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Citing Jorge Luis Borges

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ABSTRACT

The works and ideas of Jorge Luis Borges have had a major impact on literature, movies, art, philosophy, and pop culture. His influence in these areas has been documented and studied. To date, however, there has been no significant effort to catalog or discuss the impact Borges has had on legal scholarship. The impact is significant. Hundreds of law journal articles, essays, and book reviews reference Borges and his work. For instance, authors have used Borges stories as a lens through which to analyze legal doctrines and developments. Others have quoted Borges to help convey particular ideas or principles. This paper aims to identify all references to Borges and his work in the legal scholarly literature, and to analyze the ways authors rely on Borges to determine the nature and extent of Borges's influence on legal scholarship. My aim is primarily to evaluate the scholarly treatment as a whole, rather than focus on individual cases. As such, I have attempted to compile a comprehensive list of Borges references in the legal scholarship to date. If I have omitted any scholarly works that should be included, please let me know and I will happily add them.

KEYWORDS

law and literature, law and humanities, latin america, latin american literature, humanities

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I. Introduction

In 2005, the Texas Wesleyan Law Review[1] held a symposium on the intersection between law and the fictional universe of *Harry Potter*.[2] A dozen legal scholars contributed essays on topics like "the limitations of law and legal institutions as depicted in the *Harry Potter* narratives, the legal "failings" of the Ministry of Magic, and the "arbitrariness contrary to the rule of law" inherent in "the operation of the legal system [in the *Harry Potter* universe] through the lens of the 'Unforgivable curses'."[3] This was not the first attempt at incorporating J.K. Rowling's work into the legal scholarship, nor was it the last.[4]

Nor was this blending of literature and legal scholarship unique to *Harry Potter*. Numerous authors and their works have shown up in law journal articles. These include, for instance, Jane Austen, Charlotte Brontë, Miguel de Cervantes, Fyodor Dostoevsky, Herman Melville, William Shakespeare, Leo Tolstoy, Mark Twain, and Virginia Woolf.[5] To this list we can add the name of Latin America's most influential author, Jorge Luis Borges, who has been cited in hundreds of law review articles, essays, and book reviews.[6] Borges was an Argentine poet and short story writer who died in 1986, and is widely considered one of the most important writers of the twentieth century.[7] But while his influence in the legal scholarship—

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1 The Texas Wesleyan University School of Law was acquired by Texas A&M University on August 12, 2013. Press Release, *Acquisition by Texas A&M University*, Texas A&M University, https://law.tamu.edu/about-us/acquisition-by-tamu. At that time, the Texas Wesleyan Law Review became the Texas A&M Law Review.

2 *See generally Harry Potter and the Law*, 12 Tex. Wesleyan L. Rev. 427 (2005).

3 *Id.* at 430.

4 *See, e.g.*, Benjamin H. Barton, *Harry Potter and the Half-Crazed Bureaucracy*, 104 Mich. L. Rev. 1523 (2006); Elizabeth Kent & Susan Hippensteele, *The Bill of Rights, Mediation, and Harry Potter*, August 2008 Haw. B.J. 4 (2008); William P. MacNeil, *"Kidlit" As "Law-and-Lit": Harry Potter and the Scales of Justice*, 14 Law & Literature 545 (2002); Babak Zarin, *In the Restricted Section: Harry Potter and Unauthorized Sagas*, 9 Elon L. Rev. 459 (2017); Susan Hall, *Harry Potter and the Rule of Law: The Central Weakness of Legal Concepts in the Wizard World*, *in* Reading Harry Potter: Critical Essays 11, 147–62 (Giselle Liza Anatol ed., 2003); Paul R. Joseph & Lynn E. Wolf, *The Law in Harry Potter: A System Not Even a Muggle Could Love*, 34 U. Tol. L. Rev. 193 (2003).

5 George Anastaplo, *Law & Literature and the Austen-Dostoyevsky Axis: Explorations*, 46 S.D. L. Rev. 712 (2001); Rodger Citron, *Herman Melville's Billy Budd: Why This Classic Law and Literature Novel Endures and Is Still Relevant Today*, 36 Touro L. Rev. 17 (2020); Michael Newcity, *Why Is There No Russian Atticus Finch? Or Even A Russian Rumpole?*, 12 Tex. Wesleyan L. Rev. 271 (2005); Margaret Valentine Turano, *Jane Austen, Charlotte Bronte, and the Marital Property Law*, 21 Harv. Women's L.J. 179 (1998); H. Parkman Biggs, *Jousting at Windmills: Cervantes and the Quixotic Fight for Authorial Control*, 22 Marq. Intell. Prop. L. Rev. 213 (2018); Daniel J. Kornstein, *Mark Twain's Evidence: The Never-Ending Riverboat Debate*, 72 Tenn. L. Rev. 1 (2004); George Anastaplo, *Law & Literature and Shakespeare: Explorations*, 26 Okla. City U. L. Rev. 1 (2001).

6 *See infra* Section III.

7 *See* Jane Ciabattari, *Is Borges the 20th Century's Most Important Writer?*, BBC (Sept. 2, 2014), http://www.bbc.com/culture/story/20140902-the-20th-centurys-best-writer ("Today one could consider Borges the most important writer of the 20th Century." [quoting Suzanne Jill Levine, translator and editor of the Penguin Classics five-volume

the topic of this article—has not yet been examined seriously, his influence in other areas like literature, philosophy, and popular culture has been widely recognized, and in some cases studied.

Indeed, Borges is revered by a growing and diverse range of individuals, from academics and literary titans to heads of church and state.[8] Almost four decades after his death, Borges's fiction and poetry continue to be published, and he continues to be praised and discussed, in prestigious literary forums.[9] Indeed, like Kafka, Orwell, and Shakespeare, Borges's surname has become an adjective. According to Merriam-Webster's dictionary, "Borgesian" (or "Borgean"[10]) means "of, relating to, or suggestive of Jorge Luis Borges or his writings."[11] The term's popularity appears to be growing.[12]

To name Borges among the most important writers of the 20th Century is no so much an opinion as a universally-accepted truism, at least among the literary

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Borges series]); *Jorge Luis Borges said that football was 'stupid'*, NoticiasFinancieras (June 14, 2018), Westlaw 2018 WLNR 18359523 (noting that Borges was "one of the most important writers of the 20th century"); David Berry, *Art can be a beacon of hope or an explanation of the world*, Nat'l Post (Dec. 2, 2016), https://nationalpost.com/entertainment/art-can-be-a-beacon-of-hope-or-explanation-of-the-world-but-whether-it-can-shape-it-in-dark-times-is-uncertain (noting Borges was "unquestionably the most important Argentinian writer, if not one of the finest writers in the Spanish-language); *Culture of prevention lost in haze of Mexico fires*, Dallas Morning News (May 17, 2003), Westlaw 2003 WLNR 16519446 (noting Borges was "one of the most important short story writers and essayists of the last century").

8 Wes Henricksen, *Why Jorge Luis Borges Still Matters*, 6 Middle Atlantic Rev. Lat. Am. Stud. 128, 128–38 (2022), http://doi.org/10.23870/marlas.386.

9 Jorge Luis Borges, *The Other Tiger*, Atlantic, January 31, 2021 (illustrations by Miki Lowe), https://www.theatlantic.com/books/archive/2021/01/poem-jorge-luis-borges-other-tiger/617885; Nina Sharma, *Jorge Luis Borges and Nancy Meyers Pitch a Movie (Because, Admit It, You've Watched Everything Else)*, New Yorker, May 11, 2021, https://www.newyorker.com/humor/daily-shouts/jorge-luis-borges-and-nancy-meyers-pitch-a-movie-because-admit-it-youve-watched-everything-else; *Jorge Luis Borges, Master of the Mystical*, N.Y. Times, June 14, 2016, https://www.nytimes.com/interactive/projects/cp/obituaries/archives/jorge-luis-borges; Michael Greenberg, *A Road Trip With One of the 20th Century's Greatest Writers*, N.Y. Times, Aug. 18, 2020, https://www.nytimes.com/2020/08/18/books/review/jay-parini-borges-and-me.html.

