MEADOR LECTURE SERIES 2007–2008: EMPIRE

AN EMPIRE OF LAW: CHANCELLOR KENT AND THE REVOLUTION IN BOOKS IN THE EARLY REPUBLIC

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INTRODUCTION

Drawing on James Kent's law library, this Essay illuminates one aspect of the postcolonial British influence on early American legal culture: a revolution in books in the Atlantic world that coincided with the American Revolution. This book revolution was a condition precedent for the way that leading jurists like Chancellor Kent of New York conceived of law and also shaped the media through which they communicated law. The book revolution had many causes and resulted in an explosion of English print that spread across the Atlantic through the copyright-free haven of Dublin. This transatlantic network of copyright arbitrageurs—they should not be called "pirates" because they did not violate British law—made it possible for James Kent and other young lawyers with no personal connec-

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tions to Great Britain to fill their libraries with the latest English law books at discount prices. As Kent struggled to make sense of these books, he developed an unusually print-oriented vision of the ideal legal order. He then translated what he learned—the substance as well as the vision—into his own reports and his four-volume *Commentaries on American Law* (1826–1830), which were available everywhere in the Union throughout the nineteenth century. In sum, this revolution facilitated the development of a transjurisdictional conception of law that Federalist jurists like Kent used to promote a new kind of empire: an empire of law in which law was conceived as a set of legal principles that should operate everywhere in the Union.

Working in a constitutional system with a weak central government—a federal legislature with limited powers and no national private law court—jurists like Kent, but especially Kent, sought to generate a conception of legal authority that was purposive but not instrumental, consensual but not exactly natural. He believed and behaved as though this form of authority was more than the exercise of individual will. Instead, law was a collection of principles that captured the best legal reasoning in a form that could be applied to local circumstances. That is why he spent so much time parsing, and ranking, the law reports from other jurisdictions.

The database that reveals the book revolution is Kent's law library, which 160 years after his death remains largely intact but has never been systematically examined or completely catalogued. Built between 1785 and 1847, with most purchases coming while Kent was on the bench (1798–1823), his library was transatlantic in its provenance and contents. In the early years, it looked like an English barrister's library. By the end it was a comparatively huge collection of Anglophone legal literature, nicely leavened with continental learning. This library includes over 500 law titles in approximately 1,700 volumes that Kent collected during his life, most of which are judicial reports.[1] It also contains notes that he inscribed

1. Approximately 500 titles, comprising 1,500 volumes, from Kent's law library are in the Special Collections Department of the Diamond Law Library, Columbia University. A smaller collection (approximately 200 volumes) of reports is held at the Rare Books Room, New York State Library, Albany. Some of Kent's other books are held in the Rare Book and Manuscript Library, Columbia University. The Columbia trove derived principally from the bequest of Kent's great-grandson, William Kent; the Albany collection derived from the collection of Simon Sterne (1839–1901), a lawyer involved in late nineteenth-century municipal reform, who purchased them from the Kent estate in approximately 1873. It is apparent that some of Kent's volumes were sold by his family and then repurchased for these collections. The collections do not include every law book that Kent purchased, let alone read, during his lifetime. For example, Kent shared books with other lawyers and borrowed books from a private law library—the New York Law Institute—which he helped found in 1828. The survival of a large proportion of his law books is nonetheless important and unusual. I have used only notes in books signed by Kent and in his distinct handwriting, or notes in books not signed by Kent but in his handwriting. In fact, Kent signed most of his books, and there are very few instances of notes in unsigned books. In addition, although many of these books had other owners—especially after Kent's death—there are almost no notes in any other handwriting. I have not seen similar notations in the law books of other contemporary lawyers. Frederick C. Hicks, the Columbia Law Librarian at the time

in about two-thirds of his books. These notes include his signature and the price paid or notice of gift, which is valuable information about how much this large library cost at a time when books were expensive commodities, and there is little other aggregate data on the provenance and cost of imported books in the early Republic. But there are also many notes in the flyleaves about the judges, reporters, and cases within the books. These notes make it possible to analyze Kent's interaction with his library: how he collected his books, the way he read and interpreted them, and how he used the books to write his own opinions and *Commentaries*.[2] His collecting habits and interactive reading, memorialized in his library, show that he considered law to be something other than pure will or pure science. It was a matter of craft: a transatlantic enterprise to which American jurists could make valuable improvements.

The focus in this Essay is on the books themselves, especially the volumes that Kent collected between the end of the American Revolution and the first years of the nineteenth century. When his collection is catalogued on a table it becomes clear that the political revolution did not result in a simple Americanization of legal culture.[3] On the measure of book consumption, at least, American law became more Anglicized than ever.[4]

The argument that the influence of English legal culture on American law continued, and actually increased, after the Revolution cuts against the conventional wisdom. For more than three decades, the legal history of

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that Kent's great-grandson bequeathed Kent's books to Columbia, quoted bits of Kent's notes in FREDERICK C. HICKS, MEN AND BOOKS FAMOUS IN THE LAW 148–55 (1921). Donald M. Roper reprinted sixty-nine necrologies that Kent sketched in his copies of the New York reports in Albany. *See* Donald M. Roper, *The Elite of the New York Bar as Seen from the Bench: James Kent's Necrologies*, 56 N.Y. HIST. SOC'Y Q. 199 (1972). Angela Fernandez has recently analyzed Kent's notes in his copy of the New York property case *Pierson v. Post*. *See* Angela Fernandez, *The Pushy Pedagogy of* Pierson v. Post *and the Fading Federalism of James Kent* (2007 Stanford–Yale Junior Faculty Forum Working Paper), *available at* http://ssrn.com/abstract=984163. Kent's only book-length biographer did not examine Kent's book notes. *See generally* JOHN THEODORE HORTON, JAMES KENT: A STUDY IN CONSERVATISM, 1763–1847 (1939).

2. This Essay is derived from the first three chapters of a book-length study of Kent's interaction with his library. Daniel J. Hulsebosch, Crafting Authority: Chancellor Kent and the Development of American Law (August 2008) (unpublished manuscript, on file with author).

3. Book catalogues are more useful for historians when organized as aggregate data in tables or charts. For suggestive examples, see FRANCO MORETTI, ATLAS OF THE EUROPEAN NOVEL 1800–1900 (1998); FRANCO MORETTI, GRAPHS, MAPS, TREES: ABSTRACT MODELS FOR A LITERARY HISTORY (2005); RICHARD B. SHER, THE ENLIGHTENMENT & THE BOOK: SCOTTISH AUTHORS & THEIR PUBLISHERS IN EIGHTEENTH-CENTURY BRITAIN, IRELAND & AMERICA 620–89 tbl.2 (2006); Mary Sarah Bilder, *The Lost Lawyers: Early American Legal Literates and Transatlantic Legal Culture*, 11 YALE J.L. & HUMAN. 47, 112–17 (1999). On the importance of the history of the book for legal history, see M.H. Hoeflich, *Legal History and the History of the Book: Variations on a Theme*, 46 U. KAN. L. REV. 415 (1998); Richard J. Ross, *The Commoning of the Common Law: The Renaissance Debate Over Printing English Law, 1520–1640*, 146 U. PA. L. REV. 323 (1998). For a catalogue of Kent's library, see *infra* appendix.

4. For late colonial Anglicization, see generally John M. Murrin, Anglicizing an American Colony: The Transformation of Provincial Massachusetts (1966) (unpublished Ph.D. dissertation, Yale University) (on file with David Library of the American Revolution).

the early Republic, like early American history generally, has centered around concepts of "transformation" and "Americanization." The two are not identical, and variations on each exist, but most accounts of early American legal culture are premised on the notion that the Revolution initiated a dramatic change in the role of law in American society. They include some of the most insightful works on early American history, from those by Roscoe Pound in the early twentieth century to Morton Horwitz and William Nelson during the past generation.[5] Although these historians disagree about many details and even the meaning of legal independence, all these transformationist works try to locate a date at which American lawyers broke free of British influence and declared independence. Historians of other areas of culture, such as literature and religion, follow similar postcolonial narratives.[6] Cultural liberation is treated not just as the delayed promise of the American Revolution. It was necessary to perfect the Revolution.

James Kent and his *Commentaries* play a leading role in the narrative of Americanization. Kent was arguably the most influential state judge in the nineteenth century, a time when most law was state law. Even in his own day Kent was labeled "the American Blackstone," symbolizing the argument that he indigenized the legal form of the commentaries and helped nationalize a body of law.[7] In a brief but shrewd assessment that highlights Kent's pragmatism, Lawrence Friedman argues that "Kent intended his huge work to be the national Blackstone."[8] John H. Langbein, in an insightful article putting the *Commentaries* in comparative perspective, argues that the work fit into a long tradition of European institutes in which jurists differentiated their national law from a body of transnational jurisprudence.[9] In continental Europe, the source to be distinguished was Roman Law. In the United States, it was the English common law. Regardless, the object was nation-building. "Above all," Langbein argues, "what Kent's *Commentaries* shares with the European institutes of national law is the auspicious enterprise of giving character and definition to the law of a newly self-conscious nation."[10] Publishing a national institute of

5. *See* MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780–1860 (1977); WILLIAM E. NELSON, AMERICANIZATION OF THE COMMON LAW (1975); ROSCOE POUND, THE FORMATIVE ERA OF AMERICAN LAW (1938).

6. For cultural histories, see JOSEPH J. ELLIS, AFTER THE REVOLUTION: PROFILES OF EARLY AMERICAN CULTURE (1979); JILL LEPORE, A IS FOR AMERICAN (2002); LARZER ZIFF, LITERARY DEMOCRACY: THE DECLARATION OF CULTURAL INDEPENDENCE IN AMERICA (1981). For religious history, see NATHAN O. HATCH, THE DEMOCRATIZATION OF AMERICAN CHRISTIANITY (1989).

7. *See* JOHN SEELY HART, A MANUAL OF AMERICAN LITERATURE 126 (1969) ("Chancellor Kent has been called, in allusion to his Commentaries, 'the American Blackstone.'").

8. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 332 (2d ed. 1985).

9. *See* John H. Langbein, *Chancellor Kent and the History of Legal Literature*, 93 COLUM. L. REV. 547, 591–93 (1993).

10. *Id.* at 593.

law was one of the steps a polity took to be recognized as a fully civilized nation.[11]

At times the line blurs between the nationalist subject matter and the nationalist premise of this scholarship. Historical claims to nation-building or even exceptionalism are confirmed as just that, and the histories participate in the process they examine.[12] As a result, many of these historical narratives of transformation give short shrift to the pre-revolutionary and imperial legacies that affected American law well into the nineteenth century.[13]

Kent not only felt the weight of those British legacies, he reveled in them. His interaction with his personal library demonstrates the enduring influence of the British Empire—its lawyers, judges, books, booksellers, and pluralistic legal regime—on early U.S. legal culture. Some of this influence was direct, as when American lawyers read English law books. Some was indirect, as when these books were excerpted, cited, or paraphrased in American books, and then consumed by American readers. Kent spent much of his life curating legal principles from his library and transmitting it to the readers of his own books. His appetite for foreign legal sources, combined with his gift for synthesis and adaptation, probably discouraged the next generation of readers from returning to his sources. Consequently, many readers of his books did not find it necessary to buy the books that he owned; almost immediately, his personal library became an unvisited archive. It is a great irony that one of the early Republic's most cosmopolitan jurists contributed not just to the indigenization of its law-book culture but also to the nativism of its legal mind.

Part I of this Essay offers a snapshot of the interstate and international network of bookmaking and reading toward the end of the early Republic as seen through the lens of the title page of the first volume of the Alabama Supreme Court reports, which was published in New York and that the state reporter hoped Kent would cite in future editions of his *Commentaries*.

Part II provides a brief biography of James Kent and outlines the imperial dimensions of his legal writing. The British Empire provided him with the raw material of his craft, and he used those books to forge a na-

11. *See* Klaus Luig, *The Institutes of National Law in the Seventeenth and Eighteenth Centuries*, 17 JURID. REV. 193, 193–226 (1972).

12. *See, e.g.*, PERRY MILLER, THE LIFE OF THE MIND IN AMERICA: FROM THE REVOLUTION TO THE CIVIL WAR (1965); JAMIL S. ZAINALDIN, LAW IN ANTEBELLUM SOCIETY (1980).

13. For the recovery of the imperial origins of American constitutionalism, see generally DANIEL J. HULSEBOSCH, CONSTITUTING EMPIRE: NEW YORK AND THE TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664–1830 (2005); MARY SARAH BILDER, THE TRANSATLANTIC CONSTITUTION: COLONIAL LEGAL CULTURE AND THE EMPIRE (2004); JACK P. GREENE, PERIPHERIES AND CENTER: CONSTITUTIONAL DEVELOPMENT IN THE EXTENDED POLITIES OF THE BRITISH EMPIRE AND THE UNITED STATES, 1607–1788 (1986).

tional law that operated across state lines and in dialogue with the legal systems of other nations.

Part III of this Essay analyzes the Atlantic revolution in books. This revolution resulted from the clarification of copyright doctrine within England, the exception of Ireland from most British Parliamentary legislation, including copyright law, and the American Revolution, which all contributed to a large—and legal—market for Irish reprints of new English books.

Part IV briefly examines how Kent made sense of the flow of English law books from Ireland in the late eighteenth century and suggests how it affected his vision of the American legal order that he helped create.

I. A SNAPSHOT FROM ALABAMA, 1830: JAMES KENT, HENRY MINOR, AND THE MAKING OF AMERICAN LAW BOOKS

When James Kent became a New York Supreme Court judge in 1798, the people in the territory that now forms the State of Alabama knew and cared little about things like the English common law, the trade in English books, and the ambitions of northeastern lawyers and judges. Alabama was part of New France until 1763, when the Treaty of Paris transferred it to the British. After the American Revolution, the area was divided between Spain and the United States, which called its part the Southwest Territory. Following the Louisiana Purchase, the pieces were put together, and, after a convention drafted a constitution, the state was established in 1819. Suddenly everything changed. The next year, the Alabama Supreme Court began hearing cases,[14] and in 1829 the first reports of Alabama's supreme court were published.[15]

The title page of Alabama's first judicial reports reveals a lot about early American legal history. First, the reporter was Henry Minor, who like many in the new southwestern states, was born in Virginia. He moved to the Alabama territory, became the territory's attorney general, and participated in the constitutional convention of 1819 that established the state. In 1826, he was appointed the supreme court's clerk and its first official reporter.[16]

By appointing an official state reporter, Alabama joined an increasing number of states on the cutting edge of American legal culture.[17] Until the

14. *See* George Earl Smith & Bilee Cauley, A History of the Alabama Judicial System 1 (1991), http://www.judicial.state.al.us/documents/judicial_history.pdf.

15. *See* 1 HENRY MINOR, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF ALABAMA, FROM MAY 1820 TO JULY 1826 (New York, Collins & Hannay 1829). The title page from James Kent's copy of this first reporter is reprinted *infra* figure 1.

16. Brock Jones, Judge Henry Minor, http://magnolia.cyriv.com/GreeneAlGenWeb/Surnames/Minor_Family.htm (last visited Dec. 17, 2008).

