

What Do Law Professors Believe About Law and the Legal Academy?

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Legal scholarship is replete with debates about competing legal theories: textualism or purposivism; formalism or realism; natural law or positivism; prison reform or abolition; universal or culturally specific human rights? Despite voluminous literature about these debates, great uncertainty remains about which views experts endorse. This Article presents the first dataset of American law professors' views about legal theory. A study of over six hundred law professors reveals expert consensus and dissensus about dozens of longstanding debates.

Law professors also debate questions about the legal academy. These include descriptive questions: Which subjects (for example, constitutional law) and methods (for example, law and economics) are most central within the legal academy today? They also include prescriptive ones: Should the legal academy prioritize different areas or methods (for example, critical race theory)? There is great interest in these questions but uncertainty about which views experts endorse. This Article's empirical study also clarifies these questions, documenting law professors' evaluation of over one hundred areas of law. The findings from both parts provide unique insight into legal theory, education, and practice.

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INTRODUCTION

In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.

—Felix Frankfurter¹

Legal scholarship regularly claims that certain theories are widely accepted. “We are all” originalists,² textualists,³ purposivists,⁴ and realists now.⁵ Other legal theories are reputedly in decline: formalism⁶ and strict liability for accidents⁷ are “dead,” while living constitutionalism is “largely dead”⁸ and textualism has fallen.⁹ Other views are alleged to be marginal among legal experts: animals are surely not “legal persons,”¹⁰

1. Letter from Felix Frankfurter, Professor, Harvard L. Sch., to Mr. Rosenwald (May 13, 1927) (on file with Harvard Law School Library), *quoted in* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992).

2. *E.g.*, Lawrence B. Solum, *We Are All Originalists Now*, in CONSTITUTIONAL ORIGINALISM: A DEBATE 1 (2011).

3. *E.g.*, Jonathan R. Siegel, *Textualism and Contextualism in Administrative Law*, 78 B.U. L. REV. 1023, 1057 (1998) (“In a significant sense, we are all textualists now.”); Harvard L. Sch., *The 2015 Scalia Lecture | A Dialogue with Justice Elena Kagan on the Reading of Statutes*, at 08:30, YOUTUBE (Nov. 25, 2015), <https://www.youtube.com/watch?v=dpEtszFT0Tg>.

4. *E.g.*, Victoria F. Nourse, *Elementary Statutory Interpretation: Rethinking Legislative Intent and History*, 55 B.C. L. REV. 1613, 1648 n.164 (2014).

5. *E.g.*, Laura Kalman, *Legal Realism*, in 4 THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY 74, 78 (Stanley N. Katz ed., 2009).

6. *E.g.*, Daniel Farber, *The Ages of American Formalism*, 90 NW. U. L. REV. 89, 89 (1995).

7. *See generally, e.g.*, Peter M. Gerhart, *The Death of Strict Liability*, 56 BUFF. L. REV. 245 (2008).

8. James E. Ryan, *Laying Claim to the Constitution: The Promise of New Textualism*, 97 VA. L. REV. 1523, 1524 (2011).

9. *See generally* Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 COLUM. L. REV. 1 (2006).

10. *See* Taimie L. Bryant, *Animals Unmodified: Defining Animals/Defining Human Obligations to Animals*, 2006 U. CHI. LEGAL F. 137, 141, 154 (discussing the challenges of securing rights for animals).

and prison abolition remains “unfathomable.”¹¹

Similar claims implicate the legal academy itself. Professors remark that different areas (for example, tort or contract) have become more or less significant over time. As Professor John Goldberg explains, “Intellectual history suggests that the respective status of law’s various subdisciplines wax and wane.”¹² Scholars regularly make claims about subdisciplines’ current statuses, professing the centrality of certain doctrinal areas (for example, contract¹³) or methodologies (for example, critical race theory¹⁴). Scholars have also heralded disciplinary declines and deaths: of contract,¹⁵ tort,¹⁶ corporate law,¹⁷ jurisprudence,¹⁸ and law and economics.¹⁹

These empirical claims about legal theory and the legal academy are pervasive. But which of them are true? Do today’s legal experts mostly endorse textualism or purposivism; realism or formalism; positivism or natural law theory? And do they agree that, within the legal academy, law and economics is comparatively peripheral and critical race theory is more central? This Article presents the results of a survey of hundreds of law professors, which help determine answers to these questions.

11. See Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1160 (2015). McLeod’s article articulates and defends a form of prison abolition, grounded in an “aspirational ethic and a framework of gradual decarceration.” *Id.* at 1156.

Taken literally, some of these statements are hyperbolic. There are undoubtedly *some* non-originalists and formalists, enthusiasts of strict liability, and advocates of prison abolition. But it is no mistake for professors to take stock of the status of legal theories. Law professors have debated these theories over many law review pages, offering arguments that aim to persuade their peers of certain views. When there is a sense that legal experts have been persuaded, that is remarkable. So, it is unlikely that we are (literally) “all” adherents of any theory, but it is worthwhile to attend to which theories have been persuasive or have gained traction. Similarly, it is unlikely that any theory is entirely dead, but it is worthwhile to assess which have fallen into decline.

12. John C. P. Goldberg, *Unloved: Tort in the Modern Legal Academy*, 55 VAND. L. REV. 1501, 1518 (2002).

13. *Id.* at 1519 (“Contract is more important and more valued today than at any time since the late nineteenth century.”).

14. See, e.g., Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U. L. REV. 329, 352 (2006) (describing how critical race theory has become increasingly “entrenched in the legal academy”).

15. See generally, e.g., GRANT GILMORE, *THE DEATH OF CONTRACT* (1974); Robert E. Scott, *The Death of Contract Law*, 54 U. TORONTO L.J. 369 (2004).

16. See generally, e.g., Ryan Martins, Shannon Price & John Fabian Witt, *Contract’s Revenge: The Waiver Society and the Death of Tort*, 41 CARDOZO L. REV. 1265 (2020).

17. See generally, e.g., Zohar Goshen & Sharon Hanes, *The Death of Corporate Law*, 94 N.Y.U. L. REV. 263 (2019).

18. See generally, e.g., Omri Ben-Zvi, *Zombie Jurisprudence*, in *SEARCHING FOR CONTEMPORARY LEGAL THOUGHT* 406 (Justin Desautels-Stein & Christopher Tomlins eds., 2017).

19. See Ugo Mattei, *The Rise and Fall of Law and Economics: An Essay for Judge Guido Calabresi*, 64 MD. L. REV. 220, 220 (2005) (“[T]he decline phase of the economic approach in legal reasoning is well on its way.”). Professor Morton Horowitz claimed law and economics “peaked out” in the 1980s, and Professor Owen Fiss later agreed. See Anita Bernstein, *Whatever Happened to Law and Economics?*, 64 MD. L. REV. 303, 303 & n.3 (2005).

Why do these survey results matter? In a review of a draft of this Article, Professor Ilya Somin lists three primary reasons.²⁰ First, law professors are experts, and broad expert consensus often guides us to the truth.²¹ The consensus of legal experts about law is prima facie evidence about law. For some theorists, expert consensus plays a stronger role—it is not merely evidence of law, it is constitutive of law. For example, Professor William Baude argues that whether our law is originalist is an “empirical question”²² about legal officials and practice. Insofar as some law professors are legal officials,²³ the groups’ overlapping consensus would be partly constitutive of law, for theories that ground law in social practice and consensus.²⁴

Second, law professors influence lawyers, and lawyers influence law.²⁵ As jurist Felix Frankfurter explains, “Law is what the lawyers are . . . and lawyers are what the law schools make them.”²⁶ We would add: Law schools are, in large part, what the law professors make them.²⁷

Third, law professors themselves influence legal education, law, and policy.²⁸ Somin’s review cites as examples Professor Catharine MacKinnon’s influence on sexual harassment law²⁹ and Professor Cass Sunstein’s influence on nudging policy.³⁰ One could locate these specific examples within two broader trends: a rise in feminist legal theory, and law and economics. The survey data about the attractiveness of specific legal theory views (for example, prison abolition) and need

20. See Ilya Somin, *What Law Professors Think About Legal Issues—and Why It Matters*, REASON: THE VOLOKH CONSPIRACY (Aug. 10, 2022, 6:02 PM), <https://reason.com/volokh/2022/08/10/what-law-professors-think-about-legal-issues-and-why-it-matters/> [<https://perma.cc/49RK-CX38>].

21. See *id.*

22. William Baude, *Is Originalism Our Law?*, 115 COLUM. L. REV. 2349, 2365 (2015).

23. See, e.g., Felipe Jiménez, *Legal Principles, Law, and Tradition*, 33 YALE J.L. & HUMANS. 59, 84 (2022) (arguing that legal scholars and legal practitioners contribute to the content of the legal system); Melvin A. Eisenberg, *The Concept of National Law and the Rule of Recognition*, 29 FLA. ST. U. L. REV. 1229, 1230 (2002) (suggesting that officials, legal scholars, and scholarly institutions create a national body of law); Frederick Schauer, *The Restatements as Law*, in THE AMERICAN LAW INSTITUTE: A CENTENNIAL HISTORY 425, 426 (Andrew S. Gold & Robert W. Gordon eds., 2023) (proposing that Restatements of Law, to which law professors regularly contribute, are law).

24. See, e.g., William Baude & Stephen E. Sachs, *Grounding Originalism*, 113 NW. U. L. REV. 1455, 1464 (2019) (“Positivism grounds law in social practice and consensus . . .”). *But see id.* at 1465 (“[O]riginalism can be a correct *descriptive* account of our legal system, even if few people would currently describe our system that way.”).

25. See Somin, *supra* note 20.

26. Letter from Felix Frankfurter to Mr. Rosenwald, *supra* note 1.

27. See, e.g., Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 5 AM. BAR FOUND. RSCH. J. 501, 501 (1980) (“The gatekeeping function of law schools places the nation’s law teachers in a most influential position.”).

28. See Somin, *supra* note 20.

29. *Id.* (“Catharine MacKinnon’s argument that sexual harassment is a form of sex discrimination was eventually adopted by the Supreme Court, with major consequences for the development of anti discrimination law.”). See generally CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

30. Somin, *supra* note 20 (“Sunstein has helped influence governments around the world to adopt policies based on ‘nudging.’”). See generally RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008).

for legal education to focus on certain fields (for example, Native American law) could help predict broad future directions in legal education, law, and policy.

This Article proceeds in four Parts. Parts I and II provide background on the (American) “legal academy” and longstanding debates in legal theory. Part III presents the results of a survey of over six hundred American law professors.³¹ It reports which legal areas (for example, property) professors evaluate as most “central” in the legal academy and which areas they evaluate as ones that *should be* most central. Next, it reports which legal theory views professors endorse or reject (for example, textualism or purposivism as a theory of statutory interpretation). Part III also considers the relationship between demographic factors—such as age, race, gender, and political identity—and views of the legal academy and theory.

Part IV turns to the findings’ limitations and implications. The legal theory results offer sociological data that can help replace speculation about which legal theories are widely accepted or rejected within the academy. In some cases, our findings directly challenge some of this speculation, such as the finding that fewer than 20% of professors endorse originalism as an approach to constitutional interpretation, or that over 30% endorse personhood for some subset of non-human animals. In other cases, the results serve to validate (and add an additional degree of quantitative rigor and nuance to) certain empirical claims about the status of debates, such as the finding that over 80% of professors endorse negligence as the appropriate default standard for liability in accidents compared to roughly 20% who endorse strict liability. And in other cases, the results reveal not so much a consensus in favor of one view over another view but rather a consensus in favor of a pluralism of views, such as the finding that the majority of participants endorse textualism, purposivism, and pragmatism as approaches to statutory interpretation.

Beyond this descriptive contribution, we argue that the survey results have normative value. This survey should not completely resolve difficult questions about legal theory. However, in most scholarly fields, considered expert consensus counts as a useful datum in favor of strongly supported propositions. Insofar as law professors are experts about legal theory, their strong support for a view is a *prima facie* consideration in favor of that view.

We develop a similar argument about the legal academy subject-area results. The survey collects judgments from law professors about hundreds of different areas. The data include judgments about which areas *are* most central, as well as data about how central different areas *should be*. This two-question strategy, distinguishing the descriptive from the prescriptive, allows the identification of areas that law professors tend to evaluate as “over central” and “under central.” For

31. Participants were recruited through a public survey link and by direct emails sent to professors at the so-called “T50” law schools, as evaluated by the 2022 U.S. News and World Report’s Rankings. *See* 2022 *Best Law Schools*, U.S. NEWS & WORLD REP. [<https://web.archive.org/web/20220210135522/https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings>] (last visited Feb. 10, 2022).

example, we find that professors evaluate constitutional law and appellate practice as two of a handful of “over central” areas. The “under central” areas list is much longer, including natural resources, regulated industries, legislation, Native American law, energy law, poverty law, and consumer law. As a descriptive result, this contributes to the sociology of the modern legal academy. But the findings also carry prescriptive value. Insofar as law professors are experts about these matters, the results support normative recommendations about the broad directions in which the legal academy should develop. This first-ever survey about hundreds of legal areas also provides a unique dataset for important ongoing discussions about how to improve, diversify, and modernize legal education.

Finally, we discuss the relationship between demographic data and responses about legal theory and subdisciplines’ descriptive (“is central”) and normative (“should be central”) centrality. There is a dearth of recent, public, detailed demographic data about American law professors. As such, the survey’s detailed demographics (including self-reported results about disability, sexual orientation, and political identity) are a contribution on their own. The results are fairly robust with respect to demographic differences, but our comparisons also suggest a connection between factors like age, gender, race, and politics; the composition of the legal academy; and trends in legal theory. Insofar as the legal academy is insufficiently diverse (with respect to, for example, race, politics, or gender), these data clarify some of the costs of that homogeneity.

I. EMPIRICAL CLAIMS ABOUT THE “LEGAL ACADEMY”

This Part provides background about the American legal academy, highlighting several unanswered empirical questions that call for more rigorous empirical study. Section I.A overviews the main activities that comprise the American legal academy, including legal education, study, scholarship, and practice, as well as the main doctrinal areas associated with these activities. Section I.B describes the legal academy’s demography. Section I.C discusses the legal academy’s self-conception and the need for empirical study in clarifying the academy’s self-conception. Section I.D discusses the practicality of conducting an empirical study of the legal academy using previous work in experimental philosophy as a blueprint.³²

A. WHAT IS THE “LEGAL ACADEMY”?

Law professors are familiar with the phrase “legal academy,”³³ but the associated concept does not have perfectly clear boundaries. Broadly speaking, the American legal academy refers to what occurs in U.S. law schools. Our empirical

32. Experimental philosophy is “empirical work undertaken with the goal of contributing to a philosophical debate.” Stephen Stich & Kevin P. Tobia, *Experimental Philosophy and the Philosophical Tradition*, in *A COMPANION TO EXPERIMENTAL PHILOSOPHY* 5, 5 (Justin Sytsma & Wesley Buckwalter eds., 2016); see Joshua Knobe & Shaun Nichols, *An Experimental Philosophy Manifesto*, in *EXPERIMENTAL PHILOSOPHY* 3, 3 (Joshua Knobe & Shaun Nichols eds., 2008).

33. A Google Scholar search reveals over 16,000 citations to the phrase since the year 2000. See GOOGLE SCHOLAR, https://scholar.google.com/scholar?as_ylo=2000&q=%22legal+academy%22&hl=en&as_sdt=0,9 [https://perma.cc/3JRC-P554] (last visited June 3, 2023).

study's materials describe the legal academy as "what occurs within law schools, including legal study, education, practice, and scholarship."³⁴ This is consistent with other recent descriptions of the legal academy.³⁵ This Section provides a brief overview of each of these activities.

1. Legal Education and Study

A key feature of the legal academy is educating the next generation of lawyers. For example, according to American Bar Association (ABA) statistics, the legal academy graduated roughly 34,420 Juris Doctors (J.D.'s) across the 197 ABA-approved law schools in 2020.³⁶ The Association of American Law Schools (AALS), whose membership includes all but a handful of the ABA-approved law schools,³⁷ notes that legal academics are required to be teachers and are encouraged to do it well: "Law professors should aspire to excellence in teaching and to mastery of the doctrines and theories of the subjects they teach."³⁸

Legal education is regulated by the ABA, which imposes a number of requirements on both law schools and students hoping to complete a J.D. Law schools must offer a curriculum that requires each student to complete (a) a two-credit course in professional responsibility, (b) a first-year and upper-level writing requirement, each supervised by faculty, and (c) a six-credit experiential learning course.³⁹ Law schools tend to have a relatively uniform required first-year curriculum for students, including property, torts, criminal law, civil procedure, constitutional law, and contracts.⁴⁰ However, the ABA does not require this traditional

34. Appendix to Eric Martínez & Kevin Tobia, *What Do Law Professors Believe About Law and the Legal Academy?*, 112 GEO. L.J. 111 app. 1, 7 (2023), <https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2023/10/Martinez-Tobia-Appendix-112.1.pdf>.

35. For a similar gloss on the "legal academy," see generally Orin Kerr, *The Legal Academy*, APPLE PODCASTS, <https://podcasts.apple.com/us/podcast/the-legal-academy/id1515327336> (last visited Sept. 5, 2023) (discussing topics including "legal scholarship, the hiring market, teaching, and everything else that law professors care about").

36. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA, EMPLOYMENT OUTCOMES AS OF APRIL 2021 (CLASS OF 2020 GRADUATES) 1 (2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/class-of-2020-employment-summary-release.pdf [<https://perma.cc/MX5H-P4LY>]; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA, 2020 STANDARD 509 INFORMATION REPORT DATA OVERVIEW 1 (2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2020-509-enrollment-summary-report-final.pdf [<https://perma.cc/PD54-3W9M>].

37. See *About AALS*, ASS'N AM. L. SCHS., <https://www.aals.org/about/> [<https://perma.cc/2EET-7ZK8>] (last visited June 24, 2023) ("The Association of American Law Schools (AALS) is a 501(c)(3) nonprofit association of 176 member and 19 fee-paid law schools.").

38. *Law Professors in the Discharge of Ethical and Professional Responsibilities*, AALS Handbook: *Statement of Good Practices*, ASS'N AM. L. SCHS. (July 12, 2017), <https://www.aals.org/about/handbook/good-practices/ethics/> [<https://perma.cc/EPE8-7TUD>].

39. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2021–2022, at 18 (2021) [hereinafter ABA STANDARDS], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure.pdf [<https://perma.cc/M6ZN-LD2G>].

40. See *The First Year*, HARV. L. SCH., <https://hls.harvard.edu/academics/degree-programs/jd-program/> [<https://perma.cc/W5VL-6VJH>] (last visited Sept. 5, 2023) ("First-year students take courses in civil

first-year curriculum.⁴¹ More recently, schools have begun to alter these requirements, for example, by adding required first-year courses such as legislation.⁴²

Despite the homogeneity and rigidity of the traditional first-year curriculum, law schools generally offer flexibility to students in their second and third years. Law schools offer an extensive range of upper-level courses, as indicated by the more than one hundred teaching categories listed on the AALS Faculty Appointments Register (FAR) form.⁴³ However, it remains an open question how prominently some of these courses actually feature in the academy. The AALS does not release data on the number of faculty who specialize in each teaching category, nor on the breakdown of course offerings at each school.

2. Legal Scholarship

Legal academics (members of the legal academy) also produce legal scholarship. Scholarship's role has changed over time. As legal scholar and former Judge Richard Posner explains, as recently as the 1960s, "scholarly publication was not even a condition of tenure . . . let alone a career expectation; other forms of service to the profession, such as work on the American Law Institute's *Restatements of the Law*, could be substituted."⁴⁴ However, today many hiring and tenure decisions are made primarily on the basis of an evaluation of a candidate's scholarship.⁴⁵

As legal scholarship has grown in prominence, so too has interdisciplinary legal scholarship—examining law from an "external" point of view. Over the last several decades, scholars have drawn from other fields of academic inquiry to

procedure, constitutional law, contracts, criminal law, legislation and regulation, property, and torts, which collectively provide a foundation for understanding the common law tradition and governing structures of the U.S. legal system and the role of statutes and regulations within that system."); Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166, 167–68 (2008) (describing how "the vast majority" of law schools directly or indirectly model their curriculum off that of Harvard's); SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010, at 15 (Catherine L. Carpenter ed., 2012), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2012_survey_of_law_school_curricula_2002_2010_executive_summary_authcheckdam.pdf [<https://perma.cc/KWK8-ASJE>] (describing how the first-year core courses have remained "constant" since 1975); Prentiss Cox, *1L Curricula in the United States: 2023 Data and Historical Comparison* 1 (Minn. Legal Stud. Research Paper No. 23-08, 2023) (noting that "[f]our widely offered 1L courses—contracts, torts, property, and civil procedure—still constitute more than half the first year credits in the first year at the vast majority of law schools" and that "credits for required courses in criminal law or constitutional law have been stable").

41. See ABA STANDARDS, *supra* note 39, at 18 (noting the only first-year curriculum requirement is "one writing experience" that is "faculty supervised").

42. Leib, *supra* note 40, at 169.

43. *Faculty Appointments Register*, ASS'N AM. L. SCHS. [hereinafter AALS], www.aals.org/recruitment/current-faculty-staff/far/ (last visited Feb. 2, 2022). Areas on the list include areas associated with more traditional "core" 1L courses, such as constitutional law, civil procedure, and torts, as well as a variety of other areas, such as Native American law, poverty law, international law, election law, and elder law.

44. Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1319 (2002).

45. See Kenneth Lasson, Commentary, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 936 (1990) ("[T]he promotion-and-tenure standards of most faculties focus unduly on articles published in law reviews. Often neither briefs nor practice manuals . . . are considered 'scholarship.'"); see also William R. Slomanson, *Legal Scholarship Blueprint*, 50 J. LEGAL EDUC. 431, 431 (2000) (writing that "the pursuit of tenure without a scholarship plan invites failure").

inform legal scholarship, developing a range of “law and X” approaches including law and economics,⁴⁶ law and society,⁴⁷ law and literature,⁴⁸ critical legal studies,⁴⁹ critical race theory,⁵⁰ feminist jurisprudence,⁵¹ law and political theory,⁵² law and biology,⁵³ and law and cognitive science.⁵⁴ It remains an open question to what extent legal academics view interdisciplinary subfields (for example, law and economics) as central to the academy.

3. Legal Practice

In addition to teaching and scholarship, a third main activity in law schools relates to legal practice. As Professor Stephen Feldman explains, “Since the post-Civil War era law professors have perceived themselves first and foremost as lawyers.”⁵⁵ Although law schools have been oft-accused of being too theory oriented,⁵⁶ legal academics often write scholarship for the purpose of impacting legal practice. HeinOnline data show that this bidirectional influence is substantial, as law review articles consistently cite and are cited by judicial opinions.⁵⁷

46. See generally, e.g., Richard A. Posner, *The Law and Economics Movement*, 77 AM. ECON. REV., no. 2, 1987, at 1.

47. See generally, e.g., Lawrence M. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763 (1986).

48. See generally, e.g., RICHARD A. POSNER, *LAW AND LITERATURE* (3d ed. 2009); KIERAN DOLIN, *A CRITICAL INTRODUCTION TO LAW AND LITERATURE* (2007); IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* (1995).

49. See generally, e.g., Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561 (1983); ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT: ANOTHER TIME, A GREATER TASK* (2015).

50. See generally, e.g., RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (3d ed. 2017).

51. See generally, e.g., HILAIRE BARNETT, *INTRODUCTION TO FEMINIST JURISPRUDENCE* (1998); Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373 (1986); Patricia Smith, *Feminist Jurisprudence*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY* 290 (Dennis Patterson ed., 2d ed. 2010).

52. See generally, e.g., MARTIN LOUGHLIN, *PUBLIC LAW AND POLITICAL THEORY* (1992).

53. See generally, e.g., E. Donald Elliott, *Law and Biology: The New Synthesis?*, 41 ST. LOUIS U. L.J. 595 (1997).

54. See generally, e.g., *LAW AND MIND: A SURVEY OF LAW AND THE COGNITIVE SCIENCES* (Bartosz Brozek et al. eds., 2021).

55. Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. LEGAL EDUC. 471, 472 (2004).

56. See, e.g., Leib, *supra* note 40, at 166 (noting that “[c]harges that legal education (at least at the most elite schools) is out of touch with legal practice are old ones”).

57. For example, the top twenty-five most-cited U.S. Supreme Court cases in HeinOnline were each cited by more than 8,000 law review articles. See Lauren Mattiuzzo, *Most-Cited U.S. Supreme Court Cases in HeinOnline: Part III*, HEINONLINE BLOG (Sept. 26, 2018), <https://home.heinonline.org/blog/2018/09/most-cited-u-s-supreme-court-cases-in-heinonline-part-iii/> [https://perma.cc/DFJ5-DAMP]. To reference the most-cited law review article according to HeinOnline (in terms of citations by other law review articles), see Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890). Over 400 cases cite *The Right to Privacy*. HeinOnline uses ScholarCheck to count the number of cases citing the article.

Legal practice also manifests in the academy in ways beyond doctrinal scholarship. Podium faculty members⁵⁸ sometimes serve as counsel or author amici briefs.⁵⁹ Law schools also employ “professors of practice” and “of counsel” professors, who tend to have had significant practice experience prior to teaching in the academy.⁶⁰

Law schools also hire clinical professors and host clinical and pro bono programs, in which both law students and clinical law professors participate in and manage real-world cases. The ABA’s curriculum guidelines require law schools to “provide substantial opportunities to students for: (1) law clinics or field placement(s); and (2) student participation in pro bono legal services, including law-related public service activities.”⁶¹ According to a recent survey of clinical programs across the legal academy, there are well over 1,000 clinical offerings across all law schools.⁶² Ninety-seven percent of law schools offer at least one clinic, and half of all law schools offer at least seven.⁶³ Even schools accused of being mostly theory oriented tend to have expansive clinical offerings, in many cases more so than other schools in the academy.⁶⁴

The focus of the commonly offered clinics tends to differ from that of the traditional first-year courses: immigration law, human rights law, environmental law, disability law, and housing law.⁶⁵ It remains an open question to what extent these areas are perceived as central to the legal academy, despite not featuring heavily in traditional first-year curricula.

