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Symposium: Law Libraries are “Knowledge Institutions Supporting Democracy”

¶1 Two years ago, there were rounds of discussion on the email community for academic law library directors in response to Vickie C. Jackson’s AALS president’s message (Summer 2019 AALSNEWS) titled “Legal Scholarship and Knowledge Institutions in Constitutional Democracy.” Her main theme was the important role that law schools play in support of the constitution through scholarship and research. She expanded that beyond law schools and legal scholarship, writing that other institutions also play critical roles in maintaining democracy through their creation of knowledge. She listed in her column knowledge institutions as being universities, a free press, scientific offices (public and private), and “even libraries.” To some of us, her phrasing sounded as if libraries were an afterthought on her list. While it was later shared that Jackson holds that law libraries are key players in the role of knowledge institutions, her original phrasing still left some doubts. Several directors pointed out that we need supporters of our positions to write about law libraries as “knowledge institutions supporting democracy.”

¶2 A few of our colleagues weighed in with replies. They offer discussion and argument, not whether, but how law libraries are “knowledge institutions supporting democracy.” These contributions are included in this symposium issue of Law Library Journal.

¶3 The lead article is An Ecological and Holistic Analysis of the Epistemic Value of Law Libraries by Paul Callister and Dana Neacsu. They not only look at law libraries as knowledge institutions, but do so in light of the COVID-19 pandemic and the monumental, or maybe not so monumental, changes we adopted to meet the demands of different delivery mechanisms. This article is a deep dive in its direct address to Jackson’s column. Law libraries’ missions of acquiring, holding, and preserving legal information should not be confused with the delivery of that information. The law library is not technology. Technology is the tool libraries use to convey the legal information.

¶4 Amy Emerson brings to us her article, A Place of One’s Own: How Law Libraries Support Democracy by Protecting Citizens’ Right to Read. She speaks of the library as a foundational place in the infrastructure on which information knowledge is built and connected. Law libraries balance themselves as both public and private spaces that support and encourage individuals and groups in their self-discovery and promotion of democracy. They do this both by the fundamental element of providing space in which to work and think and also the elementary provision of access to information resources.
for self-learning and inspiration for new ideas. We cannot have knowledge institutions without libraries, including law libraries.

¶5 Kara Lea Phillips focuses on one aspect of law libraries in her article *An Informal Exploration of How Academic Law Libraries Curate Research Guides to Support Democracy, Rule of Law, and the Legal System*, looking at peculiar library publications known as “research guides.” Many of these guides are now openly available for any Internet search thanks to the migration to open access platforms, such as Springshare’s LibGuides. Phillips points out how law libraries are pulling together diverse sources for both their primary users (students, faculty, lawyers) and the public, who can now use the library without ever stepping into its physical location. She samples the guides published by law libraries and, unsurprisingly, finds they cover not only law and legal topics, but also many of the leading topics of the day.

¶6 We thank these authors for taking the time and effort to respond and, through their contributions, to provide evidence that law libraries are, in fact, “knowledge institutions” first and foremost, standing on our own merits and not as add-ons fostered by our association with our parent institutions.

–Edward T. Hart

An Ecological and Holistic Analysis of the Epistemic Value of Law Libraries

Paul D. Callister** and Dana Neacsu***

New technologies of communication do not generate specific social forces and/or ideas, as technological determinists would have it. Rather, they facilitate and constrain the extant social forces and ideas of a society. The hypothesized process can be likened to the interaction between species and a changing natural environment.—Ronald Deibert

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The authors thank the following colleagues, without whose help their article would have had little empirical support: Garth Tardy, Mayra Alvarez, Tom Baker, Candice Kail, Irina Kandarasheva, Jeremiah Mercurio, Carole Steinfeld, Eamon Tewell, and Hayrunnisa Bakkalbasi. Particular thanks must be given to the 2021 Boulder Conference on Legal Information: Scholarship and Teaching (July 15, 2021), which reviewed the article, including the patient and helpful suggestions of its Senior Readers, Sarah Lambdan, Susan Nevelow Mart, Shawn Nevers, and Dennis Prieto.

Introduction to the Problem, Epistemic Roots, and Deibert’s Theory

§1 Despite its uncertain trajectory, the recent COVID-19 pandemic has already amplified global social, racial, economic, and political disparities. Within this sea of systemic impact, the pandemic has also deeply affected how law school teaching, research, and services take place. Yale Law School Dean Heather K. Gerken poignantly put it:

Even as [law] schools reoriented themselves around their core mission, they were forced to change how they carried out that mission . . . . It doesn't take long to realize what's magic and what isn't about legal education. If you look to what law schools worked to preserve in the midst of chaos, budgetary pressure, and personal stress [and losses], you'll quickly see what matters.²

This article agrees that the stress the pandemic has exerted on educational institutions has brought to the fore a growing sentiment for debating law schools’ core missions. In Gerken’s words, this core mission concerns “Teaching. Ideas. Service.” Notably, Gerken does not mention libraries in her article, so we are left to wonder why. What role does the library play in the Spartan reality of post-pandemic legal education?

Heightening our concern about the ambiguous perception of our role is Association of American Law Schools (AALS) President Vicki C. Jackson’s column *Legal Scholarship and Knowledge Institutions in Constitutional Democracy*. Here Jackson seems to give uncertain credence—or at least afterthought—to the value of libraries as “knowledge institutions” that make up society’s epistemic foundation. She states, “We as legal educators are part of a broad infrastructure of ‘knowledge institutions’—universities, a free press, scientific offices (public and private), even libraries—that help provide the epistemic foundation for a successful democracy.”

Jackson surely meant no harm, but are libraries just an afterthought worthy of honorable mention? Do they carry less weight than other epistemic institutions? Jackson’s meaning cannot be pinned down with certainty, but the questions we have raised are important, nonetheless. On September 5, 2019, University of Texas library director and law professor Barbara Bintliff posted her concern over Jackson’s comments on the library directors listserv. Bintliff challenged us, her colleagues, to address the implications in Jackson’s statement about the role of law libraries in our democracy. Here we explore the answer to this question using an ecological and holistic analysis, which includes epistemic considerations.

**Technological Determinism and Ecological Holistic Media Theory**

We start with the presumption that perhaps law school administrators, faculty, and students forget about libraries by assuming their subordination to technology. Such a narrow view relegates the epistemic function of libraries to providing media technologies—whether books or databases. This kind of technological determinism focuses on the continual encroachment of digital technologies (including artificial intelligence, or AI) on the library’s print collections and human functions, such as reference and cataloging. However, using historian Ronald Deibert’s *ecological holistic media theory* as a framework (including epistemic analysis), we propose a much broader and renewed view of law libraries’ roles as centers of teaching, knowledge (including ideas), and service.

3. Id. at 1060.


5. Posting of Barbara A. Bintliff, Joseph C. Hutcheson Professor in Law, Director, Tarlton Law Library and Jamail Center for Legal Research, University of Texas School of Law, bbintliff@law.utexas.edu to lawlibdir@lists.washlaw.edu (Sept. 5, 2019 3:09 PM CST) (on file with authors).

6. See infra figure 1—Ronald Deibert’s Model of Ecological Holistic Media Theory, as adapted by authors to law.
Jackson may have (unintentionally) diminished the role of libraries by following a common misperception about their relationship with new information technologies. After all, *Oxford English Dictionary* links libraries to *liber*, the Latin word for *books*, which some may consider antiquated resources. However, books are creatures of print, whether in physical or digital form. Preserving the print-like format and characteristics of books is an important objective of e-book platforms and many databases. Nevertheless, may Jackson have wondered, like many others, whether today’s online technologies, the Internet, and AI are the library’s inevitable successors? In the same way that a mere collection of books, which is more like a warehouse, has never created a library, today’s technologies cannot replace the library’s multiple facets—human expertise; pedagogical mission; social, institutional, and technological networking; and transformative, communal spaces. Indeed, the library’s relationship with technology should be described as *interdependent*. To make our case more fully, we explore the answer to this question using an ecological and holistic analysis. We have adapted the ecological holistic media theory, developed by Ronald Deibert, as a rejection of public doubts about law libraries’ future in legal education. See, e.g., James G. Milles, *Legal Education in Crisis, and Why Law Libraries are Doomed* (Dec. 20, 2013), SUNY Buffalo Legal Studies Research Paper No. 2014-015, https://ssrn.com/abstract=2370567 (last visited Oct. 4, 2021) (Milles’s reasons are mostly economic); see also Brian Z. Tamanaha, *Failing Law Schools* 174 (2012) (“The entire set of [ABA] rules relating to the law library must be deleted. These rules require law schools to maintain unnecessarily expensive library collections and a large support staff; the book-on-the-shelf library is virtually obsolete in the electronic information age.”).


See supra note 7.

See infra figure 1. Deibert expounds on his theory:

Ecological holism takes as its starting point the basic materialist position that human beings like all other organisms, are vitally dependent on, and thus influenced by, the environment around them. However, it recognizes that because human beings have the unique ability to communicate complex symbols and ideas, they do not approach their environment on the basis of pure instinct (as other organisms do) nor as a linguistically naked “given,” but rather through a complex web-of-beliefs, symbolic forms, and social constructs to which they are acculturated and through which they perceive the world around them.
technological determinism (the belief that changes in society are all accounted for by changes in technology).

Figure 1
Ronald Deibert’s Model of Ecological Holistic Media Theory as adapted by authors to law

To understand the significance of Deibert’s model, it must first be contrasted with earlier theory. In the 1950s and 1960s, Marshall McLuhan and Harold Adam Innis conceived of media theory, not simply as an underlying theoretical basis for librarianship and information systems, but as an explanation of historical evolution, including geopolitics and social institutions. For example, Innis’s theory finds that in about 2160 BC (during the Egyptian Middle Kingdom), the movement from Egyptian monarchy to feudalism “coincides with a shift in emphasis on stone as a medium of communication or as a basis of prestige as shown in the pyramids, to an emphasis on papyrus.”

Deibert, supra note 1, at 43 (1997). In other words, unlike other species, it is through “social epistemology” or “web-of-beliefs” that humans perceive the world. See also Paul D. Callister, Law’s Box: Law, Jurisprudence and the Information Ecosphere, 74 UMKC L. Rev. 263, 265–66 (2005).


However, this initial theory is criticized for being technologically deterministic and “monocausal,” crediting every geopolitical development and social innovation to new media technology. Another prominent and prodigious media theorist, Elizabeth Eisenstein, is criticized for similar reasons.

¶7 In a later generation, Deibert imposes a less deterministic and, ultimately, Darwinistic model on media theory, in what he terms a “holistic” approach. “[T]he central proposition of [Deibert’s] medium theory is that changing modes of communication have effects on the trajectory of social evolution and the values and beliefs of society.” Deibert modifies earlier theory by moving away from technological determinism to emphasize the ecological and holistic nature of information media:

New technologies of communication do not generate specific social forces and/or ideas, as technological determinists would have it. Rather, they facilitate and constrain the extant social forces and ideas of a society. The hypothesized process can be likened to the interaction between species and a changing natural environment. New media environments favor certain social forces and ideas by means of a functional bias toward some and not others, much the same as natural environments determine which species prosper for “selecting” for certain physical characteristics. In other words, social forces and ideas survive differentially according to their “fitness” or match with the new media environment—a process that is both open-ended and contingent.

It is a question of “fitness” whether libraries survive. We believe this article demonstrates libraries are fit for the new environment and are undergoing significant adaptation.

¶8 Figure 1 modifies Deibert’s model to our law library environment. Deibert believes, among other things, that social forces as organized by institutions, ergo libraries, survived or failed based on a host of factors, of which technology was just one. In a sense, Deibert’s work is Darwinian; the institutions best adapted to new environments survive and flourish. Note, too, that cognitive authority or social epistemology lies at the center for consideration. This same analysis can be applied to law libraries, universities, the press, and the practice of law. We focus our analysis on libraries in general and specifically law libraries.


18. See Deibert, supra note 1, at 37–38.

19. Id. at ix.

20. See id. at 36 (emphasis in original).

21. See id. at 38–39.

22. See id.

23. See id.
Epistemology—The Heart of Analysis

¶9 Being at the center of Deibert's rings, epistemology lies at the core of our ecological and holistic analysis. The epistemic root of our analysis concerns the perceived, tenuous relationship of the legal profession's “theory” about the nature of legal knowledge (of what the law is) to law libraries. In shorthand, an epistemology answers the questions how do you know, and how do you know that you know? Now, there are many theories of epistemology. As we will demonstrate in this article, and despite any doubts to the contrary, law libraries have an epistemic role—they facilitate confidence in how you know what the law is.

¶10 In answering these questions, we start from a more nuanced view of epistemology, one that is psychological and evolves through critical thinking, even information literacy. In fact, the most sophisticated type of epistemology recognizes that opinions are not all equally good, because of the different evidence supporting them (or not). In turn, that evidence can be of high quality (or not). This is called “the evaluativist position in which critical thinking serves the function of evaluating and selecting among competing views on the basis of their degree of support by evidence.” It differs from the absolutist and multiplist views, which give equal value to all opinions, assuming that they all reflect reality. The downside of our evaluativist approach is that it tends to be associated with having undergone tertiary-level education. The implications for information literacy if [correct, implies that] only a proportion of the most highly educated subgroups of the population will perceive the need, and routinely be in the habit of, exercising critical thinking in relation to information obtained from whatever source.

Fostering information literacy is a key function of libraries. Being critical about information sources ties directly into the pedagogical and epistemic missions of libraries.

¶11 Turning to philosophy for other interpretations, examples of epistemologies include scholasticism (teachings of religious or philosophical schools “based upon the authority of the Bible and Christian Fathers and with the logic and philosophy of Aristotle and his commentators”), rationalism (with Euclidean geometry as the

24. See id. (note the center ring).
25. See Anthony Anderson & Bill Johnston, From Information Literacy to Social Epistemology: Insights from Psychology 54 (2016) (“Epistemology concerns the individual’s lay ‘theory’ about the nature of knowledge and what can be known.”).
26. See infra note 30 and accompanying text.
27. From a philosophical perspective, “epistemic role” means providing an epistemology—a way of knowing—which in turn posits an answer to the philosophical question at the heart of every discipline—“how do you know, and how do know that you know?” “Epistemic” can also mean relating to “degree of validation.” See Epistemic, adj., OED ONLINE (3d ed., modified June 2021), https://www.oed.com/view/Entry/63541 (last visited Oct. 4, 2021); see also Epistemology, n., OED ONLINE (3d ed., modified June 2018), https://www.oed.com/view/Entry/63546 (last visited Oct. 4, 2021) (“The theory of knowledge and understanding, esp. with regard to its methods, validity, and scope, and the distinction between justified belief and opinion; . . . a particular theory of knowledge and understanding” (emphasis added)). Libraries certainly can play an epistemic role in validating information.
29. Id. at 56.
It is tempting to think of libraries and law as adherents to a modern scholastic tradition of epistemology. After all, libraries not only provide access to authoritarian scholarship in the vein of historical scholasticism, but they also authenticate and validate sources of authority (official and unofficial statutes and case reporters), and facilitate recognition of scholarship (such as certain treatises or law reviews) and secondary materials as accepted as persuasive authority in the law. Law libraries also provide access tools to those authorities. We recognize that jurisdiction and relevance may also play a role in determining authority in the field of law, and we distinguish between persuasive and binding authorities. However, we are not suggesting that law is limited to a modern scholasticism because the case can easily be made that those other epistemologies, such as rationalism and empiricism, have their place in the law, but that is a topic beyond the scope of this article. We make brief mention that in librarianship, cataloging represents an attempt to create a rational system (with systemic and noncontradictory rules like geometry) for the classification of works of knowledge.

Summary of the Analysis Ahead

With Deibert’s model as our framework, we have our lens for thorough analysis: the next section deals with the epistemic role of libraries as cognitive authority and the history of libraries and the legal profession as a community of readers. This analysis is combined with a brief exploration of librarianship from its modern inception through the present, to better support our view of libraries as continuing their role as part of the epistemic foundation of democratic society subject to the rule of law. The following section lays claim to libraries’ status as “knowledge institutions” using a multifaceted analysis. Using this analysis, we consider the libraries as knowledge workers and network relationships; libraries as portals; libraries as their physical holdings; libraries as an impact on their constituents; and libraries as transformative spaces and communal centers. Next, we focus on new and old media technologies and their influences. The next section focuses on geopolitical and physical issues. Finally, we consider influences on the future of libraries. The sections align with Deibert’s model. In conclusion, the article finds that the future of law libraries is not technologically determined and affirms their epistemic and foundational role in society. In such role, it is especially relevant to democracy and the rule of law.


31. Although proprietary, the West Topic and Key Number System plays a similar role—a role augmented and challenged by search technologies (now assisted with AI).
Social Epistemology and Libraries as Epistemic Institutions

14 So, what is social epistemology? Here we define social epistemology as a branch of epistemology that studies knowledge as arising at the societal and communal levels, from individual relations interconnected to others. A simple example is whether a community, such as law, considers libraries a trusted source of knowledge—an institution supporting a way of knowing. Another example is the transmission of knowledge from one person to another, through libraries as intermediaries. In a related perspective, others associate social epistemology with enquiries examining the social contexts of belief and thought. A simple example would be the role of libraries within their academic institutions and within the larger society. Social epistemology may be unique to a community or a profession such as law.

15 Figure 1 represents Deibert’s model of holistic ecological media theory as adapted by the authors to law. Deibert depicts the information environment as a series of concentric rings, with humanity’s social epistemology at the center surrounded by various spheres of influence, each one bearing down on another. We have done the same, with modifications for what we believe is law’s evolving information environment. Indeed, the rings “blend” into one another—social epistemology blends into the ring of institutions.

16 Visually, we have adapted the center term from Deibert’s original formulation of “web of beliefs” to use a term coined by Robert Berring, “cognitive authority.” This comports well with the social epistemology (also in the model’s inner ring) of the profession of law. In any event, the relationship to AALS President Jackson’s statement about epistemic foundations relates well to the idea of cognitive authority, which means at its core the act of conferring trust. Libraries have always played a role in helping communities establish what is their cognitive authority. However, that role has not always been recognized. With respect to cognitive authority or social epistemology, our epistemic foundation as a democratic society, we have noted some basic challenges for libraries and the legal community. There is

32. Deibert makes clear that the ring of social epistemology or “web-of-beliefs” (in his version) “blends into the next ring, which is composed of formal and informal institutions, ranging from states and corporations and organizations on the formal side to habits of actions and general modes of organizing human interaction and subsistence on the informal side.” Deibert, supra note 1, at 38–39. This blending of social epistemology into institutions would include libraries as formal institutions.
33. For more, see, e.g., Social Epistemology (Adrian Haddock, Alan Millar & Duncan Pritchard eds., 2010).
34. See Deibert, supra note 1, at 38, fig. 2.
35. See supra note 32.
36. “Web-of-beliefs” was the original term used by Deibert at the innermost ring of his model. It is a related concept to “social epistemology” and our use of “cognitive authority.” See Deibert, supra note 1, at 38, fig. 2.
37. Robert C. Berring, Legal Information and the Search for Cognitive Authority, 88 Calif. L. Rev. 1673, 1676 (2000). Here Berring lays out his idea of cognitive authority (“The cornerstone tools of legal information have been established as unquestioned oracles. They appeared too obvious to examine.”).
38. Id.
increasing fragmentation of cognitive authority in the legal community due to affordability and access to legal information and AI and alternative sources on the web. Libraries struggle to influence cognitive authority as they move from print to digital collections and as finding aids become disintermediated, depending on algorithms and AI.39

¶17 Usually, we hear scholars talk about the epistemic power people or institutions possess.40 Their capacity as an epistemic agent is best understood in terms of two related abilities. First is the ability to influence what others believe, think, or know on the basis of authority. Librarians are in a position to do that each time they face research questions. “The second is the ability to enable and disable others from exerting epistemic influence. This is done by way of believing others (‘giving them credence’) or by discrediting them.”41 When faculty members send students our way or when librarians are entrusted with their own for-credit classes, we are enabled to exert influence, and our epistemic power increases.

¶18 An institution has epistemic power to the extent it is able to influence what people think, believe, and know, and to the extent it is able to enable and disable others from exerting epistemic influence. The law school, for example, possesses epistemic power by virtue of its position within a university and the legal profession, which grants it a special status as the source of legal education.

¶19 This brings us to the question related to the epistemic power of academic law libraries: it rests on the law school administration, faculty, and students recognizing the role and value of law libraries, by peer institutions granting recognition to each other, by the community’s (academic, legal, and public) use of the library, and by the perceived credibility of law librarians’ relevant expertise. In other words, a library’s epistemic power is a two-way street: in part, it is granted to the library and, at the same time, it is of the library’s own making in the quality of the librarians as epistemic workers and the utility of its collection—physical and electronic. Law libraries’ epistemic power functions in a most essential way—to help its users find what the law is from authentic and relevant authority.

The Past of Libraries and Reading in the Legal Profession

¶20 To understand the past, from Deibert’s model we observe “lingering effects of print past and [the] hierarchy of elite libraries.”42 To understand that past, we begin with the rise of lawyers as a fellowship of readers.

The Rise of Lawyers in England as a Fellowship of Readers

¶21 Membership in the bar and the English Inns of Court meant fellowship with a community of readers. The structure of the Inns of Court, increased use of books of

39. See supra figure 1. For a discussion of AI, the law, and legal research, see Paul D. Callister, Law, Artificial Intelligence, and Natural Language Processing: A Funny Thing Happened on the Way to My Search Results, 112 LAW LIBR. J. 161, 2020 LAW LIBR. J. 6.
40. Alfred Archer et al., Celebrity, Democracy, and Epistemic Power, 18 PERSPS. ON POLITICS 27 (2019).
41. Id. at 28.
42. See supra figure 1.
legal instruction (such as Lord Coke’s *Institutes* or Littleton’s *Tenures*), the growth of libraries among attorneys, correspondence among members of the profession, professional customs, and even disagreements between Lord Coke and King James I underscore the essence of the legal community as based in a commonality of reading.\(^{43}\)

\[\S 22\] Membership in an Inn implied a progression of fellowships: “two years in Clerks’ Commons, two in Master’s Commons, Utter Barrister in eight years and in sixteen, Reader and Bencher . . . . Five or ten years after that, a fortunate few were called by the Queen to the degree of Serjeant-at-Law.”\(^{44}\) Head instructors at the Inns were called Readers and were selected from “Utter” or outer Barristers by Benchers:45

Many of the Readers of the Inns of Court afterwards attained to high positions at the Bar or on the Bench, and many of their “Readings” were long remembered in the profession for their learning and excellence. Among the most celebrated readings were Sir Thomas Littleton’s upon the Statute of Entails, Sir James Dyer’s upon Wills, Sir Edward Coke’s upon Fines, and Sir Francis Bacon’s upon Uses. The most famous of them was a Reading of Searjeant Callis of Gray’s Inn, upon “Sewers,” which for many years constituted the leading authority upon that unsavory subject. While the readings continued, the Reader was obliged to give a series of magnificent feasts, the expense of which sometimes exceeded £1,000.\(^{46}\)

These readings resembled more of a festive lecture than a simple vocalization of text among a group of law students. Nonetheless, the role of traditional private reading is also evident, at least with respect to Lord Coke, who apparently arose at 3:00 a.m. each morning to read until 8:00 a.m., followed by hearing argued cases and attendance at “readings.”\(^{47}\)

\[\S 23\] In 1769, John Rutledge (first governor of South Carolina and second Chief Justice of the United States),\(^{48}\) wrote a telling letter to his brother Edward (a signer of the Declaration of Independence),\(^{49}\) who was then studying law in England at the

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43. See Hastings Lyon & Herman Block, Edward Coke, Oracle of the Law 179 (1929) (description over dispute whether King James I serves as an actual judge, “the supreme judge” for any court). Coke would argue:

\[\text{T}rue it was, that God had endowed His Majesty with excellent science, and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of law, which law is an act which requires long study and experience . . . .\]


46. Id. at 13.

47. Id. at 123.


“Temple Inn.” The letter counseled his brother to “not neglect the classics,” to study “generals, poets, and heathen philosophers,” English history, and advising:

[W]ith regard to particular law books—Coke’s Institutes seem to be almost the foundation of our law. These you must read over and over, with the greatest attention, and not quit him till you understand him thoroughly, and have made your own everything in him, which is worth taking out. . . . Blackstone, I think, useful. . . . I would read every case reported from that time [the Glorious Revolution of 1688] to the present [1769]. . . . I would have you, also, read the Statute Laws throughout . . . . When I say you should read such a book, I do not mean just to run cursorily through it, as you would a newspaper but to read it carefully and deliberately, and transcribe what you find useful in it.

Apparently, to study law was a commitment to an immersion in reading and to collecting legal texts—it was the shared social epistemology of the profession. True, there were other aspects, like attending “readings,” making notes while observing court and exchanging those with fellow students, and mastering oratory, but the basic program involved immersion in reading while in the fellowship of other students at the Inns.

The communal impact of the English Inns on reading as a profession is evidenced in several ways. Early English judges and attorneys apparently elected to read Littleton’s Tenures each Christmas. Furthermore, the life of an English judge as described by John Fortescue in the late 15th century is rather contemplative and bibliocentric in nature:

[T]he justices of England do not sit in the king’s courts except for three hours a day, that is, from eight o’clock before noon to eleven o’clock, because those courts are not held in the afternoon. . . . Hence the justices, after they have refreshed themselves, pass the whole of the rest of the day in studying the laws, reading Holy Scripture, and otherwise in contemplation at their pleasure, so that their life seems more contemplative than active.

Fortescue also connected reading with festivals and described the role of the Inns in helping nobles acquire manners appropriate to their class:

50. See 2 John Belton O’Neall, Biographical Sketches of the Bench and Bar of South Carolina 115 (1859).
51. Id. at 123.
52. Id. at 124.
53. Id.
54. Id. at 124–26 (emphasis added). Both John and Edward Rutledge would serve as delegates to the General Congress prior to the American Revolution and later as governors of South Carolina. Edward Rutledge would sign the Declaration of Independence, and John would serve on the U.S. Supreme Court and as Chief Justice of the S.C. Supreme Court. On John Rutledge, see 1 id. at 17–37; on Edward Rutledge, see 2 id. at 115–29.
55. See 2 id. at 121.
56. See id. at 122.
57. 2 Westminster Hall or Professional Relics and Anecdotes of the Bar, Bench, and Woolsack 8 (1825) (describing Roger North as the model law student); see also 2 Gilbert J. Clark, Life Sketches of Eminent Lawyers: American, English, and Canadian 101 (1895); Frederick C. Hicks, Men and Books Famous in the Law 95 (Lawbook Exchange 1992) (1921).
In these greater inns, indeed, and also in the lesser, there is, besides a school of law, a kind of academy of all the manners that the nobles learn. There they learn to sing and to exercise themselves in every kind of harmonics. They are also taught there to practice dancing and all games proper for nobles, as those brought up from the king's household are accustomed to practice. In the vacations most of them apply themselves to the study of legal science, and at festivals to the reading, after the divine services, of Holy Scripture and of chronicles.59

In effect, the Inns functioned, at least in the late 15th century (at the time of Fortescue) as a kind of finishing school for young nobles, and at the same time, the Inns, no doubt for many, instilled habits of reading and study that were characteristic of the emerging professional class of lawyers and judges.

¶25 The full impact of reading, as a result of the mass production of law books through the printing press, did not affect the Inns until well after Fortescue's time. As noted by the eminent legal bibliographer Fredrick Hicks, “Reasons for writing it [Littleton's Tenures] appear when we recall that, up to the year of Littleton's death [1481], no English law books had been printed. There were in existence numerous legal tracts, a few treatises and the volumes of Year Books, but all of these were in manuscript.”60 Littleton's death occurred within a few years of Fortescue's published observations on the Inns.61 If reading and studying the law were already important in Fortescue's (and Littleton's) time, they would likely increase in significance as law books became more available through means of the printing press. Although originally in manuscript form, Littleton's Tenures are, per Lord Coke, written for Littleton's son, who was a law student.62 By the time Coke's Institutes appeared in 1628, 73 editions of Littleton were already published, indicating a heavy demand for the book (see fig. 2).63

59. Id. at 119.
60. Hicks, supra note 57, at 86; see also id. at 84 (date of Littleton's death).
61. See Fortescue, supra note 58, at 129.
62. Hicks, supra note 57, at 85.
63. See, e.g., Littleton Tenures in English (Fleetestrete, London, Rychard Tottill 1568); Littletons Tenures in English (Temple Barre, London, Richard Tottell 1592); Les Tenures De Monsieur Littleton (London, Companie of Stationers 1608); Les Tenures De Monsieur Littleton (London, Companie of Stationers, London 1617); Thomas Littleton, Littleton's Tenures in English (Eugene Wambaugh ed., 1903).
It can be surmised that the prominence of reading standardized texts and the importance of book collections (even libraries) among the Inns grew with time as texts became available.
The Importance of Coke and Blackstone

Coke’s First Part of the Lawes of England (note the use of marginal pinpoint citation)\(^65\)

\(\S 26\) Sometime after the invention of the printing press, intermediation took on a systemic aspect, particularly in legal literature. Through printing, 17th century standardized English legal texts had become stable in editions, which enabled pinpoint

citations in legal texts that bound them into a system of common authority, of which Lord Coke’s *Institutes* are the prime and among the first examples (see fig. 3).

