The First

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Christoph Engel is a remarkable scholar. He is a European legal scholar who blends law and economics, psychology, behavioral economics, game theory, and empiricism. Indeed, he is a pioneer. But he is not just a pioneer; he is the first to combine all of these approaches into the study of law in Europe. He is, of course, too modest to make such a claim on his own. And there are certainly others who have brought novel methods to the more formalistic approaches on which European legal scholars customarily rely. But I will say it – he is the first. In his honor, I offer this article, which addresses the rise in assertions that a law review article is "the first" of its kind.

Claims to being the "the first" in legal scholarship have enjoyed explosive growth in law review articles in the United States. As the data I report show, for most of the history of legal scholarship, no author claimed to have produced "the first" work on any topic. Today, however, well over 200 articles per year make this extravagant claim (Although this claim may be leveling off after a period of exponential growth.) What a remarkable scholarly era we must have entered, in which so many articles are "the first" on any subject! This article (the first on the subject) documents the trend for authors to announce the primacy of their work and discusses its causes.

Of course, every law review article is the first of its kind. At an average length of 25,000 words, any published law review article is, absent severe plagiarism, the first article to use exactly those 25,000 words in exactly that order. Any article that fails to break some new ground is either an empirical replication or probably not worth reading. Authors who use this phrase surely mean to signal more than that they have adopted a unique combination of words. An article that is "the first" presumably denotes a path-breaking scholarly endeavor; something never before achieved in the

* I wrote this piece after repeatedly encountering the phrase "the first article" in drafts articles over the last six months. Research funding in support of this Article was provided by the Roger C. Hyatt Fund.

many millions of pages of law reviews that have come before. Something like what Christoph Engel has achieved with his body of work.

Legal scholarship should be witnessing fewer firsts, not more. After over a century of legal scholarship, it should be hard to find a new thesis. Certainly scholarly focus drifts and legal scholarship might document novel trends in the development of law, technology, and society. Surely by now, however, most legal subjects worth addressing have received some attention. No one in 2026 can rightfully claim to have written "the first" article discussing the Second Amendment[1] or the first to propose strict liability for defective products.[2] Authors claiming to be "the first" are not actually marking new territory in this way. Rather, authors mean to signal their exploration of some unexplored avenue of research or to apply some existing methodological approach to a well-known topic. Even still, it is surprising that anyone can truly claim to be "the first" at this stage of legal scholarship. At the very least, these claims should be on the decline.

To document the rate at which authors claim primacy, I conducted a search in the Westlaw "Law Reviews and Journals" database.[3] Specifically, I searched for two variations on assertions to primacy: "this is the first article" or (the more common) "this article is the first." I omitted from these results those articles that used that phrase to denote the first of a series of articles by excluding those articles that used these terms within five words of the word "series."[4] This search captured a residue of articles that were not claiming primacy. For example, some authors denoted their first contribution,[5] or just happened to use the word Article too close to the

1 The first such piece I could find is S.T. Ansell, *Legal and Historical Aspects of Militia*, 26 Yale L.J. 471 (1917).

2 The well-known article by Professor James is a god candidate for that honor. Fleming James Jr., *Products Liability*, 34 Texas L. Rev. 192 (1955).

3 I updated the search on September 12, 2025.

4 For example, I excluded the 1912 piece, Jay Newton Baker, *The American Federation of Labor*, 22 Yale L.J. 73, 73 at note a1 (1912) ("This is the first article of a series of articles by the author on the subject of 'Regulation of Industrial Corporations.'"). The exact search was thus: adv: "this is the first article" or "this article is the first" BUT NOT ("this article is the first" /5 series).

5 For example, Muriel Morisey Spence, *The Sleeping Giant: Textualism as Power Struggle*, 67 S. Cal. L. Rev. 585, 585 n.* (1994) ("Because this is my first article as a law professor I want to extend special thanks to four of the people whose words and acts of support helped me decide to enter law-teaching: Regina Austin, Judge Harry T. Edwards, Lani Guinier and Robert Suggs."). I also excluded articles referring to the "first article" of a convention or treaty.

phrase "the first", although not meaning their own article. I also excluded both articles that reported being the "first in thirty years" to address a subject.[6] I therefore had to review each article that the search captured to ensure it was a claim to primacy.[7] I cut the search off after 2023 because articles are still being added with a 2024 date.