B. THE LEGAL ACADEMY’S DEMOGRAPHIC COMPOSITION

It is widely understood that the legal academy is not representative of the American population in various respects, including race and

58. By “podium faculty members,” we refer to faculty members that primarily teach in a traditional, non-clinical setting (that is, “behind a podium”).

59. See, e.g., Richard H. Fallon, Jr., *Scholars’ Briefs and the Vocation of a Law Professor*, 4 J. LEGAL ANALYSIS 223, 223 (2012) (examining “the increasingly common phenomenon of ‘scholars’ briefs’ in which collections of law professors appear as amici curiae in litigation before a court”).

60. See, e.g., Michael H. Hoefflich & J. Nick Badgerow, *Law School Faculty, LLP: Law Professors as a Law Firm*, 53 KAN. L. REV. 853, 854 (2005); Rory K. Little, *Law Professors as Lawyers: Consultants, Of Counsel, and the Ethics of Self-Flagellation*, 42 S. TEX. L. REV. 345, 359 (2001); David Lander, *What Is a Law School Professor of Practice?*, PRAWFSBLAWG (Dec. 5, 2016), <https://prawfsblawg.blogs.com/prawfsblawg/2016/12/what-is-a-law-school-professor-of-practice-.html> [<https://perma.cc/DZT7-DA96>] (stating that in some law schools a professor of practice “identifies a well thought of person who has practiced outside the academy and who now spends most of her time doing something at the law school as a sabbatical from that practice or after such a career”).

61. ABA STANDARDS, *supra* note 39, at 18.

62. ROBERT R. KUEHN, MARGARET REUTER & DAVID A. SANTACROCE, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., 2019–20 SURVEY OF APPLIED LEGAL EDUCATION 6 (2020).

63. See *id.*

64. See, e.g., Heather K. Gerken, Commentary, *Resisting the Theory/Practice Divide: Why the “Theory School” Is Ambitious About Practice*, 132 HARV. L. REV. F. 134, 135 (2019) (discussing how Yale Law School has developed one of the most ambitious clinical programs in the country despite Yale’s reputation as a theory-focused school).

65. See KUEHN ET AL., *supra* note 62, at 7–8.

gender.⁶⁶ An unanswered empirical question is to what extent the academy is affected by its own demographic composition. For example, does the academy's unrepresentative gender, age, or racial composition affect which interests, concerns, methodologies, or even doctrinal areas are more central to the academy?

One way to make progress on this question is to assess whether law professors' evaluations of legal areas' importance vary across law professors of different demographic characteristics. For example, do men, women, and non-binary professors have differing conceptions of how central feminist theory *should be* within the legal academy?

There are also many demographic categories for which there is little publicly available data regarding the academy's composition, such as disability and sexual orientation.⁶⁷ Empirically investigating the professorial composition of the academy with regard to these categories would further serve to verify both the extent to which the academy is representative of the American population and the extent to which the legal academy is impacted by its professorial composition.

Similar uncertainties exist with regard to law-specific demographic categories, such as area of specialization. For example, it remains an open question what percentage of law professors specialize in constitutional law. Moreover, it remains unclear to what extent specializing in a given area of law influences one's conception of how central different areas of law are or should be within the legal academy. Empirically investigating these questions would provide valuable insight into both the composition of the legal academy and the ways in which the legal academy is impacted by its professorial composition.

C. THE NEED FOR EMPIRICAL STUDY

Despite the apparent multitude of unanswered empirical questions regarding the legal academy's self-conception, scholars nonetheless assert there to be definitive answers to some of these questions. In particular, scholars often make empirical claims about the degree to which the academy understands different subdisciplines of law as being central. For example, scholars regularly talk about the death, fall, or decline of different areas of law, such as contract,⁶⁸ tort,⁶⁹

66. See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 4 (2019) (analyzing the challenges faced by women of color in the legal academy); Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 99 (describing the various ways in which "there is a gender divide on law school faculties"); Miranda Li, Phillip Yao & Goodwin Liu, *Who's Going to Law School? Trends in Law School Enrollment Since the Great Recession*, 54 U.C. DAVIS L. REV. 613, 614 (2020) (noting that "[w]omen, African American students, and Hispanic students are disproportionately enrolled in lower-ranked schools").

67. See, e.g., *Statistics*, ABA, https://www.americanbar.org/groups/legal_education/resources/statistics/ [<https://perma.cc/3LWA-WAUK>] (last visited Sept. 5, 2023) (showing the various statistics released by the ABA related to ABA-approved law schools, none of which relate to disability and sexual orientation); *Data Resources*, ASS'N AM. L. SCHS., <https://www.aals.org/research/data-resources/> [<https://perma.cc/X3SR-NS4F>] (last visited Sept. 5, 2023) (showing the various data resources related to AALS-member law schools, few of which pertain to law faculty demographics).

68. See generally, e.g., GILMORE, *supra* note 15; Scott, *supra* note 15.

69. See generally, e.g., Martins et al., *supra* note 16.

corporate law,⁷⁰ jurisprudence,⁷¹ law and economics,⁷² international law,⁷³ comparative constitutional law,⁷⁴ and administrative law.⁷⁵ At the same time, scholars have talked about how certain areas have risen, emerged, or re-emerged as more central, such as legal philosophy,⁷⁶ critical race theory,⁷⁷ animal law,⁷⁸ climate law,⁷⁹ art law,⁸⁰ state constitutional law,⁸¹ and various types of international law.⁸²

These empirical claims might give the impression that the self-conception of the legal academy is not an open question at all. After all, if scholars claim that the law of torts is in decline, why not take this at face value? One obvious reason is that some of these claims conflict. For example, with regard to contract, although some scholars have claimed that “[c]ontract is more important and more valued today than at any time since the late nineteenth century,”⁸³ other scholars have heralded the “death” of contract law.⁸⁴

A second reason is that some areas that have been described as surging seem intuitively less central than areas described as declining. Scholars have noted the “explosive rise” of animal law⁸⁵ and the “death” of corporate law,⁸⁶ despite the fact that corporations, not animals, are recognized as legal persons⁸⁷ and corporate law, not animal law, is typically included as a subject on the bar

70. See generally, e.g., Goshen & Hannes, *supra* note 17.

71. See generally, e.g., Ben-Zvi, *supra* note 18.

72. See generally, e.g., Mattei, *supra* note 19.

73. See generally, e.g., MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870–1960* (2004).

74. See generally, e.g., David Fontana, *The Rise and Fall of Comparative Constitutional Law in the Postwar Era*, 36 *YALE J. INT’L L.* 1 (2011).

75. See generally, e.g., Richard A. Posner, *The Rise and Fall of Administrative Law*, 72 *CHI.-KENT L. REV.* 953 (1997).

76. See generally, e.g., Randy E. Barnett, *Contract Scholarship and the Reemergence of Legal Philosophy*, 97 *HARV. L. REV.* 1223 (1984) (book review).

77. See generally, e.g., Mutua, *supra* note 14.

78. See generally, e.g., Greg Miller, *The Rise of Animal Law*, 332 *SCIENCE* 28 (2011); Maneesha Deckha, *Critical Animal Studies and Animal Law*, 18 *ANIMAL L.* 207 (2012); Richard L. Cupp, Jr., *Bioethics and the Explosive Rise of Animal Law*, *AM. J. BIOETHICS*, May 2009, at 1; Peter Sankoff, *Charting the Growth of Animal Law in Education*, 4 *J. ANIMAL L.* 105 (2008).

79. See generally, e.g., Jacqueline Peel, *Climate Change Law: The Emergence of a New Legal Discipline*, 32 *MELB. U. L. REV.* 922 (2008).

80. See generally, e.g., James J. Fishman, *The Emergence of Art Law*, 26 *CLEV. ST. L. REV.* 481 (1977).

81. See generally, e.g., Shirley S. Abrahamson, *Criminal Law and State Constitutions: The Emergence of State Constitutional Law*, 63 *TEX. L. REV.* 1141 (1985).

82. See generally, e.g., Tseming Yang & Robert V. Percival, *The Emergence of Global Environmental Law*, 36 *ECOLOGY L.Q.* 615 (2009); Benedict Kingsbury, Nico Krisch & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 *LAW & CONTEMP. PROBS.* 15 (2005); John G. Sprankling, *The Emergence of International Property Law*, 90 *N.C. L. REV.* 461 (2012); Edith Brown Weiss, *The Rise or the Fall of International Law?*, 69 *FORDHAM L. REV.* 345 (2000).

83. Goldberg, *supra* note 12, at 1519.

84. See generally, e.g., Scott, *supra* note 15.

85. Cupp, Jr., *supra* note 78.

86. Goshen & Hannes, *supra* note 17.

87. See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 342–43 (2010).

exam.⁸⁸ Similarly, it seems counterintuitive to believe that “emerging” disciplines such as art law and global environmental law are considered more central to the academy than “unloved” disciplines such as tort,⁸⁹ which remains a mainstay in the required first-year curriculum across U.S. law schools.⁹⁰

Some readers might take a more skeptical view of these prior scholarly claims, reading these not as literal claims, but rather as metaphorical, or even hyperbolic or attention-grabbing expressions. The “death” of an area does not really mean that the area is *dead*, but rather that the area is experiencing some important change. We are open to this possibility and see empirical study of areas’ perceived centrality as a useful way to clarify the literal from the metaphorical.

A related issue is that these empirical claims on their own do not give precise estimates of an area’s centrality. For example, do the claims that tort law is “unloved”⁹¹ or that jurisprudence is in a “zombie”⁹² state mean that these areas are seen as completely irrelevant in the academy, or merely that they are less central than they used to be, or less central than other areas that are *truly* central? A more rigorous empirical examination of areas’ perceived centrality can also help address this issue.

Finally, extant claims in the literature often blur the line between the descriptive and the normative. An area (for example, contract) may be dead in a descriptive sense (that is, the scholar claims that contract is no longer as central as it once was) or in a normative sense (that is, the scholar claims that contract *should* not be treated as centrally). Empirical study could more cleanly distinguish these distinct claims.

Understanding the academy’s self-conception would not only be useful from a sociological perspective but could also support normative implications. Just as expert consensus in other scholarly fields tends to count as a useful datum in favor of strongly supported propositions,⁹³ it seems reasonable to assert that insofar as

88. See *Preparing for the MEE*, NAT’L CONF. BAR EXAM’RS, <https://www.ncbex.org/exams/mee/preparing-mee> [<https://perma.cc/XB84-VT5U>] (last visited Sept. 5, 2023) (listing “Business Associations (Agency and Partnership; Corporations and Limited Liability Companies)” as an area of law “that may be covered” on the Multistate Essay Examination but not listing animal law).

89. Goldberg, *supra* note 12.

90. See *supra* note 40 and accompanying text.

91. Goldberg, *supra* note 12.

92. Ben-Zvi, *supra* note 18.

93. For an example of research that surveys experts in climate change science, see William R. L. Anderegg, James W. Prall, Jacob Harold & Stephen H. Schneider, *Expert Credibility in Climate Change*, 107 PROC. NAT’L ACAD. SCI. U.S. 12107, 12107 (2010) (“(i) 97–98% of the climate researchers most actively publishing in the field surveyed here support the tenets of ACC [Anthropogenic Climate Change] outlined by the Intergovernmental Panel on Climate Change, and (ii) the relative climate expertise and scientific prominence of the researchers unconvinced of ACC are substantially below that of the convinced researchers.”). For examples in economics, see generally *US Economic Experts Panel*, CHI. BOOTH, <https://www.igmchicago.org/igm-economic-experts-panel/> [<https://perma.cc/8PV6-6GEA>] (last visited Sept. 5, 2023) (polling over 80 economists’ views on vital policy issues) and Paola Sapienza & Luigi Zingales, *Economic Experts Versus Average Americans*, 103 AM. ECON. REV.: PAPERS & PROC. 636 (2013) (comparing expert opinions on economics with those of average Americans). For examples in medicine and public health, see generally Thomas A. Aloia, Nicolas Jarufe, Milind Javle, Shishir K. Maithel, Juan C. Roa, Volkan Adsay, Felipe J. F. Coimbra & William R. Jarnagin, *Gallbladder Cancer: Expert Consensus Statement*, 17 HPB 681

law professors are experts about the legal academy, those experts' strong support for the position that a given area should be more central to the academy than it currently is should count as a *prima facie* consideration in favor of that position.

Clarifying the legal academy's self-conception would have implications not just for the legal academy itself but for society at large, as well. The AALS states that law professors owe a duty to the general public.⁹⁴ To the extent that members of the academy's views regarding which areas of law should be central are informed by their perceived duty to the public, documenting which areas of law the academy sees as over central and under central would help elucidate which areas the academy should focus on in order to better serve the public according to the academy's own lights.

D. PREPARING AN EMPIRICAL STUDY OF THE LEGAL ACADEMY

One way to obtain comprehensive data regarding the legal academy's self-conception is to survey its members. For example, to know whether law professors evaluate tort law as less central than contract law, one straightforward way would be to recruit a large, representative sample of the legal academy and individually ask each professor how central tort and contract law are to the academy.⁹⁵ Similarly, to know whether law professors believe that tort law *should be* less central than contract law, one way to find out would be to recruit a large, representative sample of the legal academy and individually ask each professor how central tort and contract law *should be* to the academy.

As a comparison, consider the philosophical academy. In 2016, John Turri conducted a survey study to measure perceptions of traditional areas of philosophical inquiry.⁹⁶ Professional philosophers were asked to rate ten areas of philosophy.⁹⁷ For each, they rated a series of questions, including whether they agreed that "[t]his area is currently central to the discipline of philosophy."⁹⁸ On the scale, "1" indicated "completely disagree," and "7" indicated "completely agree."⁹⁹

(2015); Sharon M. Weber, Dario Ribero, Eileen M. O'Reilly, Norihiro Kokudo, Masaru Miyazaki & Timothy M. Pawlik, *Intrahepatic Cholangiocarcinoma: Expert Consensus Statement*, 17 HPB 681 (2015); and John C. Mansour, Thomas A. Aloia, Christopher H. Crane, Julie K. Heimbach, Masato Nagino & Jean-Nicolas Vauthey, *Hilar Cholangiocarcinoma: Expert Consensus Statement*, 17 HPB 691 (2015).

94. See ASS'N AM. L. SCHS., *supra* note 38 (describing law professors' responsibilities to the bar and general public, including advocating for improvements in law and the legal system).

95. There are at least two ways in which an empirical survey could be relevant to this descriptive question. First, insofar as law professors are *experts* about which areas are more central within the legal academy, their survey responses can be seen as reflecting the views of experts. See Somin, *supra* note 20, for an explanation of why the views of experts are informative. Second, some readers might be inclined to think that the centrality beliefs of law professors are *constitutive* of descriptive centrality. What it means for tort law to be "more central" than contract law in today's legal academy is simply that most law professors believe it to be so. For ease of exposition, we generally adopt the first framing in this Article.

96. John Turri, *Perceptions of Philosophical Inquiry: A Survey*, 7 REV. PHIL. & PSYCH. 805, 805 (2016).

97. "[A]esthetics, epistemology, ethics, history of philosophy, logic, metaphysics, philosophy of language, philosophy of mind, philosophy of science, and political philosophy." *Id.*

98. *Id.* at 808.

99. *Id.*

The survey results clarify philosophers' understanding of their field. All ten areas were rated relatively highly (that is, a mean of four or above on the seven-point scale), but the order of mean ratings highlights the perceived centrality of different areas: ethics and epistemology were most central, while aesthetics was least central.¹⁰⁰

The legal and philosophical academies differ, raising several challenges regarding how to operationalize a similar survey in law. We address these challenges in Section III.A (Methods) and Section IV.A (Responses to Objections).

II. EMPIRICAL CLAIMS ABOUT LEGAL THEORY

This Part offers background about debates in legal theory and untested empirical claims that pervade the theory literature. Section II.A provides an overview of questions like: Is formalism or realism the best description of judicial decision-making; should we be textualists or purposivists in statutory interpretation; is international law genuine law; and what are the goals of tort law?

Law professors regularly seek to persuade other expert jurists of specific legal theory views, and they often remark on which theories seem to have been successfully persuasive—and which seem to have fallen into decline. Expert endorsement is one plausible measure of a theory's success, but there is a surprising gap in knowledge about expert endorsement of legal theories. Section II.B discusses the uncertainty regarding legal theory and Section II.C covers the resulting need for an empirical study to document which views experts accept or reject. Section II.D introduces another effort to document expert consensus in philosophy and explains how it may serve as a blueprint for an analogous effort in law.

A. LEGAL THEORY LANDSCAPE

Legal theory explores a wide range of questions. For simplicity, this Article presents these questions as falling within one of three broad and collectively exhaustive categories: (1) judicial decisionmaking; (2) the general nature and purpose of law; and (3) particular aspects of legal doctrine or procedure. Here, we discuss each of these categories in turn.

1. Judicial Decisionmaking

“Judicial decisionmaking” includes debates about how judges resolve cases. For example, the realism versus formalism debate concerns how judges apply rules to the facts of a given case.¹⁰¹ Legal formalism holds that judges (do or should) apply rules in a mechanistic, deductive fashion without regard to social interests and public policy.¹⁰² In contrast, legal realism holds that judges (do or should) consider social interests and public policy when deciding a case.¹⁰³

100. *Id.* at 809 & fig.1.

101. See generally Brian Leiter, *Legal Formalism and Legal Realism: What Is the Issue?*, 16 LEGAL THEORY 111 (2010).

102. See *id.* at 111. See generally Frederick Schauer, *Formalism*, 97 YALE L.J. 509 (1988).

103. See Brian Z. Tamanaha, *Understanding Legal Realism*, 87 TEX. L. REV. 731, 743 (2009).

A related debate concerns whether all legal disputes have a right answer. This debate is often attributed to the legal philosophers H.L.A. Hart and Ronald Dworkin.¹⁰⁴ According to Dworkin's "Right Answer Thesis," even so-called constitutional "hard cases" have a correct answer that a judge can (and should) appeal to,¹⁰⁵ whereas the Hartian point of view is that such (hard) cases are indeterminate, meaning a judge will have no choice but to exercise discretion.¹⁰⁶

Other debates about judging concern how judges should interpret law. With regard to constitutional interpretation, originalists hold that interpretation should be constrained by the Constitution's original meaning,¹⁰⁷ whereas living constitutionalists maintain that judges should interpret the Constitution as having a dynamic meaning that evolves and adapts to new circumstances.¹⁰⁸ At the statutory level, scholars have debated whether judges should interpret provisions according to their plain text (*textualism*),¹⁰⁹ purpose (*purposivism*),¹¹⁰ legislative intent (*intentionalism*),¹¹¹ or social consequences (*pragmatism*).¹¹² With regard to contracts, scholars have debated whether contracts should be interpreted according to their express "as written" provisions (*formalism/textualism*)¹¹³ or whether judges should take into account extratextual indications of a party's intent (*contextualism/anti-formalism*).¹¹⁴ Finally, on a more general level, scholars have debated to what extent judges should apply moral reasoning when deciding cases.¹¹⁵

104. See, e.g., Scott J. Shapiro, *The "Hart–Dworkin" Debate: A Short Guide for the Perplexed*, in RONALD DWORKIN 22, 22 (Arthur Ripstein ed., 2007).

105. See generally RONALD DWORKIN, *Hard Cases*, in TAKING RIGHTS SERIOUSLY 81 (1977).

106. See generally H.L.A. HART, *THE CONCEPT OF LAW* (3d ed. 2012).

107. See, e.g., Antonin Scalia, *Originalism: The Lesser Evil*, 57 CIN. L. REV. 849, 851–52 (1989); Jamal Greene, *Selling Originalism*, 97 GEO. L.J. 657, 661–62 (2009); Keith E. Whittington, *Originalism: A Critical Introduction*, 82 FORDHAM L. REV. 375, 377 (2013). For a discussion of the different types of originalism, see Lawrence B. Solum, *Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate*, 113 NW. U. L. REV. 1243, 1250–54 (2019).

108. See, e.g., William J. Brennan, Jr., *The Constitution of the United States: Contemporary Ratification*, 27 S. TEX. L. REV. 433, 437 (1986); Charles A. Reich, *Mr. Justice Black and the Living Constitution*, 76 HARV. L. REV. 673, 735 (1963) ("[I]n a dynamic society the Bill of Rights must keep changing in its application or lose even its original meaning.").

109. See, e.g., Caleb Nelson, *What Is Textualism?*, 91 VA. L. REV. 347, 348 (2005); John F. Manning, *Textualism and Legislative Intent*, 91 VA. L. REV. 419, 420 (2005); William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 621 (1990).

110. See, e.g., *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892) (discussing the "spirit" rather than the "letter" of the law); John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 113; Anita S. Krishnakumar, *Backdoor Purposivism*, 69 DUKE L.J. 1275, 1275–76 (2020).

111. See, e.g., Earl M. Maltz, *Statutory Interpretation and Legislative Power: The Case for a Modified Intentionalist Approach*, 63 TUL. L. REV. 1, 3 (1988).

112. See, e.g., RICHARD A. POSNER, *THE FEDERAL JUDICIARY: STRENGTHS AND WEAKNESSES* 80 (2017).

113. See, e.g., Eric A. Posner, *A Theory of Contract Law Under Conditions of Radical Judicial Error*, 94 NW. U. L. REV. 749, 752 (2000); Robert E. Scott, *The Case for Formalism in Relational Contract*, 94 NW. U. L. REV. 847, 851 (2000).

114. See, e.g., Robert E. Scott, *Text Versus Context: The Failure of the Unitary Law of Contract Interpretation*, in *THE AMERICAN ILLNESS: ESSAYS ON THE RULE OF LAW* 312, 312 (F.H. Buckley ed., 2013).

115. See, e.g., Jeremy Waldron, *Judges as Moral Reasoners*, 7 INT'L J. CONST. L. 2, 2 (2009) ("Debates about judicial authority—including debates about the desirability of judicial review of

2. The General Nature and Purpose of Law

A second significant category of legal theory debate concerns the general nature and purpose of law: what is law, and what should law do? Concerning the first question, one long-standing debate is between natural law theory and legal positivism. Natural law theory posits that law and morality are inherently intertwined,¹¹⁶ whereas legal positivism asserts that the two are distinct.¹¹⁷ Moreover, positivism usually holds that one can understand and describe law by appealing to social facts alone.¹¹⁸ Relatedly, scholars have debated whether certain areas of law are “really” law. For example, should international law be regarded as “genuine” law, merely “law-like,” or not really law at all?¹¹⁹

Scholars have also debated the second question about law’s aims. Should the overarching purpose of law be to maximize efficiency, welfare, and well-being,¹²⁰ to secure fairness and justice;¹²¹ or to promote rule-of-law values, such as predictability, coherence, and consistency?¹²² Related debates implicate specific areas of law, such as: What is the justification of criminal punishment;¹²³ what are the goals of contract law;¹²⁴ and what is the purpose of tort law?¹²⁵

legislation—sometimes turn on the question of whether judges have superior skills when it comes to addressing what are, essentially, moral issues about rights.”)

116. *See generally, e.g.*, JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Paul Craig ed., 2d ed. 2011).

117. *See, e.g.*, Jules L. Coleman & Brian Leiter, *Legal Positivism*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY*, *supra* note 51, at 228, 228–29 (“All positivists share two central beliefs: first, that what counts as law in any particular society is fundamentally a matter of social fact or convention (‘the social thesis’); second, that there is no necessary connection between law and morality (‘the separability thesis’). . . . [R]oughly, natural lawyers reject both the social thesis and the separability thesis.”).

118. *See id.*

119. *See, e.g.*, Louis Henkin, *International Law as Law in the United States*, 82 MICH. L. REV. 1555, 1555 (1984) (“How did, and how does, international law become part of our law? What does it mean that international law is a part of our law? What is the relation of that part of our law to other parts of our law?”).

120. *See, e.g.*, Louis Kaplow & Steven Shavell, *Fairness Versus Welfare*, 114 HARV. L. REV. 961, 966 (2001) (“The thesis of this Article is that the assessment of legal policies should depend exclusively on their effects on individuals’ welfare. In particular, in the evaluation of legal policies, no independent weight should be accorded to conceptions of fairness, such as corrective justice and desert in punishment.”).

121. *Id.* at 999 (“Notions of fairness—which we take in this Article to include ideas of justice, rights, and related concepts—provide justification and language for legal policy decisions.”).

122. *See, e.g.*, Robert S. Summers, *The Principles of the Rule of Law*, 74 NOTRE DAME L. REV. 1691, 1691, 1706, 1710 (1999) (“The principles of the rule of law, as recognized in developed Western systems, generally include the familiar requirements that law be rule-like so far as appropriate, that it be clear, that it be public, and that it generally be prospective.” (footnote omitted)).

123. *See, e.g.*, Mike C. Materni, *Criminal Punishment and the Pursuit of Justice*, 2 BRIT. J. AM. LEGAL STUD. 263, 263 (2013) (“Since the beginning of recorded history societies have punished offenders while at the same time trying to justify the practice on moral and rational grounds and to clarify the relationship between punishment and justice.”). For an overview of some of the justifications of criminal law, see generally Leo Katz, *Criminal Law*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY*, *supra* note 51, at 90.

124. For an overview of the main theories of contract law, see generally Peter Benson, *Contract*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY*, *supra* note 51, at 29.

125. For an overview of some of the justifications of tort law, see generally Stephen R. Perry, *Tort Law*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY*, *supra* note 51, at 64 and Peter Cane, *Justice and Justifications for Tort Liability*, 2 OXFORD J. LEGAL STUD. 30 (1982).

3. Particular Aspects of Legal Doctrine or Procedure

A third category of legal theory debates concerns particular aspects of legal doctrine. For example, within criminal law: what is the best mechanism to resolve criminal prosecutions;¹²⁶ is capital punishment legally and/or morally permissible;¹²⁷ should the incarceration system be preserved as-is, revised, or abolished altogether?¹²⁸ In tort law, should the default liability standard for accidents be one of strict liability or negligence?¹²⁹ In international law, are there universal and/or particular human rights?¹³⁰ And in corporate law, should public corporations seek to prioritize the interests of shareholders only (*shareholder primacy*) or take into account other stakeholders as well (*stakeholder theory*)?¹³¹

Other legal theory issues concern concepts that traverse multiple areas of law, such as *reasonableness*, *consent*, *personhood*, and concepts related to gender and race. For example, should what is “reasonable” be informed by considerations of what is customary, just, and/or efficiency-maximizing?¹³² Should the law conceptualize consent with a performative or a mental state criterion?¹³³ Which sets of entities (for example, animals or corporations) should be regarded as “persons”

126. See generally, e.g., Gene M. Grossman & Michael L. Katz, *Plea Bargaining and Social Welfare*, 73 AM. ECON. REV. 749 (1983) (evaluating the implications of plea bargaining on social welfare); Robert J. Conrad, Jr. & Katy L. Clements, *The Vanishing Criminal Jury Trial: From Trial Judges to Sentencing Judges*, 86 GEO. WASH. L. REV. 99 (2018) (detailing the negative implications of the decline of the criminal jury trial).