¶27 Print technology permits Lord Coke’s works to operate on at least two levels with respect to visual signs. First, Coke’s treatises are visually rendered to emphasize supporting authority through marginal, pinpoint citations to authority. Second, they are arranged in such a way as to connect them to glossed manuscripts, constituting authority in prior era. In early 17th century England, Lord Coke found an information environment favorable to publication and abundant in stabilized texts. Through unprecedented use of marginal cross-referencing to diverse sources (made possible by stabilized texts), Coke creates a web and appearance of authority sufficient to stand on its own, even without royal sanction. Coke’s extensive use of marginalia is unprecedented, at least for English legal texts. Thus,

[b]y its appearance, the *Institutes* establishes a web and weight of authority. . . . [T]he layout of Coke’s first part of the *Institutes*, the *Commentaries upon Littleton*, visually replicate the glossed manuscript texts of Justinian, which will only serve to reinforce the authority of the *Institutes*. The subject of the work, *Littleton’s Land Tenures*, is paralleled with Coke’s translation into English (itself a major departure from the past), then surrounded by Coke’s extensive annotations, and finally garnished (a distinction from Justinian) with marginal references to other authority, such as Bracton, Britton, and Fleta. The visual effect is one of weighty scholarship and authority of the same stature as Justinian’s works. The technology of print not only allows Coke to cross reference with precision but to replicate prior forms of authority.66

¶28 Coke, using the print technology of the time and stabilized editions of legal texts, was able to create a web of authority and connect to perhaps the most important legal texts of the prior legal age—those authored by Emperor Justinian,67 whom Coke replicated. It is an epistemic exercise following the tradition of scholasticism as an epistemology. To the extent Coke lays out a system of nonconflicting principles in his *Institutes*, it is also an exercise in rational epistemology.

¶29 We have already mentioned American patriot John Rutledge’s admonition to his brother while studying at Temple Inn to read the classics, especially Lord Coke and Blackstone.68 Of Lord Coke and Lord Blackstone, it was the former who had a much greater effect on revolutionaries, but in 17th-century England:

With it [the Institutes] the lawyers fought the battle of the constitution against the Stewarts; historical research was their defense for national liberties. In the Institutes . . . the tradition of the common law from Bracton and Littleton . . . made famous, firmly established itself as the basis of the constitution of the realm.69

67. See the image of Justinian’s Digestum Novum in the Shoyen Collection, at Justinianus: Digestum Novum, The Shoyen Collection, https://www.schoyencollection.com/law/roman-law/justinianus-digestum-novum-ms-219 (last visited Oct. 4, 2021) (although the resolution of the images makes study difficult—it helps to download the image, note the tiny alphabetical enumeration of the marginal gloss, but lacking any indication of cross-referencing, and any visible indication of citation to other sources).
68. See *supra* notes 48 through 54 and accompanying text.
By the mid-17th century, events had further degenerated into pamphlet wars, and civil war

literature was part of the crisis and the revolution, and was at [the English Civil War’s] epicentre. Never before in English history had written and printed literature played such a predominant role in public affairs, and never before had it been felt by contemporaries to be of such importance: “There had never been anything before to compare with this war of words. It was an information revolution.”

¶30 Coke’s conception of his *Institutes of the Laws of England* came at this revolutionary juncture in English history and would have been of more inspiration to the American colonists than Blackstone’s work. Blackstone’s *Commentaries on the Laws of England*, on the other hand, may have reinforced ideas seminal to the constitution, such as the division of powers, but was not a revolution-inspiring document. However, the *Commentaries*’ position as an authority on the common law was more firmly established in 1787 than in 1776. Accordingly, it is not surprising that there are many more references to the *Commentaries* during the period of the constitutional debates than there were during the revolutionary struggle. But it should be emphasized that the *Commentaries* were rarely cited as an authority on the merits of a proposal; the *Commentaries* instead acted as a convenient reference work—as authority for the way things were, not for the way they ought to be. Blackstone’s work would be more instructive of what the law is, and that is what Blackstone’s *Commentaries* were designed to do.

¶31 Blackstone’s *Commentaries* was probably the one law book that accounts for more impact on formal and informal legal education in the colonies and 19th century America. Blackstone’s *Commentaries* were first published in four volumes between 1765 and 1769. The book sold rapidly in America, including a published edition in Philadelphia in 1771–1772, and by 1790 had “sold nearly as many copies in the American colonies as in England.” St. George Tucker, an early law professor at the University of William and Mary, prepared an edition for American audiences in 1803 that considered Virginia and federal law. Thus,

[Blackstone’s] influence was more direct and more powerful on American legal education than upon the American political system or the American courts. That influence took forms he did

71. See supra note 54 and accompanying text (quote referencing Lord Coke).
72. Dennis R. Nolan, *Sir William Blackstone and the New American Republic: A Study of Intellectual Impact*, 51 N.Y.U. L. Rev. 731, 744–45 (1976) (emphasis added). “He did not bring about the Revolution or even contribute significantly to the Declaration of Independence. His contribution to the Constitution and the debates over its adoption was limited to defining a few concepts.” Id. at 767.
not intend and would not necessarily appreciate since it extended beyond American universities
to the text writers, to the apprenticeship system he so disliked and to the rude frontier villages
he would have detested.\footnote{77}

\$32 Indeed, the \textit{Commentaries} have been celebrated, perhaps with exaggeration, as
“an elegant and eloquent do-it-yourself guide to becoming a lawyer.”\footnote{78} Blackstone
would not have advocated that his \textit{Commentaries} replace the need for other legal works
on the common law. For instance, in describing the common law as the unwritten law,
it is to be known “by the judges in the several courts of justice. They are the depositories
of the laws; the living oracles, who must decide in all cases of doubt, and who are bound
by an oath to decide according to the law of the land.”\footnote{79} In addition, Blackstone also
gave homage to court reports and classic treatises as necessary to the lawyer’s library.\footnote{80}

\$33 Coke and Blackstone are important because they illustrate what was accepted as
cognitive authority or social epistemology of the legal profession in England and
America during the late 18th and 19th centuries. Not only are they touchstones in
themselves, but Coke introduces a web of authority (challenging the monarchy’s pre-
rogatives in the face of law) adopting pinpoint citations to other, earlier authority, and
indeed building some of his works on Littleton. The \textit{Institutes} and \textit{Commentaries}
pre-date the period of specialized treatises,\footnote{81} whose multiplication (along with increases in

\footnote{77. Nolan, supra note 72, at 761.}
\footnote{78. Boorstin, supra note 75, at xiii.}
to American common law).}
\footnote{80. See id at 64–65, *71–*73. Among the reporters, Blackstone mentions Lord Coke and the year-
books. He also includes Coke’s \textit{Institutes} and Glanvil, Bracton, Britton, Fleta, Hengham, Littleton, Statham,
Brook, Fitzherbert, and Staundforde “whose treatises are cited as authority and are evidence that cases have
formerly happened in which such and such points were determined . . . .” Id.}
\footnote{81. See John H. Langbein, \textit{Chancellor Kent and the History of Legal Literature}, 93 COLUM.
REV. 547, 585–93 (1993) (describing Kent’s \textit{Commentaries on American Law} as the end of an institutionalist tradition
and the beginning of the treatise writers).}

\textit{Id.} at 677–78. Such a viewpoint has implications for the cognitive authority or social epistemology
reported cases and the arrival of law reviews)\textsuperscript{82} would make law libraries much more necessary and voluminous.

\textit{Early American Libraries}

\textsuperscript{34} We know about libraries from the early days of our democracy from such famed actions as Thomas Jefferson selling his library in 1814 to the Library of Congress when the British burned the capital in the War of 1812.\textsuperscript{83} The first free library in the United States opened in 1852.\textsuperscript{84} But other libraries existed, primarily in the northern and mid-Atlantic of the republic. Figure 4 illustrates the growth of libraries in the colonies based on published catalogs. While free libraries did not exist, social, circulating, and college libraries did. Certainly, many more libraries existed that did not publish their catalogs.

of the legal profession. It shifts us to a pragmatic attitude for authority—if it works, cite it—and away from a rational and rule-based approach.

Nonetheless, Richard Danner suggests “interpretive frameworks” for legal information are still necessary despite Simpson’s conclusions:

\textit{[N]o one in the twenty-first-century United States “feels the need to bury their noses in heavy tomes of treatise learning.” Solutions for information-inundated lawyers and judges are unlikely to be found in new print tomes (or even in their digitized equivalents). Where will lawyers and judges find new forms of interpretive frameworks? Electronic search engines, despite their power and sophistication at aggregating data, are less successful at providing structure and context for information and continue to rely on the research skills of searchers and the knowledge they bring to the task.}

Richard A. Danner, 2013 \textit{Survey of Books Related to the Law: Foreword: Oh, The Treatise!}, 111 Mich. L. Rev. 821, 834 (2013) (emphasis added). Despite his criticism of reliance upon electronic search engines, Danner concludes optimistically: “\textit{Twenty-first-century Blackstones will be technologically literate legal scholars who understand the relationships between form, content, and structure, and who possess the skills to present legal information in innovative ways appropriate to the formats in which information is now published, identified, and delivered.” Id. We agree.

\textsuperscript{82} Danner, \textit{supra} note 81, at 828–29.


What is noteworthy is the sudden surge in published catalogs with social libraries in the period just before the Revolution during 1761–1770, followed by a depression in the Revolutionary War years, a recovery during 1781–1790 (including the emergence of circulating and college libraries), and an explosion after 1791 in all three categories. Only a handful of college libraries published catalogs during this period, perhaps reflecting the practice that students were well enough off to buy their own books.

¶35 Again, the number of libraries in existence in the colonies must have been much greater, simply because most may not have published their catalogs (although doing so would have helped subscribers and users know what items were available because there were, as yet, probably no card catalogs). Many libraries may have been tiny enough that only one librarian was needed to find what was available. Most libraries, if we may call

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85. Data compiled from Robert B. Winans, A Descriptive Checklist of Book Catalogues Separately Printed in America 1693–1800, at xviii, tbl. 1 (1981). A social library is a subscription library with members, such as the Library Company of Philadelphia. In 1733 Benjamin Franklin was asked to print a catalog for each subscriber. Id. at 11. A good example is the Salem Social Library (1760–1810), later turned over to Salem Athenaeum in 1810. Salem Social Library, WIKIPEDIA, https://en.wikipedia.org/wiki/Salem_Social_Library (last visited Oct. 4, 2021). A circulating library differed in how it accrued funds. It would lend out books to anyone who paid the requisite fee for borrowing an item. See, e.g., Winans, supra (entry for John Mein's catalog and his circulating library describing the terms of borrowing “[w]hich are lent to read, at one pound eight shillings, lawful money, per year; eighteen shillings per half-year; or, ten and eight pence per quarter . . . .”).
them that, were private collections in family homes. These private collectors relied on the published catalogs of book sellers and auctions, the former of which were more prevalent than even social libraries in 1781–1790, by a factor of over three times. We also know that the states that led the number of publications were Pennsylvania, Massachusetts, and New York. The three states accounted for 53 of the 79 social library catalogs and 17 of the 21 circulating library catalogs published from 1693 to 1800. The South, with its plantations and lack of urbanization, may have relied more heavily on the private libraries of its estates. “The South, not unexpectedly is poorly represented, not because it lacked books, or learning and culture, but rather because its scattered planters, located far from central market towns most likely tended to order goods directly from England.” Cities and “market towns” were more likely to produce libraries.

¶36 Regarding the South, Paul was given access in 2007 to the rare books of the Missouri Supreme Court Law Library and allowed to photograph some of them. Paul was surprised to find Statham's Abridgement (circa 1490s) in the collection (see fig. 5), the oldest printed book on English law (other than perhaps the Year Books), although printed neither in English nor in England but in Normandy. He also found early editions of Bacon, Bracton, Cowel, Selden, and others.

![Printer's Mark from Statham's Abridgement at Missouri Supreme Court Library in Jefferson City, Missouri](image)

Figure 5

86. Winans, supra note 85, at xviii, tbl. 1.
87. Id. at xix, tbl. 2.
88. Id.
89. Id. at xviii.
90. Percy H. Winfield, Abridgments of the Year Books, 37 Harv. L. Rev. 214, 224–25 (1923). My edition was marked with a card stating it was published in 1470, which is unlikely. Photos in my possession reveal it was published for Richard Pynson and has a printer’s mark from a Norman printing firm, Tailleur from Rouen, possibly because these works were in Norman French. See Ames Found., A Bibliography of Early English Law Books, at 105 no. R 455, 111 no. T 5, 187–88, 214 fig.2, and Sweet & Maxwell, 1 Sweet & Maxwell’s Complete Law Book Catalogue 117, no. 14, 292, no. 50 (W. Harold Maxwell comp. 1925).
Paul asked the Supreme Court librarian how these books ended up in central Missouri. He was told that many of the earliest Missouri lawyers came from Virginia (and had built their collections from England) and brought their collections with them.91 The colonial South, lacking libraries, still managed to possess extensive legal collections, even without the aid of libraries.

¶37 What might these social and circulating libraries contain during the time of the drafting of the Constitution? Well, for instance, the 1786 catalog for the Annapolis Circulating Library had nearly 1500 items, including “agriculture, arithmetic, astronomy, biography, chymistry, commerce, gardening, geography, history, husbandry, law, military affairs, mathematics, navigation, painting, physic, rhetoric, surgery, surveying, voyages, travels, plays, novel, magazines &c.”92

¶38 In 1800, the Library of Congress was established with an appropriation from President John Adams of $5000 for books, which purchased 740 volumes and three maps.93 The British burned the library in 1812, and in 1814 Thomas Jefferson sold his personal library of 6487 volumes to the Library of Congress.94 In 1851, another fire destroyed two-thirds of the library’s 55,000 volumes. Money was quickly appropriated to restore the collection.95 Even at the end of the Civil War, it contained about 80,000 volumes. Andrew Rand Spofford is credited with establishing a world-renowned library, reorganizing the Library of Congress in 1897 with bipartisan congressional support for a library that served both legislative and national functions.96 He also revived the practice of copyright deposit as a requirement for authors seeking copyright.97 Today, “with collections totaling more than 100 million items, a staff of nearly 5,000 persons, and services unmatched in scope by any other research library, the Library of Congress is one of the world’s leading cultural institutions.”98

¶39 We cannot adequately treat here the importance of all libraries to democratic society. Philanthropist Andrew Carnegie certainly understood this relationship and became the champion and root of the American public library.99 More recently, the

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91. See supra notes 50 through 56 and accompanying text (discussion of the importance of reading books, particularly law books, in legal education of the time).
92. Vinans, supra note 85, at 78 (entry “110 CLARK, STEPHEN”).
95. Jefferson’s Legacy, supra note 93.
96. Id.
97. Id.
98. Id.
99. Carnegie’s vision about public libraries was about democracy and equality: The public library fit neatly into Carnegie’s social thought. He frequently described it as a democratic and democratizing institution. Within its walls as within the American republic there were to be no artificial restrictions, no ranks, no privileges, no classes; but he considered the library much more than a microcosmic democracy. “Free libraries maintained by the people are cradles of democracy,” Carnegie told an audience at the dedication of the Washington D.C., Public Library, “and their spread can never
president of the Carnegie Corporation of New York praised libraries as essential to democracy: “In both the actual and symbolic sense, the library is the guardian of freedom of thought and freedom of choice, standing as a bulwark for the public against manipulation by various demagogues. Hence, it constitutes the finest emblem of the First Amendment of our Constitution.”

Academic American Law Libraries
¶40 Harvard Law School had a library when the school was founded in 1817, but it was Dean Christopher Langdell in 1870 who introduced the radical notion of no longer providing students with individual textbooks but instead assigning them readings within the library’s collected law reports. He hired the first full-time librarian. By the turn of the century, the library had more than 6000 volumes. By 1988, the library had 1.45 million volumes.

¶41 Harvard Law School has always led the way in collections and methods. But throughout the 20th century and into the 21st century, the collection efforts of academic law librarians continued, in part as driven by ABA data collection efforts.

fail to extend and strengthen the democratic idea, the equality of citizen, the royalty of man.” Libraries were to be missionary outposts spreading word of American Democracy and individualism throughout the land even as by deed they put those ideals into practice.

Peter Mickelson, American Society and the Public Library in the Thought of Andrew Carnegie, 10 J. Libr. Hist. 117, 121 (1975).
100. Vartan Gregorian, From the President, Power Houses, CARNEGIE REP, Fall 2019, at 3, 3.
102. Id.
103. For the sake of brevity, we are skipping over the important contributions of institutions like American Association of Law Libraries, the Association of American Law Schools, and the American Bar Association to the development of academic law libraries. See Jessie Wallace Burchfield, Tomorrow’s Law Libraries: Academic Law Librarians Forging the Way to the Future in the New World of Legal Education, 113 LAW LIBR. J. 5, 8–9, 2021 LAW LIBR. J. 1, ¶¶ 5–7.
Figure 6
Titles and Volumes Held by Academic Law Libraries as Reported to the ABA in 2007

Figure 6 shows one outlier library with close to 1.8 million volumes and 900,000 titles. However, the mean for titles held was 167,326 and for volumes was 468,106. Much of the upward pressure on titles and volumes was driven by reporting to *U.S. News & World Report* because such statistics were used in their formula to rank law schools. This pressure weakened libraries when they inevitably faced the real changes to their information environment brought about by online technologies. Libraries were figuratively two-dimensional in their planning, driven by title and volume counts.

¶42 At the time, spending per law student was quite high (averaging $1928), but the range of spending per student varied widely with student body size.

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104. The source of this data is the *Summary of Law School Library Statistics Reported to the ABA* (2007), https://umkc.box.com/s/puo6l0hh2ervq4m5urejy4eu5kfh02z (last visited Oct. 4, 2021). We have anonymized the information.
As of 2007, law libraries spent a wide range of dollars per student even when varying class size. Figure 7 reflects how some large schools invested less heavily per student because of economies of scale. On the other hand, some small schools invested heavily in library materials to have the same breadth of collection as larger schools. Competition was certainly a factor, as *U.S. News & World Report* included collection sizes in its calculations of rankings. For 2007, the median spending was $1785 per student with a student body size of 555 students. Again, this two-dimensional thinking trapped libraries as they faced the changes brought about by new technologies in an evolving information environment. The ecological and holistic Deibert approach to analysis is crucial to understanding the library’s trajectory and evolution. That pressure to spend and add to collections was largely removed once the ABA stopped requiring the data in 2009;\textsuperscript{106} the Great Recession of 2007–2009 contributed also to this lessened

\textsuperscript{105} Id. We have anonymized the information.

\textsuperscript{106} We wish to thank Kevin Gerson, Director of UCLA’s law library, for locating this information.
pressure. Since so much of a law library’s collection relies on access through subscription databases, these factors led to a decrease in the purchase of materials (although this is hard to document because of the lack of ABA data).

§43 During the last decade, the UMKC Law Library has experienced a dramatic decline in the number of items borrowed and lent (really an indicator of information use) from the library’s local MOBIUS consortium (which includes patron-initiated delivery, a union catalog, 4 academic law libraries, more than 77 other libraries, and 29 million items) (see fig. 8). For example, the UMKC Law Library declined in items borrowed from 974 to 164 annually in a little more than a decade. This phenomenon is hardly unique to UMKC Law. Indeed, the entire MOBIUS consortium of 77 libraries is experiencing a decline (in a period when it was adding more libraries to its membership).

![Figure 8](MOBIUS_Circulation_Lending_Borrowing.png)

Figure 8
MOBIUS Libraries Circulation, Borrowing, and Lending

However, *U.S. News & World Report* continues its collection of this data.


109. For an illustration of Paul’s library, see figure 20 below.

110. The source for the data is Historic Borrowing and Lending Statistics Reports, MOBIUS LINKING LIBRS., https://mobiusconsortium.org/node/279 (last visited Oct. 4, 2021). The four academic
Students and faculty (and especially UMKC’s law students and faculty) are simply not borrowing items to the same extent they were in previous decades.

¶44 Figure 9 shows another university’s experience. Although nowhere near the circulation activity of the MOBIUS consortium, Columbia University has had strong volume in library checkouts but was deeply impacted by the pandemic.

¶45 Is the phenomenon caused by decreased purchases of relevant print materials across the system or more reliance on electronic databases in the MOBIUS and Columbia systems? How have Google, Wikipedia, and the web played roles? What is the role of e-books, arriving in the last half of the decade? Certainly, 2019–2020 was affected by the pandemic and the shutdown of library operations. It is hard to know exactly what is going on. In any case, libraries find themselves in a new information environment that challenges their role with respect to cognitive authority and social epistemology.

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law libraries are at UMKC School of Law, University of Missouri, Saint Louis University School of Law, and Washington University in St. Louis School of Law.
Libraries and “Cognitive Authority”

¶46 The current pandemic’s lockdown, and then the digital or hybrid teaching models, have suddenly created new venues for libraries. Law schools and their libraries can create closer partnerships in leveling the playing field in accessing information, especially for students who are particularly vulnerable in access to even their basic educational texts. Librarians can help reshape “cognitive authority” for legal education and scholarship by facilitating open access publishing texts. Librarians can do it as Rice University does it with OpenStax textbooks.111 Librarians can do it in partnership with Amazon’s print on demand,112 as Professor Lisa Heinzerling did it with her most recent textbook, Food Law: Cases and Materials (2019).113 Or, we can do it as Columbia Law Library did it114 when it published Katharina Pistor’s Law in the Time of COVID-19115 on the law school’s scholarship repository, which is managed by the law library. From April 20, 2020, until November 16, 2021, Pistor’s book has been downloaded 18,548 times worldwide.116 Other schools have used their Digital Commons117 platforms (usually managed by libraries) to offer open access textbooks118 as well as law reviews and faculty papers.119 For example, University of Missouri School of Law has an even more developed publishing experiment with five open access books published on its digital repository.120

¶47 While a two-way street (it is library users who must convey trust), the institutional epistemic foundation of libraries has a long history based on cognitive authority. For instance, from the beginning of their existence, in an era when information was

116. See infra notes 243–246 and accompanying text for a more in-depth discussion of the publishing aspect of the library’s academic role.
119. See, e.g., Duquesne University’s Digital Commons, managed by both Gumberg Library and Duquesne Center for Legal Information. For more, go to https://guides.library.duq.edu/impactchallenge/oa (last visited Oct. 4, 2021).
120. Faculty Books, supra n.118.
scarcer than today and when libraries flourished, they did more than provide access to that information. Their very acts of purchasing some items over others, and how they classified items with bibliographic information, established what items should receive our trust and become “cognitive authority.” This was a very important role in society. Libraries divided up the fields of knowledge on agreed-upon lines that delimited fields for research and knowledge.

¶48 The dominion that libraries held, like the encyclopedias, continues, but it is challenged by new technologies. Google and other search engines challenge the taxonomic expertise libraries use to create collections or organize knowledge. Like libraries, all search engines rest on the power of indexing, a library creation. Indeed, Google and Yahoo! hired librarians as indexers to facilitate their organization of knowledge and make information accessible.

¶49 That is why back in 2013 Dana argued that Google was not a professional threat to libraries. While Google used the correct approach—organizing, categorizing, and labeling information in a way that eases access—it lacked what we call epistemic expertise, our professional emotional cue. Academic knowledge, scholarly work—at least in its Western version—builds on existing well-indexed and accessible work. To research it, then, the fastest way is by using indexes, which offer controlled searches incorporating topics deemed relevant for a scholarly area. Library catalogs are basic indexes. Google incorporates basic library trade, and it goes much further with its proprietary search algorithms. Knowledge users have adopted Google, but not for all their searches. True, until the digitization revolution, the library’s physical collection represented the academic emotional cue one sought for expert knowledge. But, today, when so much information is digitally available, a mere index search limited to one academic

121. See, e.g., How Google Search Works: Indexing, Google Search Cent., https://developers.google.com/search/docs/beginner/how-search-works#indexing (last visited Oct. 4, 2021). After a page is discovered, Google tries to understand what the page is about. This process is called indexing. Google analyzes the content of the page, catalogs images and video files embedded on the page, and otherwise tries to understand the page. This information is stored in the Google index, a huge database stored in many, many (many!) computers.

122. Dana is acquainted with librarians hired by Google and Yahoo!


124. People rely on what Dana calls emotional cues, which are shortcuts pregnant with meaning because they come with embedded consumer trust in the product they represent, whether food for the body or food for thought. Companies employ such shortcuts to convey perceived consumer strength. Economists call it “signaling.” The public calls it “branding” or “market identity,” and it helps people choose everything from baby formula to, as argued here, research data. For those with a legal bent, trademarks perform the same function. See id. at 26.

125. Id.

126. For example, an emotional cue for Paul of a library collection is the library reading room at Cornell Law School, where he went to school. Similarly, for Dana it is the Widener Library where she spent her time reading ecclesiastic legal documents for her European legal history class with Charles Donohue.
library’s holdings has become inadequate. For instance, to exude expertise and credible knowledge shortcuts, today’s index searches need federated searches—to connect collections and make accessible library content that goes beyond the mere title, author, and keyword field. Today’s research expertise has to impress Internet users for whom Google searches are deficient. Today’s emotional cues have evolved into the Google-like single search bar of a federated search.127 For example, the homepage of UMKC’s Miller Nichols Library has a single search bar that is a federated search (including periodical articles with the traditional materials of the catalog) (see fig. 10).

Figure 10
UMKC Miller Nichols Library’s Federated, Single Search Bar

In the next section, we see one response to Dana’s criticism129 of libraries’ perceived lack of epistemic nimbleness: expert taxonomy.

127. Furthermore, the first search bar on Westlaw Edge or Lexis+ offers a federated search of all its holdings, which can then be narrowed by selecting filters.
An Example from a Catalog Bibliographic Record

The bibliographic record in figure 11 tells a unique story about the epistemic authority of libraries based on their ability to categorize items into fields for study. As shall be seen, this ability has adapted to the Internet. The topmost arrow marks not only which university library has the item *White Fragility*, but that it is in a special location dedicated to Social Justice Reading. The next arrow shows that the bibliographic record also has a summary about what the book is about, taken from the back cover of the book. Next, the subject fields show the book has three subjects that characterize the book and that link to other similar items. They are *Racism*, *Whites*, and *Race relations*. The cataloger (really a society of catalogers) has defined how the book fits into various fields of study using the Library of Congress Subject Headings (LCSH).
Note that under the LCSH for Whites, a whole system of defining the concept, and hence the field, has been put into place with rules such as the subject may be divided by geography, acceptable variants, the broader term of Ethnology, a list of

narrower terms or concepts, and a related term of the *Caucasian Race*. By scrolling down the page in figure 12, the user finds a list of narrower but related concepts from other fields (see fig. 13).

![Figure 13](https://example.com/narrower_concepts.png)

**Figure 13**

LCSH Narrower Concepts from Other Schema for “Whites”

What the LCSH does is establish the ethnography for the subfield of *Whites*. It also establishes the field of *ethnography*. Every item in the collection must fit into a carefully worked out construct of genus, relatives, subcomponents, related concepts from other fields, variants, and so on. What is important is that the LCSH and other taxonomies like it (e.g., for periodical articles or specialized fields) work out how scholars and scientists see and view their worlds of study. It also creates definition and boundaries to the social epistemology or cognitive authority that is acceptable for those endeavoring in human knowledge, including the profession of law. If you don’t believe us, just look up the LCSH heading for *Torts*, which is quite a bit more extensive than for *Whites*. It has 46 “Narrower Terms” spanning the subject.

¶ Finally, see figure 11 again. Additional key words based on FAST (Faceted Application of Subject Terminology) in the bibliographic record also illuminate the item with descriptive terms using a simpler taxonomy than LCSH subject headings, but further defining where *White Fragility* fits within the domain of knowledge.133 FAST

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132. See *Research, FAST* (Faceted Application of Subject Terminology), OCLC, https://www.oclc.org/research/areas/data-science/fast.html (last visited Oct. 4, 2021). FAST originated as a joint research project of OCLC’s Cooperative Online Resource Catalog (CORC), which endeavored to adopt a “simple, low-cost, low-effort approach[ ] to describing web resources (e.g., using Dublin Core).” *Id.* Having said that, it has 1.8 million headings of its own.

133. We thank Garth Tardy, Metadata Librarian, at UMKC’s Miller Nichols Library for information on the keywords, which are found in MARC field 650 7 and are the OCLC Subject Added Entry
Descriptors were a response to developments in metadata and the web. The point is that before the web, libraries had almost exclusive control over how an item such as *White Fragility* fit into the various domains of knowledge. However, even with development of the web, librarians working in the field of metadata exerted efforts to lend their expertise to the categorization of knowledge through taxonomies like FAST. Returning to *White Fragility*, working backwards, items classified under *Racism* framed the field for study for scholars.

§53 Pre-web, librarians had the unchallenged epistemic authority to define knowledge domains. In a way, we could say that librarians held a monopoly on this type of cognitive authority. Nowadays, cognitive authority needs something more than the anonymous basic organization by subject. For instance, Google searches today “involve both live tests and thousands of trained external Search Quality Raters from around the world.” Additionally, as any specific search will show, Google also incorporates user aggregators like Yelp or Facebook in its relevance ranking. We call this “anonymous value-added by users.” To this extent, Google relevance is a matter of crowd “clicking” in addition to its algorithmic factors.

