Article

The Most-Cited Articles from the Minnesota Law Review

Fred R. Shapiro†

The 100th anniversary of the Minnesota Law Review provides an opportunity to assess its legacy and importance. The very fact of having a centennial is impressive in itself; not that many human institutions last that long. There is also available to us a method of assessing, in a relatively objective way, the impact that this hundred-year-old law review has had on legal scholarship and on the larger world. That method is citation analysis.

Sociologists of science have demonstrated that there is a high degree of correlation between the number of citations to an article, journal, or author and “judgments by peers of the ‘productivity,’ ‘significance,’ ‘quality,’ ‘utility,’ ‘influence,’ ‘effectiveness,’ or ‘impact’ of scientists and their scholarly products.”¹ Citations are equally revealing in law. Indeed, they may be more important in the legal realm than in science, since science publications and their interconnections are byproducts of the research enterprise, while in law publications and their interconnections are at the very heart of the discipline. As long as it is kept in mind that citation counts measure a “quality” that is socially defined, based on the usefulness of the writings to other scholars or to judges, rather than necessarily measuring intrinsic merit, such counts may offer valuable insights into the influence and history of legal scholarship.

Articles and journals that receive large numbers of citations are very likely to have exerted significant influence. And

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so we can conclude that Minnesota Law Review and many of its articles have had a very substantial impact, because the citation data for that review have been truly impressive. I will demonstrate the impressiveness of that data in this study.

In Table I below I list the fifty (in reality fifty-two because of a three-way tie for fiftieth place) Minnesota Law Review articles that have been most often cited by other law review articles. In Table II I list the ten articles most cited by judicial opinions.

The methodology for compiling these most-cited articles lists involved searching on the HeinOnline database. HeinOnline, produced by the William S. Hein Company, includes the great majority of the English-language legal periodical literature since the early nineteenth century. I ran searches calculated to retrieve all of the Minnesota Law Review’s articles, and then sorted the articles by “Number of Times Cited by Articles” and “Number of Times Cited by Cases.” The powerful capability of HeinOnline to perform these sorts thus enabled me to create thorough and accurate rankings.2

As I have explained in previous “most-cited” enumerations, such lists are skewed in a number of ways and should thus be taken with a grain of salt. One bias is chronological. Since it generally takes decades to accumulate enough citations to make an all-time most-cited ranking, it is almost impossible for a very recent article to make the cut. Very old articles may also be disfavored, since the size of the citing literature was smaller and footnoting was less extensive in the early and mid-twentieth century. There is also a subject bias. There are more opportunities to be cited in fields, such as constitutional law, procedure, contracts, property, torts, and criminal law, that have more extensive literatures. Fields like corporate law, family law, intellectual property, and international law have smaller literatures and thus fewer opportunities to be cited.

With the above caveats, I believe that the two lists in Tables I and II are the most objective guides possible to the history and influence of the first century of Minnesota Law Review articles. As suggested above, the lists demonstrate an extraordinary record of success in publishing notable scholarship.

The first table, Minnesota Law Review Articles Most Cited by Other Legal Periodical Articles (Table I), is headed by the landmark 1974 article by Anthony G. Amsterdam, Perspectives

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2. The HeinOnline searches were run on September 5, 2015.
on the Fourth Amendment,
which has garnered 1415 citations. Other research I have done tells me that this is the eighteenth most-cited article of all time among all law reviews (cited by other articles). Amsterdam has been a tremendously important scholar and advocate in criminal law and constitutional law, as well as being the pioneer of clinical legal education. He successfully argued the case of Furman v. Georgia before the United States Supreme Court in 1972, leading to a temporary moratorium on capital punishment throughout the country. Perspectives on the Fourth Amendment stemmed from Amsterdam’s Oliver Wendell Holmes Devise Lecture, delivered at the University of Minnesota Law School. This brilliant article conceptualized the theory of the Fourth Amendment by distinguishing between two approaches to the Amendment, one viewing it as creating atomistic spheres of personal privacy, the other viewing it as regulating government conduct of searches and seizures. The importance and broad influence of the article is emphasized by the fact that, in addition to its ranking eighteenth among all articles cited by other articles, it is the twelfth most-cited article of all time among all law reviews in terms of citations by judicial opinions.

In second place among the most-cited Minnesota Law Review articles (cited by other articles) is William L. Prosser’s 1966 piece, The Fall of the Citadel (Strict Liability to the Consumer). This too figures in the overall most-cited list among all law reviews, ranking thirty-sixth on that all-encompassing list. Prosser, who graduated from the University of Minnesota Law School in 1928, taught at Minnesota from 1931 to 1940, then at Harvard, Berkeley (where he was dean), and Hastings. He published several very highly cited articles and the classic treatise Prosser on Torts.

4. This assertion, and others I make below about rankings of articles from all law reviews, derives from unpublished results of HeinOnline searching performed in September 2015.
5. 408 U.S. 238 (1972).
contract as a requirement for products liability. Like the Amsterdam article, the Prosser piece transcended the world of scholarship and is the thirteenth most-cited article of all time among all law reviews in terms of citations in case law.

The third most-cited Minnesota Law Review article, measured by citations in other law review articles, is Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*. The Freeman article also makes the “top 100” all-law-review ranking, placing as the eighty-ninth most-cited on that overall tabulation. The author taught at the University of Minnesota Law School (1971–1982) and the SUNY Buffalo Law School. This article was an important precursor of the “critical race theory” movement, arguing that antidiscrimination law actually legitimized racial discrimination.

