Bibliographical Perspectives on Roman and Civil Law*

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Dean Hoeflich briefly reviews the principal sources of Roman law, the history of Roman law publishing, and the paths by which Roman legal texts found their way into so many American law libraries.

Goethe once characterized Roman Law as being like a duck; one never quite knows how much is visible and how much is below the water line.¹ In the history of modern law, and especially in the history of law publishing and law libraries, this is particularly true. Roman law, though not recognized by most Anglo-American lawyers as a formal source of the common law, is always with us. In this article, I want to convey several bits of information. I will begin with a brief review of the principal sources of Roman law as they have developed over the past two millennia. I will then provide a brief history of Roman law publishing, followed by a discussion of how Roman legal texts have found their way into so many American law libraries. I will end with some suggestions for the provenance research that needs to be done with these volumes.

Principal Sources of Roman Law

Although the Romans traditionally dated the founding of their civilization to the eighth century B.C., we may begin our survey of Roman legal history with the creation of what is known as the Twelve Tables, the Roman equivalent of the Ten Commandments, which probably date from somewhere around the fifth century B.C.² The Twelve Tables and the other remains of earliest Roman law, mostly dealing with agricultural matters, may be generally classified as pre-Republican Roman Law. They are primarily of interest to historians rather than lawyers, and over the centuries have been the subject of much archaeological and historical debate. Similarly, the laws of Republican Rome have also much

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1. JOHANN ECKERMANN, CONVERSATIONS WITH GOETHE 313 (1892).
interested historians rather than lawyers. Of most interest to "modern" lawyers (i.e., post-1200, A.D.) are the laws and legal materials from the "classical period" of Roman law, stretching roughly from the second to the fourth centuries A.D.

These materials from the classical period, mostly the product of legal scholars, were collected in what has become the primary Roman legal source for the modern world, known today as the *Corpus Iuris Civilis*. In the early sixth century, the Emperor Justinian appointed a tribunal, headed by the jurist and civil servant Tribonian, whose task it was to collect, edit, and codify all of the earlier Roman laws still deemed relevant.\(^3\) The juristic writings of the classical period (along with some earlier material) were incorporated into what became known as the *Digest* or *Pandects*. Imperial legislation, which had been collected earlier into a compilation known as the *Theodosian Code*, was incorporated into the *Codex Justinianii* and the *Novellae*. The tribunal also put together an elementary textbook of Roman law, based upon a classical text authored by the jurist Gaius, known as the *Institutiones Justiniani*. These texts incorporated all that the sixth-century jurists thought were significant from the whole history of the Roman law. They were promulgated and confirmed by imperial authority between 529 and 534 A.D.\(^4\)

Unfortunately, just as these texts were being issued in the East, the extent of direct Roman political, legal, and military power declined sharply in what was to become Western Europe. This territory came increasingly under the control of Germanic tribes such as the Visigoths, Ostrogoths, and Franks, who had their own laws and customs and who adopted Roman legal rules only sparsely and often in forms quite different from the "pure" Roman models. Further, evidence suggests that the juristic writings contained in the *Digest* were little known in the West outside of a small area of northern Italy. From the sixth until the late eleventh and early twelfth centuries, what Roman law was known in Western Europe was known from scattered, pre-Justinianic sources and in what has come to be called a "vulgarised" form.\(^5\) Not that these various early medieval societies lacked laws; to the contrary, many had sophisticated legal systems. Furthermore, the Church, as its power spread across Europe, brought with it canon law, much of it derived from Roman law.\(^6\)

