

A Century of *Texas Law Review* Scholarship*

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Introduction

In 1915, Texas Law professors Ira Hildebrand and Charles Potts, who were members of the law reviews at Harvard and Chicago, pushed The University of Texas to form a student-edited law journal.¹ By that time, most of the leading law schools² had established journals as a perfect complement to the casebook method of teaching, as an avenue for the faculty to publish their views, and, not least, as a service to the bar.³ The major barrier to forming the new journal was finding a sustaining source of funds.⁴ The ongoing cost was why many law-school administrations refused to commit the resources to finance a law journal.

Leon Green, a Texas Law graduate and a new faculty member, devoted several years to solving the funding issue.⁵ Ultimately, he decided that creating a nonprofit corporation and selling shares to members of the Texas

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1. JOHN ROBERT ANTHONY, THE MISSING FIRST CHAPTER: A HISTORY OF THE FORMATION OF THE TEXAS LAW REVIEW 3 (1974), <http://texaslawreview.org/wp-content/uploads/2015/07/The-Missing-First-Chapter.pdf> [<https://perma.cc/NX6L-Z9UR>].

2. See Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 779 (1985) (explaining that by 1906 the nation's most prestigious law schools had founded legal periodicals modeled after the *Harvard Law Review*). Although the *Harvard Law Review* was not the first student-edited law journal, it did set a standard for many subsequent law schools to emulate in forming such journals in the late 1800s and early 1900s. *Id.* at 763, 779.

3. See *id.* at 772–78 (highlighting justifications made for the formation of the *Harvard Law Review*).

4. See ANTHONY, *supra* note 1, at 4 (explaining that Leon Green had realized there was no wealthy friend of the law school who would fund the journal). By this time, there were many examples of commercial and educational journals that had failed because of a lack of financial support. Swygert & Bruce, *supra* note 2, at 754, 780, 782.

5. ANTHONY, *supra* note 1, at 4–8.

Bar was the best way to give the student editors independence from the financial pressures of publishing a journal.⁶ By 1920, Dean John Charles Townes had endorsed the Green plan.⁷ Townes announced a leadership structure with a founding Board of Alumni Trustees, a student Board of Editors, and an advisory faculty committee.⁸ The law school began the process of marketing shares of the proposed corporation by sending a letter to every Texas lawyer and judge.⁹ A group of students formed the provisional Board of Editors to begin researching and writing case notes and comments.¹⁰ The letter campaign generated \$21,000 from 420 subscriptions, not enough to fully underwrite the new journal.¹¹ Professor Green decided to make one final plea in a speech at a State Bar of Texas annual meeting.¹² In the end, his efforts were successful. The law school formed the corporation and began to

6. *Id.* at 4–5, 9. Dean Green’s idea of selling shares in the nonprofit corporation was based upon the government’s use of Liberty Bonds as a means of financing the war. *Id.* at 5. He envisioned that owners of the stock would receive one copy of the *Texas Law Review* “per share owned for the duration of ownership.” *Id.* The goal was to sell 500 shares for \$50 each to raise \$25,000, the equivalent of almost \$350,000 in 2022 dollars. Dean Green had joined the law faculty in 1915 and in 1918 left to practice law at the Locke & Locke firm in Dallas. *Id.* at 4; 1 WHO’S WHO IN LAW 372 (J.C. Schwartz ed., 1937). During his law practice, he developed the idea for a nonprofit corporation. ANTHONY, *supra* note 1, at 4. When he returned to the faculty in 1920, Green drafted the legal documents for the corporation and had them reviewed by his former law partner, Maurice Locke, who enthusiastically endorsed the plan. *Id.* at 5.

7. ANTHONY, *supra* note 1, at 6.

8. *Id.* at 6–7.

9. *Id.* at 9–10. Professor Green articulated six purposes for lawyer support of the organization:

1. To furnish a medium of expression for the Texas Bar.
2. To provide a means of preserving the results of research done by members of the Bar.
3. To afford a means of recording the achievements of Texas lawyers.
4. To record the progress being made in the development of jurisprudence.
5. To furnish a means whereby the research and writing work of students, so essential to good legal training, could be published as an incentive to the students.
6. To establish a channel of communication between the Law School and the Bar, mutually beneficial to both.

Id. at 10.

10. *Id.* at 9. This provisional board prepared for a publication in 1921, but the formation of the *Texas Law Review* occurred one year later in 1922. *Id.* at 9, 15–16.

11. *Id.* at 13.

12. *Id.* at 13. Professor Green appealed to the individuals who had reservations about the publication:

Notwithstanding the rather promising start, those who have been pushing the campaign feel that the idea of the law review has by no means achieved a beloved place in the big heart of the profession. It is still an orphan—to most of the profession, a doubtful experiment . . . Moreover, most of those who have subscribed feel that their money support was the end of their participation in the enterprise. But that is not so. It is to be regretted that every lawyer in this state has not taken the time to consider the proposed publication in all its possibilities. We truly believe it deserves your deepest professional interest and support . . .

Id. at 13–14. After Dean Green’s address, the Texas Bar Association voted to approve the law school’s plan to organize and finance the *Texas Law Review*. *Id.* at 15.

publish the *Texas Law Review*.¹³ The first issue made clear that unlike most other law reviews at the time, the *Texas Law Review* was a “joint enterprise of the Law School and the Bar of the State, with sufficient endowment to assure its continued existence, and, with the aid of its income from other sources, to render it independent and self-supporting.”¹⁴ Its purpose was to foster “a frank, constructive criticism of the decisions of our courts, and for suggesting needed legislative and constitutional changes” to devise a just system for the administration of laws.¹⁵

Professor Green was an innovator on many fronts in legal education.¹⁶ During his early teaching, he wrote several casebooks to implement the casebook method in law schools.¹⁷ He developed a reputation as a legal realist in torts for his work on the concepts of proximate cause and attractive nuisance.¹⁸ Green’s career path led him to leave Texas to teach at Yale and to become the dean at University of North Carolina and Northwestern.¹⁹

13. *Id.* at 15–16. The plea attracted another thirty-eight subscriptions, and the existing contributors decided to make up the final forty-two needed to form the corporation. *Id.* at 15. The original charter and bylaws can be found at 1 TEXAS L. REV. 117 (1922). Leon Green, Ira Hildebrand, and Judge Ireland Graves became the incorporators. ANTHONY, *supra* note 1, at 15. Judge Ireland Graves was a graduate of the law school, a local district judge, and a law-school lecturer who founded the law firm of Graves Dougherty in Austin. *Guide to the Ireland Graves Papers, 1883–1945*, TARLTON L. LIBR., <https://legacy.lib.utexas.edu/taro/utlaw/00005/law-00005.html#bioghist> [<https://perma.cc/D4VT-3QC6>]. The organization of the *Texas Law Review* in a shareholder-dominated organization did pose some risk. Dean Charles McCormick described an attempt by “S.M.U. [Law School] . . . to take over a share in the management of the [Texas Law] Review.” Letter from Charles McCormick to Leon Green (Oct. 28, 1946), in THE CORRESPONDENCE BETWEEN LEON GREEN AND CHARLES MCCORMICK, 1927–1962, at 129 (David W. Robertson & Robin Meyer eds., 1988) (footnote omitted). Several prominent lawyers associated with S.M.U. had purchased shares and had introduced a motion at the 1928 shareholders’ meeting to invite S.M.U. law students to collaborate in publishing the journal in proportion to the enrollment of each law school. *Id.* at 129 n.269. Professor Bobby Stayton and Dean Ira Hildebrand collected proxies to push back that takeover attempt. *Id.* at 129 & n.269.

14. *The Texas Law Review*, 1 TEXAS L. REV. 76, 76 (1922).

15. *Id.* at 78.

16. See David W. Robertson, Tribute, *The Legal Philosophy of Leon Green*, 56 TEXAS L. REV. 393, 393 (1978) (noting Green’s influence as a reformer in judicial administration, the activities and responsibilities of the organized bar, and legal education).

17. *Id.* at 395–96.

18. See *id.* at 398–405 (examining the claims that Green was a realist and concluding that “[n]owhere in Green’s work is there any systematic attempt to link his viewpoints with others’ theories about the nature of the law, or to elaborate any such abstract system of his own.” (footnotes omitted)); *UT School of Law First Year Societies: Leon Green*, TARLTON L. LIBR., <https://tarlton.law.utexas.edu/first-year-societies/leon-green> [<https://perma.cc/89CA-KV79>] (Aug. 28, 2018, 8:25 AM) (briefly highlighting Green’s work on proximate cause and attractive nuisance).

