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The right to understand law and justice is a basic civil right and the foundation of active citizenship.
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READING AND COMPARING LEGAL SOURCES

Abstract. In the Network Society, official legal information has, more clearly than ever before, become part of our *social capital* – and thus a resource we best take very good care of.
In any state governed by constitution and the rule of law, the *legal superhighway* runs from human and fundamental rights to legislation and the guidelines for implementing it; this is a route that should be made plainly visible on the net using the appropriate signs, images and descriptions.
In the day-to-day work of the lawyer, it is also important that we note the new, global character of legal information. When working with legal information – be it theoretical or practical – we increasingly find ourselves needing the skills to cross the boundaries between legal cultures.
These fundamental changes require that we take a deeper and more comprehensive approach in teaching information literacy in law, one that guides prospective and practicing lawyers alike to appreciate the societal significance of legal information and how influences from different legal cultures are reflected in the texts they read.

1. From databank to social capital

The path we have traveled from the introduction of single legal databanks to their regular use and on to today's digital *information environment* has been a long and tortuous one. "Databank" is in fact a metaphor: one becomes a customer - on certain conditions. Earlier the customer was almost always a lawyer. Over the last two decades or so, using databanks has become one of the lawyer's essential professional skills.

Today we speak of *legal information resources* and the *citizen's right to information*. Both concepts are intimately connected with the development and maintenance of a democratic state governed by the rule of law. We can and should, as *Virginia Wise* and *Frederick Schauer* have so persuasively done, speak of legal knowledge as an important form of *social capital*. What we need is a clear conception of the significance of the *core legal information resource*, how it should be developed and what constraints apply to its use.

This is a very real and increasingly acute problem in the new Network Society. We can justifiably claim that *a change in forum* – meeting point - is taking place where law is concerned. Where it was once lawyers and government officials who read and applied the laws, today we increasingly find *laypeople* doing so. The phenomenon has become more international with the expansion of open information networks and it is a contingency that we have not prepared for when drafting legal texts – legislation or other varieties.

We must also give equal attention to the fact that *web2* has brought us into a communicative environment with increased opportunities for producing various legal texts. The forms in which legal information are published have changed and continue to do so. It is easy to make texts visible.

This change is in part a positive one. Publication is faster and the negative influences associated with *conservative quality control* can be avoided to a certain extent. It is easier to bring out what is new and important. But differentiating good information from bad has become more difficult. We most definitely need *a new doctrine of the sources of information* – a doctrine of how legal information sources are produced, maintained, searched and used. In the final analysis, this will be a legal doctrine.

2. From retrieval to understanding

When we were using databanks, we started speaking of *information retrieval*. Users had a particular query language to look for particular information in a particular databank. In today's digital environment, information retrieval has a greater role. We can distinguish at least five senses of the term: it can be seen as the retrievability of (1) databanks and databases, (2) portals and vortals, (3) documents, (4) parts of documents and, in final analysis, (5) texts, signs and images.

These are all elements that are fraught with risks on the path towards proper legal information. And the risks apply across the board – to citizens, officials and lawyers alike.

As Scandinavian pioneer of legal informatics, professor *Peter Seipel*, has so aptly pointed out, *information retrieval* is of *critical importance* where legal work and the formation of knowledge are concerned. No one starts a search with a blank slate, but very rarely do we know enough beforehand. Generally we need new information to create new or support previous knowledge.

Law is in fact a set of very well argued narratives of what is or should be right. To be sure, a single provision in the law or – depending on the legal culture – a single case should tell us quite a lot. But this rarely happens. Stating facts and interpreting them are different matters. Texts are interpreted, we puzzle over them, combine them and compare them. This is the core of our traditional skills in the profession. And a *skill* is always a means to achieve some end: in the practice of law this means recognizing what is right.

It is thus no wonder that we have imagined – and continue to do so – that legal texts are first and foremost *for lawyers*. It is only lawyers who can tell us what is right. Similarly, the development of the various legal expert systems we have seen has been done primarily with the lawyer in mind. And it is lawyers to whom law presents its recommendations on how things should be interpreted. This is how the *profession* has been accustomed to administering legal information.

This approach makes perfect sense if one thinks of the distribution of responsibilities among different professions. But it has long been a very dangerous course - it blithely ignores *the citizen*. When we talk about law – at least in a democratic society – the priority is the *rights of the individual* and *the individual's right to legal information*. This is not a right lawyers are entitled to seize and claim as their own. However, professions – and not just ours – are known to have a tendency to link professional skill and the exercise of power.

The steadily increasing legal information we see on open networks presents us with a new situation when trying to read and understand the law. It is more and more frequently the case that the primary user of a legal text is in fact a *layperson*. Texts are read and people try to understand them without any particular legal skills. This is the crux of what I have called the change of forum – meeting point - in law.

