

# AMERICAN LAW PUBLISHING 1860-1900

**Historical Readings** 

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#### PREFACE

The need for a history and analysis of law book publishing for the period 1860-1900 requires elucidation. American legal history, to the shame of the well-paid and luxuriously-equipped American legal profession, remains one of the worst-chronicled of important American institutions. Much of a legal historian's work consists of the culling of the research materials that he needs in his work from local histories, dictionaries of biography, company histories, and sources other than full-length specialized monographs on the rules of lawyers. 1 This is not to say that several excellent histories do not exist. A valuable work on the earliest age of the American legal profession is Anton-Hermann Chroust's, The Rise of the Legal Profession in America, 2 volumes, 1965, a massive compilation of facts about the profession and its practitioners until 1820. A valuable modern survey of the vague and diverse activitites of American lawyers in the mid-twentieth century is Martin Mayer's, The Lawyers, 1967, an anecdotal, statistical account all the more valuable because it is by an experienced reporter, who is not a lawyer. Lawrence M. Friedman's A History of American Law, 1974, is a more recent, comprehensive treatment of the subject. The state of legal bibliography parallels the problem of legal history: poor and imcomplete records, superficial research, and general lack of interest. In the past, a student of legal bibliography of the 1860-1900 period has been forced to work his way through various book catalogs of the larger libraries to determine bibliographic information on any one item and any subject searching was impossible and still is today though the growth computer-based search system such as OCLC and RLIN will no doubt make such searching more feasible. This exis-

<sup>&</sup>lt;sup>1</sup>Daniel Boorstin, <u>The Americans</u>: <u>The Democratic Experience</u> (New York: Random House, 1973), p. 623.

tence of the book catalogs was complemented by very few good treatises. Charles Warren's <u>History of the American Bar</u>, 1911, contains among many fine chapters, two chapters on "Early American Law Books" and "American Law Books, 1815-1910." These chapters provide the beginning student an invaluable starting point in research. However, the errors and omissions in Warren's classic work are serious.

"Warren's book, it goes without saying, is still a basic, indispensable, and perhaps, unsurpassed text that must be consulted by anyone interested in our subject. Unfortunately, it is so replete with misprints, inaccuracies of detail, errors of citations, and even errors of fact, that it would be extremely unwise to accept any of Warren's statements without further verification."<sup>2</sup>

In addition to library book catalogs such as the <u>Catalogue of the Library of the Law School of Harvard University</u>, 1909, book catalogues such as Charles C. Soule's <u>The Lawyer's Reference Manual of Law Books and Citations</u> (1883) are of value to the research.<sup>3</sup>

The absence of a comprehensive bibliography of law books published in the latter half of the nineteenth century led to an interest in the legal literature of the period and ultimately promoted the undertaking of a bibliographical project to fill the void and compliment the bibliography being compiled by Professor Morris Cohen, Director of the Yale University Law Library, from the beginning of American legal publishing to 1860.

<sup>&</sup>lt;sup>2</sup>A.H. Chroust, The Rise of the Legal Profession in America, xix (1965).

<sup>&</sup>lt;sup>3</sup>See Eldon Revare James, "A List of Legal Treatises Printed in the British Colonies and the American States Before 1801," in <u>Harvard Legal</u> Essays Written in Honor of and Presented to Joseph Henry <u>Beale and Samuel Williston</u> (Cambridge, Mass.: Harvard University Press, 1934); Kate Wallach, "The Publication of Legal Treatises in America from 1800 to 1830," 45 <u>Law Library Journal</u> 136-148 (1952); Jenni Parrish, "Law Books and Legal Publishing in America, 1760-1840," 72 <u>Law Library Journal</u> 355-452 (1979).