10 Marco Jimenez, *Towards A Borgean Theory of Constitutional Interpretation*, 40 Pepp. L. Rev. 1 (2012).

11 *Borgesian*, Merriam-Webster Dictionary, accessed Feb. 1, 2024, https://www.merriam-webster.com/dictionary/Borgesian.

12 *See, e.g.*, Judith Shulevitz, *Ruth Ozeki's Borgesian, Zen Buddhist Parable of Consumerism*, N.Y. Times, Sept. 19, 2021, https://www.nytimes.com/2021/09/19/books/review/the-book-of-form-and-emptiness-ruth-ozeki.html; Thom Dunn, *Chinese woman spent a decade building Borgesian fake Russian history on Wikipedia*, BoingBoing (July 7, 2022), https://boingboing.net/2022/07/07/chinese-woman-spent-a-decade-building-borgesian-fake-russian-history-on-wikipedia.html; Lloyd Davies, *All that is Solid Melts into Air: Borgesian Variations on Translation, Fidelity, Citation and Plagiarism*, 39 Romance Stud. 138 (2021), https://www.tandfonline.com/doi/abs/10.1080/02639904.2021.1950359; Ilan Stavans & Verónica Albin, Knowledge and Censorship 73 (2008) (noting that Scottish lexicographer Sir James Murray is "a Borgesian character"); State v. Hurd, 734 N.E.2d 365, 366–67 (Ohio 2000) (noting that "it may seem that we are mired in a Borgesian Labyrinth . . . where there is a wrongdoing and yet no way to punish the perpetrator.").

establishment.[13] His eminence in the canon stems not only from the merits of his work, but also from the influence his work has had on art, culture, and society. The influence is significant.[14] One area where his influence is evident is, predictably, modern literature. He is credited as "the father of the Latin American novel" who "created a new literary continent."[15] His work is widely-acknowledge as having inspired, if not given birth to, the Latin American literary "Boom" and the magical realism movement.[16] Indeed, the Boom, which launched a group of young Latin American novelists onto the world stage, is widely credited with originating in Borges's fiction. Borges, one author noted, was the primary reason "Latin American literature emerged from the academic realm into the realm of generally educated readers."[17]

This worship of Borges is not merely popular among critics and readers; it is engaged in by many of the twentieth century's leading literary figures, such as Gabriel García Márquez, Mario Vargas Llosa, Isabel Allende, Carlos Fuentes, Julio Cortázar, Roberto Bolaño, and Augusto Monterroso.[18] Borges's literary influence extends far beyond Latin America.[19] His ideas and plots have been used by writers

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13 *See* Ciabattari, *supra* note 7 (remarking in the title that Borges might be "the 20th Century's Most Important Writer"); Jorge Luis Borges, Jorge Luis Borges: Conversations book jacket (Richard Burgin ed., 1998) (declaring Borges "one of the indisputably great writers of the twentieth century").

14 *See, e.g.*, Noam Cohen, *Borges and the Foreseeable Future*, N.Y. Times (Jan. 6, 2008), https://www.nytimes.com/2008/01/06/books/06cohenintro.html; Hector Tobar, *The Borges boom: he may be dead, but his legacy remains strong,* L.A. Times *(Aug. 1, 2013),* https://www.latimes.com/books/jacketcopy/la-et-jc-jorge-luis-borges-blindess-and-books-20130731-story.html; Valeria Sabater, *Jorge Luis Borges: One of the Most Influential Writers of All Time*, Exploring Your Mind (Jan. 6, 2022), https://exploringyourmind.com/jorge-luis-borges-one-of-the-most-influential-writers-of-all-time/.

15 Ciabattari, *supra* note 7.

16 Henricksen, *supra* note 8, at 134; *see also* Lanin A. Gyurko, *The Metaphysical World of Borges and Its Impact on the Novelists of the Boom Generation*, 14 Ibero Amerikanisches Archiv 215 (1988).

17 Emir Rodriguez Monegal, *Jorge Luis Borges: Argentine Author*, Encyclopedia Britannica (Aug. 20, 2021), https://www.britannica.com/biography/Jorge-Luis-Borges.

18 *See* Norman Thomas di Giovanni, The Lesson of the Master: On Borges and His Work 164 (2003). Julio Cortázar, in a 1977 interview on the Spanish program "A Fondo" referred repeatedly to Borges as "the great" or "the master" of his literary generation. Editrama, Julio Cortázar "In Depth" (1977), May 31, 2020, YouTube.com, https://www.youtube.com/watch?v=ppon2ldpJwU. Roberto Bolaño referred to Borges reverentially in interviews, clumping together three "brilliant prose writers," Cervantes, Quevedo, and Borges, the former two dating to the sixteenth and early seventeenth centuries, and Borges to the twentieth century. ThePostArchive, Roberto Bolaño Interview, Feb. 12, 2020, YouTube.com, https://www.youtube.com/watch?v=B0PMd4f80iQ. Gabriel García Márquez said that in his travel suitcase he carries Borges's complete works. Gabriel García Márquez & Mario Vargas Llosa, La novela en América Latina: Dialogo 36, 40 (Milla Batres, 1969). The Mexican novelist Carlos Fuentes said that without Borges's prose "there simply would not be a modern Spanish-American novel," and that Borges "constitutes a new Latin-American language." Carlos Fuentes, La Nueva Novela Hispanoamericana 26 (Joaquín Mortiz, 1969).

19 *See Rebirth of the true Georgie*, Guardian (Jan. 15, 1999), https://www.theguardian.com/books/1999/jan/16/jorgeluisborges (noting that John Barth, John Updike, Angela

in languages other than Spanish to create two of the most-read books in history. These are *The Alchemist* by Paulo Coelho, which has sold over 150 million copies, and *The Name of the Rose* by Umberto Eco, which has sold over 50 million.[20]

Borges has also had a significant impact on film, something studied and discussed in academic papers, doctorate dissertations, blogs, books, and websites.[21] At present, a professor of literature is writing a scholarly book on Borges's influence on Hispanic film.[22] Borges's stories and screenplays have served as the basis for over 30 movies[23] and he is credited as a writer on more than sixty films.[24] Recent Borges-inspired films include *Inception* (2010), *The Matrix* movie franchise (1999, 2003, 2021),[25] and the award-winning Argentine film *Extraordinary Stories* (2008).[26] There are several recent examples of additional movies with scenes or plotlines that draw on Borges and his fiction. For instance, in a scene in *Spider-Man: Across the Spider-Verse* (2023)—which draws heavily on the Borges story "The Aleph"—one character, Miguel O'Hara, shows another, Miles Morales, a pinpoint of light

Carter, Salman Rushdie, and others name Borges as a major influence on their writing); Allen B. Ruch, *Borges as an Influence*, Shipwreck Library, accessed Feb. 1, 2024, https://shipwrecklibrary.com/borges/borges-influence/ ("The work of Jorge Luis Borges has had a profound impact on modern [world] literature.").

20 *The Alchemist* has sold over 150 million copies. *See* Ezekiel Boone, *Nine books that sold more than 100 million copies and how they compare to my book*, Penguin Random House Canada, accessed Feb. 1, 2024, https://www.penguinrandomhouse.ca/532/nine-books-sold-more-100-million-copies-and-how-they-compare-my-book. *The Name of the Rose* has sold over 50 million copies. Gregory McNamee, *Umberto Eco's The Name of the Rose Turns 40*, Kirkus (Jan. 7, 2020), https://www.kirkusreviews.com/news-and-features/articles/umberto-ecos-name-rose-turns-40/.

