

## Meaningful Access to Information as a Critical Element of the Rule of Law: How Law Libraries and Public Libraries Can Work Together to Promote Access

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### Abstract:

*Most international governmental and non-governmental organizations agree that the access to information—and notably access to legal information—is critical to enhancing and promoting the rule of law. Meaningful access to legal information has also been held out as a fundamental right, even declared by some as an international human right. While law libraries are designed to help citizens access legal information, in many societies, especially in developing states, public libraries may be better suited to promote citizens' access to legal information for a variety of reasons. Public libraries can help uphold and promote the rule of law by providing this access to legal information through outreach programs, partnerships with law library counterparts, and by using other tools to train staff and create physical and digital collections to enhance access.*

**Keywords:** Rule of Law, Legal Information, Public Libraries, Library Partnerships

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### Introduction

The rule of law has been held to be a critical part of good governance and state development. The United Nations Secretary-General, developing a definition of the rule of law in 2004, stated that the rule of law is “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards” (UN, 2011). While there is no universally agreed definition on the rule of law (*Ibid.*), the majority of definitions can be synthesized to include several fundamental elements (WJP, 2016; UN, 2011; O’Connor, 2015; McKay, 2015). Three core principles of democratic governance and the rule of law emerge from these multiple definitions: transparency, accessibility, and accountability. (Sen, 2013; Dann & Engelhardt, 2011; Kalper, 2010).

Transparency refers to a government's openness in its actions, allowing all who are interested to understand what government actions are taken (Brewer-Carías, 2009). Accessibility means free access to laws, as well as information related to the lawmaking process. These two lead to the essential part of responsive and representative governance—accountability—which broadly refers to the ability to hold leaders accountable for their actions through peaceable means, often the electoral process (Trebilcock & Daniels, 2008). Government transparency and accessibility of laws are preconditions to accountability in government, where citizens have ready access to the information and the capacity to use it (Anderson & Fenton, 2013). Each of these three elements are critical to the rule of law, and public libraries are uniquely suited to support the process by providing access to and assisting patrons with legal information.

The role of public libraries providing access to legal information can thus be critical to the development and success of the rule of law in many states. Finding ways for public libraries to better provide this access is therefore important, as public libraries may often provide the only opportunity for citizens to gain access to legal information, and receive the assistance needed to knowledgeably search legal resources (which is often extremely difficult for laypersons). This paper explores why the access principle is so critical to the rule of law, why public libraries are especially suited to fulfilling it, and ways public libraries may help provide access to legal information.

### **Access to Legal Information and Rule of Law**

Access to legal information could be described as the linchpin in the rule of law. The World Justice Project lists as one of its four universal principles of the rule of law that laws are “clear, *publicized*, stable, and just” (WJP, 2016). The United Nations in defining the rule of law calls for laws that are publically promulgated, with procedural and legal transparency (UN, 2011). In elaborating on the application of the UN definition of the rule of law, one commentator noted that laws must be “clear, precise, prospective . . . accessible, and they must allow citizens to understand their rights and obligations” (O’Connor, 2015; McKay, 2015).

Rachel Kleinfeld, in writing about second generation rule of law reform, wrote that the rule of law represents “a relationship between a state and society” that allows all to be treated equally before the law. The responsibility for this relationship rests on both parties – the state to make information about laws and regulations available, and society to access them (Kleinfeld, 2012). Presupposing that a government discloses laws and other government acts, a majority in society is not necessarily capable themselves of searching and understanding a government’s laws. This is where *meaningful* access becomes critically important to the rule of law – allowing citizens to know *and* understand the rules by which they are bound, and ensure that they are being treated equally.

Key international legal agreements and aspirational documents, important to promoting and upholding the principles of the rule of law, universally acknowledge the importance of the right to access to information. Article 19 of the Universal Declaration of Human Rights (UDHR) states: “Everyone has the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (UDHR, 1948). While not compulsory upon states, the UDHR is an aspirational document that embodies fundamental international norms, and as some argue, customary international law related to individual

rights (Donnelley, 2007). The American Declaration of the Rights and Duties of Man, also a non-binding aspirational document, states at article IV that all have the right to investigation of information (Am. Dec., 1948).

