

THE JOHN M. OLIN FELLOWSHIPS AND THE ADVANCEMENT OF CONSERVATISM IN LEGAL ACADEMIA

*"[I]t is merely a question of time until the views now held by the intellectuals become the governing force of politics."*¹—F.A. Hayek

INTRODUCTION

In his 2008 book *The Rise of the Conservative Legal Movement*, Johns Hopkins Professor Steven M. Teles stated, "It is still too early to tell whether the [John M.] Olin Fellows² program has been effective, and in any case it is very difficult to disentangle the impact of the program from the influence of a changed legal culture or greater willingness of law schools to consider hiring conservatives."³ The fellowship program, which provides conservatives or moderates interested in entering the legal academy with a one to two year, fully-funded position at a law school,⁴ is a joint venture of sorts between the Federalist Society and the John M. Olin Foundation, an organization better known in law schools for its advancement of law and economics programs. Since 1997, the John M. Olin Fellowship has sought to encourage and assist conservatives and libertarians in becoming law professors.⁵

In investigating the theory that a changed legal culture at least partially explained the John M. Olin Fellows' placement successes in the academy, Professor Teles looked to Harvard Law School and cited then-Dean Elena Kagan's hiring of three conservatives to the law school faculty—Professors John F. Manning, Jack Goldsmith, and Adrian Vermeule.⁶ During her tenure,

1. F.A. Hayek, *The Intellectuals and Socialism*, in *THE INTELLECTUALS: A CONTROVERSIAL PORTRAIT* 371 (George B. de Huszar ed., 1960).

2. As John M. Olin preferred that the foundation be called the "John M. Olin Foundation," rather than the "Olin Foundation," I use full titles for the foundation and the John M. Olin Fellowship throughout this paper.

3. STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT* 175 (2008).

4. OLIN-SEARLE FELLOWS IN LAW, <http://www.fed-soc.org/aboutus/page/olin-searle-fellows-in-law-full-time> [<https://perma.cc/UVY8-DP6X>] (last visited Mar. 2, 2016).

5. *See id.*

6. TELES, *supra* note 3, at 175–78. It is questionable, however, if Professor Vermeule would continue to consider himself a "conservative." *See* Christopher Shea, *Supreme downsizing*, *BOS. GLOBE* (Oct. 7, 2007), http://archive.boston.com/news/globe/ideas/articles/2007/10/07/supreme_downsizing?page=full [<http://perma.cc/L6YY-6GU8>] ("Although Vermeule rejects the label of conservative, at

Dean Kagan was lauded for valuing “intellectual and viewpoint diversity” by alumni and professors alike.⁷ After Kagan’s nomination for the Supreme Court, Professor Ilya Somin, a noted conservative (and former John M. Olin Fellow himself), wrote an article for *Forbes* magazine, in which he stated that “Elena Kagan is far from an ideal Supreme Court nominee,” but “[h]er openness to non-liberal views of the law and occasional deviations from liberal orthodoxy make her a more attractive candidate than the likely alternatives.”⁸ Professor Somin mentioned that Kagan hired Jack Goldsmith and John Manning at Harvard even though “[b]oth had taken controversial positions on major legal issues that attracted opposition to their appointments from some left-wing students and faculty.”⁹

While Professor Teles believed that the hiring of three openly conservative professors at Harvard might signal a shift in law school culture, it in fact appears to be the exception that proves the rule.¹⁰ First, the fact that the hiring of three conservatives to a law school faculty is at all newsworthy is an indicator of how liberals have come to dominate legal academia. Second, it is notable that those three conservatives were the only openly conservative professors hired at Harvard Law School during Dean Kagan’s tenure—during which a total of thirty-two tenured or tenure-track professors were hired. In other words, conservatives failed to make up even ten percent of Dean Kagan’s new hires.¹¹ As Eugene Meyer, the President of the Fed-

Harvard he is often viewed as part of a group of new hires . . . who have diversified Harvard’s left-leaning faculty.”).

7. Anna Schneider-Mayerson, *Harvard Law on Heterodox Spree, Listing Right*, THE OBSERVER (Dec. 5, 2005), <http://observer.com/2005/12/harvard-law-on-a-heterodox-spree-listing-to-right-2/> [<http://perma.cc/RFR9-4EZN>]. In fact, some liberals were concerned that Dean Kagan was a “closet conservative who would tilt the law significantly to the right.” Ilya Somin, *Don’t Dismiss Elena Kagan*, FORBES (May 11, 2010), <http://www.forbes.com/2010/05/11/elena-kagan-supreme-court-opinions-contributors-ilya-somin.html> [<http://perma.cc/EWB4-ZM54>].

8. Somin, *supra* note 7.

9. *Id.* Professor Somin also cited the fact that Dean Kagan had “created a welcoming atmosphere for conservative and libertarian student groups, such as the Federalist Society.” *Id.*

10. As there has not been another “conservative hiring spree” at other law schools, Dean Kagan’s efforts remain an outlier in that sense.

11. See Debra Cassens Weiss, *Researchers Who Studied Newly Hired Law Profs Found 52 Liberals, 8 Conservatives*, ABA JOURNAL (Jul. 21, 2010), http://www.abajournal.com/news/article/researchers_who_studied_newly_hired_law_profs_found_52_liberals_8_conservat/ [<http://perma.cc/Q3SD-MAAX>] (for

eralist Society, observed, Dean Kagan both deserved and did not deserve credit for increasing ideological diversity on Harvard's faculty. Meyer posed the following hypothetical to illustrate his point: Say you have a school with 100 members on the faculty, one of whom is conservative. If you hire two more conservatives, do you say that the number of conservatives has tripled, or do you say that only three percent of the faculty is conservative?¹² It is also notable that in the ten years since Dean Kagan hired Manning, Goldsmith, and Vermeule, not a single conservative has been hired at Harvard.¹³ Finally, none of these hires were made at the entry-level. Manning, Goldsmith, and Vermeule were known quantities. "[Dean] Kagan went after the known [conservative] rock stars and hired them. That just shows that it's still hard to get hired right off the bat."¹⁴ In other words, the last seven years have shown that the legal culture has not changed, and law schools do not appear to be more willing to hire conservatives than they were before Elena Kagan became the Dean of Harvard Law School.

Incorporating data on five more years of John M. Olin Fellows than Professor Teles's study (the John M. Olin Fellows from 1997–

the professors that Douglas M. Spencer and James C. Philips were able to determine ideology—only 40 percent of their data set—they found that 52 of the newly-hired professors were liberal, while only 8 were conservative); see also Paul Caron, *Ideological Diversity and Law School Hiring*, TAXPROF BLOG (July 19, 2010), http://taxprof.typepad.com/taxprof_blog/2010/07/ideological-diversity.html [<http://perma.cc/79TS-7XZX>]. But see Jim Lindgren, *Questions About a New Study on Political Diversity in Law Schools*, THE VOLOKH CONSPIRACY (July 20, 2010, 11:18 PM), <http://volokh.com/2010/07/20/questions-about-a-new-study-on-political-diversity-in-law-schools/> [<http://perma.cc/K4U7-3B7L>] (pointing out a handful of problems with the regression analyses).

12. Telephone Interview with Eugene Meyer, President, Federalist Society (Mar. 4, 2015).

13. An article in the *Harvard Crimson* last year reported the ideological disparity at Harvard University on the whole. Between 2011 and 2014, 84 percent of campaign contributions by Harvard University faculty, instructors, and researchers went to Democratic campaigns and Political Action Committees (PACs). At the law school, 97.7 percent of campaign contributions by faculty went to Democratic campaigns and PACs, with 95 individuals donating. One of the top ten largest contributors across Harvard University was law school Dean Martha Minow (as the third highest contributor), donating a total of \$105,250 from 2011–2014, all to Democratic campaigns and organizations. See Karl M. Aspelund & Meg P. Bernhard, *Harvard Faculty Donate to Democrats by Wide Margin*, HARVARD CRIMSON (May 1, 2015), <http://www.thecrimson.com/article/2015/5/1/faculty-political-contributions-data-analysis/> [<http://perma.cc/FGM5-EA5D>].

14. Telephone Interview with James Phillips, PhD Candidate, University of California, Berkeley (Apr. 14, 2015).

2011), this Note seeks to reconsider the question of whether the John M. Olin Fellowship program has been successful. I evaluate “success” according to the terms used by the John M. Olin Foundation and the Federalist Society’s stated goals for the program: to alter the ideological balance of law schools by increasing the dissemination and understanding of conservative ideas.¹⁵

This Note proceeds in five main sections. The first Part is a review of the current literature on ideological bias in legal academia. Second, I provide an in-depth description of the John M. Olin Fellowships and an account of how they were developed. Next, I provide historical narratives of the John M. Olin Foundation’s ideological development, and a brief history of the foundation’s relationship with the Federalist Society. Finally, I measure the success of the John M. Olin Foundation in three main parts.

In that final section, I argue that the John M. Olin Fellowship has demonstrated considerable success in placing Fellows in the academy, though that success is limited somewhat by the fact that the fellowship chooses very accomplished candidates who are likely to achieve a placement without the fellowship (though perhaps not quite as prestigious a placement). Still, the John M. Olin Fellows themselves consider the fellowship to have been very helpful, if not instrumental, in obtaining their placements.

The statistics on the placement of John M. Olin Fellows from 1997–2011 initially led me to believe that the fellowship was significantly impacted by the downturn in the legal academic market beginning around 2008. However, upon closer analysis it appears the program’s placement success has been somewhat affected by the economic downturn, but the drop off in placement success appears to be primarily due to candidates losing interest in academia or leaving the profession entirely.

In terms of whether the Fellows themselves have used their positions to advance conservatism in academia, my argument proceeds in three parts. First, the fellowship has been successful in establishing “beachheads,” or concentrations of Fellows at certain institutions. The Fellows have largely been kept out of the most prestigious institutions, however. Second, the fellowship has also been overwhelmingly successful in placing conservatives who have a law and economics bent, but has had

15. See JOHN J. MILLER, *A GIFT OF FREEDOM: HOW THE JOHN M. OLIN FOUNDATION CHANGED AMERICA* 39 (2006); TELES, *supra* note 3, at 173–74.

mediocre success in public law placements, which was a major goal of the program.

Third, in terms of disseminating conservative ideas in the classroom, the Fellows have access to students in both first-year courses (as almost all Fellows teach at least one first-year subject), and a decent number of Fellows also teach public law classes, where I hypothesize more conversations would arise that would indicate a professor's ideology. Despite the fellows' access, however, on the whole they have not used their time in the classroom to advance conservative ideology, unless one accepts the proposition that keeping an ideological balance in the classroom is in itself an expression of conservatism. It also appears that some professors, particularly tenure-track professors, try to hide their conservatism for fear that it will impact their ability to earn tenure in the future.

Consequently, the John M. Olin Fellows seem to have run into the biases against conservatism, particularly against public law conservatism, that the fellowship was designed to combat. Unfortunately, institutional bias likely will change only through the passage of time and by slowly increasing the numbers of conservatives on law school faculties.

I. THE LACK OF CONSERVATISM IN LEGAL ACADEMIA

As law professors choose their future colleagues in the tenure system, they can self-replicate through new hires, creating very narrow paths into the profession.¹⁶ Professors Borthwick and Schau's review of the legal profession found that one-third of professors received their law degree from Harvard, Yale, Columbia, Michigan, or Chicago, and sixty percent had received their law degree from one of the top twenty law schools.¹⁷ Clerk-

16. See Daniel M. Katz et. al, *Reproduction of Hierarchy? A Social Network Analysis of the American Law Professoriate*, 61 J. LEGAL EDUC. 76, 78-79 (2011).

17. Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191, 226-27 (1991). At the time of the study, the top twenty schools (besides Harvard, Yale, Columbia, Michigan, and Chicago) included NYU, Georgetown, Texas, Virginia, Berkeley, Pennsylvania, Wisconsin, Northwestern, Stanford, Iowa, Illinois, Cornell, Duke, and George Washington. *Id.*; see also Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 507 (finding that almost a third of professors earned their law degree from Harvard, Yale, Columbia, Michigan, and Chicago); Richard E. Redding, "Where Did You Go to Law School?" *Gatekeeping for the Professoriate and Its Implications for Legal*

ships are also highly regarded by faculty hiring committees; a study by Professor Redding found that among law professors hired from 1996–2000, 57 percent of professors had clerked for a judge.¹⁸ The networks that a competitive candidate must pass through in order to be hired, then, are quite small.

