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# A Poststructuralist Analysis of the Legal Research Process

Jill Anne Farmer

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### A Poststructuralist Analysis of the Legal Research Process\*

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*Ms. Farmer describes the role of epistemology in research in law and library science, arguing that while poststructuralist critiques have gained prominence in legal scholarship, poststructuralist approaches have been largely ignored in library science research. The potential benefits of post-structural analyses are presented.*

#### Introduction

The term poststructuralism is in some sense a catch-all category referring to an intellectual position or a form of cultural criticism. It is also an emerging set of social, cultural, and economic conditions that characterize the age of multinational capitalism.<sup>1</sup> As an intellectual critique, poststructuralism should be of concern to librarians, insofar as it radically questions librarianship's traditional epistemology, or sociology of knowledge. As a prominent component of current legal scholarship, poststructuralism should be of particular concern to law librarians, who need to be aware of trends in both librarianship and law to carry out their mission.

In this article, I suggest that research in library science is dominated in both its theoretical constructs and research efforts by an outmoded epistemology—positivism. In this respect, the field has resisted a rather widespread paradigmatic shift by the social sciences to an alternate method of conceptualizing communication and its consequences. A poststructuralist analysis yields a framework to examine information processes; this analysis is more flexible and has more explanatory power than the positivist approach. By way of example, I analyze the system of legal research from

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1. STANLEY ARONOWITZ & HENRY A. GIROUX, POSTMODERN EDUCATION: POLITICS, CULTURE AND SOCIAL CRITICISM 62 (1991).

the poststructuralist perspective. I begin with a definition of poststructuralism in order to set the stage for future departures from positivism and to help us understand the necessity for doing so.

### Poststructuralism

In a broad sense, poststructuralism rejects "master narratives" and foundational claims that purport to be based on science, objectivity, neutrality, and scholarly disinterestedness. Such universalizing categories are rather seen as "ideological expressions of particular discourses embodying normative interests and legitimating historically specific relations of power."<sup>2</sup>

In particular, the poststructuralist movement represents an analytical shift from an emphasis on a literary (or cultural) product as a "work," that is, a closed entity with a definite meaning, to seeing it as an ongoing dialogue, or "text." "Text" is used to refer to the entity created by the interactive relationships among the reader, the broader culture, and the work, making the meaning of the product a function of many variables. Rather than determinant, the text can be seen as "an endless play of signifiers which can never be finally nailed down to a single centre, essence or meaning."<sup>3</sup> Theorists of this movement "deconstruct" or take apart texts to reveal the array of assumptions underlying each statement. They point out not only the implications of what is said, but also how that which is denigrated, excluded, or otherwise marginalized is also essential to meaning and the influence of the discourse on power.<sup>4</sup>

The poststructuralist perspective has come to inform a significant proportion of published writing in all areas of the law.<sup>5</sup> Yet, in spite of the theoretical storm sweeping through universities and law schools, the field of library and information science seems to have remained largely apart from the maelstrom.<sup>6</sup> Law librarians traditionally have maintained that

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2. *Id.* at 68. See also the seminal work of THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (1962).

3. TERRY EAGLETON, *LITERARY THEORY: AN INTRODUCTION* 138 (1983).

4. J.M. Balkin, *The Domestication of Law and Literature*, 14 *LAW & SOC. INQUIRY* 787, 808-09 (1989) (book review of RICHARD POSNER, *LAW AND LITERATURE* (1988)).

5. See, e.g., Duncan Kennedy & Karl E. Klare, *A Bibliography of Critical Legal Studies*, 94 *YALE L.J.* 461 (1984).

6. See, e.g., Brenda Dervin & Michael Nilan, *Information Needs and Uses*, in 21 *ANNUAL REVIEW OF INFORMATION SCIENCE AND TECHNOLOGY* 3, 13 (Martha E. Williams ed., 1986) (writing, "Most observers agree that information needs and uses studies have focused on objective information, on a conception of information as something that has constant meaning and some element of absolute correspondence to reality."). Cf. Stanley Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 *DUKE L.J.* 1, 25 (discussing First Amendment law, stating, "Although the assumption of the existence of objective truth is crucial to classic marketplace theory, almost no one believes in objective truth today.").

