LEGAL LITERACY AND OTHER LITERACIES

Examining the Concept and Objectives of Legal Literacy

In this chapter we will examine in more detail the idea of literacy in law both in a functional and critical sense. Literacy today means more than just being able to read—it encompasses understanding society so that one is able to function within it, and be capable of working to change it for the better. Legal literacy in this expanded sense thus involves knowing the constraints and possibilities law offers for change, plus having the capability to use its tools and techniques to improve society for oneself and others.

LITERACY AND LAW

To become literate (able to read and write) is to become a full member of a written language community. If someone is only capable of oral expression, they are not a full member of the community that uses the written word. Being able to write extends the range of a person’s words far beyond hearing distance; being able to read vastly increases the number of other people whose words can be experienced. Being literate is considered such an important capacity that the United Nations has labelled it a human right. Literacy has also been described as essential to healthy families.
Being literate can therefore be seen as a crucial way in which an individual connects and interacts with society around them. As the South American educator and social activist Paulo Freire puts it, “reading the word and learning how to write the word so one can later read it are preceded by learning how to write the world, that is, having the experience of changing the world and touching the world.” Literacy can empower an individual to influence the society around him or her more effectively. The relationship of literacy to law is a strong one, particularly in Western societies with a long tradition of written and published laws.

To the extent that written law helps to form society and guide the actions of its members, literacy becomes important for participation in a legal system. Without literacy, people can become intimidated and alienated from law. This may create a situation where people come into conflict with law, or are unable to obtain help from it. Courts have recognized the barriers raised by a lack of literacy that interfere with asserting guaranteed rights effectively, especially when parties have no lawyer to represent them. In addition, literacy requirements have been used to block access to the political system through voter registration procedures in some jurisdictions, such as the southern states in the U.S. Lack of literacy can disadvantage citizens in many ways.

Organizations at all levels of society are engaged in education to increase literacy levels. However, even basic literacy may not be enough to allow an individual to effectively participate in a legal system.

Even if people with low literacy have found a way to cope with their daily routine, they find it very difficult to read, understand, and use material related to legal problems. They do not understand the concepts contained in the words, even if they understand the words themselves. Therefore, they cannot understand what is expected of them and often the implications of what is being said.

In modern societies with vast amounts of written law and complex legal systems, it is necessary to go beyond basic literacy in order to understand and use law. Today, the concept of legal literacy has been expanded to include all of the knowledge and skills required to interact effectively with the legal system.
Evolution of the Concept of Legal Literacy

Originally, the term legal literacy was used to refer to an aspect of professional legal education. To be legally literate meant that you, as a lawyer, were capable of reading and writing the legal arguments, briefs, opinions, judgments, and legislation that contribute to the body of law. This definition describes legal literacy as being “literate in the law.” In this sense, legal literacy is primarily a concern of legal writing programs in law schools that teach students to think and communicate “like lawyers.”

Later, a broader meaning of legal literacy became more common as a result of two different approaches to the concept. One approach considers legal literacy as a capacity spread along a continuum, with lawyers and judges at one end and relatively incapable non-lawyers (“laypersons”) at the other. This approach was adopted by the legal scholar James Boyd White, who considered legal literacy to mean “that degree of competence in legal discourse required for meaningful and active life in our increasingly legalistic and litigious culture.” Another legal writer describes legal literacy as a “spectrum of functional skills” related to the conduct of litigation. According to the continuum approach, a certain degree of legal literacy is required for effective participation in modern society, but it is not necessary for the average citizen to reach the professional standard that law schools traditionally require.

The second recent approach to the meaning of legal literacy is to consider it as a metaphor. According to this view, the term is “intended to suggest some parallels between the institution of the law, and a system of language to be mastered, knowledge gained and understanding achieved.” Legal literacy can thus be compared to learning the language of a foreign society in order to be able to operate effectively within it. For those who lack legal literacy, the world of lawyers and judges feels just as foreign as an unfamiliar country.

The views I have described have led to an expanded conception of legal literacy today that extends beyond the profession of law and into the community. Numerous broad definitions of legal literacy have been advanced. Here are some influential ones:

Full legal literacy goes beyond the development of a basic legal competence and implies the acquisition of knowledge, understanding and critical judgment about the substance of law, legal process and
legal resources, enabling and encouraging the utilization of capacities in practice.\textsuperscript{6}

The ability to make critical judgments about the substance of the law, the legal process, and available legal resources, and to effectively utilize the legal system and articulate strategies to improve it.\textsuperscript{7}

The ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action.\textsuperscript{8}

Legal literacy is a process of self and social empowerment that moves women not only to activate the rights they do have, but to redefine and reshape the inadequate ones as expressed in law and in practice.\textsuperscript{9}

Common to these definitions is an emphasis on the ability to take appropriate action in response to problems involving the law. It is understood such action may sometimes be critical of, and challenging to, the legal system. Such a view of what legal literacy means is in keeping with the idea of becoming a member of a community. Membership “has its rewards” as the advertisement says, but it also has its demands. To become the member of a language community is to accept many rules and conventions about how to communicate, but it also entails the ability to challenge those constraints in a way that will be understood and perhaps accepted by other members. So it is with law. Becoming legally literate is gaining full membership in a community that shares a legal system. Such membership comes not only with many constraints but also many opportunities for action and change.