The authors initiated the compilation, surveying the completeness of the existing resources, and extracting entries from extant bibliographies. The authors, assisted by members of the research staff and aided by NEH funding, culled entries from the following sources:

- United States, Library of Congress, <u>A Catalog of Books Represented by Library of Congress Printed Cards</u>. (Paterson, N.J.: Rowman and Littlefield, Inc. 1963).
- 2) Soule, Charles C. <u>The Lawyers Reference Manual of Law Books and Citations.</u> (Boston: Soule and Bugbee, 1883).
- 3) Griswold, H.E. Catalogue of Law Books: Banks & Brothers. (Buffalos Hein, 1977). (Reprint of 1894 ed.).
- 4) Warren, Charles. "American Law Books, 1815-1910," <u>History of the American Bar (1911)</u>.
- 5) Catalogue of the Library of the Law School of Harvard University. Volume 1 and 11. Cambridge: Harvard Law School Press, 1909.
- 6) Catalogue of Law Books, 1902, St. Paul, Minn.: West Pub. Co., 1902.
- Catalogue of Law Books Published or for Sale by William Gould and Son. Albany, New York: William Gould Publishing Co., 1881.
- 8) Catalogue of Law Books Published or for Sale by F.W. Thomas and Co. St. Louis, Mo.: F.H. Thomas and Co., 1884.
- 9) Schwartz, Mortimer and Henke, Dan. Combined Catalog Anglo-American Law Collections: University of California Law Libraries, Berkeley and Davis with Library of Congress Class K added. Littleton, Col.: Fred B. Rothman & Co., 1970. 10 v. Supplement, 1979. 9v.

Each author entry garnered from these sources was searched on the OCLC system to locate more entries by the same author. Consequently, we tapped the resources of law and general libraries throughout the U.S. The student of bibliography will note with great interest that the Library of Congress catalog data constituted only one of several significant sources for bibliographic data. Consequently, it would be very wrong to assume that LC catalogs are comprehensive in their coverage.

While compiling the titles, guidelines for inclusion and exclusion of entries were refined for uniformity in identifying appropriate books. Bibliographies do exist for official publications, statutes, court reports, and

serials; therefore, they are excluded from the bibliography unless they have been enhanced by an author's contributions to the work. The guidelines, refined as the project progressed, describe the monographs and subject matter that were included:

- A legal monograph with an American imprint from the period 1860 to 1900.
- 2. Only a limited selection of government documents of a substantial nature and relating to major legal issues.
- Digests or collections of statutes only when compiled by an individual and containing commentary or annotations.
- Legal dictionaries, bibliographies, directories, and similar works of the period.
- Pamphlets, similar short monographs, published trials and briefs (with notes, commentary, or other additional text) of a legal and valuable nature.
- Law-related monographs, including these with a mixture of other subject areas and law.

#### Exclusions:

- Session laws, reporters, digests, attorney general reports, official codes and statutes and works of a serial nature.
- 2. Single speeches in Congress.
- 3. Reprints of articles previously published in journals.
- 4. Official trial records and briefs filed in litigation.

The bibliographic data was then input via computer terminals at the Legal Information Center onto discs and then tapes at the University of Florida's Northeast Regional Data Center. The computer magnetic tapes were then transmitted to the publishing company's data processing affiliate where the data was manipulated to produce the author, title, and subject indexes.

The inclusion of background readings on the culture and socio-economic environment of this publishing period was designed to acquaint the reader with the developments and institutional factors that created the markets, readers, and interest in the many areas of law publications of the 1860-1900

period. The historical background information and the readings that constitute Volume I of this project were organized around the following topics:

- I. Introduction
- II. History of Education 1860-1900
- III. Libraries 1860-1900
- IV. The Legal Profession
- V. Printers, Booksellers, and Publishers
- VI. American Law Books 1860-1900

Within each chapter, there is a discussion of critical developments and the literature on the topic with readings from or concerning the period.

The authors are indebted to numerous individuals and organizations for their help in sponsoring this research effort. The authors thank Mr. Phillip Cohen and Mr. David Cohen of Oceana Publishing Company, Dobbs Ferry, N.Y., for their support and encouragement and the National Endowment for the Humanities for its financial support. The research project was ably assisted by Barbara Pactor in preparing the bibliographic data and Carole Grooms and Carol Feltz of the Cataloging Department. Numerous law student assistants and computer programmers, Charles White and Bruce Klein, were involved in the garnering and organizing of the bibliographic entries. Claire Moynihan and Lauren Frazier provided valuable assistance in the editorial preparation of the historical readings.