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3. For information about Tribonian, see TONY HONORÉ, TRIBONIAN (1978).
4. The standard edition of the Justinian codification, known since the sixteenth century as the *Corpus Iuris Civilis*, is THEODOR MOMMSEN & PAUL KRUEGER, CORPUS IURIS CIVILIS (reprint 1973) (1877)[hereinafter CICJ]. This edition is generally referred to as the "Stereotypic Edition." An English translation of the whole of the CICJ prepared by Samuel Parsons Scott is highly inaccurate and should not be used. SAMUEL PARSONS SCOTT, CORPUS IURIS CIVILIS (AMS Press, 1973) (1932). The Digest has been translated into English by an international group of scholars led by Alan Watson. THE DIGEST OF JUSTINIAN (Alan Watson ed., 1985).
5. See generally ERNST LEVIN, WEST ROMAN Vulgar Law (1951); PETER STEIN, RÖMISCHES RECHT UND EUROPA 68 (1996).
Nevertheless, the scholarly consensus, which I think is largely correct, holds that the West did not receive its Roman law from Justinianic sources during the early medieval period, and thus did not have available the great richness of the Digest’s juristic writings.  

All of this changed with the general revival of learning in science, theology, law, and the arts, which took place in the late eleventh and early twelfth centuries. During this period a full manuscript of the Digest came to light in Italy, first in Pisa, and then Florence (where it was taken by a raiding party). This manuscript, known as the Florentine Pandects, made available to Western jurists all of the juristic writings of the classical period of Roman law. It rapidly became a source for study in all of the law schools of Western Europe, and quickly displaced local Germanic laws and customs as a source of law. Within a hundred years, manuscripts of the Digest were in circulation throughout Western Europe. These manuscripts, in fact, often differed somewhat in their textual readings from the Florentina, which was kept in a suspended, locked cage away from potential thieves, in the cathedral at Florence. This medieval text of the Digest was the primary source for Roman law in the later middle ages and was the principal text lectured on in the medieval universities.  

Unfortunately, the Digest is not an easy book. It is long, cumbersome, and contains many words and phrases which were unknown to medieval lawyers. Thus, from roughly 1250 onward, much of the activity of the law professors and students in the universities was aimed at making the text of the Digest more comprehensible. The first fruit of this activity was the compilation of what came to be known as the “ordinary gloss” on the Digest, a set of explanatory notes and cross-references attributed to the jurist Accursius. The standard format of Digest manuscripts came to be one quite similar to that adopted for manuscripts of the canon law and for the Jewish Talmud, which had the original text written in the center of the page surrounded by the explanatory material—the gloss—in the margins. Anyone who looks at a medieval manuscript of the Digest will recognize it immediately from this format. After the gloss was settled, fairly early in this period, jurists and professors turned to the development of more sophisticated works and began to produce thousands of separate commentaries, indices, and other explanatory and finding aids for these texts.  

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9. See Calasso, supra note 7, at 345; Stein, supra note 5, at 76.  
11. See Stein, supra note 5, at 80–86; Bellomo, supra note 10, at 176–77; O.F. Robinson et al., European Legal History: Sources and Institutions (2d ed. 1994).
During this period the great glossators and commentators, men such as Baldus and Bartolus, flourished. Again, just a short glance through any catalogue of a Roman law collection will be enough to highlight the proliferation, after the thirteenth century, of texts labeled Summa, Repertorium, or Tractatus. All of these texts used the Digest and the gloss on the Digest as their primary and fundamental source.

As the graduates of medieval university law schools went out into the greater world and assumed high positions in church and state, the importance of Roman law grew. At the same time, of course, nascent nationalistic movements began empowering national customs as laws as well. By the fifteenth and sixteenth centuries, when nationalistic movements were gaining immense ground throughout Western Europe, the influence of Roman legal ideas and texts was so firmly ensconced throughout Western Europe (except in England, where the common law lawyers were successfully holding off the university civilians) that the incorporation of Roman law as a fundamental part of these various national legal systems was inevitable. All of the major European legal systems incorporated Roman law and Roman legal ideas to some degree. Thus all came to be classified as civil law systems. This also meant that Roman legal texts, as sources fundamental to both the university law curricula and practicing lawyers, were prime subjects for the earliest printers.

