THE AMERICAN STRUGGLE FOR INTERNATIONAL COPYRIGHT, 1866-1891

By

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Foreword

I am deeply grateful to Sam B. Warner, the former Register of Copyrights, for his suggestions during the early stages of this study, and for his criticism of preliminary drafts of several of the chapters, which led to a thorough revision of much of the work. I have been particularly fortunate in having as my adviser Professor Carl Bode, who, although on leave while the writing of this dissertation was in progress, generously sacrificed time from his own work to counsel me.

The student of copyright in America during the period covered herein must acknowledge the indispensability of Publishers' Weekly, and of Thorvald Solberg's Copyright in Congress, 1789-1904, Copyright Office Bulletin No. 8 (Washington: Government Printing Office, 1905). Another valuable tool is Henriette Mertz's Copyright Bibliography (Washington: Library of Congress, 1950).

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CHAPTER I

THE BACKGROUND OF THE STRUGGLE

Pertinence of the Study of International Copyright

The passage of the so-called international copyright act of March 3, 1891, which granted American copyright under certain conditions to foreign writers, ended a difficult situation for American authors and publishers, but it by no means settled all the problems arising from the American publication of foreign books in English, or of American books in other countries.[1] As recently as 1949 the Librarian of Congress, while discussing the relationship of the United States to the Inter-American Convention on the Rights of the Author in Literary, Scientific, and Artistic Works, and to UNESCO studies of similar questions, declared:

> Copyright has a closer connection to today's world struggle than may be apparent at first to some who have not had occasion to consider the wider implications of the subject or may have

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[1] The term international copyright, which has come into general use, is actually a misnomer when applied to the American statute, which simply provides a means by which foreign authors may obtain American copyright. American authors, in seeking foreign copyright, must still comply with the domestic laws of other nations. Only as the American law requires reciprocal treatment for its citizens, if nationals of other countries are to be eligible for American copyright, is our present law in any sense international. See "Title 17. - Copyrights: Sec. 8. Authors or proprietors, entitled; aliens," United States Code, 1946 edition (Washington: Government Printing Office, 1947), II, 1823.

> been engrossed in the detailed problems of particular industries or interests.[2]

Furthermore,

> Misled in some measure by the numerous technically complicated details of the subject, many people may have overlooked the fact that determination of sound copyright policies raises, alike in the domestic and the foreign field, the fundamental issues of our day: preservation of personal initiative with greater equality of opportunity; avoidance of the evils of monopoly with a minimum of state control; freedom and integrity of thought, speech, and communication reconciled to media of mass communication. Copyright properly understood and wisely handled may be at the same time a powerful stimulus to creation and the means of opening the channels of dissemination of thought, information, and debate. Misunderstood, and with its true purpose lost sight of, copyright can become a limitation on creation and a barrier to free interchange and expression.[3]

That the American people, or at least their representatives in Congress, have been slow to accept the idea of "international" copyright on so exalted a plane is demonstrated by the legislative history of the reform during the two and a half decades before enactment of the law of 1891. The culmination of that struggle, as it will be shown in this study, was reached only through the compromise of idealism with the hard realities of the publishing business, and it may well be that history <u>is</u> repeating itself in this connection. The result of the recent Congressional hearings on the "Celler

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[2] Luther H. Evans, "Copyright and the Public Interest," <u>Bulletin of the New York Public Library</u>, LIII (January, 1949), 3. (Thirteenth Richard Rogers Bowker Memorial Lecture, delivered at the New York Public Library on January 13, 1949.)

[3] <u>Ibid</u>., p. 4.

Bill" (H. 4059, 82d Congress, 2d session, 1952) is a case in point: the measure, intended to modify the "manufacturing clause" of the 1891 act, which restricted copyright to books printed from type set in the United States, or from plates made from such type, was not reported out by the House Judiciary Committee. The consequence is that this country must still remain outside any international copyright convention.[4]

Contemporary Misconceptions of the Nature of the Struggle

The contrast between the forces motivating the decision to shelve the "Celler Bill" and the belief in a broader purpose for copyright than a restricted grant to foreign authors is reflected in the writing of contemporary literary historians who tend to emphasize the moral attitude of American authors in the struggle for copyright reform at the expense of its opponents, who are regarded as more or less hypocritical

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[4] An account of the hearings on this bill may be found in U. S. Congress, House of Representatives, Judiciary Committee, Subcommittee No. 3, "Removal of Domestic Manufacturing Requirements for the Acquisition of Copyright by Certain Foreign Nationals," Report of Hearings on H. 4059, January 28, 30, February 1, 1952, Serial No. 13, 82d Congress, 2d Session (Washington: Government Printing Office, 1952). This transcript of the hearings contains no mention of the bill's being reported out of committee, and there is also no mention of the committee's having reported it out in the Congressional Record, 82d Congress, 2d Session. For a popular discussion of the fate of the "Celler Bill" (H. 4059), see Frederick G. Melcher, "We Deplore the Shelving of the Celler Bill," Publishers' Weekly, CLXI (April 5, 1952), 1550.

