

**Joined in Common Enterprise:  
A Bibliography on the Origins of Early  
Anglo-American Partnership Law**

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William S. Hein & Co., Inc.  
Buffalo, New York  
2005

*Library of Congress Cataloging-in-Publication Data*  
Anglim, Christopher.

Joined in common enterprise : a bibliography on the origins of early  
Anglo-American partnership law / Christopher Anglim.

p. cm.

Includes bibliographical references.

ISBN 0-8377-3001-5 (cloth : alk. paper)

1. Partnership—History—Bibliography. 2. Partnership—Great  
Britain—History—Bibliography. 3. Partnership—United  
States—History—Bibliography. I. Title

K1305.A12 A54 2001

016.346'0682'09—dc21

2001019065

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Printed in the United States of America



This volume is printed on acid-free paper  
by William S. Hein & Co., Inc.

## **DEDICATION**

To All My Family and Friends,  
With Fond Appreciation for Their Love and Support

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## PREFACE

The *Bibliography on the Origins of Early Anglo-American Partnership Law* is an exhaustive bibliography of the major sources documenting the history of partnership law. Primarily, it covers the literary sources of early Anglo-American partnership law and, secondarily, the form of the legal rules of partnership. The work examines sources documenting the development of partnership law from the following legal systems: Natural law, civil law (including Roman law), the Law Merchant, and the common law. Largely, this work examines “sources” in the sense of literary forms, official or otherwise, in which authoritative materials may be found.

This bibliography assists in the study of the history and sources of Anglo-American partnership law by providing: (1) a general overview of the origins and development of partnership law; (2) the historical evolution of partnership law doctrines; (3) the context in which changes occurred in partnership law; (4) the sources that were significant in the development or articulation of Anglo-American partnership law in different phases of its development; (5) a new bibliographic record of partnership works that is more accurate, more comprehensive, and more detailed than any now existing; and (6) commentary as annotations to assist users by providing the historical context, an analysis of the work’s significance and contribution to partnership law, and biographical information on the author. The annotations assist researchers in distinguishing between sources and selecting those materials that would facilitate research. Because partnership law did not develop in isolation, researchers must consider how political, sociological, and economic factors contributed to the development of legal doctrines in this area, in addition to strictly legal factors. The annotations discuss these factors when relevant.

After examining the origins of partnership law, the bibliography explores how Anglo-American partnership law developed by compiling sources of legal materials from the following legal systems or bodies of law: natural law; civil law systems (including Roman law, French law, Dutch law, and Spanish law); common law systems (including English law and American law); and, finally, the legal systems in mixed jurisdictions (including Louisiana, Scotland, and South Africa). The bibliography further explains how these foreign law sources contributed to the development of Anglo-American partnership law. If particularly relevant and significant, the work also includes selected partnership works of the various American states.

As an extensive annotated guide to the literary sources of partnership law, this bibliography assists scholars in researching broad academic issues, students in seeking introductory material, and practitioners in searching for the origins of particular legal doctrines. It provides an in-depth analysis of the sources and history of early Anglo-American partnership law. While many

subjects have been well covered by subject-specific bibliographies (such as constitutional law), no other work provides comprehensive treatment on partnership law. Thus, the historical development of partnership law is one area in legal history that warrants bibliographic treatment. This work also acknowledges and updates many earlier works in this area. The materials, concepts, and principles in partnership law follow a subject-oriented arrangement that allows users to access these materials conveniently. This bibliography principally includes legal monographs. The work examines the topic particularly through sources that many students and other researchers would have difficulty obtaining. It also includes sources tracing the development of partnership law in treatises on contract, equity, agency, commercial law, and mercantile law.

During the late eighteenth and early nineteenth century, when modern partnership law developed, American law, including private law, was in its formative stage. This work discusses the crucial historical developments that enabled emergent entrepreneurial and commercial constituencies to win advantageous positions legally, which they used to maximize economic growth and promote developmental goals. Partnership traditionally is a crucial legal relationship in Anglo-American law. It is the relationship of persons conducting a business, found in every trade, occupation, or profession, joined in common with a goal of earning a profit. Therefore, understanding how the law governing these relationships developed greatly assists the researcher in understanding how Anglo-American law developed as a whole during certain crucial junctures in both English and American legal history.

Throughout history, various legal systems have mandated that transactions must be approved by the government—land transactions, rules of inheritance, enforceable contracts or commercial instruments, and business corporate formation. It seems reasonable to theorize that to some limited extent the types of form available will channel social activity and affect the ways in which people think of property rights, fairness in business dealings, and the risks and advantages of starting new ventures.