127. See generally, e.g., STUART BANNER, *THE DEATH PENALTY: AN AMERICAN HISTORY* (2002) (covering the history of capital punishment in America); DAVID C. BALDUS, GEORGE WOODWORTH & CHARLES A. PULASKI, JR., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990).

128. See, e.g., Barack Obama, Commentary, *The President's Role in Advancing Criminal Justice Reform*, 130 HARV. L. REV. 811, 816 (2017) (“It’s hard to deny the urgent need for reform.”); Leon Jaworski, *American Criminal Justice System: A Defense*, 47 N.Y. ST. BAR J. 549, 549 (1975) (“I stand on the belief that basically the [criminal justice] system is better—fairer to the individual as well as to society—than any other on the globe.”). See generally McLeod, *supra* note 11 (discussing abolition).

129. See, e.g., Richard A. Posner, *Strict Liability: A Comment*, 2 J. LEGAL STUD. 205, 205 (1973) (criticizing “several major articles” that argue for the principle of strict liability, and asserting that “the authors of these articles fail to make a convincing case for strict liability”). See generally Steven Shavell, *Strict Liability Versus Negligence*, 9 J. LEGAL STUD. 1 (1980) (analyzing the efficiency of negligence and strict liability standards in different scenarios).

130. See generally, e.g., JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* (3d ed. 2013).

131. For a brief overview of shareholder primacy, see Lynn A. Stout, *Bad and Not-So-Bad Arguments for Shareholder Primacy*, 75 S. CAL. L. REV. 1189, 1189–90 (2002). For a description of stakeholder theory (also called “stakeholder governance” or “stakeholderism”), see Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 91 (2020) (stating that “supporters of stakeholder governance (‘stakeholderism’) advocate a governance model that encourages and relies on corporate leaders to serve the interests of stakeholders and not only those of shareholders”).

132. For an overview of the different types of theories of reasonableness, see Kevin P. Tobia, *How People Judge What Is Reasonable*, 70 ALA. L. REV. 293, 298–316 (2018).

133. For an overview of this debate, see generally Larry Alexander, *The Ontology of Consent*, 55 ANALYTIC PHIL. 102 (2014) and Alan Wertheimer, *What Is Consent? And Is It Important?*, 3 BUFF. CRIM. L. REV. 557, 566–75 (2000).

under the law?¹³⁴ How should law generally conceptualize gender (for example, biological, psychological, or social);¹³⁵ how should it generally conceptualize race?¹³⁶

B. CLAIMS ABOUT THE STATUS OF LEGAL THEORIES

Law professors have written many pages defending and criticizing specific legal theory views. It is natural to wonder which arguments have proven most persuasive among the community of expert jurists (including law professors). Surprisingly, there is a dearth of documented consensus resulting from this scholarship. It remains an open empirical question how widely these views are endorsed or rejected.

For some empirical claims trumpeting the endorsement of a particular legal theory, there exists an opposite claim heralding that theory's widespread rejection. With regard to constitutional interpretation, for example, in 2010, Justice Elena Kagan proclaimed in her Senate confirmation hearing that "we are all originalists,"¹³⁷ a refrain that has since been echoed by other prominent constitutional scholars.¹³⁸ Just a few years later, Professor Garrett Epps penned an article entitled *Originalism Is Dead*.¹³⁹ More recently, Professor Mitchell Berman has proclaimed that "pluralistic theories"—which generally stand in contrast to originalist ones—are "by far the most popular theories around."¹⁴⁰

Empirical claims regarding the status of other debates are similarly difficult to reconcile. For example, with regard to statutory interpretation, some claim that "we are all textualists now,"¹⁴¹ whereas others have described the apparent "death"¹⁴² or "fall"¹⁴³ of textualism within the legal academy or championed the rise of purposivism instead.¹⁴⁴

The same is true of debates about positivism and natural law. Some have described natural law as having been in "decline"¹⁴⁵ or even "dead, never to rise

134. See generally, e.g., Bryant Smith, *Legal Personality*, 37 YALE L.J. 283 (1928).

135. See generally, e.g., FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katharine T. Bartlett & Rosanne Kennedy eds., 1991).

136. See generally, e.g., IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (rev. ed. 2006).

137. *The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. 62 (2010) (then-nominee Solicitor General Elena Kagan responding to Sen. Patrick J. Leahy).

138. See generally, e.g., Solum, *supra* note 2.

139. Garrett Epps, *Originalism Is Dead*, ATLANTIC (July/Aug. 2013), <https://www.theatlantic.com/magazine/archive/2013/07/originalism-is-dead/309386/>.

140. Mitchell N. Berman, *Keeping Our Distinctions Straight: A Response to Originalism: Standard and Procedure*, 135 HARV. L. REV. F. 133, 140 (2022).

141. E.g., Siegel, *supra* note 3, at 1057.

142. E.g., Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1750, 1753 (2010) ("[A]cademics have spent the past decade speculating about the 'death of textualism' Some say that textualism is dead.")

143. See generally, e.g., Molot, *supra* note 9.

144. See, e.g., Nourse, *supra* note 4, at 1648 n.164 ("We are all purposivists now . . .").

145. See generally STUART BANNER, *THE DECLINE OF NATURAL LAW: HOW AMERICAN LAWYERS ONCE USED NATURAL LAW AND WHY THEY STOPPED* (2021).

again from its ashes,¹⁴⁶ while framing positivism as a widely held view¹⁴⁷ which fits within “an overlapping consensus among American legal scholars.”¹⁴⁸ Yet other scholars have retorted that natural law theory is in “revival”¹⁴⁹ and that “[t]o believe otherwise is to evince embarrassingly bad aesthetic judgment.”¹⁵⁰

The same story characterizes discussions of legal realism. On the one hand, scholars repeat the refrain “we are all realists now,” to the point that it has “been accepted unquestioningly.”¹⁵¹ As Professor Michael Green describes, “[I]t has become a cliché to call it a ‘cliché.’”¹⁵² Yet other scholars claim that “realism is dead”¹⁵³ and that, “[w]ithin Anglo-American jurisprudence, Realism remains a joke.”¹⁵⁴ Some scholars have even claimed that it was never popular to begin with, stating that, “legal realism . . . even at its heyday had merely a foothold in a handful of law schools.”¹⁵⁵

Other claims are less contested. For example, in the case of contract law, scholars have claimed that “most commentators” are contextualists as opposed to formalists/textualists.¹⁵⁶ In torts, scholars have asserted that strict liability “is dying” amidst “the dominance of the negligence principle.”¹⁵⁷ And in the context of incarceration, even scholars who support prison abolition have assumed it to remain “unfathomable” within the legal academy.¹⁵⁸ Yet, across these different debates, there is a problematic lack of empirical evidence about consensus (or the lack thereof). Perhaps there is more support among law professors for prison abolition, or less support for contract contextualism, than is commonly assumed.

146. ALEXANDER PASSERIN D'ENTRÈVES, *NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY* 13 (3d ed. 2017).

147. See, e.g., Emad Atiq, *Disagreement About Law and Morality: Empirical Results and the Meta-Problem of Jurisprudence*, JOTWELL (Feb. 18, 2022), <https://juris.jotwell.com/disagreement-about-law-and-morality-empirical-results-and-the-meta-problem-of-jurisprudence/> [<https://perma.cc/U6NS-GQ64>].

148. Baude & Sachs, *supra* note 24, at 1459.

149. See generally Rodger D. Citron, *The Nuremberg Trials and American Jurisprudence: The Decline of Legal Realism, the Revival of Natural Law, and the Development of Legal Process Theory*, 2006 MICH. ST. L. REV. 385.

150. Dennis Patterson, *After Legal Positivism*, JOTWELL (July 24, 2018), <https://juris.jotwell.com/after-legal-positivism/> [<https://perma.cc/B6M6-3W26>].

151. Neil Duxbury, *The Reinvention of American Legal Realism*, 12 LEGAL STUD. 137, 138 (1992).

152. Michael Steven Green, *Legal Realism as Theory of Law*, 46 WM. & MARY L. REV. 1915, 1917 (2005).

153. See *id.*

154. Brian Leiter, *Rethinking Legal Realism: Toward a Naturalized Jurisprudence*, 76 TEX. L. REV. 267, 274 (1997).

155. Posner, *supra* note 44, at 1320.

156. Alan Schwartz & Robert E. Scott, *Contract Interpretation Redux*, 119 YALE L.J. 926, 926 (2010) (“While a strong majority of U.S. courts continue to follow the traditional, ‘formalist’ approach to contract interpretation, some courts and most commentators prefer the ‘contextualist’ interpretive principles that are reflected in the Uniform Commercial Code and the Second Restatement.”).

157. Gerhart, *supra* note 7, at 246.

158. McLeod, *supra* note 11, at 1160.

C. THE NEED FOR EMPIRICAL STUDY

A large empirical study of expert consensus about these questions would bring many benefits. First, that some of these anecdotal impressions are contradictory suggests that there is uncertainty about which legal theory views are, in fact, widely held—or widely rejected. Second, anecdotal claims about the level of support of a particular view—even in cases where the speculation is not conflicting—tend to provide a poor estimate of the actual level of support for that view. For example, does the claim “we are all textualists now” really mean (as the literal text would imply) that 100% of law professors are textualists? Perhaps it merely refers to a substantial majority of law professors being textualist. Even so, there is still great uncertainty, and it would be instructive to know whether that number is closer to 20%, 50%, or 80%.

Third, anecdotal speculation about the level of support of a particular view also does not provide insight into the factors motivating that support. That is, the assertion that “we are all originalists,” even if it were somehow true, does not provide insight into *why* we are all originalists. In contrast, documented expert consensus regarding the level of support for a variety of legal theory debates could reveal information regarding the degree to which support for one theory might be correlated with support for another theory or the degree to which both theories might be accounted for by a particular demographic factor, such as age or politics. That in turn might provide evidence for why the legal community understands questions in particular ways.

Fourth, expert consensus provides a *prima facie* reason in favor of a particular view. Legal theory questions certainly should not be settled by appeal to whatever 51% of law professors report to accept. However, in most scholarly fields, such as philosophy, economics, and climatology, expert consensus counts as a useful datum in favor of strongly supported propositions.¹⁵⁹ It is not clear why the legal field should differ. Law professors are experts about legal theory, and those experts’ strong support for a view counts as a *prima facie* consideration in favor of that view.¹⁶⁰ Indeed, the fact that legal academics tend to make so many claims regarding the status of legal theory views in the context of advancing or rejecting those views indicates that legal academics believe either that (a) expert consensus provides evidence in favor of a view or (b) *other legal academics* believe that expert consensus provides evidence in favor of a view. If so, it would be good to have a more precise and reliable estimate of that consensus as opposed to conflicting, anecdotal speculation.

Finally, even if legal theorists understand where their peers stand on these topics, the lack of documented consensus and multitude of conflicting claims would still leave outsiders (whether law students, practicing lawyers, or the general public) confused or uninformed regarding where legal theorists stand on

159. See *supra* note 93 and accompanying text.

160. Of course, some scholars might reject the *prima facie* consideration upon further psychological or empirical analysis, such as the discovery that experts’ views are explained entirely by their politics.

these topics. In this regard, the lack of data concerning consensus could also be detrimental to those outside of the legal academy.

D. DOCUMENTING LAW PROFESSORS' THEORY VIEWS

One way to obtain robust empirical evidence about expert consensus is by directly surveying members of the legal academy. For example, perhaps the most straightforward way to know whether we are all originalists (or even mostly originalists) would be to recruit a large, representative sample of the legal academy and individually ask each member if they are an originalist. Similar strategies have been employed in other disciplines, including economics,¹⁶¹ climate change,¹⁶² and, most similarly, philosophy.¹⁶³

In 2014, David Bourget and David Chalmers conducted a survey of professional philosophers from the English-speaking world regarding their views on thirty of the discipline's biggest questions.¹⁶⁴ The survey used a multiple-choice format, with brief labels for each question and view. For example, one question was, "Normative ethics: deontology, consequentialism, or virtue ethics?"¹⁶⁵ For each question, participants could choose to either "lean toward" or "accept" any of the options in the question or select from one of several "other" responses, including "[a]ccept both," "[r]eject both," "[i]nsufficiently familiar with the issue," "[t]he question is too unclear to answer," and "[t]here is no fact of the matter."¹⁶⁶

The results clarified the degree of support for large questions in philosophy. For some debates, the results revealed a strong consensus in favor of one view over another. For example, 68.2% of philosophers leaned towards or accepted "switch" for the "[t]rolley problem," whereas just 7.6% responded "don't switch" and 24.2% responded "other."¹⁶⁷ For other debates, the results revealed more of a plurality of positions, as fewer than 30% of philosophers leaned towards or accepted any of three options for "[n]ormative ethics" (deontology, consequentialism, and virtue ethics).¹⁶⁸ In all cases, the results provided a precise estimate of the level of support for each view.

161. See *supra* note 93 and accompanying text.

162. See *supra* note 93 and accompanying text.

163. See *supra* note 96 and accompanying text; David Bourget & David J. Chalmers, *What Do Philosophers Believe?*, 170 PHIL. STUD. 465, 465 (2014).

164. Bourget & Chalmers, *supra* note 163, at 467; David Bourget & David Chalmers, *Philosophers on Philosophy: The Philpapers Survey*, 23 PHILOSOPHERS' IMPRINT, no. 11, 2023, at 1, 1.

165. Bourget & Chalmers, *supra* note 163, at 469.

166. *Id.* at 469–70.

167. *Id.* at 470, 477. The trolley problem is a major thought experiment in philosophy and psychology, involving hypothetical ethical dilemmas of whether to sacrifice one person to save a larger number. In the version asked in Professors Bourget and Chalmers' study, an onlooker has the choice to save five people in danger of being hit by a trolley, by diverting or "switching" the trolley to kill just one person. For an overview of the trolley problem, see Judith Jarvis Thomson, *The Trolley Problem*, 94 YALE L.J. 1395, 1395 (1985).

168. In the study, 25.9% leaned toward or accepted deontology, 23.6% leaned toward or accepted consequentialism, and 18.2% leaned toward or accepted virtue ethics. Bourget & Chalmers, *supra* note 163, at 476.

It is worth noting, of course, that the legal and philosophical academies differ, raising several challenges regarding how to operationalize a similar survey in law. We address these challenges in Section III.A (Methods) and Section IV.A (Responses to Major Objections).

III. THE SURVEY: METHODS AND RESULTS

The previous two Parts introduced the American legal academy and debates in legal theory, noted that empirical claims permeate discussions of both, and argued that an empirical study of experts would fill these gaps in the literature.

In this Part, we present an empirical study to assess these claims.¹⁶⁹ Section III.A details the study's methods, including the experimental materials, the participant recruitment process, and the analysis plan. Section III.B details the demographic profile of the study's participants. Section III.C documents the results and analyses of participants' responses to the descriptive and normative centrality of different areas of law. Section III.D documents the results and analyses of participants' legal theory responses.

A. METHODS

1. Materials

The survey materials distributed to participants consisted of three parts.¹⁷⁰ Part 1 consisted of a demographics questionnaire, while parts 2 and 3 comprised the substantive portion of the survey. Here, we discuss the design of each of these parts in turn.

Part 1 was titled "Demographics" and contained both general and law-specific demographics questions. The general demographics questions included questions on gender, sexual orientation, age, race, disability, country of residence, and political orientation. The law-specific demographics questions asked about educational background (whether one had a J.D. or equivalent and how long it had been since the attainment of one's degree), professional status (for example law professor or legal practitioner), and law school ranking.

Part 2 was titled "Centrality within the Legal Academy," and consisted of questions about the centrality of different areas of law within the legal academy. In designing this part, we followed John Turri's similar survey in philosophy,¹⁷¹ with a few deviations. Turri's survey asked participants to rate their agreement on a scale of 1 ("completely disagree") to 7 ("completely agree") with the statement "[t]his area is currently central to the discipline of philosophy" with respect to ten different areas of philosophy.¹⁷² In our own approach, we divided centrality into normative and descriptive components to avoid potential confusion among respondents. We also decided to adopt a 0–10 scale as opposed to a 1–7 scale, to

169. Survey materials and anonymized data can be viewed at the following repository: <https://osf.io/mfytz/>.

170. See Appendix, *supra* note 34, at 7.

171. Turri, *supra* note 96, at 808–09.

172. *Id.*

potentially measure more subtle differences in mean ratings between areas and because 11-point scales are generally perceived by those responding to surveys as better allowing them to express their feelings adequately.¹⁷³

FIGURE 1. EXAMPLE CENTRALITY QUESTION.

Comparative Law

(strongly disagree) 0 1 2 3 4 5 6 7 8 9 10 (strongly agree)

Currently, this is a central area within the legal academy.

Currently, this should be a central area within the legal academy.

With regard to the different areas of law, we sought an objective “smaller” and “larger” list. We relied on (a) the eighteen areas reflected in *Jotwell: The Journal of Things We Like (Lots)*¹⁷⁴ and (b) the 107 areas listed by the AALS in their FAR recruitment material.¹⁷⁵ We combined these lists to eliminate some redundant areas, resulting in a final list of 104 areas.

Our reasoning behind using these two lists was threefold. First, given that these two lists were established independently of this survey and with no knowledge of its hypotheses, using these lists would reduce the potential for personal bias or prejudice in selecting areas arbitrarily. Second, given the vast number of items on the combined lists, we would be able to examine law professors’ beliefs on a wide range of areas as opposed to a more restricted set of areas (as would be the case with one smaller list). Third, given that the two lists are well-known and respected within legal academia,¹⁷⁶ we expected that using these lists would be

173. See Carolyn C. Preston & Andrew M. Colman, *Optimal Number of Response Categories in Rating Scales: Reliability, Validity, Discriminating Power, and Respondent Preferences*, 104 ACTA PSYCHOLOGICA 1, 1 (2000) (“Respondent preferences were highest for the 10-point scale . . .”).

174. JOTWELL: THE J. OF THINGS WE LIKE (LOTS) [hereinafter JOTWELL], <http://www.jotwell.com> [<https://perma.cc/3MY7-4RRW>] (last visited Sept. 5, 2023). Jotwell is a blog edited by law professors that describes itself as “a space where legal academics can go to identify, celebrate, and discuss the best new scholarship relevant to the law.” *Mission Statement*, JOTWELL, <https://jotwell.com/mission-statement/> [<https://perma.cc/D8F9-9BL8>] (last visited Sept. 5, 2023). Jotwell is “organized in sections, each reflecting a subject area of legal specialization.” *Id.* These sections were chosen as a source for areas of law given Jotwell’s status and influence within the academy and legal profession. See *The 2014 ABA Journal Blawg 100*, ABA J., <https://www.abajournal.com/blawg100/archived/2014/> [<https://perma.cc/WZE4-DBHA>] (last visited Sept. 5, 2023) (listing Jotwell as among three of the top legal blogs in the “Prof’s” category as voted on by *ABA Journal* readers). These eighteen sections are referenced throughout the Article as “Jotwell areas” and the “Jotwell list.”

175. AALS, *supra* note 43.

176. For example, almost all aspiring law faculty must fill out the AALS Faculty Appointments Register (FAR) recruitment materials when filling out their applications on the entry-level legal

seen as a reasonable choice by the legal academy. In addition to the areas from the list of 104 items, we also constructed a question that allowed participants to rate an additional area of their choosing.

Part 3 was titled “Legal Theory Views” and consisted of questions related to specific issues in law and legal theory. In selecting the set of questions to include in this part of the survey, we sought to incorporate questions that were of interest to and representative of a wide range of perspectives within legal theory. We constructed an initial list of questions and answer choices, with some emphasis on breadth and diversity of issues. The list was circulated to a diverse set of U.S. law professors, and we received and incorporated detailed feedback from approximately twenty law professors, resulting in a final set of twenty-five questions.

With regard to the question-and-answer format of part 3, we followed David Bourget and David Chalmers’ similar study in philosophy.¹⁷⁷ However, we decided to deviate from that model by asking participants to rate each answer choice individually as opposed to asking them to choose one answer choice for each question. We also designed a slightly more elaborated question format so as to further clarify potential ambiguity. For example, Bourget and Chalmers’ questions followed the following format:

Mind: non-physicalism or physicalism?

(1) Accept: non-physicalism

(2) Lean toward: non-physicalism

(3) Accept: physicalism

(4) Lean toward: physicalism

(5) Other [with various options, such as “no fact of the matter”]¹⁷⁸

Our questions instead followed this format:

FIGURE 2. EXAMPLE LEGAL THEORY QUESTION.

1. What theory should judges apply when interpreting the U.S. Constitution?

	Please rate your view of each answer				Or, select the best explanation of why it is not possible to rate your view
	Reject	Lean Against	Lean Towards	Accept	
Originalism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Living Constitutionalism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/> No fact of the matter <input type="checkbox"/> It depends <input type="checkbox"/> Question unclear <input type="checkbox"/> Insufficient knowledge <input type="checkbox"/> Other
Pluralism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Common Law Constitutionalism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

academic market. Virtually all law schools use applicant responses to these lists as part of their hiring search. *See, e.g., AALS Recruitment Conference*, YALE L. SCH., <https://law.yale.edu/studying-law-yale/areas-interest/law-teaching/current-candidates/aals-recruitment-conference> [<https://perma.cc/2NY5-BAMC>] (last visited Sept. 5, 2023) (stating that “[t]he vast majority of new law teachers” are hired through the AALS Recruitment Conference, and that in order to participate in the conference, candidates “must complete the Faculty Appointments Register (‘FAR’) form online”).

177. Bourget & Chalmers, *supra* note 163, at 468–70.

178. *Id.* at 469–70.

In addition to these primary materials, we also constructed a prompt which asked participants to give feedback on any part of the survey they wished (for instance, if they thought any parts of the materials were unclear).

2. Participant Recruitment and Procedure

Participants were recruited by email to law professors at fifty law schools. Emails were collected for all law professors at the following schools: Boston University, University of California–Berkeley, University of California–Los Angeles, University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, Harvard University, University of Michigan, New York University, Northwestern University, University of Pennsylvania, University of Southern California, Stanford University, University of Texas–Austin, Vanderbilt University, University of Virginia, Washington University in St. Louis, and Yale University (T20 List), and University of Alabama, University of Arizona, Arizona State University, Baylor University, Boston College, Brigham Young University, University of California–Davis, University of California–Irvine, University of Colorado–Boulder, Emory University, University of Florida, Fordham University, George Mason University, George Washington University, University of Georgia, University of Illinois–Urbana-Champaign, Indiana University–Bloomington, University of Iowa, University of Maryland, University of Minnesota, University of North Carolina–Chapel Hill, University of Notre Dame, Ohio State University, Pepperdine University, University of Utah, Wake Forest University, University of Washington, Washington and Lee University, William & Mary, and University of Wisconsin–Madison (T50 list).¹⁷⁹

Emails were sent between June 30, 2021, and July 16, 2021. Each participant received a link that prevented them from completing the survey more than once, and participants were instructed not to distribute that link to ensure that the ultimate sample was representative of the population we were interested in.

For the T20 list, 1,709 emails were sent; the unique survey link was accessed 374 times (21.9%), and 294 self-identifying law professors participated in the survey (17.2%). For the T50 list, 1,537 emails were sent; the unique survey link was accessed 354 times (23%), and 261 self-identifying law professors participated in the survey (17%).¹⁸⁰

179. U.S. NEWS & WORLD REP., *supra* note 31. Note that many papers use the U.S. News rankings, though not always with the same cutoff as our study. *See, e.g.*, Eric J. Segall & Adam Feldman, *The Elite Teaching the Elite: Who Gets Hired by the Top Law Schools?*, 68 J. LEGAL EDUC. 614, 615 (2019) (examining “law faculty profiles at the U.S. News 2019 top twenty-five law schools”); Matthew Naven & Daniel Whalen, *The Signaling Value of University Rankings: Evidence from Top 14 Law Schools*, ECON. EDUC. REV., Aug. 2022, at 1, 1 (estimating “the labor-market effects of attending a U.S. News & World Report Top 14 (T14) law school”). Note also that some papers have analyzed top law faculty using different rankings. *See, e.g.*, Stephen Thomson, *Letterhead Bias and the Demographics of Elite Journal Publications*, 33 HARV. J.L. & TECH. 203, 206–07 (2019) (examining article selection practices at the “top fifty U.S. law journals” based on Washington and Lee Law Journal Rankings).

180. Our decision to split between the T20 and T50 in the current study was primarily to facilitate the evaluation of potential differences in responses between faculty at different groups of law schools. Because the T20 and T50 law schools collectively were observed to have roughly equivalent numbers of

In total, 3,246 emails recruited 555 law professors from fifty schools (17.1%). After the direct email rounds, we also publicized a separate link with a “public” survey so that those outside our target population could complete the survey. In total, this link recruited an additional 112 self-identifying law professors.

Upon opening the link, participants were first presented with a consent form, which provided further details about the survey, including risks and information about Institutional Review Board (IRB) approval. Participants were instructed that they could skip any question and/or entire parts of the survey. Participants were also instructed that after completing one section/page of the survey and moving on to the next, they would not be allowed to go back and alter their answer to a previous section (for example, changing their centrality ratings after beginning the legal theory portion).

After agreeing to participate, participants were taken to part 1 of the survey (Demographics). A separate screen for part 2 of the survey (Centrality within the Legal Academy) asked participants to rate the descriptive and normative centrality of twenty-five areas of law. This set of twenty-five areas included all eighteen of the Jotwell areas,¹⁸¹ as well as seven random areas from the larger list from AALS.¹⁸² These twenty-five areas were presented to participants in random order. To avoid confusion and to encourage reflection upon the relationship between an area’s descriptive and normative centrality rating, for each area of law participants were asked to rate both the descriptive and normative centrality for that area of law at once, as opposed to, for example, giving their descriptive ratings for every area of law prior to giving any normative ratings. Participants were also given the opportunity to rate an area of their choosing in addition to the twenty-five areas presented.