§54 Thus, if the first wave of digitalization relied more on user-added value (see the example of *Wikipedia*), today, even by Google standards, this is insufficient. Users are becoming more sophisticated in terms of trusting their search results and thus more demanding of what we call the “signal of confidence,” “epistemic trust,” or “emotional cue.” We associate this trust with cognitive authority. Using the library catalog of large academic library collections offers that signal of confidence, to a certain degree. As shown above, that trust and confidence seem connected to librarians who add key words and descriptors that go way beyond the title, author’s name, and year of publication. That adds enormous value to knowledge organization and access. But for these “cues” to work, deans and AALS presidents hold the key to law libraries’ emotional cue. For example, this article is an argument that libraries should receive a more prominent place on each law school’s website. Dana remembers that when she wrote her AALL Spectrum article in 2013, both Harvard University and Harvard Law School (HLS) listed their library links under their resource offices. Today, we are happy to note that the portal to one of our best academic law libraries, at Harvard, is no longer hidden beyond the more generic concepts of Resources and Offices, as it was in 2013. Its place now

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134. *Id.*


136. *Id.*

is at the front of the HLS page, next to Admissions, Academics, Faculty, and Careers. Libraries are omnipresent. Neither their power structures nor our cognitive authority is easily sloughed off in the Internet age.

Libraries as Knowledge Institutions

§55 Having spent considerable effort on the epistemic role of libraries, it is time to consider their institutional role, specifically as knowledge institutions. From Deibert’s model, we have observed:

Relationship of law and legal publishing descend into oligopolies. Market disrupters leverage new technologies but without good access to secondary, editorial material characteristic of the major vendors. [There is a] transition of libraries from print collections to online/AI technologies. Rise of open access movements and online repositories both not-for-profit and for profit.139

To this we might add there is connection between new information institutions arriving with the web and the social epistemology (scholastic and authoritarian in nature) traditionally claimed by library catalogs and resources, including in the field of law.

Impact of Web Knowledge Institutions and Anti-authoritarianism

§56 Needless to say, with the web and the arrival of various wikis, Wikipedia, Reddit, and Twitter, they seem at first glance to let users lay out a domain of knowledge based on how they see fit, according to their social epistemology. But the truth is more subtle. In his wonderful book, The Anarchist in the Library, Siva Vaidhyanathan lays out the characteristics of what he would call “peer-to-peer ideology”:

- End-to-end design
- Decentralization
- Anti-authoritarianism
- Difficult to manage
- Extensibility140

Libraries, and especially vast online union catalogs among library consortia, may fit many of these facets, but what Vaidhyanathan says about anti-authoritarianism and the web’s actors is of most interest to us. “They are antiauthoritarian. There may be guides, mavens, or experts who contribute more to the system than others do. But no one person or committee can turn the system off or remove participants. There is no discernible command-and-control system.”141 For Vaidhyanathan authority may be bypassed in peer-to-peer systems (and the web) because of the reliance on protocols over controls. So,

139. See supra figure 1.
141. Id.
[a] protocol is a handshake. It's a way for different actors to agree on rules of engagements, habits, traditions, or guidelines. If one or the other actor breaks or ignores the protocol, the communicative act fails. If one actor abrogates the terms of a protocol, it will lose the trust of the others. Protocols should be simple enough to allow a diverse array of actors to work with them. They should be flexible enough to allow a variety of interactions over a network or through a system. Controls, on the other hand, are coercive measures imposed by one actor on another. If a protocol is a handshake, a control is a full nelson.142

How do libraries compare to peer-to-peer systems? Libraries have long used protocols to cooperate in the sharing of bibliographic information and providing services such as interlibrary loan (ILL) (consider WorldCat and Worldshare Interlibrary Loan offered by the library member–driven OCLC). Indeed, libraries are facilitated in their use of protocols and consortia (end-to-end design) by the web. In this respect, they were ready for the web and are a “species” of institution that thrives more readily in the information environment brought about by the web.¶

There are other respects in which libraries and librarians thrive on the web. Some of the mavens (mentioned as the anti-authoritarian alternative by Vaidhyanathan) that engage with systems like Wikipedia, Reddit, and Twitter are librarians. As mentioned earlier, metadata librarians have developed systems like FAST, to provide simpler classification systems for material on the Internet.143 And then there are Internet manifestations of libraries like Google Books,144 the HathiTrust,145 and the Internet Archive (especially the Open Library),146 each rich repositories of library materials, all library institutions made possible by the information environment of the web. As an interesting transition from physical to digital, the Open Library had initiated a practice of lending one digital copy of any physical book (regardless of copyright) in its collection, but during the early weeks of the pandemic in 2020, it waived the single copy rule and distributed unlimited copies. It was promptly sued by four publishers for both the original practice and the lending without limits during the pandemic.147

142. Id. at 33.
143. See supra note 132.
\[\text{In the field of law librarianship, there are repositories of scholarly works like SSRN, Law Review Commons, LawArXiv, and Harvard's Perma.cc. The present and future use of law schools' Digital Commons (a service of law libraries) is discussed above. The point is librarianship is exerting a heavy influence over the access to knowledge in the Internet era.}\]

\[\text{As Dana noted back in 2013, librarians continued to be relevant in the face of the web and digital technologies. Rather than being replaced by them, they have leveraged them to benefit their own institutional services (e.g., online union catalogs). They have tried to benefit the web with metadata systems like FAST, and they have created their own web guides and content. For example, in 2020, users visited guides created by librarians of the Columbia Law Library approximately 41,000 times in 45,000 sessions. Libraries are adapting to the changing information environment. Their struggles with the web and digital technologies are no different than institutions like the press and universities (the very institutions described by AALS President Vicki Jackson).}\]

\[\text{Returning to social epistemology, law libraries (and all libraries) have an interesting dilemma with respect to Vaidhyanathan's description of the anti-authoritarian nature of peer-to-peer systems on the web. Law by nature is scholastic and authoritarian (it is part of its cognitive authority and social epistemology inherent in the system). Jurisdiction and the primary authority in that jurisdiction are everything in defining social epistemology. In addition, certain secondary authorities, like Moore's Civil Practice, Nimmer on Copyright, Williston on Copyright, and the Restatements, are part of the pantheon of authority of practicing attorneys, judges, and jurists. Finally, although libraries use protocols (they are decentralized in many important respects), they also use authority control across vast bibliographic systems spanning the globe, to}\]

152. See, e.g., Columbia L. Sch. Scholarship Repository, https://scholarship.law.columbia.edu/ (last visited Oct. 4, 2021). This is an example of a law school (through its library) participating in Elsevier's Digital Commons, which is also part of the Law Review Commons. See supra note 149.
154. See infra Figure 18.
155. See supra note 4 and accompanying text.
156. Authority Control, Wikipedia, https://en.wikipedia.org/wiki/Authority_control (last visited Oct. 4, 2021). "Subject headings from the Library of Congress fulfill a function similar to authority records, although they are usually considered separately. As time passes, information changes, prompting needs for
consistently describe how items in their catalogs fit into taxonomies of knowledge. Law libraries have to respect the authoritarian nature of their field. However, there are even exceptions in law—international law, at least diplomacy, primarily works on protocols—but as a whole, the law has its authorities that will not be shifted easily in the face of digitization, the web, or even AI, which might otherwise displace traditional authorities.¹⁵⁷

Librarians, Instructional Roles, and the Challenge of the Single Search Bar

¶ 61 In instructional roles, web resources are challenging our epistemic authority. While we continue to rely on the importance of the traditional cognitive authority—including primary law and secondary sources, whether through editorial scholarship, such as Moore’s Civil Practice, or hybrid, practitioner-oriented works, like American Law Reports—we are also adapting by building expertise, and thus credibility, in our epistemic role. Librarians must do this because the library’s dominion over cognitive authority is no longer a given; librarians have to fight for it.¹⁵⁸

¶ 62 We start from a position of strength. We represent the historical cognitive authority for our student body’s chosen area of practice. But we also face patron behavior that exclusively starts with the single search bar, represented in figure 14. Almost every vendor has such a bar.

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¹⁵⁷. For a discussion of AI, the law, and legal research, see Callister, supra note 39.
¹⁵⁸. The challenge to cognitive authority was starkly framed in 2000. Robert Berring, perhaps law librarianship’s foremost thinker on the effects of electronic legal research on the practice of law at the time, saw a revolution affecting legal authority:

The century’s close sees this situation changing radically. The comfortable structure of cognitive authority that had been so central to legal information has fallen, and it can’t get up. Old tools are slipping from their pedestals while new ones are fighting for attention. Where once there was a settled landscape, there now is a battlefield. The change is not an organic growth, nor are the learned hands like those of the American Law Institute or the American Bar Association guiding it. This change is being driven by publishers as they battle in the information marketplace for consumers. Many senior lawyers who would normally function as the gatekeepers of change are unaware that the earth is shifting under their feet, but it is. Law students and young lawyers do not see current events as revolutionary, but they are. To them it is odd that anyone ever used Shepard’s in print or that anyone actually used a digest volume at all. Berring, supra note 37, at 1677. Since 2000, when Berring made his statement, the challenge over cognitive authority has become only more difficult for libraries.
In a recent article, Paul explained the basis of this concern following a survey at his school:

In discussing how they start their research, almost half the students agreed with this statement: “I just start typing in the search bar on Lexis, Westlaw, or Bloomberg to see what comes up.” This held true even though “starting with Google” was also an option on the survey (12.85% of students selected). Starting with legal commentary (something with an index) to get background on the law is far less likely (11.88%) than using a single-search box. Students can filter their results on Lexis, Westlaw, and Bloomberg “post-search” to find secondary sources, but do they bother when primary materials are displayed first and may seem relevant?\footnote{Callister, supra note 39, at 168, ¶12. The question in the 2019 survey of 101 UMKC law students was:}

But such behavior among students does not encourage winnowing the more complex resources, the ones that contain the contextual explanation, positing the questions into the larger epistemological context of a treatise, such as, say, \textit{New Appleman on Insurance Law Library Edition}. As shown in figure 15, a search in the single search box, by default and at this moment in time, will always start with answers in case law. And such results (case law), while crucial for legal research, are highly unsatisfactory, if we demand, as we should, that our students master the context of an issue.

\footnote{For the survey question, see Question 8 of the Default Report 360 Legal Information Environment Survey (Mar. 7, 2019), https://umkclaw.link/360-survey (last visited Nov. 4, 2021).}
¶63 For example, in figure 15 a single search box search for “retirement plan assets protected from creditors in bankruptcy” produces a U.S. bankruptcy court case from the Central District of Illinois styled *In re Lee* (which is on point assuming that you are in the Central District of Illinois). Because bankruptcy and retirement plans are each governed by statutes, a superior approach would be by the appropriate jurisdictional statute or, even better, explanatory commentary. However, in figure 15, on the left is a link for secondary sources, 680 of them, but that seems a little daunting. When selected, based on relevancy ranking, Westlaw Edge returns an article from *Stetson Law Review* from 1991. Surely, there are more timely staples of bankruptcy and retirement planning law on point. Indeed, Lexis’s *4 Collier on Bankruptcy* [10][b] is home to the relevant information. One way to find it is to search the index on Lexis+ under *Exemptions > Pension Plans*. There is still a genuine need for librarians to impart information about the seminal texts (the “cognitive authority”) in fields of law of interest to law students and practitioners! Drilling in the use of indexes is also critical because a full-text search using “retirement plan assets protected from creditors in bankruptcy” of the entire text of *Collier* fails to locate the essential material.

Figure 15
Westlaw Edge Single Search Box Search
Used by permission of Thomson Reuters

¶64 The good news is that even in a digital information environment, human bibliographic/metadata and research expertise is what most patrons need. Additionally, the good news in the example of *In re Lee* is that the Internet and its web resources have not replaced the epistemic power of librarians to discern and define authority in the profession for their users. As this example of the differences between uses of disintermediated

160. A similar search from the single search box in Lexis+ produces a list of cases. There is no link or “filter” for secondary commentary.
and intermediated information elaborated on from a technological perspective shows, librarians have a role in explaining both, if they can sustain the credibility to do it.161

**Facets for Institutions Such as Libraries**

¶65 Libraries can be studied by their facets. Much as in the Indian tale of the *Blind Men and an Elephant*,162 the trick is to see the whole pachyderm.

### Library as Its Networked Relationships of Knowledge Workers

¶66 Today, more than ever, what a library owns, or even electronically subscribes to, is less important than the expertise, skills, scholarship, contributions, and professionalism of its librarians and the relationships they have with their core constituencies and colleagues throughout the profession.163 The cultivation of expert “knowledge workers” and supporting contributions to academic and professional literature are not just luxuries but may be imperatives, especially in the changing information and multicultural environment.

¶67 Most visitors can identify librarians and staff as supporting their local library, but the organizational underpinnings are far more extensive than the immediate library. The diagram in figure 16 of the network in which a single academic law library participates is the tip of the iceberg. Many services of these network relationships are not covered, and many relationships may have been missed. The human component is missing.

¶68 Our combined experiences in AALL have deepened our commitment to our profession and enriched our capacity to serve. There are many librarians we could point to whose service far exceeds our own. Furthermore, much service occurs in chapter organizations and other library associations. The point is that librarians are networkers by nature. Services like OCLC cataloging and union catalogs are the result of efforts on a grand scale with a great vision. They didn’t come into being by accident or

161. Paul had an insightful experience while working with Wolters Kluwer several years ago. He complained so much about a new interface to its online CCH tax services that he was invited to join a “customer advisory board” that met in Chicago. Meeting with other members of the board was insightful. The major criticism was that all searches brought up news articles first—without getting into the tax code or the flagship commentary of the *CCH Standard Federal Tax Reporter*. Wolters Kluwer’s algorithmic designers had thought news was the most important feature, rather than what their users valued—the context of existing tax law so carefully treated by CCH editors in commentary.


163. Some colleagues reviewing this paper at the 2021 Boulder Conference thought this statement went too far. Shawn Nevers, from BYU’s Law Library, stated, “Our students regularly tell us how much they love our print collection.” 2021 Boulder Conference on Legal Information: Scholarship and Teaching (July 15, 2021). The relative worth of librarians and collections (print and digital) may vary, but we make our statement anyway based on our own experience to provoke thought and discussion. We believe it to be generally true.
half-hearted efforts. Librarians are like bees, constantly concerned with maintaining and expanding the hive.

¶69 Figure 16 describes the network of relationships in a hypothetical library, and we did not even include vendors. The thing to note is that relationships can be divided into international, national, regional, and municipal. There are relationships that provide academic outlets, professional education, and advocacy on library issues (such as copyright and government authentication of documents “born digital”). Some organizations have, as mentioned, produced large union catalogs and work closely with OCLC, which provides cataloging records that can be copied (“copy cataloging”), batch downloads of bibliographic records, ILL services, and the largest catalog in the world. Some organizations are dedicated to legal technology, and others to narrower fields like serving self-represented patrons. Others are distinctively ethnographic, like the AALL’s Latino Caucus. The divisions of labor and interests are quite complex.

¶70 For example, this year Paul serves on the Leadership Development Committee of AALL. Last year, he was an ABA site team member for the reaccreditation of another law school. He also serves on an Affordable and Open Access Committee for his university library and the Library Dean and Directors Council for the University of Missouri System. He serves on the board of directors for the Mid-America Law Library Consortium, chairs the Promotion and Tenure Committee for UMKC School of Law, and serves on its Curriculum and Assessment Committee. Nevertheless, in July 2020, the authors first met in their role as scholars, over Zoom, during the Boulder Conference on Legal Information: Scholarship and Teaching, while presenting and reviewing their own scholarship with other participants. Such complex professional relationships help all of us stay grounded in our jobs, learning about where libraries and law schools are going, their threats and opportunities. Such engagement, tantamount to any professional’s continuing education, ensures that librarians remain resourceful, skilled, and valuable at what we do. Yet, individual librarians still see only a small part of library networks and must rely on their colleagues for information based on the parts of the network to which they belong.

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¶71 If Jackson’s reluctance to accept librarians’ epistemic role was caused by technology, that view was mistaken on so many levels. In fact, digitization has made our institutional role more complex than ever. Increasingly, it is not what a library physically holds or how many platforms and e-books it has, but how often it provides access. For instance, at the UMKC Law Library, students and faculty visited (meaning had a session with) a HeinOnline collection 4900 times during 2020. We use HeinOnline because few vendors provide meaningful usage data. The 4900 visits are more than the local checkouts in print at the law library’s reference desk, consortium checkouts, and ILL combined by a factor of at least 10 for the same year. HeinOnline is linked to our catalogs and, perhaps most significantly, to Google, which drives users to the database at our libraries. In the end, a single database is driving Paul’s library to being a digital portal by a factor of 10 (over the library’s print checkouts). Similar data can be gleaned from Columbia’s use of HeinOnline over time, with a trend toward online visits (see fig. 17).
¶72 During the same time at Columbia, when HeinOnline visits were increasing, checkouts of print materials by faculty and students were falling. At the same time, HeinOnline visits exceeded student and faculty checkouts by a factor ranging from 4.56 to 6.75. Thus, while a large Ivy League law library like Columbia has been able to maintain more checkouts than the much smaller UMKC law library, Columbia is subject to the same declines and trend toward many more visits to HeinOnline than the checking out of print materials. It may be a controversial conclusion, but if we look at patron behavior with regard to resource access and usage, law libraries, even great ones like Columbia, are already more portal to digital resources than they are print repositories.

¶73 Interestingly, during the pandemic months of March to November 2020, checkouts increased at the Columbia University Libraries (CUL), as the table below shows.\textsuperscript{166}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{Columbia_Law_School_HeinOnline_Visits.png}
\caption{Visits to HeinOnline at Columbia Law Library\textsuperscript{165}}
\end{figure}

\textsuperscript{165} According to definitions accompanying HeinOnline data at Columbia Law School, visits are "the number of unique HeinOnline server sessions for an account." If a user's browser does not accept cookies, then each server request creates a new session and counts as another visit. This metric counts both specific HeinOnline sessions and the number of unique sessions within a specific title or collection. Thus, each title or collection a user visits during a single session counts as a "visit" to that title or collection. Therefore, adding up the number of visits by titles or collections may be overstated. Data from Excel file attached to email from Thomas W. Baker, Coordinator of Electronic Resources, Columbia L. Libr., to Paul D. Callister, Libr. Dir. & Professor of L., UMKC (Dec. 22, 2020, 11:58 CST) (on file with author).

\textsuperscript{166} Email from Hayrunnisa Bakkalbasi, Assoc. Dir., Assessment & Analytics, Columbia Univ.
But these non-law libraries did this as a *portal* to the HathiTrust Emergency Temporary Access Service (ETAS).\(^{167}\) Thus, CUL switched from providing print to giving access to digital copies through the ETAS.\(^{168}\)

<table>
<thead>
<tr>
<th>Month</th>
<th># of Checkouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2020</td>
<td>1</td>
</tr>
<tr>
<td>April 2020</td>
<td>6,299</td>
</tr>
<tr>
<td>May 2020</td>
<td>10,498</td>
</tr>
<tr>
<td>June 2020</td>
<td>8,608</td>
</tr>
<tr>
<td>July 2020</td>
<td>9,027</td>
</tr>
<tr>
<td>August 2020</td>
<td>8,249</td>
</tr>
<tr>
<td>September 2020</td>
<td>9,783</td>
</tr>
<tr>
<td>October 2020</td>
<td>10,310</td>
</tr>
<tr>
<td>November 2020</td>
<td>10,474</td>
</tr>
<tr>
<td>Grand Total</td>
<td>73,249</td>
</tr>
</tbody>
</table>

\(^{74}\) Returning to the use of online services, if we also had the numbers of views for Lexis, Westlaw, and Bloomberg, the relative access to those services compared to patron contact with physical items would differ by several orders of magnitude. Libraries, while still temples of printed knowledge, have become portals to digital resources. It is not just commercial vendors like HeinOnline, Lexis, Westlaw, and Bloomberg that are turning libraries into portals; it is the librarians themselves as they produce web guides for their users (see fig. 18).

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168. A word of caution is in order: During the early pandemic, the Internet Archive offered similar access, but without a one-to-one restriction on lending digital books based on ownership of a physical copy, as practiced by ETAS. The Internet Archive is being sued for copyright infringement; see Complaint, *supra* note 147; see also Kwan, *supra* note 147. Besides the four named publishers serving in the lawsuit, the Authors Guild (often active in litigation) wrote an open letter demanding the Internet Archive’s National Emergency Library be shut down. The Authors Guild, *Authors Guild Sends Open Letter to Internet Archive and Brewster Kahle Demanding Open Library’s “National Emergency Library” Shut Down*, https://www.authorsguild.org/industry-advocacy/ag-sends-open-letter-demanding-national-emergency-library-shut-down/ (last visited Oct. 5, 2021).
Some libraries have been able to turn special print collections into electronic databases that drive traffic to their portals. During the pandemic, the Columbia University Libraries (CUL) system has benefited from the temporary access arrangement with HathiTrust: if CUL owns a print copy of a work available digitally anywhere in the HathiTrust collection, CUL patrons can access it digitally, too. Some more examples are in the next section.

The geopolitical aspects of law have increased demand for international, foreign, and comparative materials. Many of these items come through special databases (such as *International Encyclopedia of Laws* or the *Max Planck Encyclopedias of International Law*). It might also mean access to foreign and international guides such as those provided by NYU’s *Globalex*, the Law Library of Congress, or even your own school’s LibGuides. For instance, of the “Research Guides” listed on Columbia’s law library site, nearly all are dedicated to foreign, comparative, and international Law.

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In 2020, Columbia’s FCIL guides accounted for 17,390 unique page visits, again far more than student and faculty checkouts. Columbia Law Library has become a portal for FCIL research.

The important thing to note is that the library may be accessed many more times as a portal than used to check out materials (or even visited). Perhaps the most important way libraries can be portals for their schools is to develop online commons or repositories, as discussed below.

**Library as Its Physical Collection**

Libraries experienced another threat to their status in the late part of the first decade of the 21st century: the loss of print. Following the decision by the ABA to stop collecting title and volume data (2009) and the Great Recession (2007–2009), forces were in place to reduce library spending, to force them to “play defense” and face an existential threat. For example, figure 19 shows data collected from 16 participating members of the Mid-America Law Library Consortium (MALLCO).


Like Columbia’s law library, UMKC’s law library maintains web guides or LibGuides, although only two are dedicated to FCIL. The total views for UMKC guides in calendar year 2020 was 10,960, with 1202 views for its leading FCIL guide. This is again more evidence of the UMKC’s law library becoming a portal.

174. The HeinOnline “visits” outpaced reference questions in UMKC’s law library by a factor of four.

175. See supra note 106.

176. See Great Recession, supra note 107.

177. An Excel file is available with the authors at https://umkc.box.com/s/3o1q8oku93ukko1go m8v5qvjx89vypu. The data has been scrubbed to eliminate the identifying information of participating law schools. In the Excel file, the same study revealed that of 200,425 titles purchased by the 16 law schools from 2000–2010, almost a quarter (44,295) were unique to one of the libraries in the consortium. On average, a law school library during that time period would have 2768 unique titles (among an average of 12,527 acquired titles). On the other hand, only 74 titles were shared by all 16 schools. Thus, redundancy of titles among libraries in the consortium is far from a certainty.
Figure 19
WorldCat Analytics Study of 16 Participating MALLCO Libraries

The gradual rise and then decline (from an average of 1110 to 1278 to 780 per library) in ownership of titles (most likely monographs) in a given year is hard to interpret. It could be because there is a lag time between the date of publication and purchase. It could be because of the Great Recession. Or, it could be because libraries were relying more heavily on digital collections. It could also be because the ABA (but not U.S. News & World Report) had stopped collecting the data on titles and volume counts. All these factors combined may suggest something more fundamental is going on—a shift to a digital access environment for libraries. Unfortunately, the ABA and the MALLCO libraries did not collect the data to assess what happened on a broad scale after this time. Since that time, another technology is impacting library collections: the arrival of the e-book in the mid-2010s.

Library as Its Impact on Information Use and Scholarly Output

¶78 Rather than focusing on inputs (how much money we have or how many titles and volumes), we need to focus on impacts. How much information do we use? What is our scholarly output? How much circulation, how much database and web guide usage, how many reference transactions, and how much instruction?178

178. The 2021 U.S. News & World Report questionnaire now asks about library instruction, reference transactions, and accessible databases. It also asks about titles accessible through the catalog or
Circulation

¶79 Circulation data can be complicated because of consortia, ILL, and just plain old checkouts at the front desk. The question is how are we doing over time with information usage and scholarly “outputs”? Figure 20 illustrates an example from UMKC’s law library users and their relationship to MOBIUS, which implements patron-driven request delivery, a union catalog, and cataloging services among 76 libraries, 4 of which are law libraries. In total, it has more than 29 million items. Given the size of MOBIUS, the borrowing from UMKC’s law library by its users is nothing short of embarrassing. It is a prime example of a failure of information use that it is getting worse over time.

![Figure 20](image_url)

In a little over a decade, borrowing by patrons of UMKC’s small law library has declined from borrowing 970 books in a year (admittedly, a trifle compared to larger law school libraries) to 164. During fiscal years 2011–2017 (but omitting 2016), a period for which “discovery system” (both at the law school and its larger university collection). This is a step in the right direction.


180. The source for the data is Historic Borrowing and Lending Statistics Reports, MOBIUS LINKING LIBRS., https://mobiusconsortium.org/node/279 (last visited Oct. 5, 2021). The four academic law libraries are at UMKC School of Law, University of Missouri, Saint Louis University School of Law, and Washington University in St. Louis School of Law.
we were able to obtain data, Columbia Law Library showed a similar decline in circulation checkouts among faculty and students. We suspect this is a nationwide phenomenon. Indeed, figure 20 reveals that the MOBIUS consortium experienced a similar precipitous drop in the same period. The same is true for Columbia Law School’s library (see fig. 21).

Thus, circulation data from at least one large law library indicates a decline. However, libraries are also portals to e-resources. As mentioned above, during 2020 at UMKC, students and faculty visited (meaning had a session) HeinOnline’s collection 4900 times.181 These 4900 visits represent more than the local checkouts in print at the reference desk, consortium checkouts, and ILL combined by a factor of at least 10 for the same year. During the last year, at Columbia, library users visited HeinOnline in equally large numbers,182 which suggests a change in use patterns by patrons everywhere. As described earlier, the library is a portal. It is important to increase use of resources, acquired often at great expense, as well as resources created by librarians to guide students and faculty.

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181. See supra ¶ 71.
182. See supra figure 17.
§80 Besides declining circulation, another challenge for libraries is the necessary move to digital access when combined with the copyright first sale doctrine.\textsuperscript{183} Prior to the COVID-19 pandemic, financial pressures and demand caused libraries to switch from a collection based on ownership to one based on licensed databases. The pandemic has made electronic access a must. This new reality has tremendous negative impact on libraries’ missions and library users’ ability to access information. It might also further adversely impact the digital gap separating big law and small firms and highly ranked law schools and those schools with less means. For example, Columbia’s law library as a HathiTrust member could participate in ETAS, providing digital copies (in large numbers)\textsuperscript{184} to its patrons during the pandemic, but UMKC’s law library had no such privileged access.

Reference

§81 If the pandemic has taught us anything, it is that going digital need not decimate reference transactions with library patrons, especially students and faculty. Perhaps as expected, and especially during the pandemic, the non-law libraries at Columbia University have seen an increase in virtual reference (v-ref) and a decrease in in-person reference transactions. In 2018, CUL averaged 128 v-ref interactions per week; in 2019, 123 per week; and in 2020, during the pandemic, around 300 v-ref interactions per week. During the same period, in-person transactions declined from 800 to 700, and finally 300 a week.\textsuperscript{185}

§82 UMKC’s law library also saw healthy reference transactions (many virtual) during the pandemic, as figures 22 and 23 reveal.

\textsuperscript{183.} 17 U.S.C.A. § 109(a) (Westlaw through Pub. L. No. 116-216) (“the owner of a particular copy . . . , or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy . . . .”). This article is written during the pandemic, and due to lack of access to print, citations to the U.S.C. will be to Westlaw Edge’s online version.

\textsuperscript{184.} See the table in § 73.

\textsuperscript{185.} See email from Jeremia Mecurio, Interim Dir. of Digital Scholarship, Columbia Univ. Librs., to Dana Neacsu, Reference Libr. & Lecturer of Law, Columbia Law Sch. (Dec. 29, 2020, 12:34 PM EST) (on file with authors).
Figure 22
UMKC Law Library Reference Transactions in 2019 and 2020

Figure 23
UMKC Law Library: When Reference Questions Were Asked in 2019 (Previous) and 2020 (Current)
Despite the pandemic, reference services to law faculty and students survived well (and, in total, increased) at the UMKC Law Library, even though much of the service was in a virtual environment after March 2020.

