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**From the Selected Works of James M. Donovan**

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# Why Bibliography?

James M. Donovan



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# **Sexual Orientation, Gender Identities, and the Law: A Research Bibliography, 2006–2016**

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## Why Bibliography

James M. Donovan\*

The occasion of the new volume of *Sexual Orientation, Gender Identities, and the Law: A Research Bibliography* perhaps leads some to ask, Why bibliography? In these days of instant and abundant results from keyword searches on increasingly intelligent computer tools, isn't the print bibliography quaintly old-fashioned?

No. No more so than keyword searching has eliminated the need for the index even in digital books. But these are days when we often must defend the necessity of libraries against the argument that everything is free and on the Internet. Perhaps it should come as little surprise that we must likewise justify, or at least remind ourselves of, the importance of the bibliography. We can then go further and trumpet the value of *this* bibliography in particular.

"Bibliography" encompasses several distinct intellection activities, from the catalog to the more formal specialized subject bibliography. They share the task to bring order to the universe of knowledge in either whole or part, through lists of citations along with descriptive information on either the physical entity or the content. As the name suggests, the works included are primarily written, and mostly books, but in practice the items considered today present a range of formats.

In an earlier time, the argument wasn't whether there should be bibliographies, but rather what form they should take and what purpose they should serve. Should they aspire to be universal, or were they better limited to subject specialties? Comprehensive, or selective? Should bibliographies be created by academic specialists in the topic (a once-popular, but now almost extinct practice), or can they be successfully compiled by generalists like librarians who are more fluent in the documents as physical objects than in the subtleties of their contents? International in scope, covering multiple languages, or tailored to domestic consumption? Organized for use by the layman, or constructed according to concepts understood only by experts? These choices must be made for any bibliography.

The choices behind a bibliographical project might appear to be consummately practical. One does whatever promises to produce a tool helpful to the intended audience. Different possibilities emerge, though,

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when these utilitarian interests are wedded to a general theory that seeks to clarify the broader undertaking.

The most influential vision for bibliographical projects appeared in a seminal article by Margaret Egan and Jesse Shera.<sup>1</sup> The piece defends a "macrocosmic" approach which "would view bibliography as one of the instrumentalities of communication and communication itself as an instrumentality of social organization and action." This stance contrasts with the "microcosmic" point of view that looks upon bibliography as an end in itself rather than part of a larger stream of information exchange that coalesces to form shared cultural understandings. The microcosmic perspective approaches "each bibliography as a separate tool, fashioned to meet the specific needs of a limited number of persons with more or less common interests, each separate bibliography having little or no acknowledged relationship to any other."

In essence, Egan and Shera argue for a layered theory of information. At the largest scale the communication of information creates social bonds and makes possible the achievement of all human goals. Perhaps that claim today seems commonplace. The more difficult challenge is to identify the role of "graphic communication" within that flow of information, and, within that subset, the role of bibliography, which the authors define as "a means for locating a graphic record of the *content desired by the prospective receptor*."

B.C. Brookes summarizes Shera's project as involving the "belief in the need to establish a fundamental theory of communication regarded as an instrumentality, founded on bibliography, quantitative in character (at least initially), applicable to the more rational planning of library and information systems and networks, and within the province of librarianship if librarians wish to claim it."<sup>2</sup>

If Shera is correct, we should regard bibliography not as the quaint holdover of a technologically primitive stage of librarianship, but as the first step in the larger mission to transmute data into useful information, and then, perhaps ultimately, into wisdom. Librarianship has long been concerned about "losing knowledge in our search for information."<sup>3</sup> The goal is not to put before the user ever-increasing amounts of information,

<sup>1</sup> Margaret Egan & Jesse Shera, *Foundations of a Theory of Bibliography*, 22 LIBR. Q. 125-137 (1952).

<sup>2</sup> B.C. Brookes, *Jesse Shera and the Theory of Bibliography*, 5 J. LIBRARIANSHIP 233-245, 258 (1973).

<sup>3</sup> BARBARA M. HALE, *THE SUBJECT BIBLIOGRAPHY OF THE SOCIAL SCIENCES AND HUMANITIES* (1970).

