

*AALL Centennial Feature**

Annals of Legal Bibliography: J. G. Marvin**

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Professor Hoeflich explores the importance of Harvard law librarian J. G. Marvin's Legal Bibliography, a work he considers to be not only a milestone in the history of American legal bibliography and bookselling, but also a turning point in the history of American law.

¶1 It has been nearly fifty years since Howard Jay Graham published his first article on John Gage Marvin in *Law Library Journal*.¹ When this article was published, American legal history was in its infancy as an academic discipline, and the study of the history of American legal publishing was virtually nonexistent. All of that has changed in the intervening half century, a change that makes it an appropriate time to again consider the life, works, and importance of J. G. Marvin, librarian of the Harvard Law School while a student there,² and the author of a milestone in the annals of American legal bibliography.³

* *Editor's Note:* The American Association of Law Libraries was founded on July 2, 1906, by a handful of law librarians who met during the Annual Conference of the American Library Association at Narragansett Pier, Rhode Island. To commemorate the AALL Centennial that will be celebrated with a year-long series of events and activities in 2005–06, culminating at the 2006 Annual Meeting in St. Louis, *Law Library Journal* is including an “AALL Centennial Feature” article in each issue published through 2006. While the focus common to each article is the history of law libraries, law librarianship, and AALL, the specific topics vary according to the interests of authors and readers. Individuals interested in contributing a “Centennial Feature” article should contact Frank G. Houdek, Editor, *Law Library Journal*, Southern Illinois University School of Law, Lesar Law Bldg., Mail Code 6803, Carbondale, IL 62901-6803, (618) 453-8788, houdek@siu.edu.

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1. Howard Jay Graham, *John G. Marvin and the Founding of American Legal Bibliography*, 48 *LAW LIBR. J.* 194 (1955) [hereinafter Graham, *Marvin*]. For other articles on Marvin that have appeared in *Law Library Journal*, see Howard Jay Graham, *A Legal Bibliographer in the Gold Rush*, 56 *LAW LIBR. J.* 247 (1963) [hereinafter Graham, *Gold Rush*]; Margaret C. Klingelsmith, *J. G. Marvin: An Appreciation*, 15 *LAW LIBR. J.* 71 (1923).
2. “The Librarians, from 1830 to 1845, were students in the School, appointed because of their high scholarship or other deserving qualities. They were entitled to occupy, free of rent, a room in the second story of Dane Hall, and, beginning in 1839–40, received a small compensation. . . . They were as follows: . . . John G. Marvin (1843–45).” 2 CHARLES WARREN, *HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA* 79 (1908).
3. JOHN G. MARVIN, *LEGAL BIBLIOGRAPHY OR A THESAURUS OF AMERICAN, ENGLISH, IRISH OR SCOTCH LAW BOOKS* 391 (Philadelphia, T. & J.W. Johnson 1847). Writing in 1923 of Marvin’s achievement, Klingelsmith called it “a book of such common sense, thoroughness, accuracy and scholarly information that seventy-five years after its publication, it is still an absolute necessity for every law librarian as well as a beloved friend.” Klingelsmith, *supra* note 1, at 73. In the introduction to his own recent monumental legal bibliographical effort, Morris Cohen makes clear that Marvin is still held in

A Brief Biographical Note

¶2 Marvin was born in 1815 and attended Wesleyan University.⁴ After three years, he left in 1840 to become head of Athens Academy, a small school in Pennsylvania, where he taught Latin and Greek and published essays and translations from the French.⁵ At the end of August 1842, he changed careers and enrolled at the Harvard Law School, where he remained for four years as student and, eventually, librarian.⁶ The Harvard to which he came was then in its antebellum heyday.⁷ The faculty consisted of Joseph Story, Associate Justice of the United States Supreme Court since 1811; Simon Greenleaf; and Charles Sumner. Story, four years from his untimely death, had produced the series of treatises that were to revolutionize American law.⁸ Greenleaf had just published the first volume of his treatise on evidence.⁹ Sumner, then at the beginning of his career, was just formulating his ideas on slavery and freedom which would help shape antebellum American politics. It was, in short, a period of great intellectual ferment and creativity.