Overall, after I excluded the articles that the search captured but did not actually claim to be the first, 2,369 articles claimed primacy. Figure 1 presents the results over time.

Surprisingly, the first use of the phrase did not occur until 1986 when two pieces claimed to be the first in their fields.[8] Over the next two decades a handful of authors included the phrase in their articles, but its use started to pick up in 2005 and took off at an exponential rate after 2007. After a plateau of about 150 such articles per year between 2015 and 2019, claims to primacy have surged further. In 2023, 220 papers declared themselves the first paper in some form.

These papers consist of several types of firsts:

– Some articles declared themselves the first "systematic" or "comprehensive discussion" of a topic. For example, Kathleen Clark laid claim

6 Victor Fleischer, *A Theory of Taxing Sovereign Wealth*, 84 N.Y.U. L. Rev. 440, 452 (2009) ("[T]his is the first article in thirty years to focus on sovereign investment and the first to focus on sovereign wealth funds."); Richard M. Hynes, *Bankruptcy and State Collections: The Case of the Missing Garnishments*, 91 Cornell L. Rev. 603, 607 (2006) ("Surprisingly, this is the first article in thirty years to carefully examine garnishment statistics." I also omitted article that quoted that language in Professor Hynes' piece. Steven L. Willborn, *Wage Garnishment: Efficiency, Fairness, and the Uniform Act*, 49 Seton Hall L. Rev. 847, 868 n. 109 (2019). Strangely, Professor Hynes did not identify the piece from thirty years earlier, which was likely the first of its kind.

7 The most difficult case concerned the use of "this article is the first step," which was fairly common. Many authors clearly meant this to open up a new area of scholarship and hence counted as a claim to primacy. E.g., Suneal Bedi & Mike Schuster, *Measuring Fair Use's Market Effect*, Wis. L. Rev. 1467, 1491–91 (2022) ("This article is a first step toward addressing whether a factual presumption is feasible and what sort of presumption would be appropriate.") Others intended the phrase as the first of a series of articles and were thus excluded.

8 Paul Burstein & Kathleen Monaghan, *Equal Employment Opportunity and The Mobilization of Law*, 20 Law & Soc'y Rev. 355 (1986) ("This is the first article to describe quantitatively the extent and outcomes of the mobilization of EEO laws at the appellate court level."); Robert J. Kaczorowski, *Revolutionary Constitutionalism in the Era of Civil War and Reconstruction*, 61 N.Y.U.L. Rev. 863, 867 (1986) ("This is the first Article to explore this question and explain the connection made by the framers between the primacy of national citizenship and the primacy of the national government's authority to enforce civil rights.").

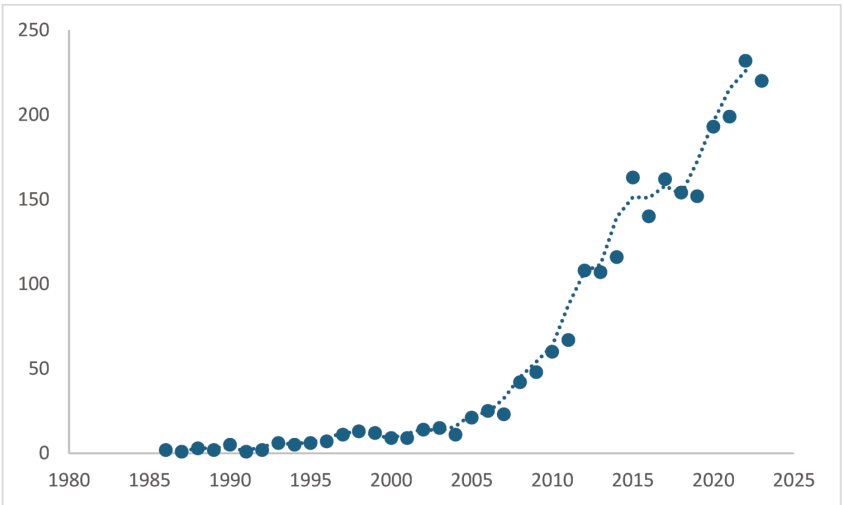

Figure 1: Number of Law Review Articles Claiming to be "The First Article" by Year