Although there is very little empirical scholarship on the ideological makeup of law school faculties, the scholarship that exists suggests faculties are overwhelmingly liberal and resistant—if not outwardly hostile—to the addition of conservatives to their ranks.¹⁹ Indeed, “[l]iberals, in large part, still remain in control of the institutions and processes of legal education.”²⁰ Professor Merritt found that only ten percent of faculty hired between 1986 and 1991 self-identified as “conservative,” while more than seventy-five percent self-identified as “liberal.”²¹ Further, Professor Lindgren found that the groups that are most underrepresented on law school faculties are Republicans and Protestants, despite the fact that these groups make up a significant portion of the population of the United States.²² In a study of election-cycle contributions by tenured and tenure-track professors at the top twenty-one law schools, Professor McGinnis found that only fifteen percent of professors contributed wholly or predominantly to Republican candidates, while eighty-one percent of professors contributed wholly or predominantly to Democrats.²³

Education, 53 J. LEGAL EDUC. 594, 599 (2003) (finding that a third of professors earned their law degree from either Harvard or Yale; two thirds received their law degree from the top twelve schools, and more than eighty-five percent received their law degree from the top twenty-five schools).

18. See Redding, *supra* note 17, at 600.

19. See, e.g., James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J.L. & PUB. POL’Y, 89, 111–12 (2016); Mark V. Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1520 n.24 (1991) (“My sense is that it is just as difficult these days for a dedicated conservative (at least one who does not specialize in right-wing law and economics) to get a job on many law faculties as it is for a [Critical Legal Studies] person to do so.”).

20. William E. Nelson et al., *The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?*, 62 VAND. L. REV. 1749, 1798 (2009).

21. Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 780 n.54 (1998). Professor Merritt found that 14.6% of law professors identified as “middle-of-the-road.” *Id.*

22. Lindgren, *supra* note 19, at 93.

23. John O. McGinnis, Matthew A. Schwartz, & Benjamin Tisdell, *The Patterns and Implications of Political Contributions by Elite Law School Faculty*, 93 GEO. L.J. 1167, 1170, 1177 (2005) (At Yale, the ratio of Democratic to Republican contributors was 20:1; at Harvard, Stanford, Columbia, and Michigan, fewer than 10 per-

The overwhelmingly liberal trend in academia is not unique to legal faculties. In the social psychology field, Yoel Inbar and Joris Lammers published a study finding that more than ninety percent of social psychologists self-reported as “liberal,” in comparison to less than four percent who self-identified as “conservative.” Almost nineteen percent of the psychologists surveyed stated that they “would have a bias against a conservative-leaning paper”; twenty-four percent “against a conservative-leaning grant application”; fourteen percent “against inviting a conservative to a symposium”; and thirty-eight percent “against choosing a conservative as a future colleague.”²⁴ Professor Jonathan Haidt published a paper in *Behavioral and Brain Sciences* in 2015, arguing that the lack of political diversity within social psychology has introduced a liberal bias into how the profession studies race, gender, stereotyping, power, and inequality—in other words, all areas that concern “political ideology and politicized notions.”²⁵

Current data on the legal academy suggests that there remains a significant need for increased ideological diversity in law school hiring. A recent paper published by James C. Phillips at the University of California, Berkeley describes conservative or libertarian law professors as “the snail darter or great horned owl of the legal academy”; outside of “outliers like George Mason or Pepperdine where they are a majority of the faculty . . . their numbers at any given faculty can usually be counted on one hand.”²⁶ Perhaps even more indicative of the need for increased numbers of conservatives on law school faculties is that a previous iteration of Phillips’s study “drew so

cent of contributions were made to Republicans). For more current information on political donations at Harvard Law School, see *supra* note 13.

24. See Maria Konnikova, *Is Social Psychology Biased Against Republicans?*, NEW YORKER (Oct. 30, 2014), <http://www.newyorker.com/science/maria-konnikova/social-psychology-biased-republicans> [https://perma.cc/Y3TJ-Z6HL]. See generally Yoel Inbar & Joris Lammers, *Political Diversity in Social Personality Psychology*, 7 PERSP. ON PSYCHOL. SCI. 496 (2012).

25. Konnikova, *supra* note 24. See generally Jonathan Haidt, et al., *Political Diversity Will Improve Social Psychological Science*, BEHAV. AND BRAIN SCI. (2015), <http://journals.cambridge.org/action/displayFulltext?type=1&fid=9945987&jid=BB5&volumeId=38&issueId=-1&aid=9945982> [https://perma.cc/C8LH-W5AP].

26. James C. Phillips, *Why Are There So Few Conservatives and Libertarians in Legal Academia? An Empirical Exploration of Three Hypotheses*, 39 HARV. J.L. & PUB. POL’Y, 153, 153–54 (2016); see also Caron, *supra* note 11; Weiss, *supra* note 11.

much fury from the left that it was withdrawn from the Internet and Spencer disassociated from the project.”²⁷

An easy answer to the question of why conservatives are so underrepresented on law school faculties (and one that liberals like to use) is that there is an input problem—few conservatives are interested in legal academia and fail to apply for the positions. But there is no evidence to suggest that this is true, and conservatives in the field reject this argument. One John M. Olin Fellow stated, “there are a lot of conservatives who want to get into academia who aren’t getting jobs.”²⁸ Another added that the only way there could be a lack of conservative candidates “is if conservatives get scared out of the field—I was a beneficiary of being naïve or overconfident in myself. The ideological biases are more severe than I had imagined.”²⁹ In other words, if there is a disparity between liberal and conservative candidates applying for positions, it is due to discrimination. Particularly for those professors who are the first conservative on a faculty, or one of two or three, “it’s not a very welcoming environment. You have to have a particular kind of personality to want to welcome that kind of opposition, particularly as you’re going to face far less ideological hostility in firms, the private sector, or government.”³⁰ Most people “want a less combative, less stressful work environment,” and that has only “further exacerbated the disparity” between liberals and conservatives on law school faculties.³¹

II. THE DEVELOPMENT OF THE JOHN M. OLIN FELLOWSHIPS

The John M. Olin Fellowships were developed in 1996, when James Piereson, the Executive Director of the John M. Olin Foundation, asked Eugene Meyer, the President of the Federalist Society, what could be done “to alter the ideological balance of America’s law schools.”³² Having begun in the nation’s top law schools in 1982, the Federalist Society has always focused on legal education, and “[a]t the top of the Society’s list of complaints

27. George W. Dent, Jr., *Toward Improved Intellectual Diversity in Law Schools*, 37 HARV. J.L. & PUB. POL’Y, 166, 168 n.14 (2013).

28. Telephone Interview with John Ohlendorf, Cooper & Kirk, PLLC (Apr. 9, 2015).

29. Confidential Telephone Interview (Apr. 13, 2015).

30. Telephone Interview with John Ohlendorf, *supra* note 28.

31. See Confidential Telephone Interview, *supra* note 29.

32. TELES, *supra* note 3, at 173–74.

with the legal establishment has been the perceived exclusion of conservative faculty in American law schools.”³³ Meyer knew that young scholars who hoped to have success on the academic market needed to have published one or two scholarly articles prior to applying for entry-level positions, but it was difficult to produce scholarship that would be accepted by a reputable law review while working in the legal field.³⁴ A contact of Meyer’s, Gary Lawson of Boston University, told him that his one-year fellowship at Yale Law School was extremely helpful in obtaining his legal placement.³⁵ While academic fellowships would provide the necessary environment for legal scholars to build their CVs, Meyer was concerned that the existing fellowships were controlled by the academy, and thus biased toward scholars on the Left.³⁶ The 1999 Federalist Society proposal for the John M. Olin Fellowship program stated:

Fellowships do exist, but they are difficult to obtain and usually are closely controlled by fairly senior professors who share, even more than the average law school academic, the prevailing left-wing orthodoxy that dominates the academy. Therefore, if these opportunities are going to exist for students dedicated to principles of the rule of law and limited government, a new fellowship program is necessary.³⁷

Up to that point, conservative scholars had been successful in achieving positions in the law and economics field, but both the Federalist Society and the John M. Olin Foundation wanted to build on that success and expand into other fields. The Federalist Society proposal noted, “there is some tendency for any conservative teaching law to be pushed into law and economics. Therefore, while there should be great pride in the build-up in that area, it is crucial to reach into other parts of the legal academy as well.”³⁸ As for the John M. Olin Foundation, Pierson had long wanted to promote conservatism in constitutional

33. *Id.* at 173.

34. Telephone Interview with Eugene Meyer, *supra* note 12.

35. TELES, *supra* note 3, at 173–74.

36. Telephone Interview with Eugene Meyer, *supra* note 12.

37. TELES, *supra* note 3, at 174 (quoting Proposal to the John M. Olin Foundation, Inc. for the John M. Olin Fellows in Law for the 2000–2001 Academic Year, Federalist Society Archives, March 15, 1999, at 3).

38. *Id.*

law but did not feel that there was enough support within the law schools for such a program:

If you said to a dean that you wanted to fund conservative constitutional law, he would reject the idea out of hand. But if you said that you wanted to support law and economics, he would see that as a program with academic content and he would be much more open to the idea.³⁹

The John M. Olin Fellowships grew out of this collaboration between the Federalist Society and the John M. Olin Foundation. The fellowships were first granted in 1997 and survive to this day, though the program is now known as the Olin-Searle-Smith Fellows in Law. Consistent with Meyer's initial evaluation of the academic market, the focus of the grant is to provide legal scholars with the ability to take a year off from the practice of law to write scholarship.⁴⁰ The John M. Olin Fellowships are exclusively granted to legal scholars, and are focused on the front end of the process—getting young, talented conservatives into academia at top law schools—rather than supporting conservatives who already hold tenure-track positions within the academy.⁴¹ While the funds for the program initially came from the John M. Olin Foundation, today the program is primarily funded by the Searle Freedom Trust,⁴² with contributions from the Thomas W. Smith Foundation and other sources.⁴³ Funds from the John M. Olin Foundation termination grant (a \$1.2 million close-out grant from the John M. Olin Foundation to the Federalist Society)⁴⁴ are mainly used to cover the administrative costs associated with the program.

The John M. Olin Fellowship is generally a yearlong award,⁴⁵ though some scholars have applied for and received an additional

39. *Id.* at 188.

40. MILLER, *supra* note 15, at 95.

41. TELES, *supra* note 3, at 173–74.

42. I attempted to contact the Searle Freedom Trust about their involvement in the fellowship, but a representative stated that while they “appreciate the topic of [my] research,” “we prefer to allow our grantees to speak for themselves.” E-mail from Jennifer Eakle, Office Manager, Searle Freedom Trust, to Erin Cady (Apr. 13, 2015, 11:35 EST) (on file with author).

43. Telephone Interview with Eugene Meyer, President, Federalist Society (Feb. 28, 2015); Telephone Interview with Eugene Meyer, *supra* note 12.

44. The \$1.2 million “termination grant” was intended, in part, to cover the administration of the John M. Olin Fellowships. MILLER, *supra* note 15, at 201.

45. OLIN-SEARLE FELLOWS IN LAW, *supra* note 4.

semester or year of funding (although such extensions are discouraged).⁴⁶ The scholars are granted a generous \$60,000 stipend plus health benefits⁴⁷ and are placed with a top law school. While they are encouraged to integrate themselves into the law school community, they are not expected to teach during their fellowship.⁴⁸ Fellowships are extremely competitive: in recent years, only one or two have been granted each academic year.⁴⁹ Applicants must exhibit a “[d]edication to teaching and scholarship”; hold a law degree and “extremely strong academic qualifications (such as significant clerkship or law review experience)”; demonstrate a “[c]ommitment to the rule of law and intellectual diversity in legal academia”; and indicate a “promise of a distinguished career as a legal scholar and teacher.”⁵⁰ Most, though not all, of the fellowships have been granted to conservatives.⁵¹

In order to measure the success of the John M. Olin Fellowships, it is first important to understand the ideological history of the organization, its relationship with the Federalist Society, and its goals in funding the John M. Olin Fellowships.

