

Auctions and the Distribution of Law Books in Antebellum America

M. H. HOEFLICH

TODAY, THE POPULAR IMAGE OF THE LAWYER is as an oral advocate who vanquishes his opponents by the strength of his rhetoric in court. In fact, even the most skilled litigator must know the law and argue from legal principles. To do otherwise is to risk the displeasure of the court and almost certain defeat by an opponent who does know the law. The law in Western society for the past millennium has been acquired by its students through tedious reading in often dry and bloated tomes embodying the sum total of legislative, court, and private literature that together make up the law. Thus, although a lawyer might well have practiced on horseback, as did Lincoln a hundred and fifty years ago, or out of the back of a minivan, as some do today, all have needed and will continue to need familiarity with the books and documents that contain the accumulated law and legal wisdom.¹

In the period from the founding of the new republic to the beginning of the Civil War, American law and the American legal

I would like to thank the American Antiquarian Society for awarding me the Reese Fellowship that supports research in American bibliography and projects in the history of the book in America, which made it possible for me to have a month in the splendid library of the Society, and Marie E. Lamoureux, director of readers' services at AAS, and her staff who provided numerous instances of help.

1. See Henry C. Whitney, *Life on the Circuit with Lincoln* (Boston: Estes and Lauriat, 1892) for an excellent evocation of the life of a circuit-riding lawyer in antebellum Illinois.

M.H. HOEFLICH is John H. and John M. Kane Distinguished Professor of Law
at the University of Kansas.

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profession underwent intensive changes.² This was a period of profound legal syncretism. English law was neither wholly rejected nor wholly accepted, and every lawyer during this period had to know something of English statutes and cases as well as be familiar with the great treatise literature that had dominated English legal thought, particularly the works of Coke and Blackstone.³ As each of the new American states and the new federal government was developing a legal literature of its own, in courts, in legislatures, and in law offices and law schools, no antebellum American lawyer could risk not knowing the laws of the nation and his own state. At the same time American lawyers of this period were cosmopolitan in their thinking and writing. If they could not find relevant English or American law, they would gladly look to the law of ancient Rome, and of contemporary France or Germany, among others.⁴ The new nation in its formative period offered lawyers an unparalleled freedom to look widely for their authorities.

In practice this broadly syncretic approach to legal sources meant that to do their work lawyers needed access, either through proximity or ownership, to books. Many were not satisfied simply with a few reports of local cases and a dog-eared Blackstone. 'Habits of reading inform habits of speaking on legal subjects,' the students of Transylvania Law School in Lexington, Kentucky, were told at their academic convocation in 1835. Their assignments in the coming year would include reading 'the various branches of the science' and participating in moot courts 'modelled on practice at Westminster Hall, not the practices in Kentucky or any other state in the Union.' No wonder a taste was cultivated for copies of

2. See M. Bloomfield, *American Lawyers in a Changing Society, 1776-1876* (Cambridge, Mass.: Harvard University Press, 1976); Gerard W. Gawalt, *The Promise of Power: The Emergence of the Legal Profession in Massachusetts, 1760-1840* (Westport, Conn.: Greenwood Press, 1979), 81-128.

3. See, especially, A. W. B. Simpson, 'The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature,' in Simpson, *Legal Theory and Legal History* (London: Hambledon Press, 1987), 273-320. See also Michael Lobban, 'The English Legal Treatise and English Law in the Eighteenth Century,' in *Auctoritates: Xenia R. C. Van Caenegem Oblata*, eds. S. Dauchy, J. Monballyu, A. Wijffels, *Iuris Scripta Historica*, 13 (Brussels: Koninklijke Akademie voor Wetenschappen, 1997), 69-90.

4. See M. H. Hoeflich, *Roman and Civil Law and the Development of Anglo-American Jurisprudence* (Athens: University of Georgia Press, 1997).

such works as Pothier on contracts and Vattel on natural law, of Vinnius on Justinian's *Institutes*, and Littleton on the English law of tenures. These could most reliably be found in a law library that could indeed offer the full range of legal sources that lawyers of the period used in drawing their arguments and documents.⁵

As the economists have taught us, when one finds a conjunction of demand with the ability to pay for the goods demanded, a market to supply such goods will inevitably result. This is precisely what happened in the first decades of the new United States. Prior to the Revolution, a number of booksellers offered law books, mostly imported from England, and a few even issued catalogues or held the occasional auction of a private library. A few law libraries of the colonial period were notable for the breadth and depth of their holdings. There were not a great number of such libraries. Thomas Jefferson, for instance, built up respectable legal holdings in the collection that eventually became the foundation for the Library of Congress.⁶ Edwin Wolf 2nd has shown that law books were readily available in colonial cities such as Philadelphia.⁷ The Loganian Library there is one such example.⁸ John Adams, too, built up a substantial law library in Boston, but the colonial trade in law books was far less significant and the demand for them far smaller than in the first seventy-five years after independence. It was in the antebellum period that the American legal profession saw its first dramatic increase in size and prestige, soon eclipsing, as Perry Miller has demonstrated, at least in prestige, the American clergy.⁹ And all of these lawyers needed books.

5. Daniel Mayes, *An Address to the Students of Law in Transylvania University, delivered at the beginning of the Session for 1835* (Lexington, Ky., 1835), 26-27, 15. Reprinted in M. H. Hoefflich, ed., *The Gladsome Light of Jurisprudence: Learning the Law in England and the United States in the Eighteenth and Nineteenth Centuries* (Westport, Conn.: Greenwood, Press, 1988), 145-64.

6. See, above all, M. Sowerby, ed., *Catalogue of the Library of Thomas Jefferson* (Charlottesville: University of Virginia Press, 1983).

7. Edwin Wolf, 2nd., *The Book Culture of a Colonial American City* (Oxford: Clarendon Press, 1988), 131-63.

8. See *Catalogue of the books belonging to the Loganian Library* (Philadelphia: Z. Poulson, Jr., 1795).

9. Perry Miller, *The Life of the Mind in America from the Revolution to the Civil War* (New York: Harcourt, Brace, 1969), 99-238.

*all the Books on this List furnish'd
by S. Coleman at lowest prices
121 Washington St Boston*

CATALOGUE
OF
ANCIENT AND MODERN
LAW BOOKS,

FOR SALE BY
GOULD, BANKS & Co.

LAW BOOKSELLERS AND PUBLISHERS,

No. 144 NASSAU STREET,

(NEAR SPRUCE, OPPOSITE THE BRICK CHURCH)

NEW YORK; AND BY

WM. & A. GOULD & Co.

No. 104 STATE STREET,

ALBANY, N. Y.

NEW YORK:
PRINTED by GOULD, BANKS & Co.

No. 144 NASSAU STREET.
1836.

