Chicago-Kent Law Review

Volume 71
Issue 3 *Symposium on Trends in Legal Citations and Scholarship*

Article 10

April 1996

How to Win Cites and Influence People

J. M. Balkin

Sanford Levinson

HOW TO WIN CITES AND INFLUENCE PEOPLE

J. M. BALKIN* AND SANFORD LEVINSON**

INTRODUCTION: THE ECOLOGY OF CITATION—IT'S A JUNGLE OUT THERE

By now, Fred Shapiro can lay claim to be the founding father of a new and peculiar discipline: "legal citology." Citology, the study of citations, should not be confused with "cytology," which is the biological study of cells. Legal citology is the systematic study of the citation practices of those professors, research assistants, and law review editors who produce articles in journals widely circulated in the legal academy. Of course other people—judges, politicians, journalists, and even ordinary citizens writing letters to the editor—may occasionally cite law journal articles. Yet, unsurprisingly, academics are most interested in citations by people like themselves, who publish primarily in academic journals. So we're confident that Shapiro's new article will, like its predecessor,[1] be avidly read (and gossiped about) by members of the legal academy. More than a few of us will be eager to discover who ranks where and to speculate, with mixed tones of admiration, envy, and outright rancor, about the justice of whatever kudos are signified by high citation counts.

We mean no disrespect when we suggest that Shapiro's enterprise has important connections to what has come to be called "garbology," the social scientific study of forms of social detritus, especially that found in trash cans. Both citations and thrown-away objects provide entryways into people's lives and the larger culture in which they live and by which they are shaped. And we are not ones to take what is condemned to the margins—whether footnotes or garbage—lightly.[2] A piece of garbage, like a citation, is a sign or trace of previous cultural trends and influences. Like the garbologist, the student of legal citations receives a highly skewed and idiosyncratic perspective on the culture being studied. Even so, the wealth of information Shapiro

* Lafayette S. Foster Professor, Yale Law School

** W. St. John Garwood and W. St. John Garwood, Jr., Centenial Chair of Law, University of Texas School of Law. Our thanks to Akhil Reed Amar and Carol Rose for their thoughtful comments on previous drafts.

1. *See* Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985).

2. *See, e.g.*, J. M. Balkin, *The Footnote*, 83 Nw. U. L. REV. 275 (1989) (shameless attempt by author to raise citation count for this piece) (*see infra* Maxim Seven).

presents suggests a host of questions about our legal culture, many of which he himself addresses.

Many legal academics will, for a variety of reasons, be fascinated with who is and is not on Shapiro's lists. No doubt one reason for this fascination is the sense that one's status is improved by being on such a list. Of course, most people will be quick to assert that there is no necessary connection between high quality and high citation counts.[3] Each of us undoubtedly can readily identify at least one article on the list that we find deficient in one or another measure of quality. To take only one example, we could easily cite a hundred articles better crafted and reasoned than Robert Bork's *Neutral Principles and Some First Amendment Problems*,[4] which is apparently the seventh most-cited law review article of all time.[5] Yet no matter how eagerly we disavow belief in a correlation between citation rates and quality, our fascination with these lists remains, for strength of citation counts surely bears some connection to a scholar's importance and influence. All law professors, no matter how famous, feel underappreciated, and hence all are interested in the most concrete symbols of appreciation.

In fact, our inability to resist the lure of citation counts suggests that the relation (or nonrelation) between citation counts and academic quality is more complicated than it first appears. More disturbingly, it suggests that our notions of quality are not fully separable from notions of influence, not because influence necessarily follows quality as its just reward, but because disproportionate influence constructs our very notions of what good quality scholarship is.

As Barbara Herrnstein Smith has noted, "the repeated inclusion of a particular work in anthologies" or "its frequent citation or quotation by professors [and] scholars" is more than a simple repetition.[6] It is a "recommendation of value" that "not only promotes but goes some distance toward creating the value of that work."[7] Citations and quotations not only draw attention to works, they make works the kinds of works that attention is paid to and hence should be paid to.[8] "[B]y making the work more likely to be experienced at all," citations

3. *See, e.g.*, Fred R. Shapiro, *The Most Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996) (explicitly disclaiming such a connection).

4. Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L. J. 1 (1971).

5. *See* Shapiro, *supra* note 3, at 767. Indeed, we think we could produce at least fifty such examples even if we were confined to producing a list of *conservative* articles whose conclusions we disagree with at least as much as those of Judge Bork.

6. BARBARA HERRNSTEIN SMITH, CONTINGENCIES OF VALUE 10 (1988).

7. *Id.* (emphasis omitted).

8. *Id.*

and quotations "make it more likely to be experienced as valuable."[9] "In this sense," Herrnstein Smith concludes, "value creates value."[10]

Moreover, much-repeated works not only gain status from their constant repetition, they also start to affect the very environment in which they are reproduced, like a particularly successful biological species.[11] Space in the minds of academics, or even a community of academics, is a limited and valuable resource.[12] By gaining an increasing presence in that space, the canonical work may create an increasingly hospitable environment for its own reproduction in the minds of future academics, whose own minds are constructed and stocked through cultural transmission from their colleagues and elders. In this way, "the canonical work begins increasingly not merely to survive within but to shape and create the culture in which its value is produced and transmitted and, for that very reason, to perpetuate the conditions of its own flourishing."[13]

Thus, citation practices are a sort of economy of communication and exchange between academics, or, to return again to biological metaphors, an ecology of reproduction and hence competition with other citations. Moreover, this economy or ecology has important disciplinary effects. By creating and recreating expectations about what one should cite and not cite, about what one should discuss and not discuss, the economy of citations normalizes certain practices of thought and action and makes others deviant.[14] The economy of citations confirms and establishes the types of articles and subject matters that produce higher citation counts and greater academic attention, with all that goes with such attention. Thus, the decision to write about mortgage lien priorities rather than knotty issues of economic efficiency or constitutional interpretation already marks one as a certain kind of scholar, who presumably accepts a particular place in the great chain of academic status and presumably has insufficient desire to become well known or move "up" in the pecking order of the contemporary theory-intoxicated legal academy.

9. *Id.*

10. *Id.*

11. Suggesting another possible connection between citology and cytology.

12. *See* DANIEL C. DENNETT, DARWIN'S DANGEROUS IDEA 349 (1995).

13. SMITH, *supra* note 6, at 50 (emphasis omitted).

14. For example, both LINO GRAGLIA, DISASTER BY DECREE (1976) and Justice Harlan's dissenting opinion in Plessy v. Ferguson, 163 U.S. 537 (1896), stand for the proposition that the Constitution, correctly interpreted, is colorblind. But if one simply cited the former and ignored the latter in a law review article, there would be some doubt as to whether one really knew how to play the academic game.

Hence, citation counts are worrisome not because they are trivial and divert our attention from the real issues of merit. Rather, they are worrisome precisely because they may be quite important—because fascination with citations counts suggests that our very ideas of merit may have been infected with and even constituted by relations of social power.[15]

We had planned to write an entire essay along these lines, dutifully showing how academic conceptions of merit were constructed by the economy of citation and offering helpful suggestions on how to reform our current practices. But, after discussing the issue between ourselves for several weeks, we gradually realized that most readers of this Symposium probably couldn't care less about our views on these weighty theoretical matters. What most readers really want to know is who's made the all-star team in the law professor game and how they can get there themselves.[16]

Hence, after a long period of contemplation, we decided upon an entirely different approach. After studying Shapiro's list carefully, we concluded that the best way to discuss his findings was not through the moralistic lens of ideology critique or the aloof aesthetic of the sociology of knowledge, but through a more central and influential genre of American popular culture: the self-help book.

As many of our readers are aware, we consider ourselves devoted students of American popular culture.[17] It can hardly be doubted that the self-help book is a distinctive and long-lasting genre of American

15. It is important to understand that acknowledging this worry is not to engage in cultural relativism. Quite the contrary: If merit were simply the product of forces of social power in a particular community, then the most influential would be the most meritorious almost by definition. To worry about their possible disjunction would simply be neurotic. Rather, we insist, to acknowledge this worry is already to believe in the possibility of a merit that is not merely the product of a set of scholarly conventions and the social power created and maintained by them. It is to believe in the possibility of a merit that truly merits the merit it possesses in the minds and hearts of a community of scholars, and to worry that meritorious work is often insufficiently recognized or otherwise badly used by the particular constellation of forces that constitutes that community of scholars. We can find this attitude expressed implicitly even in fields like literature where postmodernist approaches currently reign. A standard rhetorical move is to "discover" some ignored work from the past and to claim that it in fact has more merit than many far more famous and familiar works.

