2017

Freeing the Law

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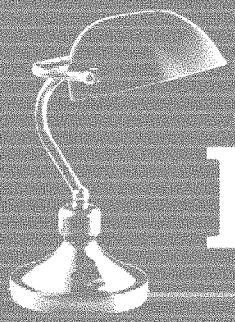

Law Library Lights

Freeing the Law

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The "free law" movement is a trendy topic in the legal community these days. In fact, just a few weeks ago, AALL and Boston University School of Law held the National Conference on Copyright of State Legal Materials. The movement actually began more than 20 years ago with the creation of Cornell's Legal Information Institute (LII). Since then, more than 50 similar information institutes have sprung up around the world, all focused on providing access to free primary and secondary legal resources.

The movement is based on the idea that unfettered access to the law promotes both the rule of law and access to justice. While the free law movement may be fairly new, the idea that the law should be freely available to the public is not. In 1886, a Massachusetts court stated:

> The decisions and opinions of the justices are the authorized expositions and interpretations of the laws which are binding upon all the citizens. They declare the unwritten law, and construe and declare the meaning of the statutes. Every citizen is presumed to know the law thus declared, and it needs no argument to show that justice requires that all should have free access to the opinions, and that it is against sound public policy to prevent this, or to suppress and keep from the earliest knowledge of the public the statutes or the decisions and opinions of the justices.

The idea is really quite simple: How can you know about the law if you can't locate or access it? Yet much of the law is hidden

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behind paywalls and subscriptions, out of reach of the average citizen. To successfully navigate the legal system, a litigant often must rely on primary sources that are codified, published, or disseminated in some "official" way. Many legal sources, including most state and municipal codes, are subject to copyright restrictions. Before the advent of the internet, publishers held a monopoly on publication of legal materials. The federal government has its own in-house printing press, GPO, but most states do not have an equivalent and many rely on various publishers to disseminate their codes.

The Bluebook requires citation to "official" codes that are often published by for-profit private entities, rather than the government or non-profit groups. Although there is express language prohibiting copyright protection of U.S. government materials,[2] there is no such stipulation for states. States have continued to assert their copyright interests either in the text of the law itself or its arrangement or compilation. As a result, there have been a number of lawsuits over the last three centuries and efforts to "legislate" this problem. Only a handful of states (California, Florida, Indiana, Louisiana, Massachusetts, Minnesota, New Jersey, New York, North Carolina, and South Carolina) have laws that make their codified and compiled laws part of the public domain.

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So who benefits from the free law movement? Essentially, everyone. The law makes up part of the culture and hegemony of society. There is no aspect of life that the law does not touch. The law governs our lives, from the way we elect our leaders and the amount of taxes we must pay, down to the width of the turnstile at the subway station and public school toilet paper contracts. There is very little that is not regulated, legislated, or litigated in modern society, thus making the law itself a cultural artifact.

Shouldn't the law be free? Doesn't it belong to all of us? This is an issue of history, cultural property, anthropology, sociology, and morality.

Libraries have always been the warehouse of information for any community. This information should include legal information as well. All libraries, public, academic, government, and private, should consider how their organization can contribute to this movement. As the role of the library continues to change from the warehouse of books to the public meeting house to a digital access point, it is imperative that librarians and libraries continue to be arbiters of information.

The use of finding aids and reference services can help with this mission. But partnerships with legal service providers and community leaders can also help this cause. There have been a number of different programs in this regard, from legal clinics offered in libraries, to embedded law librarians in public libraries. Other groups are starting to follow suit as well. Many law schools and academic law libraries are creating clinics, classes, and incubator programs that provide these services.

It is up to law librarians as arbiters, vetters, and disseminators of legal information to lead the charge. ■

Notes

[1] *Nash v. Lathrop*, 142 Mass. 29 (1886).

[2] *See* 17 USC 105.