to publishing "the first article to take a comprehensive look at the [Emoluments] Clause as interpreted by the Department [of Justice]."[9] The article was not the first paper discussing the Department of Justice's view of the Emoluments Clause and that is not what Professor Clark claimed. The paper presented a review of the entire body of opinions of the Department of Justice on the subject and as such, was likely the first such assessment. I included papers in this category if they identified themselves as engaged in the first systematic or comprehensive analysis, even though some of these authors indicate that earlier discussions of the topic might exist.[10]

9 Kathleen Clark, *The Lawyer Who Mistook a President for Their Client*, 52 Ind. L. Rev. 271, 273 (2019).

10 Madison Condon, *Externalities and the Common Owner*, 95 Wash. L. Rev. 1, 7 (2020) (Declaring itself to be "the first Article to systematically examine institutional investor activism on environmental issues using the economic incentive of common ownership as a framework.") The use of the term systematic in this case might actually reflect caution by the author, much as others qualify their claim to primacy with phrase like "the first article of which we are aware." *See, e.g.*, John J. Donohue & Peter Siegelman, *Law and Macroeconomics: Employment Discrimination Litigation Over the Business Cycle*, 66 S. Cal. L. Rev. 709, 710 n. 2 (1993). I could also poten-

- Some articles concerned highly specialized topics that previous literature presumably had neglected. For example, "Crisis-Driven Tax Law: The Case of Section 382" might well be important scholarship in an area of tax law, but it is a relatively narrow topic.[11]
- Some articles applied an existing framework of analysis to a topic that has not previously been subjected to that methodology. For example, two articles applied economic analysis to legal topics that had (somehow) previously escaped the attention of law-and-economics scholars.[12]
- Some articles made a connection between two existing lines of scholars. For example, Holning Lau and Hillary Li's "American Equal Protection and Global Governance" stated that it was "the first article to focus squarely on convergences between U.S. equal protection doctrine and global developments."[13]
- Some articles remarked on a novel trend, often one that calls for legal reform. For example, such as the first article to discuss "local approaches to regulating digital platform short-term rentals across major American municipalities," thereby addressing the rise of Airbnb and Vrbo.[14]

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tially have categorized this paper as one of three other categories I describe below: addressing a highly specialized topic, given its particular analysis of investor activism; as the application of an existing framework to a new topic; or as making a connection between two existing lines of scholarship.

11 Albert Choi, Quinn Curtis & Andrew T. Hayashi, *Crisis-Driven Tax Law: The Case of Section 382*, 23 Fla. Tax Rev. 1 (2019).

12 A. Mitchel Polinsky & Paul Riskind, *Deterrence and the Optimal Use of Prison, Parole & Probation*, 62 J. L & Econ. 347, 349 (2019) ("this is the first article to compare the use of prison, parole, and probation to promote deterrence when offenders discount disutility and the state discounts costs."); Donohue & Siegelman, *supra* note 10, at 710 n. 2. ("This is the first article of which we are aware that shows that potential beneficiaries of an important federal statutory right are quite sensitive to the state of the macroeconomy in making decisions about whether to initiate litigation."). These two openly assert that they are using economic analysis, but other pieces claiming primacy appear also be using economic approaches. For example, Sergio J. Campos & Cheng Li, *Discovery Disclosure and Deterrence*, 71 Vand. L. Rev. 1993, 1995 (2018) (announcing itself to be the first article that considers whether orders sealing discovery might encourage misconduct.).

13 Holning Lau & Hillary Li, *American Equal Protection and Global Governance*, 86 Fordham L. Rev. 1251, 1256 n. 34 (2017).

14 Braedon Sims, Jordan Carr Peterson, *No Vacancy or Open for Business? Making Accommodations for Digital Platform Short-Term Rentals in Major American Municipalities*, 43 U. Haw. L. Rev. 123, 138 (2020).