After providing their centrality ratings, participants were taken to a different screen where they were asked to fill in their teaching and research specialties. The specialty options consisted of virtually the same areas of laws from which the centrality questions were drawn,¹⁸³ and participants were permitted to mark as many of these areas as they wished as their specialties. Participants were presented with this screen after giving their centrality ratings to minimize potential bias or priming effects.¹⁸⁴

faculty (based on the number of email addresses we collected), drawing the cutoff between these two groups in particular allowed us to have a balanced statistical comparison relative to many other possible divisions.

181. JOTWELL, *supra* note 174.

182. AALS, *supra* note 43.

183. The two lists differed in that the areas of specialization were drawn directly from the those on the FAR form, whereas the areas in the centrality section were slightly reduced to avoid redundancy and overlap with the Jotwell areas by merging similar-seeming areas. See *infra* Table 2 for results from the areas of specialization question.

184. For example, it is conceivable that if participants were asked to provide their areas of specialization prior to rating those areas, it might influence the ratings they ultimately gave for those and other areas (such as by influencing them to provide higher ratings for the areas they rated as their specialty, and/or lower ratings for certain rival areas).

Finally, participants were taken to a separate screen for part 3 of the survey (Legal Theory Views). Participants were given all twenty-five legal theory responses on the same page, as well as the optional feedback prompt, and asked to rate their view of each answer as “reject,” “lean against,” “lean towards,” “accept,” or other explanations.

3. Analysis Plan

We planned and conducted a number of pre-registered analyses for each of the substantive parts of the survey. Full details of the analysis plan are presented in the Appendix.

B. DEMOGRAPHIC RESULTS

This Section summarizes the self-reported demographic data from the study’s participants. Following our pre-registration plan, participants who failed a comprehension check question were excluded from the analyses.¹⁸⁵ From the T20 list, 311 participants correctly answered the comprehension check question, and one did not.¹⁸⁶ From the T50 list, 270 correctly answered the comprehension check question, and one did not.¹⁸⁷ From the public link, all 162 participants correctly answered the comprehension check question.¹⁸⁸

We were primarily interested in the views of law professors. Thus, following our pre-registration plan, we excluded all participants who did not self-identify as a law professor. Within the T20 list, this resulted in a sample of 294 law professors (excluding ten others: two self-identified law fellows, one non-law professor, one non-law fellow, and six with “other” jobs); within the T50 list, this resulted in a sample of 260 law professors (excluding seven others: three law fellows, one non-law professor, and three with “other” jobs). From the public link, this excluded twelve law fellows, fourteen practitioners, six law students, five non-law professors, one non-law fellow, two non-law students, and four with “other” jobs, which resulted in a sample of 113 law professors.

185. Comprehension checks, also referred to as “attention checks” and “instructional manipulation checks,” are used in surveys and other behavioral studies to verify that participants are paying sufficient attention to the study materials such that their responses can be trusted. *See, e.g.,* Daniel M. Oppenheimer, Tom Meyvis & Nicolas Davidenko, *Instructional Manipulation Checks: Detecting Satisficing to Increase Statistical Power*, 45 J. EXPERIMENTAL SOC. PSYCH. 867, 867 (2009) (demonstrating “how the inclusion of an IMC [Instructional Manipulation Check] can increase statistical power and reliability of a dataset”); R. Michael Alvarez, Lonna Rae Atkeson, Ines Levin & Yimeng Li, *Paying Attention to Inattentive Survey Respondents*, 27 POL. ANALYSIS 145, 145 (2019) (noting that those who do not pass attention checks in political surveys “display lower consistency in their reported choices” and that “failing to properly account for [inattentiveness] may lead to inaccurate estimates of the prevalence of key political attitudes and behaviors”).

186. The correct answer to the question was “9.” Of those in the T20 list, 309 entered “9,” one entered “9 (or IX, or 1001 in binary),” and one entered “9. Alternatively ‘the number 9 below.’” One respondent entered (incorrectly) “0.”

187. Of those in the T50 list, 268 entered “9,” one entered “#9,” and one entered “9+.” One respondent entered (incorrectly) “Heterosexual and straight.”

188. All entered “9.”

TABLE 1. PARTICIPANT DEMOGRAPHICS

	T20 List	T50 List	Public Link
Total	N = 294	N = 260	N = 113
Gender			
Male	194 (66.0%)	177 (68.1%)	89 (78.8%)
Female	97 (33.0%)	80 (30.8%)	21 (18.6%)
Transgender	0 (0.0%)	0 (0.0%)	1 (0.9%)
Non-binary	0 (0.0%)	0 (0.0%)	0 (0.0%)
Write-in	1 (0.3%)	0 (0.0%)	0 (0.0%)
Age			
18-29	0 (0.0%)	0 (0.0%)	0 (0.0%)
30-39	35 (11.9%)	20 (7.7%)	22 (19.5%)
40-49	83 (28.2%)	85 (32.7%)	34 (30.1%)
50-59	64 (21.8%)	72 (27.7%)	23 (20.3%)
60-69	68 (23.1%)	54 (20.8%)	28 (24.8%)
70-79	37 (12.6%)	22 (8.5%)	5 (4.4%)
80 or above	3 (1.0%)	4 (1.5%)	1 (0.9%)
Country			
United States	289 (98.3%)	258 (99.2%)	96 (85.0%)
Other	1 (0.3%)	1 (0.4%)	17 (15.0%)
Race			
White	251 (85.4%)	216 (83.1%)	95 (84.1%)
Black or African American	17 (5.8%)	9 (3.5%)	4 (3.5%)
Native American	1 (0.3%)	0 (0.0%)	0 (0.0%)
Asian	19 (6.5%)	13 (5.0%)	5 (4.4%)
Hispanic or Latino/a/x	10 (2.4%)	13 (5.0%)	5 (4.4%)
Native Hawaiian or Pacific Islander	0 (0.0%)	0 (0.0%)	0 (0.0%)
Write-in	5 (1.7%)	9 (3.5%)	6 (5.3%)
J.D.			
Yes	269 (91.5%)	250 (96.1%)	102 (90.3%)
No	9 (3.1%)	0 (0.0%)	2 (1.8%)
Other (e.g., equivalent foreign degree)	15 (5.1%)	9 (3.5%)	9 (8.0%)

	T20 List	T50 List	Public Link
Years Since J.D.			
0-9	18 (6.1%)	10 (3.8%)	14 (12.4%)
10-19	71 (24.1%)	75 (28.8%)	34 (30.1%)
20-29	69 (23.5%)	68 (26.1%)	20 (17.7%)
30-39	61 (20.7%)	59 (22.7%)	25 (22.1%)
40-49	46 (15.6%)	34 (13.1%)	9 (8.0%)
50 or more	12 (4.1%)	8 (3.1%)	3 (2.7%)
Politics			
Very liberal	66 (22.4%)	40 (15.4%)	32 (28.3%)
Liberal	107 (36.4%)	96 (36.9%)	38 (33.6%)
Somewhat liberal	65 (22.1%)	52 (20.0%)	13 (11.5%)
Middle of the road	35 (11.9%)	36 (13.8%)	20 (17.7%)
Somewhat conservative	13 (4.4%)	15 (5.8%)	5 (4.4%)
Conservative	4 (1.4%)	13 (5.0%)	2 (1.8%)
Very conservative	2 (0.7%)	3 (1.2%)	0 (0.0%)
Sexual Orientation			
Heterosexual or straight	257 (87.4%)	222 (85.4%)	91 (80.5%)
Gay or lesbian	17 (5.8%)	25 (9.6%)	13 (12.4%)
Bisexual	8 (2.7%)	2 (0.7%)	4 (3.5%)
Another orientation	5 (1.7%)	3 (1.2%)	1 (0.9%)
Disability			
Yes	17 (5.8%)	36 (13.8%)	14 (12.4%)
No	270 (91.9%)	220 (84.6%)	96 (85.0%)
U.S. News School Rank (2022)			
1-20	291 (99.0%)	5 (1.9%)	12 (10.6%)
21-50	1 (0.3%)	252 (96.9%)	9 (8.0%)
51-100	0 (0.0%)	2 (0.8%)	35 (31.0%)
101-150	0 (0.0%)	0 (0.0%)	23 (20.4%)
151-200	0 (0.0%)	0 (0.0%)	14 (12.3%)
Not on the list	0 (0.0%)	0 (0.0%)	2 (1.8%)

Those who completed part 2 of the survey ($N = 583$) also filled out their areas of specialization. Below is the breakdown of that data.

TABLE 2. AREAS OF SPECIALIZATION OF STUDY PARTICIPANTS

Area of Specialization	T20 List	T50 List	Public Link
Administrative Law	36 (13.9%)	42 (18.3%)	15 (14.9%)
Admiralty	0 (0.0%)	0 (0.0%)	0 (0.0%)
Agency and Partnerships	4 (1.5%)	7 (3.0%)	2 (2.0%)
Agricultural Law	0 (0.0%)	2 (0.9%)	1 (1.0%)
Alternative Dispute Resolution	8 (3.1%)	9 (3.9%)	3 (3.0%)
Animal Law	2 (0.8%)	0 (0.0%)	0 (0.0%)
Antitrust	11 (4.2%)	12 (5.2%)	1 (1.0%)
Appellate Practice	6 (2.3%)	10 (4.3%)	5 (5.0%)
Aviation and Space Law	0 (0.0%)	0 (0.0%)	0 (0.0%)
Bioethics	4 (1.5%)	6 (2.6%)	1 (1.0%)
Business Associations	58 (22.4%)	52 (22.6%)	14 (13.9%)
Civil Procedure	40 (15.4%)	37 (16.1%)	14 (13.9%)
Civil Rights	28 (10.8%)	9 (3.9%)	5 (5.0%)
Clinical Teaching	31 (12.0%)	22 (9.6%)	7 (6.9%)
Commercial Law	15 (5.8%)	8 (3.5%)	3 (3.0%)
Communications Law	2 (0.8%)	5 (2.2%)	2 (2.0%)
Community Property	1 (0.4%)	2 (0.9%)	1 (1.0%)
Comparative Law	17 (6.6%)	13 (5.7%)	9 (8.9%)
Conflict of Laws	6 (2.3%)	10 (4.3%)	1 (1.0%)
Constitutional Law	66 (25.5%)	39 (17.0%)	26 (25.7%)
Consumer Law	6 (2.3%)	10 (4.3%)	0 (0.0%)
Contracts	38 (14.7%)	29 (12.6%)	16 (15.8%)
Corporate Finance	7 (2.7%)	7 (3.0%)	1 (1.0%)
Creditors and Debtors Rights	8 (3.1%)	4 (1.7%)	3 (3.0%)
Criminal Justice	22 (8.5%)	13 (5.7%)	9 (8.9%)
Criminal Law	26 (10.0%)	27 (11.7%)	22 (21.8%)
Criminal Procedure	20 (7.7%)	16 (7.0%)	11 (10.9%)
Critical Legal Studies	5 (1.9%)	4 (1.7%)	4 (4.0%)
Critical Race Theory	11 (4.2%)	8 (3.5%)	4 (4.0%)
Disability Law	1 (0.4%)	1 (0.4%)	2 (2.0%)
Education Law	2 (0.8%)	2 (0.9%)	2 (2.0%)
Elder Law	0 (0.0%)	1 (0.4%)	2 (2.0%)

Area of Specialization	T20 List	T50 List	Public Link
Election Law	4 (1.5%)	6 (2.6%)	0 (0.0%)
Employee Benefit Plans	1 (0.4%)	0 (0.0%)	0 (0.0%)
Employment Law	11 (4.2%)	5 (2.2%)	6 (5.9%)
Energy Law	1 (0.4%)	5 (2.2%)	2 (2.0%)
Entertainment Law	2 (0.8%)	0 (0.0%)	1 (1.0%)
Environmental Law	13 (5.0%)	13 (5.7%)	4 (4.0%)
Equity	4 (1.5%)	4 (1.7%)	2 (2.0%)
Estate and Gift Tax	0 (0.0%)	3 (1.3%)	4 (4.0%)
Estate Planning	0 (0.0%)	3 (1.3%)	5 (5.0%)
Estates and Trusts	3 (1.2%)	8 (3.5%)	10 (9.9%)
Evidence	18 (6.9%)	16 (7.0%)	9 (8.9%)
Family Law	9 (3.5%)	8 (3.5%)	3 (3.0%)
Federal Courts	15 (5.8%)	13 (5.7%)	7 (6.9%)
Feminist Legal Theory	8 (3.1%)	5 (2.2%)	5 (5.0%)
Financial Institutions	5 (1.9%)	4 (1.7%)	4 (4.0%)
Forensic Medicine	1 (0.4%)	1 (0.4%)	2 (2.0%)
Government Contracts	2 (0.8%)	2 (0.9%)	0 (0.0%)
Health Care Law	10 (3.9%)	6 (2.6%)	3 (3.0%)
Human Rights	8 (3.1%)	6 (2.6%)	8 (7.9%)
Immigration Law	13 (5.0%)	7 (3.0%)	5 (5.0%)
Insurance Law	3 (1.2%)	3 (1.3%)	0 (0.0%)
Intellectual Property	22 (8.5%)	21 (9.1%)	9 (8.9%)
International Business Transactions	8 (3.1%)	11 (4.8%)	4 (4.0%)
International Law	21 (8.1%)	29 (12.6%)	9 (8.9%)
International Organizations	4 (1.5%)	6 (2.6%)	2 (2.0%)
Judicial Administration	4 (1.5%)	6 (2.6%)	3 (3.0%)
Jurisprudence	32 (12.4%)	25 (10.9%)	20 (19.8%)
Juvenile Law	5 (1.9%)	3 (1.3%)	4 (4.0%)
Labor Law	3 (1.2%)	3 (1.3%)	5 (5.0%)
Land Use Planning	1 (0.4%)	3 (1.3%)	3 (3.0%)
Law and Accounting	0 (0.0%)	2 (0.9%)	0 (0.0%)
Law and Economics	34 (13.1%)	23 (10.0%)	8 (7.9%)
Law and Literature	7 (2.7%)	1 (0.4%)	1 (1.0%)

Area of Specialization	T20 List	T50 List	Public Link
Law and Medicine	3 (1.2%)	6 (2.6%)	2 (2.0%)
Law and Psychiatry	1 (0.4%)	1 (0.4%)	3 (3.0%)
Law and Religion	9 (3.5%)	9 (3.9%)	3 (3.0%)
Law and Science	10 (3.9%)	11 (4.8%)	6 (5.9%)
Law and Social Science	26 (10.0%)	22 (9.6%)	8 (7.9%)
Law and Technology	29 (11.2%)	20 (8.7%)	12 (11.9%)
Law Office Management	1 (0.4%)	1 (0.4%)	1 (1.0%)
Legal Drafting	6 (2.3%)	7 (3.0%)	0 (0.0%)
Legal History	33 (12.7%)	20 (8.7%)	11 (10.9%)
Legal Methods	4 (1.5%)	11 (4.8%)	4 (4.0%)
Legal Research and Writing	10 (3.9%)	22 (9.6%)	4 (4.0%)
Legislation	20 (7.7%)	17 (7.4%)	7 (6.9%)
Local Government	7 (2.7%)	7 (3.0%)	0 (0.0%)
Military Law	1 (0.4%)	2 (0.9%)	3 (3.0%)
National Security	1 (0.4%)	5 (2.2%)	3 (3.0%)
Native American Law	2 (0.8%)	4 (1.7%)	3 (3.0%)
Natural Resources	3 (1.2%)	9 (3.9%)	2 (2.0%)
Nonprofit and Philanthropy	3 (1.2%)	4 (1.7%)	2 (2.0%)
Ocean Resources	0 (0.0%)	1 (0.4%)	0 (0.0%)
Oil and Gas	0 (0.0%)	1 (0.4%)	0 (0.0%)
Payment Systems	2 (0.8%)	1 (0.4%)	0 (0.0%)
Poverty Law	9 (3.5%)	7 (3.0%)	3 (3.0%)
Products Liability	5 (1.9%)	5 (2.2%)	1 (1.0%)
Professional Responsibility	16 (6.2%)	22 (9.6%)	8 (7.9%)
Property Law	17 (6.6%)	18 (7.8%)	14 (13.9%)
Real Estate Transactions	0 (0.0%)	4 (1.7%)	1 (1.0%)
Regulated Industries	7 (2.7%)	4 (1.7%)	1 (1.0%)
Remedies	8 (3.1%)	9 (3.9%)	4 (4.0%)
Securities Regulation	16 (6.2%)	8 (3.5%)	5 (5.0%)
Sexual Orientation and Gender Identity Issues	4 (1.5%)	6 (2.6%)	3 (3.0%)
Sports Law	1 (0.4%)	1 (0.4%)	3 (3.0%)
Tax Policy	11 (4.2%)	10 (4.3%)	6 (5.9%)

Area of Specialization	T20 List	T50 List	Public Link
Taxation, Corporate	6 (2.3%)	9 (3.9%)	2 (2.0%)
Taxation, Federal	10 (3.9%)	16 (7.0%)	8 (7.9%)
Taxation, State and Local	4 (1.5%)	1 (0.4%)	0 (0.0%)
Torts	28 (10.8%)	21 (9.1%)	17 (16.8%)
Trade Regulation	3 (1.2%)	5 (2.2%)	2 (2.0%)
Trial Advocacy	7 (2.7%)	7 (3.0%)	3 (3.0%)
Water Rights	2 (0.8%)	5 (2.2%)	2 (2.0%)

C. LEGAL ACADEMY RESULTS

This Section reports the results of the evaluation of different areas' descriptive and normative centrality. Full details and additional analyses are reported in the Appendix.

With regard to descriptive centrality, the mean rating for all areas was 3.93 on a scale of 0 to 10. Twenty-three areas received a mean centrality rating of five or above (the midpoint of our scale), whereas eighty-one areas received a centrality rating of lower than five. Our regression model revealed forty-seven areas rated as significantly less descriptively central than the average, and thirty-four areas were rated as significantly more descriptively central than the average.¹⁸⁹ When comparing the areas from the Jotwell list with those from the AALS list, Jotwell areas had a mean descriptive centrality rating of 5.71 (95% CI: 5.65–5.77), whereas AALS areas had a mean descriptive centrality rating of 3.50 (95% CI: 3.42–3.57). Six of the top ten most descriptively central areas were from the Jotwell list,¹⁹⁰ while none of the ten least descriptively central areas were from the Jotwell list.

With regard to normative centrality, the mean overall rating for all areas was 4.70. Forty-three areas had a mean normative rating of five or above, while sixty-one areas had a mean normative rating of lower than five. Our regression model revealed thirty-five areas rated as significantly less normatively central than the average and thirty-six areas rated as significantly more normatively central than average. As with descriptive centrality, Jotwell areas had a higher mean normative centrality rating (6.37; 95% CI: 6.32–6.42) than AALS areas (4.42; 95% CI: 4.34–4.50). Six of the top ten most normatively central areas were from the Jotwell list,¹⁹¹ and all of the ten least normatively central areas were from the AALS list.

189. Full details are reported in the Appendix, *supra* note 34.

190. Constitutional law, criminal law, contracts, torts, corporations, and property were from the Jotwell list.

191. Constitutional law, criminal law, contracts, torts, corporations, and property were from the Jotwell list.

With regard to specialization, law professors tended to rate an area as descriptively more central if it was among their self-identified areas of specialization (mean: 6.09; 95% CI: 5.89–6.28) than if it was not among these areas (mean: 5.13; 95% CI: 5.10–5.15). The same was true for normative centrality, as professors tended to think areas that were among their specialty *should be* more central (mean: 7.78; 95% CI: 7.65–7.91) than areas that were not (mean: 5.86; 95% CI: 5.84–5.88). Our regression models revealed both differences to be significant.¹⁹²

Figure 3 shows the mean descriptive and normative centrality rating by self-identifying law professors for all areas, organized by highest descriptive rating.

Comparing descriptive and normative means reveals a strong correlation between the evaluation of how central an area *is* and how central it *should be*. Mean ratings for the areas' descriptive centrality were strongly correlated with mean ratings for the areas' normative centrality.¹⁹³ As Figure 3 indicates, seven of the top ten most descriptively central areas were also among the top ten most normatively central areas, and six of the ten least descriptively central areas were among the ten least normatively central areas.

At the same time, participants reported that many areas *should be* more central than the participants' evaluation of the area's current centrality. Paired t-tests revealed that participants rated twenty-nine areas as significantly more normatively central than descriptively central,¹⁹⁴ and two areas as significantly more descriptively central than normatively central.¹⁹⁵ Figure 4 presents the mean ratings for centrality differences (descriptive minus normative) by law professors in our sample. The Figure indicates that legislation, legal drafting, and poverty law were evaluated as most under central, meaning that these areas were rated more highly as "should be central" than "is central." Conversely, law and economics, constitutional law, and appellate practice were evaluated as most over central. Each of these areas was rated more highly as "is central" than "should be central."

As the Appendix documents, most results are robust across participants with demographic differences. For example, with regard to descriptive centrality, the vast majority of areas that were rated as central (or not central) by liberals were

192. Descriptive centrality: $\beta = -.1442$, $SE = -.05977$, $p = .01583$. Normative centrality: $\beta = 1.125$, $SE = .006214$, $p < 2^{-16}$.

193. The correlation coefficient (r) and significance (p) values are as follows: $r = .90$, $p < .0001$.

194. The twenty-nine areas rated as significantly more normatively central than descriptively central (ordered by adjusted p-value) were comparative law, employment law, technology law, health law, family law, legal history, jurisprudence, professional responsibility, administrative law, tax law, international law, local government law, legislation, natural resources law, Native American law, law of office management, welfare law, poverty law, energy law, consumer law, trusts, legal drafting, remedies, alternative dispute resolution, elder law, agricultural law, equity, nonprofit law, and election law.

195. The two areas (ordered by adjusted p-value) were constitutional law and law and economics.

FIGURE 3. CENTRALITY RATINGS BY AREA. ERROR BARS INDICATE 95% CONFIDENCE INTERVALS.

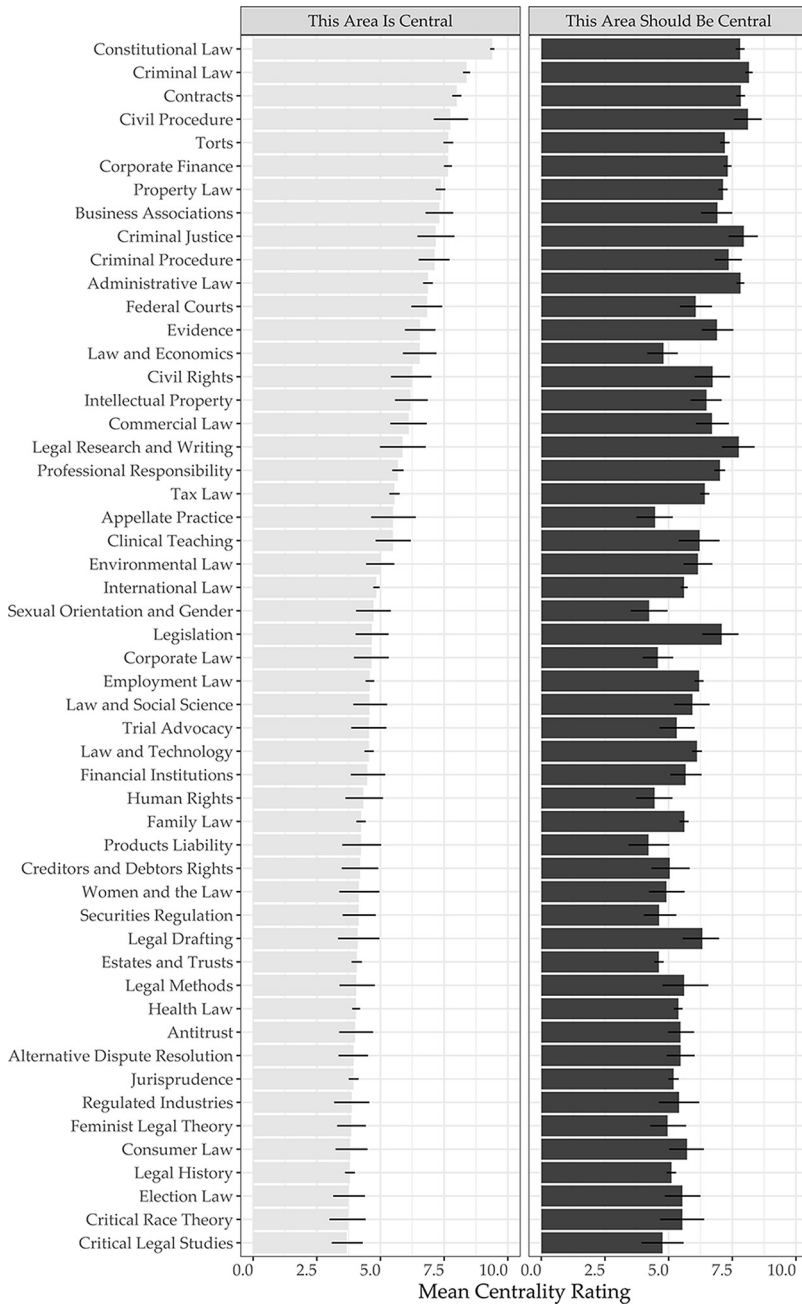


FIGURE 3. (CONTINUED)

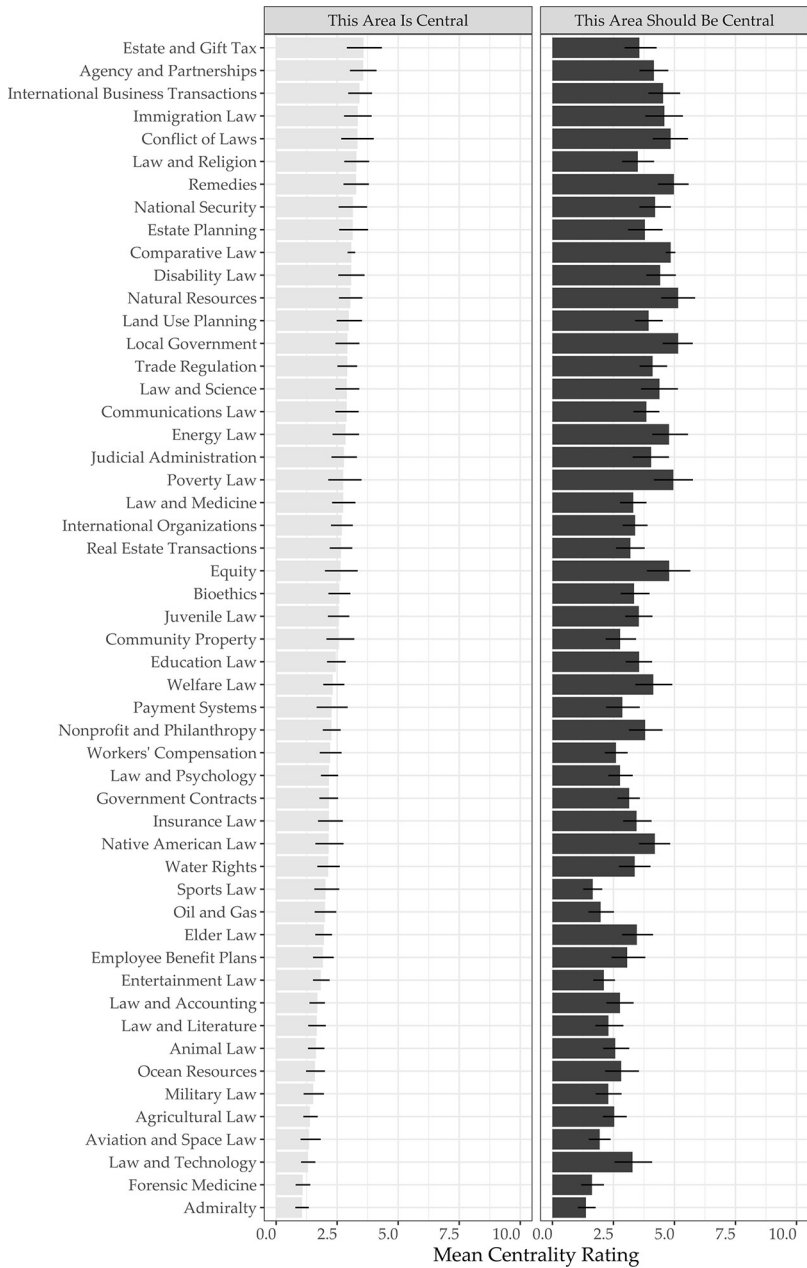


FIGURE 4. MEAN CENTRALITY DIFFERENCES (DESCRIPTIVE MINUS NORMATIVE) BY AREA.