21 *See* Héctor J. Freire, *Borges y el cine*, 57 INTI: Revista de literatura hispánica 153 (2003) (academic paper); Zavaleta Balarezo, *Jorge Borges y el cine: imaginería visual y estrategia creativa*, 39 Mester 111 (2010) (academic paper); David Oubina, *El espectador corto de vista: Borges y el cine*, 24 Variaciones Borges 133 (2007) (academic paper); Philip Swanson, *Borges and Popular Culture*, 19 Hispanic Rsch. J. 250 (2018), https://doi.org/10.1080/14682737.2018.1467855 (academic paper); Monica Sumihar Simorangkir, Borges in Hollywood: From Art House to Blockbuster Cinema (Oct. 27, 2017) (Ph.D. dissertation, Georgetown University), https://repository.library.georgetown.edu/handle/10822/1047823 (doctoral dissertation); Edgardo Cozarinsky, Borges en/y/sobre cine (Editorial Fundamentos, 1981) (book); Allen B. Ruch, *Borges and Film*, Shipwreck Library, accessed Feb. 1, 2024, http://shipwrecklibrary.com/borges/borges-films (website); Borges in/and/on Film, accessed Feb. 2, 2024, https://www.complete-review.com/reviews/borgesjl/bonfilm.htm (website based on Edgardo Cozarinsky's book).

22 *See* personal correspondence on file with the author.

23 Ruch, *supra* note 21.

24 Jorge Luis Borges, IMDB, accessed Feb. 1, 2024, https://www.imdb.com/name/nm0096566.

25 *See* Jaime Perales Contreras, *Inception and Jorge Luis Borges*, 62 Américas 41 (2010) (noting that both *Inception* and *The Matrix* are strongly influenced by Borges); Brian Durán Fuentes, *The Penrose Stairway: Jorge Luis Borges at the Center of Christopher Nolan's Inception*, 2 Cuaderna Vía 11 (2016) (same).

26 *See* Robert Koehler, *Extraordinary Stories*, Variety, May 6, 2008, https://variety.com/2008/film/reviews/extraordinary-stories-1200522660/ (noting that Borges and his collaborator, Adolfo Bioy Casares, were the film's "strongest" influences).

that contains "everything" in all universes of the spiderman multiverse.[27] In the film *Interstellar* (2014), the main character enters the fifth dimension—by way of a black hole—and finds himself surrounded by seemingly infinitely repeating patters along the walls, many of which are bookshelves, strongly reminiscent of Borges's infinite library in his story "The Library of Babel."[28] This reference to Borges is not surprising, given that the film's director, Christopher Nolan, reveres Borges and has used Borges's work as inspiration on numerous occasions.[29] Another recent example is a scene in the award-winning film *Birdman* (2014), which shows one of the leading characters reading *Labyrinths*, a short story collection by Borges.[30]

In addition to literature and film, Borges has also had a significant impact on philosophy, and is indeed sometimes credited with having greatly "inspired professional philosophers from both the continental and analytic traditions."[31] Borges has also had a strong influence within academia, and is one of the most widely read and studied writers in literature, creative writing, and Latin American studies programs.[32] There are today Borges collections at several American universities, including Michigan State, Texas, and Virginia, and the University of Pittsburgh houses the Borges Center, a vast repository of Borges manuscripts, criticism, and scholarship, as well as an academic journal dedicated to scholarship on Borges and his work.[33]

The influence Borges has exerted on literature, film, and academia—which has occurred despite an effort to suppress a significant portion of Borges's work[34]—

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27 Spider-Man: Across the Spider-Verse (Columbia Pictures 2023).

28 *Compare* Interstellar (Paramount Pictures 2014) with Jorge Luis Borges, *The Library of Babel*, *in* Ficciones 79 (A. Kerrigan ed. & trans. 1962) (1941).

29 *See, e.g.*, Swapnil Dhruv Bose, *Christopher Nolan named his favourite book of all time*, Far Out (March 13, 2022), https://faroutmagazine.co.uk/christopher-nolan-favourite-book-all-time/ (Nolan said the one book he'd take to a deserted island would be Borges's collected fiction and nonfiction works, and that, "[i]n a way, all stories are contained within his [Borges's] stories").

30 Birdman (Regency Enterprises 2014).

31 University of California Television, Jorge Luis Borges on War, February 13, 2016, YouTube.com, https://www.youtube.com/watch?v=5P1-q7hokE8.

32 *See* The eccentric Borges: Two UCL analyses, University College London, Dec. 1, 2006, https://www.ucl.ac.uk/news/2006/dec/eccentric-borges-two-ucl-analyses ("He has been identified as a key figure in post-modern literature, paving the way for a generation of writers to explore new ways of telling stories and thinking about the world. That he should be the subject of academics' attention is not surprising….").

33 Jorge Luis Borges: An Inventory of His Collection at the Harry Ransom Center, Univ. of Texas, accessed Feb. 2, 2024, https://norman.hrc.utexas.edu/fasearch/findingAid.cfm?eadid=00629; Donald Yates collection on Jorge Luis Borges, Michigan State Univ., accessed Feb. 2, 2024, https://findingaids.lib.msu.edu/repositories/4/resources/6429; Jorge Luis Borges Collection, Univ. of Virginia, accessed Feb. 2, 2024, https://small.library.virginia.edu/collections/featured/163-2/; Borges Center, Univ. of Pittsburgh, accessed Feb. 2, 2024, https://www.borges.pitt.edu/.

34 *See generally* Wes Henricksen, *Silencing Jorge Luis Borges: The Wrongful Suppression of the di Giovanni Translations*, 48 Vermont L. Rev. 208, 223–35 (2024) (discussing the possible copyright infringement resulting from the suppression of the di Giovanni translations of the works of Borges); Wes Henricksen, *Borges's Most Problematic Translator*, 56 Variaciones Borges 159, 166 n.3 (2023) (discussing the suppression of the di Giovanni translations).

has been widely observed and studied by others.[35] But Borges has also exerted a substantial impact on the law and legal scholarship. Unlike Borges's influence in the other areas discussed above, his impact on the law and legal scholarship has remained, to date, almost totally unexamined. I will leave Borges's influence on law in general for another day.[36] In this article, I aim to catalogue and examine Borges's influence on the legal scholarly literature. I approach this task from two angles. First, I have compiled an index of legal scholarly references to Borges and his work.[37] And second, I analyze and draw conclusions based on the data compiled in the index.[38]

This article was inspired by my repeated encounters with references to Borges in the legal academic literature over the years.[39] Because I am an admirer of the author, these references piqued my interest. They also raised several questions. How many legal scholarly papers cite to Borges? What is the nature of these references? Are they typically mere passing mentions, or are these references more substantive in nature? Are most citations to Borges made in the narrow field of law and literature, or do they occur in other doctrinal areas, such as constitutional law, civil procedure, intellectual property, and torts? Has anyone compiled all such references or analyzed them empirically? What would such an analysis entail? What would it reveal? In short, what influence has Borges had on the legal scholarship to date, and what conclusions can we draw from it?