19. Robertson, *supra* note 16, at 396 (recounting the career path of Dean Green); see also Willard Wirtz, Tribute, “Dean Green,” 56 TEXAS L. REV. 571 (1978) (recounting the accomplishments of Dean Green at Northwestern). At the beginning of his deanship at Northwestern, Green delivered a speech to the Chicago Bar Association announcing that “his purpose for Northwestern would be to draw on various other fields of learning so as to give students a fuller understanding of the social and political environment that gives legal problems their

However, his mentorship of the *Texas Law Review* (and student-edited journals in general) continued throughout his life.²⁰ Fortunately for the *Texas Law Review*, he finished his teaching career as a distinguished professor at Texas.²¹

An important feature of the *Texas Law Review* has been its alumni's continued involvement in the executive positions of the corporation and their deep support of law review activities. As dean at Northwestern, Leon Green lamented the fact that law schools "have never considered themselves nor have they been considered by the bar in America as a part of the legal profession."²² The *Texas Law Review*, however, has managed to attract the support of its former editors and members, who have given their time, resources, and leadership to support the *Review*'s mission of the institution. A review of the officers of the corporation, now the Texas Law Review Association, reveals distinguished judges, prominent lawyers, and leading academics who have remained involved throughout the last century.

To celebrate and reflect upon the *Texas Law Review*'s centennial anniversary, this essay examines the *Review*'s articles, symposia, and student works most cited by other scholars.²³ Of course, ranking and citation studies

changing implications and laws their protean purpose." *Id.* at 572. Northwestern University supported Dean Green by funding a transformation of the law school and in turn setting a model for other law schools. *Id.* at 572–73.

20. For the *Texas Law Review*, one can see the breadth of authors connected to Leon Green who published their scholarship in the law review. Green has been credited with promoting several journals at various times throughout his career. See Allen E. Smith, Tribute, *Some Realism About a Grand Legal Realist: Leon Green*, 56 TEXAS L. REV. 479, 498 (1978) (noting Green's support for the *Illinois Law Review*, the *Northwestern University Law Review*, *The Journal of American Juridical Society*, *The Journal of Air Law*, *The Journal of Criminal Law and Criminology*, and *The Journal of Police Science*). Justice John Paul Stevens recalls how Dean Green convinced law students that work on the law review was worth the extra time commitment in addition to the work of law school. John Paul Stevens, Memory, *A Personal History of the Law Review*, 100 NW. U. L. REV. 25, 25 (2006).

21. Wirtz, *supra* note 19, at 578. In the February 1978 issue, the *Texas Law Review* honored the legal career of Leon Green by publishing a collection of articles and essays about his work. 56 TEXAS L. REV. 341 (1978). Leon Green passed away the following year on June 15, 1979. John F. Sutton, Jr., *Green, Leon A. (1888–1979)*, TEX. STATE HIST. ASS'N: HANDBOOK TEX. <https://www.tshaonline.org/handbook/entries/green-leon-a> [<https://perma.cc/6WRB-QKKA>], (Oct. 26, 2020).

22. Leon Green, *The Path of Law School Development*, 5 N.C. L. REV. 124, 126 (1927).

23. Any work in the area of law-review citations must acknowledge the meticulous scholarship of Fred Shapiro, the Associate Librarian for Public Services and Lecturer in Legal Research at Yale Law School. See generally Fred R. Shapiro, Study, *The Most-Cited Law Review Articles*, 73 CALIF. L. REV. 1540 (1985) (listing the most cited law-review articles in the years preceding the article's publication); Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996) (same); Fred R. Shapiro & Michelle Pearse, Essay, *The Most-Cited Law Review Articles of All Time*, 110 MICH. L. REV. 1483 (2012) (same); Fred R. Shapiro, *The Most-Cited Articles from The Yale Law Journal*, 100 YALE L.J. 1449 (1991) (compiling the most cited articles from the *Yale Law Journal*); Fred R. Shapiro, Centennial Introduction, *The Most-Cited Articles from the Iowa Law Review*, 100 IOWA L. REV. 1 (2014) (compiling the most cited articles from the *Iowa*

today are often taken too seriously in judging the merit of scholarship.²⁴ And, as Fred Shapiro has noted several times about the limits and biases of citation studies:

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 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.²⁵

Despite the limitations and potential biases of citation studies, this essay honors the authors and editors who have produced a century of scholarship. Past *TLR* editors and members may be curious about the outcomes of the citation study. They can look back on their decision-making and editing and test whether a publication's apparent attractiveness is reflected in citations. It is also intriguing to consider student works that have attracted citations in scholarly literature. And future editorial boards may glean some insight into article selection by examining the lists as they consider whether they are accepting scholarship likely to influence the law by being highly cited.

Citation ranking should never outweigh a substantive judgment about the quality of the scholarship and its contribution to the literature. But

Law Review); Fred R. Shapiro, *The Most-Cited Articles from the Minnesota Law Review*, 100 MINN. L. REV. 1735 (2016) [hereinafter Shapiro, *Most-Cited Articles from the Minnesota Law Review*] (compiling the most cited articles from the *Minnesota Law Review*).

24. See J.M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 846 (1996). In critiquing the use of citation studies, Balkin and Levinson observe:

[C]itation counts are worrisome not because they are trivial and divert our attention from the real issues of merit. Rather, they are worrisome precisely because they may be quite important—because fascination with citations counts suggests that our very ideas of merit may have been infected with and even constituted by relations of social power.

Id. Professors Balkin and Levinson end up creating a list of self-help maxims on how to increase the chance of ending up on a list of most cited publications. *Id.* at 849–65. See also Jeffrey L. Harrison & Amy R. Mashburn, *Citations, Justifications, and the Troubled State of Legal Scholarship: An Empirical Study*, 3 TEX. A&M L. REV. 45, 61 (2015) (demonstrating reliability concerns about citation databases and reliance upon citations).

25. Shapiro, *Most-Cited Articles from the Minnesota Law Review*, *supra* note 23, at 1736. For a more detailed examination of the biases of citation studies, see Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88 U. CHI. L. REV. 1 (2021) (carefully examining potential bias in citation studies in analyzing most cited legal scholars of all time).

frequency of citation often does reflect the innovativeness of the scholarship and its role in advancing a particular doctrine or area of law.

This essay uses the most cited works over the past 100 years, by decade, as a reflection of the work of the editors and members of the *Texas Law Review*, as well as, of course, a reflection of the authors. It is based on citations to the works published in the *Texas Law Review* in the Hein database. It reports the articles, notes, and student works with the most citations in journals included in that database.²⁶

I. Most Cited Articles

A. *The Most Cited Articles Published During the 100-Year Period*

The most cited article published during the last century in the *Texas Law Review* is Frank Easterbrook's seminal 1984 work, *The Limits of Antitrust*.²⁷ Easterbrook, who was a University of Chicago Law professor and who later became a Seventh Circuit judge,²⁸ first delivered this content as part of the inaugural Susman, Godfrey & McGowan Centennial Litigation Lecture at Texas Law.²⁹ However, the delivered text was far more than the lecture. Easterbrook wrote a forty-page article that set forth the thesis that judicial decisions that prevent competitive behavior are more harmful to society than those that allow anticompetitive behavior.³⁰ Easterbrook postulated that errors in deciding monopolization cases impose costs upon markets and illustrate the "limits" of antitrust law.³¹ He proposed a solution that erred on the side of permitting questionable practices because, he argued, the costs of prohibiting competitive behavior were significant.³² Scholars have cited this article because the courts adopted much of Easterbrook's analysis, even as the topic of monopolization in antitrust laws continues to be litigated and debated in new industries.³³ Judge Easterbrook is one of the most influential antitrust

26. For a comprehensive examination of databases, see generally John R. Beatty, *Citation Databases for Legal Scholarship*, 39 LEGAL REFERENCE SERV. Q. 56 (2020).

27. Frank H. Easterbrook, *The Limits of Antitrust*, 63 TEXAS L. REV. 1 (1984).

28. Frank H. Easterbrook, U. CHI. L. SCH., <https://www.law.uchicago.edu/faculty/easterbrook> [<https://perma.cc/7CED-4KQ6>].

29. Easterbrook, *supra* note 27 at 1 n.*.

30. *See id.* at 2–3 (arguing that judicial errors permitting harmful practices are self-correcting but errors condemning beneficial practices are not).

31. *Id.* at 4.

32. *Id.* at 39–40. Texas Law Professor Richard Markovits published a response to Easterbrook claiming that Professor Easterbrook underestimates the harm caused by anticompetitive mergers and proposes a simplistic analysis for courts that fails to prevent anticompetitive behavior prohibited under the antitrust laws. *See* Richard S. Markovits, *The Limits to Simplifying Antitrust: A Reply to Professor Easterbrook*, 63 TEXAS L. REV. 41, 86–87 (1984) (arguing that Easterbrook's approach would "screen out—and thus legalize—many types of illegal and undesirable conduct").

33. *See generally* Joshua D. Wright & Murat C. Mungan, *The Easterbrook Theorem: An Application to Digital Markets*, 130 YALE L.J.F. 622 (2021) (applying Easterbrook's approach to

scholars of our day and his works are heavily cited in the social-science literature.³⁴ These factors explain why *The Limits of Antitrust* received the most citations by a significant margin.

