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The Cathedral at Twenty-Five: Citations and Impressions*

James E. Krier[†] and Stewart J. Schwab^{††}

It was twenty-five years ago that Guido Calabresi and Douglas Melamed published their article on property rules, liability rules, and inalienability.¹ Calabresi, then a law professor, later a dean, is now a federal judge. Melamed, formerly a student of Calabresi's, is now a seasoned Washington attorney. Their article—which, thanks to its subtitle, we shall call *The Cathedral*—has had a remarkable influence on our own thinking, as we tried to show in a recent paper.²

This is not the place to rehash what we said then, but a summary might be in order. First, we demonstrated that the conventional wisdom about liability (damage) rules, that judges should use them when transaction costs are high, is incorrect, because the costs of assessing damages might in fact be higher still; if they are, property (injunction) rules are superior, at least from the standpoint of efficiency. Second, and relatedly, we identified problems of correlation and synergy that come into play as one tries to choose between damages and injunctive relief. Correlation problems arise because the same considerations that yield high transaction costs usually yield high assessment costs as well; synergy problems arise because the use of damage rules can inhibit the development of more effective bargaining practices. Third, we showed that Calabresi and Melamed's celebrated Rule 4 (reverse damages) contains a paradox, which we went on to resolve by inventing reverse-reverse damages (the "double reverse twist"). The trick of the double reverse twist relates to our fourth point, having to do with a "best-chooser axiom" which can be used to illuminate matters of institutional (not just judicial) design generally. Finally, we suggested in conclusion the relationship of much of the foregoing to relevant literature in other disciplines.

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1. Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972).

2. James E. Krier & Stewart J. Schwab, *Property Rules and Liability Rules: The Cathedral in Another Light*, 70 N.Y.U. L. REV. 440 (1995).

For now, we have nothing to add to these thoughts of ours, so we turn to the influence of Calabresi and Melamed on others. *The Cathedral* is undoubtedly a classic, as the occasion for this Essay suggests. But how so?

I. CITATION ANALYSIS

Our inquiry relies in part on “citation analysis,” a term of art. The purpose of this art is to determine the influence of particular scholars or scholarly products on the minds of others writing in a field; the practice of the art depends on the fact that researchers make reference in their publications to work by predecessors, thereby generating citations that can be collected, counted, and otherwise analyzed. What links practice to purpose (arguably a weak link, for reasons to be considered) is the notion that the material cited by the researchers “in their own papers represents a roughly valid indicator of influence on their work,”³ such that citations can be taken as an indication of the “quality or impact” of scholarly contributions, among other things.⁴ Frequency of citation (as opposed to, say, place of citation or nature of citation) is generally the key, and quality or impact is taken to vary directly with it, in both absolute and relative terms. Basically, it is good to be cited a lot, or at least a lot more than others.

Citation analysis is most widely practiced in scientific communities, including both the hard and the social sciences. It is far less common as a measure of scholarly influence in the legal world, yet it is in connection with law (though not academic writing in law) that it originated about a century ago. We have learned this and much else from the work of Fred Shapiro, a librarian and lecturer at the Yale Law School and the only person who has demonstrated a sustained interest in modern citation studies of legal scholarship. His periodic reports, which continue to date,⁵ provide a good primer on the subject, as does Richard Posner’s recent study of Benjamin Cardozo.⁶

As already suggested, the crucial assumption of citation analysis is “that the number of times a scholarly work is cited is a proxy for the influence or importance of the work.”⁷ Sometimes, however, it is not, as a few examples suggest. Survey articles are regularly cited but they are usually derivative,

3. JONATHAN R. COLE & STEPHEN COLE, *SOCIAL STRATIFICATION IN SCIENCE* 220 (1973).

4. M.H. MacRoberts & B.R. MacRoberts, *Another Test of the Normative Theory of Citing*, 38 J. AM. SOC. INFO. SCI. 305, 305 (1987).

5. See Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985) [hereinafter Shapiro, *Most-Cited I*]; Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996) [hereinafter Shapiro, *Most-Cited II*]; see also Fred R. Shapiro, *The Most-Cited Articles from the Yale Law Journal*, 100 YALE L.J. 1449 (1991).

6. See RICHARD A. POSNER, *CARDOZO: A STUDY IN REPUTATION* (1990). Posner’s endeavor is to measure Cardozo’s reputation by, among other means, comparative citation counts.

7. *Id.* at 70.

convenient as opposed to important. In contrast, very important works are vulnerable to "obliteration," their contributions becoming so much a part of the common understanding in a field that citations become superfluous and would even look silly.⁸ Moreover, recent publications might rack up higher citation counts than older ones because the new work is more accessible or otherwise salient; on the other hand, youth is a disadvantage when total citations over the years are being tabulated. Famous scholars might be overcited, out of deference or because they and their work come most readily to mind. Some authors who publish a lot publish a lot of junk, yet they could enjoy high counts because their work is routinely criticized. Relatedly, prolific scholars given to citing themselves can become legends in their own footnotes.

This is not a complete catalog of the vices of citation analysis, but it is suggestive, sufficient, and less damning than might at first appear. Regarding obliteration, for example, Shapiro rightly says, "[A]ny work so successful as to achieve this status would have already amassed a [sic] impressive citation total before becoming 'obliterated,' and would still rank near the top of the list."⁹ As to critical citations, we agree with Posner that "[n]egligible work is more likely to be ignored than to be criticized in print; and work that is heavily criticized, even work decisively shown to be erroneous, plays a vital role in the growth of knowledge."¹⁰ And perhaps prolificacy should be its own reward, for it might be the only reward.

"Citation rates are as good a measure for influence," says Arthur Jacobson, "as suicide rates are for anomie, though both citation and suicide have personal sides to them as well."¹¹ Citation analysis is understood to be an imperfect proxy, but usually there is no superior (or equally wieldy) alternative. Empirical studies demonstrate a high correlation between citation counts and peer judgments,¹² and our assessment of *The Cathedral* relies (eventually) on more than mere numbers in any event. Whatever the state of the art, our concern is the status of the article.

II. CITATIONS TO *THE CATHEDRAL*

But we begin with mere numbers, some of them borrowed, with thanks, from Fred Shapiro's compilations of the most-cited law review articles,

8. See Shapiro, *Most-Cited I*, *supra* note 5, at 1543-44.

9. *Id.* at 1544.

10. POSNER, *supra* note 6, at 70.

11. Arthur J. Jacobson, *Habermas and Luhman in the American Legal Tradition*, 14 RECHTSHISTORISCHES J. 3, 3 (1995).

12. See, e.g., POSNER, *supra* note 6, at 72 (noting that research on citation studies "provides some basis for believing that such studies yield reliable estimates of excellence in areas where we lack confidence in alternative methods of determining excellence"); Shapiro, *Most-Cited I*, *supra* note 5, at 1542-43 (noting that studies suggest that "citations and peer ratings appear to be virtually the same measurement") (quoting Stephen J. Bensman, *Journal Collection Management as a Cumulative Advantage Process*, 46 C. & RES. LIBR. 13, 23 (1985)).

including his most recently published survey, an update in late 1996¹³ of his original 1985 study.¹⁴ The original looked back only to articles published since 1947, lacked data from some relevant publications, and limited its most-cited list to the top fifty. The update, on the other hand, has no chronological restrictions on articles surveyed, includes interdisciplinary journals that previously had been excluded, and aims to identify “the one hundred most-cited legal articles of all time, that is, most often cited within other articles.”¹⁵

Because Shapiro’s full-blown tabulations are readily available, there is little point in our reproducing them in their entirety here. It is interesting, however, to look at how the top thirty articles on Shapiro’s two lists (1985, 1996) changed over the eleven years between them. As can be seen in Appendix I, no general pattern emerges. Some very well-known works have suffered rather marked declines since 1985,¹⁶ others have held pretty steady,¹⁷ and several have moved up significantly on the list.¹⁸ *The Cathedral* is among the latter, rising from its 1985 position in the middle of the pack to a place just shy of the top ten in the expanded 1996 list.