16. Similar questions (and anxieties) are probably raised by the preparation of the list of "most prolific" scholars over the past several years that appears in the same issue of this journal. *See* James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI.-KENT L. REV. 781 (1996).

17. For Professor Levinson's interest in letters-to-the-editor and bumper stickers as aids to constitutional interpretation, see Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637, 650, 656-57, 657 n.95 (1989); for Professor Balkin's television watching habits, see J.M. Balkin, *Populism and Progressivism as Constitutional Categories*, 105 YALE L.J. 1935, 1937-42 (1995); for both scholars' expertise concerning Marlon Brando's acting style, Bert Parks, the Miss America Pageant, and cheap but tasty Tex-Mex restaurants, see Sanford Levinson & J.M.

popular literature, as ubiquitous as the hot dog and as American as apple pie. In its myriad forms, the self-help book offers strategies for self-improvement in all of the various aspects of human endeavor, ranging from advice on effective marketing and selling of products, to office stratagems, tricks for more effective use of one's time, programs of aerobic training, dietary tips, strategies for creating and preserving relationships, and twelve-step programs to build a more positive attitude and attractive self-image.

Although Americans have particularly excelled at the publication of self-help literature, examples of the genre have appeared in many different times and places. They range from Sun-Tzu's *The Art of War*,[18] a Taoist-inspired military treatise dating from the third century B.C.E., to Niccolo Machievelli's *The Prince*,[19] itself merely the most famous of an entire genre of contemporary treatises of advice offered to powerful (and now dead) white European noblemen.[20] Although these illustrious predecessors of the American self-help book are generally concerned with affairs of state, one can even find works offering suggestions on the delicacies of personal behavior and advancement, of which the most famous is probably the Jesuit priest Balthasar Gracian's *The Art of Worldly Wisdom*, dating from 1637.[21]

American contributions to the self-help genre have tended to embrace a philosophy that goes beyond mere strategizing and emphasizes relentless self-improvement, both of the body and the spirit. Success is not simply a matter of having an effective strategy—it is a matter of becoming a better person. One improves one's prospects by improving one's character. Thus, in the standard American version of the self-help book, the way to get ahead is not simply to manipulate the situation, but to manipulate the self. Borrowing a line from Michel Foucault, one can see in the American self-help genre a distinctive set of "techniques of the self,"[22] in which the self is recreated through the achievement of ever new disciplines of the body and mind, disciplines that miraculously transform the undeserving into the deserving. In this tradition fall such masterpieces as Benjamin Frank-

Balkin, *Law, Music, and Other Performing Arts*, 39 U. PA. L. REV. 1597, 1633, 1639-40, 1640 n.166 (1991).

18. SUN TZU, THE ART OF WAR (Thomas Cleary trans., 1988).

19. 1 NICCOLÒ MACHIAVELLI, *The Prince*, *in* MACHIAVELLI 5-96 (Allan Gilbert trans., 1965).

20. *See* QUENTIN SKINNER, MACHIAVELLI 34 (Keith Thomas ed., 1981).

21. BALTHASAR GRACIAN, THE ART OF WORLDLY WISDOM (Joseph Jacobs trans., 1993).

22. *See* MICHEL FOUCAULT, THE USE OF PLEASURE, 2 THE HISTORY OF SEXUALITY (1985). *See also infra* text accompanying note 93 (impression management through citation practices).

lin's *Autobiography*,[23] Norman Vincent Peale's *The Power of Positive Thinking*,[24] and, of course, Dale Carnegie's *How to Win Friends and Influence People*,[25] which has sold over fifteen million copies since its publication in 1937.[26]

The relentless American desire for upward mobility can also be seen in treatises on etiquette from Emily Post[27] to Miss Manners.[28] This desire is not merely a lust for higher social status. The point of these treatises is not simply to hobnob with one's betters, but, through careful self-regulation and restraint, to become the very sort of person who deserves to hobnob.

A similar point applies to the burgeoning literature on American business strategy, which threatens to consume ever greater shelf space at the local Barnes & Noble. These books combine mundane wisdom on how to position products and organize one's phone calls with quasi-spiritual advice on how to become a better person, to achieve "personal integration," and to make one's self the best one can be. In the American mind, to succeed in business is to succeed at life, and to succeed at life is—as anyone who has read Max Weber can attest—to prove one is self worthy of success in this world by relentless spiritual discipline and ambitious self-improvement. The religious element of American business literature is clear from such books as Norman Vincent Peale's *The Power of Positive Thinking*[29] and Stephen R. Covey's *The Seven Habits of Highly Effective People*.[30]

It is in the spirit of this worthy tradition that we approach Shapiro's list of the most-cited law review articles. This list offers a veritable gold mine of implicit advice on how to become widely cited and, hence, widely successful.[31] At the same time, we think that Shapiro's study offers valuable hints as well on how to use citations to enhance

23. BENJAMIN FRANKLIN, *The Autobiography*, *in* BENJAMIN FRANKLIN: THE AUTOBIOGRAPHY AND OTHER WRITINGS 15-181 (L. Jesse Lemisch ed., 1961).

24. NORMAN VINCENT PEALE, THE POWER OF POSITIVE THINKING (1952).

25. DALE CARNEGIE, HOW TO WIN FRIENDS AND INFLUENCE PEOPLE (rev. ed. 1981).

26. *Id.* (front cover).

27. ELIZABETH L. POST, EMILY POST'S ETIQUETTE (15th ed. 1992).

28. JUDITH MARTIN, MISS MANNERS' GUIDE TO EXCRUCIATINGLY CORRECT BEHAVIOR (1982).

29. PEALE, *supra* note 24.

30. STEVEN R. COVEY, THE SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE (1989).

31. We also think that there is much to be learned from Mark Tushnet and Timothy Lynch's trailblazing study of the annual Forewords to the *Harvard Law Review*. *See* Mark Tushnet & Timothy Lynch, *The Project of the Harvard Forewords: A Social and Intellectual Inquiry*, 11 CONST. COMMENTARY 463 (1995). Their meticulous investigation of the authors and subject matters of these Forewords offers the careful reader a definitive account of one of the central icons of status in the American legal academy.

one's scholarly image. Hence, in the spirit of that great master of self-improvement, Dale Carnegie, we will consider both how to win citations and how to influence others by the careful deployment of one's own citation practices.

In offering advice to the curious about how to become one of the most-cited members of the legal academy, we are mindful of the wisdom of previous American masters of the self-help genre. As giants like Franklin, Peale, and Carnegie well knew, the secret to success lies not merely in reshaping one's articles to suit popular tastes, but in entirely reshaping the self. To win cites and influence people, one must first become the kind of person to whom such citations and influence naturally flow. It is with this admonition in mind that we describe the lessons we have gleaned from a careful study of the most-cited law review articles of all time. We hope that ambitious law professors, no matter at what point in their careers, can make use of the tips we offer here.

Maxim One: (Make sure that you have already) Attend(ed) Harvard, Yale, or the University of Chicago Law Schools.

Take a look at your law school diploma. Does it say, Harvard, Yale, or Chicago on it? If so, you have already taken the first step towards writing a "monster" article, as we say in the trade. Is another school's name listed? Try to do better next time.

Maxim Two: Publish all of your articles in the *Harvard Law Review*, the *Yale Law Journal*, or the *University of Chicago Law Review*.

An amazing number of people have failed to take this advice, judging from the number of articles that weekly do not appear in one of these three journals. One can only wonder what these authors can possibly have been thinking. Shapiro's findings demonstrate conclusively that if you don't publish your article in one of these three principal journals, your chances of having it cited more than, say, a hundred times go down drastically. That's not the way to make the all-star team.

Maxim Three: Take a job as an assistant professor at the Harvard, Yale, or University of Chicago Law Schools.

You'd be surprised at how many people, faced with offers from Slippery Rock Law School and the Harvard Law School, turn down

the latter and choose the former. Don't do it! Grit your teeth and tell Bob Clark that you're coming. Sure, the housing costs are higher on the East Coast, but it's well worth it in terms of the extra citation counts. Moreover, as you bask in the rosy glow of a fire during a freezing Boston winter, you can also bask in the glow of those extra citations. Don't you think it's worth the effort?[32]

Maxim Four: Triple Threats tend to score; Cinderellas sweep the floor.

If you follow our first three maxims, you are well prepared for, although not guaranteed, success in the world of legal citation. Obviously, there are many examples of "triple threats"—people who went to Harvard, Yale, or Chicago, teach at one of these three schools, and publish in their law reviews—who don't appear on Shapiro's lists. Still, even if these qualifications don't guarantee making the academic equivalent of the all-star team, they certainly couldn't hurt one's chances, and not having them definitely does hurt.