In addition to aspirational declarations of rights, several positive international laws support the principles of freedom to access information. Article 19 of the International Covenant on Civil and Political Rights sets forth a positive obligation on signatory nations to ensure the right for everyone to “seek, receive and impart information” either orally or in print (ICCPR, 1976). Article 13 of the Convention on the Rights of the Child specifically grants children the right to “seek, receive and impart information” as well (ICRC, 1989). By definition, nations party to these conventions must incorporate these principles into their domestic law, and support and enforce these rights to seek information. (Similar regional international agreements also promote this right to information in various ways, reinforcing this important right.)

Several national and international library organizations have also recognized the important role libraries can play in civil society, and in promoting democracy and the rule of law. The International Federation of Library Associations (IFLA), in its Standards for Public Libraries, describes the role of public libraries in society as “a democratic institution for education, culture and information” (Byrne, 2004). Adopted in 1994, the United Nations Education, Scientific and Cultural Organization (UNESCO) and IFLA jointly issued the Public Library Manifesto, in part highlighting the need for libraries in the development of democracy—directly invoking the access principle of the rule of law. The Manifesto states:

Freedom, Prosperity and the Development of society and individuals are fundamental human values. They will only be attained through the ability of well-informed citizens to exercise their democratic rights and to play an active role in society. Constructive participation and the development of democracy depend on satisfactory education as well as on free and unlimited access to knowledge, thought, culture and information. (IFLA/UNESCO, 2001).

The American Library Association since its inception has also been at the forefront of advocating for access to information of all kinds, including legal information to support democratic development, and thus the rule of law (Kranich, 2001). These legal declarations as well as mission statements by the most prominent national and international library organizations support the role of libraries as promoting and supporting access to information, and the rule of law. One commentator noted that these statements “give the public library an instrumental role in the strengthening of civil society through building social capital” (Byrne, 2004).

Indeed, since their inception libraries have played a unique role in societies – that of an impartial mediator, brokering information from those who dispense it to those who seek it. This perception of an honest and impartial dealer in information garners a certain respect for libraries as institutions, existing for the betterment of society. This is uniquely true as it relates to legal information, an extremely important special collection as it related to the rule of law, as free access to legal information for the general public promotes the rule of law (Browne, 2015). This can be seen, for instance, in the post-communist context where access to legal information was critical to establishing a society based on the rule of law (Laffranque, 2006). There have been several successes creating free public access to legal information. CanLII is perhaps a notable one among those in the Free Access to Law

Movement, while online are freely accessible in public libraries throughout Canada (Poulin, 2012). The Federal Depository Library Program in the United States is another good example (Pettinato, 2007).

In addition to the existence of libraries as institutions, librarians themselves are an essential component in the connection between libraries, the access to information, and the rule of law. The access principle may not necessarily be fulfilled by only having a repository of information, but by assisting seekers of information to meaningfully search and access what they need. Especially when seeking government information, the average user is at a disadvantage because of a lack of knowledge of sources, types of information, and overall deficits in information literacy. Law-related documents have been described as the “essential form of government information, yet they are also one of the most difficult for both ordinary citizens and experts to access and understand (Pettinato, 2007). Librarians are often well suited to bridge this divide and navigate complex systems and databases to find information for library users—especially government information. (Heanue, 2001).

There is no question, however, that the greatest connection between libraries and the rule of law is the availability of information, and in particular government information. Taking advantage of a government’s willingness to provide information, libraries that provide meaningful access to legal information fulfill the access principle of the rule of law – a principle necessary in any successful system based on the rule of law. Indeed, one commentator noted that “[m]ost who value government information consider public access a basic right of every citizen,” and something that is necessary for self-governance and ensuring accountability of governments (Heanue, 2001).

### **Access to Legal Information – Why Public Libraries?**

Law libraries are the natural place to access legal information. In an ideal setting, librarians at law libraries are specially trained to assist patrons locating legal information, and providing reference assistance and instruction for patrons to locate information better in the future. However, there are several reasons why public libraries—not law libraries—are better entry points for providing access to legal information to support the rule of law.