Marvin's First Bibliographic Work

¶3 Marvin brought something special to his Harvard studies. Already learned in Latin, Greek, and French, he began to study Spanish and Italian during his law school stay.¹⁰ His natural linguistic abilities must have been strong since he soon published a translation of a Spanish novel.¹¹ In this same year, 1843, Marvin also published an American edition of Sir James Mackintosh's *Discourse on the Study of the Law of Nature and Nations*, to which he contributed a life of Mackintosh

high esteem: "I have taken so many of those evaluations [comments from other sources] from J. G. Marvin's *Legal Bibliography* (1847) because that most congenial lawyer/bibliographer gives us many references and quotations from contemporary reviews of the works he covers." 1 MORRIS L. COHEN, *BIBLIOGRAPHY OF EARLY AMERICAN LAW*, at xviii (1998).

4. Graham, *Marvin*, *supra* note 1, at 198.
5. *Id.* at 199.
6. *Id.* at 199–203. On the early years of the law library, see 1 WARREN, *supra* note 2, at 462–68; 2 *id.* at 77–83.
7. See 1 WARREN, *supra* note 2, at 480–506; ROBERT BOCKING STEVENS, *LAW SCHOOL LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 35–72 (1983).
8. *E.g.*, JOSEPH STORY, *A SELECTION OF PLEADINGS IN CIVIL ACTIONS* (Salem, Barnard B. Macanulty 1805); JOSEPH STORY, *COMMENTARIES ON THE LAW OF BAILMENTS, WITH ILLUSTRATIONS FROM THE CIVIL AND THE FOREIGN LAW* (Cambridge, Hilliard and Brown 1832); JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* (Boston, Hilliard, Gray & Co.; Cambridge, Brown, Shattuck & Co. 1833); JOSEPH STORY, *COMMENTARIES ON THE CONFLICT OF LAWS, FOREIGN AND DOMESTIC* (Boston, Hilliard, Gray & Co. 1834); JOSEPH STORY, *COMMENTARIES ON EQUITY PLEADINGS, AND THE INCIDENTS THERETO, ACCORDING TO THE PRACTICE OF THE COURTS OF EQUITY OF ENGLAND AND AMERICA* (Boston, Charles C. Little & James Brown 1838). Marvin provided an annotated list of many of Story's publications in his *Legal Bibliography*. MARVIN, *supra* note 3, at 668–74.
9. SIMON GREENLEAF, *TREATISE ON THE LAW OF EVIDENCE* (Boston, C.C. Little & J. Brown 1842–53).
10. Graham, *Marvin*, *supra* note 1, at 202.
11. "Zest for languages presently led to translation of *El Bastardo de Castille*, a Gothic tale by Don Jorge Montgomery, Irish-born employee of the American consulate in Madrid. . . ." *Id.* The translation was retitled as G.W. MONTGOMERY, *BERNARDO DEL CARPIO* (John G. Marvin trans., Boston, Sly 1843).

and a bibliography of international law.¹² This latter would appear to have been Marvin's first foray into legal bibliography. The inspiration for this production may well have been a suggestion by Justice Story. Marvin also provided translations for Latin phrases that appeared in the text of the *Discourse*.¹³

¶4 In fact, this first bibliographical essay by Marvin is little more than a list of leading books on the law of nations. It consists of 101 titles listed in alphabetical order by author. Marvin gives few details on each work: generally, only author, title, date of publication, and, in some cases, place of publication and translator. The majority of the works are in English, French, or Latin. Several are in Italian. Only six are in German. Publication dates range from the latter part of the seventeenth century until just before publication of Marvin's edition in 1843.

¶5 Perhaps the most interesting aspect of this list is what it tells us of Marvin's own knowledge and working methods. It seems reasonably clear that all of the works cited by Marvin were not in the library at Harvard. A number do not appear in either the 1835 supplemental catalog¹⁴ of the Livermore bequest¹⁵ or in the revised catalog of the Harvard Law School Library that Marvin himself compiled in 1846,¹⁶ three years after his work on the *Discourse*.¹⁷ It is possible that some texts may have been in other libraries, such as Justice Story's, although, again, these do not appear in near contemporary catalogs.¹⁸ Interestingly, a number of these titles also do not appear in Marvin's own *Legal Bibliography* of 1847. Instead, it seems much more likely that Marvin found citations to some of these