**Overview of Roman Law Publishing**

During the earliest period of printing with moveable type, known as the *incunabula* period, Roman law texts were surpassed only by the Bible and related theological texts as the most frequently printed items. If one looks at the great catalogues of incunabula, such as Hain or the Harvard Catalogue, one cannot help but be struck by the vast quantity of Roman law books, many of which were primary sources, such as the Digest, which were put out by presses between 1465 and 1500. The reason is quite obvious: Lawyers needed books to ply their trade, the invention of moveable type made book production quicker and cheaper, lawyers were a perfect market for this newfound technology, and Roman law books were what they needed. But one should not stress discontinuity and innovation. The earliest printed versions of the Digest and

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12. For a discussion of these terms, see Brundage, *supra* note 6, at 44–69.
other Roman law books are virtually indistinguishable in appearance from manuscripts. The page format—text surrounded by gloss—is exactly the same.

By the sixteenth century, a number of European cities and printers had established themselves as centers for legal printing. Among the most famous were Venice, Paris, and Rome. Strong relationships grew up in these centers among the printers, the universities, and the law professors. The professors supplied the publishers with editorial and authorial services. The printers supplied the universities with student texts. And the universities supplied the students and graduates who bought the texts. Very quickly a market economy for Roman law books emerged. But a methodological rift in the study of Roman law developed in the sixteenth century, particularly in France, and also in Germany and Italy, though to a lesser extent. Many of the university professors decided to abandon the old medieval, practice-oriented approach to the texts of Roman law, to abandon the medieval gloss, and to study the Roman legal texts as historical artifacts with the purpose of restoring them to their original classical state. Thus, there came to be two approaches to these texts: the mos italicus, the old, practice-oriented learning, and the mos gallicus, stressing the importance of philology and history.

This rift among the academics proved a gold mine for the printers. Now printers could publish the old glossed texts with the various commentaries and finding aids, as well as all of the newly restored versions of the Roman legal texts and the new treatises on these texts. In effect, the market segmented itself. The practitioners largely continued to purchase glossed texts and the scholarship according to the mos italicus. Scholars, depending upon their methodological biases, purchased either the old texts or the new, as well as commentaries of one or both types. From a bibliographical perspective, the categorization of Roman law books published from the sixteenth century on becomes more difficult, particularly with respect to the primary sources. One must know not only that a particular edition is the Digest, but also whether it is in the old or new format (the new is without the gloss) and whether the editor followed mos italicus or mos gallicus. One easy determinant is page format. The new scholarship abandoned the gloss, and thus featured the primary Roman legal text (often in two columns) with either footnotes or marginal notes (usually printed in italics and far less extensive than the gloss). It was also in the sixteenth century that the collection of Justinianic legal texts—the Digest,

15. See, above all, HELMUT COING, HANDBUCH DER QUELLEN UND LITERATUR DER NEUEREN EUROPÄISCHEN PRIVATRECHTSGESCHICHTE (1973–1978), esp. Bd. II/1 and II/2. This multivolume work is a bio-bibliographical history of Roman law from the middle ages to the modern period. It contains a wealth of information on editions, presses, and legal authors. For criticisms of this monumental bibliographical undertaking, see the many articles of Douglas Osler, including his latest, Douglas Osler, Jurisprudentia Elegantior and the Dutch Elegant School, 23 Ius Commune 339 (1996).


Codex Justiniani, Novellae, and Institutiones—acquired the collective title of Corpus Iuris Civilis. This title first appeared in 1569 in an edition by Denis Godefroy, one of the leading exponents of the mos gallicus.