Congressman Emanuel Celler, in a letter to the editor of the New York Times, August 18, 1952, explained the purpose of his bill with reference to the "manufacturing clause" and to the Universal Copyright Convention. New York Times, August 24, 1952, Section 4, p. 8, col. 6.

and selfish.[5] It will be shown, however, that the authors were not quite so influential in overcoming apathy and opposition to international copyright as it is claimed for them, and that they were frequently insensible to the implications of their stand for abstract justice in the matter of rights in intellectual property. Their efforts were fruitful only when they realized the hopelessness of achieving "pure and simple" copyright, and joined ranks with their erstwhile antagonists, the publishers and members of the printing trades who were equally insistent that their interests also be protected from competition with "cheap foreign books." That "international" copyright was attained when economic conditions determined its necessity is true, but the terms of its acceptance were dictated by the enlightened self-interest of certain publishers, and the bounds were set by those publishers, printers, and trade unionists who had heretofore opposed it.

Other misconceptions of a less serious nature also mar the standard histories of American literature. For example, three writers agree that opponents of international copyright tended "to confuse it with the protective

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[5] Robert E. Spiller, Odell Shepard, Luther S. Mansfield, and John D. Wade, "Art in the Market Place," Literary History of the United States, edited by Robert E. Spiller, Willard Thorp, Thomas H. Johnson, and Henry Seidel Canby (New York: The Macmillan Co., 1948), I, 237; Dixon Wecter, "The Education of Everyman," Ibid., II, 807; William Charvat, "Literature as Business," Ibid., II, 962-963.

tariff. . . . ."[6] Yet confusion, if confusion it was, could be expected, for the questions of international copyright and the tariff on books were virtually conterminous, the first petition for the rights of foreign authors being presented to the Senate in 1837, and the first tariff on books being adopted in 1842. When the McKinley Tariff Act of 1890 provided that books printed in foreign languages should be admitted duty-free, "this was considered no small victory for the forces of free trade in ideas."[7] The relationship of the essentially protective "manufacturing clause" in the act of 1891 to the tariff should be fairly obvious.[8] Although this study deals primarily with international copyright, sufficient evidence will be offered to show that the problems of copyright and the tariff were, in many of their phases, virtually inseparable.[9]

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[6]Earl L. Bradsher, "Book Publishers and Publishing," Cambridge History of American Literature, edited by W. P. Trent, John Erskine, Stuart P. Sherman, and Carl Van Doren (New York: The Macmillan Co., 1931), IV, 547; Harold Blodgett, "Heard from the New World," Literary History of the U.S., I, 621; Charvat, "Literature as Business," Ibid., II, 962. The quotation is from Bradsher.

[7]L. Quincy Mumford, "The History of Copyright," ALA Bulletin, XLVI (February, 1952), 45. Here, as elsewhere in this chapter, sources used for background material, i.e., information primarily concerned with events occurring prior to 1866, are, with one exception, secondary. Since the account of the earlier period, 1744-1860, given later in this chapter, is presented solely as an introduction to the succeeding chapters, which are based largely on primary materials, the writer feels justified in taking this course.

[8]Ibid., p. 46.

[9]This relationship has been clearly and thoroughly demonstrated by Donald Marquand Dozer in "The Tariff on Books," Mississippi Valley Historical Review, XXXVI (June 1949), 73-96.

Another misconception of the problem may be found in the statement that the history of the struggle for international copyright in the years before the Civil War has been neglected, "while what attention has been given the matter has been directed to the culminating events. . . . ."[10] It is entirely proper, however, to call attention to the "culminating events." In the light of what has previously been said about the dual nature of the copyright problem, and about its practical aspect as shown in the "confusion" of copyright and tariff, a study of the struggle from 1866 to 1891 is far more rewarding, for the Civil War terminated the earlier activity completely. In at least two of several brief accounts of the American movement for international copyright, the war is looked upon as cutting the series of events into two parts.[11] Although the methods used to arouse public opinion were, to a certain extent, similar in both periods,[12] it was not until long after the Civil War that legislation was finally passed. Of nearly forty bills dealing

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[10] James A. Hawley, "An Early History of the Copyright Movement," Library Quarterly, XI (April, 1941), 201-202.