**Instruction and Education**

¶83 Paul has written a string of articles and a book on the pedagogy of legal research instruction.\(^1\) The real question, always, is are we having any impact? Of course, we receive annual evaluations from our students, but aside from those, what we know is what was said in a recent study:

In a 2014–2015 national study, the Institute for the Advancement of the American Legal System surveyed 24,000 participating lawyers, from diverse practice backgrounds, regarding about a dozen foundational “short-term” skills. The participating lawyers most frequently cited legal research skills as foundational—84% of those surveyed found it necessary in the “short term as a foundational skill to legal thinking. Legal research isn't just a routine activity. . . . [I]t is part of legal thinking.”\(^2\)

¶84 Instruction is a place where librarians can and often do have great impact, though there are several problems. For one, the first year is not an adequate time for students to form legal research skills,\(^3\) upper-level courses dedicated to legal research

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\(^2\) Field Guide, supra note 186, at 1 (citing John Moye Hall, *Inst. for the Advancement of Am. Legal Sys., Foundations for Practice: The Whole Lawyer and the Character Quotient*, 1, 11, fig. 5 (2016)). The report does not address the need for long-term legal research skills.

\(^3\) For instance,

There is nothing new in the notion that law students have trouble understanding how to conduct efficient legal research, nor are some of the reasons for this phenomenon hard to understand. The law is, after all, a complicated web of interrelated doctrines and often contradictory interpretative texts. First-year law students frequently lack the contextual understanding necessary to discover and evaluate all the extant decisions necessary to develop a full analysis of the issues presented to them.

Ian Gallacher, *Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151, 152 (2006); see also Ian Gallacher, “Who Are Those Guys?”. *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 CAL. W. L. REV. 151 (2007). Attorneys who supervise new lawyers report varying degrees of skill in legal research. For those research skills traditionally emphasized in first-year research instruction, such as case law and statutory research, about 90% of new attorneys were rated as having adequate or better skills. . . . However, many new lawyers lacked other skills. Over a quarter of new lawyers were rated as having poor or unacceptable skills in using secondary sources effectively, researching court documents, locating non-legal information, or researching administrative decisions. The same percentages of attorneys were deficient in such fundamental research skills as performing cost-effective research or knowing when to stop.

are usually not required, and upper-level legal research and writing requirements for graduation never seem to get around to adequately motivating students to learn to research on their own, which is unlikely in any event.

§85 Still, libraries that offer upper-level courses, even if affecting only a small percentage of the students, are sending out students better prepared to confront the world that will confront them. As the survey above supports, this is equally true in an information environment that has largely gone online.

**LIBRARIES AND SCHOLARLY OUTPUT**

§86 Bibliometrics has long belonged to librarians, and librarians are best situated to teach and motivate our law professor colleagues to use them. Below is an example of the diversity of resources and data for reporting bibliometrics for a single scholar:

- Google Scholar – 256 citations to articles, 97 since 2016, h-index 7, i10-index 6.
- SSRN – 1,521 downloads (6 articles with 100 or more downloads each).
- BePress Selected Works – 6,430 downloads (April 14, 2005–July 8, 2021) (10 articles with over 100 downloads each).
- Research Gate – 9,264 reads, 86 citations.
- HeinOnline – 230 accessed online (past 12 months), cited by 122 articles, average citations per article 10.17, h-index 6.
- LawArXiv – 4,670 downloads. ¹⁸⁹

§87 Many legal scholars have focused on SSRN but have not taken advantage of the diverse array of resources for promoting and monitoring their scholarship. With Elsevier’s acquisition of both SSRN and BePress Law Journal Commons, and the relationship of HeinOnline to Google and legal repositories, legal scholars may find the ground shifting under their feet—hence, the need for better bibliometrics.

§88 Many scholars have also failed to set up their own Google Scholar profiles, ¹⁹⁰ which is quite telling. In our experience, having a profile is important (although not perfect) in detecting citations and because Google often drives users to HeinOnline (the importance of which is described below). Figure 24 tells us not only Dana’s total citations (218)¹⁹¹ but reveals an h-index, telling us that she has 8 articles with at least 8 citations. Her i10-index tells us she has 6 articles with at least 10 citations. On the left, we can see what those articles are. Indeed, the top article has 54 citations.

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¹⁸⁹. LawArXiv is no longer accepting new submissions. See [LawArXiv](https://lawarxiv.org), supra note 150.

¹⁹⁰. Log on to [https://scholar.google.com](https://scholar.google.com) and click the “My Profile” link at the top of the page to get started on your account.

Unlike Dana, many law professors do not take advantage of the full array of resources that, predictably, may become increasingly important in reporting their scholarship. Librarians are stretched to the limits because of budgets, but those who can help with bibliometrics can make a decisive impact.

With Google's connection to HeinOnline and law school digital repositories, bibliometrics increasingly tell the story of the impact of scholarship. Figure 25 gives an example from HeinOnline.
One thing librarians should do for Professor Levit is help or motivate her to register for her ORCID ID and update her information under MyHein Profile, which includes connections to SSRN, LinkedIn, Wikipedia, Google Scholar, and her faculty bibliography.192

¶90 Finally, the game changer in bibliographic metrics may be Elsevier’s Digital Commons, which has more than 300 open access law reviews from 112 law schools.193 Librarians have been heavily involved in Digital Commons wherever it is installed.

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193. See Law Review Commons, supra note 149 and accompanying text.
Library as a Transformative Space and Community Facilitator

¶91 In 2005, Paul helped a session of the famous Salzburg Seminars (this one dedicated to the future of libraries) draft and adopt a statement with librarians from all types of libraries from around the globe. It read:

The library is a place where knowledge and information freely dwell to define, empower, preserve, challenge, connect, entertain and transform individuals, cultures and communities. The dwelling place, whether physical or virtual, is the product of collective reflection, aspiration, commitment, expertise and organization. It is both a byproduct of civil communities and a catalyst for cultural progress, inspiration, expression and exchange. Its absence in this new century would not only deprive many individuals of important resources, but also, more significantly, such loss would deny humanity an essential portion of its shared identity and entitled liberties. The library can never be fully replaced by information technologies. For the essence of its communal role is not the technological mastery over knowledge and information, but rather the provision of sanctuary for human thought and expression in any medium.194

There is a lot that could be unpacked from this dense and metaphysical statement about libraries and their communal role. One point Paul wishes to emphasize here is the transformative nature of libraries on “individuals, cultures, and communities.” Working in Glendale, California, in the 1990s, he remembers going to the city’s public library. What immediately struck him was that almost all the patrons in that fine institution were from an immigrant community of Armenians that was becoming the dominant ethnic group in Glendale’s residential community. Why so many immigrants at the library? Because the library gave them access to literature, knowledge, tax forms, and language and citizenship classes. It was an avenue to assimilation and a focal point for their community. The Glendale public library was an instrument of transformation.

¶92 Such is also the case with academic law libraries. Law students seek to become members of a new professional community. They are forging new identities. The library can be an institution and a space for such transformation. Some libraries do this well with rather impressive reading rooms or entrances, designed to impress upon the visitor the decorum of the law.

The photograph shown in figure 26 is from Paul’s alma mater. It is no accident that a photo of the U.S. Deputy Secretary of Defense and the law dean occurred there because it is in a space that defines Cornell Law School’s identity and “brand.” The solemn and spectacular reading room of that library, where Paul spent many hours in earnest study, left an indelible impression on him as to what it meant to be a Cornell law student and later a Cornell law school graduate. Immersive study in the library, in such surroundings, was part of Paul’s mental transition into a community.

¶93 It is not just physical architecture that is significant. Law libraries provide safe spaces (sanctuaries) for students to learn from librarians how to rigorously search for legal information in the quest for competence as attorneys.195 One-on-one interactions

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195. See, e.g., Model Rules of Prof. Conduct r. 1.1 (Am. Bar Ass’n 1983). Courts have interpreted Model Rule 1.1, or its state-adopted equivalent, to require a duty of basic legal research. See Baldayaque v. United States, 338 F.3d 145, 152 (2d Cir. 2003) (criminal defense lawyer “did no legal research” on client’s case); Att’y Grievance Comm’n v. James, 870 A.2d 229, 240 (Md. 2005) (failure to do “even cursory research” regarding viability of claim); State ex rel. Okla. Bar Ass’n v. Hensley, 661 P.2d 527, 530 (Okla. 1983) (intestacy laws not “peculiar to probate law” but “basic” and “readily ascertainable”); In re Young, 639 S.E.2d 674 (S.C. 2007) (filing RICO counterclaim in answer to adversaries’ suit without
with librarians can create memorable experiences molding (transforming) law students and giving meaning to their current and future legal roles: first student, then law school graduate and, ultimately, member of the legal profession.

**Media, Technology, and Language**

¶94 From Deibert’s model, we have surmised:

Print texts, which are uniform and stable, give way to digitalization with search capabilities and increased storage, capable of manipulation by AI and natural language processing (including predictive capabilities and detection of new relationships). The internet adds ubiquitous access, global connectivity, but suffers from the phenomenon of link rot. Copyright law is insufficient to address link rot problem or archiving the Web.¹⁹⁶

The most fundamental technology in an information environment is written and spoken language. In our times, digital technologies and AI are also taking their places as fundamental to our environment and importance as institutions such as libraries grapple to adapt. Key to understanding the role of technology and language is the role of human intermediation or disintermediation by technology.

**Intermediated Technologies**

¶95 Looking to history, the ancient Egyptians’ writing was intermediated by a scribal class because of silent determinatives embedded in writing that demanded interpretation rather than mere vocalization of text.¹⁹⁷ So, too, the bards of Iceland and Ireland intermediated their law by committing it to memory and reciting it to the populace on some regular basis.¹⁹⁸ Prior to printing, gloss manuscripts were intermediated by scribes, who interpolated texts by inserting their own interpretations into the manuscripts they copied.¹⁹⁹

¶96 To our point, there is an intermediation going on in Lord Coke’s scholarship through the author’s linking provisions of law, from different legal masters, to each other in a collective system, demarcated by pinpoint, marginal citation. It is a different type of intermediation—it is systemic and connotative of authority²⁰⁰—but it is not so

¹⁹⁶. See figure 1.
¹⁹⁸. *Id.* at 311–19. The medieval Welsh used triads. See generally *The Legal Triads of Medieval Wales* (Sara Elin Roberts ed., 2007).
different from the intermediation imposed by librarians with the development of library science and bibliographic protocols in catalogs to impose standard ways of accessing information. Figures 11 and 12 (relating to bibliographic records) illustrate a common purpose with Lord Coke to link or intermediate texts of common subjects together, according to subjects determined by librarians.

**Disintermediation, Digitization, AI, and Natural Language Processing**

¶97 Moving forward in time, digitization and AI with natural language processing would, at least on the surface, move the legal cognitive authority from intermediated reading of accepted texts on given subjects to the disintermediated search for legal information. By “disintermediated,” we mean the absence of human direction to appropriate authority in legal texts. Digitalization has been accompanied by mass storage of legal information, the capacity for manipulating legal texts, processes that expose new relationships between texts,201 and AI response to search inquiries. In a recent article, Paul began with a quest to determine whether AI had become or could become our disintermediated touchstone for authority.

¶98 We may be inevitably moving toward AI becoming our touchstone for authority, or as Robert Berring has articulated, our “cognitive authority,” but we are not there yet. Outside of the field of law, it is easy to see how this shift has already occurred. We can ask Google and Amazon Alexa about all sorts of things and get cogent answers. For example, “Who won the last Chiefs game?” More remarkable than the answers is that we trust their accuracy. These devices and the software that supports them have become part of our cognitive authority. Within law, the relationship between search engines and cognitive authority is more complex.202

¶99 Indeed, law is more complex. After much inquiry into the mathematics and statistical operations of modern search engines, and a very unscientific review of search results from different search platforms and based on a complex search of Paul’s own devise, Paul concluded in his article:

> There are a number of reasons why we cannot yet rely upon legal search engines like we do with Google or Amazon Alexa, at least with respect to natural language processing. The legal search services are turning to the single-search bar, but their natural language algorithms appear to be based on a “bag of words” [processing based on proximity without reference to word order], with scarce evidence of syntax playing any significant role. For the most part, by treating words as vectors, we are relying on proximity—whether terms in the same document or within a “context window”—to accord with meaning. I believe legal discourse to be too subtle to be boiled down to proximity of words, regardless of the method of doing so. Perhaps more important, the role of secondary authority (the great treatises) is often subjugated in search processes, especially with respect to access through indexes and tables of contents.203

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202. Id. at 162–63, ¶ 1 (footnotes omitted).
203. Id. at 210, ¶ 108.
In other words, we still find the role of human intermediation of librarians in the search for information to be critically important. Legal texts and sources are complex, and disintermediated searching, especially when confined to a single search bar focused on primary law, simply is not ready at this point to replace the human element.

¶100 We also feel, as librarians, it is our duty to caution legal researchers that the search for information must not replace the reading of legal texts or the use of human intermediaries and the tools they produce. Legal texts are not fodder for manipulation in snippets and clips from online searches without risk of loss of context, relevance, meaning, and connection to the web of authority that constitutes the law.

Intermediated v. Disintermediated: Cognitive Authority and Epistemic Foundations

¶101 The choice between intermediated and disintermediated technologies has epistemic consequences. It can be a significant choice of where to bestow our trust for accessing knowledge, a choice of cognitive authority. Prior to the Internet, librarians held the keys to the kingdom of knowledge, making suggestions and using their epistemic power. Certainly, the goal of the librarian should not be to get his or her students to always choose intermediated technologies such as indexes, tables of contents, subject headings in online catalogs, or key term (metadata) searching in databases, but to understand when intermediated access is a better choice than choosing a disintermediated technology, such as a single search box using AI. Educating students on this issue is important because it demonstrates that librarians—as well as digital and AI technologies—assume needed roles in the future.

¶102 In a recent advanced legal research class (during COVID and online), Paul influenced students by guiding them to trusted resources for their chosen fields. All students learned the value of American Law Reports, various state encyclopedias and treatises, dictionaries, the West Key Number System, and authoritative sources for primary law. But to be more precise about cognitive authority, one student planning to practice bankruptcy came to appreciate Collier on Bankruptcy. Another student, interested in human resources law, with a particular interest in the Equal Pay Act, found no single treatise that was the “flagship” service for the issue but, with the help of a librarian, found Bloomberg BNA manuals, books, and treatises addressing the topic; several American Law Reports annotations on point; Congressional Research Service reports; and key law review articles. The point is the student got away from the single search bar and found solid materials to help with understanding the Equal Pay Act (as well as expected legislative history and EEOC resources)—the student’s cognitive authority had changed over the course of the class.

¶103 From a different aspect of librarianship, the very act of catalogers and metadata librarians to add a human element and taxonomy to organize information has epistemic consequences: the established epistemic pathways for researchers to connect with materials based on classifications accepted by an experienced group of human subject matter
experts—the librarians. This stands in stark contrast to algorithms and AI (although some of that may be “trained” by humans).  

104 We would venture that some major legal research companies are betting their futures on whether the market will settle on one epistemic choice or the other—intermediated versus disintermediated access to legal information, with or without librarian help to explain the roles of each option. Thomson Reuters (formerly West Publishing) built its reputation for case law access on the West Topic and Key Number System, which it continues to this day in electronic format (as well as print) and which system may well enhance the AI systems Westlaw Edge has added to its search systems. A very unscientific study by one of the authors in a recent article revealed that Westlaw Edge’s search technology performs handsomely with a difficult search (singular though the test might have been). The dichotomy between intermediated and disintermediated choices may turn out to be a false one. The legal profession’s cognitive authority of the future may be an intricately woven, epistemic web of human intermediated and AI disintermediated resources and techniques.

The Digital Divide and the Threat to Libraries

105 It is hard for libraries to establish cognitive authority for a community such as law without widespread access to epistemologically recognized research resources. Access is threatened in this new digital environment. In one sense, legal information used to be scarce but for libraries that enabled access to their collections. Now, information is assumed to be ubiquitous, which is true, but only for a privileged few; the rest have to scavenge for scraps on the web.

106 During 2015–2017, Paul was retained as an expert witness in a cyberlaw case where a domain name had been converted in southern Missouri. The issue was whether domain names were property that could be converted. The contest was unfair between the two sides. While on the witness stand, it became apparent to Paul that while he had access to an American Law Reports annotation that supported his position (with underlying cases), the opposing counsel was left to Google searches—hardly a fair contest, and one that underscores the increasing digital divide among attorneys. Access is not


206. Paul once asked Pablo Arrendondo of Casetext how his company could compete with giants like Thomson Reuters that had acquired the Topic and Key Number System of West Publishing and could incorporate that human element into its search systems. Pablo’s reply was that they also used a human element, the statements of judges into subsequent cases about the holding and meaning of prior cases to determine what those prior cases really meant. Even startup companies like Casetext can excel by using a combination of human intermediated and disintermediated information.
just about enjoying a particular source. Indeed, the advent of AI deepens the divide further, with the concern that some technologies require so much computer power and data that only the U.S. and Chinese governments will be able to afford them.

¶ 107 While we don’t envision our major vendors of online legal information as ever expending so much on AI that only the government will be able to afford them, they certainly may find that their return on investment is maximized with fewer subscribers, who pay more for the complete package that AI may offer. In such a world, it is big law versus the rest of the profession and what lesser “libraries” with limited resources can afford. As county and public academic law libraries dwindle for lack of resources, gaping chasms in the access to legal resources are opening up in the profession, let alone for the self-represented litigant. The same is true for law schools. It is easy to imagine a future in which only the top law schools can afford the full array of tools offered by AI and vendors. Lesser-ranked law schools may find it financially hard to provide for such resources. If law libraries are to have a future, it is because the legal profession and vendors decide it is a moral imperative to help close the access gap in legal resources. Will we let our trusted repositories of the law be open to all?

¶ 108 The use of HathiTrust’s ETAS and other online services are problematic examples. Traditionally, libraries acquired print copies and lent them—one print copy per user—but because of the first sale doctrine, this is not necessarily the case with digital copies. Pre-pandemic, when a print copy came back, another user could lend it. It was economical for users—all they needed was literacy. Now, in the digital environment, things are quite different for many reasons, especially because libraries cannot avail themselves of the first sale doctrine, as there are fewer and fewer print copies available for lending (due to budget cuts). Instead, libraries are forced to license e-books. For example, HarperCollins licenses e-books to libraries with “self-destruction mechanisms” embedded in the library loan, so the title disappears after 26 individual loans. It seems absurd, but the publisher’s requirement is noteworthy: if a library wants to lend a title 27 times, it needs to buy another copy. This library “arm-twisting” is noteworthy because there is no purchase involved and, therefore, no first sale library exception. Worse, the simultaneous access to a digital work is never guaranteed. Thus, in the digital environment, libraries find themselves at the mercy of publishers, unable to perform

207. See Elliot Jones, Nicolina Kalantery & Ben Glover, DEMOS, Research 4.0 Interim Report 18 (Oct. 2019), https://demos.co.uk/wp-content/uploads/2019/10/jisc-OCT-2019-2.pdf (last visited Oct. 6, 2021) (“Unless the cost of compute drastically decreases, experiments will grow too large to be affordable by anyone but the US or Chinese governments.”). Compute is the correlation between the amount of computing power used to train AI and the power necessary for the resulting AI model. Id.


their traditional lending functions, which is an existential threat to this fundamental institution of our epistemic foundation for a democratic society.

Moreover, users in a digital world need so much more than literacy skills to access information, but hardware and Internet access are not yet guaranteed benefits of living in an urban or suburban environment (and certainly not a rural one). Therefore, library space as a communal space for knowledge production may be revitalized because libraries still offer some hardware and, of course, Internet access. This is true not only for public libraries but also for law libraries, though the scope of access and usage is different. Among law school libraries, as mentioned throughout this article, there is a digital gap in resources. Digitization, having replaced the benefits of lending print copies, is rewriting the rules for the sharing of information.

### Geopolitical and Physical Considerations

The global and physical considerations of Deibert’s model may not be visible at first, but they are important to libraries that strain to accommodate students and faculty in an ever-changing world. Our own summation is:

Globalization of business, NGOs, government, academia, immigration, and Web connectivity increase relevance of international, transnational, and foreign law. Libraries with ownership or access to these materials provide invaluable resources. Humanitarian, immigration, global environmental, and trade law, once the providence of elite law libraries, become of interest to all libraries.210

To this we must add the operation of global pandemics like COVID-19, further pushing libraries to function as portals for digital information, online platforms, e-books, and virtual reference services for the sake of public health, let alone preexisting demand for online services.

### Libraries as Enablers of the Rule of Law

In April 2008, Paul presented at the National Defense University on the Rule of Law, which topic was a Major Mission Element (MME) of the military’s Security, Stability, Transition, and Reconstruction (SSTR) operations in Iraq and Afghanistan. Paul learned that an army colonel had gone to great lengths during her tour in Iraq to publish the existing regulations (as promulgated by Saddam Hussein’s administration). Iraqis and Americans were in dire need of law to run the country. According to the colonel, the demand for the regulations was overwhelming, and some Iraqis requested that a television program be devoted to them. Imagine having a television program for the U.S. Code of Federal Regulations! The point is that access to law is critical to a functioning society, and libraries can play a role.

210. See supra figure 1.
With respect to rule of law, there is a thin theory that separates out elements of rule of law from democracy and human rights—not that those are not also essential. The rule of law functions as a check on power, and in thin theory, scholars have articulated various elements, including access to and transparency of the law. Paul has previously attempted to define this access as follows:

Under the theory, the law must also be transparent, public, and accessible (this is where factors such as literacy, libraries, and affordable access to legal services and published law comes into play). Law that is intermediated by a professional class of lawyers, clerics, or priests can operate to either clarify or obfuscate the law.

Law libraries can provide a critical role in providing access to law. Paul has stated another element of the rule of law thusly: “Law is based upon procedural rules for enactment and made by an institution with authority (to this I would add that the thin theory presupposes a shared cognitive authority—that there are certain touchstones in a society, that its members recognize as authority).” As set forth here, libraries also have a role with respect to identifying the cognitive authority of the field and practice of law.

¶113 In many countries, and indeed often in our own, law is not accessible to the majority of the population. Without access, there can be no rule of law, and the legitimacy of the ruling government is in question.

The Importance of Foreign, Comparative, and International Law Collections and Expertise

¶114 As already mentioned above, law libraries act as a portal to provide access to and guidance on foreign, comparative, and international law (FCIL). Although it varies widely from library to library, many have built extensive print collections. Figure 27 shows a bar chart of the FCIL print titles held among law schools in MOBIUS, including UMKC Law School. The data was collected in 2010 through WorldCat Collection Analysis.

213. Id.
214. See supra notes 169 through 173 and accompanying text.
Among all four academic law libraries of MOBIUS, there were 40,927 FCIL titles in 2010, of which 24,759 (60 percent) were unique to one of the law libraries in the consortium. This represents a substantial investment and diverse collection practices for law libraries in Missouri and demonstrates how geopolitical considerations affect law libraries as predicted in figure 1. In 2013, Paul did a similar WorldCat analysis study of 16 participating MALLCO member libraries for FCIL post-1999 titles. The 16 participating libraries had 60,969 FCIL titles, with 12,559 (20 percent) being unique. On average, libraries had 3811 titles, of which 785 were unique (21 percent). Only 7 titles were held in common by all 16 schools. See figure 28. There is significant diversity as well as overlap among FCIL titles being collected, but note that one school (School 16) had as many unique FCIL titles as total titles held by several of the MALLCO participating libraries. For some schools, FCIL titles are much more important. Again, geopolitical considerations, as expressed in the collection of FCIL titles, are important factors in the adaption of Deibert’s model to the legal information ecological sphere, even if FCIL titles are not equally important to all schools.

216. The study is in an Excel file held by the author at https://umkc.box.com/s/sfj4uhfuwdn94kw5ilomr5zwrkn7wihc. It has been scrubbed of any information identifying the participating schools.
Influences on the Future of Libraries

¶115 From Deibert’s model we have predicted that AI will aid and replace tasks and even human decision making. Furthermore, global access to law is increasingly important in an interconnected world. Because law is such a complex cognitive and authority-driven field, we feel that law librarians will always have a role if they decide to face the new epistemic challenges. To this, we add the need for continuously diversifying library services with new offerings. Among this expanded role we encourage libraries to assume and embrace the role of publishers through Digital Commons or other repository services.

Technological Factors: Libraries, Subscription Digital Services, and AI

¶116 If the question is whether law libraries will be replaced by Alexa or similar services by subscription vendors providing AI products, Paul’s conclusion in a recent article in this journal is that we are a ways from such sophisticated services in law due to the technical subtlety of legal language, the tendency of AI search algorithms to treat phrases and sentences as a “bag of words” where word order doesn’t matter (but

217. See supra figure 1.
218. Word order and proximity within a range of context words doesn’t matter. See Callister,
proximity still does), and the exaltation of primary law (usually cases) in the first results of a search from the single search bar on the services’ “splash” page.\textsuperscript{219} Furthermore, studies by Susan Nevelow Mart indicate a wide variation in results from different legal platforms by searching from a single search bar.\textsuperscript{220} Roughly 40 percent of search results across the different services are “unique to one database.”\textsuperscript{221} Worryingly, many attorneys do not have access to a variety of services to compare results, and many do not have access to platforms that are as capable as the flagship services of Westlaw Edge and Lexis+. In conversation, Nevelow Mart’s answer to the problem of varied results is to do \textit{reiterative} searching.\textsuperscript{222} Nonetheless, it is hard to bestow trust, the essence of cognitive authority, when results are not consistent in single search bar querying on legal research platforms.

\textsuperscript{117} At the same time, we must acknowledge the potential of AI, which “including natural language processing [and whose algorithms are proprietary and unknown], may challenge this profession, including the larger profession of law practice, as much as, if not more than, the shift from ownership of print resources to licensed digital resources.”\textsuperscript{223} Nonetheless, we earnestly believe librarians may shape their future through providing portals and access, fashioning online guidance, improving their instructional capabilities, testing and comparing legal research search engines, and defining cognitive authority, whatever the future online environment may bring.

**Institutional Factors: Libraries as Digital Commons Publishers and Repositories**

\textsuperscript{118} We see academic libraries returning to the age of the scriptorium\textsuperscript{224}—where knowledge is both published and stored for the benefit of humanity. Academic libraries have continuously reinvented their roles as centers of knowledge, adding new digital and teaching centers, opening new laboratories, and diversifying their body of

\textsuperscript{219.} \textit{Id.} at 209–10, ¶¶ 107–08. Callister examined AI algorithms and techniques, and studied natural language search capabilities on Westlaw Edge, Lexis Advance, Bloomberg Law, Fastcase, Ravel, and Google Scholar. See \textit{id.} at 187–98, ¶¶ 53–71. Lexis seemed least likely to follow a “bag of words” approach since word order mattered in natural language search results. See \textit{id.} at 189–92, ¶¶ 59–62. Since search algorithms used with AI are proprietary, it is hard to draw any exact conclusions.


\textsuperscript{221.} Nevelow Mart, \textit{Algorithm}, \textsuperscript{supra} note 220, at 390, ¶ 5.

\textsuperscript{222.} Telephone interview with Susan Nevelow Mart (Oct. 24, 2019).

\textsuperscript{223.} Callister, \textsuperscript{supra} note 39, at 162, ¶ 1.

\textsuperscript{224.} See Jenneka Janzen, \textit{Pondering the Physical Scriptorium}, Medievalfragments, Jan. 25, 2013, https://medievalfragments.wordpress.com/2013/01/25/pondering-the-physical-scriptorium/ (last visited Oct. 6, 2021) (“The chapter house, an increasingly standard structure from the 11th century on, may have served as a part-time scriptorium, or its upper floor used as a dual-purpose library-scriberium as at St Alban’s.”).
expertise. It seems only logical to argue in favor of their increased role in the scholarship enterprise, including publishing and scholarship dissemination.\(^{225}\)

¶119 On November 7, 2008, directors from a dozen prestigious law libraries (including Columbia) signed the Durham Statement, pledging to migrate from print to electronic journals and to provide open access to the public.\(^{226}\) Ironically, as of this writing, 112 law schools have made more than 300 law reviews open access through a platform known as the Digital Commons (including the Law Review Commons),\(^{227}\) formerly owned by BePress and now owned by Elsevier (the former publisher of many print journals in fields other than law).\(^{228}\) Thus, legal academic journals are migrating from cheap print journals from their own university presses to an online, open access platform of an expensive journal publisher. The Digital Commons promotes not only a school’s journals, but faculty scholarship of any kind, and anything else the school deems important. For example, as of this writing University of Missouri in Columbia has had 3,059,688 downloads and 487,965 in the last year through its Digital Commons platform (see fig. 29).\(^{229}\) Our colleague, Randy Diamond, the director of library and technology resources at Missouri, made an early, astute decision in 2012 to invest in the platform,\(^{230}\) as did many other directors. The Digital Commons platform provides for mirroring of faculty scholarship published elsewhere; for a host site for its own journals; for publishing books (five titles), including open educational resources to be used in the


\(^{227}\) LAW REVIEW COMMONS, supra note 149; see also LAW REVIEW COMMONS, About, https://lawreviewcommons.com/about.html (last visited Oct. 6, 2021).


