few years. But we adhere to the most recent multiyear timeframe to make the results truly contemporary.

Heald and Sichelman do understand that including “all-time citations place[s] heavy emphasis on more senior professors who may have generated most of their citations many years ago relative to mid-career and junior professors who may be generating most of their citations now.”³⁹ That “heavy emphasis,” however, makes their approach more backward-looking than it should be. The great merit of timely citation rankings of faculties is to see what is happening now rather than to celebrate past accolades. By the Heald and Sichelman approach, some senior faculty who through long tenure may have collected numerous citations could bolster a school’s ranking even though those professors

37. Heald & Sichelman, *supra* note 3, at 36.

38. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 109.

39. Heald & Sichelman, *supra* note 3, at 19.

have contributed little or nothing in recent years and whose contemporary scholarly impact has faded.⁴⁰

Now Heald and Sichelman report a better than 90 percent correlation between means and medians of their 12-month count and the all-time count.⁴¹ Nonetheless, placing half of the weight of the citation ranking on the past strikes me as a mistake in principle as well as operation. Indeed, the high correlation is more of an argument for dropping the all-time citations in future rankings.

Even if marginal overall, the inclusion of all-time citation counts is not without effect in the ranking. When I compared the 2018 Leiter-Sisk ranking based on the most recent five-year period with an adjusted Heald-Sichelman ranking limited also to the most recent time period, the correlation between our two rankings grew to over 90 percent. Moreover, certain discrepancies between our rankings—what Heald and Sichelman refer to as “outliers”⁴²—are resolved.

Florida State and William & Mary are two notable examples here. In our 2018 Leiter-Sisk Scholarly Impact Ranking, Florida State appeared at #29 and William & Mary at #28. In the Heald-Sichelman overall citation scoring, they fall to #58 and #49 respectively. But if the Heald-Sichelman results were re-ranked based solely on the mean of the most current citation counts, Florida State rises to #29 (identical to the Leiter-Sisk ranking) and William & Mary to #31 (more parallel to the Leiter-Sisk ranking). Knowing of the way in which Florida State and William & Mary have recruited faculty and developed a scholarly culture in recent years, these contemporary results may be expected. But those current developments appear to be missed if the ranking results are diluted by weighting historical citation counts.

C. Heald-Sichelman Gives Full Credit to All Coauthors on Joint Publications, While Leiter-Sisk Is Limited to Authors Named in a Citation

The Heald-Sichelman use of the HeinOnline database does have a distinctive advantage over the Leiter-Sisk Westlaw approach in overcoming the “et al.” problem.

The strength of Westlaw is also sometimes a weakness: it can be mechanical. When used as a literal search engine, a Westlaw search simply will not uncover a name that is missing in a citation as rendered in that law journal. When it comes to our Leiter-Sisk methodology, we have to consider what is practical and possible in a large-scale study involving thousands of tenured faculty members at a hundred law schools. In looking at literally hundreds of thousands of citations for thousands of law professors, we must rely primarily on a mechanical counting method, with minimal adjustments.

40. In their open letter to *U.S. News*, the directors of the Society for Empirical Legal Studies characterize this element of the HeinOnline approach as a “Bias Against Junior Scholars” and, because it could encourage retention of older less productive faculty members, may negatively affect faculty diversity. See Letter from SELS Bd. of Dirs. to Robert Morse, *supra* note 30, at 3.

41. Heald & Sichelman, *supra* note 3, at 19.

42. *Id.* 32 n.31.

Fortunately, our primary objective in the Leiter-Sisk ranking is comparison of law faculties, and the “et al.” issue is simultaneously neither epidemic nor isolated to a particular law school’s faculty. First, the scope of the problem is limited. Articles authored by two authors will be cited with both author names in standard *Bluebook* format, and, in many instances, those by three authors will be set out as well. Second, I’ve run some test searches in the past—admittedly on an ad hoc basis—and it appears that this problem becomes vanishingly small when looking at the collective impact of a law school’s faculty, which is the central feature of the Leiter-Sisk Scholarly Impact ranking. That being said, the foregoing admittedly is an arguably acceptable avoidance of the issue (on the assumption it doesn’t much distort faculty-wide averages) rather than a resolution of it.

