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THE SIGNALING VALUE OF LAW REVIEWS: AN EXPLORATION OF CITATIONS AND PRESTIGE

ALFRED L. BROPHY*

ABSTRACT

This brief Essay reports a study of citations to every article published in 1992 in thirteen leading law journals. It uses citations as a proxy (an admittedly poor one) of article quality and then compares the citations across journals. There are, not surprisingly, vast differences in the number of citations per article. While articles in the most elite journals receive more citations on average than the other less elite (but still highly regarded) journals studied, some articles in the less elite journals are more heavily cited than many articles in even the most elite journals. In keeping with studies in other disciplines and other citation studies of legal journals, the results here suggest that we should be wary of judgments about quality based on place of publication. We should also be wary of judgments about quality of scholarship based on the number of citations, and we should, therefore, continue to evaluate scholarship through close reads of it.

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I. INTRODUCTION

Once LexisNexis and Westlaw started putting full texts of law reviews on their databases, the authority of print started to recede, leaving the authority of the publisher and, to a lesser extent, the authority of limited access. A lot of law professors these days never actually handle original physical copies of law review articles, unless they're stuffing envelopes with reprints to send out to colleagues. The patois of the professoriate long ago started to refer to placement of an article simply by the school name, that is, by the authority of the brand. "I'm publishing in NYU," or "I'm publishing in Florida State," is a perfectly comprehensible statement among legal scholars.

— Michael J. Madison¹

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1. *The Idea of the Law Review: Scholarship, Prestige and Open Access*, 10 LEWIS & CLARK L. REV. 901, 916-17 (2006).

The legal academy's obsession with law reviews continues. It may even be growing.² We have extensive discussion of everything from how to place an article³ to how to rank law journals (and the implications for rankings of law schools).⁴ Every spring, faculty blogs light up with discussion of when journal editorial boards turn over and the best time to submit articles.⁵ There are legendary stories about what one might call "the law of the jungle," as faculty try to "trade up"—that is, get an offer from a "better" law journal than the ones from which they currently have offers. Faculty members rescind acceptances, while students fail to respond to expedite requests or string faculty along, asking for more time with virtual promises of acceptance. And law review editors exercise enormous (perceived) power over the process, even over the form of scholarship. When many of the leading law reviews agreed in 2005 to limit the size of articles they published,⁶ there was an immediate shift in the behavior of authors.⁷

II. FRAMING QUESTIONS ABOUT CITATIONS TO LAW REVIEW ARTICLES

Much of the obsession rests on an assumption that there are better reviews and that it is desirable to publish in a better review than a worse one. For purposes of career promotion, there is likely truth to this. For purposes of job placement and pay increases, it is not unreasonable to assume that articles placed in more prominent journals are more useful, as a general matter, than articles placed in less prominent journals. In fact, some schools are reputed to pay bonuses for articles placed in highly regarded journals. This is because evaluators use journal placement as a proxy for article quality. And in the world of law reviews, where there is precious little turf in the more prominent law reviews, this likely makes sense. But this rests on an

2. At least there is a sense that the difficulty of placing articles at top law reviews may be growing. See Posting of Gordon Smith to The Conglomerate, Just Curious About Law Review Rejection Rates, http://www.theconglomerate.org/2007/03/just_curious_ab.html (Mar. 21, 2007).

3. Posting of Dave Hoffman to Concurring Opinions, Law Review Submissions, http://www.concurringopinions.com/archives/2006/07/law_review_subm.html (July 17, 2006, 23:00).

4. See, e.g., Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35, 35-36 (2007); Ronen Perry, *The Relative Value of American Law Reviews: Refinement and Implementation*, 39 CONN. L. REV. 1, 28-32 (2006).

5. See, e.g., Posting of Dave Hoffman to Concurring Opinions, Is the Window Open? February Law Review Submission Season Notice Board, http://www.concurringopinions.com/archives/2009/02/is_the_window_o.html (Feb. 5, 2009, 22:52).

6. Joint Statement Regarding Articles Length, *available at* http://www.harvardlawreview.org/PDF/articles_length_policy.pdf (last visited Apr. 11, 2009).