\(^{230}\) Email from Randy Diamond, Dir. of Libr. & Tech. Res. & Professor of Legal Rsch., Univ. of Mo. School of L., to Paul D. Callister, Libr. Dir. & Professor of L., UMKC Sch. of L. (Jan. 8, 2021) (on file with authors). Randy credits Cindy Bassett and Needra Jackson for managing the project “brilliantly and expeditiously.” Id.
classroom;\textsuperscript{231} and for a home for library special collections. Interestingly, not only are libraries usually paying for the service, but it is librarians who are driving their schools’ scholarly works and productive output to Elsevier’s Digital Commons and administering the platforms. Thus, librarians are adapting to important new roles, facilitating the promotion of scholarship at their institutions.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{scholarship_repository.png}
\caption{Digital Commons Scholarly Repository for University of Missouri (Columbia)}
\end{figure}

\textsuperscript{120} In any event, libraries have gradually built their archiving role, through academic repositories, usually known as \textit{information repositories} or \textit{digital commons}. They

\footnotetext{231. Univ. of Mo. Sch. of L., Scholarship Repository, Faculty Books, https://scholarship.law.missouri.edu/fac_books/ (last visited Oct. 6, 2021).}
are, in effect, using “mirror sites” for already published scholarship, but often in ways that highlight their institution’s *brand*. Besides archiving, Dana, in a recently coauthored article, has called for greater involvement in the academic publishing process and in the bibliometrics that track scholarly impact. “[W]e suggest that libraries define for themselves a more active role within scholarship production, which we define to include publication, distribution, access, and the process of scholarship impact assessment.” The library’s role as a scriptorium becomes more realistic in this conception of the future.

In many ways, little has changed in academic publishing writ large. Journal scholarship is largely published at no charge in specific journals whose titles convey varying levels of quality. The top 10–20 publishers include the likes of “Elsevier, Taylor & Francis, Springer Nature, and Wiley.” According to Kate Murphy in the *New York Times*, they typically have profit margins of more than 30 percent and participate in a $10 billion industry provided in part by university library acquisition budgets. Murphy points out both content providers (publishers) and content consumers (academic libraries) believe the price “is justified because [the publishers/aggregators] are curators of research, selecting only the most worthy papers for publication.”

However, not all libraries have accepted the costs demanded for content access. That is understandable if we consider, according to Murphy, “annual subscription fees rang[e] from $2,000 to $35,000 per title, if they don’t buy subscriptions of bundled titles, which cost millions.” For instance, the Max Planck Institute has published a white paper calling for a disruption of the subscription model, asking libraries to support the open access publishing model. Recently, the Ohio State University Library announced

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232. For example, an article may be published in a law review (which posts the article to its site) and then be “mirrored,” or reposted in a university repository (hosted by a university library, such as at https://mospace.umsystem.edu), a law school digital commons (provided by Elsevier and facilitated by the law library, such as at https://scholarship.law.columbia.edu/), the Social Science Research Network (SSRN, at https://ssrn.com), Research Gate (at https://www.researchgate.net/), and LawArXiv (at https://osf.io/preprints/lawarxiv, but no longer accepting new submissions). If the law review or journal is hosted by the Elsevier digital commons, then the original posting is digital and there is no “mirroring.”

233. Neacsu & Donovan, supra note 225.

234. *Id.* at 434.


236. *Id.*

237. *Id.*

238. *Id.*

239. **Ralf Schimmer, Kai Karin Geschuhn & Andreas Vogler, Disrupting the Subscription Journal’s Business Model for Necessary Large-Scale Transformation to Open Access: A Max Planck Digital Library Open Access Policy White Paper, Apr. 28, 2015, https://pure.mpg.de/rest/items/item_2148961_7/component/file_2149096/content (last visited Oct. 6, 2021).** The world’s research organizations, together with their libraries, need to act jointly and with some coordination, with the key aim of shifting the money out of the subscription system and so that it can be reinvested in open access publishing. This coordinated move will also give an unambiguous message to the publishers, so that they themselves can adapt to the new business model with confidence in its financial
that Taylor & Francis would abandon its subscription model (pay to read) in favor of a transformative contract, supporting publication.\footnote{240} Some prominent university libraries have dropped subscription contracts with Elsevier altogether.\footnote{241}

¶123 While there is a growing trend to change journal publication (e.g., Ohio State’s contract with Taylor & Francis and also Elsevier’s Digital Commons),\footnote{242} little has changed in the way articles are published: Peer-reviewed journals publish the work of the tenured and tenure-track members of the academe, and sometimes that of nontenured faculty. Our experience is that the established peer-reviewed journals tend not to be open access.

¶124 How could academic libraries participate in the transition to publication in open access enterprises? First, nothing is possible without strong partnerships with the faculty. While librarians may never review and select articles—faculty will do so, within their specialty—the fact that libraries already pay for and manage digital platforms, which is the digital equivalent of the printing press, serves as the point of departure for our proposal.

¶125 In the world of academic law libraries,\footnote{243} this is what has been proposed in a recent article cowritten by Dana with James M. Donovan.\footnote{244} This giant step taken by academic law libraries into the publishing fray might be explained by the fact that the legal scholarship landscape is easier to master. The vast majority of U.S. law journals are sustainability for the future. In the end, neither the libraries nor the publishing houses need lose their roles; all the players will be transformed, emerging with new vigor in a modernized publishing system.\footnote{Id. at 11.}


\footnote{243. Outside of law, this proposal remains problematic because the big journal publishers still own the high-impact journals. Nevertheless, libraries may step up their knowledge-production role by creating a niche; as tenure is dwindling and nontenured faculty is on the rise, the library can step in to publish articles where faculty do not rely on the impact ranking of an established journal. In addition, when tenured faculty no longer need the “approval” of prestigious publishers, they too may want their work to be out there through faster publication technologies such as open access journals. Tenured faculty might care less about traditional placement. Librarians can start small but, in the right conditions, what constitutes a “top ranked journal” might, over time, become a library-published open access journal.}

\footnote{244. See Neacsu & Donovan, supra note 225, at 436–37.}
not peer-reviewed, and while the most influential journals are those from the top-tier law schools, they all work in the same way. Legal scholarship is selected and edited by students: quite often the work of their professors. Nevertheless, as incestuous and unprofessional as that may sound, American legal scholarship has been and remains rigorously done. An anomaly, perhaps, but in the current environment, the students may be the only brave ones to lead us to open debate on uncomfortable issues.

¶126 Besides periodicals, we have already described an example of rapid book publishing by law libraries.245 Certainly, academic publishing is a complex endeavor, and some faculty are interested in royalties, but the current pandemic has changed the rules of the game. As such, what might have been unimaginable a few months ago is thinkable today. Faculty, while understandably reluctant to bypass the prestige of academic university presses, may view library publishing on Digital Commons or similar platforms as an option for digital-born, collaborative projects, which need to be produced faster than the regular academic publishing cycle allows because of the timeliness and impact of their topic or for any other academic reasons.

¶127 Particularly apropos is Katharina Pistor’s *Law in the Time of COVID-19*. Dana worked closely with Pistor. In early April, Pistor felt that much of the information floating around about the legal implications of COVID was not well-grounded. As Pistor related to Dana, she first proposed the book’s concept on LinkedIn, but it took emailing specific faculty members to secure commitments. Eventually, the e-book was written within four weeks and published on Columbia Law School’s instantiation of the Digital Commons.246

¶128 For Pistor’s book, all of the contributors were faculty members. They provided the peer review to their colleagues, and some also provided the content and copy editing. No one received any supplementary remuneration, in addition to their salary, for their work on this project. The work was then collected and formatted for publication by a faculty assistant and a librarian. This example shows that some basic functions of academic publishing can happen with minimal cost.

¶129 The library played an important role. The subsequent indexing, tagging, and metadata creation were added by a library staff member, the scholarly repository coordinator, whose primary role is to manage the law school’s Digital Commons account. In this instance, the coordinator had to manage the publication of a digital-born new work of scholarship. Luckily, her labor was in large part automated. Once logged into the Digital Commons, the coordinator chose the option to create a new post in Columbia Law’s “Book Gallery,”247 and then filled in the online submission form with different metadata, such as Title, Author(s), Description, Publication Date, Disciplines, Keywords,

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245. See *supra* notes 112–118 and accompanying text.
and so on. There is also the option to upload a book cover image, the file of the book, plus any additional files. Once everything is filled in correctly, the form is submitted, the site gets updated, and the new book is added to the gallery in the repository. That work took a couple of hours.

¶130 Pistor's e-book contains links to many other resources as well. The authors plan to update the book with new information, and Pistor hopes to create a stand-alone website and distribute the book on various e-book platforms. For now, it is available to download, for free, from Columbia Law School's scholarship repository site.248

¶131 This instance may seem specific to COVID, but it stands out as an example of collaboration and partnership. Academic libraries could take on new roles adding their services to the existing archival model, beyond rescuing the quaint: taking over the entire born-digital content, whether it is journal or book publishing. The talent exists, as well as the initiative and, more importantly perhaps, the need. In today's climate of ideatic intransigency, libraries can lead the way in partnership with their faculty and produce works of scholarship in conditions similar to those imposed by the viral pandemic: thoughtful, meaningful, and fast. Having considered technological and institutional factors, next we address geopolitical and social epistemology influences.

Geopolitical Factors and Resources

¶132 As already mentioned, geopolitically, FCIL may play an increasing role that reaches beyond lawyers graduating from the top law schools to lawyers graduating from all levels of the social stratum.249 Already immigration law, including its humanitarian aspects of refugee law, is increasingly exercising its influence. According to the UN High Commission on Refugees (UNHCR), 82.4 million people have been forced to flee their homes across the world.250 Human rights law is elbowing its way among academics who wish it to play a role in influencing U.S. constitutional interpretation, at least with respect to civil rights.251 There is also a growing interest in transnational law—a field where not just nation-states but provinces, U.S. states, municipalities, tribes, and NGOs are acting on the international stage to fashion law.252 Often, the issues are shared environmental concerns such as water resources.253

248. See supra note 246.
249. See supra ¶¶ 105–09.
253. See, e.g., NIGEL BANKES & BARBARA COSENS, THE FUTURE OF THE COLUMBIA RIVER TREATY,
FCIL and related topics are challenging for librarians. In an era constraining purchase of print resources, increasingly there is a need for cheaper online solutions for foreign materials. This is both a huge challenge and an opportunity for librarians who make FCIL available and produce guides to such research. Remember, nearly all of Columbia Law Library’s web guides are devoted to FCIL, with 17,390 views last year.\textsuperscript{254} In comparison, UMKC’s law library had about 10 percent of its traffic directed to its FCIL LibGuide.\textsuperscript{255} Whether small or great, law libraries have to expend resources and expertise on FCIL.

The outermost ring of Deibert’s model considers geopolitical factors, but it also mentions resources—a subject libraries have so far neglected. Suffice it to say that the Durham Statement set forth an imperative to move law reviews and journals online from print (a move to protect natural resources) as well as making them open access. As already mentioned,\textsuperscript{256} we have grave concerns that, going forward, legal resources, including AI, will increasingly become the providence of BigLaw, and that many solo and small firms, not to mention self-represented individuals, will be cut off from access to law. Access to the law is fundamental to the rule of law.\textsuperscript{257}

Cognitive Authority and Social Epistemology as Factors

We have discussed AI at several points,\textsuperscript{258} but both within that field and law, there is a real crisis as to what is our social epistemology. The crisis stems from the single search bar and whether legal research will be about querying primary law (mostly case law) or will include the secondary commentary developed over generations, such as Williston on Contracts, Nimmer on Copyright, Moore’s Federal Practice: Civil, or even the Restatements. It also stems from whether access to law reviews and other scholarly papers through free services and HeinOnline will replace other secondary editorial commentary.\textsuperscript{259} A future that contemplates powerful searches of primary law is really a disintermediated future, without the aid of indexes, tables of contents, topic and key numbers (except as incorporated into AI) and, really, commentary from proven and trusted scholars in the various fields of law. It is the end of the treatise and the rise of AI. At the same time, the future portends open access to journals, most of which do not target practitioners but are increasingly free to them. Will open access to scholarly journals actually help attorneys practice law? If so, that is a secondary effect of the publications. It is non-journal secondary material, with exhaustive treatment and targeted to

\textsuperscript{254} See supra notes 172–173 and accompanying text.
\textsuperscript{255} See supra note 172 and accompanying text.
\textsuperscript{256} See supra \(\textsuperscript{\textsc{\textgamma}}\) 20–39.
\textsuperscript{257} See supra notes 211–212 and accompanying text.
\textsuperscript{258} See, e.g., supra \(\textsuperscript{\textsc{\textgamma}}\) 97–100.
\textsuperscript{259} Colleagues at the 2021 Boulder Conference who reviewed this article raised this issue.}
the practicing attorney or presiding judge, that will suffer because of fiscal barriers to access and because of the omnipresence of free scholarly materials. The paradigm in figure 30 of starting first with encyclopedic commentary to build background knowledge and then narrowing issues as research is finally conducted in primary sources of the law (capped by KeyCite) cannot function in such an environment.260

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Conclusion

¶136 We have adapted Ronald Deibert’s ecological holistic media theory to reject a technologically deterministic view of libraries as having no future. We have considered the role of libraries, especially law libraries, in the social epistemology or cognitive authority of the legal community, the role of libraries as knowledge institutions (in multiple facets), the function of technology (including language and media), and geopolitical and physical considerations such as resources. We have reviewed our past in terms of reading and the development of libraries, and speculated about our future through the holistic ecological lenses. Our answer to AALS President Vicki Jackson is a resounding, “Yes, even libraries!” and to Yale’s Dean Heather K. Gerken, “Remember the Library!”

¶137 While our past is firmly grounded in reading books and libraries with large print collections, what continues on is the role of librarians with respect to social epistemology or cognitive authority. Just as with books, which databases we license are statements about what society should trust. Our catalogs continue to be sources that shape knowledge domains within law and without. What we teach our students remains important in their own process of recognizing the cognitive authority of their chosen fields.

¶138 We live in an age of networks. Digital networks are easy enough to name, but libraries are also networks of relationships of expertise and institutions devoted to the common good. Librarians, not the books, databases, or even the catalogs, stand preeminent in all of this. Furthering the metaphor of the digital age, libraries are increasingly portals where impact on information use should be the primary metric. That said, libraries still maintain an aspect of transformative physical spaces and function as community centers (including in academic settings).

¶139 In discussing current technology, we have argued for the continued relevance of human-intermediated tools for accessing legal information. Ideally, disintermediated technologies (such as AI search algorithms) are combined with human-intermediated elements—for example, when Westlaw Edge searches incorporate topic and key numbers and headnotes to identify additional relevant cases. However, we need much more emphasis on editorial content from recognized sources of cognitive authority in particular fields. We also noted the digital divide that favors firms and libraries that are research rich and that puts lawyers and libraries with lesser resources at a significant disadvantage. This may become increasingly true as AI becomes an increasing (and increasingly expensive) factor in legal research.

¶140 Besides geopolitical factors like the increasing role of FCIL, we noted the importance of transnational law and humanitarian law in an age with 80+ million refugees. Libraries are devoting significant time to creating finding aides and guides to such law. Libraries can also play a critical role with respect to access to the law and identifying cognitive authority, which are important prerequisites for the rule of law on the
international stage as well as at home. Resources are also an issue, and the movement of law journals to open access digital formats is encouraging in that respect.

¶141 With respect to the future, we believe that AI in legal research is still a ways from matching Siri on iPhone (at least for common uses) in answering anything but a narrow set of questions. However, it may one day fill an important role and, in retrospect, be as or more significant as the shift from print to digital resources. The disparity of results between research platforms portends to be problematic, however, in establishing a stable cognitive authority, although reiterative searching may help narrow discrepancies.

¶142 Libraries may also play a significant epistemic role by facilitating open-access legal publishing on platforms such as the Digital Commons. Dana has demonstrated that capability with her work on Pistor’s book, *Law in the Time of COVID-19*, which was rapidly published and disseminated using the Digital Commons. Perhaps libraries can function as scriptoria before the rise of print libraries. Also important is the function that great law libraries, such as Columbia’s, played during the pandemic in providing access to digital copies of works through the HathiTrust Emergency Temporary Access Service. Unfortunately, such services are threatened by lawsuit, such as in the case of a similar service provided by the Internet Archives Open Library, and only libraries in an elevated tier can afford to participate in the first instance. Also, current copyright law may not extend the first sale doctrine to digital lending. Licensing agreements lock down content of e-books, restricting the ability of libraries to circulate materials. This does not bode well for the future.

¶143 We have already summarized geopolitical and resources factors and have nothing new to add here, but we must conclude our analysis with the future of cognitive authority and libraries’ epistemic value. Of grave concern is whether secondary source staples survive in a future that today seems to be a single search bar that favors primary sources (particularly case law). Indeed, many of the new legal research platforms have limited or no access to secondary sources. Librarians have a challenge (as well as an opportunity) here to bring secondary staples within the circle of cognitive authority and preserve effective research processes.

¶144 So, in parting, yes, libraries are part of the epistemic foundation of society. Social epistemology or cognitive authority permeates our ecological holistic analysis. Libraries are critical to democratic society, the rule of law, and the functioning of the legal profession. They are not victims to be sacrificed on the altar of technological determinism—they have many features, not only compatible with the current and future information environment, but valuable to the society embedded within it.

261. For instance, on November 17, 2021, Paul asked Siri on his iPhone who won the last Chiefs’ game. She answered, “The Chiefs crushed the Raiders by a score of 41-14 last Sunday,” which answer can be confirmed as correct on Google’s Chiefs website.
A Place of One’s Own: How Law Libraries Support Democracy by Protecting Citizens’ Right to Read

Amy A. Emerson

By offering places for private reading and contemplation, law libraries foster well-informed citizens capable of independent thought. This process, in turn, provides a foundation for understanding the law, questioning the law, and ultimately challenging the legal status quo, all necessary elements of a well-functioning democracy.

Introduction: Knowledge Institutions

Public Space in Democracy

Public Parks

Public Libraries

A Parallel Evolution

Private Space in Democracy

The Law Library as Blended Space

Where Space Becomes Place

Place and Personal Identity

Privacy and Confidentiality

The Right to Receive Information and Ideas

The Law Library as a Place of One’s Own

Conclusion

In our democratic society, the library stands for hope, for learning, for progress, for literacy, for self-improvement and civic engagement. The library is a symbol of opportunity, citizenship, equality, freedom of speech and freedom of thought, and hence, is a symbol for democracy itself. It is a critical component in the free exchange of information, which is at the heart of our democracy.¹

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Introduction: Knowledge Institutions

¶1 Knowledge institutions comprise a multitude of organizations that collectively support and protect the foundations of our democracy by providing educational access and factually accurate and objective information necessary to create an informed citizenry. They include private and public institutions that together form a “knowledge ecosystem.” Here, individuals have the opportunity to evaluate, question, parse, and, when needed, resist manipulation to participate in governance, from engaging with the policy positions of their elected officials to enforcing the rule of law.

¶2 Law libraries, through the spaces they provide for conducting research and engaging in contemplation with our country’s laws and the commentaries written about those laws, are uniquely positioned within the infrastructure of knowledge institutions to contribute significant support to our democratic foundations.

Public Space in Democracy

¶3 The long-standing relationship between space and democracy has received significant attention in democratic theory. The distinction between public and private spaces has been a particularly frequent point of discussion. As individuals move through various public and private spaces in their daily routines, they observe different patterns of behavior and respond accordingly, thereby adapting to the inherent character of each space.

¶4 Public space is often what most readily comes to mind when envisioning an active democracy. Broadly defined, public space is “an unbounded, expansive space of


3. Vicki C. Jackson, Legal Scholarship and Knowledge Institutions in Constitutional Democracy, AALS News, Summer 2019, https://www.aals.org/about/publications/newsletters/summer2019/legal-scholarship-and-knowledge-institutions-in-constitutional-democracy/ [https://perma.cc/MUX6-2BUG] (“Knowledge institutions ... play a vital role in contributing to the information infrastructure of a democratic society ... Informed public opinion is the most potent of all restraints upon misgovernment ... In a democracy, the citizenry—or at least a sufficient swathe of the citizenry and their elected representatives—need access to good information to be able to identify trends of social and economic fact, as well as knowledge of relevant national and world history that bears on current issues.”).

4. Diana Saco, Cybering Democracy: Public Space and the Internet 35 (2002) (“all forms of political theory that are comprehensive and totaling presume elaborate spatial strategies”).


social interaction, free exchange of ideas, and political action that influences governmental practice.”  

Often, the image evoked is that of a group assembled to collectively engage in democratic practices and deliberate on public matters.

**Public Parks**

Public parks are commonly identified as spaces to engage in freedoms of speech and of assembly.  

Parks have a long and interesting history in our country, with significant attention bestowed upon them in the mid-19th century. The rise of large cities such as New York and Philadelphia meant that people could no longer easily escape to the country to avoid urban crowding. Recognition of the importance of open spaces to maintain public health through physical recreation and relief from poorly ventilated tenements eventually led to the design of city parks.

European parks, originally reserved for use by royalty, had recently opened to the European public, and they captured the attention of American travelers who, on returning home, extolled them as would-be models of beauty and size. Furthermore, European parks, now open to the multitude, were lauded as institutions that “raised the people in social civilization and social culture to a far higher level” than in America.

The perceived “social influence” of parks, or the notion that parks not only bring people together but also “act as agents of moral improvement,” was an influential part of the discourse about the need for urban parks. Advocates such as landscape architects A.J. Downing and Frederick Law Olmstead believed that parks created a more democratic social order by bringing together all classes of people for the enjoyment of nature. Downing promoted a theory of social reform he called “popular refinement.” In it, he advocated for supplementing schools with public parks, gardens, libraries, art museums, and galleries. “By these means, you would soften and humanize the rude,

8. SACO, supra note 4, at 35.
11. *Id.* at 63–65.
12. *Id.* at 64.
13. *Id.* at 65.
14. *Id.* (noting that Stephen Duncan Walker praised the park as “a commonwealth, a kind of democracy, where the poor, the rich, the mechanic, the merchant and the man of letters, mingle on a footing of perfect equality.” Downing called parks the “pleasant drawing-rooms” of European cities. He further noted that in Germany, “all classes assemble under the shade of the same trees,” creating “true democracy.”).
15. *Id.*
16. *Id.*
educate and enlighten the ignorant, and give continual enjoyment to the educated,” resulting in banishing the “plague-spots of democracy.”

Similarly, Olmstead believed that institutions such as parks, gardens, and music and dancing schools were necessary to achieve “a democratic condition of society” and “more directly assist the poor and degraded to elevate themselves.” He described New York City’s Central Park as “a democratic development of the highest significance.”

Initially, however, public parks were neither intended to be nor used as places to engage in political debate. On the contrary, strict limitations were often placed on public expression in parks. For example, advertising, displays, and political discussions were frequently prohibited. Specifically, Boston parks banned public meetings, some Chicago parks prohibited meetings that could lead to the formation of crowds and speeches, and Philadelphia parks allowed only religious meetings. The goal of these prohibitions was to avoid the divisiveness of politics and “transcend, not reflect, the evils of urban life.”

Public Libraries

Parallels exist between the paternalistic tendencies of early public parks and early public libraries. Like public parks, libraries have a history steeped in perceptions of a shared responsibility for the common good. When the American Library Association (ALA) was formed in 1876, prior to the formation of the American Association of Law Libraries (AALL), librarians viewed themselves as censors of the materials they provided to their patrons, with a moral responsibility to society to “elevate” the lower classes and immigrants.

The first conference of the ALA took place in Philadelphia in October 1876. Documented in its proceedings are discussions that shed light on the views of librarians and their relationships with their patrons. There was agreement that the printed word had an impact on social behavior, but there was little agreement about how to handle

17. Id. at 65–66.
18. Id. at 66.
19. Id. at 94.
21. Id.
22. Id.
23. Id.
24. Id. at 835–36.
25. Id. at 834–37.
this responsibility.\textsuperscript{29} For example, the topic of fiction, particularly novels, drew “battle lines”—to include novels in a library’s collection was to include materials of “marginal quality” that could risk immorality, irresponsibility, or reckless living.\textsuperscript{30} Some librarians, however, were willing to take these risks if providing fiction would lead to “fostering the reading habit” and elevate the reading tastes of the public.\textsuperscript{31} One argument in favor of placing novels in libraries was that the novels could be used as “a means of keeping order in the community by giving people a harmless source of recreation.”\textsuperscript{32} These discussions reflect the position of many leading library professionals at that time. There was significant agreement that an important library role was to acquire and prescribe the best reading materials for a mass reading public who could not prudently do so for themselves.\textsuperscript{33}

\textsuperscript{¶}12 The discussions among these librarians revealed a deeper intent: that exposing the public to “good” literature would result in a better informed and more orderly society. Although at first blush their intentions seem pure and suited to the support of democracy, unfortunately the group’s limitations were evident in their demographics: all of ALA’s first officers were “white, Anglo-Saxon Protestant males born in the northeast, from families which had been living on the continent three generations or more.”\textsuperscript{34} The views they espoused at the first conference of the ALA marked a transition from libraries’ first societal roles to more simply acquire and preserve\textsuperscript{35} and would temporarily steer the course of the ALA in its early years.\textsuperscript{36}

A Parallel Evolution

\textsuperscript{¶}13 Libraries’ relationships with their patrons evolved through the years to the very different one it is today as protectors of privacy and First Amendment values.\textsuperscript{37} In 1939, the ALA adopted the first Library Bill of Rights in which librarians were defined as “guardian[s] of the freedom to read.”\textsuperscript{38} In the same year, the legal right of citizens to use

\textsuperscript{29}. Id. (“Good literature led to good behavior; bad literature led to bad behavior.” Good literature was easy to define, but identifying bad literature was problematic.).
\textsuperscript{30}. Id.
\textsuperscript{31}. Id. at 9–10.
\textsuperscript{32}. Id. at 10.
\textsuperscript{33}. Id.
\textsuperscript{34}. Id. at 12.
\textsuperscript{35}. Id. at 10.
\textsuperscript{36}. Id. (“[T]he function of ‘prescribing’ use, which was supported by principles of materials ‘selection,’ automatically placed these librarians in a socially patronizing position which was heavily influenced by their own social backgrounds and cultural value systems. Librarians charged with the responsibility for prescribing and selecting reading materials seldom questioned these values, for they instinctively assumed what was good for them as a group would be good for society in general, and would function as a passive control mechanism to maintain societal order.”).
\textsuperscript{37}. Blitz, supra note 20, at 837–38.
\textsuperscript{38}. Id.
public space for democratic purposes was established by the Supreme Court in a disjointed 5–2 decision. Justice Owen Roberts reflected a similar evolution directly impacting public parks when he wrote:

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.39

Side by side, public parks and public libraries evolved from institutions of censorship to institutions promoting and protecting intellectual liberty.40 Years later, AALL followed suit, endorsing a similar position to that of ALA by adopting its first code of ethics that embraced the principles of confidentiality and privacy.41

¶14 As society continues to evolve, the importance of public space to democracy cannot be overstated.42 Indeed, democracy has been deemed “dependent upon the existence of public space” for exercising the “essential elements of citizenship,” including the freedom of expression and assembly.43

Private Space in Democracy

¶15 Private space is the domain in which individuals are free to make autonomous decisions without the interference of others.44 An individual’s “private sphere” is a space that exists within the individual’s personal control, “outside public observation and

42. Sara Schindler, The “Publicization” of Private Space, 103 IOWA L. REV. 1093, 1127 (2018). The rise of privately owned public open spaces, like private parks, has caused alarm among commentators who argue that the provision of physical space alone is not enough. The space must be accessible to all and provide the same opportunities to exercise democratic values; otherwise the public has lost the value inherent in public space. The rules governing privately owned public open spaces are usually established by private developers and therefore do not receive public oversight, consequently resulting in a loss of democratic ideals.
43. Id. at 1102 (citing others who identify public spaces as “one of the last independent forums for public opposition in a civil society”).
44. PARKINSON, supra note 5, at 50 (invoking Baechler’s “locus of initiative”).
knowledge and outside official or state control.” 45 In other words, one’s private or personal space may also be public or social space that is under the individual’s control for personal use. 46 The individual’s personal control over this space creates “a protective layer from social pressures, which enables them to develop a sense of identity, find a location in the social world and develop as an autonomous political subject.” 47 The role that private space plays in providing individuals with a place in which they have autonomy to discover their individuality and exercise independent thought makes it equally important to the role of public space in an active democracy.

The Law Library as Blended Space

§16 Despite their distinctions, it soon becomes difficult to distinguish between public and private spaces as one delves deeper into each. According to one school of thought offered by scholar John Parkinson, whether space is public or private should not be determined by a bright line. 48 Instead, our understanding of space should be defined by the particular purposes and values we seek to assign to that space. 49 Seen in this light, space may be public in four major ways: It “1. is openly accessible; and/or 2. uses common resources; and/or 3. has common effects; and/or 4. is used for the performance of public roles.” 50 Some spaces are public in all of these ways, others in some of these ways, and others in only one of these ways. 51 Such spaces may include publicly and privately owned spaces among their varieties, but ownership itself is not included on the list because it does not, in Parkinson’s eyes, track with the values and goals at stake. 52 For example, privately owned buildings have a public face that, together with other


46. Id. at 28–29 (“Personal space is “the invisible, mobile, and subjective space around the body, functioning as the extension of the body. It includes spaces that are personalized by people who inhabit them (such as apartments, hotel rooms, workplaces, cars, computers and mobile phones) and the processes through which this personalization occurs.”).

47. Id. (quoting Madanipour: “The control of the enclosed, private spaces offers the individual an ability to communicate with others through becoming a means of expression of their will, identity and power. It also offers them the ability to be let alone by being protected from the intrusion of others. The establishment of a private sphere offers the individual the ability to regulate the balance of concealment and exposure, the balance of access to oneself and communication with others.”).