It is also in the sixteenth century that one can begin to identify with even more certainty national centers for Roman legal scholarship and printing. In the fifteenth century, during the incunabular period, Roman law books were published throughout continental Europe. In the sixteenth century, the great centers of Roman legal scholarship were found in France and Italy. By the seventeenth and eighteenth centuries, the center of such scholarship had shifted to the Netherlands. By the late eighteenth century, the center had shifted again, to Germany, where it remained throughout the nineteenth century and still resides today. Thus, although Roman law books continued to be written by scholars throughout continental Europe, one sees concentrations of authors in, and production runs of first editions from, various geographical centers. Furthermore, by the late seventeenth century, Roman law was becoming less important in many European states as a direct source of national law and, therefore, the practice-oriented approach, the mos italicus, began to lose ground. Roman-derived civil law continued to be important and texts continued to be produced, but fewer practicing lawyers in France and Germany needed copies of the primary texts. Consequently, it is difficult to find texts of the Digest printed with the medieval gloss after the middle of the seventeenth century. As the market for such texts declined, printers ceased to produce them, although they did publish practice commentaries, such as those by Bynkershoek and Voet, aimed at practicing lawyers. They also continued to produce primary texts edited according to the mos gallicus aimed at scholars.

One important point should be obvious. Between 1465 and 1750 printers throughout Europe produced vast numbers of Roman law books. Spangenberg’s Einleitung in der Römischen-Justinianischen Rechtsbuch, a nineteenth-century bibliography of editions of the Corpus Iuris Civilis and its constituent parts (which is still absolutely necessary as a resource), contains several thousand entries just of these primary sources. This, of course, is significant to the inquiry about how American lawyers and libraries acquired such volumes.

17. Id. at 1–52.
Roman Law and Literature in England

Before we can turn to that inquiry, however, it is necessary to briefly discuss the spread of Roman legal learning and literature in England, our mother country. During the medieval period, Roman law was the legal subject at both Oxford and Cambridge. 21 (Indeed the first chair in common law at the universities dates to the late eighteenth century. 22) But, unlike what happened on the continent, the university civilians did not develop a monopoly over the legal system. The Inns of Court became the seed from which the English legal profession grew after the thirteenth century. 23 And the members of the Inns did not (with the exception of Doctors' Commons 24) practice Roman law or civil law derived from Roman law. The members of the Inns were common law lawyers. Of course, throughout the history of England during this period, Roman and Roman-derived civil law flourished in the ecclesiastical courts and a few other civilian outposts, like the University Chancellor's court and the Courts Martial, but these were never the main source of English law. Nevertheless, Roman law and law books were not unknown in England. English civilians, men such as Arthur Duck, 25 did write treatises, though none ever gained pan-European renown. And these civil lawyers did often acquire wealth (as Brian Levack's work has shown) and several acquired substantial libraries rich in Roman legal works (such as that of Thomas Legge of Cambridge). 26 Furthermore, college and university libraries bought many Roman legal texts. 27 And, indeed, even some common law lawyers became interested in Roman law, and through their influence Roman law did affect the development of English jurisprudence. Men such as Sir William Jones and John Austin helped to Romanize some areas of common law jurisprudence. 28 And, of course, the Scots, with their hybrid common-civil law system, were consumers of Roman law books. 29

22. The first chair was the Vindelian Chair at Oxford, whose first incumbent was William Blackstone. See Harold G. Harbury, The Vindelian Chair and Legal Education passim (1958).
25. For a discussion of Duck and his work, see Coquillette, supra note 24, at 161.
27. See generally Alan Wijffels, Late Sixteenth-Century Lists of Law Books at Merton College (1992); Elizabeth S. Leedham-Green, Books in Cambridge Inventories (1986).
What this all adds up to is that Roman legal ideas were known in England, and Roman law books were found in English libraries and at English booksellers. What never developed to any real extent in England was Roman legal publishing. Apparently it was easier and more profitable to import Roman law books from the continent than to print them at home. Once again, the market controlled. And while Roman legal ideas were influential in such fields as commercial law and bailments, for example, the civilian tradition in England stayed firmly rooted in the universities and Doctors’ Commons and never played the major role it did on the continent.