7. Posting of Matt Bodie to PrawfsBlawg, Article Length Limits: Some Early Results, http://prawfsblawg.blogs.com/prawfsblawg/2006/07/article_length_.html (July 24, 2006, 08:05) (concluding from a study of law reviews that the new policy had the effect of reducing the length of articles).

assumption that students are good at selecting articles and, thus, the meritorious articles are the ones that end up in high-status journals. One common complaint among faculty is that the students are, well, rather poorly equipped for this task.⁸ It really is extraordinary that students pick articles in areas in which they have little expertise. One solution is to ask faculty for assistance, and I suspect that this is done with increasing frequency. As faculty and administrators become increasingly concerned with their schools' reviews, perhaps this will become the norm. At the *Alabama Law Review*, for instance, all acceptances of articles must be approved by a faculty member. And working as the faculty advisor in recent years has reminded me just how difficult it is to select good articles. Although I have read a lot of legal scholarship over the years, it is hard (if not impossible) for me to competently evaluate articles in areas outside of my areas of teaching and research. For this, we rely heavily upon other faculty members. This, at a minimum, ensures a minimum quality of articles. Obviously flawed pieces are screened out. However, really meritorious pieces may still not receive the attention (or offer) they are due.

One student editor at the *University of Pennsylvania Law Review*, in a moment of candor, has acknowledged the difficulties students face in evaluating submissions. She goes on, however, to state that students are capable of making good choices (even if not the best choices) and that good choices are good enough:

The issue is not whether students are competent to select only the "best" articles, but whether student editors are able to determine whether a given article meets a basic threshold of validity, thereby creating a portfolio of valid articles for dissemination to the legal community. . . .

. . . .

[B]ecause the article selection process is *complex*, anyone young and inexperienced will have difficulty with it. The truth is, however, that article selection is not too difficult a task for law students. Deciding whether or not an article is desirable is not an elusive process requiring a refined professional judgment, honed through years of apprenticeship and experience. It is not even like wine tasting or art-gallery visiting, where a certain kind of "taste" or "eye" is needed.⁹

8. See James Lindgren, *Reforming the American Law Review*, 47 STAN. L. REV. 1123, 1123-24 (1995); Richard A. Posner, *Against the Law Reviews*, LEGAL AFF., Nov.-Dec. 2004, at 58.

9. Natalie C. Cotton, Comment, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 959-61 (2006). The *Review of Litigation* referred to it as "an excellent rebuttal of Judge Posner's article." See William G. Hagans, *The Review at 25: Looking to a Bright Future*, 25 REV. LITIG. iii, iii n.4 (2006).

Ah, wine tasting is different (and apparently more difficult) than article selection. Good to know. That's certainly worthy of further exploration at a later date.

All of this leads to a question, which scholars in other fields¹⁰ have been asking as well: are those assessments of an article's quality associated with the journal that publishes the article warranted? There is a high correlation between citations to a school's main law journal and the school's *US News* peer assessment score. So there is a correlation between highly regarded journals and highly regarded law schools. But how do those judgments work at the level of an individual article? Is place of publication a good proxy for an article's quality?¹¹

Quality is, of course, notoriously difficult to gauge, though we have had some serious attempts to define universal and useable ways of evaluating it.¹² One objective and commonly used—even if flawed—way of measuring quality is citation counts.¹³ The problems with citation studies include substantial field biases (some areas, like criminal law, intellectual property, and professional responsibility, have more people writing in them than others and, hence, are more likely to be cited).¹⁴ These field biases exist across disciplines, of course. Henry Wai-Chung Yeung, writing about geography scholar-

10. See, e.g., Andrew J. Oswald, *An Examination of the Reliability of Prestigious Scholarly Journals: Evidence and Implications for Decision-Makers*, 74 *ECONOMICA* 21, 22 (2007).

11. See Dennis J. Callahan & Neal Devins, *Law Review Article Placement: Benefit or Beauty Prize?*, 56 *J. LEGAL EDUC.* 374, 375 (2006) (finding that high quality articles are cited regardless of the review's prestige, and poor quality articles, regardless of publication placement, are not cited).

12. See, e.g., Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 *CAL. L. REV.* 889, 891 (1992). We have also had some serious engagement with the issue of whether originality is what we should be striving for anyway. See generally, e.g., Daniel A. Farber, *The Case Against Brilliance*, 70 *MINN. L. REV.* 917, 917 (1986) (suggesting "thoughtfulness may be a more important virtue" than originality); Pierre Schlag, *The Brilliant, the Curious, and the Wrong*, 39 *STAN. L. REV.* 917, 924 (1987) (noting in response to Farber that "it is not as if we have an overabundance of [brilliance] to begin with" and concluding that "[e]ven if most of Farber's argument is at best curious, and at worst wrong, there is one part that nonetheless remains near brilliant: It is the notion that brilliance in law stands in special need of containment and criticism").

13. For an amusing take on citations—and therefore an indictment of them—see J.M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 *CHI.-KENT L. REV.* 843 (1996).