Fig. 1. A handwritten inscription on the American Antiquarian Society's copy of a New York-published *Catalogue of Ancient and Modern Law Books* advises that 'all the Books on this List furnish'd by S. Coleman at lowest prices 121 Washington St Boston.' Courtesy American Antiquarian Society.

Thus, we find the law book trade growing in every major city during this period. Little, Brown in Boston, W. and A. Gould in Albany, T. and W. Johnson in Philadelphia, and Voorhies and Livingston and Gould, Banks, and Company in New York City are just a few of those who prospered during this period.¹⁰ Law booksellers of this period carried on a sophisticated trade. They imported books from both England and continental Europe (including pirated English editions from Ireland); and, as well, printed, published, and sold American-produced translations of foreign works, plus texts and reports of American origin.¹¹ Most of the major law booksellers and publishers also sold books by catalogue through the newly created and often unpredictable United States postal service (fig. 1).¹² Finally, a number of booksellers, both those in general trade and those specializing in legal materials began to hold auctions of notable law libraries and collections of law books.

Until recently, legal historians have, for a number of reasons, paid very little attention to the law book trade in antebellum America. Traditional legal history has been doctrinal history, interested in the contents of books, not in the more mundane matters of how such doctrines were, in fact, made known to lawyers and the public. The assumption has been that a doctrine in print was a doctrine of importance, particularly if it was incorporated into a court report or legislative text. Although the 'new' legal history has broken from the doctrinal focus of the traditionalists to explore such issues as race and gender, it, too, has been more concerned with the substance of the law than with the vectors by which

10. The standard work on the history of American law publishing is Edwin Surrency, *A History of Law Publishing* (New York: Oceana, 1990). Surrency does not deal with either auctions or retail sales in any detail.

11. See M. H. Hoefflich, 'Translation and the Reception of Foreign Law in the Antebellum United States,' *American Journal of Comparative Law* 50 (2003): 753.

12. Books could not be sent securely or inexpensively through the U.S. Post Office until 1851; see Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, Mass.: Harvard University Press, 1995), 39. See also R. B. Kielbowicz, *News in the Mail: The Press, Post Office, and Public Information, 1700-1860s* (Westport, Conn.: Greenwood Press, 1989); Kielbowicz, 'Mere Merchandise or Vessels of Culture? Books in the Mail, 1792-1942,' *Papers of the Bibliographical Society of America* 82 (1988): 169-200.

legal doctrines became known. It is only within the past decade that a few hardy legal historians such as Richard Ross, Ann Fidler, Mary Bilder, and Alfred Brophy have attempted to combine the comparatively new field of book history with legal history.¹³

A second reason why the history of law books and the law book trade has not been written lies in the difficulty of finding the sources for such a history. Few business records of antebellum law booksellers and publishers survive. Most were lost long ago, as is usual with mundane business records. The printed records of these businesses, their catalogues, can still be found, but they have also suffered the fate of most printed ephemera: few institutional libraries preserved these materials precisely because they were ephemera.¹⁴ Surviving law book catalogues of the antebellum period may be roughly divided into two classes: catalogues issued by law booksellers advertising stock offered for sale at fixed prices and catalogues issued by booksellers and auction houses advertising a sale by auction. While a few manuscript catalogues of lawyers' libraries survive, such as the handlist of James Kent's library now at Columbia University or Emory Washburn's manuscript catalogue now at the American Antiquarian Society, these are not common.¹⁵ The book titles in post-mortem probate lists, while useful when they exist, are often so sketchy in details as to

13. See Ann Fidler, "Till You Understand Them in Their Principal Features": Observations on Form and Function in Nineteenth-Century American Law Books,' *Papers of the Bibliographical Society of America* 92 (1998): 427-42; Richard Ross, 'The Memorial Culture of Early Modern English Lawyers: Memory as Keyword, Shelter, and Identity, 1560-1640,' *Yale Journal of Law and the Humanities* 10 (1998): 229-326; Mary Bilder, 'The Lost Literates: Early American Legal Literates and Transatlantic Legal Culture,' *Yale Journal of Law and the Humanities* 11 (1999): 231-85; Alfred Brophy, 'The Rule of Law in Antebellum College Literary Addresses: The Case of William Greene,' *Cumberland Law Review* 31 (2000/2001): 231-85; see also M. H. Hoefflich, 'Legal History and History of the Book: Variations on a Theme,' *University of Kansas Law Review* 46 (1998): 415-31.

14. Among the libraries that have kept them are the New York Public Library, the Boston Athenæum, the Harvard Law Library, and the American Antiquarian Society. Other institutional libraries that once had substantial collections of such materials, such as the New York State Historical Library, have sold off many of their holdings, but this too has served a purpose by permitting these items to enter the current market to be purchased by other libraries and private collectors.

15. Part of Kent's library is in Special Collections at the Arthur W. Diamond Law Library at Columbia University. Kent, the first professor of law in Columbia College, was an avid reader. His original library contained upwards of 3,000 volumes, some of which now reside in the New York State Law Library in Albany. The title pages of many of the vol-

make it impossible to reconstruct the library of the deceased. Auction catalogues are, then, the best source for reconstructing private law libraries from the antebellum period. Catalogues for auctions of private libraries, collections of libraries, or, in a few instances, the stock of a bookseller or publisher, are the subjects of this paper.¹⁶

That noted, reconstructing a library from an auction catalogue is not necessarily straightforward. The auctioneer might add books to an auction that were not from the principal library for sale. Occasionally, there is also more than one catalogue of the auction of a single library. An example is the library of Hugh Swinton Legaré (1789–1843), the Charleston lawyer who was attorney general of the United States at his death. The library of one of his distinguished New England contemporaries, Joseph Story (1779–1845), is another example. It is not easy to discover the precise parameters of the library being auctioned or account for differences between the different versions of the catalogues.¹⁷ Even when no such problems exist, the small number of law-related catalogues published during this period (see Appendix) makes generalization difficult. Even with drawbacks such as these, auction catalogues are an incredibly rich resource for library reconstruction because they exist not only for the libraries of notable lawyers and jurists, but also the smaller libraries of ordinary lawyers. Thus, we are able to learn about the greatest law libraries of the antebellum period and also the libraries of common lawyers in ordinary practice.

umes note price and date acquired. On Kent's library and his reading therein, see John Langbein, 'Chancellor Kent and the History of Legal Literature,' *Columbia Law Review* 93 (1993): 547–94. See also James Wynne, *Private Libraries of New York* (New York: H. French, 1860), 281–86. Washburn (1800–77) was a Worcester lawyer and professor at Harvard Law School, who served one term as governor of Massachusetts.

16. Although historians have worked with English and European book auction catalogues, much remains to be done. A useful starting point is a special issue of the *Papers of the Bibliographical Society of America* 89 (December 1995), which contains papers from the 1995 conference 'Book Catalogues, Today and Tomorrow.'

