

Legal Indexing on an International Scale*

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Introduction

In approaching indexing of legal materials on an international scale, I am limiting my discussion to experiences with two publications: *The Index To Foreign Legal Periodicals*¹ (IFLP), a quarterly devoted to indexing articles in journals and collections of essays and congress reports, and *Foreign Law*², a looseleaf work that has evolved into an attempt to index, or arrange in consistent format, citations to the major legislation of the countries of the world. It is also, in effect, an index to secondary sources, wherever published, that translate or reprint national legislation or regulation. I have been General Editor of the first venture since 1984 and a co-author of the second since 1988.

In my experience, when looking at law on an international scale, one has to regard it broadly. There is so much detail when covering five or six hundred journals from two hundred countries that one can easily become bogged down by concentrating too much on the specific. Naturally, the coverage is more than law, encompassing multinational and foreign economic and political relations, philosophy, sociology and penology. In this paper I'll be focussing on the development and scope of the *The Index To Foreign Legal Periodicals*, a publication of the American Association of Law Libraries that first appeared in 1960, supported by a Ford Foundation Grant and which was the brainchild of the late William B. Stern of the Los Angeles County Law Library.

Scope and Aims of IFLP and Foreign Law

We have become more ambitious over the years, currently indexing articles in some 525 legal journals published throughout the world plus a yearly average of fifty collections of essays, Festschriften and congress reports. We analyse materials in all European languages and some East Asian vernaculars³. This means that we

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1 *The Index To Foreign Legal Periodicals*. General Editors: K. Howard Drake, 1960-1967; W. A. Steiner, 1968-1983; Thomas H. Reynolds, 1984-, Managing Editor: R. Kevin Durkin, 1992-. Berkeley: University of California Press, 1960-.

2 *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*. Thomas H. Reynolds and Arturo A. Flores. Littleton, Colo.: Rothman, 1989- 5v (looseleaf).

3 Up to 1994 this included coverage of Japanese legal periodicals, this has now been discontinued since better indices in Japanese are now available. Chinese and Korean materials are still indexed.

index, review and assign subject headings to, about 7,500 articles each year. Because of the scale of publication and the magnitude of the undertaking, it is necessary to take a broad approach in order to accomplish anything at all.

I am not a "back of the book" indexer, far from it; indeed I am hardly an indexer at all. I manage a regularly published commercial venture that appears in hard copy as a quarterly with an annual cumulation. It is also available, cumulated back to 1985 online on the Research Libraries Group's RLIN and in a CD-ROM published by the SilverPlatter; both of these are updated and re-cumulated quarterly. I also write/compile a reference work that attempts to organise information about a couple of hundred national legal systems into a consistent and rational scheme. In both instances we deal with legal information, in the one a detailed index approach to secondary literature and in the other a broader access to information, or guidance to legislation and primary materials. The goal for the two is the same, to sort out and fit into a single, consistent framework information from or about the world's different legal systems and their current activity and developments. In one I depend on a managing editor, a copy editor, clerical staff and a network of experienced indexers, and in the other I depend on a co-author who controls and manipulates our increasingly complex database.

Common Law and Civil Law Systems

The world-wide scope means that one must view all law in a single prism, and so one has to account for and accommodate anything and everything coming from, and pertaining to, the world's two great competing legal systems: the common law system, for the United Kingdom, member states and former member states of the British Commonwealth and the United States; and the civil law system, pretty much the rest of the world, plus Quebec. There are, additionally, a number of variant states, usually with mixed legal systems, primarily jurisdictions with Islamic or customary connections.

Thus we have to look at two legal systems, quite different, but like all human legal endeavor, broken up into public and private law, and all their internal subcompartments, plus added features that either influence or exist independently, custom or customary law - and Maori or aboriginal would be counterparts here - as well as the major contributions of Roman law, canon law, etc.