12. JAMES MACKINTOSH, A DISCOURSE ON THE STUDY OF THE LAW OF NATURE AND NATIONS, TOGETHER WITH A COLLECTED LIST OF WORKS UPON INTERNATIONAL LAW, A SKETCH OF THE AUTHOR'S LIFE, ETC. (J. G. Marvin ed., Boston, Pratt 1843). Mackintosh's memoirs, edited by his son, had been published just a few years earlier. JAMES MACKINTOSH, MEMOIRS OF THE LIFE OF THE RIGHT HONOURABLE SIR JAMES MACKINTOSH (Robert James Mackintosh ed., London, E. Moxon 1835).
13. Charles Sumner disagreed with this practice. See Graham, *supra* note 1, at 202 n.55.
14. HARVARD LAW SCH. LIBRARY, SUPPLEMENT TO THE CATALOGUE OF THE LAW LIBRARY OF HARVARD UNIVERSITY IN CAMBRIDGE, MASSACHUSETTS (Cambridge, Charles Folsom, printer to the University 1835) [hereinafter 1835 HLS CATALOGUE SUPPLEMENT].
15. "In 1834 came the princely Livermore gift—401 volumes valued at \$6000, largely civil and foreign law classics—from the library of the distinguished Baltimore and New Orleans lawyer [Samuel Livermore, an 1804 graduate of Harvard] who had written the first American treatises on agency and conflicts." Graham, *Marvin*, *supra* note 1, at 203 (citations omitted). "Charles Sumner was set at work preparing a Catalogue of this valuable gift; and in 1835, a supplement of the Library Catalogue, of 16 pages was issued, principally composed of the titles of the Livermore bequest." 2 WARREN, *supra* note 2, at 80.
16. HARVARD LAW SCH. LIBRARY, A CATALOGUE OF THE LAW LIBRARY OF HARVARD UNIVERSITY IN CAMBRIDGE, MASSACHUSETTS (4th ed., Cambridge, Metcalf & Co., printers to the University 1846) [hereinafter 1846 HLS CATALOGUE]. Although identified as the fourth edition, "actually it was the third complete catalog; numbering apparently became confused by counting Sumner's 16-page supplement [of 1835] as an 'edition.'" Graham, *Marvin*, *supra* note 1, at 205 n.88.
17. For instance, Marvin's list in the *Discourse* begins with a citation to "Barrère, B. De la Liberté del Mars, 3 vols, 8vo. Paris, 1798." This work appears neither in the Harvard Law School catalogues of 1835 and 1846 nor in Marvin's *Legal Bibliography* of 1847.
18. The Barrère volume does not appear in the catalog of Story's library. CATALOGUE OF LAW AND MISCELLANEOUS BOOKS BELONGING TO THE LIBRARY OF THE LATE MR. JUSTICE STORY . . . TO BE SOLD BY PHILLIPS AND SAMPSON . . . APRIL 3RD & 4TH, 1846 (Boston, Alfred Mudge & Son 1846).

texts in other scholars' works. We know that he was intimately familiar, for instance, with the works of David Hoffman¹⁹ and with Dupin's edition of Camus's *Letters sur la Profession d'Avocat*,²⁰ the second volume of which was the best known contemporary French legal bibliography. Further, it also seems quite likely that Marvin may well have found several of these works cited in other scholarly works on the subject and copied from them. There are several reasons to think this. First, Justice Story himself, who was Marvin's teacher and mentor, used this technique of borrowing citations from other scholars' works in his own writing, especially in the case of German works which he could not read in the original.²¹ Second, at the time Marvin was working on this edition and list, he was a student at Harvard and unable to travel widely to other libraries as he later did when putting together his own *Legal Bibliography*. Third, one must ask why Marvin would cite a work in the 1843 list and not include it in his 1847 *Bibliography*? The most reasonable explanation for this is that his working methods for his later masterpiece were more careful than for his 1843 list and that he chose not to include texts in the 1847 volume that he had not examined. Finally, while many of the works included in the 1843 list have full details, others do not. In some cases there is only a partial title or a title and author without date or place of publication.²² If Marvin had been able to personally examine these books, we may assume that these bibliographical lacunae would not be present.

Harvard Catalogue of 1846

¶6 The Harvard *Catalogue* of 1846²³ represents the work of a far more mature legal scholar and bibliographer. Marvin had been appointed as the law librarian, succeeding, among others, Charles Sumner, who held the position from 1832 to 1834.²⁴ His

19. DAVID HOFFMAN, A COURSE OF LEGAL STUDY, RESPECTFULLY ADDRESSED OF LAW IN THE UNITED STATES (Baltimore, Coale & Maxwell 1817); DAVID HOFFMAN, A COURSE OF LEGAL STUDY, ADDRESSED TO STUDENTS AND THE PROFESSION GENERALLY (2d ed., Baltimore, J. Neal 1836).