14. Some of my favorite examples of the field bias in citations come from legal history. William W. Fisher's article on the intersection of religious and political ideology and protections for private property in the century after our country's founding is, in my opinion, the finest article I have ever read in legal history. See William W. Fisher III, *Ideology, Religion, and the Constitutional Protection of Private Property: 1760-1860*, 39 *EMORY L.J.* 65 (1990). It has been cited about thirty-three times. This, I suppose, is largely due to the fact that there are relatively few people writing in the field of antebellum legal history. To put this into context, one might consider that one of Fisher's intellectual property articles, published at about the same time as *Ideology, Religion, and the Constitutional Protection of Private Property*, has been cited more than six times as often. See William W. Fisher III, *Reconstructing the Fair Use Doctrine*, 101 *HARV. L. REV.* 1659 (1988).

ship, illustrates the problems: “It is thus reasonable to expect authors in the area of, say, globalisation studies to be more cited than their counterparts who specialise in the symbolism of particular architectural forms in rural China during the early Ming dynasty.”¹⁵ Another problem is that some works are cited because they summarize basic principles rather than because they are innovative or “good.” That is, citations are a measure of popularity of sorts. Yet, popularity is not always a measure of quality. As Ian Ayres and Fredrick Vars concluded in their 2000 article, “extreme modesty is in order” for citation studies.¹⁶ As they point out, citation studies have “gossipy and at times tawdry aspect[s].”¹⁷ They note that they “are drawn to citation rankings—reading and discussing them around the water cooler—but [they] are simultaneously repulsed by them.”¹⁸

Yet, as Ralph Waldo Emerson said in his *Lecture on the Times*, “Everything that is popular, it has been said, deserves the attention of the philosopher: and this for the obvious reason, that although it may not be of any worth in itself, yet it characterizes the people.”¹⁹ And so this Essay turns to an examination of citations to articles published in several leading law journals in 1992. It studies citations in the Westlaw journals and law reviews database and its Allcourts database to articles (not notes, essays, or book reviews) appearing in the *Columbia Law Review*, *Duke Law Journal*, *Harvard Law Review*, *Hastings Law Journal*, *Indiana Law Journal*, *Stanford Law Review*, *Texas Law Review*, *University of Chicago Law Review*, *Vanderbilt Law Review*, *Virginia Law Review*, *Washington and Lee Law Review*, *Wisconsin Law Review*, and *Yale Law Journal*. It proceeds from the premise that fifteen years is a sufficient time to gauge how well cited an article is likely to be.²⁰ And it compares the citations of articles in each of these journals, with the purpose of asking this: how do citations to individual articles compare? The citation hierarchy of these journals has been closely studied; the *Harvard Law Review* consistently outperforms all other journals, for instance. However, there has been less attention paid to the question of how individual articles do in each journal. What, for instance, distinguishes the *Harvard Law Review* from the *Vanderbilt Law Review* and from the *Indiana*

15. Henry Wai-chung Yeung, *Deciphering Citations*, 34 ENV'T & PLAN. A 2093, 2099 (2002).

16. Ian Ayres & Fredrick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 J. LEGAL STUD. 427, 447 (2000).

17. *Id.*

18. *Id.*

19. RALPH WALDO EMERSON, *Lecture on the Times*, in WORKS OF RALPH WALDO EMERSON 209, 211 (1880).

20. Ayres & Vars, *supra* note 16, at 436-37 (concluding that high-point of citations of articles is in the fourth year and “that half of total citations . . . occurred before the articles were 4.61 years old”). Some articles, of course, may continue to be cited for a long time—and perhaps even begin to collect citations only many years after they appear.

Law Journal? Are all of the Harvard articles cited at above-average rates, or does Harvard benefit from certain big winners—or something in between?

III. THE IMPERFECT RELATIONSHIP BETWEEN JOURNAL REPUTATION AND ARTICLE CITATIONS

The results are summarized in Table 1.²¹ It shows the mean and median citations per article in each journal; it also has the citations at the extremes.²² Thus, the *Harvard Law Review*'s most-cited article (Kathleen M. Sullivan's legendary foreword, *The Justices of Rules and Standards*²³) garnered nearly 600 citations; its least-cited article garnered 50 citations. *Indiana Law Journal*'s most-cited article, by contrast, received sixty-one citations. (Adam J. Hirsch and William K.S. Wang's *A Qualitative Theory of the Dead Hand*²⁴ is a wills article, where citations are notoriously hard to come by, no less!) Thus, while some of the *Harvard Law Review*'s articles are huge winners of citations, some of the articles in highly desirable (but still less sought-after) journals are more heavily cited. In fact, Hirsch and Wang overperformed the median at both the *Vanderbilt Law Review* and the *Texas Law Review*. And, as noted earlier, this is particularly impressive given that they are writing in the field of wills, a field in which relatively few people work and, thus, where it is particularly hard to win citations.