Shapiro’s 1996 rankings are based on data from the Social Science Citation Index (SSCI). Out of curiosity, and as a check, we searched another source of citation information, the Westlaw Journals and Law Review (JLR) database. The JLR database has several advantages for our purposes. First, it is more familiar to lawyers than SSCI, which makes it easier for skeptics to replicate our searches should they wish to do so.¹⁹ Second, JLR is tailored to law, whereas SSCI is a huge international multidisciplinary citation index, designed to cover the most important social science journals worldwide (some 1500 periodicals covering everything from anthropology to urban planning), plus selected articles from another 2400 journals in the natural and physical

13. See Shapiro, *Most-Cited II*, *supra* note 5, at 766–71 tbl.I (“Most-Cited Law Review Articles of All Time”).

14. See Shapiro, *Most-Cited I*, *supra* note 5, at 1549–51 tbl.I (“Most-Cited Law Review Articles, Rank Order”).

15. Shapiro, *Most-Cited II*, *supra* note 5, at 751.

16. William L. Prosser, *Assault on the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 109 (1960), for example, fell from 3 to 21; John Hart Ely, *Wages of Crying Wolf: A Comment on Roe v. Wade*, 81 HARV. L. REV. 1439 (1968), faded from 5 to 16.

17. E.g., Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959); Gerald Gunther, *The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court*, 86 HARV. L. REV. 1 (1972); and Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

18. Robert Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1 (1971), for instance, moved from 24 to 7, and Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667 (1975), from 14 to 8.

19. Bear in mind that searches subsequent to ours will reveal additional hits. For example, if readers want to see how their own articles stack up in comparison to our tabulation of the top articles, they should rerun a few of the highest ranking entries on our lists to see what has happened to them since the date of our search (Jan. 11, 1997).

sciences.²⁰ SSCI does include a number of prominent law journals, but many others are ignored. JLR, in contrast, includes virtually all legal periodicals, though its citations in some cases go back only to 1982; this is a drawback, but also a strength in that freshness is an asset in trying to measure the recent impact (say, in the last fifteen years) of an article like *The Cathedral*.

Our searches of the JLR database are current up to January 11, 1997. Regarding methodology, we expressed our queries in the form "Author's Last Name" /5 "Article Title." We used this approach instead of Shapiro's—he used authors and citations—because citations are much more likely to generate unreliable results. For example, a search of "85 Harv. L. Rev. 1089" would not pick up citations to "85 Harv.L.Rev. 1089" or "85 Harv. L.R. 1089" or "85 Harvard L. Rev. 1089." Of course, with our technique, a misspelled author name or article name prevents a hit. This required that we alter our approach in some instances. An example is provided by articles, many of them citation classics, that appeared under the heading "Foreword" in the *Harvard Law Review's* annual Supreme Court issue. The word "Foreword" is misspelled with rather amazing regularity; apparently a lot of people think of these articles not as prefaces, so to speak, but rather as stuff pushing things "forward" (which might be so, but that does not advance one's search). We remedied the problem simply by dropping "Foreword" from our title queries. Another spelling tic affected *The Cathedral* directly: Its junior author's name suffered abuse at the hands of many. We remedied this problem by using "Calabresi *or* Melamed" in our search.

The foregoing aside, we have largely followed Shapiro's methodology, which we note has been recently criticized by Landes and Posner on a number of counts.²¹ They complain about ranking individual articles rather than individual scholars, suggesting, in other words, that the impact of a scholar is of more interest than the impact of a given scholarly work. But that depends on what one is trying to figure out. Surely a student of art history would not be criticized for examining how the frescoes on the ceiling of the Sistine Chapel influenced subsequent generations of artists, even though the same student would just as surely not be criticized for examining instead the influence of all of Michelangelo's paintings (or all of his art, or all of his everything). Whether a study of a person is somehow a *more* worthy enterprise than a study of a work can be left aside, because each can obviously be well worth doing in any event. Besides, we were commissioned to investigate

20. Shapiro excluded a few law and economics articles, ones that would have made the top 100 of his all-time list, because most of the citations to those articles were in nonlegal periodicals. See Shapiro, *Most-Cited II*, *supra* note 5, at 756.

21. See William M. Landes & Richard A. Posner, *Heavily Cited Articles in Law*, 71 CHI.-KENT L. REV. 825 (1996).

Calabresi & Melamed, not Calabresi and Melamed.²²

Landes and Posner also criticize citation studies that exclude books, but such an exclusion makes sense in our case because it is the comparative impact of an article, not a book, that motivates our study (and we do consider a few books later on). Finally, Landes and Posner dislike Shapiro's practice of slighting (by exclusion) articles that get the majority of their citations in nonlegal journals. Happily, this shortcoming does not apply to the work of concern to us here.²³

Our independent investigation into Shapiro's results entailed taking his 1996 tabulations of most-cited articles, based on SSCI, and searching those same candidate articles in JLR to see how they fared in that alternative database. (With respect both to Shapiro and ourselves, the number of times a candidate article is referred to in a citing source is immaterial. *The Cathedral*, for example, has a single citation added to its score whether it is cited once or many times in a given source.)²⁴ Because we worked from Shapiro's list, it is possible, but unlikely, that some other articles have garnered more citations than the articles high on our list.

Appendix II sets forth our list of the 100 most-cited law review articles in JLR. Among other things, Appendix II illustrates the difference a database can make, though not in the case of *The Cathedral*. It is cited 542 times according to SSCI and Shapiro, but only 483 times according to JLR and us, yet this sizable difference in citation frequency makes little difference in rank order (Shapiro's number 11 versus our number 14).²⁵ In other instances, however, the source of information matters a lot. For example, three articles do spectacularly better in our rankings than in Shapiro's;²⁶ four others do considerably worse in our rankings as opposed to his.²⁷ The range of years

22. Landes and Posner note that (according to Shapiro's list) Calabresi would rank fifth overall. *See id.* at 827.

23. In the course of criticizing Shapiro for excluding articles with mostly nonlegal citations, Landes and Posner, *see id.* at 825-26, specifically identify only a single case in point, Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968). We ran a JLR search of the article and found 196 citations. This would put the item 116th on our all-time list.

24. For now we are just counting, as is typical in this business; later we shall try to assess the *quality* of citations to *The Cathedral*.

25. In other searches regarding *The Cathedral*, we limited our JLR query to citations of the article since 1985, and then to citations in the 1990s. Its standing held steady. Fred Shapiro has also done an (unpublished) updating of his investigations, and informs us that the article has now moved into the top ten on his list. He says it is "remarkable for an article of that age to still be climbing." Telephone Interview by Stewart J. Schwab with Fred Shapiro, Librarian, Yale Law School (Oct. 24, 1996).

26. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977), is 9 in our rankings versus 26 in Shapiro's; Frank H. Easterbrook & Daniel R. Fischel, *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 HARV. L. REV. 1161 (1981), is 12 versus 24; and Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U. L. REV. 204 (1980), is 18 versus 30.

27. Gunther, *supra* note 17, is 10 on our list versus 3 on Shapiro's; Reich, *supra* note 17, is 16 versus 4; Marc S. Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95 (1974), is 57 versus 13; and Joseph Tussman & Jacobus tenBroek, *The Equal Protection of the Laws*, 37 CAL. L. REV. 341 (1949), drops off our list versus 14 on Shapiro's (the article

covered by an index accounts for some of this variation, but the range of publications covered probably has a greater bearing. For example, we suppose that Galanter does better with Shapiro than in our rankings because of the large number of social science journals in SSCI, a conjecture that appears to be confirmed by the fact that Coase's *The Problem of Social Cost* stands head and shoulders above all else in Shapiro's 1996 list, yet appeared nowhere in the 1985 tabulation!²⁸

Coase's change in standing suggests another development that has undoubtedly boosted *The Cathedral* over the years. The subdiscipline of law and economics, only a teenager at the time of Shapiro's 1985 list, has since continued to grow and mature. One consequence is that works in the field now appear not just in law and economics journals but also, and much more regularly than a decade ago, in conventional legal periodicals. Additionally, there are of course more journals now than there were before, both interdisciplinary and legal. *The Cathedral* has been a beneficiary of (as well as a contributor to) the ongoing success of law and economics, and of the proliferation of legal scholarship generally. The second kind of benefit washes out—it extends to all contenders seeking citations—but the first does not, because it gives a comparative advantage to scholarship in the economic analysis of law in particular. Note that the advantage includes an edge suggested by our earlier comments about citation analysis: Law and economics has spawned among other things a Critical literature, and Critics are about as likely to cite an article like *The Cathedral* as are the economists' fellow travelers (but economists are less likely to cite Critics), and *every* citation counts!

The inquiry suggested by the foregoing observation is a citation analysis limited to works in law and economics. We have done such a study, although only rather casually, and present the results in Table I, which also shows citations to the same works in judicial opinions. (Frank Michelman's article and Ronald Dworkin's book are included in the table for comparative purposes.)

Looking at the left-hand side of Table I (number of citations in articles), we can see that *The Cathedral* is a little above the median in our sample. The big winner is a book, Richard Posner's *Economic Analysis of Law*. Its 2446 citations put it far ahead of the top-ranked article (by Coase) on Shapiro's 1996 list; hence it beats all other articles, law and economics or otherwise. Dworkin's book also beats every article that we or Shapiro examine, and Calabresi's book beats his article with Melamed. The right-hand side of Table I lends some impressions about another matter, the popularity of (mostly law and economics) literature among judges writing opinions. Posner dominates

would be 103 on our list if we were to continue beyond the top 100).

28. See Appendix I.

TABLE I. CITATION FREQUENCY (IN ARTICLES AND JUDICIAL OPINIONS) OF SELECTED WORKS IN LAW AND ECONOMICS

JLR DATABASE					ALLCASES DATABASE	
NO.	RANK	AUTHOR	SHORT TITLE	YEAR	NO.	RANK
2446	1	Richard A. Posner	ECONOMIC ANALYSIS OF LAW	1972	161	1
1433	2	Ronald Dworkin	TAKING RIGHTS SERIOUSLY	1977	38	4
1002	3	R.H. Coase	<i>The Problem of Social Cost</i> , 3 J.L. & ECON. 1	1960	38	4
697	4	Guido Calabresi	THE COSTS OF ACCIDENTS	1970	48	3
508	5	Frank I. Michelman	<i>Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law</i> , 80 HARV. L. REV. 1165	1967	78	2
483	6	Guido Calabresi & A. Douglas Melamed	<i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 HARV. L. REV. 1089	1972	12	9
261	7	Richard A. Posner	<i>A Theory of Negligence</i> , 1 J. LEGAL STUD. 29	1972	14	8
179	8	Guido Calabresi	<i>Some Thoughts on Risk Distribution and the Law of Torts</i> , 70 YALE L.J. 499	1961	36	6
163	9	Guido Calabresi & Jon T. Hirschoff	<i>Toward a Test for Strict Liability in Torts</i> , 81 YALE L.J. 1055	1972	24	7
154	10	Steven Shavell	<i>Strict Liability versus Negligence</i> , 9 J. LEGAL STUD. 1	1980	6	10
30	11	A. Mitchell Polinsky	<i>Resolving Nuisance Disputes: The Simple Economics of Injunctive and Damage Remedies</i> , 32 STAN. L. REV. 1075	1980	2	11
17	12	A. Mitchell Polinsky	<i>Controlling Externalities and Protecting Entitlements: Property Right, Liability Rule, and Tax-Subsidy Approaches</i> , 8 J. LEGAL STUD. 1	1979	0	12

once again, whereas Coase and Dworkin fade considerably. Calabresi's book does well but *The Cathedral* rather poorly, though much better than the lowest ranking articles among our law and economics sample.

Taken together, the two sides of Table I suggest that books will usually have a comparative advantage over articles in the most-cited game, presumably because books generally cover a wider range of subjects (and have indexes, which make their contents more accessible). Beyond this, works that deal concretely with a specific field or specific fields probably appeal especially to judges, whereas synthetic works are likely to be of relatively more interest to scholars. Posner's book does well on both counts because it has both characteristics: Its attention to a huge number of discrete legal topics attracts judges, and its sweeping analysis of law in terms of economics is of interest to academics of many stripes.²⁹ Calabresi's book, a theoretical treatment of torts, is no doubt of less value to judges than would be a more doctrinal account, and so too, in spades, for his even more theoretical and less doctrinal article with Melamed; but both works, for just these reasons, excite scholars.

As a further measure of the influence of *The Cathedral*, especially its changing influence over the years, we decided to compare its citation record to that of another classic article, Gerald Gunther's *Foreword* on equal protection.³⁰ The two articles were published in the same year, in sequential volumes of the same high-profile law review. As Appendix I shows, both articles made both of Shapiro's lists, with Gunther doing substantially better than Calabresi and Melamed in each instance (Gunther standing 1 in 1985 and 3 in 1996 as compared to Calabresi and Melamed's 22 and 11). The trend favors *The Cathedral*—it is ascending as *Foreword* moves backwards—but still Shapiro has it far behind in the rankings.