17. See M. H. Hoefflich, *Roman and Civil Law*, 163, n. 41. For the library auction sale of Joseph Story's books, there are two catalogues extant, one from 1846 and the other from 1856. On these, see the forthcoming edition of the 1846 auction catalogue that Karen Beck and I have edited to be published by the Tarleton Law Library of the University of Texas School of Law.

Law book auction catalogues reveal information about the actual sale and distribution of law books in the United States during this period. For instance, a law bookseller might list a particular work as available, but this is not necessarily proof that the book was, in fact, for sale. On the contrary, good evidence exists that law booksellers listed volumes for sale that they did not have in stock and may well not have been able to supply at will.¹⁸ In contrast, the presence of a book in an auction catalogue almost certainly means that the book was, indeed, owned and was in circulation at the time in the United States. Thus, the number of foreign books listed for sale by booksellers such as Livingston or Little, Brown differs significantly from the number listed for sale in even the largest law book auctions. This may indicate either that booksellers listed books in the belief that they could obtain them, if ordered, but did not necessarily stock them, or it may indicate that many foreign books on booksellers' shelves may not have sold.

Antebellum law book auction catalogues also reveal the extent to which lawyers were willing to invest in their libraries. Booksellers' catalogues can give us some indication of the cost of law books in the primary retail market, but they tell us nothing about how much lawyers actually invested in their libraries, nor what the secondary market for law books was like. All of this can be learned to some degree through the study of law book auction catalogues. For example, Washburn of Worcester, Massachusetts, noted in his manuscript library catalogue that '...the prices set to the books are those for which they were purchased when recollected and in no cases excluding the lowest catalogue prices of the bookstores—many of them are less than ½ price—as they were bought at auction.'¹⁹

The study of auction catalogues has been made significantly easier by several bibliographical resources. McKay's *American Book*

18. This would appear to have been the case, for instance, in regard to John Livingston's law book catalogues; see M. H. Hoefflich, 'John Livingston and the Business of Law in Nineteenth-Century America,' *American Journal of Legal History* 44 (2000): 347–68.

19. 'Catalogue of Books Belonging to the Library of Emory Washburn,' 1, Emory Washburn Papers, American Antiquarian Society. The catalogue occupies eighteen pages of a small volume containing seventy-two pages, with 1832 as the latest date cited for a book.

Auction Catalogues, 1713-1934 provides a union list of auction catalogues based upon an extensive survey of contemporary sources, including newspapers, as well as modern library catalogues.²⁰ The original 1937 edition of McKay was supplemented in 1946 and 1948. The copy of McKay now at the American Antiquarian Society has itself been further annotated and updated by the AAS staff and includes a number of items not found in the 1948 addendum. McKay is usefully supplemented for nineteenth-century items, in particular, by Morris Cohen's magisterial *Bibliography of Early American Law*.²¹ Although Cohen lists fewer law book auction catalogues than McKay, the work gives far greater bibliographical detail about those it does list. These two published sources are, themselves, also supplemented by the catalogues of several contemporary collections, particularly of the Library of Congress and the Harvard Law School.²² Taken together, these bibliographical sources provide a good overview of law book auctions in the United States in the nineteenth century.

These sources show first of all, that auctions of law books in the United States clearly predate 1800.²³ Indeed, auctions of goods including books were an established part of the landscape of trade in new and used goods during the eighteenth century. It is equally clear, however, that the 'golden age' of law book auctions in antebellum America was the 1840s and 1850s, periods in which the numbers of such auctions reached the double digits (see Appendix). Second, from the bibliographies it is also clear that law book auctions were held primarily in the major northeastern cities, particularly Boston, New York, and Philadelphia, although later in the century St. Louis also became a center for such sales.²⁴

20. George L. McKay, *American Book Auction Catalogues, 1713-1934: A Union List* (1937; reprint with supplements, New York: Gale, 1967). The volume also contains an extremely helpful list of American book auction houses and, when known, contemporary locations of catalogue copies.

21. Morris Cohen, *Bibliography of Early American Law* (Buffalo, N.Y.: Hein, 1998).

22. I want to acknowledge the invaluable help provided by David Warrington of the Harvard Law Library in making their author catalogues available to me.

23. See, for instance, McKay's listings of sales that include law books in *American Book Auction Catalogues*.

24. See McKay, *American Book Auction Catalogues*, xvii-xxxi, and the introductory essay by Clarence S. Brigham, 'History of Book Auctions in America,' 1-37.

Third, the law book auction business was dominated by a few auction houses. Fourth, law book auctions were not limited only to the great law libraries or to antiquarian law books, although when the individuals who prepared auction catalogues highlighted the previous owners of books, especially eminent lawyers and judges, they may have presumed a book, particularly when annotated by them, would be in greater demand and sell at a premium.²⁵ However, one could also purchase quite mundane law books from working lawyers' libraries at auction, possibly, as suggested above, at a significant price discount. For the most part, libraries sold at auction were those of deceased lawyers. It seems that executors of lawyers' estates often chose the route of selling their goods, including their libraries, at auction rather than by private sale or by sale to a dealer. To sell an estate library at auction was often more lucrative, since dealers, then as now, would be willing to pay only a fraction of the open market value of books. This was probably especially true in the case of books with valuable provenances. Further, willing booksellers may not have been available, since it may well have been difficult for many to raise the capital sufficient to buy a large library *in toto*.

The printed catalogues produced for law book auctions range in size and sophistication from a single sheet broadside with little detail about individual books to the very elaborate booklets published by the major auctioneers to record the contents of important law libraries. Although it is extremely difficult to know how many catalogues were produced for the average sale and how widely they were distributed, one may assume a number sufficient to satisfy the bar in the city in which a sale was held as well as more distant dealers and interested parties. Certainly, by the 1840s retail booksellers such as Little, Brown in Boston were regularly producing catalogues and distributing them widely by mail. There is little reason to doubt that the sale catalogues of libraries such as

25. I base this judgment on the fact that annotated volumes listed in auction catalogues of libraries such as Story's often list when a particular volume has annotations; see, for instance, *Catalogue of Law and Miscellaneous Books, Belonging to the Library of the Late Mr. Justice Story* (Boston: A. Mudge, 1846), no. 7: 'Littleton's Tenures "autograph."'

those owned by the Boston lawyer and literary figure Rufus Choate (1799–1859) or Joseph Story were not similarly treated. About this sale, the *New York Times* reported: ‘The Boston Journal is informed that the library of Rufus Choate will be sold at auction in October. It consists of 10,000 volumes, of which one-third are law books.’²⁶ The two printed catalogues for the auction of the books of Judge John Purviance of Baltimore (1774–1854) offer another example.²⁷ The law book catalogue is virtually unique among such nineteenth century auction catalogues because it bears printed values for the books. The stated reason for this was to provide bidders some idea of the retail market value of each title, but the preface notes that a secondary purpose was that it would become a reference work to both titles and prices. The unusual preface to this law book catalogue indicates the estate administrator’s anticipation ‘that the catalogue might fall into the hands of many lawyers in the interior of the country who might not have ready access to booksellers catalogues and who might be curious to know the selling prices of some of the books’ both to know their value and to aid them in subsequent book purchases.²⁸ That the auctioneers believed it possible that their catalogues would be retained and used by lawyers far removed from Baltimore would suggest that in their experience such auction catalogues were widely distributed beyond the locality of the auction sale. (My copies of these Baltimore sale catalogues were in the library of Union College in upstate New York during the nineteenth century.)