The author index consists of the bibliographic entries arranged alphabetically by personal author; where a personal author does not exist, the entry is listed by title alphabetically. The author entries also include the "note" information commonly found on catalog cards in addition to the full bibliographic information.

The subject index consists of the entries arranged alphabetically

by Library of Congress Subject Headings. Under each subject entry, the full title is listed in addition to full bibliographic information; the entries in the subject index do not include the "note" information.

## CHRONOLOGICAL TABLE OF EVENTS

1800	Library of Congress was established.
1810	Only 18 American law reports had been published.
1814	LC (in Capitol building) was burned by the British.
1817	David Hoffman's <u>Course of Legal Study</u> , which for many years was the standard manual for law students, appeared.
1820	The New York Mercantile Library was founded.
1821	Caleb Cushing edited the first American translation of Pothier's $\underline{\text{Maritime Contracts}}.$
1822	The second edition of the first book on patent law, Fessenden's Law of Patents for New Inventions was published.  In Philadelphia, the publication of Thomas Sergeants, Constitutional Law occurred.  Daniel Chipman's Essay on the Law of Contracts for Payment of Specific Articles appeared.  William Griffith's valuable Annual Law Register (1822-1823) appeared.  United States Law Journal (1822-1826), edited by members of the Connecticut and New York Bars, appeared.
1823	Nathan Dane published the first volume of his <u>Abridgement of American Law</u> , the profits from which were to be the means of the recreation of the Harvard Law School.  The first American book on insurance by Willard Phillips was published.  John Taylor published in Philadelphia his <u>New View of the Constistution of the United States</u> .
1824	The first American Case Book, <u>Angell on Watercourses</u> , the book contained 96 pages of text and 246 pages of cases.  Asahel Stearn published his <u>Summary of the Laws and Practice of Real Actions</u> .
1825	William Rawle's A View of the Constitution of the United States was published.  Gulian C. Verplanck's Essay on Doctrine of Contract; being an Inquiry how Contracts are affected in Law and Morals by Concealment, Error or Inadequate Price was published.
1826	Chancellor Kent published volume one of the landmark work, <a href="Commentaries">Commentaries</a> .
1828	Charles Jackson published his much-used $\underline{\text{Treatise on the Pleadings}}$ and $\underline{\text{Practice in Real Action}}$ .
1829	United States Law Intelligencer and Review started in Providence. American Jurist started.
1830	Fourth volume of Kent's Commentaries was published.

1832	Judge James Gould of the Litchfield Law School published his famous book on <u>Pleadings</u> . Second edition of Kent's <u>Commentaries</u> was published.  Judge Joseph Story published <u>Bailments</u> .  Joseph K. Angell and Samual Ames published their <u>Law of Private Corporations</u> , the first book on the subject.  A separate Law department was established in LC.
1833	Judge Story published <u>Constitutional Law</u> . Peterboro (N.Y.) Public Library was founded. U.S. law students numbered 150.
1834	Judge Story published his Conflict of Laws.
1835	The New York school district library law passed; the first recognition of the principle of taxation for support of public libraries.
1836	The revolver patented by Samuel Colt in 1836 proved very effective in driving the Indians from the Great Plains.  Judge Story published <u>Equity Jurisprudence</u> .  Henry Wheston's <u>Elements of International Law</u> was published.  452 American Law Reports had been published.
1837	The Panic of 1837 occurred. Sir Anthony Panizzi became "Keeper of printed books" at the British Museum. Jacob D. Wheeler's A Practical Treatise on the Law of Slavery appeared. Timothy Walker published his Introduction to American Law which for many years was used as a textbook for American law students.
1838	Judge Story published <u>Equity Pleading</u> . Francis Williard published his <u>Real Property</u> . Law Reporter was published at Boston from 1838 to 1866.
1839	Judge Story published his <u>Agency</u> .  John Bouvier's noted <u>Law Dictionary</u> was published.
1841	Judge Story published his <u>Partnership</u> . British Museum cataloging rules were printed.
1842	First volume of <u>Greenleaf on Evidence</u> was published. Labor unions were legalized.