By contrast, the HeinOnline approach begins with the article itself as the point of departure, which thus means that every author on that article is given full credit for any citations to that article, regardless of whether a particular author is listed.⁴³ In this particular way, the Heald-Sichelman approach truly is superior.

D. Heald-Sichelman Approach Registers Multiple Citations to an Author, While Leiter-Sisk Counts Only One Citation per Citing Article

We can (and should) debate how much additional weight should be given when a single law journal article cites to multiple works by the same scholar. While citing two or three articles by an author likely should count for more than one, the addition of citations must reach a point of diminishing marginal impact. An article that exhaustively recites the portfolio of work by a single author surely should not be regarded as making an exponentially higher scholarly impact. Even more so, ten citations with “*id.*” references to the same article cannot reasonably be considered as ten times more impactful than one citation. Nonetheless, we might agree that a single citation to a single article should not be given the identical weight as multiple citations, especially if those multiple citations are to more than one work of scholarship.

In this way, the Heald-Sichelman HeinOnline approach is arguably, if marginally, preferable and more consistent with standard expectations in other disciplines. By using Westlaw searches for a law professor’s name, the Leiter-Sisk approach registers a single count if the professor is cited in an article, but it does not matter how many citations occur in that article or to how many different works. By contrast, the HeinOnline method by Heald and Sichelman “counts multiple citations to different articles by a single author in a given publication as multiple citations.”⁴⁴

43. *Id.* at 4, 9.

44. *Id.* at 4.

E. Leiter-Sisk Limits Scholarly Impact Ranking to Tenured Law Professors, While Heald-Sichelman Includes Tenure-Track in Their Ranking

Beyond the employment of a different database, Heald and Sichelman depart for their first study from the Leiter-Sisk approach by including both tenured and tenure-track faculty.⁴⁵ In so doing, they recognize that their “metric thus penalizes schools with high numbers of pre-tenure (and other relative junior) faculty compared to those schools with more senior faculties.”⁴⁶

As I’ve explained for our Leiter-Sisk ranking, we believe “it would be premature to include untenured faculty, who typically produce fewer articles during the pre-tenure stage and have not yet had an opportunity to build a portfolio of work that in turn draws significant numbers of citations.”⁴⁷ Untenured faculty would be unfairly injected into the ranking evaluation because there simply hasn’t been sufficient time for their work to sink into the literature and generate citations.

To be fair, Heald and Sichelman appear to be on the same page here, as they explain their intent to exclude tenure-track faculty in future iterations.⁴⁸

F. Leiter-Sisk Ranks Law Schools Based on Citations, While Heald-Sichelman Blends Citation Ranking with Download Statistics

In a departure from prior citation-based scholarly impact rankings, Heald-Sichelman merge together citation counts and statistics on downloads of articles from the Social Science Research Network.⁴⁹ Joining these distinctive measures into a single ranking strikes me as a mistake, although commendably Heald and Sichelman separately report the citation count ranking as well.⁵⁰ Not only do I think that SSRN download statistics are not a valid proxy for scholarly impact, but I think that they measure something different than journal citation counts. Like mistakenly comparing apples and oranges, citation counts and SSRN downloads each have a distinct flavor that should not be blended together into a single ranking.

SSRN download statistics are a more remote proxy for faculty scholarly quality.⁵¹ Papers posted on SSRN are often in draft form, sometimes never progress to finished and published work, have not been vetted through use in other

45. *Id.* at 7.

46. *Id.* at 36.

47. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 109.

48. Heald & Sichelman, *supra* note 3, at 36.

49. *See id.* at 20–23.