All such law is reduced to three types, easily categorized by form, but difficult to index by content. In any legal system, legislation is the most important source; in authoritarian systems it is often the only source - everything moves around this - the enactments of a parliament or legislature, the decrees of a chief of state or governing council. This is paramount, the primary legislation, followed and fleshed out by secondary legislation and regulations issued under authority by the executive.

Different Indexing Requirements

We come face to face with our first problem of two legal systems when we seek the next most important source. Let's take it as "jurisprudence", not in the philosophical sense but in the meaning of the body of court decisions, case reports of the hierarchically ranked courts of any jurisdiction. This is also a body of knowledge, a mass of written material that has great significance in the common law world and which must be reduced to approachable, indexed formats. In the Anglo-American systems, all of this case law may be important to someone and must be indexed, almost willy nilly. Jurisprudence is of much less value in the sensible and better structured civil law systems where judicial decisions essentially have a case-specific value and only emerge as compelling when there is a discernible, perhaps even unconscious, sequence of decisions all in line on a particular topic or point. In France this is *jurisprudence constante*; in Italy, *massima*, etc. This makes indexing in civilian contexts easier, which is fortunate, since civil law case indexing is not very good.

The third body of knowledge or writing that has to be indexed for law is, to use the French term, *la doctrine*, which does not mean doctrine at all, but simply refers to the mass of secondary source - writing - found, in order of importance, in treatises, monographs and articles in journals and collections of essays or congress reports. In civil law systems, *la doctrine* is as important, if not more persuasive, than a judicial opinion; the reverse holds in the US, and pretty much so in the UK and Commonwealth, where, until recently, a secondary authority could not even be cited in court unless he were dead.

Legal Indexing Requirements

Dorothy Thomas is quoted in a recent book by Betty Moys⁴ to the effect that in a law book an index "is an absolute necessity to the practice of law", raising indexers to be a "part of the literature of the law". All good law books aspire to be works of reference, however specialised, or at least serve as guides. Beyond the indexes to the books - those individual indexes to the finite information in specific treatises or monographs - there is the broader effort, more widely displayed and more fraught with the pitfalls and perils of indexing all knowledge, or at least broad sectors of a discipline, and this is what we attempt with *The Index To Foreign Legal Periodicals* and with *Foreign Law*.

Legal indexing has particular requirements, but also offers rewards. Law is a field, as are the sciences, that demands speed of information transferral. The users want the information in consistent and intelligible format; the research and production -

4 *Indexing legal materials*. Ed by Elizabeth M Moys. [London] : Society of Indexers, 1993 (Occasional papers on indexing, no 2)

5 Thomas, Dorothy "Law book indexing" in *Indexing specialized formats and subjects* Metuchen, N J : Scarecrow Press, 1983

on the cutting edge - as in scientific endeavor, is in "the literature", journals, essay collections and Festschriften and congress reports. This must be brought to attention and used rapidly in a coherent display. Law has tended to be jurisdiction-centred, and therefore its audience was for a long time circumscribed. These lines and distinctions have lately become blurred, and the jurisdictions have become larger, either actually or as boundaries disappear.

Electronic Indexes

The reward is that the legal audience, in whatever jurisdiction, is most attractively affluent. Legal users, especially practitioners, and even institutions (in the relative sense) are willing to pay for information. This has led to the development of electronic, online systems for control and display of legal information. The United States has been in the forefront of this movement, a venture greatly simplified by the fact that all American legal information of a primary nature, legislation and court reports, is in the public domain. We have been spared the bizarre concept of Crown copyright that has so discouraged or delayed comparable development in the United Kingdom and the rest of the Commonwealth. Of course, as we look at smaller jurisdictions, with smaller legal audiences, however affluent, the possibilities for online display are limited.