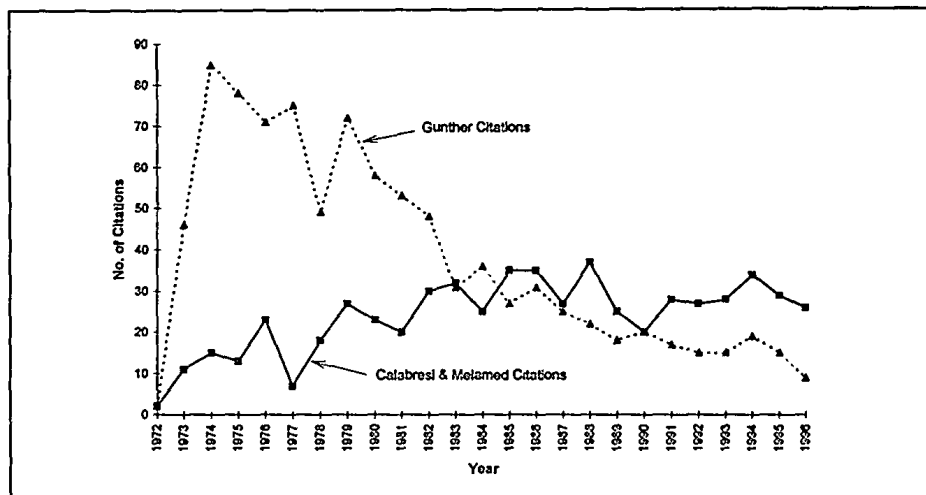
Our Appendix II tells a significantly different story, with Calabresi and Melamed nearly equal to Gunther. Upon observing this, we supposed that *Foreword* must have passed its peak at some time in the past, whereas *The Cathedral* is maintaining (or increasing) its influence on the community of legal scholars. To test that notion, we traced citations to the two articles year by year. (The exercise required that we abandon JLR, which goes back only to the 1980s to count citations, in favor of the SSCI used by Shapiro, which goes back to 1956.) Figure 1 displays the results and confirms our conjecture; the paths of the two articles have crossed.

Gunther's total citations in Shapiro's 1996 list are almost twofold the count for Calabresi and Melamed, but the numbers conceal the fact that the bulk of citations to *Foreword* came early on. In recent years *The Cathedral* has garnered substantially higher annual counts, and its future looks promising.

29. Posner's book is helped as well by its ongoing currency, thanks to the regular appearance of new, revised editions.

30. Gunther, *supra* note 17.

FIGURE 1. CITATIONS TO CALABRESI & MELAMED AND GUNTHER OVER TIME



III. SOME IMPRESSIONS (AND MORE CITATIONS)

Our exercises thus far have convinced us of two things. First, judging at least by the standard methods of citation analysis and a few simple variations thereon, Calabresi and Melamed's contribution to the literature has had significant and ongoing, even increasing, influence. Further evidence of the importance of their work is found in the many anthologies, casebooks, and textbooks that reproduce *The Cathedral* in whole or in part or otherwise discuss or refer to it. We checked sources like these only casually, however, chiefly because of unnecessarily high search costs. Most casebooks and textbooks have tables of cases, but they seldom have tables of readings (so too for anthologies, an especially surprising thing given that "secondary" literature is what anthologies are all about). This enduring hangover from Langdell makes it difficult to locate a particular scholarly work in any particular book, and the problem is only compounded by the crummy indexes so typical of books in legal education. (Most anthologies do not have crummy indexes; instead they have none at all!) Our investigation nevertheless indicates that Calabresi and Melamed's article figures regularly in books on subjects like Property, Torts, and Contracts, at the least.

Our second conviction relates to a point discussed in Part I of this Essay: Citation analysis does indeed leave much to be desired in terms of assessing influence. To be sure, an influential work must be, among other things, well-known, and number of citations is a pretty good proxy for notoriety in a given community. Notice, though, that to be a contender in the most-cited game a publication has to have reached some salient threshold in the rank order, such

as 10, or 25, or 50, or 100. Nobody cares about the top twenty-six articles, or the fifty-first best article ever written.

So a little luck helps, and sometimes more than marginally. For example, the celebrity of a work is promoted by its originality, but originality itself can be a matter of chance. One obvious instance is where we get an idea before you, but you are lucky enough to publish it before us. Another and more troubling instance is where we get an idea before you and publish it before you, but you are lucky enough to get the kudos anyway. Calabresi and Melamed have enjoyed a few such happy twists of fate. They are generally credited for identifying the relevance of high versus low transaction costs in connection with the merits of injunctive relief, yet their discussion was anticipated in a book review published prior to *The Cathedral*.³¹ Furthermore, the so-called Rule 4 (reverse damages), widely regarded as Calabresi and Melamed's signature contribution, was simultaneously and independently discovered by the Supreme Court of Arizona.³² This itself is well-known, so the *Spur Industries* court has gotten its share of the limelight. Much less well-known is the fact that Rule 4 was plainly suggested in a law student note that appeared three years prior to *The Cathedral* and the decision in *Spur Industries*.³³

Other considerations also affect how scholarly work fares in the world of citation counts. As already suggested, much turns on when citation analysts do their investigations, where they look, and how far back (these again are more or less fortuitous). It can also matter what other scholars happen to be writing at any given time, because their work can add to or detract from the significance of work by others. The display of data can make a difference; trends in rates, for example, tell a different story than do rates in isolation. Factors like these have affected the status of Calabresi and Melamed's article, usually for the better, although they have of course had a bearing on the success of other much-cited articles as well.

Is there any way, besides mere counting, to gauge conveniently *The Cathedral's* influence on other scholars? Consider a final exercise that relies

31. See Frank I. Michelman, *Pollution as a Tort. A Non-Accidental Perspective on Calabresi's Costs*, 80 YALE L.J. 647, 666-74 (1971) (book review). Michelman was inspired by the book he was reviewing, which of course was GUIDO CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* (1970), so this could be an instance of chickens coming home to roost.

32. See *Spur Indus., Inc. v. Del E. Webb Dev. Co.*, 494 P.2d 700 (Ariz. 1972).

33. See James R. Atwood, Note, *An Economic Analysis of Land Use Conflicts*, 21 STAN. L. REV. 293, 315 (1969). We learned about Atwood's contribution only recently, thanks to Jeff L. Lewin, *Boomer and the American Law of Nuisance: Past, Present, and Future*, 54 ALB. L. REV. 189, 246-47 n.295 (1990). Doug Melamed, coauthor of *The Cathedral*, has told us that he and Atwood were near-classmates at Yale College, and that both of them took a course there that touched generally on the matters later developed by Atwood and Calabresi and Melamed. Interview by Stewart J. Schwab with A. Douglas Melamed, Attorney, Washington, D.C. (Jan. 5, 1996).

We should mention, by the way, that it is possible that Calabresi and Melamed have in their own turn been denied the credit they deserve for originating other ideas that instead have been attributed to other people. See Guido Calabresi, *Remarks: The Simple Virtues of The Cathedral*, 106 YALE L.J. 2201 (1997).

in some respects on the objective methods of citation analysis but in other respects on our own subjective judgments. Taking the 483 articles that JLR identifies as citing *The Cathedral*, we examined them in terms of their nature; our aim was to see *how* Calabresi and Melamed's work has been put to use, as opposed to just how much it has been cited. We grouped citations in terms of the following four types:

Type 0: Minimal to trivial. Examples: Citing to *The Cathedral* for a general discussion of "transaction costs," a term not invented by Calabresi and Melamed; or citing to *The Cathedral* as an example of Calabresi's work, or as an example of a work in law and economics.

Type 1: Minor. Example: Citing to *The Cathedral* for a discussion of "property rules" and "liability rules," which are terms invented by Calabresi and Melamed.

Type 2: Substantial but somewhat derivative. Example: Citing to and discussing *The Cathedral* in connection with an analysis of a legal field or a legal problem in the terms that Calabresi and Melamed used to examine, for instance, the law of nuisance.

Type 3: Major. Example: Citing to and discussing *The Cathedral* in connection with work that significantly extends or critiques Calabresi and Melamed's ideas.

Table II summarizes the results of our investigation.