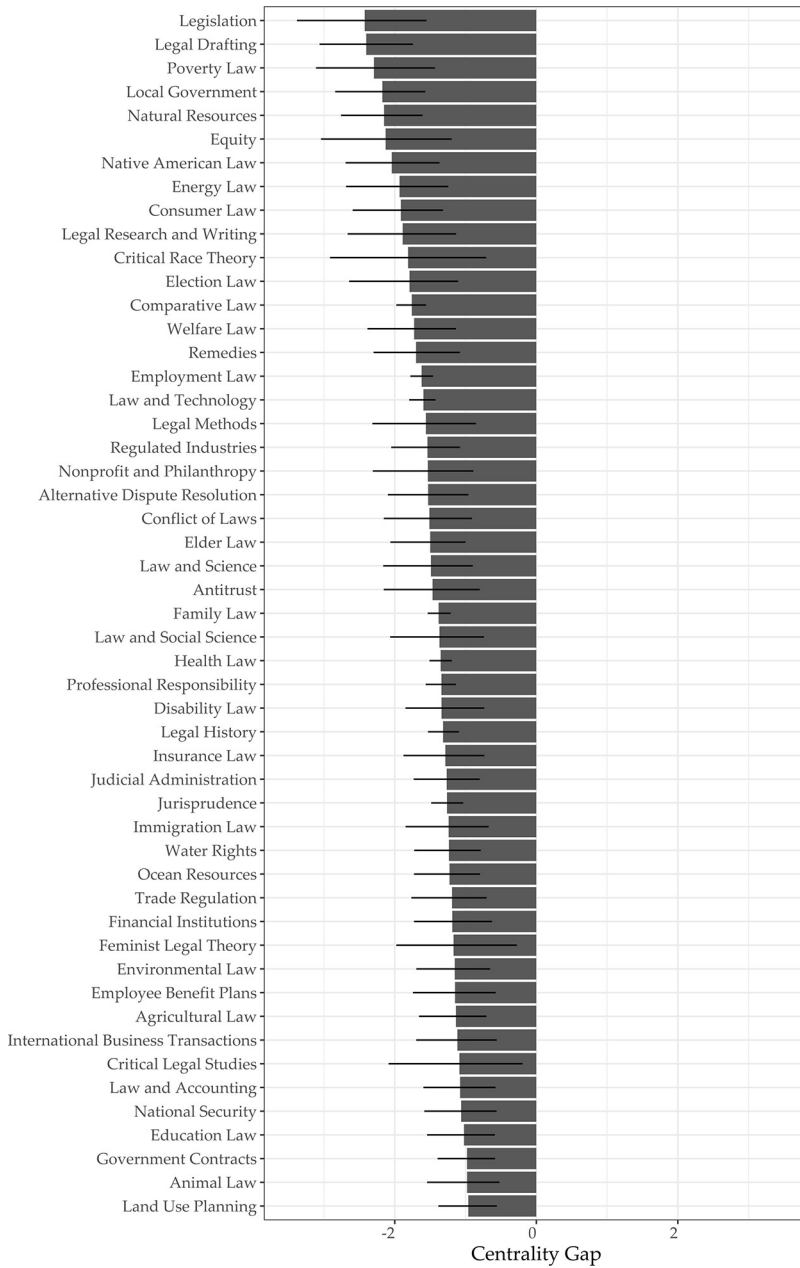
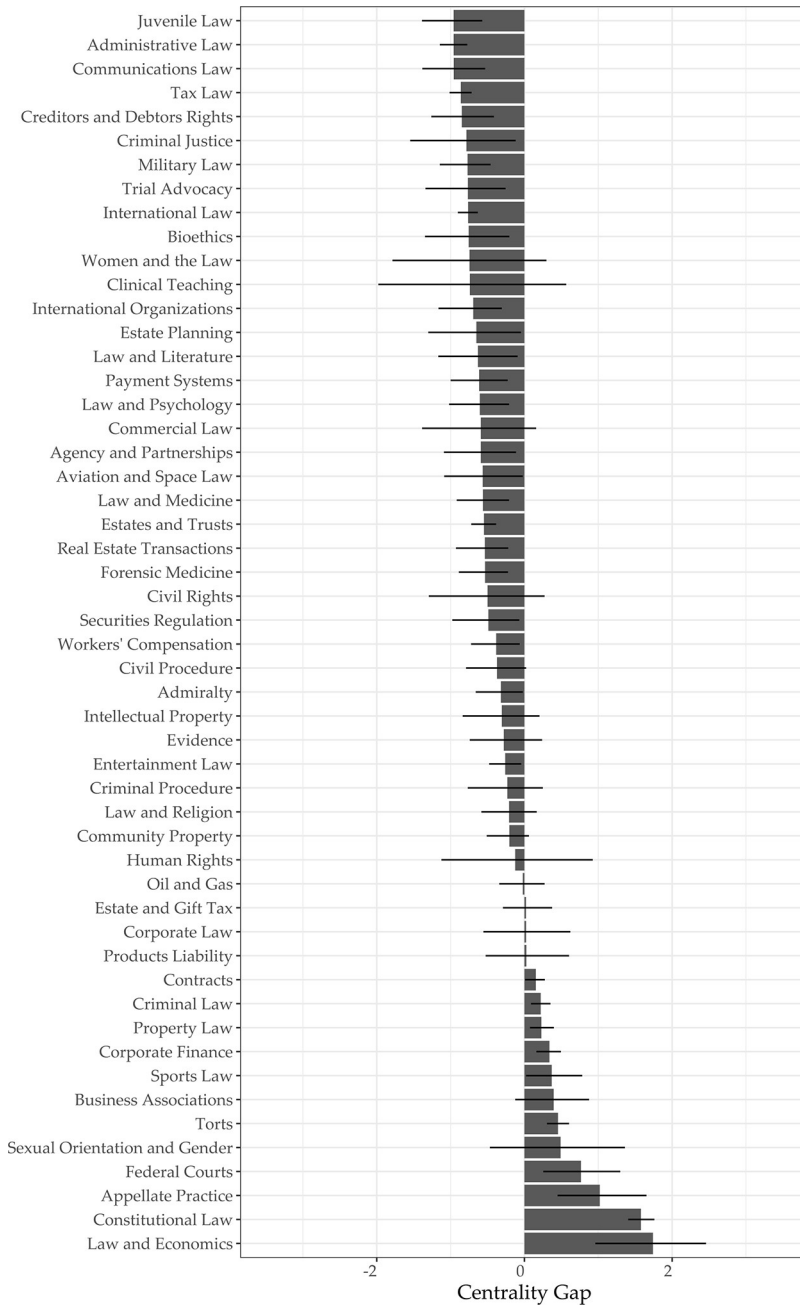


FIGURE 4. (CONTINUED)



also rated as central (or not central) by non-liberals.¹⁹⁶ The same was true across gender¹⁹⁷ (male versus non-male) and school rank¹⁹⁸ (T20 versus T50 versus public link). Regarding normative centrality, the vast majority of areas that were rated as normatively central (or not central) by liberals were also rated as normatively central (or not central) by non-liberals.¹⁹⁹ The same was true across gender²⁰⁰ and school rank.²⁰¹ At the same time, examining relationships between the demographic data and individual centrality areas revealed a number of significant correlations. For example, liberals gave significantly higher normative centrality ratings to international law, legal history, and employment law, and older participants gave significantly higher normative centrality ratings to constitutional law and professional responsibility. These correlations are reported in the Appendix.

D. LEGAL THEORY RESULTS

Next, we consider the results from the legal theory questions in part 3 of the survey. Of those who completed the centrality portion of the survey, 88% participated in the legal theory portion of the survey by answering at least one of the questions.²⁰² From these participants, the average participation rate for each legal theory question was 95.4%,²⁰³ and the average participation rate for each individual legal theory aside from write-ins was 91.9%,²⁰⁴ indicating that most who began part 3 of the survey felt comfortable enough to participate in all of the questions.²⁰⁵ Moreover, the mean response rate (excluding the response of

196. There was concordance regarding whether an area was descriptively central (that is, with a mean descriptive rating of five or higher) for 97 of the 104 areas.

197. There was concordance for 102 of the 104 areas.

198. There was concordance between professors from the T20 link and the T50 link for 94 of the 104 areas. Between the public link and the combined T20 and T50 links, there was concordance for 96 out of the 104 areas.

199. There was concordance regarding whether an area was normatively central (that is, with a mean normative rating of five or higher) for 82 of the 104 areas.

200. There was concordance for 93 of the 104 areas.

201. There was concordance between professors from the T20 link and the T50 link for 88 of the 104 areas. Between the public link and the combined T20 and T50 links, there was concordance for 82 out of the 104 areas.

202. 583 law professors completed the end of part 2. 512 law professors participated in part 3.

203. The legal theory question with the highest participation rate was the first question: "What theory should judges apply when interpreting the U.S. Constitution?" with a response rate of 99.2%, while the legal theory question with the lowest participation rate was "Which theory best describes the nature of law?" with a response rate of 90.8%.

204. The individual legal theory with the highest participation rate was the response "morally permissible" (answering the question, "Is capital punishment ever morally and/or legally permissible (anywhere in the United States)?"), with a response rate of 98.4%, while the theory with the lowest participation rate was the response "none" (answering the question, "What should be the default civil liability standard for accidents?"), with a response rate of 82.6%.

205. Of course, there are other reasons besides discomfort with a particular question that might lead one to drop out of a survey without answering each question, such as lack of time or unexpected technical difficulties. Assuming any of these factors contributed to participants ending the survey early as opposed to lack of comfort with individual questions, the percentage of people who felt comfortable enough answering the questions may have been even higher than 91.9%.

“other”) across all questions was 91.5%, indicating that for any given question the vast majority of participants felt comfortable enough to endorse or reject a view as opposed to choosing “other” responses such as “it depends,” “question unclear,” or “no fact of the matter.”

The following table offers conclusions at the highest level of generality, broken out by each population: law professors from the T20 list, T50 list, or public link. “Strongly Accept” and “Accept” denote theories endorsed by greater than two-thirds and one-half of participants, respectively, in each group. “Strongly Reject” and “Reject” denote theories rejected by greater than two-thirds and one-half of participants, respectively, in each group. “–” denotes theories for which the endorsement and rejection rates were not greater than 50% (for example, 45% accept; 40% reject; 15% other).

TABLE 3. DEGREE OF ACCEPTANCE OF DIFFERENT THEORIES BY PARTICIPANT GROUP

Theory Option	T20	T50	Public
1. What theory should judges apply when interpreting the U.S. Constitution?			
Living Constitutionalism	Strongly Accept	Strongly Accept	Accept
Common Law Constitutionalism	Strongly Accept	Accept	Accept
Pluralism	Accept	Accept	Accept
Originalism	Strongly Reject	Strongly Reject	Strongly Reject
2. What theory should judges apply when interpreting statutes?			
Purposivism	Strongly Accept	Strongly Accept	Strongly Accept
Pragmatism	Strongly Accept	Strongly Accept	Strongly Accept
Textualism	Accept	Strongly Accept	–
Intentionalism	Accept	Accept	Accept
3. What theory should judges apply when interpreting contracts?			
Formalism/Textualism	–	Accept	Reject
Contextualism	Strongly Accept	Strongly Accept	Strongly Accept
4a. What is the best explanation of how trial court judges resolve most cases?			
Formalism	–	Reject	Reject
Realism	Accept	Strongly Accept	Strongly Accept

Theory Option	T20	T50	Public
4b. What is the best explanation of how appellate court judges resolve most cases?			
Formalism	–	Accept	–
Realism	Accept	Accept	Accept
5. What is generally the best legal mechanism to resolve civil disputes?			
Judge decision	Accept	Strongly Accept	Strongly Accept
Jury decision	–	–	–
Arbitration	–	–	–
Other negotiation (e.g., settlement)	Strongly Accept	Strongly Accept	Strongly Accept
6. What is generally the best legal mechanism to resolve criminal prosecutions?			
Judge decision	Accept	Accept	Strongly Accept
Jury decision	Strongly Accept	Strongly Accept	Strongly Accept
Plea bargain	Reject	Reject	Reject
7. Is capital punishment ever morally and/or legally permissible (anywhere in the United States)?			
Morally permissible	Strongly Reject	Strongly Reject	Strongly Reject
Legally permissible	Accept	Accept	Accept
8. How should our legal system treat incarceration as a form of criminal punishment?			
Preserve it as-is	Strongly Reject	Strongly Reject	Strongly Reject
Revise or reform it	Strongly Accept	Strongly Accept	Strongly Accept
Abolish it	Strongly Reject	Strongly Reject	Strongly Reject
9. Which of the following should be the goal(s) of criminal punishment?			
Rehabilitation	Strongly Accept	Strongly Accept	Strongly Accept
Retribution	Reject	Reject	Reject
Deterrence	Strongly Accept	Strongly Accept	Strongly Accept
Expressivism	Reject	–	–
Incapacitation	Strongly Accept	Accept	Accept

Theory Option	T20	T50	Public
There should be no criminal punishment	Strongly Reject	Strongly Reject	Strongly Reject
10. Which of the following should be the goal(s) of contract law?			
Promoting autonomy	Strongly Accept	Strongly Accept	Strongly Accept
Promoting reliance	Strongly Accept	Strongly Accept	Strongly Accept
Promoting fairness	Strongly Accept	Strongly Accept	Strongly Accept
Promoting efficiency, wealth, and/or welfare	Strongly Accept	Strongly Accept	Accept
Respecting consent	Strongly Accept	Strongly Accept	Strongly Accept
11. Which of the following should be the goal(s) of tort law?			
Corrective justice	Strongly Accept	Strongly Accept	Strongly Accept
Compensation	Strongly Accept	Strongly Accept	Strongly Accept
Wealth, welfare and/or efficiency	Accept	Accept	Accept
Civil recourse	Accept	Strongly Accept	Accept
Deterrence	Strongly Accept	Strongly Accept	Strongly Accept
Expressing or constructing community norms	Strongly Accept	Strongly Accept	Accept
12. What should be the default civil liability standard for accidents?			
Negligence	Strongly Accept	Strongly Accept	Strongly Accept
Strict liability	Reject	Strongly Reject	Strongly Reject
None	Strongly Reject	Strongly Reject	Strongly Reject
13. What approach to corporate governance should guide public corporations?			
Shareholder primacy	–	–	Reject
Stakeholder theory	Accept	Accept	Accept
14. How should the law generally conceptualize consent?			
Mental state	–	Accept	–
Performative	–	Accept	Accept

Theory Option	T20	T50	Public
15. Which consideration(s) should generally inform legal assessments of what is “reasonable”?			
What is ordinary or customary	Strongly Accept	Strongly Accept	Strongly Accept
What is good (e.g., just or fair)	Strongly Accept	Strongly Accept	Strongly Accept
What is efficient	Reject	Reject	Reject
16. How should law generally conceptualize gender?			
Biological	–	Accept	–
Psychological	Accept	Accept	Accept
Social	Accept	Accept	Accept
Unreal	Reject	Strongly Reject	Strongly Reject
17. How should law generally conceptualize race?			
Biological	Reject	Reject	Reject
Social	Strongly Accept	Strongly Accept	Strongly Accept
Unreal	Reject	Reject	Reject
18. Is international law genuine law?			
It is genuine law	Accept	Accept	Accept
It is “law-like,” in some important sense	Strongly Accept	Strongly Accept	Strongly Accept
19. Are there universal or culturally particular human rights?			
There are at least some universal human rights	Strongly Accept	Strongly Accept	Strongly Accept
There are at least some culturally particular human rights	Strongly Accept	Strongly Accept	Strongly Accept
20. What approach to class participation should law faculty generally adopt when teaching doctrinal courses?			
Cold calling	Accept	Accept	Accept
Cold call panels	Accept	Accept	Accept
Other	Accept	Strongly Accept	Strongly Accept
21. What primary purpose(s) should law serve?			
Justice, equality, and/or fairness	Strongly Accept	Strongly Accept	Strongly Accept

Theory Option	T20	T50	Public
Welfare, wealth and/or efficiency	Accept	Strongly Accept	Accept
Rule of law values (e.g., predictability)	Strongly Accept	Strongly Accept	Strongly Accept
22. Insofar as domestic law should protect the rights, interests, and/or well-being of “persons,” which of the following categories includes at least some “persons”?			
Humans in the legal jurisdiction	Strongly Accept	Strongly Accept	Strongly Accept
Humans outside the legal jurisdiction	Strongly Accept	Strongly Accept	Strongly Accept
Corporations	Reject	Reject	Reject
Unions	–	Accept	Accept
Non-human animals	Strongly Reject	Reject	Reject
Artificially intelligent beings	Strongly Reject	Strongly Reject	Strongly Reject
Humans who will be born in the next 50 years	Accept	Accept	Accept
Humans who will only exist in the very distant future	Reject	Reject	Reject
23. Which theory best describes the nature of law?			
Positivism	Strongly Accept	Strongly Accept	Strongly Accept
Natural Law	Strongly Reject	Reject	Strongly Reject
24. In constitutional “hard cases,” is there always a unique right answer or always indeterminacy?			
Always a unique right answer	Strongly Reject	Strongly Reject	Strongly Reject
Always indeterminacy	Accept	Strongly Accept	Strongly Accept
25. In appellate court decision making, should a judge use moral reasoning to determine the legal outcome?			
Always	Strongly Reject	Strongly Reject	Strongly Reject
Sometimes	Strongly Accept	Strongly Accept	Strongly Accept

For a more granular view of the results, consider Table 4 below. This presents the aggregated data from all participants who self-identify as law professors (using the T20 link, T50 link, or public link), listing the specific percentages of theory endorsement. “Yes” includes “accept” and “lean towards” responses; “No” includes “reject” and “lean against” responses. The denominator of each proportion is the sum of all nine possible responses for that question (reject, lean against, lean towards, accept, no fact of the matter, question unclear, it depends, insufficient knowledge, or other). “Other” reflects the proportion of respondents answering: no fact of the matter, question unclear, it depends, insufficient knowledge, or other.

TABLE 4. DEGREE OF ACCEPT, REJECT AND OTHER RESPONSES BY LEGAL THEORY

	Yes	No	Other
1. Constitutional interpretation			
Living Constitutionalism ²⁰⁶	70.0%	22.2%	7.8%
Common Law Constitutionalism ²⁰⁷	61.0%	19.7%	19.3%
Pluralism ²⁰⁸	57.8%	17.4%	24.7%
Originalism ²⁰⁹	17.3%	75.7%	7.0%
2. Statutory interpretation			
Purposivism ²¹⁰	77.3%	13.9%	8.8%
Pragmatism ²¹¹	72.9%	19.6%	7.4%
Textualism ²¹²	60.6%	34.1%	5.3%
Intentionalism ²¹³	53.9%	33.0%	13.2%
3. Contract interpretation			
Formalism/Textualism ²¹⁴	46.3%	42.7%	11.0%
Contextualism ²¹⁵	74.6%	15.7%	9.8%

206. 95% CI: Yes (65.7–73.9); No (18.6–26.3); Other (5.5–10.2).

207. 95% CI: Yes (56.6–65.5); No (15.9–23.1); Other (15.9–22.7).

208. 95% CI: Yes (53.1–62.2); No (14.2–21.1); Other (20.9–28.6).

209. 95% CI: Yes (14.0–20.6); No (71.8–79.6); Other (4.9–9.3).

210. 95% CI: Yes (73.4–80.7); No (10.9–17.2); Other (6.4–11.5).

211. 95% CI: Yes (69.0–76.7); No (16.1–23.1); Other (5.2–9.9).

212. 95% CI: Yes (56.1–64.9); No (30.0–38.2); Other (3.5–7.4).

213. 95% CI: Yes (49.7–58.5); No (29.0–37.2); Other (10.2–16.3).

214. 95% CI: Yes (41.7–50.8); No (38.0–46.9); Other (8.5–13.9).

215. 95% CI: Yes (70.9–78.5); No (12.6–18.5); Other (7.1–12.4).

	Yes	No	Other
4a. Most trial court decision making			
Formalism ²¹⁶	35.6%	51.4%	13.0%
Realism ²¹⁷	69.9%	18.6%	11.5%
4b. Most appellate court decision making			
Formalism ²¹⁸	48.7%	39.7%	11.6%
Realism ²¹⁹	60.4%	28.5%	11.0%
5. Best civil adjudication mechanism			
Judge decision ²²⁰	66.5%	20.1%	13.5%
Jury decision ²²¹	44.1%	43.9%	12.0%
Arbitration ²²²	42.4%	45.8%	11.8%
Other negotiation (e.g., settlement) ²²³	79.4%	7.8%	12.8%
6. Best criminal adjudication mechanism			
Judge decision ²²⁴	59.9%	26.4%	13.6%
Jury decision ²²⁵	71.1%	16.0%	12.9%
Plea bargain ²²⁶	31.8%	55.9%	12.3%
7. Capital punishment			
Morally permissible ²²⁷	22.7%	74.7%	2.6%
Legally permissible ²²⁸	56.5%	37.8%	5.7%
8. Incarceration as criminal punishment			
Preserve it as-is ²²⁹	9.1%	89.5%	1.4%
Revise or reform it ²³⁰	95.2%	3.2%	1.6%

216. 95% CI: Yes (31.3–40.1); No (46.7–55.4); Other (10.0–16.2).

217. 95% CI: Yes (65.9–73.8); No (14.9–22.2); Other (8.8–14.4).

218. 95% CI: Yes (44.3–53.2); No (35.1–44.1); Other (8.6–14.5).

219. 95% CI: Yes (56.0–64.8); No (24.8–32.5); Other (8.1–13.8).

220. 95% CI: Yes (62.5–70.6); No (16.6–24.0); Other (10.6–16.4).

221. 95% CI: Yes (39.9–48.3); No (39.2–48.3); Other (9.3–15.0).

222. 95% CI: Yes (38.0–46.9); No (41.2–50.2); Other (8.8–14.9).

223. 95% CI: Yes (75.6–83.0); No (5.7–10.1); Other (9.9–16.0).

224. 95% CI: Yes (55.6–64.5); No (22.7–30.6); Other (10.5–16.5).

225. 95% CI: Yes (67.0–75.2); No (12.7–19.1); Other (9.8–15.8).

226. 95% CI: Yes (27.3–36.2); No (51.5–60.6); Other (9.3–15.7).

227. 95% CI: Yes (18.9–26.3); No (70.7–78.3); Other (1.4–4.2).

228. 95% CI: Yes (51.8–60.8); No (33.5–42.3); Other (3.9–7.7).

229. 95% CI: Yes (6.6–11.8); No (86.6–92.2); Other (0.4–2.7).

230. 95% CI: Yes (93.1–96.8); No (1.8–4.8); Other (0.6–2.8).

	Yes	No	Other
Abolish it ²³¹	13.0%	85.1%	1.9%
9. Goals of criminal punishment			
Rehabilitation ²³²	91.9%	7.3%	0.8%
Retribution ²³³	39.6%	58.9%	1.4%
Deterrence ²³⁴	81.7%	17.9%	0.4%
Expressivism ²³⁵	34.8%	45.3%	19.9%
Incapacitation ²³⁶	65.0%	28.1%	6.9%
There should be no criminal punishment ²³⁷	3.1%	95.4%	1.5%
10. Goals of contract			
Promoting autonomy ²³⁸	74.3%	19.0%	6.7%
Promoting reliance ²³⁹	85.0%	10.0%	5.0%
Promoting fairness ²⁴⁰	80.5%	15.6%	4.0%
Promoting efficiency, wealth, and/or welfare ²⁴¹	71.5%	24.3%	4.2%
Respecting consent ²⁴²	83.4%	11.9%	4.8%
11. Goals of tort			
Corrective justice ²⁴³	73.1%	22.1%	4.8%
Compensation ²⁴⁴	90.3%	7.2%	2.5%
Wealth, welfare and/or efficiency ²⁴⁵	63.7%	32.9%	3.4%
Civil recourse ²⁴⁶	71.0%	19.1%	10.0%

231. 95% CI: Yes (9.8–15.9); No (81.8–88.1); Other (0.6–3.1).