[11] Thorvald Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany (Boston: John W. Luce and Co., 1939), No. 18, p. 14; Andrew J. Eaton, "The American Movement for International Copyright, 1837-1860," Library Quarterly, XV (April, 1945), 95.

[12] Solberg, "The Long Struggle for Honorable International Copyright Relations," Copyright Miscellany, No. 15, p. 24.

with international copyright presented to Congress between 1837 and 1891, only seven were introduced before 1861.[13]

Thus it is the later period which deserves the fuller study, for international copyright legislation was not attained until then. Furthermore, comparison of the two phases of the struggle shows the recurrence of trade conditions and the growing intensification of certain factors throughout the entire fifty-four-year period (1837-1891) until the climax was reached in the decade before 1891: a chaotic situation in the publishing business productive of attempts of authors to better their economic status by means of copyright reform, coupled with the mixed reactions of publishers to their own difficulties and to the problem of international copyright.

The Scope of This Study

The scope of this study is confined, therefore, to the period 1866-1891, although the remainder of this chapter will be devoted to a summary of events of the years before the Civil War.[14] But the work is not limited to a mere annotated history of occurrences leading to the passage of the Chace bill in 1891; rather, it is the purpose of this dissertation to set the record straight, and in so doing, to

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[13] Solberg, "Bibliography of Copyright. I. Bills," Copyright in Congress, 1789-1904, Copyright Office Bulletin No. 8 (Washington: Government Printing Office, 1905), pp. 33-57.

[14] In dealing with these events, the writer has relied upon secondary sources as previously explained in note 7, above.

correct the misconceptions that have developed simply because the subject of copyright history has all too often been glossed over as a minor phase of literary or cultural history, or relegated to the province of specialists in copyright law. Since the current interest in the question of copyright on the international and national scenes follows lines of discussion similar to those developed during the years 1866 to 1891, a history of the movement during that important period is especially pertinent now.

The succeeding chapters deal with unauthorized reprinting on both sides of the Atlantic, and with efforts of American authors to protect themselves under existing copyright laws; with similar efforts of American publishers, which included the purchase of advance sheets and the system of trade courtesy; the failure of the publishers' efforts through the breakdown of trade courtesy; attempts at changes in the statutes by authors and publishers; and finally, the achievement of success in 1891 by means of the united efforts of authors and publishers, with the cooperation of printers and trade unionists.

Historical Summary, 1774-1860

Until the passage of the act of March 3, 1891, which granted copyright under certain conditions to foreign authors, the economic balance of the American publishing business was constantly upset by unauthorized reprinting of foreign books. This system of publication without the authorization of, and

frequently without payment to, the English or European authors was entirely to the advantage of the American publishers, whose financial risks thus did not include sponsorship of unknown native writers. An early instance of the increasingly popular practice was Benjamin Franklin's republication of Pamela in 1744.[15] Although American authors were protected in this country after 1782 by the copyright legislation of various states, and later by an act of Congress approved in 1790,[16] they could not compete with the more popular English writers whose works were reprinted or imported in greater and greater numbers.[17] Indeed, American authors were in double jeopardy: discriminated against at home by the reprinting activities of the American publishers, they were also the victims of the practice abroad. In 1782, for example, Jeremy Belknap was trying to discover a means of protecting himself from the London reprinters.[18] Republication without benefit of international copyright became the basis for a productive and highly competitive segment of American book publishing throughout the first nine decades of the nineteenth century.[19]

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[15]Spiller and Alexander Cowie, "The Making of the Man of Letters," Literary History of the U. S., I, 124.

[16]Solberg, "The Long Struggle for Honorable International Copyright Relations," Copyright Miscellany, p. 22.

[17]Spiller and Cowie, "The Making of the Man of Letters," Literary History of the U. S., I, 125.

[18]Bradsher, "Book Publishers and Publishing," CHAL, IV, 546

[19]Eaton, "The American Movement for International Copyright, 1837-1860," Library Quarterly, XV (April, 1945), 101.