III. DEVELOPING AN IDEOLOGICAL FOUNDATION: THE JOHN M. OLIN FOUNDATION

John M. Olin, a wealthy industrialist and long-time donor to Republican political candidates, first established his philanthropic organization in 1953, but almost two decades passed before he began to establish his charitable mission.⁵² He was greatly disturbed by student protests and Leftist politics at his beloved alma mater, Cornell University.⁵³ During one incident in

46. Telephone Interview with Eugene Meyer, *supra* note 43. The 2016–2017 version of the application actually markets the fellowship as a one to two year program, a change from previous years. OLIN-SEARLE FELLOWS IN LAW, *supra* note 4.

47. OLIN-SEARLE FELLOWS IN LAW, *supra* note 4.

48. *Id.*

49. Hiring constrictions in legal academia have led the Federalist Society to restrict the number of fellowships it offers per year. Accordingly, the qualifications for Fellows have increased. Telephone Interview with Eugene Meyer, *supra* note 43.

50. See OLIN-SEARLE FELLOWS IN LAW, *supra* note 4.

51. Telephone Interview with Eugene Meyer, *supra* note 43.

52. See MILLER, *supra* note 15, at 24, 30. In 1957, *Fortune* magazine included both Olin and his brother in its annual list of people whose personal wealth exceeded seventy-five million dollars. *Id.* at 19.

53. *Id.* at 30 (quoting John M. Olin).

April 1969, a group of armed militants affiliated with the Afro-American Society took over the Cornell Student Union.⁵⁴ Within thirty-six hours, the Cornell Administration had acquiesced to most of the militants' demands, including the demand that students involved in the protest not be punished, outraging some faculty members, students, and alumni.⁵⁵ Olin later said that this incident helped accelerate his disillusionment with higher education, believing it to have become a bastion of socialism,⁵⁶ and he was subsequently inspired to use his fortune to advance free-market economics, primarily by funding scholars and activists who could influence the political and intellectual debate.⁵⁷ "My greatest ambition now," he told the *New York Times* in 1977, "is to see free enterprise re-established in this country. Business and the public must be awakened to the creeping stranglehold that socialism has gained here since World War II."⁵⁸

Olin recruited Frank O'Connell, the Olin Corporation's top labor counsel, to run the foundation and advance his mission to defend free enterprise.⁵⁹ In the spring of 1975, O'Connell drafted a thirty-page "Memorandum for Mr. Olin" that came to be known within the organization as the "Fat Memo," due to its heft. To combat the deterioration of the United States "ever closer to socialism or some other form of collectivist system," the John M. Olin Foundation would fight "a battle for men's minds."⁶⁰ The foundation's mission would be "to seek to ensure, insofar as it is possible to do so, the revitalization and survival of the free enterprise system."⁶¹ It would "support such individuals and institutions that are effectively engaged in quality scholarship—teaching, reading, writing, and related activities—in Market Economics and the Political Philosophy of Freedom."⁶² Attracting talent from top universities and organi-

54. See *id.* at 31; George Lowery, *A Campus Takeover that Symbolized an Era of Change*, CORNELL CHRON. (Apr. 16, 2009), <http://www.news.cornell.edu/stories/2009/04/campus-takeover-symbolized-era-change> [https://perma.cc/3L4R-LF9J].

55. See Lowery, *supra* note 54; MILLER, *supra* note 15, at 31.

56. MILLER, *supra* note 15, at 31.

57. *Id.* at 32.

58. *Id.* (quoting John M. Olin).

59. *Id.* at 34.

60. *Id.* at 39.

61. *Id.*

62. MILLER, *supra* note 15, at 39–40.

zations was critical, as was the rational persuasion of students: “The arguments for capitalism and freedom [must be presented] in the idiom of today’s youth.”⁶³ To achieve these goals, the John M. Olin Foundation would need to find a way to circumvent the Leftist-controlled university faculties and administrations. “[O]ur successes will be measured by the degree to which our efforts increase the dissemination and understanding of those ideas,” O’Connell noted.⁶⁴

Olin’s death in 1982 infused \$52 million into the John M. Olin Foundation. During that year, James Piereson, who succeeded Frank O’Connell in running the Foundation, collaborated with colleague Michael Joyce on a memo titled, “Report to the Trustees on the Future Direction of the Grants Program,” known colloquially as the “Fatter Memo” (as it was even longer than O’Connell’s “Fat Memo” of 1975). The Fatter Memo reaffirmed the Foundation’s mission “to support work intended to strengthen the American system of free institutions,” but also recognized that to do so, it was important to “strengthen[] the work of political institutions, moral values, and philosophical principles” that created the foundation for the free market system.⁶⁵

The John M. Olin Foundation understood that it was trying to wage a war of ideas, and “winning that war requires patience.”⁶⁶ James Piereson recognized that “the world is going to be changed in increments, by and large,” and did not subscribe to the idea that the organizations benefitting from John M. Olin Foundation funds become self-sufficient. This philosophy led the John M. Olin Foundation to focus its activities on law school campuses and grant funds to “ambitious law students with little or no expectation—with some skepticism, even.”⁶⁷

In 2005, as the John M. Olin Foundation prepared to shutter its doors,⁶⁸ Piereson reflected on the success of the foundation: “The

63. *Id.* (alteration in original).

64. *Id.* at 39.

65. *Id.* at 114–15.

66. MICHAEL AVERY & DANIELLE MCLAUGHLIN, *THE FEDERALIST SOCIETY: HOW CONSERVATIVES TOOK THE LAW BACK FROM LIBERALS* 17 (2013).

67. *Id.* at 17; *see also* MILLER, *supra* note 15, at 163.

68. One of Olin’s wishes for the foundation was that it should not live on for perpetuity, but liquidate within a few decades after his death. Olin believed that the Ford Foundation had drifted from its founder’s principles to support the Leftist politics of its Board of Directors, and he was determined that his own foundation not be used to such ends. Consequently, over the course of a few decades,

campuses were a main focus of our activities,” but “I’m not sure we were able to change them much.”⁶⁹ John Miller, the author of John M. Olin’s biography, disagrees: the John M. Olin Foundation “supported a counterintelligentsia for an entire generation, helped it build a set of academic counterinstitutions, and made its numbers greater and its influence broader than it would have been in the foundation’s absence.”⁷⁰ Perhaps the John M. Olin Foundation “did not transform higher education for the better, but it kept alive the possibility of improvement—and allowed improvement to be a hope rather than a fantasy.”⁷¹

IV. THE JOHN M. OLIN FOUNDATION AND THE FEDERALIST SOCIETY

When Steven Calabresi, Lee Liberman Otis, and David McIntosh founded the Federalist Society at Yale and the University of Chicago Law Schools, they also reached out to a friend of theirs at Harvard Law School—Spencer Abraham, who edited the *Harvard Journal of Law & Public Policy*.⁷² Fortunately for the nascent organization, Abraham was a friend of Irving Kristol’s son William, and used his conservative contacts to connect with Michael Joyce at the John M. Olin Foundation. The Federalist Society’s stated purpose to “build on a nucleus of law students and recent law-school graduates to become ‘an effective national conservative legal network’”⁷³ aligned with the rhetoric of the John M. Olin Foundation, and Joyce “immediately recognized the opportunity not only to help a group of students pursue their worthy goals but also to establish [beachheads] at several of America’s top campuses.”⁷⁴ The John M. Olin Foundation donated \$6,000 to the *Harvard Journal of Law & Public Policy*.⁷⁵

millions of dollars were spent in his name for the intellectual defense of capitalism. See MILLER, *supra* note 15, at 185.

69. *Id.* at 163 (quoting James Piereson).

70. *Id.*

71. *Id.*

72. See AVERY & MCLAUGHLIN, *supra* note 66, at 1.

73. MILLER, *supra* note 15, at 92.

74. See *id.* at 89–90.

75. See *id.*

The Federalist Society held its first conference at Yale Law School in April 1982,⁷⁶ and the seventy or so out-of-town students who attended the conference had much of their travel subsidized, in part, by the John M. Olin Foundation.⁷⁷ Indeed, the John M. Olin Foundation's support was critical to the success of the Federalist Society from the very beginning. Steven Calabresi noted that the John M. Olin Foundation was "indispensable" and that it was "absolutely number one in terms of foundation support."⁷⁸ By October 1983, the Federalist Society had raised a total of \$103,000, more than half of which came from the John M. Olin Foundation and the Institute for Educational Affairs.⁷⁹

Over the course of two decades, the John M. Olin Foundation granted more than \$5.5 million to the Federalist Society. The impact of this support cannot be overstated. "I don't know if the Federalist Society would have come about in some other way, absent the John M. Olin Foundation's support," said Eugene Meyer, the president of the national Federalist Society organization. "It might not exist at all."⁸⁰

V. MEASURING THE SUCCESS OF THE JOHN M. OLIN FELLOWSHIPS

Although there are significant empirical challenges associated with evaluating the success of the John M. Olin Fellowships,⁸¹ it remains a valuable endeavor, despite its difficulties. The program represents a small, yet significant investment of John M. Olin Foundation funds, and the fellowship is important enough to the Federalist Society that they have continued to fund the program over a decade after the John M. Olin Foundation closed its doors. In *The Rise of the Conservative Legal Movement*, Professor Teles expressed that "there are some signs that [the John M. Olin Fellowship program] has helped, at the margins, to alter the ide-

76. Keynoted by Robert Bork, the conference also featured such prominent speakers as Walter Berns, Charles Fried, Ted Olson, Judges Richard Posner and Ralph Winter, and future Supreme Court Justice Antonin Scalia (future Justice Stephen Breyer was also scheduled to speak, but a death in his family forced him to cancel at the last minute). *Id.* at 90-91.

77. *Id.* at 90-91.

78. AVERY & MCLAUGHLIN, *supra* note 66, at 16-17.

79. MILLER, *supra* note 15, at 93.

80. *Id.* at 94-95.

81. E-mail from James C. Phillips to Erin Cady (Apr. 7, 2015, 18:11 EST) (on file with author).

ological composition of the legal academy that caused the Society to come into existence in the first place.”⁸²

Armed with data on five more years of John M. Olin Fellows (the John M. Olin Fellows from 1997–2011), I reconsider the question of whether the John M. Olin Fellowship program has been successful. I consider “success” on the terms of the John M. Olin Foundation and the Federalist Society’s stated goals for the program. In the 1975 Fat Memo, O’Connell stated that “[b]ecause [the John M. Olin Foundation’s] aim is the propagation of ideas, our successes will be measured by the degree to which our efforts increase the dissemination and understanding of those ideas.”⁸³ Similarly, the Federalist Society’s goal for the program was to “alter the ideological balance of America’s law schools,”⁸⁴ and also “reach into other parts of the legal academy” besides law and economics.⁸⁵ To that end, I consider the success of the John M. Olin Fellowships on the following terms: (a) the program’s impact on fellows’ success on the academic market; (b) the placement success of fellows; and (c) the program’s success in advancing conservatism in legal academia through (i) fellows’ placement rankings, (ii) legal areas of interest (law and economics versus public law), and (iii) the dissemination of conservative ideas in the law school classroom.

A. *Measuring the Impact of the John M. Olin Fellowship on the Placement Success of Conservative Candidates*

Professor Teles cautioned that the John M. Olin Fellows who had the most success were those with Supreme Court clerkships and law degrees from Harvard, Yale, Chicago, and Notre Dame, and that, “[i]t would be surprising if candidates like this did not get an academic teaching position of some sort.” In fact, Professor Teles continued, “[t]heir success could simply be a sign of the impact of conservative Supreme Court appointments on the legal academy, and thus a strong argument for a direct connection between electoral and academic change.”⁸⁶

82. TELES, *supra* note 3, at 178.

83. MILLER, *supra* note 15, at 39.

84. TELES, *supra* note 3, at 173–74.

85. *Id.* at 174 (quoting Proposal to the John M. Olin Foundation, Inc. for the John M. Olin Fellows in Law for the 2000–2001 Academic Year, Federalist Society Archives, March 15, 1999, at 3).