Sportswriters covering the NCAA basketball tournament each March always like to focus on some "Cinderella team" that supposedly proves that any college can hope to compete with the traditional powerhouses.[33] Every now and then, one of them *does* upset a powerhouse, giving great pleasure to all of life's underdogs. But, we insist, one shouldn't make a practice of betting on the Cinderellas, because most of them will get the pumpkin rather than the prince.[34]

In fact, there are relatively few "Cinderellas" who get the tiara in the legal academy. The overwhelming number of the 103 articles on Shapiro's list of the top one hundred (with ties) are published either by professors at one of the "top-ten" (by conventional opinion) law schools *or* in a review published at one of these same law schools.[35] Indeed, we have discovered only seven articles, written by six authors,

32. Anyway, once you get highly cited, you'll probably be invited to dozens of conferences in warm places that will regularly take you away from the Northeast or Chicago (assuming the airports are open).

33. This no doubt helps to explain the sheer joy this past football season with which Northwestern's trip to the 1996 Rose Bowl was received by most sportswriters (and, indeed, most right-thinking people).

34. As indeed was demonstrated in the 1996 Rose Bowl itself, where the University of Southern California resoundingly trounced the Evanston upstarts (though ABC's "Nightline" chose to interview the Northwestern coach and president that night rather than pay homage to the victorious Trojans of U.S.C.).

35. We will not list the "top-ten" law schools here, not merely out of politeness, but due to the fact that at least twenty different schools believe themselves to be on this list.

out of Shapiro's total of 103, that failed to meet at least one of these two conditions:

> 13. Marc Galanter (University of Wisconsin Law School), *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).
> 15. Stewart Macaulay (University of Wisconsin Law School), *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC'Y REV. 55 (1963).
> 19. Henry G. Manne (then at George Washington National Law Center), *Mergers and the Market for Corporate Control*, 73 J. POL. ECON. 110 (1965).[36]
> 64. William L. Prosser (University of Minnesota), *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966).
> 65. Marc Galanter (University of Wisconsin), *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).
> 82. Alan David Freeman (State University of New York at Buffalo), *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).
> 96. Catharine A. MacKinnon (then at University of Minnesota), *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635 (1983).

Surely the most impressive of these Cinderellas is Marc Galanter, who managed to make the list twice. He *did* go to the University of Chicago, though, which may make him less inspiring to some than the late Alan Freeman, who managed to make the list even though he "only" went to NYU. Freeman, though, was smart enough to write about racial discrimination, a subject of great interest about which many people write articles in which they can cite many other articles written on the subject. Galanter's achievement is thus especially striking when one recognizes that his subject—the structure of the American legal profession—is scarcely one of the "hot topics" within the legal academy. Indeed, none of the remaining one hundred articles seems to treat the organized legal profession at all, a point whose significance we shall return to presently.

Despite Shapiro's hopeful suggestion that the academy is opening up to new groups of scholars, very little changes if one looks at the one hundred most-cited articles from 1981-1991. In addition to MacKinnon's and Galanter's 1983 articles listed above, there are only

36. We point out, however, that the *Journal of Political Economy* is published at the University of Chicago, so it is possible that Manne's article should be omitted from the Cinderella list on jurisdictional grounds.

six additional articles that weren't published in "top-ten" journals or by law professors at "top ten" schools at the time of publication:

1. Catharine A. MacKinnon (then at the University of Minnesota), *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515 (1982).
2. Michael S. Moore (then at the University of Southern California), *A Natural Law Theory of Interpretation*, 58 S. CAL. L. REV. 277 (1985).
3. Daniel Farber & Philip P. Frickey (both at the University of Minnesota), *The Jurisprudence of Public Choice*, 65 TEX. L. REV. 873 (1987).
4. William N. Eskridge, Jr. (Georgetown University), *The New Textualism*, 37 UCLA. L. REV. 621 (1990).
5. Gary Peller (Georgetown University), *Race Consciousness*, 1990 DUKE L.J. 758.
6. Richard Delgado (University of Colorado), *Campus Antiracism Rules: Constitutional Narratives in Collision*, 85 Nw. L. REV. 343 (1991).

Of course, if you think that Georgetown or Duke is in the mythical "top ten"—tact leads us to avoid mention of the University of Texas's claim to such status—then the only "Cinderella" articles would be those of MacKinnon and Moore. Moore gains further Cinderella status from the fact that he attended the University of Oregon Law School, though he did later receive a J.S.D. from the Harvard Law School. MacKinnon, of course, is a graduate of the Yale Law School.

Since publication, MacKinnon and Moore have moved to "top-ten" schools (Michigan and Pennsylvania, respectively); as this Article went to press, Eskridge had just accepted an offer from Yale. According to informal sociological studies[37] it's likely that some of the other much-cited authors also had opportunities, which they declined, to move up in the pecking order. But the general trend is clear enough. One must temper Shapiro's emphasis on the growing importance of "outsider" perspectives with the sober recognition that few "outsiders"—whatever their citation counts—currently reside in the principal bastions of the legal academy. The overwhelming majority of students who are later selected for teaching jobs at elite law schools are trained at astonishingly few schools.[38] The faculty at these institutions are thus almost uniquely placed to mold the legal consciousness of future generations of law students. Few "outsiders" currently enjoy this opportunity. This leads, all too naturally, to our next point.

37. Gossip.
38. *See supra* Maxim One.

Maxim Five: If you want to get somewhere, it helps to be there already.

How often has publishing one of the hundred most-cited articles actually led to an invitation to join one of the Valhallas of the legal academy? One example might be Arthur Leff's classic article on unconscionability,[39] which catapulted him from Washington University in St. Louis to the hallowed halls of the Yale Law School. Still, as with Galanter's stunning achievement, one wonders how common such stories are. In fact, they are relatively infrequent. Our research indicates that only eleven people who wrote articles on the top list of 103 subsequently moved to schools higher up in the traditional pecking order.[40] This is partly due, of course, to the fact that most of the other authors were already ensconced in elite schools when they wrote their celebrated pieces.

The fact that writing much-cited articles does not necessarily result in upward mobility[41] has interesting implications for the hypothesis that citation counts correlate with quality. If publication does not usually generate opportunities for mobility (including all-important career moves from the lower half of the "top ten," which train relatively few future teachers, to the top half), this suggests two possibilities. First, there may be no correlation between a highly cited article by a professor at a non-elite school and the article's merits. This might be comforting to those whose articles are not on the list. A second, but more ominous possibility is that there is a correlation—

39. Arthur A. Leff, *Unconscionability and the Code-The Emperor's New Clause*, 115 U. PA. L. REV. 485 (1967).

40. Here is the list of scholars, with their subsequent movements:

1. Robert Mnookin: from Berkeley to Stanford to Harvard.
2. Daniel R. Fischel (co-author): from Northwestern to Chicago.
3. Lon Fuller (co-author): from Duke to Harvard.
4. Joseph Sax: from Colorado to Michigan to Berkeley.
5. George Fletcher: from UCLA to Columbia.
6. Henry Mongahan: from B.U. to Columbia.
7. Gerald Frug: from Penn to Harvard.
8. Arthur Alan Leff: from Washington University (St. Louis) to Yale.
9. Albert Altschuler: from Texas (actually a visiting fellow at Chicago at the time) to Chicago.
10. Sanford Kadish: from Utah to Michigan to Berkeley.
11. Catharine MacKinnon: from Minnesota to Michigan.

There are two other cases that might seem to fit within this category, but don't really:

1. John Hart Ely: from Yale to Harvard, then to Stanford. (This is better described as lateral movement).
2. Bruce Ackerman: from Columbia back to Yale (where he was tenured before leaving for Columbia).

41. See Tushnet & Lynch, *supra* note 31, at 469, for a similar observation about the fate of *Harvard Law Review* Foreword authors.

but that it is basically irrelevant to one's prospects for dramatic mobility. It's probable, after all, that articles by professors at non-elite schools able to command this amount of attention are pretty good articles. Unfortunately, lateral hiring practices at the most prestigious schools may have relatively little to do with merit, or at least the kind of merit revealed in publishing.

Maxim Six: Write about public law subjects, particularly about Constitutional law, and especially about the Fourteenth Amendment.

Once you have been hired as an assistant professor at Harvard, Yale, or Chicago, your task has only begun. Now you actually have to write something.[42] You now have to produce something to sell to others, and, as every student of marketing knows, to sell something you have to understand your market. Who constitutes the academic market? Law professors surely. But let's not forget the true gatekeepers of academic success—that small handful of third-year law students known as articles editors, who decide which articles ascend to Heaven in a chariot of fire and which descend to the Hades of the law review's trash bin.

