The Most-Cited Law Review Articles Revisited

Fred R. Shapiro

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Recommended Citation
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol71/iss3/3
This Article presents two lists updating my previous study of *The Most-Cited Law Review Articles*, published in the *California Law Review* in 1985.\(^1\) The first list sets forth the one hundred most-cited legal articles of all time, that is, most often cited within other articles. This list is more comprehensive than the original study because it has no chronological restrictions and because it includes interdisciplinary journals that were formerly excluded. Since eleven years have transpired, the new roster also encompasses a new generation of legal scholarship.

The second list presented here enumerates one hundred most-cited articles of recent years, consisting of the top-ten most-cited articles published each year for the ten most recent years for which meaningful data are available. 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 raise the question of whether, at least in the world of the law reviews, the outsiders have become insiders.

In the preface to my book, *The Oxford Dictionary of American Legal Quotations*, I wrote: "Law is the intersection of language and power."\(^2\) The body of that book, however, is devoted to another kind of intersection: *legal documents are the intersections of other legal doc-

---

\* Associate Librarian for Public Services and Lecturer in Legal Research, Yale Law School; Editor, *Oxford Dictionary of American Legal Quotations* (1993); S.B., Massachusetts Institute of Technology; J.D., Harvard University; M.S.L.S., Catholic University of America. I would like to thank my research assistant, Tracy L. Thompson, for her outstanding work and Ann C. Davidson for excellent research help. I am deeply indebted to David Pendlebury of the Institute for Scientific Information for supplying me with crucial data. Akhil Amar, James Lindgren, Richard Delgado, and Jean Stefancic were each in their own way godparents of this project, and I owe much to each of them. Thanks also to Blair Kauffman for his encouragement and support, to Yale Law School Associate Dean Stephen Yandle for generously approving funds for research assistance, and to Ian Ayres for helpful comments.

The links between the documents (I am avoiding the term texts because it is freighted with trendy baggage) are called "quotations" or, more broadly, "citations."

Citations are strings of names and numbers incorporating the language and power of one source in another source. Judges' opinions usually have citation links with other judges' opinions and with statutes and regulations. Law review articles usually have citation links with other law review articles, with judges' opinions, and with statutes and regulations.

Links between documents (I am avoiding the terms intertextuality and hypertext) are more important in law than in any other discipline, even the literary and computer-science fields that have given rise to the concepts of intertextuality and hypertext. In judges' opinions in the common-law system, citation links, which carry the weight of precedent and legislative mandate, are more significant than the words that surround the citations.

In law review articles, readers often peruse the citation links (footnotes) with an occasional glance at the "top of the page" text, rather than the other way around, because the really interesting scholarly conversation is taking place at the bottom. The great legal iconoclast and footnote-hater, Fred Rodell, missed the point. Yes, footnotes are abominations destroying the readability of legal writing, but they proliferate and become discursive because they are where the action is. If I am right that citations are the crux of legal documents, then it is inevitable that legal writers will be drawn to insert text in the footnotes where the citations live.

The centrality of citations is reflected in a variety of legal institutions. The Shepard's Citations system of indexes dutifully records every citation link and thus creates a powerful tool for verifying the authority of case precedents and finding cases and other sources relating to a given subject. The citation networks are so pervasive that it is said that a researcher can find the entire universe of cases relevant to his or her issue by starting with a single case and tracing citation links forward and backward. LEXIS and Westlaw, the two full-text online legal databases, also spotlight citation links and facilitate citation-based research.


4. J. M. Balkin, The Footnote, 83 Nw. U. L. Rev. 275 (1989), states the case for the footnote possibly being more important than the text far more eloquently than I can.
The Bluebook, a manual of citation form for law students and lawyers, exerts a despotic influence over legal writing. Citation form even has economic and public policy ramifications, as was proven recently when a major legal publishing company, a public-interest group, the Department of Justice, and other players engaged in an epic lobbying battle over a proposed change in the method of citing court decisions.

I have contributed to citation obsession in the legal community with two studies ranking the most frequently cited law review articles. In 1985 I published The Most-Cited Law Review Articles, enumerating the fifty most-cited law review articles since 1947 (the upper crust of these pieces were then collected in full text in an anthology with the same title). Six years later I published The Most-Cited Articles from The Yale Law Journal, listing that journal's thirty most frequently cited articles on the occasion of its centennial.

The Yale Law Journal study summarized the rationale of citation analysis as follows:

Citation analysis is now extensively used by information scientists and sociologists to study the history and structure of the natural sciences and other disciplines. Authors too have been evaluated through tabulation of citations to their writings. Citation counts have been utilized in assessing scholars' work for purposes of grant awards, tenure, or promotion decisions.

Those using citation data for evaluative purposes have justified such use by pointing to research demonstrating a high correlation between the total of citations to a scientist's or scholar's writings and judgments by peers of the "productivity," "significance," "quality," "utility," "influence," "effectiveness," or "impact" of scientists and their scholarly products." One investigator has gone so far as to say that "citations and peer ratings appear to be virtually the same measurement."

Almost all citation analysts, however, are careful to note that citation counts measure a "quality" which is socially defined, reflecting the utility of the writing in question to other scholars, rather than gauging its intrinsic merit. Furthermore, the value of the counts may be lessened by limitations in the accuracy, coverage, or time-frame of the source data. For these reasons and others, evaluative use of citation analysis has remained controversial.

