

# The Most-Cited Articles from the *Iowa Law Review*

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On the occasion of the centennial of the *Iowa Law Review*, I have compiled lists of that journal's most-cited articles of all time. Two different lists are presented here. The first tabulates the 50 (actually 51 because of a tie) *Iowa Law Review* articles that are most cited by other legal periodical articles. The second list sets forth the 10 (actually 11 because of a tie) articles most cited by federal and state judicial opinions.

I have discussed the rationale of legal citation-counting in a series of previous studies.<sup>1</sup> Interested readers may consult those studies, but I will summarize here the basic rationale. Citation analysis is a standard tool used by information scientists and sociologists studying the history and structure of various academic disciplines. It has also become common to use citation counts to aid in evaluating publications, authors, journals, or schools. Such evaluative use is often justified by research that has demonstrated a high degree of correlation between the total of citations to an author or publication and “judgments by peers of the ‘productivity,’ ‘significance,’ ‘quality,’ ‘utility,’ ‘influence,’ ‘effectiveness,’ or ‘impact’ of [scholars] and their scholarly products.”<sup>2</sup> Responsible citation analysts, however, are careful to note that citation counts measure a “quality” that is socially defined, reflecting the usefulness of the writings in question to other scholars or to judges, rather than necessarily gauging their intrinsic merit.

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1. Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CALIF. L. REV. 1540 (1985); Fred R. Shapiro, *The Most-Cited Articles from The Yale Law Journal*, 100 YALE L.J. 1449 (1991); Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996); Fred R. Shapiro, *The Most-Cited Legal Scholars*, 29 J. LEGAL STUD. 409 (2000); Fred R. Shapiro, *The Most-Cited Legal Books Since 1978*, 29 J. LEGAL STUD. 397 (2000); Fred R. Shapiro, *The Most-Cited Law Reviews*, 29 J. LEGAL STUD. 389 (2000); Fred R. Shapiro & Michelle Pearse, *The Most-Cited Law Review Articles of All Time*, 110 MICH. L. REV. 1483 (2012).

2. Stephen M. Lawani & Alan E. Bayer, *Validity of Citation Criteria for Assessing the Influence of Scientific Publications: New Evidence with Peer Assessments*, 34 J. AM. SOC'Y FOR INFO. SCI. 59, 61 (1983).

The value of citation-counting may also be lessened by limitations in the accuracy, coverage, or timeframe of the source data. The *Iowa Law Review* tabulations set forth below, however, are based on the spectacular capabilities of the very accurate and comprehensive database HeinOnline. HeinOnline, produced by the William S. Hein Company, includes the vast majority of the entire United States law review literature from the 19th, 20th, and 21st centuries. I devised a search that retrieved virtually all of the over 1.4 million articles in that database<sup>3</sup> and then used the ability of HeinOnline to sort those articles by “Number of Times Cited by Articles” or “Number of Times Cited by Cases” to generate thorough and precise rankings.

There are some biases present even in the best citation rankings. It generally takes decades for an article to amass the large citation count needed to make an all-time list, so it is difficult for a very recent article to compete with leading older ones. Also chronologically disfavored are very old articles handicapped by the fact that the citing literature was much smaller and footnoting practices much less developed in the period before the late 20th century. A final bias in the rankings involves subject matter. Some areas, such as constitutional law, civil procedure, contracts, property, torts, and criminal law, have large scholarly literatures affording ample opportunities for being cited. Other subjects, such as corporate law, family law, intellectual property, and international law, have smaller literatures and less opportunity for citations that could earn articles in these fields a place on “most-cited” rosters.

If the caveats above are kept in mind, I believe my two lists are very useful and interesting guides to the history and impact of the first century of the *Iowa Law Review*. At the top of both lists is a landmark article by a very distinguished judge, former chief judge of the United States Court of Appeals for the District of Columbia Circuit Patricia M. Wald.<sup>4</sup> Some law review articles are of interest only in the cloistered ivory tower of academia, others are of practical or doctrinal relevance to the work of courts; this one clearly has been important to scholars *and* to the judiciary and the advocates who practice before them.

Placing second among the articles most cited by other articles is *Free Speech and Social Structure* by Yale professor Owen M. Fiss.<sup>5</sup> Many other distinguished authors follow, including, to name just a few, Milton Handler, Richard B. Stewart, Jack B. Weinstein, Frank I. Michelman, and Harry T. Edwards. The subjects represented on the list of fifty span a very wide range,

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3. The search, based on lists of the most common words in the English language, was “the OR of OR a OR to OR in OR is OR that OR it OR he OR was OR for OR on OR are OR as OR with OR his OR they OR at OR be OR this OR have OR from OR one OR had OR by OR law.”

4. Patricia M. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195 (1983).

5. Owen M. Fiss, *Free Speech and Social Structure*, 71 IOWA L. REV. 1405 (1986).

with no pattern of dominance by particular fields except for a mild emphasis on constitutional law.

The list of the top ten articles most cited by courts is also a diverse one. One interesting fact about it is that Arthur Bonfield, now Allan D. Vestal Chair at the University of Iowa College of Law, has two of the seven highest-ranking articles on this enumeration.