20. ARMAND-GASTON CAMUS, LETTRES SUR LA PROFESSION D'AVOCAT ET BIBLIOTHÈQUE CHOISIE DES LIVRES DE DROIT (4th ed., Paris, B. Warée 1818).

21. See MICHAEL H. HOEFELICH, ROMAN AND CIVIL LAW AND THE DEVELOPMENT OF ANGLO-AMERICAN JURISPRUDENCE IN THE NINETEENTH CENTURY 31 (1997); G. Kegel, *Joseph Story*, 43 RABELS ZEITSCHRIFT FÜR AUSLANDISCHES UND INTERNATIONALES PRIVATRECHT 609, 620 (1979).

22. This inclusion of partial listings of recommended books, presumably because the author had not personally examined them, was not unusual. John Livingston did the same thing in compiling his list of recommended law books. JOHN LIVINGSTON, CATALOGUE OF LAW BOOKS COMPRISING A CATALOGUE OF A SELECT LAW LIBRARY (New York, 1856).

23. 1846 HLS CATALOGUE, *supra* note 16. The last catalog listing the entire collection had been prepared by Sumner while serving as librarian. HARVARD LAW SCH. LIBRARY, A CATALOGUE OF THE LAW LIBRARY OF HARVARD UNIVERSITY IN CAMBRIDGE, MASSACHUSETTS (Cambridge, Charles Folsom, printer to the University 1834) [hereinafter 1834 HLS CATALOGUE].

24. 2 WARREN, *supra* note 2, at 77. The appointment of Sumner as librarian "proved to be a most fortunate appointment; for no one ever in the School had proved to be so indefatigable a student or omnivorous a reader." 1 *id.* at 477. In fact, as a "young student librarian . . . [h]e lost no time in preparing—at two dollars per page—the library's first printed catalog, in eighty-two pages, and from it listing the chief *desiderata*." Graham, *Marvin*, *supra* note 1, at 203 (citation omitted) (describing Sumner's work on the 1834 HLS CATALOGUE, *supra* note 23).

greatest task, as he quickly recognized, was to put together a new catalog of the collection, incorporating the major gifts from Livermore, Story, and others that had been received since the last catalog had been published.²⁵ Further, the state of legal science had advanced considerably during this period under the influence of scholars such as Story, Kent, and Greenleaf. Especially important was the increased interest in Roman and civil law among these scholars and the need to provide a listing of resources available in these fields.²⁶

¶7 The catalog that Marvin produced in 1846 was, therefore, far more than a listing of the holdings of the law library. It was designed to be a handbook for legal scholars and practicing lawyers who might need to do research into legal subjects in much greater depth than had lawyers of the previous generation. Marvin was also fully aware of the fundamental changes going on in the field of bibliography and of the needs of his intended readers.²⁷ Thus, he produced a catalog that was arranged alphabetically, but which included a topical index and had frequent cross-references.²⁸ Each entry provided a full author's name, a full title, date and place of publication, and volume size. Where appropriate, Marvin also included the name of the book's donor.

¶8 Several things are quite interesting about these entries. First, the much greater level of detail in these entries as compared to those in the list he had appended to the 1843 edition of Mackintosh's *Discourse* make it clear that Marvin was able to examine each volume and transcribe information directly from the volume into the catalog. Second, the inclusion of the topical index also speaks to Marvin's sensitivity to the needs of practicing lawyers. A purely alphabetical listing of author's names would not have been of optimal use to lawyers who were searching for authority for an argument. They needed to have a topical index with which to start since they might not know authors' names.²⁹ Finally, the inclusion of book donor's names was quite important. First, it was a brilliant way to acknowledge generosity while simultaneously encouraging others to give. Second, in terms of modern scholarship, it permits us to reconstruct personal library holdings of these individuals.

¶9 Without question, however, the most important aspect of Marvin's labors on the Harvard law library catalog must be the personal familiarity he gained with the

25. A supplementary catalog, listing Livermore's bequest as well as gifts from Justice Story, was published in 1835, but it did not cover the entire collection of the law school library. 1835 HLS CATALOGUE SUPPLEMENT, *supra* note 14.

26. See HOEFELICH, *supra* note 21, at 26–49.

27. For a discussion of these changes, see JIM RANZ, *THE PRINTED BOOK CATALOGUE IN AMERICA* 16–34 (1964).

28. *Id.* at 23–30.