6. For a survey of this controversy, see Kelly Browne, The Ins and Outs of a Uniform Citation System, NAT'L L.J., July 17, 1995, at C5.
7. Shapiro, supra note 1.
Even with their acknowledged limitations, citation counts are attractive as relatively objective tools for assessing scholarly impact. They can be used not only to gauge the impact of a given author or writing, but also to identify which writings are the most frequently cited, taken to be a rough measure of the writings which have had the most extensive impact.¹⁰

Reactions to my previous studies have ranged from denunciation:

[R]anking by citation counts could become an invidious virus in the world of scholarship. It bears no relationship to scholarly merit. It is nondiscriminating in its discrimination. It is not even a reliable indicator that the work cited was read, let alone understood by the citer.¹¹

to adulation:

Footnotes nowadays are not phony excrescences; they are the raw data used by the hottest new school of legal scholarship, the citation analysts. These bibliotechks have shown once and for all that nobody reads the text of other people's articles anyway. Anybody who is anybody in any field you care to name has already said the same thing in different words a dozen times before. There is nothing new under the sun. The only thing that is important is who cites whom. If you're cited, that means you're identified as a player in the game: a scholar of significance.¹²

Well, tongue-in-cheek adulation.

I have tried to stake out a middle ground in which I present lists of most-cited articles as rosters of high-impact contributions worthy of recognition, but I do not claim too much significance for the compilations. Most of the supercited articles are probably articles of great merit, but the connection is by no means assured, there being a variety of reasons why an article might be very frequently cited, of which merit is only one. For example, an article might summarize a particular idea or issue effectively so that it becomes a convenient or reflexive cite long after it has ceased to influence scholars or even to be read. On the other hand, a brilliant or influential article might fail to make a most-cited list for a number of reasons.

In any case, here I go again.

¹⁰ Id. at 1453-54 (footnotes omitted). For more extensive discussion of citation analysis, see Shapiro, supra note 1, at 1540-44; Shapiro, supra note 9, at 1453-58, and sources referred to in those articles.


This updated study is really a substantial expansion of the original "most-cited law review articles" concept. I have compiled two lists, one historical in nature and the other focusing on contemporary scholarship. Table I is a compilation of the one hundred most-cited legal articles. Table II is a listing of the ten most-cited legal articles published each year for the years 1982 through 1991, the most recent years for which there is meaningful data available.

These lists are comprehensive, in a way that my original study was not, in two respects. First, the tables now are based on data from the Social Sciences Citation Index, a marvelous tool that lists, for any publication, articles from over one hundred legal journals and over one thousand social science journals citing that publication. Where The Most-Cited Law Review Articles was a ranking of the most-cited articles published in traditional law reviews, such as Harvard Law Review or Yale Law Journal, measured by citations in other traditional law review articles, the new study is broader.

"Law and" journals such as Journal of Law and Economics, Journal of Legal Studies, Harvard Civil Rights-Civil Liberties Law Review, Law and Society Review, and Supreme Court Review, some of which are very important outlets for law-related scholarship, are covered here both as sources of articles included among the most-cited and as part of the "citing" universe from which the citation counts are drawn. As a result, The Most-Cited Law Review Articles Revisited takes a genuinely interdisciplinary view, embracing the law and economics movement and the law and society movement and, for all articles, counting impact on social science as well as impact on legal scholarship narrowly defined.

I went even one step further and also included some articles published in economics journals, sociology journals, and the like, if the majority of citations to the article occur in legal or "law and" journals. My theory in doing so was that I wanted to represent law-related scholarship as comprehensively as possible, and that a predominance of citations in law-related journals seems to identify an article as being law-related. Under this rule, an article by Stewart Macaulay, an article by Henry G. Manne, and two articles by Catharine A. MacKin-
non\textsuperscript{15} qualified for my lists even though they were all published in "nonlegal" journals.

Conversely, I excluded some highly cited articles appearing in "law and" journals because the majority of their citations occur in nonlegal journals. For example, Sam Peltzman, \textit{Toward a More General Theory of Regulation},\textsuperscript{16} has received over seven hundred citations, but the great majority have been in economics and political science journals. A number of other articles have citation totals high enough to make the "top 100" list but have been similarly excluded because of this criterion. They are as follows: Benjamin Klein, Robert G. Crawford, and Armen A. Alchian, \textit{Vertical Integration, Appropriable Rents, and the Competitive Contracting Process};\textsuperscript{17} Oliver E. Williamson, \textit{Transaction-Cost Economics: The Governance of Contractual Relations};\textsuperscript{18} Eugene F. Fama and Michael C. Jensen, \textit{Separation of Ownership and Control};\textsuperscript{19} Harold Demsetz, \textit{Why Regulate Utilities}?;\textsuperscript{20} and Gary S. Becker and George J. Stigler, \textit{Law Enforcement, Malfeasance, and Compensation of Enforcers}.

The second respect in which this study is more comprehensive than the original one is chronological coverage. Before, only articles published in 1947 or later were included, and articles published after 1977 had not had enough time to amass sufficient citations to qualify. The present lists expand the coverage in both directions.