86. *Id.* at 175.

After conducting interviews with several John M. Olin Fellows, however, Professor Teles learned that several of the Fellows believed that the fellowship “had a substantial impact on their career trajectory.”⁸⁷ The fellowship added prestige to the John M. Olin Fellows’ résumés and allowed recipients to work on a second degree, develop networks at top institutions, and, of course, find the time to produce scholarship in the legal field.⁸⁸

My findings were very similar to Professor Teles’s. Most of the John M. Olin Fellows hold stellar academic credentials, with law degrees from top institutions and clerkships with respected and well-connected judges; many also hold advanced degrees. Still, the John M. Olin Fellowship received rave reviews from its recipients. “[The success of the John M. Olin Fellowships] goes to both the value of the fellowships but also the selectiveness of Fellows going in. They’re looking for people who should be getting into academia anyway but [they] want to give them an extra push.”⁸⁹

87. *Id.* at 178.

88. *Id.*

89. Telephone Interview with Gregory Dolin, Associate Professor of Law, University of Baltimore School of Law (Apr. 10, 2015).

Table 1: John M. Olin Fellows 1997–2011						
Name	Fellowship and year	JD	Other Degree	Federal Appellate Clerkship	Tenured/ Tenure-Track Position	Primary Focus Law & Econ?
Allen Ferrell	Harvard (1997)	Harvard	PhD	Supreme Court; D.C. Circuit	Harvard	Y
Adrian Vermeule	George Washington (1997)	Harvard		Supreme Court; D.C. Circuit	Harvard	N
Erica Worth Harris	Virginia (1997)	Texas		District Court	N/A	Y
Geoff Manne	Virginia (1998)	Chicago		8th Circuit	Lewis & Clark	Y
Matt Stowe	Texas/Cornell (1998)	Harvard		Supreme Court; 4th Circuit	N/A	N
Keith Sharfman	Cornell (1999)	Chicago		7th Circuit	St. John's (previously Rutgers & Marquette)	Y
Scott Angstreich	Georgetown (1999)	Harvard	M.Phil	D.C. Circuit	N/A	N
Julian Ku	Virginia (1999)	Yale		5th Circuit	Hofstra	N
Thomas Lambert	Northwestern (1999)	Chicago		5th Circuit	Missouri	Y
Rachel Barkow	Georgetown (2000)	Harvard		Supreme Court; D.C. Circuit	NYU	N
Nicholas Rosenkranz	NYU (2000)	Yale		Supreme Court; 7th Circuit	Georgetown	N
Laurence Claus	Northwestern (2000)	Oxford (U.K.)	D.Phil	7th Circuit	San Diego	N
Amy Barrett	George Washington (2001)	Notre Dame		Supreme Court; D.C. Circuit	Notre Dame	N
Adam Mossoff	Northwestern (2001)	Chicago	MA	5th Circuit	George Mason	Y
David Moore	Chicago (2001)	Brigham Young		Supreme Court; 3rd Circuit	Brigham Young	N
Jennifer Bracer	Harvard (2001)	Harvard		2nd Circuit	N/A	N
Ilya Somin	Northwestern (2002)	Yale	MA	5th Circuit	George Mason	N
James Prescott	Harvard (2003)	Harvard	PhD	D.C. Circuit	Michigan	Y
Charles Keckler	Northwestern (2003)	Michigan	MA	6th Circuit	N/A	N
Donald Kochan	Virginia (2003)	Cornell		6th Circuit	Chapman	Y
Robert Miller	Columbia (2003)	Yale	PhD	N/A	Iowa	N
Jeffrey Manns	Harvard (2004)	Yale	D.Phil	4th Circuit	George Washington	Y
Chaim Saiman	Harvard (2004)	Columbia		10th Circuit	Villanova	N
John Pfaff	Northwestern (2004)	Chicago	PhD	D.C. Circuit	Fordham	Y
Brian Fitzpatrick	NYU (2005)	Harvard		Supreme Court; 9th Circuit	Vanderbilt	N
Nathan Sales	Georgetown (2005)	Duke		D.C. Circuit	Syracuse	N

Table 1: John M. Olin Fellows 1997–2011						
Name	Fellowship and year	JD	Other Degree	Federal Appellate Clerkship	Tenured/ Tenure-Track Position	Primary Focus Law & Econ?
Elizabeth Harmer-Dionne	Harvard (2006)	Stanford	M.Phil	N/A	N/A	N
Charles Fischette	Pennsylvania (2006)	Virginia	MA	2nd Circuit	N/A	N
Christopher Newman	UCLA (2006)	Michigan		9th Circuit	George Mason	N
Michael Risch	Stanford (2006)	Chicago		N/A	Villanova	Y
K.A.D. Camera	Northwestern (2006)	Harvard		10th Circuit	N/A	Y
Scott Shepard	Vanderbilt (2007)	Virginia	MA	5th Circuit	John Marshall	N
Ashlie Warnick	Yale (2007)	Michigan	PhD	8th Circuit	N/A	N
Greg Dolin	Northwestern (2007)	Georgetown	MD; MA	Federal Circuit; 4th Circuit	Baltimore	N
Daniel Kelly	Yale (2007)	Harvard		2nd Circuit	Notre Dame	Y
Joshua Kleinfeld	Johann Wolfgang Goethe Univ. of Frankfurt (2008)	Yale	PhD	N/A	Northwestern	N
Jeffrey Pojanowski	Virginia (2008)	Harvard		Supreme Court; D.C. Circuit	Notre Dame	N
Carrie Severino	Georgetown (2008)	Harvard	MA	Supreme Court; D.C. Circuit	N/A	N
Steve Erickson	Pennsylvania (2008)	SUNY-Buffalo	LLM; PhD	N/A	N/A	N
Nathaniel Stewart	Yale (2008)	Case Western	MA	6th Circuit	N/A	N
Tara Helfman	NYU (2009)	Yale	M.Phil; MA	N/A	Syracuse	N
Steven Menashi	Georgetown (2009)	Stanford		Supreme Court; D.C. Circuit	N/A	N
Elina Treyger	Yale (2009)	Harvard	PhD	6th Circuit	George Mason	N
Logan Beirne	Yale (2010)	Yale		N/A	N/A	N
Nathan Chapman	Stanford (2010)	Duke	MA	11th Circuit	Georgia	N
Marie Gryphon Newhouse	Harvard (2010)	Washington	PhD	N/A	Surrey (U.K.)	N
Erin Sheley	Georgetown (2010)	Harvard	PhD	N/A	University of Calgary (Canada)	N
Michael Kenneally	Harvard/ Columbia (2011)	Harvard	PhD	10th Circuit	N/A	N
John Ohlendorf	Northwestern (2011)	Harvard		8th Circuit	N/A	N
James Stern	Virginia (2011)	Virginia		Supreme Court; 4th Circuit	William & Mary	N

From 1997–2011, the John M. Olin Fellows overwhelmingly received their law degrees from the nation’s top schools.⁹⁰ The greatest number of Fellows received their degrees from Harvard (16), followed by Yale (8), Chicago (6), Michigan (3), Virginia (3), Duke (2), and Stanford (2); one Fellow each received a degree from Brigham Young, Case Western, Columbia, Cornell, Georgetown, Notre Dame, Oxford (U.K.), SUNY-Buffalo, Texas, and Washington.

Consistent with Professors Borthwick and Schau’s study, in which they found that “a handful of the most established and prestigious law schools [Harvard, Yale, Columbia, Michigan, and Chicago] dominate the production of the nation’s law teachers,”⁹¹ most of the John M. Olin Fellows—a staggering thirty-four out of fifty, or sixty-eight percent—received their degrees from those five schools.⁹² With the exception of Brigham Young, Case Western, Oxford (U.K.), SUNY-Buffalo, and Washington (amounting to a total of only five John M. Olin Fellows),⁹³ all of the schools that John M. Olin Fellows have graduated from are included in Brian Leiter’s list of the “Top Producers of Law Teachers at the Leading Law Schools Since 1995.”⁹⁴

Besides the ranking of a candidate’s law school, clerkships and advanced degrees are also known to lead to statistically greater success in the legal academic market.⁹⁵ For instance, of the self-reported hires in 2014, about sixty percent had completed a clerkship and about fifty-one percent held an advanced degree.⁹⁶ From 1997–2011, twelve John M. Olin Fellows (twenty-four per-

90. See *supra* Table 1.

91. See Borthwick & Schau, *supra* note 17, at 226.

92. See *supra* Table 1.

93. See *id.*

94. See Brian Leiter, *Top Producers of Law Teachers at the Leading Law Schools Since 1995*, BRIAN LEITER’S LAW SCHOOL RANKINGS (Jan. 31, 2011), http://leiterrankings.com/new/2011_LawTeachers.shtml [<https://perma.cc/G6PT-57B2>].

95. See Sarah Lawsky, *Spring Self-Reported Entry Level Hiring Report 2015*, PRAWFSBLAWG (May 19, 2015), <http://prawfsblawg.blogspot.com/prawfsblawg/2014/05/spring-self-reported-entry-level-hiring-report-2014.html> [<https://perma.cc/86HG-LN2K>]. In recent years, candidates who have completed at least one fellowship also have had statistically greater success on the academic market than candidates who have not completed a fellowship. Of the self-reported hires in 2015, about eighty-five percent had completed a fellowship. See *id.*

96. See *id.*

cent) have served as Supreme Court clerks.⁹⁷ Additionally, forty⁹⁸ John M. Olin Fellows (eighty percent) have held Circuit Court clerkships.⁹⁹ Additionally, a total of twenty-five¹⁰⁰ John M. Olin Fellows (fifty percent) hold advanced degrees, mostly PhDs and MAs.¹⁰¹ Although the disciplines for advanced degrees range from linguistics to religious studies, popular disciplines include economics and political science.

B. *The John M. Olin Fellows' Evaluation of their Fellowship Experiences*

Despite their stellar academic credentials, all of the John M. Olin Fellows that I spoke with credited the fellowship, at least in part, for their placement success.¹⁰² Professor Jeffrey Pojanowski of Notre Dame Law School said, “maybe [without the fellowship], I would have gotten a job, but I certainly wouldn’t have gotten as many callbacks.”¹⁰³ One Fellow described the John M. Olin Fellowship as helpful in “pushing you into [the market].”¹⁰⁴ Professor Elina Treyger, for instance, ended up at a school that was “as in-network as it can get”; George Mason is generally regarded to be more conservative than most law schools.¹⁰⁵ When one professor was applying for teaching posi-

97. Four John M. Olin Fellows have clerked for Justice Kennedy, four have clerked for Justice Scalia, two for Justice Alito, and one each for Justices O’Connor and Thomas.

98. One John M. Olin Fellow, Greg Dolin, held two Circuit Clerkships—one on the Federal Circuit with Judge Newman and one on the Fourth Circuit with Judge Widener.

99. Eleven John M. Olin Fellows have clerked on the D.C. Circuit, three on the Second Circuit, one on the Third Circuit, four on the Fourth Circuit, five on the Fifth Circuit, four on the Sixth Circuit, three on the Seventh Circuit, three on the Eighth Circuit, two on the Ninth Circuit, three on the Tenth Circuit, and one each on the Eleventh Circuit and Federal Circuit.

100. *See supra* Table 1. Three John M. Olin Fellows hold two advanced degrees: Greg Dolin (MD and MA, which was conferred after the John M. Olin Fellowship), Steve Erickson (LLM and PhD) and Tara Helfman (M.Phil and MA). *See id.*

101. Ten John M. Olin Fellows hold PhDs, nine have MAs, three have M.Phils, two have D.Phils, and one each has an LLM and MD. *See id.*

102. In order to test Professor Teles’s finding, in this section I only consider the views of the individuals who received their fellowship after Professor Teles conducted his study.