29. On the importance of topical arrangement to lawyers, see M. H. Hoeflich, *The Lawyer as Pragmatic Reader: The History of Legal Common-Placing*, 55 ARK. L. REV. 87, 98 (2002). It is interesting that Marvin worked on the 1846 preprinted commonplace volumes produced by Little and Brown, Graham, *Marvin*, *supra* note 1, at 210 n.120, because these were arranged both by alphabetical and topical order.

collection and its impact on his own bibliographical thinking. The Harvard law library in the mid-1840s was notable on several counts. Its collection was the largest in any institution in the United States.³⁰ Second, its holdings of antiquarian volumes, often acquired by gift from alumni, was without parallel in the United States.³¹ Third, and most significant, Harvard's collection of foreign legal material was unique. As a result of the Livermore benefaction, as well as acquisitions from the libraries of Justice Story and others, Harvard had the most extensive collection of foreign legal materials to be obtained anywhere in the United States. The collection was especially rich in Roman legal sources as well in modern civilian materials from France, Germany, Italy, and Spain.

¶10 Joseph Story was a champion of the importance of Roman and civil law materials for the American practitioner and legal scholar, and the richness of the Harvard law library in these materials provided the resources for this new, expansive "scientific" legal scholarship to be done.³² The library's holdings in these materials were a source not only for students studying at Harvard but for practitioners in Boston and other locales who could gain access to the law library. Marvin's work in this collection meant that he, beyond all other law librarians of his time, was uniquely qualified to make these sources better known to a wider audience and this is precisely what he did in his 1847 masterwork.

Marvin's Legal Bibliography

¶11 The *Legal Bibliography* should be seen as the culmination of all of Marvin's work of the prior years as well as an evangelical doctrine for the scientific jurisprudence of Story's era at Harvard Law School. It should also be seen as marking a milestone, not only in the history of American legal bibliography but also in the history of American law bookselling. Far more than has been recognized, even by Howard Jay Graham, Marvin's 1847 publication marked a turning point in the history of American law.

Bibliographical Method

¶12 From the purely bibliographical standpoint, Marvin's work of 1847 was both a culmination of his earlier work and an important additional step methodologically. Marvin's was not the first attempt at legal bibliography. On the contrary, at the time Marvin was writing, the genre was already ancient. He had the works of

30. According to Graham, the largest American law libraries at the time were Harvard (10,000 volumes), New York State Library in Albany (9900 law volumes in 1850), and the Law Library of Congress (estimated 6000–7000 volumes). Graham, *Marvin*, *supra* note 1, at 194 n.2 (citations omitted).

31. On the scarcity of antiquarian legal volumes in the antebellum United States, see M.H. Hoeflich, *Law Book Auctions in the Antebellum United States*, PROCEEDINGS AM. ANTIQUARIAN SOC'Y (2002) (forthcoming).

32. HOEFLICH, *supra* note 21, at 29–30.

Nicholson,³³ Clarke,³⁴ Bridgeman,³⁵ and others readily available in English.³⁶ He also had Dupin's edition of Camus's *Profession d'Avocat*,³⁷ the second volume of which was a comprehensive bibliography of European law; Struve's *Bibliotheca*;³⁸ and De Bure's volume on legal bibliography,³⁹ among many continental bibliographical guides. There were also American attempts at legal bibliography available before Marvin's was published. David Hoffman's *Course of Legal Study*⁴⁰ was, in many respects, a massive volume of legal bibliography. There were also Wallace's study on legal reporters⁴¹ and the anonymous guide to legal treatises published in the 1834 volume of the *American Jurist*.⁴²

¶13 In spite of these many predecessors, Marvin's work stands out as something both traditional and new. His arrangement of entries was alphabetical by author, much in keeping with contemporary standards. But, as in his Harvard catalog, he provided a topical index. More interesting, so far as method is concerned, are the entries themselves. A typical entry consists of the author's name, the title of the book, the number of volumes in the work, the size of the volume, and its place and date of publication. This is often followed by evaluative comments on the book and citations to other comments on the book. If there is more than one edition of the book or a translation of the book, this is noted and, on occasion, the various editions or translations are compared and evaluated.