In this article, I attempt to answer these questions. My method for completing this task is to locate, to the extent possible, all references to Borges in the legal

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35 *See, e.g.*, Hector Tobar, *The Borges boom: he may be dead, but his legacy remains strong*, L.A. Times (Aug. 1, 2013), https://www.latimes.com/books/jacketcopy/la-et-jc-jorge-luis-borges-blindess-and-books-20130731-story.html; Katy Waldman, *Jorge Luis Borges' 'Library of Babel' Is Now a Real Website. Borges Would Be Alarmed*, Slate (Apr. 30, 2015), https://slate.com/culture/2015/04/jonathan-basile-brings-borges-library-of-babel-to-life-with-an-eerie-gibberish-filled-web-site.html; sources cited *supra*, in notes 18, 19 & 21.

36 For example, Borges is quoted in numerous U.S. Supreme Court and court of appeals briefs. *See, e.g.*, Brief, Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC, U.S. Supreme Court, No. 17-571, 2018 WL 4293383 (Sept. 4, 2018); Brief, Sebelius v. Hobby Lobby Stores, Inc., U.S. Supreme Court, Nos. 13-354 & 13-356, 2014 WL 411293 (Jan. 18, 2014); Brief, NML Capital, Ltd. v. Republic of Argentina, U.S. Court of Appeals for the Second Circuit, 2013 WL 388620 (2d Cir., Jan. 25, 2013). See also New Jersey Div. of Child Prot. & Permanency v. J.E.M., No. A-1728-20, 2021 WL 5313109, at *2 n.2 (N.J. Super. Ct. App. Div. Nov. 16, 2021) (holding "[w]e assume the judge was not channeling the fictional Pierre Menard" and comparing a judge's cribbing large portions of a court filing in its opinion and order with how in Borges's story, "Pierre Menard, Author of the Quixote," a writer copies an earlier book word for word and passes it off as his own work); GMF ELCM Fund L.P. v. ELCM HCRE GP LLC, No. CV 2018-0840-SG, 2019 WL 3713844, at *1 (Del. Ch. Aug. 7, 2019) ("The writer Jorge Luis Borges opined that reading is a more intellectual activity than writing. Readers attempting to understand the history of the progress—if progress is the appropriate word—of this litigation may come to the same conclusion.").

37 *See infra* Part III.

38 *See infra* Part II.

39 *See, e.g.*, Jenny S. Martinez, *Human Rights and History*, 126 Harv. L. Rev. F. 221, 237 (2013) (discussing Borges as a lens used by Yale Law professor Samuel Moyn in his book, *The Last Utopia* (2010)); Mala Chatterjee, *Understanding Intellectual Property: Expression, Function, and Individuation*, 70 J. Copyright Soc'y U.S.A. 57, 73–74 (2023) (discussing a Borges story while framing an intellectual property issue).

scholarly literature, compile them into one list, review each source, and make observations based on what I find. Part II of this article contains a brief discussion and analysis of my findings. In it, I discuss trends I observed and offer some tentative conclusions. Part III contains the comprehensive index of law journal articles, essays, books, and book reviews that reference Borges or his work. Part IV concludes.

II. Observations Based on the Data

The first citation to Borges in the American legal scholarly literature appeared in Volume 43 of the Indiana Law Journal, in a book review by Gary S. Goodpaster, an Assistant Professor of Law at the University of Iowa, in the fall of 1967.[40] Professor Goodpaster wrote this book review at the beginning of what would be a long and distinguished career in the legal academy.[41] Notably, this first citation was not a *mere* citation, but a detailed discussion of a major Borges story, "The Library of Babel," in the body text of the review. Goodpaster gives a detailed description of the story in the second paragraph of the book review, and uses it as an interpretative device for demonstrating how the book at issue contains a voluminous "universe" of "encyclopedic" work.[42] Thus, Borges's entrance into American legal scholarship was rather abrupt and, from the outset, consequential. Even in this first scholarly mention, the author did not so much *refer to* Borges, as he *relied on* Borges to formulate the thesis he put forth in the book review.[43]

Goodpaster's Borges discussion did not open a floodgate of citations. In fact, more than ten years would pass until another legal scholar cited Borges.[44] The index in Section III of this article, which lists citations to all legal scholarly references to Borges, shows how slowly Borges and his work began to be cited. In the 1960s, there was only the Goodpaster citation.[45] In the 1970s, there was likewise only one citation.[46] It was not until the 1980s that Borges began to be cited regularly. In fact, that decade saw the first two consecutive years in which Borges was cited (1980–1981), first year in which he was cited by multiple authors (1985—three authors), and the first year Borges was cited in more than five separate articles

40 Gary S. Goodpaster, *Social Dimensions of Law and Justice by Julius Stone*, 43 Ind. L.J. 167 (1967).

41 After graduating from law school in 1965, Professor Goodpaster clerked for an appellate judge and then joined the law faculty at the University of Iowa. He published the book review in which he cited Borges less than a year later. In 1971, he joined the law faculty at the University of California, Davis, where he worked until his death in 2012. *King Hall Mourns Professor Emeritus Gary Goodpaster*, University of California, Davis, Dec. 5, 2012, https://law.ucdavis.edu/news/king-hall-mourns-professor-emeritus-gary-goodpaster; Gary Goodpaster, N.Y.U. Review of Law & Social Change, accessed Feb. 2, 2024, https://socialchangenyu.com/people/goodpaster-gary/.

42 Gary S. Goodpaster, *Social Dimensions of Law and Justice by Julius Stone*, 43 Ind. L.J. 167, 167–68 (1967).

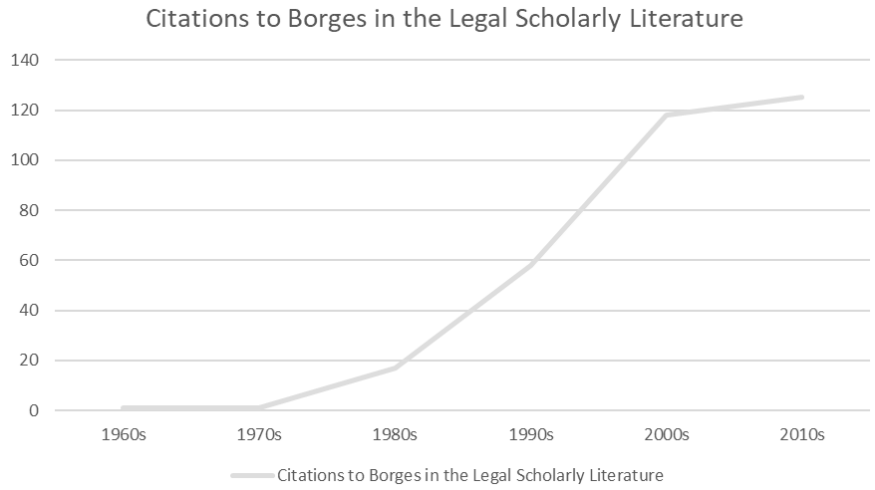
43 *Id.*

44 *See infra* Section III.

45 *Id.*

46 *Id.*

(1988).[47] Moreover, 1984 was the last year in which there was no citation to Borges, and 1989 was the last year in which there was only a single citation to Borges.[48] The number of citations to Borges has ballooned over the past couple decades, growing to more than 120 citations in the 2010s. The following chart shows the growth of citations to Borges over time.



Not all citations are equal, of course. There is a significant qualitative difference between an article that contains a single citation to Borges in a footnote, on one hand, and an article that discusses Borges at length throughout the work.[49] For this reason, the index in Section III assigns a numerical "depth" score to each citation, indicating the level of depth with which Borges is discussed in the publication. A "1" indicates Borges is mentioned or cited only in one or more footnotes. A "2" indicates Borges is mentioned or cited in the body or title of the article. A "3" indicates the publication contains at least a full paragraph discussing Borges or his work. And a "4" indicates a lengthy discussion of Borges or his work in at least a substantial portion of the publication, if not throughout the whole of it.