– Numerous first articles purported to be the first empirical or statistical analysis of their topics.[15]

One author even called the assertion that an assertion of primacy "the standard law review claim", before asserting it was actually true of their article.[16]

Declarations of primacy grace every type of journal. Many of the top flagship journals have published such articles, including the *Stanford Law Review*, the *University of Michigan Law Review*, the *University of Chicago Law Review*, and the *Cornell Law Review*. One might have expected student-edited journals to use the phrase with greater frequency, as authors feel the need to inform the less-experienced student editors of their novelty,[17] but this is not the case. Numerous claims to primacy have been published in peer-reviewed journals. In fact, as noted above, one of the first two pieces to claim primacy in 1986 was published in the peer-reviewed *Law and Society Review*.

I did not systematically assess whether the use of the phrase facilitates acceptance of the article or whether it attracts subsequent citations.[18] Although I am skeptical, the data nevertheless contain some evidence that "firsts" garner more citations. Among the articles declaring primary, 87 % received at least one citation and 52 % received more than ten citations. This compares favorably to a 2007 study showing that only 57 % of law review articles receive any citations and only 21 % are cited more than ten

15 Surprisingly, the first of these does not appear until 2006. Hon. Donald E. Shelton, Young S. Kiim & Gregg Barak, *A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the "CSI" Effect Exist?* 9 Vand. J. Ent. & Tech. L. 331, 332 (2006).

16 Brian Soucek, *The Case of the Religious Gay Blood Donor*, 60 Wm. & Mary L. Rev. 1893, 1935 (2019) ("Maybe the standard law review claim – 'This article is the first to . . . '–is actually true here.").

17 My colleague Jed Stiglitz makes this argument concerning the choice of title. Jed Stiglitz, Untitled 2 (Jan. 10, 2022) (unpublished manuscript on file with author) ("Relative to peer editors, student editors seem likely . . . to be more susceptible to strategies involving enticement or the representation of article quality through titling choices.").

18 A systematic analysis of this would likely require a full accounting of the predictors of citation rates among all law reviews, which is beyond the ambition of this modest undertaking. Ian Ayres and Frederick Vars provided a thorough analysis of the predictors of citation over twenty-five years ago but did not assess the then-rare claims of primacy. Ian Ayres, Frederick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 J. Legal Stud. 427 (2000).

times.[19] Considering that most of these articles were publishing the last few years, they might be more valuable than most articles. That said, the 2007 study is dated; as the number of law review articles published rises (especially the short "on-line" commentary pieces), citation rates overall might be on the rise.[20]

Several patterns in these articles suggest that the increasing tendency to declare an article the first of its kind is a branding trend, not a change legal scholarship. A great many articles over the decades fit into some of the patterns of the types of types of "firsts" without declaring their primacy. For example, noting previously unobserved connections between lines of cases or lines of scholarship is a time-honored formula for a law review article, but only in recent years do some authors tout this as a breakthrough. Likewise, articles that comment on a new trend could plausibly arise from the dramatic changes in commerce and media technologies in recent decades, but technological and social trends that affect law are themselves nothing new. The Twentieth Century witnessed numerous technological and social changes without authors labeling their pieces as the first to address a topic. The first paper addressing the regulation of radio could have made similar claims, but it did not because articles published in the 1940s did not make such claims.[21] We can certainly expect a plethora of "first" articles on various aspects of the recent pandemic, however.

Also consider that only two of the "novel applications" pieces involved the application of economic analysis to an area of law. Law and economics witnessed decades of articles that were the first to apply economic analysis to law without authors announcing their novelty. The first of many articles applying an economic analysis to the suit and settlement process, for example, made no such claim.[22] By contrast, several "firsts" consisted of empirical analysis of an area. The difference lies not with the different methodologies, but with when these methodologies became popular. Empirical legal scholarship has grown as a methodology along

19 Thomas A. Smith, *The Web of Law*, 44 San Diego L. Rev. 309, 336 (2007) (reporting that among about 385,000 articles across 726 law reviews, 43% are never cited and 79% are cited ten or fewer times).