their education and experience give them the professional expertise and “wide-angle lens” by which to view the field in order to make decisions on matters ranging from collection development to the physical organization of the library. Without examining the fundamental issues raised by poststructuralist movements, however, librarians are missing the full range of viewpoints that currently characterize the landscape. In the legal field, the broad incursion of poststructuralist thought into both public and private law reflects a “deep and persistent crisis” in the practice of legal interpretation and “a loss of faith concerning the availability of objective criteria permitting the ascription of distinct and transparent meanings to legal texts.”<sup>7</sup> The reflection of this intellectual ferment in legal scholarship has direct implications for legal research and thus for the law librarian. Moreover, the interpretation of law as a product of the cultural and social formation is but a subset of a theory which posits “meaning” as separate from “information” and which is therefore of major importance to the library field as a whole.

### Implications for Library and Information Science

According to poststructuralist analysis and contrary to the understanding of information in library and information science, there is no objective reality; rather, reality is socially constructed. On the individual level of analysis, formation of conceptions is a function of one’s socioeconomic background, methodological preferences, or personal experience.<sup>8</sup> In addition, as one feminist methodologist argues, the “genderspecific workings” of the objective/subjective dichotomy in mainstream epistemology show “without doubt that the sex of the knower is epistemologically significant.”<sup>9</sup> On the societal level, one’s position in history,<sup>10</sup> the structure

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7. Michel Rosenfeld, *Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptations of the New Legal Formalism*, 11 CARDOZO L. REV. 1211, 1211 (1990). This is not just a problem of unclear law or difference of opinion about the law. See Robert M. Cover, *The Supreme Court 1982 Term, Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 42 (1983) (quoting Brown v. Allen, 344 U.S. 443, 540 (1953) (Jackson, J., concurring), “We are not final because we are infallible, but we are infallible only because we are final.”).

8. Susan Mann, *The Universe and the Library: A Critique of James Boyd White as Writer and Reader*, 41 STAN. L. REV. 959, 959 (1989) (summarizing literature she labels as “humanistic theories of interpretation”).

9. LORRAINE CODE, WHAT CAN SHE KNOW? FEMINIST THEORY AND THE CONSTRUCTION OF KNOWLEDGE 67 (1991).

10. *Id.* at 56 (“Any critical analysis of abstract, universalist models of knowledge which takes subjective cognitive circumstances into account will reveal that a knower’s location in history is constitutive of her or his possibilities of knowing.”).

of one's language,<sup>11</sup> and the media through which one receives the message also affect interpretation of information.<sup>12</sup>

How and why people come to embrace different belief systems is a complex issue. It could be argued, as Edelman does, that

[B]eliefs and perceptions are very largely not based upon empirical observations or, indeed, upon "information" at all. More than that, nonempirically based cognitions are the most resistant to revision based upon observations of the world, and accordingly they have the most potent influence upon which empirical observations and social cues are taken into consideration and which ignored.<sup>13</sup>

Indeed, library science can hardly agree on a definition of information, much less how people come to an understanding of it.<sup>14</sup> For the most part, however, positivism, with its view of a deterministic world that is discoverable, describable, and predictable, underlies many of the assumptions of research in the field.<sup>15</sup>

Kernan maintains that each type of information technology used—whether oral, written, printed, or electronic—creates a different kind of "truth"—wisdom, knowledge, information, and now, data.<sup>16</sup> Knowing who or what disseminates this "truth" is an important aspect of understanding not only the relationship between information and meaning, but potential problems of access to information as well. Because meaning is socially constructed, the groups that control the economic and cultural

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11. Peller reminds us that not only is language a socially created way to categorize perception, but it mediates perception by shaping ways of thinking about the world. Moreover, "[w]hen we try to move beyond language and rhetoric . . . to what is being represented, we find only more language, more metaphor, more interpretation." Gary Peller, *Reason and the Mob: The Politics of Representation*, TIKKUN, Vol. 2, No. 3, 1989, at 28, 29.

12. NEIL POSTMAN, *AMUSING OURSELVES TO DEATH* 10 (1985). Postman observes: [T]he forms of our media . . . are rather like metaphors, working by unobtrusive but powerful implication to enforce their special definitions of reality. Whether we are experiencing the world through the lens of speech or the printed word or the television camera, our media-metaphors classify the world for us, sequence it, frame it, enlarge it, reduce it, color it, argue a case for what the world is like.