The most-cited articles in many other journals also significantly outperformed many articles in the most elite journals. For example, John H. Jackson's *World Trade Rules and Environmental Policies: Congruence or Conflict?*,²⁵ in the *Washington and Lee Law Review*, received 159 citations; Jana B. Singer's *The Privatization of Family Law*,²⁶ in the *Wisconsin Law Review*, received 165 citations; and Joseph Sanders' *The Bendectin Litigation: A Case Study in the Life Cycle of Mass Torts*,²⁷ in the *Hastings Law Journal*, received 139 citations.

21. See *infra* p. 239.

22. See *infra* p. 239.

23. 106 HARV. L. REV. 22 (1992). Sullivan's foreword was particularly successful, even as forewords to the *Harvard Law Review*'s Supreme Court issue go. Guido Calabresi wrote the foreword the year before. Guido Calabresi, *Foreword: Antidiscrimination and Constitutional Accountability (What the Bork-Brennan Debate Ignores)*, 105 HARV. L. REV. 80 (1991). It has received 146 citations. Morton J. Horwitz wrote the foreword the next year. Morton J. Horwitz, *Foreword: The Constitution of Change: Legal Fundamentalism Without Fundamentalism*, 107 HARV. L. REV. 30 (1993). It has received 177 citations.

24. 68 IND. L.J. 1 (1992).

25. 49 WASH. & LEE L. REV. 1227 (1992).

26. 1992 WIS. L. REV. 1443.

27. 43 HASTINGS L.J. 301 (1992).

Louis Kaplow's *Rules Versus Standards: An Economic Analysis*²⁸ was the second most cited of all articles with 454 citations. Meanwhile, there are some other notable outliers. For instance, the most-cited article in the *Vanderbilt Law Review* had more than 300 citations, which gave it more citations than every other article studied except for five: Sullivan's *The Justices of Rules and Standards* (572 citations); Kaplow's *Rules Versus Standards*, mentioned earlier in this paragraph (454 citations); Daniel J. Freed's *Federal Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers*²⁹ (363 citations), in the *Yale Law Journal*; Michael W. McConnell's *Religious Freedom at a Crossroads*³⁰ (345 citations), in the *University of Chicago Law Review*; and Akhil Reed Amar's *The Bill of Rights and the Fourteenth Amendment*³¹ (328 citations), in the *Yale Law Journal*. *Vanderbilt Law Review*'s most-cited article was William Eskridge and Philip Frickey's *Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking*,³² which appeared as part of the *Vanderbilt Law Review*'s symposium on the reevaluation of canons of statutory interpretation. That symposium included other well-cited articles, including the following: Daniel A. Farber's *The Inevitability of Practical Reason: Statutes, Formalism, and the Rule of Law*³³ (131 citations); Jonathan R. Macey and Geoffrey P. Miller's *The Canons of Statutory Construction and Judicial Preferences*³⁴ (69 citations); and Stephen F. Ross's *Where Have You Gone, Karl Llewellyn? Should Congress Turn Its Lonely Eyes to You?*³⁵ (67 citations).

Another perspective on this appears in Figure 1, which graphs the citations by journals to each article in each journal studied here.³⁶ One striking thing is the maldistribution of "wealth," as it were. There are some real winners: Reva Siegel's *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*³⁷ (181 citations) (the *Stanford Law Review*'s most-cited); Douglas Laycock's *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*³⁸ (201 citations) (the *Columbia Law Review*'s most-cited); Wendy J. Gordon's *On Owning Information: Intellectual Property and the Restitutionary*

28. 42 DUKE L.J. 557 (1992).

29. 101 YALE L.J. 1681 (1992).

30. 59 U. CHI. L. REV. 115 (1992).

31. 101 YALE L.J. 1193 (1992).

32. 45 VAND. L. REV. 593 (1992).

33. 45 VAND. L. REV. 533 (1992).

34. 45 VAND. L. REV. 647 (1992).

35. 45 VAND. L. REV. 561 (1992).

36. See *infra* p. 240.

37. 44 STAN. L. REV. 261 (1992).

38. 92 COLUM. L. REV. 249 (1992).

*Impulse*³⁹ (199 citations) (the *Virginia Law Review*'s most-cited); and Lawrence E. Mitchell's *A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes*⁴⁰ (152 citations) (the *Texas Law Review*'s most-cited).

There were some other huge citation winners. A number of other articles with more than 190 citations included the following: Lucian Arye Bebchuk's *Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law*⁴¹ (298 citations), in the *Harvard Law Review*; Michael Bradley and Michael Rosenzweig's *The Untenable Case for Chapter 11*⁴² (244 citations), in the *Yale Law Journal*; Steven G. Calabresi and Kevin H. Rhodes' *The Structural Constitution: Unitary Executive, Plural Judiciary*⁴³ (224 citations), in the *Harvard Law Review*; Ian Ayres and Robert Gertner's *Strategic Contractual Inefficiency and the Optimal Choice of Legal Rules*⁴⁴ (206 citations), in the *Yale Law Journal*; Mark Seidenfeld's *A Civic Republican Justification for the Bureaucratic State*⁴⁵ (203 citations), in the *Harvard Law Review*; and Randy E. Barnett's *The Sound of Silence: Default Rules and Contractual Consent*⁴⁶ (194 citations), in the *Virginia Law Review*.