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- Judge Story published his <u>Bills of Exchange</u>.

  The <u>Western Law Journal</u>, at Cincinnati, from 1843 to 1853, was published.

  The <u>American Law Magazine</u>, at Philadelphia, from 1843 to 1845 was published.
- 1845 The U.S. annexed the Republic of Texas.
- 1846 New law entitled LC to one copy of all U.S. copyrighted materials.
- Theodore Ledgwick, Jr. published his <u>Elements of Damage</u> the first book on the subject then written, excepting only a "slender and shadowy book of Sayers (London, 1770)."
- 1848 First edition of Poole's "Index" was published.

  Massachusetts passed a library law allowing Boston to tax itself
  for support of the public library.

  800 American Law Reports had been published.
- Angell on Carriers, the first book to treat of the subject of railroads, was published.

  New Hampshire passed a library law allowing towns to tax themselves
  for support of libraries.

  Astor library was founded; a great endowed reference library open
  to the public.

  Bradstreet Company was founded.
- 1850 First free library act for Great Britain passes through the instrumentality of William Ewart
- Boston Public Library was founded.

  The American Law Register at Philadelphia was published from 1852 to 1861.

  Elisha Otis invented the elevator which made possible the construction of the skyscraper.
- Second edition of Poole's "Index" was published. First conference of librarians held in New York City; 53 delegates were present. The company founded in 1853 by a penniless Bavarian immigrant named Levi Strauss had made a modest success in its first century selling its model 501 Double X denim jeans to farmers and cow-
  - Professor Theophilus Parsons of the Harvard Law School issued his famous work on Contracts.
- A young lawyer in Springfield, Illinois, Abraham Lincoln, helped the Michigan Central Railroad negotiate with the Illinois Central to extend its tracks westward.
- 1855 Charles Coffin Jewett was appointed librarian of the Boston Public Library.

- Parsons' <u>Elements of Mercantile Law</u> was published.

  Joel P. <u>Bishop's Criminal Law</u> was published.
- Panic of 1857 occurred.

  Edward L. Pierce's American Railway Law, the first book devoted to railway law, was published.

  Causten Browne's Statute of Frauds was published, the first book on the subject since Roberts' in England, fifty years before.
- Law of Freedom and Bondage in the United States by John C. Hurd and Law of Negro Slavery in the United States by T.R.R. Cobb, were published, the two books appearing in 1858, only four years before, by the emancipation of the slaves, all books of law on the subject became unnecessary.
- R.G. Dun & Company was founded.
  Theophilus Parsons issued his Maritime Law.
  The first chain store began.
  Darwin's Origin of Species was published.
- The Age of Capital for the U.S. and the British Empire surged forward.

  Abraham Lincoln was elected President.
  21 law schools existed in the U.S. of which 12 still required only one years work.

  Emory Washburn's American Law of Real Property, the first comprehensive native book on the subject, was published.

  American exports rose from \$20 million in value in 1790 to \$400 million in 1860 and \$2.5 billion in 1914.
- 1861 Fort Sumter, S.C. was fired upon. The Civil War.
  Federal Act passed providing for appeal in all copyright cases to
  the U.S. Supreme Court.
  Yale University awarded the first Ph.D. from an American University.
- Congress passed the Morrill Land Grant Act.
  Congress passed the Homestead Act.
  The Emancipation Proclamation was issued.
  The first department store began.
- John D. Rockefeller bought his first refinery. Washburn's work on Easements was published.
- 1864 General Sherman marched to the sea.

  Ainsworth R. Spofford appointed Librarian of Congress.
- President Lincoln assassinated; Johnson succeeded.

  General Lee surrendered at Appomatox, Va.

  MIT was founded.

  Theophilus Parsons' Promissory Notes and Bills of Exchange appeared.

Copyright deposit law, revoked in 1859; reinstated; LC to again receive one copy of all deposits.

- Vanderbilt consolidated the N.Y. Central Railway.
  National Labor Unions.
  Appropriation for the purchase of books by LC reached \$8,000 a year.
- Grange organized.