*Id.*

13. MURRAY EDELMAN, *POLITICS AS SYMBOLIC ACTION* 31 (1971). See also *id.* at 34 n.4 (citing literature on selective perception and the predilection of individuals to ignore data in systematic fashions). For the ways in which experiential influence over opinion formation subverts the notion of a "free marketplace of ideas," see Ingber, *supra* note 6, at 26-31.

14. See generally Nancy Freeman Rohde, *Information Needs*, in 14 *ADVANCES IN LIBRARIANSHIP* 49 (Wesley Simonton ed., 1986).

15. *Id.* at 61. Harris charges that the library community has fallen prey to the "objectivist illusion" (described by Jurgen Habermas), which lies like "an all-encompassing blanket over work in the field." See Michael H. Harris, *State, Class, and Cultural Reproduction: Toward a Theory of Library Science in the United States*, in *id.* at 211, 221.

16. Alvin Kernan, *Literacy Crises, Old and New: Information Technologies and Cultural Change*, 9 *LANG. & COMM.* 159, 159 (1989).

apparatus of a given society largely determine which meanings are considered the most important.<sup>17</sup> Moreover, the cultural process is shaped increasingly by fewer transnational corporations.<sup>18</sup> Profit and ideological conformity have become important criteria for any print or visual production.<sup>19</sup> Not only information resources but information technologies are controlled by a handful of commercial firms, making access to and control of technology selectively limited. A number of surveys have found, for example, that income and education of parents are directly correlated with computer ownership in the home, which in turn translates into educational advantage for the children and the subsequent social and economic power associated with knowledge of technology.<sup>20</sup> Cognizance of the threat to the availability and diversity of information as well as the pervasive but subtle imposition of meaning onto information are essential for information literacy. Yet, most literature in librarianship reveals little inclination to embrace the idea that "information" is a product of anything but intellectual effort.<sup>21</sup>

Ruben delineates the theoretical distinctions between "the Communications Studies perspective" and "the Information/Library Studies perspective."<sup>22</sup> While the former, he suggests, involves an "ongoing creation of meaning by interactants" (and thereby is analogous to what we are calling a "poststructuralist" perspective), the latter emphasizes "the retrieval, transmission, and use of information [*qua* a discrete entity] by a logical and rational user. . . ."<sup>23</sup> Thus, information studies tend to focus on outcomes and proceed on the assumption of managed, formal systems of information transfer.<sup>24</sup>

Harris proposes that this epistemological emphasis arose from the concern, beginning in the 1920s, that librarianship be considered a "science," in part to upgrade the status of the profession.<sup>25</sup> Positivism, with its emphasis on the amassing of facts governed by general laws,

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17. Henry A. Giroux, *Reading Texts, Literacy, and Textual Authority*, 172 J. EDUC. 84, 85 (1990).

18. Henry T. Blanke, *Libraries and the Commercialization of Information: Towards a Critical Discourse of Librarianship*, 1 PROGRESSIVE LIBR. 9, 10 (1990-91). See also generally Ronald D. Doctor, *Information Technologies and Social Equity: Confronting the Revolution*, 42 J. AM. SOC'Y FOR INFO. SCI. 216 (1991).

19. Blanke, *supra* note 18, at 10.

20. Doctor, *supra* note 18, at 219.

21. Harris, *supra* note 15, at 214.

22. Brent D. Ruben, *The Communication-Information Relationship in System-Theoretic Perspective*, 43 J. AM. SOC'Y FOR INFO. SCI. 15, 18 (1992).

23. *Id.*

24. *Id.* at 19.