¶14 Marvin depended a great deal on a number of sources for his evaluative comments. First, he often cites to Wallace, Hoffman, Bridgeman, and to various legal periodicals. He also quite frequently includes citations to Chancellor Kent's

33. WILLIAM NICHOLSON, *THE ENGLISH, SCOTCH AND IRISH HISTORICAL LIBRARIES* (London, T. Evans, 2d ed. 1776).
34. JOHN CLARKE, *CLARKE'S BIBLIOTHECA LEGUM; OR, COMPLETE CATALOGUE OF THE COMMON AND STATUTE LAW-BOOKS OF THE UNITED KINGDOM, WITH AN ACCOUNT OF THEIR DATES AND PRICES, ARRANGED IN A NEW MANNER* (T.H. Horne ed., London, W. Clarke & Sons, New ed. 1819).
35. RICHARD W. BRIDGEMAN, *A SHORT VIEW OF LEGAL BIBLIOGRAPHY: CONTAINING SOME CRITICAL OBSERVATIONS ON THE AUTHORITY OF THE REPORTERS AND OTHER LAW WRITERS: COLLECTED FROM THE BEST AUTHORITIES, AND INTENDED AS A COMPANION TO THE AUTHOR'S REFLECTIONS ON THE STUDY OF THE LAW: TO WHICH IS ADDED A PLAN FOR CLASSIFYING A PUBLIC OR PRIVATE LIBRARY* (London, W. Reed 1807).
36. See generally WILLIAM L. FRIEND, *ANGLO-AMERICAN LEGAL BIBLIOGRAPHIES: AN ANNOTATED GUIDE* (1994).
37. CAMUS, *supra* note 20.
38. J. G. STRUVE, *BIBLIOTHECA JURIS SELECTA* (Jena, C.H. Cuno, 8th ed. 1756).
39. GUILLAUME-FRANÇOIS DE BURE, *BIBLIOGRAPHIE INSTRUCTIVE: OU, TRAITE DE LA CONNOISSANCE DE LIVRES RARVES ET SINGULIERS* (Paris 1763–68).
40. HOFFMAN, *supra* note 19. Marvin himself heaps praise on Hoffman's second edition, characterizing it as "a priceless contribution to young men just starting upon the life-long study of the law" and "a bibliographical treasure. . . . My own humble labours in legal bibliography have been greatly aided by this excellent writer. . . ." MARVIN, *supra* note 3, at 391.
41. JOHN WILLIAM WALLACE, *THE REPORTERS, CHRONOLOGICALLY ARRANGED WITH OCCASIONAL REMARKS UPON THEIR RESPECTIVE MERITS* (Philadelphia, Bailey, 1844). According to Hewitt, "[t]his first appeared in modest form in January 1844 in the *American Law Magazine* where it filled seventy-five pages." It was eventually published in four editions, including a second edition by T. & J.W. Johnson in 1845. Luther E. Hewitt, *Remarks on John William Wallace*, 15 *LAW LIBR. J.* 61, 65 (1923).
42. *Character of Law Books and Judges*, 12 *AM. JURIST & L. MAG.* 5 (1834).

Commentaries.⁴³ All of these citations tend to be included at the end of the evaluative comments and include page references. Interestingly, Marvin also frequently cites to Justice Story's opinions. Many of these citations are found in the text of the evaluative comments, without pinpoint citations, and indicate the close access Marvin had to Story as student and colleague.⁴⁴ In his entries on foreign works, Marvin most often cites Dupin's edition of Camus, Hoffman's *Course of Legal Study*, and several European periodicals, as well as reviews of these works found in American periodicals.

¶15 The technique of including evaluative comments in the bibliography was not new. To some extent both Hoffman and Bridgeman did this in their works. Even closer in format was the 1834 article in the *American Jurist*.⁴⁵ The entries in this earlier bibliography, however, were much more brief and had far fewer citations. For the most part, as well, citations in this 1834 article were to Kent, Story, the *American Jurist*, and various judicial reports. The amount of time and effort that went into these earlier entries was obviously far less than that expended by Marvin on his work. Indeed, we know from Graham's work and from a scrapbook belonging to Marvin now in the Harvard Law Library, that Marvin put a great deal of effort into his bibliography, using not only the Harvard collection, but also libraries in Washington and Philadelphia.⁴⁶

Impact on Interest in Foreign Law

¶16 Far more significant than the form of the entries themselves, however, was the inclusion of a substantial number of foreign books in the bibliography. This was innovative in the highest degree. Hoffman's bibliographical sections in his *Course of Legal Study* included a large number of foreign works but these were often in the form of bare citations. Further, these entries were *not* integrated with the Anglo-American materials. Instead, Hoffman's foreign citations generally were segregated and cited under special sections on foreign law. Thus, a student or practitioner seeking information on a legal topic, such as property, would not find citations to foreign works unless he deliberately searched in those chapters devoted to foreign law.

