

THE RIGHT TO BEAR KNOWLEDGE



CARL MALAMUD



Let the public disputations become researches into the grounds and nature and ends of government, and the means of preserving the good and demolishing the evil. Let the dialogues, and all the exercises, become the instruments of impressing on the tender mind, and of spreading and distributing far and wide, the ideas of right and the sensations of freedom.

In a word, let every sluice of knowledge be opened and set a-flowing.

JOHN ADAMS

DISSERTATION ON THE CANON AND FEUDAL LAW

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**PREPARED STATEMENTS
AND
REMARKS**

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THE RIGHT TO BEAR KNOWLEDGE

BRIDGES AND RESERVOIRS

CARL MALAMUD

THE RIGHT TO BEAR KNOWLEDGE
REMARKS TO THE DPLA WEST PLENARY
APRIL 27, 2012, SAN FRANCISCO

1 There has arisen a bright line between government and
the rest of our country. A line, or maybe a ditch, a moat,
even an ocean, it is a feeling that government is only
relevant to those inside the beltway.

2 The feeling is that government is only relevant to
lobbyists from large entrenched interests with offices on K
Street, only relevant to a government bureaucracy that is
somehow not a part of our country or in touch with the rest
of us.

3 That rhetoric is wrong.

4 There is also a bright line that has arisen between the
capabilities of our government and those of the private
sector, a bright line that has led to a reliance on private
contractors to do the real work of government, to an
outsourcing of democracy, to some spectacularly bad
deals.

5 Take the Government Accountability Office, which
maintains the legislative history of every law. They packed
those 50 million pages of paper up and sent them, at
government expense, to the Thomson Corporation, which
digitized them and turned them into a product. Thomson
sent those valuable papers back to the government. And,
what did the government get in return? A couple logins for
a couple of staffers, but even members of Congress must
now pay to access this Thomson product.

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6 This is based on a perception that government can only
spend money, and it must rely on profiteers to do the real
work of government.

7 That rhetoric is also wrong.

8 The question before us today is whether government is
relevant to a Digital Public Library of America, whether
the works of government are relevant to Americans,
whether we can jump that wall, whether we should jump
the wall.

9 Take the regulations promulgated by our executive
branch, the edicts of government. The Code of Federal
Regulations is 170,000 pages of dense text. The
regulations of our 50 states are another million pages.

10 These are rules relevant to every person. These are the
OSHA safety regulations that every business owner and
factory worker must obey. These are the hazmat transport
and storage regulations, the product safety regulations for
hearing aids and baby strollers and propane tanks and
elevators.

11 Are these edicts of government available to citizens to
inform themselves? Are they available for publishers that
wish to make them more readable? Are they available for
businesses that must obey them? Are they available to
students that wish to learn?

12 At the state level, Stanford University and the American
Association of Law Libraries did a National Inventory of
Legal Materials. They found that the regulations of the 50
states are a paragon of unusability, an abomination of bad
HTML and atrocious graphics. They found that 26 states
assert copyright and prohibit reuse of their regulations.

13 At the federal level, the Federal Register, the official
newspaper of government, is only available going back a
few years (although kudos are due to Mr. Ferriero for the
amazing transformation he has made in that publication
since he took office).

14 The Code of Federal Regulations, the codification of
our rules, is only available in very bad unformatted text or
even worse SGML, a technology that became old in the
1970s.

15 There is an XML version of the CFR that was created by
Cornell with considerable cooperation from the
Government Printing Office, but those parties agreed that
the XML would not be made available so that Cornell
could “monetize their investment,” making money on this
valuable part of the public domain. The theory is
government has no choice, because why would anybody
want to make government better unless they can make a
profit?

16 This rhetoric is also wrong! It hurts democracy.
Government should not condone this. The American
people should not stand for it.

17 There is one more consideration. The CFR is 170,000
pages, but that is only the visible part. There are many
tens of thousands of pages that are incorporated by
reference, made part of the official law of the land but only
available by paying money to private parties.

18 We are not talking trivial amounts of money. A
mandatory safety standard from Underwriters
Laboratories costs \$850. A 4-page document about how
one must test for lead paint costs \$64. The IEEE dictionary

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of electronic terms costs \$500, and that vocabulary forms the basis for many procurement actions.

19 Much of the CFR is hidden behind a cash register, a
poll tax on access to justice.

20 You can't read our Fuel and Gas Code, the Life Safety
Fire Code, the Fireworks Safety Standards, or the Water
Hygiene Guidelines without an American Express card.

21 I brought some examples. Here is the mandated
standard for Disinfecting Water Mains, for \$72.

22 The Safety Requirements for Window Cleaning, for \$60.
The Safety Requirements for Wheeled Child Conveyances
at \$217. The American National Standard for Power
Operated Pedestrian Doors costs \$40. The Performance
Requirements for Hot Water Dispensers is \$45 as are the
Performance Requirements for Pressurized Flushing
Devices, known as Flushometers. The critical hazmat
standard for the Welding of Pipelines and Related
Facilities is \$125, and the standard for the Disinfection of
Wells is \$72. The Standard for Construction and Approval
for Transportation of Fireworks, Novelties, and Theatrical
Pyrotechnics is \$60 if you want a safe Independence Day.

23 These regulations are one small part of the information
in our government storehouses. Genealogy, the law, the
economy, science, the arts, all this information is relevant
to people in their day-to-day lives. This is useful
information. This is information vital to education. Just
imagine if law students could see video of Laurence Tribe
arguing before the Supreme Court? If engineering
students could read the technical safety standards and
make them better?

24 Government information is useful to people, but the reverse is true. People, and institutions like a Digital Public Library of America, can help government make information available, to avoid bad partnerships, to find problems like privacy violations in documents. People can make government better because we are the government, and an informed citizenry is not just a desirable attribute of a democracy, but a prerequisite.