25. Harris, *supra* note 15, at 217.

quantitative analysis, and value neutrality, was adopted toward this end from the model of the so-called "hard," or "respectable," sciences.<sup>26</sup> Harris argues that positivism's appeal was reinforced because of its harmony with the pluralist perspective embraced by librarians in the war years of the 1930s and 1940s:

[T]he library was now portrayed as an institution which could play a vital role in promoting and preserving democracy in America by assisting the successful working of pluralist self-government. Librarians were seen as apolitical servants of the "people" and were expected to be completely neutral on social, economic, and political questions . . . .<sup>27</sup>

According to Harris, the methodology of positivism, informed by the pluralistic perspective, not only dominates research on the American library, but has become even more entrenched, "through processes involving cognitive commitments, acquired through socialization and maintained by the application of authority and social control."<sup>28</sup> This narrowly focused epistemology restricts the conception of information to that which has an existence independent of thought, sources, or receivers.<sup>29</sup> The consequences of this conceptual poverty have had broad and deleterious repercussions. Years of research guided by this theoretical framework have brought us no closer to understanding how and why people use information, nor how libraries can therefore meet individual needs in more widespread and useful ways.<sup>30</sup>

### Implications for Research in Law

An understanding of information in general and the relevance of libraries in particular can come in part from a poststructuralist analysis of the information industry and the cultural determinants with which the user approaches information. As Edelman suggests, "People can use only an infinitesimal fraction of information reaching them. The critical question, therefore, is what accounts for the choice . . . of what to organize into a meaningful structure and what to ignore."<sup>31</sup>

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26. *Id.* at 217-20.

27. *Id.* at 215.

28. *Id.* at 214 (citing BARRY BARNES, T.S. KUHN AND SOCIAL SCIENCE 11 (1982)).

29. Brenda Dervin, *Useful Theory for Librarianship: Communication, Not Information*, DREXEL LIBR. Q., Vol. 13, No. 3, 1977, at 16, 16.

30. *Id.* at 24.

31. EDELMAN, *supra* note 13, at 33.

The law library makes an interesting case study because of the unique concentration of publishing in the hands of only a few companies.<sup>32</sup> West Publishing Company, with its philosophy of reporting virtually all cases, prints approximately 130,000 decisions annually.<sup>33</sup> To lend structure to this chaos, West devised a "key" system to classify all points of law under predetermined topics (each point having a "key number"), which are used for the entire body of federal and state law. West also prepares editorial headnotes that summarize each point of law in a case, resulting in a "normalization" of legal language and concepts.<sup>34</sup> This process has had an enormous impact on legal scholarship, so much so that "the National Digest system has molded and narrowed the way we conceptualize law."<sup>35</sup> To the extent that readers' choices are defined and limited by information sources (as well as their classification systems), it does not seem unreasonable to observe that a "remarkable sameness afflicts many scholarly articles, books, and doctoral dissertations."<sup>36</sup>

In legal scholarship, there are several movements descending and diverging from legal realism that have attempted to redefine jurisprudence and affect the way that texts are approached and analyzed. Critical Legal Studies (CLS) practitioners, for example, seek to bring to the foreground the assumptions and conceptual frameworks underlying most legal interpretations, which they feel do not reflect disinterested normative standards but reflect instead dominant Western political ideologies, values,

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32. KENT C. OLSON & ROBERT C. BERRING, PRACTICAL APPROACHES TO LEGAL RESEARCH 7-9 (1988). Virtually all case and federal statutory law in this country is published by just two houses: West Publishing Company and the Lawyers Cooperative Publishing Company (a division of Thomson Professional Publishing Group, a conglomerate owning other legal publishers, including Warren Gorham Lamont and Clark Boardman Callaghan). West is still the nation's largest publisher of legal information. Statutory law is published in full but annotated at the discretion of the publishers. Case law is published on a selected basis, first according to what judges deem to be important and therefore disseminate, and then, in the case of Lawyers Cooperative, to what editors deem important as well. Two other companies, BNA (Bureau of National Affairs) and CCH (Commerce Clearing House), are the primary publishers of looseleaf services, which often provide a lawyer's main source of interpretation about a field or topic in the law. Most of this material is also available online through LEXIS and WESTLAW. LEXIS is owned by Mead Data, although it includes Auto-Cite, an electronic citator produced by the Thomson Group, and WESTLAW is another product of the ubiquitous West Publishing Company.

33. Written communication from Dorothy Molstad, Manager of Media Relations, West Publishing Company (Oct. 13, 1992).

34. Robert C. Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CAL. L. REV. 15, 24-25 (1987).

35. Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?*, 81 LAW LIBR. J. 431, 443 (1989).

36. Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 STAN. L. REV. 207, 207 (1989).



and economic interests.<sup>37</sup> Nevertheless, the language, ideals, signs, and structures created by the law have significant material and moral consequences for *all* groups within the culture, whether or not they derive equal benefit from the implementation of so-called "neutral" standards.<sup>38</sup> The fact that much of our law is based on tradition, and that tradition in turn has coercive power, has therefore given the poststructuralist movement particular appeal and significance for groups traditionally excluded from social and political privilege.<sup>39</sup> Thus, it is not surprising that minority scholars dominate the CLS movement and have been in the forefront of efforts to deconstruct legal decisions (since prior law determines subsequent law) and to analyze modes of organizing that material (since terms and methods used to abstract and index materials can serve to construct perception). As Mann notes, "The move toward hermeneutics has been a healthy one for legal scholarship because its emphasis on perspective helps open up legal discourse to the views of those it has traditionally excluded."<sup>40</sup> In fact, however, this Prague Spring may obtain only in academia. Legal practitioners, with little free time to keep up with law journals and continuous pressure to generate documents based

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37. Peter C. Schanck, *The Only Game in Town: Contemporary Interpretive Theory, Statutory Construction, and Legislative Histories*, 82 LAW LIBR. J. 419, 427 (1990). A plethora of articles give full explanations of the history and concerns of the CLS movement. A good place to start is Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991). For an introduction geared to librarians, as well as references to a number of other articles defining the movement, see Steven M. Barkan, *Deconstructing Legal Research: A Law Librarian's Commentary on Critical Legal Studies*, 79 LAW LIBR. J. 617 (1987).

38. For an historical analysis of the cultural repercussions of sex-based disparities in the law, see Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731 (1991).

39. "A fundamental principle of our legal system which shapes the techniques of legal research is *stare decisis*, the doctrine that precedents should be followed." MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* 3 (9th ed. 1989). These precedents however, can be seen as laws and practices that reflect underlying values of the dominant culture, even though these values are often touted as "neutral." Duclos provides the example of the French-English bilingualism decision in Canada. Although conceived as a neutral compromise, it was really only desirable from the cultural perspective of the dominant culture, which was confident that it would mean everyone would speak English and some would speak French if they wished. From the cultural perspective of the Quebecois, however, bilingualism so conceived posed a direct threat to their cultural survival. See generally Nitya Duclos, *Lessons of Difference: Feminist Theory on Cultural Diversity*, 38 BUFF. L. REV. 325 (1990). Similarly, Derrick Bell adduced evidence for an unspoken judicial principle of "interest convergence" providing that "[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites." Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

40. Mann, *supra* note 8, at 960. The appeal has been such that two large movements have grown out of CLS, namely Critical Race Theory and Feminist Legal Theory. On the development of these strands of CLS, see Symposium, *Minority Critiques of the Critical Legal Studies Movement*, 22 HARV. C.R.-C.L. L. REV. 297 (1987).

on precedents, are much less likely to be exposed to an alternative analysis of events.

Searching for information in the law library, the information seeker is confronted with several systems that organize knowledge. The collection itself represents a selected subset of available material (much of which, as noted above, is published by the same few companies). The way the collection is physically housed necessarily omits all but a one-dimensional relationship among the materials. And, most importantly, the terms used to abstract and index materials—both physically within the collection and those which may be obtainable elsewhere—establish a virtual conceptual tyranny over access.

The common element in this picture is that the information provided by law libraries for their clientele is preselected and conceptually constrained. Moreover, the means by which this information is organized inevitably structures our perceptions. As Stephen Jay Gould notes,

[C]lassifications are human impositions, or at least culturally based decisions on what to stress among a plethora of viable alternatives. Classifications are therefore theories of order, not simple records of nature . . . . More important, since classifications are actively imposed, not passively imbibed, they shape our thoughts and deeds in ways that we scarcely perceive because we view our categories as “obvious” and “natural.”<sup>41</sup>

Delgado and Stefancic argue that indexing systems “function like DNA; they enable the current system to replicate itself endlessly, easily, and painlessly.”<sup>42</sup> Naturally, that which the systems replicate can only be preexisting ideas, thoughts, and approaches. Thus, if an indexing system does not have a category for the issue being researched, it is almost impossible to find.<sup>43</sup> While free-text computer searching helps somewhat, “[s]ome key articles and cases dealing with [new] concepts . . . do not refer to them by name; others that do are not included in standard legal databases.”<sup>44</sup> By sticking with preexisting ideas, on the other hand, the

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41. Stephen Jay Gould, *Taxonomy as Politics*, DISSENT, Winter 1990, at 73, 73.