In content, the catalogues included books that were not professional law books, indeed, not law books at all, an indication that lawyers in antebellum America should not be considered narrowly educated and narrowly read men with little interest outside

26. *New York Times*, September 12, 1859, 2. Thanks to the comment of the anonymous reviewer of this article I was introduced to the ProQuest on-line data base containing the text of the *New York Times* from 1859.

27. *Catalogue of the Miscellaneous Library (Theological, Classical, etc.) of late Judge Purviance, of Baltimore*, and *Catalogue of Judge Purviance’s Common and Civil Law Library* (Baltimore: James Young, 1855), Gibson and Company were the auctioneers (McKay, *American Book Auction Catalogues*, 679).

28. *Catalogue of Purviance’s Law Library*, 1–2.

the law. Robert Ferguson has described the typical American lawyer of the period as having broad interests in politics and history, as well as the arts and humanities.²⁹ Lawyers, such as Purviance and Choate, amassed and used books outside the narrow confines of the law. Choate's library was rich in both Greek and Latin texts and the scholarship appurtenant thereto, as well as literary and historical works reflecting the breadth of his interests.³⁰ The Purviance catalogue has a section described as books of 'special interest to lawyers' that includes biographies, accounts of trials such as Aaron Burr's, histories, speeches, and parliamentary debates.³¹ Other lawyers were quite catholic in their tastes. Gustavus Schmidt (1795-1877), a Swedish immigrant who became one of the greatest figures at the antebellum Louisiana Bar, collected French novels and purchased by subscription one of the first sets of Audubon's *Birds of America* sold in the United States.³² Even the professional law books that were sold at these auctions were not solely those of a narrowly trained lawyer and practitioner. Of course, virtually every sale of a substantial library contained copies of case reports and legislative materials, as well as the standard English and American treatises on the common law and its various specialties such as contracts or property of wills and trusts. But these library sale catalogues also reveal that American lawyers possessed books on foreign law, particularly Roman law and the laws in force in France and Germany at the time.³³ In part, these holdings reflect the great influence exerted upon American law by Roman and civil law, especially in such areas as admiralty and commercial law. These holdings also reflect the rather so-

29. See, for instance, Robert Ferguson, *Law and Letters in American History* (Cambridge, Mass.: Harvard University Press, 1984).

30. The number of classical texts as well as the level of classical scholarship represented by them had few matches in contemporary private libraries.

31. *Catalogue of Purviance's Law Library*, 54-58.

32. [Gustavus Schmidt], *Catalogue of a Large and Valuable Library* (St. Louis: Souls, Thomas and Wentworth, 1877); the unique surviving catalogue of this library is now at Tulane Law Library. See M. H. Hoefflich and Louis de la Vergne, 'Gustavus Schmidt: His Life and Library,' *Roman Legal Tradition* 1 (2002): 112-22.

33. I would estimate, from my reading of these catalogues over the past decade, that, perhaps, 25 percent contain several or more works on Roman law and modern civil law.

phisticated notion commonly held by members of the American Bar that the law was a learned profession and that this scholarly heritage must be buttressed by a serious interest in both legal history and comparative law.³⁴

The specific types of works found generally in these sale catalogues of private libraries also provide significant evidence of the seriousness with which American lawyers took their professional activities. For instance, lawyers generally owned the published case reports from their own jurisdiction as well as case reports from a few other jurisdictions, particularly those from New York and Massachusetts. The fact that New York reports occur far more frequently in these catalogues than for instance, Connecticut reports, would seem to suggest that the decisions of the New York courts were held in higher esteem outside New York than were Connecticut reports outside Connecticut. The contents of the catalogues also reveal the popularity of individual authors, both living and dead. It comes as no surprise, for instance, that the works of Blackstone and Story were so widely held. What is, perhaps, more surprising, are the numbers of pre-nineteenth-century law books printed in England and on the continent that also appear in these catalogues. The appearance of such antiquarian texts, even in libraries of modest size, would suggest that the importation of such treatises may have been even greater than some scholars had traditionally thought.³⁵ It also may suggest that lawyers who would have had very little practical use for such books in nineteenth-century America found some other value, i.e., prestige, in the ownership of such volumes.³⁶

Probably the best way to understand the nature and scope of the law book auctions during the antebellum period, and of the libraries that were sold at these auctions, is to examine a few of the sales closely. One of the most informative is the two-part estate

34. See M. H. Hoeflich, *Roman and Civil Law*, passim.

35. See Surrency, *History of Law Publishing*, 142.

36. On the 'prestige' value of law books for lawyers, see M. H. Hoeflich, 'Lawyers, Books, and Pages,' *Green Bag* 5 (2002): 163-72; see also, Fidler, 'Till You Understand Them.'

sale of books belonging to Purviance, the well-known Baltimore lawyer and judge. The *Catalogue of the Miscellaneous Library (Theological, Classical, etc.) of late Judge Purviance, of Baltimore*, was devoted to the general library. The second catalogue, obviously designed for a specialized market, the *Catalogue of Judge Purviance's Common and Civil Law Library* (1855), listed the contents of the judge's law library. The general catalogue was divided into five sections, each consisting of numbered lots, many comprised of multiple items. The categories were miscellaneous (138 lots), classical (164), theological (343), church fathers (16), and American history and politics (128). The law book catalogue was divided into two sections. The first section, devoted to works on the common law, consisted of 889 numbered lots. The second section, devoted to books on the civil law, consisted of 169 numbered lots. Lots in both sections were arranged alphabetically.

The Purviance catalogues are unusual in a number of respects, but particularly because they contain a substantial amount of information about the auctioneers and the auction sales. First, a note in the first catalogue provides strong evidence that the auctioneers did not prepare the sales catalogue entirely on their own, but rather used a list prepared by the administrator of Judge Purviance's estate. An introductory note to the law catalogue states that the prices provided as guides to books listed in the common law section of the catalogue were, in fact, provided by the administrator who had first made up a priced list of these books with the hope making a private sale of the entire library.³⁷ The inclusion of such price guides was, as already noted, quite unusual. One does find, on occasion, auction catalogues with prices inserted by hand by a participant in the auction, but rarely pre-printed prices.³⁸ Retail prices would not have provided exact values for purchasers since evidence suggests that auction prices

37. *Catalogue of Purviance's Law Library*, 1-2.

