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## The Enduring Value of Books Related to the Law: A Librarian's Perspective

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## FOREWORD

### THE ENDURING VALUE OF BOOKS RELATED TO THE LAW: A LIBRARIAN'S PERSPECTIVE

Linda S. Maslow\*

In the 1979 inaugural issue of the *Michigan Law Review's* annual survey of books related to the law, Professor Cavers wrote an enthusiastic and hopeful introduction. He characterized the journal's effort as a "bold innovation" that would benefit lawyers; law professors, both domestic and foreign; scholars in other disciplines, such as the social sciences; and the marketplace of ideas generally.<sup>1</sup> As the annual survey approached its twentieth anniversary, Professor Schneider provided a fascinating, frank description of the Book Review issue's origins during his tenure as the *Michigan Law Review's* Editor-in-Chief.<sup>2</sup> Happily, this annual Book Review issue continues to thrive. A few years after the inaugural issue, I arrived at the University of Michigan as a young lawyer on a new career path to law librarianship. I chose Michigan in order to benefit from the combined excellence of its library school, its law school, and its law library. I was unaware of this homegrown "bold innovation" that would become a part of my work for years to come. As an alumna of the University of Michigan's School of Library Science (now the School of Information) and a former member of the law school's library staff, I am honored to recognize Michigan's distinct contribution to the legal profession by introducing this year's commentary on a typically impressive and eclectic array of titles.

The law librarian works at the juncture of the two disciplines with the most direct interest in the work product that this annual issue represents—law and scholarship. Cavers touched on this fact when he observed that, if "faculty participation would be tolerated, I suggest the appointment of a faculty book-review editor—often the law librarian would be a good choice."<sup>3</sup> The law librarian's stock-in-trade is the scholarship of law and, increasingly, other disciplines. Books, in whatever format,<sup>4</sup> remain a key

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1. David F. Cavers, *Book Reviews in Law Reviews: An Endangered Species*, 77 MICH. L. REV. 327, 327–35 (1979).

2. Carl E. Schneider, *The Book Review Issue: An Owner's Guide*, 96 MICH. L. REV. 1363 (1998).

3. Cavers, *supra* note 1, at 331.

4. My comments in this introduction do not depend on whether the books are in print or electronic format. A few years ago, Professor Volokh explored this format question in this Book Review. See Eugene Volokh, *The Future of Books Related to the Law?*, 108 MICH. L. REV. 823 (2010).

source of historical trends, facts and theories, and research paths and leads, all of which support librarians' central professional role in the work of judges, scholars, practitioners, and students. Reviews of these books provide intellectual support for librarians by setting the works in a scholarly framework. And reviews provide practical support by offering critical evaluations that assist librarians in assessing a book's usefulness for a research task or in deciding to purchase books for our collections. In fact, this annual issue of the *Michigan Law Review* is one of a handful of scholarly book review collections that librarians often use to choose titles to add to library collections.<sup>5</sup>

Others have written about the value of reviews of law-related books and have lamented their decline in the traditional student-run law review.<sup>6</sup> My focus instead is on the importance of the books themselves. This is a simple point and self-evident to anyone who has chosen to read this issue of the *Michigan Law Review*. But I offer the perspective of a librarian, not a legal scholar. How do librarians use books, value them, and seek to preserve their content, from cover to cover?

Allow me a few words on the classic "treatise." Librarians often use the word "treatise" as shorthand for a substantial secondary work on a legal topic. *Black's Law Dictionary* defines a treatise as "[a]n extended, serious, and [usually] exhaustive book on a particular subject."<sup>7</sup> This classic, all-encompassing synthesis has seen days of both favor and decline over the history of legal publishing. Some eras in legal history and some areas of law may be more amenable than others to treatment by the classic treatise. Professor Tribe—who famously decided to cease work on his treatise, *American Constitutional Law*,<sup>8</sup> after the first volume of the third edition had been published—had such an ambitious definition for his work. He stated in a letter to Justice Breyer that "if one is aiming at a work that organizes the corpus of decisional law—that identifies, and reflects critically on, the major themes and directions of movement—then this isn't the moment."<sup>9</sup> Tribe sought "a synthesis of enduring value" and, in a subsequent open letter to readers, he observed, "I have come to have profound doubts whether any new synthesis having such enduring value is possible at present."<sup>10</sup>

I love the classic treatise as much as the next librarian. But as a librarian, I am happy to put aside its lofty definition and find enduring value in the

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5. Journal reviews tend to cover titles well after their publication, so they usually serve a supplemental role in selection. These reviews follow close-in-time but sometimes cursory reviews in librarian-focused publications such as *Choice* and *Publishers Weekly*, or sources dedicated to reviews such as the *New York Review of Books*, the *Times Literary Supplement*, newspaper book reviews, and the growing body of online reviews.