50. *Id.* at 27–30.

51. I must say that I have been very well treated by the SSRN download measure. On more than one occasion in the past couple of years, I have ranked in the top 100 of law professors for SSRN downloads. And my own institution, the University of St. Thomas ranks even better on the Heald-Sichelman SSRN ranking (at #14) than the HeinOnline citation ranking (#29). Heald & Sichelman, *supra* note 3, at 20, 25. While (perhaps selfishly) not wanting to dismiss these SSRN

scholarship as evidenced by citation, and may be downloaded by anyone (thus opening the door to gaming, including episodes of professors asking or even requiring their students to download an SSRN paper and reports that SSRN security features may be circumvented).⁵² As Marco Ventoruzzo says, “SSRN downloads simply indicate that someone, somewhere in the world, has downloaded your paper,” which “is hardly a measure of academic excellence.”⁵³

In my own admittedly anecdotal experience, I find a high noise to signal ratio in SSRN.⁵⁴ I frequently download a paper that is intriguing from the title or abstract on SSRN, only to find that it is not what I thought it would be or is not of sufficient quality to justify my attention. But I’d never cite to an article in my published work that hasn’t made a meaningful impact in some way on my research and analysis. Citation counts show impact through actual use by scholars of a prior work. In sum, with exceptions noted below, SSRN remains subject to at least some manipulation (especially given the lower rates of downloads that most law professors generate) and is a weak filter for quality.

In addition, SSRN is far from comprehensive, as a large share of legal scholarship never finds its way into that database. While there are relatively minor differences in the law journals included in the Westlaw database and those in HeinOnline, both databases strive to maintain a large collection of law journals. By contrast, SSRN is a largely passive venue, mostly including only those works of scholarship that are submitted to it, usually by the author. Many prominent legal scholars, whose works are highly cited in both Westlaw and HeinOnline, simply do not bother to post working or published papers onto any digital repository, relying instead on universal access among academics to Westlaw, and those who do upload a working or finished paper may choose a different online collection than SSRN.

Now the questions that I raise about the validity of SSRN downloads statistics as a proxy for scholarly quality should not be mistaken as disparaging the value of SSRN in its primary mission. SSRN is a valuable and user-friendly platform for distributing works in progress (and published works), including through school paper series and in subject matter journals. SSRN provides an

download commendations as meaningless, I nonetheless reach the conclusion that citation counts are a more valid proxy for actual scholarly impact.

52. In contrast with treating a simple download of a paper from SSRN as a mark of scholarly impact, the actual citation of an SSRN posted essay in a published work of legal scholarship should so count, as illustrated immediately below.

53. Marco Ventoruzzo, *Where Are the Best (Corporate) Law Professors Teaching?*, 19 (Bocconi Univ. Legal Studies, Research Paper No. 2696217, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2696217.

54. In fairness, I should add that I find a similarly high noise to signal ratio when conducting research with law journals on the Westlaw database. The difference is that when I scan through and then discard an article on Westlaw, my negative observation is not registered as a positive statistical vote to rank the article higher (at least in any publicly available ranking). With SSRN, by the time that I have determined the paper is not on point or of sufficient quality to advance my research, it is already too late because merely exploring the paper’s content by downloading it has already been counted as a point in its favor.

early glimpse of forthcoming scholarly works, being “at the forefront of online sharing of working papers.”⁵⁵

Moreover, SSRN downloads are a distinctive marker for certain types of scholarly works. As an example, high quality pedagogical and other works aimed at students are more likely to be recognized through large downloads on SSRN. As another example, scholarly writing for practicing lawyers may be more likely to reach that audience through SSRN links than by later publication in a law review.