48. PARKINSON, supra note 5, at 50 (“The categories ‘public’ and ‘private’ are bundles of concepts that do not fit neatly together.”).

49. Id.

50. Id. at 61.

51. Id.

52. Id. Here, Parkinson departs from the mainstream conversation about the role of space in democracy: “There are privately owned things that are public in all of the other senses, and publicly owned things whose importance is best captured by sense 2 only.” Id.
buildings, create the built environment and thereby impact the community around
them.53

17 Public law libraries naturally meet several of these requirements in that they are
openly accessible to the public, consume collective resources through public financing,
and have common impacts through the resources they provide to their patrons. In this
way, they are similar to other spaces owned by the public for collective purposes, such
as police stations and government office buildings.54

18 What our profession commonly conceives as “private” law libraries, however,
deserves a second look under Parkinson’s definition of public space. The third classifi-
cation, “has common effects,” is of particular importance for our purposes because it
means that what we refer to as private law libraries in our daily discourse also meets the
threshold of public space. Parkinson defines common impacts as those that “are a
legitimate topic of public discussion, in terms of their impact on the streetscape, on the
availability of light, air, and space for performing other roles. It does not automatically
follow that all the other normative criteria of publicity should apply[,]” clarifying that
common impact is not a “functional necessit[y] of democracy but the subject matter of
democracy” and includes the production of cultural and informational goods.55
Parkinson goes on to praise libraries for the provision of their information infrastruc-
ture.56

19 Under Parkinson’s definition, then, all libraries defy specific categorization and
may be viewed as public spaces due to their common impacts. Faculty and students who
use academic law libraries to conduct research compile their results into articles and
editorials intended to impact public discourse, and occasionally judicial opinions, about
the law. Lawyers in law firm libraries compile the results of their research in the form
of court briefs that will become part of the public record and are intended to influence
judicial opinions not only in the case at hand but in future cases as they are consulted
by future lawyers and self-represented litigants alike. Lawyers also use the results of
their research to construct advice and counsel intended to impact the direction of their
clients’ businesses and personal lives. In these ways, all law libraries transcend the pri-
vate/public divide and contribute to society through their common impacts.

Where Space Becomes Place

20 The inherently ubiquitous nature of space and place makes them difficult to
differentiate and define, and the difference between them has been debated for decades

53. Id. at 58.
54. Id.
55. Id. at 66–67.
56. Id. at 217.
by disciplines ranging from urban planning to philosophy. Although they are often treated interchangeably, they may be distinguished, again, by considering the purpose of each. A space that functions in a specific manner or for a specific reason within a particular context becomes a place. One common definition of place is simply “a meaningful location.” Spaces and places naturally fall on a personal continuum depending on one’s movement and stability. The more time one spends in a space, the more likely it is to become a place. Places offer security and freedom from the abstraction of space.

The concept of place becomes more fluid as globalization and the Internet expand our experiences. Virtual space is that which is “not physically locatable, thus not perceptible, but which, thanks to the tools of communication, exists as a network of relations.” Saco argues in favor of a dynamic conception of how technologies contribute to the social construction of new kinds of places, drawing on the work of her predecessors in political theory to support the notion that cyberspace is a social place where strong feelings of group identification can invest ever greater numbers of individuals in operations and outcomes, and technology’s ability to share information reduces the need for citizens to meet in close physical proximity. The Internet helps to resolve issues of scale in democracy because it is difficult for large, diverse populations to meet in one physical location to exercise their democratic values. Additional and obvious benefits of the Internet are direct communication, interaction, and unmediated content, while a well-known shortcoming is that the Internet may fail to encourage serious, deliberative contemplation.

57. Tim Cresswell, Place: An Introduction 19 (2d ed. 2015).
58. Koops and Galič, supra note 45, at 23.
59. Id.; see also Cresswell, supra note 57, at 12–14 (quoting John Agnew: A “meaningful location” includes three fundamental elements: location, locale, and sense of place. Locale is differentiated from location in that it captures “the material setting for social relations—the actual shape of place within which people conduct their lives as individuals.”).
60. Koops and Galič, supra note 45, at 23.
61. Id.
62. Id.; see also Cresswell, supra note 57, at 15 (“What begins as undifferentiated space becomes place as we get to know it better and endow it with value . . . . The ideas of ‘space’ and ‘place’ require each other for definition. From the security and stability of place we are aware of the openness, freedom, and threat of space, and vice versa. Furthermore, if we think of space as that which allows movement, then place is pause; each pause in movement makes it possible for location to be transformed into place.”) (quoting Yi-Fu Tuan, Space and Place: The Perspective of Experience 6 (1977)).
63. Marcel Hénaff & Tracy B. Strong, Conclusion: Public Space, Virtual Space, and Democracy, in Public Space and Democracy 222 (Marcel Hénaff & Tracy B. Strong eds., 2001).
64. See Andrea Slane, Democracy, Social Space, and the Internet, 57 U. TORONTO L.J. 81, 86–87 (2007).
65. Saco, supra note 4, at 37–45. But see Hénaff & Strong, supra note 63, at 228 (noting the limitations of scaling—for example, it is not practically possible to hold a debate among millions of people).
66. Slane, supra note 64, at 87 (referencing the work of Benjamin Barber and challenging Saco to note that “the speed with which communications occur over the Internet may undermine participatory democracy.”).
¶22 Whether physical or virtual, places are important because they influence how individuals construct their identities and can affect their sense of belonging in a community. Through a combination of physical and virtual space, individual identities form through places and “flows,” including the home, physical-digital networked spaces, and tangible personal and public spaces, each with their own shades of privacy. The security and stability of one’s personal home, and the privacy it offers for the purpose of creating one’s personal identity, serves as a classic example of a place where one can experience a kind of “authentic existence.”

¶23 Events occurring in one’s private sphere can simultaneously occur in a public space, such as a library; in this way, they become “a private life played out in a public space.” Public places also impact the formation of personal identities through the different experiences they provide, which influence how individuals see, know, and understand the world. The connections between people and spaces, between meaning and experience, and the “complicated interplay of people and the environment” serve to elevate place from a simple location or thing in the world to a greater way of knowing. Excellent examples exist within law library literature of the role law libraries play in providing a meaningful place for their patrons.

Place and Personal Identity

¶24 Place identity is the process through which an individual comes to see a place as a significant part of his or her world and “accepts and recognizes the place as integral to his or her personal and communal identity and self-worth.” How place informs

67. Koops & Galič, supra note 45, at 39 (identity construction, including issues of culture, race, and gender, are influenced by spatial constraints and the construction of place).
68. Id. at 44, 46 (asserting that “the mobile nature of identity construction in a space of flows suggests that privacy, as a freedom to shape one’s identity, also requires protection in public”). Id. at 44.
69. Id. at 23, 41 (discussing Tuan, supra note 62, describing the home as “the ideal type of place: the most meaningful, valued, stable, and safe space a person might inhabit[,]” but noting that different people, particularly women, have different experiences in the home, and clarifying that the home may be considered “a particular kind of safe place where (some) people are relatively free to forge their own identities.” Koops and Galič, supra note 45, at 41.).
70. Madanipour, supra note 6, at 35.
71. Cresswell, supra note 57, at 18.
72. Id.
73. See, e.g., Ryan Metheny, Improving Lives by Building Social Capital: A New Way to Frame the Work of Law Libraries, 109 LAW LIBR. J. 631, 2017 LAW LIBR. J. 28 (applying social capital analysis to conceptualize and describe the valuable work of law libraries, particularly that involving space); Lee F. Peoples, Designing a Law Library to Encourage Learning, 63 J. LEGAL EDUC. 612 (2014) (applying the concept of designing-for-learning to law library space); Stephen Young, Looking Beyond the Stacks—The Law Library as Place, AALL SPECTRUM, July 2010, at 16 (invoking Ray Oldenburg’s conception of “third place” to characterize a welcoming law library environment).
one’s identity is often examined in the context of the home, but it also must be considered in the context of the social constructs that exist within one’s community.

¶25 Personal and social identities (some of which are formed through one’s relationships with others, and others of which are imposed by society) are intricately interrelated and together form a person’s whole identity. Democracy, by creating the social category of “citizen” and bestowing political and civil rights on citizens, provides individuals with the opportunity to use their personal and social identities to influence society’s values. It is therefore important to maintain balance between one’s personal and social identities. For, “if individuals are constrained in pursuing personal identities, their social side engulfs them.”

¶26 How an individual’s experience with place (or lack of place) contributes to the formation of his or her personal identity is explored extensively in race and gender literature. For example, in A Room of One’s Own, Virginia Woolf observes that “intellectual freedom depends upon material things” and paramount among those things “are money and a room of one’s own.” Woolf explains that the money “stands for the power to contemplate,” and “a lock on one’s door means the power to think for oneself.” To the critics who take objection to Woolf’s thesis and insist that “the mind should rise above such things,” Woolf responds by naming “the great poetical names of the last one hundred years” and pointing to their gender and their privileged backgrounds. She concludes, “It is—however dishonouring to us as a nation—certain that, by some fault in our commonwealth, the poor poet has not in these days, nor has had for two hundred years, a dog’s chance.” Chief among the poor are women who are not represented in literature, for they are “washing up the dishes and putting the children to bed.”

75. Id. at 10–12.
76. Id. at 12–13.
77. Id. at 14.
78. See, e.g., bell hooks, Ain’t I a Woman: Black Women and Feminism (1981) (examining the effects of racism and sexism on Black women throughout the movements of the 1970s); Toni Morrison, Sula (1973) (two friends grow up together in a small town, then part ways as one chooses to stay and raise a family and one chooses to leave for college, causing their paths to diverge significantly); Adrienne Rich, The Fact of a Doorframe (1984) (a collection of poetry reflecting Rich’s participation in the feminist movement).
79. Virginia Woolf, A Room of One’s Own 108 (1929). Some have raised objections to the privileged tone of Woolf’s essay, and this article does not attempt to dispute those assessments but to recognize the value of her thesis. Woolf herself recognizes that great writers exist in the worst of circumstances and that their writing, whether or not it meets its full potential in those circumstances, is worthwhile “even in poverty and obscurity.” Id. at 114. Indeed, there are authors who have proved this to be true, such as Harriett Beecher Stowe, who created exceptional literature without the privileged conditions for which Woolf advocates.
80. Id. at 106.
81. Id. at 106–07.
82. Id. at 107 (referring here to Woolf’s home country of England).
83. Id. at 113.
a focus on women but a message meant for all, Woolf stands firm in her belief that money and a room of one’s own provide the opportunity to “escape a little from the common sitting-room” and cultivate “the habit of freedom and the courage to write exactly what we think.”

¶27 Bert Jaap-Koops describes “a room of one’s own” as “probably the most concrete physical place in the personal zone where someone can experience privacy.” Adds Wolfgang Sofsky, it provides a “refuge” that allows one to temporarily opt out of society and find a place of peace and tranquility where one can indulge one’s inclinations, lose oneself in one’s thoughts, work out secret projects, care for one’s body, or do nothing at all, without being urged by anyone to act, speak, or work.

Privacy and Confidentiality

¶28 Privacy, too, plays a role in the formation of one’s identity because privacy supports the growth of autonomy and self-development in individuals. “Privacy is central to individuals’ opportunities to engage with culture, find their own meanings, and cultivate their own ‘intellectual diversity and eccentric individuality’” unfettered by community pressures.

¶29 Libraries are commonly recognized as places where privacy is enjoyed and have even been described as prototypical of a type of space for achieving a condition of privacy. A seat in a library is a “well-bounded space to which individuals can lay temporary claim, possession being on an all-or-none basis.” An individual who occupies such a space is in his or her personal space, which also serves as a privacy space.

¶30 Libraries further serve as places where individuals can rely on professional secrecy and discretion, allowing them to be themselves and reveal vulnerabilities. The library is a place where people can access information and read in private without experiencing a chilling effect, thereby creating an environment that “fosters the privacy of

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84. Id. at 113–14.
87. Koops, supra note 85, at 621.
88. Neil M. Richards, The Dangers of Surveillance, 126 HARV. L. REV. 1934, 1951 (2013); see also Koops & Galič, supra note 45, at 39 (“The right to privacy is the freedom from unreasonable constraints on the construction of one’s own identity.”).
89. Koops, supra note 85, at 622.
90. Id. at 644.
91. Id. at 644, 619 (referencing Irwin Altman’s study of privacy and boundary management, in which library users exhibit territorial behavior by using markers, such as library books and personal items, to deter intruders during the library user’s temporary absence).
92. Id. at 645.
pursuing one's very personal interests.” Also helpful, the quiet space of a library provides a place for “mental bubbles” to occur.

¶31 American libraries were among the first institutions to recognize the inherent qualities of privacy and confidentiality for protecting the civil liberties of our patrons. Librarians themselves are recognized as “very thoughtful about the duties they owe to their patrons, and the consequences of their ethics for civil liberties on the larger society.” In fact, the principles of privacy and confidentiality fundamentally comprise the core values on which our libraries stand, regardless of type of library.

¶32 The terms “privacy” and “confidentiality,” although often used interchangeably, are distinguishable based on the roles of the parties involved. Library patron privacy “is the right to engage in open inquiry without having the subject of one's interest examined or scrutinized by others.” Confidentiality, on the other hand, is the duty of librarians to keep information private on a patron's behalf. Confidentiality is necessary to maintain privacy, which in turn is “essential to the exercise of free speech, free thought, and free association.”

¶33 Librarians seek to protect private inquiry through three interconnected frameworks: professional norms and ethics, library privacy statutes, and administrative policies and procedures. In large part, librarians’ normative commitments to privacy are the strongest source of protection in libraries, although legal protections do exist in

93. Id. at 645–46, 648.
94. Id. at 624–25 (describing mental bubbles as “the main space for another aspect of privacy: freedom from intrusion by undesired sensory signals”).
95. Neil Richards, Intellectual Privacy: Rethinking Civil Liberties in the Digital Age 177 (2015) (describing librarians as “our first and oldest information professionals, with special expertise in the issues intellectual records raise . . . struggling with the problems of reading records for centuries, as custodians of books and the records of those reading them”).
96. Id.
98. Richards, supra note 95, at 178 (citing ALA Intellectual Freedom Manual and summarizing “the words of several influential librarians”).
99. Id.
varying degrees across the country. Perhaps where librarian norms and the law intersect at their best is through the political advocacy and enforcement litigation librarians conduct on behalf of their patrons to protect the right to private reading. AALL plays a significant role in this effort; since the 1970s, AALL has advocated on state and federal levels on behalf of the legal information field and the rights of our patrons, not only about matters involving privacy, but also for the right to free access to legal information.

¶34 When it comes to implementing privacy policies, the devil is in the details. Anne Klinefelter examines the delicate balance a library strives to achieve in providing services to its patrons while protecting their privacy. She notes that the collection of user information such as name, contact information, and borrowing records is necessary for a library to function; it is in how a library handles those records that the potential for harm exists. Recently, in the long-standing and tireless spirit of librarians as guardians and advocates of reader privacy, Klinefelter and others are raising the alarm regarding third-party access to patron data. The serious implications for the loss of privacy in this context present a further opportunity for library advocacy and will require a close review of the adequacy of existing resources, such as the ALA Intellectual Freedom Manual, the ALA Code of Ethics, and the AALL Ethical Principles.

¶35 Maintaining the library’s commitment to protecting privacy is deeply important because social science studies show that being observed, or even the perception of being observed, is enough to change an individual’s behavior. Management surveillance techniques in the workforce, police officers outfitted with recording devices, and the simple posting of an image of a pair of eyes have all demonstrated that the suggestion

102. Id. at 19–28 (documenting various library privacy statutes and placing them in context with historical and existing library norms and the library advocacy efforts that led to existing legal protections).
103. BJ Ard, Librarians as Privacy Advocates, 13 I/S: J.L. & Pol’y Info. Soc’y 161 (2016) (lauding the library profession’s commitment to intellectual freedom and active role in advocating and fighting for intellectual freedom, and proposing that libraries make the most of their expertise by serving as local clearinghouses for privacy complaints).
104. Mary Alice Baish, AALL’s Advocacy Program Gets Better All the Time . . . With a Lot of Help from Its Members, AALL Spectrum, Apr. 2003, at 1.
105. Anne Klinefelter, Privacy and Library Public Services: Or, I Know What You Read Last Summer, 26 Legal Reference Servs. Q. 253 (2007) (conducting a thorough review of the potential types of interests and harms involved in law library public services in light of Daniel Solove’s modern taxonomy of privacy, which sets forth four categories of privacy harming activities: information collection, information processing, information dissemination, and invasion).
108. See Am. Libr. Ass’n, Ethics, supra note 97.
109. See Am. Ass’n L. Librs., AALL Ethical Principles, supra note 97.
of being watched impacts human behavior, sometimes on involuntary or subconscious levels.\textsuperscript{111} A study in which students were asked to present their opinions on a topic and were advised that their presentations would be recorded and shared with law enforcement concluded that the “experiment demonstrates that the threat of surveillance exerts a powerful influence over behavior, beliefs, and feelings, whether or not that threat is realized.”\textsuperscript{112} It stands to reason that surveillance of a patron’s reading records and Internet browsing history could impact what that patron reads or browses.\textsuperscript{113}

\textsuperscript{¶}36 Based on these studies, Margot Kaminski and Shane Witnov conclude that “widespread surveillance, or even the belief in it, is damaging to the development of diverse viewpoints, without any additional clear threat of injury or retaliation.” They label the consequences of these circumstances “the conforming effect” and identify four ways in which the effect does more than simply chill speech: (1) “surveillance tends to more strongly influence those who are undecided in their beliefs”; (2) “surveillance can increase anxiety and unease, which makes it more difficult for people to form intellectual thoughts”; (3) “surveillance can encourage people to change their beliefs by creating cognitive dissonance in those who self-censor”; and (4) “surveillance weakens minority influence.”\textsuperscript{114} The sum result is that “surveillance encourages less reasoned majority rule.”\textsuperscript{115}

\textsuperscript{¶}37 The effect of surveillance on democracy is significant. Stifling research and the freedom to read results in fewer and less confident minorities who will likely be less successful at challenging the status quo or majority views.\textsuperscript{116} Consequently, “individuals and the public will miss out on the better, more deliberative, more creative, and more critical thinking that results from minority influences.”\textsuperscript{117}

\begin{itemize}
  \item \textsuperscript{111} Id. at 491.
  \item \textsuperscript{112} Id. at 492. In the late 1970s, researchers Gregory White and Philip Zimbardo asked students at UCLA to give a presentation on the topic of whether “marijuana possession in small quantities should be a misdemeanor, but in large quantities should be a felony.” The subjects were told that they would be videotaped and half of them would be shared with the police and FBI for training purposes and half of them would be used by the researchers only. Ultimately only one subset of the group was recorded and the other subsets were told that the video camera was broken. The results of the study found that the subjects were less likely to agree with the advocacy statement than protest questionnaires completed by students at UCLA had indicated. In addition, those in the surveillance group distanced themselves from their arguments by consistently using second- and third-person pronouns. See id.
  \item \textsuperscript{113} Id. at 492–93.
  \item \textsuperscript{114} Id. at 499–500.
  \item \textsuperscript{115} Id. at 500.
  \item \textsuperscript{116} Id. at 508.
  \item \textsuperscript{117} Id. at 509.
\end{itemize}
The Right to Receive Information and Ideas

¶ 38 Although libraries have not yet received explicit First Amendment protections similar to those enjoyed by public parks, the Supreme Court has expressed some support for reader privacy through the recognition of a narrow, corollary right to the First Amendment right to freedom of speech. It is known as the right to receive information and ideas, or simply as the right to receive. A series of Supreme Court opinions have recognized this doctrine over the course of 50 years in a multitude of contexts, from public school libraries, to the use of contraceptives in the home, in commercial advertising, and beyond.

¶ 39 Legal scholars have also devoted significant time advocating for the right to receive. For example, Thomas Emerson observes a First Amendment right to receive information and identified two related features within it: “the right to read, to listen, to see, and to otherwise receive communications” and “the right to obtain information as a basis for transmitting ideas or facts to others.” He conceives of the system of freedom of expression as a coin, one side of which represents the right to communicate and the other the right to receive. Emerson further asserts that the right to know is “essential to personal fulfillment,” “necessary for seeking the truth, or at least seeking the better answer,” and “necessary for collective decision-making in a democratic society.”

¶ 40 The Supreme Court’s position on the right to receive has garnered some criticism for its lack of cohesion and clarity. Specifically, the Court has not explicitly tied the right to receive information and ideas to the individual receiving the ideas, independent and separate of the right of the speaker to express those ideas. Therefore, some question the proper application of the right to receive in the context of libraries if speakers do not have rights to speak in those venues.

118. Blitz, supra note 20, at 839–40.
121. Id.
122. Id.
123. See, e.g., Smith, supra note 119, at 70 (summarizing First Amendment scholar William Lee’s observations that, although the Supreme Court stated that the right to receive was well established in Stanley v. Georgia, 394 U.S. 557, 564 (1969), the Court has not fully explained the theoretical foundations of the right, and the various contexts in which it has been applied, as well as the various purposes for which it has been applied, further exacerbate the issue).
124. Smith, supra note 119, at 70.
125. Id. at 70–71.
¶41 Others, however, challenge this position. First Amendment scholar Rodney Smolla, for example, argues on behalf of the right to receive in libraries. He asserts that “[l]ibraries play a pivotal role in maintaining the free flow of information in American Society” and even goes so far as to express disappointment that “courts have not gone very far in devising First Amendment doctrines that more fully protect the intellectual neutrality of libraries.”

¶42 First Amendment scholar Marc Blitz takes the discussion to the next level by reviewing the jurisprudence and scholarship about the right to receive and finding it lacking. He asserts that the right to receive is more than merely a “mirror image” or the “reverse side of the same coin” of the right to free speech. Similarly, Blitz finds Smolla’s depiction of speakers without listeners “as incomplete as one hand clapping” unconvincing. He argues instead for a theoretical conception of the right to receive in which it stands alone as an alternative way for individuals to exercise liberty of conscience and self-development. According to Blitz, silent intellectual contemplation is independent of free speech and expression, and reading and listening are as essential as speaking to the democratic process of citizen interaction and debate. They “bring us closer to the truth, foster individual self-development [and] improve the quality of collective deliberation and self-government.”

¶43 Blitz’s conception of the right to receive sets forth two important characteristics that distinguish it from the right to speech. First, it allows individuals to encounter dissenting or obscure views without having to say what they themselves believe; this creates a safe place for people who might otherwise be unwilling to engage with the material and thereby creates a broader realm of individual liberty. Regardless of a person’s “courage, stubbornness, or certainty” about his or her views, the right to receive creates the opportunity to think quietly and struggle with individual thoughts, without taking the risk of openly alienating him- or herself. Even a person whose “circumstances require outward adherence to a particular view” may engage in self-examination and intellectual exploration. This opportunity for reflection, Blitz asserts, can be “much deeper and more thoroughgoing than the questioning of those who dissent publicly.”

¶44 The second characteristic Blitz identifies that sets the right to receive apart from the right to speech is that it not only provides individual liberty for those who do not
wish to share their position with the world, but it also creates a space for those “who have no stance at all” and gives them the opportunity to gather information, “to sample widely from books and cultural materials instead of espousing a particular position as their own.”135

¶45 Blitz is a proponent of institutions, libraries in particular, that provide a place where individuals may exercise their right to receive. He notes that the right to receive “is often most valuable not in the tumult of the public square, but in the quiet of the library.”136 Exercising one’s right to receive in a physical or virtual library “secures liberty for the shy or uncertain” and “gives individuals exposure to an accumulation of recorded thinking and experience that they might never encounter in their own internal reflections—and with a freedom from social monitoring and pressure that is absent when they question others or test certain identities or views in public.”137 It is the opportunity that libraries provide for solitary, self-directed learning that leads to more nuanced intellectual development and the discovery or formation of ideas that fall outside the “collective pull” of common discourse.138 Ultimately, libraries provide a platform for “individual self-fulfillment and autonomy.”139 Building on John Stuart Mills’s On Liberty, Blitz observes that this freedom from social pressures allows individuals to “conduct valuable thought experiments in living where actual experiments aren’t practical.”140

¶46 This separate and distinct form of intellectual liberty is so important, Blitz argues, that it is worthy of recognition by courts and scholars.141 Indeed, Blitz contends that libraries “may be more important in advancing the individual liberty interests at the core of the First Amendment than in furthering the democratic deliberation it makes possible.”142

The Law Library as a Place of One’s Own

¶47 Scholars commonly recognize that democracy cannot be achieved without shared access to information.143 But it is not the information itself that constitutes democracy; democracy instead lies in the decisions made by an informed people.144

135. Id. at 803, 829–34.
136. Id. at 800.
137. Id. at 804.
138. Id. at 804–06.
139. Id. at 817.
140. Id. at 820.
141. Id. at 804 (“Certain environments where information-seeking itself, even when unconnected to any specific willing speaker or any specific instance of speech, deserves to be valued and constitutionally-protected because of its crucial role in promoting core First Amendment values.”).
142. Id. at 818.
143. Hénaff & Strong, supra note 63, at 221.
144. Id.
Thus, the provision of new outlets of information, from print, to radio, to televisions to the Internet, does not in themselves serve to further democracy.\textsuperscript{145} It is the interaction of the people with that information and the places they are given to do so that provide the true infrastructure of democracy.

\textsuperscript{¶48} Law libraries are knowledge institutions that provide citizens with a place to interact with the laws of our country through research, reading, and quiet contemplation. All law libraries, whether they consider themselves public or private, have common impacts on society through this process: some through the guidance they provide to self-represented litigants, some via creation of influential academic scholarship, others by the contribution of briefs and other persuasive documents to the public record, and others through the legal advice and counsel that steer the lives and businesses of our citizens.

\textsuperscript{¶49} Law libraries’ common impacts on society underscore the importance of the framework through which law libraries protect private inquiry free from the inhibiting effects of surveillance. Kaminski and Witnov identify one result of surveillance as “a weakened minority influence.”\textsuperscript{146} This consequence is damaging to democracy as minority influence “foster[s] better, more deliberate, and more creative thinking than majority influence . . . in part, because minority influence stimulates critical thought.”\textsuperscript{147} Minority influence is one of the key mechanisms that lead individuals to change their opinions, but being in the minority is difficult because of the social pressures associated with it.\textsuperscript{148} As a result, change driven by minority influence typically happens privately through “active information processing” and “considering arguments and counterarguments.”\textsuperscript{149} Surveillance impedes this analytic process by making individuals less likely to research or assume the minority position, resulting in smaller and less confident minorities.\textsuperscript{150}

\textsuperscript{¶50} The virtual and physical walls of law libraries provide temporary freedom from social pressures and private places for engaging with our nation’s laws that are analogous to the room of one’s own envisioned by Woolf.\textsuperscript{151} A person in his or her own room is let alone in all senses—there is no pressure to play social roles, there is no fear of observation or judgment, and there is “utmost control over information flows.”\textsuperscript{152}

\begin{flushright}
\textsuperscript{145.} \textit{Id.}
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\begin{flushright}
\textsuperscript{146.} Kaminski \& Witnov, \textit{supra} note 110, at 506.
\end{flushright}

\begin{flushright}
\textsuperscript{147.} \textit{Id.}
\end{flushright}

\begin{flushright}
\textsuperscript{148.} \textit{Id.} at 506–07.
\end{flushright}

\begin{flushright}
\textsuperscript{149.} \textit{Id.} at 508.
\end{flushright}

\begin{flushright}
\textsuperscript{150.} \textit{Id.} (further noting that “a person’s commitment to a minority position is directly related to her ability to resist majority influence, and surveillance is likely to make it harder to become committed to a minority position”).
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\textsuperscript{151.} Blitz, \textit{supra} note 20, at 820–26 (discussing the philosophy of John Stuart Mill, John Locke, and others and separately observing that many social pressures do not come from political or social tyranny but from family, friends, and colleagues. Small groups can be more stifling than the larger society.).
\end{flushright}

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\textsuperscript{152.} Koops, \textit{supra} note 85, at 624 (noting that “for most of history, a room of one’s own was a
Likewise, a person visiting a law library is offered a place to interact with library materials in a private setting and engage in independent thought. This experience provides a foundation for that person to understand the law, question the law, and ultimately challenge the legal status quo—an endeavor most frequently undertaken by those in the minority.

51 Blitz’s reconception of the right to receive is compelling in light of these ramifications and presents law libraries with a potential new direction for advocacy, should the opportunity present itself in the courts. Recognizing a right to read and engage in silent intellectual contemplation independent of the right to free speech and expression has the potential to improve the democratic process through the deeper substance it would bring to democratic discourse.

52 Ultimately, the protections anonymous reading provides democracy by giving citizens the means to form personal views are comparable to the protections the anonymous ballot provides democracy by giving citizens the means to act on those views.153 Law libraries, through the places they provide for individual exploration and development, particularly with regard to understanding one’s rights and responsibilities among our nation’s laws, inform their patrons’ participation as active citizens. This is among the law library’s greatest contributions to democracy—its support for developing “the next generation of advocates who, bolstered by research and reading, will be able to resist society’s conforming effect.”154

Conclusion

53 By offering places for private reading and contemplation, law libraries provide individuals with a room of their own in which to engage with their nation’s laws. The unique responsibilities that law libraries fulfill protect the privacy rights of readers who wish to become well-informed citizens and thus contribute to a strong democracy through independent thought.