Because the source data from the \textit{Social Sciences Citation Index} have no beginning date for cited publications, older articles can be encompassed. Thus, articles going as far back as the infancy of law review publishing in the 1890s appear here. However, the \textit{SSCI}'s citing coverage does have a commencement date of 1956, i.e., citations in pre-1956 journals are not counted, so pre-1956 articles are disfavored in this respect. Samuel Warren and Louis D. Brandeis's article, \textit{The

\begin{itemize}
  \item \textsuperscript{16} Sam Peltzman, \textit{Toward a More General Theory of Regulation}, 19 J.L. & ECON. 211 (1976).
  \item \textsuperscript{17} Benjamin Klein, et al., \textit{Vertical Integration, Appropriable Rents, and the Competitive Contracting Process}, 21 J.L. & ECON. 297 (1978).
  \item \textsuperscript{20} Harold Demsetz, \textit{Why Regulate Utilities}? 11 J.L. & ECON. 55 (1968).
  \item \textsuperscript{21} Gary S. Becker & George J. Stigler, \textit{Law Enforcement, Malfeasance, and Compensation of Enforcers}, 3 J. LEGAL STUD. 1 (1974).
\end{itemize}
Right to Privacy, was published in 1890 but gets no credit for any citations to it between 1890 and 1956. Because of this factor, only a few early articles make the "top 100" list based on their post-1956 citations. Therefore I have appended a special roster, arranged chronologically, of a dozen "Additional Older Articles." These did not qualify for the all-time listing but would, I believe, have qualified had the data included pre-1956 citations.

In addition to classic older articles, these lists reflect a generation of scholarship uncounted by the previous study. The data, prepared eleven years later, are consequently eleven years more up-to-date, but I have ensured that contemporary trends are measured in another way as well. An overall list of the one hundred most frequently cited articles of all time will not fully represent recent articles because even a very high-impact article will take a half-dozen or more years to reach the threshold level of citations. Therefore I have separately enumerated the ten most-cited articles published in each of the years from 1982 to 1991. This way recent articles fairly compete only with their own cohort. I believe that it is too early for data for years subsequent to 1991 to be meaningful.

For those interested in further details of how I compiled this study, a Methodological Appendix is included after the most-cited lists.

III

The Most-Cited Law Review Articles Revisited charts a dramatically different scholarly landscape than The Most-Cited Law Review Articles. The two lists in the new study, one a long-term historical view and the other a snapshot of contemporary activity, make it plain that there has been a striking change in recent years in the composition and perspective of legal scholars.

One dimension of the change is demographic. On the all-time list of the 100 most-cited articles (actually 102 articles because of a four-way tie at the bottom), only three of the articles are written by women, with those being recent publications near the end of the ranking. Only one is by a minority author. The list of 100 recent most-cited articles, however, yields quite different statistics.

Of the 100 articles on the recent listing (actually 103 because of ties), 29 are by women. The representation of women grows stronger as more recent years are examined. Over the most recent five years (1987-91), the numbers are 20 out of 51. Focusing on the top five of each of those years rather than the top ten, an actual parity emerges: 13 of 26 top-ranking articles from 1987-91 are written by women.

Racial composition shows a similar trend. The 103 recent articles include 19 written by African Americans, Latinos, or Asian-Americans. Again, the representation is greater in recent years. Seventeen of the 51 articles in the 1987-91 period are by minority scholars.

If we combine women and minority scholars into one demographic “outsider” category, we find that 39 of 103 articles in the latest ten-year period and 28 of 51—a majority—in the latest five years are “outsiders” in this sense. The minority majority reaches an astonishing level if only the top five of each year from 1987 to 1991 are tabulated. Seventeen of 26 top-ranking articles from these five years are outsider-authored. The number goes to 19 of 26 if openly gay scholars are added in to the demographic outsider definition. Clearly, outsiders in this period have achieved some kind of insider status in the law reviews, if not outright dominance.

There are other ways of defining outsiderhood than demographics. The list of most-cited recent articles can also be analyzed from a political perspective. A trio of movements in the legal academy—feminism, critical race theory, and critical legal studies—loom very large in this compilation. Precise categorization is difficult, but I would estimate that about 45 of the 103 included articles fall within these tendencies. The numbers grow as the decade progresses: for the latest five years (1987-91) most of the articles are “outsider” in their politics, and for 1990 and 1991 the fraction is two-thirds.25

I do not want to portray this political trend, or the demographic trend, as an inevitable historical march to the left or toward diversity—it may be that I merely happened to end my study at a time when a short-term wave was cresting—but the numbers are hard to dismiss. No one could maintain that leftist politics or feminism or racial minorities are reigning triumphant in American society in the


25. Although the outsider political movements taken together increase their presence as this decade progresses, one component, critical legal studies, fades in the later years.
1990s (quite the contrary appears to be the case), but in the realm of legal scholarship, or at least in the realm of the law reviews, the outsiders may have achieved something resembling a dominant position.