Table 2 presents the data in a somewhat different format.⁴⁷ It presents the raw data for each article in each journal, ranked from highest in citations to lowest. This facilitates comparison across journals. Some immediate observations jump out. Except for the *Harvard Law Review*'s most-cited article, the *Yale Law Journal* had more citations for all other articles (as ranked two through eleven by numbers of citations) than did the *Harvard Law Review*. The same is true for the *Columbia Law Review* for articles ranked six through eleven.

Certainly, articles in the *Harvard Law Review* and the *Yale Law Journal* and a few other journals win lots and lots of citations. The median article in the *Yale Law Journal* in 1992 has nearly 200 citations. But what is important—and perhaps surprising—is that many articles are not much more heavily cited in the leading, elite journals than in the still very strong, but less elite. So I am led to a few important, sobering conclusions. There are some articles that are amazingly well cited and (on the assumption here) influential. Yet, then there are many articles, even in elite journals, that are not nearly so

39. 78 VA. L. REV. 149 (1992).

40. 70 TEX. L. REV. 579 (1992).

41. 105 HARV. L. REV. 1435 (1992).

42. 101 YALE L.J. 1043 (1992).

43. 105 HARV. L. REV. 1153 (1992).

44. 101 YALE L.J. 729 (1992).

45. 105 HARV. L. REV. 1511 (1992).

46. 78 VA. L. REV. 821 (1992).

47. See *infra* p. 241.

well cited and that are (in terms of citations) not distinguishable from many, many other articles. This suggests an even further need for caution in measuring articles by their placement.

Table 3 presents data on citations to the articles by courts.⁴⁸ In keeping with recent discussions of the declining importance of law reviews to courts, there are substantially fewer citations to the articles by courts than by journals. The most heavily cited article has forty-two citations; yet, the modal citation is zero. Even the median citations of articles by courts in some of the journals is zero. Table 4 presents data on citations to each article in each journal under study here.⁴⁹

IV. CONCLUSION

Given the limited number of articles under study here and the small window of time they were published (1992), it is certainly possible that temporary aberrations skew the results. However, there is some evidence from other citation studies that provides some reinforcement for these findings. For instance, Kincaid Brown reviewed fourteen citation studies published between 1930 and 2002.⁵⁰ Most of those studied citations by journals, although a few involved case citations by the U.S. Supreme Court and U.S. Courts of Appeals. Brown ranked law reviews by number of citations in each study and then averaged the ranks to obtain an overall rank for each law review.⁵¹ Spearman's rank-order correlation between Brown's average rank for the thirteen law reviews in the present study and the law review

48. *See infra* p. 242.

49. *See infra* p. 243.

50. Kincaid C. Brown, *How Many Copies Are Enough? Using Citation Studies to Limit Journal Holdings*, 94 LAW LIBR. J. 301 (2002).

51. *Id.* Brown's overall citation rank of the thirteen law reviews in the present study is as follows:

1. HARV. L. REV.
2. YALE L.J.
3. COLUM. L. REV.
4. U. CHI. L. REV.
6. VA. L. REV.
8. STAN. L. REV.
11. TEX. L. REV.
15. DUKE L.J.
16. VAND. L. REV.
20. WIS. L. REV.
22. HASTINGS L.J.
37. IND. L.J.
58. WASH. & LEE L. REV.

rank of the most-cited article by publications is 0.71 ($p = 0.01$).⁵² The Spearman correlations between Brown's average rank and the mean and median citations to the thirteen law reviews by publications are larger: -0.90 and -0.92, respectively ($p < 0.0001$ for both). The larger correlations are consistent with the greater representativeness of the mean and median in comparison with the single most-cited article in each law review. Citation ranks of law reviews in this study can also be compared with John Doyle's findings on citations for 1995 through 2002.⁵³ Spearman correlations between Doyle's ranks and ranks for most-cited article, mean, and median for the thirteen law reviews in the present study are 0.52, -0.79, and -0.84, respectively ($p = 0.07$, 0.002, and 0.0004, respectively). The Spearman correlation between Brown's and Doyle's citation ranks for the thirteen law reviews is 0.92 ($p < 0.0001$), indicating that the two sets of ranks are very similar despite their differences in time frames and suggesting once again the stability of such criteria.