17. On the rise of official reporters, see generally ERWIN C. SURRENCY, A HISTORY OF AMERICAN LAW PUBLISHING 37–72 (1990); Denis P. Duffey, Jr., *Genre and Authority: The Rise of*

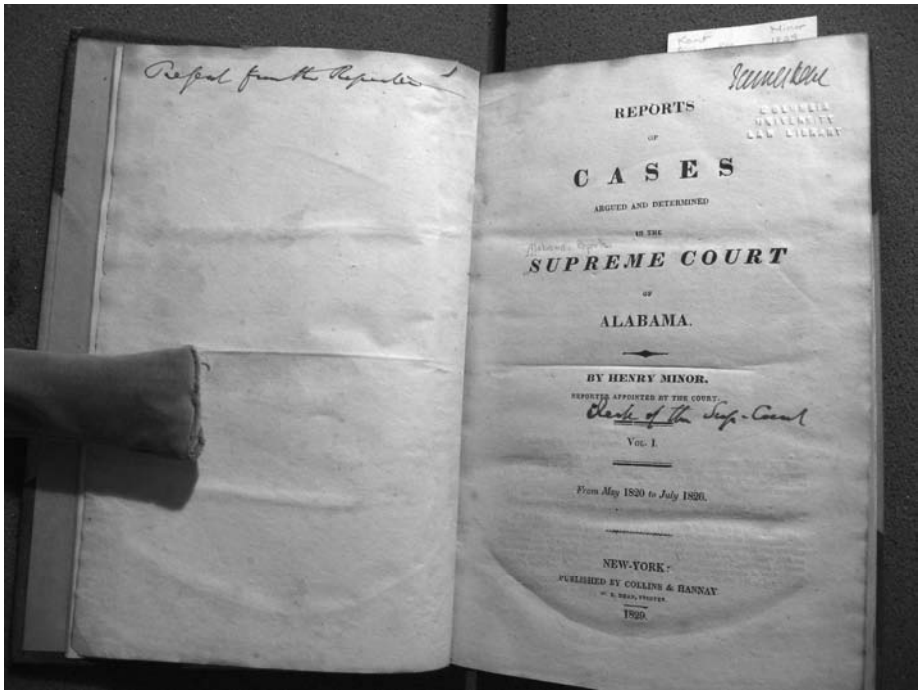


Figure 1:
Title page from Kent's copy of Henry Minor's *Reports*.

Case Reporting in the Early United States, 74 CHI.-KENT L. REV. 263 (1998); Craig Joyce, *The Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendancy*, 83 MICH. L. REV. 1291 (1985). On reporters in general, see J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 178–86 (4th ed. 2002); W.S. HOLDSWORTH, SOURCES AND LITERATURE OF ENGLISH LAW (1925); JOHN WILLIAM WALLACE, THE REPORTERS ARRANGED AND CHARACTERIZED WITH INCIDENTAL REMARKS (Boston, Soule & Bugbee 1882).

early nineteenth century, reporters were typically practitioners who took notes on court cases and wanted to make a bit of extra money by publishing them. Most trial lawyers kept notes. Before reports were published regularly, that was the best way for lawyers to learn the law and, afterward, to keep track of what the courts in one's own jurisdiction were doing. For three centuries there had been published reports of some decisions in the Westminster courts in England, but they were usually of older decisions, posthumously published, to remind the profession of past decisions. Up to the late eighteenth century, a lawyer needed manuscript notes of contemporary cases to know how his jurisdiction resolved disputes.[18] The designation of an official reporter changed this practice. Minor, whose interest in education had made him a natural candidate as one of the first trustees of the University of Alabama, served as reporter for several years. Evidently he was politically connected because he was also a land surveyor and a presidential elector for Alabama in the electoral college.[19] It was a good life, but his career was not the stellar success that he had anticipated. He did not, for example, return to the bench and end his life as a judge, which was the aspiration of many English and American reporters up until the middle of the nineteenth century.[20] There were two reasons for this change in expectations: First, judges were increasingly elected rather than appointed after ascending through what, at the time, were considered the usual meritocratic channels. Second, judges began to write out their opinions, which made the reporter's job mechanical and bureaucratic.

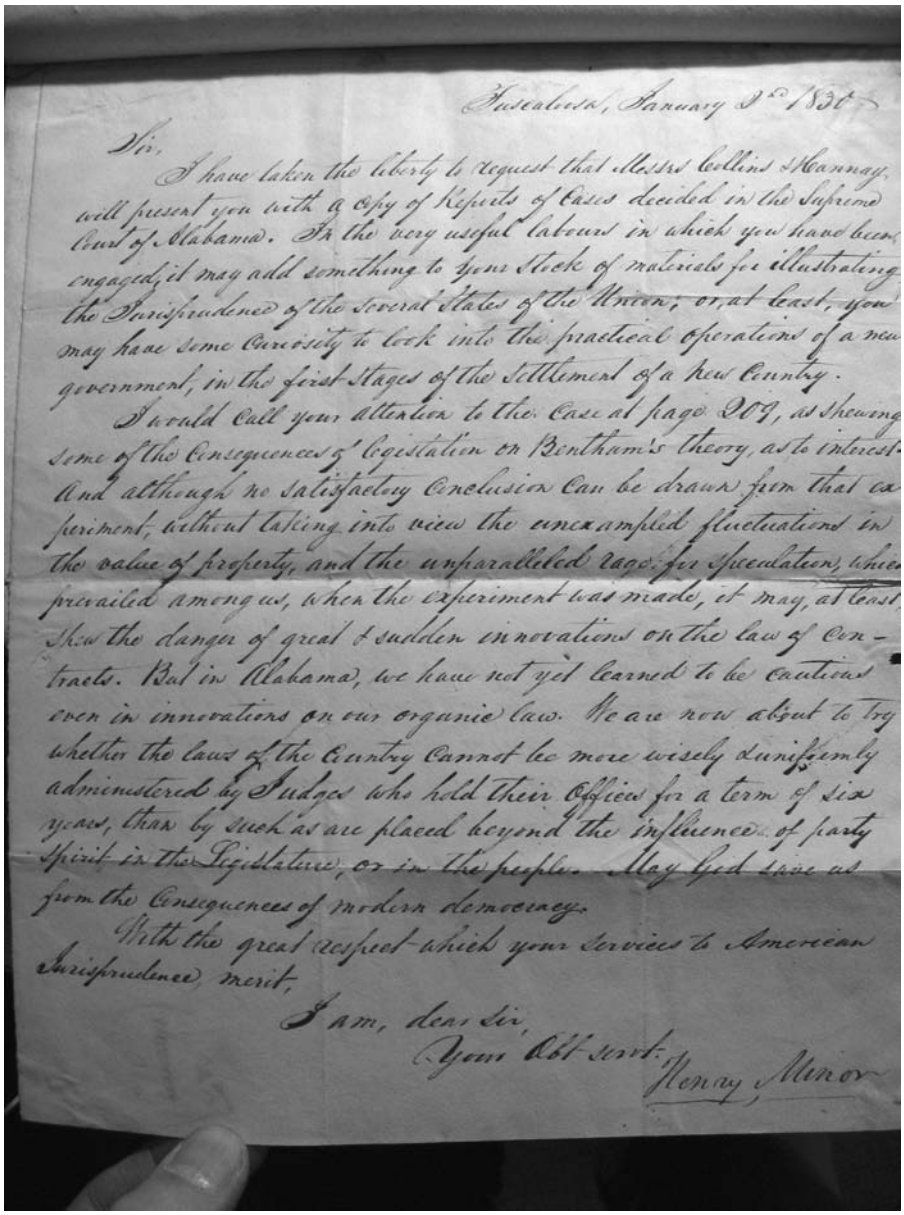
Minor published the first volume of his reports in 1829, but they covered the period 1820–1826.[21] Like most Anglo-American reports before the appointment of official reporters, his first volume was not published contemporaneously with the decisions in it. His next volume did, however, cover recent cases. The imprint on Minor's title page is also revealing. Although these were Alabama reports, they were printed in New York City. The publishers were named Collins and Hannay, and the printer was W.E. Dean. Two of these men were Irish immigrants or had Irish ancestry. Printing was still a rare skill in the United States. Many printers in the nineteenth century were either immigrants from Ireland or

18. *See* WALLACE, *supra* note 17, at 9–12; James Oldham, *Underrreported and Underrated: The Court of Common Pleas in the Eighteenth Century*, *in* LAW AS CULTURE AND CULTURE AS LAW: ESSAYS IN HONOR OF JOHN PHILLIP REID 119, 119–30 (Hendrik Hartog & William E. Nelson eds., 2000).

19. *See* Jones, *supra* note 16.

20. *See* Letter from Henry Minor to James Kent (Jan. 2, 1830) (on file with the James Kent Library, Special Collections Department, Diamond Law Library, Columbia University, pasted to the flyleaf of 1 MINOR, *supra* note 15). Minor's aspiration is implicit in his letter to Kent. The letter, pasted to the flyleaf of Kent's copy of Minor's reports, is reprinted *infra* figure 2.

21. *See* 1 MINOR, *supra* note 15, at iii.



Tuscaloosa, January 8th 1830

Sir,

I have taken the liberty to request that Messrs Collins & Hannay will present you with a copy of Reports of Cases decided in the Supreme Court of Alabama. In the very useful labours in which you have been engaged, it may add something to your Stock of materials for illustrating the Jurisprudence of the several States of the Union, or, at least, you may have some Curiosity to look into the practical operations of a new government, in the first Stages of the Settlement of a new Country.

I would call your attention to the Case at page 209, as shewing some of the Consequences of Legislation on Bentham's theory, as to interest. And although no Satisfactory Conclusion can be drawn from that experiment, without taking into view the unexampled fluctuations in the value of property, and the unparalleled rage for Speculation, which prevailed among us, when the experiment was made, it may, at least, shew the danger of great & sudden innovations on the law of Contracts. But in Alabama, we have not yet learned to be cautious even in innovations on our organic laws. We are now about to try whether the laws of the Country cannot be more wisely & uniformly administered by Judges who hold their Offices for a term of six years, than by such as are placed beyond the influence of party Spirit in the Legislature, or in the people. May God save us from the Consequences of modern democracy.

With the great respect which your Services to American Jurisprudence merit,

I am, dear Sir,

Your Obt Servt.

Henry Minor

Figure 2:
Minor's letter to Kent, pasted to the flyleaf of Kent's copy of Minor's *Reports*.

the children of Irish immigrants.[22] In the colonies, there were a few printers of newspapers, pamphlets, and broadsheets, but no large publisher of books. Only one colonial printer was a notable success: Philadelphia's Benjamin Franklin.[23] There simply was not enough capital, skill, machinery, or demand for books. A generation later, however, there were several publishers in Philadelphia, New York City, Boston, and Baltimore. Some of these bookmakers were, or relied on, skilled immigrants from the British Empire.[24] Publishers in those cities competed for jobs outside the northeast, where there were few publishers and printers. Henry Minor was not alone in sending his Alabama reports north for publication. Some of the earliest reports in Virginia and South Carolina were also published in northern cities.[25] When these states did develop local publishers, they trumpeted the fact as a sign of progress.

The third bit of information on the title page is unique to this copy of Minor's *Reports*—the signature of James Kent. In 1830, Kent had been retired from the New York courts for seven years and was completing his *Commentaries*.[26] The *Commentaries* went through fourteen editions in the nineteenth century; it was also abridged and translated.[27] It was the nation's best-selling law book for decades, and probably one of the best-selling books of any kind. Before there were many law schools, Kent's book was most students' introduction to the law. It remained on their desks for reference throughout their careers. When law schools did emerge, the book was required reading at many of them, and its first volume was also assigned in some colleges.[28] Lawyers often disagreed about

22. This was true even before the American and Irish Revolutions, and the numbers increased after the Act of Union of 1800. *See generally* RICHARD CARGILL COLE, IRISH BOOKSELLERS AND ENGLISH WRITERS, 1740–1800 (1986).

23. *Cf.* James N. Green, *The Book Trade in the Middle Colonies in the Age of Franklin*, *in* A HISTORY OF THE BOOK IN AMERICA: THE COLONIAL BOOK IN THE ATLANTIC WORLD 199, 223 (Hugh Amory & David D. Hall eds., 2000).

24. On the rise of American publishers, see generally ROSALIND REMER, PRINTERS AND MEN OF CAPITAL: PHILADELPHIA BOOK PUBLISHERS IN THE NEW REPUBLIC (1996). Skilled immigrants contributed to the development of other industries too. DORON S. BEN-ATAR, TRADE SECRETS: INTELLECTUAL PIRACY AND THE ORIGINS OF AMERICAN INDUSTRIAL POWER 78–103 (2004) (describing the role of British and European immigrants in early American manufacturing); MICHAEL DUREY, TRANSATLANTIC RADICALS AND THE EARLY AMERICAN REPUBLIC (1997).

25. *E.g.*, ELIHU HALL BAY, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPERIOR COURTS OF LAW IN THE STATE OF SOUTH CAROLINA, SINCE THE REVOLUTION (New York, Riley 1809); 1 WILLIAM MUNFORD, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF APPEALS OF VIRGINIA (New York, Riley 1813); 2 WILLIAM MUNFORD, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF APPEALS OF VIRGINIA (New York, Riley 1814); 3 WILLIAM MUNFORD, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF APPEALS OF VIRGINIA (New York, Riley 1817); 4 WILLIAM MUNFORD, REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF APPEALS OF VIRGINIA (Philadelphia, Webster 1817).

26. *See* HORTON, *supra* note 1, at 261.

27. *See id.* at 301; Langbein, *supra* note 9, at 565.

28. *See* EDWARD POTTS CHEYNEY, HISTORY OF THE UNIVERSITY OF PENNSYLVANIA, 1740–1940, at 235 (1940) (Professor George Sharswood lectured off of Kent and Blackstone at the University of

its contents. But if every legal dispute did not end with a citation to Kent's *Commentaries*, an astonishing number began with one.

Kent's *Commentaries* were filled mostly with citations to English and New York law, but that did not prevent the work from being distributed across the nation. Kent intended the book to represent the best of American law. This was, he thought, best captured in his own reports, which in turn relied heavily on his translation of English law for American conditions. He explained that his goal was "to discuss the law . . . as known and received at Boston, New York, Philadelphia, Baltimore, Charleston &c. and as proved by the judicial decisions in those respective states."[29] He focused on the Atlantic trading ports and confessed that he did

> not much care what the law is in Vermont or Delaware or Rhode Island, or many other states. Cannot we assume American common law to be what is declared in the federal courts and in the courts of the states I have mentioned and in some others, without troubling ourselves with every local peculiarity? I shall *assume* what I have to say, to be the law of every state, where an exception is not shown, because I mean to deal in *general Principles* and those positive regulations, legislative and judicial, which constitute the basis of all American jurisprudence.[30]

Kent's law was designed to be the foundation of national decisional law.

The *Commentaries* were immediately available in Alabama. That is why Henry Minor sent a copy of his reports to Kent as soon as it was printed. Kent usually noted the price he paid for his books on their title pages. After publishing the *Commentaries*, he received many reports as gifts. Here, Kent noted that Minor's book was a "Present from the Reporter."[31]

Minor sent the volume with a letter of introduction, dated January 2nd, 1830.[32] By that time, three volumes of the *Commentaries* were in print and the last was in production. Minor referred to the work and hoped that his own reports would help Kent illustrate American law. "In the very

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Pennsylvania in the 1850s); HORTON, *supra* note 1, at 302–03; 1 MARK DEWOLFE HOWE, JUSTICE OLIVER WENDELL HOLMES 189 (1957) (noting that Kent's work was part of the first-year Harvard Law School curriculum); James Kent, notes on flyleaf of 1 JAMES KENT, COMMENTARIES ON AMERICAN LAW (1826) (unpublished notes, on file with the James Kent Library, Special Collections Department, Diamond Law Library, Columbia University) (noting that the first volume of the first edition was assigned at "West Point & elsewhere," which required a second printing in 1829).