The second-most-cited article is then-Justice William Rehnquist's *The Notion of a Living Constitution* published in 1976, four years after his nomination to the Supreme Court by President Nixon.³⁵ The publication was presented as an observation, rather than a full article, because it was derived from a Will E. Orgain lecture Justice Rehnquist delivered at Texas Law.³⁶ However, constitutional law scholars have viewed Rehnquist's "observations" as one of his "first major 'off the bench' articulations of his constitutional and judicial philosophy . . . [that] influenced the growing conservative legal movement and future Reagan administration."³⁷ This piece clearly articulated the philosophy of judicial restraint: Justice Rehnquist argues that activism by an appointed judiciary is an "end run around" an elected government.³⁸ It is not surprising to see a high number of citations to a Supreme Court Justice who articulated a judicial philosophy that became part of a political movement.

The third- and fourth-most-cited articles were written by Mark Lemley, a professor who started his career at our law school and moved to Berkeley and later to Stanford.³⁹ *The Economics of Improvement in Intellectual Property Law* (1997)⁴⁰ and *Property, Intellectual Property, and Free Riding*

modern debates on monopolization law triggered by large firms in the digital economy). One scholar noted that the *TLR* article "led the Antitrust Division of the U.S. Department of Justice, around the same time, to shift its resources to cartel prosecutions and away from big monopolization cases." William H. Page, *Microsoft and the Limits of Antitrust*, 6 J. COMPETITION L. & ECON. 33, 33 (2010).

34. According to Hein, Easterbrook has been cited in over 13,000 publications in the Core U.S. Journals database. *Easterbrook, Frank H.*, HEINONLINE, https://heinonline.org/HOL/AuthorProfile?action=edit&search_name=Easterbrook%2C%20Frank%20H.&collection=journals [<https://perma.cc/E7LS-8QRL>].

35. William H. Rehnquist, *Observation, The Notion of a Living Constitution*, 54 TEXAS L. REV. 693 (1976).

36. *Id.* at 693 n.†. Professor Lucas A. Powe, Jr. recounts that Justice Rehnquist ended his lecture with the phrase "better dead than read" in reference to the Constitution. Email from Lucas A. Powe, Jr., Anne Green Regents Chair in Law, The University of Texas School of Law, to author (Sept. 22, 2021) (on file with the author).

37. 2 HOWARD GILLMAN, MARK A. GRABER & KEITH WHITTINGTON, AMERICAN CONSTITUTIONALISM 1 (Supp. 2013), <https://learninglink.oup.com/protected/files/content/file/1623813142035-williamhrehnquist.pdf> [<https://perma.cc/NG4F-9AC2>].

38. Rehnquist, *supra* note 35, at 706.

39. Mark A. Lemley, STAN. L. SCH., law.stanford.edu/directory/mark-a-lemley/ [<https://perma.cc/U763-QPM7>].

40. Mark A. Lemley, *The Economics of Improvement in Intellectual Property Law*, 75 TEXAS L. REV. 989 (1997). This article, which compares the law of improvements in patent and copyright from a law and economics perspective, was written as one of Lemley's tenure publications. *Id.* at 989 n.*, 991–92.

(2005)⁴¹ are the leading articles cited in the 1990–1999 and 2000–2009 decades. Fred Shapiro noted that intellectual property as a field did not attract a high number of citations when compared to scholarship in the first-year subjects.⁴² And scholarship in intellectual property frequently falls within one of the subtopics in the field, such as patents, copyrights, or trademarks, with scholarship often fragmenting within these areas. Lemley was among a group of intellectual-property scholars whose work transcended these subtopics and appealed to a broader audience.⁴³ Mark Lemley is the most cited intellectual property law scholar⁴⁴ and is the third-most-cited law scholar in the 2016–2020 period.⁴⁵ It is not surprising that Lemley’s works that combine intellectual property and law and economics attracted the attention of and citation by many other scholars and by many courts.

The fifth-most-cited article is Mark Tushnet’s 1984 *An Essay on Rights*,⁴⁶ which appeared in a symposium on a critique of rights. This article became known as a key part of the debate on rights associated with the Critical Legal Studies Movement in the 1980s.⁴⁷ Tushnet argued that rights analysis is indeterminate and capable of manipulation and therefore leads to harmful outcomes, especially for progressives.⁴⁸ His argument engaged the

41. Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83 TEXAS L. REV. 1031 (2005). This article, which examines how real property theory has influenced the law of intellectual property to focus on free riding and internalizing externalities, was written after Lemley had moved to Stanford. *Id.* at 1031 n.*, 1033.

42. Shapiro, *Most-Cited Articles from the Minnesota Law Review*, *supra* note 23, at 1736.

43. That group includes Mark Lemley, Robert Merges, Pamela Samuelson, and Rebecca Tushnet.

44. Mark A. Lemley, *supra* note 39.

45. Brian Leiter, *10 Most-Cited Law Faculty in the U.S., 2016–2020*, BRIAN LEITER’S L. SCH. REPS. (Aug. 26, 2021), <https://leiterlawschool.typepad.com/leiter/2021/08/10-most-cited-law-faculty-in-the-us-2016-2020.html> [<https://perma.cc/73GK-H8V9>].

46. Mark Tushnet, *An Essay on Rights*, 62 TEXAS L. REV. 1363 (1984).

47. See Robin L. West, *Tragic Rights: The Rights Critique in the Age of Obama*, 53 WM. & MARY L. REV. 713, 714–15 (2011) (highlighting the importance of the rights critique in the 1980s).

48. Tushnet, *supra* note 46, at 1386 (“It is not just that rights-talk does not do much good. In the contemporary United States, it is positively harmful.”); see also Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2187–88 (2013) (discussing Tushnet’s critique of rights analysis).

debate at the ideal time (for citations and scholarly debate) and became the favored citation for the critique of rights.⁴⁹ And Tushnet also appears on the list of most cited constitutional/public law scholars.⁵⁰

Completing a review of the top ten most cited articles at the end of the first century are a public-choice-jurisprudence article by Daniel Farber and Philip Frickey, a law-as-literature symposium article by Sanford Levinson, a patent symposium article by Mark Lemley and Carl Shapiro, a constitutional-interpretation symposium article by Lawrence Lessig, and a corporate-theory article by Jonathan Macey and Geoffrey Miller. Common to these articles is the prominence of the authors as leaders in their field—scholars who today appear on lists of highly cited scholars at their respective institutions and who hold positions at top law schools—and topics that are viewed as forging substantial new ground in their area and therefore are frequently addressed in subsequent scholarship.

The top two most cited articles were the product of invited lectures, and another three articles in the top ten most cited were the product of invited symposia. They represent a balance of the constitutional law/theory and intellectual property/corporate/antitrust fields in which Texas Law has professors with national reputations. Four articles in the top ten were authored or co-authored by Texas Law professors, and one sees the influence of our faculty throughout most cited articles in the various decades. I suspect few are surprised by the articles and authors represented on this top ten list, but some, including, of course, past Board editors and *Review* members, will believe that other articles deserved to make the list too.

49. Tushnet presents four related critiques of rights that are often cited. See Tushnet, *supra* note 46, at 1363–64 (presenting the four critiques).

50. E.g., Brian Leiter, *20 Most-Cited Constitutional Law Scholars in the U.S. for the Period 2013–2017 (Corrected and Updated 8/21)*, BRIAN LEITER'S L. SCH. REPS. (Aug. 21, 2018), <https://leiterlawschool.typepad.com/leiter/2018/08/20-most-cited-constitutional-law-scholars-in-the-us-for-the-period-2013-2017.html> [<https://perma.cc/U5M4-PM4M>].

Top Ten Most Cited Articles at the End of the First Century
(Citation Numbers as of Nov. 14, 2021)

RANK	ARTICLE	CITES
1.	Frank H. Easterbrook, <i>The Limits of Antitrust</i> , 63 TEXAS L. REV. 1 (1984)	814
2.	William H. Rehnquist, Observation, <i>The Notion of a Living Constitution</i> , 54 TEXAS L. REV. 693 (1976)	689
3.	Mark A. Lemley, <i>The Economics of Improvement in Intellectual Property Law</i> , 75 TEXAS L. REV. 989 (1997)	611
4.	Mark A. Lemley, <i>Property, Intellectual Property, and Free Riding</i> , 83 TEXAS L. REV. 1031 (2005)	592
5.	Mark Tushnet, <i>An Essay on Rights</i> , 62 TEXAS L. REV. 1363 (1984) (symposium article)	559
6.	Mark A. Lemley & Carl Shapiro, <i>Patent Holdup and Royalty Stacking</i> , 85 TEXAS L. REV. 1991 (2007) (symposium article)	527
7.	Daniel A. Farber & Philip P. Frickey, <i>The Jurisprudence of Public Choice</i> , 65 TEXAS L. REV. 873 (1987)	487
8.	Sanford Levinson, <i>Law as Literature</i> , 60 TEXAS L. REV. 373 (1982) (symposium article)	478
9.	Lawrence Lessig, <i>Fidelity in Translation</i> , 71 TEXAS L. REV. 1165 (1993)	411
10.	Jonathan R. Macey & Geoffrey P. Miller, <i>Toward an Interest-Group Theory of Delaware Corporate Law</i> , 65 TEXAS L. REV. 469 (1987)	378

B. The Most Cited Articles Published in Each Decade

In order to provide a survey of the last 100 years of *Texas Law Review* publications, I have grouped the top ten most cited articles in each decade in Appendix A. After each grouping of ten, I include the top three most cited symposium articles of the decade. Symposium articles often appear on both lists but not always. Interestingly, symposium articles did not tend to produce citations equivalent to the top cited articles until 1980. Since then, many symposium articles have been cited enough to place them in the top ten most cited articles in the decade.