"Extreme modesty,"⁵⁴ of course, is in order in interpreting these results, but so, too, may be a conclusion drawn about the quality of a piece simply by its location of publication.⁵⁵ Placement in one of the most elite journals may not signal that an article will be cited—although the articles in the two most elite journals, the *Harvard Law Review* and the *Yale Law Journal* were heavily cited, by and large. And some articles in a very respectable, but not quite elite journal (like the *Indiana Law Journal*) are cited more frequently than articles in even the most elite journals. This is further evidence of the limitations of using placement as a proxy for quality. In evaluating scholarship, we must continue to read it rather than rely upon proxies, such as placement (or citations).⁵⁶

52. The Spearman correlation coefficient is a measure of correlation between two sets of ranks. GEORGE W. SNEDECOR & WILLIAM G. COCHRAN, *STATISTICAL METHODS* 193-95 (8th ed. 1989).

53. Doyle's data are available at Washington and Lee University School of Law, Law Journals: Submissions and Ranking, <http://lawlib.wlu.edu/LJ> (last visited Apr. 11, 2009). I report changes in Doyle's rankings from 2002 to 2005 in Brophy, *supra* note 4, at 64-68.

54. Ayres & Vars, *supra* note 16, at 447.

55. The findings here match Callahan and Devins's conclusion that "meritorious articles will be cited regardless of the prestige of the review in which they appear, and poor articles, even those published in high-tier reviews, will be ignored." Callahan & Devins, *supra* note 11, at 375. As Callahan and Devins address, the citations pattern suggests that quality (or at least utility) of articles may be fairly flat. *Id.* And it is yet another reminder, as if any is needed, that good work is being done (and published) throughout the legal academy. See Alfred L. Brophy, *The Relationship Between Law Review Citations and Law School Rankings*, 39 *CONN. L. REV.* 43, 51 n.25 (2006).

56. Of course, at some point I would like to have a more rigorous, empirical study of the judgments based on reading of scholarship. My experience with the peer review process, as both a referee and a recipient of peer reports, suggests that, while some judgments are fairly stable across readers, there are other judgments that vary rather widely. And even in nonanonymous peer reviews—like signed book reviews—we see rather wide variance of judgments. One might take, for instance, the recent discussion of Robin Ein-

**TABLE 1: CITATIONS IN LEGAL PERIODICALS TO ARTICLES PUBLISHED IN
SELECTED LAW REVIEWS IN 1992**

LAW REVIEW	RANK*	MEAN	STD. DEV.	MIN.	25TH %ILE	MEDIAN	75TH %ILE	MAX.	N
Chicago	3	91.31	77.40	8	52.75	81.5	104.50	337	16
Columbia	7	101.44	56.27	8	40.50	96.5	147.50	196	18
Duke	2	114.33	129.69	15	40.50	58.0	142.25	451	12
Harvard	1	179.00	159.36	44	66.00	88.0	270.00	571	11
Hastings	12	46.79	27.14	13	24.50	44.0	65.00	138	29
Indiana	13	25.15	16.24	6	10.50	24.0	36.00	60	13
Stanford	8	70.62	43.88	12	37.50	62.0	101.00	178	13
Texas	11	56.29	41.68	9	29.00	38.0	78.50	151	17
Vanderbilt	5	62.42	63.99	6	34.00	51.0	67.00	302	19
Virginia	6	76.31	54.16	16	37.25	57.5	97.75	197	16
Washington & Lee	10	36.76	42.76	3	8.50	18.0	57.00	159	17
Wisconsin	9	39.94	45.40	1	13.50	30.0	44.50	165	17
Yale	4	174.38	105.58	25	69.50	185.0	280.00	321	13

* Rank is based on number of journal citations to most-cited article in each law review.

horn's *American Taxation, American Slavery* as an example here. ROBIN L. EINHORN, *AMERICAN TAXATION, AMERICAN SLAVERY* (2006). She received a glowing review in the *American Historical Review*. Loren Schweninger, Book Review, 112 AM. HIST. REV. 193 (2007). She also received quite positive reviews in *The Journal of American History* (Stanley L. Engerman, Book Review, 93 J. AM. HIST. 1209-10 (2007)), *Enterprise and Society* (Douglas R. Engerton, Book Review, 7 ENTERPRISE & SOC'Y. 837-38 (2006)), and the *Law and History Review* (Ajay K. Mehrotra, Book Review, 26 LAW & HIST. REV. 206-08 (2008)). However, Gordon S. Wood's review in *New York Review of Books* (54 N.Y. REV. BOOKS, June 28, 2007) was quite critical. A critical review—particularly in such an important venue as the *New York Review of Books*—may testify to the importance of the book. But we see widely varying evaluations of quality, even among the leading figures in the field.