29. MAXWELL BLOOMFIELD, AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776–1876, at 361 n.55 (1976) (quoting a letter from James Kent to Peter DuPonceau (Dec. 29, 1826)).

30. *Id.*

31. James Kent, notes on flyleaf of 1 MINOR, *supra* note 15 (unpublished notes, on file with James Kent Library, Special Collections Department, Diamond Law Library, Columbia University) (reprinted *supra* figure 1).

32. Letter from Henry Minor to James Kent, *supra* note 20 (reprinted *supra* figure 2).

useful labours in which you have been engaged," he wrote from Tuscaloosa, "it may add something to your stock of materials for illustrating the Jurisprudence of the several States of the Union; or, at least, you may have some curiosity to look into the practical operation of a new government, in the first stages of the settlement of a new Country."[33] In other words, he wanted Kent to cite his book in the last volume, or perhaps Minor expected that Kent would revise the work in the future. He was right. Kent published six editions before he died in 1847—six editions in twenty years. Minor's premise is clear: Alabama cases were a piece of Kent's larger project of illustrating all of American law. His jurisdiction was not insulated from other court systems. It did follow the right general principles. Many of the cases that Minor reported cited authorities from outside the state and even outside the United States. The early Alabama cases are filled with references to cases from New York, Virginia, and England.[34]

The second paragraph asked Kent to look at a case interpreting Alabama's usury law, which allowed lenders to charge whatever interest the market would bear, as recommended by the English law reformer Jeremy Bentham.[35] Both Kent and Minor found this departure from Anglo-American tradition controversial. Alabama was not, however, alone. The proximate cause for its experiment, Minor told Kent, was that neighboring states were doing the same, which set off a race for capital.[36] Although this subject is worth exploring, for now it is enough to note that Minor was familiar with Kent's position on usury, and apparently lawyers all over the country had read Bentham.[37] A half-century after the Revolution, American legal culture was not only interstate; it also remained transatlantic.

Finally, in the last few lines of his letter, Minor related that under the recently amended state constitution, Alabama had abolished good-behavior tenure for its judges.[38] They were instead to be elected for six-year terms, an innovation that Minor believed threatened the "wise[] & uniform[]" administration of the law. Minor knew that Kent, a tireless defender of judicial independence, would lament this as well, so he ended his letter

33. *Id.*

34. *See* 1 MINOR, *supra* note 15, *passim*.

35. Letter from Henry Minor to James Kent, *supra* note 20 (reprinted *supra* figure 2).

36. *See* FRIEDMAN, *supra* note 8, at 443–45.

37. Kent disapproved of usury in his *Commentaries*. *See* 3 JAMES KENT, COMMENTARIES ON AMERICAN LAW 80 (Leonard W. Levy ed., Da Capo Press 1971) (1828) [hereinafter KENT, COMMENTARIES]. He later elaborated his reasons and criticized Bentham in JAMES KENT, OPINION OF CHANCELLOR KENT ON THE USURY LAWS (Albany, Munsell 1837). For Bentham's position, see JEREMY BENTHAM, DEFENCE OF USURY: SHOWING THE IMPOLICY OF THE PRESENT LEGAL RESTRAINTS ON THE TERMS OF PECUNIARY BARGAINS (Philadelphia, Manly & Orr 1841).

38. *See* ALA. CONST. of 1819, art. V, § 13 (1830).

with the anxious salutation: "May God save us from the Consequences of modern democracy."[39]

That was a political statement. Yet Minor and Kent thought that law could and should be separate from politics. Therefore, they abhorred the election of judges and the decline of good-behavior tenure. Professional appointment and good-behavior tenure were baseline principles of constitutional politics that set the boundaries of ordinary politics.[40] Separating the courts from party politics was a political position, but it was political, they thought, only to the degree that it allowed the courts to engage in nonpartisan legal decision making. Whether or not modern lawyers believe that is possible, *they* did believe it. They shared a conception of the rule of law that transcended state lines and derived from a common past. At least, this new Alabamian was claiming a share in what they thought was a common past. In just a few short years after the territory was incorporated into the Union, some Alabama lawyers had begun to imagine themselves as participating in a transatlantic epic of the rule of law.

II. JAMES KENT AND THE EMPIRE OF LAW

James Kent was a New York judge and legal writer who was born in 1763, the same year that the Treaty of Paris delivered part of present-day Alabama to the British Empire. He died in 1847 as the United States expanded to the Pacific. This was soon after the annexation of Texas and the Mexican–American War that made California a federal territory, and just before a treaty with Britain that added the Oregon Territory to the United States. In his lifetime, Kent witnessed the division of one empire and the continental expansion of another.

All lawyers must read a fair number of books, but Kent was unusually bookish. He was not a great public speaker, and he confessed that he "hated" the practice of law—so much of which required oral improvisation.[41] But he loved to read and he liked to write. Print was his favorite medium. At age thirty-one, he already fantasized about escaping urban practice and enjoying a "rural retirement" of reading and gentleman farming.[42] Instead, he collected, read, wrote, and worked as a judge and coun-

39. Letter from Henry Minor to James Kent, *supra* note 20 (reprinted *supra* figure 2).

40. For the distinction between ordinary and constitutional politics, see 1 BRUCE ACKERMAN, WE THE PEOPLE *passim* (1991).

41. The office of Master in Chancery, Kent recalled years later, "promised me a more steady supply of pecuniary aid (of which I stood in need), and it enabled me in a degree to relinquish the practise of an attorney, which I always extremely hated. My diffidence, or perhaps pride, was a principle cause of this disgust since I found that I had not the requisite talents for a popular and shining advocate at the Bar." James Kent, Memoranda of My Life (unpublished manuscript, on file in James Kent Papers, National Archives, microfilm on file at NYU School of Law).

42. Letter from James Kent to Moss Kent (Dec. 11, 1794) (on file in the James Kent Papers, National Archives, microfilm on file at NYU School of Law).

sel until the very end. (He finished editing the sixth edition of his *Commentaries* one month before he died.[43]) Along the way, he turned his own library into the source of much American law. Lawyers who could never afford or obtain nearly two thousand law books were still able to access much of that learning through Kent's translation in his opinions and his *Commentaries*.

First appointed by Governor John Jay as a Master in Chancery in 1796, Kent climbed the state judicial hierarchy, serving as an associate judge on the state supreme court, then as its chief justice, and finally as the state's chancellor until reaching the mandatory retirement age of sixty in 1823.[44] Kent was bookish from the beginning of his legal clerkship. There were no law schools in 1781 when he started to study law. Instead, a law clerk signed an apprenticeship contract with a practitioner. Typically, a mentor would employ the clerk as a copyist and provide some measure of education, the quality of which varied widely. Kent had a good mentor in New York Attorney General Egbert Benson. Benson was a learned lawyer with a sizable library, and he allowed Kent to spend hours each day reading through it. Kent recalled those days fondly. In 1828, Thomas Washington, a venerable member of the Tennessee Bar, wrote to Kent, who had just published two volumes of the *Commentaries* and was a kind of hero in the law for offering a coherent initiation, and asked how he had learned the law.[45] Kent responded that he just read a lot of it, especially case reports, and that he never stopped reading.[46] In contrast, other clerks used their free time in other ways and made fun of Kent for being a bookworm. "My fellow students, who were more gay and gallant, thought me very odd," Kent reminisced almost fifty years later, "but out of five of them, four died in middle life, drunkards. I was free from all dissipations; I had never danced, played cards, or sported with a gun, or drunk anything but water."[47]

The last part was probably true. Kent's memory deceived him, though, when he recalled enjoying all that reading. At the time, he complained that English legal materials were fusty, disorganized, and incoherent. "Law, I must frankly confess," he wrote to a friend as he began his second year in Benson's office, "is a field which is uninteresting and boundless. Notwithstanding, it leads forward to the first stations in the

43. *See* HORTON, *supra* note 1, at 325–26.

44. Good biographical sources on Kent include HORTON, *supra* note 1; George Goldberg, *James Kent, The American Blackstone: The Early Years*, *in* LAW-MAKING AND LAW-MAKERS IN BRITISH HISTORY 157–94 (Alan Harding ed., 1980); Frederick C. Hicks, *Kent, James*, *in* 5 DICTIONARY OF AMERICAN BIOGRAPHY 344 (Dumas Malone ed., 1961); *see also* David W. Raack, *"To Preserve the Best Fruits": The Legal Thought of Chancellor James Kent*, 33 AM. J. LEGAL HIST. 320 (1989).

45. *See* WILLIAM KENT, MEMOIRS AND LETTERS OF JAMES KENT 116 (Da Capo Press 1970) (1898) (noting that Kent's response to Washington's letter drew heavily from Kent's "Memoranda").

46. *See id.* at 19 (quoting Kent's "Memoranda" explaining his devotion to reading the law).

47. *Id.*

State. The study is so encumbered with voluminous rubbish and the baggage of folios that it requires uncommon assiduity and patience to manage so unwieldy a work."[48] A folio was a large book that could be read only when propped up on a stand or table. It was a popular format for law books up until the end of the seventeenth century. Sir Edward Coke's early seventeenth-century writings, for example, were mostly available in folio editions.[49] It was just a student's gripe, but it reveals that Benson's library contained a lot of books published decades, perhaps even a century, earlier. Revolutionary-era law clerks had of course to rely on books published before the Revolution, as British imports of all sorts were restricted during the war.[50] Therefore, Kent did not spend his clerkship reading the latest English reports. Indeed, English booksellers were just beginning to publish contemporaneous "term reports," so called because they were printed soon after the conclusion of the annual Westminster judicial term.[51] But Kent and his peers who learned law during the war relied on books published before the Declaration of Independence—often long before.[52]

Although Kent is an important figure in his own right, his interaction with his library offers a unique lens through which to view the development of American legal culture and changing notions of the rule of law. For Kent and like-minded jurists, the United States was an empire, but a special kind that operated under a republican government and the rule of law, which facilitated and justified the nation's expansion. Regardless of present perspectives on empires and American expansion, there is value in recovering a historical notion of law in which expansion was seen as more than a scramble for land and the dispossession of the Native Americans, more than a series of exploitations of wage and slave labor, and more than the extension of political power ocean to ocean and beyond. American

48. Letter from James Kent to Simeon Baldwin (Oct. 10, 1782) (on file with James Kent Papers, National Archives, microfilm on file at NYU School of Law).

49. Kent's personal copies of Coke's reports of King's Bench decisions are in folio and are on file in the James Kent Library in the Special Collections Department, Columbia Law School Library.

50. Kent's clerkship notes have not survived, but the procedure manual that Alexander Hamilton outlined while studying for the New York bar exam at about the same time has survived. Hamilton's citations in this manual (as opposed to those added by the editor) suggest that he had access to many English reports from the late seventeenth and early eighteenth centuries, but only a few from recent decades. He did, however, have a copy of the Philadelphia reprint of William Blackstone's *Commentaries on the Laws of England*. *See Practical Proceedings in the Supreme Court of the State of New York*, *in* 1 THE LAW PRACTICE OF ALEXANDER HAMILTON: DOCUMENTS AND COMMENTARY 55–135 (Julius Goebel Jr. ed., 1964).

51. Durnford and East's reports of the decisions of King's Bench between 1785 and 1800 were the first known as "Term Reports." WALLACE, *supra* note 17, at 529 n.2. James Burrow, publishing reports of King's Bench from 1756 to 1771, with the first volume appearing in 1766, may have been the first reporter who tried to publish his reports nearly contemporaneously with the decisions. *Id.* at 446–52; *see also* BAKER, *supra* note 17, at 184.

52. For changes in English law book publishing that were concurrent with the American Revolution, see *infra* Part III.

expansion was all those things. Kent saw them all and lamented some of them. He worried about extending federal territory too fast, fearing that "colonizing" settlers would not reach statehood for generations and that, meanwhile, these "colonists would be in a state of the most complete subordination."[53] He shuddered at the way both state and federal governments removed the native tribes from their land.[54] Although he was not an abolitionist, he believed that slavery was "evil."[55] He nonetheless believed that the expansion of American jurisdiction would also spread the rule of law. In fact, he believed that more lawful means of expansion would help justify that expansion.

Kent's republican-inflected conception of the American empire was widely shared. From Thomas Jefferson's "[e]mpire of liberty"[56] and Alexander Hamilton's "empire, in many respects, the most interesting in the world,"[57] to John Adams's "empire of laws, and not of men,"[58] many in the founding generation referred to the new Union as a special empire that might avoid the corruption of the Roman and British Empires. There were two dimensions to this empire of law.[59] One dimension was the imperial experience within American legal culture, which included the legal legacies and continuing influence of the British Empire. Political independence did not bring full independence of legal culture. Kent's library and writings demonstrate that American law continued to be derived in large part from English law. This was not mere subservience, but rather due to habit, continuing trade networks, and a quest for national legitimacy. The

53. *See* 1 KENT, COMMENTARIES, *supra* note 37, at 385–86 (expressing concerns about rapid expansion).

54. *See* James Kent, notes on the flyleaf of ALEXIS DE TOQUEVILLE, DEMOCRACY IN AMERICA (3d ed. New York, Adlard 1839) (unpublished notes, on file with the James Kent Library, Rare Book and Manuscript Library, Columbia University) ("His Essay on the *American Indians* & of the rapacity, violence & perfidy with which they have been treated by the Independent States & by the central Government, & of their miseries & fast approaching Destruction, is deeply interesting. It is bold, authentic, just to hold up the Anglo-American Whites to Infamy. p. 329–54."). Kent also wrote an opinion of counsel in favor of federal court jurisdiction in *Cherokee Nation v. Georgia*. *See* RICHARD PETERS, THE CASE OF THE CHEROKEE NATION AGAINST THE STATE OF GEORGIA app. I at 225–43 (Philadelphia, 1831).

55. *See* 3 KENT, COMMENTARIES, *supra* note 37, at 201–09 (expressing moderate opposition to slavery).

56. Letter from Thomas Jefferson to George Rogers Clark (Dec. 25, 1780), *in* 4 THE PAPERS OF THOMAS JEFFERSON 233, 237 (Julian P. Boyd ed., 1951).

57. THE FEDERALIST NO. 1, at 3 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). The preface to the collected essays published in March 1788 declared that they concerned "the very existence of this new Empire." *This Day is Published*, N.Y. INDEP. J., Mar. 22, 1788, *reprinted in* 16 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 469 (John P. Kaminski & Gaspare J. Saladino eds., 1986).

58. Norbert Kilian, *New Wine in Old Skins? American Definitions of Empire and the Emergence of a New Concept*, *in* NEW WINE IN OLD SKINS: A COMPARATIVE VIEW OF SOCIO-POLITICAL STRUCTURES AND VALUES AFFECTING THE AMERICAN REVOLUTION 142 (Erich Angermann, Marie-Luise Frings & Hermann Wellenreuther eds., 1976) (quoting John Adams).