103. Telephone Interview with Jeffrey Pojanowski, Associate Professor of Law, Notre Dame Law School (Apr. 13, 2015).

104. Interview with Elina Treyger, Assistant Professor, George Mason Law School, in Cambridge, Mass. (Apr. 15, 2015).

105. *See id.*

tions, the “teaching market fell apart” and he “could have gotten addicted to firm life.”¹⁰⁶ “I don’t think I would have gone into academia without [the John M. Olin Fellowship],” he stated, describing the fellowship as a “but-for cause” of his tenure-track position.¹⁰⁷

The John M. Olin Fellows described the fellowship experience as “above and beyond” their expectations.¹⁰⁸ It was “a really well concentrated combination of time to write, targeted advice, and practical preparation.”¹⁰⁹ As the legal academic market has constricted, it has also become more competitive, and a candidate’s scholarship can help distinguish him or her from the rest of the candidates for a position.¹¹⁰ More candidates have published law review articles in recent years, many receiving fellowships or earning advanced degrees in order to find the time to write. “Now, [a candidate] really needs three or four articles to go on the market; this kind of fellowship seems to be the norm.”¹¹¹ The John M. Olin Fellowship provides the “time and money to follow your ideas and put something down in writing, which is hard to do in private practice because you don’t have time.”¹¹² Several Fellows mentioned to me that this time was crucial; without it, one Fellow stated, “I certainly wouldn’t have been able to write the paper I did.”¹¹³

Besides providing time to write, the John M. Olin Fellowship places its Fellows at prestigious law schools across the country, and works with each Fellow to find a placement at an institution (or with a group of colleagues) that aligns with his or her academic interests. Of course, a Fellow’s engagement with the law school community where he or she is placed depends both on the personality of the Fellow and the environment of the particular law school, but the program does try to find a welcoming placement for its Fellows. At some schools, for in-

106. Confidential Telephone Interview, *supra* note 29.

107. *Id.*

108. See Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

109. See *id.*

110. The prevalence of fellowships such as the John M. Olin Fellowship has likely exacerbated the arms race in terms of the scholarship that candidates are expected to have produced prior to entering the academy.

111. Telephone Interview with Nicholas Quinn Rosenkranz, Professor of Law, Georgetown University Law Center (Apr. 9, 2015).

112. Telephone Interview with Gregory Dolin, *supra* note 89.

113. Confidential Telephone Interview, *supra* note 29.

stance, the John M. Olin Fellows are “integrated into the place,” and are “invited to faculty workshops,” “able to present their work during the summer workshop,” “can sit in on job talks,” “go to lunch with people,” and are otherwise “integrated into the norms of the academy to get used to how things are done.”¹¹⁴ This engagement is particularly helpful in terms of the quality of the scholarship a Fellow is able to produce. For instance, Professor Pojanowski spent his John M. Olin Fellowship at the University of Virginia, where he was able to get early feedback on his scholarship at incubator lunches and present an early version of his paper at a faculty workshop.¹¹⁵ John Ohlendorf speaks positively of his John M. Olin Fellowship at Northwestern, “I was treated very favorably at Northwestern—I was treated as a junior faculty member and was able to participate in the luncheon program and workshop papers.”¹¹⁶ “Part of that is because [the John M. Olin Fellowship] compensates schools well on the understanding that the Fellows will be included in the community.”¹¹⁷ The placement of Fellows at rigorous academic institutions is also helpful. Professor Pojanowski was able to send his paper to law reviews on University of Virginia letterhead, which he believes was an advantage in getting it noticed and, ultimately, accepted for publication.¹¹⁸ Professor Chapman added, “[A benefit of the fellowship was in] associating in part with another institution in addition to Duke [where he received his law degree]; [Stanford, his fellowship placement] is more seen as producing students who become legal scholars.”¹¹⁹ “I got the opportunity to write and get my foot in the academy. I wouldn’t have had that otherwise.”¹²⁰

Several candidates have met faculty members during their fellowship with whom they became close. “Getting to know people in the academy is super helpful,” both formally, for references, and informally, for incubator talks.¹²¹ For instance,

114. Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

115. *See id.*

116. Telephone Interview with John Ohlendorf, *supra* note 28.

117. *Id.*

118. *See* Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

119. Telephone Interview with Nathan Chapman, Assistant Professor of Law, University of Georgia Law School (Apr. 10, 2015).

120. *Id.*

121. Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

during his John M. Olin Fellowship, Professor Pojanowski met two of the references he used for his Association of American Law Schools (AALS) application.¹²² John Ohlendorf “got to know John McGinnis and he’s been a big supporter of mine ever since,”¹²³ and Professor Chapman “got to know Michael McConnell, who became a good mentor for me, and we later co-authored a paper together.”¹²⁴

The John M. Olin Fellowship also “creates a bit of a network within the Federalist Society—people who know you and can make calls for you.”¹²⁵ Professor Dolin stated, “I had the chance to build that [network] and have had the opportunity to repay the favor.”¹²⁶ “Post-going on the market, the connections I made [through the John M. Olin Fellowship] helped tremendously in terms of network.”¹²⁷

The Federalist Society provides resources on getting hired in the legal academy, which they encourage John M. Olin Fellows to utilize. One such program is Professor Lisa Bernstein’s “bootcamp” on “academic hiring for Fed Soc minded people.”¹²⁸ She “strives to deliver a hard message to people” that no law schools want to hire conservatives.¹²⁹ Although the Fellows with whom I spoke had mixed views on this kind of programming (some thought that it hurt their self-confidence, but others welcomed it as a needed reality-check), many Fellows have benefited from using Federalist Society resources to build their applications and develop their interview skills. Professor Pojanowski got a sense of how to present and model himself receiving feedback on what to emphasize in his application. In other words, he “became a much more polished candidate.”¹³⁰

For what it is worth, the John M. Olin Fellows themselves consider the program to be very successful in supporting and encouraging young conservative scholars to enter legal academia. Notably, however, it is not just Federalist Society insiders who

122. *See id.*

123. Telephone Interview with John Ohlendorf, *supra* note 28.

124. Telephone Interview with Nathan Chapman, *supra* note 119.

125. Telephone Interview with Gregory Dolin, *supra* note 89.

126. *Id.*

127. *Id.*

128. *See* Confidential Telephone Interview, *supra* note 29.

129. *See id.*

130. Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

have benefited from the program. One John M. Olin Fellow stated that the fellowship “is not as nefarious, insider, homegrown as it can be portrayed or understood as by outsiders. I wasn’t an insider. I wasn’t even a member of the Federalist Society—it wasn’t something on my radar in law school.”¹³¹ “My sense is that [the] goal [of the fellowship] is what they publicly state: to encourage diversity within the academy.”¹³² In the words of one Fellow, “The [John M. Olin Fellowship] has been very successful—look at the people who have done it and ended up in academia. Of course some people change their mind about going into [the academy], but almost everyone who wanted it ended up in academia.”¹³³ Not to mention, “Once those jobs are [filled with conservative professors], our network is growing.”¹³⁴

C. *Tenured/Tenure-track Placement Success of the
John M. Olin Fellows*

Another measure of the fellowship’s success is the number of John M. Olin Fellows holding tenured or tenure-track positions in the nation’s law schools. From 1997 through 2011, there were fifty John M. Olin Fellows. Currently, thirty-two out of forty-eight recipients hold tenured or tenure-track positions in the nation’s law schools,¹³⁵ a success rate of sixty-seven percent.¹³⁶ Given that the AALS has reported that between 1991 and 2007 merely twelve percent of applicants were “successful” on the legal academic market,¹³⁷ the John M. Olin Fellowship seems remarkably successful. Eugene Meyer echoed this sentiment, “[the John M. Olin Fellowship] did significantly better than we expected.

131. Telephone Interview with Nathan Chapman, *supra* note 119.

132. *Id.*

133. Telephone Interview with Gregory Dolin, *supra* note 89.

134. *Id.*

135. Because Professors Marie Gryphon Newhouse and Erin Sheley hold tenure track positions at universities outside the United States (the University of Surrey in the United Kingdom and the University of Calgary in Canada, respectively), I do not count them in my analysis throughout this Note, as *U.S. News and World Report* only ranks law schools within the United States. As Geoff Manne achieved tenure at Lewis & Clark Law School before leaving to work in private practice, I do count him in my analysis. He also continues to serve as a lecturer at Lewis & Clark Law School.

136. *See supra* Table 1.

137. ASSOCIATION OF AMERICAN LAW SCHOOLS, STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS, 2005–2006, Table 13A.

People got hired, and got hired at better schools than we would have expected.”¹³⁸ Further, the “fact that two-thirds of the Fellows have gotten tenure track positions and most are still in the academy is pretty striking.”¹³⁹

Of the sixteen John M. Olin Fellows who have not placed in academia,¹⁴⁰ three chose not to pursue academic careers, two have left the field altogether, two are currently pursuing PhDs, three are completing fellowships, one is a partner at a law firm, two work in the public interest or government field, one is the CEO of his own company, and one is serving as a Supreme Court clerk this Term.¹⁴¹ Additionally, one of those Fellows was active on the academic market in 2015 and received callback interviews.¹⁴² The placement rate for John M. Olin Fellows has declined slightly since Professor Teles published his work, however. In 2008, twenty-three out of thirty Fellows¹⁴³ had placed in tenured or tenure-track positions, a placement rate of seventy-seven percent.¹⁴⁴

D. *Placement success from 2008–2011: Indicative of Broader Problems in the Legal Market?*

Since 2007 it has apparently been very difficult for the John M. Olin Fellows to be placed in the academy. In the subset of 2007–2011 John M. Olin Fellows (who went on the market the year after their fellowship began, from 2008–2012), only nine out of seventeen Fellows have been placed,¹⁴⁵ a rate of only fifty-seven percent. One explanation for this trend is that the hiring market has been increasingly restricted since the Great Recession began in 2008.¹⁴⁶

Unfortunately, there is no yearly compilation of data on new hires in the legal market. One source that many in the field look to, however, is *PrawfsBlawg’s* yearly compilation of self-

138. Telephone Interview with Eugene Meyer, *supra* note 12.

139. *Id.*

140. *See supra* Table 1.

141. Email from Eugene Meyer, President, Federalist Society, to Erin Cady (Mar. 4, 2015, 12:15 EST) (on file with author).

142. *See id.*

143. Professor Teles’s data only included John M. Olin Fellows through 2006.

144. TELES, *supra* note 3, at 176–77; *see supra* Table 1.

145. I do not consider the placement of Professors Newhouse or Sheley in these numbers, as they are teaching abroad. *See supra* Table 1.

146. Telephone Interview with Eugene Meyer, *supra* note 12.

reported hires.¹⁴⁷ From 2006 to 2009, self-reported hires remained fairly steady, with 158 new hires reporting in 2006, 153 in 2007, 167 in 2008, and 151 in 2009.¹⁴⁸ In 2011, new hires remained steady at 155 before taking a tumble—143 self-reported as new hires in 2012, 106 in 2013, 73 self-reported in 2014, and a mere 70 self-reported in 2015.¹⁴⁹ Of course, any self-reported study will have an underreporting problem, but those who follow hiring in the legal academy believe that it is a “pretty good” representation of the market.¹⁵⁰

The difficult market for legal academics, particularly entry-level hires, has been widely acknowledged.¹⁵¹ For instance, Susannah Barton Tobin, the Managing Director of the Climenko Fellowship Program and Assistant Dean for Academic Career Advising at Harvard Law School reported to me that Harvard’s Climenko Fellowship Program was also affected by the

147. See Lawskey, *supra* note 95.

148. See *id.* No data is provided for 2010, as the blog collected insufficient data that year. See *id.*

149. See *id.*

150. Interview with Susannah Barton Tobin, Managing Director of the Climenko Fellowship Program and Assistant Dean for Academic Career Advising at Harvard Law School, in Cambridge, Mass. (Apr. 18, 2015). Dean Tobin estimated that maybe ten people were not included on *PrawfsBlawg*’s 2014 Entry Level Hiring Report. *Id.*