There are many extremely renowned scholars on the top-fifty “cited by other articles” list. To name only some of them, in addition to Amsterdam and Prosser, there are Vern Countryman, Edmund M. Morgan, Monrad Paulsen, Daniel Farber, Carol Rose, Charles Alan Wright, Yale Kamisar, Arthur Miller, Felix Cohen, Charles McCormick, Richard Ravesz, Philip Frickey, and Archibald Cox. Prosser is the only author with three articles included. Paulsen, Farber, and the coauthor team of William B. Lockhart and Robert C. McClure have two articles each. A great variety of topics are covered by the listed pieces. Constitutional law and criminal law are the most frequently appearing subjects, followed by civil rights, torts, and civil procedure.

My second list, *Minnesota Law Review* Articles Most Cited by Judicial Opinions (Table II), is perhaps even more remarkable than the first. It is headed by Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, with an extraordinary 476 citations in case law. That 476 total is the second-highest among all law review articles in all law reviews over all time. Arguably, Countryman’s piece should actually be considered to be number one, since the sole article with more judicial citations is a citation magnet that is very anomalous, cited routinely for a specific procedural point by the Texas courts and has never


been cited even once by the courts of any other state. Vern Countryman was a professor at Yale and Harvard law schools and dean of the law school at the University of New Mexico. He was the leading bankruptcy scholar of his time, and the *Executory Contracts* article discussed the treatment of unperformed contracts.

Tables I and II show the Minnesota Law Review in a superlative light relative to other law reviews. The three Minnesota articles in the nationwide “100 most-cited by other law review articles” ranking are the most by any law review other than Harvard Law Review, Yale Law Journal, Stanford Law Review, Columbia Law Review, and Michigan Law Review. The three articles near the top of the “most-cited by judicial opinions” ranking (Countryman at number two, Amsterdam at number twelve, and Prosser at number thirteen) are the most dominant showing by any law review other than Harvard. It is plain that Minnesota Law Review has cast a very long shadow on both the legal academy and the practical and doctrinal work of the courts.

In closing, I will note that the success of Minnesota Law Review, demonstrated by the citation data, is not just a historical achievement over the course of a century. It is also a current phenomenon. The law journals ranking website of the Washington and Lee University School of Law Library, which tabulates citation counts exhaustively, has Minnesota Law Review in eleventh place among all law reviews for the most-recent ten-year period available (2003–2013). To be more precise, Minnesota is eleventh over that period in citations per article, thirteenth in total citations, and eleventh in Washington and Lee’s combined scoring. If specialized journals are not included and only the main “flagship” law reviews of each school are compared, Minnesota is ninth in citations per article.

12. Amsterdam, supra note 3.
<table>
<thead>
<tr>
<th>Rank</th>
<th>Citations</th>
<th>Title</th>
<th>Author(s)</th>
<th>Volume</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1415</td>
<td>Perspectives on the Fourth Amendment</td>
<td>Anthony G. Amsterdam</td>
<td>58</td>
<td>1974</td>
</tr>
<tr>
<td>2</td>
<td>999</td>
<td>The Fall of the Citadel (Strict Liability to the Consumer)</td>
<td>William L. Prosser</td>
<td>50</td>
<td>1966</td>
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<tr>
<td>5</td>
<td>456</td>
<td>Executory Contracts in Bankruptcy: Part I</td>
<td>Vern Countryman</td>
<td>57</td>
<td>1973</td>
</tr>
<tr>
<td>6</td>
<td>362</td>
<td>The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought</td>
<td>Orly Lobel</td>
<td>89</td>
<td>2004</td>
</tr>
<tr>
<td>7</td>
<td>322</td>
<td>The Constitutional History of the Seventh Amendment</td>
<td>Charles W. Wolfram</td>
<td>57</td>
<td>1973</td>
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<tr>
<td>8</td>
<td>299</td>
<td>Tort Remedies for Police Violations of Individual Rights</td>
<td>Caleb Foote</td>
<td>39</td>
<td>1955</td>
</tr>
<tr>
<td>10</td>
<td>255</td>
<td>The Privilege Against Self-Incrimination</td>
<td>E. M. Morgan</td>
<td>34</td>
<td>1949</td>
</tr>
<tr>
<td>11</td>
<td>252</td>
<td>The Implied Warranty of Merchantable Quality</td>
<td>William L. Prosser</td>
<td>27</td>
<td>1943</td>
</tr>
<tr>
<td>12</td>
<td>250</td>
<td>The Limits of Municipal Power Under Home Rule: A Role for the Courts</td>
<td>Terrance Sandalow</td>
<td>48</td>
<td>1964</td>
</tr>
</tbody>
</table>


30. 175 Felix S. Cohen, Original Indian Title, 32 MINN. L. REV. 28 (1947).
35. 160 Charles T. McCormick, Counsel Fees and Other Expenses of Litigation as an Element of Damages, 15 MINN. L. REV. 619 (1931).
Most-Cited Articles


46. 145 Charles L. B. Lowndes, *Civil Liability Created by Criminal Legislation*, 16 Minn. L. Rev. 361 (1932).


**TABLE II. MINNESOTA LAW REVIEW ARTICLES MOST CITED BY JUDICIAL OPINIONS**