38. The use of book auction catalogues as price reference guides is of some antiquity, stretching back at least as far as the seventeenth century in Europe; see M. H. Hoeflich, 'Bibliography in the Seventeenth Century: J. G. Graevius' Lectures,' *The Library* 32 (1977):

were generally substantially lower than retail prices. However, such prices might well have served as guides for bidding, particularly to the upper limit of values since, presumably, books could be obtained from retail booksellers at these prices.³⁹

Both Purviance catalogues were octavo pamphlets with paper covers. The copy in my possession has the remnants of a postmark stamp on its back cover, suggesting that it was mailed as is, without a wrapper or envelope. To make it even easier for lawyers at a distance to take part in the auction, the catalogues were available, postage paid, from several sources, the auctioneers, the estate's lawyer and the estate administrator, as well as from other Baltimore booksellers, who were prepared to act as agents for those unable to attend by bidding for them at the auction. Successful absentee bidders were given the suggestion that they might want to use a particular freight company, Adams Express, for the 'safe transmission' of their purchases.⁴⁰

A note on the cover of the catalogue of the general library gives some indication of the order of sale: its contents were to be sold in the morning and the law books were to go under the hammer that evening, but changes in accord with 'the views of purchasers' were said to be possible. One may assume that the auctioneers wanted to save the law books until the evening when more lawyers, freed of their professional duties of the day, might attend.

The compilers of the sale catalogues listed each volume's author and title, and, when known, details of publication such as place, date, and publisher. These notes would suggest that the catalogue was compiled with the assistance, at least, of someone familiar with the law, and, in this case, the estate administrator, who did

48 ff.; Hoeflich, 'Two Heinsius-Related Volumes in the University Library, Cambridge,' *Transactions of the Cambridge Bibliographical Society* 6 (1975): 262 ff.

39. A printed note at the top of the front wrappers of the Harvard copy of the *Catalogue of Purviance's Law Library* books indicates that it was a 'reserve catalogue.' This may indicate that the prices were included because there were auction reserves placed on the items up for sale. Without further information, however, it is impossible to know. I want to thank the anonymous reviewer of this article for this information.

40. *Catalogue of Purviance's Law Library*, back cover; on the Adams Express Co., see Kielbowicz, *News in the Mail*.

not hesitate to comment on particular aspects of the books or on the special desirability of certain volumes. Approximately 10 per cent of the entries in the law catalogue have notes about an item's condition appended. The description of Atkyns' Reports notes that it was 'marked in J's Phila catalogue as "very scarce,"' several, including Sugden's 'Law of Vendors and Purchasers of Real Estate,' were noted as 'a fine copy.' Another volume, of law French with a law Latin Dictionary, was described as 'a scarce old book—useful for students.' The introduction to the law book sale catalogue takes pains to advertise the presence of several antiquarian volumes in the sale revealing 'the mellowing influence of time,'⁴¹ including a copy of the Paris printing of 1505 of 'Lyndewode's *Provinciale*,' described as 'a rare work, printed in black letter, rubricated throughout, a fine specimen of early printing;' the 1585 edition of Anthony Fitzherbert's 'Natura Brevium' and a copy of the 1668 edition of Malyne's 'Law Merchant' described as a 'scarce and valuable work.'⁴² 'Corpus Juris Civilis cum notis Gothofredi,' published in Amsterdam in 1664, was described as 'an immense portfolio in double columns of about 2000 pages, beautifully printed . . . perhaps the most beautiful book in the present library. Bound in vellum.'⁴³ According to Madeleine Stern, by the time of the Purviance sale, the cult of antiquarian books had spread to the United States and antiquarian booksellers were to be found in several major American cities.⁴⁴ It would appear that interest amongst some members of the bar in antiquarian law books was also significant, enough so that such volumes were specially identified in catalogues like this, if only as collectors' items.⁴⁵

41. No. 10; No. 19 p. 4; No. 479. Edw. Sugden, *Law of Vendors and Purchasers of Real Estate* (London, 1830), *Catalogue of Purviance's Law Library*, 30; *Catalogue of Purviance's Law Library*, 2. This suggests that condition was considered to affect both desirability and, presumably, price.

42. Nos. 436–37, *Catalogue of Purviance's Law Library*, 29.

43. *Catalogue of Purviance's Law Library*, 11.

44. Madeleine B. Stern, *Antiquarian Book Selling in the United States* (Westport, Conn.: Greenwood Press, 1985), vii–xviii.

45. Not all lawyers thought antiquarian volumes were worth consulting. See, for example, [Wright], *Advice on the Study of Law with Directions for the Choice of Books, Addressed to Attornies' Clerks, with Additional Notes for the American Student* (Baltimore: E. J. Coale, 1811), 47, n. 1: 'These ancient authors are not much read in our offices or used in our courts.'

Some of the volumes to be sold at the auction were not separately listed in the catalogue. A note in the general catalogue for the Purviance sale indicates to the reader that a number of unbound periodicals and pamphlets as well as other volumes not listed by the administrator of the estate but found by the auctioneer were to be sold after the numbered lots.⁴⁶ This is further evidence that the auctioneers were working from a list provided by the estate's administrator when they printed the auction catalogue.

In terms of the library itself, Purviance's collection was quite remarkable. The law library alone numbered in the thousands of volumes, and the administrator estimated that it represented an investment of some thirty-five thousand dollars.⁴⁷ Although not unique, Purviance's library was unusual because it contained so many foreign law books, including many in French, German, and Latin. The common law library was rich in reports and digests, as well as the myriad specialist treatises one would expect to find in a comprehensive law library of the period. The collection was rich in American imprints as well as books printed in London and Dublin. This was a working lawyer's library. The antiquarian volumes listed in the catalogue were for the most part standard works of English law and not historical oddities. Virtually every book listed in the law catalogue would have been of some use to a sitting judge. Even the civil law library represented Purviance's pragmatic interests. It was rich in maritime law as well as international law, just the topics one would expect to be of interest to a lawyer in the major port city of Baltimore. We have no evidence of the success of the Purviance sale, nor of the purchasers' identities. But the catalogues themselves can, as noted, provide a wealth of evidence about trade practices as well as collecting habits of the period.

One of the most celebrated antebellum auctions of law books was an estate sale that took place in Boston on November 8 and 9, 1859. Like the Purviance sale, it was also comprised of two parts,

46. (*Purviance*) *Catalogue of the Miscellaneous Library*, 51.