It is worth noting that the very feature that made assembly of Table II manageable—it concerns itself with citations to a single work—serves to limit its value as well, because it does not permit of comparisons with other works. We consider it illuminating nonetheless. Our guess is that the extraordinarily large proportion of Type 0 and Type 1 citations is fairly typical of most-cited articles. It stands to reason that the standard use of any piece of scholarship, even (or especially) a very substantial and challenging piece like *The Cathedral*, will be more or less limited and conventional, because most legal writing is itself limited and conventional. Academic legal writing, moreover, appears to us to be much more idiosyncratic than academic writing in many other disciplines; legal scholars seem peculiarly inclined to go off on their own, perhaps with a nod to what inspired them (impelled by the common law tradition of citing precedents), than to engage seriously the work of others as part of an ongoing enterprise. The result is a proliferation of what might be called the "empty citations" of Type 0 and Type 1, many of which probably owe not to actual careful readings of the items cited but rather just to a practice of noting stock works that everybody seems to cite.³⁴ Articles

34. For example, two articles of John Hart Ely's made Shapiro's list of the most-cited articles in the

authored or coauthored by already prominent figures, such as Calabresi, are especially likely to enjoy this sort of popularity.

TABLE II. QUALITY ASSESSMENT OF ARTICLES CITING *THE CATHEDRAL*, 1981-1996

YEAR	TYPE 0	TYPE 1	TYPE 2	TYPE 3	TOTAL
1996	7	35	1	1	44
1995	7	32	2	5	46
1994	2	46	5	0	53
1993	6	26	2	2	36
1992	1	39	1	1	42
1991	2	36	2	0	40
1990	1	34	4	0	39
1989	1	22	1	0	24
1988	3	26	1	0	30
1987	1	21	1	1	24
1986	0	27	0	2	29
1985	1	22	2	0	25
1984	1	15	2	1	19
1983	0	12	2	0	14
1982	0	16	1	0	17
1981	0	1	0	0	1
Total	33	410	27	13	483

We would also expect a lot of Type 1 (and Type 2) citations to scholarship that invents a new taxonomy or framework that has applications to many different legal fields, and *The Cathedral* is a powerful example of such work. In this respect, Calabresi and Melamed's "property rules" and "liability

Yale Law Journal. Speaking of these, Ely said that the one receiving the fewer citations "is by far the more important contribution. Unfortunately, no evidence exists that anyone has read it. (True, it gets mentioned, but generally in string citations supporting the proposition that questions of motivation are complicated and have spawned some literature.)" Shapiro, *The Most-Cited Articles from the Yale Law Journal*, *supra* note 5, at 1473 (quoting John Hart Ely).

rules³⁵ resemble Thomas Kuhn's "paradigms" in connection with the history of science,³⁶ or Ronald Coase's "transaction costs" in economics and law.³⁷ It is a mixed blessing to be in such company, something like being the composer of a memorable melody hummed by everybody, but usually off key.³⁸ Such is the price of admission to the minds of others.

Works of Type 3 are the payoff. The baker's dozen of this sort in Table II actually understate the degree to which Calabresi and Melamed have moved others to critique and extend *The Cathedral's* contributions. Table II excludes articles in the present symposium, as well as several pre-1981 articles and a handful of post-1996 works in progress that were sent to us, mostly unsolicited, by their authors; these in particular show the remarkable influence of their progenitor even as it celebrates its silver anniversary. All of this scholarship, old and new, we leave unnamed. Oversights could cause unintended offense, and we mean in any event to give more attention here to *The Cathedral* than to all that stand in its shadow. Suffice it to say, the Type 3 articles we have found promise to make further significant inroads on the territory first opened up by Calabresi and Melamed, who have the wonderful satisfaction of being the proximate cause of a vital body of scholarship.

The Cathedral was not, of course, erected in a vacuum; it too is a Type 3 article that was provoked by the work of others. Its most obvious debt is to Ronald Coase and *The Problem of Social Cost*,³⁹ which seems to have first stirred Calabresi to think about the ideas subsequently developed with Melamed.⁴⁰ Richard Posner claims that Gary Becker, like Coase, a Chicago economist and Nobel Laureate, played a role as well. "It is not widely realized," Posner writes, "that Guido Calabresi's pathbreaking paper with A. Douglas Melamed on the distinction between property rights and liability rules was written in reaction to Becker's article [on the economics of crime and punishment]."⁴¹

Nothing comes from nowhere. What particularly distinguished *The Cathedral*, what set it apart from earlier work that had anticipated some of its ideas,⁴² was its rigorous and systematic approach to topics that before had been handled rather haphazardly, if at all. The cornerstone of that approach

35. The terms have become standards. See, e.g., BIBLIOGRAPHY OF LAW AND ECONOMICS at viii (Boudewijn Bouckaert & Gerrit de Geest eds., 1992) (containing entry for "Property Rule vs. Liability Rule vs. Inalienable Rights" in table of contents).

36. THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962).

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

38. We discuss some fundamental misunderstandings of Calabresi and Melamed in Krier & Schwab, *supra* note 2.

39. See Coase, *supra* note 37.

40. See Guido Calabresi, *Transaction Costs, Resource Allocation and Liability Rules—A Comment*, 11 J.L. & ECON. 67, 67 (1968).

41. Richard A. Posner, *Gary Becker's Contributions to Law and Economics*, 22 J. LEGAL STUD. 211, 211–12 (1993), referring to Becker, *supra* note 23. Yet Becker's article is cited only once, as an "e.g.," at the end of *The Cathedral*. See Calabresi & Melamed, *supra* note 1, at 1125 n.68.

42. See *supra* notes 31–33 and accompanying text.

was, of course, what Posner and many others have noted: the distinction between property rights and liability rules. "The point of property rights, as Calabresi and Melamed explained, is to compel voluntary transacting where transaction costs are low."⁴³

Here an irony enters, and we shall end with it. In the context considered by Calabresi and Melamed—the context, particularly, of litigation—transaction costs are hardly ever low; they are high either because there are many parties to a lawsuit (high coordination costs) or high because there are few (high costs of strategic bargaining). Given this, Posner's statement implies that property rights, and property rules, are seldom the best approach to disputes over resources; liability rules and centralized judicial decisionmaking should be relied upon instead. The trouble is that liability rules and centralized judicial decisionmaking are themselves costly to employ, thanks to what we elsewhere refer to as assessment costs.⁴⁴ The issue in choosing between property rules and liability rules—between, that is, the decentralized means of the market or the centralized means of the state—is *not* whether transaction costs are low or high, but rather whether they are lower or higher than the assessment costs that must otherwise be expended. This is a very difficult question to resolve, which perhaps is why virtually the entire scholarly community reads Calabresi and Melamed in the convenient way that Posner suggests. Whatever the cause, the consequence is plain: Conventional thinkers opt for liability rules when voluntary exchange in the market would be costly, notwithstanding that involuntary exchange in the courts might be more costly yet. In short, *The Cathedral's* congregation takes on faith a proposition that the article's reasoning cannot support.

