

Are Legal Texts Grey Literature? Toward a definition of Grey Literature that invites the Preservation of Authentic and Complete Originals

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Law books in the popular imagination

Legal texts, though they exist in a wide variety of forms, are most typically thought of as Law Books. Law books, hardbound volumes in expensive bindings of browns and blacks, are heavy, difficult, and technical. They are a prop to popular conceptions of the law itself, and resemble more closely than most other earthly books the Platonic form of the 'weighty tome.'

In fact, some law libraries do a regular, if not exactly brisk, trade in renting their law books to TV and film productions. And the more dour the entertainment, the more likely it is to include law books in the background. Perry Mason was too active a man to spend much time in his law office, so we did not see the floor-to-ceiling oak shelves of reserved and wise volumes which undoubtedly offered him nightly counsel. In the '80s, LA Law was too concerned with exciting power suits and hairdos to have much need of our serious friends. The '90s brought us Law and Order, the dourest thing Americans have thus far been able to stomach on a regular basis. Much like marmite in the UK, or beef jerky in Canada, this distinctive fare seems to have become a regular and much-loved part of the daily American diet. As a result, US citizens, and those of us in the provinces of the empire as well, are treated to regular glimpses of the formidable law book in law office scenes. I would guess that Law and Order also offers the very occasional library scene, though I'm not enough of a devotee to attest to this "so help me God" on a stack of Bibles.

To the extent that there actually is a popular conception of law books, it is undoubtedly one of authority, tradition and power. Of course, it is naturally allied to the reputation of lawyers and of the justice systems generally, which are not unalloyed gold. Between the Innocence Project, which has had many successes exonerating those wrongly convicted and awaiting execution, and vagaries of international 'law' which were brought to public notice regarding the Guantanamo detainees, there exists much evidence of the failings of our systems of justice. In these dramas, law books are sources of traditions that can communicate both rights and wrongs.

The mixed character of law books can be summarized in two additional qualities, which it is safe to say escape entirely the purview of the casual onlooker: Law books are both official and public. In their official character they reveal their intimate connection with bureaucracy. Law books are perhaps the most official and authoritative printed result of any bureaucratic process, and in this they are a pinnacle in our doomed efforts to exert systematic control over the wildness of everyday life. Technical and convoluted, law books also remind us of the grim possibility of state-sanctioned force overriding our human rights: law books can send you to jail, and it is this powerful capacity, their official nature, that most distinctly sets them apart from grey literature, which, to say the least, has credibility issues.

Law books are also public, or at least they are in less paternalistic societies. In this aspect law books, and the legal texts they contain, represent trust in the good sense of our fellow citizens, and in the traditions of conversation and consensus building that create individual freedoms and which have led to the discovery, recognition, and protection of human rights in the first place. The public character of law, the legal texts which articulate them and law books where they are physically expressed is one of the most promising characteristics of any literature.

Characteristics of Primary Legal Texts

Legal texts are either statements of the law or statements about the law. Statements of the law are known as primary legal sources, and statements about the law are known as secondary legal sources. Primary legal sources carry much more authority in court than do secondary. Inasmuch as a court of law can be viewed as a laboratory in which the facts of everyday experience are examined with a view to discovering, refining, and elaborating our understanding of the laws under which we naturally operate, the primary legal texts represent the established body of knowledge, and they are for the most part accepted without incident as 'fact', that is, as a reality. The exceptions, of course, are where new facts bring into