OTHER LITERACIES

In the twentieth century, consumers rose in stature and power as an interest group within society, while the traditional professions came under criticism for being unresponsive and paternalistic. The increasing public availability of information in digital formats has also challenged professional monopolies over expert knowledge. Taken together, these trends have resulted in new approaches to professional practices that are more collaborative in nature. Professionals have begun to involve their clients more actively in
decision-making and problem-solving, based on shared information and knowledge. In order to play a more active role in securing their own welfare, laypeople have been encouraged to develop a deeper understanding of professional fields that were formerly considered the domain of experts only.

The development of the modern concept of legal literacy can therefore be seen as part of a movement to empower citizens and to free them from domination by professionals. From this point of view, legal literacy is only one of many capabilities that must be mastered in contemporary society in order to enjoy a free and productive life. Legal literacy alone will not yield all of the benefits of full and active membership in an interconnected and interdependent society, so it is important to understand and embrace other literacies as well. Today, many fields of knowledge and practice have their own equivalents to legal literacy in its expanded sense.

Perhaps the most conspicuous example of another type of literacy today is information literacy, which has grown out of the concept called computer literacy. Once computers became readily available in society, there was a movement to educate as many people as possible to understand their functions and uses. As the amount of data available via the Internet increases dramatically, most recognize that the skills of locating, analyzing, and evaluating this information have become crucial for success both in business and private pursuits. Thus the majority of educational institutions today provide students with opportunities to enhance their information literacy. To the extent that the information available online is legal in nature, information literacy shares many of the same goals as legal literacy.

Health literacy is another prominent parallel development to legal literacy. It has been defined as “the ability to access, understand, evaluate and communicate information as a way to promote, maintain and improve health.” Public health groups recognize that low health literacy can jeopardize an individual’s health in the same way low legal literacy can affect their legal rights. Health literacy includes being able to use some of the same type of tools and techniques as legal literacy, such as searching for and analyzing medical and scientific information in order to make informed choices about future actions.

There are numerous other literacies similar to legal literacy. Numeracy is the equivalent in relation to scientific and mathematical understanding.

* Words in italic can be found in the glossary.
Financial literacy is considered necessary to manage money and investments. Environmental literacy is a knowledgeable appreciation of the limits of our planet to cope with human activity. Media literacy involves the capacity to access, utilize, and evaluate communications in various media.

Other literacies share many similarities with legal literacy. They represent ways in which non-experts can acquire the knowledge, information, and capability to act effectively in various spheres of social life without relying entirely on professional help. Like legal literacy, many other literacies also focus on developing a critical appreciation of social forms and practices, and the ability to challenge them when it is thought necessary.

Socio-legal scholars have used other concepts besides literacy to describe the interaction of people and laws, and we will look at some of these next.

RELATED SOCIO-LEGAL CONCEPTS

There are other useful concepts concerning law that may help to put legal literacy in perspective. Three of these are legal consciousness, legal mobilization, and legal socialization. Legal consciousness is a socio-legal term that refers to awareness of law and legal institutions, together with attitudes toward them, among members of the public. It helps us to understand the significance people attach to the law in relation to their everyday affairs. Legal consciousness can be studied in relation to popular culture, which often portrays law, lawyers, and judges in the entertainment media and helps to shape public ideas and attitudes toward them. Legal consciousness is also related to the concept of norms, which is used to describe everyday expectations of proper behaviour, including etiquette, morals, and laws. Some rules that are usually followed are not law but merely norms, so legal consciousness may not be required in some areas of life.

Studies of legal consciousness show how law helps to frame the perceptions people have of their lives, and to constitute the relations they have with others. Such interaction with the law can take many forms, including avoiding or accepting it: “people make claims on the law, but not necessarily rights claims; the law leads people to accept and acquiesce to existing social and economic arrangements without making them ‘lump’ their grievances; and people may reject the formal apparatus of the law even as they create viable substitutes for its power and authority.”

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The concept of legal mobilization refers to how people actively appeal to law and legal institutions to advance personal and group interests. Thus, it is closer to the concept of legal literacy than legal consciousness because mobilization emphasizes the instrumental use of law by those subject to it. It differs from legal literacy in that mobilization usually builds upon existing law rather than offering a critique of it, as legal literacy promises to do. In the past, mobilization meant the processes by which disputes enter the formal legal system, but more recently it has been described as the strategies used by individuals and groups to focus the attention of both legal institutions and the public on their justified grievances. Several scholars have noted that mobilization of law may not yield the intended results because the existing legal system and processes tend to support the status quo rather than change. Effective legal mobilization may therefore also require challenging those established legal processes and systems.