43. Posner, *supra* note 41, at 212.

44. See Krier & Schwab, *supra* note 2, at 453–57.

APPENDIX I: SHAPIRO'S MOST-CITED LIST, 1996 AND 1985
 (FIRST THIRTY ARTICLES ON 1996 LIST)⁴⁵

1996 RANK	AUTHOR	ARTICLE	1996 NUMBER OF CITATIONS	1985 NUMBER OF CITATIONS	1985 RANK
1	R.H. Coase	<i>The Problem of Social Cost</i> , 3 J.L. & ECON. 1 (1960).	1741	—	—
2	Herbert Wechsler	<i>Toward Neutral Principles of Constitutional Law</i> , 73 HARV. L. REV. 1 (1959).	968	572	2
3	Gerald Gunther	<i>The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection</i> , 86 HARV. L. REV. 1 (1972).	913	600	1
4	Charles A. Reich	<i>The New Property</i> , 73 YALE L.J. 733 (1964).	728	90	4
5	O.W. Holmes	<i>The Path of the Law</i> , 10 HARV. L. REV. 457 (1897).	719	—	—
6	Abram Chayes	<i>The Role of the Judge in Public Law Litigation</i> , 89 HARV. L. REV. 1281 (1976).	645	229	11
7	Robert H. Bork	<i>Neutral Principles and Some First Amendment Problems</i> , 47 IND. L.J. 1 (1971).	609	167	24
8	Richard B. Stewart	<i>The Reformation of American Administrative Law</i> , 88 HARV. L. REV. 1667 (1975).	582	191	14
9	Samuel D. Warren & Louis D. Brandeis	<i>The Right to Privacy</i> , 4 HARV. L. REV. 193 (1890).	578	—	—
10	Duncan Kennedy	<i>Form and Substance in Private Law Adjudication</i> , 89 HARV. L. REV. 1685 (1976).	550	—	—

45. See, Shapiro, *Most-Cited I*, *supra* note 5; Shapiro, *Most-Cited II*, *supra* note 5.

1996 RANK	AUTHOR	ARTICLE	1996 NUMBER OF CITATIONS	1985 NUMBER OF CITATIONS	1985 RANK
11	Guido Calabresi & A. Douglas Melamed	<i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 HARV. L. REV. 1089 (1972).	542	169	22
12	Frank Michelman	<i>Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law</i> , 80 HARV. L. REV. 1165 (1967).	523	243	8
13	Marc S. Galanter	<i>Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change</i> , 9 L. & SOC'Y REV. 95 (1974).	489	—	—
14	Joseph Tussman & Jacobus tenBroek	<i>The Equal Protection of the Laws</i> , 37 CAL. L. REV. 341 (1949).	460	252	6
15	Stewart Macaulay	<i>Non-Contractual Relations in Business: A Preliminary Study</i> , 28 AM. SOC. REV. 55 (1963).	454	—	—
16	John Hart Ely	<i>The Wages of Crying Wolf: A Comment on Roe v. Wade</i> , 82 YALE L.J. 920 (1973).	446	262	5
17	William W. Van Alstyne	<i>The Demise of the Right-Privilege Distinction in Constitutional Law</i> , 81 HARV. L. REV. 1439 (1968).	436	219	13
18	Owen M. Fiss	<i>The Supreme Court, 1978 Term—Foreword: The Forms of Justice</i> , 93 HARV. L. REV. 1 (1979).	402	—	—
19	Henry G. Manne	<i>Mergers and the Market for Corporate Control</i> , 73 J. POL. ECON. 110 (1965).	384	—	—
19	Frank I. Michelman	<i>The Supreme Court, 1968 Term—Foreword: On Protecting the Poor Through the Fourteenth Amendment</i> , 83 HARV. L. REV. 7 (1969).	384	230	10

1996 RANK	AUTHOR	ARTICLE	1996 NUMBER OF CITATIONS	1985 NUMBER OF CITATIONS	1985 RANK
21	William L. Prosser	<i>The Assault Upon the Citadel (Strict Liability to the Consumer)</i> , 69 YALE L.J. 1099 (1960).	370	365	3
22	Anthony G. Amsterdam	<i>Perspectives on the Fourth Amendment</i> , 58 MINN. L. REV. 349 (1974).	360	—	—
23	Robert H. Mnookin & Lewis Kornhauser	<i>Bargaining in the Shadow of the Law: The Case of Divorce</i> , 88 YALE L.J. 950 (1979).	357	—	—
24	Frank H. Easterbrook & Daniel R. Fischel	<i>The Proper Role of a Target's Management in Responding to a Tender Offer</i> , 94 HARV. L. REV. 1161 (1981).	356	—	—
25	Henry M. Hart, Jr.	<i>The Supreme Court, 1958 Term—Foreword: The Time Chart of the Justices</i> , 73 HARV. L. REV. 84 (1959).	355	—	—
26	William J. Brennan, Jr.	<i>State Constitutions and the Protection of Individual Rights</i> , 90 HARV. L. REV. 489 (1977).	346	176	19
27	Henry M. Hart, Jr.	<i>The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic</i> , 66 HARV. L. REV. 1362 (1953).	341	169	22
28	H.L.A. Hart	<i>Positivism and the Separation of Law and Morals</i> , 71 HARV. L. REV. 593 (1958).	340	187	15
29	Laurence H. Tribe	<i>Trial by Mathematics: Precision and Ritual in the Legal Process</i> , 84 HARV. L. REV. 1329 (1971).	338	—	—
30	Paul Brest	<i>The Misconceived Quest for the Original Understanding</i> , 60 B.U. L. REV. 204 (1980).	337	—	—

APPENDIX II: MOST CITED ARTICLES, JLR DATABASE⁴⁶

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
1	R.H. Coase, <i>The Problem of Social Cost</i> , 3 J.L. & ECON. 1 (1960).	1002	1741	1
2	O.W. Holmes, <i>The Path of the Law</i> , 10 HARV. L. REV. 457 (1897).	848	719	5
3	Robert H. Bork, <i>Neutral Principles and Some First Amendment Problems</i> , 47 IND. L.J. 1 (1971).	816	609	7
4	Herbert Wechsler, <i>Toward Neutral Principles of Constitutional Law</i> , 73 HARV. L. REV. 1 (1959).	689	968	2
5	Duncan Kennedy, <i>Form and Substance in Private Law Adjudication</i> , 89 HARV. L. REV. 1685 (1976).	597	550	10
6	Charles R. Lawrence III, <i>The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism</i> , 39 STAN. L. REV. 317 (1987).	568	253	61
7	Abram Chayes, <i>The Role of the Judge in Public Law Litigation</i> , 89 HARV. L. REV. 1281 (1976).	560	645	6
8	Roberto Mangabeira Unger, <i>The Critical Legal Studies Movement</i> , 96 HARV. L. REV. 561 (1983).	542	327	32
9	William J. Brennan, Jr., <i>State Constitutions and the Protection of Individual Rights</i> , 90 HARV. L. REV. 489 (1977).	536	346	26
10	Gerald Gunther, <i>The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court A Model for a Newer Equal Protection</i> , 86 HARV. L. REV. 1 (1972).	527	913	3

46. In constructing our list of the 100 articles with the most citations in the Westlaw JLR database, we searched in the JLR database all 191 articles that Shapiro names in the various lists in his 1996 article his all time top 100, plus 12 additional older articles, plus yearly top 10 articles published in 1982-91. The far left column in Appendix II shows our rank order, and the fourth column shows the number of citations Shapiro found in the SSCI database. From these numbers we construct an "overall" Shapiro rank order. With respect to articles in Shapiro's top 100, this rank order matches his, for articles not in his top 100, we indicate the ranking that Shapiro gives for the particular year, and we also show where a given article would fall in an overall rank order based on citations in the SSCI database.