In sum, while admiring much about the study prepared by Heald and Sichelman, I cannot agree that their effort is superior as yet to the longstanding Leiter-Sisk approach. Indeed, until the HeinOnline approach addresses the exclusion of citations to books, book chapters, and articles in other disciplines, the more comprehensive and inclusive approach of Westlaw is preferable. Moreover, I suggest that the Heald-Sichelman ranking would be on stronger footing and better serve the purpose of providing contemporary information about law faculty scholarly impact if it gave weight only to current citation counts and did not blend in the disparate measure of download statistics.

In the end, more important than the differences between the Leiter-Sisk and Heald-Sichelman methodologies is the powerful correlation of our results. Even with their differences, the two rankings prove remarkably similar in outcome. As addressed in the next part of this essay, these robust results confirm the reliability of a citation-based measure for ranking law faculties.

IV. EVALUATING THE VALIDITY OF CITATION-BASED RANKING AS A PROXY FOR FACULTY SCHOLARLY IMPACT

That an empirical study is reliable and consistently reproducible does not by itself establish that it is valid for what it purports to measure. The remarkably parallel results of the Heald-Sichelman and Leiter-Sisk studies are some indication of validity, but we must further test the results against independent factors to ensure reasonable accuracy in the estimate of scholarly quality.

First, as Gary Lucas has observed, “scholars who have higher citation counts tend to have better reputations.”⁵⁶ When a law professor becomes generally regarded as prominent or a leader in her field, high citation counts usually follow. Neither Heald and Sichelman nor Leiter and Sisk share comprehensive individual-level citation information, to avoid abuse of the data to derogate any individual. However, the Leiter-Sisk ranking does list the citation leaders at each law school⁵⁷ and Brian Leiter has prepared lists of citation leaders in several

55. From The Desk of Michael C. Jensen, Chairman of SSRN (May 17, 2016), <https://www.ssrn.com/index.cfm/en/ssrn-joins-mendeley-elsevier> [https://perma.cc/T7QT-4HZ9].

56. Lucas, *supra* note 31, at 167.

57. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 116–29.

fields of law.⁵⁸ If readers prepare their own lists of those they regard as leaders in their areas of study and then run those names against these citation leader rankings, we expect most readers would find a comfortable (but not perfect) correlation between general popular understandings and objective citation rankings. Again, citation counts are an imperfect proxy for quality, but a rough measure is more than adequate when drawing general conclusions about law faculties as a whole.

Second, for those who keep current on faculty developments at law schools around the country, the rise of certain law schools in an objective scholarly impact ranking is far from surprising. Using some of the examples of remarkable correlation between citation-based ranking as charted above,⁵⁹ an informed observer of faculty transitions, scholarly cultures, pattern of publications in leading journals, awards and recognitions, and influence with other scholars would place the faculties at Vanderbilt and California-Irvine in or near the top ten. Based on the same variables, George Mason and the University of St. Thomas faculties would score in or very near the top twenty-five. And similar stories could be told about the impressive progress in scholarly culture and faculty productivity and impact at many other law schools that are undervalued in a peer reputation survey but demonstrate scholarly chops in a citation-based ranking.⁶⁰

That the dynamic and timely citation rankings conducted by Heald/Sichelman and Leiter/Sisk verify these standings is further proof that such a measure is a valid if rough proxy for faculty scholarly quality.

In sum, I emphatically agree with Heald and Sichelman in their conclusion that there are indeed “reliable and reproducible quantitative rankings that can fairly accurately provide measures of faculty impact at the school-level.”⁶¹

V. INCORPORATING CITATION-BASED RANKING INTO THE *U.S. NEWS* LAW SCHOOL RANKING SYSTEM

Love it or hate it, the annual *U.S. News* ranking of American law schools is the most prominent and influential general comparison of law schools at a national level. Prospective students read it, candidates for faculty positions know it, and deans fret over it. Rather than rage ineffectively against the rising of the *U.S. News* tide, I join with Heald and Sichelman in urging addition of an objective measure of faculty scholarly quality to provide a more timely and accurate picture.