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but to do so in a way that enhances comprehension. That outcome requires placing each item in its proper context. In other words, the work of the bibliographer is opening a cultural consensus and

It would be inaccurate to say that "native facts," and science's overreliance upon the supposedly played a role. At the indiscriminate reliance upon the recognized value of expert bibliography, to include an effort sufficient to correct such problems, drawing a clearer line around them.

The utility of good bibliography trails through the swamp of information quality. The information value of publication details, the analysis promise more than accuracy; they provide raw data as anticipated. For example, William Goffman employs the epidemiological theory

It is not clear from Shera's model how to fulfill the macrocosmic mission; it aspires to satisfy the immediate difference appears to be more and less in the work itself, carefully, and transparently.

The immediate problem of the "age of the scholarly bibliography" is that the scholar-librarian is

<sup>4</sup> See ANDREW KEEN, *THE CULTURE* (2007).

<sup>5</sup> See William Goffman & C. J. *of Scientific Discovery*, 229

<sup>6</sup> Bob Berring, *The End of the Line*, 104 LAW LIBR. J. 69-82 (2007).

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but to do so in a way that allows for thoughtful processing and comprehension. That outcome requires that results be organized in a manner that places each item in its proper context of what came before and after. In other words, the work of the bibliographer is an essential aspect of developing a cultural consensus about what is true and valuable.

It would be inaccurate to attribute these times of "fake news," "alternative facts," and science deniers to lack of good bibliography, but an overreliance upon the supposed bibliography substitute, the Internet, has surely played a role. At the very least, as Andrew Keen has pointed out, indiscriminate reliance upon the Internet has resulted in a diminution of the recognized value of expertise.<sup>4</sup> A conscientious return to the art of bibliography, to include an effort to guide patrons in its proper use, while not sufficient to correct such problems, will certainly play a necessary role in drawing a clearer line around what is known to be reliable from what is not.

The utility of good bibliography does not, however, end with blazing a trail through the swamp of increasingly prolific documents of dubious quality. The information within the bibliography—the chosen citations, the publication details, the annotations both summary and evaluative—should promise more than accurate details about that specific entry. In the aggregate they provide raw data for future studies that the editor could not have anticipated. For example, mathematician-turned-library school dean William Goffman employed data from bibliographies to test his theory on the epidemiological theory of knowledge dissemination.<sup>5</sup>

It is not clear from Shera's description how a bibliography compiled to fulfill the macrocosmic goal will obviously differ from one that merely aspires to satisfy the immediate research needs of specialized patrons. The difference appears to be in what the user hopes to extract from the work, and less in the work itself. Almost any bibliography that is competently, carefully, and transparently compiled could be expected to serve both ends.

The immediate problem, though, as Bob Berring sees it, is that the "age of the scholarly bibliographer is gone, and at the same time the role of the scholar-librarian is under siege."<sup>6</sup>

<sup>4</sup> See ANDREW KEEN, *THE CULT OF THE AMATEUR: HOW TODAY'S INTERNET IS KILLING OUR CULTURE* (2007).

<sup>5</sup> See William Goffman & Glynn Harmon, *The Mathematical Approach to the Predication of Scientific Discovery*, 229 *NATURE* 103-07 (1971).

<sup>6</sup> Bob Berring, *The End of Scholarly Bibliography: Reconceptualizing Law Librarianship*, 104 *LAW LIBR. J.* 69-82 (2010).

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In a sense, the great bibliographic projects also were efforts at control. If a trusted eye examined an item and described it with care, it would be forever part of the known world of information. [This is true: many of the great works of the ancient world are known only through their descriptions in lists compiled at the time.] The elevation of a work in the authoritative canon via the judgment of a scholar is a lovely distillation of the world of cognitive authority.

Unfortunately, "the careful, methodical work of great bibliographers is a vocation being consigned to the past. It was tied to the three-dimensional object, and it solved the problems and challenges of the era of the book. Trusting an authoritative mind has given way to the use of a great search engine."<sup>7</sup> And thus we find ourselves where we began: Are bibliographies such as *Sexual Orientation, Gender Identities, and the Law: A Research Bibliography*, a quaint survivor of a bygone age which should be encouraged to gracefully yield to the new technologies?