6. E.g., Sanford Levinson, Essay, *The Vanishing Book Review in Student-Edited Law Reviews and Potential Responses*, 87 *TEX. L. REV.* 1205 (2009).

7. *BLACK'S LAW DICTIONARY* 1732 (10th ed. 2014).

8. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* (3d ed. 2000).

9. Laurence H. Tribe, *The Treatise Power*, 8 *GREEN BAG 2D* 291, 292 (2005).

10. *Id.* at 295. I have particular respect and fondness for Professor Tribe and his treatise. I took his Constitutional Law class shortly after his treatise was first published and it served as our primary text, "supplemented" by Supreme Court opinions.

luxurious and expansive realm of “books related to the law.” The breadth and variety of these books support access to information, the paramount tenet of the law-library profession. This function is served by such books, whether a book offers global synthesis and analysis, or simply a thorough, well-documented discussion of a field of law or a field impacted by the law. A point-in-time work may explore the primary law in an area, the issues of importance to the actors, the dominant interpretations, the effects on other fields, and the tensions and unresolved issues at play. A work of history, economics, or philosophy may provide context for past legal events and shape the development of future ones. A life’s magnum opus or a brief and specific study, a philosophical overview or a statistics-laden report, a cutting-edge examination of new issues or a thorough survey of the scholarship of the past, especially once probed—with an astute reviewer’s assistance—for balance, accuracy, and the work’s place in the literature—all of these have value to a librarian.

Librarians value books from cover to cover. Readers who turn immediately to the main text may miss out on significant material. From the title page, we learn the author’s professional position and affiliation; from its verso, the publication and copyright dates of the work. From the foreword, the author or a third party gives the work a broader context; if contributed by a third party—often an important figure in the field—we benefit from an outside perspective. In one of the books reviewed in this issue, Robert Belton’s posthumous *The Crusade for Equality in the Workplace*, Belton’s colleague Stephen Wasby, who shepherded the manuscript to publication, provides a particularly poignant foreword. An author’s introduction sets the stage with a point of view, key concerns, and personal notes about those who helped with the achievement.<sup>11</sup> The table of contents sets out an intellectual scheme; it can be general, abstract, or a detailed and analytical classification that guides the reader through the work’s structure and its approach to the subject matter.

The text obviously provides the exposition—the guts of the arguments and underlying theory. It also contains two key artifacts for research: page numbers and footnotes. Page numbers are essential for citation; all future references to the text depend on them.<sup>12</sup> Footnotes are the librarian’s treasure trove. Scholars and judges may debate the value of the footnote, but the librarian is probably the reader most devoted to what falls below the line.<sup>13</sup>

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11. University of Chicago Professor McAdams said, in explaining his meticulous drafting process for the introduction to his first book, “The beginning of the book in some ways is the most important . . . . If people don’t like the beginning of the book, they’re not going to read the rest of it. And some people will only read the introduction to get the gist of the ideas.” Meredith Heagney, *How I Wrote a Book: Richard McAdams*, U. CHI. L. SCH. REC. Fall 2014, at 14, 16, available at <http://www.law.uchicago.edu/alumni/magazine/fall14/howiwroteabook>.

12. Publishers of e-books should take heed of page numbers’ value and be sure to include pagination (true to the printed work, if one exists) in the electronic versions of titles.

13. For a defense of footnotes in judicial opinions and a rebuttal of their critics, see Edward R. Becker, *In Praise of Footnotes*, 74 WASH. U. L.Q. 1 (1996).

Imagine a librarian's sense of hopeful discovery when working with the classic Wright and Miller treatise, *Federal Practice and Procedure*,<sup>14</sup> and finding page after page filled with more footnotes than text—citations galore to explore for leads, support, refutation, and deeper understanding. Footnotes can also reveal the breadth of thought that informs a legal scholar's analysis. For instance, Robert Post turns to poetry to explicate some points in his *Citizens Divided*, reviewed herein.<sup>15</sup> The permanence of the footnotes' content faces a modern threat with the growth of electronic scholarship and the resulting "link rot" or "reference rot" of citations to Internet resources.<sup>16</sup> Librarians, among others, have documented and are seeking solutions to this problem.<sup>17</sup>

The researcher's tools are not complete with the last page of the main text. One might find the figurative "bookend" to the foreword—a thoughtful afterword setting out final observations or paths for future scholarship, such as in Professor Amar's *America's Unwritten Constitution*.<sup>18</sup> Additionally, the index, a low-tech predecessor of the modern search engine, helps pinpoint discussions of narrow issues and reveals the relative strength or weakness of the book's coverage of a particular area. The book may contain tables of authorities (to statutes, cases, or regulations) and cross-references from past editions to the current one. Even the bindings, when it comes to traditional law books, are valuable: they may house pocket parts updating the main work. The electronic versions of these books add the precision and depth of Boolean and full-text search capabilities, enhance portability, offer opportunities for an author to engage the reader with links beyond the text, and allow the reader to add searchable personal annotations to her copy. Librarians embrace these exciting advances and have helped publishers improve them. We caution, however, that these new versions should remain true to the text, cover to cover, retaining the proven treasures of the print versions, while building on them to enhance the works' usability.