59. *See* HULSEBOSCH, *supra* note 13, at 213–20 (analyzing the two dimensions of empire in the ratification debates on the federal Constitution).

last factor was crucial. Federalists like Kent wished to be taken seriously on the other side of the Atlantic, and this required that they master much English and European law. Indeed, the ability to navigate foreign bodies of law was one justification for their political independence.[60]

Second, the law's imperial function refers to the role that law played as a language allowing people to communicate across political boundaries, whether interstate or international. Legal reasoning and discourse transcended politics in the basic sense that they allowed people to communicate, or argue, or agree to do business, across borders. Law had played this role in the British Empire, which was divided into a variety of kingdoms, colonies, and dominions. It continued to play this role. In the early Republic, the United States was primarily a commercial union, and such a union, many lawyers thought, should be based on a common understanding of commercial law.[61] Law was required to grease the wheels of trade and facilitate the transit of goods and people.

Commercial law is private law. The United States has never had a Westminster: a centralized, hierarchical national court system. Instead, the federal legal system refined its colonial structure: two (or more) layers with institutions and doctrines that mediated between local and central jurisdictions. This decentralized legal federalism was more than a legacy of empire. It also provided a way to calibrate the optimal degree of centralization while retaining benefits of local control over most facets of everyday life. Much of Kent's work was about finding the right balance.

At the same time, American courts had to deal with a variety of cases that, before the Revolution, were rarely found in the old colonies' courts. Most commercial transactions, for example, were not litigated in the provincial common law courts. Studies of colonial courts demonstrate that most local lawyers and judges were not practicing sophisticated commercial law.[62] Instead, commercial disputes were resolved in local arbitral forums, in the imperial vice-admiralty courts or, when the parties had contacts in England, in the Westminster courts. After the Revolution, the state courts began to process many new commercial claims. Similarly, colonial

60. *See* David Golove & Daniel Hulsebosch, On an Equal Footing: Constitution-Making and the Law of Nations in the Early Republic (March 2008) (unpublished manuscript, on file with author).

61. *See* TONY FREYER, HARMONY & DISSONANCE: THE *SWIFT* & *ERIE* CASES IN AMERICAN FEDERALISM (1981); MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780–1860, at 211–52 (1977).

62. *See, e.g.*, BRUCE H. MANN, NEIGHBORS AND STRANGERS: LAW AND COMMUNITY IN EARLY CONNECTICUT 6 (1987) ("It was the questions of debt, contract, and property that underlay everyday social interactions. These were the issues that constituted the vast majority of court business [in colonial America] . . . ."); *cf.* HERBERT ALAN JOHNSON, THE LAW MERCHANT AND NEGOTIABLE INSTRUMENTS IN COLONIAL NEW YORK 1664 TO 1730 (1963) (describing the vibrant commercial law practice in colonial New York); Eben Moglen, Settling the Law: Legal Development in New York, 1664–1776 (1993) (unpublished Ph.D. dissertation, Yale University) (on file with author). Historians writing "communities studies" often derive sociological conclusions from local court records without taking into account the imperial institutions encompassing those local courts.

lawyers had limited exposure to admiralty law proper. Again, there were vice-admiralty courts in the colonies, but they were not highly regarded. During the decades before the Revolution, these jury-less courts had generated much suspicion. They were also supervised by the English Court of High Admiralty and Privy Council in London.[63] After the Revolution, many federal court judges and lawyers had to learn admiralty law on the fly. In sum, the Revolution required the internalization within the United States of legal tasks previously handled elsewhere in the British Empire. This internalization encouraged greater reliance on metropolitan sources—another paradox at the heart of postcolonial American law.

These imperial legacies can be seen in a revolution that prepared the way for James Kent's contribution to American legal literature: the Atlantic revolution in books. This revolution, as much as the American Revolution, was a necessary condition for Kent's vision of the rule of law.

III. THE ATLANTIC REVOLUTION IN BOOKS

The late eighteenth century witnessed an explosion of print in the Atlantic world, an explosion that began as an import boom and continued after 1801 with a jump-start of American publishing. Three factors contributed to this increase. First, there were simply more new law books being published in the Anglophone world in the late eighteenth century than at any time before. This was due to a change in copyright law. Second, political independence meant that the United States became a large, growing market for English-language publications at a time when there was no such thing as international copyright.

Finally, the suppliers best able to meet this demand were in Dublin. Kent's law library evidences the crucial role that Irish booksellers played in developing American legal literature. A majority of the law books Kent purchased between 1785—the date of his first purchase—and 1800 came from Dublin. The percentage fell off precipitately after 1801, but the influence of Irish booksellers lasted much longer.

Regulatory change within the British Empire was the central reason why books in the United States became more affordable after the peace treaty. The London booksellers' monopoly on all publication of English books, including law books, collapsed in the last quarter of the eighteenth century. The key event was *Donaldson v. Beckett*, the 1774 House of Lords decision that rejected the doctrine of perpetual common law copy-

63. *See generally* DAVID R. OWEN & MICHAEL C. TOLLEY, COURTS OF ADMIRALTY IN COLONIAL AMERICA: THE MARYLAND EXPERIENCE, 1634–1776, at 25–43 (1995); JOSEPH HENRY SMITH, APPEALS TO THE PRIVY COUNCIL FROM THE AMERICAN PLANTATIONS 177–93 (1950) (describing vice-admiralty appeals in Navigation Acts cases); CARL UBBELOHDE, THE VICE-ADMIRALTY COURTS AND THE AMERICAN REVOLUTION (1960).

right.[64] For decades the London bookselling community had argued and behaved as though they enjoyed common law copyright protection beyond that provided under the Statute of Anne of 1709. That statute replaced the old publishing regime of the royal monopoly of the Worshipful Company of Stationers of London, originally established by Queen Mary and King Philip to suppress the Reformation. Queen Elizabeth re-chartered the Company and gave it a new mandate: to approve or reject any publication in the realm, with a special eye toward banning counter-reformation tracts. The Stationers' monopoly eroded throughout the seventeenth century, but it was not until 1695 that it fell apart. Fifteen years of printing freedom ensued. Then the Stationers formed a new coalition of booksellers and reestablished some control over publishing.[65]

By ending the licensing and public regulation regime under the old Stationers' Company, the Statute of Anne shifted focus to the private right to publish—or right to copy—printed works. In an important innovation, the act spoke of the right as belonging to the author, though all realized that, in practice, authors sold that right to booksellers who did the work of transmuting manuscript into print and shepherding the work into the market.[66]

The new act protected copyright in new books for fourteen years, renewable for another term of fourteen years if the author was still alive at the expiration of the first term. It also protected books published before 1709 for a single term of twenty-one years. The booksellers interpreted this statute as merely creating a right in the author and adding new remedies, as well as helping to create a new image of books as the product of authorial genius, which helped justify their expanding print trade. But it did not contradict their notion of perpetual protection of a text owner's right to control its publication.[67] The Statute of Anne confirmed the fall of one monopoly. The bookselling community turned it into a charter for a new guild.

For most of the eighteenth century, therefore, there was no added incentive for booksellers to seek out and fund new law books, whether treatises or compilations of reports. Older books remained on hand to be sold

64. Donaldson v. Beckett, (1774) 1 Eng. Rep. 837 (H.L.) (appeal taken from Scot.) (U.K.). Later that year, the booksellers failed in their effort to push through a statute that would have reversed *Donaldson* and recognized what they thought they had long enjoyed. RONAN DEAZLEY, ON THE ORIGIN OF THE RIGHT TO COPY: CHARTING THE MOVEMENT OF COPYRIGHT LAW IN EIGHTEENTH-CENTURY BRITAIN (1695–1775) 213–15 (2004).

65. *See* DEAZLEY, *supra* note 64, at 1–50.

66. *See* LISA MARUCA, THE WORK OF PRINT: AUTHORSHIP AND THE ENGLISH TEXT TRADES, 1660–1760, at 60–90 (2007); JAMES RAVEN, THE BUSINESS OF BOOKS: BOOKSELLERS AND THE ENGLISH BOOK TRADE 1450–1850, at 128–29 (2007).

67. *See* DEAZLEY, *supra* note 64, at 46; MARUCA, *supra* note 66, at 62–63; RAVEN, *supra* note 66, at 128; *see also* LAWRENCE LESSIG, FREE CULTURE: THE NATURE AND FUTURE OF CREATIVITY 85–94 (2004).

or reprinted; customary norms prevented booksellers from raiding each other's backlists.[68] This is probably one reason why the informative but disorganized writings of Sir Edward Coke continued to play a central role in legal education a century and a half after his death. Besides encapsulating, and promoting, the Whig common law tradition, Coke's books were available and had little competition. Old and familiar books were cheap. Booksellers incurred the marginal cost of producing the next batch, but after fourteen, twenty-one, or at most twenty-eight years, owed no payment to the author. Instead, after paying the author for the copyright or after the author's remedies expired, *the booksellers* owned the copyright. Copyright then, even more than today, was a monopoly benefiting publishers more than authors. Eighteenth-century English print was a world the London booksellers made.

Consequently, authors of new legal works struggled to get them published. The ambitious analytical works of Matthew Hale—such as the *Analysis of the Law*, which outlined the common law using civil law categories and influenced William Blackstone, and his *History of the Common Law*—were not published during his own life. Innovators like Charles Viner and Blackstone, whose works proved to be enormously successful, found it difficult to obtain an established legal publisher. Instead, they undertook to have Oxford University publish their works. Viner's multivolume *A General Abridgment of Law and Equity* (23 volumes, 1742–1753) required considerable investment of his own time and capital. Blackstone became one of the overseers of the Oxford University Press just before he was appointed as the first Vinerian Chair of English Law at Oxford and delivered his university lectures, a combination that helped him publish his *Commentaries on the Law of England* (4 volumes, 1765–1769) without the assistance of the London booksellers.[69] Before *Donaldson*, these evasions of the London monopoly were exceptional. In the wake of *Donaldson*, the legal and, more important, customary control by the London bookselling community over the publication of all books was imperiled. Their ability to wring new money out of old books declined. This set off a search for new books that could be covered by copyright.[70]

The main beneficiaries were Dublin booksellers. The rise and fall of the Dublin bookselling community in the late eighteenth century is a key factor explaining the increase of English law books in North America. Once the London market opened up, new publications poured forth. But

68. *See generally* Tariq A. Baloch, *Law Booksellers and Printers as Agents of Unchange*, 66 CAMBRIDGE L.J. 389 (2007) (discussing the causes of the prolonged lifespan of obsolete English law books in the early eighteenth century).

69. *See id.* at 389, 398–400, 405–08 (detailing the problems facing Viner and Blackstone). On Blackstone's association with the Press, see WILFRID PREST, WILLIAM BLACKSTONE: LAW AND LETTERS IN THE EIGHTEENTH CENTURY 132–37, 145–50, 217 (2008).

70. *Id.* at 409–10.

that itself did not lower the price of those books. Dublin booksellers got hold of the new books and quickly reprinted them at a discount. British copyright law did not yet extend to Ireland, though it forbade Dublin printers from exporting their books to Britain.[71] Irish printers could sell their books in Ireland or outside the British Empire, but the Navigation Acts prevented the direct export of books to the American colonies, at least until 1778.[72] Before the American Revolution, there was only a small market (on the Continent) outside the British Empire for English books. Afterward, there was a large market: the United States.

Dublin printers enjoyed cheaper production costs chiefly because they scaled books down from one format to the next smaller size. For example, they would often reprint a mid-sized quarto book as a smaller octavo book, which cost less to make and to ship. In addition, the raw material and labor costs were marginally cheaper in Ireland. Lower production costs, combined with the absence of formal copyright protection, made English books reprinted in Ireland affordable and popular in America.[73] Thus began a golden age for Dublin booksellers.

Kent's library demonstrates that Irish publishers became the chief source of English law books in the United States between the Revolution and 1800.[74] Over half of the titles that Kent purchased between his oldest surviving signed book (dated 1785) and 1800 were published in Dublin.[75] When older titles—that is, those published before the Revolution—are removed, the percentage rises to three-quarters.[76] In other words, seventy-five percent of new law books that Kent purchased during these fifteen years were published in Dublin. The content of these Irish books, howev-

71. *See* JOHN FEATHER, A HISTORY OF BRITISH PUBLISHING 77–78 (1988) (noting that in 1710 the Dublin bookselling industry was small and no threat to the London community); MARY POLLARD, DUBLIN'S TRADE IN BOOKS, 1550–1800, at 69, 71 (1989) (surmising that the small Dublin community had enough influence in the British Parliament to prevent the extension of the act to Ireland).

72. *See* POLLARD, *supra* note 71, at 67, 135–37.

73. *See* COLE, *supra* note 22, at 148–57; POLLARD, *supra* note 71, at 138; SHER, *supra* note 3, at 443–502.

74. The provenance of one large private law library certainly does not prove that most books of all sorts purchased in the United States in the two decades after the Revolution were manufactured in Ireland. This unusual archive does, however, offer possibly unique insight into the provenance of books in the early Republic. Probate records, advertisements, and the scant business records of booksellers do not offer this same insight because their book lists almost never include imprint information: the bookmaker's name and the place and date of publication.

75. Thirty-two of sixty-three books that Kent purchased (and on which he inscribed the purchase date) before 1801 were published in Dublin. Some of these books contained multiple volumes. *See infra* Table of Kent's Law Library, 1785–1815, appendix. These are dated purchases. Kent's collection contains another eight Dublin books (of thirteen English-language law books in total) published between the Revolution and 1801 but that do not contain Kent's handwritten purchase date. Together, the number rises to forty Irish books out of seventy-six total purchases. By contrast, between 1801 and 1815, only eight of Kent's eighty-six dated purchases were books purchased in Ireland.

76. Thirty-two of forty-six books. *See infra* appendix.

er, was English. All except one were reprints of contemporary English judicial reports.[77]

The window was slammed shut by the Irish Act of Union, passed in 1800 and effective in 1801. After the Irish Republican Revolution in 1798, the British Parliament opened its doors to direct representation for Ireland. (Direct representation was a central grievance in many rebellions against the British Empire.) The Act of Union, however, also brought Ireland beneath British statutory law, including its copyright law.[78] The advantage that many Dublin booksellers had enjoyed over the previous generation in the export of books to the United States evaporated. The boom collapsed.

Although the Dublin discount market was short-lived, it had profound effects on American legal culture. These Irish books educated the first generation of U.S. lawyers. The collapse then ignited domestic production. Even this reaction had an Irish accent. Instead of sending books, the empire sent bookmakers: many Irish booksellers and printers emigrated after 1801 and set up shop in American seaports.

A bookseller named Patrick Byrne, for example, published many of Kent's books that came from Dublin in the 1790s.[79] After *Donaldson*, Byrne began reprinting English books in Dublin on a heroic scale: 216 of the 292 titles he published between 1779 and 1801 were English reprints. After 1790, he began to specialize in law books. A Catholic republican, he left Dublin in 1801 due to some combination of politics, religion, and professional interest.[80] By 1802, Byrne's name appeared on the imprint of some of Kent's books that were published in Philadelphia.[81] At first, immigrant publishers like Byrne concentrated on the familiar practice of reprinting English books.[82] Soon, however, they sought out and published domestic content.[83]

The legal pluralism of the British Empire that gave rise to Kent's jurisdictional situation—a state judge in a federal system, who relied heavily on English law—also supplied him with low-cost books in his formative years. Empires toss off many by-products. In the case of English legal culture after the American Revolution, the by-products included affordable

77. The exception was a 1762 reprint of John Davies's seventeenth-century *Irish Reports*, which Kent purchased in 1794.

78. Prior to 1801, British statutes only extended to Ireland when Parliament "named" Ireland in the statute. *See* SMITH, *supra* note 63, at 469.