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154. Kaminski & Witnov, supra note 110, at 511.
An Informal Exploration of How Academic Law Libraries Curate Research Guides to Support Democracy, Rule of Law, and the Legal System

Kara Lea Phillips

This article informally explores selected academic law library research guides generally and more specifically diversity, equity, and inclusion guides to show how these guides support democracy, rule of law, and the legal system.

Introduction

¶1 Research guides require a lot of effort to produce and maintain. Challenges include quality, design, platform, currency, and usability. Moreover, libraries may duplicate efforts by creating guides on topics and resources already covered. Despite these drawbacks, research guides continue to be a primary resource available in academic law libraries. Recently, when the Law Library Journal editorial board put out a

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2. Mattson, supra note 1, at 248.
call for articles about how libraries as knowledge institutions support democracy, what immediately came to mind is the wealth of academic law library research guides. Not only do these guides provide open access to helpful resources on various topics, but they also address important issues like COVID; elections; Supreme Court nominations; diversity, equity, and inclusion (DEI); and more. This article explores what kinds of

3. The call for papers stated,
   On behalf of Tom Gaylord, Editor of the Law Library Journal, and the journal's Editorial Board, of which I am a member for one last year, we seek articles that take up the argument that law libraries are “knowledge institutions supporting democracy.” Last year, there was much discussion on this listserv in response to then AALS President Professor Vickie C. Jackson's AALS president's message (summer 2019 AALSNEWS) titled “Legal Scholarship and Knowledge Institutions in Constitutional Democracy.” She listed knowledge institutions as being universities, a free press, scientific offices (public and private), and “even libraries.” To some of us her phrasing sounded as if libraries were an afterthought on her list. While it was later shared that Prof. Jackson holds that law libraries are key players in the role of knowledge institutions, her original phrasing still left some doubts. Several on this listserv called out that we need scholarship to support our claim on being “knowledge institutions supporting democracy.” Now is the time for such scholarship! Our roles as collectors and instructors of legal information are increasingly important when there is so much disinformation being shared purposely or accidentally.

Posting of Edward Hart, Edward.Hart@untdallas.ed, to lawlibdir@lists.washlaw.edu (Sept. 11, 2020) (on file with author).

4. In using the term “democracy” as it relates to knowledge institutions, Vickie C. Jackson states, [w]e as legal educators are part of a broad infrastructure of “knowledge institutions”—universities, a free press, scientific offices (public and private), even libraries—that help provide the epistemic foundation for a successful democracy. Law schools play special roles in protecting our constitutional system, through the scholarship they produce and through how they educate their students to become lawyers, judges, and other participants in our legal system. In these ways, law schools help to maintain a well-functioning system of rights-protecting democracy, based on free and open elections, and to resist erosion of foundational principles of equality, due process, and the rule of law, which serve as bulwarks against authoritarianism.


Jackson mentions a few examples of how law schools assist in maintaining constitutional democracy, including research and scholarship, establishing centers and programs, and educating the next generation of legal professionals. She concludes “[i]n whatever their field of interest, and through whatever scholarly approaches they use, law faculty and their scholarship will, I believe, continue to contribute to the important work of sustaining constitutional democracy and the rule of law, and of moving towards an ever-improving and more just legal system.” Id. Similar to faculty scholarship, many academic law library research guides arguably contribute to the “important work” Jackson notes above.

5. Research guides are also produced by many other types of law and non-law libraries. For example, the LibGuides Community has 5702 institutions from 101 countries. See LIBGUIDES COMMUNITY, https://community.libguides.com [https://perma.cc/X2MC-HU4P]. Among the more than 1900 academic libraries in the United States listed on the LibGuides community as of December 11, 2020, I found 97 academic law libraries. That is about 50 percent of all academic law libraries that use the LibGuides platform for their research guides. For this article, although I limited the scope of my research to academic law libraries, this in no way diminishes the significant contributions of other types of libraries and institutions that produce research guides in support of democracy. It is my hope that they will also contribute to the discussion.
research guides\(^6\) are being produced by academic law libraries and how they support democracy, rule of law, and the legal system.

**Methodology**

\(\S2\) For this informal study, I began by identifying the top headlines and topics of 2020. I already had some topics in mind but wanted to review what others considered significant. It came as no surprise that Google’s top 10 news searches in 2020 included such topics as the election, unemployment, stock market, coronavirus, and environmental events (e.g., California wildfires, Hurricane Laura).\(^7\) Similarly, *Time* magazine highlighted the following issues for 2020: systemic racism, wildfires/hurricanes, the election, and coronavirus.\(^8\) ALM covered important events in 2020 with a photo montage depicting the impeachment proceedings, coronavirus, California wildfires, Black Lives Matter, the election, and the Supreme Court.\(^9\) *ABA Journal* noted that “[t]he 2020 elections, economy and pandemic dominated our year.”\(^10\) Broadly speaking, many of these topics relate to democracy, rule of law, and/or the legal system.\(^11\)

\(\S3\) Next, I randomly chose 20 academic law libraries from the list of ABA approved law schools.\(^12\) This review confirmed that not only were the traditional legal topics

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\(6\). For detailed discussions and studies of research guides, see Mattson, *supra* note 1, at 247 (Mattson’s methodology and analysis provided a helpful model in conducting this informal analysis). See generally Crystal Anson & Mary Woodward, *A Survey of Legal Research Guides*, 84 LAW LIBR. J. 543 (1992). Mattson defines a research guide as “any collection of research resources—regardless of form—selected for inclusion by a librarian and addressing a singular subject designed to orient users and suggest resources to facilitate research queries.” Mattson, *supra*, at 250. Anson and Woodward use the following definition:

[A] research guide addresses a particular subject (“Choosing a Lawyer”), or type of material (citators), or several closely related items (“Federal Bills and Public Laws”). A research guide begins with an opening statement on the item’s uses and gives the user step-by-step instruction on how to access information contained within the item. A guide to a particular item allows the librarian to highlight all the indexes, tables, etc., that he or she may not have time to discuss in person. The information is often written in brief prose on a single sheet of paper and is intended for general use.

Anson & Woodward, *supra*, at 544. When conducting the research for this article, if a library labeled a work a research guide, then I considered it as such.


\(11\). See generally Jackson, *supra* note 4.

\(12\). See ABA, List of ABA Approved Law Schools in Alphabetical Order, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/in_alphabetical_order/ [https://perma.cc/6Z67-8BAJ]. The law libraries were representative: older and newer, private and public,
represented but also the top issues of 2020. As expected, there were comprehensive guides on federal, state, and municipal law, plus international law research, as well as the typical subjects covered in law school, from alternative dispute resolution to wrongful convictions. Some guides partnered with legal clinics, focusing on resources to assist students representing clinic clients. Self Help research guides with free resources and legal assistance referrals for the public were available. There were also guides focused on student support, including low cost and open access textbooks, career resources, writing journal articles, and so on. A few guides focused on resources to promote wellness, covering topics as varied as movies and games, mindfulness, and counseling resources.

Results

The top current events of 2020 were well covered, including research guides on the following topics: protester support, racial justice, social justice, criminal falling at differing levels within the U.S. News rankings. At the time of this survey, these libraries had varying numbers of research guides, from 10 to 90, with an average of 42. The libraries and links to their general research guide page are listed in Appendix A, infra.

Unfortunately, time constraints prevented a systematic review of all academic law libraries.

13. See generally id. (all sites).
justice, prisoner rights, LGBTQIA+ research, the Supreme Court, elections, and COVID-19. While there were no guides specific to the wildfires or hurricanes, environmental law research guides were also represented. Law libraries are producing research guides that not only cover a wide range of legal topics but are also responding to current events in real time.

For a more in-depth analysis, I reviewed research guides focused on diversity, equity, inclusion, and social justice to determine in what ways academic law libraries have covered this important issue. I identified and reviewed guides from 34 academic law libraries. What I found was that these were not cookie-cutter guides. There were variations in the subjects covered and the resources selected. Topics included policing.

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31. Unfortunately, I was not able to check websites for each academic law library; however, I did identify research guides from my initial survey of 20 academic libraries. See supra note 12 and Appendix A, infra. Additionally, I included research guides listed on the AALL’s Anti-Racism, Diversity, Equity & Inclusion Updates & Resources page (https://www.aallnet.org/about-us/press-room/anti-racism-diversity-equity-inclusion [https://perma.cc/KHW5-EYUE]), and I supplemented with Google searches. As of Dec. 31, 2020, my initial list of academic law libraries with research guides on diversity, equity, inclusion, and social justice is in Appendix B, infra.

I am sure there are many more. RIPS-SIS is compiling research guides and resources that “libraries have created in support of diversity, equity, inclusion, social justice, antiracism . . . .” A form is available here: https://docs.google.com/forms/d/e/1FAIpQLSf5L3S3M-F755BfsmymCK_UyFSkLRbn6-N-tuoN1b0J8DK_A/viewform [https://perma.cc/6A7V-FBB3]. Posting of Taryn Marks, tmarks@law.stanford.edu, to AALL Members Open Forum (Dec. 10, 2020).

anti-racism, protester resources, civil rights, activism, and social justice. Specialized guides addressed implicit bias in the law, COVID-19 and racism, and instruction. As for resources, in addition to the articles, books, media, and databases,


36. See, e.g., AJ Blechner, HARV. L. SCH. LIBR., Activist Research Guide, https://guides.library.harvard.edu/activist-research [https://perma.cc/9HE8-9QZC] (“While all lawyers serve as advocates, legal researchers advocating for political or social change require a unique set of skills and benefit especially from particular resources. This guide will help direct you to resources best suited for political and social advocacy work.”).


39. VAND. UNIV., ALYNE QUEENER MASSEY L. LIBR., COVID-19 and Racism: Legislative Responses, https://researchguides.library.vanderbilt.edu/covid_19_racism_legislative_responses [https://perma.cc/JZK3-CH4H] (“a compilation of state and local laws that have been passed in the wake of COVID-19, as a response to the rise of racist and xenophobic attacks on Asians and other minority groups as well as an attempt to address systemic injustices”).

several guides featured special collections, exhibits, and programs. After reviewing these guides, I was impressed with the breadth and depth of issues and resources included. These guides illustrate how frequently law libraries step up to expand research and access.

Conclusion

This article gives only an informal snapshot of the kinds of research guides created, maintained, and made available by academic law libraries. Do these research guides cover every legal topic? No. But clearly, academic law libraries continue to create and maintain guides that respond to important issues so that patrons can find reliable, authoritative information. In this way, academic law libraries as knowledge institutions are fostering scholarship and research on the key topics of the day to support democracy, rule of law, and the legal system.

Appendix A

- Chapman University Fowler School of Law, Hugh & Hazel Darling Law Library: https://libguides.law.chapman.edu/ [https://perma.cc/2DML-TGE6]
- Fordham University School of Law, The Maloney Library: https://researchguides.lawnet.fordham.edu/?b=g&d=a%20 [https://perma.cc/2W6N-47C5]
- Hofstra Law Library: https://libguides.law.hofstra.edu/ [https://perma.cc/LT6V-AMFB]

42. UC DAVIS MABIE L. LIBR., Dr. Martin Luther King Jr.: Mabie Law Library Exhibit, https://libguides.law.ucdavis.edu/MLKExhibit [https://perma.cc/8GTD-EHKS].
• Loyola University New Orleans College of Law Library: https://libguides.law.loyno.edu/?b=g&d=a [https://perma.cc/HZ4C-JL23]
• New England Law Boston Law Library: https://libraryguides.nesl.edu/ [https://perma.cc/ZW55-QECG]
• Northern Kentucky University Chase College of Law Library: https://chaselaw-nku.libguides.com/ [https://perma.cc/45AU-2S29]
• Roger Williams University School of Law Library: https://lawguides.rwu.edu/ [https://perma.cc/ET7F-TL8T]
• Santa Clara University Law Library: https://lawguides.scu.edu/?b=g&d=a [https://perma.cc/JY5L-2FDG]
• Texas A&M School of Law, Dee J. Kelly Law Library: https://law.tamu.libguides.com/ [https://perma.cc/358H-UEFF]
• University of Akron School of Law Library: https://law.uakron.libguides.com/ [https://perma.cc/T4TA-WC5C]
• University of Connecticut School of Law, Meskill Law Library: https://libguides.law.uconn.edu/?b=s [https://perma.cc/B7QV-6W3L]
• University of Kansas School of Law, Wheat Law Library: http://law.ku.edu/research-study-guides [https://perma.cc/ZPZ9-KTQ4]
• University of Michigan Law Library: https://libguides.law.umich.edu/?b=g&d=a [https://perma.cc/3N3X-573G]
• University of Pennsylvania Carey Law School, Biddle Law Library: https://law.upenn.libguides.com/?b=g&d=a [https://perma.cc/C4LD-H7GL]
• Vanderbilt Law School, Alyne Queener Massey Law Library: https://researchguides.library.vanderbilt.edu/law?b=g&d=a&group_id=880 [https://perma.cc/G736-QFG6]
• WMU-Cooley Law Library: https://cooleylawlibguides.com/ [https://perma.cc/2D5J-THCW]

Appendix B

• Arizona State University Sandra Day O’Connor College of Law, Ross Blakley Law Library: https://libguides.law.asu.edu [https://perma.cc/WZY6-H3FU]
• Drake University Law Library: https://libguides.law.drake.edu [https://perma.cc/VK56-TAA5]
• Drexel University Thomas R. Kline School of Law, Legal Research Center: https://drexellaw.libguides.com [https://perma.cc/G82U-BKK8]
• Duke University School of Law, Goodson Law Library: https://law.duke.edu/lib/research-guides [https://perma.cc/4Y45-ZB2K]
- Florida A&M University College of Law Library: https://library.famu.edu/?group_id=5746 [https://perma.cc/2Q4D-HC74]
- Fordham University School of Law, Maloney Library: https://researchguides.lawnet.fordham.edu/?b=g&d=a%20[https://perma.cc/SZN4-N6MS]
- Gonzaga University School of Law, Chastek Library: https://libguides.law.gonzaga.edu [https://perma.cc/F78C-XMGB]
- Howard University School of Law Library: https://library.law.howard.edu/c.php?g=540556&p=3702253#s-lg-box-wrapper-28453672 [https://perma.cc/L3H6-2V82]
- Lewis & Clark Law School, Paul L. Boley Library: https://library.lclark.edu/law/research-guides [https://perma.cc/5QQN-UUAR]
- North Carolina Central University School of Law Library: https://ncculaw.libguides.nccu.edu [https://perma.cc/F68J-E6XQ]
- Northern Illinois University College of Law, David C. Shapiro Memorial Law Library: https://libguides.niu.edu/?group_id=2362 [https://perma.cc/L7WL-QAG5]
- Pennsylvania State University Dickinson Law, Montague Law Library: https://psudickinsonlaw.libguides.com/lawresearchguides [https://perma.cc/3YZX-XK59]
- Roger Williams University Law Library: https://lawguides.rwu.edu/ [https://perma.cc/7YCX-4GLS]
- Santa Clara University Law Library: https://lawguides.scu.edu/?lg=548823&group_id=28453672 [https://perma.cc/MC65-ZHHZ]
- Seattle University Law Library: https://lawlibguides.seattleu.edu/index.php [https://perma.cc/86LC-QKAE]
- Southwestern Law School, Leigh H. Taylor Law Library: https://libraryguides.swlaw.edu/ [https://perma.cc/6HXF-93RL]
- Texas A&M University School of Law, Dee J. Kelly Law Library: https://law.tamu.libguides.com/ [https://perma.cc/9C7A-H8UT]
- UC Davis Mabie Law Library: https://libguides.law.ucdavis.edu/home [https://perma.cc/4LHG-DW5N]
- University of Akron School of Law Library: https://law.uakron.libguides.com/ [https://perma.cc/E7BM-DKSM]
- University of Connecticut School of Law, Meskill Law Library: https://libguides.law.uconn.edu/?b=s [https://perma.cc/2YE5-L3ZA]
- University of Georgia School of Law, Alexander Campbell King Law Library: https://libguides.law.uga.edu/c.php?g=239099&p=1589799 [https://perma.cc/53W7-YAD3]
- University of Hawai’i Manoa Law Library: https://law-hawaii.libguides.com [https://perma.cc/PBF6-BLRZ]
- University of Minnesota Law Library: https://libguides.law.umn.edu/ [https://perma.cc/BQG3-6458]
- University of New Mexico Law Library: https://libguides.law.unm.edu/ [https://perma.cc/3N8M-UMMH]
- University of Oregon School of Law, John E. Jaqua Law Library: https://library.uoregon.edu/law/guides [https://perma.cc/TW67-LNWN]
- University of Richmond School of Law, William Taylor Muse Law Library: https://law-richmond.libguides.com/Muse_Guides_Directory [https://perma.cc/2XHG-QGQC]
- University of Washington, Gallagher Law Library: https://guides.lib.uw.edu/law/guides [https://perma.cc/HGE2-MLYP]
- USC Gould School of Law, Asa V. Call Law Library: https://lawlibguides.usc.edu/ [https://perma.cc/N2VP-8X3W]
- Vanderbilt University, Alyne Queener Massey Law Library: https://researchguides.library.vanderbilt.edu/law [https://perma.cc/TNZ5-2Y5W]
- Washington and Lee University School of Law Library: https://libguides.wlu.edu/law [https://perma.cc/Y43Z-6YQ6]
- Washington College of Law, Pence Law Library: https://wcl.american.libguides.com/ [https://perma.cc/9Q6U-YCDA]
Keeping Up with New Legal Titles*

Compiled by Susan Azyndar** and Susan David deMaine***

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* The works reviewed in this issue were published in 2020 and 2021. If you would like to write a review for “Keeping Up with New Legal Titles,” please send an email to sdemaine@indiana.edu and sazyn dar@nd.edu.

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*** Director and Senior Lecturer, Jerome Hall Law Library, Indiana University Maurer School of Law, Bloomington, Indiana.
National Security, Leaks and Freedom of the Press: The Pentagon Papers Fifty Years On, a volume of essays, reflects on developments in freedom of the press and security leaks over the 50 years since the U.S. Supreme Court handed down the landmark Pentagon Papers opinion.1 The authors—First Amendment scholars, journalists, and national security experts—examine changes, or the lack thereof, as well as the relevance of the case to 21st century concerns. Lee C. Bollinger, president of Columbia University, and Geoffrey R. Stone, professor of law at the University of Chicago, edited the volume and convened a committee of experts to make recommendations for changes to deal with leaks in the digital age.

The Pentagon Papers were composed of a portion of a classified history of the United States’ involvement in Vietnam, photocopied and leaked to the New York Times and Washington Post by Daniel Ellsberg, who had helped to compile them. The Nixon administration sought injunctions against both newspapers, succeeding against the New York Times but losing to the Washington Post. The cases were quickly appealed and reached the U.S. Supreme Court in late June 1971. The Court issued a per curiam decision just five days after oral argument. The decision was only three paragraphs long but was an enormous victory for freedom of the press, as it limited the government’s ability to prevent the press from publishing news the government would prefer remain non-public information.

The essays provide solid analysis of how leaks and reporting have changed since the days when Ellsberg used a photocopier to copy thousands of pages and deliver the physical papers to reporters. Now, classified documents can be stored on a USB drive and leaked with a click of a button. One of the opening essays, “The Pentagon Papers Framework, Fifty Years Later;” details some of these changes. In a later essay, “Behind the Scenes with the Snowden Files: How the Washington Post and National Security Officials Dealt with Conflicts over Government Secrecy,” author Ellen Nakashima details how the Washington Post balanced the public’s right to know with the need for governmental secrecy in reporting on information leaked by Edward Snowden. Her reporting on the Snowden leaks won a Pulitzer Prize in 2014.

The essays are organized around three perspectives: that of the national security community, that of journalists grappling with the tension between the public’s right to know and the government’s need for secrecy, and that of academics peering in from the outside. I found one of the “journalist perspective” essays, authored by Jameel Jaffer, executive director of the Knight First Amendment Institute at Columbia University, particularly interesting. Jaffer examines the poor treatment of whistleblowers in relation to the public service they provide in revealing the full actions of government. The current response to whistleblowers is noteworthy since Ellsberg, after being charged with violating the Espionage Act of 1917, escaped prosecution for government misconduct and illegal wiretapping. Chelsea Manning, Julian Assange, Edward Snowden, Reality Winner, Terry J. Albury, and Daniel Hale are some of the most recent leakers of classified information to be charged under the Espionage Act.

The editors also convened a commission of experts to discuss the issues raised by the essays, and its report concludes the book. In brief, it reports too much information is deemed classified, and whistleblowers deserve more protection as well as access to internal methods of resolving their issues without leaking. The commission recommends fixing overclassification problems, creating alternatives to leaking within governmental structures, and remedying a legal system that is both too harsh on leakers and underdeters leaks. The commission also proposes that the press not be protected by the First Amendment when it engages in prohibited activities unrelated to publishing, such as computer hacking, eavesdropping, or trespassing in pursuit of material.

These essays take a thoughtful look at the state of freedom of the press and how it may evolve. They are written in an engaging manner that draws on the varied expertise and viewpoints of the many authors. It is recommended for any library, law or otherwise, collecting in the areas of whistleblowers, national security, or freedom of the press.

Reviewed by Gail Wechsler

¶7 Our world suffers through many crises, both individually and collectively. In many of these situations, lawyers are called to the scene. What role do lawyers play in crisis situations? Do traditional lawyering skills work, or are different strategies required? These are among the questions addressed in Crisis Lawyering: Effective Legal Advocacy in Emergency Situations, edited by Ray Brescia and Eric K. Stern. It offers many words of wisdom for those who litigate, mediate, or otherwise flex their legal muscles to help those in dire need.

¶8 This collection contains essays by multiple authors, most of whom are writing in their capacities as lawyers who have stepped up to address a crisis at hand. The essays are divided into sections with titles such as “Beyond the Familiar and the Imperative of Creativity” and “Educating and Skill Building.” Despite this sectioning, one common theme running throughout the collection is the nontraditional, outside-the-box nature of crisis lawyering. Creativity, coalition work, and collaboration are key. Another common theme is the importance of preparation even when the contours of the crisis to come are unknown.

¶9 Several chapters are particularly helpful in that they provide an overview of a crisis situation that unfurled followed by concrete best practices learned from that experience. For example, in a chapter on litigation on behalf of homeless in the 1980s, author Richard Pinner concludes with key questions to ask when working with this population, including factors to consider when getting started and strategic partnerships to form. These takeaways can help others preparing to offer similar crisis lawyering in the future.

¶10 I found my interest level varied from essay to essay. I was most drawn to chapters that told stories of heroic litigation efforts, relatable clients, and compelling issues. In an early example, lawyers represented a domestic violence victim who lost her case in the U.S. Supreme Court, made the daring decision not to give up, and took her case to the Inter-American Commission on Human Rights. Also compelling were stories about an in-house counsel for a major newspaper who was forced to intervene in the kidnapping of his reporters, a lawyer who worked for years doing election protection work on Election Day, and a team of lawyers who went into emergency mode to bring a lawsuit challenging the Trump administration’s first “Muslim ban” less than 24 hours after it went into effect. These were the types of stories that brought the reader right into the action while also offering important pointers: emergency lawyering works best when several organizations with expertise on the issue join forces; or, sometimes not bringing a lawsuit is the best way to achieve your goals.

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In contrast, I found some chapters very technical and dry, making it harder to keep my attention focused on the topic and the lawyering advice. This is likely inevitable in a collection wherein each chapter has a different author and the issues vary widely. Nonetheless, I recommend this collection. It would be a good addition to any law library seeking to expand its diversity, equity, and inclusion holdings, as many of the stories focus on clients from marginalized populations. I also would recommend it for academic law libraries. A number of the chapters hold lessons that would help those who teach or participate in law school clinics.


Reviewed by Christine I. Dulac⁴


As noted in that review, I was drawn to the book for two reasons. First, Buck is a 2005 graduate of Maine Law, of which I am an employee and proud alumna. Second, I attended the 2009 AALL Annual Meeting program on incorporating movies into teaching as a way to engage students. Eleven years since the publication of Buck’s first edition, the use of movies, television, and other pop culture artifacts in teaching and learning has continued to grow, to say nothing of the explosion of streaming services that make movies and television programs more accessible than ever before.

In my review of the first edition, I noted that Buck compiled an interesting mix of movies, including classics, like *Twelve Angry Men*, as well as current favorites, such as *Erin Brockovich*. In this new edition, she has added 18 movies to the list. As in the first edition, she provides a concise summary of the plot and analyzes the legal issues in each, pointing out how the movie touches on various fields such as business law, criminal law, criminal procedure, civil procedure, contracts, constitutional law, employment law, and so on. She also includes exam tips, bar exam tips, and movie extras, when appropriate. New to this edition, the author includes rhetorical questions designed to engage the reader in a deeper analysis of the issues at hand. Many of the movies involve

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² Editor’s note: At time of press, price and format availability depended on seller; see, e.g., https://www.amazon.com/Movie-Therapy-Law-Students-2020-ebook-dp-B08M4H39WY/dp/B08M4H39WY/ref=mt_other?_encoding=UTF8&me=&qid= [https://perma.cc/K882-D5H9].

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legal issues that go beyond the traditional first-year subjects of torts, constitutional law, contracts, property, and civil procedure. The breadth of the subject matter makes this useful and approachable for all law students, no matter where they are in their law school career, as well as for faculty teaching upper-level topics.

¶15 Many entries cover multiple issues, each separated by bold headings, making it easy for the reader to switch gears with each new issue. In addition, Buck includes movies that speak to some of the most current legal issues, such as the inherent biases in the criminal justice system, as portrayed in *Just Mercy* (Warner Bros. 2019), or who should retain custody of a dog when a couple divorces, portrayed in *Who Gets the Dog* (Epic Pictures Group 2016).

¶16 The most surprising inclusion on the list was, at least to me, *Ted 2* (Universal Pictures 2015), for all the reasons the author points out: “downright ridiculous, disgusting, contains drug use, violence, language, filth, racism, sexism, anti-Semitism . . . ” (p.310). What could a movie about a crass-talking anthropomorphic Teddy bear have to do with the law? Buck uses this movie to discuss the constitutional requirements of standing to sue. She also discusses the issue of citizenship under the Fourteenth Amendment. Even with a movie that she admits is “one of the most offensive movies she has ever seen” (p.310), Buck is able to find legal concepts portrayed in the movie and clearly lay out these concepts in a readily understandable way. In fact, in the “Legal Briefs & Movie Extras” for *Ted 2*, Buck points out that Seth MacFarlane said the plot for this movie was in part inspired by the story behind the landmark case about personhood, *Scott v. Sandford*.4

¶17 The films are organized by release date from oldest, *Young Mr. Lincoln* (Twentieth Century Fox 1939), to newest, *You Can’t Take My Daughter* (Big Dreams Entertainment 2020). Helpful readers’ aids, including an alphabetical listing of the movies and a subject-matter index, make it easy for readers to locate a movie of interest or to find all films on a particular legal topic. My only complaint with these tools is they lack page numbers, which would make the index and alphabetical listing more useful. Finally, the author provides citations to relevant legal authority throughout the text, including citations to case law, statutes, court rules, rules of evidence, and ethical rules. The citations are especially helpful for faculty who want to use a film in their teaching.

¶18 We love to go to the movies. Streaming services like Netflix, Hulu, and Amazon Prime have made watching movies even easier. Presenting material to our classes in an interesting and engaging way through film is a worthy goal. Doing so in the era of Zoom and hybrid teaching environments has encouraged faculty to engage their students in novel ways. Buck’s work in *Movie Therapy for Law Students* removes some of the pressure from the faculty. It provides astute explanations on some of the best-known legal movies, as well as more recent entries. Once again, Buck piqued my interest in legal movies. Recommended for public libraries and both academic undergraduate and law libraries.

4. 60 U.S. 393 (1856).
With the recent deaths of Breonna Taylor, Rayshard Brooks, Ahmaud Arbery, and George Floyd, as well as the current political climate and attacks on critical race theory, *Integrating Doctrine and Diversity* arrives not a moment too soon. It has become increasingly difficult and absurd to “bleach out” law school courses and curriculum and to tout the “perspectivelessness” of those who make and enforce laws in America. Doing so would neglect legal instructors’ responsibility to educate and prepare future lawyers and leaders for practice in a diverse world. Indeed, in her foreword to the book, Dean Onwuachi-Willig of Boston University School of Law recalls faculty and students’ observations that “traditions and practices worked to produce law school graduates who are completely unaware of how to be critical consumers of the law and who were largely ill-equipped to represent a diverse clientele, work with and manage a diverse group of lawyers, and serve as leaders in their increasingly diverse and interdependent communities, cities, states, and nation” (p.ix). The many authors featured in this collection presuppose that readers recognize the importance of integrating doctrine and diversity and want to create culturally competent lawyers and leaders. To that end, it reads as a how-to guide, with detailed advice for law professors from their colleagues, and curated bibliographies from trusted law librarians, who share in the same goal. In this book, the reader finds a welcoming community of fellow legal instructors who enthusiastically and humbly share their pedagogy and techniques.

As editor-author Nicole P. Dyszlewski demonstrates in the opening chapter, the work of integrating diversity into the classroom is not easy or comfortable. To some, Dyszlewski notes, this is a daunting task: “This work requires humility, patience, resolve, and dedication; the same qualities which helped you become a law professor in the first place. This authentic education has you working with students, and this work, however difficult, is the way forward” (p.14).