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
11	Frank I. Michelman, <i>Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law</i> , 80 HARV. L. REV. 1165 (1967).	508	523	12
12	Frank H. Easterbrook & Daniel R. Fischel, <i>The Proper Role of a Target's Management in Responding to a Tender Offer</i> , 94 HARV. L. REV. 1161 (1981).	502	356	24
13	Mari J. Matsuda, <i>Public Response to Racist Speech: Considering the Victim's Story</i> , 87 MICH. L. REV. 2320 (1989).	501	193	161 1989-1st
14	Guido Calabresi & A. Douglas Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 HARV. L. REV. 1089 (1972).	483	542	11
15	Robert M. Cover, <i>The Supreme Court, 1982 Term—Foreword: Nomos and Narrative</i> , 97 HARV. L. REV. 4 (1983).	479	291	41
16	Charles A. Reich, <i>The New Property</i> , 73 YALE L.J. 733 (1964).	467	728	4
17	Owen M. Fiss, <i>The Supreme Court, 1978 Term—Foreword: The Forms of Justice</i> , 93 HARV. L. REV. 1 (1979).	447	402	18
18	Paul Brest, <i>The Misconceived Quest for the Original Understanding</i> , 60 B.U. L. REV. 204 (1980).	445	337	30
19	Richard B. Stewart, <i>The Reformation of American Administrative Law</i> , 88 HARV. L. REV. 1667 (1975).	435	582	8
20	Samuel D. Warren & Louis D. Brandeis, <i>The Right to Privacy</i> , 4 HARV. L. REV. 193 (1890).	435	578	9
21	Cass R. Sunstein, <i>Interest Groups in American Public Law</i> , 38 STAN. L. REV. 29 (1985).	419	301	38
22	Owen M. Fiss, <i>Against Settlement</i> , 93 YALE L.J. 1073 (1989).	413	198	119 1989-4th
23	Angela P. Harris, <i>Race and Essentialism in Feminist Legal Theory</i> , 42 STAN. L. REV. 581 (1990).	412	142	171 1990-1st

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
24	Frank I. Michelman, <i>The Supreme Court, 1985 Term—Foreword: Traces of Self-Government</i> , 100 HARV. L. REV. 4 (1986).	408	282	48
25	Anthony G. Amsterdam, <i>Perspectives on the Fourth Amendment</i> , 58 MINN. L. REV. 349 (1974).	396	360	22
26	Alexander Meiklejohn, <i>The First Amendment is an Absolute</i> , 1961 SUP. CT. REV. 245.	347	319	34
27	Duncan Kennedy, <i>The Structure of Blackstone's Commentaries</i> , 28 BUFF. L. REV. 205 (1979).	344	290	42
28	Robin West, <i>Jurisprudence and Gender</i> , 55 U. CHI. L. REV. 1 (1988).	341	166	154 1988-4th
29	Cass R. Sunstein, <i>Beyond the Republican Revival</i> , 97 YALE L.J. 1539 (1988).	338	208	93
30	William L. Cary, <i>Federalism and Corporate Law: Reflection Upon Delaware</i> , 83 YALE L.J. 663 (1974).	336	278	50
31	Frank I. Michelman, <i>Law's Republic</i> , 97 YALE L.J. 1493 (1988).	336	200	152 1988-2d
32	Thomas I. Emerson, <i>Toward a General Theory of the First Amendment</i> , 72 YALE L.J. 877 (1963).	335	323	33
33	John Hart Ely, <i>The Wages of Crying Wolf: A Comment on Roe v. Wade</i> , 82 YALE L.J. 920 (1973).	331	446	16
34	Mark V. Tushnet, <i>Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles</i> , 96 HARV. L. REV. 781 (1983).	331	268	52
35	Owen M. Fiss, <i>Objectivity and Interpretation</i> , 34 STAN. L. REV. 739 (1982).	328	253	60
36	Lon L. Fuller, <i>The Forms and Limits of Adjudication</i> , 92 HARV. L. REV. 353 (1978).	324	284	46
37	Frances E. Olsen, <i>The Family and the Market: A Study of Ideology and Legal Reform</i> , 96 HARV. L. REV. 1497 (1983).	315	224	84

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
38	Kimberlé Williams Crenshaw, <i>Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law</i> , 101 HARV. L. REV. 1331 (1988).	314	195	153 1988-3d
39	Margaret Jane Radin, <i>Market-Inalienability</i> , 100 HARV. L. REV. 1849 (1987).	312	179	144 1987-3d
40	William N. Eskridge, Jr., <i>Dynamic Statutory Interpretation</i> , 135 U. PA. L. REV. 1479 (1987).	308	141	148 1987-7th
41	H. Jefferson Powell, <i>The Original Understanding of Original Intent</i> , 98 HARV. L. REV. 885 (1985).	307	162	127 1985-3d
42	Charles R. Lawrence III, <i>If He Hollers Let Him Go: Regulating Racist Speech on Campus</i> , 1990 DUKE L.J. 431.	304	105	174 1990-4th
43	Richard Delgado, <i>Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling</i> , 17 HARV. C.R.-C.L. L. REV. 133 (1982).	303	134	111 1982-10th
44	Robert H. Mnookin & Lewis Kornhauser, <i>Bargaining in the Shadow of the Law: The Case of Divorce</i> , 88 YALE L.J. 950 (1979).	297	357	23
45	Katharine T. Bartlett, <i>Feminist Legal Methods</i> , 103 HARV. L. REV. 829 (1990).	294	129	172 1990-2d
46	William N. Eskridge, Jr., <i>The New Textualism</i> , 37 UCLA L. REV. 621 (1990).	293	107	173 1990-3d
47	Ronald J. Gilson & Reinier H. Kraakman, <i>The Mechanisms of Market Efficiency</i> , 70 VA. L. REV. 549 (1984).	289	161	125 1984-10th
48	Thomas C. Grey, <i>Do We Have an Unwritten Constitution?</i> , 27 STAN. L. REV. 703 (1975).	286	282	47
49	Antonin Scalia, <i>The Rule of Law as a Law of Rules</i> , 56 U. CHI. L. REV. 1175 (1989).	283	117	164 1989-4th

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
50	Marc S. Galanter, <i>Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society</i> , 31 UCLA L. REV. 4 (1983).	280	249	65
51	Kathleen M. Sullivan, <i>Unconstitutional Conditions</i> , 102 HARV. L. REV. 1413 (1989).	280	82	170 1989-10th
52	Frank H. Easterbrook, <i>The Supreme Court, 1983 Term—Foreword: The Court and the Economic System</i> , 98 HARV. L. REV. 4 (1984).	279	191	120 1984-5th
53	Joseph L. Sax, <i>Takings and the Police Power</i> , 74 YALE L.J. 36 (1964).	278	292	40
54	Frank H. Easterbrook, <i>Statutes' Domains</i> , 50 U. CHI. L. REV. 533 (1983).	277	177	116 1983-8th
55	Bruce A. Ackerman, <i>The Storrs Lectures: Discovering the Constitution</i> , 93 YALE L.J. 1013 (1984).	271	243	68
56	Richard Delgado, <i>Storytelling for Oppositionists and Others: A Plea for Narrative</i> , 87 MICH. L. REV. 2411 (1988).	270	123	163 1989-3d
57	Marc S. Galanter, <i>Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change</i> , 9 L. & SOC'Y REV. 95 (1974).	267	489	13
58	Martha Minow, <i>The Supreme Court, 1986 Term—Foreword: Justice Engendered</i> , 101 HARV. L. REV. 10 (1987).	267	238	74
59	Akhil Reed Amar, <i>The Bill of Rights as a Constitution</i> , 100 YALE L.J. 1131 (1991).	267	106	181 1991-1st
60	Frank H. Easterbrook & Daniel R. Fischel, <i>Corporate Control Transactions</i> , 91 YALE L.J. 698 (1982).	266	193	103 1982-2d
61	Judith Resnik, <i>Managerial Judges</i> , 96 HARV. L. REV. 374 (1982).	266	156	109 1982-8th
62	Joseph William Singer, <i>The Player and the Cards: Nihilism and Legal Theory</i> , 94 YALE L.J. 1 (1984).	266	203	114 1984-3d