Writers are often advised to write about what they know. Since this would disable most law professors from writing anything at all, we offer a different suggestion: Write about constitutional law. Over half (55) of the top 103 articles are about the Constitution in one way or another.[43] Sure, you might make the list writing about labor law or antitrust, or even evidence. After all, Laurence Tribe did.[44] But why put yourself at such a disadvantage? (Ask yourself how many articles on evidence Tribe has written since *Trial by Mathematics*. The man is no fool.) And, whatever you do, don't write about the legal profession and its problems. Most of your fellow academics—who, after all, have consciously rejected a career in the actual practice of law—are just not interested in what is going on in the legal services industry. What a snorer!

Of course, you can still go wrong even in constitutional law. You also have to pick the right subspecialty. Our advice is: stick with the

42. Actually, at Harvard you had to write very little, but that's another story.

43. We count 55 such articles, although there are several others that could be said to deal with constitutional issues. It's possible that all of the articles are *really* about constitutional law, but let's not go down that road.

44. Laurence Tribe, *Trial by Mathematics: Precision and Ritual in the Legal Process*, 84 HARV. L. REV. 1329 (1971).

Fourteenth Amendment and the Bill of Rights, especially if you blend your discussion with some of the post-1960 infatuation with "constitutional theory."

If we have one basic piece of advice about topic selection, it's this: Never confuse what's important in the world outside law schools with what's important in law reviews. For example, anyone trying to discern what counts as important constitutional issues simply by looking at Shapiro's list would scarcely know that in this century America has become an administrative state, unless, that is, one believes that Richard Stewart said, almost literally, the last word on the matter in his 1975 classic, *The Reformation of American Administrative Law*.[45] A more likely conclusion is that most law professors (and articles editors) think that administrative law is a cure for insomnia. Nor, from this list of approved topics, would one have the slightest idea that presidents of the United States regularly involve our country in foreign wars with minimal or no consultation with the Congress. John Ely made Shapiro's list three times with his articles on *Roe v. Wade*,[46] flag desecration,[47] and the role of motivation in constitutional law.[48] Then he turned to presidential war-making powers. That was his big mistake. His superb articles on presidential war-making in Southeast Asia,[49] like the book based on those articles,[50] sank without a trace.[51]

45. Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667 (1975).

46. John Hart Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920 (1975).

47. John Hart Ely, *Flag Desecration: A Case Study in the Roles of Catgorization and Balancing in First Ammendment Analysis*, 88 HARV. L. REV. 1482 (1975).

48. John Hart Ely, *Legislative & Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205 (1970).

49. *See* John Hart Ely, *The American War in Indochina, Part I: The (Troubled) Constitutionality of the War They Told Us About*, 42 STAN. L. REV. 877 (1990); John Hart Ely, *The American War in Indochina Part II: The Unconstitutionality of the War They Didn't Tell Us About*, 42 STAN. L. REV. 1093 (1990); John Hart Ely, *Suppose Congress Wanted a War Powers Act That Worked*, 88 COLUM. L. REV. 1379 (1988).

50. JOHN HART ELY, WAR AND RESPONSIBILITY (1993). It's possible that Ely's decision to publish his articles as a book destroyed any chance of high citation counts. Perhaps a similar decision accounts for the failure of his own *Harvard Law Review* Foreword, John Hart Ely, *The Supreme Court, 1977 Term—Foreword: On Discovering Fundamental Values*, 92 HARV. L. REV. 5 (1978), to make the all-time list, given that it was absorbed into JOHN HART ELY, DEMOCRACY AND DISTRUST (1980). Similarly, we expect that Bruce Ackerman's citation count for his Storrs Lectures will surely suffer as a result of publishing BRUCE ACKERMAN, WE THE PEOPLE (1991). So perhaps we should add to our list of maxims the following corollary: If you want to make the lists, publish articles, not books, and don't gather your articles together into books. Of course, one could also simply prevail upon Shapiro to add citation counts to books in the next incarnation of his citation lists.

51. We exaggerate only slightly. Since its publication in 1993, JOHN HART ELY, WAR AND RESPONSIBILITY (1993), has garnered a grand total of 20 citations (according to a January 1996 LEXIS search we performed). Ely's three articles have been cited (respectively) 32 times (*Sup-*

After such success at wowing the masses, Ely's sudden development of a tin ear is mystifying. Only someone completely out of touch with the fashions of the academy could have believed that the shift of war-making power to the presidency in the twentieth century is as interesting or important as flag desecration.[52]

In fact, the fate of Ely's articles on war-making powers underscores that even true "triple threat" scholars can get totally buried if they stray too far from the cultural *zeitgeist* of the moment. If John Hart Ely—a former Yale *and* Harvard Professor, a former Dean of Stanford Law School, and the author of one of the most important books on constitutional theory in this century— doesn't have the clout to generate an extensive conversation about the issues raised by presidential Caesarism, who can? Of course, maybe it can all be explained by the fact that Ely left Harvard for Stanford. Not a good way to maximize citations, if you ask us.

Maxim Seven: Charity begins at home.

You might think that high citation counts are a sign of widespread interest in an article. But the real question is who is doing the citing. And this suggests two important principles for any would-be master of citation:

(1) Cite yourself, early and often.
(2) Get your friends to cite you whenever you can.

The central point is that under Shapiro's method of counting it's irrelevant why your article is cited or who cites it, as long as the publication appears in the *Social Science Citation Index*.[53] Moreover, a hundred citations in a single work praising an article to the skies count just as much as a single cite merely mentioning the article or curtly dismissing it. So cite away. It's true that you'd have to write a hundred and one articles to produce one hundred self-citations to your

pose Congress Wanted a War Powers Act That Worked, 88 COLUM. L. REV. 1379 (1988)), 12 times (*The American War in Indochina, Part I: The (Troubled) Constitutionality of the War They Told Us About*, 42 STAN. L. REV. 877 (1990)), and 11 times (*The American War in Indochina Part II: The Unconstitutionality of the War They Didn't Tell Us About*, 42 STAN. L. REV. 1093 (1990)). By way of comparison, since 1993, JOHN HART ELY, DEMOCRACY AND DISTRUST (1980) has been cited 373 times. Fortunately, the *University of Miami Law Review* has recently devoted an entire symposium issue to war and responsibility. *See* Symposium, *War and Responsibility: A Symposium on Congress, the President, and the Authority to Initiate Hostilities*, 50 U. MIAMI L. REV. 1 (1995).

52. Gerald Rosenberg has argued that the importance of many of the cases that fascinate law professors, like Brown v. Board of Education, 347 U.S. 483 (1954), and Roe v. Wade, 410 U.S. 113 (1973), is vastly overstated. *See* GERALD N. ROSENBERG, THE HOLLOW HOPE (1991). But of course, he's a political scientist, so he would say that.

53. *See* Shapiro, *supra* note 3, at 755 (explaining methodology).

first article. But at the margin, self-citation can make all the difference in the world. The last twenty articles on Shapiro's all time list are separated by a measly twenty citations (224 to 204). And there are several articles that are less than a dozen cites away from making the all-time list.[54] A few cites here and there can make a big difference.[55]

We realize that it takes a bit of chutzpah to shamelessly self-cite. But after a while, you'll get over it. Believe us, many other people in the legal academy already have.

There are many ways to work self-citations into your articles.[56] You should try as many of them as possible.[57] Don't be

54. For example, Joseph William Singer, *The Player and the Cards, Nihilism and Legal Theory*, 94 YALE L.J. 1 (1984) (203 citations) needs only one more cite to gain entry into the top one hundred (actually 104 counting ties). Hey, wait a minute, we just cited him, so he's in! Congratulations, Joe!!!!

55. We're not going to list the articles Singer is now tied with, lest we negate his achievement.

56. Here are some examples of self-citation:

Sanford Levinson, *The Multicultures of Belief and Disbelief*, 92 MICH. L. REV. 1873 (1994) (although this article has nothing whatsoever to do with the subject of the present article, this cite still counts for purposes of citation lists); J.M. Balkin, *Being Just With Deconstruction*, 3 SOC. & LEGAL STUD. 393 (1994) (so does this one); Sanford Levinson, *Constituting Communities Through Words that Bind: Reflections on Loyalty Oaths*, 84 MICH. L. REV. 1440 (1986) (and this one); J.M. Balkin, *Ideology as Cultural Software*, 16 CARDOZO L. REV. 1221 (1995) (it's like taking candy from a baby).