U.S. News allocates 25 percent of its ranking weight to a survey of designated faculty members at each law school. Not only does this survey suffer from a lack of informed evaluation, but it serves primarily to entrench the prior year’s ranking and thereby make the overall *U.S. News* ranking less responsive to developments on law school faculties around the country.

58. BRIAN LEITER’S L. SCH. REP., <https://leiterlawschool.typepad.com/leiter/rankings> (last visited Oct. 29, 2019).

59. See *supra* notes 22–24 and accompanying text.

60. See *supra* notes 21–27 and accompanying text.

61. Heald & Sichelman, *supra* note 3, at 39.

First, the greatest predictor of the results of the peer assessment survey is the results of the prior year's overall *U.S. News* ranking. As Heald and Sichelman report, the correlation between the overall *U.S. News* ranking and the academic peer reputation survey is a "startling 0.96."⁶² Rather than providing an independent and dynamic assessment of changes in faculty quality, the survey in practice places a heavy thumb on the scale in favor of the status quo. As Heald and Sichelman accurately describe it, the peer assessment score "essentially creat[es] an inertial feedback loop that provides little in the way of an independent metric tracking academic reputation."⁶³ As a consequence, the academic survey results are "sticky"⁶⁴ and have proven mostly impervious to changes on the ground in faculty recruitment and scholarly success.⁶⁵

Second, the peer assessment survey is undermined by an understandable lack of information available to the small group of academics who answer the survey. Heald and Sichelman rightly lay the blame on the absence of any clear point of reference, because the surveyed academics "are currently given no empirical basis upon which to quantify their assessment of their peer institutions."⁶⁶ Without any guidance, and left only to rely on unanchored impressions or to indulge personal biases, most of those surveyed can do little more than make a subjective guess.

This is where a citation-based ranking offers itself as a dynamic and objective improvement to the *U.S. News* ranking. As Ted Eisenberg and Martin Wells observed two decades ago, a scholarly impact ranking based on citations "assesses not what scholars say about schools' academic reputations but what they in fact do with schools' output[s]."⁶⁷ Opinion polls are one thing, but counting the votes of actual scholarly impact is much more revealing.

Heald and Sichelman commendably "encourage *U.S. News* to incorporate these scores into its overall rankings, partly in place of its current peer assessment metric."⁶⁸ And, as announced by *U.S. News*,⁶⁹ such an improvement is being actively considered. To be sure, to be both reliable and valid, any schol-

62. *Id.* at 32.

63. *Id.* at 2.

64. See Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 501 (2017) ("[C]ritics agree that the *U.S. News* methodology's heavy reliance on quality assessment causes stagnation, because quality assessment is remarkably 'sticky,' causing rankings to 'echo' in the following year.").

65. Anderson, *supra* note 15 (referring to "immovable peer reputation based on the distant past").

66. Heald & Sichelman, *supra* note 3, at 2.

67. Eisenberg & Wells, *supra* note 11, at 374.

68. Heald & Sichelman, *supra* note 3, at 6.

69. Robert Morse, *U.S. News Considers Evaluating Law School Scholarly Impact*, U.S. NEWS & WORLD REP. (Feb. 13, 2019, 1:00 PM), <https://www.usnews.com/education/blogs/college-rankings-blog/articles/2019-02-13/us-news-considers-evaluating-law-school-scholarly-impact> [<https://perma.cc/7CX9-XEZY>].

arly impact ranking employed by *U.S. News*, especially if based on the HeinOnline database, should address the omissions discussed earlier and make necessary adjustments.⁷⁰

If properly implemented, a citation-based scholarly impact ranking would be a welcome objective control to the subjective academic reputation survey in the *U.S. News* law school ranking. To be specific, I suggest that *U.S. News* should adjust the weight of the academic peer reputation survey from 25 to 15 percent, thus bringing it in line with the 15 percent weight allocated to the judges and lawyers survey. Without making any other change in the weighting of other factors in the *U.S. News* ranking, the remaining 10 percent from the peer reputation survey would be reallocated to a scholarly citation ranking.