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
63	John Hart Ely, <i>Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis</i> , 88 HARV. L. REV. 1482 (1975).	264	244	67
64	Kimberlé Williams Crenshaw, <i>Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics</i> , 1989 U. CHI. LEGAL F. 139.	263	93	167 1989-7th
65	H.L.A. Hart, <i>Positivism and the Separation of Law and Morals</i> , 71 HARV. L. REV. 593 (1958).	261	340	28
66	Richard A. Posner, <i>A Theory of Negligence</i> , 1 J. LEGAL STUD. 29 (1972).	261	299	39
67	Cass R. Sunstein, <i>Naked Preferences and the Constitution</i> , 84 COLUM. L. REV. 1689 (1984).	261	163	123 1984-7th
68	Akhil Reed Amar, <i>Of Sovereignty and Federalism</i> , 96 YALE L.J. 1425 (1987).	260	130	149 1987-8th
69	Richard A. Epstein, <i>A Theory of Strict Liability</i> , 2 J. LEGAL STUD. 151 (1973).	259	278	49
70	Mari J. Matsuda, <i>Looking to the Bottom: Critical Legal Studies and Reparations</i> , 22 HARV. C.R.-C.L. L. REV. 323 (1987).	258	143	146 1987-5th
71	Margaret Jane Radin, <i>Property and Personhood</i> , 34 STAN. L. REV. 957 (1982).	257	134	113 1982-10th
72	Alan David Freeman, <i>Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine</i> , 62 MINN. L. REV. 1049 (1978).	255	225	82
73	David Rosenberg, <i>The Causal Connection in Mass Exposure Cases: A "Public Law" Vision of the Tort System</i> , 97 HARV. L. REV. 849 (1984).	253	163	122 1984-7th
74	Bruce A. Ackerman, <i>Beyond Carolene Products</i> , 98 HARV. L. REV. 713 (1985).	248	152	128 1985-4th

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
75	Jonathan R. Macey, <i>Promoting Public-Regarding Legislation through Statutory Interpretation: An Interest Group Model</i> , 86 COLUM. L. REV. 223 (1986).	248	192	135 1986-2d
76	Laurence H. Tribe, <i>Trial by Mathematics: Precision and Ritual in the Legal Process</i> , 84 HARV. L. REV. 1329 (1971).	241	338	29
77	Henry M. Hart, Jr., <i>The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic</i> , 66 HARV. L. REV. 1362 (1953).	240	341	27
78	Felix Frankfurter, <i>Some Reflections on the Reading of Statutes</i> , 47 COLUM. L. REV. 527 (1947).	238	255	57
79	Gerald E. Frug, <i>The City as a Legal Concept</i> , 93 HARV. L. REV. 1057 (1980).	238	228	80
80	Felix S. Cohen, <i>Transcendental Nonsense and the Functional Approach</i> , 35 COLUM. L. REV. 809 (1935).	236	240	72
81	George L. Priest & Benjamin Klein, <i>The Selection of Disputes for Litigation</i> , 13 J. LEGAL STUD. 1 (1984).	234	204	102
82	Henry G. Manne, <i>Mergers and the Market for Corporate Control</i> , 73 J. POL. ECON. 110 (1965).	233	384	19
83	Kenneth L. Karst, <i>Equality as a Central Principle in the First Amendment</i> , 43 U. CHI. L. REV. 20 (1975).	232	206	95
84	Robert M. Cover, <i>Violence and the Word</i> , 95 YALE L.J. 1601 (1986).	231	125	137 1986-4th
85	Cass R. Sunstein, <i>Lochner's Legacy</i> , 87 COLUM. L. REV. 873 (1987).	231	151	145 1987-4th
86	Joan C. Williams, <i>Deconstructing Gender</i> , 87 MICH. L. REV. 797 (1989).	231	98	165 1989-5th
87	Suzanna Sherry, <i>Civic Virtue and the Feminine Voice in Constitutional Adjudication</i> , 72 VA. L. REV. 543 (1986).	230	162	136 1986-3d

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88	Philip Areeda & Donald F. Turner, <i>Predatory Pricing and Related Practices Under Section 2 of the Sherman Act</i> , 88 HARV. L. REV. 697 (1975).	228	217	89
89	Harry Kalven, Jr., <i>The New York Times Case: A Note on "The Central Meaning of the First Amendment"</i> , 1964 SUP. CT. REV. 191.	226	287	45
90	Daniel A. Farber & Philip P. Frickey, <i>The Jurisprudence of Public Choice</i> , 65 TEX. L. REV. 873 (1987).	222	127	151 1987-10th
91	Cass R. Sunstein, <i>Constitutionalism After the New Deal</i> , 101 HARV. L. REV. 421 (1987).	221	129	150 1987-9th
92	L.L. Fuller & William R. Perdue, Jr., <i>The Reliance Interest in Contract Damages</i> (pts. 1 & 2), 46 YALE L.J. 52, 373 (1936-37).	220	288	43
93	Paul Brest, <i>The Supreme Court, 1975 Term—Foreword: In Defense of the Anti-Discrimination Principle</i> , 90 HARV. L. REV. 1 (1976).	217	256	56
94	Abram Chayes, <i>The Supreme Court, 1981 Term—Foreword: Public Law Litigation and the Burger Court</i> , 96 HARV. L. REV. 4 (1982).	217	152	110 1982-9th
95	Lon L. Fuller, <i>Positivism and Fidelity to Law—A Reply to Professor Hart</i> , 71 HARV. L. REV. 630 (1958).	216	306	36
96	George P. Fletcher, <i>Fairness and Utility in Tort Theory</i> , 85 HARV. L. REV. 537 (1972).	216	255	58
97	Herbert Wechsler, <i>The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government</i> , 54 COLUM. L. REV. 543 (1954).	216	242	69
98	Patricia J. Williams, <i>Alchemical Notes: Reconstructing Ideals from Deconstructed Rights</i> , 22 HARV. C.R.-C.L. L. REV. 401 (1987).	215	143	147 1987-5th

JLR RANK	TITLE	NO. JLR CITATIONS	NO. SHAPIRO CITATIONS	SHAPIRO RANK
99	Peter Westen, <i>The Empty Idea of Equality</i> , 95 HARV. L. REV. 537 (1982).	214	178	105 1982-4th
100	Clare Dalton, <i>An Essay in the Deconstruction of Contract Doctrine</i> , 94 YALE L.J. 997 (1985).	214	137	129 1985-5th