First, in areas where development of the rule of law is most needed, there are few law libraries, and they are often not equipped to offer the instruction and reference support needed to provide meaningful access to legal information. Rwanda is a good example of this phenomenon, where there are actually several law libraries open to the public, but they are infrequently used (Anderson, 2015). Second, even where citizens are allowed to use law libraries, there is often a perception that they are nonetheless closed, and limited for use by those in the legal community (*Ibid.*). Third, public libraries offer a comfortable entry point for citizens to access information of all kinds, thus making it more a known and comfortable place to seek legal information. For example, one study of information needs in rural Pakistan noted that citizens would use public libraries for, among other things, access to legal information (Naveed & Anwar, 2014).

Additionally, access to legal information increasingly requires internet access, and public libraries are a key access point to online information. Even in countries like the United States, access to the internet is far from universal (Jaeger & Bertot, 2010). A 2009 study noted:

The use of computers and internet access in public libraries reveals the real gaps in access to e-government. As the usage of e-government to deliver information, communication, and services to members of the public has become commonplace, the demand in public libraries for access to and assistance using e-government has skyrocketed, creating sizeable new demands on libraries (Jaeger & Bertot, 2010).

With growing amounts of legal information online (sometimes exclusively) internet access becomes necessary to uphold the access principle of the rule of law, and public libraries by providing internet resources help ensure access to all.

## **Public Libraries and Opportunities to Provide Meaningful Access**

There are several ways that public libraries can provide meaningful access to legal information with little or no investment in infrastructure or collection development. Law libraries can provide an indispensable role in helping public library counterparts with providing this access. Public libraries can take lessons from the successes of law libraries in this area; use information such as guides and tutorials created by law libraries; or even enter into partnerships or memoranda of understanding with law libraries to enhance access to legal information. Some of these ideas are explored below.

### Clear Instructions for Patrons

Law libraries have found success increasing access to *pro se* patrons by giving clear instructions to patrons seeing legal information. For instance, academic law libraries in the United States have tackled access issues for *pro se* or other public patrons by outlining best practices that give clear guidelines for library services, and online examples of how libraries can assist with legal research (Berns & Vogel, 2015). Law libraries have also created self-help resources, such as outlining frequently asked questions or providing online links to relevant and frequently sought information, which can increase access tremendously in some populations of users (*Ibid.*). Public libraries can work with law library counterparts by anticipating the legal resource needs of their users, and offering support matching what is customary in their jurisdictions.

### Create a Collection

A great way to expand meaningful access to legal information is to share existing resources, or use pathfinders to legal information from law libraries for users at public libraries. Law libraries are the natural starting point for gathering this information—especially information on what is most useful, or most frequently needed by public patrons in law libraries. For instance, articles or guides to accessing information in a particular country or jurisdiction could be curated and shared with public libraries, and cataloged for public users. One study, for example, catalogued access to information laws and free legal research resources in South American countries (Miguel, 2012). Many country-specific examples abound, for example a 2010 article surveying legal information resources available for Turkey (Bezirci, 2010). The Law Library of Congress's foreign law research guides is also a good place to start, for example, creating country-specific databases for general consumption. (LLC, 2016). The Foreign Law Guide, also providing research guides for most jurisdictions, is a great starting point for compiling *where* to locate legal resources (FLG, 2016). Naturally, local experts are the best to develop collections of legal resources, whether in print or online, for

libraries to supply to patrons. Nonetheless, assistance with collection development from law library counterparts is critical, especially in public libraries that typically lack legal bibliography experts.

### Public Library Outreach Programs

There has also been success with public libraries engaging in public information campaigns about legal information – often with the help of law libraries. For instance, law librarians in the northeast United States established an outreach program to promote community access to legal information at public libraries, with instruction and information sharing between law libraries and their public library counterparts (Biondo, et al., 2014). Research on cost-effective ways to provide access to justice has identified the use of forms, as well as partnerships with libraries (discussed below) to provide access to legal information (Broccolina & Zorza, 2008). One public library in the United States created a “Legal Research and Training Center” designed to provide access to frequently sought legal information for citizens, amounting to a sort of *pro se* / self-help center (Holcomb, 2003). Thus, if public libraries engage themselves in information access campaigns, there is much support and/or guidance to be sought from law library counterparts.

