Biography

Adrian Howe was the foundational chair in criminology at the University of Central Lancashire. She is now adjunct research fellow at Griffith Law School, Griffith University, Australia. She writes in the field of sexed violence and is currently developing a theatre in education project about intimate partner femicide. The project's first play, *Othello on Trial*, was performed at the Fighting Femicide Conference she organised at Queen Mary University of London in 2015.

Legal Information Management, 16 (2016), pp. 107–110

doi:10.1017/S1472669616000268

Law Belongs to the People: Access to Law and Justice

Abstract: This paper written by Ginevra Peruginelli is devoted to a discussion of the issues concerning the provision of free access to law in our global society and investigates the effects and benefits of freely available information to the legal profession, citizens and governments. The knowledge of rights, responsibilities and policies allows people and institutions to know what is expected of them and which protections they enjoy. In particular, the paper focuses on the main actors, namely the Legal Information Institutes, involved in the free access to law all around the world. These institutions publish legal information from more than one source for free, and mutually collaborate both politically and technically through membership.
Keywords: free legal information; access to justice

INTRODUCTION

The internet and the digital revolution have led to an information overload from multiple sources and to ever-increasing speed in the dissemination of data, and has resulted in the expectation for instant answers. With regard to access to the law, difficulties have arisen in managing the information glut as well as the increase of new legal issues. Not only are new regulatory spaces generated, but also new areas of law created. Globalization, as a process of gradual elimination of national borders and of economic integration of nations and people within a wider community at political, economic and cultural level, also has a strong impact on law. More and more national, foreign and international law is being "fused" together; in fact, nowadays every relevant internal legal matter assumes a supranational and international dimension.

THE KNOWLEDGE OF THE LAW

Law is the operating system of our society. This derives from the ancient concept *ubi societas ibi jus*. Indeed, every human aggregation, in order to ensure a civil coexistence among its members, has its foundation in a set of appropriate rules regulating the infinite relationships among people living in a society. Unlike other social sciences, the object of law is not a particular human activity, rather it is a set of rules regulating all human activities, the resulting subjective situations (rights, obligations, powers, etc.), and the institutions that produce, implement and enforce those rules.

From this point of view, law affects all of us in every moment of our lives. As the nature of law is so pervasive, it becomes essential for everybody to know about it. By being acquainted with the law it essentially means that the consequences of our behaviour as well as of our omission, negligence or even the passing of time, must be clear to us. This is what is meant by legal certainty; the principle that ensures the realization of the principle of the rule of law[1].

The tools for the knowledge of the law are at the heart of the rule of law and of a democratic state. However, in practice the law is not really knowable to everybody. The Roman legal principle *nemo censetur*

ignore legem (it is assumed that no one ignores the law) is one of the most noticeable absolute fictions, and at the same time one of the most essential, as if the excuse of ignorance of the law were accepted, anyone could misuse it in any situation[2].

The knowledge of the law can help to increase political participation since, if more citizens are informed, the greater their contribution to political and social life. If everyone is provided with the means to acquire a knowledge of the law, this implies more equitable legal systems. In some areas where legislation is difficult to access and case law is even more difficult to retrieve, the discrepancy between rich and poor citizens is further aggravated. As a result, a citizen with few resources facing civil procedures will never have the same chances as one who can afford the cost of a legal professional. Of course, such situations undermine the capital of true democracy and the ideal of freedom and equality[3].

In this context, full availability of legal information represents the strategy to even out access to law for everybody. The result, hopefully, is a non-discriminatory society giving access to online, free of charge information, freed from legal restrictions[4]. This creates the necessary conditions for achieving equity and fairness of a legal system, thus improving the operation of democratic institutions.