  American Law Review began.
  Theophilus Parsons' Partnership was published.
  Gregory Yale's Legal Titles to Mining Claims, one of the earliest books on a new branch of the law which had developed within fifteen years, appeared.
  The great development of railroad and street railway law within ten years was marked by a third edition of Redfield on Railways.
  The U.S. bought Alaska from Russia.
  LC became the largest library in U.S.
- Municipal corruption Boss Tweed.

  Justice Winsor was appointed Superintendent of Boston Public Library.

  Ratification of the Fourteenth Amendment.

  John Norton Pomeroy published the first substantial book on Constitutional Law since Judge Story's in 1833.

  Thomas M. Cooley's Constitutional Limitations was published.

  The first trestise on the Law of Telegraphs by William L. Scott and Milton P. Jarnagin appeared.
- First transcontinental railroad was completed. (Pacific Railway)
  C.A. Cutter was appointed librarian at the Boston Athenaeum.
  The first law book on negligence, Trestise on the Law of Negligence, by Thomas G. Shearman and Amasa A. Redfield, was published.
  Knights of Labor.
- The Guilded Age of the post-Civil War 1870's, which the historians so aptly dubbed the "Great Barbeque."
  Rise of John D. Rockefeller.
  Librarian of Congress made the U.S. copyright official.
  Langdell was selected as Dean of the Harvard Law School.
  The appearance of Langdell's A Selection of Cases on the Law of Contracts.
  Farm acreage doubled in the years 1870 1900 as thousands of pioneers moved into the trans-Mississippi West.
  U.S. copyright activities were centralized at LC.
- 1871 Introduction of Langdell's case method instruction.
  Cincinnati Public Library opened on Sunday.
  Separate building for LC first was suggested by the librarian.
- 1872 Illinois free library law was passed; copied substantially by several states.

1872 Under Charles William Eliot, Harvard University was introduced to the "elective principle."

Mail order business began.

R.G. Dun & Company performed credit analysis of Indian Territory (later Oklahoma).

The legal classic by Judge John F. Dillon, <u>Municipal Corporations</u>, the first American book entirely devoted to this branch of law, appeared.

Jairus W. Perry published his Law of Trusts and Trustees.

Francis Wharton's <u>Conflict of Laws</u> (the first on this subject since Story's in 1834) was published.

Melville M. Bigelow's Law of Estoppel was published.

Orlando F. Bump's Conveyances made by Debtors to Defraud Creditors was published.

First mail-order house began.

1873 Great Baltimore and Ohio strike.

Shepard's Publishing Company was established.

Dr. William Frederick Poole was appointed Librarian of Chicago Public Library.

Financial Panic.

R.G. Dun & Company performed credit analysis of southern and central California.

James Schouler's Personal Property was published.

A.C. Freeman's Judgments was published.

The invention of barbed wire by Joseph F. Glidden solved the farmers problem of fencing large treeless areas.

James L. High's Injunctions was published.

1876 "What a year for the nation's libraries!"

The Library Journal was established.

The American Library Association was established, the first meeting was held in Philadelphia.

The Johns Hopkins University was founded.

Trains from 8 cities formed NL of PBC.

West Publishing Company's Syllabi.

"Public Libraries in the U.S."was issued by the Bureau of Education; included Cutter's "Rules for a Dictionary Catalogue."

Library Bureau established for manufacture of library supplies. First edition of Dewey's "Decimal Classification" was published. Harvard lengthened its law course to three years, and required for

admission either a college degree or three years in Harvard college.

John W. Daniels' <u>Negotiable Instruments</u> was published.

Cooley's Taxation was published.

High's <u>Receivers</u> was published. The great fires in Boston and <u>Chicago</u>, and the financial troubles of the country, of that period, made its appearance extremely timely.

1877 Dawes Indian Act.

Billy the Kidd arrived in Pecos, Texas.

First international conference of librarians was held in London.

Library Association of the United Kingdom was founded.

