

THE INDEXING OF LEGISLATION

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It has long been recognized that law-books constitute the principal tools in trade of the lawyer. If these tools are to be kept sharp and ready for use, they must be accompanied by some device through which the particular point sought can be quickly located. In the case of court reports, this vital need is effectively met by the numerous digests, citations and tables of cases. Through the use of all the digests arranged in accordance with the three or four principal digest classification schemes, it is possible in a very short time to discover substantially every judicial precedent bearing upon any particular point of law.

Far less adequate are the devices for finding the statutory law, which is becoming every year a matter of greater importance to the lawyer, as well as to the scientific legislator. Not only is there no single classification scheme which will reveal at a glance all the legislation of a large number of states on any given topic, but in many cases there is even an absence of uniformity in the indexing of successive volumes of session laws of the same state.

There is little fault to find with the devices available for finding the legislation, especially recent legislation, enacted by Congress. The indexes included in each volume of the Statutes at Large are prepared by a relatively permanent force of expert indexers at the State Department, who have followed a substantially uniform classification scheme for many years. In 1903 the indexes of the first 32 volumes of the Statutes at Large were consolidated in a single index, of which unfortunately only a few copies were ever published; this Consolidated Index is for many purposes the most useful available index of the Federal statutes, in spite of a considerable lack of uniformity in the classification scheme for the first ten or twelve volumes of the Statutes. The permanent general legislation enacted from 1789 to 1907 is included in a single classification scheme, with an extensive use of cross-references, in the two Scott and Beaman indexes prepared in the Library of Congress; the same scheme has been continued in the form of a card index at the Library of Congress, for the permanent general legislation from 1907 to date and also for a considerable amount of recent Federal legislation of a temporary, local or private nature. In addition to these official indexes, there are very satisfactory unofficial indexes in the latest editions of the Compiled Statutes and the Federal Statutes Annotated. There are also many compilations of laws on particular subjects, prepared by

the bureau or office having charge of the enforcement of such laws; in most cases these compilations include satisfactory and reliable indexes.

The indexing of British and colonial laws, though somewhat less extensive than that of the Acts of Congress, is for the most part adequate after one has learned the system of indexing; there is, however, little uniformity in the classifications employed in the different jurisdictions. Still greater, of course, is the lack of uniformity in the indexing of laws in foreign languages.

But from the standpoint of the average American lawyer or legislator, the most aggravating lack of uniformity of indexing is that exhibited in the compilations and session laws of the various states and territories of the United States. One who is seeking all the American statutory law on a particular point is likely to meet with several distinct sources of annoyance. In the first place, unless the point in which he is interested has already been covered by some recent and reliable compilation or treatise, he is obliged to make at least forty-eight distinct investigations before he has completed his task. Nor is the process of investigation by any means uniform in the case of all the states, on account of the great diversity of the statute material in the different states. In about half the states the entire body of the statute law has been officially consolidated in a single volume, variously labeled General Statutes, Revised Laws, Code, Compiled Statutes, etc., such compilations being for the most part completely revised every ten or twenty years. In other states the statute law is divided into several different codes; one of the most conspicuous examples being California, with its General Laws, Political Code, Civil Code, Code of Civil Procedure, and Penal Code, each of which is composed of sections numbered independently of the other codes. In such states there is seldom a recent official revision of any of the codes; but these are ordinarily amended specifically by section number, so that the frequent unofficial editions of the codes are entirely reliable. In a few of the states, of which Pennsylvania is perhaps the best example, the entire matter of compiling the laws has in recent years been left altogether to private initiative, so that the reliability of the existing compilations depends entirely upon the ability and diligence of the unofficial compilers. In these cases it is always difficult to determine to what extent a recent law should be regarded as repealing an earlier and apparently inconsistent law, since the best unofficial compiler is likely to be either unable or unwilling to determine such a question; in short, situations are frequently likely to arise in which it is necessary to go behind the unofficial compilations and consult the session laws themselves.