Therefore, access to law is a fundamental issue of social policy. This implies a fundamental connection between the policy of justice and the broader issue of public policy and social cohesion. In this context, openness and transparency are the natural and essential elements to ensure effective access to the law. As stated by Jeremy Bentham, philosopher and jurist in the early 1800s, the action of making legal information visible and available to all is the very soul of justice. Only with publicity in place, can any of the checks applicable to judicial injustice operate. Where there is no publicity, there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial"[5].

The possibility for citizens to find out which court has jurisdiction over a given case, which facts are taken into consideration and what conclusions are reached, gives assurance to citizens that justice is applied unmistakably. Effective access to justice implies a positive attachment to the judicial system by citizens[6].

An important role is played by policies regarding access to law. Putting policies into action implies shared knowledge of a network of rights and obligations. To move effectively in that direction, people and institutions have to know, very concretely, what is expected of them and what protection they enjoy. It is clear that a country in which law is not communicated effectively is one in which policies cannot be implemented efficiently. The well-known American legal scholar Marc Galanter once said that, "law usually works not by exercise of force but by information transfer, by communication of what's expected, what forbidden, what allowable, what are the consequences of acting in certain ways."[7] Indeed, when law is not communicated, it simply does not work. In particular, clear communication of law and of the means by which it is enforced helps entrepreneurs and investors to assess and manage risk when entering the markets.

THE ACTORS OF FREE ACCESS TO LAW

A definition that makes the concept of free access to law more understandable[8] is that offered by the Montreal Declaration on Free Access to Law dated October 2014[9]. The charter of principles of the Free Access to Law Movement (FALM), which will be discussed later, refers to the role of legal information providers giving free access to their online legal materials without impeding others from obtaining public legal information from its sources and publishing it.

Since 1990, the World Wide Web has provided the key element needed to make free access to legal information operational; this element is essentially represented by a low or no-cost distribution mechanism[10].

In many countries the first efforts to exploit the advantages of the web in the provision of legal information have been put in place by academics, rather than by governments, pursuing an explicit ideology of free access to knowledge.

In this context, a group of organizations, known as Legal Information Institutes (LIIs) decided to meet and cooperate with the aim of promoting free access to law and created the FALM – Free Access to Law Movement[11]. The FALM started in 1992 with the creation of the Cornell Law School Legal Information Institute by the American scholars Thomas R. Bruce and Peter Martin who began to exploit the Internet to provide access for free to some US legal materials. The initiative was called Legal Information Institute, soon shortened to "LII". The high access rate to their website soon showed that there was a strong demand for accessing legal information, far beyond the professionals' and academics' demand.

In 1993, LexUM[12], the Legal Documentation Institute operating at the University of Montreal, initially through a gopher server and later through the Public Law Research Center, created the first Canadian legal website available in French and undertook a series of initiatives for accessing law. At a later time, a number of Canadian legal sites were created, including the current access system to case law of the Supreme Court of Canada[13]. In 2000 the Canadian Legal Information Institute (CanLII)[14], in collaboration with the Canadian legal profession, was created.

In 1995 the Australasian Legal Information Institute (AustLII)[15], located in two law schools (University of Technology (UTS) and University of New South Wales - UNSW) followed the example of the Cornell Law School. Successively, this institute developed information

https://doi.org/10.1017/S1472669616000268 Published online by Cambridge University Press

systems for the nine Australian jurisdictions by providing access to legislation, case law, treaties and legal scholarship[16].

To date, there are 59 legal information institutes around the world. Collectively, they are a source of expertise and working examples that also help governments create their own open-access systems while bringing knowledge of the law to millions upon millions of people around the world. Users of these services are not only lawyers (the minority part), but ordinary people, journalists and public officers. Today for example, Cornell's LII is visited by more than 30 million people each year from more than 240 countries and territories.

Most of the LIIs are independent from their governments and often use the technologies developed within the FALM community[17]. In October 2002, at the 4th Conference "Law Via the Internet" in Montréal, legal information institutes from all around the world signed the above mentioned Declaration on Free Access to Legal Information. The declaration is the policy paper of the various signatory institutions, stating that public legal information of all countries and international institutions should be considered as "collective digital property" and must be accessible for free and non-profit[18].