232. 95% CI: Yes (89.5–94.3); No (5.1–9.5); Other (0.2–1.6).

233. 95% CI: Yes (35.6–43.9); No (54.9–63.4); Other (0.4–2.4).

234. 95% CI: Yes (78.3–84.9); No (14.7–21.1); Other (0.0–1.0).

235. 95% CI: Yes (30.4–39.0); No (40.7–49.7); Other (16.6–23.7).

236. 95% CI: Yes (60.9–69.5); No (24.0–32.0); Other (4.7–9.0).

237. 95% CI: Yes (1.7–4.8); No (93.6–97.1); Other (0.4–2.7).

238. 95% CI: Yes (70.8–77.9); No (15.7–22.5); Other (4.6–8.8).

239. 95% CI: Yes (81.7–88.3); No (7.5–12.7); Other (3.1–7.1).

240. 95% CI: Yes (76.5–83.8); No (12.5–18.9); Other (2.3–5.8).

241. 95% CI: Yes (67.6–75.7); No (20.6–27.9); Other (2.5–6.0).

242. 95% CI: Yes (79.8–86.7); No (9.1–15.0); Other (2.9–6.7).

243. 95% CI: Yes (69.1–76.8); No (18.6–25.7); Other (2.9–6.9).

244. 95% CI: Yes (87.6–92.8); No (5.0–9.7); Other (1.2–4.1).

245. 95% CI: Yes (59.4–68.4); No (28.7–37.2); Other (1.9–5.1).

246. 95% CI: Yes (66.9–75.0); No (15.9–22.5); Other (7.4–12.7).

	Yes	No	Other
Deterrence ²⁴⁷	82.5%	14.4%	3.1%
Expressing or constructing community norms ²⁴⁸	70.3%	25.7%	4.0%
12. Liability standard for accidents			
Negligence ²⁴⁹	82.5%	7.9%	9.6%
Strict liability ²⁵⁰	22.2%	65.6%	12.3%
None ²⁵¹	3.1%	95.4%	1.5%
13. Corporate governance			
Shareholder primacy ²⁵²	36.3%	47.5%	16.2%
Stakeholder theory ²⁵³	55.4%	26.0%	18.6%
14. Consent			
Mental state ²⁵⁴	49.7%	28.9%	21.4%
Performative ²⁵⁵	53.9%	21.5%	24.6%
15. Reasonableness			
What is ordinary or customary ²⁵⁶	83.9%	13.4%	2.7%
What is good (e.g., just or fair) ²⁵⁷	70.3%	26.2%	3.6%
What is efficient ²⁵⁸	40.0%	56.4%	3.5%
16. Gender in law			
Biological ²⁵⁹	51.6%	37.0%	11.4%
Psychological ²⁶⁰	59.0%	28.4%	12.6%
Social ²⁶¹	62.3%	25.0%	12.7%

247. 95% CI: Yes (78.9–85.8); No (11.5–17.5); Other (1.7–4.8).

248. 95% CI: Yes (66.0–74.1); No (21.9–29.7); Other (2.3–5.7).

249. 95% CI: Yes (79.1–85.9); No (5.5–10.4); Other (7.2–12.4).

250. 95% CI: Yes (18.5–25.8); No (61.5–70.1); Other (9.2–15.3).

251. 95% CI: Yes (2.9–6.9); No (81.7–88.1); Other (9.2–15.3).

252. 95% CI: Yes (32.4–40.8); No (40.8–52.1); Other (12.8–19.3).

253. 95% CI: Yes (50.9–59.8); No (22.2–29.8); Other (15.4–22.4).

254. 95% CI: Yes (45.3–54.5); No (24.7–33.0); Other (17.9–25.4).

255. 95% CI: Yes (49.8–58.8); No (18.0–25.4); Other (20.6–28.5).

256. 95% CI: Yes (80.5–87.0); No (10.5–16.3); Other (1.3–4.2).

257. 95% CI: Yes (66.2–74.5); No (22.2–30.2); Other (2.1–5.3).

258. 95% CI: Yes (35.8–44.6); No (52.0–60.4); Other (2.1–5.3).

259. 95% CI: Yes (47.0–56.0); No (32.4–41.6); Other (8.5–14.4).

260. 95% CI: Yes (54.5–63.9); No (24.4–32.6); Other (9.5–15.7).

261. 95% CI: Yes (58.1–66.4); No (21.0–29.2); Other (9.6–15.8).

	Yes	No	Other
Unreal ²⁶²	7.5%	67.1%	25.3%
17. Race in law			
Biological ²⁶³	34.9%	53.6%	11.5%
Social ²⁶⁴	74.5%	15.4%	10.1%
Unreal ²⁶⁵	15.5%	58.6%	25.9%
18. International law			
It is genuine law ²⁶⁶	56.4%	37.4%	6.2%
It is “law-like,” in some important sense ²⁶⁷	77.8%	16.8%	5.4%
19. Human rights			
There are at least some universal human rights ²⁶⁸	88.8%	8.2%	3.0%
There are at least some culturally particular human rights ²⁶⁹	80.7%	13.7%	5.6%
20. Class participation			
Cold calling ²⁷⁰	60.4%	31.4%	8.2%
Cold call panels ²⁷¹	61.1%	30.4%	8.5%
Other ²⁷²	74.3%	10.7%	15.0%
21. Law’s primary purpose(s)			
Justice, equality, and/or fairness ²⁷³	94.5%	3.6%	1.9%
Welfare, wealth and/or efficiency ²⁷⁴	65.9%	29.6%	4.5%
Rule of law values (e.g., predictability) ²⁷⁵	94.3%	4.7%	1.1%

262. 95% CI: Yes (5.3–9.8); No (62.8–71.2); Other (21.5–29.5).

263. 95% CI: Yes (30.5–39.2); No (49.2–58.2); Other (8.9–14.6).

264. 95% CI: Yes (70.4–78.4); No (12.2–18.8); Other (7.5–12.8).

265. 95% CI: Yes (12.0–18.9); No (53.9–63.2); Other (22.3–30.2).

266. 95% CI: Yes (51.7–60.6); No (32.8–41.7); Other (4.0–8.5).

267. 95% CI: Yes (73.7–81.5); No (13.8–20.0); Other (3.4–7.5).

268. 95% CI: Yes (86.1–91.6); No (5.9–10.8); Other (1.5–4.6).

269. 95% CI: Yes (77.0–84.1); No (10.7–16.7); Other (3.6–7.7).

270. 95% CI: Yes (56.0–64.8); No (27.2–35.4); Other (5.7–10.7).

271. 95% CI: Yes (56.7–65.3); No (26.0–34.9); Other (5.9–11.0).

272. 95% CI: Yes (67.1–80.7); No (5.7–15.7); Other (9.3–21.4).

273. 95% CI: Yes (92.4–96.6); No (1.9–5.3); Other (0.8–3.2).

274. 95% CI: Yes (61.8–70.2); No (25.5–33.9); Other (2.8–6.2).

275. 95% CI: Yes (92.2–96.2); No (2.8–6.6); Other (0.2–2.1).

	Yes	No	Other
Please feel free to enter another view (that you reject, lean against, lean towards, or accept) and rate it²⁷⁶	64.1%	20.3%	15.6%
22. Legal “persons”			
Humans in the legal jurisdiction²⁷⁷	99.4%	0.2%	0.4%
Humans outside the legal jurisdiction²⁷⁸	85.3%	11.0%	3.7%
Corporations²⁷⁹	40.3%	54.5%	5.2%
Unions²⁸⁰	51.9%	43.1%	5.0%
Non-human animals²⁸¹	30.5%	65.6%	3.9%
Artificially intelligent beings²⁸²	6.5%	85.7%	7.8%
Humans who do not yet exist, but will be born in the next 50 years²⁸³	53.8%	40.1%	6.1%
Humans who will only exist in the very distant future²⁸⁴	34.5%	58.4%	7.2%
23. Nature of law			
Positivism²⁸⁵	73.8%	13.2%	13.0%
Natural Law²⁸⁶	21.4%	66.5%	12.1%
24. Constitutional “hard cases”			
Always a unique right answer²⁸⁷	11.4%	83.7%	4.9%
Always indeterminacy²⁸⁸	67.8%	27.1%	5.1%

276. 95% CI: Yes (51.6–75.0); No (10.9–29.7); Other (7.8–25.0).

277. 95% CI: Yes (98.5–100.0); No (0.0–0.6); Other (0.0–1.1).

278. 95% CI: Yes (81.8–88.3); No (8.2–14.3); Other (2.2–5.4).

279. 95% CI: Yes (35.7–44.7); No (49.9–59.0); Other (3.5–7.4).

280. 95% CI: Yes (47.4–56.5); No (38.8–47.6); Other (3.2–7.1).

281. 95% CI: Yes (26.3–34.6); No (61.2–69.7); Other (2.2–5.7).

282. 95% CI: Yes (4.3–8.9); No (82.2–88.7); Other (5.4–10.2).

283. 95% CI: Yes (49.5–58.4); No (35.4–44.9); Other (4.1–8.5).

284. 95% CI: Yes (29.9–38.8); No (53.8–62.7); Other (5.2–9.8).

285. 95% CI: Yes (69.7–78.0); No (9.9–16.0); Other (9.9–16.3).

286. 95% CI: Yes (18.1–25.4); No (62.3–71.0); Other (9.2–15.4).

287. 95% CI: Yes (8.8–14.4); No (80.3–86.9); Other (3.0–7.1).

288. 95% CI: Yes (63.8–72.1); No (23.2–30.7); Other (3.2–7.2).

	Yes	No	Other
25. Judicial use of moral reasoning			
Always ²⁸⁹	24.4%	70.0%	5.6%
Some ²⁹⁰	74.8%	19.4%	5.8%

Across all legal theories, the mean endorsement percentage was 56.5%. Excluding write-in items, fifty-five theories had a mean endorsement rate of at least 50%. Twenty-eight theories had a mean endorsement rate of less than 50%.

When comparing all legal theories against each other, our regression model revealed thirty-eight legal theories as having a higher-than-average endorsement rate, while thirty-one legal theories had a lower-than-average endorsement rate. Our analyses also revealed significant correlations between endorsement of legal theories. For example, those who believed that law should conceptualize gender as biological were significantly more likely to believe incarceration as criminal punishment should be preserved “as-is” ($r = .407$), and significantly less likely to believe that incarceration should be abolished ($r = -.362$). Similarly, those who endorsed shareholder primacy as the best approach to corporate governance were more likely to endorse originalism as the best approach to constitutional interpretation ($r = 3.11$) and capital punishment as morally permissible ($r = .343$). To more systematically evaluate the relationship among all of these correlations, we performed a principal component analysis with varimax rotation. We report the full results of the regression model, as well as the correlation and principal component analysis, in the Appendix.

All of these findings were fairly robust to demographic differences. For example, the majority of legal theories that were endorsed by greater than 50% (or less than or equal to 50%) of liberals were also endorsed by greater than 50% (or less than or equal to 50%) of non-liberals. Similarly, the majority of legal theories that were endorsed by 50% or fewer liberal participants were also endorsed by 50% or fewer non-liberal participants.²⁹¹ The same was true across gender²⁹² and school rank.²⁹³ However, examining correlations between the demographic data and individual legal theory responses revealed many significant correlations. For example, conservatives were significantly more likely than liberals to endorse personhood for corporations ($r = .348$) and originalism as a theory of

289. 95% CI: Yes (20.7–28.4); No (65.7–74.4); Other (3.4–7.8).

290. 95% CI: Yes (70.9–78.6); No (16.0–23.1); Other (3.8–8.1).

291. There was concordance between liberals and non-liberals regarding whether a legal theory view had greater than 50% endorsement for sixty-five out of eighty-five legal theories.

292. There was concordance between self-identifying male and non-male participants for eighty-three out of eighty-five legal theories.

293. There was concordance between T20 and T50 participants for seventy-nine out of eighty-five legal theories. There was concordance between public link and combined T20 and T50 participants for eighty-three out of eighty-five legal theories.

constitutional interpretation ($r = .505$), and male-identifying participants were significantly less likely than non-male-identifying participants to endorse abolishing incarceration as a form of criminal punishment ($r = -.292$), and significantly more likely to endorse capital punishment as morally permissible ($r = .238$). In all, there were 138 significant correlations between demographic variables and legal theory responses. The most significant correlations are provided in the Appendix.

IV. OBJECTIONS, LIMITATIONS, AND IMPLICATIONS

This Part responds to objections about the study and develops the implications of the results for legal education and legal theory. Section IV.A discusses five objections raised concerning the study: (1) the sample is insufficiently large; (2) the sample is an unrepresentative selection of the broader academy; (3) the questions are ambiguous, vague, or likely to cause confusion; (4) the results are obvious; and (5) the results only tell us what professors *say* they believe, not what they truly believe. We argue that the force of these objections is limited.

Section IV.B defends six implications from the study: (1) the study offers the first-ever data assessing the status of long-standing theoretical debates; (2) insofar as law professors are legal experts, the data provide new evidence for and against dozens of legal theories; (3) the data help clarify the legal academy and inform ongoing discussions about modernizing, diversifying, and improving law and legal education; (4) the data about which areas *should be* most central bear on how the academy should develop; (5) the results may help predict future developments in both the legal academy and legal theory; and (6) the rich dataset of self-reported demographic information includes rarely reported law professor demographics such as disability, sexual orientation, and area(s) of specialization.

A. RESPONSES TO OBJECTIONS

1. Sample Size

One concern relates to the size of the sample of the legal academy included in our survey. Did we include enough people in the survey to make meaningful statistical inferences? With regard to the number of people, both a priori statistical reasoning and empirical data from our study suggest that we included a sufficient number of members of the legal academy in our sample to make meaningful statistical inferences regarding the legal academy at large. Consider, for example, the population of full-time U.S. law professors, as measured in 2019 (9,494).²⁹⁴ According to standard estimates of probability sampling, the ideal sample size needed to obtain a 95% confidence level with a 5% margin of error at this

294. Stephanie Francis Ward, *How Many Tenured Law Professors Are Black? Public Data Does Not Say*, ABA J. (Oct. 28, 2020, 3:25 PM), <https://www.abajournal.com/web/article/how-many-tenured-law-professors-are-black-public-data-does-not-say> [<https://perma.cc/B9XB-DF5Y>].

population size is 369, substantially lower than the over six hundred law professor participants in our survey.²⁹⁵

Indeed, when looking at the actual results of the survey, the parameter estimates for the responses to each of the main legal theory questions, for example, had a 95% confidence interval with substantially less than a 5% margin of error, allowing one to obtain a high degree of certainty about the level of endorsement and rejection of individual legal theories within the entirety of the legal academy.²⁹⁶

2. Representativeness

A different concern about the sample relates to representativeness. Were the survey takers representative of the larger population, in relevant ways, such that the Article's inferences about the population at large are warranted?

Representativeness is a question worth raising about any survey that does not capture responses from the entire target population. Unfortunately, this question is especially challenging to address for this survey, given the limited public data about the target population. For example, it is notoriously difficult to assess the modern legal academy's demographic composition. As Professor Meera Deo notes, "[T]he Association of American Law Schools (AALS) has not released law faculty data in over a decade."²⁹⁷

If rich, reliable, contemporary data about the population of U.S. law professors become available, future work could *weight* the responses from this Article's survey.²⁹⁸ For example, consider weighting this survey's responses based on gender. This weighting would require knowledge of the underlying gender distribution in the legal academy, or at least a reliable estimate of that distribution. Consider some recent estimates from research published in 2021 on gender pay disparities in the academy,²⁹⁹ which drew on an impressive survey of tenured law faculty's perspectives on the tenure process published in 2012.³⁰⁰ Relying on the tenure

295. To compute the sample size, we used Cochran's correction formula (adjusted for population size), a widely accepted method for obtaining the minimum necessary sample size. See James E. Bartlett, II, Joe W. Kotrlík & Chadwick C. Higgins, *Organizational Research: Determining Appropriate Sample Size in Survey Research*, 19 INFO. TECH., LEARNING & PERFORMANCE J. 43, 47–48 (2001) (noting that the minimum returned sample size for a population size of 4,000 with a margin of error of .05, a confidence interval of 95%, and a t-value of 1.96 is 351). See generally WILLIAM G. COCHRAN, *SAMPLING TECHNIQUES* (3d ed. 1977). For an online resource that directly calculates the sample size produced by Cochran's correction formula for a given population size, margin of error, and confidence interval, see *Sample Size Calculator*, QUALTRICS MKT. RSCH. BLOG (Aug. 14, 2023), <https://www.qualtrics.com/blog/calculating-sample-size/> [<https://perma.cc/VHX8-TEVD>].

296. See *supra* Part III.

297. Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2471 (2021).

298. See, e.g., Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors' Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 514 (2012) (controlling for non-response by re-weighting the study sample "based upon estimated response rates").

299. See Christopher J. Ryan, Jr. & Meghan Dawe, *Mind the Gap: Gender Pay Disparities in the Legal Academy*, 34 GEO. J. LEGAL ETHICS 567, 567 (2021).

300. See Barnes & Mertz, *supra* note 298, at 511–12.

survey data, the authors of the 2021 pay study compute *weighted* percentages of men and women in the legal academy.³⁰¹ They report the weighted percentage of women as 26%.³⁰² In contrast, the most recent (2008–2009) detailed AALS data report that women constitute 37% of the academy.³⁰³ The 2022 ABA summary disclosure report indicates a higher number: overall, 48.2% of “full-time faculty members” are women, 51.7% are men, and 0.1% are “other.”³⁰⁴ By way of comparison, the summary disclosure reports that 44.1% of T20 “full-time faculty members” are women, 55.8% are men, and 0.2% are “other.”³⁰⁵ However, it is not clear what definitions the disclosure uses for “full-time” or “faculty member.”³⁰⁶

The self-reported demographics for this Article’s survey indicate that women are 33% (T20 email list), 31% (T50 email list), and 19% (open link) of the invite samples.³⁰⁷ The disproportionately lower rate of female participants in the open link compared to the T20 and T50 lists along with prior demographic data add more weight to our prior skepticism about the open link, indicating that the email recruitment for the T20 and T50 lists is a more reliable recruitment method than a public open link. One could consider weighting the results of our survey in line with the demographics of any of the lists. But here the direction of the weighting depends on which estimate one chooses. For example, if the T20 results are weighted for gender, should the weighting be positive (for example, using a 37% or 44% or 48% figure for women) or negative (for example, using the 26% figure)?

Another challenge in attempting to compare our results with a baseline of U.S. law professor demographics is that some categories in our survey are not reported in previous surveys (and perhaps vice versa). For example, we asked participants about their gender, including the category “non-binary.” No participants self-identified as non-binary in our survey, but not all previous work reports questions or estimates about non-binary U.S. law professors. Thus, it is unclear whether our estimate (0%) coheres with findings of previous work, since previous work did not ask this question.³⁰⁸

301. Ryan, Jr. & Dawe, *supra* note 299, at 579–80.

302. *Id.* at 582.

303. Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7, 11–12 (2015).

304. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA, ABA REQUIRED DISCLOSURES, COMPILATION—ALL SCHOOLS DATA [hereinafter ABA REQUIRED DISCLOSURES], <https://www.abarequireddisclosures.org/Disclosure509.aspx> [<https://perma.cc/34ZD-6GAZ>] (choose “2022” from dropdown; then choose “Faculty Resources”; then click “Generate Report”).

305. See *id.*

306. See *id.* The disclosure summary is based on individual schools’ reporting sheets, which distinguish among “full-time faculty members,” “non-full-time faculty,” and “librarians,” but do not otherwise provide guidance about what constitutes a “full-time” or “faculty” position.

307. See *supra* Table 1.

308. See, e.g., Jonathan Choi, *A Survey of Law Professors on Tax Reform*, YALE J. ON REGUL. (Aug. 25, 2021), <https://www.yalejreg.com/nc/a-survey-of-law-professors-on-tax-reform/> [<https://perma.cc/TYJ2-3MF7>] (noting that fifty-five of the respondents of a survey of tax professors were female and 112 were male, but not mentioning the percentage of non-binary respondents).

Similar questions surround data about law professors and race. According to Deo, the most recent AALS information on raceXgender (the combination of race and gender) suggests “that just about 7 percent of all law teachers are women of color, [and] 8 percent are men of color.”³⁰⁹ According to AALS data from 2008, of the law professors who identify as men, 0.4% identify as American Indian or Alaskan Native, 2.3% identify as Asian or Pacific Islander, 5% identify as Black or African American, 2.9% identify as Hispanic or Latino, 74.6% identify as white, 1.9% identify as “other race” or multiple races, and 12.7% did not identify their race or ethnicity.³¹⁰ Of the law professors who identify as women, 0.5% identify as American Indian or Alaskan Native, 2.7% identify as Asian or Pacific Islander, 10% identify as Black or African American, 3.4% identify as Hispanic or Latino, 67% identify as white, 2.2% identify as “other race” or multiple races, and 14.1% did not identify their race or ethnicity.³¹¹

Here again, there are more recent AALS disclosure reports that indicate a higher number of law professors of color than the 15% cited by Deo. However, the same questions about the unclear meanings of “full-time” and “faculty” in those reports apply. For example, the 2022 AALS disclosure reports 22% of “full-time faculty” are “people of color” (by way of comparison, the figure is 20% at T20 schools).³¹²

When considering the general categories of “white” and “people of color” (understood as non-white), the survey results are in line with previous studies. The T20 sample self-reports as 15% non-white, and the T50 reports as 13% non-white. The 2008 AALS data indicate 15% non-white professors, and the 2022 ABA disclosure report indicates 20% non-white “full-time faculty” at T20 schools and 22% at all schools.³¹³

Of course, here these general categories obscure distinctions among non-white races and ethnicities, raceXgender intersections, as well as other intersections, such as raceXgenderXpolitics. Consider how the more detailed demographics from the survey’s T20 list are similar to prior estimates of the legal academy’s demographic makeup: of the participants in the study, 0.3% identified as Native American, 6.5% as Asian, 5.8% as Black, 2.4% as Hispanic, 1.7% as write-in, and 85.4% as white. The T50 list is also similar: of the participants in the study, 0% identified as Native American, 5% as Asian, 3.5% as Black, 5% as Hispanic, 3.5% as write-in, and 83.1% as white.³¹⁴

One could consider weighting the survey results by any of the demographics described in the paragraphs above. But here again, different choices of baseline demographics would lead to different weightings. For example, the 2022 AALS report would suggest that non-white responses should be weighted more heavily,

309. Deo, *supra* note 297, at 2468, 2471.

310. Deo, *supra* note 303, at 12.

311. *Id.*

312. See ABA REQUIRED DISCLOSURES, *supra* note 304.

313. See *id.*

314. See *supra* Table 1.

but it is not clear which specific raceXgender combinations should be weighted. The 2008 AALS data could be used more concretely (for example, weighting certain raceXgender responses more heavily and others less heavily), but it is unclear whether it is prudent to use fifteen-year-old data in this way given the plausibility of demographic changes within the legal academy in the interim.

An important broader point from this discussion is that all of this data support the observation that the American legal academy is not representative of the general American population. Census estimates from 2021 reveal the following racial demographics: non-Latino white 59.3%, Latino 18.9%, Black 13.6%, Asian 6.1%, multiple races 2.9%, Native American 1.3%, and Native Hawaiian and other Pacific Islander 0.3%.³¹⁵ This raises a concern not so much with how representative our sample is of the population of the broader legal academy, but rather with how representative the population of the broader legal academy is of the United States population at large. As we discuss in the implications section, Section IV.B, insofar as demographics predict legal academy views, the survey provides new insight into the implications of the legal academy's demographic homogeneity.

Similar reasoning also applies to demographic categories for which there are no official data regarding the breakdown of these categories in the legal academy. For example, one might wonder whether the Article's survey would disproportionately attract professors with an interest in questions of legal theory, who may plausibly have different centrality and legal theory views than the rest of the academy. If so, one would expect that (a) our sample would be laden with specialists in jurisprudence, and (b) those who specialize in jurisprudence would be disproportionately likely to endorse particular legal theory views or rate certain areas of law as central. However, our results show that approximately 86.8% of participants did not self-identify as specializing in jurisprudence (despite the fact that participants were allowed to fill out as many areas of specialization as they wanted). Moreover, specializing in jurisprudence was only correlated with a handful of legal theory responses, suggesting that even if there were a slightly higher index of jurispruders in the sample, their presence would not have meaningfully affected or tainted our results.

The same was true for other demographic categories. Our main findings were mostly robust to demographic differences, such that even if our sample were not perfectly representative of the legal academy, we would still be able to draw similar inferences as if it were a more perfect representation of it.

The same reasoning applies to concerns over the representativeness of the law school faculties included in our sample. According to this concern, even if the participants included in our sample were representative of professors at 50 law schools, it may be that the professors at those 50 law schools are not

315. *QuickFacts*, U.S. CENSUS BUREAU, [<https://web.archive.org/web/20221110163629/https://www.census.gov/quickfacts/fact/table/US/PST045221>] (last visited Nov. 10, 2022) (detailing data from July, 2021).

representative of law faculties as a whole, in which case our study would not capture the entirety of the legal academy but rather merely a rarified slice of it. If this were the case, one would predict that we would see differences in our results between (a) the data from the T20 list and T50 list, and (b) the data from the combined T20 and T50 list and the public list.