Legal scholarship's other celebrated movement of recent decades is law and economics. This school also figures very prominently in the most-cited rankings. Of the 102 articles on the "all-time" list, at least 12 belong to law and economics. They include the overwhelmingly number-one ranked article and three others in the top twenty-five. In comparison with its towering citation landmarks of the 1960s, 1970s, and early 1980s, law and economics's representation for recent years appears to be a bit less strong, although the top-ten articles of each year may be too small a slice to permit generalizations of this sort. If there has been a decline, the explanation could lie in the tendency of a scholarly movement in a mature phase to focus on narrower issues, resulting in fewer citations per paper, than was true in a formative phase characterized by articles of wide application.26

Another school, the "law and society" movement, places only three articles on the all-time list, but two of them are blockbusters ranking in the top fifteen.27 Law and economics, law and society, feminism, critical race theory, and critical legal studies can all be characterized as rebellions against traditional doctrinal scholarship and interdisciplinary departures from the notion of law as an autonomous field. Lumped together, their performance in this study is a formidable one. By the 1980s, traditional doctrinal articles are few and far between among the citation elite.

Turning to individual articles, the runaway citation champion is R. H. Coase, *The Problem of Social Cost.*28 This renowned paper has been recognized, along with Coase's other work, with a Nobel Memorial Prize in Economics. It is frequently said to be the most-cited article both in law and in economics. I have not verified this assertion as to economics, but its citation preeminence in law is dramatic, as it has amassed almost twice as many citations as any other law-related article. The methodology of my original study necessitated the omission of *The Problem of Social Cost,* but its inclusion is one of the principal benefits of the more comprehensive data used in this update.

The original study anointed Gerald Gunther's 1972 equal protection piece\(^{29}\) as number one. Gunther still ranks near the top (third), but Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*,\(^{30}\) has now pulled ahead into the second position. Charles A. Reich, *The New Property*,\(^{31}\) one of the genuinely original breakthroughs in legal thought, is number four. Fifth, despite a passage of time that would have ended most articles' citation careers and despite being denied the benefit of decades of pre-1956 cites, is Oliver Wendell Holmes, Jr., *The Path of the Law*\(^{32}\) (probably first among law review articles in jurisprudential importance and surely first from the standpoint of literary merit). Another venerable classic overcoming similar obstacles is Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*,\(^{33}\) whose scholarly influence was accompanied by a profound influence on the courts.

One function of such a study is to spotlight the work of certain scholars whose impact is evidenced by multiple appearances on the lists. Only one author has four articles on the all-time list: Henry M. Hart, Jr. Three of Hart's articles rank in the top forty. Scholars with three articles each on the all-time list are: Alexander M. Bickel, Guido Calabresi, John Hart Ely,Lon L. Fuller (all three in the top fifty), Frank I. Michelman (also all three in the top fifty), and William L. Prosser. Those with two articles each are: Robert H. Bork, William J. Brennan, Jr., Paul Brest, Owen M. Fiss, Henry J. Friendly, Marc Galanter, Kenneth L. Karst, Duncan Kennedy, Richard A. Posner, Joseph L. Sax, Cass R. Sunstein, Herbert Wechsler, and Harry H. Wellington. If the Additional Older Articles are added in, then Karl N. Llewellyn has four articles listed, Fuller picks up a fourth article, and Harry Kalven, Jr. gets a second.

The list of most-cited recent articles features, for the most part, a different group of authors with more than one contribution. Towering over this group is the impressive record of Cass R. Sunstein. Sunstein has eight articles listed, including a 1985 article that has in a short time already climbed to 38th on the all-time list\(^{34}\) and a 1988 one that is the

---

youngest item in that top 100. After Sunstein, the most prolific participant is Frank H. Easterbrook. Easterbrook, in addition to coauthoring the most-cited article of the 1980s, a 1981 article which is already 24th all-time, produced five articles among the yearly leaders for the early 1980s before entering upon a judicial career.

Next among recent-article authors is Richard Delgado with four publications. Those with three each include: Akhil Reed Amar, John C. Coffee, Jr., William N. Eskridge, Jr., Catharine A. MacKinnon, Mari J. Matsuda, and Margaret Jane Radin. The two-timers are: Bruce A. Ackerman, Robert M. Cover, Kimberlé Williams Crenshaw, Daniel R. Fischel (for a total of three between the all-time and recent lists), Owen M. Fiss (for a total of three between the all-time and recent lists), Philip P. Frickey, Ronald J. Gilson, Reinier Kraakman, Charles R. Lawrence III, Frank I. Michelman (for a total of four between the all-time and recent lists), Gary Peller, Frederick Schauer, and Joseph William Singer. Duncan Kennedy and Richard A. Posner each have one for a total of three between the all-time and recent lists. Abram Chayes, Gerald E. Frug, and Richard B. Stewart each have one to go with another one they have on the all-time list.

This is an appropriate point to insert some caveats about the incompleteness of this study as a pantheon of the highest-impact legal scholars. The principal incompleteness relates to the fact that scholarship in book form is not reflected. Although most scholarly legal writing does occur in articles, there is a substantial literature in books. Much significant work is therefore unnoted on my lists, and some major scholars’ oeuvres are slighted or omitted altogether.