This numbering system has some obvious limitations and flaws, of course. Because there are only four categories, there is a wide range of depth of treatment within each category. For instance, an article might cite Borges only in footnotes, but contain several citations to Borges, while another might mention Borges only once in the body text, merely as a passing and mostly irrelevant reference. Yet, the former would be designated only a "1," while the latter would receive a "higher" designation of "2." Nevertheless, these numerical designations generally do reflect the relative depth of treatment the respective authors give to Borges in their work.

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47 *Id.*

48 *Id.*

49 *Compare, e.g.*, Steven R. Shapiro, *Ideological Exclusions: Closing the Border to Political Dissidents*, 100 Harv. L. Rev. 930 (1987) (single citation), *with* Shulamit Almog, *From Sterne and Borges to Lost Storytellers: Cyberspace, Narrative, and Law*, 13 Fordham Intell. Prop. Media & Ent. L.J. 1 (2002) (discussing Borges throughout the article).

One observation that can be made from an overview of the index is that, with few exceptions, there are almost no repeat-citers.[50] That is, the growth in the number and depth of citations to Borges is not a matter of a few Borges fans repeatedly inserting Borges references. Rather, more and more legal scholars are citing Borges and his work.[51] The number of citations rocketed up from the 80s to the 90s, and again from the 90s to the 2000s.[52] The rise was more modest moving from the 2000s to the 2010s.[53]

So, what can be made of these more than 300 citations? There really is an infinite number of interpretations. The aim of this article is not to focus on any particular analysis, which inserts subjective judgement, not only in the selection of the topic but in the interpretation of it, but rather to present the full data and let readers draw their own conclusions. Nevertheless, I will make a few brief remarks on some of the trends I observed while compiling the index.

A. Prestige and Impact

Borges has been cited in many of the most prestigious law reviews, as determined by current leading rankings,[54] including the Yale Law Journal, Harvard Law Review, Stanford Law Review, and others.[55] To date, Borges has been cited in three

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50 One exception is Paul Campos, who cited to Borges in five articles between 1992 and 1996. Paul F. Campos, *A Text Is Just a Text*, 19 Harv. J.L. & Pub. Pol'y 327 (1996); Paul F. Campos, *The Chaotic Pseudotext*, 94 Mich. L. Rev. 2178 (1996); Paul Campos, *Silence and the Word*, 64 U. Colo. L. Rev. 1139 (1993); Paul F. Campos, *Advocacy and Scholarship*, 81 Cal. L. Rev. 817 (1993); Paul Campos, *Against Constitutional Theory*, 4 Yale J.L. & Human. 279 (1992).

51 *See infra* Section III.

52 *Id.*

53 *Id.*

54 *See, e.g.*, W&L Law Journal Rankings, Washington and Lee Law School, accessed Feb. 2, 2024, https://managementtools4.wlu.edu/LawJournals/; Paul Caron, 2023 Meta-Ranking Of Flagship U.S. Law Reviews, TypePad, July 26, 2023, https://taxprof.typepad.com/taxprof_blog/2022/09/2022-meta-ranking-of-flagship-us-law-reviews.html; Bryce Clayton Newell, Law Journal Meta-Ranking, 2023 Edition, University of Oregon, accessed Feb. 2, 2024, https://blogs.uoregon.edu/bcnewell/meta-ranking/.

55 Mark A. Lemley & Jacob S. Sherkow, *The Antibody Patent Paradox*, 132 Yale L.J. 994 (2023); Daniel J. Solove, *Fictions About Fictions: Constitutional Law As Fiction: Narrative in the Rhetoric of Authority*, 105 Yale L.J. 1439 (1996); Gretchen A. Craft, *The Persistence of Dread in Law and Literature*, 102 Yale L.J. 521 (1992); Madhav Khosla, *Is A Science of Comparative Constitutionalism Possible? How Constitutional Rights Matter.*, 135 Harv. L. Rev. 2110 (2022); Barton Beebe & Jeanne C. Fromer, *Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion*, 131 Harv. L. Rev. 945 (2018); Carol G.S. Tan, *How A "Lawless" China Made Modern America: An Epic Told in Orientalism Legal Orientalism: China, the United States and Modern Law. by Teemu Ruskola*, 128 Harv. L. Rev. 1677 (2015); Jenny S. Martinez, *Human Rights and History*, 126 Harv. L. Rev. F. 221 (2013); Steven R. Shapiro, *Ideological Exclusions: Closing the Border to Political Dissidents*, 100 Harv. L. Rev. 930 (1987); Mark S. Nadel, *Customized News Services and Extremist Enclaves in Republic.com*, 54 Stan. L. Rev. 831 (2002); Teemu Ruskola, *Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in A Chinese Perspective*, 52 Stan. L. Rev. 1599 (2000); Lawrence Lessig, *Understanding Changed Readings: Fidelity and Theory*, 47 Stan. L. Rev. 395 (1995); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581 (1990); Susan Mann, *The Universe and the Library: A Critique of James*

Yale Law Journal articles, five Harvard Law Review articles, and five Stanford Law Review articles.[56] Borges has also been cited in numerous specialty journals at top law schools, such as the Yale Journal of Law and the Humanities, the Columbia Journal of Law and the Arts, the Harvard Human Rights Journal, and the Harvard Journal of Law and Public Policy.[57]

Moreover, scholars who have cited to Borges count among their numbers some of the most influential and eminent scholars in the legal academy. These include, for instance, Lawrence Lessig, who cited to Borges in a 1995 Stanford Law Review article.[58] Lessig was called by the New Yorker "the most important thinker on intellectual property in the Internet era," and has been included on numerous most-cited-legal-scholars lists.[59] His accolades are many, and include authoring the third most cited law review article in 1995, and co-authored the second most cited article in 1994.[60] Another leading legal scholar who has cited Borges is Douglas Kysar. He cited to Borges in his 2003 article in Ecology Law Quarterly.[61] Kysar, like Lessig, has been included on numerous lists as one of the most-cited scholars in the modern era.[62] Yet another eminent legal scholar who has cited to Borges is Mark Lemley. He cited to Borges in a Yale Law Journal article he co-authored in 2023.[63] Lemley was recently acknowledged to be the eighth most-cited legal scholar of all time.[64]

Boyd White As Writer and Reader, 41 Stan. L. Rev. 959 (1989).

56 *See* articles cited *supra*, in note 55.

57 Paulo Barrozo, *Law in Time: Legal Theory and Legal History*, 31 Yale J.L. & Human. 316 (2021); Peter Brooks, *"Inevitable Discovery"- Law, Narrative, Retrospectivity*, 15 Yale J.L. & Human. 71 (2003); Shoshana Felman, *A Ghost in the House of Justice: Death and the Language of the Law*, 13 Yale J.L. & Human. 241 (2001); Peter Brooks, *A Slightly Polemical Comment on Austin Sarat*, 10 Yale J.L. & Human. 409 (1998); Peter Brooks, *Storytelling Without Fear? Confession in Law & Literature*, 8 Yale J.L. & Human. 1 (1996); Paul Campos, *Against Constitutional Theory*, 4 Yale J.L. & Human. 279 (1992); Benjamin L. W. Sobel, *Artificial Intelligence's Fair Use Crisis*, 41 Colum. J.L. & Arts 45 (2017); Agnieszka Kurant, *Phantom Capital, Hybrid Authorship, and Collective Intelligence*, 39 Colum. J.L. & Arts 371 (2016); Michael J. Madison, *The Narratives of Cyberspace Law (or, Learning from Casablanca)*, 27 Colum. J.L. & Arts 249 (2004); Patricio Nazareno, *Impunity Reconsidered International Law, Domestic Politics, and the Pursuit of Justice*, 33 Harv. Hum. Rts. J. 173 (2020); Paul F. Campos, *A Text Is Just A Text*, 19 Harv. J.L. & Pub. Pol'y 327 (1996).