57. For example, here we could have gratuitously cited J.M. Balkin, *The Crystalline Structure of Legal Thought*, 39 RUTGERS L. REV. 1 (1986) or Sanford Levinson, *Law as Literature*, 60 TEX. L. REV. 373 (1982), or even J.M. Balkin & Sanford Levinson, *Constitutional Grammar*, 72 TEX. L. REV. 1771 (1994), and each of these cites would count for purposes of Shapiro's study, but of course, we wouldn't want to do *that*, now would we?

shy;[58] in our view,[59] self-citation is "an unqualified human good."[60]

58. For an example of an article that uses the word "shy," see J.M. Balkin, *supra* note 2, at 285.

For examples of articles that use the word "don't," see J.M. Balkin, *The Constitution as a Box of Chocolates*, 12 CONST. COMMENTARY 147, 147 (1995); Sanford Levinson, *Identifying the Compelling State Interest: On "Due Process of Lawmaking" and the Professional Responsibility of the Public Lawyer*, 45 HASTINGS L.J. 1035, 1056 (1994); Sanford Levinson, *Strategy, Jurisprudence, and Certiorari*, 79 VA. L. REV. 717, 731 n.75 (1993) (reviewing H.W. PERRY, JR., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT (1992)); J.M. Balkin, *The Promise of Legal Semiotics*, 69 TEX. L. REV. 1831, 1849 (1991); Sanford Levinson, *Conversing About Justice*, 100 YALE L.J. 1855, 1865 (1991) (reviewing JAMES BOYD WHITE, JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM (1990)); J.M. Balkin, *The Rhetoric of Responsibility*, 76 VA. L. REV. 197, 239 (1990); J.M. Balkin, *Nested Oppositions*, 99 YALE L.J. 1669, 1670 n.5 (1990) (reviewing JOHN M. ELLIS, AGAINST DECONSTRUCTION (1989)); Sanford Levinson, *The Adultery Clause of the Ten Commandments*, 58 S. CAL. L. REV. 719, 719 (1985); Sanford Levinson, *What Do Lawyers Know (and What Do They Do With Their Knowledge)? Comments on Schauer and Moore*, 58 S. CAL. L. REV. 441, 443 (1985); *cf.* J.M. Balkin, *Ideological Drift and the Struggle over Meaning*, 25 CONN. L. REV. 869, 870 (1993) (using related expression "do not").

Of course, almost every article published in English uses the word "be," but we thought you might like to see a few anyway, so see Sanford Levinson, *On Positivism and Potted Plants: "Inferior" Judges and the Task of Constitutional Interpretation*, 25 CONN. L. REV. 843, 845 (1993); J.M. Balkin, *The American System of Censorship and Free Expression*, *in* PATTERNS OF CENSORSHIP AROUND THE WORLD 155, 155 (I. Peleg ed., 1993); J.M. Balkin, *What is a Postmodern Constitutionalism?*, 90 MICH. L. REV. 1966, 1966 (1992); Sanford Levinson, *Could Meese Be Right This Time?*, 61 TUL. L. REV. 1071, 1071 (1987) (employing the word "be" in title); J.M. Balkin, *Too Good To Be True: The Positive Economic Theory of Law*, 87 COLUM. L. REV. 1447, 1447 (1987) (reviewing WILIAM M. LANDES & RICHARD A. POSNER, THE ECONOMIC STRUCTURE OF TORT LAW (1987)) (same).

59. For examples of other articles expressing a view, see J.M. Balkin, *Transcendental Deconstruction, Transcendent Justice*, 92 MICH. L. REV. 1131 (1994); J.M. Balkin, *Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence*, 103 YALE L.J. 105 (1993); Sanford Levinson, *Pledging Faith in the Civil Religion; Or, Would You Sign the Constitution?*, 29 WM. & MARY L. REV. 113 (1987); Sanford Levinson, *Gerrymandering and the Brooding Omnipresence of Proportional Representation: Why Won't It Go Away*, 33 UCLA L. REV. 257 (1985).

For examples of articles expressing a jointly held view, see Jordan Steiker et al., *Taking Text, Intention, and Structure Really Seriously: Constitutional Interpretation and the Crisis of Presidential Eligibility*, 74 TEX. L. REV. 237 (1995) (written with Sanford Levinson and J.M. Balkin); Thomas Haskell & Sanford Levinson, *On Academic Freedom and Hypothetical Pools: A Reply to Alice Kessler-Harris*, 67 TEX. L. REV. 1591 (1989); Thomas Haskell & Sanford Levinson, *Academic Freedom and Expert Witnessing: Historians and the* Sears *Case*, 66 TEX. L. REV. 1629 (1988).

60. J.M. Balkin, *Ideology as Constraint*, 43 STAN. L. REV. 1133, 1133 (1991) (quoting Morton Horwitz, *The Rule of Law: An Unqualified Human Good?* 86 YALE L. REV. 561, 566 (1977) (quoting E.P. THOMPSON, WHIGS AND HUNTERS 266 (1975))) (demonstrating yet another example of how to increase the number of self-citations).

For examples of articles we have not yet cited to in this article, see Sanford Levinson, *Presidential Elections and Constitutional Stupidities*, 12 CONST. COMMENTARY 183 (1995); Sanford Levinson, *Constitutional Protestantism in Theory and Practice: Two Questions for Michael Stokes Paulsen and One for his Critics*, 83 GEO. L.J. 373 (1994); Sanford Levinson, *Religious Language and the Public Square*, 105 HARV. L. REV. 2061 (1992) (reviewing MICHAEL J. PERRY, LOVE AND POWER (1991)); Sanford Levinson, *Some Reflections on the Posnerian Constitution*, 56 GEO. WASH. L. REV. 39 (1987); J.M. Balkin, *(A) Just Rhetoric?*, 55 MOD. L. REV. 746 (1992) (reviewing COSTAS DOUZINAS ET AL., POSTMODERN JURISPRUDENCE (1991)); J.M. Balkin, *The Top Ten Reasons to Be a Legal Pragmatist*, 8 CONST. COMMENTARY 351 (1991); J.M. Balkin, *Ideological*

If you can't generate enough cites from self-citation, prevail on your friends to cite you in everything they write.[61] Of course, it helps to have friends who are prolific, and it especially helps to have colleagues on prolific faculties, who can spread your name widely through their citations. But this is yet another reason to become an assistant professor at the University of Chicago.

Friends are usually more than happy to cite you, especially if you offer to cite them in return. Sometimes, however, they need a bit of cajoling before doing the right thing. Make your friends feel guilty if they don't cite you in all of their articles. Tell them how hurt you are that they are neglecting you and your ideas. If all else fails, accuse them of insensitivity, plagiarism, or worse. Sure it may strain the friendship, but aren't the extra cites worth it?[62]

Drift, in ACTION AND AGENCY (R. Kevelson ed., 1991); J.M. Balkin, *Tradition, Betrayal, and the Politics of Deconstruction*, 11 CARDOZO L. REV. 1613 (1990); J.M. Balkin, *The Hohfeldian Approach to Law and Semiotics*, 44 U. MIAMI L. REV. 1119 (1990); J.M. Balkin, *Turandot's Victory*, 2 YALE J.L. & HUMAN. 299 (1990); J.M. Balkin, *The Domestication of Law and Literature*, 14 LAW & SOC. INQUIRY 787 (1989) (reviewing RICHARD POSNER, LAW AND LITERATURE (1988)); J.M. Balkin, *The Rule of Law as a Source of Constitutional Change*, 6 CONST. COMMENTARY 21 (1989); J.M. Balkin, *Constitutional Interpretation and the Problem of History*, 63 N.Y.U. L. REV. 911 (1988) (reviewing RAOUL BERGER, FEDERALISM (1987)); J.M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743 (1987).

Finally, you might even consider creating a boilerplate footnote with all of your previous articles, which you can simply insert at some point in each new article. For an example of what such a boilerplate footnote might look like . . . well, you get the picture.

61. *See, e.g.*, Sanford Levinson, *Electoral Regulation: Some Comments*, 18 HOFSTRA L. REV. 411, 415 n.27 (1989) (Levinson citing Balkin); J.M. Balkin, *Some Realism About Pluralism: Legal Realist Approaches to the First Amendment*, 1990 DUKE L.J. 375, 378 n.11 (Balkin citing Levinson) (and note as well how this gives us two more self-citations).

Kimberly Fahrbach, an editor of the *Chicago-Kent Law Review* has correctly reminded us that "[i]n addition to having your friends cite you, you should have them all cite the *same* article." E-mail from Kimberly Fahrbach, Executive Articles Editor, *Chicago-Kent Law Review*, to Sanford Levinson, (April 24, 1996) (on file with authors). As Ms. Fahrbach points out, the more articles one has written, the less likely it becomes that one's friends will all cite the same article. To be sure, their citations will fatten one's overall citation count, but such a scattershot approach will fail mightily in getting any particular article onto Shapiro's lists, which is, after all, the whole point of the game. In any case, if one is willing to impress upon one's friends the continuing desire to be cited, it should hardly take much more nerve to mention the particular article that would be most appropriate.