Hart’s and Wechsler’s positions would be further enhanced if their federal courts casebook were encompassed, and Hart’s still more so if the Hart and Sacks legal process materials were covered. Holmes’s The Common Law, Prosser’s torts treatises, and the books of Bruce Ackerman, Alexander M. Bickel, Charles L. Black, Jr., Guido Calabresi, John Hart Ely, Lon L. Fuller, Felix Frankfurter, Harry Kalven, Jr., Karl N. Llewellyn, Catharine A. MacKinnon, Richard A. Posner, Roscoe Pound, Laurence H. Tribe, and Charles Warren

would add to their respective authors' citation record were this an articles-and-books compilation. Some other major scholars are not mentioned at all on my lists because their contributions have predominantly appeared in books. Ronald Dworkin, Jerome Frank, Grant Gilmore, J. Willard Hurst, John Henry Wigmore, and Samuel Williston are examples.

Some articles' citation totals might be curtailed because they are turned into books, which then may be cited instead of the articles. Alexander M. Bickel, The Supreme Court, 1960 Term—Foreword: The Passive Virtues,\textsuperscript{40} which became a chapter in Bickel's book, The Least Dangerous Branch,\textsuperscript{41} illustrates this category. Conversely, the articles near the top of the all-time list might have had more modest totals if they had been made into books.\textsuperscript{42}

There is another bias tilting the playing field against certain articles. As I have pointed out before, "Some topics have a far larger scholarly literature than others, resulting in much greater citation potential for an article in a popular subject area than for one in an area less frequented by law reviews."\textsuperscript{43} A constitutional law article will have countless opportunities to pick up law review citations, but the most brilliant article on wills would have so few opportunities that it could never qualify for a most-cited list. John H. Langbein, The German Advantage in Civil Procedure,\textsuperscript{44} has received a remarkable number of citations for an article on comparative law, but this is a field with a modest-sized literature, so Langbein's paper falls just short of the most-cited list for 1985.

Returning to the data, it may be of interest to analyze the listed articles by law reviews and author affiliations. The following are the numbers of articles from particular law reviews:

\textsuperscript{41} Alexander M. Bickel, The Least Dangerous Branch (1962).
\textsuperscript{42} The opposite argument can also be made, however: a book could enhance the visibility of the author's articles, increasing the articles' citations.
\textsuperscript{43} Shapiro, supra note 9, at 1459-60.
All-Time List (Law Reviews)

Harvard Law Review 42
Yale Law Journal 18
Columbia Law Review 5
Journal of Legal Studies 5
Stanford Law Review 5
University of Pennsylvania Law Review 4
California Law Review 3
Minnesota Law Review 3
University of Chicago Law Review 3
Journal of Law and Economics 2
Supreme Court Review 2

Recent-Articles List (Law Reviews)

Harvard Law Review 30
Yale Law Journal 16
Stanford Law Review 9
Columbia Law Review 7
Michigan Law Review 6
University of Chicago Law Review 6
California Law Review 3
Harvard Civil Rights-Civil Liberties Law Review 3
Southern California Law Review 3
University of Pennsylvania Law Review 3

It is clear that Harvard Law Review and Yale Law Journal continue to dominate the production of the most frequently cited articles. Harvard Law Review’s preeminent position seems even stronger than Harvard Law School’s historical preeminent position in general law school prestige. Nine of the top 12 articles, and 18 of the top 29, are from this review. Stanford Law Review, Michigan Law Review, and University of Chicago Law Review may be ascending in importance, although the sample is too small for firm conclusions. Particularly noteworthy is the presence of two nontraditional and young journals, Journal of Legal Studies (founded in 1972) and Harvard Civil Rights-Civil Liberties Law Review (founded in 1966), alongside the hoary traditional reviews. Their showing reflects the strength of law and economics and critical race theory in the rankings.

45. The annual series of Forewords to the Supreme Court issue of the Harvard Law Review accounts for a remarkable 13 articles on the most-cited all-time list. An additional two articles appear among the most-cited recent articles. See Mark V. Tushnet & Timothy Lynch, The Project of the Harvard ‘Forewords’: A Social and Intellectual Inquiry, 11 Const. Comment. 463 (1994), for a fascinating intellectual history of these Forewords. My original study, Shapiro, supra note 1, gave only crude approximations of the citation totals of the Forewords, because Shepard’s does not fully cover them, but the present data accord them equal treatment with other articles.
The academic affiliations of the authors on the lists at the time of publication, counting authors more than once if they have multiple articles included, are as follows:\textsuperscript{46}

\textit{All-Time List (Authors' Academic Affiliations)}

\begin{tabular}{lll}
Harvard & 22 & UCLA \\
Yale & 18 & University of Wisconsin \\
University of Chicago & 10 & Duke \\
Stanford & 7 & George Washington \\
Columbia & 5 & University of Minnesota \\
University of California, Berkeley & 4 & \\
\end{tabular}

(schools with 1 are omitted)

\textit{Recent-Articles List (Authors' Academic Affiliations)}

\begin{tabular}{lll}
University of Chicago & 15 & University of Southern California \\
Harvard & 15 & UCLA \\
Yale & 11 & University of Wisconsin \\
Columbia & 6 & University of Colorado \\
Stanford & 6 & University of Hawaii \\
University of Michigan & 5 & Northwestern University \\
University of Minnesota & 5 & American University \\
Boston University & 4 & University of California, Berkeley \\
Georgetown & 4 & University of Virginia \\
\end{tabular}

(schools with 1 are omitted)

Here we see, on the all-time list, Yale a closer second to Harvard in author affiliations than it is in law reviews. The University of Chicago is third all-time, and on the recent-articles list it ties Harvard for first. One cannot help but speculate that Chicago would have run away with first place on the latter list had Easterbrook and Posner not become judges.