20 An earlier study reported that 57% percent of articles are never cited, which suggests a trend towards more citations over time. Deborah L. Rhode, *Legal Scholarship*, 115 Harv. L. Rev. 1327, 1331 (2002) (reporting that among 70,560 articles published between 1981 and 1993, 57% were not cited).

21 Note, *Radio Program Controls: A Study in Inadequacy*, Yale L.J. 275 (1947).

22 William M. Landes, *An Economic Analysis of the Courts*, 14 J.L. & Econ. 61 (1971).

with the tendency to announce one's article as first, whereas the wave of law-and-economics scholarship emerged decades earlier.

Similarly, it is ironic that several articles using a framework developed in a previous piece declare their primacy, even though paradigm-shifting framework pieces did not announce themselves as the first of their kind. Consider Kristin Carpenter's article, "Real Property and Peoplehood," which claimed to be is "the first Article to consider Radin's theory in the context of American Indian real property."[23] The piece applied Professor Margaret Radin's work on market inalienability in this novel context.[24] Professor Radin herself did not claim any such primacy in her own work. Nor is any major, highly cited "framework" piece (such as Ronald Coase's "The Problem of Social Costs"[25]) among the firsts. The data reflect a trend in branding, not a change in the scholarship.

Ronald Coase's article perhaps merits special attention in a discussion of academic primacy. Guido Calabresi arguably wrote a similar article before Coase published his Nobel-Prize winning work.[26] Calabresi submitted his piece as a student note years before Coase's publication, but the student editors of the *Yale Law Journal* rejected it for being too unconventional.[27] Ultimately, Calabresi's article saw the light of day a year after Coase's more famous contribution.[28] With a Nobel Prize on the line, Calabresi surely should have submitted the piece earlier to SSRN and claimed primacy. But I suppose that is hindsight (and of course SSRN did not exist in the 1950s).

Why do law review articles increasingly declare themselves the first? As the details of the Coase and Calabresi articles illustrates, being first matters. One can hardly blame budding young authors for claiming pri-

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23 Kristen A. Carpenter, *Real Property and Peoplehood*, 26 Stan. Env't. L. Rev. 313, 319 at n 26 ((2008)

24 Margaret Jane Radin, *Property and Personhood*, 34 Stan. L. Rev. 957 (1982).

25 Ronald Coase, *The Problem of Social Cost*, 3 J.L & Econ. 1 (1960).

26 *See* Steven G, Medema, Juris *Prudence: Calabresi's Uneasy Relationship with the Coase Theorem*, 77 Law & Contemp. Prob. 65, 65 (2014) ("[A]n argument can be made … that Calabresi 'discovered' the Coase Theorem roughly two years before Coase first stated those ideas in print.").

27 *See* Emily Sherwin, *Guido Calabresi*, *in* New Palgrave Dictionary of Economics and the Law v. 1 199, 199 (Peter Newman ed. 1998) (noting that "Calabresi wrote the initial draft of the article as a student comment … [but it] was not published until 1961").

28 Guido Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 Yale L.J. 499 (1961).

macy. Who, after all, remembers those who come second? Norgay and Hillary were the first to summit Everest, but who comprised the second team to achieve that feat? No one I can name. The sprinter Usain Bolt won the gold medal for first crossing the finish line in the one-hundred and two-hundred-meter races in three consecutive Olympics to earn the title of "world's fastest human," but no one even marks the name of the second fastest human. The gymnast McKayla Maroney famously turned herself into an instant meme with her "not impressed" scowl while receiving the silver medal in the vault at the 2012 Olympics.[29] Who was the second human after Neil Armstrong to set foot on the moon? OK, Buzz Aldrin is also famous, but who captained the second expedition to the moon? Being second is perhaps worse in academia. We all know Watson and Crick for their first publication describing the structure of DNA; being second would not even merit publication except as a replication. As the first (and second) coach to win a Super Bowl, Vince Lombardi, put it, "winning isn't everything, it's the only thing." The only real puzzle is that the trend to declare primacy is so recent.