Law Journal Indexes

There is now a variety of national indexes to articles in journals. The American online systems, WESTLAW and LEXIS cover a smattering of journals, but only when they have obtained copyright permission for full text display. For the most part American private industry, the H.W. Wilson Company's *The Index To Legal Periodicals* and Information Access Company's CD-ROM *LegalTrac* do the job well, and equal work is performed by *Legal Journals Index* in the UK which indexes anything it can get its hands on, so long as it is in English, and, of course, counterparts in Australia and New Zealand and two in Canada. Beyond the English speaking world, each nation - or at least each sophisticated Western European country - has a legal journals index, and now this moves beyond Germany and Holland to Poland and Romania. And as well, there are legal journal indexes for Japan, India and many other smaller countries in the Third World.

Market Influence

This sort of indexing is essentially market-driven and therefore must be immediately responsive to its audience. Naturally, all indexing may be termed market-driven, in the sense that books should have good indices, but if they don't, people will still buy the book; however, if large sets with indices compiled by our old friends on the "publisher's editorial staff" don't do a good job of indexing, the word gets around and sales may eventually suffer.

Journal indexing on a broad scale, and certainly on an international scale is under more immediate scrutiny - since, of course, this is the product. Certain things have to be done for the international - technically multinational - audience. Firstly, there is the purpose. What - how much - is one going to cover? The competition of separately published, regularly issued, national bibliographies of legal literature provides an effective means of maintaining currency with the flow of legal information. Most of these are limited to a single jurisdiction, some few to a region, such as Scandinavia, and all include "foreign" or international topics, so long as the material has appeared in a locally published review. There are drawbacks in relying on these, the plethora of such bibliographies makes acquisition and maintenance time-consuming and costly. There is no consistent approach to indexing, a factor further complicated by various indigenous idiosyncrasies - each jurisdiction, each bibliography will have to be regarded as a new adventure. Finally, for the user out of that jurisdiction, or even out of the continent, many of these reveal or display more than he or she wants to know. The researcher will be tantalised by references to fascinating articles - right on point - and the librarian will be frustrated because they may appear in journals, obscure, unknown and unavailable anywhere, even within thousands of miles. Document delivery is always a good alternative, but as publishers crack down on photocopying or faxing their product, electronic transmission is not always feasible.

Part of the market's influence is to emphasise the possible. The material selected has to be reasonably accessible in trade avenues and it has to be selected with an eye to appeal. Publications from Pakistan or Sénégal may be important *there* but not to the mass of the general users. Therefore one would select representative titles from such countries, taking into account subjectively the quality of the content, and this compared to 20 or 30 journals each from Germany or France. Thus, any such endeavor should be structured to be commercially viable and capable of attracting a reasonable audience. There is even a moral responsibility attached: when an acknowledged indexing medium adds or drops a title, subscribers take note and often follow the lead of the index that has, in a sense, weighed and vetted the journal.⁶

One has to then assert and impose standards on what is indexed. Of course it has to be everything in selected journals - but, and come out and say it, everything of five pages or more in length, all book reviews, certain book reviews, no "student notes", no case notes, etc.

Structure

Once the control language is selected - and English is the only possibility for an operation of broad scope - one determines the structure. Betty Moys outlines three possibilities: the specific, alphabetic arrangement, detailed to whatever level: this is

6. Published indexes and standard bibliographies often serve as acquisition guides or criteria for reviewing collection adequacy, the responsibility attached is an important one that could involve an institution in substantial financial outlays. Occasionally an appealing source must be passed up if its cost would put it beyond the means of all but two or three institutions.

easy to use, in a sense automatic, and requires no instruction; then there is a classified structure, broad rubrics with specific entries underneath, alphabets within alphabets; and most refined, a pure classification *system*: an hierarchical ranking of subjects organized relationally and not alphabetically

There is a final distinction to be explained. The *Index To Foreign Legal Periodicals* follows (inconsistently) the American practice of making no distinction between United States law and British common law, thus we don't index British or Canadian or Australian law journals, *unless* they deal with some non-common law subject, thus we do not index the *Australian Law Journal* but we do index the *Australian Yearbook of International Law*. We regard the Republic of South Africa as a foreign jurisdiction and, as well, somewhat inconsistently, embrace smaller Commonwealth states Zambia, Kenya, etc as "foreign". The outlook of *Foreign law* is broader and more consistent; we attempt to cover every nation, every jurisdiction, except the United States and its possessions