151. *PrawfsBlawg* described their findings of seventy self-reported hires as “[b]ad, but not much worse than last year.” See Lawskey, *supra* note 95. *PrawfsBlawg*’s 2014 self-reported hiring report stated “73 self-reported tenure track hires? What the . . . ?” Sarah Lawskey, *Spring Self-Reported Entry Level Hiring Report 2014*, PRAWFSBLAWG (May 2, 2014), <http://prawfsblawg.blogs.com/prawfsblawg/2014/05/spring-self-reported-entry-level-hiring-report-2014.html> [<http://perma.cc/5CHL-BX6D>]. As entry-level hiring has gone down, however, the “arms race” in qualifications continues to rise. *PrawfsBlawg* reported that the rate of reported hires having completed fellowships has increased over the past few years: sixty-nine percent of reported hires in 2011 had completed a fellowship, sixty-eight percent in 2012, seventy-eight percent in 2013, eighty-four percent in 2014, and eighty-three percent in 2015. In comparison, only fifty-two percent of reported hires in 2006 had completed a fellowship, forty-two percent in 2007, fifty-one percent in 2008, and fifty-three percent in 2009. See Lawskey, *supra* note 95. Additionally, a recent study by UCLA Law School Professor Lynn M. LoPucki found that in 2014 and 2015, twenty-two of the thirty-three entry-level hires at the top twenty-six law schools held PhDs (a total of sixty-seven percent). Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. OF LEGAL EDUC. 506, 506 (2016). Projecting forward, LoPucki predicts that if JD-PhD hiring continues at the same rate, the “the proportion of PhDs on the top-twenty-six faculties will exceed 33% in 2019 and 50% in 2028. The relevance of those levels is that 33% of the faculty can block hires at many schools and 50% is the threshold for affirmatively making hires at others.” *Id.* at 540.

downturn. She hypothesized that some stronger candidates have decided not to take the risk even to enter the legal academic market right now, leaving the program with a smaller pool of quality candidates from whom to choose.¹⁵² In the words of one John M. Olin Fellow, “the academic market is in a unique place. It’s difficult to even call it a market, particularly for people interested in public law.”¹⁵³

While the academic market has undoubtedly experienced a downturn in recent years, the statistics from *PrawfsBlawg* do not fully explain the difficulties the John M. Olin Program has had in placing Fellows from 2007–2011. After all, *PrawfsBlawg* did not report a downturn until 2012, the year that the 2011 class of John M. Olin Fellows went on the academic market. That said, several former John M. Olin Fellows told me that around 2008 was when the program started seeing the effects of the market. Dean Tobin hypothesized that in 2008 there was an initial shock to budgets, and out of an abundance of caution schools may not have given many callbacks or offers.¹⁵⁴

On a deeper analysis of the 2007–2011 candidates, it becomes clear that the numbers are not as poor as they initially appear. Three Fellows appear to have lost interest in academia or have left the profession entirely.¹⁵⁵ Excepting these three, the placement rate for the 2008–2011 John M. Olin Fellows rises from nine out of seventeen (fifty-three percent) to nine out of fourteen (sixty-four percent), still below the overall placement rate of sixty-seven percent, but only slightly.¹⁵⁶ The credentials of the remaining five Fellows who have not been placed do not appear any different from the John M. Olin Fellows generally. In fact, by some measures they may be even more competitive candidates than the average John M. Olin Fellow. Two of the five received their law degrees from Harvard, and one each from Stanford, Michigan, and Case Western.¹⁵⁷ Three hold advanced degrees,

152. Interview with Susannah Barton Tobin, *supra* note 150.

153. Telephone Interview with John Ohlendorf, *supra* note 28.

154. Interview with Susannah Barton Tobin, *supra* note 150.

155. Carrie Severino (2008) serves as the Chief Counsel and Policy Director at the Judicial Crisis Network, Steve Erickson (2008) is currently in private practice in psychology, and Logan Beirne (2010) founded Matterhorn Transactions, Inc., where he currently serves as the Chief Executive Officer. *See supra* Table 1.

156. *See id.*

157. *See id.*

two PhDs and one MA (sixty percent, versus fifty percent of all John M. Olin Fellows).¹⁵⁸ Additionally, all five clerked on a Circuit Court of Appeals (one-hundred percent, versus eighty percent of all John M. Olin Fellows), though only one has served as a Supreme Court clerk (twenty percent versus twenty-four percent of all John M. Olin Fellows).¹⁵⁹ Perhaps, then, the difference is a poor hiring market.

VI. THE JOHN M. OLIN FELLOWSHIP PROGRAM'S SUCCESS IN
ADVANCING THE CONSERVATISM IN ACADEMIA:
AN ANALYSIS

How successful have the John M. Olin Fellows been at advancing the conservative cause through their tenured or tenure-track positions? There are multiple levels to the John M. Olin Foundation's goal of increasing the "dissemination and understanding of [conservative] ideas."¹⁶⁰ First, there is a benefit to establishing, in the parlance of the John M. Olin Foundation, a "beachhead" at a law school.¹⁶¹ In other words, conservative ideas are more widely disseminated if the John M. Olin Fellows are established at many different law schools, rather than all clustered at one or two schools. So, at which law schools have the John M. Olin Fellows been placed? Second, conservatives have historically found more success in Law and Economics placements (in large part, due to the work of the John M. Olin Foundation) than in the traditional public-law arena. Does that hold true for the John M. Olin Fellowships? Third, how successful have the John M. Olin Fellowships been in disseminating conservative ideas to students? Each of these elements will be considered in turn.

A. *At which Law Schools have John M. Olin Fellows been Placed?*

In the 15 years of data that I have compiled, the thirty-two tenured or tenure-track John M. Olin Fellows are currently placed at twenty-four different institutions in the United States.¹⁶² Establishing "beachheads" at 24 different institutions

158. *See id.*

159. *See id.*

160. MILLER, *supra* note 15, at 39.

161. *See id.* at 89–90.

162. *See supra* Table 1.

seems like a significant success of the program. Additionally, five law schools currently employ more than one John M. Olin Fellow: George Mason (4); Notre Dame (3); Harvard (2); Syracuse (2); and Villanova (2).¹⁶³ The clustering of conservatives at George Mason and Notre Dame indicates that conservatives have passed the “beachhead” stage and have established inroads into those (already conservative-leaning) law schools.

Second, there is a greater benefit to establishing conservatives in the faculties of the nation’s elite schools. The John M. Olin Foundation recognized that change in higher education “filters down from the top”;¹⁶⁴ accordingly, it is important for the John M. Olin Fellows to be employed at top law schools. Using the *U.S. News & World Report* law school rankings for the year that each John M. Olin Fellow went on the market,¹⁶⁵ I tabulated the rankings for all of the schools at which a Fellow earned his or her first tenure-track position (Column A in Table 2, below).¹⁶⁶ The schools range in rank from Harvard (ranked 2nd in 1998) to Syracuse (ranked 87th in 2009). Additionally, nine schools were either unranked or ranked above 100th in the year that a John M. Olin Fellow went on the market, so for the sake of consistency, I have excluded these schools from my calculation.¹⁶⁷ The mean law school ranking for a John M. Olin Fellow’s entry-level position is twenty-nine, and the median ranking is twenty-five. For reference, the 2016 *U.S. News & World Report* law school rankings place William & Mary at 29th.¹⁶⁸ The 2016 rankings do not have a school ranked 25th, but four schools are tied for 22nd: George Washington University, the University of Alabama, the Univer-

163. *See id.*

164. TELES, *supra* note 3, at 175; *see also* MILLER, *supra* note 15, at 74 (“The importance of Harvard Law School is difficult to overstate: At the dawn of the twenty-first century, five of the nine Supreme Court justices had attended it, along with nine senators, 28 percent of the managing partners in top-fifty law firms, and 16 percent of America’s law school professors (with an even higher percentage at first-tier law schools).”).

165. To tabulate this data, I use the *U.S. News & World Report* ranking for the year that a John M. Olin Fellow completed his or her fellowship. Thus, if an individual was a John M. Olin Fellow from 1997–1998, I used the 1998 law school ranking.

166. *See infra* Table 2.

167. *See id.*

168. U.S. NEWS & WORLD REPORT: BEST LAW SCHOOLS 2016, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings?int=a1d108> [<https://perma.cc/ZD6L-QCCQ>] (last visited Mar. 2, 2016).

sity of Iowa, and the University of Notre Dame.¹⁶⁹ Thus, post-fellowship, the median John M. Olin Fellow is placed at a well-respected legal institution, but not at a top law school.

I also used the 2016 *U.S. News & World Report* law school rankings to tabulate the rankings of all schools at which a John M. Olin Fellow currently teaches (Column B in Table 2, below).¹⁷⁰ The schools range from Harvard (ranked 2nd) to Lewis & Clark (ranked 94th). In 2016, only four schools are unranked (versus nine previously), and I have not included them in my calculations.¹⁷¹ The 2016 mean ranking is 40th, while the median ranking is 34th. The *U.S. News & World Report* has ranked the University of Colorado, Boulder at 40th, while six schools are tied for 34th: Boston College, Brigham Young University, Fordham University, Indiana University, Bloomington (Maurer), Ohio State University (Moritz), and the University of North Carolina, Chapel Hill.¹⁷² These numbers are deceptively lower than the tabulations in Column A. When the five schools that were unranked when the Fellow accepted a position are excluded from this analysis (the schools that were labeled “unranked” in Column A but not Column B), the numbers are very similar to the tabulation in Column A, with a mean of 31st (as opposed to 29th in Column A) and a median of 22nd (as opposed to 25th in Column A). Consequently, my conclusion remains the same for a 2015-based analysis—the median John M. Olin Fellow is currently employed at a decent law school, but not at the top law schools that John M. Olin Foundation likely targeted.¹⁷³ The John M. Olin Fellowship has had little success in the so-called “T14,” or the top fourteen schools in the nation.¹⁷⁴ Only five out of thirty-two Fellows are currently placed at a T14 school (Harvard (2),

169. *Id.*

170. *See infra* Table 2.

171. *See id.*

172. *See* U.S. NEWS & WORLD REPORT, *supra* note 168.

173. John M. Olin preferred to donate money and support programs at “elite institutions,” ones that are “academically respectable in terms of influence on public policy” and those at which “faculties, alumni, and students tend to influence the climate of opinion.” MILLER, *supra* note 15, at 73–74.

174. The current “T14” includes Yale, Harvard, Stanford, Columbia, Chicago, NYU, Pennsylvania, Duke, University of California, Berkeley, Virginia, Michigan, Northwestern, Cornell, and Georgetown. U.S. NEWS & WORLD REPORT, *supra* note 168.

NYU, Michigan, Northwestern, and Georgetown), so the T14 success rate at those schools is a mere 16 percent.¹⁷⁵

175. See *infra* Table 2.

Name	Fellowship Year (Start)	Tenured/Tenure-Track Academic Position	<i>U.S. News & World Report</i> Law School Rankings (year fellowship was completed) ["Column A"]	<i>U.S. News & World Report</i> 2016 Law School Rankings ¹⁷⁶ ["Column B"]
Allen Ferrell	1997	Harvard	2	2
Adrian Vermeule	1997	Harvard	2	2
Geoff Manne	1998	Lewis & Clark	Unranked	94
Keith Sharfman	1999	Rutgers (currently St. John's)	Unranked (Rutgers)	82 (St. John's)
Julian Ku	1999	Hofstra	Unranked	Unranked
Thomas Lambert	1999	Missouri	Unranked	59
Rachel Barkow	2000	NYU	5	6
Nicholas Rosenkranz	2000	Georgetown	14	14
Laurence Claus	2000	San Diego	Unranked	71
Amy Barrett	2001	Notre Dame	24	22
Adam Mossoff	2001	George Mason	47	42
David Moore	2001	Brigham Young	33	34
Ilya Somin	2002	George Mason	40	42
James Prescott	2003	Michigan	7	11
Donald Kochan	2003	Chapman	Unranked	Unranked
Robert Miller	2003	Iowa	23	22
Jeffrey Manns	2004	George Washington	25	22
Chaim Saiman	2004	Villanova	63	87
John Pfaff	2004	Fordham	27	34
Brian Fitzpatrick	2005	Vanderbilt	17	17
Nathan Sales	2005	Syracuse	Unranked	87
Christopher Newman	2006	George Mason	34	42
Michael Risch	2006	Villanova	60	87
Scott Shepard	2007	John Marshall	Unranked	Unranked
Greg Dolin	2007	Baltimore	Unranked	Unranked
Daniel Kelly	2007	Notre Dame	22	22
Joshua Kleinfeld	2008	Northwestern	10	12
Jeffrey Pojanowski	2008	Notre Dame	23	22
Tara Helfman	2009	Syracuse	86	87
Elina Treyger	2009	George Mason	42	42
Nathan Chapman	2010	Georgia	28	31
James Stern	2011	William & Mary	33	29
MEAN			29	40
MEDIAN			25	34

176. To be consistent with how *U.S. News & World Report* ranked law schools in the late 1990s and early 2000s, I consider all rankings above 100 to be "unranked." In 2016, the University of Baltimore and Hofstra University were tied for 122nd (along with three other schools) and Chapman University was ranked 127th. John Marshall Law School remained truly "unranked" in 2016.