Finally, I have tabulated the authors' law degrees by schools. Authors are counted more than once if they have multiple articles:\textsuperscript{47}

\textit{All-Time List (Authors' Law Degrees)}

\begin{tabular}{lll}
Harvard & 41 & Stanford \\
Yale & 23 & University of Minnesota \\
University of Chicago & 13 & University of California, Berkeley \\
Columbia & 7 & New York University \\
\end{tabular}

(schools with 1 are omitted)

\textit{Recent-Articles List (Authors' Law Degrees)}

\begin{tabular}{lll}
Harvard & 33 & University of Hawaii \\
Yale & 29 & New York University \\
University of Chicago & 11 & University of Southern California \\
University of California, Berkeley & 6 & University of Michigan \\
Columbia & 3 & UCLA \\
\end{tabular}

(schools with 1 are omitted)

\textsuperscript{46} If two coauthors of an article were affiliated with the same school, I counted this as one affiliation for that school. If coauthors were affiliated with two different schools, I counted this as one affiliation for each school.

\textsuperscript{47} See supra note 46 for treatment of coauthors.
Harvard's historical flagship role as a producer of leading scholars is apparent from these figures. For the recent time-period, Yale runs a close second to Harvard. It should be noted, however, that Yale and University of Chicago both have much smaller alumni populations than Harvard's; on a per-capita basis, Yale would probably rank first. Together, Harvard, Yale, and Chicago train over 70% of the authors of the most highly cited legal articles. All in all, looking at the numbers for law reviews, authors' affiliations, and authors' law degrees, Harvard, Yale, and Chicago clearly form a triumvirate dominating legal scholarship, or at least that portion of it published in article form.\cite{footnote:48} Stanford, Columbia, and University of Michigan are probably comparable to Chicago in overall prestige, but do not appear to be its equals in scholarly importance.

**Conclusion**

I have previously written that "the historical and structural insights of citation analysis could provide grist for a sociology of legal scholarship."\cite{footnote:49} I have not belabored the rationale and prospects of legal citation analysis here, but interested readers will find in my first two essays on the subject the sketch of a methodological roadmap.\cite{footnote:50} The present study is a modest example of sociology of legal scholarship. I believe the results will be of interest to the legal and scholarly communities, particularly the finding that outsider groups may have become insiders in the legal academy.

Citation analysis can also provide grist for the intellectual history of law. On one level, "the historical development of areas of legal thought could be charted by means of network diagrams showing citation connections between recent and older writings, or time series of co-citation maps."\cite{footnote:51} Such charts could be converted into narrative ac-

\footnote{48. I do not believe the inclusion of books would alter the dominance of these three schools. The only tabulations above in which the three are not obviously 1-2-3 in some order are those of law reviews, where *University of Chicago Law Review* is a bit further down on both all-time and recent-articles rankings. If, however, *Journal of Legal Studies, Journal of Law and Economics, and Supreme Court Review*, all of which are produced at the University of Chicago Law School, are added in, Chicago rises to third on both rankings. One other school is competitive with the "Big Three" if we compile "where are they now" data on the current academic affiliations of the authors on the most-cited recent articles list (authors with multiple articles counted more than once). Georgetown has 12 in this analysis, tied with Chicago for third behind Harvard's 17 and Yale's 13. For the last five years covered (1987-91), Georgetown easily ranks first in current affiliations of the authors.}

\footnote{49. Shapiro, *supra* note 9, at 1457.}

\footnote{50. See *supra* note 10.}

\footnote{51. Shapiro, *supra* note 9, at 1457.}
counts of specific landmark scholarship, of specific patterns of influence, or of the development of specific scholarly movements.

On another level, citation maps and the sort of citation-classic list presented here can form the basis for generalizations about the nature of innovation in legal thought. I do not by any means think that all of the articles on my lists are pathbreaking, but some of them certainly are, and such lists can help to identify the truly seminal legal writings. What are the conditions under which breakthroughs are made? What are the characteristics of landmark scholarship and scholars? How does influence exert itself in law? What social, political, and economic factors facilitate or work against legal change? If, as I have suggested, citation links are the crux of legal discourse, then the analysis of those links can be crucial to answering these and other questions leading to an understanding of the history of legal ideas.
# Table I