25 John Adams made that point so eloquently when he said that if we believe that “truth, liberty, justice, and benevolence are the everlasting basis of law and government,” then we must arm our citizens with knowledge. This right to bear knowledge is far more important than the Second Amendment, government information shouldn’t be a conceal-carry privilege for the rich, the knowledge lobby should be far more powerful than the gun lobby.

26 John Adams said we must “let the public disputations become researches into the grounds and nature and ends of government,” we must “spread far and wide the ideas and the sensations of freedom.” He said that “we must let every sluice of knowledge be opened and set a-flowing.”

27 That is our job as citizens, that is our government’s job, that is our society’s responsibility as a democracy. That is the opportunity we must face as we build a Digital Public Library of America.

BRIDGES AND RESERVOIRS
REMARKS TO THE DPLA EAST PLENARY
OCTOBER 21, 2011, WASHINGTON, D.C.

1 Good morning. I'd like to thank David Ferriero for
allowing us to Occupy NARA, and Maura Marx and John
Palfrey for their tireless work organizing the DPLA over
the last year. Most of all, I'd like to thank Robert Darnton,
our prophet who is leading us to the promised land, the
Republic of Letters. Bless me Professor, for I have
scanned.

2 When I think about a Digital Public Library of America,
two structures come to mind, I keep seeing images of
reservoirs and bridges, when I think of the DPLA, I see the
Hoover Dam and the Golden Gate Bridge.

3 If you look at our museums, our archives, our research
institutions, there is a tremendous reservoir of knowledge
locked up, waiting to be tapped. It is tempting to think that
in our world of knowledge born digital, that we are
flooded with information, that we need what Clay Johnson
calls an information diet instead of more data. Our Internet
is only flooded with some kinds of information.

4 Some of our most important pools of knowledge are not
available at all, or available only to those with golden
credit cards or positions of privilege in our elite
institutions. Knowledge in our world belongs to the 1
percent.

5 I can give you two examples today of such private
reserves, but I'm sure you can think of many more.

6 The first is law and government. The law—court
opinions, statutes, regulations, public safety codes—is the
operating system of our society, the rules that make our
democracy work, the code that makes America such a
special place.

7 But private fences have enclosed what should be the
most public of public domains. Access to justice has
become all about access to money.

8 Let me give you one more example. If you are a
creative worker—a writer, a filmmaker, an artist, a scholar
—you draw on imagery that has accumulated over
thousands of years, imagery you use to create new works
of art and scholarship. Creative workers must stand on the
shoulders of giants if they are to reach new heights.

9 But, as any Hollywood filmmaker will tell you, much of
that imagery is locked up in a few for-profit collections
like Getty Images or Corbis or other operations that have
taken public domain materials and built walls and gates
around them. Even our museums—even our national
Smithsonian Institution—have locked their vaults, allowing
the images to be used only by those who stop by the cash
register first.

10 There is a tremendous reservoir of untapped
knowledge in America. Knowledge is our country's most
important renewable natural resource, a common pool
that should be available to all.

11 We already have many beautiful museums, bottomless
libraries, unique research institutions. What if the DPLA,
instead of simply creating yet another institution, created
that common reservoir that all could tap into? What if the

Hathi Trust put everything they have into a common pool, a pool that they could in turn draw on to create an even more impressive Hathi Trust?

12 What if the Internet Archive and the Library of Congress and public libraries and individuals and local historical groups could all draw from those deep wells, all contribute to that common pool?

13 It is tempting for any one institution to say “I have the answer.” But, what if we shifted the debate, so that it becomes “We all have the answer, here’s my contribution, see what you can do with it. Surprise me!”

14 I have one more metaphor—and then I’ll stop beating this metaphorical horse—and that metaphor is a bridge, and the specific bridge I think of is a Washington Bridge, a bridge that connects our nation’s capitol to the rest of the country.

15 When it comes to untapped resources, Washington is surely the deepest well, a vast storehouse locked inside the beltway.

16 Look at our national cultural institutions—our Library of Congress, the National Library of Medicine, the Smithsonian Institution, the National Agricultural Library, the National Technical Information Service, the National Archives, and many more.

17 While we have glimpsed a few shining examples of the potential of our national cultural institutions—the American Memory project from the Library of Congress, the pioneering National Library of Medicine—for the most part our resources lay hidden.

18 Our opportunity is to build a bridge to Washington and
that means we need to get much more serious about
public works projects for knowledge, we need to start a
national digitization initiative that is more than pilots and
prototypes.

19 We need a decade-long commitment to scanning, we
need our federal government to understand that it must
deploy the Internet corps of engineers, to scan at scale, to
become a much more serious contributor to that reservoir
of knowledge, to be at the center of that public park that
makes access to knowledge a right for all Americans, not a
privilege for the 1 percent.

20 If a self-appointed librarian in an abandoned church
like Brewster Kahle can publish 3 million books, how can
our federal government not do more?

21 If Google can scan 10 million books just to feed its
search engine, why can't the federal government do the
same to transform our nation's educational system?

22 If WestLaw can scan the opinions of our courts and the
statutes of our legislatures to maximize shareholder value,
why can't the Judicial Conference of the United States and
our nation's law schools work together to maximize
democratic values?

23 If we can put a man on the moon, why can't we launch
the Library of Congress into cyberspace?

24 If billions of dollars can be spent to buy access to
politicians, why can't we spend billions of dollars to buy
access to knowledge and justice, to promote the useful
arts and commerce and science?

That is the challenge that we face, these are the kinds of bridges and reservoirs we can build, the kinds of public works projects that can become the foundation of a Digital Public Library of America, the opportunity we can realize, but only if we work together.