Despite the criticisms made about the value of citation studies, it is possible to identify some themes and trends in the most cited scholarship over time. Early in its history, our law school aspired to be a national school.⁵¹ The movement of faculty in and out of the Law School contributed to this goal. The school's location in populous Texas and the strength of The University

51. See Douglas Laycock, *Charles Alan Wright and The University of Texas School of Law*, 32 TEX. INT'L L.J. 367, 370 (1997) (explaining that early in Texas Law's history the institution was almost entirely a regional school).

of Texas as a major research institution were also instrumental in developing a national reputation. Although Dean Green pitched the law review as serving the lawyers of Texas,⁵² the faculty members who actively supported the law review were involved in national dialogues on the development of the law and how to best improve legal education.⁵³ Thus, from the beginning, the *Texas Law Review* sought to address the dual goals of serving the state's lawyers and also advancing larger national debates over the law.⁵⁴ One might wonder how the *Texas Law Review* could satisfy the members of the Texas Bar and their local interests, yet continue to develop a national reputation at the same time. It succeeded at both because the core faculty in torts, oil and gas, trial procedure and evidence, and constitutional law were productive and prominent scholars on a national level and because Texas law sufficiently often served as a model for consideration of similar issues in other states.

The first forty years of most cited scholarship reflects the law school faculty's strength in oil and gas, torts, procedure, and evidence. Four of the top ten articles in the 1922–1929 period addressed legal issues in oil-and-gas law, in what was still a formative era for that body of law.⁵⁵ The development of oil and gas in the 1920s and 1930s posed fundamental questions of property, contract, and administrative law. Texas courts and law school professors were on the forefront of this developing area. Oil-and-gas scholarship appeared prominently on the most cited lists in the first four decades. And Texas Law graduates went on to teach in this field at other law schools.⁵⁶

Texas Law was also known for its torts professors. Of course, Leon Green's association with the law school, support of the law review, and law-review publications contributed to the school's dominance in this area. W. Page Keeton, a 1931 graduate of the law school who joined the faculty and later became the dean,⁵⁷ wrote articles that appear in five decades of most cited scholarship. Dean Keeton's reputation as a leading torts scholar helped attract highly cited torts articles from William Prosser, Clarence Morris, and

52. ANTHONY, *supra* note 1, at 10.

53. See Robertson, *supra* note 16, at 393 (noting Green's influence on torts and legal education).

54. ANTHONY, *supra* note 1, at 10.

55. In the 1920–1929 period, A.W. Walker, who was the first Editor in Chief of the *Texas Law Review* and subsequently a Texas Law professor, published three oil and gas articles in the top ten cited pieces.

56. Charles Meyers and Joseph Sneed were graduates and professors at Texas and moved to Columbia and Cornell, respectively, and then on to Stanford Law School. *Obituaries: C.J. Meyers; Lawyer, Former Stanford Dean*, L.A. TIMES (July 18, 1988, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1988-07-18-mn-4326-story.html> [<https://perma.cc/J84Y-K5T5>]; *Joseph Tyree Sneed*, DUKE L., <https://web.law.duke.edu/history/faculty/sneed/> [<https://perma.cc/U4CX-6TJV>].

57. *UT School of Law Early Deans 1902–1974: Page Keeton, 1949–1974*, TARLTON L. LIBR., <https://tarlton.law.utexas.edu/early-deans/w-page-keeton> [<https://perma.cc/N7SJ-LGK5>] (Mar. 16, 2018, 8:28 AM).

Fleming James Jr. Almost half of the most cited articles the *Review* published between the 1930s to 1960s covered different aspects of tort law.

The Texas Law faculty also had leading scholars in the areas of procedure and evidence. Charles McCormick, an undergraduate at The University of Texas and a graduate of Harvard Law School, was a professor at the law school and later dean.⁵⁸ McCormick published four top cited evidence articles in the 1930s and 1940s. And articles in the areas of procedure and evidence by Charles Alan Wright, Roger Traynor, and James William Moore turn up in the most cited articles in the three-decade period from the 1930s to the 1960s.

The most cited scholarship in the first five decades of the *Texas Law Review* reflects a balance of topics of interest to practicing lawyers and to courts. Professors such as A.W. Walker saw the chance to influence judicial decisions on unresolved oil-and-gas problems and made the most of the opportunity. Leon Green, Page Keeton, and Charles McCormick helped transform the law in their respective fields. They substantially influenced how scholars and judges thought about such issues. Not only were these articles of interest to practitioners, but they were also powerful pieces of academic scholarship. In other words, one might view them as doctrinal scholarship with policy and theoretical underpinnings. These articles furthered theory and practice in a substantial way.

In the second fifty-year period of the *Texas Law Review*, which began during the 1970s, the most cited articles include a number of interdisciplinary articles. Most of these articles focused on public law. Although some Texas lawyers and judges criticized this development,⁵⁹ such a shift occurred throughout top journals nationwide.⁶⁰ The change also reflected law schools' hiring faculty with advanced degrees in other disciplines and the development of interdisciplinary courses. The Law School added a number of faculty in constitutional and public law. The *Texas Law Review*, in turn, often relied upon these professors to host symposia. In the last fifty years of

58. *UT School of Law Early Deans 1902–1974: Charles McCormick, 1941–1949*, TARLTON L. LIBR., <https://tarlton.law.utexas.edu/early-deans/charles-mccormick> [<https://perma.cc/T6GH-K83A>] (Mar. 16, 2018, 8:28 AM).

59. See Thomas R. Phillips, Foreword, *A Law Review for Texas*, 75 TEXAS L. REV. 1, 2–3 (1996) (lamenting a shift to more theoretical scholarship in the 1970s). Since the 1970s, every editorial board can recount several instances of letters, emails, or calls from members of the bar who criticize the shift away from doctrinal scholarship. The *Texas Law Review* does, however, publish the official state citation guide, the *Texas Rules of Form*, that is used by courts and lawyers for guidance in citing Texas authorities. See Jane O'Connell, *The Development and Evolution of The Greenbook: The First Fifty Years*, 97 TEXAS L. REV. ONLINE 171, 171 (2019) (“Today’s *Greenbook* provides not only Texas-specific citation information but also serves as a guide to general Texas practice, Texas court structure, Texas-specific legal publications, and Texas legal history.”).

60. See Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 DENV. U. L. REV. 661, 666–67 (1998) (claiming that law reviews of “fancy schools” have moved away from doctrinal pieces).

most cited articles, symposia seem to generate one or two highly cited articles, even though frequent citations do not often migrate to other articles in the symposium.

The articles most cited beginning in the 1980s highlight the influence of our faculty in intellectual property and constitutional law. Mark Lemley's and John Golden's article and symposia contributions account for six articles from the 1990s to 2010s. Constitutional scholars Sanford Levinson, Sam Issacharoff, Ernest Young, David Anderson, and David Robertson also published highly cited articles during this time period.

A review of the most cited scholarship within each decade reflects the evolution of faculty scholarship and the areas of faculty expertise. The faculty's role in forming the *Texas Law Review* and their concern to address the needs of practicing lawyers in Texas shaped the types of articles published during the early years.⁶¹ The national reputation of many faculty members helped entice top scholars at other institutions to publish articles in the *Review*. The Texas faculty's clout contributed significantly to a rapid increase in the *Review*'s national reputation. As expertise in the faculty evolved and expanded to other areas of the law, so did the *Review*.

II. Most Cited Student Notes by Decade

Many student members of journals are required to write a note or comment to fulfill a requirement of membership. Students often combine the requirement with a seminar or class so that they can get the benefit of faculty supervision and also academic credit. The editorial board selects student notes based upon a number of factors that add up to a note's perceived importance. The process of preparing, checking, editing, and publishing a note or comment offers law review members a significant professional experience.

One expects student notes and comments to be less likely to attract the attention of the scholarly community because most student writers do not yet have developed reputations within the academy. They also do not usually have a chance to present their work at conferences and workshops. Exceptions do occur when law students have advanced degrees or reputations in another discipline and student editors may later become law professors and continue writing in the area, develop good reputations, and find even their notes cited as a result. Student notes and comments are also usually written on narrower topics and shorter than most law-review articles. However, one typical criterion for publishing a student note or comment is that the ideas are

61. Early in the history of the *Texas Law Review*, faculty members controlled the articles selected for publication in the journal. ANTHONY, *supra* note 1, at 16. Eventually, the responsibility of selecting articles and editing the manuscripts was transferred to the student editorial board.

not preempted by existing scholarship. Therefore, student notes and comments may be the first published commentary in an area.