Deans and law faculties understandably may be disquieted by any change in the ranking and will worry that a change might have collateral consequences that make their job harder or evaluation of their school less positive. In addition, while every law school dean touts his or her faculty as leading national scholars, such a distinction obviously cannot be true for all law schools. Not every law school, or even most, can truly be a scholarly leader. And many law school deans have little concrete basis for making such a claim. A scholarly impact ranking will not be welcomed by those deans who preside over schools where faculty scholarly accomplishment may not be as distinctive as the school wishes or pretends.

But if a citation-based ranking is sensibly implemented by *U.S. News*, the concern should be removed for the substantial majority of law schools by effectively excepting them from the ranking. The reality is that more than half of ABA-accredited law schools (indeed, approaching two-thirds) register a collective scholarly impact that is simply too low to be distinguished from the critical mass of most other law schools. While scholarly impact is properly used as a mark of additional distinction for law schools that achieve national reach, it should not be used a means to depress ranking among the remainder (other than indirectly, of course, by not obtaining the scholarly impact boost).

As we've explained in each update of our Leiter-Sisk Scholarly Impact Ranking, even before reaching the one-third mark, scholarly impact scores

70. See *supra* notes 32–34 and accompanying text. Although carefully explaining they are not opposed to ranking, the directors of the Society for Empirical Legal Studies urge *U.S. News* not to integrate the particular HeinOnline approach into the law school ranking, insisting the “method suffers from a variety of systemic measurement flaws so significant that they undermine its validity as a measure of scholarly impact—and with it, the validity of any metric incorporating it.” See Letter from SELS Bd. of Dirs. to Robert Morse, *supra* note 30, at 1. While sharing many of the directors’ concerns about the HeinOnline metric, Brian Leiter “predict[s] with confidence” that *U.S. News* will incorporate the HeinOnline ranking to the overall ranking formula. Brian Leiter, *Society for Empirical Legal Studies (SELS) Objects to Use of HeinOnLine Citation Data to Measure “Scholarly Impact,”* BRIAN LEITER’S L. SCH. REP. (Oct. 29, 2019), <https://leiterlawschool.typepad.com/leiter/2019/10/society-for-empirical-legal-studies-sels-objects-to-use-of-hein-on-line-citation-data-to-measure-sch.html>. “[I]f the choice is between academic reputation data and *no measure of scholarly impact*, versus Hein impact data,” Leiter says he’d vote for the latter. *Id.* I strongly urge HeinOnline to adjust its ranking to address the serious concerns raised here and elsewhere, but I agree that adding even a flawed measure of objective scholarly impact would be preferable to retaining a subjective reputational vote as the primary criterion.

begin to compress. To extend the ranking beyond approximately the top one-third would inaccurately assign misleading ranking level differences among law schools with greatly diminishing variation in citation counts. In other words, the ranking begins to cluster and, if forced all the way through all 200 law schools, “would result in ties at ordinal rank levels that would include dozens of law schools.”⁷¹

For that reason, scholarly impact is a meaningful measure for only about one-third of American law schools. It is one thing (and a meritorious thing) for *U.S. News* to incorporate a citation ranking as a further basis for distinguishing among the scholarly leaders in law faculties. It is quite another thing (and a bad idea) to attempt to place every law school into a ranking ladder. *U.S. News* should consider adopting a default score for law schools, which would be applied to the substantial majority, with upward departures for those one-third or so of law schools with a distinctly measurable scholarly impact scoring.

Critics also worry that adding a scholarly impact element to the *U.S. News* ranking will influence deans and faculty in faculty hiring and evaluation. My response is a threefold “yes”: Yes, it will. Yes, it should. And yes, it already does.