I hope I've said enough to indicate that such a conclusion is premature. In addition to Shera's normative aspirations, we can ask the more immediate and practical question whether search engines can, in fact, do the work of a bibliography. After all, any suggestion to mothball bibliographies presumes that a feasible alternative exists. Yet it is difficult to imagine Google, even with all its bells and whistles, producing a result comparable to the information found within Cheryl Rae Nyberg's *Subject Compilations of State Laws*, or in Nancy Johnson's (and now Ron Wheeler's and Jenna Fegreus') *Sources of Compiled Legislative Histories: A Bibliography of Government Documents, Periodical Articles, and Books*. What sets these and similar works apart is that they do not rely upon generic categories to mechanically create their lists. They examine candidate sources, identify the relevant sections, and use this carefully curated information to compile the best possible results. Whatever may occur in the future, we are not today at the point where Internet search results can guide us meaningfully through a disciplinary corpus. Until we reach that point, we should not overly vex ourselves whether they should.

I have one more reason to add to my list of why I do not believe we are in any danger of the Internet rendering print bibliography superfluous. The best bibliographies necessarily tell a story. Connecting themes emerge implicitly through the accreted insights embedded in the structure of the categories, the selection of items, and the annotations highlighting the important contributions that made *that* work worthy of inclusion, at *that*

<sup>7</sup> *Id.* at 75.

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Bibliographies should h avoid having one despite ar tion. Telling its story, a goo the discipline that is not red emergent insights from goo the pieces, but also the ge modes of expression, and tl terns that are not discernibl that reason, some writers ju for [their] own sake," howe wanted fact."<sup>8</sup> If a bibliog existing and accumulated c ple and the result of no sel Like many things, you get c

With at least this rud relevance of bibliographie currently in hand.

*Sexual Orientation, Gender Identities, and the Law: A Research Bibliography*, is the third publication of the Standing Committee on Sexual Orientation and Gender Identity (and its earlier incarnations). The *Library Journal*,<sup>9</sup> and the *Journal of Law and Society*. That volume's introduction to the UCLA Williams Institute project on sexual orientation and gender identity law and policy, and the details have changed, th

<sup>8</sup> Roger E. Stoddard, *How I Feel About Bibliography*, 25 *FLQ* 1 (1969).

<sup>9</sup> *Sexual Orientation and the Law*, 86 *LAW LIBR. J.* 1-10 (1969-1993).

<sup>10</sup> *SEXUAL ORIENTATION AND GENDER IDENTITY: TREATING LEGAL LITERATURE TH*

point in the collection. In some instances, the narrative is made yet more explicit through summary essays that isolate the threads of the evolving ideas. Although they did not use the term, Shera and Berring would surely recognize the bibliography in this sense as an intellectual history of its surveyed field. How that story is told is, of course, the choice of the editors, and that makes each bibliography unique even when superficially claiming to survey the same universe of information.

Bibliographies should have a point of view—indeed, they can hardly avoid having one despite any assurances of being an objective presentation. Telling its story, a good bibliography generates a new perspective on the discipline that is not reducible to the sum of the included citations. The emergent insights from good bibliography arise not only from the ideas in the pieces, but also the geography of their published appearances, the modes of expression, and the meta-analyses. These all reveal hidden patterns that are not discernible in any computer-generated citation list. For that reason, some writers judge the best bibliographies to “deserve reading for [their] own sake,” however useful they may be for “rapid finding of the wanted fact.”<sup>8</sup> If a bibliography were nothing more than a catalog of existing and accumulated citations, arranged according to no useful principle and the result of no selectivity, it could indeed be replaced by Google. Like many things, you get out what you put in.

With at least this rudimentary background sketch on the continued relevance of bibliographies, we can turn attention toward the exemplar currently in hand.

*Sexual Orientation, Gender Identities, and the Law: A Research Bibliography*, is the third published iteration of an ongoing commitment by the Standing Committee on Sexual Orientation and Gender Identity (and its earlier incarnations). The first version appeared as an article in the *Law Library Journal*,<sup>9</sup> and the first monographic treatment appeared in 2007.<sup>10</sup> That volume’s introduction by Brad Sears, then Executive Director of the UCLA Williams Institute, a think tank on sexual orientation and gender identity law and policy, warrants attention even today. He places the bibliography project in the context of the developments of its day. While the details have changed, the lesson remains the same: “In short, use this

<sup>8</sup> Roger E. Stoddard, *How I Found the Poets and How I Left Them Behind: A Librarian’s Apology for Bibliography*, 25 HARV. LIBR. BULL. 20–36 (2014).