In preparing this essay, I thought it would be interesting to highlight the most cited student notes and comments during the last century. In Appendix B, I have organized the most cited student works by decade. Before 1977, student works were either classified as comments or short notes, and they often focused on a case or narrow topic. Starting in the 1978 Volume 56, the *Texas Law Review* began to publish the modern note: a student publication that typically identifies a problem, presents the various arguments and policies on every side, and proposes a resolution. I have divided the 1970s decade to reflect these two types of student works. It is interesting to review the topics that attract the most citations.

Conclusion

In 1983, while the law school celebrated its 100th anniversary, former Dean Page Keeton gave several speeches about the institution and his deanship. Fortunately, his notes have been preserved.⁶² In Dean Keeton's words:

Certainly, one of the major events in the history of the law school and at the end of Townes's period as dean must be the launching of the Texas Law Review in 1922, a project which had long been a major dream of Dean Townes and which was brought to accomplishment with the help and support of Leon Green . . .⁶³

He explained that for the first quarter century of the law school, its primary role was to prepare students to be practicing lawyers. Keeton said:

The launching of the Law Review helped to broaden the goals and role of this law school by way of emphasizing roles other than that of preparing persons for the law practice.

But the Law Review was designed as an activity that would serve to improve the skills of law students in research and writing and, at the same time, provide a means by which the law school could serve the profession and practicing lawyers in improving the administration of justice and providing continuing education.⁶⁴

Dean Keeton highlights the importance of the 1920s and 1930s in the law school's ascent to national prominence.⁶⁵

62. See Page Keeton, Some Remarks Related to the History of the University of Texas School of Law—1883–1983 (Oct. 1, 1983) (transcript available in the Tarlton Law Library) (providing Dean Keeton's notes for his centennial speech at the law school).

63. *Id.* at 5.

64. *Id.* at 6.

65. *Id.* at 8. Cf. Alfred L. Brophy, *The Emergence of the Importance of Law Review Rankings for Law School Rankings, 2003–2007*, 78 COLO. L. REV. 35 (2007) (analyzing the connection between journal rankings and law school rankings).

By all accounts, the *Texas Law Review* has had a very successful century of publication.⁶⁶ It has served as the training ground for thousands of Texas Law graduates who have become successful and distinguished lawyers, judges, and academics. The experience of working countless hours on source checking, editing, writing, and publishing has produced professional and personal relationships that continue throughout our lives. Journal work gives an added dimension to the second- and third-year law-school experience, and those lessons prove to be invaluable throughout our careers.

The loyalty for the *Texas Law Review* that is engendered by this experience is fierce and enduring. The number of *Texas Law Review* alumni who actively participate in the Texas Law Review Association (TLRA), and the banquets and symposia is impressive. The TLRA through its life member program and fundraising has provided scholarships to editors, emergency low-interest loans to members, and funding for hosting the annual symposia. And the *Review* produces a core of loyal graduates who serve on the law school foundation and alumni associations. The relationship between the institution of the *Texas Law Review* and its alumni is one important key to its success.

The Texas Law School faculty's support of the *Review* is also another important strength of the institution.⁶⁷ Faculty members respect the right of the student editors to make editorial decisions about publication and content. But the editorial boards have astutely relied upon faculty connections to scholars in specific fields and thereby attracted high-quality publications. This relationship began with Leon Green, Ira Hildebrand, and Charles Potts, but a review of the top cited scholarship highlights the importance of faculty contributions to the *Review*. Of course, one finds countless additional faculty-written articles just below the top ten in each decade that have profoundly contributed to the *Review*'s offerings.

As we celebrate the first century of *Texas Law Review* publications, I look forward to the work of the new editors and members in continuing this long-scholarly tradition. I have no doubt that the landscape for student-edited journals will continue to evolve and will confront many new challenges, but our editors and members will continue to enjoy the experience and build on the success of the publication. The University of Texas School of Law

66. Scott Atlas, who has formally and informally mentored decades of student editorial boards of the *Texas Law Review*, provided his explanation on why students choose to work so diligently for the *Review* in celebration of its seventy-fifth anniversary. See Scott J. Atlas, Foreword, *Why Did We Do It?*, 75 TEXAS L. REV. 9 (1996).

67. See Charles Alan Wright, Foreword, *And Now We Are 75*, 75 TEXAS L. REV. 5, 5–6 (1996) (examining briefly the efforts of Texas Law faculty to improve the reputation of the *Texas Law Review*).

community honors the students, alumni, and faculty who have contributed to the accomplishments of the *Texas Law Review*. I congratulate you for a job well done. You have carried forth the vision of the founders and investors of this educational nonprofit corporation. Your successors are well positioned to continue to uphold the standards of the *Texas Law Review* for the next century.

Appendix A: Most Cited Articles by Decade
(Citation Numbers as of Nov. 14, 2021)

2010–2019
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	Rachel E. Barkow, <i>Insulating Agencies: Avoiding Capture Through Institutional Design</i> , 89 TEXAS L. REV. 15 (2010)	343
2.	John C.P. Goldberg & Benjamin C. Zipursky, <i>Torts as Wrongs</i> , 88 TEXAS L. REV. 917 (2010)	255
3.	Victor Fleischer, <i>Regulatory Arbitrage</i> , 89 TEXAS L. REV. 227 (2010)	166
4.	Daniel J. Hemel & Lisa Larrimore Ouellette, <i>Beyond the Patents–Prizes Debate</i> , 92 TEXAS L. REV. 303 (2013)	155
5.	Scott R. Peppet, <i>Regulating the Internet of Things: First Steps Toward Managing Discrimination, Privacy, Security, and Consent</i> , 93 TEXAS L. REV. 85 (2014)	148
6.	Robert J. Delahunty & John C. Yoo, <i>Dream On: The Obama Administration’s Nonenforcement of Immigration Laws, the DREAM Act, and the Take Care Clause</i> , 91 TEXAS L. REV. 781 (2013)	143
7.	Daniel A. Farber & Anne Joseph O’Connell, <i>The Lost World of Administrative Law</i> , 92 TEXAS L. REV. 1137 (2014)	120
8.	Steven G. Calabresi & Julia T. Rickert, <i>Originalism and Sex Discrimination</i> , 90 TEXAS L. REV. 1 (2011)	117
9.	Marcel Kahan & Edward Rock, <i>Embattled CEOs</i> , 88 TEXAS L. REV. 987 (2010)	115
10.	John M. Golden, <i>Principles for Patent Remedies</i> , 88 TEXAS L. REV. 505 (2010)	113

Top Three Most Cited Symposia Articles

RANK	ARTICLE	CITES
1.	Gillian E. Metzger, <i>Administrative Constitutionalism</i> , 91 TEXAS L. REV. 1897 (2013)	104
2.	John R. Allison, Mark A. Lemley & David L. Schwartz, <i>Understanding the Realities of Modern Patent Litigation</i> , 92 TEXAS L. REV. 1769 (2014)	94
3.	Henry T.C. Hu, <i>Too Complex to Depict? Innovation, “Pure Information,” and the SEC Disclosure Paradigm</i> , 90 TEXAS L. REV. 1601 (2012)	83

2000–2009

Top Ten Most Cited Articles

(Note: Top three most cited symposia articles are included below.)

RANK	ARTICLE	CITES
1.	Mark A. Lemley, <i>Property, Intellectual Property, and Free Riding</i> , 83 TEXAS L. REV. 1031 (2005)	592
2.	Mark A. Lemley & Carl Shapiro, <i>Patent Holdup and Royalty Stacking</i> , 85 TEXAS L. REV. 1991 (2007) (symposium article)	527
3.	Bradford R. Clark, <i>Separation of Powers as a Safeguard of Federalism</i> , 79 TEXAS L. REV. 1321 (2001)	338
4.	Sarah H. Cleveland, <i>Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Powers over Foreign Affairs</i> , 81 TEXAS L. REV. 1 (2002)	307
5.	Ernest A. Young, <i>The Rehnquist Court's Two Federalisms</i> , 83 TEXAS L. REV. 1 (2004)	252
6.	Kathleen C. Engel & Patricia A. McCoy, <i>A Tale of Three Markets: The Law and Economics of Predatory Lending</i> , 80 TEXAS L. REV. 1255 (2002)	249
7.	Ernest A. Young, <i>Constitutional Avoidance, Resistance Norms, and the Preservation of Judicial Review</i> , 78 TEXAS L. REV. 1549 (2000) (symposium article)	214
8.	John M. Golden, <i>"Patent Trolls" and Patent Remedies</i> , 85 TEXAS L. REV. 2111 (2007) (symposium article)	197
9.	James S. Liebman, Jeffrey Fagan, Valerie West & Jonathan Lloyd, <i>Capital Attrition: Error Rates in Capital Cases, 1973–1995</i> , 78 TEXAS L. REV. 1839 (2000) (symposium article)	195
10.	Barry Friedman, <i>The Politics of Judicial Review</i> , 84 TEXAS L. REV. 257 (2005)	180