58 Lawrence Lessig, *Understanding Changed Readings: Fidelity and Theory*, 47 Stan. L. Rev. 395 (1995).

59 James Surowiecki, *Righting Copywrongs*, New Yorker, Jan. 21, 2002, at 27; Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U. Chi. L. Rev. 1595 (2021); Brian Leiter's Law School Rankings, Most Cited Law Professors, 2000-2007, Nov. 12, 2007, https://www.leiterrankings.com/faculty/2007faculty_impact_areas.shtml.

60 Fred R. Shapiro & Michelle Pearse, *The Most-Cited Law Review Articles of All Time*, 110 Mich. L. Rev. 1483, 1492 (2012). The articles were Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. Chi. L. Rev. 943 (1995), and Lawrence Lessig & Cass R. Sunstein, *The President and the Administration*, 94 Colum L. Rev. 1 (1994).

61 Douglas A. Kysar, *Some Realism About Environmental Skepticism: The Implications of Bjorn Lomborg's the Skeptical Environmentalist for Environmental Law and Policy*, 30 Ecology L.Q. 223 (2003).

62 *See* Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U. Chi. L. Rev. 1595 (2021).

63 Lemley & Sherkow, *supra* note 55.

64 Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U. Chi. L. Rev. 1595, 1602 (2021).

B. Depth and Frequency

As discussed earlier, not all citations to Borges are equal. While any article that cites to Borges is counted as one on the table above, which tabulates the total number of citations to Borges from the 1960s to present, this includes a diverse range of treatment of Borges and his work. The "depth" numerical score ascribed to each article helps give better context to how much treatment the author gives to Borges. Thus, an article designated a "3" means the article discusses Borges in at least one full paragraph within the work,[65] and a "4" means the article discusses Borges throughout at least a substantial portion of the work, if not throughout all of it.[66]

But while certainly a higher number on this scale indicates a greater importance of Borges to the work in which he is cited, this should not be confused to mean that the greater the number the greater the influence. Paradoxically, a lower number might actually indicate more deference. This is because while the earliest citations—from 1967 and 1979[67]—were both designated as "3," an increasing number of later citations received the designation of "1."[68] This can be interpreted in two ways. It could be seen as later authors giving less treatment to Borges because his ideas or work is of less direct importance to the article in which he is cited. Alternatively, it could be seen as giving greater deference to Borges in later citations because there is no longer any need to explain citing to him by including a discussion in the body text. When authors merely drop in a citation to a source, without addressing that source in the body text, the cited authority is understood to stand for the point made. Early citations to Borges explained why the author was citing to Borges. Increasingly, later authors merely cited to Borges without giving such explanation, taking for granted that readers would understand the weight of Borges's authority.

Moreover, Borges appears to be becoming more ever-present in society and the academic literature, such that citations to him no longer come from literary specialists who happen to appreciate his work, but increasingly from authors who might not be a particular fan of the author but have encountered a quote or point ascribed to Borges that works to support the assertion for which they are citing Borges.

C. Borgesian Themes

Perhaps the most interesting use of Borges in the legal academic literature, at least from the perspective of Borges scholars, is how authors use Borgesian themes, ideas, and plots to explore legal doctrines and trends. This blending of the fictional

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65 *See, e.g.*, F.E. Guerra-Pujol, *Gödel's Loophole*, 41 Cap. U. L. Rev. 637, 638–44 (2013) (using "the infinite library in Jorge Luis Borges's beautiful short story The Library of Babel" as a lens through which to explore and discuss the topic of the article).

66 *See, e.g.*, Rosa Vila, *Emma Zunz by Jorge Luis Borges: the Concept of Justice*, 4 Oñati Socio-legal Series 1232 (2014), http://ssrn.com/abstract=2519490 (exploring concepts of formal and informal justice through the plot and characters of the Borges story "Emma Zunz"); James Grimmelmann, *Information Policy for the Library of Babel*, 3 J. Bus. & Tech. L. 29 (2008) (positing an information policy for the fictional Library of Babel in the Borges story of the same name).

67 Maria José de Queiroz, *Perón e o Peronismo: uma Visão Literária*, 48 Revista Brasileira Estudos Politicos 85 (1979); Gary S. Goodpaster, *Social Dimensions of Law and Justice by Julius Stone*, 43 Ind. L.J. 167 (1967).

68 *See infra* Section III.

world of Borges with real world legal principles and theories has been accomplished in creative ways by numerous scholars.

For example, Professor Pedro Cabán Vales of the Interamerican University of Puerto Rico published an article in which he explored how the criminal law in place at the time Borges wrote the story *Emma Zunz*[69] might have influenced the story's plot.[70] In the story, which Borges wrote and published in the 1940s, but which took place in Buenos Aires in the 1920s, "the protagonist creates a story aimed at disguising her revenge as an act of self-defense."[71] Professor Cabán Valdes summarized his thesis as follows: "[t]his paper analyzes *Emma Zunz* and the applicable Argentine criminal law of the time in order to determine to what extent the legal texts may have influenced the writing of the short story."[72] Other legal scholars have used the Emma Zunz story to explore legal doctrines and theories.[73]

In a law student comment on the fair use doctrine under copyright law—how a copyrighted work may be used by another in a transformative way—Brockenbrough Lamb used a Borges story[74] as a device for explaining how the doctrine should, or at least could, be interpreted.[75] "In 1939," Brockenbrough wrote, "decades before . . . the Copyright Act, or the concept of transformative use existed, the Argentinian Jorge Luis Borges wrote the short story *Pierre Menard, Author of the Quixote*, which illustrated the relationship between author, reader, and text by focusing on the transformation that occurs through contextual reading."[76] The story's plot, and what makes it useful as a scholarly device for Brockenbrough, centers a fictional French writer, Pierre Menard, whose ambition is to rewrite the classic novel *Don Quixote* by Miguel de Cervantes word for word, not by copying it down or channeling Cervantes, but by writing it verbatim in his own original voice. In the story, Menard succeeds.[77] Literary critics are astonished by the new version, even though it is verbatim the old version, judging it vastly superior because of the context in which it was written.[78] Brockenbrough concludes that this story reveals "the surprising relationship between author, reader, and text that appropriation artists . . . seek to expose: that authors lose authority once the texts are on the page."[79]

In another article, this one published in the Pepperdine Law Review, Professor Marco Jimenez likewise used the Borges story *Pierre Menard, Author of the Quixote* as a lens for scholarly exploration, but Professor Jimenez did so in the

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69 Jorge Luis Borges, *Emma Zunz*, *in* Labyrinths: Selected Stories & Other Writings 132–36 (Donald A. Yates & James E. Irby eds., New Directions 1964).

70 Pedro Cabán Vales, *Creación Literaria, Crimen Y Ley: Jorge Luis Borges Y Emma Zunz*, 54 Rev. Jur. U.I.P.R. 147 (2020).

71 *Id.* at 147.

72 *Id.*

73 *See* Vila, *supra* note 66 (using *Emma Zunz* as a lens to discuss and analyze issues of criminal law and evidence).

74 Jorge Luis Borges, *Pierre Menard, Author of the Quixote*, *in* Labyrinths: Selected Stories & Other Writings 36–43 (Donald A. Yates & James E. Irby eds., New Directions 1964).

75 Brockenbrough A. Lamb, *Richard Prince, Author of the Catcher in the Rye: Transforming Fair Use Analysis*, 49 U. Rich. L. Rev. 1293, 1296 (2015).

76 *Id.* at 1302.

77 *Id.* at 1302–04.