Or, to take another example from legal scholarship, Michael J. Klarman's *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (2004) won the prestigious Bancroft Prize in American history. Press Release, Columbia University Libraries, Columbia Announces 2005 Bancroft Prize Winners (Mar. 16, 2005), http://www.columbia.edu/cu/web/news/libraries/2005/2005-03-16.bancroft_winners.html. Still, Klarman's book has also been the subject of sustained challenges in leading law reviews. See, e.g., David E. Bernstein & Ilya Somin, *Judicial Power and Civil Rights Reconsidered*, 114 YALE L.J. 591 (2004) (book review); Mary L. Dudziak, *The Court and Social Context in Civil Rights History*, 72 U. CHI. L. REV. 429 (2005) (book review); Paul Finkelman, *Civil Rights in Historical Context: In Defense of Brown*, 118 HARV. L. REV. 973 (2005) (book review). This is further illustration of the variance of expert judgments, even on monumental works.

We may, of course, recognize that a book is important, even if we disagree with its thesis. See, e.g., Alfred L. Brophy, *Reason and Sentiment: The Moral Worlds and Modes of Reasoning of Antebellum Jurists*, 79 B.U. L. REV. 1161 (1999) (reviewing PETER KARSTEN, *HEART VERSUS HEAD: JUDGE-MADE LAW IN NINETEENTH-CENTURY AMERICA* (1997)).

FIGURE 1: JOURNAL CITATIONS PER ARTICLE IN SELECTED LAW REVIEWS

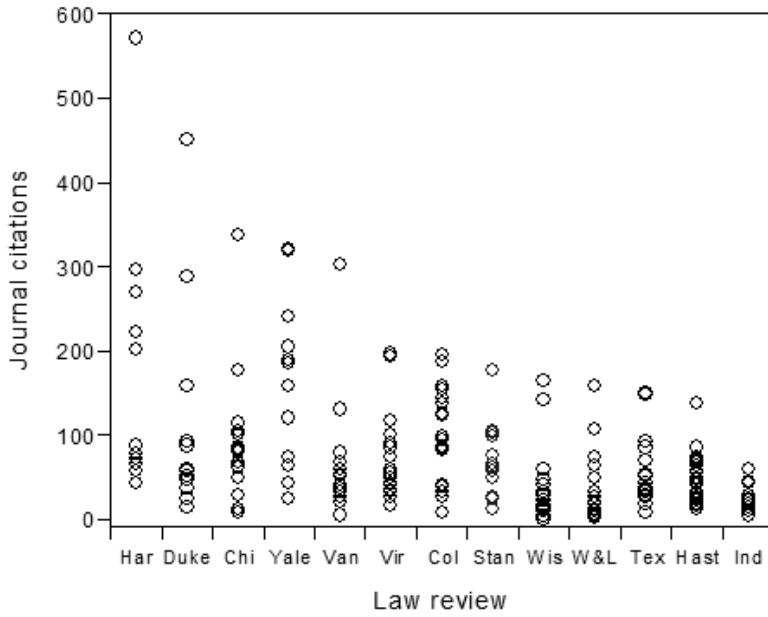


TABLE 2: TOTAL CITATIONS IN LEGAL PERIODICALS AND BY COURTS PER ARTICLE IN SELECTED LAW REVIEWS, 1992

ARTICLE RANK*	HARVARD	DUKE	YALE	CHICAGO	VANDERBILT	COLUMBIA	VIRGINIA	STANFORD	WISCONSIN	W&L	TEXAS	HASTINGS	INDIANA
1	572	454	363	345	310	201	199	181	165	159	152	139	60
2	297	289	328	181	131	188	193	118	145	108	149	86	46
3	274	171	326	120	80	167	118	110	59	74	94	75	43
4	226	95	243	107	69	158	102	98	48	64	86	74	29
5	202	88	205	100	67	158	91	77	41	50	71	70	29
6	94	60	196	86	61	141	87	66	35	35	55	68	25
7	82	57	191	84	59	129	74	62	33	27	52	65	24
8	79	53	163	82	54	129	60	60	31	20	44	65	19
9	67	48	121	81	53	98	55	58	30	18	42	57	17
10	58	38	74	67	51	97	49	51	24	18	38	56	11
11	49	26	70	63	44	95	43	27	17	14	37	50	10
12	.	15	43	61	42	87	42	27	16	11	36	50	10
13	.	.	26	50	38	83	38	13	16	10	35	50	7
14	.	.	.	31	38	42	34	.	14	7	28	50	.
15	.	.	.	13	37	41	29	.	12	5	28	45	.
16	.	.	.	8	28	41	16	.	5	5	19	44	.
17	.	.	.	.	22	36	.	.	3	3	13	44	.
18	.	.	.	.	21	8	.	.	.	.	.	42	.
19	.	.	.	.	6	.	.	.	.	.	.	34	.
20	.	.	.	.	.	.	.	.	.	.	.	32	.
21	.	.	.	.	.	.	.	.	.	.	.	26	.
22	.	.	.	.	.	.	.	.	.	.	.	25	.
23	.	.	.	.	.	.	.	.	.	.	.	24	.
24	.	.	.	.	.	.	.	.	.	.	.	24	.
25	.	.	.	.	.	.	.	.	.	.	.	18	.
26	.	.	.	.	.	.	.	.	.	.	.	16	.
27	.	.	.	.	.	.	.	.	.	.	.	15	.
28	.	.	.	.	.	.	.	.	.	.	.	14	.
29	.	.	.	.	.	.	.	.	.	.	.	13	.