47. *Catalogue of Purviance's Law Library*, 1.

with two separate primary catalogues.⁴⁸ The owner of this great library had been Rufus Choate, one of the greatest lawyers the United States has ever known and, with Daniel Webster, the greatest of all antebellum Yankee advocates in the Senate. Choate was also a serious student of the classics, who, had he not been so preoccupied with the daily tasks of a busy law office or senatorial duties, might well have made a major contribution to classical scholarship.⁴⁹ Certainly, he was exceptionally well read in the classics, and he built up one of the premier classical libraries in the United States during his lifetime. But he was also a thorough and scholarly lawyer, and his law library reflected this.

The auction of Choate's books was conducted by Leonard and Company, one of the leading auction houses in Boston. It was held at their auction rooms at 45 Tremont Street, close to Little, Brown's retail establishment. The catalogue, issued in octavo in paper covers, was arranged alphabetically with 463 lots in all. Choate's library, numbering approximately a thousand volumes, had the standard runs of reporters and statutes as well as periodicals. Like Purviance, Choate also had a good selection of American, English, Irish, and European imprints. The collection was rich in volumes on maritime law. It was also particularly rich in works on Roman law produced in Germany during the late eighteenth and early nineteenth centuries,⁵⁰ but Choate seems to have been less interested in antiquarian volumes than was Purviance. Whereas Purviance owned a sixteenth-century edition of Fitzherbert, for example, Choate owned a mid-eighteenth-century

48. *Catalogue of the Law Library of the Late Hon. Rufus Choate to be Sold by Auction* (Boston: Leonard & Co., 1859) [McKay, *American Book Auction Catalogues*, 820]; *Catalogue of the Valuable Private Library of the Late Hon. Rufus Choate* (Boston: Leonard & Co., 1859). McKay also lists an *Addition to the Law Catalogue* of three pages and seventy lots sold on November 9, 1859.

49. See Jean V. Mathews, *Rufus Choate: The Law and Civic Virtue* (Philadelphia: Temple University Press, 1980), 105-46; Samuel Gilman Brown, *The Life of Rufus Choate* (Boston: Little, Brown, 1891), 97-98.

50. This was a period in which Roman law scholarship flourished in Germany and in which German-American ties within the legal and scholarly communities also flowered; see M. H. Hoeflich, "Transatlantic Friendships and the German Influence on American Law in the First Half of the Nineteenth Century," *American Journal of Comparative Law* 35 (1987): 599 ff.; Hoeflich, "Savigny and His Anglo-American Disciples," *American Journal of Comparative Law* 37 (1988): 17-37.

Dublin reprint. There can be no doubt that Choate had the opportunity to purchase works on pre-eighteenth century common law for his law library, so the absence of such volumes suggests a lack of interest. His collection of works on Roman and civil law also lacks older, antiquarian editions. Instead Choate chose the latest editions for his library, which suggests that he collected his legal books for their utility in his practice rather than for either antiquarian or legal historical reasons. Choate's text-critical training must also have led to his preference for more modern, 'scientific,' editions, when available.

Although the catalogue does not indicate the extent of its distribution or the number of people in attendance at the auctions themselves, general efforts were made to publicize this sale. A notice published in the *Boston Advertiser* for October 19, 1859, reported that 'The sale of the miscellaneous library of the late Rufus Choate, began yesterday at Chapman Hall, by Messrs. Leonard & Co., and attracted a considerable collection of book buyers, besides an unusually large number by orders from a distance.'⁵¹ This level of interest is confirmed by the commonplace book of New Hampshire lawyer (and son of the state's attorney general) Stephen Greeley Clark with an entry for November 20, 1859, that reads: 'Have been adding some to my library of late—both my own and the Law L. of the firm—A portion of both came from the Libraries of the Late Mr. Choate—He had a magnificent private library—It made me feel bad to read the catalogue—and worse to see the books and realize how few of even those that I should most desire I could hope to possess—'.⁵² The auction clearly attracted at least regional attention.

Most of the private law libraries that came up for auction in antebellum America were much smaller collections than those of Purviance or Choate. They were the libraries of working lawyers and judges. Some filled little more than a page or two in a catalogue;

51. *Boston Advertiser*, October 19, 1859; a clipping of this notice has been inserted in the copy of Choate's library sale catalogue in my personal collection.

52. Stephen Greeley Clark, *Commonplace Book*, November 20, 1859. Author's collection.

others numbered in the hundreds of lots and warranted catalogues of their own. Some examples can give a good impression of the nature of these libraries and their sales. On October 22 and 23, 1828, for instance, J. L. Cunningham, located at the corner of Milk and Federal streets in Boston, auctioned the library of Barney Smith, Esq., which included, according to the fifteen-page octavo catalogue, a 'collection of valuable law books' in addition to 'nearly 3000 volumes of rare, curious and valuable works, in English, French, Spanish, Italian & Greek. Many of them London editions. Beautifully bound and enriched with plates.'⁵³ In addition to the list of sixty-three law books were a number of law volumes that appear in the miscellaneous section. The majority of Smith's law books were the standard reports, statutes, and treatises one would expect to find in a working lawyer's library. But he also owned a number of works on Roman law, including a two-volume translation of Cicero's works on oratory, a strong reminder of the importance of Roman oratorical models to members of the antebellum bar.⁵⁴ Other diverse titles include the *Code Napoleon*, Chief Justice Marshall's *Life of Washington*, and a copy of Halhed's *Code of Gentoo Laws*, a work that appears in many library lists of the period.⁵⁵ Smith's 'copying machine' was also included in the auction. We may suspect that this machine was like the one used by Thomas Jefferson, and it may well have been used by Smith in his practice.⁵⁶

On July 5 and 6, 1848, Leonard and Cunningham, a successor to

53. *Catalogue of the Library of Barney Smith, Esq. Consisting of Nearly 3,000 Volumes . . . Also a Collection of Valuable Law Books* (Boston: 1828); McKay 223. J. L. [Joseph Lewis] Cunningham was the name of the firm from 1824 to 1841.

54. M. H. Hoeflich, 'Roman Law and Forensic Oratory in Antebellum America,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Rom. Abt.) 120 (2003): 189-99.

55. Nathaniel Brassey Halhed's translation of *A Code of Gentoo Laws, or Ordinations of the Pundits* (1776), was a response to the East India Company trade in India and the emerging need for British colonial traders and settlers to understand Bengali law. Catalogue of the Library of Barney Smith, Esq., 10.

56. On copying devices, see Silvio Bedini, *Thomas Jefferson and His Copying Machines* (Charlottesville: University Press of Virginia, 1984); Barbara Rhodes and William W. Streeter, *Before Photocopying: The Art and History of Mechanical Copying* (New Castle, Del.: Oak Knoll Books, 1999).