For an international index on an international scale - once we have overcome the language hurdle, a specific alphabetic index is the only avenue of control. A classified structure is neither fish nor fowl and lacks congeniality. Classification systems are great. The one true genius our profession has produced, Melvil Dewey devised a wonderful one that, alas, is no longer able to cope with the avalanche of modern information. The major classification systems for law just do not lend themselves to application for an index. They are too detailed, worrying about Karnataka or labor hygiene, and if one strips them of detail, they lose their symmetry of construction - the only one with possibilities is Elizabeth Moys' scheme - and this as well because it has a good index.⁷ Willi Steiner's is designed for a specific library and the Los Angeles County Law Library classification system is complex and does not have a great index.⁸ The Library of Congress, of course, produces magnificent classification schedules. The person responsible for law, Jolande Goldberg, has now completed all law. The final schedule for "the rest of the world" - including Australasia - will be out at the end of 1995 and by late 1996 an entirely new schedule for international law will be released.⁹ These all have great utility as indexes to library collections, but I personally find their use as a basis for a published index quite unsatisfactory.

The *Index To Foreign Legal Periodicals* does provide for the user a separate classification scheme outlined in ten pages in each annual cumulation. In 1985 I proposed jettisoning it as irrelevant, a move that was met with cries of horror, so

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7. Elizabeth M. Moys. *Moys Classification Scheme for Law Books*. 2nd ed. with a new index-thesaurus. London: Butterworths, 1982.
 8. WAF P. Steiner. *Classification Scheme and List of Subject Headings for the Squire Law Library, University of Cambridge*. Dobbs Ferry: Oceana, 1974. *Los Angeles County Law Library Classification Schedule, Class K, Law*. [William B. Stern] Los Angeles: Los Angeles County Law Library, 1958.
 9. The Library of Congress law classification commenced publication a half century after the completion of schedules for all other disciplines with *Class K, Subclass KF, Law of the United States*. Washington D C: Library of Congress, 1969. Although credited to a committee, with input from consulting scholars, this was essentially the work of a European scholar, Werner Ellinger. This was carried on by John Fischer and now Jolande Goldberg.

instead it was revised and reorganized to serve as a guide to those not familiar with, say, common law concepts, but who are comfortable with a classed arrangement of legal knowledge. Equally, for the annual cumulations, we provide French to English, German to English and Spanish to English glossaries for the subject headings we use. One has to have such a tool when covering many languages with a single English control. The Canadians have taken a different approach combining English and French headings in a single sequence with duplicated entries¹⁰. This, of course, would not work for more than one language.

Thesaurus

It makes the most sense to develop your own thesaurus. In our case we faced the difficulty of developing, not multiple thesauri - therein lies madness and the creation of clumsy, triple tiered arrangements that deter the user - but rather a single sequence, capable of coping with and intelligibly displaying entirely different and disparate societal concepts and legal disciplines. All lawyers think pretty much alike although their thought processes do not necessarily follow similar patterns in reaching reasoned conclusions. Unlike the sciences where things are absolute, in law these concepts are relative. The historical approach, ingrained in the common law on the one side and on the other, the more formally structured viewpoints of the civil law, confront problems and arrive at solutions intellectually in quite different fashions. It is the problems and solutions that we index.

One develops the subject headings by first seeking common ground. All the cognatic concepts - and there are lots of these, as well as cognates in the world's legal literature - have to be accepted and pruned away. With this as the basis, one simply then adds those essential, unique or legal-system-specific terms that have to be accommodated. There are compromises, sometimes clumsy: "Offenses against the person" for murder or homicide; or catchalls, "Execution, attachment and garnishment" really three different matters, but we cannot be too detailed; and then of course, escape valves for the poor indexer, such as "Jurisprudence" which covers anything one cannot fit into a more precise rubric.