This bibliography acknowledges the historicity of past doctrine, recognizing that it cannot be treated as if it were identical to, or an underdeveloped version of, current doctrine. It attempts to supply past reasoning patterns, inasmuch as possible, as they were understood by the lawyers who used them. The legal changes represented in these sources reflect the changing ideas of the ways in which government ought to regulate social and economic life.

The term “sources of law” is defined in several different ways. Sometimes it refers to the organ of a politically organized society from which the authoritative materials proceed or by which they are given. Sometimes the term refers to the molding influences that provided those sources form and content. Mostly it refers to the literary shapes, official or otherwise, in which the authoritative materials are used. There is a hierarchy of these organs, an authoritative gradation of these molding influences, and a prescribed sequence of these literary forms.

Jurisprudence deals largely with the sources of law—particularly legislation, judicial precedent, custom, and equity. This bibliography primarily is concerned with literary sources (i.e., the sources of early Anglo-American partnership law), and secondarily with the form of the legal rules of partnership. It examines the sources of early Anglo-American partnership law that originated in customary law, natural law, civil law (including Roman law), the Law Merchant, and common law. The focus is on authorities such as the case law, statutes, and commentaries on partnership law. This book also facilitates the comparative study of the development of Anglo-American partnership law with the development of that jurisprudence in selected civil law systems.

Throughout most of the nineteenth century, law developed through judicial promulgation and enforcement of common law rules, as opposed to statutes. Legal treatise writers in the late eighteenth and early nineteenth century had a major role in shaping partnership law. These authors viewed law as a science and thought that most legal problems could be resolved through the intensive application of reason. They had no particular theoretical view of the nature of the common law. Beginning around William Blackstone's time, English legal writers began to publish treatises on special commercial subjects, including partnership laws. They were influenced by Lord Mansfield's contemporaneous efforts on the bench to systematize English commercial law. Most of these English works were reprinted in the United States.

The American treatise tradition dominated for nearly 100 years, roughly from the publication of James Kent's *Commentaries* in 1826 until Samuel Williston's *Treatise on Contracts* in 1920. This tradition developed on the belief of the logic and internal consistency of legal doctrine, which led legal scholars of the time to compile, classify, and systematize the law or various aspects of the law. The treatise tradition was a response to the codification movements of the 1820s and 1830s, and attempted to demonstrate the common law was in fact reasonable against the arguments of the codifiers that the common law was inconsistent.

Scholars often find it valuable to consult consecutive editions of treatises. The changes in treatment and subject matter of various editions of the same work can be crucial and even can indicate major legal transformations. These changes are discussed in this work as they relate to partnership law.

This bibliography includes the major annotated editions of important treatises such as the Christian or Tucker editions of William Blackstone's *Commentaries* and the twelfth edition of Kent's *Commentaries* by Oliver Wendell Holmes. The annotations in each of these works are themselves very important for understanding issues in legal history, reflecting the efforts of later commentators to update earlier works without impairing the original intellectual structure.

Influenced by eighteenth-century natural law, American judges in the early nineteenth century creatively used comparative law without any formal reliance on the hierarchy of authorities or even against the express language of the most prominent authorities. The French and Dutch treatises on natural law had no theoretical authority, yet they constantly were treated as authoritative.



The use of French and Dutch law treatises in jurisdictions such as New York in the early nineteenth century originated in the training of American lawyers of the colonial period and the post-Revolutionary era. As part of their legal education, lawyers studied the works of Hugo Grotius, Samuel von Pufendorf, Emmerich de Vattel, as well as the French commercial law treatises.

In Anglo-American law, although the “books of authority” rank last in the theoretical gradation of authority. In practice, they were frequently more highly regarded than what was suggested by the hierarchy of forms. Treatises by Robert Pothier, Friedrich Savigny, Joseph Story, and Rudolf von Jhering illustrate the tenuous relationship that may have existed between formal and actual authority.

During the Revolution, many Americans believed that the new nation should abolish the English common law after independence. The common law survived, only after a difficult struggle. When American law still was in its formative stage, it was receptive to civil law influence. This influence on American law was especially strong in the period between the Revolution and the Civil War and particularly in the areas of commercial and maritime law, including partnership law. American scholars interested in the civil law were particularly interested in Roman law and some French private law sources, such as works written by Pothier and Jean Domat, and the Code Napoleon. Samuel Pufendorf was the only German author generally cited by American scholars.