We acknowledge that our study's results are more persuasive with respect to the T20 and T50 lists than the public list. The sampling methodology (direct emails) was stronger and the sample size larger. We hoped that the public link would generate many survey hits, but ultimately, fewer people participated using that link. As such, it is important to note that future work would do well to explore whether the T20 and T50 results are representative of the legal academy at large. Many of our initial results suggest yes—the legal theory views and legal area evaluations are not identical among lists, but they are similar.³¹⁶

Although the above highlight some of the most likely candidates of response bias, one might also speculate whether there are any other hidden selection effects at play that are not captured by the demographic measures we included. For example, are the survey participants who agreed to take the study more interested in the subject matter (questions of legal theory and/or questions about the legal academy)? This is an important concern, which could affect *any* survey study with non-perfect responses. As Professors Abbe R. Gluck and Lisa Schultz Bressman put it in their seminal survey of 137 (out of about 650) congressional staffers, “Such problems are unavoidable in a project like this one, with a generally reticent population that necessarily depends on volunteers.”³¹⁷

However, our survey is likely to be less susceptible to this concern than other methods, including those that form the state-of-the-art in psychology and social science research. For example, although much of psychology research attempts to derive inferences generalizable to the general public, as many as 80% of studies in major psychology journals are based on samples consisting solely of university students enrolled in an introductory psychology class.³¹⁸ More recent methods have recruited subjects via online platforms such as Prolific³¹⁹ and

316. See *supra* Table 1.

317. Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 922 (2013).

318. Jeffrey J. Arnett, *The Neglected 95%: Why American Psychology Needs to Become Less American*, 63 AM. PSYCH. 602, 604 (2008) (“[I]n 67% of American studies published in *JPSP*, the samples consisted of undergraduate psychology students. The percentage of psychology student samples in non-American studies was even higher, 80%.”); see also Reginald G. Smart, *Subject Selection Bias in Psychological Research*, 7a CAN. PSYCH. 115, 115 (1966) (reporting that up to 85.7% of the studies in leading psychological research journals used college students). Similar sampling biases are reported in other fields as well. See, e.g., Sible Andringa & Aline Godfroid, *Sampling Bias and the Problem of Generalizability in Applied Linguistics*, 40 ANN. REV. APPLIED LINGUISTICS 134, 135–38 (2020) (finding 88% of research samples in *Applied Linguistics* are of university students).

319. See Stefan Palan & Christian Schitter, *Prolific.ac—A Subject Pool for Online Experiments*, 17 J. BEHAV. EXPERIMENTAL FIN. 22, 22–23 (2018).

Amazon's Mechanical Turk,³²⁰ which seek to be more demographically representative of United States adults than a sample of college students but still capture a much narrower (and plausibly less representative) slice of the population of interest relative to our study.³²¹ Consider that a modern social science experiment with the same number of participants as our study would comprise approximately 1/500,000 of the United States population.³²² By comparison, our participant sample comprised over 1/6 of the total law professors at T50 law schools, or around 1/14 of all law professors in the United States.³²³ Given that (a) the influence of individual selection effects is plausibly more likely to decrease as the proportion of one's sample to the overall target population increases and (b) criticisms of selection effects tend not to be levied to individual studies whose sample comprised a much smaller proportion of the overall target population than did the present study,³²⁴ it seems reasonable to conclude that criticisms of selection effect ought not to be a significant concern here either.

In sum, the available estimates generally suggest that our participants were broadly representative of the American legal academy on a number of demographic factors. However, there is a dearth of recent, reliable, detailed data about U.S. law professors' demographics (especially intersectional demographics). As such, we see representativeness as a challenge that our study (and other surveys of law professors) ought to continue addressing. We hope that the AALS or other bodies release modern, detailed demographic data. And we will continue to keep our survey open in an effort to recruit participants who were not aware of the public link at the time of recruitment.³²⁵

320. See, e.g., John Bohannon, *Mechanical Turk Upends Social Sciences*, 352 SCIENCE 1263, 1263 (2016); Gabriele Paolacci & Jesse Chandler, *Inside the Turk: Understanding Mechanical Turk as a Participant Pool*, 23 CURRENT DIRECTIONS PSYCH. SCI. 184, 184 (2014).

321. For an overview of the demographics of online recruitment platforms such as Amazon's Mechanical Turk, see generally Joel Ross, Lilly Irani, M. Six Silberman, Andrew Zaldivar & Bill Tomlinson, *Who are the Crowdworkers?: Shifting Demographics in Amazon Mechanical Turk*, 2010 CHI 2863; Kevin E. Levay, Jeremy Freese & James N. Druckman, *The Demographic and Political Composition of Mechanical Turk Samples*, SAGE OPEN, Jan.–Mar. 2016, at 1, 2.

322. The U.S. population in 2021 was over 331 million. See U.S. CENSUS BUREAU, *supra* note 315.

323. See Ward, *supra* note 294 (“For the 2019 reports, there were 9,494 full-time professors at ABA-accredited law schools . . .”).

324. To further clarify, these individual studies are seen as sufficiently robust with regard to selection effects despite being plausibly more vulnerable to selection effects relative to the current study. For example, consider Adam M. Mastroianni & Daniel T. Gilbert, *The Illusion of Moral Decline*, 618 NATURE 782 (2023), a study published in *Nature*, the world's most cited scientific journal, featuring a meta-analysis of global surveys on morality. The study had a target population of all humans over at least the past seventy years and featured a collective sample of 12,492,983, less than 1% of the global population living today. *Id.* at 782. Compare it to Scott Alexander, *Is There an Illusion of Moral Decline?*, ASTRAL CODEX TEN (June 30, 2023), <https://astralcodexten.substack.com/p/is-there-an-illusion-of-moral-decline> [https://perma.cc/LY7T-DP7E], presenting four major conceptual and methodological critiques of the paper, none of which directly relate to issues of selection effects. Consequently, the current study should likewise be seen as sufficiently robust in this regard, as well.

325. https://georgetown.az1.qualtrics.com/jfe/form/SV_3jA8A6ps7rJu2kS.

3. Ambiguity, Vagueness, and Bias in the Questions

A third concern relates to the design of the study itself—in particular, with the selection and formulation of the questions and answer choices. In particular, one might worry whether using simple labels for the prompts and answer options may have resulted in ambiguity or vagueness in the questions relative to a more elaborated format.

First, we note that this study's questions and answer choices are more elaborated and fine-grained than previous empirical research in philosophy. For example, regarding centrality, previous work in philosophy simply asked participants to rate whether certain views were "central" to the discipline of "philosophy," without defining philosophy or distinguishing between different types of centrality.³²⁶ This Article's study provided both a definition of "legal academy" and distinguished between descriptive and normative interpretations of the question.

The question-and-answer format for part 3 of the survey was likewise more fine-grained than previous work, so as to reduce potential ambiguity and vagueness. For example, in David Bourget and David Chalmers' survey of professional philosophers on questions of philosophy, question options often consisted of a simple phrase as opposed to an elaborated question (akin to the prompt "statutory interpretation" as opposed to the prompt "what approach to statutory interpretation should judges apply?") and did not allow for participants to individually rate multiple theories for a given question.³²⁷ In piloting our own materials, we found some disadvantages to that approach in the context of legal theory and therefore opted for a more elaborated question format, as well as the freedom to rate multiple theories within the same question.

At the same time, we opted against other types of elaboration, such as defining individual legal theories, or providing an even more fleshed-out question prompt. In soliciting feedback on draft materials, we found that such types of additional elaboration did not appear to substantially reduce ambiguity, and in many cases created additional ambiguity, which would have called for further clarification *ad infinitum*. Moreover, the succinct labels that we ended up using for the answer choices in the legal theory section, as well as the areas of law in the centrality section, are standard, agreed-upon labels that are often freely used by those in the legal academy without the need for further elaboration and without causing any serious ambiguity. For example, just as law professors are generally able to read and understand the AALS areas of law when filling out their teaching preferences without the need to clarify what each of these areas mean (and similarly are able to advertise classes with just these areas of law in the title, such as contract, torts, and civil procedure), likewise it seems reasonable to expect that they might be able to easily understand these areas in the context of rating whether they are central.

326. See Turri, *supra* note 96, at 808.

327. See Bourget & Chalmers, *supra* note 163, at 469–70.

We also addressed concerns about vagueness by including “other” responses. Insofar as some scholars found the particular wording of a legal theory question problematic, the survey provided a wide range of options from which to choose an explanation for why it was impossible to rate their view, including “insufficient knowledge,” “question unclear,” “no fact of the matter,” “it depends,” and simply “other.” For some questions, as high as 26% chose among these options, suggesting either ambiguity or lack of familiarity. However, the average non-other response rate was 91.5%, indicating that ultimately, the vast majority of professors were comfortable giving an answer to the vast majority of questions. We see this empirical response to the objection as one of the most important: participants could have expressed that the questions were ambiguous or unclear, but the vast majority did not.

In addition to the question-and-answer-choice format, some might take issue with the substance of the questions and answers themselves, including the selection of (a) the areas of law used in the centrality portion of the survey and (b) the debates included in the legal theory portion of the survey. With regard to (a), the response to this concern is fourfold. First, the areas that we decided to include in the centrality portion of the survey were drawn from two lists that were established independently of this survey with no knowledge of its hypotheses, thus reducing the potential for personal bias or prejudices in selecting areas arbitrarily.³²⁸ Second, the vast number of items on the combined lists allowed us to examine law professors’ beliefs on a wide range of areas as opposed to a more restricted set, thus minimizing the risk of neglecting important but less mainstream areas. Third, given that the two lists are well-known and respected within legal academia, we expected that using these lists would be taken to be a reasonable choice by the legal academy. Fourth, participants were given the opportunity to rate an additional area apart from those presented to them from the two lists, thus further mitigating concerns of inadequacy from the two lists.

Nevertheless, we acknowledge that there are many other important areas that are not reflected in either of the lists that we used. The survey welcomed participants to rate an additional area of their choice, as well as to include written feedback including suggestions of areas to include in future iterations of the survey.

With regard to (b), the legal theory portion of the project, the selection of topics was trickier, given that there is no “official” or unofficially agreed-upon list of important legal theory debates. As mentioned in the methods section, we tried our best to incorporate questions that were of interest to, and representative of, a wide range of perspectives within legal theory. To do so, we circulated our initial draft of questions to a diverse set of U.S. law professors. We received and incorporated feedback from approximately twenty law professors, as well as several academics outside of the legal academy with expertise in survey research, resulting in a final set of twenty-five questions.

328. See *supra* notes 174–75 and accompanying text.

Although this final set of questions forms an eclectic and relatively balanced array of interesting and important legal questions, there are some areas that are over- or underrepresented in the survey. Some areas of law did not lend themselves as well to questions with a sufficiently small list of most common answers. For example, we solicited feedback on several property law questions, but ultimately no question was viewed favorably by the group from whom we solicited feedback.³²⁹ The twenty-five questions included a larger number of criminal law questions, which tended to be more comprehensible by those who were not specialists in that field. Consequently, the set of issues covered does not perfectly reflect all important perspectives and questions, particularly those which cannot be succinctly captured via brief labels. To the extent that the survey is in fact biased against certain topics or views, we hope to address this in future iterations of the survey, while still acknowledging that the current iteration provides unique insight in various ways beyond past work.

4. Aren't the Results Obvious?

Another objection is that the results are obvious, and thus of little value. A critic might contend that an empirical study does not add value if we already suspect the answers. We strongly disagree with this objection.

First, recall the distinction between a hypothesis and evidence in favor of that hypothesis. Even if one were to predict that most professors accept realism, that prediction is different from evidence. We see the study as replacing anecdotal speculation about legal theories' status with (the first-ever) robust empirical study. Even if the results confirm some law professors' predictions, it is better to make claims backed by evidence than speculation. "Obvious" empirical data still have value.

In any case, some of the results are surprising! To assess which results were most surprising, we conducted a second "meta-survey," in which we offered a \$1,000 incentive to law professors (or others) who could most accurately predict the results of the first study. Unsurprisingly, on both parts of the meta-survey (legal theory and legal academy), all individual predictions were imperfect. Even the wisdom of the crowd (that is, average ratings from the meta-survey) was imperfect. For example, some central areas were predicted as ranked nearly forty places lower (for example, legislation).

Beyond this empirical confirmation of the results' surprisingness, there are other reasons in favor of the results' non-obviousness. First, some claims in the literature conflict. If we are "all" textualists³³⁰ and textualism is also "dead,"³³¹ surely it is not obvious what percentage of legal experts endorse textualism. Second, some claims in the literature did not bear out. For example, prison

329. For example, one candidate property law question asked about the justification of property and included as theories labor theory, occupation theory, and economics.

330. See generally, e.g., Siegel, *supra* note 3.

331. See generally, e.g., Molot, *supra* note 9.

abolition is commonly described as wildly unpopular,³³² but a surprising 13% of law professors favored the view. Animal personhood is another view commonly thought to be unpopular,³³³ but a striking 30% of law professors favored that view!

Finally, there are three larger patterns that are surprising. Most participants registered *non-other responses* to most legal theory questions. At the start of the survey, we considered (and worried about) the possibility that law professors would quibble with the survey questions (often answering “other” or “unclear”), or express radical context-sensitivity (often answering “it depends”). We were surprised by the degree to which many participants frequently endorsed non-other answers. In law school, the right answer is often “it depends,” but for legal theory apparently not.

Another surprising pattern was *theory pluralism*. Many participants endorsed multiple views per question. For example, some participants endorsed both “textualism” and “purposivism” regarding statutory interpretation. Of course, under some theories of textualism, it is not possible to be simultaneously a textualist and a purposivist. But this pattern of judgment suggests that many legal experts disagree. Across the legal theory survey, we were surprised by how often participants registered pluralistic patterns of answers and think that this offers an interesting lesson about the nature of legal theory.

A third surprising pattern is in the legal academy results. There were many, many more “under central” areas than “over central” areas. Professors registered views implying that many areas should be more central in the academy today than they currently are: legislation, legal drafting, poverty law, local government law, natural resources law, equity, Native American law, energy law, consumer law, legal research and writing, critical race theory, election law, comparative law, welfare law, and dozens of other areas.

5. Does the Survey Measure What Law Professors Actually Believe, or Merely What They Say They Believe?

There may be a gap between what people *say* they believe (in a poll or in ordinary conversation) and what they *actually* believe. As a salient example, consider recent electoral polling. Self-reports about whom citizens will support in an election do not always perfectly mirror citizens’ voting-day behavior.³³⁴

This, too, is an important concern that could be raised about any survey study. As one point of optimism, consider that the weighted average error for polls within twenty-one days of an election (compared to actual voting behavior) has been roughly 6% (including all sources of error beyond self-reporting bias) going

332. See McLeod, *supra* note 11.

333. See Bryant, *supra* note 10.

334. See, e.g., David Leonhardt, *Are the Polls Wrong Again?*, N.Y. TIMES (Sept. 12, 2022), <https://www.nytimes.com/2022/09/12/briefing/polling-midterms-republicans-democrats.html> (“The final polls in the 2020 presidential election overstated Joe Biden’s strength, especially in a handful of states.”).

back to 1998.³³⁵ Even if one were to consider this to be a large number in the case of election polls (because many races tend to be relatively close), a similar error rate (or even a substantially higher one) in our own study would not be nearly as concerning for drawing analogous conclusions, because, for example, the vast majority of legal theories had an endorsement rate more than 6% higher or lower than 50%.

Moreover, there are good reasons to expect that this source of error is less of an issue in our study. The study is more anonymous than live call-in electoral polling. Our study's method is also identical across participants, with less variation than live call-in polling. Moreover, unlike our survey, election polling tries to predict future beliefs rather than current ones. Additionally, our response rate and sample size as a proportion of the target population is larger.³³⁶ Finally, relatively large election poll errors do not seem to affect same-year issue polls,³³⁷ and our survey topic is arguably more similar to an issue poll.

Beyond this empirical response, we also offer a theoretical one. The objection discussed here has a complex philosophical dimension: what is "belief" in a legal theory view, and what is good evidence of it? Imagine that there was a systematic difference between (a) our survey result and (b) comparable "real-world behavior." For example, we find that about (a1) 17% of participants report favoring originalism, while 76% report disfavoring it (about 7% entered "other"). This ratio (17-to-76) might differ from (b1) the ratio of law professors that have published favorably about originalism to law professors that have published expressing disfavor, or even (b2) the proportion of law professors who would identify in academic or public settings as "originalists." All of these facts (a1, b1, b2) are evidence of what law professors believe, but we think that the data from this *anonymous* survey provide especially useful information. Various incentives could distort real-world behaviors away from a person's "true belief": incentives to publish articles in favor of views that are consistent with one's politics, incentives to identify openly with views that one's colleagues or superiors share, and so on. The anonymous survey format may not be entirely free from these distortions, but we think it is plausible that it is substantially less susceptible to them.

335. Nate Silver, *The Death of Polling Is Greatly Exaggerated*, FIVETHIRTYEIGHT (Mar. 25, 2021, 10:00 AM), <https://fivethirtyeight.com/features/the-death-of-polling-is-greatly-exaggerated/> [<https://perma.cc/777Q-RAV7>]. Note that this calculation excludes polls that are banned by FiveThirtyEight.

336. See, e.g., Courtney Kennedy & Hannah Hartig, *Response Rates in Telephone Surveys Have Resumed Their Decline*, PEW RSCH. CTR. (Feb. 27, 2019), <https://www.pewresearch.org/shortreads/2019/02/27/response-rates-in-telephone-surveys-have-resumed-their-decline/> [<https://perma.cc/66JX-6MRW>] (noting that response rates dipped to 6% for call-in polling in 2018 after holding steady at 9% for several years); AM. ASS'N FOR PUB. OP. RSCH., TASK FORCE ON 2020 PRE-ELECTION POLLING: AN EVALUATION OF THE 2020 GENERAL ELECTION POLLS 46 (2021) (showing sample sizes from specific election polls).

337. See Scott Keeter, Nick Hatley, Arnold Lau & Courtney Kennedy, *What 2020's Election Poll Errors Tell Us About the Accuracy of Issue Polling*, PEW RSCH. CTR. (Mar. 2, 2021), <https://www.pewresearch.org/methods/2021/03/02/what-2020s-election-poll-errors-tell-us-about-the-accuracy-of-issue-polling/> [<https://perma.cc/5692-KLAT>].

B. THE STUDY'S IMPLICATIONS

1. Taking Stock in Legal Theory Debates

A primary motivation of this study was the mismatch between the volume of legal theory scholarship and the dearth of documented academic consensus resulting from this scholarship. Academics have long debated natural law versus positivism, realism versus formalism, originalism versus living constitutionalism, and many other theories.³³⁸ One purpose of these debates (perhaps the primary purpose) is to convince other jurists of the merits or flaws of specific views. As such, scholars often make descriptive claims about the status of these debates (“we are all X,” “Y is unpopular”), but there had previously been no systematic evaluation of the legal academic community’s propensity to endorse or reject these views. By surveying legal academics on their beliefs regarding the most often-debated questions, this Article’s study provides unique insight into the status of these debates beyond mere anecdotal speculation.

For example, the study reveals that some of the legal theory views that have been heralded as uniformly accepted are in fact among the least endorsed. Regarding constitutional interpretation, for instance, although scholars repeatedly state that “we are all originalists now,”³³⁹ we found that originalism was the least popular approach to constitutional interpretation, with just 17% of scholars favoring it as the approach that judges should apply when interpreting the Constitution (76% disfavoring it; 7% other). Whereas others herald pluralism as by far the most popular approach to constitutional interpretation,³⁴⁰ it turns out that pluralism is the second least-endorsed theory of constitutional interpretation, behind both living constitutionalism and common law constitutionalism.

How about statutory interpretation—are we really all textualists now, or has textualism fallen? The short answer, according to our study, is neither. On the one hand, approximately 60% of law professors leaned towards or accepted textualism, suggesting that, unlike originalism, textualism is a well-regarded approach to interpretation and not exclusively endorsed by those on one side of the political spectrum.³⁴¹ On the other hand, the fact that nearly 40% of law professors did not endorse textualism, and that purposivism and pragmatism both had higher levels of endorsement, suggests that textualism is neither universally endorsed nor even the most commonly endorsed approach to statutory interpretation. Moreover, the fact that purposivism and textualism both had majority endorsement also indicates that many scholars do not view these theories as mutually exclusive, disagreeing with scholars who maintain that between the two exists a “meaningful

338. See *supra* Part II.

339. *E.g.*, Solum, *supra* note 2.

340. See Berman, *supra* note 140, at 140.

341. Results in this Section can be found in *supra* Table 4. That said, textualism is still endorsed at a higher rate among conservatives than liberals. However, this correlation is lower than the correlation between politics and originalism, and overall textualism has a much higher endorsement rate among liberals than does originalism.

distinction.”³⁴² It seems many of the law professors surveyed agree that it is possible to be both a textualist and purposivist.

Our study clarifies similar confusion with regard to the realism versus formalism debate. Although scholars have long echoed the refrain that “we are *all* realists now,”³⁴³ while others have described realism as a jurisprudential “joke,”³⁴⁴ that “even at its heyday had merely a foothold in a handful of law schools,”³⁴⁵ the results of our study present a much more nuanced picture. Although the majority of law professors endorsed realism as the best explanation of how judges resolve most cases at both the trial and appellate level, the endorsement was by no means universal. A significant minority of scholars endorsed formalism at the trial level, and nearly half endorsed formalism at the appellate level. The fact that there were fewer proponents of realism at the appellate level than the trial level further undercuts the usefulness of general claims regarding the degree of acceptability of realism, as well as the implicit dismissal of formalism as a viable account of judicial decisionmaking according to members of the legal academy.

The consensus as revealed by our study regarding the natural law versus positivism debate was more definitive. Just over one-fifth of participants (21.4%) endorsed natural law theory as the best account of the nature of law, complicating the notion that natural law is undergoing a “revival”³⁴⁶ while lending credence to the claim that it is and/or has been in “decline”³⁴⁷—at least compared to some hypothesized past time in which the majority of experts endorsed natural law theory. In contrast, 73.8% of scholars endorsed positivism as providing the best account of the nature of law, challenging the claim that “positivism . . . is dead.”³⁴⁸

In other cases, the results of our study serve to validate certain empirical claims of the status of debates, adding an additional degree of quantitative precision and nuance to previous assertions of endorsement or rejection of particular positions. For example, our results support the claim that “strict liability” is no longer championed in the legal academy, as just over 20% of law professors leaned towards or accepted strict liability as the appropriate default standard for liability in accidents, whereas approximately 80% of law professors endorsed negligence as the appropriate default standard.

Other legal views that are commonly seen as extremely unpopular received some support. Just over 30% of law professors considered some subset of non-human animals to be legal persons. And prison abolition, sometimes characterized as an “unfathomable” view,³⁴⁹ was favored by 13% of law professors. This is

342. John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70, 70, 100–01 (2006).

343. Green, *supra* note 152, at 1917.

344. Leiter, *supra* note 154, at 274.

345. Posner, *supra* note 44, at 1320.

346. Citron, *supra* note 149.

347. BANNER, *supra* note 145.

348. Patterson, *supra* note 150.

349. McLeod, *supra* note 11, at 1160.

no trivial number. In fact, even taking the lower bound of the 95% CI for the endorsement rate of prison abolition as a proxy for the number of prison-abolitionist faculty, back-of-the-envelope estimates suggest that an entering law student is 57% likely to have at least one prison abolitionist as a law professor in the first year and 93% likely to have one as a law professor by the end of three years.³⁵⁰

Some of the legal theories included in the survey were without widespread empirical claims regarding their status within the academy. In these cases, our results offer equally informative, novel, and useful evidence of the propensity of law professors to endorse these views. In some cases, our results reveal widespread consensus in favor of one view over another. For example, in the context of corporate law, the majority of law professors endorsed stakeholder theory as their preferred approach to corporate governance over shareholder primacy, indicating that law professors by and large do not believe that corporations should primarily serve only the interests of shareholders. And in the context of contract interpretation, most law professors endorsed contextualism as their preferred theory over formalism/textualism.

For many other legal theories, however, the results reveal not so much a consensus in favor of one view over another view but rather a consensus in favor of a pluralism of views. This was perhaps most evident when evaluating the goals of different areas of law, as a substantial majority of law professors considered rehabilitation, deterrence, and incapacitation to be appropriate goals of criminal punishment; autonomy, reliance, fairness, efficiency (and/or wealth and/or welfare), and consent as appropriate goals of contract; corrective justice, compensation, efficiency (and/or wealth and/or welfare), civil recourse, deterrence, and expressing or constructing community norms as appropriate goals of tort; and justice (and/or equality and/or fairness), efficiency (and/or wealth and/or efficiency), and rule of law values (for example, predictability) as law's primary purpose. This was also true of professors' views regarding how the law should conceptualize reasonableness, as the majority of participants endorsed both what is ordinary or customary and what is good (for example, just or fair), as well as professors' preferred approach(es) to class participation, as the majority of participants endorsed cold calling, cold call panels, and "other" approaches (many of which wrote in "volunteer").

Finally, in a few cases, the results reveal much less of a consensus in favor of any answer. Perhaps the clearest example of this was in the case of participants'

350. The lower bound of the 95% CI for the endorsement rate of prison abolition is 10%. This figure would imply that 90% of law professors are not prison abolitionists (rejecting the view or holding an "other" attitude). Assuming (a) a first-year law student has eight different courses, one each with a different professor, (b) the probability of having one law professor who is a prison abolitionist is independent of the probability of having another law professor who is a prison abolitionist, and (c) first-year law professors are representative of law professors as a whole, the following is the joint probability that all of these law professors are NOT prison abolitionists: $.9^8 \cong .43$. The probability that at least one IS a prison abolitionist is one minus this probability: $1 - .43 = .57$. Thus, the percent chance that at least one first-year law professor is a prison abolitionist is approximately 57%.

views regarding how the law should generally conceptualize consent, as roughly half of participants (49.7%) endorsed mental state and roughly half of participants (including some of the same) endorsed performative (53.9%). To a lesser extent, this was also true with regard to how the law should conceptualize gender. Whereas a clear majority of participants endorsed “social” for how the law should conceptualize race (74.5%), roughly similar amounts endorsed “psychological” (59%) and “social” (62.3%) in the case of gender.

Looking at these results as a whole, our study reveals interesting information about how law professors view both the nature of law more generally, as well as the sophisticated (and perhaps surprising) relationship between different areas of law. For example, the correlation results indicate that those who endorsed efficiency as the primary purpose of law were much more likely to endorse efficiency as a normative goal of tort and contract law, as well as efficiency as an appropriate consideration in determining reasonableness judgments. This suggests that law professors often have a unified sense of the normative driving force of law as a whole as opposed to conceptualizing different areas of law as achieving disparate goals. At the same time, professors’ empirical views regarding a mechanism’s capacity to achieve these goals in one area of law do not seem to necessarily inform their views regarding the same mechanism’s capacity to achieve those goals in another area of law, evidenced by the fact that law professors by and large endorsed negotiation and settlements as the best mechanism to resolve civil disputes but rejected plea bargains as the best mechanism to resolve criminal disputes.