42. Delgado & Stefancic, *supra* note 36, at 208.

43. Delgado & Stefancic suggest looking up articles like Bell's on interest convergence (see *supra* note 39) in the *Index to Legal Periodicals*. It was listed under two subjects: “schools” and “discrimination: race,” neither of which bears on the notion of an interpretive challenge to the basis of juridical decisions. Delgado and Stefancic provide other illustrations of this dilemma; for instance, there was no entry for Critical Legal Studies until nearly a decade after the movement began. Unfortunately, while the subject headings include articles *about* CLS, they do not include articles written from a CLS perspective. *Id.* at 217-19.

44. *Id.* at 220. Wise reviews the problems posed by current methods of indexing. She maintains that awareness of the names of the major actors in Critical Legal Studies is often the only way of

researcher is rewarded by quick and easy searches, and a wealth of information.

It is well documented that subject headings promulgated by the Library of Congress are riddled with inadequacies, which some contend reflect conservative, white, male-centered values and perspectives.<sup>45</sup> The LC and West systems of classification, however, dominate the structure of legal information. *Current Law Index*, for example, is based on subject headings. The *Index to Legal Periodicals* lists West's *Black's Law Dictionary* and West's *Legal Thesaurus/Dictionary* as sources for its subject headings. The Library of Congress lists *Black's Law Dictionary* and *Current Law Index* as the principal sources used to establish authority. The system is basically closed.<sup>46</sup> As Olson and Berring contend, "[West's] system of comprehensive publication and the indexing scheme it applied to every case has had a profound impact on the development of the legal system."<sup>47</sup>

Another aspect of the way the mass of legal information is handled, which affects outcome, is the encouragement of the use of previous citations as a guide to researching current topics.<sup>48</sup> Those analyzing citation data for evaluative purposes point to a high correlation between the number of times an article is cited and its significance or quality or influence or impact.<sup>49</sup> However, as Shapiro notes, "quality" itself is a socially defined trait, "reflecting the utility of the writing in question to other scholars, rather than gauging its intrinsic merit."<sup>50</sup>

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knowing whether an article indexed under a topic heading such as "Labor" or "Jurisprudence" is written from a CLS perspective. See generally Virginia Wise, *Of Lizards, Intersubjective Zap, and Trashing: Critical Legal Studies and the Librarian*, LEGAL REFERENCE SERVICES Q., Vol. 8, No. 1/2, 1988, at 7.

45. Sanford Berman has been prolific in his exposes of LC absurdities in general. See, e.g., his classic, SANFORD BERMAN, PREJUDICES AND ANTIPATHIES: A TRACT ON THE LC SUBJECT HEADS CONCERNING PEOPLE (1971). Feminists have published a great deal on male bias in particular. See, e.g., Connie Miller, *Standard Forms of Information Organization: Academic Libraries and Curriculum Integration*, WOMEN'S STUD. Q., Summer 1985, at 23.

46. Delgado & Stefancic, *supra* note 36, at 213.

47. OLSON & BERRING, *supra* note 32, at 7.

48. There is, of course, a rationale in jurisprudence for this practice. The doctrine of *stare decisis* "allows for or obligates judges to look at and cite to earlier decisions." Robert Schriek, *Most-Cited U.S. Courts of Appeals Cases from 1932 Until the Late 1980s*, 83 LAW LIBR. J. 317, 318 (1991). Practitioners tend to rely on the use of previous citations as much as possible to save time and effort. Bob Berring, for example, in his videotape series "Commando Legal Research," (Legal Star Communications, 1989) advocates as a smart research tactic finding "one good case," and locating the topic and key number for the case to find citations for similar decisions. He also recommends checking annotations and looseleaf services for citations to law review articles that have already set out the relevant issues and legal reasoning (albeit in traditional modes of analysis).