On the first point, whether integrating scholarly impact rankings into the *U.S. News* ranking will influence future faculty hiring choices, my answer is a qualified “yes.” What I mean is that the answer is “yes” for the minority of law schools that already place nationally prominent scholarly achievement at the core of the academic mission. But, again, only about one-third of law faculties attain a sufficiently distinctive collective citation scoring to be so ranked. Thus, for the majority of law schools, a citation-based ranking should have little effect on their overall ranking. The deans and faculty of those law schools should not be moved to make any change in hiring or promotion. Indeed, they likely would be foolish to do so, and, to be frank, they probably would not succeed if they tried. Hiring the occasional professor with the actuality or potential of high-level individual scholarly impact simply will not move a school’s collective mean or median in a meaningful and competitive way.

In sum, only a school that places high emphasis on scholarly achievement and has consistently hired faculty with that model should be influenced by the integration of citation counts into the *U.S. News* ranking—and, as discussed below, they already are so influenced.

On the second and third points, given that a citation-based scoring is an objective overall proxy of faculty scholarly quality and influence, considering that one factor among others in faculty hiring and promotion is hardly a bad thing and already is happening at leading law schools. To be sure, as noted, for the substantial majority of law faculties that do not have a collective nationally distinctive scholarly impact, this factor presumably will prompt few changes in their faculty hiring decisions. Only a school with a mission of a nationally prominent scholarly faculty would sensibly and consistently make decisions about scholarly impact promise in faculty hiring. And, frankly, those schools already

71. Sisk et al., *Scholarly Impact in 2018*, *supra* note 1, at 112.

are considering that factor, as I learn each time we update the Leiter-Sisk Scholarly Impact Ranking and through many conversations with deans and faculty at schools with highly cited faculties.

Importantly, however, those law faculties with a strong scholarly culture do not make hiring choices along a single metric, but sensibly consider multiple marks of scholarly distinction, subject matter needs, expectations in a field, diversity, scholarly activities directed to courts or legislatures or other audiences, etc. Indeed, a nationally leading faculty is the least likely to be so foolish as to mistake a citation count as a perfect proxy for scholarly quality. Still, to say that leading law schools do consider whether a faculty candidate has demonstrated or has the promise of being widely read and highly cited should hardly come as a surprise to anyone.⁷²

In sum, relying exclusively on an academic peer reputation survey to measure the quality of schools simply entrenches past *U.S. News* rankings and is largely blind to changes in the quality and scholarly cultures at specific law schools. Introducing an objective control measure as a partial substitute for the subjective peer assessment survey would make the ranking more responsive to meaningful change and more timely in reflecting current scholarly patterns.



In an ideal world of infinitely elastic resources, the eternity of time, and omniscient observers, every individual law professor and every law school's faculty would be fully known, sensitively understood, and thoroughly evaluated based on complete, detailed, and nuanced information. A dean or faculty committee conducting an annual evaluation of an individual faculty member may conduct a more focused individualized assessment. Similarly, a candidate for a faculty position at a particular law school may have the opportunity for a more targeted exploration of the scholarly culture and activity and arrive at a more specified assessment of that school's progress as a scholarly community.

When comparing large numbers of law faculties across the country, however, a generalized assessment approach has considerable merit and the imperfections of a robust proxy for scholarly accomplishment will wash out at the macro level. That is no reason to be insensitive to flaws in a particular method or to resist adjustments that improve the accuracy and meaning of the results, even if at the margins. And honesty demands acknowledging the limitations of any single approach, allowing the reader to avoid ascribing perfect confidence.

With those qualifications in mind, a citation-based measurement of law faculty scholarly impact has proven to be a reliable method and should be recognized as a valid if imperfect proxy for faculty scholarly achievement. Citation ranking has established itself as a worthwhile factor in comparative assessment of law faculty scholarly impact.

72. See Adam S. Chilton et al., Rethinking Law School Tenure Standards (Sept. 17, 2019) (unnumbered working paper), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3200005 (arguing that “objective data, used in combination with traditional criteria, could improve academic personnel decision-making”).