57. See McKay, *American Book Auction Catalogues*, 5.

Leonard and Company, Boston book auctioneers,⁵⁷ sold the library of a Judge Hubbard who had recently died.⁵⁸ Again, this was a sale consisting of the late judge's miscellaneous books, listed in the catalogue as for sale on the first day, followed by his law books. The thirty-page octavo catalogue has no lot numbers, but the list of 336 law titles begins on page 18, approximately halfway through the pamphlet. Hubbard's library was, for the most part, a working judge's library, containing the standard works needed in a judge's chambers. But, again, there are some interesting books in the collection. Hubbard, like Smith, owned a copy of the *Gen-too Laws*. Like many of his contemporaries he also owned a copy of a translation of Beccaria's work on criminal law, attesting to this Italian jurist's influence on the development of American criminal law and penology.⁵⁹ Hubbard owned a number of foreign imprints, mostly texts on maritime law with a few works on Roman law intermixed. Of these titles, 136 were London imprints, strong testimony to the importance of London-printed law books in the United States even at mid-century. Finally, Hubbard owned fifteen volumes of *The Law Library*, the pioneering Philadelphia effort to reprint English legal treatises in a format better suited for the American market.⁶⁰

One year later, on December 14, 1849, an unusual sale took place: the auction of the law library and contents of the law office of another recently deceased lawyer, C. Wallace Brook, was held by Moses Thomas & Sons of Philadelphia.⁶¹ The library itself was small; the catalogue consists of only eight octavo pages of unnumbered lots. The library was what one would have expected of

58. *Catalogue of the Law Library of the Late Judge Hubbard* (Boston, 1848), McKay 473. The partnership of Joseph Leonard and Andrew L. Cunningham extended from 1848 to 1851.

59. *Catalogue of the Law Library of the Late Judge Hubbard*, 2; Beccaria, 21; on this, see Hoeflich, 'Roman Law and Forensic Oratory,' 189-99.

60. *Catalogue of the Library of Barney Smith, Esq.*, 22. On this series, see Surrency, *History of Law Publishing*, 167.

61. *Valuable Law Library by Order of the Executor of the Late C. Wallace Brook, Esq.* (Philadelphia, 1849). This information is taken from the AAS copy of the catalogue; McKay is incorrect. Moses Thomas established his firm in 1828. It continued as M. Thomas and Sons from 1849 to 1865.

a successful practitioner of the time and place. It contained the standard works as well as a few foreign works on maritime law. Brook also owned a copy of Beccaria. He, like Rufus Choate, did not collect antiquarian volumes, but he did own the 1846 edition of the *London Law Catalogue*, which he used, perhaps, to order London legal imprints.

In addition to the library, the auctioneers had been engaged to sell the contents of Brook's law office, and so the catalogue indicates the equipment that he used in his law practice, giving an almost unprecedented insight into the material culture of the law during this period. He owned two seal presses, large and small, which he must have used to notarize and seal official documents (among his books was a three-volume treatise on notaries). He also owned a 'marble office slate,' a 'patent bond docket or ledger,' and an engraved copper plate of the 'Arms of the United States.' The case of 'mathematical instruments' we may suppose to have been of use in dealing with surveys or patent applications. These details of the office contents left by Brooks are invaluable, for they are found in no other sources.

The auctions of private law libraries were only one kind of law book auction. Indeed, it was common during the antebellum period to hold auctions either of imported books brought over especially for the purpose or general trade auctions that drew upon many sources for the lots.⁶² Also, on occasion, auctions were held to sell off the entire stock of a single bookseller or publisher. One such sale was held on September 9, 1830, by Moses Thomas at 87 Chestnut Street, Philadelphia;⁶³ this sale was actually conducted by Alexander McCausland.⁶⁴ The sale catalogue consists of twenty-

62. See John Tebbel, *A History of Book Publishing in the United States: The Creation of an Industry, 1630-1865*, 4 vols. (New York: Bowker, 1972), 1: 230 n.

63. *Extensive Sale of Books by Auction; Catalogue of an Extensive Collection of Law and Other Books* (Philadelphia, 1830).

64. This sale is not listed in McKay, but a note in the AAS copy indicates that it was almost certainly the sale of Carey and Lea's stock of law books mentioned by David Kaser in *Messrs. Carey and Lea of Philadelphia* (Philadelphia: University of Pennsylvania Press, 1957), 119, 130. Kaser, who identified the sale from a letter from McCausland to Mathew Carey now at the Clements Library (168, n. 6), does not seem to have been aware of this catalogue.

seven octavo pages filled with unnumbered lots. Although the sale contained many law lots, it also contained nonlegal materials. Many of the lots contained multiple items. Often these were either in sheets or in various formats. There can be little doubt that this was a sale of a dealer's stock. This catalogue provides an insight into the typical stock of a law bookseller/publisher of the period and, because the catalogue lists quantities of books in each lot, as well as format, it permits us to estimate the availability—and, perhaps, even rough print runs—for the works listed.

It casts light, for instance, on American interest in books on foreign law in translation, the extent of which has been the subject of much scholarly debate. This 1830 catalogue records six volumes of Azuni's treatise on maritime law bound in sheep, as well as twenty-four sets folded in sheets.⁶⁵ There were 247 sets of Burlamaqui's treatise on natural law available in sheets.⁶⁶ There were ten sets of Pothier's treatise on obligations available bound in sheep and fifteen sets available in sheets.⁶⁷ There were 260 copies of Ingersoll's translation of the Italian jurist Rocco's treatise on admiralty law available in sheets and twenty-nine bound sets of Pothier's maritime law treatise.⁶⁸ There were also 170 copies of volume three of Hall's *American Law Journal*, which contained Peter DuPonceau's translation of the work on admiralty law written by the Dutch jurist Cornelius van Bynkershoek (1673–1743).⁶⁹

65. Dominique Albert Azuni (1786–1853) was the author of *The Maritime Law of Europe* (2 vols.) that was translated from French and published in New York in 1806; *Extensive Sale of Books by Auction*, 6. For more on the bindings of law books in the nineteenth century, see Fidler, 'Till You Understand Them.'

66. Jean Jacques Burlamaqui (1694–1748), author of *The Principles of Natural and Politic Law*, was a powerful influence on the American founding fathers. *Extensive Sale of Books by Auction*, 6

67. The French jurist Robert Joseph Pothier (1699–1772) was the author of *A Treatise on Obligations: Considered in a Moral and Legal View*, a classic study of Roman law and several treatises on French law that were incorporated in the French Code Civil. *Extensive Sale of Books by Auction*, 6.

68. Francesco Rocco (1605–76), *A Manual of Maritime Law: Consisting of a Treatise on Ships and Freight and a Treatise on Insurance Translated from the Latin of Roccus, with notes by Joseph Reed Ingersoll* (Philadelphia: Hopkins and Earle, 1809), *Extensive Sale of Books by Auction*, 16.

