Whither Law Student Information Literacy?

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Abstract: Information Literacy has only recently been applied to instructional frameworks and benchmarking assessment for legal research skills in the United States. This paper seeks to answer two simple questions: what has IL done for legal research since AALL has adopted Legal Research Competencies and Standards for Law Student Information Literacy, and what is the future of IL in legal research classrooms and the practice of law around the world?

Keywords: Legal Research Skills, Law Student Information Literacy, Legal Information Literacy.

1 What is Law Student Information Literacy?

1.1 The Road Recently Taken…

In 2011, my paper proposing standards for law student information literacy, entitled "The Road Not Yet Taken: How Law Student Information Literacy Standards Address Identified Issues in Legal Research Education & Training," was published in the preeminent scholarly journal covering law librarianship in North America. [1] Two years later, the American Association of Law Libraries adopted the Principles & Standards for Legal Research Competency (hereinafter, "Principles & Standards"), a document strongly informed by the draft standards I proposed in the article cited above. [2]

Law Student Information Literacy is summarized from top-level descriptors down, starting with overarching Principles that describe a given area of research abilities, which are analyzed into Standards that identify particular skills, resulting in Competencies that describe the behaviors of students who possess these skills.

The Principles are brief enough to be quoted here. They are, *seriatim*:

1. A successful legal researcher possesses foundational knowledge of the legal system and legal information sources;
2. A successful legal researcher gathers information through effective and efficient research strategies;
3. A successful legal researcher critically evaluates information;
4. A successful legal researcher applies information effectively to resolve a specific issue or need;
5. A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

Attentive readers who notice similarities between the Principles & Standards and the first iteration of ACRL Standards for Information Literacy (ultimately replaced by the current ACRL Framework for Information Literacy for Higher Education) should know that these similarities are not unintentional. As one of the librarians consistently contributing to the working groups, task forces, and committees preparing the Principles & Standards, this author can attest to the fact that we were quite conscious of the ACRL's work, and found the reliance on competencies nested within standards underneath overarching principles to be a very useful model for the particular demands that legal research requires in the context of practice within a Common law jurisdiction.

Tuominen, Savolainen, and Talja famously posit that Information Literacy is a sociotechnical practice; they note that the "interplay between knowledge formation, workplace learning, and information technologies is crucial for the success of IL initiatives." [3] These factors are also crucial in the successful practice of law in the US: the American Bar Association has fully approved of the notion of "A Lawyer's Duty of Technological Competence." [4] And as of this writing, 34 of the 50 United States have adopted this duty into their local rules of practice. [5] The other factors, knowledge formation and workplace learning, are easily recognized in the practice of law as the formal legal training that a student undertakes to become a lawyer, and the licensing and requirements of continuing legal education that jurisdictions require for one to continue practicing as a lawyer.

Since the approval of the Principles & Standards, several publications and presentations have discussed and analyzed the standards as well as the overarching concept of legal information literacy; writing from a variety of jurisdictions, and focusing upon classroom research instruction. [6] AALL has also offered webinars training law librarians in the Principles & Standards, which reinforces the importance of such benchmarking to legal research education. [7]

1.2 Foundations of the Road that Lies Ahead…

The future of Law Student Information Literacy must be multinational. As legal practice continues to cross borders, knowledge of the foundations of legal systems, which provide context for understanding distinctions among legal systems, becomes more critical. [8] Law Student Information Literacy begins with knowledge of the foundations of the legal system in question, so the importance of an approach to legal research pedagogy grounded in Law Student Information Literacy is clear.

However, like legal systems themselves (and the comparisons of such systems), the future of Law Student Information Literacy is complex and nuanced. Legal systems of the world do not all share the same foundations, and are largely, if grossly, divided into two general systems: Civil law and Common law systems. Civil law is the dominant system in Europe, Asia, and Africa, and largely traces its roots to German iterations of Napoleon's efforts to codify and update the traditions of Roman Law to fit the needs of his empire. In any Civilian jurisdiction, the Code remains the source and foundation of law; and the Code comes from the legislature, parliament, or local body charged with writing the law.