Various amendments to the copyright law were adopted between 1790 and 1865, but all of them dealt with domestic copyright or with administrative details,[20] and maintained legislation as a means of limiting copy-privilege rather than as a means of extending copy-right.[21] ~~Meanwhile~~, there was little improvement in the situation of American authors, for reprinting of their works by foreign publishers continued even as the American practice flourished. German publishers began to bring out unauthorized translations of American books in 1793, and French publishers later did likewise, Cooper's novels being especially popular in France. Yet during his residence in that country, Cooper did not receive enough there from his literary work to pay his French taxes.[22] Strangely enough, he fared better in Great Britain, where the expense of translation did not hinder the republication of American books. In 1827 Cooper rediscovered what Irving had learned in 1820, that it was possible for the American author to secure a financial return for his work either by living in England or by publishing there prior to publication elsewhere. By selling his manuscript to a British publisher, who would rush printed but unbound and as yet unpublished pages to the

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[20] Solberg, "Copyright Legislation: A Retrospective Summary," Copyright Miscellany, No. 5, p. 17.

[21] Eaton, "The American Movement for International Copyright, 1837-1860," Library Quarterly, XV (April, 1945), 96.

[22] Bradsher, "Book Publishers and Publishing," CHAL, IV, 546.

United States, the American author could beat the American reprinters at their own game and receive payment in both countries. The system of British copyright, which required only residence or prior publication in England, thus offered an advantage not afforded by the American law,[23] which stipulated that a writer, to receive copyright, must be a citizen of or resident in the United States.[24]

Of the American publishers, Matthew Carey of Philadelphia was one of the most successful reprinters, the novelist Scott, about 1814, being the first author whose works he republished. Carey's method was to obtain unbound printed pages of the novels from his London agent, who alone received any payment for his services, before the published work could appear in England or be imported into this country. The success of the venture depended upon getting the completed books into the hands of local booksellers and traveling book peddlers before any other edition appeared.[25] By 1823 the technique was developed to a high degree of efficiency. When Carey & Lea received unbound pages of two cantos of Byron's Don Juan, the work was distributed to thirty- five or forty compositors; thirty-six hours later the completed edition was

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[23]Spiller, Shepard, Mansfield and Wade, "Art in the Market Place," Literary History of the U. S., I, 237.

[24]Library of Congress, Copyright Office, "Public Acts Relating to Copyright Passed by the Congress of the United States, 1790-1900," Copyright Enactments, 1783-1900. Compiled by Thorvald Solberg. Copyright Office Bulletin No. 3 (Washington: Government Printing Office, 1900), p. 46.

[25]Spiller and Cowie, "The Making of the Man of Letters," Literary History of the U. S., I, 125-126.

on sale. The same system was applied to works to be translated.[26] However, until the adoption of a number of revolutionary inventions by printers, chiefly in the 1830's and 1840's, the editions were small, one thousand copies being average. Even so, sixty per cent of all books published in 1820, to the value of $1,500,000, were of popular appeal, and of these only thirty per cent were of American authorship.[27]

Under such circumstances, it was quite natural that the chief proponents of international copyright should be British and American authors. The growing American reading public, easily satisfied with popular English literature, and the expanding American publishing industry, profitably engaged in reprinting English works at a minimum cost, were not so concerned over the matter as were Europeans, whose legitimate markets, the writers felt, were being cut off by unauthorized reprinting. Nor could there be a highly developed American literature as long as English literature was available without hindrance.[28] It has even been suggested that American writers did not realize, until about 1825, that the phrasing of the American copyright law worked to their

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[26] Bradsher, "Book Publishers and Publishing," CHAL, IV, 546. Eventually, the easier accessibility of the port of New York may have given that city primacy over Philadelphia as a reprinting center. Ibid., p. 544. Certainly the jealousy between the publishers of the two cities as exhibited after the Civil War might have stemmed in part from such rivalry.

[27] Spiller, Shepard, Mansfield and Wade, "Art in the Market Place," Literary History of the U. S., I, 234-236.

[28] Eaton, "The American Movement for International Copyright, 1837-1860," Library Quarterly, XV (April, 1945), 97.

disadvantage.[29] Paine's reported advocacy of international copyright in 1792, and that of the New York Post twenty-eight years later, went unheeded. But others took up the cry: John Neal in 1823, Willis G. Clark in the pages of the Knickerbocker Magazine, and an English publisher, Frederick Saunders, who is said to have influenced William Cullen Bryant to favor international copyright legislation.[30] Another writer says that Saunders was inspired by N. P. Willis and an unnamed Boston publisher to make a test case in 1836 by appointing a representative in America, who was to publish in this country, under the Saunders imprint, works being issued simultaneously in London, in order to forestall American reprinting and to appeal to American publishers on moral grounds. The attempt did not succeed and Saunders' efforts were ignored.[31] He failed, but his fellow countrymen were not disheartened. British writers kept up the agitation for an American copyright law that would end the unauthorized reprinting of their books.[32]

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[29] Spiller and Cowie, "The Making of the Man of Letters," Literary History of the U. S., I, 126.