B. *How Successful have Public Law Conservatives been in Relation to Law and Economics Conservatives?*

In a recent law review article, Harvard Law School Professor Mark Ramseyer argued that many law professors' statements about the Affordable Care Act reflected their partisan bias rather than a considered legal analysis.¹⁷⁷ Within universities, Professor Ramseyer found that "leftward loyalties are strongest (1) at the best universities, and (2) in the least scientific disciplines."¹⁷⁸ In terms of the law school environment, "constitutional law would lie near the humanities on this spectrum; perhaps law and economics would lie near STEM."¹⁷⁹

The fringe-left bias among constitutional law scholars follows. Methodologically, they resemble no one so much as their colleagues in the humanities. They proceed not by logic but by rhetoric, not by empirical tests but by narrative. Among legal scholars, they lie at the "least scientific" and intellectually least secure end of the methodological spectrum. Like their colleagues in the humanities, they protect the "plausibility of their scientific orientations" through fringe politics.¹⁸⁰

Thus, under Professor Ramseyer's logic, it would follow that constitutional law, and public law generally, would be the most difficult subject area for conservatives to be hired, and perhaps, the most important for the John M. Olin Fellowship to break into. The idea that the "barriers for public law are much higher—there's much more at stake,"¹⁸¹ was reflected in my conversations with the John M. Olin Fellows. One professor stated, "Being a conservative is more of a disadvantage in public law so it wouldn't surprise me if [John M. Olin Fellows with a public law interest] are less successful."¹⁸² All of the John M. Olin Fellows with whom I spoke agreed that "the academy could use more [conservative] voices outside business law." There are a "couple" of conservatives "who have an outsize impact in constitutional law, but if you want to get in on the entry level, it's a real-

177. See J. Mark Ramseyer, *Biases that Blind: Professor Hyman and the University*, 2014 U. ILL. L. REV. 1229, 1240.

178. *Id.* at 1233.

179. *Id.* at 1235.

180. *Id.* at 1239–1240.

181. Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

182. Telephone Interview with Nicholas Quinn Rosenkranz, *supra* note 111.

ly high-risk move.”¹⁸³ Unsuspecting candidates can be tagged as conservative early, depending on their scholarship interests: “I wasn’t writing about affirmative action or abortion, but there are a lot of landmines you could walk on.”¹⁸⁴

The data reflect the observations of the John M. Olin Fellows. A total of thirteen out of the fifty John M. Olin Fellows can be identified as law and economics conservatives, either through self-identification or an analysis of their scholarship, and on the whole, they have been remarkably successful in achieving tenure-track positions: eleven out of the thirteen law and economics conservatives have been placed in tenured or tenure-track positions (eighty-five percent).¹⁸⁵ Of the two who were not placed, Erica Worth Harris chose not to pursue an academic career and is currently a partner at the law firm Susman Godfrey. K.A.D. Camara initially pursued an academic career, but a troubled past derailed his appointment at George Mason.¹⁸⁶ The placement statistics for academics with a primary focus outside of law and economics have been decidedly worse, however. Consistent with the Federalist Society’s goal to expand conservatives’ success in academic placements beyond the law and economics subject area,¹⁸⁷ most of the John M. Olin Fellows are not law and economics specialists—a total of thirty-seven of fifty fellows (thirty-five out of forty-eight when Professors Newhouse and Sheley, who are both teaching abroad, are excepted). Only twenty-two of the thirty-five have been placed in the academy,¹⁸⁸ however, while thirteen have failed to achieve placement (a success rate of only sixty-three percent).¹⁸⁹ Consequently, conservatives have continued to find overwhelming success in law and economics placements, but still

183. Telephone Interview with Jeffrey Pojanowski, *supra* note 103.

184. *Id.*

185. *See supra* Table 1.

186. *See* Ian Shapira, *Racist Writing as a Teen Haunted GMU Candidate*, WASH. POST (Apr. 3, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/02/AR2007040201537.html> [<http://perma.cc/F899-QR57>].

187. TELES, *supra* note 3, at 174 (quoting Proposal to the John M. Olin Foundation, Inc. for the John M. Olin Fellows in Law for the 2000–2001 Academic Year, Federalist Society Archives, March 15, 1999, at 3).

188. Once again, I exclude Marie Gryphon Newhouse and Erin Sheley from this analysis even though they have both obtained tenure-track positions, as their schools are located outside of the United States.

189. *See supra* Table 1.

lag far behind in constitutional and public law—areas specifically targeted by the Federalist Society and the John M. Olin Foundation in creating the fellowship.¹⁹⁰ The structural biases against conservatives in the public law arena seem still to be a force to be reckoned with.

C. *Have the John M. Olin Fellows Disseminated Conservative Views in the Classroom?*

Finally, conservatives' presence on law school faculties may be a useful goal in and of itself: conservatives can challenge the "intellectual laziness" of their colleagues;¹⁹¹ they can advocate for hiring more conservative faculty members;¹⁹² they can create a more welcoming intellectual community for like-minded students; and they can provide conservative students with advice and recommendations for clerkships and jobs with conservative judges and causes.¹⁹³ Still, the John M. Olin Foundation's goal of disseminating ideas is not fully complete unless the John M. Olin Fellows expound conservative views in the classroom.¹⁹⁴ It is essential, then, to consider which classes the John M. Olin Fellows teach. It seems important for as many students as possible to have access to conservative professors. Professors can likely reach the greatest number of students if they teach one or more of the first-year foundational courses (in which students are assigned their professors), and can establish a relationship with students that lasts at least three years. Most law schools offer the following core courses during the first year: Civil Procedure, Contracts, Criminal Law, Consti-

190. TELES, *supra* note 3, at 188.

191. Nicholas Quinn Rosenkranz, *Intellectual Diversity in the Legal Academy*, 37 HARV. J.L. & PUB. POL'Y, 137, 138 (2013) (noting that scholarship becomes "unreflective and imprecise" when members of faculty workshops share the same perspectives and thus do not challenge each others' basic premises).

192. Professor Dent cites Harvard professor Cass Sunstein's work in behavioral economics, noting that "ideological imbalance in academia tends to perpetuate itself." See Dent, *supra* note 27, at 166.

193. Sherif Girgis, *How the Law School Can Succeed—An Invitation*, 37 HARV. J.L. & PUB. POL'Y, 187, 188 (2013) ("A professor at Yale once told me she absolutely agreed on the need for conservative faculty. 'After all,' she said without irony, 'we liberals have trouble getting you all internships in Republican administrations.'").

194. Professor Rosenkranz notes that "intellectual diversity matters to students" who wish "to learn how to persuade Justices Scalia, Thomas, Alito, Roberts, and Kennedy," which he claims is unlikely, if not impossible, unless they are taught, in part, by conservative professors. See Rosenkranz, *supra* note 191, at 142–43.

tutional Law, Property, and Torts. Perhaps unsurprisingly, almost all of the John M. Olin Fellows teach one or more of the core first-year courses: twenty-eight¹⁹⁵ out of thirty-two tenured or tenure-track Fellows (eighty-eight percent).¹⁹⁶

As previously mentioned, one of the goals of the Federalist Society and the John M. Olin Foundation was to increase the number of public law conservatives in the academy.¹⁹⁷ Thus, it is important for Fellows to teach public law courses. I also hypothesize that political views are more often discussed, and conservative views most often silenced, in public law courses. Core public law courses include Constitutional Law,¹⁹⁸ Administrative Law, Federal Courts, and Legislation or Statutory Interpretation. Other public law courses include Public International Law, Foreign Relations Law, and Comparative Constitutional Law.¹⁹⁹ In the public law arena, the John M. Olin Fellowship has been less successful: only fourteen out of thirty-two tenured or tenure-track John M. Olin Fellows teach public law courses (forty-four percent).²⁰⁰ These fourteen Fellows also all teach core first-year courses, and thus likely have the greatest ability to disseminate conservative views.²⁰¹

195. I count Professor Vermeule among these professors, as he teaches Legislation & Regulation, a core first-year course at Harvard Law School. See *infra* Table 3.

196. See *id.*

197. TELES, *supra* note 3, at 174 (quoting Proposal to the John M. Olin Foundation, Inc. for the John M. Olin Fellows in Law for the 2000–2001 Academic Year, Federalist Society Archives, March 15, 1999, at 3).

198. As Constitutional Law is also a core-first year course in most law schools, I include it in my analysis of first-year courses.

199. See, e.g., *Program of Study in Public Law*, UNIVERSITY OF NOTRE DAME, <http://law.nd.edu/academics/programs-of-study/program-of-study-in-public-law/> [<https://perma.cc/UD3A-AL8R>] (last visited Apr. 2, 2015).

200. See *infra* Table 3.

201. See *id.*

Name	Tenured/ Tenure-Track Academic Position	First-Year Courses Taught	Public Law Courses Taught	Other Courses Taught
Allen Ferrell	Harvard	Contracts	N/A	Securities Regulation; Regulation of Market Structure; Law & Finance; Corporate Finance
Adrian Vermeule	Harvard	Legislation & Regulation ²⁰²	Administrative Law; Public Law	N/A
Geoff Manne	Lewis & Clark	N/A	N/A	Antitrust; Corporate Governance; International Economic Regula- tion
Keith Sharfman	St. John's	Contracts	N/A	Antitrust; Bank- ruptcy; Commer- cial Law; Corpo- rate Finance; Corporate Reor- ganization; Law & Economics; Legal Valuation
Julian Ku	Hofstra	Contracts; Constitutional Law	Constitutional Law	Business Organi- zations; Interna- tional Business Transactions; International Commercial Arbitration
Thomas Lambert	Missouri	Contracts	N/A	Antitrust; Busi- ness Organi- zations; Environ- mental Law; Publicly Held Corporations
Rachel Barkow	NYU	Criminal Law	Administrative Law; Legislation and the Regulator- y State; Public Law	N/A
Nicholas Rosenkranz	Georgetown	Constitutional Law	Constitutional Law; Federal Courts	N/A
Laurence Claus	San Diego	Constitutional Law; Contracts	Constitutional Law; Compara- tive Constitution- al Law	N/A

202. Legislation & Regulation is a core first-year course at Harvard Law School.

Table 3: Courses Taught by the Tenured/Tenure Track John M. Olin Fellows				
Name	Tenured/ Tenure-Track Academic Position	First-Year Courses Taught	Public Law Courses Taught	Other Courses Taught
Amy Barrett	Notre Dame	Civil Procedure; Constitutional Law	Constitutional Law; Federal Courts; Statutory Interpretation	Evidence
Adam Mossoff	George Mason	Property	N/A	Internet Law; Patent Law; Trade Secrets Law
David Moore	Brigham Young	Civil Procedure	Foreign Relations; International Law; Internation- al Human Rights Law	N/A
Ilya Somin	George Mason	Property	Constitutional Law	N/A
James Prescott	Michigan	Criminal Law	N/A	Employment Law; Law & Economics Work- shop
Donald Kochan	Chapman	Property	Administrative Law; Federal Courts	Natural Re- sources Law; Corporations; Agency & Part- nership; Law & Economics
Robert Miller	Iowa	Contracts	N/A	Business Associa- tions; Mergers & Acquisitions; Corporate Fi- nance; Antitrust
Jeffrey Manns	George Washington	N/A	N/A	Securities Regula- tion; Financial Institutions; Mergers & Acqui- sitions
Chaim Saiman	Villanova	Contracts	Legislation & Statutory Inter- pretation	Insurance Law; Jewish Law
John Pfaff	Fordham	Criminal Law	N/A	Sentencing Law; Law & Economics
Brian Fitzpatrick	Vanderbilt	Civil Procedure	Federal Courts	Complex Litiga- tion
Nathan Sales	Syracuse	Criminal Law; Constitutional Law	Constitutional Law; Administrative Law	National Security Law
Christopher Newman	George Mason	N/A	N/A	Intellectual Prop- erty Law
Michael Risch	Villanova	Contracts	N/A	Patent Law; In- ternet Law; Intel- lectual Property Law