Other relationships are less straightforward and intuitive to unpack when taking into account the legal theory results alone and suggest the influence of demographic factors or area of specialization. For example, those who believed the law should conceptualize gender as biological were much more likely to believe incarceration as criminal punishment should be preserved “as-is” and that judgments of what is reasonable should be informed by what is ordinary or customary. Similarly, those who endorsed shareholder primacy as the best approach to corporate governance were more likely to endorse originalism as the best approach to constitutional interpretation and capital punishment as morally permissible. The fact that those who endorsed these views were all more likely to lean conservative or specialize in law and economics or business suggests that endorsement of particular legal theory views is sometimes closely tied to one’s political leanings or disciplinary training.

At the same time, the results are fairly robust to demographic differences; the vast majority of theories that were endorsed (or rejected) by liberals were also endorsed (or rejected) by self-identifying conservatives. The same was true of other significant demographic categories, such as gender, race, or school rank. The fact that many of the results are stable across demographic differences indicates that the primary determinant of law professors’ views is law-specific expertise as opposed to other factors (for example, gender or politics).

2. What Views Should We Hold?

The first set of implications of this study relates to uncovering the ground truth about which theories legal academics believe to be true, as discussed above. We think of this as a type of legal theory sociology.

Here, in the second set of implications, we argue—more provocatively—that the results also bear on the validity of the theories themselves. Although legal theory questions certainly should not be settled by appeal to whatever 51% of law professors report to accept, expert consensus in other fields counts as a useful datum in favor of strongly supported propositions.³⁵¹ Several reasons dictate in favor of treating expert consensus of legal theory issues the same way.

Consider, for example, that some of the legal theory issues surveyed concern empirical facts about the world. The realism versus formalism debate, for example, is an empirical debate about the factors that influence how judges resolve cases, at least in the manner presented in the study. Given that law professors plausibly have insight into the factors that influence how judges resolve cases, the fact that most law professors believe that realism is the best explanation of how judges resolve most cases at both the trial and appellate levels provides some evidentiary weight in favor of this being the case. At the same time, these results might actually lower one's confidence in the truth of realism if one came into the study having unquestioningly accepted the refrain that "we are all realists now." Similarly, the fact that the consensus was less strong at the appellate level than at the trial level should suggest that the evidence in favor of realism at the appellate level is likewise less strong than at the trial level.

The answers to many other questions likewise hinge on an understanding of either legal doctrine itself or the factors that influence the creation or validity of legal doctrine. Some examples include (a) whether natural law theory or positivism best describes the nature of law; (b) whether international law counts as "genuine" law; (c) whether capital punishment is ever legally permissible anywhere in the United States; (d) whether constitutional "hard cases" have a right answer or are indeterminate; and (e) whether particular groups are considered persons under the law. Here again, there are plausible reasons to suppose both that the law professors included in our survey have expertise on these issues and that expert consensus in favor of a particular view with respect to these issues serves to provide weight in favor of that view. Consequently, the fact that our results for these questions reveal broad consensus in favor of particular views—that positivism, not natural law theory, is the best description of the nature of law; that international law is not only "law-like" but counts as genuine law; that capital punishment is legally (though not morally) permissible; and that constitutional hard cases do not have a right answer but are instead always indeterminate—should serve to provide some evidentiary weight in favor of those views.

One type of legal theory question where some might doubt whether law professor consensus offers any weight is questions that contain normative components.

351. See *supra* note 93 and accompanying text.

For example, while it might seem straightforward how legal training would equip law professors with privileged insight regarding how judges resolve cases, it might seem less straightforward how legal training would equip law professors with the same privileged insight into how judges *should* resolve cases. It is important to note, however, that many of the normative questions included in our survey still have a descriptive component to them, about which law professors are likely to have a degree of expertise. For example, consider the question of what is considered the best legal mechanism to resolve criminal prosecutions. In answering this question, one must start with both a normative premise (for example, “the goal/purpose of the criminal prosecutorial system should be to achieve X”), and a descriptive premise (for example, “the mechanism that best achieves that goal/purpose is generally Y”).

Even if one believes that law professors are in no better position than non-professors to judge what sort of evaluative criteria should be satisfied by the criminal prosecutorial system, law professors—in virtue of their domain expertise regarding the substance and procedure of the law—are likely to have an especially informed view regarding the best legal mechanism that would achieve this aim, and therefore are plausibly likely to have an informed position overall regarding what is generally the best legal mechanism to resolve criminal cases. This reasoning similarly applies to other debates covered in our study, including (a) what is the best mechanism to resolve civil disputes; (b) what should be the default liability standard for accidents; (c) what approach to corporate governance should guide public corporations; (d) which considerations should inform legal assessments of law; and (e) how the law should conceptualize consent, gender, and race. In these cases, expert consensus towards a view may still provide weight in favor of the view, albeit to a potentially more attenuated degree than some of the views outlined above.

How about normative questions that are less dependent on empirical facts to which legal experts are more likely to have access, such as the primary purpose that law should serve? Some might wonder whether law professors have any insight at all into these issues beyond a layperson’s knowledge. Even in these cases, however, some might take consensus as evidence, just as some consider the consensus of professional philosophers regarding a particular moral view as evidence in favor of that view.³⁵² That is, given law professors’ training in argumentation, exposure to complex normative legal arguments, and freedom to dedicate oneself more seriously to the reflection of normative legal issues, one might likewise conclude that legal academics are substantially more well-informed on normative legal issues than laypeople. If so, then by extension, one would be more likely to take seriously the results of the purely normative questions in our survey as legitimate evidence in favor of a particular view.

Of course, there are reasons to doubt the above argument. Some have argued that the legal system is or ought to be built on ordinary concepts accessible to

352. See Peter Singer, *Moral Experts*, 32 ANALYSIS 115, 117 (1972).

laypeople.³⁵³ For example, laypeople participate in the legal process in various important ways,³⁵⁴ such as by serving on a jury in a criminal or civil trial, signing contracts, or electing (or even serving as) the officials who create and/or enact law (congresspeople and, in some states, judges).³⁵⁵ Laypeople also comprise the vast majority of those affected by the legal system, as less than 1% of the United States population are lawyers.³⁵⁶ If so, one might instead conclude that valuations of what primary purpose law should serve, or what considerations should inform judgments of reasonableness, should be determined by laypeople as opposed to legal experts.³⁵⁷

However, even if one doubts the validity of deriving jurisprudential inferences based on expert consensus and instead views the utility of some or all of these results as mainly sociological in nature, there are still reasons to acknowledge the jurisprudential value of this sociological–jurisprudential contribution. For

353. See, e.g., Kevin Tobia, *Law and the Cognitive Science of Ordinary Concepts*, in *LAW AND MIND: A SURVEY OF LAW AND THE COGNITIVE SCIENCES* 86, 86 (Bartosz Brozek et al. eds., 2021) (“Laypeople’s common-sense understandings, or ‘ordinary concepts’, are at the root of many important legal concepts—ones about the mind, like intent and knowledge, but also a host of other central legal concepts including consent, reasonableness and causation.”); James A. Macleod, *Ordinary Causation: A Study in Experimental Statutory Interpretation*, 94 *IND. L.J.* 957, 980–82 (2019) (noting that many traditional jurisprudential arguments appeal to “rule of law values” such as fair notice, and that many jurists claim, for example, “that the law’s concept of causation is the man on the street’s concept of causation”); Kevin Tobia, *Experimental Jurisprudence*, 89 *U. CHI. L. REV.* 735, 765–70 (2022) (arguing against the “myth” that experimental jurisprudence research should study legal experts as opposed to laypeople); Eric Martínez, Francis Mollica & Edward Gibson, *Poor Writing, Not Specialized Concepts, Drives Processing Difficulty in Legal Language*, *COGNITION*, July 2022, at 1, 1 (finding that laypeople’s difficulty in understanding legal documents can be largely attributed to “working-memory limitations imposed by . . . poor writing . . . as opposed to a mere lack of specialized legal knowledge” and arguing that these findings “undermine the specialized concepts account of legal theory, according to which law is a system built upon expert knowledge of technical concepts”); Eric Martínez, Francis Mollica & Edward Gibson, *Even Lawyers Do Not Like Legalese*, *PROC. NAT’L ACAD. SCI. U.S.*, May 30, 2023, at 1, 1 (finding that lawyers, like laypeople, struggled to understand legal content written in a complex register relative to a simplified register, and that lawyers rated simplified legal documents as “preferable to legalese contracts on several important dimensions”).

354. See Roseanna Sommers, *Commonsense Consent*, 129 *YALE L.J.* 2232, 2237 (2020) (noting that “[l]aypeople sit on juries and on campus sexual-misconduct panels,” where they “are frequently entrusted to make decisions in cases involving consent, with little guidance from the law,” and “are also defendants in criminal cases” where they “have a right to be put on notice that their conduct is unlawful ‘in language that the common world will understand’” (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931))).

355. See Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 *COLUM. L. REV.* 1287, 1287 (2022) (finding that “thirty-two states allow at least some low-level state court judges to adjudicate without a law degree”); Larry C. Berkson, *Judicial Selection in the United States: A Special Report*, 64 *JUDICATURE* 176, 178 (1980) (finding that approximately half of the states appoint judges and half elect them).

356. There were 1,327,910 active attorneys in the United States in 2021. *ABA National Lawyer Population Survey 2021*, ABA [https://web.archive.org/web/20220206005418/https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf] (last visited Feb. 6, 2023). In 2021, the U.S. population was over 331 million. See U.S. CENSUS BUREAU, *supra* note 315.

357. That said, our results suggest that in many cases experts and laypeople align on these topics. For example, similar to our study, previous work has found that lay judgments of what is reasonable seem to be informed both by considerations of what is “good” and of what is “ordinary.” Tobia, *supra* note 132, at 295–96.

example, sociological beliefs are often used in determining which views one can presuppose, attend to, or ignore. Without the data from our study, one might claim or assume that we are “all originalists” and feel less likely to include an antioriginalist argument in their brief or paper, even if they genuinely believed it would strengthen the overall argument. In this regard, insofar as sociological beliefs play a role in jurisprudential and legal argumentation, and insofar as their accuracy contributes to their rhetorical persuasion, our results can allow scholars to write better, more persuasive legal arguments by making the sociological beliefs that fuel those arguments more accurate.

In sum, expert consensuses about debates within the field generally count as *prima facie* reasons in favor of those consensuses. Law professors are experts about legal theory, so law professors’ consensuses about legal theory debates count as *prima facie* reasons in favor of those consensuses. The results here do not settle these legal theory debates; for example, there may be other arguments that are more convincing than expert consensus. And a *prima facie* reason in favor of a view might be rejected upon further analysis. For example, some theorists might argue that consensus explainable primarily or entirely by evaluators’ political views should not count in favor of a view. We do not have the space here to treat this important question in detail, but we welcome further debate about it. This Article’s data (for the first time) make this type of debate possible by providing evidence about which views are more or less strongly associated with politics and other demographic factors.

3. Defining the Legal Academy

Another major motivation for this study was to gather more information regarding how the legal academy sees itself. As noted in the Introduction and background Sections, legal scholars generally make claims about the status and centrality of certain subdisciplines: what are the most central areas (for example, constitutional law) and methods (for example, law and economics) to the current academy; and should other areas (for example, legislation) and methods (for example, critical race theory) be more central? Our survey provides important evidence about the legal academy’s self-conception, as well as a check on empirical claims regarding this self-conception.

One aspect of the legal academy’s self-conception as revealed by the survey results is that scholars tend to perceive relatively few areas as currently central to the legal academy, and most other areas as merely peripheral. For example, the mean descriptive rating for all areas was 3.93 out of 10, substantially lower than the midpoint of our centrality scale. Scholars rated just 22.1% (23 out of the 104) of the areas included in our survey as currently central to the legal academy as indicated by a mean score of greater than five out of ten, while rating the remaining 77.9% (81 out of 104) areas as currently not central. This indicates a potential difference in the self-conception of law as compared to other disciplines, as

previous work in philosophy has shown that philosophers consider most areas of philosophy to be central to the discipline.³⁵⁸

Some of the areas that were rated as central may come as no surprise; constitutional law, for example, was rated as currently central with a mean rating of 9.39 out of 10, whereas admiralty law had a much lower centrality rating of 1.06. However, the relative centrality of some areas as revealed by our study may come as a surprise given some of the empirical claims outlined earlier. For example, contract, torts, law and economics, and corporate law—all areas whose decline has been heralded by scholars in the legal academic literature—were all among the few areas consistently perceived as currently central by scholars.

The normative centrality results in part show that many of these areas not only are currently central to the legal academy but should be currently central to the legal academy as well. More generally, the fact that there was a fairly tight correspondence between the descriptive and normative centrality ratings suggests that the legal academy is fairly content with its current self-conception.

At the same time, our results uncover differences between the legal academy's current self-conception and its preferred self-conception. First, the fact that many areas had significantly higher levels of normative centrality than descriptive centrality indicates that there are many areas that law professors believe are currently "under central," such as natural resources, regulated industries, legislation, Native American law, energy law, poverty law, and consumer law. At the same time, our results indicate that there are a couple of areas that law professors view as "over central," including constitutional law and appellate law. Moreover, the fact that law professors rated more areas as normatively central than descriptively central indicates that law professors would be more satisfied with a legal academy in which more areas are central than currently. On the other hand, the fact that mean normative centrality ratings were still below five indicates that law professors believe that most areas of law should not be central to the legal academy.

In terms of the factors that determine the legal academy's self-conception, our results reveal that, among the demographic variables that we measure, the most significant factor is one's area of specialization. In particular, law professors gave significantly higher centrality scores to areas that were among their areas of specialization. This was the case for descriptive centrality, normative centrality, and the difference between descriptive and normative centrality. This indicates that, relative to areas that are not within their area of expertise, law professors believe that their own areas of specialization (a) are more central than areas that are not within their areas of specialization; (b) should be more central than areas that are not within their area of specialization; and (c) should be more central than they currently are relative to areas that are not within their area of specialization.³⁵⁹ At

358. See Turri, *supra* note 96, at 809.

359. As described in the methods Section, *supra* Section III.A, participants completed the centrality portion of the survey prior to filling out their areas of specialization and were not permitted to go back and change their centrality ratings after having filled out their areas of specialization. This suggests that

the same time, the fact that there were few significant correlations between centrality scores and variables such as age, politics, race, and gender indicates that law professors' feelings regarding the legal academy are more affected by their training and expertise within the academy than other self-identifying demographic factors.

4. How Should the Academy Develop?

Law professors are experts about the legal academy. As such, our results provide insight not only into law professors' views on these matters but also into the nature of these matters themselves, both in terms of (a) the current state of the legal academy as it stands and (b) the state of the legal academy as it ought to be.

With regard to (a), our study defined the term legal academy broadly in terms of "what occurs within law schools, including legal study, education, practice, and scholarship."³⁶⁰ Given that law professors have plausible insight into what goes on inside their respective law schools, law professors have collective insight into which areas are most central within the legal academy. Consequently, the descriptive centrality ratings law professors gave with regard to different areas of law should be taken as evidence of those areas' centrality as opposed to law professors' mere subjective attitudes about their centrality. If so, our results directly reveal that the centrality of the legal academy as it currently stands is defined by (i) a handful of dominant subdisciplines, including constitutional and criminal law, contracts, civil procedure, torts, and corporations, and (ii) a much larger subgroup of subdisciplines in the periphery.

With regard to (b), normative centrality, similar to many of the issues covered in the legal theory section of the survey, the question of whether a particular area of law *should be* central to the legal academy is laden with both normative and descriptive considerations. In answering which areas of law should be central, one must start with (i) a normative premise (for example "Y criteria should determine centrality") and (ii) a descriptive premise (for example "the centrality distribution Z is most likely to satisfy Y criteria"). Even if one believes that law professors are in no better position than non-professors to judge what sort of purpose the legal academy should serve, law professors do seem plausibly more likely to have a more informed empirical stance regarding which areas of law should be most central in order to help the legal academy serve this purpose. Law professors are therefore plausibly more likely to have a more informed position overall regarding which areas of law should be most central.

For example, imagine that Professor X believes that the purpose of the legal academy should be to train future lawyers who will defend the rights of marginalized groups. Professor X also believes that in order to best achieve this purpose, areas of law such as Native American law and poverty law should be more central

the effect of specialization was not the result of some priming effect. Rather, law professors truly believe their areas of specialization to be more central than other areas outside their specialization, and even more so that they should be more central than other areas.

360. Appendix, *supra* note 34, at 7; *see also supra* Section I.A.

to the legal academy, whereas areas such as corporations and business associations should be less central. When asked to rate whether each of these areas is and should be central to the legal academy, Professor X rates Native American law and poverty law as under central and rates corporations and business associations as over central. Even if it is unclear whether Professor X is in a more privileged position to know whether the purpose of the legal academy should be to defend the rights of marginalized groups, it does seem reasonable to suppose that Professor X has privileged insight into which areas of law should be prioritized in the legal academy in order to defend the rights of marginalized groups.

If so, the fact that law professors by and large rated areas such as Native American law and poverty law—as well as areas such as natural resources, regulated industries, legislation, energy law, and consumer law—as significantly less central to the legal academy than they should be plausibly provides weight in favor of the view that these areas should be more central moving forward. Conversely, the fact that law professors rated other areas as more central than they should be may suggest that these areas should be somewhat less central moving forward.³⁶¹

5. Predicting the Future of Theory and the Academy

In addition to documenting legal academics' current views regarding which areas of law are most central and which legal theories are most plausible, the survey also provides evidence of future trends in the academy with regard to these views. As Richard Posner explains, "Academic law is an intellectually insecure field. It lacks a theoretical gyroscope and therefore wobbles, grabbing at the methods and insights of other fields while buffeted by the political and ideological currents of the day."³⁶²

The results about which areas should be central provide evidence about the direction in which members of the legal academy believe the academy should develop. Insofar as many of those members have the power to change the academy, these results provide a potential window into the academy's future.

Additionally, by examining the views of the younger cohort of participants relative to the older cohort of participants, we may gain insight into which legal theories may persist—or grow—in influence over time. With regard to centrality, age was significantly correlated with the normative centrality ratings of two areas of law: constitutional law and professional responsibility. Older faculty were significantly more likely to give higher ratings to both of these areas of law than

361. This position is bolstered by the fact that the areas that were rated as under central were also areas that were underrepresented among participants' specialization areas. *See supra* Table 2 and Figure 3. Given that participants tended to rate their own areas as more under central than other areas, one might predict that under central areas would be areas that were overrepresented among participants' specialization areas. If so, a confounding factor would be whether participants truly viewed these areas as under central based on an object appraisal or based on their own personal biases. Instead, the fact that these areas were rated as under central and underrepresented among participants lends credence to the idea that participants' ratings were driven by experience and expertise as opposed to personal bias.

362. Posner, *supra* note 75, at 953.

were younger faculty. Given that constitutional law was rated as the most over central area in the legal academy, this provides further evidence that its centrality may decline in the future (at least compared to its current status as the most descriptively central area).

With regard to legal theory, age was significantly positively or negatively correlated with the endorsement of nineteen different legal theory views, suggesting that, insofar as the views of the current young faculty are at least somewhat predictive of the views of future faculty as a whole, the endorsement levels for a substantial portion of the legal theory views are likely to change as the composition of the legal faculty changes. In some cases, these hypothetical changes would appear to solidify existing consensus; for example, younger faculty are even more likely than the sample as a whole to endorse positivism as the best account of the nature of law; to endorse “social” as how the law should generally conceptualize race; to reject strict liability as the default liability standard for accidents; and to reject plea bargaining as the best mechanism for resolving a criminal prosecution. In other cases, these changes would imply a sort of resurgence in currently rejected views; younger faculty were more likely to endorse originalism as the best theory of constitutional interpretation, for example. Finally, some of these changes would potentially resolve a current deadlock,³⁶³ as younger faculty were less likely to endorse “mental state” as how the law should generally conceptualize consent.

6. Demographics

The above implications primarily focused on the substantive parts of the survey. A final contribution of the study relates to the demographic data we collected. While the AALS releases annual reports that include law schools’ reports of their respective faculty’s gender and racial composition, the data collected in this survey provide insight into many other factors, such as disability, sexual orientation, politics, and area(s) of specialization. Moreover, we discuss analyses of the relationship between demographic factors and participants’ views of legal theory.

As noted in the limitations section, the gender and racial composition of the participants in this survey is similar to the official numbers released by the AALS.³⁶⁴ Although this lends credence to the idea that our sample is representative of the legal academy, it also underscores that neither the legal academy nor the sample of professors in our survey are representative of the United States population as a whole. For example, whereas the 2021 United States Census reveals that 43.1% of the United States population identifies as Latino, Black, Asian, Native Hawaiian and Pacific Islander, Native American, or multi-racial,³⁶⁵ this number in our survey was just 14.4%. And whereas 50.5% of the United States

363. Note that by “current deadlock” we refer to legal theory debates where there is not a clear consensus in favor of one view over another.

364. See *supra* Section IV.A.2.

365. See U.S. CENSUS BUREAU, *supra* note 315.

population self-identifies as female,³⁶⁶ about 29.7% of our sample identified as female.

With regard to categories for which there is no official, public demographic data available, our results suggest other ways in which the legal academy is unrepresentative of the population at large. For example, with respect to politics, Gallup polling data from 2020 indicate that 36% of Americans identify as conservative, 35% identify as moderate, and 25% as liberal.³⁶⁷ In our sample, 8.5% identified as conservative, 13.6% identified as moderate, and 76.3% identified as liberal, indicating that the legal academy leans heavily liberal. With regard to self-reported sexual orientation, 10.8% of our T50 sample self-identified as non-heterosexual, as compared to 7.2% of the general population in 2020.³⁶⁸

The study did not collect fine-grained information regarding participants' age out of concern for privacy but rather asked participants to report their age in terms of a ten-year range (for example, 40–49). Even so, our results suggest that the legal academy skews fairly old: 58.5% of T20 faculty and 57% of T50 faculty are over fifty years old, while none of the faculty from either list are under thirty. Perhaps unsurprisingly, the survey's population is also United States-centric. All but two participants across the T20 and T50 lists resided inside the United States.

In addition to general demographic data, our results also provide new data regarding the legal training and expertise of the members of the legal academy. For example, 96.1% of T50 law professors had a J.D., while a remaining 3.5% had a foreign equivalent, indicating that the legal academy is composed almost entirely of lawyers trained in the United States. On the other hand, our results indicate a great diversity in the number of areas of specialization among the faculty. All but two (aviation and space law, and admiralty law) of the 104 areas of specialization included in our survey were represented among the faculty in our sample. At the same time, there was some lopsidedness in the areas in which law professors tend to specialize: 14.6 times as many professors claimed to specialize in constitutional law compared to Native American law, and 6.9 times as many professors claimed to specialize in constitutional law compared to poverty law.

As noted in previous sections, most results were robust to demographic differences.³⁶⁹ At the same time, many of these demographic categories had an impact on individual participant responses. Law professors were more likely to rate an area as central if it was within their specialty; conservative law professors were more likely to endorse originalism and shareholder-centric corporate governance; males were more likely to reject abolishing incarceration as a form of criminal punishment; and older faculty were more likely to rate constitutional law as

366. *Id.*

367. Lydia Saad, *Americans' Political Ideology Held Steady in 2020*, GALLUP (Jan. 11, 2021), <https://news.gallup.com/poll/328367/americans-political-ideology-held-steady-2020.aspx> [https://perma.cc/CB25-LL2T].

368. Jeffrey M. Jones, *What Percentage of Americans Are LGBT?*, GALLUP (Feb. 26, 2023), <https://news.gallup.com/poll/332522/percentage-americans-lgbt.aspx> [https://perma.cc/VN4A-5A4G].

369. *See supra* Section III.C.

normatively central. These relationships reveal a deep connection between demographic factors and substantive questions of legal theory and the academy. Given the aforementioned homogeneity of the legal academy on a variety of these dimensions, these comparisons suggest potential costs of that homogeneity, raising difficult questions for the academy moving forward.

CONCLUSION

Nearly every law review article attempts to persuade legal officials or experts: judges should be textualists, not purposivists; the law is better explained by realism than formalism; corporations should adopt stakeholder theory; lawmakers should abolish prisons; and so on. Despite the rich debates about these and dozens of other questions, there is shockingly little data about where legal experts stand. Which theories have been persuasive, and which have not? This Article fills this significant gap, with the first survey of American law professors about fundamental legal theory debates.

Of course, the questions we have considered should not be settled by a survey about what many experts believe. We expect and encourage debate to continue. But the Article's survey addresses a longstanding deficiency in legal theory: Despite speculative discussion about which views have proven persuasive, there has been no systematic analysis of that question. This Article's survey provides the first empirical insight to help experts take stock of various debates.

The Article also fills a second significant gap. Currently, there are critical discussions about the legal academy and its future: Which subjects (for example, constitutional law) and methods (for example, law and economics) are most central within the academy today? And should *different* areas and methods (for example, legislation, Native American law, or critical race theory) be more central than they are currently? This Article has presented the first survey of American law professors about the legal academy, uncovering professors' evaluation of how central over one hundred areas are and should be.

Not only is this the first empirical study of these critical questions; it is also a large one. We recruited over six hundred law professors (including over two hundred from each of the T20 and T50 groups of law schools). Nevertheless, this large study captures just one moment in time, and in future decades, we hope to repeat the study, tracking the evolution of legal theory and the legal academy. For other future scholarship that asks questions about the legal academy, this Article's study will be a valuable historical reference point.

Ultimately, this study's results contribute essential data to longstanding debates about legal theory and modern debates about the future of legal education and the profession. As Frankfurter notes: "[T]he law is what the lawyers are. And the law and lawyers are what the law schools make them."³⁷⁰ We would add: Law schools are, in part, what the law professors make them. For those who seek to understand the law, the views of expert law professors provide critical insight.

370. Letter from Felix Frankfurter to Mr. Rosenwald, *supra* note 1.