79. *See* Table of Kent's Law Library, 1785–1815, appendix.

80. *See* COLE, *supra* note 22, at 184–87.

81. Byrne relocated to Philadelphia in 1800. REMER, *supra* note 24, at 38.

82. *See, e.g.*, FRANCIS VESEY, JR., 3 REPORTS OF CASES ARGUED AND DETERMINED IN THE HIGH COURT OF CHANCERY (Philadelphia, Byrne 1802).

83. Byrne, for example, published some of the earliest reports of the U.S. Supreme Court. *See* ALEXANDER J. DALLAS, REPORTS OF CASES RULED AND ADJUDGED IN THE SEVERAL COURTS OF THE UNITED STATES, AND OF PENNSYLVANIA (Philadelphia, Byrne 1807).

books and then skilled booksellers. Without Irish books and publishers, Kent's library and writings would look quite different.

The paradoxical increase in the circulation of English legal authority after the Revolution had lasting repercussions. Printed reports were suddenly widely available, and they seemed like repositories of learning from distinguished, though foreign, courts. To North American lawyers, the Westminster courts were farther away than ever, and yet never before so familiar.

Both before and after the Revolution, English law books played a different role in North America than they did in England. In England, the reports of the Westminster courts provided authority that could be used in the highest courts of the kingdom. Without delving into the complicated question of the meaning of precedent in the eighteenth century, it is fair to conclude that these books were something close to binding authority.[84] In contrast, English law books never quite had that status in North America because the provincial legal systems were not part of the Westminster system of courts. Many advocates invoked them as something like binding authority, but the decisions were closer to what modern lawyers would call persuasive authority: models of reasoning and doctrinal application, but not governing rules of decision in North American courts. After the Revolution, English cases could not be cited as, literally, governing authority.[85]

Paradoxically, the ambiguous authority of English law books meant that they did not automatically become irrelevant in the new United States. English sources remained useful in much the same way as they had been before the Revolution. Political independence did not require jettisoning English legal authority because the English central courts never had direct jurisdiction over the colonies.[86] Even if it had been possible to cast off English decisional law, as opposed to British statutes, there was no immediate political imperative to do so because it had never been imposed in an

84. On precedent in eighteenth-century England, see MICHAEL LOBBAN, THE COMMON LAW AND ENGLISH JURISPRUDENCE, 1760–1850, at 80–87 (1991).

85. *See* Letter from James Kent to Simeon Baldwin (July 18, 1786), *reprinted in* 1 THE LAW PRACTICE OF ALEXANDER HAMILTON: DOCUMENTS AND COMMENTARY 50 n.50 (Julius Goebel Jr. ed., 1964); *cf.* HORWITZ, *supra* note 5, at 1–30 (arguing that English decisions were treated as binding authority in the colonies).

86. The non-common law Privy Council did have writ of error jurisdiction over the final decisions of the colonies' highest courts that often functioned as an appeal (i.e., reviewing facts as well as law). *See generally* SMITH, *supra* note 63. Kent reported to a historian writing about the colonial period that he had never seen a record of arguments in Privy Council appeals. Letter from James Kent to Mr. Cooper (March 25, 1834) (on file with the Kent Family Papers, Rare Book and Manuscript Library, Columbia University). The question of Westminster jurisdiction over causes arising in the colonies is complicated. They did occasionally exercise jurisdiction over transitory actions where they had personal jurisdiction over the parties. In addition, in the late 1760s Parliament granted King's Bench jurisdiction to hear criminal cases involving imperial agents, which was one of the grievances listed in the Declaration of Independence.

oppressive manner on the American colonists. Indeed, some of the central grievances of the Revolution stemmed from the denial of common law "liberties of Englishmen."[87]

In sum, without Irish books and publishers, Kent's library would look quite different. Books would have been scarcer and more expensive. The U.S. publishing industry would have been slower to expand without skilled immigrant craftsmen. This would have made it harder for Kent to learn and then publish law the way he did. Harder also for Henry Minor to print Alabama's first reports, and harder to tie the states together in a web of printed law.

IV. JUDGE-MADE LAW REPORTING

Kent's extensive reading notes cannot be fully analyzed here. It is possible, however, to suggest how he read his books and what he derived from them.[88] The book boom allowed Kent to fill his library with recent English reports, but it also created curatorial and epistemological problems. In trying to solve those problems, he helped guide U.S. legal culture toward a print-based conception of authority. Briefly, he developed ways to prioritize his books, to gauge their relative authority, to figure out how each new book related to those he had purchased in the past, and to determine the best way for him, as a new judge, to present his own opinions.

The other revolution—along with the book revolution—that prepared the conditions for Kent's influence was the revolution in the American judiciary that came within, or on the heels of, the new constitutions of the revolutionary period. In several states and in the federal government, these new constitutions strengthened the relative power of courts in the new republic—relative to colonial courts, and relative to the other political branches. Some constitutions did so by design; others did so as the legislators and judges construed and interpreted them. The process was never uncontroversial.[89]

Two elements of this new, controversial constitutionalism were the increased independence of judges and the greater role of judges in policing constitutional limitations. First, the implicit model for many state courts and the federal judiciary was Westminster. Many—though not all—in the

87. For a legalist interpretation of the Revolution, see GREENE, *supra* note 13, at 19–42; Barbara A. Black, *The Constitution of Empire: The Case for the Colonists*, 124 U. PA. L. REV. 1157 (1976) (embracing constitutional interpretations but focusing on the issue of parliamentary sovereignty). *See generally* HULSEBOSCH, *supra* note 13; JOHN PHILLIP REID, CONSTITUTIONAL HISTORY OF THE AMERICAN REVOLUTION: THE AUTHORITY TO TAX (1987).

88. For a fuller analysis of Kent's notes, see Hulsebosch, *supra* note 2.

89. Good discussions of the transformation of the judiciary under the American constitutions abound. *See, e.g.*, GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787, at 291–305, 453–63 (1969); Jack N. Rakove, *The Origins of Judicial Review: A Plea for New Contexts*, 49 STAN. L. REV. 1031 (1997).

founding generation, and especially Federalists, assumed that even state judges were like central English judges: they should enjoy substantial independence from the other branches, secure tenure, and should ascend to the top through some system based on merit.[90]

Second, the founding generation sought new ways to institutionalize limited constitutions. They tried to formalize the customary constitutionalism that led to colonial resistance against British regulation. There were limits to what governments could do and a variety of ways for the people to enforce those limits: through politics, protests, resistance, and ultimately revolution. The general notion was that constitutions would help institutionalize these forms of popular participation in monitoring government behavior. Judges could play a role, too.[91]

This newly empowered role for judges built on, and in turn accelerated, the notion that the rule of law was not the property of any one state. Instead, it floated above them, and all states were held to it. Most Americans probably believed that latter idea, but many disagreed about the power of judges and their role in enforcing this rule of law.

Kent worked hard to make judges key players in the articulation and policing of this court-centric notion of the rule of law. Institutional design was not static, not limited to the constitution-making period, and not just about court structures and procedures. It also had to do with the genres of communication that courts used.[92] Kent was a central player in the reconceptualization of these genres, and of the role of the judge. Evidence of what he was trying to accomplish can be found in his early reading notes.

Kent's reading notes cover a variety of topics. Most notes were on the legal genre that dominated his library and life: the case report. These notes explored the form of the reports, including the medium of the judicial opinion (oral or written), the relative space devoted to the judges' opinions as opposed to attorneys' arguments, the value of reporters' notes, and the kinds of cases that should be reported. As a result, about the time that Kent joined New York's Supreme Court in 1798, he was developing the belief that judicial opinions should be carefully written, read in that form upon judgment, and, in appropriate cases, delivered to a reporter for publication.

It might be difficult for modern lawyers to imagine, but Anglo-American judges generally did not write opinions before the nineteenth century. Even when some judges began writing them, the product re-

90. For struggles in one state over the design of its court system, see JOHN PHILLIP REID, CONTROLLING THE LAW: LEGAL POLITICS IN EARLY NATIONAL NEW HAMPSHIRE (2004); JOHN PHILLIP REID, LEGISLATING THE COURTS: JUDICIAL DEPENDENCE IN EARLY NATIONAL NEW HAMPSHIRE (2009).

91. HULSEBOSCH, *supra* note 13, at 207–58; LARRY D. KRAMER, THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW (2004).

92. *See generally* HULSEBOSCH, *supra* note 13, at 207–58.

mained a script for oral performance rather than a draft for publication. The practice of transmitting written opinions to a reporter did not develop until reporters were appointed by the court or the legislature. Only then did most judges start to view at least some of their opinions as drafts for publication. Kent was at the center of this change. A pioneer of sorts, he developed his notions about the literary form and didactic purpose of judicial reports while reading books in his library. Notes cobbled together from dozens of volumes reveal that Kent's plan of action was all there in his flyleaves of his books.

Here are just a few examples. In a collection of English decisions from the 1790s, Kent was impressed by the "*anxiety* of the English Judges to give their opinions with preparation & care."[93] He also praised "a very long, elaborate & *eloquent* Decision of the Lord Chancellor . . . the Decree is . . . Evidence of the *great Pains* the Chancellor took to form a correct opinion, & to understand truly the Authorities."[94] Kent was developing criteria for evaluating the good opinion: it was long, elaborate, and painstaking, but also eloquent and respectful of authorities.

In another volume that Kent purchased in 1797, he noted that "[i]t is the custom of English Judges to deliver their opinions frequently *in writing*."[95] At some later point—it is impossible to say when because the notes are undated, though written with different pens—he noted that other volumes he had recently read also contained opinions that seemed to have been drafted in writing. Kent scribbled the following note in this book:

> I have but little doubt from the Style & accuracy of them & their manner in which they are reported that the Decisions of Sir R. P. *Arden* . . . were *written*. Lord C. J. *Lee* gave a written opinion. . . . Justice Buller's opinion in [another case] is printed as a written opinion. Sir Wm. *Scott* & Sir Wm. *Edward* drew up their Opinions in writing.[96]

Kent imitated this practice and added to it. When he joined the New York Supreme Court in 1798, he helped get the court to appoint an official reporter—previously it had none—and then he orchestrated the replace-

93. James Kent, notes on flyleaf of FRANCIS VESEY JR., 2 REPORTS OF CASES ARGUED AND DETERMINED IN THE HIGH COURT OF CHANCERY (Dublin, Byrne 1796) (unpublished notes, on file with the James Kent Library, Special Collections Department, Diamond Law Library, Columbia University).

94. *Id.*

95. James Kent, notes on flyleaf of ALEXANDER ANSTRUTHER, REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF EXCHEQUER, FROM EASTER TERM 32 GEORGE III TO TRINITY TERM 33 GEORGE III, BOTH INCLUSIVE (Dublin, Byrne, Rice & Moore 1796) (unpublished notes, on file with the James Kent Library, Special Collections Department, Diamond Law Library, Columbia University).

96. *Id.*

ment of that first reporter, whose work he disliked, with his close friend William S. Johnson. He remained the reporter of the New York courts—supreme court, chancery, and court of errors—for twenty years, until 1823, when Kent left the bench.[97]

Kent began, in his second term on the state supreme court, to write opinions and read them aloud from the bench. "This was," he recalled later, "the commencement of a new plan, and then was laid the first stone in the subsequently erected temple of our jurisprudence."[98] Kent also soon began sending his written opinions directly to Johnson.[99] From the beginning, too, he admitted that he "labored" each opinion "most unmercifully." Johnson's reports bear this out. The typical Kent opinion gives the appearance of being exhaustive. It is also exhausting to read. He sifted through the authorities on both sides of an issue and tried to persuade the reader that one side really was the right side, that the issue had a definitive answer that could be expressed as a legal principle. Now, this is classic common law reasoning. Coming from a judge in a printed opinion in the first years of the nineteenth century, it was new. Kent had helped remake the report to carry a certain kind of opinion.

This habit of writing opinions that summarized both parties' arguments and sorted out the authorities struck Kent as distinctly American. But soon, a few English judges also began delivering elaborate written opinions. Kent marveled at them, calling them "American" in style. Reading through a volume of King's Bench decisions published (and that he purchased) in 1805, Kent praised an opinion of Lord Ellenborough, who was then its chief justice: "Lord Ellenborough gives a long, studied opinion pa. 535, in which he goes into a detail of the authorities, criticizes upon them very much at large. It was evidently *written*, & is very much in the Style of our *American* Decisions."[100]

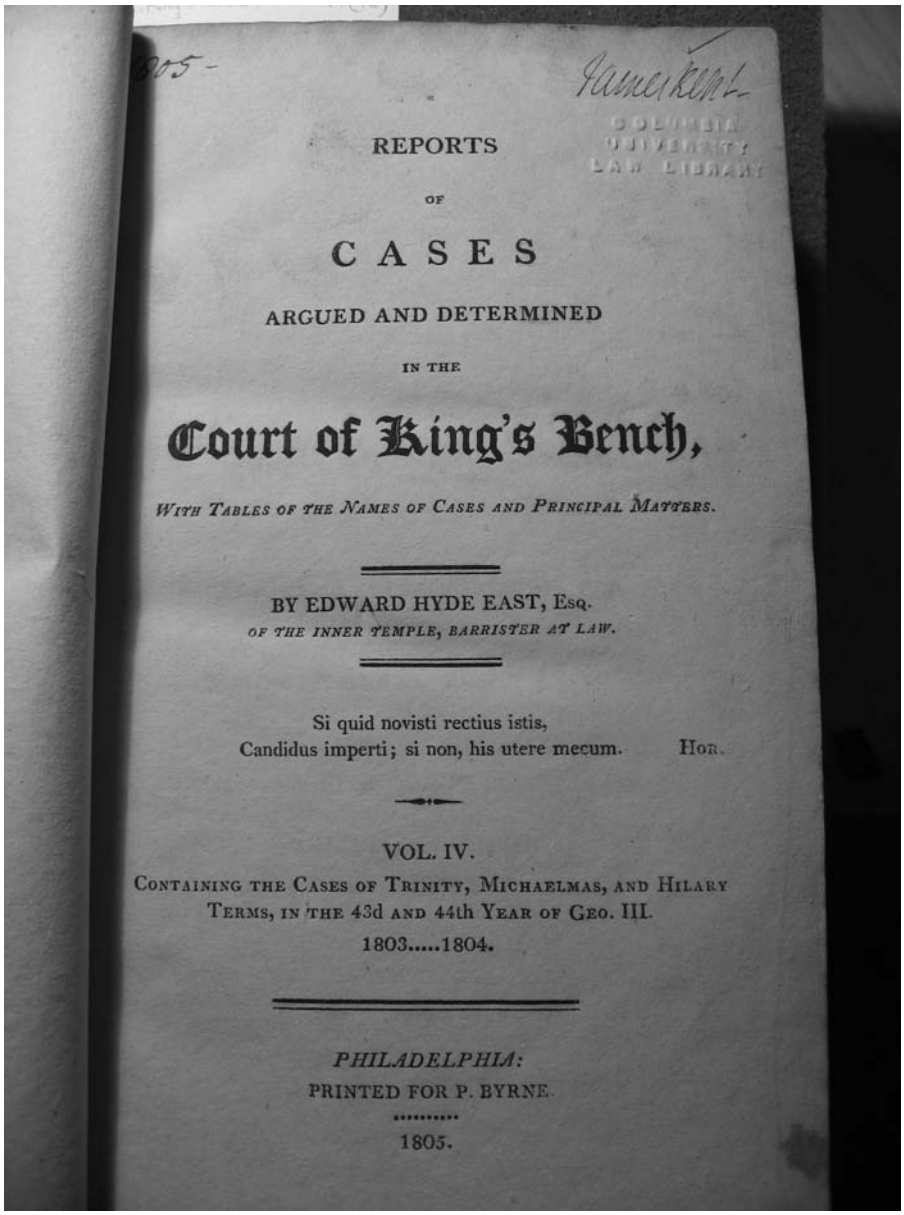
Suddenly, the carefully crafted opinion was an American form to which English decisions were compared. The American value added, which was largely the value that Kent added, was that such opinions delved into "a detail of the authorities" and "criticize[d]" them in general terms. Such opinions not only decided the cases at hand; they also provided general instruction in overarching legal principles. American cases

97. Langbein, *supra* note 9, at 578–79.

98. KENT, *supra* note 45, at 117.

99. Johnson wrote that he reported Kent's chancery opinions "exactly as they were given delivered in writing." William Johnson, *Preface to* 1 REPORTS OF CASES ADJUDGED IN THE COURT OF CHANCERY OF NEW YORK, at vii (William Johnson ed., 1816).