Name	Tenured/ Tenure-Track Academic Position	First-Year Courses Taught	Public Law Courses Taught	Other Courses Taught
Scott Shepard	John Marshall	Property	N/A	Natural Resources Law; Trusts & Estates; Sales Law
Greg Dolin	Baltimore	Property; Torts	N/A	Healthcare Law; Intellectual Property Law
Daniel Kelly	Notre Dame	Property	N/A	Trusts & Estates; Remedies; Law & Economics Seminar
Joshua Kleinfeld	Northwestern	Criminal Law; Criminal Procedure	N/A	Corporate Criminal Law; Jurisprudence; Legal Theory; Moral Concepts in Legal Doctrine
Jeffrey Pojanowski	Notre Dame	Torts	Administrative Law	Jurisprudence
Tara Helfman	Syracuse	Constitutional Law; Contracts	Constitutional Law; International Law; Law of the Sea	N/A
Elina Treyger	George Mason	Criminal Law	N/A	Criminal Procedure; Immigration Policy
Nathan Chapman	Georgia	N/A	N/A	Law & Ethics of Lawyering; Law & Religion; Georgia Practice ²⁰³
James Stern	William & Mary	Property Law	N/A	Private Law Theory; Intellectual Property Law; Conflict of Laws

After speaking to students across the country who have had one or more John M. Olin Fellows as a professor, I determined that the opportunity to disseminate conservative views in a classroom does not mean that the Fellows have done so. First of all, not all of the Fellows are, or appear to be, conservative. Professor Treyger stated, “No relevant audience has reliably determined whether to classify me as a conservative or a liberal

203. Professor Chapman will be teaching two public law courses in the 2016–2017 school year: Constitutional Law I (a required first-year course) and Comparative Constitutional Law.

(in the American sense), and, at least in my judgment, there is minimal, if any, ideological tinge to my work.”²⁰⁴ Additionally, one Villanova University Law School student with whom I spoke expressed surprise that his Contracts professor, Michael Risch, had received the John M. Olin Fellowship, “To be honest I’m not entirely sure of his persuasion—[he] kept that pretty low key during class.”²⁰⁵

Second, none of the students with whom I spoke thought that the John M. Olin Fellows that they had as professors came across as strongly conservative in class. One Notre Dame student who had classes with Professors Pojanowski and Barrett stated that those professors “stick to the law, and as such, avoid much [sic] of the political issues raised by a conservative-or-not kind of question.”²⁰⁶ A University of Baltimore student described Professor Dolin, his first-year Torts professor, as follows:

I do not know that I would classify him as a conservative, but rather that he has conservative leanings. He definitely likes to bring conservative speakers to our school to discuss and debate a whole host of issues. But he hides his personal beliefs As far as his ideology coming across in class, it was not enough to really say definitely. I tend to pay close attention to that because I like professors who do not beat students over the head with their personal beliefs.²⁰⁷

Many students’ experiences were similar—they noted that they knew a particular professor was conservative, based on his or her involvement in the Federalist Society, or through conversations outside of class, but most professors’ conservative leanings could hardly be detected in class, or if they were, they were expressed in a more objective manner (such that students understood that an opinion was just a personal opinion, and not definitively “the law”²⁰⁸). For instance, “[St. John’s]

204. Interview with Elina Treyger, *supra* note 104.

205. Telephone Interview with John Lisman, Student, Villanova University Law School (Apr. 8, 2015).

206. E-mail from Greg Chafuen, Student, Notre Dame Law School, to Erin Cady (Apr. 13, 2015 20:30 EST) (on file with author).

207. Confidential E-mail from Student, University of Baltimore School of Law, to Erin Cady (Apr. 8, 2015 21:10 EST) (on file with author).

208. One student described this to me as, “In class [Missouri Professor Lambert] does state his libertarian leaning viewpoints on certain issues but it in no way biases his teaching. He is very good about stating his opinion and making sure students know that it is just his opinion, then he takes the issue back to a neutral

Professor Sharfman is definitely one of [the conservatives], but I learned that more by working with him through the Federalist Society and on my note than I did by being in his first year contracts class.”²⁰⁹ Similarly, “I think that [Chapman Law School] Dean Kochan is more Libertarian It is something that is widely known among his students, not because of the way he teaches, but because of the organizations he aligns himself with and after class discussions.”²¹⁰

One George Mason student knew that Professor Somin was libertarian, but he “teaches property very objectively—however, his widely published works on his libertarian positions on Property rights do creep into the course, especially in the context of takings, etc.”²¹¹ Additionally, “As [Brigham Young] Professor Moore works most closely with the Federalist Society among the professors at BYU, I would assume that he is a strong conservative.”²¹²

The students’ observations of their professors are consistent with the views of the John M. Olin Fellows with whom I spoke. John Ohlendorf stated that he did not “think it was widely known that I am a conservative,” and that “on the whole most students didn’t pick up on [his conservatism in the classroom], but “would have thought that I taught a very balanced class.”²¹³ That said, he hoped that he had “changed left-of-center students’ perspectives in a small way by presenting Originalism as a viable option.”²¹⁴ When I suggested that perhaps being conscious of keeping an ideological balance in the classroom is an indicator of a professor’s conservative leanings, Mr. Ohlendorf agreed.²¹⁵

point (a lot more than I can say for some other professors).” E-mail from Alexandra Sheppard, Student, University of Missouri Law School, to Erin Cady (Apr. 13, 2015 15:17 EST) (on file with author).

209. E-mail from Brianna Walsh, Student, St. John’s University Law School, to Erin Cady (Apr. 9, 2015 11:00 EST) (on file with author).

210. E-mail from Sarah Johnson, Student, Chapman University School of Law, to Erin Cady (Apr. 13, 2015 17:35 EST) (on file with author).

211. E-mail from Tom Hunt, Student, George Mason University School of Law, to Erin Cady (Apr. 9, 2015 11:13 EST) (on file with author).

212. E-mail from Eva Brady, Student, Brigham Young University Law School, to Erin Cady (Apr. 15, 2015 00:02 EST) (on file with author).

213. Telephone Interview with John Ohlendorf, *supra* note 28.

214. *Id.*

215. *See id.*

Professor Dolin mentioned to me that because he is tenured, he “doesn’t hide [his] views; [he has] no reason to do that,” but he added, “I take pride in not foisting my views on anyone.”²¹⁶ “I think I’m good at not tipping my hand.” He said that one student was surprised to find that he was not a member of the American Constitution Society (the liberal student group that was created in response to the Federalist Society’s success).²¹⁷ The situation for tenure-track professors is different, however. One professor tries “not to show off my conservatism. I don’t want to upset anyone. I don’t have tenure, so I’m sensitive to course evaluations. I try to keep a fairly low profile.”²¹⁸ It seems, then, that conservative professors’ fears about ideological bias do not end with their tenure-track placement. This phenomenon likely makes it very difficult for the John M. Olin Fellowship to have achieved “success” in terms of disseminating conservative ideas in the classroom. First of all, as mentioned previously, if a professor’s scholarship is obviously conservative, or if he or she comes across as obviously conservative in interviews, it will be more difficult for him or her to find a placement.²¹⁹ Even once a professor is placed, it appears that he or she needs to keep somewhat of a low profile in order to avoid poor course evaluations by liberal students,²²⁰ or a biased tenure vote by the faculty.²²¹ Thus, it is difficult for a professor to express his or her conservative beliefs in the classroom setting, even if so inclined, until he or she has achieved tenure. Of course, this has a negative impact on the John M. Olin Foundation’s goal of disseminating conservative views. Unfortunately, there is no easy solution to that problem, other than to have more conservative professors tenured at law schools across the country. In other words, the limited success of the John M. Olin Fellows in disseminating conservative views in the classroom is at least partially based on the presence of institutional biases against conservatives, particularly public law conservatives, that the John M. Olin Fellowship was designed to combat.

216. Telephone Interview with Gregory Dolin, *supra* note 89.

217. *See id.*

218. Confidential Telephone Interview, *supra* note 29.

219. *See supra* Part VI.B.

220. *See* Confidential Telephone Interview, *supra* note 29.

221. *See* Telephone Interview with Gregory Dolin, *supra* note 89 (“I have the sense that some faculty have deep-sixed candidates because of the candidates’ political views.”).

VII. CONCLUSION

The John M. Olin Fellowship program has increased the numbers of conservatives in tenured or tenure-track positions in the legal academy. It is evident, through the schools that the John M. Olin Fellows attended, the clerkships that they have held, and the advanced degrees that they have earned, that they are, by and large, quality applicants that are perhaps likely to achieve placements even absent the Fellowship. Still, the Fellows' views of their own experiences strongly suggest that the John M. Olin Fellowship was helpful in achieving their placement, and perhaps in achieving a more prestigious placement than they otherwise would have attained.

A deeper analysis of the John M. Olin Fellowship demonstrates that the program has been quite successful at establishing conservative "beachheads" at well-respected law schools, and clustering Fellows at certain conservative-oriented law schools. Still, the program has had little success in placing Fellows in tenured or tenure-track positions in the T14 schools that were likely the ultimate goal of the John M. Olin Foundation.

Upon first glance, it appears that the placement success of the John M. Olin Fellows has declined considerably since 2007. After a more thorough investigation, however, the placement success of John M. Olin Fellows from 2007–2011 has held up well in comparison to the market generally, though the market's current struggles will likely continue to be an issue for the John M. Olin Fellowship's success, as it will be for all other fellowships. The program's success throughout its tenure has suffered more from investing in Fellows who have chosen not to pursue careers in academia, however, which is something that the program can change. Perhaps the Federalist Society can work to ensure that the John M. Olin Fellows they select demonstrate an ironclad commitment to the academy, so as to avoid repeating the program's early history, in which it funded several fellowships for individuals who chose not to pursue an academic career.

The John M. Olin Fellowship program has demonstrated overwhelming success in placing professors whose interests include law and economics, but its success in placing conservative constitutional or public law scholars has been middling, at best. I read Professor Ramseyer's research as appearing to suggest that this is a result of continued discrimination within the

academy that is particularly strong towards conservative constitutional and public law scholars. Of course, this makes it very difficult to grow conservatism in constitutional and public law, which was a stated goal of James Piereson and the John M. Olin Foundation.²²²

Once a John M. Olin Fellow has earned a tenured or tenure-track position, he or she likely teaches a core first-year or public law course, both of which are important for disseminating conservative ideas. Many of the John M. Olin Fellows keep their opinions to themselves, however, and it is not always easy for students in the classroom to determine whether their professor is conservative. Instead, students identify a professor's conservatism through scholarship, conversations outside of class, or a professor's affiliation with the Federalist Society or other conservative or libertarian organizations. Some tenure-track professors may even try to conceal their conservatism so as not to ruffle any feathers unnecessarily before a tenure vote.

This Note has demonstrated that being a conservative in legal academia remains "very debilitating,"²²³ but it appears that the John M. Olin Fellowship has made a difference on the margins. In less than two decades, the fellowship has helped place thirty-two conservative or moderate professors in tenured or tenure track positions on law school faculties across the country. Although this number is small, and many of the Fellows are one of only a handful of conservative professors at their respective schools, the John M. Olin Fellowship has successfully made inroads into an overwhelmingly liberal academy. As demonstrated by the experiences of the John M. Olin Fellows themselves, the conservative network within law schools remains strong, and grows stronger with every Fellow placed at one of the nation's law schools. Although it will take time—perhaps decades or longer—for it to no longer be newsworthy when Harvard Law School hires three conservative faculty members, that time may yet come, and if so, programs like the John M. Olin Fellowship will have helped to pave the way.

Erin Cady

222. TELES, *supra* note 3, at 188.

223. Confidential Telephone Interview, *supra* note 29.