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SYMPOSIUM ON TRENDS IN LEGAL CITATIONS AND SCHOLARSHIP

SYMPOSIUM EDITORS

FRED R. SHAPIRO, JEAN STEFANCIC

INTRODUCTION *Jean Stefancic* 743
& *Fred R. Shapiro*

THE MOST-CITED LAW REVIEW ARTICLES
REVISITED *Fred R. Shapiro* 751

This Article presents two lists updating Mr. Shapiro's previous study of *The Most-Cited Law Review Articles*. The first list sets forth the one hundred most-cited legal articles of all time. The second list enumerates the one hundred most-cited articles of recent years. This contemporary list reveals a striking phenomenon. A very high percentage of the articles included are written by women, feminists, minority scholars, critical race theorists, critical legal studies scholars, and other "outsiders." The percentage of such participation is so high as to pose the question of whether, at least in the world of the law reviews, the outsiders have become insiders.

THE MOST PROLIFIC LAW PROFESSORS
AND FACULTIES *James Lindgren* 781
& *Daniel Seltzer*

Which law schools are the most prolific producers of scholarship in the top law reviews? Which individual professors are the most prolific publishers in those reviews? These are the primary questions that Professor Lindgren and Mr. Seltzer answer in this study of faculty productivity in the ten and twenty most-cited law reviews in volumes beginning in 1988-92. Along the way, they determine the most-cited law reviews and the law reviews that publish more of their home faculty's work. Last, they show that faculty hired as laterals make up a higher percentage of the most prolific publishers than others on the same faculties.

THE PROBLEM OF SOCIAL COST:
THE CITATIONS *R.H. Coase* 809

Professor Coase discusses his article, *The Problem of Social Cost*, which became widely cited in the economics literature because it contravened existing doctrines. It was also widely cited in legal literature because the concepts were useful in analyzing legal situations.

This Commentary is a letter Professor Gunther wrote to Mr. Shapiro discussing the impact of his article, *The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*.

PROPERTY LAW AND THE NEW ECONOMIC ORDER:
A BETRAYAL OF MIDDLE AMERICANS AND
THE POOR

Charles A. Reich 817

In this Article, Professor Reich revisits his earlier article, *The New Property*, and finds that although the Framers considered private property to be both the basis of independent citizenship and the foundation of our economic system, we are rapidly becoming a propertyless people. Working Americans have lost ownership of their labor and livelihood, as well as ownership of the endowment of public resources once shared by all. By failing to protect individual property while actively allowing corporations and government to exercise control over the nation's wealth, the Supreme Court has abandoned fidelity to the Constitution and betrayed the interests of ordinary Americans.

HEAVILY CITED ARTICLES IN LAW

William M. Landes 825
& Richard A. Posner

In this Comment on Mr. Shapiro's article, Professor Landes and Judge Posner first point out several methodological problems with Mr. Shapiro's approach — the ranking of individual articles rather than scholars, the failure to take account of differences among articles in their age or time since publication, the exclusion of books, and the exclusion of articles more than half the citations to which appear in nonlegal journals. Professor Landes and Judge Posner then reanalyze Mr. Shapiro's data and show, among other things, that law is a relatively decentralized and competitive field of scholarship, as distinct from one dominated by a handful of scholars to whom the rest defer; that economic methodology can be used to compare the influence or importance of articles of different vintages; and that the peak age of scholarly productivity in law is inverse to interdisciplinarity.

RESPONSE TO LANDES AND POSNER

Fred R. Shapiro 841

In this Article, Mr. Shapiro briefly responds to some of the methodological points made by Professor Landes and Judge Posner.

HOW TO WIN CITES AND INFLUENCE PEOPLE

J.M. Balkin 843
& Sanford Levinson

Are you feeling neglected in the law professor world? Want to know how you, too, could win the citation game, confound your senior colleagues and amaze your friends? Let Professors Balkin and Levinson give you a quick and easy 10-step program to bolster your citation prowess. Caution: Adopting their suggestions may be hazardous to your professional integrity. Offer void where prohibited by law.

JUDGES AND SCHOLARS: DO COURTS AND
SCHOLARLY JOURNALS CITE THE SAME
LAW REVIEW ARTICLES?

Deborah Jones Merritt 871
& Melanie Putnam

A preliminary comparison of the law review articles most heavily cited by judges and those most frequently cited by academics reveals important differences between the two groups of articles. The articles most often cited by judges address different

topics than those cited by academics, employ different scholarly perspectives, appear in a more diverse range of journals, and are more likely to represent the work of nonacademics and nonlawyers. These preliminary results suggest several avenues for further research.