In Judge Posner's introduction to last year's Book Review issue, he framed his topic by noting, "I am not interested in which already published books should be retained and which discarded."<sup>19</sup> The judge is afforded this

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14. CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE: CIVIL* (3d ed. 2002); CHARLES ALAN WRIGHT & ANDREW D. LEIPOLD, *FEDERAL PRACTICE AND PROCEDURE: CRIMINAL* (4th ed. 2008).

15. ROBERT C. POST, *CITIZENS DIVIDED* 240 n.23, 242 n.36 (2014).

16. "Link rot refers to the URL no longer serving up any content at all. Reference rot, an even larger phenomenon, happens when a link still works but the information referenced by the citation is no longer present, or has changed." Jonathan Zittrain et al., *Perma: Scoping and Addressing the Problem of Link and Reference Rot in Legal Citations*, 127 *HARV. L. REV. F.* 176 (2014), [http://cdn.harvardlawreview.org/wp-content/uploads/2014/03/forvol127\\_zittrain.pdf](http://cdn.harvardlawreview.org/wp-content/uploads/2014/03/forvol127_zittrain.pdf).

17. Professor Zittrain, whose many roles include director of the Harvard Law School Library, has provided thought-provoking scholarship and one possible solution, known as the Perma Project. *See id.*

18. AKHIL REED AMAR, *AMERICA'S UNWRITTEN CONSTITUTION* 479–85 (2012) (reviewed herein).

19. Richard A. Posner, *What Books on Law Should Be*, 112 *MICH. L. REV.* 859, 859 (2014).

luxury because library professionals take up this challenge daily, at the micro and macro levels, to preserve scholarship for the ages. Librarians retain superseded editions of select treatises in their print collections when space allows and needs demand; encourage publishers to do the same for the electronic versions of their products; and digitize unique public-domain materials in library collections when resources are available. Librarians work with organizations such as Internet Archive and HathiTrust Digital Library and cooperate with projects like Google Books to develop digital collections. Through these efforts, the works of scholars, practitioners, and students will continue to inform the work of their future counterparts. Scholars and researchers may seek superseded editions of works to understand the state of the law and its scholarship at a certain time; judges may find superseded materials useful when hearing cases with facts that originated many years in the past.<sup>20</sup> If the reader will forgive a reference drawn from my favorite pastime, whenever I hear the opening of a radio broadcast of a Washington Nationals baseball game and the announcer Charlie Slowes intones, “remember where you are, so you’ll remember where you were,” I think he could just as well be narrating the daily challenge facing librarians, researchers, archivists, and historians.

As the classic, synthesizing treatise declines and the sources of scholarship important to the legal profession proliferate both in format and in subject area,<sup>21</sup> the librarian stands at the crossroads—unearthing paths, finding crucial information, evaluating authoritativeness, preserving literature, ensuring accuracy, and enhancing access for all comers. Substantive book reviews can contribute a roadmap to this journey. By offering careful, evaluative criticism of a work and setting it within the literature of its discipline, reviews serve the librarian and the scholar. Old-fashioned, perhaps; slower to appear than the expectations and dictates of modern times, certainly; but also, maybe even because of their old-fashioned and slow nature, of unquestionable value to the serious and timeless study of legal thought.

And so I welcome you to consider the variety of thought that supports the lawyer’s imagination as you explore this collection of reviews of books by jurists like retired Justice Stevens and Judge Posner; law professors such as Bruce Ackerman and Lawrence Zelenak; and writers in nonlegal fields whose works have received wide attention like Thomas Piketty and Shel Silverstein, among others. As a law librarian, I look forward to what these books and their reviewers’ commentaries may teach me, and the many fruitful paths to further knowledge and understanding that they will lead me to discover.

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20. A journalist recently reported that, according to his newspaper’s analysis, the average age of a case heard by the U.S. Supreme Court since October Term 2009 is almost six years, and thirty-two of those cases originated over a decade earlier. Brent Kendall, *A Matter of Endurance: Average Age for Supreme Court Case is Nearly Six Years*, WALL ST. J., Dec. 1, 2014, at B5.

21. Richard A. Danner, *Oh, the Treatise!*, 111 MICH. L. REV. 821 (2013).