TABLE I. IOWA LAW REVIEW ARTICLES MOST CITED BY OTHER LEGAL PERIODICAL ARTICLES

Ranking	Total Citations	Article
1	396	Patricia M. Wald, <i>Some Observations on the Use of Legislative History in the 1981 Supreme Court Term</i> , 68 IOWA L. REV. 195 (1983).
2	389	Owen M. Fiss, <i>Free Speech and Social Structure</i> , 71 IOWA L. REV. 1405 (1986).
3	264	Richard J. Lazarus, <i>Changing Conceptions of Property and Sovereignty in Natural Resources: Questioning the Public Trust Doctrine</i> , 71 IOWA L. REV. 631 (1986).
4	261	Fred C. Zacharias, <i>Rethinking Confidentiality</i> , 74 IOWA L. REV. 351 (1989).
5	245	C. Edwin Baker, <i>Commercial Speech: A Problem in the Theory of Freedom</i> , 62 IOWA L. REV. 1 (1976).
6	205	Milton Handler, <i>Unfair Competition</i> , 21 IOWA L. REV. 175 (1936).
7	200	Calvin A. Kuenzel, <i>The Attorney's Fee: Why Not a Cost of Litigation</i> , 49 IOWA L. REV. 75 (1963).
8	181	Mark McCormick, <i>Scientific Evidence: Defining a New Approach to Admissibility</i> , 67 IOWA L. REV. 879 (1982).
9	165	Oona A. Hathaway, <i>Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System</i> , 86 IOWA L. REV. 601 (2001).
10	161	Richard B. Stewart, <i>The Development of Administrative and Quasi-Constitutional Law in Judicial Review of Environmental Decisionmaking: Lessons from the Clean Air Act</i> , 62 IOWA L. REV. 713 (1977).
11	155	Marshall A. Leaffer, <i>Protecting United States Intellectual Property Abroad: Toward a New Multilateralism</i> , 76 IOWA L. REV. 273 (1991).
12	149	Ernest J. Weinrib, <i>Corrective Justice</i> , 77 IOWA L. REV. 403 (1992).

13	146	Grant S. Nelson & Robert J. Pushaw, Jr., <i>Rethinking the Commerce Clause: Applying First Principles to Uphold Federal Communications Regulations But Preserve State Control over Social Issues</i> , 85 IOWA L. REV. 1 (1999).
14	145	Jack B. Weinstein, <i>Probative Force of Hearsay</i> , 46 IOWA L. REV. 331 (1961).
15	144	Stephen R. Perry, <i>The Moral Foundations of Tort Law</i> , 77 IOWA L. REV. 449 (1992).
16	139	Gary Lawson & Christopher D. Moore, <i>The Executive Power of Constitutional Interpretation</i> , 81 IOWA L. REV. 1267 (1996).
17	135	Michael Rustad, <i>In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data</i> , 78 IOWA L. REV. 1 (1992).
18	134	Robert A. Schapiro, <i>Toward a Theory of Interactive Federalism</i> , 91 IOWA L. REV. 243 (2005).
19	129	Richard W. Wright, <i>Causation, Responsibility, Risk, Probability, Naked Statistics, and Proof: Pruning the Bramble Bush by Clarifying the Concepts</i> , 73 IOWA L. REV. 1001 (1988).
20	128	Carl H. Esbeck, <i>The Establishment Clause as a Structural Restraint on Governmental Power</i> , 84 IOWA L. REV. 1 (1998).
21	127	Richard B. Lillich, <i>Forcible Self-Help by States to Protect Human Rights</i> , 53 IOWA L. REV. 325 (1967).
22	126	Frank I. Michelman, <i>Possession vs. Distribution in the Constitutional Idea of Property</i> , 72 IOWA L. REV. 1319 (1987).
22	126	Alan N. Polasky, <i>Collateral Estoppel—Effects of Prior Litigation</i> , 39 IOWA L. REV. 217 (1954).
22	126	Harry I. Subin, <i>The Lawyer as Superego: Disclosure of Client Confidences to Prevent Harm</i> , 70 IOWA L. REV. 1091 (1985).
25	125	Allan D. Vestal, <i>Preclusion/Res Judicata Variables: Parties</i> , 50 IOWA L. REV. 27 (1964).
26	121	Craig M. Bradley, <i>Racketeers, Congress, and the Courts: An Analysis of RICO</i> , 65 IOWA L. REV. 837 (1980).
27	117	N. William Hines, <i>Nor Any Drop to Drink: Public Regulation of Water Quality Part I: State Pollution Control Programs</i> , 52 IOWA L. REV. 186 (1966).
28	116	Robert G. Bone, Twombly, <i>Pleading Rules, and the Regulation of Court Access</i> , 94 IOWA L. REV. 873 (2009).
29	115	Andrew Koppelman, <i>Dumb and DOMA: Why the Defense of Marriage Act Is Unconstitutional</i> , 83 IOWA L. REV. 1 (1997).
29	115	Rollin M. Perkins, <i>The Law of Arrest</i> , 25 IOWA L. REV. 201 (1940).
31	114	Yale Kamisar, Gates, “Probable Cause,” “Good Faith,” and Beyond, 69 IOWA L. REV. 551 (1984).