**Most-Cited Law Review Articles of All Time**

Compiled by Fred R. Shapiro

<table>
<thead>
<tr>
<th>Rank</th>
<th>Citation</th>
<th>Article Title</th>
<th>Author(s) &amp; Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>968</td>
<td>Toward Neutral Principles of Constitutional Law</td>
<td>Herbert Wechsler, 73 Harv. L. Rev. 1 (1959)</td>
</tr>
<tr>
<td>4.</td>
<td>728</td>
<td>The New Property</td>
<td>Charles A. Reich, 73 Yale L.J. 733 (1964)</td>
</tr>
<tr>
<td>5.</td>
<td>719</td>
<td>The Path of the Law</td>
<td>Oliver Wendell Holmes, Jr., 10 Harv. L. Rev. 457 (1897)</td>
</tr>
<tr>
<td>6.</td>
<td>645</td>
<td>The Role of the Judge in Public Law Litigation</td>
<td>Abram Chayes, 89 Harv. L. Rev. 1281 (1976)</td>
</tr>
<tr>
<td>9.</td>
<td>578</td>
<td>The Right to Privacy</td>
<td>Samuel D. Warren &amp; Louis D. Brandeis, 4 Harv. L. Rev. 193 (1890)</td>
</tr>
<tr>
<td>10.</td>
<td>550</td>
<td>Form and Substance in Private Law Adjudication</td>
<td>Duncan Kennedy, 89 Harv. L. Rev. 1685 (1976)</td>
</tr>
<tr>
<td>17.</td>
<td>436</td>
<td>The Demise of the Right-Privilege Distinction in Constitutional Law</td>
<td>William W. Van Alstyn, 81 Harv. L. Rev. 1439 (1968)</td>
</tr>
</tbody>
</table>

52. The column of numbers on the left is the ranking. The second column is the total number of citations in the Social Sciences Citation Index from 1956 through May 1995. See Methodological Appendix after Table II for more detailed explanation.


<table>
<thead>
<tr>
<th></th>
<th>Article</th>
<th>Journal</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>Duncan Kennedy, <em>The Structure of Blackstone's Commentaries</em></td>
<td><em>Buff. L. Rev.</em> 28:205 (1979)</td>
</tr>
<tr>
<td>44</td>
<td>Friedrich Kessler, <em>Contracts of Adhesion—Some Thoughts About Freedom of Contract</em></td>
<td><em>Colum. L. Rev.</em> 43:629 (1943)</td>
</tr>
<tr>
<td>46</td>
<td>Lon L. Fuller, <em>The Forms and Limits of Adjudication</em></td>
<td><em>Harv. L. Rev.</em> 92:353 (1978)</td>
</tr>
<tr>
<td>47</td>
<td>Thomas C. Grey, <em>Do We Have an Unwritten Constitution?</em></td>
<td><em>Stan. L. Rev.</em> 27:703 (1975)</td>
</tr>
<tr>
<td>51</td>
<td>Guido Calabresi, <em>Some Thoughts on Risk Distribution and the Law of Torts</em></td>
<td><em>Yale L.J.</em> 70:499 (1961)</td>
</tr>
<tr>
<td>57</td>
<td>Felix Frankfurter, <em>Some Reflections on the Reading of Statutes</em></td>
<td><em>Colum. L. Rev.</em> 52:527 (1947)</td>
</tr>
<tr>
<td>58</td>
<td>George P. Fletcher, <em>Fairness and Utility in Tort Theory</em></td>
<td><em>Harv. L. Rev.</em> 85:537 (1972)</td>
</tr>
<tr>
<td>60</td>
<td>Owen M. Fiss, <em>Objectivity and Interpretation</em></td>
<td><em>Stan. L. Rev.</em> 34:739 (1982)</td>
</tr>
<tr>
<td>61</td>
<td>Charles R. Lawrence III, <em>The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism</em></td>
<td><em>Stan. L. Rev.</em> 31:317 (1987)</td>
</tr>
</tbody>
</table>
64. 250 William L. Prosser, The Fall of the Citadel (Strict Liability to the Consumer), 50 MINN. L. REV. 791 (1966).

65. 249 Marc Galanter, Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society, 31 UCLA L. REV. 4 (1983).


88. 218 Charles Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?—The Original Understanding*, 2 Stan. L. Rev. 5 (1949).


Additional Older Articles


Karl N. Llewellyn, *Some Realism About Realism—Responding to Dean Pound*, 44 Harv. L. Rev. 1222 (1931).


Lon L. Fuller, *Consideration and Form*, 41 Colum. L. Rev. 799 (1941).


53. These articles, ordered chronologically, did not qualify for the all-time listing but would, I believe, have qualified had the data included pre-1956 citations.
### Table II

**Most-Cited Law Review Articles of Recent Years**

Compiled by Fred R. Shapiro

<table>
<thead>
<tr>
<th>Year</th>
<th>Article Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>Objectivity and Interpretation</td>
<td>Owen M. Fiss</td>
</tr>
<tr>
<td>193</td>
<td>Corporate Control Transactions</td>
<td>Frank H. Easterbrook &amp; Daniel R. Fischel</td>
</tr>
<tr>
<td>186</td>
<td>Feminism, Marxism, Method, and the State: An Agenda for Theory</td>
<td>Catharine A. MacKinnon</td>
</tr>
<tr>
<td>178</td>
<td>The Empty Idea of Equality</td>
<td>Peter Westen</td>
</tr>
<tr>
<td>170</td>
<td>Distributive and Paternalist Motives in Contract and Tort Law, with Special Reference to Compulsory Terms and Unequal Bargaining Power</td>
<td>Duncan Kennedy</td>
</tr>
<tr>
<td>165</td>
<td>Public Programs and Private Rights</td>
<td>Richard B. Stewart &amp; Cass R. Sunstein</td>
</tr>
<tr>
<td>158</td>
<td>Suit, Settlement, and Trial: A Theoretical Analysis Under Alternative Methods for the Allocation of Legal Costs</td>
<td>Steven Shavell</td>
</tr>
<tr>
<td>156</td>
<td>Managerial Judges</td>
<td>Judith Resnik</td>
</tr>
<tr>
<td>152</td>
<td>The Supreme Court, 1981 Term—Foreword: Public Law Litigation and the Burger Court</td>
<td>Abram Chayes</td>
</tr>
<tr>
<td>134</td>
<td>Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling</td>
<td>Richard Delgado</td>
</tr>
<tr>
<td>134</td>
<td>Ways of Criticizing the Court</td>
<td>Frank H. Easterbrook</td>
</tr>
<tr>
<td>134</td>
<td>Property and Personhood</td>
<td>Margaret Jane Radin</td>
</tr>
</tbody>
</table>