The book was born out of conversations addressing whether diversity issues were being taught in law school, how they were being taught, and how such teaching could be integrated and supported throughout the law curriculum. Although this work began as a project undertaken prior to 2020, the “new climate” surrounding discussions of diversity has increased awareness of the need for curricular change (p.xii). The book is a collection of “road maps for how to integrate diversity into the traditional 1L curriculum in a way that is approachable and accessible” (p.xiv). The overarching message

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is that diversity is not separate from the law, although we may have thought it was given
the construction of the law school curriculum at many institutions.

¶22 Law professors can effectively integrate diversity into the doctrinal courses they
teach, a principle reflected in the decision to divide the book into nine “chapters” that
cover legal subjects typically taught in the first-year curriculum. Each chapter includes
a collection of articles about teaching, plus an annotated bibliography of resources
related to integrating diversity in that area of law. The articles address how issues of
diversity apply to the area of law generally and to specific cases traditionally included
in the curriculum. Many of the articles offer alternative cases that could be used to
teach the same legal rules along with pedagogical techniques useful in teaching issues
of diversity in each subject area. Each chapter closes with an annotated bibliography
offering selected resources such as books, articles, websites, and videos for further
research, accompanied by explanations of what a professor may find useful about each
one. The variety of research resources highlighted appeals to diverse learning styles and
personal preferences of professors.

¶23 In the introduction, Dyszlewski describes Integrating Doctrine and Diversity as
an “approachable and accessible” (p.xiv) compilation of road maps that serves as “a
resource by law professors for law professors” (p.xiii). The book certainly follows
through on this claim and can be read and implemented by law professors and/or law
librarians at any stage in their career. The writing style of each author is welcoming and
presumes only a will to teach diversity issues. This book is highly recommended for any
law instructor and all academic law libraries.

Fairfield, Joshua A.T., Runaway Technology: Can Law Keep Up? Cambridge, UK:  

Reviewed by Daniel Radthorne*

¶24 Is the field of law capable of adapting to the unprecedented technologies that
permeate modern life? In Runaway Technology: Can Law Keep Up?, author Joshua
Fairfield answers with a resounding “yes,” provided we act with the alacrity and inten-
tion the task demands. By turns deeply cynical and highly optimistic, Fairfield lays out
a convincing vision for realigning the tech sector with societal well-being.

¶25 In Fairfield’s conception, law is itself a “technology”—a distinctly human tech-
ology we create for the express purpose of managing our affairs and interactions. Law
has always been able to “keep up” with the world because it is, in fact, the scaffold on
which we adapt ourselves to new circumstances. Law is how we create rules to handle
everything from technical innovations (like steamships and railroads) to increasingly
complex social mechanisms (like voting and international markets). In other words,
crafting law is how we keep up with our own advancement.

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Austin, Texas.
Legal practitioners, particularly in common law contexts, are at the forefront of this effort, using analogy and interpretation to fit new developments into long-standing, deeply intuitive legal doctrines. For Fairfield, this process has broken down only recently due to a preventable concatenation of factors, chief among them the legal profession's abdication of its traditional role. He places particular blame on the legal academy's abandonment of established interpretive tools in favor of stubborn attempts to shoehorn ill-suited social and hard science techniques into legal contexts. These efforts have been exacerbated, in Fairfield's view, by technology companies' self-serving narratives about the infeasibility of regulation and by the proliferation of information technology echo chambers that deprive us of diverse viewpoints. Fairfield posits that building linguistic communities that embrace such diversity, reject coercive authoritarian influence, and develop their own shared goals could reorient our society under new, powerful ideas. These new cooperative fictions could align science, technology, and end users toward long-term success and away from the current paradigm of exploitation.

That may sound abstract and, indeed, those seeking concrete policy prescriptions will not find them here. Unlike some other recent entries in this space, Fairfield does not endorse a particular technical approach to reigning in “Big Tech” (though he is not shy about deriding what he views as the industry’s corrosive influence). With an engaging and casual style, Fairfield instead guides the reader through a model for generating language that might inform new, uniting legal principles that could, in turn, be brought to bear on modern problems. At its best, the prose crackles with a righteous energy that compels the reader deeper into the exercise.

Unfortunately, the book is not always at its best. The narrative is plagued by unnecessary repetition and rephrasing of core points from earlier sections. The flow between chapters is repeatedly broken by frolics into adjacent topics or philosophical background, robbing the text of urgency. Most problematically, Fairfield sometimes paints with such a broad brush in constructing his narrative that he drifts away from scholarship and into unsubstantiated polemics. After a wonderful overview of the history of scientific epistemology from the Enlightenment to the mid-20th century, Fairfield veers into a few anecdotal examples of recent algorithm-driven scientific projects. He then claims to have demonstrated that all modern science is engaged in a misguided quest to “maximize production, performativity, and profit” (p.142). This myopic view reduces the entire scientific enterprise to the activities of technology company R&D departments and is supported by little more than the occasional citation to the New York Times or the Washington Post. There is nothing inherently wrong with questioning the narratives and incentives that drive modern scientific inquiry. However, there is simply too much daylight between the nodes of this argument, and others like it throughout the text, to support the sweeping generalizations in which Fairfield sometimes indulges.

Despite these issues, Runaway Technology remains a highly original application of linguistics and philosophy, inviting the reading audience to reframe their understanding of where law comes from and what it can help us accomplish. Those intrigued by the more theoretical aspects of jurisprudence will likely find the book valuable, and
casual readers might find its history of scientific and legal thought an appealing entry point for the field. Accordingly, libraries that seek out meditations on big ideas or maintain a section for popular-interest titles on legal subjects would be well served by adding this highly readable work.


Reviewed by Christine Bowersox

¶30 Throughout history, clothing has been utilized as a sign of wealth or poverty, aristocracy or commoner, ruling class or ruled. Dress codes and laws surrounding dress coincided with what is considered the birth of fashion at the end of the Middle Ages. These codes were developed largely to reinforce the idea of dressing according to one's class or status, from early examples reserving certain fabrics for nobility to the current trend of eschewing traditional formal business wear as a hallmark of the modern-day tech industry. Richard Thompson Ford takes us from the 1300s to the present day, covering key periods in fashion history with a focus on dress codes associated with these times and how people “tried to control fashion and why” (p.18).

¶31 Ford breaks down this long history into five major parts, starting in the 14th century with the Renaissance. Dress codes were used by the elite to augment social stratification, using the new technique of tailored clothing to express power and rank. Fashion was considered a threat to the previous social order as new economies allowed the development of a class of wealthy merchants, bankers, and tradespeople to show off their new status in garments once out of financial reach. In the Tudor era, trunk hose were considered ostentatious, and those who wore them violated a number of sumptuary laws passed under the guise of austerity. In reality, these laws aimed more to “reserve status symbols for the elite” than to maintain a moral society (p.28).

¶32 Ford then focuses on the shift from opulent clothing to more elegant styles. The rise of the Enlightenment period corresponded with dress codes emphasizing a more understated style, reflecting new social values of industriousness, competence, and reasoning. This shift, referred to as the “Great Masculine Renunciation,” started in the late 18th century, with a more masculine and Puritan style replacing the powdered wigs and ornate clothing of previous periods (pp.79–80). The development of more nationalistic feelings during this time also gave rise to national dress codes, some of which banned traditional ethnic dress to create a sense of unity. Such attempts were not always successful. For example, the Tartan Act, a form of “sartorial colonization” (p.88), sought to ban traditional Highland garb, but the law backfired and led to greater identity with, and adoption of, this style of dress among the Highlanders of Scotland.
¶33 Ford next explores dress codes as a means of claiming power or, as he terms it, “power dressing” (p.155). In this part, Ford focuses mostly on the dress of African Americans, evoking the power of attire to reinforce their “claims to equal dignity and respect, first as slaves, runaways, and free Blacks struggling for basic humanity in an unapologetically racist society . . . after Emancipation . . . and, of course, during the civil rights struggle” (p.21). The Great Masculine Renunciation left out groups such as women and minorities, passing laws and dress codes to keep certain of these groups from “dress[ing] above their condition” (p.155). Ford provides countless examples of such dress codes, such as Negro Acts that controlled slaves and free Blacks, the violence perpetrated on Latinos and others who wore zoot suits in the 1940s, and the “respectable” hairstyles required of Black women in the 1960s, a “time consuming and expensive” endeavor that also carried the implication that their hair required “extensive transformation to be presentable” (p.180). Ford then turns to more recent times, scrutinizing the late 20th to early 21st century. In part four, he first investigates dress codes as they have been used to regulate and define gender, with a focus on women's dress as political and as an expression of personality. As women fought for equality and started to assume roles once reserved for men, traditional dress gave way to a range of styles, from austere and modest looks to sexualized and assertive ones. Dress codes for women were challenged under Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in the workforce. Ford provides the example of a business requiring women, and only women, to wear makeup at work. A challenge to this dress code was rejected by the Ninth Circuit Court of Appeals in 2006 due to precedent that created an “exception to employment discrimination laws for gendered dress codes” (p.227).

¶34 Ford’s final section explores modern takes on dress codes, including the absence of a consistent code and the reintroduction of opulence and elegance in modern dress. In the court of Louis XIV, it was decreed that red-soled shoes were allowed to be worn only by those who had certain social rankings. Today, Christian Louboutin has staked a claim to red-soled shoes by filing them as a registered trademark. Much like the sumptuary laws discussed in part one, modern trademark laws serve to “protect [the] exclusivity and high status” (p.300) of these goods, but also to prevent the masses from sharing in a similar style. In the end, Ford brings us full circle by showing that our laws concerning dress in current times differ little from when they were first developed.

¶35 I found this treatise deeply informative and accessible to readers without a strong legal background. While case law is cited and areas of law are examined in depth, readers do not need familiarity with the law or legal terms to understand this information. The book is recommended if your area of practice or study is fashion or trademark (or intellectual property generally), and for libraries that specialize in any of these areas.

Reviewed by Paul Pruitt, Jr.

¶36 Oliver Wendell Holmes, Jr. (1841–1935) is one of the great figures of American law. His writings, majority opinions, and dissents, reinforced by his long tenure on the U.S. Supreme Court (1902–1932), were instrumental in undermining 19th century formalism and ushering in a new era of judging. Over these years, Holmes was a fore-runner of the approach to jurisprudence now known as legal realism. His personal charisma—tall, handsome, and witty—has kept alive a folk memory of his greatness while his published correspondence has confirmed his great erudition.

¶37 From about 1880 until shortly before his death, Holmes kept a black notebook (hereinafter BB). He began it with transcribing reading notes for his study, *The Common Law* (1881), a treatise that famously emphasized “experience” over “reason” in the development of law. The second half of BB consists of yearly reading lists of impressive length: 55 titles in 1908, 59 titles in 1924, and 69 titles in 1930, to cite but three. Plainly, BB provides valuable insight into the study habits of a great scholar, but few beyond the inner circle of Holmes scholars have known of its existence. Now, Michael Hoeflich and Ross Davies have taken on the formidable task of deciphering Holmes’s small, cramped hand to transcribe BB. The volume begins with an abundance of prefaces (three), after which Hoeflich and Davies, along with Steven A. Epstein, provide useful and instructive essays.

¶38 Hoeflich’s “Oliver Wendell Holmes, Law & the Self-Creation of a Scholar-Jurist” shows that Holmes’s “knowledge of ancient and medieval law was far greater than scholars have credited” (p.xviii) and that he achieved that level of knowledge by mastering difficult bodies of French and German scholarship. Hoeflich also makes the nice point that Holmes wanted to be a scholarly jurist, not merely a scholar. Epstein’s “The Black Book and Premodern Law” is a tour de force, surveying the works for which Holmes made extensive notes. Epstein places these titles in historiographical context, covering “the three great legal systems” that fascinated Holmes: “Roman, early Germanic, and above all English Common Law” (p.xxv). In “The True Reason Appears from the Old Books,” Davies discusses Holmes’s judicial practice of “working both sides of the street” (p.liii), which means that Holmes took account of precedent and public policy. Davies makes a point of discussing the complex relationship between Holmes’s writing and his judicial life, including his habit of self-citation (pp.lx–lxii).

¶39 Faced with the voluminous lists of books in BB, many readers will ask what patterns they reveal. What do the notes and lists indicate about Holmes’s ongoing scholarly life? How long after publication of *The Common Law* did Holmes continue to conduct research? Or the reader could attempt to follow the trail blazed by Louis Menand’s *Metaphysical Club* (2001), in which we see Holmes’s engagement with a
group of first-rate minds. Titles by Holmes’s friends William and Henry James, his English confidante Frederick Pollock, and his 20th century correspondent Harold Laski are easily found in BB. These and other interpretive projects present themselves, but this reviewer sought only to ask one question: What types of books were Holmes’s favorites?

¶40 One clear answer is that Holmes was much inclined to philosophy. His lists include more than 120 references to works by or about philosophers, ranging from the classical Greeks to then contemporary pragmatists. Judged by frequency alone, Holmes’s favorite philosopher (11 references) was his contemporary George Santayana. Aristotle, Hegel, and William James were tied at seven references apiece; John Dewey, Alfred North Whitehead, Bertrand Russell, and Spinoza (the latter a great influence on Santayana) each registered four references. All of these names can be found, copiously, in indexes to Holmes’s published correspondence.

¶41 It should surprise no one that classical writings also abound in Holmes’s lists, being a staple of studies at Harvard, Holmes’s alma mater. Holmes registers works by the standard philosophers (Plato and Aristotle); historians (Thucydides, Sallust, Tacitus, and Plutarch); dramatists (Sophocles, Aeschylus, Aristophanes, and Plautus); Petronius the Satirist; and the letter writer Pliny the Younger. Some of these he read in translation, others in the original. Sometimes his entries were written in an original language that was Greek to this reviewer.

¶42 Holmes’s lists also abound with the works of great European writers from the late Middle Ages onward. However, I was intrigued to find titles from what might be called the great era of boyish adventure (1880–1920). It seems that titles by Robert Louis Stevenson, Arthur Conan Doyle, H. Ryder Haggard, Rudyard Kipling, John Buchan, and Alfred Ollivant helped fill Holmes’s time during the evening. Likewise, the many titles from the “Golden Age” of mysteries that fill up the lists in the last years of Holmes’s life—all show that the great jurist needed escape reading like the rest of us.

¶43 Readers of The Black Book of Justice Holmes should thank Hoeflich, Davies, and Epstein for making this vital primary source available to us and for providing us with keys—more than can be covered in this review—for its unlocking. Recommended for Holmes scholars as well as academic law libraries.


Reviewed by Nicholas Mignanelli*

¶44 At first glance, Knowledge Justice appears to do something novel, namely, to use the lens of critical race theory (CRT) to interrogate librarianship. But as Ecclesiastes tells us, “There is nothing new under the sun” (Ecc. 1:9 [NRSV]). Indeed, law librarians

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have been engaging CRT for over three decades now. Although this fact does not pre-empt this volume or detract from its potential as a new foundation for further scholarship in this area, *Knowledge Justice* does contain a significant omission. While the editors and contributors repeatedly point to Richard Delgado and Jean Stefancic as authorities on what CRT is, in only one instance does the reader encounter a reference to Delgado and Stefancic's considerable legal information scholarship. This is a missed opportunity because Delgado and Stefancic's line of articles provides an excellent model for how CRT can be effectively used to criticize library and information practices.

¶45 Reading the introduction to *Knowledge Justice*, I was impressed by the editors’ bold decision to “intentionally use library and information studies, rather than library and information science” (p.34, n.1). The editors are exactly right in their assertion that librarianship is not a science. Indeed, the use of scientific rhetoric to obscure the subjectivity involved in organizing information has done untold harm to marginalized groups throughout the history of modern librarianship. I was also heartened by their commitment to using CRT to reenvision librarianship “not only as a[n] . . . academic field but also as a far-reaching institution with organizations, governing bodies, and professional standards and guidelines” (p.7). This commitment will be crucial to ensuring that CRT in librarianship is not derailed by the idealistic and discursive tendencies that have hindered the progress of CRT in other fields.

¶46 On the other hand, I found several of the editors’ stylistic choices distracting and counterproductive. For example, in the literature review section, the editors refer to each referenced author with the pronoun “they” when an Internet search would have allowed the editors to identify each author’s pronouns. For my part, I think it is always better to refer to an individual by the pronoun with which that person identifies. I was also perplexed by the land acknowledgment statement found at the beginning of the introduction. As Indigenous scholars have argued, land acknowledgment statements are highly problematic.

¶47 Regarding the chapters, the contributors address a wide array of library topics, from the foundational (e.g., library neutrality, the organization of information, and

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access to information), to the specialized (e.g., archival practices, children’s literature, and the intersection of librarianship and the digital humanities). However, the use of CRT methodology is somewhat limited in scope. For instance, while a number of contributors utilize storytelling, far fewer employ interest convergence analysis, even in instances where the latter would have been more useful in explaining why racial injustice persists in librarianship.

¶48 While Knowledge Justice contains a number of thought-provoking and even polemical chapters, I encourage academic law librarians to read Harrison W. Inefuku’s chapter, “Relegated to the Margins: Faculty of Color, the Scholarly Record, and the Necessity of Antiracist Disruptions.” In it, Inefuku uses the CRT precept that “racism is ordinary” (p.197) to examine how the academic publishing and scholarly communication gatekeeping processes “create[] a body of knowledge that privileges a white worldview” (p.198). Inefuku’s criticisms of research topic and methodology selection, peer review, knowledge dissemination, and tenure processes will ring true for law librarians who have often contended with the legal academy’s equivalent structures, but what makes Inefuku’s chapter particularly valuable are the practical strategies he proposes for disrupting the way white supremacy operates through these processes.

¶49 I have long observed that law librarianship is somewhat isolated from the field of librarianship as a whole. We have our own scholarly literature, and we are far more likely to embrace trends in legal scholarship than trends in LIS, which is, of course, why we have been engaging CRT for so long. While I have no particular objection to this situation, I hope it will not deter law librarians, especially academic law librarians, from reading this book and using it to imagine what the field of law librarianship would look like if it internalized the insights of CRT.


Reviewed by Eve Ross*

¶50 The NCLC Digital Library is an online set of 21 trusted treatises on consumer law topics, along with more than 2600 sample documents. Staff attorneys at the National Consumer Law Center (NCLC) are primary authors of the treatises, with contributions from other attorneys who practice in the relevant fields. Long-standing reliance on these treatises is evident in that Consumer Bankruptcy Law and Practice is in its 12th edition, while Consumer Credit Regulation and Truth in Lending are each in their 10th editions. In addition, the number of titles has grown over the years. The treatises are also available in print and can be purchased individually, including first editions (2019) of Home Foreclosures and Mortgage Servicing and Loan Modifications.

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Rather than staying with a print-first model that simply reformats physical books as e-books, the NCLC Digital Library demonstrates the added value of an online-first model in three ways. First, the “Highlight Updates” checkbox lets the reader reveal changes NCLC has integrated into the text of an online treatise since the most recent print edition, with red flags to indicate important changes to the law. Second, the search feature has a dropdown menu that adjusts search scope to (1) all content, (2) all treatises to which the user subscribes, (3) the current treatise, or (4) the current chapter. The all-content option adds value because subscribing to at least one online treatise results in free access to the first chapter of all the other treatises as well. The treatises’ first chapters tend to cover threshold questions straightforwardly. Using the first chapter in addition to the table of contents (tables of contents are available to all without a subscription), a researcher can get a good idea whether adding a given treatise to the subscription would shed light on a research question. Third, the 14,000 case summaries associated with the Fair Debt Collection treatise are searchable by court, topic, year, citation, party name, and key word in the FDCPA Case Connector database, which is unique to that treatise.

Sample documents associated with each treatise are useful, with three limitations to keep in mind. First, documents are not available individually. To download any document, the user must be subscribed to the treatise associated with that document. Second, when the user selects a state law cause of action as the legal claim in “Advanced Pleadings Search,” there may be sample documents from only one or two states. The collection tends to be stronger for federal consumer law, with 243 sample documents relating to the Fair Credit Reporting Act findable in “Advanced Pleadings Search,” for example. Third, searching across the set of treatises for sample documents can be complicated. Sample documents are appended to specific treatises and are categorized either as “Pleadings and Discovery” or as “Practice Tools.” Only the documents categorized as “Pleadings and Discovery” appear in the “Advanced Pleadings Search” and in the browsable online-only treatise Consumer Law Pleadings. The “Pleadings and Discovery” category includes many documents beyond a strict definition of those words, including demand letters, jury instructions, motions for attorneys’ fees, and more. However, some documents labeled “Practice Tools” seem to fit that broad definition equally well. For example, in the companion materials to Student Loan Law, notices may be classified either way. The “DOE Notice of Cancellation of Solicitation” is labeled “Pleadings and Discovery,” and the “Treasury Notice of Offset” is labeled “Practice Tools.” The DOE notice is findable in “Advanced Pleadings Search” and Consumer Law Pleadings, while the Treasury notice is not. Documents labeled “Practice Tools,” like the Treasury notice, are discoverable by searching “All Content” and by browsing the companion materials for a specific treatise.

Except for Surviving Debt, which is written for a general audience, NCLC is clear that its treatises are intended for practicing lawyers, not for a lay audience. Nonetheless, when an issue is more complex than a general reader can resolve alone, it can be helpful to let the reader look at the same treatises a lawyer would likely use. The treatises may help the lay reader develop a reference point, ask effective questions, and select a well-qualified lawyer who can answer those questions. The NCLC Digital
Library is recommended for government law libraries open to the public, law school libraries with a public service mission, and law firms that represent consumers, merchants, debtors, or creditors.


Reviewed by Margaret Kiel-Morse*

¶54 In *Remaking Appalachia*, Nicholas Stump examines the intertwined history of Appalachia and environmental law, arguing that incremental reforms have failed Appalachia and urging radical transformational change. Underlying these broad topics are themes of intersectionality, persistent misconceptions, and the lasting impacts of extractive industries that supported, and were in turn protected by, aggressively capitalist economic and political power structures.

¶55 The book is well organized, stating the central thesis up front in the introduction, along with a road map for each of the seven chapters. Additionally, Stump provides thorough endnotes, an extensive bibliography, and an index. The chapters flow logically from a brief overview of the nature and history of the region, to the history and development of environmental law, the law’s failure to create change because of its place within the profit- and production-focused economy, as well as our materialistic and individualistic society and, finally, Stump’s proposals for radical transformation.

¶56 Early in the book, Stump suggests that what most people know about Appalachia is a myth. The common misconception of Appalachians as homogenous, isolated, and “culturally backwards” was created and manipulated by the timber and coal industries to subordinate the region, beginning in the late 19th century (p.17). By perpetuating the myth and engaging in practices that further “othered” Appalachia, the coal and, later, oil and gas industries (Stump refers to these combined industries as “the fossil fuel hegemony” (p.1 et seq.) effectively established the region as an “energy sacrifice zone” (pp.17–19). Stump defines a sacrifice zone as a region “deemed acceptable for environmental despoliation in order to serve a greater national good” (p.18). The coal industry in Appalachia engaged in ecologically destructive practices in the late 19th and early 20th centuries, while exercising extreme levels of control over workers and their families, most notoriously via company towns and payment of wages in scrip rather than regular currency. These practices, combined with patriarchal social structures and widespread racism, significantly undervalued women’s labor and all but erased the experiences of Indigenous people and people of color.

¶57 In contrast to the myth, Stump argues that Appalachia not only is more diverse than people assume but also has a deep history of self-sufficiency, grassroots activism, and community organizing. He provides many examples of local organizing, ranging from strikes and activism in the late 19th and early 20th centuries, to more modern...
state and regional organizations that emerged in the 1980s and 1990s in response to the havoc wreaked by surface mining and mountaintop removal mining. These latter groups featured more women's voices and adopted environmental justice approaches, recognizing the disparate impact of ecological harms that fall most heavily at the intersections of class, gender, and race (p.155).

¶58 After debunking the myths about Appalachia, Stump presents his main thesis: Appalachia must move away from further incremental legal reforms and instead embrace radical structural change: that is, eliminating the fossil fuel hegemony and reconstructing a sustainable and critically just ecological political economy. The extensive changes and rebuilding must be done by Appalachians themselves, using ecofeminist and ecosocialist approaches to create a solidarity economy based on subsistence, rather than production, and focused on clean, renewable energy.

¶59 In the final two chapters, Stump digs into the core of his central thesis, expanding on ecofeminist and ecosocialist theories, and illustrating how they can generate radical transformation in Appalachia. He lays out “systemic stepping stone measures” to transition away from endless accumulation and environmentally destructive economic growth and toward sustainable systems (p.162). He suggests that ecofeminist approaches involving reconstructing theories of gender and the division of labor, and participatory grassroots democracy, dovetail with ecosocialist theories that also focus on sustainability, subsistence, and community control. Environmental human rights and public trust doctrine are named as stepping stones, for their already wide recognition, bottom-up grassroots approaches, and emphasis on benefits for the public at large. These theories form the foundation for systemic change, which must begin with dismantling the fossil fuel hegemony. After investigating various ways to achieve this dismantling, Stump closes by proposing a radicalized version of a Green New Deal that comes from outside of hegemonic liberal capitalist structures and fully embraces ecofeminist and ecosocialist approaches to environmental justice and transformation.

¶60 Remaking Appalachia is a dense but fascinating book. It is accessible for those new to the topic, but it helps to have some background knowledge of environmental law and economic theory. It is Stump’s proposals in the later chapters that make it a must-read for anyone concerned about our reliance on unsustainable energy sources and environmentally damaging practices, and what can be done about it. It is recommended for academic law libraries.


Reviewed by Sarah Gotschall*

¶61 In our increasingly polarized society, debates about free speech have reached a fevered pitch. Every new Supreme Court decision on the subject is simultaneously
celebrated as democracy’s savior and lamented as its doom by politicians, citizens, and commentators at opposing ends of the political spectrum. Into this fray jumps Alexander Tsesis, adding the interesting and readable *Free Speech in the Balance* to the veritable mini-library of free speech scholarship critiquing the Roberts Court in the post-*Citizens United* era.

¶62 Tsesis is highly critical of the direction the Roberts Court has taken on free speech issues, arguing that its increasingly libertarian and absolutist approach is a departure from earlier Supreme Court free speech jurisprudence and would be unrecognizable to the founding fathers. He argues that the Court increasingly embraces free speech as the most important value, rather than a very important competing value, in our society. In fact, the Court displays an activist and unprecedented enthusiasm for spotting free speech implications in government actions where none were recognized before in a variety of areas such as limits on campaign contributions, restrictions on immoral trademarks, and bans of videos depicting illegal activity. Though the Court continues to recognize the traditional categories of unprotected speech such as obscenity and incitement, it appears to view all expression outside those static and limited categories as free speech deserving the highest protection, often irrationally rejecting the traditional approach of balancing speech against other important individual rights and state interests. This approach ignores the traditional purposes for protecting free speech, harms society and democracy, and is out of step with the more balanced and nuanced approach seen in Western Europe.

¶63 In the first of two parts of the book, Tsesis argues that this new and strict “categorical approach” (p.3) to resolving free speech disputes was unveiled in Chief Justice Roberts’s majority opinion in *United States v. Stevens*,¹⁰ which declared a federal statute prohibiting the creation and distribution of animal torture “crush” videos unconstitutional. Despite the illegality of animal torture in most states, which makes these videos depictions of crimes, the Court declined to categorize them as unprotected obscenity. Then, ignoring Supreme Court precedent, Roberts rejected balancing the value of this speech against social costs and ignored any legitimate governmental interest in deterring such conduct. Tsesis continues to trace this misguided evolution of free speech jurisprudence, thoroughly examining decisions and explaining their departure not only from reason, but also from traditional Supreme Court free speech doctrine.

¶64 In the second part of the book, Tsesis examines the theoretical underpinnings for protection of speech in a democracy and offers his own theoretical framework that American courts could use to better analyze and resolve free speech disputes. He recommends viewing free speech not as a separate value that stands alone, but as “a critical component of deliberative and representative democracy” (p.xv) that should sometimes be balanced against other societal values such as privacy, public safety, and human dignity. After exploring the current law of free speech in different contexts such as campaign financing, hate speech, and terrorist incitement, and in different settings such as high schools and university campuses, he explains how application of his approach

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¹⁰ *559 U.S. 460 (2010).*
would lead to more rational and predictable, though not necessarily less controversial, outcomes.

65 Dissatisfaction over Supreme Court free speech decisions is a growth industry that has apparently created insatiable demand for scholarly critique despite a constant flow of new books and articles. Law library shelves are already overflowing with books on the topic—is there room for one more? Yes, this book is a worthwhile addition to law library collections of all types. In addition to providing thoughtful and readable criticism of the current hodge-podge of often unprincipled, unprecedented, and contradictory free speech decisions, it paints an interesting picture of the business-friendly and libertarian-leaning Roberts Court, where the Justices seem intent on continually sparking controversy by creeping through the jungle of relatively settled jurisprudence to identify new areas of free expression to embrace and protect at the expense of other values. Also, not content to simply analyze and critique historical and current jurisprudence, the author offers lawyers and courts his own theoretical framework of how to move forward through the current morass toward a future almost certainly filled with more novel free speech challenges.
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