**INTERDISCIPLINARY LEGAL SCHOLARSHIP:
THE CASE OF HISTORY-IN-LAW**

Mark Tushnet 909

Critics sometimes fault interdisciplinary legal scholarship for its failure to satisfy the professional standards of work in the "other" discipline. Examining some uses of history in legal scholarship, Professor Tushnet argues that those critics are often mistaken because they fail to understand that the practice they criticize is "the use of the other discipline in legal scholarship," rather than "the other discipline." History-in-law, and interdisciplinary legal scholarship more generally, is different from history and the other disciplines, and therefore must be assessed according to standards drawn from the practice of history-in-law rather than from the practice of history.

**AFFIRMATIVE ACTION: NECESSARY BUT
NOT SUFFICIENT**

Frances Olsen 937

Professor Olsen notes the increased numbers of women and minorities represented on the current list of most-cited articles and speculates about the significance and possible future effects of this increase. This increase might indicate that women and minority men who generally have been "outsiders," are or soon will be fully accepted into legal academia. Yet recent attacks on affirmative action, and what appears to be a decreased commitment to promoting women and minority men, make such a sanguine view questionable. While citation counts have generally been accepted as a sign of academic merit, Professor Olsen suggests their value can be manipulated and misrepresented, just as other credentials frequently are. She concludes with a caution that the relative success of "outsider" scholarship may pose a danger to its transformative value.

**DEFINING CUTTING EDGE SCHOLARSHIP:
FEMINISM AND CRITERIA OF RATIONALITY**

Nancy Levit 947

Professor Levit argues that quantitative measure of scholarship, particularly those resting on popularity, may reinforce existing hierarchies of merit. She suggests instead a turn toward evaluation of the foundational qualities of scholarship — those resting on theory significance. Using the vehicle of feminist legal theory, Professor Levit explores the promise of criteria of rationality in evaluating scholarship and promoting innovation in theory-building.

**THE COLONIAL SCHOLAR: DO OUTSIDER AUTHORS
REPLICATE THE CITATION PRACTICES OF
THE INSIDERS, BUT IN REVERSE?**

Richard Delgado 969

Professor Delgado revisits his earlier study of the politics of legal authority, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, this time examining the citation practices of outsider scholars. Professor Delgado finds that, unlike the mainstream scholars he examined in his previous study, outsider scholars are much more egalitarian in their citation patterns, referring to mainstream scholars and fellow Critics in roughly equal numbers.

**OUTSIDER-INSIDERS: THE ACADEMY OF
THE CLOSET**

William N. Eskridge, Jr. 977

Professor Eskridge observes that lesbian, gay, and bisexual authors of law review articles occupy a distinctive position in the "insider-outsider" divide: the authors are

outsiders who can usually pass for insiders. The plasticity of sexual orientation, and the easy availability of the closet, render this characteristic strategic as well.

THE LAW REVIEW SYMPOSIUM: A HARD PARTY
TO CRASH FOR CRITS, FEMINISTS AND
OTHER OUTSIDERS

Jean Stefancic 989

In *The Law Review Symposium: A Hard Party to Crash for Critics, Feminists and Other Outsiders*, Ms. Stefancic examines symposium issues of law reviews to determine the extent to which these special issues, where faculty influence is often greatest, exhibit exclusion and clubby sameness.

OUTSIDER SCHOLARS: THE EARLY STORIES *Jean Stefancic* 1001
& *Richard Delgado*

In *Outsider Scholars: Early Stories*, Professor Delgado and Ms. Stefancic report the results of a survey of early writers who pioneered critical movements, feminist legal theory, gaylegal narratives and other forms of outsider scholarship. If these forms of legal thought are now receiving a respectful hearing by the legal academy, has this always been so? The survey suggests otherwise — that the early years of these movements were accompanied by much pain and struggle.

STUDENT NOTES AND COMMENTS

THEATRE, STAGE DIRECTIONS, AND
COPYRIGHT LAW

Beth Freemal 1017

This Note examines the recent development of stage directors registering their stage directions for copyright protection. The Note concludes not only that copyright law ineffectively protects the director's stage directions, but also that stage directions do not fulfill the required elements of copyright law and are therefore not protectable.

*This issue of the Chicago-Kent Law Review
is dedicated to the memory of*

The Honorable Hubert L. Will
(1914-1995)