G.C. Clemen's Law of Corporate Securities as Decided in the Federal Courts, illustrated the growth of a body of law due also to disastrous conditions of railroad and municipal finances.

Leonard A. Jones Law of Railroad and Other Corporate Securities was published.

Dillon's Removal of Causes from State Courts to Federal Courts which illustrated the growth of federal jurisdiction appeared.

Melville M. Bigelow's Fraud was published.

Middle of what Mark Twain called the Gilded Age.

Darwin's theory of evolution was a subject of bitter debate.

Lemonade Lucy was presiding over nonalcoholic receptions at the White House.

The leading authors were Mark Twain, Walt Whitman and Henry James. Henry George was scribbling away the manuscript of <a href="Progress and Poverty">Progress and Poverty</a>.

The American Bar Association was founded. Jones' work on <u>Mortgages</u> was published. The Twine binder was invented.

power.

Morgan floated Vanderbilt stock.

George Baldwin Selden filed a patent application for the automobile. The famous Selden patent dispute developed.

Philemon Bliss's Code Pleading, illustrating the spread of Davis Dudley Field's propaganda in behalf of civil codes of procedure, was published.

Henry E. Mills' Eminent Domain, another work of novel impression, was published.

Seymour D. Thompson's Law of Stockholders in Corporation illustrated the immense growth of private corporation law.

Standard Oil Company had attained a high concentration of economic

Intercollegiate Football Association was founded.
Publication of "American Catalogue" was begun by Frederick Leypoldt.
51 law schools existed in the U.S.
Seymour D. Thompson's The Liability of Directors and Other Officers and Agents of Corporations was published.
Cooley's Constitutional Law was published.
The 1880's witnessed a giant influx of immigrants.

Tuskeegee Institute was founded.
Third edition of Dillon's Removal of Causes from State Courts to
Federal Courts appeared - illustrating the strong tendency
of the Federal judiciary to assert vigorously their own jurisdiction.
Oliver Wendell Holmes, Jr's remarkable work of juristic research and originality, The Common Law, was published.
Pomeroy's Equity Jurisprudence (the first complete work of the kind

since Story's in 1836) appeared. John D. Lawson's Law of Usages and Customs was published.

- Standard Oil Trust was perfected.
  The Lawyers Cooperative Publishing Company was founded.
  Henry N. Sheldon's Subrogation was published.
  Victor Morawetz's Private Corporations expressed the modern view of corporations.
- Joseph Pulitzer took over the N.Y. <u>World</u>.

  Great influx of immigrants occurred.

  Melvil Dewey was appointed librarian of Columbia University.

  John C. Gray's <u>Restraint on the Alienations of Property</u>, one of the few American <u>Tegal</u> works of absolute authority, was published.
- 1884 Library school was authorized by Columbia trustees.
- New York (city) Library Club was organized. 3,798 American law reports had been published.
- Consolidation and organization of the Bancroft-Whitney Company occurred.

  Library Notes was established; edited by Melvil Dewey.

  American Federation of Labor was organized.

  Wabash case holds U.S. congress supreme over interstate commerce. Frederic J. Stimson's American Statute Law was published.

  Congress authorized the construction of a separate LC building. Index to Legal Periodical Literature was published.
- Columbia College's school of library economy opened.

  Macy's ad: "Goods suitable for the millionaire at prices in reach of the millions."

  Interstate Commerce Act was passed.

  William W. Cook's Stock and Stockholders was published.

  American and English Encyclopedia of Law (1887-1896) was published.
- 1888 Melvil Dewey appointed director of New York State Library.
  President Harrison was elected.
- Wyoming was the first state to give women the right to vote.
  Jane Adams opened Hull House.
  St. Louis convention started the Populist movement.
  Omnibus Bill created the northwest states.
  School transferred to New York State Library; name changed to New York State Library School.
  University law of New York state was passed.
  Floyd R. Mechem's Agency was published.
- Immense increase in the urban populations in the 1890's The Progressive Movement of the 1890's.
  Roger Foster's Federal Practice of 1890 bore witness to the greatly increased importance of the Federal courts.
  B. Don Passos' work on Collateral Succession and Inheritance

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