32	113	Steven J. Burton, <i>More on Good Faith Performance of a Contract: A Reply to Professor Summers</i> , 69 IOWA L. REV. 497 (1984).
32	113	Robert J. Pushaw, Jr., <i>The Inherent Powers of Federal Courts and the Structural Constitution</i> , 86 IOWA L. REV. 735 (2001).
34	111	Russell J. Weintraub, <i>Due Process and Full Faith and Credit Limitations on a State's Choice of Law</i> , 44 IOWA L. REV. 449 (1959).
35	109	Angela J. Davis, <i>The American Prosecutor: Independence, Power, and the Threat of Tyranny</i> , 86 IOWA L. REV. 393 (2001).
35	109	Dale A. Nance, <i>The Best Evidence Principle</i> , 73 IOWA L. REV. 227 (1988).
37	108	Michael Bradley & Cindy A. Schipani, <i>The Relevance of the Duty of Care Standard in Corporate Governance</i> , 75 IOWA L. REV. 1 (1989).
37	108	William W. Buzbee, <i>Recognizing the Regulatory Commons: A Theory of Regulatory Gaps</i> , 89 IOWA L. REV. 1 (2003).
37	108	Stephen H. Legomsky, <i>Forum Choices for the Review of Agency Adjudication: A Study of the Immigration Process</i> , 71 IOWA L. REV. 1297 (1986).
40	107	Willis L. M. Reese & Nina M. Galston, <i>Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction</i> , 44 IOWA L. REV. 249 (1959).
41	105	Randall P. Bezanson & William G. Buss, <i>The Many Faces of Government Speech</i> , 86 IOWA L. REV. 1377 (2001).
41	105	Gerald B. Wetlaufer, <i>The Ethics of Lying in Negotiations</i> , 75 IOWA L. REV. 1219 (1990).
43	103	James Grimmelman, <i>Saving Facebook</i> , 94 IOWA L. REV. 1137 (2009).
43	103	Mason Ladd & Robert B. Gibson, <i>The Medico-Legal Aspects of the Blood Test to Determine Intoxication</i> , 24 IOWA L. REV. 191 (1939).
43	103	D. Bruce La Pierre, <i>Technology-Forcing and Federal Environmental Protection Statutes</i> , 62 IOWA L. REV. 771 (1977).
46	102	Bruce A. Green, <i>Lethal Fiction: The Meaning of "Counsel" in the Sixth Amendment</i> , 78 IOWA L. REV. 433 (1993).
47	101	Harry T. Edwards, <i>The Rising Work Load and Perceived "Bureaucracy" of the Federal Courts: A Causation-Based Approach to the Search for Appropriate Remedies</i> , 68 IOWA L. REV. 871 (1983).
48	100	Joel R. Reidenberg, <i>Setting Standards for Fair Information Practice in the U.S. Private Sector</i> , 80 IOWA L. REV. 497 (1995).
49	97	Michel Rosenfeld, <i>Contract and Justice: The Relation Between Classical Contract Law and Social Contract Theory</i> , 70 IOWA L. REV. 769 (1985).

50	96	Jim Chen, <i>Unloving</i> , 80 IOWA L. REV. 145 (1994).
50	96	Joan Williams, <i>The Rhetoric of Property</i> , 83 IOWA L. REV. 277 (1998).

TABLE II. IOWA LAW REVIEW ARTICLES MOST CITED BY JUDICIAL OPINIONS

Ranking	Total Citations	Article
1	57	Patricia M. Wald, <i>Some Observations on the Use of Legislative History in the 1981 Supreme Court Term</i> , 68 IOWA L. REV. 195 (1983).
2	53	M. C. Slough & J. William Knightly, <i>Other Vices, Other Crimes</i> , 41 IOWA L. REV. 325 (1956).
3	50	Arthur Earl Bonfield, <i>The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process</i> , 60 IOWA L. REV. 731 (1975).
4	46	Allan D. Vestal, <i>Preclusion/Res Judicata Variables: Parties</i> , 50 IOWA L. REV. 27 (1964).
5	42	Robert G. Bone, Twombly, <i>Pleading Rules, and the Regulation of Court Access</i> , 94 IOWA L. REV. 873 (2009).
6	39	Rollin M. Perkins, <i>The Law of Arrest</i> , 25 IOWA L. REV. 201 (1940).
7	29	Arthur Earl Bonfield, <i>The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act</i> , 63 IOWA L. REV. 285 (1977).
8	28	E. Eugene Davis, <i>Indemnity Between Negligent Tortfeasors: A Proposed Rationale</i> , 37 IOWA L. REV. 517 (1952).
9	24	Yale Kamisar Gates, "Probable Cause," "Good Faith," and Beyond, 69 IOWA L. REV. 551 (1984).
9	24	Alan N. Polasky, <i>Collateral Estoppel—Effects of Prior Litigation</i> , 39 IOWA L. REV. 217 (1954).
9	24	Willis L. M. Reese & Nina M. Galston, <i>Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction</i> , 44 IOWA L. REV. 249 (1959).