The Spread of Roman Law to the United States

This whirlwind tour of the history and bibliography of Roman law now brings us to the second part of this article, the spread of Roman law to the United States. 30

Outside the pioneering work of Herbert Johnson on foreign law books in eighteenth-century American libraries, 31 there is surprisingly little scholarship dealing directly with the trade in foreign law books in eighteenth- and nineteenth-century America. For Americans to obtain books on Roman law during this period, it was necessary to look abroad. While American law publishing grew substantially between 1750 and 1900, very few books on Roman or civil law were written or produced in the United States. There were a few notable exceptions, including James Murdock Walker’s study of the Roman law of real property published at Charleston, South Carolina 32; Luther Stearns Cushing’s textbook on Roman law published in Boston 33; an English text on Roman law by William Grapel, reprinted at Philadelphia as part of the Law Library series 34; Thomas Cooper’s translation of Justinian’s Institutes published in Philadelphia and reprinted several times 35; and Peter DuPonceau’s translation of Bynker-

30. I have devoted the past fifteen years to researching this issue. My latest book, Roman Law and the Development of Anglo-American Jurisprudence, supra note 28, concerns itself mainly with what I call “high legal culture,” the writings of judges and jurists, a topic also dealt with in an earlier article, Michael H. Hoeflich, Roman Law in American Legal Culture, 66 Tul. L. Rev. 1723 (1992). In the book I discuss the holdings of American libraries in Roman law to some extent, but I do no more than skim the surface of how these books got into these libraries. This I intend to treat in a follow-up book on the growth of public and private law libraries in England and the United States. In this article, I want to share with you, in a very preliminary way, some of this new research.


33. Luther S. Cushing, An Introduction to the Study of Roman Law (1854).

34. William Grapel, Sources of the Roman Civil Law (1857).

shoek's *Quaestiones Publicae*, which was published in the *American Law Magazine*, as well as a separate monograph entitled *The Art of War*. But these were exceptions, not the rule. Those American lawyers, scholars, and librarians who wanted to build a library of Roman law books, including both primary sources and commentaries, were forced to rely upon books printed mainly on the continent of Europe. These either had to be imported directly or purchased from someone in the United States who had already obtained them.

Perhaps the most direct way for an American to obtain Roman law books printed on the continent was to enlist the aid of a foreign acquaintance. Joseph Story, who included many references to Roman as well as modern civil law in his various works, obtained some of his materials and books in this way. A collection of correspondence contained in the Huntington Library, complemented by other letters in the Harvard Law School Treasure Room, illuminates this process. Story had befriended a German émigré scholar, Francis Lieber. Through his good offices, Story was introduced to the great German jurist C. J. A. Mittermaier. Among the benefits of this friendship was the development of a pipeline between the United States and Germany in which Mittermaier acquired continental legal texts for Story. Even more interesting, Story also solicited translations of German texts on Roman and civil law from Mittermaier. (Apparently Mittermaier employed his graduate students to prepare these translations.) This allowed Story, who spoke no German, to keep up on the latest continental scholarship.

Story, of course, was not the only lawyer to avail himself of direct foreign connections. Hugh Swinton Legaré used a variation of Story's strategy. When one of Legaré's students decided to go to Germany to obtain a doctorate in law, Legaré gave him the mission of finding copies of the works of Friedrich Carl von Savigny, which were unavailable in the United States at that time. Thus, through a traveling friend, Legaré was able to bring copies of Savigny's seminal works on Roman law and legal history to the United States. Of course, one could also go abroad to buy books. Certainly, Mr. Jefferson did not fail to take advantage of his European sojourn to enrich his library. Benjamin Silliman, a Yale professor and future Yale president, journeyed to England and the continent for the enrichment of the Yale libraries. More important, many

36. Peter S. Duponceau, *The Art of War* (1810). This translation was issued both as part of the *American Law Magazine* and as a separate volume published by Farrand & Nicklas. Both carry the same date.