After the French Revolution, American liberals became interested in the French civil law and many regarded the Napoleonic code as a model of clarity and order. Pothier’s treatises on obligations and partnership were translated into English and were used widely. The two leading figures of American jurisprudence in the first half of the nineteenth century, Joseph Story and James Kent, had a profound knowledge of European law and frequently used foreign law citations in their opinions and writings.

When the United States acquired new territories from France and later from Spain and Mexico, it brought U.S. law into jurisdictions formerly governed by civil law systems of French and Spanish origin. In a clash of legal traditions, the common law emerged victorious. This victory, however, was far from absolute. There are civil law remnants in the contemporary law of many states. In most states just a few traces remain, but Texas, and particularly Louisiana have unique systems of their own based on a synthesis of the two legal traditions. In Texas, the common law was introduced by statute, but with important modifications derived from Spanish models. In Louisiana, the reverse is true; while the common law has made some important inroads, the civil law dominates that state’s jurisprudence. Indeed, the Louisiana constitution prohibits reception of common law as a total system. Louisiana, thus, continues to be the one durable enclave of civil law in the United States.

Beginning around 1850, however, American lawyers began to use European civil law authority rarely. Several reasons may explain this trend. First, the complicated system of adapted Roman law, as it was then analyzed by German scholars—the “*usus modernus Pandectarum*”—did not attract much interest among common law lawyers. Second, American lawyers and law

schools of the time were focused on the practice of law rather than on theory and thus, had little interest in foreign legal systems. A third factor may have been a certain divergence between the economic philosophies of the United States and the Germany. In Europe, the excessive laissez-faire tendencies of the free enterprise system were increasingly controlled by government regulation in the 1870s and 1880s, much earlier than in the United States. This was the period during which American courts were guardians of the strongest traditions of unregulated individualism. Any attempt to introduce into American law German ideas of state control of industry and business or even modest social legislation would have been opposed overwhelmingly. Thus, understanding the tradition of treatise writing in partnership law is essential in understanding how American partnership law developed, because treatises are essential sources of that law, and Sources of that law, and because American courts often looked to the civil law for guidance, especially in commercial law, including partnership law. Thus, understanding the developments in publishing legal treatises, as well as the use of civil law in shaping American law in general, is essential to understanding how Anglo-American partnership law developed, since these are essential sources of that law.

## ABBREVIATED REFERENCES

The following abbreviations are used throughout to cite the sources indicated.

- A&D Adams, James N. & Michael J. Davies(eds.), *A Bibliography of Nineteenth Century Legal Literature* (1992).
- AI, [year] Paine, Nathaniel, *A List of Early American Imprints, 1640–1700: Belonging to the Library of the American Antiquarian Society* (1896).
- Shaw, Ralph R. & Richard Shoemaker, *Checklist of American Imprints, 1801–1844* (1958–1966).
- Shoemaker, Richard H., *Checklist of American Imprints for 1820–1829* (1964–1971).
- Gayle Cooper, *Checklist of American Imprints for 1830* (1971).
- Bruntjen, Scott, *Checklist of American Imprints for 1831* (1975).
- Bruntjen, Scott & Carol Bruntjen, *Checklist of American Imprints for 1832–1833*(1977–1979).
- Rinderknecht, Carol & Scott Bruntjen, *Checklist of American Imprints for 1834–1849* (1982–).
- Newton, Francis P., *American Bibliography, A Preliminary Checklist, 1801 to 1819*, Ralph R. Shaw & Richard H. Shoemaker: Printers, Publishers, and Booksellers Index, Geographical Index (1983).
- AI1 Evans, Charles & Ralph Shaw Shoemaker et al., *Checklist of American Imprints, 1820–1829* (1964–1971).
- AI2 Evans, Charles & Ralph Shaw, Richard Shoemaker et al., *Checklist of American Imprint, 1830–* (1972).
- A.J. *American Jurist, 1829–1843.*
- BLESTC *British Library English Short Title Catalogue, 18th c.* (1992–).
- BN *Catalogue of the National Library of France* (Bibliothèque Nationale de France) (1986).
- Code Just. *Code Justinian.*
- DAB *Dictionary of American Biography* (1998).
- Dig *Justinian’s Digest.*
- DNB *Dictionary of National Biography (Great Britain)* (1921–1922).
- ESS *Encyclopedia of the Social Sciences* (1937).
- G.Inst. Institutes of Gaius
- Goldsmiths’ *Catalogue of the Goldsmiths’ Library of Economic Literature, University of London, 5 vols.* (1970–).