69. *American Law Journal*, 3, nos. 11–12: 'A treatise on the law of war. Translated from the original Latin of Cornelius van Bynkershoek. Being the first book of his *Quaestiones Juris Publici*. With notes, by Peter Stephen du Ponceau.' (Philadelphia:

The number of these texts available for sale at this auction in 1830 make it very plain that these books were far from rare and that they were, in fact, readily available to American lawyers, thus supporting the evidence available from private library and booksellers' catalogues. This catalogue also reveals that the auctioneers obviously hoped to attract dealers and individual lawyers to the sale. A note in the catalogue states that they had made arrangements to have any volumes purchased bound to order, if desired. The cost of such binding was forty cents per volume in 'best sheep' and seventy-five cents in 'best calf.'⁷⁰

One could also purchase law books at auctions of general books. For instance, Dorr, Howland and Company held a sale of 'valuable school, classical, law, medical, theological, and miscellaneous books' in Worcester, Massachusetts, in 1829.⁷¹ As part of that sale they offered five lots of law books: Davis's *Justice*, Goodwin's *Town Officer*, the *Laws of Massachusetts*, a treatise on patent law, and the texts of the United States and Massachusetts constitutions.⁷² They also offered blank docket books designed for lawyers and for sheriffs.

Information not provided in these auction sale catalogues can also be revealing. For instance, there is rarely information as to the type of binding or condition of volumes to be sold. In part, this may be due to the auctioneer's assumption that would-be purchasers or their agents were expected to inspect the books for sale before the auction took place. But it is also possible that binding and condition were of less importance to lawyers purchasing at these auctions because they were not buying to add to collections designed to delight the eye. Instead, they were buying working books and were concerned only with the content.⁷³ Or

Ferrand and Nicholas, 1810; for more on all of these translations, see 'Roman Law and Forensic Oratory.'

70. Hoeflich, 'Roman Law and Forensic Oratory'; see also Fidler, 'Till You Understand Them.'

71. Dorr and Howland, *Catalogue of Valuable School, Classical, Law, Medical, Theological . . . Books* (Worcester, 1829).

72. Dorr and Howland, *Catalogue of Valuable School . . . Books*, 9, 13, 18, and 3.

73. See Fidler, 'Till You Understand Them.' But, cf. Hoeflich and de la Vergne, 'Gustavus Schmidt: His Life and Library.'

alternately, lawyers may have simply assumed that, unless otherwise noted, the books would be bound in the standard sheep or 'law calf.'

In summary, law book auctions were a significant source of books for the American bar in the antebellum years. A comparison of the books available at auctions held during the 1840s and 1850s with those available from booksellers' catalogues suggests that auctions, generally, were a better source for antiquarian and, in many cases, foreign texts, than were booksellers. This is not surprising. By and large the demand for antiquarian texts among members of the Bar was limited. The catalogues of the largest law booksellers offered only a few such items, usually English reports or classic treatises,⁷⁴ and, to be sure, many auctions of law books offered few if any such texts. There was a limited market for such books and, it seems, few booksellers were willing to invest in such stock. If one wanted to obtain such a book one would either be forced to import it from a foreign bookseller or buy it from another collection, usually at auction. As to contemporary foreign books, although the major legal booksellers such as Little, Brown or Gould, Banks did offer a number of foreign law books for sale in their catalogues, here, again, it would seem that a wider variety of such texts, particularly those on more esoteric subjects, tended to be available at auctions rather than from booksellers' catalogues. Finally, auctions made large numbers of law books, both common and obscure, available more inexpensively than retail booksellers. This could be quite important for impecunious lawyers.⁷⁵ A lawyer seeking to purchase the New York Reports could obtain these easily enough from any legal bookseller, but if he wanted a work on Roman law or an early edition of a common law text, he would most likely either have had to arrange to purchase such a text abroad or find it at an auction. And, if he wanted a bargain, an auction sale was ideal.

74. For instance, the 1844 *General Catalogue of Law Books* offered by Little, Brown lists more than one thousand titles available, of which only thirty-four were published before 1700.

75. See Hoefflich, 'Roman Law and Forensic Oratory.'

Although law book auctions had a role, they could only have served a relatively small portion of the law book market. At their height, according to McKay, there were rarely more than twenty auctions devoted specifically to law books in any year during the antebellum period. Even adding in catalogues not listed in McKay, as well as others that, based upon the owner's identity, may well have contained substantial numbers of law books, the number of law book auctions probably rarely reached thirty in any year. These auctions could not have supplied the books needed by an ever-growing legal profession; during this period one must see them as supplementary to the main source of law books: legal booksellers.

Although what we learn from law book auction catalogues may be of limited importance to the history of the law book trade in antebellum America, their importance in helping us to reconstruct the intellectual milieu of the antebellum bar is far greater. Here, again, it is necessary to sound a note of caution because the auction catalogues are, for the most part, representative of the bar's elite, of those lawyers who amassed libraries substantial enough to warrant such sales. Nevertheless, there is value to knowing what the elite lawyers of the period were willing to purchase. We discover, for instance, that many lawyers did own books on foreign law, particularly in such subjects as admiralty and commercial law. Through the study of the auction sale catalogues of individual lawyers' libraries we are able to reconstruct the sources upon which they drew in their writing and in their advocacy.

My fellowship at the American Antiquarian Society enabled me to pursue my interest in the way that legal history can be studied in law book catalogues. In this essay, I have only touched upon the historical riches to be found in them. Much more work needs to be done in these and related sources on law books in the United States before the Civil War. By so doing it will be possible to gain both a far greater understanding of the intellectual context of American law and the role of lawyers in the development of American bookselling.

APPENDIX:
AUCTION SALES LISTING LAW BOOKS
FOR SALE FROM MCKAY

Dates	Sales Containing Law Books	Sales of Law Books Exclusively	Total Sales
1800-1810	1	0	1
1811-1820	1	1	2
1821-1830	1	2	3 ¹
1831-1840	2	0	2 ²
1841-1850	4	6	10
1851-1860 ³	<u>2</u>	<u>19</u>	<u>21</u>
Totals	11	28	39

1. Not including the sale of Richard Peters's library.

2. Not including the sale of William Duane's library.

3. A number of antebellum lawyers' libraries were not sold immediately after the death of their owners. Instead, such libraries were passed to heirs and only upon the death of the heir or his successor were they eventually sold. As a result, some prominent antebellum lawyers' libraries were actually sold at auction after 1860. One prominent example of such a library and its sale is that of Daniel Webster. When Webster died, his library passed to his son, Fletcher Webster, who was also a lawyer. The library was eventually sold at auction in two parts. The law library was sold by Leonard and Company on January 19-20, 1864 (McKay, 1010). The catalogue does not show the sale date of the non-law books.

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