38. See Hoeftich, *supra* note 37, at 608.


Americans, particularly southerners, traveled to Scotland to further their legal education during the antebellum period. (Legaré was one example.) In Edinburgh these lawyers were not only able to attend lectures on Roman and civil law, they were also able to buy both antiquarian and recently published books on the subject with which they could return home and add to their libraries.

Finally, we must not forget that America had amongst its own possessions a jurisdiction that followed the civil rather than the common law: Louisiana. The booksellers of Louisiana provided an important source for the introduction of Roman law books into the common law states of the Union. One of the most important early-nineteenth-century collections of Roman law books in the United States was assembled in New Orleans by Samuel Livermore, a Harvard graduate and Bostonian who migrated to Louisiana in search of professional success. That library came eventually to Harvard Law School; a list of its contents may be found as a supplement to the 1829 Harvard Catalogue. This collection, plus that of Joseph Story, which also became part of the Harvard collection, helped to establish Harvard as one of the richest resources in Roman and civil law.

Although few Roman law books were published in the United States, from an early period many were routinely imported and made available for sale in this country. In the course of my research, I have studied a large number of nineteenth-century law booksellers' catalogues and advertising. I have been struck by the number of Roman law volumes available. This should not come as a surprise because Roman law, as I have attempted to demonstrate in articles and in my new book, was of great interest to American lawyers and judges from the beginnings of our Republic. The study of Roman law was included in the curriculum of most university law schools. Court decisions at both the state and federal levels are replete with references to Roman law in certain areas, such as commercial law and admiralty. For such knowledge to be widespread, Roman law books had to be available. Demand for these books meant that canny booksellers would attempt to supply these volumes. And so they did, as demonstrated by the following examples.

Let us begin with the 1856 General Catalogue of Law Books published by the venerable Boston publisher, Little, Brown & Company. Among the many volumes advertised we find such Romanist works as D'Aguesso's Oeuvres Completes in the Paris edition of 1819–1820, Averianus' Interpretationum Iuris

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41. See Hugh S. Legaré, Writings of Hugh Swinton Legaré (Mary S. Legaré ed., Charleston, S.C., Burges & James, 1846).
42. Supplement to the Catalogue of the Law Library of Harvard University (1835).
44. A General Catalogue of Law Books; Including All the Reports, Both English and American, from the Earliest Period by Little, Brown & Company (1856).
in the Leiden edition of 1816, and Ayliffe's *New Pandect of Roman Civil Law*
in the London edition of 1734. We find a copy of the 1754 Leipzig edition of
Barnabé Brissonius' *De Formulis et Solemnibus Populis Romani Verbis*, an
early study of Roman legal terms. We find the 1734 edition of Calvinus’
standard dictionary of Roman law, the *Magnum Lexicon Juridicum*. We find
for sale three works by the great German Romanist and legal historian, Johann
Heineccius, including the 1740 Leiden edition of his basic textbook, the
*Elementa Iuris Civilis*, as well as the more advanced *Historia Iuris Civilis
Romani*, also published in Leiden, in 1740, and a splendid set in half-calf of
the three folio volumes of his *Jurisprudentia Romana et Attica* for the princely
sum of $21.45 Interestingly, Messrs. Little, Brown & Co. did not offer a full set
of the *Corpus Iuris Civilis*, but rather had for sale only a copy of Thomas
Cooper’s English translation of Justinian’s *Institutes*. I should say, however,
that in the course of my researches I discovered that few individual American
lawyers seemed to make much use of the primary Roman legal sources in the
original Latin, but, rather, depended upon secondary works or English
translations. It may well be that the absence of sets of the whole *Corpus Iuris
Civilis* from this catalogue (and it is rarely present in other catalogues I have
examined) may reflect that there was little demand for the work in the United
States. I could go on to list more Roman law books in the Little, Brown catalogue,
but, instead, let us move on to look at another bookseller.