78 *Id.*

79 *Id.* at 1304.

realm of constitutional interpretation.[80] According to Jimenez, Borges's story "deals with important issues governing interpretation, the creation of meaning, and the ascertainment of original intent."[81] In the same way that Borges's fictional scholar, Pierre Menard, rewrote Cervantes's *Don Quixote* word for word, but purported to produce a version "almost infinitely richer," Jimenez reworks Borges's story but writes it in the context of the U.S. Constitution. The idea is that, like the words in Don Quixote, the meaning of the words in the Constitution have evolved over time and have taken on deeper context and meaning, producing a new text even if the exact same words are used today.[82] According to Jimenez, the antiquated words and phrases of the Constitution "have themselves remained the same, [but] are now viewed through the lens of historical events (e.g., the Civil War, Reconstruction, and New Deal) and judicial precedents (e.g., the Dred Scott decision, Plessy v. Ferguson, and Brown v. Board of Education) so powerful as to have changed the meaning (though not the spelling) of the words themselves!"[83]

In another law review article, *The Other Death of International Law*, Professor Ed Morgan of the University of Toronto analyzes the demise of Yugoslavia and the subsequent recognition of newly self-determining sovereign entities "through the lens of the fantasy stories of Jorge Luis Borges."[84] But not only does Morgan utilize Borges as a device, he also analyzes *why* Borges and his work are so useful to legal scholars for exploring legal doctrines. "The writings of Borges suggest themselves as a vehicle through which to examine legal developments for a number of reasons," Morgan writes.[85] These include that fact "his stories have the close texture of argument,"[86] and that Borges's world "is a closed one, with its own internal logic and a fundamental detachment from the author's actual surroundings."[87] According to Mortan, this helpful vehicle for scholarly exploration applies with particular force to the area of international law. "In other words," he added, "the Borgesian perspective helps bring into focus international law's relationship to the world of politics which it purports to govern."[88]

Although this Borges-as-a-lens method of using the author's work to analyze an area of law has been used in numerous doctrinal areas, it appears to be particularly prevalent in the area of intellectual property. A significant number of legal scholarly papers discussing IP topics cite to Borges.[89] On the other hand, Borges has been

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80 Marco Jimenez, *Towards A Borgean Theory of Constitutional Interpretation*, 40 Pepp. L. Rev. 1 (2012).

81 *Id*. at 1.

82 *Id*. at 1–2.

83 *Id*. at 2.

84 Ed Morgan, *The Other Death of International Law*, 14 Leiden J. Int'l L. 3, 3 (2001).

85 *Id.* at 4.

86 *Id.* (quoting John Updike, *The Author as Librarian*, New Yorker, Oct. 30, 1965, reprinted in Jaime Alazraki ed., Critical Essays on Jorge Luis Borges 62–63 (1987)).

87 Morgan, *supra* note 84, at 4; *see also* Alfred Kazin, *Meeting Borges*, N.Y. Times (May 2, 1971), https://archive.nytimes.com/www.nytimes.com/books/97/08/31/reviews/borges-meeting.html, reprinted in Jaime Alazraki ed., Critical Essays on Jorge Luis Borges 127, 129 (1987) ("Borges' Buenos Aires, which is his whole world, is ineffably far-flung, a multitude, yet strangely empty of everything except place names …. The great city seems as vague as the endless pampas.")

88 Morgan, *supra* note 84, at 5.

89 *See, e.g.*, John Tehranian, *Toward A New Fair Use Standard: Attributive Use and the*

cited in a diverse range of other doctrines, ranging from evidence and civil procedure to free speech and artificial intelligence.[90] Perhaps the most helpful and accurate summary of the citations to Borges is the list itself, as any summary or simplification of it arguably amounts to interpretation, if not misrepresentation.

III. Index of Legal Scholarly Articles, Essays, Books, and Book Reviews That Reference Borges

The index below contains the full list of scholarly references to Borges I have located in the legal academic literature. This search involved using digital databases available through Hein Online, Westlaw, LexisNexis, and the Social Science Research Network (SSRN).[91] The index is simple. It contains two columns. In column one is a citation to each legal article, essay, book review, or book. Column two contains the numerical "depth" score discussed above. It indicates the level of depth with which Borges is discussed in the cited paper in that row. Here is a key to the usage of the numerical "depth" score[92]:

1—the paper cites to Borges only in footnotes
2—the paper mentions or cites Borges in the body text or title of the article
3—the paper discusses Borges throughout at least a full paragraph
4—the paper discusses Borges throughout at least a substantial portion of the paper

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Closing of Copyright's Crediting Gap, 96 S. Cal. L. Rev. 1 (2022); E.S. Burt, *Translatable and Untranslatable: Discourse Theory and Copyright Law*, 9 UC Irvine L. Rev. 335 (2019); Shubha Ghosh, *Remapping copyright functionality: the quixotic search for a unified test for severability for PGS works*, 39 Eur. Intell. Prop. Rev. 90 (2017); Lemley & Sherkow, *supra* note 55; Timothy T. Hsieh, *A Tale of Seven Districts: Reviewing the Past, Present and Future of Patent Litigation Filings to Form a Two-Step Burden-Shifting Framework for 28 U.S.C. § 1404(A)*, 31 Tex. Intell. Prop. L.J. 131 (2023); Dan L. Burk, *AI Patents and the Self-Assembling Machine*, 105 Minn. L. Rev. Headnotes 301 (2021); Lucas R. Yordy, *The Library of Babel for Prior Art: Using Artificial Intelligence to Mass Produce Prior Art in Patent Law*, 74 Vand. L. Rev. 521 (2021).

90 *See, e.g.*, Alexandra D. Lahav, *The New Privity in Personal Jurisdiction*, 73 Ala. L. Rev. 539 (2022); Katie Rose Guest Pryal, *Genre Discovery 2.0*, 28 Barry L. Rev. 1 (2023); Daphne Keller, *Platform Transparency and the First Amendment*, 4 J. Free Speech L. 1 (2023); Thomas Halper, *Lying and the First Amendment*, 7 Brit. J. Am. Legal Stud. 401 (2018); Dimitris Xenos, *The Guardian's Publications of Snowden Files: Assessing the Standards of Freedom of Speech in the Context of State Secrets and Mass Surveillance*, 25 Info. & Comm. Tech. L. 201 (2016); Marc Jonathan Blitz, *The Freedom of 3D Thought: The First Amendment in Virtual Reality*, 30 Cardozo L. Rev. 1141 (2008); Jeffrey Abramson, *Searching for Reputation: Reconciling Free Speech and the "Right to Be Forgotten"*, 17 N.C. J. L. & Tech. 1 (2015); Yordy, *supra* note 89; Shlomit Yanisky-Ravid, *Cynthia Martens, From the Myth of Babel to Google Translate: Confronting Malicious Use of Artificial Intelligence-Copyright and Algorithmic Biases in Online Translation Systems*, 43 Seattle U. L. Rev. 99 (2019); Benjamin L. W. Sobel, *Artificial Intelligence's Fair Use Crisis*, 41 Colum. J.L. & Arts 45 (2017).

91 Searches of these digital databases were performed using the search term "Jorge Luis Borges" in quotation marks. All results were analyzed to determine whether the result is appropriate to include in this index and, if so, what depth score should apply to it. The index contains search results in these databases up through August 2024.