1983

<table>
<thead>
<tr>
<th>Article Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Critical Legal Studies Movement</td>
<td>Roberto M. Unger</td>
</tr>
<tr>
<td>The Supreme Court, 1982 Term, Foreword: Nomos and Narrative</td>
<td>Robert M. Cover</td>
</tr>
<tr>
<td>Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles</td>
<td>Mark V. Tushnet</td>
</tr>
<tr>
<td>Reading the Landscape of Disputes: What We Know and Don’t Know (And Think We Know) About Our Allegedly Contentious and Litigious Society</td>
<td>Marc Galanter</td>
</tr>
<tr>
<td>The Family and the Market: A Study of Ideology and Legal Reform</td>
<td>Frances E. Olsen</td>
</tr>
</tbody>
</table>

54. The column of numbers on the left is the total number of citations in the Social Sciences Citation Index through May 1995. See Methodological Appendix after Table II for more detailed explanation.
205 Catharine A. MacKinnon, Women's Rights, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 Signs 635.
189 Paul C. Weiler, Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA, 96 Harv. L. Rev. 1769.
177 Frank H. Easterbrook, Statutes' Domains, 50 U. Chi. L. Rev. 533.
122 Richard A. Posner, Statutory Interpretation—in the Classroom and in the Courtroom, 50 U. Chi. L. Rev. 800.

1984

243 Bruce A. Ackerman, The Storrs Lectures: Discovering the Constitution, 93 Yale L.J. 1013.
198 Owen M. Fiss, Against Settlement, 93 Yale L.J. 1073.
163 Cass R. Sunstein, Naked Preferences and the Constitution, 84 Colum. L. Rev. 1689.

1985

301 Cass R. Sunstein, Interest Groups in American Public Law, 38 Stan. L. Rev. 29.
152 Bruce A. Ackerman, Beyond Carolene Products, 98 Harv. L. Rev. 713.

89 Frederick Schauer, *Easy Cases*, 58 S. Cal. L. Rev. 399.


1986


111 John Stick, *Can Nihilism Be Pragmatic?*, 100 Harv. L. Rev. 332.


86 John C. Coffee, Jr., *Understanding the Plaintiff’s Attorney: The Implications of Economic Theory Through Class and Derivative Actions*, 86 Colum. L. Rev. 669.

1987


1988


97 Frederick Schauer, *Formalism*, 97 Yale L.J. 509.


1989


1990

142 Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581.


1991

106 Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131.


51 Kathryn Abrams, *Hearing the Call of Stories*, 79 Cal. L. Rev. 971.


Methodological Appendix

I obtained citation totals for articles in the following manner. For each article checked, I searched for citations to that article using the Socscisrch database on Westlaw, corresponding to the printed Social Sciences Citation Index from 1972 to the present. The searches took this form (the article in this example is Akhil Reed Amar, The Bill of Rights as a Constitution, 100 Yale L.J. 1131 [1991]):

\[
\]

I chose this form to catch the variants under which the author’s name might be entered in the database, and to catch variations based only on page number. It was not possible to search for the few misspelled authors’ names or other typographical errors in the database. Each article was checked at source to make sure that there was no ambiguity in the search based on two articles by the same author or different authors with the same surname appearing in the same volume and year of the journal.

For articles published before 1972, I also counted totals of citations from the printed 1956-65 cumulation of the Social Sciences Citation Index, the printed 1966-70 cumulation of the SSCI, and the printed 1971 volumes. These totals were added to the citation totals obtained from Westlaw.

I determined which articles to check by a combination of methods. First, I scanned Shepard’s Law Review Citations and checked those articles with longer lists of citations in that source. Second, I used printouts, very generously given to me by the Institute for Scientific Information (publishers of the SSCI) some years ago, which list, for twenty-one key law reviews and interdisciplinary journals, all articles with over twenty citations. Third, I used printouts given to me, again generously, by ISI very recently which list, for twelve key interdisciplinary journals, all articles with over twenty-five citations.


Fourth, I asked several knowledgeable scholars in law and economics to check off articles, published since 1979 in the Journal of Law and Economics and Journal of Legal Studies, they thought likely to have been highly cited. Fifth, I pursued a variety of research methods, by necessity unsystematic, to catch articles from journals not covered by the four methods above.

Because of the nature of these methods, which are the only methods available for such a task but which have limitations, I cannot assert with certainty that I have caught all of the most-cited articles from interdisciplinary journals. There is also a slight possibility that I have missed some older articles from journals not included in the list of twenty-one key journals for which I obtained printouts from ISI.

The final data were assembled in May 1995, and therefore represent citation totals as of that date.