The rise of Scholastica might be to blame. Certainly, many woes can be laid at its doorstep. With just a few mouse clicks and a modest payment, today's authors can submit their articles to hundreds of student-run law reviews. One used to have to make copies and submit them via snail-mail. (Younger authors: really, actual physical copies – and here I feel like I do when explain to my kids how rotary phones worked.) Standing out to the student editors was always important, but it is now more important than ever as they have to sort through thousands of submissions.

Law perhaps produces more trends in scholarship than other fields.[30] The students who select articles are beginners to the profession and thus have a different perspective than the senior scholars who make editorial decisions for other journals. This perspective likely leads the students to search more for a novel trend than for articles that might support a well-accepted thesis. This tendency has some virtues, in that it avoids ossifi-

29 *See* https://knowyourmeme.com/memes/mckayla-is-not-impressed

30 I did not undertake a systematic analysis of the use of the phrase "this is the first" in fields other than law. Authors in other fields use the phrase, but it appears to be less common. A search of the SSRN database revealed 48 articles in 2020 and 2021 that use that phrase, 39 of which (81 %) were published in law reviews. The other nine consist of publications in computer science, economics, business, anthropology, sociology, and political science. I do not, however, know what percentage of articles in the SSRN database are law review articles.

cation and capture of the discipline by an elder statesperson, but it has a downside as well. As the data show, legal scholarship now also more commonly announces its novelty.

The tendency to declare primacy perhaps sheds some light on what academics value in legal scholarship. Summarizing and synthesizing an area of law is not the ticket to academic glory at today's law schools. No matter how useful a summary of an area of law might be to practitioners and judges, it might not impress academics as much as an article that is "the first" of its kind. Chief Justice Roberts has bemoaned this tendency:

> Pick up a copy of any law review that you see and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar.[31]

A piece on the influence of Immanual Kant on evidentiary approaches in 18th-century Bulgaria would surely also be labeled as the first article on the subject. (As it happens, the first such article was penned by Orin Kerr after the Chief Justice made that statement, and although it asserts that it "fills that gap" it does not explicitly assert that it is "the first."[32]) Authors surely mean declarations of primacy to be self-laudatory claims of a paper's worth and academics value pieces that change the paradigm, not restate existing doctrine.

For aspiring authors, I advise against announcing yourself as "the first," despite it being in vogue. The pronouncement can come across as needlessly and unintentionally pretentious. Well-known authors like Richard Posner and Cass Sunstein do appear as authors of papers claiming to be the first, but only once each, despite their many path-breaking contributions.[33] None of Christoph Engel's pieces in the database have made this claim.

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31 Chief Justice of the United States John G. Roberts, Jr., Interview at Fourth Circuit Court of Appeals Annual Conference, available at www.c-span.org/video/?300203-1/conversation-chief-justice-roberts at approx. 30:40.

32 Orin S. Kerr, *The Influence of Immanuel Kant on Evidentiary Approaches in 18th–Century Bulgaria*, 18 Green Bag 2d 251 (2015).

33 Oddly, both are in the *Stanford Law Review*. Richard Posner, *An Economic Approach to the Law of Evidence*, 51 Stan. L. Rev. (1999); Cass R. Sunstein, Daniel Kahneman, David Schkade, Ilana Ritov, *Predictably Incoherent Judgments*, 54 Stan. L. Rev. 1153 (2002). Sadly, I confess one of my own pieces appears. Susan D. Franck, Anne van

Given how specific assertions of primacy typically are, they also convey no useful information about the article. All authors are trying to write something that adds to the literature. Many of those claiming primacy seem to understand that their claim does not truly signal a path-breaking enterprise. Many add the caveat that their piece is "the first of which we are aware." Even the assertion that one's piece is the "first comprehensive" analysis is actually an admission that much has come before on the same topic. Better that you write "the last" article on a subject. Publish the piece that blankets the field, answers all questions, and leaves nothing more to be said. That would be a real triumph.

With that said and my hat off to Christoph Engel – a true first – this is the "last" article about the "the first article."

Aaken, James Freda, Chris Guthrie, Jeffrey J. Rachlinski, *Inside the Arbitrator's Mind*, 66 Emory L.J. 1115 (2017).