In developing a thesaurus that has to embrace such different legal systems, I find it necessary to stress the importance of alphabetic thinking. Civil law flows hierarchically, from the broad to the specific. All such jurisdictions have a civil code that, in a sense, controls the entire national system in a symmetrical, categorised and thoughtful plan. Normal thinking is geared to this outlook. Civil codes are generally better thought out and more controlling even than constitutions. The foreign lawyer thinks in a classified scheme, which is probably the reason why, except for Betty Moys, all those who have developed class schemes for law have been German.

The common law, however, really does not lend itself to an hierarchical intellectual arrangement, and unlike Europeans, those who are educated in the common law

10. *Index to Canadian Legal Periodical Literature* v 1 (1961/1970) - Ed. by M. Scott [et al.]
Montréal: Canadian Association of Law Libraries, 1972 -

prefer to approach thoughts, big ones and little ones, deep ones and shallow ones, all on an equal alphabetical plane. It simply makes more sense in quickly locating a subject without recourse to extraneous guides.

A thesaurus requires careful development. Allowance must be made for growth and expansion, and since we deal with topics, subjects, concepts, it is naturally going to be an eclectic product; after all, thoughts are not copyrighted even if their arrangement may be. The original thesaurus for *Index to Foreign Legal Periodicals* owes much to the Columbia Law Library subject heading list compiled by Miles O. Price¹¹. This is a congenial and very usable set of subject headings, always focussed on legal topics. Unfortunately it has long ago been abandoned by American law libraries, even Columbia. We now all use Library of Congress subject headings, and so any new headings added to our thesaurus should, if possible, conform to Library of Congress usage. And whenever a new LC term is added, there follows a careful vetting of all our present terms for consistency and duplication. This preference for Library of Congress terminology was introduced in 1986 in anticipation of future electronic formats.

Jurisdictional Sub-Headings

An international legal index requires a whole second tier of jurisdictional - or geographical - sub-headings as well. A clear display of the jurisdiction, the nation or country is essential, otherwise the index is worthless. Our user may care about contracts in general, but is more likely interested in contracts in Italy or England or the Argentine, or administrative procedure in Germany, or perhaps the entire European Union. We have to be able to get to that level of specificity quite directly, and of course these subcategories constantly evolve; we have introduced types or schools of law, such as canon law or Roman law as both a subject heading and as a subcategory. And now, just think of the jurisdictions that have evolved out of USSR and Yugoslavia.

Other Indexes

The final display in the *Index* reveals a sequence of different lists or separate arrangements. A list of the journals and collections we cover is followed by a list of abbreviations, and since this is originally a paper-based index, we depend on abbreviations to save space. The basic, fullest display is revealed in the subject arrangement where the full title and citation is provided - our indexers are permitted up to three subject headings per article, no more. There is a separate geographical index, that is computer-generated out of the sub-headings applied in the subject entries. We have a separate book review index, arranged by the author of the book reviewed. Finally, there is an author index, computer-generated from the authors of articles in the subject sequence and from the reviewers in the book review sequence.

11 *Subject headings in Anglo-American and International Law used in the Dictionary Catalog of the Columbia University Law Library*. Comp., Miles O. Price. New York: School of Library Service, Columbia University, 1957.

The online versions display the same variety of indices, except that since we are in a paperless environment, there are no abbreviations, titles are spelled out in full. Naturally, in no case is anything translated, English is the control language and the materials are arranged under English subject headings. The meaning of the title is up to the user.