100. James Kent, notes on the flyleaf of EDWARD HYDE EAST, 4 REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF KING'S BENCH (Philadelphia, Byrne 1805) (unpublished notes, on file with the James Kent Library, Special Collections Department, Diamond Law Library, Columbia University). The case was *Payne v. Drewe*, (1804) 4 East 523 (K.B.). The title page to Kent's copy of East's *Reports* is reprinted *infra* figure 3, and the notes from the flyleaf *infra* figure 4.



905-

James Kent

COLUMBIA UNIVERSITY LAW LIBRARY

REPORTS

OF

CASES

ARGUED AND DETERMINED

IN THE

Court of King's Bench,

With Tables of the Names of Cases and Principal Matters.

BY EDWARD HYDE EAST, Esq.
of the Inner Temple, Barrister at Law.

Si quid novisti rectius istis,
Candidus imperti; si non, his utere mecum. Hor.

VOL. IV.

Containing the Cases of Trinity, Michaelmas, and Hilary Terms, in the 43d and 44th Year of Geo. III.

1803.....1804.

PHILADELPHIA:
PRINTED FOR P. BYRNE.

1805.

Figure 3:
Title page from Kent's copy of East's *Reports*.

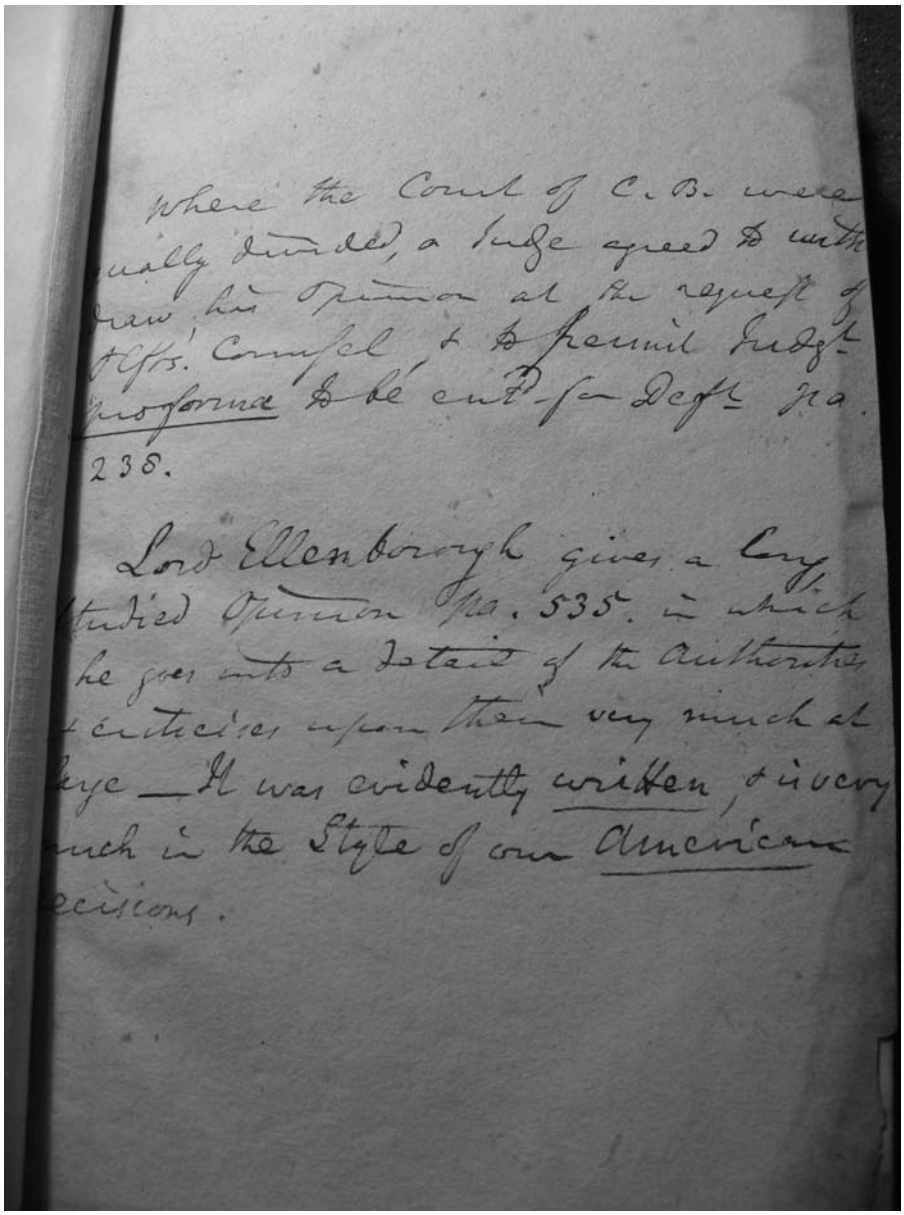


Figure 4:
Notes from the flyleaf of Kent's copy of East's *Reports*.

resolved disputes and taught readers something about the rule of law: it was a web of general principles that did not depend on political enactment.

This idea of a government of laws and not men has always been important in North America, not least because it has offered a way to tie together political units that otherwise might fly apart and go their own ways. Kent's contribution was to wrestle with the best legal sources he could get his hands on, synthesize and translate them for his American readers, and publish them in genres of legal literature—the report and, later, the treatise—that he helped redesign. In those books, the principles that Kent helped to craft would travel far beyond his library, jurisdiction, and lifetime.

CONCLUSION: LAW BOOKS AND THE AMERICAN EMPIRE

Soon after James Kent passed the New York bar exam in 1785, he purchased a stream of English law reports originating in Westminster and flowing through the copyright-free haven of Dublin. The books were plentiful, relatively inexpensive, and gave Kent the raw material of his own decisional law. They also enabled him to imagine what a sophisticated legal culture should look like. Kent did not just imitate what he read. That was impossible because so much of what he read was conflicting and confused, and all of it came from a foreign court system with which he was not personally familiar. Instead, he sat in his library and struggled to make sense of the material and to arrange the increasing flow of imported books into a hierarchy of authority. The job of reading English law in America was active and curatorial rather than passive and rote. Kent also believed that he could add to the accumulated wisdom of Anglo-American law. He did. He was instrumental in reshaping the report into its now classic form of a judicial opinion that weighs both sides of an issue, canvasses the authorities, and explains its decision by elaborating underlying legal principles.

Kent was an active reader, and lawyers who read his books were active too. Kent could not, therefore, control the purposes to which his own books would be put. Readers of Kent's *Commentaries* could bypass the expensive and arduous process of working through English law books. They could rely instead on Kent's translation and distillation. This, of course, was part of the point of publishing the *Commentaries*. But Kent probably never intended that his book would obscure the intimate connection between English and American law. For many readers, however, that is what it did.

Within days of Kent's death in 1847, bar associations across the country—from New York and New Jersey to Michigan, Tennessee, and even the newly admitted state of Texas—gathered to mark his passing. They sent letters of memorial and condolence to his family. The Bar Association

of New York was effusive, but what it wrote was typical. The lawyers praised Kent for long being "the *unquestioned head* of American Jurisprudence" and observed that his "fame . . . extends wherever the English language is spoken or read, and the science of Jurisprudence is known and cultivated."[101]

A more revealing letter came from the bar of the City of Detroit. Michigan had only joined the Union in 1836, but already it had

> borrowed much of her legal system from [New York's] jurisprudence of which the decisions of this illustrious and venerated citizen constitute so large and interesting a part. While, in common with their professional brethren in other States, the members of the Bar in this city lament the decease of the Commentator on American Law, they are peculiarly bound to express their gratitude for the labors, and their respect for the memory of the Judge whose decisions have shaped and colored the adjudications and practice of their own.[102]

Basically, the Detroit lawyers were saying that they had learned legal doctrine from Kent and his courts.

The New York Bar Association kept alive Kent's ideal of a transnational legal culture. The bar association of the federal district court of Texas was less cosmopolitan. Texas had declared independence from the Mexican Republic in 1836 and joined the United States just two years before Kent died. But Kent's *Commentaries* had been in Texas since the 1830s. Like their colleagues in New York and Detroit, the Texas lawyers celebrated Kent's influence throughout the United States. "But we may be pardoned," they added,

> for believing that this sign of the influence of his judicial life, and of the respect which attends his personal character, will be the more grateful to his bereaved family, as it comes from a country in which that influence was not a matter of course. Educated in the alien forms of the Civil Law, surrounded by its institutions, and fettered by its arbitrary provisions, the members of this profession still preserved, in this province of New Spain, their attachment to that system, which had accompanied their ancestors to the ruder and more savage wilds of New England and Virginia—to those

101. Bar of New York, Resolutions on the Death of James Kent (on file with the Rare Book and Manuscript Library, Columbia University).

102. Bar of the City of Detroit, Resolutions on the Death of James Kent (Jan. 4, 1848) (on file with the Rare Book and Manuscript Library, Columbia University).

> principles, to which your father applied the eloquent language of Cicero . . . .[103]

The point was to celebrate Kent's authoritative style: his long, classical sentences that seemed to take in, and defeat, all opposition. Like Cicero, Kent was treated as a guide—a guide to the rule of law.

> It was one of the first Acts of the General Council of the Mexican State of Texas, in the very midst of its desperate struggle to preserve a free and republican government, to authorize the purchase, among the great works of legal science, of "Kent's Commentaries." The delegates to that Council, desiring to emancipate the State from the servitude of opinion and of law, as well as from the more pressing burden of tyrannical power, wisely thought that they could derive, from no other source, higher or more invigorating lessons.[104]

Kent had not intended for his work to be a bulwark against European sources. For all his Anglo-centrism, he had prided himself on his cosmopolitanism, frequently citing civil law or European treatises.[105] But he had probably never imagined the situation of the Texas lawyers, most of whom were immigrants from the United States. They encountered a rich legal tradition encompassed in all sorts of Spanish codes and treatises and stretching back to the Roman Empire. They wanted some ballast. They wanted their own law. Kent's 2,000-page work was a good start. It would be several years more before Texas began printing reports and got its own law books. Still, with Kent in hand they thought they had their own law from the beginning, before joining the Union. Law preceded the new continental empire. Law—Kent's vision and version of it—helped forge that empire.

103. Letter from Jonas Butler & William G. Hale to William Kent (Jan. 14, 1848) (on file with the Kent Family Papers, Rare Book and Manuscript Library, Columbia University).

104. *Id.*

105. Alan Watson, *Chancellor Kent's Use of Foreign Law*, *in* THE RECEPTION OF CONTINENTAL IDEAS IN THE COMMON LAW WORLD 1820–1920, at 45 (Mathias Reimann ed., 1993).

APPENDIX: TABLE OF KENT'S LAW LIBRARY, 1785–1815

Author	Title	Pub. Date	Vols.	Pub. Place	Publisher	Purchase Date	Purchase Price
Coke, Edward, Sir	The Reports of Sir Edward Coke, kt. . . .	1680 (2d ed.)	1	London	Printed for H. Twyford, T. Collins, T. Basset, F. Wright, S. Heyrick, T. Sawbridge, M. Pitt, C. Harper, and J. Place	1785	
Jenyns, Soame	A Free Inquiry into the Nature and Origin of Evil . . .	1773 (5th ed.)		London	Printed for J. Dodsley	1786	6s., 6cts.
Blackstone, William	Commentaries on the Laws of England	1771-1772 (1st Amer. ed.)	4	Philadelphia	Robert Bell	1786	
Wilson, George	Reports of the cases argued and adjudged in the King's courts at Westminster [1776-86]	1784 (3d ed.)	3	Dublin	Printed for R. Moncrieffe	1788	£3
Popham, John, Sir	Reports and cases [1592-1597] collected by the learned, Sir John Popham, knight	1656		London	Printed by Tho. Roycroft for John Place	1791	$1.50
Dyer, Jaques (Sir James Dyer)	Les reports des divers select matters & resolutions des reverend judges & sages del ley touchant & concernant mults principal points occurrent estre debate per eux : en le several regnes de les tres-hault & excellent princes, le roys Hen. 8, & Edw. 6, & le roignes Mar. & Eliz.	1672		London	Printed by John Streater, Eliz. Flesher, and Henry Twyford, assignes of Richard Atkyns and Edward Atkyns	1791	17s.
Morgan, John	The attorney's vade mecum, and client's instructor, treating of actions; (such as are now most in use); of prosecuting and defending them; of the pleadings and law. Also of hue and cry.	1787	2	Dublin	Printed for Messrs. Chamberlain, Burnet, Lynch, H. Whitestone, Moore and Jones	1791	
Morgan, John	Inner Temple, The Attorney's Vade Mecum, and Client's Instructor, Treating of Actions . . . in Two Volumes, vol. 1	1788		Dublin	Chamberlaine, Burnet, Lynch, H. Whitestone, Moore, and Jones,	1791	
Saunders, Edmund, Sir	Les reports du tres erudite Edmund Saunders… des divers pleadings et cases en le Court del bank le Roy en le temps del reign sa tres excellent Majesty le Roy Charles le II. [1666-1672]	1686	2 vols. bound in 1	London	Printed by W. Rawlins, S. Roycroft, and M. Flesher, assigns of R. and E. Atkins	1793	24s.