49. Fred R. Shapiro, *The Most-Cited Articles from The Yale Law Journal*, 100 YALE L.J. 1449, 1454 (1991).

50. *Id.*

In a study of citation counts in the civil rights legal literature Delgado found a noticeable exclusion of minority scholars, despite a rich storehouse of writings from which to choose.<sup>51</sup> He also found that when feminist literature is cited, the more radical feminist writers are cited less often than the more mainstream feminist authors.<sup>52</sup> Shapiro believes that "[p]atterns of citation inclusion, omission, and emphasis create a canon of accepted thought" that should be analyzed.<sup>53</sup> To the extent that current research is informed by citations to what came before, the probability that one's perspective will be broadened is not very high. This tendency of "self-replicating" work is endemic to all academic areas. Because new decisions must flow logically from old decisions, however, Olson and Berring see legal literature as "unique in its obsession with citation."<sup>54</sup> Moreover, "the cumulative, self-perpetuating nature of these references"<sup>55</sup> is aided by the publishing houses' policies of referencing their own treatises and other publications.<sup>56</sup> As an editor who works in trade publishing has noted, the typical publishing corporation or conglomerate subsidiary has as its paramount concern not quality, but short-term profits.<sup>57</sup>

Finally, legal research texts themselves have come under scrutiny for reflecting "a tendency to talk about law as pre-existing and given, something that can be found in the library."<sup>58</sup> Kissam notes, "The scholarship of teaching materials probably has been least influenced by the new approaches and methods to legal inquiry."<sup>59</sup> However, as Tushnet points out:

Legal scholarship, like everything else, is a cultural artifact. As artifact, it can be studied for what its style and substance reveal about the

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51. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 561-62 (1984).

52. *Id.* at 576 n.71.

53. Shapiro, *supra* note 49, at 1457.

54. OLSON & BERRING, *supra* note 32, at 9.

55. Schriek, *supra* note 48, at 318.

56. The Lawyers Cooperative Publishing Company, for example, has developed a system called the "Total Client-Service Library." Their annotations to materials will cite the reader to all their relevant publications, but not to relevant publications of other publishing houses. Other companies now imitate this practice.

57. See generally Ted Solotaroff, *The Literary-Industrial Complex*, in LIBRARY LIT. 18 - THE BEST OF 1987, at 105 (Bill Katz ed., 1988).

58. Barkan, *supra* note 37, at 620. For a rebuttal of Barkan's contentions, see Peter C. Schanck, *Taking Up Barkan's Challenge: Looking at the Judicial Process and Legal Research*, 82 LAW LIBR. J. 1 (1990). Christopher and Jill Wren object that a historical/economic treatment of law books gives "the misimpression that law books have intrinsic significance, rather than that the books derive their significance from the legal authorities they contain." Christopher G. Wren & Jill Robinson Wren, *Reviving Legal Research: A Reply to Berring and Vanden Heuvel*, 82 LAW LIBR. J. 463, 478 (1990).

59. Philip C. Kissam, *The Evaluation of Legal Scholarship*, 63 WASH. L. REV. 221, 242 (1988).

conditions of its production. Yet, because most of the time those who analyze legal scholarship participate in the very culture in which it is embedded, it is often difficult to appreciate legal scholarship as artifact.<sup>60</sup>

Similarly, Kennedy observes: "In picking a form through which to achieve some goal, we are almost always making a statement that is independent or at least distinguishable from the statement we make in choosing the goal itself."<sup>61</sup>

### Conclusion

Librarians are in a position to help alleviate some of the conceptual lock on legal information. Law librarians, for example, can make materials available on the ongoing theoretical debates about the role of interpretation in the legal process; thoughtful and insightful literature on interpretation is voluminous.<sup>62</sup> Special librarians can also help their clientele understand that what they are able to find is not equivalent to a whole universe of information or even a random subset, but rather to that particular universe found economically, politically, and/or personally expedient or essential to publishers, editors, and librarians. Similarly, a librarian can explain that indexing and content themselves are functions of competing paradigms.<sup>63</sup> If legal researchers understand the poststructuralist perspective that a universally valid translation of any text is untenable, this may help them in their efforts to interpret both the message of prior law, and its meaning to the courts.<sup>64</sup>

Law librarians have a unique opportunity to have an effect because of the large role they play in legal research instruction.<sup>65</sup> It is often charged

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60. Mark Tushnet, *Character as Argument*, 14 LAW & SOC. INQUIRY 539, 539 (1989) (book review of HARRY KALVEN, JR., *A WORTHY TRADITION* (1988)).

61. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1710 (1976).

62. Schanck, *supra* note 37, at 420. Schanck notes, however, "The truth is, of course, that CLS and Deconstructionist ideas are barely represented in today's legal profession." *Id.* at 431. But he quotes Stanley Fish as saying, "To be sure . . . the vast majority of legal business is still done within the traditional notions of literal meanings, transparent intentions, determinate texts, and stable precedents; but if certain forces in the legal academy grow more numerous and outlive their detractors . . . , then who knows?" *Id.* at 431-32 n. 46 (quoting Stanley Fish, *Don't Know Much About the Middle Ages: Posner on Law and Literature*, 97 YALE L.J. 777, 790 (1988)).

63. Mann, *supra* note 8, at 959.

64. Schanck, *supra* note 37, at 425. Schanck describes four leading schools of contemporary legal interpretive theory and shows how each can be applied in the selection and use of legal materials to influence statutory construction.

65. See generally Gitelle Seer, *The Librarian as Teacher*, AM. LAW., Dec. 1989, at 29.

that basic legal research instruction in law schools is deficient.<sup>66</sup> The growth of research training programs in the private sector for summer associates reflects the fact that many students arrive at their jobs unable to perform basic legal research.<sup>67</sup> Even when dealing with full associates, law librarians find themselves called upon to develop and teach skills that go far beyond legal reference.<sup>68</sup> Insofar as librarians must impart more than bibliographic instruction to their clientele, the opportunity exists to teach users something about information literacy as well. Librarians can help users understand the importance of different conceptual frameworks and how to analyze information packaging and content in these terms. Librarians can also make every attempt to encourage "concept" searching on online databases so that users can approach the material from other than conventional perspectives.

Another strategy is to go beyond the usual collection policies to acquire nonlegal material that reflects on social, political, and cultural theory. As Moore argues, legal practitioners are often insulated from external questions. They must join legal theorists, he maintains, in examining the practices of their own legal culture and evaluating both the "point" and values of that culture's interpretive practices in relation to societal values and epistemological questions.<sup>69</sup>

As special librarians, we are increasingly compelled to make a case for the value of information, in order to show a return on investment by our parent organization.<sup>70</sup> In determining whether the information we provide has impact, often we fail to look outside of the system box in which we are conceptually housed. It may be true that organizations are not really

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66. See generally Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 LAW LIBR. J. 451 (1989).

67. Berring & Vanden Heuvel, *supra* note 35, at 442.

68. See, e.g., Margaret Cronin Fisk, *Maintaining Expertise*, NAT'L L.J., July 22, 1991, at S1. See also Judith M. Leon & Kathryn Kerchof, *Teaching Legal Research in Private Law Libraries*, PLL PERSPECTIVES, Sept./Oct. 1990, at 1, 1 (reporting on the "tremendous need in law firms for training associates in order to make them the lean mean researching machines that management expects").

69. Michael S. Moore, *The Interpretive Turn in Modern Theory: A Turn for the Worse?*, 41 STAN. L. REV. 871, 955-56 (1989). Unfortunately, much of the self-perceived legitimacy of professionals comes from the appearance of, and purported dedication to, neutrality. See generally M.S. LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977). The legal field has a special stake in upholding the myth of "blind justice" as it is a crucial legitimating national myth. What is also referred to here, however, is a deeper, nonlinguistic source of perception, *i.e.*, the habits, similar backgrounds, practices, social relations, etc., that constitute legal culture.

70. Bonnie C. Carroll & Donald W. King, *Value of Information*, 21 DREXEL LIBR. Q. 39 (1985). Carroll and King give a history of attempts to measure value of information, which have included estimates of what users are willing to pay for information, as well as extensive analyses of information analysis centers, government research and development projects, databases, scientific journals, and library services. Usually the endpoint against which any putative value is measured is some definition of "impact."

interested in systemic change. But as custodians, facilitators, and guides to society's storehouse of information, our mission as professionals may go beyond the (possibly latent) aims of the organization. As information professionals, we owe it to society to ensure that economic and cultural dominance does not distort information access and interpretation. If we do our part to push the boundaries of meaning farther into the social process, then we will indeed have had an important impact.