1990–1999
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	Mark A. Lemley, <i>The Economics of Improvement in Intellectual Property Law</i> , 75 TEXAS L. REV. 989 (1997)	611
2.	Lawrence Lessig, <i>Fidelity in Translation</i> , 71 TEXAS L. REV. 1165 (1993)	411
3.	Joel R. Reidenberg, <i>Lex Informatica: The Formulation of Information Policy Rules Through Technology</i> , 76 TEXAS L. REV. 553 (1998)	298
4.	Samuel Issacharoff & Pamela S. Karlan, <i>The Hydraulics of Campaign Finance Reform</i> , 77 TEXAS L. REV. 1705 (1999) (symposium article)	280
5.	Tom Baker, <i>On the Genealogy of Moral Hazard</i> , 75 TEXAS L. REV. 237 (1996)	259
6.	John F. Duffy, <i>Administrative Common Law in Judicial Review</i> , 77 TEXAS L. REV. 113 (1998)	255
7.	Lawrence E. Mitchell, <i>A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes</i> , 70 TEXAS L. REV. 579 (1992)	246
8.	Gary T. Schwartz, <i>Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice</i> , 75 TEXAS L. REV. 1801 (1997) (symposium article)	233
9.	Mark A. Lemley, Book Review, <i>Romantic Authorship and the Rhetoric of Property</i> , 75 TEXAS L. REV. 873 (1997)	219
10.	Evan H. Caminker, <i>Precedent and Prediction: The Forward-Looking Aspects of Inferior Court Decisionmaking</i> , 73 TEXAS L. REV. 1 (1994)	218

Top Three Most Cited Symposia Articles

RANK	ARTICLE	CITES
1.	Samuel Issacharoff & Pamela S. Karlan, <i>The Hydraulics of Campaign Finance Reform</i> , 77 TEXAS L. REV. 1705 (1999)	280
2.	Gary T. Schwartz, <i>Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice</i> , 75 TEXAS L. REV. 1801 (1997)	233
3.	Pamela S. Karlan, <i>The Rights to Vote: Some Pessimism About Formalism</i> , 71 TEXAS L. REV. 1705 (1993)	161

1980–1989

Top Ten Most Cited Articles

(Note: Top three most cited symposia articles are included below.)

RANK	ARTICLE	CITES
1.	Frank H. Easterbrook, <i>The Limits of Antitrust</i> , 63 TEXAS L. REV. 1 (1984)	814
2.	Mark Tushnet, <i>An Essay on Rights</i> , 62 TEXAS L. REV. 1363 (1984) (symposium article)	559
3.	Daniel A. Farber & Philip P. Frickey, <i>The Jurisprudence of Public Choice</i> , 65 TEXAS L. REV. 873 (1987)	487
4.	Sanford Levinson, <i>Law as Literature</i> , 60 TEXAS L. REV. 373 (1982) (symposium article)	478
5.	Jonathan R. Macey & Geoffrey P. Miller, <i>Toward an Interest-Group Theory of Delaware Corporate Law</i> , 65 TEXAS L. REV. 469 (1987)	378
6.	Kenneth C. Randall, <i>Universal Jurisdiction Under International Law</i> , 66 TEXAS L. REV. 785 (1988)	340
7.	Frances Olsen, <i>Statutory Rape: A Feminist Critique of Rights Analysis</i> , 63 TEXAS L. REV. 387 (1984)	304
8.	Mark S. Fowler & Daniel L. Brenner, <i>A Marketplace Approach to Broadcast Regulation</i> , 60 TEXAS L. REV. 207 (1982)	289
9.	Richard L. Abel, <i>Why Does the ABA Promulgate Ethical Rules?</i> , 59 TEXAS L. REV. 639 (1981) (symposium article)	277
10.	Peter Gabel, <i>The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves</i> , 62 TEXAS L. REV. 1563 (1984) (symposium article)	252

1970–1979
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	William H. Rehnquist, Observation, <i>The Notion of a Living Constitution</i> , 54 TEXAS L. REV. 693 (1976)	689
2.	Daniel R. Fischel, <i>Efficient Capital Market Theory, the Market for Corporate Control, and the Regulation of Cash Tender Offers</i> , 57 TEXAS L. REV. 1 (1978)	248
3.	David A. Anderson, <i>Libel and Press Self-Censorship</i> , 53 TEXAS L. REV. 422 (1975)	235
4.	Richard A. Posner, Observation, <i>The Economic Approach to Law</i> , 53 TEXAS L. REV. 757 (1975)	210
5.	W. Page Keeton, <i>Products Liability—Inadequacy of Information</i> , 48 TEXAS L. REV. 398 (1970)	194
6.	Martin H. Redish, <i>Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications</i> , 55 TEXAS L. REV. 759 (1977)	193
7.	Charles Alan Wright, <i>Must the Criminal Go Free if the Constable Blunders?</i> , 50 TEXAS L. REV. 736 (1972)	183
8.	Mark Tushnet, <i>Truth, Justice, and the American Way: An Interpretation of Public Law Scholarship in the Seventies</i> , 57 TEXAS L. REV. 1307 (1979)	179
9.	Albert W. Alschuler, <i>Courtroom Misconduct by Prosecutors and Trial Judges</i> , 50 TEXAS L. REV. 629 (1972)	171
10	David W. Robertson, <i>Defamation and the First Amendment: In Praise of Gertz v. Robert Welch, Inc.</i> , 54 TEXAS L. REV. 199 (1976)	169

Top Three Most Cited Symposia Articles

RANK	ARTICLE	CITES
1.	John F. Sutton, Jr., <i>The American Bar Association Code of Professional Responsibility: An Introduction</i> , 48 TEXAS L. REV. 255 (1970)	75
2.	David F. Cavers, <i>Conflict of Laws Round Table: The Value of Principled Preferences</i> , 49 TEXAS L. REV. 211 (1971)	59
3.	Donald T. Weckstein, <i>Maintaining the Integrity and Competence of the Legal Profession</i> , 48 TEXAS L. REV. 267 (1970)	56

1960–1969
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	Jerre S. Williams, <i>The Twilight of State Action</i> , 41 TEXAS L. REV. 347 (1963)	216
2.	Page Keeton, <i>Products Liability—Liability Without Fault and the Requirement of a Defect</i> , 41 TEXAS L. REV. 855 (1963)	205
3.	Fred Cohen, <i>The Function of the Attorney and the Commitment of the Mentally Ill</i> , 44 TEXAS L. REV. 424 (1966)	188
4.	Harry D. Krause, <i>Bringing the Bastard into the Great Society—A Proposed Uniform Act on Legitimacy</i> , 44 TEXAS L. REV. 829 (1966)	139
5.	James William Moore & Donald T. Weckstein, <i>Diversity Jurisdiction: Past, Present, and Future</i> , 43 TEXAS L. REV. 1 (1964)	122
6.	Edward J. Bloustein, <i>Privacy, Tort Law, and the Constitution: Is Warren and Brandeis' Tort Petty and Unconstitutional as Well?</i> , 46 TEXAS L. REV. 611 (1968)	117
7.	Robert W. Calvert, <i>"No Evidence" and "Insufficient Evidence" Points of Error</i> , 38 TEXAS L. REV. 361 (1960)	104
8.	Fred Cohen, <i>Sentencing, Probation, and the Rehabilitative Ideal: The View from Mempa v. Rhay</i> , 47 TEXAS L. REV. 1 (1968)	100
9.	E. Wayne Thode, <i>The Ethical Standard for the Advocate</i> , 39 TEXAS L. REV. 575 (1961)	94
10.	Leon Green, <i>Duties, Risks, Causation Doctrines</i> , 41 TEXAS L. REV. 42 (1962)	93

Top Three Most Cited Symposia Articles

RANK	ARTICLE	CITES
1.	Glenn R. Winters, <i>Selection of Judges—An Historical Introduction</i> , 44 TEXAS L. REV. 1081 (1966)	77
2.	Maurice Rosenberg, <i>The Qualities of Justices—Are They Strainable?</i> , 44 TEXAS L. REV. 1063 (1966)	55
3.	Henry Weihofen, <i>Institutional Treatment of Persons Acquitted by Reason of Insanity</i> , 38 TEXAS L. REV. 849 (1960)	50

1950–1959
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	Roger J. Traynor, <i>Is This Conflict Really Necessary?</i> , 37 TEXAS L. REV. 657 (1959)	343
2.	Fleming James, Jr., <i>Products Liability</i> (pt. 1), 34 TEXAS L. REV. 44 (1955)	140
3.	Fleming James, Jr., <i>Products Liability</i> (pt. 2), 34 TEXAS L. REV. 192 (1955)	128
4.	Leon Green, <i>Tort Law Public Law in Disguise</i> , 38 TEXAS L. REV. 1 (1959)	110
5.	Charles Alan Wright, <i>The Abstention Doctrine Reconsidered</i> , 37 TEXAS L. REV. 815 (1959)	107
6.	Ben F. Small, <i>Gaffing at a Thing Called Cause: Medico-Legal Conflicts in the Concept of Causation</i> , 31 TEXAS L. REV. 630 (1953) (symposium article)	91
7.	Leon Green, <i>Proximate Cause in Texas Negligence Law</i> (pt. 1), 28 TEXAS L. REV. 471 (1950)	68
8.	C.J. Meyers, <i>The Implied Covenant of Further Exploration</i> , 34 TEXAS L. REV. 553 (1956)	66
9.	Allan H. McCoid, <i>The Third Person in the Compensation Picture: A Study of the Liabilities and Rights of Non-Employers</i> , 37 TEXAS L. REV. 389 (1959)	59
10.	Frank J. Trelease, <i>Coordination of Riparian and Appropriative Rights to the Use of Water</i> , 33 TEXAS L. REV. 24 (1954)	54