Common law is the dominant system in the (former) British Commonwealth, including Canada, Australia, New Zealand, and the United States (which was never a proper member of the Commonwealth, but traces much of its legal and social traditions back to its founding as a British colony). While Common law jurisdictions tend to codify laws and regulations, and empower legislatures or parliaments to write those laws, they also reserve the right of reviewing such laws to the judiciary. The notion of judicial review, which has been the cornerstone of United States jurisprudence since *Marbury v. Madison*, 5 U.S. 137 (1803), has only begun to gather purchase among Civilian jurisdictions in the past generation or so. Assessing the value and longevity of this relatively recent development among Civil law jurisdictions remains a matter of individual scholarly judgment. [9]

To add nuance, many legal systems are also based in Custom or tradition, Religion, or, most commonly, some variation of these mixed with Civilian or Common law elements. When we look at the figure below, and consider the populations involved, it becomes immediately obvious that the majority of people on this planet are governed by a mixed type of legal system, usually involving some local evolution of a combination of Civilian jurisprudence, mixed with Customary or Religious law.

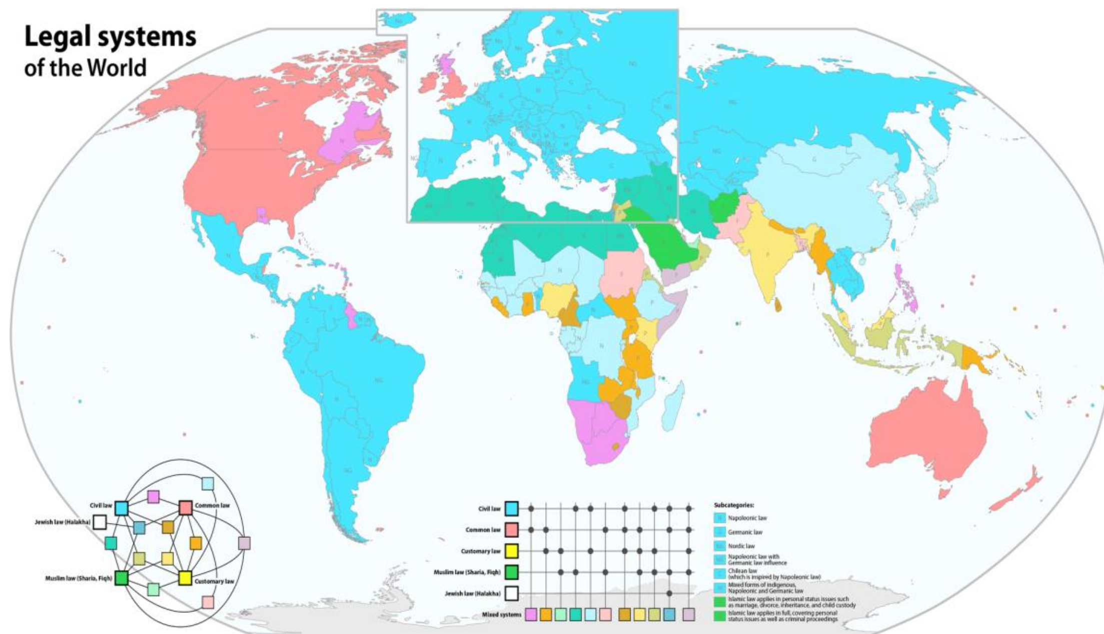

Figure 1: Legal systems of the world. The primary colors on the left side of the graph legend indicate, from top to bottom, Civil law, Common law, Customary law, Islamic law, and Jewish law. The blended colors running along the bottom of the graph legend indicate mixed legal systems. Note that the numerical majority of the world's population (consisting of the populations of China, India, Indonesia, as well a plurality of people on the continent of Africa) is governed by mixed legal systems, combining Custom, Civilian (or Common) Law, and/or Religion. [10]

Because legal research requires the practitioner to start searching for information among the types of documents that her legal system relies upon, legal researchers from differing jurisdictions will tend to start their research in different places. For example, an attorney who practices in France will likely start to look to the relevant local or national code for information and further guidance. An attorney who practices in the United States would not be incorrect in looking at published case law from state or local federal courts for guidance, or even to secondary sources that analyze this case law and other legal or regulatory developments in the area. And an attorney who practices in a Religious legal system would look to the foundational documents of that religion, as well as authoritative commentary on those documents, to find the information necessary to analyze the problem before her. All of these approaches are correct in the jurisdiction that a given practitioner works in, and baffling to attorneys who come from outside that jurisdiction.