As such this change is in principle of course a move towards better democracy. People's rights should always be available and comprehensible to them. In a democratic state governed by the rule of law, legislation and its applications should more clearly than ever be *simple* – part of our social capital. A society regulated in a complex manner is an artificial one for democratic purposes.

The frequently heard notion that a good judge is *a skilled craftsperson* has also given citizens the wrong picture of what is right and what law and justice are. Something that has been well argued and justified within the profession may send an outsider the wrong signals. The simple is considered complex. The *legal information highway* from human rights through fundamental rights to

everyday texts, their interpretation and the conceptions the interpreters work with should be a straightforward and visible part of our legal infrastructure. To date it has been far from it. And as regulation increases, the number of genuinely complicated and conflict-prone matters is on the rise.

The significant change of forum in law necessarily entails heightened demands on the *quality* of the core legal resource. This is not a question of what we can do with individual texts, but the efforts to date at improving legislation do not seem to have realized this to any significant extent. The change of forum means that higher quality will be required of the legal profession as well. We no longer need as many lawyers or researchers who were “keepers of the keys” and commentators for the legal sources that are now readily accessible to laypeople on networks. Our professional skill must be deepened.

3. Some trends

Open information networks as such are not the key to happiness in managing legal information, nor is the basically sound move towards making public information and its re-use free of charge. As a whole the development of legal information in the Network Society seems to be headed in an interesting fashion in four different, partly divergent directions.

(1) At the same time as we value good management of legal information, we need solid information retrieval skills in legal life to make use of the free material on open networks.

This will not solve all the problems, however. The maintenance of legal knowledge will continue to require databases and other knowledge products that carry a fee. Information will have a price in the future as well. But it is only when we have a sufficiently coherent conception of quality that we will have an adequate foundation for legal information maintenance in the constitutional state.

The knowledge value chain – from the cheapest and most accessible raw material to high-quality professional products – is complex one even in the Network Society and will require a combination of professional skills. Both information retrieval as a lawyer's professional skill and law librarianship as an area requiring legal training will figure more prominently than before as guarantees of consistent quality between the professions in the Network Society.

(2) *Information imbalance* – a constant threat to the realization of justice – will not be rectified by putting more conventional and traditional information in open networks. One option for addressing the problem would be to adopt a new conception of legislation – that of electronic, *interactive legislation*.

What I refer to here are official information products based on legal provisions in which the text is linked to background material: *what* and *why* would be equally visible in the knowledge space. This type of official legal information would be more along the lines of what law should be in civil society than today's traditional, linearly structured legislation. Interactive

legislation would be an essential factor on the road to better quality in legislation.

(3) A third trend to note is the assumed *democratic nature of open networks*. It has often been claimed that such networks are a step towards democracy. They are in a certain sense. For example, freedom of speech as an individual liberty can be realized more easily than before.

However, experience to date shows that the net provides an excellent platform where the accuracy of information and therefore knowledge are more easily compromised. Information is changed, changes or is presented in misleading contexts. Web2 is a misleading platform too.

When we overlook the quality systems associated with information maintenance, the old notion of *self-righting truth* put forward by liberalist journalism theory perhaps becomes an even more distant prospect than before. If we are to rectify this shortcoming or at least contribute to its rectification we need indicators of quality; we lack these at present.

(4) It is essential that we remain aware that information seeking is becoming increasingly international. In our everyday work in the profession there is a heightened need for legal information that spans the borders of different countries and legal cultures. Here – here, too – lawyers are becoming increasingly international.

In Europe, directives and their implementation have in fact smoothed the way for this development quite early on. Today, for example, the *right to data protection* is close to becoming a fundamental right on a daily and global basis. With the transfer of personal data to third countries requiring what is known as an *adequacy test* in the receiving country, we have come to terms with fundamental questions in the understanding of law. Traditional comparative law provides little if any help in understanding how legal texts from different legal cultures are understood day in and day out.

4. Conclusion

I will not go any further into the challenging areas of interactive legislation or how texts from different legal cultures are written, presented or understood. It is more relevant here to ask shortly how we take these factors into consideration in the modern legal education.

My own simple answer is that we should make *legal literacy* part of the basic legal education in a new way. We cannot sit back and wait to see what the development of interactive legislation or other high-quality legal information products brings. The legal education should be based on the present state of legal information – and take a position on what is good and what is bad about it.

Now that information retrieval on an elementary level has become a civic skill, the legal education should work on a new, more profound form of information literacy that will embrace a knowledge of legal cultures and a comparison of

sources that recognizes the significance of fundamental rights in the constitutional state. This in turn will involve, among other things, "marketing" information literacy front and center as a critical condition for the realization of subjective law. Let us not speak solely of *information retrieval* anymore.

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