Top Three Most Cited Symposia Articles

RANK	ARTICLE	CITES
1.	Ben F. Small, <i>Gaffing at a Thing Called Cause: Medico-Legal Conflicts in the Concept of Causation</i> , 31 TEXAS L. REV. 630 (1953)	91
2.	Robert E. Hardwicke & Robert E. Hardwicke, Jr., <i>Apportionment of Royalty to Separate Tracts: The Entirety Clause and the Community Lease</i> , 32 TEXAS L. REV. 660 (1954)	26
3.	Pierre R. Loiseaux, <i>Innocent Victims 1959</i> , 38 TEXAS L. REV. 154 (1959)	25

1940–1949
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	William L. Prosser, <i>Nuisance Without Fault</i> , 20 TEXAS L. REV. 399 (1942)	163
2.	Charles T. McCormick, <i>Some Problems and Developments in the Admissibility of Confessions</i> , 24 TEXAS L. REV. 239 (1946) (symposium article)	115
3.	Gus M. Hodges, <i>Contribution and Indemnity Among Tortfeasors</i> , 26 TEXAS L. REV. 150 (1947)	103
4.	Charles T. McCormick, <i>The Turncoat Witness: Previous Statements as Substantive Evidence</i> , 25 TEXAS L. REV. 573 (1947)	94
5.	Lee Jones, Jr., <i>Non-Participating Royalty</i> , 26 TEXAS L. REV. 569 (1948)	77
6.	Henry Weihofen & Winfred Overholser, <i>Commitment of the Mentally Ill</i> , 24 TEXAS L. REV. 307 (1946) (symposium article)	68
7. (tie)	W. Page Keeton & Clarence Morris, <i>Notes on "Balancing the Equities,"</i> 18 TEXAS L. REV. 412 (1940)	59
7. (tie)	Charles T. McCormick, <i>Some Observations upon the Opinion Rule and Expert Testimony</i> , 23 TEXAS L. REV. 109 (1945)	59
9.	James Wm. Moore & Robert Stephen Oglebay, <i>The Supreme Court, Stare Decisis and Law of the Case</i> , 21 TEXAS L. REV. 514 (1943)	58
10.	A.W. Walker, Jr., <i>Developments in the Law of Oil and Gas in Texas During the War Years—A Résumé</i> , 25 TEXAS L. REV. 1 (1946)	55

Top Three Most Cited Symposia Articles

RANK	ARTICLE	CITES
1.	Charles T. McCormick, <i>Some Problems and Developments in the Admissibility of Confessions</i> , 24 TEXAS L. REV. 239 (1946)	115
2.	Henry Weihofen & Winfred Overholser, <i>Commitment of the Mentally Ill</i> , 24 TEXAS L. REV. 307 (1946)	68
3.	John Barker Waite, <i>The Law of Arrest</i> , 24 TEXAS L. REV. 279 (1946)	22

1930–1939
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	W. Page Keeton, <i>Fraud—Concealment and Non-Disclosure</i> , 15 TEXAS L. REV. 1 (1936)	179
2.	Charles T. McCormick, <i>The Scope of Privilege in the Law of Evidence</i> , 16 TEXAS L. REV. 447 (1938)	151
3.	Robert E. Hardwicke, <i>The Rule of Capture and Its Implications as Applied to Oil and Gas</i> , 13 TEXAS L. REV. 391 (1935)	150
4.	A.W. Walker, Jr., <i>The Nature of the Property Interests Created by an Oil and Gas Lease in Texas</i> (pt. 5), 11 TEXAS L. REV. 399 (1933)	101
5.	Roy D. Jackson, Jr., <i>Joint Torts and Several Liability</i> , 17 TEXAS L. REV. 399 (1939)	75
6.	Dale E. Bennett, <i>The Modern Lease—An Estate in Land or a Contract (Damages for Anticipatory Breach and Interdependency of Covenants)</i> , 16 TEXAS L. REV. 47 (1937)	73
7.	A.W. Walker, Jr., <i>The Nature of the Property Interests Created by an Oil and Gas Lease in Texas</i> (pt. 3), 8 TEXAS L. REV. 483 (1930)	55
8. (tie)	W. Page Keeton, <i>Statutory Presumptions—Their Constitutionality and Legal Effect</i> , 10 TEXAS L. REV. 34 (1931)	47
8. (tie)	A.W. Walker, Jr., <i>Property Rights in Oil and Gas and Their Effect upon Police Regulation of Production</i> , 16 TEXAS L. REV. 370 (1938)	47
10.	W. Page Keeton, <i>Imputed Contributory Negligence</i> , 13 TEXAS L. REV. 161 (1935)	41

1922–1929
Top Ten Most Cited Articles

RANK	ARTICLE	CITES
1.	Bryant Smith, <i>Retroactive Laws and Vested Rights</i> (pt. 1), 5 TEXAS L. REV. 231 (1927)	109
2.	A.W. Walker, Jr., <i>The Nature of the Property Interests Created by an Oil and Gas Lease in Texas</i> (pt. 1), 7 TEXAS L. REV. 1 (1928)	88
3.	Edson R. Sunderland, <i>The Problem of Appellate Review</i> , 5 TEXAS L. REV. 126 (1927)	81
4.	Bryant Smith, <i>Retroactive Laws and Vested Rights</i> (pt. 2), 6 TEXAS L. REV. 409 (1928)	78
5.	John E. Hallen, <i>Fair Comment</i> , 8 TEXAS L. REV. 41 (1929)	71
6.	Leon Green, <i>The Courts' Power over Admission and Disbarment</i> , 4 TEXAS L. REV. 1 (1925)	67
7.	A.W. Walker, Jr., <i>Fee Simple Ownership of Oil and Gas in Texas</i> , 6 TEXAS L. REV. 125 (1928)	65
8.	A.W. Walker, Jr., <i>The Nature of the Property Interests Created by an Oil and Gas Lease in Texas</i> (pt. 2), 7 TEXAS L. REV. 539 (1929)	38
9.	D. Edward Greer, <i>The Ownership of Petroleum Oil and Natural Gas in Place</i> , 1 TEXAS L. REV. 162 (1923)	30
10.	Charles Grove Haines, <i>Judicial Review of Legislation in the United States and the Doctrine of Vested Rights and of Implied Limitations of Legislatures</i> , 3 TEXAS L. REV. 1 (1924)	23

Appendix B: Most Cited Notes and Comments by Decade

(Citation Numbers as of Nov. 12, 2021)

2010–2019 Modern Note Format

RANK	ARTICLE	CITES
1.	Karen E. Francis, Note, <i>Rollover, Rollover: A Behavioral Law and Economics Analysis of the Payday-Loan Industry</i> , 88 TEXAS L. REV. 611 (2010)	29
2.	Ryan M. Goldstein, Note, <i>Improving Forensic Science Through State Oversight</i> , 90 TEXAS L. REV. 225 (2011)	16
3. (tie)	Sidney K. Smith, Note, <i>Forum Non Conveniens and Foreign Policy: Time for Congressional Intervention?</i> , 90 TEXAS L. REV. 743 (2012)	14
3. (tie)	Ross MacDonald, Note, <i>Setting Examples, Not Settling: Toward a New SEC Enforcement Paradigm</i> , 91 TEXAS L. REV. 419 (2012)	14
4.	George Padis, Note, <i>Arbitration Under Siege: Reforming Consumer and Employment Arbitration and Class Actions</i> , 91 TEXAS L. REV. 665 (2013)	13

2000–2009 Modern Note Format

RANK	ARTICLE	CITES
1.	J. Cam Barker, Note, <i>Grossly Excessive Penalties in the Battle Against Illegal File-Sharing: The Troubling Effects of Aggregating Minimum Statutory Damages for Copyright Infringement</i> , 83 TEXAS L. REV. 525 (2004)	66
2.	Aaron P. Stevens, Note, <i>Arresting Crime: Expanding the Scope of DNA Databases in America</i> , 79 TEXAS L. REV. 921 (2001)	38
3.	Neelum J. Wadhvani, Note, <i>Rational Reviews, Irrational Results</i> , 84 TEXAS L. REV. 801 (2006)	36
4.	Maria Elena Bickerton, Note, <i>Prospects for Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program</i> , 79 TEXAS L. REV. 895 (2001)	34
5.	Molly Stephens, Note, <i>Sales of In-Game Assets: An Illustration of the Continuing Failure of Intellectual Property Law to Protect Digital-Content Creators</i> , 80 TEXAS L. REV. 1513 (2002)	28