Carthew, Thomas	Reports of cases adjudged in the Court of King's bench, from the third year of King James the Second, to the twelfth year of King William the Third. [1687-1700]	1728		London	Published by his son Thomas Carthew. Printed by E. and R. Nutt [etc.] for R. Gosling [etc.]	1793	20s.
Burrows, James	Reports of Cases Adjudged in the Court of King's Bench, Since the Death of Lord Raymond	1785 (various editions)	5	Dublin	R. Moncrieff	1793	£5 for vol. 1
Cowper, Henry	Reports of Cases Adjudged in the Court of King's Bench [from 1774-1778]	1788		Dublin	E.Lynch, R. Moncfrieffe, W. Colles, T. Walker, G. Burnet, J. Exshaw, J. Beatty, R. Burton	1793	£1.50
Douglas, Sylvester	Reports of King's Bench Vol. 1	1789 (2d ed.)		Dublin	Elizabeth Lynch	1793	£1 10s.
Salkeld, William	Reports of cases adjudged in the Court of King's Bench : with some special cases in the courts of Chancery, Common Pleas, and Exchequer, alphabeti-cally digested under proper heads [1689-1712]	1791 (6th ed.)	3	Dublin	James Moore	1793	£2 8s.
Raymond, Robert Raymond, Baron, 1673-1733	Reports of cases argued and adjudged in the courts of King's Bench and Common Pleas : in the reigns of the late King William, Queen Anne, King George the First, and King George the Second	1792 (4th ed.)	3	Dublin	Printed for E. Lynch, G. Burnet, P. Wogan, P. Byrne, J. Exshaw, A. Grueber, J. Moore, J. Jones, W. Jones, H. Watts, J. Rice	1793	£3
Croke, George, Sir, 1560-1642. reporter	Reports of Sir George Croke, knight, formerly one of the justices of the courts of Kings-Bench, and Common-Pleas, of such select cases as were adjudged in the said courts [1582-1641]	[1791-1793]	3	Dublin	Printed for E. Lynch, P. Wogan, J. While, P. Byrne, W. McKenzie, J. Moore, J. Jones, A Grueber and J. Rice, W. Jones, H. Watts, R. White, and J. Milliken	1793	
Durnford, Charles and East, Edward Hyde	Reports of the Cases Argued and Determined in the Court of the King's Bench, From [1786-1800]	1791-1800	1–4 of 8	Dublin	E. Lynch, L. White, P. Byrne, and W. Jones	1793	£7 10s.
Davies, Sir John	Irish Reports	1762		Dublin		1794	12s.
Hawkins, William	A treatise of the pleas of the crown : or, a system of the principal matters relating to that subject, digested under their proper heads in two books	1788 (6th ed.)	2	Dublin	Eliz. Lynch	1794	£2 2s.

Comyns, John	Reports of Cases Argueed and Adjudged in the courts of Kings'-Bench, common-please, and exchequer: to which are added some special cases in the court of chancery and before the delegate; in the rigns of King William, Queen Anne, King George I. and II.	1791 (2d ed.)		Dublin	James Moore	1794	£1 4s.
Plowden, Edmund, 1518-1585, reporter	The commentaries, or Reports [1548-1579]	1792	2	Dublin	William Jones	1794	£2 5s.
Shower, Bartholomew, Sir, 1658-1701	Reports of cases adjudged in the Court of King's Bench, during the reigns of Charles the Second, James the Second, and William the Third [1678-1694]	1794 (2d ed.)	2	London	W. Clarke	1794	64s.
Leach, Thomas	Modern Reports, or, Select Cases Adjudged in the Courts of King's Bench, Chancery, Common Pleas, and Exchequer [21 Car. 2 - 13 Will. 3]	1793-1796 (5th ed.)	12	London	G.G.J. and J. Robinson, F. and R. Brooke, J. Butterworth, Ogilvy and Speare, and J. White, Dublin	1794	£16 8s.
Booth, George	The nature and practice of real actions : in their writs and process, both original and judicial : together with some records in the court before the justice of the county palatine of Chester; proving the antiquity of the jurisdiction of that court, and of some families	1701		London	for Awnsham and John Churchil	1795	$5
Domat, Jean	The Civil Law in Its Natural Order: Together with the Public Law	1722	1 of 2	London	Printed by J. Bettenham, for E. Bell, J. Darby, A. Bettesworth, G. Strahan, F. Fayram, J. Pemberton, J. Hooke, C. Rivington, F. Clay, J. Batley, and E. Symon	1795	£3
Vesey Sr., Francis, 1765?-1845	Cases Argued and Determined before the High Court of Chancery, in the Time of Lord Chancellor Hardwicke, from the year 1746-7, to 1755	1788 (3d ed.)	2	Dublin	J. Jones	1795	£2 10s.
Williams, John Griffith	Cases in Equity during the Time of the Late Lord Chancellor Talbot	1793 (3d ed.)		Dublin	Henry Watts	1795	15s.

Atkyns, John Tracy, ca. 1710-1773	Reports of cases argued and determined in the High Court of Chancery, in the time of Lord Chancellor Hardwicke. [1736-1754]	1794 (3d ed.)	3	London	Printed by A. Strahan and W. Woodfall, law-printers to the King, for E. and R. Brooke [etc.]	1795	
Brown, William	Reports of Cases Argued and Determined in the High Court of Chancery [1778-1794]	1786-1795	4	Dublin	E. Lynch, R. Moncrieffe, G. Burnet, C. Jenkin, J. Exshaw, R. Burton, L. White, P. Byrne, H. Whitestone	1795	£5 14s.
Durnford, Charles and East, Edward Hyde	Reports of the Cases Argued and Determined in the Court of the King's Bench, From [1786-1800]	1791-1800	5 of 8	Dublin	E. Lynch, L. White, P. Byrne, and W. Jones	1795	5s.
Richer, Francois	Causes Celebres et Interesantes, avec les Jugemen qui les Ont Decidees	1772	22	Amsterdam	Chez Michel Rhey	1796	$10
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.]	1793	1	Dublin	P. Byrne	1796	45s. for vols 1 and 2
United States Congress	Debates in the House of Representatives of the United States, during the First Session of the Fourth Congress, Part I, upon the Constitutional Powers of the House, with Respect to Treaties	1796		Philadelphia	Printed for Benj. Franklin Bache	1796	10s.
Court of Chancery	Reports of cases taken and adjudged in the Court of Chancery, in the reign of King Charles I. Charles II. James II. William III. and Queen Anne : being special cases and most of them decreed with the assistance of the judges, and all of them referring to the register books : wherein are settled several points of equity, law and practice : to which are added learned arguments relating to the antiquity of the said court, its dignity, power and jurisdiction . . .	1736 (3d ed.)	1 of 3	London	In the Savoy, printed by E. and R. Nutt, and R. Gosling … for J. Walthoe and I. Osborne	1797	$5
Owen, Thomas	The Reports of the Late Reverend and Learned Judge, Thomas Owen, Esquire, One of the Justices of the Common Pleas	1656		London		1797	[$]10.62

Style, William, reporter	Narrationes modernae, or Modern reports begun in the now Upper bench court at Westminster, in the beginning of Hillary term 21 Caroli [1646], and continued to the end of Michaelmas term 1655, as well on the criminall, as on the pleas side.	1658		London	Printed by F. L. for W. Lee, D. Pakeman, G. Bedel, and C. Adams	1797	$1
Keble, Joseph	Reports in the Court of Kings Bench at Westminster, from the XII to the XXX year of the reign of Our late Sovereign Lord King Charles II. [1661-1673 for vols 1 and 2; coverage for vol. 3 ran through 1679]	1685	1 & 2 of 3	London	Printed by W. Rawlins, S. Roycroft and M. Flesher, assigns of Richard and Edward Atkins, for Thomas Dring, Charles Harper, Samuel Keble, and William Freeman	1797	$8 for 3 vols
Leonard, William	Reports and cases of law: argued and adjudged in the courts at Westminster, in the times of the late Queen Elizabeth and King James	1687 (2d ed.)		London	William Hughes	1797	$3
Palmer, Gefrey, Sir	Les reports de Sir Gefrey Palmer, chevalier & baronet … [1619-1629] Imprime & publie per l'original. Ovesque deux tables, l'un des nosmes des cases, l'auter des principal matters conteinus en yceux	1688		London	Printed for G. Pawlet and are to be sold by Mat Wotton	1797	$1.50
Court of Chancery	Cases argued and decreed in the High Court of Chancery [1661-1679]	1707 (2d ed.)		London	John Walthoe	1797	
Kelyng, John	A Report of Divers Cases in Pleas of the Crown, Adjudged and Determined; in the Reign of the Late King Charles II... to which is added, the reports of three modern cases, viz. Armstrong and Lisle; the King and Plumer; the Queen and Mawgridge	1708		London	Isaac Cleave	1797	$1
Skinner, Robert	Reports of cases adjudged in the Court of King's Bench : from the thirty-third year of King Charles the Second, to the ninth year of King William the Third. [1681-1697] With some arguments in special cases	1728		London	Matthew Skinner	1797	

Brown, Josiah	Reports of Cases, upon Appeals and Writs of Error, in the High Court of Parliament; from the year 1701 to the year 1779	1784	7	Dublin	E. Lynch	1797	$7
Ambler, Charles	Reports of cases argued and determined in the High Court of Chancery : with some few in other courts [1716-1783]	1790		Dublin	Chamberlaine and Rice, E.Lynch, L. White, P. Byrne, W. McKenzie, J. Moore, J. Jones, Grueber & McAllis-ter, G. Draper, W. Jones, J. Milliken, H. Watts, and R. White	1797	24s.
Barnes, Henry	Notes of cases in points of practice, taken in the Court of common pleas at Westminister : from Michaelmas term, 1732, to Hilary term, 1756, inclusive	1790 (3d ed.)		London	E. and R. Brooke	1797	31[s.] 12[cts.]
Andrews, George	Report of cases argued and adjudged in the court of King's Bench, in the eleventh and twelfth years of the reign of King George the Second. [1737-1738]	1791 (2d ed.)		Dublin	H. Watts	1797	20s.
Bunbury, William	Reports of Cases in the Court of the Exchequer from [1713-1744]	1793 (2d ed., rev.)		Dublin	John Rice	1797	13s.
Mosely, William	Reports of Cases Argued and Determined in the High Court of Chancery, during the Time of the Late Lord Chacellor King [1726-1730]	1793		Dublin	William Jones and Henry Watts	1797	15s.
Raymond, Thomas, Sir, 1627-1683, reporter	Reports of divers special cases, adjudged in the courts of King's Bench, Common Pleas, and Exchequer, in the reign of King Charles II. [1672-1685]	1793 (3d ed.)		Dublin	Printed by J. Moore	1797	
Anstruther, Alexander, Sir, 1769-1819,	Reports of cases argued and determined in the Court of Exchequer, from Easter term 32 George III. to [Trinity term 37 George III.] … both inclusive. [1792-1797]	1796	2	Dublin	Printed for P. Byrne, J. Rice and J. Moore	1797	$3
New York State	Nineteenth Session of the laws of the state of New-York	1796		New York	Printed by Thomas Greenleaf	1797	7s., 6cts.
United States Congress	The Laws of the United States of America	1796	1 of 12	Philadelphia	Richard Folwell	1797	$6 for 3 vols.
Durnford, Charles and East, Edward Hyde	Reports of the Cases Argued and Determined in the Court of the King's Bench, From [1786-1800]	1791-1800	6 of 8	Dublin	E. Lynch, L. White, P. Byrne, and W. Jones	1797	£1 18s.

[Livingston, Brockholst]	State of the case and argument on the part of Gouverneur and Kemble, in their controversy with Louis Le Guen	1797		New York	Printed at the Argus office	1798	
New York (State). Supreme Court	Special verdict, in the case of Lewis Le Guen and Isaac Gouverneur & Peter Kemble, in the Supreme Court of the State of New-York. 1797	1797		New York	Printed [by Thomas Green-leaf] at the Argus Office.	1798	
Gilbert, Geoffrey, Sir, 1674-1726	Cases in law and equity, argued, determined and ad-judged in the King's Bench and Chancery : in the twelfth and thirteenth years of Queen Anne [1714-1715] during the time of Lord Chief Justice Parker, with two treatises, the one on the action of debt, the other on the constitution of England	1792 (2d ed.)		Dublin	Elizabeth Lynch	1799	16s.
Ridgeway, William, d. 1817	Reports of cases argued and determined in the King's Bench and Chancery : during the time in which Lord Hardwicke presided in those courts, 1733-1745	1794		Dublin	P. Byrne and John Rice	1799	24s.
Espinasse, Isaac	Reports of cases argued and ruled at Nisi Prius, in the courts on King's Bench and Common Pleas [1793-1796]	1796	1 of 6	London	J. Butterworth	1799	33s.
Durnford, Charles and East, Edward Hyde	Reports of the Cases Argued and Determined in the Court of the King's Bench, From [1786-1800]	1791-1800	7 of 8	Dublin	E. Lynch, L. White, P. Byrne, and W. Jones	1799	$5
Cowper, Henry	Reports of cases adjudged in the Court of King's Bench : from Hilary term, the 14th of George III, 1774, to Trinity term, the 18th of George III, 1778, (both inclusive)	1788		Dublin	E.Lynch, R. Moncfrieffe, W. Colles, T. Walker, G. Burnet, J. Exshaw, J. Beatty, R. Burton	1800	£1 80s.
Colles, Richard	Reports of cases, upon appeals and writs of error, in the High Court of Parliament from the year 1697, to the year 1713 : with tables, notes, and references : being a supplementary volume to Brown's cases in Parliament	1789		Dublin	Printed by E. Lynch	1800	24s.

Burrow, James, Sir	Reports of cases argued and adjudged in the Court of King's Bench : during the time of Lord Mansfield's presiding in that court : from Michaelmas term, 30 Geo. II. 1756, to Easter term, 12 Geo. III. 1772	1790 (4th London ed.)	4 of 5	London	Printed by A. Strahan and W. Woodfall for E. and R. Brooke	1800	£6 80s. for 5 vols.
Bridgman, John, Sir	Reports of that grave and learned judge, Sir John Bridgman, knight; serjeant at law, sometime chief justice of Chester [1613-1621] To which are added two exact tables, the one of the cases, and the other of the principal matters therein contained	1659		London	Printed by Tho. Roycroft for H. Twyford, Tho. Dring, and Jo. Place	1801	20s.
Latch, Jean	Plusieurs tres bons cases, come ils estoyent adjudges es trois premiers ans du raign du feu roy charles le premier en la court de bank le roy	1661		London	Pub: Edward Walpool; Printed by T.R. for H. Twyford, T. Dring, and J. Place	1801	16s.
Rolle, Henry	Un abridgment des plusieurs cases et resolutions del common ley : alphabeticalment digest desouth severall titles	1668	2	London	A. Crooke, W. Leake, A. Roper, F. Tyton, G. Sawbridge, T. Dring, T. Collins, F. Place, W. Place, F. Starkey, T. Basset, R. Pawlet, S. Heyrick	1801	£2 18s.
Noy, William	Reports and Cases Taken in the Time of Queen Elizabeth, King James, and King Charles	1669 (2d ed.)		London	Samuel Heyrick	1801	20s.
Jones, William, Sir, 1566-1640	Les reports de Sir William Jones, chevalier … De divers special cases cy bien in le Court de Banck le Roy, come le Common-Banck in Angleterre. Cy bien en le darreign temps del' reign de Roy Jaqves, come en l'anns de Roy Charles. I. Colliges par luy mesme, et imprimee per l'original south son maine propre in francois remanent in les maines de Dorothy Favlconberge, & Lvcy Jones, files & executrices del' dit justice	1675		London	Thomas Basset and Richard Chiswel	1801	
Rolle, Henry	Les reports de Henry Rolle Serjecant del' Ley, de divers cases en le Court del' banke le roy en le temps del' reign de roy Jacques	1675	2	London	Printed for A. Roper, F. Titon, J. Starkey, T. Basset	1801	£3 10s.