Legal socialization is a term used when studying individuals’ relationships to the legal order surrounding them. It describes how people internalize, identify with, or reject the law and legal institutions. Some have criticized the application of the concept of socialization to law as an acceptance of law as it is, however oppressive or unjust, and emphasizing conformity to it. Other scholars however, have given legal socialization a more liberal meaning so as to include people’s critical perspectives on the law. They believe that the highest level of legal socialization demonstrates a concern for justice rather than just simple obedience to law.

Tapp and Levine take the point of view that legal socialization “works to clarify and elaborate reciprocal role orientations and rights expectations in relation to law, not to institutionalize blind obedience or preach the goodness of specific rules.” They go on to define an individual “who lacks the knowledge of rights and resources, the sense of self, and the problem-solving competence sufficient to mobilize the law” as legally impoverished. Legal socialization as a social process encompasses interaction between individuals and the legal system that may lead to mutual change. In this respect, it is a concept that is compatible with, and supportive of, legal literacy.
The concept of legal literacy suggests a number of goals to those who are interested in it. Chief among them are dissemination of information and increase of knowledge about law; empowerment of individuals to make active use of law, and support for constructive criticism of law. These may be described as the educational, competency, and critical goals of legal literacy.

The educational goal of legal literacy has been most prominent, and is often linked to wider programs promoting basic literacy. The idea of public legal education, or community legal education as it is sometimes called, has attracted legal professionals and others interested in promoting legal literacy for many years. Educating people about their legal rights and responsibilities has often been a public service performed \textit{pro bono} (without charge, for the sake of the public’s interest) by practising lawyers, and law students have done the same in conjunction with legal clinics attached to law schools. Community and public service agencies have also been active educators for legal literacy, hosting public talks and publishing legal information pamphlets.

Law-related education is the term used to describe education for the promotion of legal literacy among students and is sometimes linked to citizenship education. For young people not in school, “street law” education programs have been created to reach out to youth who are or who may come into conflict with the law. Education for legal literacy has also been targeted to other groups in society considered to be in special need of it, such as teachers, academic administrators, business people, doctors, and nurses.

Even so, information and knowledge are not sufficient to ensure legal literacy when people lack the skills and competencies to interact effectively with the legal system. Accordingly, some legal literacy programs focus on helping members of the public to increase their capacity to mobilize law on their own behalf. Examples of this can be found in developing nations where formal legal protections for women and marginalized groups, for instance, are often not pursued. In such situations, education and training is necessary to increase people’s capacity both to understand the law and their competency in asserting the rights to which they are entitled.

Critical legal studies combine legal literacy with a critical perspective. In addition to mobilizing the law for oneself, legal literacy involves working with legal tools and techniques to reshape law and the legal system so that it is more...
equitable and responsive to everyone’s needs. Such work requires an appreciation of the strengths and weaknesses of current legal structures, processes, and procedures. However, encouragement and support for critical perspectives on the law and legal institutions remains the least emphasized objective of legal literacy. Probably this has much to do with the involvement of the legal profession in legal literacy programs. Professionals are more likely to support existing institutions in their field than they are to criticize them. Lawyers, for instance, become accustomed to traditional court practices and procedures, and they are efficient in operating within them. Changing the way they carry on their work involves new learning, adaptation, and will probably be an expense.

Changing the legal system to better accommodate members of the public (particularly self-represented parties), while at the same time inconveniencing lawyers, is therefore never easy and seldom welcomed by the legal profession. Nevertheless, many appreciate the value of informed critical perspectives on the law. For instance, scholars have drawn a connection between levels of legal literacy and economic development that acknowledges the value of criticism for the improvement of legal institutions. Particularly in developing countries, it has been noted that legal institutions which need to modernize and become more responsive to social needs can benefit from increased legal literacy among the public. A society that knows more about its legal rights and responsibilities is less likely to turn to extra-legal or violent means for securing change, and may be more likely to mobilize law with both a critical perspective and reforming objective. Thus, the Asian Development Bank has stated that “dissemination of information regarding legal rights can be the starting point for communities to mobilize on a common platform to achieve legal and policy reforms.” This is a recognition that peaceful legal progress can occur if people have sufficient knowledge about law and the competency to engage with it.

The following chapters pursue all of these objectives of legal literacy. In them, I will present information about the law, its systems, and the processes designed to increase the reader’s knowledge of these aspects. I will introduce and teach strategies and skills for interacting with the legal system. For these chapters, the goal is to improve the reader’s understanding of law and ability to function in legal contexts using the tools of legal literacy. Most importantly, critical perspectives on each topic will be presented in order to encourage reflection on how the law and its institutions may be improved through critical legal studies.
CHAPTER REVIEW

After reading this chapter you should be able to:

• describe the relationship between literacy and legal literacy
• compare and contrast legal literacy and other literacies
• explain the relationship of legal literacy to other concepts related to law in society
• list the objectives of legal literacy