Updating Headings

I have discovered that, in legal indexing on the international scale, you can't go home again, you cannot revisit past performances. Betty Moys reminds indexers of the "absolute need for Consistency, Clarity and Organisation"¹² This is necessary; it just is not attainable in a continuing publication, now in its 35th year. My experience is you simply have to cut off USSR and move on to Russia, leaving the user to figure out what succeeds what. We just dropped Western Germany and Eastern Germany (actually inverted) overnight in favor of straight Germany (except for historical treatments). I decided to trust in the native intelligence of the user, and also rely on cross references. We shifted the negative "Pollution" to a more positive "Environmental" for five headings; the single heading "Computers" has now spread to five: "Computers"; "Computer crimes"; "Database access"; "Data protection"; "Computer software"; One just connects all these as best as possible, along with "Copyright", "Right of privacy", "Industrial property", etc. Of course when we introduced "Protection of the state" there were no clear subject heading antecedents, and it just appeared.

Surprisingly, when we went online in 1993, and created in RLIN and on the SilverPlatter a continuing and expanding cumulation, nine volumes in a single sequence, the real problems were all technical, the cross references seem to connect up the historically varied and inconsistent use of different headings; one still has to know how to phrase the specific questions, but you can get an answer most of the time.

Users' Needs

In the past, even up to the 1990s, lawyers and scholars tended to approach questions, and so concepts, in a jurisdiction-specific manner. One had to be conscious of the perceived needs and interests of lawyers and legal users in one jurisdiction, one country, one language - perhaps at most over one region. In recent years, the exigencies of legal practice, and the peripatetic quality of scholarship has altered and shifted these parochial focuses - we now look at legal materials rather differently. In Europe, the EEC covers everything, and now in Latin America Mercosur is becoming important. I'll be adding Trans-Tasman Free Trade Zone (perhaps optimistically) before the Library of Congress sanctions it.

Legal practice and legal intellectual interchange have become so fluid and internationalised that the demand for this type of information has become a single

12 *Indexing Legal Materials* (supra note 4) p 43

universal one - encompassing any legal system from any source and in any language (but in our case, European languages) We now reach a point where limits have to be established, not in indexing technique, but in coverage. If one does not set limits, the index will collapse of its own weight

Legislation

On my own, in *Foreign Law*, we have tried to index legislation - this is possible as long as it is done broadly. Major laws are found in equivalents in every country, marriage, adoption, business associations, civil procedure. There were no bankruptcy laws in Eastern Europe up to 1990, because no one could become officially insolvent - even that lack has now been rectified.

It is possible to find pretty much the relevant 70 or 80 basic laws governing human behavior and commercial interchange in all the countries of the world. It is harder to locate the very existence of some legislation for, say, Mali or Cambodia; on the other hand, the Germans will provide much more than you want to know or can absorb. This is not so much indexing as detailed categorizing, although we do index dozens of separately published collections from the FAO's *Food and Agricultural Legislation* to *Central and East European Legal Materials* to *Labour Law Documents* to all the publications of the International Bureau of Fiscal Documentation.

The *Index To Foreign Legal Periodicals* has eschewed indexing legislation - I have been foolhardy enough to jump in with both feet - but I have learned to define my terms and limit our scope. My co-author and I have been amazed at just what we have to tackle: the growth, the expansion of legislation has become phenomenal - this just from the abstract approach of arranging it in coherent order, country by country - I am not even talking about its pervasive intrusion into all aspects of our life.

Apparently this condition is not news to Australians, who have been described as "born to statutes" by Paul Finn (I wonder what this makes Americans or Germans?) In a way, our job of listing legislation has been eased - at least in the Commonwealth where it is the laws themselves that have grown long - not the numbers of laws that have expanded. An Australian jurist complains that "The growth of legislation appears to have reached almost exponential levels. However the increase has not been so much in the *number* of acts as in the length of legislation passed"¹³. In 1973, 221 Australian federal acts were passed, taking up 1,624 pages; in 1991 only 216 acts were passed, filling up 6,905 pages.

Clearly indexing is a growth profession - in my discipline we can take heart from this prolixity and the volume of publication.

¹³ M H McHugh "The growth of legislation and litigation" (1955) 69 *Australian Law Journal* 37