John Campbell & Son was a leading Philadelphia bookseller and law book
publisher. An examination of the *Catalogue of Law Books* which they issued
in 1872 is quite instructive.46 By this time, the attraction of Roman law to
American practitioners was in decline. Law professors and scholars still took
an active interest, particularly insofar as they could use Roman law as a basis
for comparative law studies, but the excitement felt by many antebellum
lawyers for the subject was definitely less. Thus, this catalogue contains fewer
Roman law entries, but still there are more than a few. For instance, Campbell
offered Browne’s *View of the Civil Law and Admiralty Law* in a two-volume
set reprinted in New York in 1840. They also offered what was, perhaps, the
best American textbook of Roman law, Luther Stearns Cushing’s *An
Introduction to the Study of Roman Law* published at Boston in 1854, based on his
Harvard Law School lectures of 1849–1851. And he offered the 1852 New York
third edition of Cooper’s translation of the *Institutes*.

Finally, let us return for a moment to 1856. In this year John Livingston,
the mid-nineteenth century’s Steven Brill, published his *Catalogue of Law

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45. This was an extremely large sum of money; *see generally John Macusker, How Much Is
That in Real Money?* (1992). One may presume that the special binding, unusual for a law book, may
have been responsible.

46. *A Catalogue of Law Books, Published or for Sale by John Campbell & Son* (1872).
Books Comprising a Catalogue of a Select Law Library.\textsuperscript{47} This catalogue was actually appended to the March 1856 edition of Livingston's successful periodical, Livingston's Monthly Law Magazine, and, thus, reached a wide audience of lawyers throughout the United States. The last part of this catalogue, held up to its readers as a model library for a practicing lawyer, consisted of a list of available books in the field of "Foreign and Civil Law." Among those for sale were copies of Ayliffe, Browne, Cooper and Cushing, Heineccius, Pothier (the great French commercial jurist), Vinnius (the Dutch commentator on Roman law studied by John Adams when preparing for the Bar), and even a copy of the work of the Scotsman David Irving, who was librarian of the Advocate's Library in Edinburgh, Scotland, and an early exponent of Savigny, author of the Introduction to the Civil Law. Even more interesting, Livingston offered for sale an abridged version of the Corpus Iuris Civilis, published in Germany in 1848, and also had for sale copies of translations of two of Savigny's works on Roman law.

It should be quite clear by now that the leading American law booksellers stocked a great number and variety of works on Roman law, including a fair number of antiquarian volumes. There can be no doubt that demand for such volumes, particularly in the antebellum period, was sufficiently high to warrant the maintenance of a trade in such books between Europe and America. Indeed, it is perhaps ironic to note that it was easier to purchase a basic library on Roman law in 1856 than it is today in 1996. It was also a good deal cheaper.

The other source for Roman law books in the United States during the eighteenth and nineteenth centuries (and, in fact, today as well) was the auctions of private libraries. Book auctions were commonplace throughout the United States during this period. One need only look at George McKay's American Book Auction Catalogues to see how vast the number of such sales were.\textsuperscript{48} Many of the entries in McKay are lawyers' libraries. Many of these contained Roman law volumes. And, of course, some of these were quite substantial collections. Perhaps the greatest nineteenth-century auction sale of Roman law books was that of Hugh Swinton Legaré. Legaré, as mentioned previously, was one of the most notable American Romanists of the nineteenth century. He was a frequent contributor to learned periodicals such as the Southern Review and Southern Literary Messenger. He was a successful lawyer and politician and ended his professional career as attorney general of