The indexing of the statute material of the different states is even more diverse than the material itself. In New York and California and a few other states, there are indexes which contain in a single

alphabetical arrangement references to all the laws enacted from the earliest period to a comparatively recent date. Such indexes, however, soon become obsolete unless they are kept up to date by current supplements; and this is seldom done. Where, as is ordinarily the case, the matter under investigation is the law in force on a particular topic at a given time, it is for the most part necessary to consult the latest revision or compilation, and all the session laws subsequently enacted. As there are likely to be five or perhaps ten volumes of these session laws, it is necessary, before the investigation can be completed, to consult from one to two hundred distinct indexes. The indexes contained in the various revisions and compilations, whether official or unofficial, are in general fairly reliable, although they exhibit a considerable diversity in the method of classification employed. With respect to the session laws, there is likely to be a lack of uniformity, not only between the indexes for different states, but even between those of different years for the same state. Nor is it certain that any particular index will prove entirely satisfactory from the standpoint of the ordinary investigator. For example, the South Carolina Blue Sky Law¹ is not indexed at all under Blue Sky, Stock, Corporations or Fraud, but only under Bonds, where few persons would think of looking for it.

It is often a matter of considerable difficulty to ascertain whether or not a particular law is actually in force at a given time. A frequent source of confusion from this standpoint is the practice, especially common in connection with local legislation, of amending the same section four or five times at the same legislative session.² Inasmuch as the latest of these amendments is usually worded in such a way as to supersede all the others, it is always difficult to ascertain whether or not a particular amendment is still in force except by means of a table of repeals and amendments. Such a table is generally found in the index of each volume of session laws, but in many cases it is either unreliable, or located in an unexpected place, or missing altogether. Moreover, it is by no means an infrequent custom of legislatures to ignore a recent revision of the statutes and amend an earlier act included in the revision;³ in such a case even a table of repeals and amendments would usually fail to indicate the change in the revised laws.

There have been several attempts in recent years to establish a uniform scheme of indexing current state legislation. Some of these attempts showed much promise, and were continued for a number of years; they did not receive any great amount of support, and were eventually abandoned. One of the most promising of them was

¹ South Carolina Laws, 1915, No. 160, p. 251.

² See, for example, South Carolina Laws, 1916, Nos. 421, 487, 488.

³ See, for example, Minnesota Laws, 1915, ch. 134, 259.

the scheme worked out by the New York State Library. This scheme included both an alphabetical index and an elaborate subject-classification which was continued as a uniform classification for several years; it was discontinued about ten years ago. A more recent attempt, extremely ambitious in its scope, was the Official Index to State Legislation. This index consisted of two parts: a numerical list of all the bills and resolutions introduced in the state legislatures, with a brief statement of the subject-matter and the action taken by the legislature with respect to them; and an alphabetical list of subjects with a reference to every bill bearing upon each subject. This arrangement was but partially satisfactory as an index of laws, not only because of the necessity in every case of consulting two different parts of the index before finding a citation to the law itself, but also because the subject-index made no distinction between laws and bills failing to become law, thus increasing tenfold the amount of effort required to find all the law on a particular topic.

Undoubtedly the greatest obstacle to uniform indexing of state laws is the general failure to recognize the importance of the entire subject. For the most part it seems to be taken for granted that any reasonably intelligent person is competent to prepare the indexes for the session laws of the various states. The publication of these laws is almost universally left to the secretary of state, whose office force is generally chosen more for political reasons than because of any special fitness for performing detailed work carefully and accurately, and is likely to suffer a complete change after every state election. Under such a system, it is a matter of uncertainty whether the session laws will be well or poorly indexed; and there is little prospect of securing a uniform system of indexing for all the successive laws of the state, to say nothing of uniformity with the systems employed in other states.

In several states, indexes of current legislation are prepared and published by the legislative reference bureaus in advance of the publication of the official volumes of session laws. Such indexes are likely to be relatively free from the defects to which we have referred. A legislative reference force is not ordinarily chosen primarily for political reasons; and there is apt to be a considerable continuity in the personnel and in the methods of work. Moreover, the members of a legislative reference force are peculiarly fitted to determine the system of indexing laws which would be most valuable to the investigator, since they are themselves obliged to make constant use of these indexes in the course of their ordinary duties. If the preparation of the official session law indexes could be put in the hands of the legislative reference bureaus, a long step in the direction of uniformity would be accomplished. Such a step might also pave the way for a still further approach to uniformity. Through co-operation among the different reference bureaus, it would be a matter of relatively

little difficulty to develop something in the nature of a standard index classification comparable to any of the leading digest classification schemes. But before any material progress in the direction of uniformity can be reasonably expected, there must be developed a wider appreciation of two facts: first, that there is a real need for a uniform method of indexing; and second, that the indexing of laws is a highly technical process which should be performed only by persons possessing special qualifications and training therefor.