It also occurs to us that the more friends one has in the legal academy, the greater the possibilities there are of getting a large number of them to cite a single article all at once—a phenomenon somewhat akin to the apocryphal story of Mao Tse Tung ordering the entire population of China to jump off three foot stools simultaneously in order to precipitate an earthquake on the other side of the planet. Yet we must temper this observation by the possibility that the more one kvetches at one's friends for repeated citation, the fewer friends one is likely to retain. This produces a sort of Laffer curve of friends versus citations. It is also possible that people who write lots of articles do not have much of a social life, and therefore tend to have fewer friends anyway. (We might call this the "Get a Life" effect.)

62. As postmodern pragmatists (whatever the hell that means) we are also quite interested in the semiotics of deliberately *failing* to cite another person, a case where absence is most assuredly present. Noncitations fall into two basic types, inadvertent and advertent. Inadvertent

Maxim Eight: Write articles that law students will want to cite.

Lots of people assume that citation counts are a rough proxy for the extent of interest in given issues among the professoriate. But much of the writing that appears in law journals is not by law professors at all. It is by students. Another large chunk is by assistant professors writing their tenure pieces; this group is especially significant because publication rates tend to drop off drastically after tenure for the vast majority of professors. Even when we turn to the work of tenured professors, we still have to consider who really prepared their footnotes. It's no secret that this is often done by research assistants or law review editors. Thus, assistant professors and law students are the two greatest determinants of citation counts, and anyone who wants to rise in the rankings had better write to attract their attention.

The identity of the citing party is particularly important because—as we shall argue more fully later—citation has at least as much to do with making certain semiotic gestures to the audience as providing an accurate record of an author's own intellectual paths. This is especially likely to be true of work by students and tenure pieces written by fearful assistant professors, both of whom may feel an obligation to indicate familiarity—whether feigned or real—with

noncitations occur when a previous article is on point, but the author of the later work forgets the article or has never heard of it.

Advertent or deliberate noncitation occurs when the later author knows of a work and consciously fails to cite it. *See supra* note 55, where we deliberately don't mention the articles Joe Singer is now tied with. Don't even ask us what they are: Our lips are sealed.

Although noncitation is usually harmless, at its worst it can act as a kind of silencing insofar as it leads to "burying" an article by denying it publicity and status, or by decreasing the likelihood that it will be discovered by someone else who uses the nonciting article as a research tool. And at this point, those who are uncited may very much care if the noncitation is advertent or inadvertent. One suspects, for example, that most authors feel far more upset about having been the (presumed) victim of advertent noncitation than of its inadvertent counterpart. *See* O.W. HOLMES, THE COMMON LAW 3 (1881) ("even a dog distinguishes being stumbled over and being kicked"). At this point, of course, we could digress into an extended discussion of intent v. effect as legal standards, as we have in a few citable articles on this topic, but we won't.

For examples of articles we have deliberately *not* cited to in this piece, see J.M. Balkin, *Federalism and the Conservative Ideology*, 19 URB. LAW. 459 (1987); J.M. Balkin, *Taking Ideology Seriously: Ronald Dworkin and the CLS Critique*, 55 UMKC L. REV. 392 (1987); J.M. Balkin, *Learning Nothing and Forgetting Nothing: Richard Epstein and the Takings Clause*, 18 URB. LAW. 707 (1986); J.M. Balkin, *Ideology and Counter-Ideology from* Lochner *to* Garcia, 54 UMKC L. REV. 175 (1985); Sanford Levinson: *Freedom of Speech, Freedom of Expression: Does it Matter What We Call It?*, 80 NW. U. L. REV. 767 (1985) (reviewing MARTIN H. REDISH, FREEDOM OF EXPRESSION (1984)); Sanford Levinson, *Regulating Campaign Activity: The New Road to Contradiction?*, 83 MICH. L. REV. 939 (1985); Sanford Levinson, *Testimonial Privileges and the Preferences of Friendship*, 1984 DUKE L.J. 631; Sanford Levinson, *Escaping Liberalism: Easier Said Than Done*, 96 HARV. L. REV. 1466 (1983) (reviewing THE POLITICS OF LAW (David Kairys ed., 1982)).

Ooops!

the canonical articles in their particular field.[63] This felt obligation produces a special pressure to cite every well-known article, whether or not it was genuinely useful in preparing the piece in question. In fact, the raw number of citations in the average law review article may actually be a function not of content but of authorial status. Assistant professors eager to gain notice (and tenure) will tend to write the longest, most heavily cite-laden pieces, followed by student note writers at the "top schools," particularly those who hope to enter the academy someday and thus feel some need to impress members of future appointments committees. Bringing up the rear will be more senior professors, who are more likely to publish "think pieces" that do not require proving—or at least suggesting through citation—that they are familiar with everything that is "out there" in the data bank of published articles.[64]

The tendencies of law students and untenured professors have a self-reproducing and self-reinforcing quality in constructing the legal canon. Because both law students and assistant professors have to demonstrate familiarity with the literature in the field in which they write, they will tend to cite what they understand to be canonical articles and standard cites. However, this means that articles that are already canonical will tend to remain heavily cited. As the New Testament tells us, to those who have, more shall be given.[65]

But how can one write a canonical article or standard citation that will garner the support of assistant professors and law students around the country? This brings us to our next piece of advice:

Maxim Nine: Write icons, not articles.

If you want to understand how to write the sort of articles that will get cited incessantly, you first must understand why people cite

63. Your intrepid authors went through Shapiro's list and marked off every article they had in fact read and every article that they had cited. Although, as expected, there were some articles that had been read that were uncited, we must also report that there were a few articles that had been cited even though unread. (We figure our research assistants must have read them, although that's probably just something they told us. . . .) In the language of cyberspace, we might refer to these unread citations as "virtual readings." We are unable to assess precisely how often virtual reading occurs in the legal academy because we are much too polite to ask anyone about his or her own practices in this regard.

64. These articles, we hypothesize, would produce the highest ratios of self- and friend-citations.

65. As to the last of these, see Robert Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L. J. 950 (1979). We predict this article has been cited by many people quite uninterested in family law, its actual subject. These people have been more likely entranced by the title, useful in all sorts of contexts. How many ways can *you* think of to weave "bargaining in the shadow of the law" into a discussion?

articles. The most obvious reason to cite something is as authority for a legal proposition one is arguing for. But much legal scholarship is cited to represent an idea, a movement, or a memorable phrase associated with one of them. Thus, many citations to legal scholarship, and particularly to the most canonical pieces of legal scholarship, are citations to what the article symbolizes rather than acknowledgements of the truth of what the article says. The most-cited articles are less influences than icons; they are like colors of paint conveniently dabbed on the canvas because they are familiar and are easily accessible.

Take for example, Gerald Gunther's famous 1972 *Harvard Law Review* article that explained and synthesized "the new equal protection."[66] In his first article on legal citology, Shapiro counted it as the most-cited law review article of all time; it has since slipped to number three.[67] We strongly suspect that a healthy number of its 913 citations occurred because authors used the phrase "the new equal protection," or something similar, and then tried to think of an easily accessible citation.[68] In this sense Gunther's article may primarily serve an iconic function, rather than as the locale of an argument that actually helped to generate a future author's ideas about the subject.

We will find much the same phenomenon with respect to the other members of the top-ten law review articles of all time. Often these articles get cited because they are useful symbols of important trends and movements in legal culture. Thus Robert Bork's article on the First Amendment and neutral principles[69] (number seven on the all-time list) is a standard cite for the wacky notion of a value-free approach to constitutional understanding,[70] while Duncan Kennedy's *Form and Substance in Private Law Adjudication*[71] (number 10 on the list) is an obvious symbol of critical legal studies and radical legal

66. Gerald Gunther, *The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

67. Shapiro, *supra* note 1, at 1549; Shapiro, *supra*, note 3, at 767.

68. Of course many authors might simply have wanted to repeat the description of strict scrutiny as "'strict' in theory and fatal in fact," Gunther, *supra* note 66, at 8. Shapiro's selection of this phrase for inclusion in a dictionary of legal quotations is ample proof of its iconic status. *See* THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS 126 (Fred R. Shapiro ed., 1993).