* Rank of article in terms of number of journal citations within each journal.

**TABLE 3: CITATIONS BY COURTS TO ARTICLES PUBLISHED IN SELECTED LAW
REVIEWS IN 1992**

LAW REVIEW	RANK*	MEAN	STD. DEV.	MIN.	25TH %ILE	MEDIAN	75TH %ILE	MAX.	N
Chicago	7	1.13	2.31	0	0	0.0	1.00	8	16
Columbia	2	4.06	4.71	0	0	2.5	6.25	13	18
Duke	4	1.83	3.38	0	0	1.0	2.50	12	12
Harvard	5	2.82	3.19	0	0	1.0	5.00	10	11
Hastings	10	0.48	0.99	0	0	0.0	1.00	4	29
Indiana	12	0.23	0.60	0	0	0.0	0.00	2	13
Stanford	3	2.31	3.35	0	0	1.0	2.50	12	13
Texas	8	1.29	2.02	0	0	0.0	2.00	7	17
Vanderbilt	6	1.32	2.36	0	0	0.0	2.00	8	19
Virginia	11	0.56	0.81	0	0	0.0	1.00	2	16
Washington & Lee	13	0.18	0.39	0	0	0.0	0.00	1	17
Wisconsin	9	0.88	1.36	0	0	0.0	1.50	4	17
Yale	1	6.31	11.16	0	0	4.0	6.50	42	13

* Rank is based on number of citations by courts to most-cited article in each law review

TABLE 4: CITATIONS BY COURTS PER ARTICLE IN SELECTED LAW REVIEWS, 1992

ARTICLE RANK*	YALE	COLUMBIA	STANFORD	DUKE	HARVARD	VANDERBILT	CHICAGO	TEXAS	WISCONSIN	HASTINGS	VIRGINIA	INDIANA	W&L
1	42	13	12	12	10	8	8	7	4	4	2	2	1
2	9	13	6	3	6	7	5	4	4	3	2	1	1
3	7	12	3	3	5	3	3	4	2	2	2	0	1
4	6	10	2	1	4	2	1	3	2	1	1	0	0
5	6	5	2	1	3	2	1	1	1	1	1	0	0
6	5	5	2	1	1	1	0	1	1	1	1	0	0
7	4	4	1	1	1	1	0	1	1	1	0	0	0
8	2	3	1	0	1	1	0	1	0	1	0	0	0
9	1	3	1	0	0	0	0	0	0	0	0	0	0
10	0	2	0	0	0	0	0	0	0	0	0	0	0
11	0	1	0	0	0	0	0	0	0	0	0	0	0
12	0	1	0	0	.	0	0	0	0	0	0	0	0
13	0	1	0	.	.	0	0	0	0	0	0	0	0
14	.	0	.	.	.	0	0	0	0	0	0	.	0
15	.	0	.	.	.	0	0	0	0	0	0	.	0
16	.	0	.	.	.	0	0	0	0	0	0	.	0
17	.	0	.	.	.	0	.	0	0	0	.	.	0
18	.	0	.	.	.	0	.	.	.	0	.	.	.
19	.	.	.	.	.	0	.	.	.	0	.	.	.
20	.	.	.	.	.	.	.	.	.	0	.	.	.
21	.	.	.	.	.	.	.	.	.	0	.	.	.
22	.	.	.	.	.	.	.	.	.	0	.	.	.
23	.	.	.	.	.	.	.	.	.	0	.	.	.
24	.	.	.	.	.	.	.	.	.	0	.	.	.
25	.	.	.	.	.	.	.	.	.	0	.	.	.
26	.	.	.	.	.	.	.	.	.	0	.	.	.
27	.	.	.	.	.	.	.	.	.	0	.	.	.
28	.	.	.	.	.	.	.	.	.	0	.	.	.
29	.	.	.	.	.	.	.	.	.	0	.	.	.

* Rank of article in terms of number of citations by courts within each journal.