¶17 The great genius of Marvin's work lay precisely in his integration of foreign legal materials with Anglo-American materials and in treating them all in

43. See, e.g., MARVIN, *supra* note 3, at 3 (citing 1 KENT'S COMMENTARIES 508 in his annotation of the various editions of JOHN COWELL, INSTITUTIONES JURIS ANGLICANI AD METHODUM ET SERIEM INSTITUTIONUM IMPERIALIUM COMPOSITAE ET DIGESTA (1605, 1630, 1651, 1664)).

44. Marvin was Story's student and may well have used his class notes for these entries. Graham had access to Marvin's Harvard Law School notebook for 1842-44, which, according to Graham, was once in the possession of David Ferris. See Graham, *Marvin, supra* note 1, at 199 n.28. I have been unable to find its present location. It does not appear in Karen Beck, *One Step at a Time: The Research Value of Law Student Notebooks*, 91 LAW LIBR. J. 29 (1999), which includes a bibliography identifying the present location of student notebooks.

45. *Character of Law Books and Judges, supra* note 42.

46. Graham, *Marvin, supra* note 1, at 206.

exactly the same way. The signal to the reader here was clear: for purposes of legal authority, foreign materials could be just as useful as Anglo-American materials. By so doing, Marvin provided a bibliographical work that carried forward Story's work in a way that all earlier American legal bibliographies failed to do. Marvin's 1847 *Legal Bibliography* may well be viewed as one of the most important practical tools in Story's attempt to foster the spread of continental legal learning in the United States. Most American lawyers had little knowledge of foreign works other than Pothier, Vattel, or Vinnius.⁴⁷ It would have been an impossible task for them to determine which foreign treatise on a particular subject was best. Marvin's annotated bibliography made this possible. Further, through his inclusion of Justice Story's evaluative comments, including those not easily gleaned from his treatises, Marvin also made the presentation of these authorities in court more attractive. With the publication of the *Legal Bibliography*, lawyers could now introduce an authority by saying: "As X, the noted German jurist states in his treatise, approved by Justice Story."

¶18 Graham rightly saw that Marvin's work was a bibliographical summation of the Boston legal circle that had grown up around Harvard.⁴⁸ But it was, in fact, a good deal more. It was representative of the group of scholars throughout the United States in the antebellum period who saw a practical role for Roman and civil law. It was also a tool for these scholars to use in their teaching and research as well as an evangelizing device to convince other lawyers that these foreign sources were accessible to them. Combined with the increasing number of translations of important foreign legal works in this period,⁴⁹ Marvin's work helped to foster interest in foreign law in the United States.

Impact on Libraries and Legal Publishing

¶19 Marvin's *Legal Bibliography* also played a role in two other movements in the antebellum legal world. First, the use of Roman and civil law was intimately tied to the rise of university-affiliated legal education. One of the most significant benefits such law schools could offer to potential students was their library, filled not only with the standard Anglo-American reports and treatises but also with works on foreign law not easily found in country lawyers' offices or judges' chambers. Marvin's work was, in this respect, an advertisement for such law libraries. Second, it was precisely during this period that the leading American booksellers, such as Little, Brown in Boston, Banks, Gould in Albany, and Johnson in Philadelphia were expanding their catalog offerings with extensive ranges of foreign books and periodicals. Marvin's work not only provided a source for these booksellers' catalogs to cite to, but also encouraged those who used the book to search out copies for purchase.

47. See HOEFLICH, *supra* note 21, at 131–32; M.H. Hoeflich, *Translation and the Reception of Foreign Law in the Antebellum United States*, 50 AM. J. COMP. L. 753, 753–66 (2002).

48. Graham, *Marvin*, *supra* note 1, at 199–201.

49. See generally Hoeflich, *supra* note 47.

Sale and Distribution

¶20 No matter how revolutionary in approach or brilliant in execution, no work can have impact beyond its distribution. A book that does not sell is, in effect, invisible. That we, a century and a half later, recognize the importance of an earlier work permits us to see its value in a fresh light; but, if contemporaries didn't buy it or read it, then we must also note this. It is exceptionally hard to reconstruct the sale and distribution patterns of antebellum law books. One can use bookseller and auction catalogs, catalogs of the holdings of public and private libraries, and citation analysis to gain some idea.

¶21 The application of these various bibliographical techniques to Marvin's *Legal Bibliography* produces mixed results. To begin with, we know that the book was published by T. & J.W. Johnson in Philadelphia, one of the largest antebellum law book publishers and dealers.⁵⁰ Johnson was an innovator, publishing such enterprises as the *Law Library*, a series of reprinted English texts.⁵¹ It is a bit surprising that Marvin chose Johnson, located in Philadelphia, as publisher, but apparently an earlier attempt to have the book published by Boston's Little, Brown was a failure.⁵² This, in itself, sounds a note of caution as to the sales potential of the book.