the United States. He was an intimate friend of the leading jurists of the day, including Joseph Story, who wrote a moving obituary upon Legaré's death. Legaré's works, many of them concerned with Roman law, were collected and published by his sister after his death and are worthy of study. 49 Not at all surprisingly, Legaré amassed a substantial library rich in Roman and civil law books. There actually exist two distinct, post-mortem catalogues of Legaré's library. The first would appear to have been printed very soon after his death in 1843 by his executor. 50 The catalogue states that the books are available for sale and lists as contacts a New York lawyer, Henry Cruger, as well as one of Legaré's colleagues at the attorney general's office in Washington, John Reid. Presumably this attempt at selling the books was not successful, for in 1848 the library was offered for sale at auction by W.M. Morrison in Washington. 51 This catalogue (a copy of which may be found in the Caroliniana Collection at the University of South Carolina) extends to seventeen pages and 573 separate lots. It is one of the richest nineteenth-century American collections of Roman law I have seen. Its contents range from incunabula to what was then the latest in continental legal scholarship. Some of the items are quite tantalizing. To give just one example, lot number 123 is listed only as a copy of "Savigny's Von Beruf." Was this, in fact, the copy which Legaré sent his friend to find for him two decades before in Germany? At any rate, it is clear that auction sales provided another rich source for acquiring Roman law books.

Provenance Research

The previous discussion was based upon an examination of booksellers' and auction catalogues, of correspondence and memoirs. But there is one further source for discovering the details of the American eighteenth- and nineteenth-century trade in Roman law books which I have not yet mentioned. This, of course, is the books themselves. Traditionally librarians and cataloguers, not to mention booksellers, have treated ownership marks and most marginalia (except for that readily identifiable as belonging to a prominent individual) as an irritation at best and a disfigurement at worst. It is only very recently that most librarians and rare book specialists have come to realize how enormously important such things are, since they enable us to trace the history of the provenance of individual volumes and, thereby, both reconstruct libraries of the past as well as gain a greater understanding of the flow of books in

49. LEGARÉ, supra note 41.
51. See id. at 27 n.60; MCKAY, supra note 48, no. 484.
commerce. Such provenance marks also permit us to gain a greater understanding of the intellectual sources used by those who owned the volume. Depending upon the extent of these annotations, it is often possible to see direct influence of a particular volume on a particular author or jurist. Sometimes it is possible to do even more. Recently I obtained a rather common eighteenth-century edition of an obscure Roman legal text known as the Brachylogus Juria Civilis. Though the book is fairly common and not very attractive, I confess that it is one of the most exciting acquisitions I have made in some time. The reason for this is provenance. This volume belonged to Eduard Böcking, the nineteenth-century German jurist who produced the still standard edition of the Brachylogus. More important than his ownership marks, however, are the annotations. This volume was the one that Böcking used to compare all of the manuscripts of the text and to indicate his notes and comments. It is, in fact, the working copy from which his edition derives. As such it permits me to reconstruct how a nineteenth-century German legal scholar went about preparing an edition of Roman law.

I would suggest that many American law libraries contain Roman legal texts brought over to the United States in the eighteenth and nineteenth centuries which contain important evidence as to the trade in such books and as to the intellectual history of American law in this period. I urge all law librarians with such volumes to devote some time to these books and to study their ownership marks and annotations. David Pearson’s recently published Provenance Research in Book History52 is an excellent guide and resource for such work.

Let me conclude by saying that there are treasures in the Roman law materials held by many American libraries. A few collections are well known, such as those at Harvard, Columbia, and Berkeley. Others have been catalogued to some degree but are less well known, such as at Illinois, Miami, and William and Mary. Still others remain hidden amidst the stacks. I can only hope that this brief essay may incline law librarians to spend a bit more time with those volumes.53

53. I will take the opportunity here to mention a project that I am currently engaged in. With the support of the Gladys Krieble Delmas Foundation, I have begun to compile a detailed catalogue, including provenance information, of the Roman law holdings of selected American libraries. I have begun with the collection at the Spencer Library at Kansas, but it is my hope that I shall be able to carry on at other libraries with Roman law holdings as well. I would be delighted to hear from any law librarians whose collections have Roman legal materials, particularly those whose provenance indicates that they were in the United States prior to 1900.

I would also appreciate receiving information as to holdings of nineteenth-century law bookseller's catalogues. I can be reached at University of Kansas, School of Law, Green Hall, Lawrence, Kansas 66045; e-mail: Hoflich@law.wpo.ukans.edu.