Following the drafting of the Declaration, the Permanent Bureau of the Hague Conference on Private International Law[19] organised a meeting of experts where many data providers, law libraries and industry experts were invited. The working meeting called "Global Cooperation on the Provision of Online Legal Information" was intended to discuss the ways in which online free resources were to be made available to enforce the resolution of cross-border disputes. Of course, the experience of the LII community had a significant role in the meeting: the result was the drafting of the "Guiding Principles to be Considered in Developing a Future Instrument"[20] drafted on 19–21 October 2008. These principles address many key legal informatics issues regarding digital legal information including access, standards, metadata, interoperability, authentication and preservation[21].

This programmatic document and the Montréal Declaration provide a complete overview of the requirements for the implementation of effective free access to law.

PERSPECTIVES

In the actual information society, where knowledge and communication are both resources and strategic factors, anyone can be a potential provider of information, both in the private and public sector. On the other hand, anyone, could, and should be put in a condition to exploit it.

Making information available on the web is not enough; to fully exploit the possibilities offered by digital technologies, information has to be made available as structured data and freely reusable. This is the principle underlying the Open Data model.

What matters is not only the ability to access data but also to re-use it; that is, edit, mix and/or transform it. In 2013 the European Union enacted Directive 2013/37/EU[22] amending the Directive 2003/98/EC on the re-use of public sector information (PSI). The 2013 Directive is an important pillar of the European Union's open data strategy. It establishes the general principle that public sector bodies' available information shall be reusable in accordance with a number of conditions, such as open formats. This is in line with the principle of the Open Data model enabling the democratization of data.

Open Data is also related to the movement for the semantic web and for Linked Open Data (LOD); that is, the ability to publish data according to formats readable by machines using languages that formalise the relationships between information units. The idea of linked open data is to aggregate, harmonise, integrate, enrich and publish data for re-use on the web in a cost-effective way using semantic web technologies. To fully benefit from Open Data, it is crucial to put information and data into a context that creates new knowledge and enables powerful services and applications: in fact, LOD facilitates innovation and knowledge creation from interlinked data. LOD is becoming increasingly important in the fields of state-of-the-art information and data management and, in particular, the potentialities offered by the Linked Data Model to design innovative information services for law are enormous. Legal Open Data creates a social and economic value and it is strategic for governments' transparency. Furthermore, standards to uniquely identify legal resources already exist, yet harmonisation of the different national versions is required, through initiatives that are under way in Europe[23].

CONCLUSIONS

The conditions required for a wider dissemination of law have never been so favourable as they are today. New information technologies make it possible and facilitate free access to a huge amount of legal information for the benefit of everybody. Of course, many areas of the world still have no reliable access to the World Wide Web; however, even in this case, the availability of official legal information on the web can improve the actual situation. Legal data can be communicated to people more easily, although some of them, especially in developing countries, have access only through intermediaries. However, it is important to highlight that there is still a long way to go, especially to ensure understanding of the law which is something different from accessing it. Everything seems within reach, but going beyond, it turns out that access to legal texts does not imply, in most cases, the understanding of such texts. This can be achieved through appropriate web services based on semantic web and Linked Open Data technologies.

https://doi.org/10.1017/S1472669616000268 Published online by Cambridge University Press

Legal information is not fully available to regulated communities, and it is difficult for them to discover, obtain and understand. More simply put, it is very hard and very expensive for people and businesses to find out what they must do and how they are protected. To gain a fully disseminated legal information it is essential that all stakeholders involved in the creation, interpretation and distribution of law make their contribution. In fact, free access to law is part of a balanced process between the enforcement of the rule of law on the one hand, and the fight against new attempts at monopolisation on the other. It all depends on human intervention and a community's determination, on policies based on an objective and reasonable debate of all parties involved as producers, creators, distributors and users. The potential for collaboration is enormous and of particular value, as freely accessible and openly disseminated legal information can greatly contribute to ensure effective sharing of knowledge of the law and exchange of experience in legal implementation and policies across governments.