And of course, because our subject is the practice of law, it is critical to remember that there are always exceptions: Louisiana, in the United States, provides such an exception; local state law there is based upon the French and Spanish Civilian Codes, while the overarching U.S. Federal system that governs Louisiana and other US states and territories is a Common law jurisdiction. [11] Scotland, in the United Kingdom, also retains some features of Civilian jurisprudence while remaining, like Louisiana in the United States, subject to a national jurisprudence that remains firmly based in Common law traditions. The Canadian province of Quebec is similarly positioned with respect to the larger Canadian federal legal system.

Moreover, as alluded to above, some Civilian jurisdictions have started to look to features of Common law to help resolve disputes, especially between states and their citizens. Mexico is one example, having in the past generation or so begun to look to decisions published by their federal Suprema Corte de Justicia de la Nación for limited guidance. [12] Even more surprisingly of late, some discussion at international conferences of legal scholars and librarians has expressed the notion of a "Common law of the European Union" comprised of the body of law that has emerged from the EU courts. [13] This a notion that would have been shocking 20 years ago, and unthinkable 40 years ago.

It is also critical to remember that legal training differs from jurisdiction to jurisdiction, just as legal tradition does. For example, United States bar associations have, with few exceptions, required that attorneys be trained in graduate-level schools of law for more than one hundred years. This degree is known as the Juris Doctor (JD), and generally requires an amount of classroom instruction comparable to a traditional Doctor of Philosophy degree (generally between 80 to 100 academic units of study), but completed within three to four years of commencing such study. The UK and Canada, however, allow attorneys to practice after taking an undergraduate degree in law, subsequent licensure and a bit of apprenticeship clerking (commonly called "articling" in Canada). These two Common law jurisdictions follow the norm of Civil law jurisdictions, where the practice of law requires licensure after an undergraduate or bachelor's degree. Attorneys may pursue further graduate degrees in law (usually a Master's of Law, commonly abbreviated as LLM), which may train the student in subject-area spe-

cializations (taxation is a common example), or may, in the case of foreign-trained attorneys coming to the US, provide a comprehensive understanding of United States law and practice. For obvious reasons, this latter option is never available to US-trained attorneys who have already earned the JD, but the LLM in taxation or other subject-area specialties are awarded to those US-trained attorneys who complete that course of study.

And once more, as observed above, since we are dealing with legal practice, we must always be sure to remind ourselves that exceptions to the rule occur. Within the realm of legal training, several jurisdictions outside of the US have been exploring the costs and benefits of requiring attorneys to complete graduate-level education as a condition of admittance to practice. Kim has written extensively on such developments in the Republic of Korea (South Korea), but other scholars have also noticed similar developments, primarily in East Asian jurisdictions. [14] In short, systems of legal training, much like legal systems themselves, display the sort of diversity and variation that we would expect from any compared population taken from globally-acquired samples. Nevertheless, research education remains a critical component of legal education, as research remains a critical component of the practice of law. The rest of this paper attempts to account for these distinctions while suggesting approaches to legal research instruction that might address the needs of various national (and international) bars and judiciaries.

2 Steps along the Road that Lies Ahead

Some of the work necessary for bringing Law Student Information Literacy into the training and practice of law around the globe has already been completed. Interestingly enough, both China and Turkey have experimented with early iterations of advanced legal research training between thirty to forty years ago, only to have placed these initiatives on hold until very recently. [15] Indian law librarians have recently called for more emphasis on information literacy in the law curriculum. [16] Dutch law professors and law librarians have long argued for the inclusion of information literacy in the legal curriculum. [17] Law librarians in Croatia and Slovenia have noted the need for building information literacy programs in law curricula in their nation. [18] The United Kingdom has adopted Information Literacy Standards through the British and Irish Association of Law Librarians (BIALL), in order to "enable law students, at both the academic and vocational stage of training, to develop comprehensive legal research skills following a five stage model." [19] The fact that the BIALL statement follows a five stage model in a manner similar to the Principles & Standards speaks less to the influence of the Principles & Standards *per se*, and more to the iterative nature of research in Common law jurisdictions, demonstrating the utility of such a model when legal research is a process as much as a task. [20] It should also surprise no one that separate Common law jurisdictions would have similar needs and similar issues when conducting legal research.

Likewise, it should surprise no one that Civil law and Common law practitioners would have differing needs and different issues when conducting legal research. To