92 Some limitations of this numerical "depth" scoring system are discussed *supra* in Section II.

Law Journal Citations 2020–2024	Depth
2024	
Ioan-Radu Motoarcă, Ai, Copyright, and Pseudo Art, 26 Yale J. L. & Tech. 430 (2024)	***3***
Leonard Brahin, The Real Persons Are the Corporations We Made Along the Way, 22 DePaul Bus. & Com. L.J. 1 (2024)	***3***
Richard Delgado & Jean Stefancic, What's Your Name? I Don't Like It, Please Change, 15 Ala. C.R. & C.L.L. Rev. 131 (2024)	***3***
Eyal Brook, From Mozart to Danger Mouse: Musical Parody, Humor and Copyright Law, 60 Cal. W. L. Rev. 425 (2024)	***2***
Dustyn Sams, Thinking About the Public Trust Doctrine in A Modern Context as Applied to Non-Fungible Tokens, 64 Nat. Resources J. 87 (2024)	***2***
Alan D. Miller, The Problem of Obscenity, 16 Wash. U. Jurisprudence Rev. 185 (2024)	***1***
2023	
Anaëlle Martin, Un regard borgesien sur l'État et le droit international: Tlön Uqbar Orbis Tertius (A Borgesian View of the State and International Law: Uqbar, Tlön, Orbis tertius), Hal Open Science (2023), available at https://ssrn.com/abstract=3893049 or https://hal.science/hal-04084232	***4***
Wes Henricksen, Silencing Jorge Luis Borges: The Wrongful Suppression of the Di Giovanni Translations, 48 Vt. L. Rev. 208 (2023)	***4***
Mala Chatterjee, Understanding Intellectual Property: Expression, Function, and Individuation, 70 J. Copyright Soc'y U.S.A. 57 (2023)	***3***
Daniel Markovits, Through Thin and Thick: Comments, 38 Conn. J. Int'l L. 121 (2023)	***2***
Daphne Keller, Platform Transparency and the First Amendment, 4 J. Free Speech L. 1 (2023)	***2***
Mark A. Lemley & Jacob S. Sherkow, The Antibody Patent Paradox, 132 Yale L.J. 994 (2023)	***2***
Katie Rose Guest Pryal, Genre Discovery 2.0, 28 Barry L. Rev. 1 (2023)	***2***
Daniel Markovits, Through Thin and Thick: Comments, 38 Conn. J. Int'l L. 121 (2023)	***2***
Timothy T. Hsieh, A Tale of Seven Districts: Reviewing the Past, Present and Future of Patent Litigation Filings to Form a Two-Step Burden-Shifting Framework for 28 U.S.C. § 1404(A), 31 Tex. Intell. Prop. L.J. 131 (2023)	***2***
Evan D. Bernick & Christopher R. Green, What Is the Object of the Constitutional Oath?, 128 Penn St. L. Rev. 1 (2023)	***1***
2022	
Harlan Grant Cohen, Journeys Through Space and Time While Reading International Law and the Politics of History, Found on A Palimpsest, Translated for You, the Reader, 36 Temp. Int'l & Comp. L.J. 129 (2022)	***3***

Law Journal Citations 2020–2024	**Depth**
William F. Patry, Independent creation— Arnstein v. Edward B. Marks Music Group, 3 Patry on Copyright § 9:35 (2022)	***3***
David Plunkett & Daniel Wodak, The Disunity of Legal Reality, 28 Legal Theory 235 (2022)	***3***
Xavier Bioy, Artistic Censorship and Freedoms in French Public Law, 50 Int'l J. Legal Info. 7 (2022)	***2***
Juan Pablo Scarfi, Francisco de Vitoria and the (geo)politics of canonisation in Spain/America, 35 L.J.I.L. 479 (2022)	***2***
Mira Moldawer, Myths and Clichés: The Doctrinal Myopia of Publicity Right, 22 UIC Rev. Intell. Prop. L. 50 (2022)	***2***
Travis Henry-Reid, Invaluable: Value Added Tax, Post-Colonialism, & the United States of America, 47 Brook. J. Int'l L. 527 (2022)	***2***
Jack M. Balkin, Constitutional Memories, 31 Wm. & Mary Bill Rts. J. 307 (2022)	***1***
John Tehranian, Toward A New Fair Use Standard: Attributive Use and the Closing of Copyright's Crediting Gap, 96 S. Cal. L. Rev. 1 (2022)	***1***
Alexandra D. Lahav, The New Privity in Personal Jurisdiction, 73 Ala. L. Rev. 539 (2022)	***1***
Amadou Korbinian Sow, On Reaching A Crime Scene Ahead of the Criminal: Dreams of Police and Technology from the 1970s to Today, 23 German L.J. 597 (2022)	***1***
Madhav Khosla, Is A Science of Comparative Constitutionalism Possible? How Constitutional Rights Matter., 135 Harv. L. Rev. 2110 (2022)	***1***
2021	
Tobias Smith, Borges, *The Keystone* and the Legal Imagination, in The Cabinet of Imaginary Laws (Discourses of Law) 1st Edition, edited by Peter Goodrich and Thanos Zartaloudis (Routledge, 2021)	***4***
Gustavo Tepedino, Texto e Contexto na Teoria da Interpretacao, 29 Revista Brasileira Direito Civil 11 (2021)	***3***
Shivprasad Swaminathan, Analogy reversed, C.L.J. 2021, 80(2), 366-396 (2021)	***2***
Paulo Barrozo, Law in Time: Legal Theory and Legal History, 31 Yale J.L. & Human. 316 (2021)	***2***
Dan L. Burk, AI Patents and the Self-Assembling Machine, 105 Minn. L. Rev. Headnotes 301 (2021)	***2***
Bernard Keenan, Carrier Bag Law, in The Cabinet of Imaginary Laws (Discourses of Law) 1st Edition, edited by Peter Goodrich and Thanos Zartaloudis (Routledge, 2021).	***2***
Aaron J. Walayat, China's Alaskan Jurisprudence, 28 U.C. Davis J. Int'l L. & Pol'y 43 (2021)	***1***

Law Journal Citations 2020–2024	Depth
Lucas R. Yordy, The Library of Babel for Prior Art: Using Artificial Intelligence to Mass Produce Prior Art in Patent Law, 74 Vand. L. Rev. 521 (2021)	*1*
Brian L. Frye, Deodand, 44 Seattle U.L. Rev. Supra 55 (2021)	*1*
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IV. Conclusion

Legal scholars have cited Borges with increasing frequency over the past few decades. Indeed, citations to Borges and his work have increased every decade since the author's death in 1986. Others have noted that Borges has grown in popularity, and perhaps even in relevancy, since his death[93]—though he certainly was a literary giant even in his own time—and it should be no surprise his impact in the legal scholarship mirrors this trend. My aim here has been to make a record of this growing scholarly impact, while at the same time giving it context and trying to explain why it is relevant.

The time and effort required to compile the index above almost certainly outweighs its scholarly value or significance. This is not to say that academics will not find it useful—no doubt, some will—but the task of building the index has required months of work, and it is speculative, at best, to predict that others will make significant use of it. One consolation is that the nature of the index is such that it can be updated and revised as needed moving forward. This task will be lighter work now that the foundation has been laid.

The current index focuses almost exclusively on American law journals, although certainly law journals from other jurisdictions belong on the list just as much as those from the United States. Accordingly, I anticipate supplementing the index in the future not only with future American law journal articles, but also with current and future international law journal articles. In this task, I invite readers to send me any legal scholarly article, essay, book review, book, or book chapter I have left out of the index, but which belongs on it because the author references Borges. With such contributions, the index will become more complete, and therefore better. Accordingly, although the index can and hopefully will continue to grow,[94] it will never, God willing, ever be finished.

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93 *See* authorities cited *supra*, in note 14.

94 Updated versions of the index may be posted to this article's Social Science Research Network (SSRN) page, available here: Wes Henricksen, *Citing Jorge Luis Borges*, British Journal of American Legal Studies (forthcoming 2025), https://ssrn.com/abstract=4774873.