- H.E.L. Holdsworth, William S., *History of English Law*, 17 vols. (1903–1966).
- IESS *International Encyclopedia of the Social Sciences* (1967).
- J. Inst. Justinian's Institutes.
- Kent's Comm. Kent, James, *Commentaries on American Law* (1851).
- LC U.S. Library of Congress, *Catalog of Books Represented by the Library of Congress* (1969–1971).
- NUC *National Union Catalogue* (Mansell), U.S.A. (1968–).
- PMM *Printing and the Mind of Mankind: A Descriptive Catalogue Illustrating the Impact of Print on Western Civilization* (1967).
- S&M Sweet, Leslie F. & W. Harold Maxwell, *A Bibliography of English Law* (1955).
- S&S Shaw, Ralph & Richard Shoemaker, *Checklist of American Imprints, 1801–1819* (1964).
- STC Pollard, Alfred & Gilbert R. Redgrave, *Short Title Catalogue of Books Printed in England, Scotland, Ireland, 1475–1640* (1926).

The following titles are cited throughout using the author's last name.

- Benedict, Russell, *Illustrated catalogue of acts and laws of the colony and state of New York and of the other original colonies and states constituting the collection made by Hon. Russell Benedict, justice of the Supreme court of New York. To be sold . . . February 27th, 1922 . . . The sale to be conducted by Mr. Thomas E. Kirby and his assistants, of the American art association, managers, New York City* (NY, 1922).
- Berthelot, Andrew, *La Grande Encyclopedie* (Paris, Larousse, n.d.).
- Bruntjen, Scott, *Checklist of American Imprints for 1831* (1975).
- Camus, Armand-Gaston, *Bibliothieque Choisie des Livres de Droit* (Bruxelles, 1833) (Reprint 1976).
- Cohen, Morris, *Bibliography of American Law* (1998).
- Cowley, John D., *A Bibliography of Abridgments, Digests, Dictionaries, and Indexes of English Law to the Year 1800* (1932).
- Dramard, Eugene, *Bibliographie Raisonnee du Droit Civil* (Paris, 1879) (Reprint, 1976).
- Eller, Catherine Spicer, *William Blackstone Collection in the Yale Law Library* (1938).
- Evans, Charles, *American Bibliography, 1639–1800* (1903).
- Griswold, H. E., *Griswold's Catalogue of Law Books* (Banks Brothers 1894).
- Hoefler, Jean Chrietein Ferdinand, *Nouvelle Biographie Generale* (Paris, 1862–66).

- Howes, Wright, *U.S. LANA* (2d ed. 1962).
- James, Eldon R., *A List of Legal Treatises Printed in the British Colonies and the American States Before 1801—*. In *Harvard Legal Essays 1934* (1934).
- Marvin, John Gage, *Legal Bibliography . . . of American, English, Irish, and Scottish Law Books* (1847).
- Parrish, Jenni, *Law Books and Legal Publishing in America, 1760–1840* (1978).
- Plucknett, Theodore F.T., *A Concise History of the Common Law* (5th ed. 1956)
- Plucknett, Theodore F.T., *Early English Literature* (1958).
- Robbins, Caroline, *The Eighteenth Century Commonwealthman. Studies in the Transmission . . . of English Liberal Thought . . .* (1959).
- Sabin, Joseph, *A Dictionary of Books Relating to America* (1868).
- Shipton, Clifford Kenyon and James E. Mooney, *National Index of American Imprints Through 1800: the Short-Title Evans*, 2 vols. (1969).
- Soule, Charles, *The Lawyer's Reference Manual of Law Books and Citations* (1883).
- Sowerby, E. Millicent, *Catalogue of the Library of Thomas Jefferson*, 5 vols. (1983).
- Walker, David M., *Historical Evolution of Scots Law* (1980).
- Walker, David M., *Oxford Companion to Law* (1980).
- Wallach, Kate, *The Publication of Legal Treatises in from 1800 to 1830*, 45 *Law Libr. J.* 136–48 (1952).
- Wallace, John William, *The Reporters* (1882).
- Warren, Charles, *Early American Law Books and American Law Books, 1815–1910* (1928).
- Wing, David, *Short Title Catalogue of English Books 1641–1700* (1945).