69. Bork, *supra* note 4.

70. Or, to be slightly fairer to Bork, his article symbolizes the view that the majority should get to do whatever it wants, thereby turning our constitutional republic into a de facto parliamentary one. *See* Sanford Levinson, *Parliamentarianism, Progressivism, and 1937: Some Reservations About Professor West's Aspirational Constitution*, 88 NW. U. L. REV. 283 (1993) (*see also infra* Maxim Seven).

71. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976).

thought. It's not necessary that the article symbolize something the author approves of or agrees with; in fact, we assume that these two particular articles are often cited as symbols of movements or ideas that authors reject. An even more recent example is Mari Matsuda's article *Considering the Victim's Story*,[72] one of the few articles arguing that some racist political speech is not protected by the First Amendment. It has become a convenient symbol of a position largely rejected in the legal academy.

Given the connections between citation and iconography, it's not surprising that the two most-cited articles of all time represent two central and diametrically opposed visions of the study of law. They are Ronald Coase's *The Problem of Social Cost*[73] and Herbert Wechsler's *Toward Neutral Principles of Constitutional Law*.[74] Coase is an economist who symbolizes the interdisciplinary invasion of law and the rejection of legal autonomy, while Wechsler is the consummate insider, the high priest of legal craft, the champion of law's internal operation and the defender of elite lawyerly standards.[75] There is a delicious irony in the fact that the most-cited law review article of all time was not written by a lawyer and was not even published in a traditional student-edited law review. Moreover, the article is not, strictly speaking, even written about a legal problem, but about a problem in economic theory, namely, Pigou's theory of economic externalities. Finally, the article's economic analysis tends to undermine the very idea of legal autonomy. Having this be the most-cited law review article of all time is a little like discovering that the most-cited passage in the New Testament turns out to be Pontius Pilate's question "What is truth?"[76]

An article's iconic status is improved if it stands for many different things to many different people;[77] this is particularly true of

72. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989).

73. Ronald H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960).

74. Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 75 HARV. L. REV. 1 (1959).

75. For rather acerbic comments on Wechsler's status as high priest, see RICHARD A. POSNER, OVERCOMING LAW 70-75, 77-79 (1995).

76. *John* 18:38.

77. What literary theorists call polysemousness is a great asset for garnering citations (at least once the work gains some initial fame in the first place). Future scholars can, after all, always score points by arguing that a well-known piece has not been properly understood until now. We suspect that this helps to explain the enduring citability of Holmes's *The Path of the Law*, discussed, for example, in Levinson & Balkin, *Law, Music, and Other Performing Arts*, 139 U. Pa. L. Rev. 1597, 1647-50 (discussing O.W. HOLMES, *The Path of the Law*, *in* COLLECTED LEGAL PAPERS 167 (1920)); Sanford Levinson, *Strolling Down the Path of the Law (and Toward*

Wechsler's *Toward Neutral Principles of Constitutional Law*,[78] a veritable rorschach test of jurisprudence. Wechsler's article simultaneously symbolizes a movement (Legal Process), an era (the 50s), a vision of legal procedure and neutrality as necessary counterweights to the corrosive skepticism of legal realism, an optimistic belief in the possibility of principled and apolitical judicial decisionmaking, a rejection of judicial policy choice, elite resistance to the perceived excesses of the Warren Court, and finally, the moral failure of liberal law professors who could not find a way to square their visions of legal craft with the decision in *Brown v. Board of Education*.[79] Interestingly, the article is almost never cited for what it was originally intended to be—a defense of the principle of judicial review against Learned Hand's skeptical arguments in his Holmes Lectures of 1951. Wechsler's article was intended as a moderate defense of judicial supremacy, and ended up symbolizing almost everything else to later generations.

Maxim Ten: The Real World? What's that?

Our previous discussion of John Hart Ely's book on presidential power should serve as a warning to all would-be citation moguls that the only citations that really count are those by other legal academics. If it isn't interesting to legal academics, it just isn't interesting. Like the proverbial tree that falls in the forest, an article that fails to be cited in law reviews makes no noise whatsoever. We realize that there are some benighted souls who want to reach other interpretive communities. Some want to be cited by judges and the practicing bar, and others even want to be cited in the popular press. To all of these scholars we have only two words of advice: Get real.

Critical Legal Studies?): The Jurisprudence of Richard Posner, 91 COLUM. L. REV. 1221, 1228-31 (1991) (reviewing RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE (1990) (discussing Oliver W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897), *reprinted in* OLIVER W. HOLMES, THE MIND AND FAITH OF JUSTICE HOLMES 71-89 (Max Lerner ed., 1954)); Sanford Levinson, *National Loyalty, Communalism, and the Professional Identity of Lawyers*, 7 YALE J.L. & HUMAN. 49, 55-57 (1995) (discussing Oliver W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457 (1897)); Sanford Levinson, *Frivolous Cases: Do Lawyers Really Know Anything at All?* 24 OSGOODE HALL L.J. 354, 363 (1987) (discussing O.W. HOLMES, *The Path of the Law*, *in* Collected Legal Papers 167 (1920)) (*see supra* Maxim Seven).

78. Wechsler, *supra* note 74.

79. Brown v. Board of Education, 347 U.S. 483 (1954). For more on the background of Wechsler's article, see Gary Peller, *Neutral Principles in the 1950's*, 21 U. MICH. J.L. REF. 561 (1988). (We might well have cited this anyway, because it *is* obviously relevant to our discussion of Wechsler's article, but it does not hurt that Peller is a friend. We will also read with interest Professor Peller's footnotes in his future articles. *See* discussion *supra* Maxim Seven.)

Anyone who wants to be cited by the judiciary and the practicing bar should be writing much more doctrinal, narrowly focused pieces than most of those found on Shapiro's lists. Conversely, we seriously doubt that the most-cited articles by judges or practicing attorneys would look anything like Shapiro's catalogue, especially if we focused on articles published in the last ten years.[80] Of course, it's part of the same phenomenon that there are fewer and fewer members of the contemporary academy who define success in terms of judicial citations.[81]

It's also pretty likely that Shapiro's lists have virtually no overlap with the law review articles that are mentioned in the popular press. One of us (Levinson) has written an article on the Second Amendment that chastised the legal academy for ignoring this provision of the Bill of Rights and suggested that this amendment may actually have some relevance to current debates over gun control.[82] Since the thesis, after all, is that the Second Amendment doesn't exist in the legal academy's version of the Constitution, it's not surprising that the article hasn't garnered a lot of citations in the law reviews. Yet, as one might expect given the current political climate, the NRA loves it, and the piece has received a fair amount of attention in the popular press. In particular, it has been cited in such eminent publications as *Ameri-*

80. Just imagine the following opinion:

". . . . And for the reasons stated in Pierre Schlag, *Normativity and the Politics of Form*, 139 U. PA. L. REV. 801 (1991), judgment for the plaintiff is affirmed."

Yeah, right.

81. Indeed, it's quite likely that an earlier generation of academics would have gladly traded ten citations in the *Harvard Law Review* for one citation in a Supreme Court opinion. If, as we think, many contemporary academics would find this a bad trade, then this by itself tells us something important about the contemporary legal academy. Opinions can differ, of course, as to whether one applauds or laments this discovery. For what has become the canonical (and thus heavily cited) expression of lament, see Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). Edward's article was inspired at least in part by his ire at Sanford Levinsion, *The Audience for Constitutional Meta-Theory (or Why, and to Whom, Do I Write the Things I Do?)*, 63 U. COLO. L. REV. 389 (1992). For a response to Edwards, see Sanford Levinson, *Judge Edwards' Indictment of "Impractical" Scholars: The Need for a Bill of Particulars*, 91 MICH. L. REV. 2010 (1993) (and *see supra* Maxim Seven).

82. Levinson, *supra* note 17 (although this citation is necessary for purposes of THE BLUEBOOK (16th ed. 1996), it is entirely superfluous from the standpoint of increasing citation counts, since we have already cited it earlier. Too bad.).

can Rifleman,[83] and *Shotgun News*,[84] in addition to lesser lights like the *New York Times*,[85] *Washington Post*,[86] *Washington Times*,[87] *The New Republic*,[88] and *The New York Review of Books*.[89] Sadly, however, none of these periodicals form part of the *Social Science Citation Index,* and therefore they count for naught in Shapiro's lists.[90]

CONCLUSION: CITATION AS IMPRESSION MANAGEMENT

In this Article we have tried to discover both how to win cites and influence people. But the iconic nature of many cites suggests that high citation counts and high influence do not necessarily go together. As the cites to Bork, Kennedy, and Matsuda suggest, a large number of citations may not indicate that the cited author's ideas have influenced the way other academics think. Citations seem to be more a kind of semiotic gesture to the reader than an accurate record of intellectual influence on the citing author. Sometimes there will be a degree of correlation, particularly in the case of the all-time leader, Coase's *The Problem of Social Cost*, which helped found an entirely new way of analyzing legal rules. But even here it's unclear how often Coase is simply cited iconically as part of a string citation of law-and-economics articles or as the dutiful reference for a sentence on the reciprocity of causation or the importance of transaction cost analysis. Returning to Gunther's article on equal protection, it is hard to be-

83. *See* Allen R. Hodgkins III, *National Public Radio Attacks Firearms*, 138 AM. RIFLEMAN, Feb. 1990, at 46 (noting purported inability, in January 1990, of National Public Radio to find any legal scholar who believed that the Second Amendment protected in any way an individual's right to keep and bear arms, even though Sanford Levinson, *The Embarassing Second Amendment*, 99 YALE L.J. 637 (1989), which takes such a view seriously, had recently been published).