Footnotes

[1] Gordillo, Augustin. (2014) Access to justice, legal certainty and economic rationality. *Il Diritto dell'economia*, 27(1), 43–54.

[2] van Caenegem, Raoul C. (1991) *I signori del diritto: giudici, legislatori e professori nella storia europea*. Milan, Giuffrè. 139–140.

[3] Poulin, Daniel. (2004) Open Access To Law in Developing Countries. *First Monday* 9 (12).

[4] Suber, Peter. (2004) *Open Access Overview Focusing on open access to peer-reviewed research articles and their preprints*. http://legacy.earlham.edu/~peters/fos/overview.htm.

[5] Bentham, Jeremy (1843) *The Works of Jeremy Bentham*, Vol. IV, Edinburgh, William Tait.

[6] Currie, Albert. (2004) Riding the Third Wave: Rethinking Criminal Legal Aid within an Access to Justice Framework. *Department of Justice of Canada research report Series* http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr03_5/rr03_5.pdf.

[7] Galanter, Marc. (1985) The Legal Malaise: Or, Justice Observed. *Law and Society Review* 19, 537–545.

[8] Greenleaf, Graham, Mowbray, Andrew, Philip Chung (2013) The Meaning of "Free Access to Legal Information": A Twenty Year Evolution. *Journal of Open Access Law* 1(1) https://ojs.law.cornell.edu/index.php/joal/article/view/11/14.

[9] http://www.falm.info/declaration/.

[10] Greenleaf, Graham. (2010) The Global Development of Free Access to legal Information. *European Journal of Law and Technology*" 1(1).

[11] http://www.falm.info.

[12] www.lexum.org/fr/index.html. Since April 2010 Lexum is a private company called Lexum informatique juridique.

[13] The information system gives access to case law of the Supreme Court since its creation in 1875: csc.lexum.org/decisia-scc-csc/scc-csc/fr/nav.do.

[14] www.canlii.org.

[15] www.austlii.edu.au.

[16] Greenleaf, Graham, Mowbray, Andrew, Chung, Philip. (2011) AustLII: Thinking Locally, Acting Globally. *Australian Law Librarian*, 101–116, UNSW Law Research Paper No. 2011-41. ssrn.com/abstract=1960878.

[17] Poulin, Daniel Mowbray, Andrew, Lemyre, Pierre Paul.(2007) Free Access to Law and Open Source Software in K. St. Amant, B. Still (eds.) *Handbook of Research on Open Source Software Information Science Reference*", New York, Hershey, 375–376.

[18] http://www.fatlm.org/declaration/.

[19] www.hcch.net/index_en.php.

[20] https://assets.hcch.net/upload/wop/genaff_pd11a2009e.pdf.

[21] The last meeting was organized in February 2012 in Brussels jointly by the Hague Conference on Private International Law and the European Commission.

[22] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF.

[23] Among the projects involved in linking legal open data it is worth mentioning the European Project BO-ECLI: Building on ECLI. (http://www.bo-ecli.eu/bo-ecli/at-a-glance).

Biography

Ginevra Peruginelli is a legal researcher at the Institute of Theory and Techniques of Legal Information of CNR (ITTIG). She has a degree in law, a Ph.D. in Telematics and Information Society at the University of Florence and a Master's degree in Computer Science at the University of Northumbria, Newcastle. Since 2003 she is entitled to practice as a lawyer. She has been working first as a fellow and from 2007 as researcher at ITTIG. Her current research interests include user legal information requirements, strategies for online legal information retrieval, analysis of legal language in a multilingual environment and research evaluation criteria in the legal area.

https://doi.org/10.1017/S1472669616000268 Published online by Cambridge University Press