### Partnerships Between Public Libraries and Law Libraries

Perhaps the greatest resource for public libraries providing access to legal information is partnerships with law libraries. In addition to the examples of law library and public library cooperation above, one area where there have been more formal partnerships between public libraries and special libraries is in the area of medical library and public library partnerships to provide health information to patrons. For example, the United States a partnership was created between the Washington University School of Medicine and the St. Louis Public Library to provide health information to public library users. (Engeszer, et al., 2016). The program successfully offered classes for public library staff, information kiosks regarding health information in public libraries, and a series of programs to the public about health information. (*Ibid.*). Similar programs have successfully existed throughout the U.S. providing technical health information in public library settings (Earl & Vaughn, 2010; Kaiser, 2005; Ruffin, et al., 2005). Though related to health information, these examples are very useful, as the same special library to public library resource transfer applies, as well as similar ethical constraints with providing legal information as with providing health information. Law libraries from similar or different jurisdictions can create partnerships or formal memoranda of understanding to help public libraries provide meaningful access to information. Given the guidelines for information access and library mission statements noted above, one could say that law libraries have a *duty* to partner with public libraries, especially as providing little by way of cost or capacity could result in huge strides towards providing more access to legal information.

### Screen Casting and Other Tutorials

Online tutorials have been used in many settings to provide instruction on access to information. For instance, online research tutorials have been used to enhance information literacy for undergraduate students, providing skills needed for furthering research activities (Barnes, et al., 2006). Public libraries in the U.S. offer online tutorials to search databases, giving another opportunity for research instruction outside of face-to-face interactions

(Database Tutorials, 2016). Online tutorials can be equally useful for public library patrons' self-education regarding finding legal information.

The most significant development in legal research education in the past several years, at least in the U.S., has been the notion of “flipping the classroom” to provide online lectures and tutorials for consumption before class (Hook Dewey, 2013). A consequence of this was to leave in-class time for more active learning through research exercises. It also creates tutorials, typically with cloud-based screen casting software, accessible to many users to learn how to use legal information sources. Partnerships with law libraries can either share these tutorials, provided they are relevant to a given jurisdiction and subject matter, or create *pro bono* other tutorials for public libraries in need of assistance. What is clear is that with the growing frequency and ease with which research educators are creating tutorials, the possibility for collaboration and resource sharing grows.

### **Risks Associated with Providing Access to Legal Information**

Of course, in any setting libraries must take care to avoid potential pitfalls as it relates to providing access to legal information. Most notably, reference services can quickly become legal advice, which is a constant risk in the context of law libraries (Healy, 2010). With far less training, this can be an even greater risk when public librarians actively assist patrons with legal research needs. Care should be taken, therefore, when promoting access to legal information in public libraries to avoid the unauthorized practice of law, especially in jurisdictions with strict prohibitions on such activity. (Aycock, 2015).

Sustainability is also an issue seen time and time again with efforts to provide legal information, especially in the context of promoting rule of law. In Rwanda, for example, the online searchable repository of laws fell into obscurity with the removal of outside donor funding (Anderson, 2015). This is not a rare occurrence in development, and is even a threat in countries with well-established systems of governance. In Australia, for instance, the State Library of New South Wales lost external funding for the hugely successful online Legal Information Access Centre. While the library maintained a commitment to continue to provide access, it was on a somewhat limited basis (LegalAnswers, 2014). This problem is of even greater concern in areas with far less capacity to pick up externally funded programs. Public libraries are cautioned, therefore, not to exceed capacity by offering new initiatives to access legal information without considering sustainability of such programs, as their existence is so critical to the rule of law. What is worse than not having programs, is removing them once there has been a dependence on them by a population of users.

### **Conclusion**

Many opportunities exist for public libraries to engage with patrons seeking legal information. These opportunities should be seized, as they help fulfill the access principle of the rule of law, and can strengthen good governance in a variety of ways. To accomplish this, public libraries are well-served by partnering with law library counterparts, domestically or abroad, to improve access, and develop the capacity to fulfill their envisioned role supporting the rule of law.

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