<sup>9</sup> *Sexual Orientation and the Law: A Selective Bibliography on Homosexuality and the Law, 1969–1993*, 86 LAW LIBR. J. 1–103 (1994).

<sup>10</sup> SEXUAL ORIENTATION AND THE LAW: A RESEARCH BIBLIOGRAPHY SELECTIVELY ANNOTATING LEGAL LITERATURE THROUGH 2005 (2007).

resource! It represents, and will save you, an enormous amount of time and work. Whether brushing up on a topic, tracking down footnotes, brainstorming for a thesis, or embarking on a new research project, this should be one of the first places you start."<sup>11</sup>

One of the major changes in this volume had been predicted by Sears a decade earlier. As questions surrounding the issue of sexual orientation have become comparatively settled and mainstream—LGB soldiers can now serve in the military, and same-sex marriage, after *Obergefell*, has been ruled a requirement of the U.S. Constitution—attention has shifted toward the needs of transgender individuals. The proliferation of so-called “bathroom” bills and the actions by President Trump to ban transgender people from military service today occupy the public imagination in much the same way that marriage did when the previous volume was compiled. This heightened activity justifies the change in title, making the work more reflective of the facts on the ground and hence more useful to researchers.

The legal terrain on LGBT issues changes quickly, and good bibliography can bring a practitioner or scholar quickly up to speed. The timely new volume of this work has taken further steps from its predecessors toward Shera’s bibliographic ideal with the inclusion of brief introductory overviews of each section.

Despite these improvements, the volume will be judged on the story that it tells. For me, at least, the principle lesson that emerges from the mosaic of individual works is one of endurance, perseverance, and hope.

Under the new administration, we can expect battles thought comfortably won to be engaged once more by a reinvigorated right wing. I shared the expectation that legalization of same-sex marriage would lead to a normalization of homosexuality. That argument—notably framed by Andrew Sullivan’s *Virtually Normal* (1995)—extrapolated from the fact that discrimination against homosexuals lessened when people knew actual gays. If they then saw them as ordinary couples, living unremarkable lives no different from their own, the exotic strangeness of LGBT people would disappear, and overt bigotry soon fade into the background.

Such optimism has proven to be naive. The road toward normality in the post-*Obergefell* world has been somewhat uneven. While acceptance remains the typical attitude among the younger set, their elders push back.

The U.S. Supreme Court recently considered the “wedding cake” controversy raised by *Masterpiece Cakeshop v. Colorado Civil Rights*

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<sup>11</sup> *Id.* at xxii–xxiii.

<sup>12</sup> *Masterpiece Cakeshop v.*

<sup>13</sup> *Arlene’s Flowers v. Was*



*Commission*.<sup>12</sup> The central issue concerned whether public businesses can exclude gay persons, especially those engaging their services for same-sex weddings. Anything other than a resounding “No!” to this question threatens troubling consequences not only for the LGBT community, but all minorities. The so-called “right to exclude” was created after the Civil War specifically to shield shops that did not want to serve the newly freed African Americans. That this Jim Crow rule has been resurrected to apply to same-sex couples bodes ill for everyone. Although the Court resolved *Masterpiece* in favor of the baker without addressing any of the underlying constitutional issues, the controversy remains live. The Court remanded a factually similar case to be considered in light of the *Masterpiece* opinion,<sup>13</sup> setting up a likely return to this question with a considerably more conservative Court after the resignation of Justice Kennedy. So, the struggle goes on. It can be depressing that so much effort must be expended by so many talented people to argue the proposition that everyone should be treated equally and with dignity. What contributions might these bright people have made had they not been compelled to defend what in a better world would be a self-evident and commonplace opinion?

But the contents of this bibliography stand as encouraging testimony that so long as the LGBT community has need of defenders, persons of ability and goodwill shall rise to the challenge. The entries serve as a roll call of the legal profession’s best minds fighting the good fight, sometimes at great personal cost. They have my thanks.

<sup>12</sup> *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

<sup>13</sup> *Arlene’s Flowers v. Washington*, 138 S. Ct. 2671 (June 25, 2018).