1990–1999 Modern Note Format

RANK	ARTICLE	CITES
1.	Michelle Bourianoff Bray, Note, <i>Personalizing Personality: Toward a Property Right in Human Bodies</i> , 69 TEXAS L. REV. 209 (1990)	101
2.	Jeffrey C. Kubin, Note, <i>The Case for Redistricting Commissions</i> , 75 TEXAS L. REV. 837 (1997)	56
3.	Sue A. Krenek, Note, <i>Beyond Reasonable Accommodation</i> , 72 TEXAS L. REV. 1969 (1994)	42
4. (tie)	Steven F. Grover, Note, <i>The Need for Civil-Law Nations to Adopt Discovery Rules in Art Replevin Actions: A Comparative Study</i> , 70 TEXAS L. REV. 1431 (1992)	41
4. (tie)	Susan K. Rushing, Note, <i>Separating the Joint-Defense Doctrine from the Attorney-Client Privilege</i> , 68 TEXAS L. REV. 1273 (1990)	41

1980–1989 Modern Note Format

RANK	ARTICLE	CITES
1.	Jonathan P. Graham, Note, <i>Privacy, Computers, and the Commercial Dissemination of Personal Information</i> , 65 TEXAS L. REV. 1395 (1987)	75
2.	Timothy L. Hall, Note, <i>The Sacred and the Profane: A First Amendment Definition of Religion</i> , 61 TEXAS L. REV. 139 (1982)	55
3.	Margaret I. Lyle, Note, <i>Mass Tort Claims and the Corporate Tortfeasor: Bankruptcy Reorganization and Legislative Compensation Versus the Common-Law Tort System</i> , 61 TEXAS L. REV. 1297 (1983)	53
4.	David Boyce, Note, <i>Foreign Plaintiffs and Forum Non Conveniens: Going Beyond Reyno</i> , 64 TEXAS L. REV. 193 (1985)	51
5.	Peter E. Mims, Note, <i>Promotional Goods and the Functionality Doctrine: An Economic Model of Trademarks</i> , 63 TEXAS L. REV. 639 (1984)	50

1977–1979 Modern Note Format

RANK	ARTICLE	CITES
1.	Charles H. Dearborn III, Note, <i>The Domestic Legal Effect of Declarations That Treaty Provisions Are Not Self-Executing</i> , 57 TEXAS L. REV. 233 (1979)	40
2.	Eric G. Olsen, Note, <i>The Right to Know in First Amendment Analysis</i> , 57 TEXAS L. REV. 505 (1979)	32

3.	Harva Ruth Dockery, Note, <i>Motions to Disqualify Counsel Representing an Interest Adverse to a Former Client</i> , 57 TEXAS L. REV. 726 (1979)	30
4.	Barry Abrams, Note, <i>Toward a Policy-Based Theory of State Court Jurisdiction over Class Actions</i> , 56 TEXAS L. REV. 1033 (1978)	23
5.	Mitchell S. Rosen, Note, <i>The Increasing Conflict Between State Coal Severance Taxation and Federal Energy Policy</i> , 57 TEXAS L. REV. 675 (1979)	20

1970–1977 Comment Format

RANK	ARTICLE	CITES
1.	Hal Keith Gillespie, Comment, <i>The Mackay Doctrine and the Myth of Business Necessity</i> , 50 TEXAS L. REV. 782 (1972)	43
2.	James C. Todd, Comment, <i>Title IX of the 1972 Education Amendments: Preventing Sex Discrimination in Public Schools</i> , 53 TEXAS L. REV. 103 (1974)	41
3.	P.M. Schenckan, Comment, <i>Power in the Marketplace of Ideas: The Fairness Doctrine and the First Amendment</i> , 52 TEXAS L. REV. 727 (1974)	38
4. (tie)	David Joseph White, Comment, <i>Participant Governmental Action Immunity from the Antitrust Laws: Fact or Fiction?</i> , 50 TEXAS L. REV. 474 (1972)	35
4. (tie)	Genevra Kay Loveland, Comment, <i>Newsgathering: Second-Class Right Among First Amendment Freedoms</i> , 53 TEXAS L. REV. 1440 (1975)	35

1960–1969 Comment Format

RANK	ARTICLE	CITES
1.	John G. Niles, Comment, <i>Civil Actions for Damages Under the Federal Civil Rights Statutes</i> , 45 TEXAS L. REV. 1015 (1967)	70
2.	Theodore D. Frank, Comment, <i>Requiem for the Final Judgment Rule</i> , 45 TEXAS L. REV. 292 (1966)	66
3.	Michael T. Johnson, Comment, <i>The Constitutional Rights of College Students</i> , 42 TEXAS L. REV. 344 (1964)	36
4.	George William Baab & William Royal Ferguson, Jr., Comment, <i>Texas Sentencing Practices: A Statistical Study</i> , 45 TEXAS L. REV. 471 (1967)	33
5.	James B. Sales, Comment, <i>The Applicability of Zoning Ordinances to Government Land Use</i> , 39 TEXAS L. REV. 316 (1961)	28

1950–1959 Comment Format

RANK	ARTICLE	CITES
1.	William I. Marschall, Jr., Comment, <i>Independent Administration of Decedents' Estates</i> , 33 TEXAS L. REV. 95 (1954)	26
2.	Charlie D. Dye, Comment, <i>Insurer's Liability for Judgments Exceeding Policy Limits</i> , 38 TEXAS L. REV. 233 (1959)	24
3.	Edward P. Woodruff, Jr. & James Peter Williams, Jr., Comment, <i>The Texas Groundwater District Act of 1949: Analysis and Criticism</i> , 30 TEXAS L. REV. 862 (1952)	23
4.	William B. Cassin, Comment, <i>Land Uses Permitted an Oil and Gas Lessee</i> , 37 TEXAS L. REV. 889 (1959)	22
5. (tie)	J. Hadley Edgar, Jr., Comment, <i>The Propriety of the Grand Jury Report</i> , 34 TEXAS L. REV. 746 (1956)	21
5. (tie)	Richard A. Williams, Comment, <i>Admissibility and Constitutionality of Chemical Intoxication Tests</i> , 35 TEXAS L. REV. 813 (1957)	21

1940–1949 Comment Format

RANK	ARTICLE	CITES
1.	Joseph T. Sneed, Comment, <i>Value of Lessor's Share of Production Where Gas Only Is Produced</i> , 25 TEXAS L. REV. 641 (1947)	40
2.	A.W. Walker, Jr., Comment, <i>Clauses in Oil and Gas Leases Providing for the Payment of an Annual Sum as Royalty on a Nonproducing Gas Well</i> , 24 TEXAS L. REV. 478 (1946)	26
3. (tie)	Gene T. Stone, Comment, <i>Res Judicata in Criminal Cases</i> , 27 TEXAS L. REV. 231 (1948)	21
3. (tie)	Harold Hoffman, Comment, <i>Denial of Due Process Through Use of the Class Action</i> , 25 TEXAS L. REV. 64 (1946)	21
5.	James Wm. Moore, Comment, <i>Judicial Trial and Removal of Federal Judges: H.R. 146</i> , 20 TEXAS L. REV. 352 (1942)	19

1930–1939 Notes and Comment Format

RANK	ARTICLE	CITES
1.	Hubert Dee Johnson, Note and Comment, <i>New Trial—Misconduct of Jurors</i> , 15 TEXAS L. REV. 101 (1936)	15
2.	A.E. Amerman, Jr., Note and Comment, <i>Oil and Gas—Nature of the Lessor’s Royalty Interests Under an Oil and Gas Lease in Texas</i> , 13 TEXAS L. REV. 501 (1935)	13
3.	Malcome Storey Lindsay, Note and Comment, <i>Liability Without Fault—The Rule of Rylands v. Fletcher in Texas</i> , 15 TEXAS L. REV. 355 (1937)	11
4. (tie)	Hiram A. Berry, Note and Comment, <i>Husband and Wife—Community Property—Wife’s Liability on Contracts</i> , 11 TEXAS L. REV. 81 (1932)	10
4. (tie)	Clifford Mays, Note and Comment, <i>Trial—Special Issues</i> , 10 TEXAS L. REV. 217 (1932)	10

1922–1929 Notes and Comment Format

RANK	ARTICLE	CITES
1. (tie)	Paul E. Daugherty, Note and Comment, <i>Oil & Gas—Implied Duty of the Lessee to Reasonably Develop and Protect the Premises</i> , 7 TEXAS L. REV. 438 (1929)	13
1. (tie)	Roy W. McDonald, Note and Comment, <i>Courts—State Construction of State Statutes as Rule of Decision in Federal Courts</i> , 5 TEXAS L. REV. 191 (1927)	13
3.	Roy W. McDonald, Note and Comment, <i>Pleading—Variance—Waiver by Joining of Issues and Proof</i> , 5 TEXAS L. REV. 89 (1926)	9