S.C. [Samuel Carter?]	Reports of sevral special cases argued and resolved in the Court of Common Pleas: in the XVI, XVII, XVIII, and XIXth years of King Charles II, in the time when Sir Orlando Bridgmen sate chief justice there	1688		London	Thomas Bassett, Charles Harper and Samuel Keble	1801	22s.
Shower, Bartholomew, Sir	Cases in Parliament : resolved and adjudged, upon petitions and writs of error	1698		London	A. and J. Churchill	1801	18s.
Ventris, Peyton, Sir, 1645-1691, reporter	The reports of Sir Peyton Ventris … In two parts. Containing select cases adjudged in the King's Bench, in the reign of K. Charles II. With three learned arguments, one in the King's bench, by Sir Francis North … and two in the Exchequer by Sir Matthew Hale … With two tables; one of the cases, the other of the principal matters.	1716 (3d ed.)	2	London	In the Savoy, Printed by J. Nutt for D. Browne	1801	£3
Comberbach, Roger, 1666?-1720?	The report of several cases argued and adjudged in the Court of King's bench at Westminister :from the first year of King James the Second, to the tenth year of King William the Third. [1685-1698]	1724		London	Printed by E. and R. Nutt, and R. Gosling for J. Walthoe	1801	£2 12s.
Gilbert, Geoffrey, Sir, 1674-1726	Reports of cases in equity, argued and decreed in the courts of Chancery and Exchequer, chiefly in the reign of King George I, [1705-1726]	1734		London	In the Savoy, Printed by E. and R. Nutt, and R. Gosling for R Gosling and D. Browne	1801	40s.
Jenkins, David, 1582-1663	Eight centuries of reports: or, Eight hundred cases solemnly adjudged in the Exchequer-chamber, or upon writs of error. Publish'd originally in French and Latin by Judge Jenkins. Now carefully translated, with the addition of many thousand references: particularly to such statutes as have altered or amended the law to this time	1734 (2d ed.)		London	J. Worrall and Thomas Worrall	1801	40s.
Bosanquet, John Bernard and Puller, Christopher	Reports of Cases Argued and Determined in the Courts of Common Pleas and Exchequer Chamber, and in the House of Lords, from [1796 to 1799], vol. 1	1800	1 of 3	Dublin	J. Moore	1801	48s.

Espinasse, Isaac	Reports of cases argued and ruled at Nisi Prius, in the courts on King's Bench and Common Pleas [1796-1799]	1800	2 of 6	Dublin	J. Exshaw, P. Byrne, J. Moore, P. Wogan, and J. Rice	1801	24s.
Robinson, Christopher	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Right Honorable Sir William Scott, Michaelmas Term [1798-1808]	1800	1 of 6	Philadelphia	Zachariah Poulson, Jr.	1801	11s.
Robinson, Christopher	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Right Honorable Sir William Scott, Michaelmas Term [1798-1808]	1801	2 of 6	London	J. Butterworth and J. White	1801	24s.
Durnford, Charles and East, Edward Hyde	Reports of the Cases Argued and Determined in the Court of the King's Bench, From [1786-1800]	1791-1800	8 of 8	Dublin	E. Lynch, L. White, P. Byrne, and W. Jones	1801	38s.
Moore, Francis, Sir, 1558-1621	Cases collect & report per Sir Francis Moore chevalier, serjeant del ley [1512-1621]	1675 (2d ed.)		London	Robert Pawlet	1802	
Hardres, Thomas, Sir, 1610-1681	Reports of cases ad-judged in the Court of exchequer : in the years 1655, 1656, 1657, 1658, 1659, and 1660. And from thence continued to the 21st year of the reign of His late Majesty King Charles II. [1669]	1693		London	Christopher Wilkinson, Samuel Heyrick, and Mary Tonson	1802	£3
Levinz, Creswell, Sir	Les reports de Sr. Creswell Levinz, jades un del justices del Common bank, en trois parts: commencant en le 12 an de roy Charles II. & fini en le 8 an de Son Majesty William III.	1702	3	London	S. Keble and T. Benskin and J. Walthoe	1802	£3
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 2	1796		Dublin	P. Byrne	1802	36s.
Tomlins, Thomas Edlyne, Sir, 1762-1841	A digested index to the Term reports: containing all the points of law determined in the Court of King's Bench, from Michaelmas term, 1785, to Trinity term, 1800; and in the Court of Common Pleas, from Easter term, 1788, to Trinity term, 1799.	1800 (2d ed.)		London	Printed for J. Butterworth	1802	36s.

East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1800-1801]	1801	1 of 16	London	J. Butterworth	1802	[$]5
United States Congress	The Laws of the United States of America	1801	5 of 12	Washington, D.C.; Philadelphia; Baltimore	Rapin, Conrad and Co.; John Conrad and Co.; M. and J. Conrad and Co.	1802	$2
New York State	Laws of the State of New York	1802	2	Albany	Printed by Charles R. and George Webster	1802	Gift of the State
Espinasse, Isaac	Reports of cases argued and ruled at Nisi Prius, in the courts on King's Bench and Common Pleas [1799-1801]	1802	3 of 6	London	J. Butterworth and John Cooke in Dublin	1802	30s.
Robinson, Christopher	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Right Honorable Sir William Scott, Michaelmas Term [1798-1808]	1802	3 of 6	London	J. Butterworth and J. White	1802	
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 3	1802		Philadelphia	P. Byrne	1802	36s.
New York State	Laws of the State of New York, 25th and 26th Sessions [1802-03]	1802		Albany	Printed by John Barber	1803	
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 4	1802		Philadelphia	P. Byrne	1803	$5
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 5	1803		Philadelphia	P. Byrne	1803	$6
Bosanquet, James Bernard and Puller, Christopher	Reports of Cases Argued and Determined in the Courts of Common Pleas and Exchequer Chamber, and in the House of Lords, from [1799 to 1801], vol. 2	1803	2 of 3	Philadelphia	P. Byrne	1804	$6
United States Congress	The Laws of the United States of America	1803	6 of 12	Washington, D.C.		1804	$2
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1802-1803]	1804	3 of 16	Philadelphia	P. Byrne	1804	
MacNally, Leonard	The Rules of Evidence on Pleas of the Crown	1804	2	Philadelphia	P. Byrne	1804	$5
Espinasse, Isaac	Reports of cases argued and ruled at Nisi Prius, in the courts on King's Bench and Common Pleas [1801-1803]	1804	4 of 6	London	J. Butterworth and John Cooke in Dublin	1805	26s.
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.]	1804	7	London	Brooke & Clarke	1805	$4.50 for vols 7 & 8

Caines, George	Cases Argued and Determined in the Court for the Trial of Impeachments and Correction of Errors, in the State of New-York, vol. 1	1805		New York	I. Riley and Co.	1805	22s.
Williams, Ephraim	Reports of Cases Argued and Determined in the Supreme Judicial Court of the State of Massachusetts, from September 1804 to June 1805, vol. 1	1805		Northampton	S. & E. Butler	1805	[$]5
Bosanquet, James Bernard and Puller, Christopher	Reports of Cases Argued and Determined in the Courts of Common Pleas and Exchequer Chamber, and in the House of Lords, from [1802-1804], vol. 3	1805	3 of 3	Philadelphia	P. Byrne	1805	$6
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1803-1804]	1805	4 of 16	Philadelphia	P. Byrne	1805	
Williams, John	The reports of the most learned Sir Edmund Saunders, Knt., Late Lord Chief Justice of the King's Bench of several pleadings and cases in the Court of King's Bench, in the time of the reign of … King Charles the Second, vol. 1	1799-1802 (3d ed.)	2	London	T. Cadell, Jr., W. Davies, and W. Clarke & Son	1805	$16
Christian, Edward, d. 1823	Notes to Blackstone's commentaries : which are calculated to answer all the editions	1801		Boston	Printed by I. Thomas and E.T. Andrews	1806	
Robinson, Christopher	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Right Honorable Sir William Scott, Michaelmas Term [1798-1808]	1804	4 of 6	London	J. Butterworth and J. White	1806	$6
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1805]	1805	6 of 16	London	Butterworth and Cooke	1806	$8.50
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 9	1805		London	J. Butterworth and John Cooke in Dublin	1806	$8.50
United States Congress	The Laws of the United States of America	1805	7 of 12	Washington, D.C.		1806	Gift from NY State, but binding cost 4s., 6cts.

Bosanquet, John Bernard and Puller, Christopher	New Reports of Cases Argued and Determined in the Court of Common Pleas, and other courts [1804-1805]	1806	1 of 2	London	J. Butterworth and J. Cooke	1806	$6
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.]	1806	10	London	J. Butterworth and J. Cooke (Dublin)	1806	$8.50
Azuni, M.D.A.	The Maritime Law of Europe, 2 vols.	1806	1	New York	Isaac Riley	1806	$6
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1804]	1806	5 of 16	Philadelphia	P. Byrne	1806	$5
Argou, M. [Gabriel]	Institution au Droits Francois	1773 (11th ed.)	2	Paris		1807	$2
Camus, Armand Gaston	Lettres sur la profession d'avocat : sur les études relatives à cette profession, & sur la manière de l'exercer, avec un catalogue raisonné des livres de droit quíl est le plus utile d'acquérir et de connoître	1777		Paris	Chez Méquignon le Jeune	1807	$1
Fournel, M. (Jean-François)	Traité de l'adultere, considéré dans l'ordre judiciaire;	1778		Paris	Chez Jean-François Bastien …, M.DCC.LXXVIII.	1807	$1
Levinz, Creswell, Sir, 1627-1701	The reports of Sir Creswell Levinz, Knt., late one of the judges in the Court of Common Pleas, at Westminster : containing cases heard and determined in the Court of King's Bench …	1793 (3d ed.)	1 & 2 of 3	Dublin	Elizabeth Lynch	1807	
Dyer, James, Sir, 1512-1582, reporter	Reports of cases in the reigns of Hen. VIII, Edw. VI, Q. Mary, and Q. Eliz. [1513-1582]	1794	3	Dublin	P. Byrne, J. Moore, W. Jones, J. Rice, and H. Watts	1807	
Anon.	A digested index to the Chancery reports : containing the points of equity determined in the High Court of Chancery from the year 1689 to the year 1801 : to which is added a table of the names of the cases	1802		London	J. Butterworth and John Cooke in Dublin	1807	$6
Schoales, John and Lefroy, Thomas	Reports of Cases Argued and Determined in the High Court of Chancery, in Ireland, During the Time of Lord Redesdale	1806	1 of 2	Dublin	John Jones	1807	$8
Day	Day's Connecticut Reports	1806	1	Hartford	Hudson & Goodwin	1807	$3
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1805-1806]	1806	7 of 16	London	Butterworth and Cooke	1807	$8.37

Robinson, Christopher	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Right Honorable Sir William Scott, Michaelmas Term [1798-1808]	1806	5 of 6	London	J. Butterworth and J. White	1807	
Cicero, Marcus Tullius	Essays on old age and friendship.	1807		London	W. J. and J. Richardson [etc.]	1807	$3
Lloyd, Thomas	The trials of William S. Smith, and Samuel G. Ogden, for misdemeanours, had in the Circuit Court of the United States for the New-York District, in July, 1806	1807		New York	I. Riley and Co.	1807	$3
Peters, Richard Jr.	Admiralty Decisions in the District Court of the United States, for the Pennsylvania District, by the Hon. Richard Peters, Comprising Also Some Decisions in the Same Court, by the Late Francis Hopkinson, Esq., to which Are Added Cases Determined in other Districts of the United States, With an Appendix, 2 vols.	1807	2	Philadelphia	William P. Farrand	1807	$11
Gothofredi, Dionysii	Corpus juris civilis, pandectis ad florentinum archetypum expressis, institutionibus, codice et novellis	1663	2	Amsterdam	Joannem Blaeu. Ludovicum and Danielum Elzevirios, Franciscum Hackium	1808	$20
Hardwick, Lord	Cases Adjudged in the court of King's-Bench in the time of the late Lord Hardwick	1769		Dublin	Elizabeth Lynch	1808	24s.
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1806-1807]	1808	8 of 16	Philadelphia	P. Byrne	1808	
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1801-1802]	1803	2 of 16	Philadelphia	Byrne and Hudson	1809	
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 11	1806		London	J. Butterworth and J. Cooke (Dublin)	1809	$9
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 12	1807		London	J. Butterworth and J. Cooke (Dublin)	1809	$9
United States Congress	The Laws of the United States of America	1807	8 of 12	Washington, D.C.		1809	Gift; binding 4s., 6cts.

Campbell, John and Campbell, Baron, 1779-1861	Reports of cases determined at nisi prius : in the courts of King's Bench and Common Pleas, and on the home circuit, from the sittings after Michaelmas term, [1807-1808]	1809	1 of 4	London	Printed by A. Strahan, for J. Butterworth and J. Cooke	1809	$7.50
Bosanquet, John Bernard and Puller, Christopher	New Reports of Cases Argued and Determined in the Court of Common Pleas, and other courts [1805-1807]	1809	2 of 2	Philadelphia	P. Byrne	1809	
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1807-1808]	1809	9 of 16	Philadelphia	P. Byrne	1809	$5
Tyng, Dudley Atkins	Reports of Cases Argued and Determined in the Supreme Judicial Court of the State of Massachusetts [1808], vol. 4	1809		Newburyport	Edward Little & Co.	1810	$6.25
United States Congress	The Laws of the United States of America	1809	9 of 12	Washington, D.C.	Department of State	1810	Gift; binding cost 6s.
Robinson, Christopher	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Right Honorable Sir William Scott, Michaelmas Term [1798-1808]	1810	6 of 6	New York	Isaac Riley	1810	$6
Taunton, William Pyle	Reports of Cases Argued and Determined in the Court of Common Pleas and Other Courts from [1807-1819 in 8 vols]	1810	1 of 8	New York	I. Riley	1810	$5 for vol. 1; 8 vols. cost $31
Vesey, Jr., Francis	Reports of Cases Argued and Determined in the High Court of Chancery [1789-1817 in 20 vols.], vol. 14	1810		New York	Isaac Riley	1810	$6
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1808-1809]	1810	10 of 16	Philadelphia	P. Byrne	1810	$5
Campbell, John and Campbell, Baron, 1779-1862	Reports of cases determined at nisi prius : in the courts of King's Bench and Common Pleas, and on the home circuit, from the sittings after Michaelmas term, [1809-1811]	1811	2 of 4	Philadelphia	I. Riley	1811	
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1809]	1811	11 of 16	Philadelphia	P. Byrne	1811	$5
Munford, William	Reports of Cases Argued and Determined in the Supreme Court of Appeals of Virginia [1810]	1812	1 of 4	New York	Isaac Riley	1812	[$]6.5

Tyng, Dudley Atkins	Reports of Cases Argued and Determined in the Supreme Judicial Court of the State of Massachusetts [1810-1811], vol. 7	1812		Newburyport	Edward Little & Co.	1812	$6
East, Edward Hyde	Reports of Cases Argued and Determined in the Courts of King's Bench [1811]	1813	14 of 16	Philadelphia	P. Byrne	1813	$5
Cooper, George	Cases Argued and Determined in the High Court of Chancery, During the Time of Lord Chancellor Eldon [1815]	1815		London	J. Butterworth and Son and J. Cooke in Dublin	1815	$4.87
Edwards, Thomas	Reports of Cases Argued and Determined in the High Court of Admiralty: Commencing with the Judgments of Sir William Scott, Easter Term, 1808	1815		New York	I. Riley	1815	