84. *See Neal Knox Report*, THE SHOTGUN NEWS, Mar. 1, 1990, at 3. Levinsion is quite sure that he is the only member of the University of Texas Law School faculty to have been cited in this particular venue.

85. *See* Richard Bernstein, *The Right to Bear Arms: A Working Definition*, N.Y. TIMES, Jan. 28, 1990, § 3, at 6.

86. *See* George F. Will, *America's Crisis of Gunfire*, WASH. POST, Mar. 21, 1991, at A21. Will's column is, of course, nationally syndicated, and it was, therefore, reprinted throughout the country.

87. *The Brady Bill and the Bill of Rights*, WASH. TIMES, May 8, 1991, at G2 (editorial).

88. *See* Michael Kinsley, *Gun Control Unconstitutional?*, NEW REPUBLIC, Feb. 26, 1990, at 4.

89. Where Garry Wills attacked it as "frivolous but influential." *See* Gerry Wills, *To Keep and Bear Arms*, N.Y. REV. BOOKS, Sept. 21, 1995, at 70. For Levinson's response, see Sanford Levinson, *To Keep and Bear Arms: An Exchange*, N.Y. REV. BOOKS, Nov. 16, 1995, at 61. This raises the age-old question: Is it better to be cited and vilified or to be ignored? From what we have said above, isn't the answer obvious by now?

90. That is, they do not exist in the relevant Fishian interpretive community. *See* STANLEY FISH, IS THERE A TEXT IN THIS CLASS? (1980) (Note that by citing Fish's book instead of some law review article which makes the same point, we are depriving him of a needed citation, given Shapiro's methodology. We hope he will forgive us.).

lieve that this piece is truly four times as influential, in terms of shaping the way people thought about issues, as, say, Jerome Barron's 1967 article *Access to the Press—A New First Amendment Right*,[91] which stimulated a whole new way of conceptualizing the role that mass media play in the contemporary world.[92]

If people aren't necessarily revealing which articles have influenced them when they offer citations (for they may never even have read the articles they cite), what precisely are they doing when they cite them? To answer this question, we turn to the work of the sociologist Erving Goffman. Goffman devoted his life to studying the various ways in which persons create their public *personae* and skillfully manage the impressions they convey to the world around them.[93] Citations, we think, are often just such a form of public relations or impression management. They are a way of displaying information the citing author wants to convey about him- or herself, while concealing other information that would interfere with his or her desired "performance" as a legal scholar. From a public relations perspective, it may be quite irrelevant what you've *actually* read—or, much less what you've genuinely grappled with—, as long as you can successfully create the impression that you are the sort of person who is familiar with the cited work. Just as the insecure dinner-party host can walk into the wine shop and ask for "the wines most often bought by classy people," the insecure legal academic—and is this not a redundancy?—can rarely go wrong by associating him- or herself, even if only through footnotes, with the articles published by classy people in classy law reviews. Citations are thus an essential part of the rhetoric of the law review article. They are not merely forms of evidence or proof; they also fall under the category of what rhetoricians call the "ethical appeal"—the demonstration, necessary in every persuasive speech, that the speaker is the sort of person who can be trusted and believed.[94]

91. Jerome A. Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641 (1967).

92. For an illuminating discussion of Barron's article, see the analysis by our good friend LUCAS A. POWE, JR., THE FOURTH ESTATE AND THE CONSTITUTION 245-48 (1991) (and *see supra* Maxim Seven).

93. *See, e.g.*, ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959); ERVING GOFFMAN, FRAME ANALYSIS (1974). You can tell that our motives in citing these books are pure because, alas, Professor Goffman is now dead and thus unable to cite us in return. On the other hand, Goffman, like Holmes or Habermas, is a classy cite, so we do hope that you'll think well of us for associating ourselves with Goffman by claiming to have read his books. (No, honest, we really *did* read them. Really. At least one of us did.).

94. *See* EDWARD P.J. CORBETT, CLASSICAL RHETORIC FOR THE MODERN STUDENT, 80-81 (3d ed. 1990).

Citations are also a handy way of establishing some measure of group identity or solidarity. Members of a particular school or approach often cite each other repeatedly, thus reinforcing each other's personal sense of self-worth, which, in turn, is a function of the worth each is deemed to have by others. The psychological benefits of reciprocal citation may be particularly important when members of a particular group view themselves as otherwise marginalized by the larger academy. Thus, one would predict a great deal of solidaristic citation by law-and-economics buffs, adherents of critical legal studies, critical race theory, feminist theory, and other distinctive subcultures.[95] Of course, if Shapiro is right that these formerly "outsider" groups are now fully "inside" and even hegemonic, then perhaps someday we will see beleaguered doctrinalists engaging in reciprocal citation to bolster their flagging self-esteem.[96]

Citations can also serve as a form of signaling behavior. People often look at the citations to see what approach the author employs. Some people may even be loath to read a work if it uses the "wrong" citations; for example, if the author cites to Michel Foucault and the cultural studies literature instead of to James Buchannan and the rational choice literature, or vice-versa. This may be true even if the literatures make virtually the same points using different vocabularies. Citations thus signal to readers that the proffered article is the sort they ought to be interested in because it is based on the work of people they already know and trust. Conversely, citations can have the opposite and undesirable effect of suggesting that the reader avoid the article because it relies on sources that are discreditable in that reader's eyes. In this way, citation practices may exacerbate the separation of different approaches, different disciplines, different academic subcultures, and different research programs. This is just one of the many ways in which separate "interpretive communities" are created and maintained. Conversely, a citation practice that involves the self-

95. On citations in (and to) law and economics literature, see William M. Landes & Richard A. Posner, *The Influence of Economics on Law: A Quantitative Study*, 36 J.L. & ECON. 385 (1993).

96. In this regard, we think that "citology" should be complemented by the "acknowledgmentology," the study of the acknowledgments of colleagues and friends in the traditional first footnote of a law review article. Just as the Central Intelligence Agency learned a lot about the power struggles within the Kremlin by noting which members of the Politburo watched May Day parades from the top of Lenin's tomb, we can learn a lot about the ebb and flow of movements within the legal academy by studying who gets thanked in those first footnotes. Conversely, from the author's standpoint, thanking a number of famous scholars or judges is a useful tool of impression management; for it suggests both that important people have taken the time to read the article and comment upon it, and, moreover that one is sufficiently unafraid to have one's articles critically examined by such people.

conscious crossing of different disciplinary boundaries can signal positively that the author has catholic tastes, interests, and expertise—or negatively, that the author is a dilettante.

We close this article by noting that although we have offered a great deal of advice on how to advance one's career through greater citation counts, our advice is free and is worth precisely what it costs. We can hardly claim much expertise, for neither of us is on the list of the most-cited law review articles of all time or even for any year between 1981-1991. Moreover, we are not even following our own advice, since we are happily writing this article for the *Chicago-Kent Law Review*.[97] Indeed, both of us have a disturbing habit of continually publishing in places other than the journals that promise the greatest likehihood of high citation counts. Perhaps we have become co-dependent with law review editors who just aren't right for us if our goal is maximizing citations. Our persistent inability to act on our own advice suggests the title for our next work in the genre of self-help literature: Law professors who love non-elite law reviews too much.

97. Indeed, this is Levinson's fourth appearance in its pages. *See* Sanford Levinson, *They Whisper: Reflections on Flags, Monuments, and State Holidays, and the Construction of Social Meaning in a Multicultural Society*, 70 CHI.-KENT L. REV. 1079 (1995); Sanford Levinson, *Slavery in the Canon of Constitutional Law*, 68 CHI.-KENT L. REV. 1087 (1993); Sanford Levinson, *Constitutional Rhetoric and the Ninth Amendment*, 64 CHI.-KENT L. REV. 131 (1988) (and *see supra* Maxim Seven).