¶22 In fact, Marvin's work was not only offered for sale by Johnson, it was also sold by Little, Brown in Boston, John S. Voorhies in New York City, and Banks, Gould in New York and Albany.⁵³ However, the book was listed for sale by these booksellers for only a relatively short period. Within ten years of publication it was no longer listed, unlike Hoffman's work. Most likely, the annual volume of new legal books appearing each year made a bibliography like Marvin's appear obsolete within a short time span.⁵⁴

¶23 While Marvin's book was offered for sale by the major Eastern booksellers soon after publication, it is unclear how many copies were, in fact, sold. The volume was owned by some libraries, such as Harvard's and the library of the United States Attorney General.⁵⁵ On the other hand, it is not found listed in many other library catalogs in which one might have expected to find it. It is not listed, for instance, in Caleb Cushing's catalog.⁵⁶ One may speculate that many lawyers,

50. ERWIN C. SURRENCY, *A HISTORY OF AMERICAN LAW PUBLISHING* 220–21 (1990).

51. It is interesting to note that volumes reprinted in the *Law Library* series were specifically designated by an annotation in italic type in the *Legal Bibliography*.

52. Graham, *Marvin*, *supra* note 1, at 206.

53. LITTLE, BROWN & CO., *A GENERAL CATALOGUE OF LAW BOOKS* 82 (1856); BANKS, GOULD & CO., *A GENERAL CATALOGUE OF MODERN LAW BOOKS* 73 (1852) (with incorrect publication date of 1849); JOHN S. VOORHIES, *A GENERAL CATALOGUE OF THE BEST EDITIONS OF ENGLISH AND AMERICAN LAW BOOKS* 67 (1849).

54. The annual output of new law books in the mid-antebellum period was unprecedented, much to the unhappiness of the bar. *See generally* K.J.A. Mittermaier, *Ueber den Zustand der Juristischen Literatur in Nordamerika*, 17 *KRITISCHE ZEITSCHRIFT FUER RECHTSWISSENSCHAFT UND GESETZGEBUNG DER AUSLANDER* 312 (1845); *Review*, 1 *BOSTON MONTHLY MAG.* 185 (1825).

55. *LIBRARY OF THE ATTORNEY GENERAL'S OFFICE* 68 (Washington, D.C., Gov't Printing Office 1863).

56. *CATALOGUE OF THE PRIVATE LIBRARY OF THE LATE HON. CALEB CUSHING* (Boston, 1879).

even those who were part of the Boston circle, and many law libraries chose not to spend the \$5.50, which Marvin's volume cost, on a bibliography but instead spent the money on works of more mundane legal utility. Given the volume and cost of law books produced each year, this is not altogether surprising.⁵⁷

Conclusion

¶24 In summing up Marvin's achievement as a legal bibliographer, one must conclude that it was quite substantial, both because of his work in putting together the Harvard Law Library catalogue of 1846 and, especially, because of his brilliant 1847 *Legal Bibliography*. From the perspective of understanding antebellum legal history, his importance as the bibliographical representative of Story's Harvard and, particularly, as a scholarly contributor to the introduction of Roman and contemporary European legal ideas into the antebellum American legal world is also great. Where Marvin was not so successful, however, was in the communication of his research to the public. Like so many great works of bibliographical scholarship, the *Legal Bibliography* did not achieve the success in sales during its author's lifetime that it deserved.

¶25 A final hint that Marvin's bibliographical work did not bring him the fame and fortune it merited comes from his career. After the publication of the *Legal Bibliography*, Marvin gave up scholarship. Like so many before and after him, he set sail for California to find a new life.⁵⁸ This he did as a leading educator who played an important role in shaping the California school system.⁵⁹ Nonetheless, in so doing, the chance for a second edition of the *Legal Bibliography* was lost.

57. See sources cited *supra* note 54. It is interesting that Marvin's volume also was *not* included in John Livingston's list of recommended law books published in 1856. LIVINGSTON, *supra* note 22.

58. Graham, *Marvin*, *supra* note 1, at 198; Graham, *Gold Rush*, *supra* note 1, at 248–49.

59. Graham, *Marvin*, *supra* note 1, at 198; Graham, *Gold Rush*, *supra* note 1, at 250–51.