[30] Eaton, "The American Movement for International Copyright, 1837-1860," Library Quarterly, XV (April, 1945), 101-102.

[31] Yawley, "An Early History of the International Copyright Movement," Ibid., XI (April, 1941), 202-203.

[32] Eaton, "The American Movement for International Copyright, 1837-1860," Ibid., XV (April, 1945), 98.

In 1837, fifty-six British authors presented a memorial to the United States Senate, in which they protested that they were being deprived of their property by American publishers, that their reputations were being injured by the mutilation of their work inherent in the system of reprinting then practiced, and that American writers were being deprived of the opportunity to find publication outlets as long as English literature was so readily available. A second memorial, signed by thirty American authors, argued the necessity of fostering native literature, and pointed out that its development was being stifled by the existing conditions of copyright and publication.[33] By 1853, when a new approach to the problem was devised, a total of twenty-four petitions and memorials, supporting or attacking international copyright, from authors and artists, bookseller and binders, printers and publishers, college professors and "citizens" otherwise unidentified were presented either to the House of Representatives or to the Senate, and there were others after that date.[34] The divergent points of view of these documents may be summarized as follows: (1) justice demands recognition of the rights of foreign and native authors alike; (2) prudence requires protection of native industry and native workmen; (3) wisdom insists upon the widest dissemination of

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[33]Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 18, pp. 3-5.

[34]Solberg, "Bibliography of Copyrights. V. Petitions, Memorials, Messages, and Miscellaneous Printed Copyright Documents," Copyright in Congress, 1789-1904, pp. 96-102.

knowledge among the American people at the lowest possible cost; (4) fair play calls for reciprocity on the part of the British government in the matter of copyright legislation.[35]

Henry Clay presented the first two petitions on the floor of the Senate, and in the debate that followed, the issues raised were to be heard of again in the years after the Civil War. Senator Clay favored reciprocity with Great Britain; Senator Preston analyzed the question in terms of the conflict of interest between American authors and American publishers, and in terms of free trade versus protection, asserting that the British, who had a greater number of writers seeking a market, would support the first position, while the Americans, who published a greater volume of books, would support the latter. Senator Buchanan presented an argument that would be urged constantly by opponents of international copyright, particularly by the publishers of inexpensive reprints: international copyright would keep the price of books high; the desire of the American people for education at low cost should be considered; authors should be content with less gain and more fame. Further discussion was concerned with assigning the problem to the proper committee, and here, too, the 1837 action foreshadowed what was to come.[36]

The response of the various Congressional committees to the petitions and memorials favoring copyright reform was

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[35] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 18, pp. 3-13.

[36] Ibid., pp. 3-4.

either lukewarm or antagonistic. The Senate Committee on Patents, for instance, eliminated, in 1838, the question of authors' rights to literary property as being already covered by domestic law; asserted that international copyright was an impossibility; claimed that British authors were trying to monopolize the American market and thus destroy book manufacturing in this country; dismissed the complaints of American authors that they were being discriminated against as mere cupidity on the part of the writers; doubted that competition between American and foreign books could exist, and at the same time proclaimed its desirability; and persuaded themselves that an international copyright law would chiefly benefit foreign publishers and book manufacturers while bringing no advantage to American or foreign authors.[37] Again, ten years later, another Senate committee, most of whose members were authors, failed to report in a bill in spite of a prolonged session. "It is possible that they were too much engaged in president-making."[38] Not only would the reasons given by the committee in 1838 be heard again after the Civil War, but also another committee would be found to have been "too much engaged in president-unmaking."

In spite of such adverse criticism, Clay managed to introduce his bill for international copyright to the consideration of the Senate on five different occasions between

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[37] Ibid., pp. 8-9.

[38] "The History of International Copyright in Congress," The Round Table, III (March 24, 1866), 179.

1837 and 1842, and it was this bill which loosed the flood of petitions and memorials. When it was first submitted to the Senate by the select committee it was accompanied by a report which defended authors' rights in literary property and demonstrated the constitutionality of the proposed legislation. However, the bill itself merely amended the existing act by extending copyright to works of British, Irish, and French authors to be published subsequently to passage of the bill, provided that the requirements of registration and deposit of the domestic law be complied with, and that the work to be copyrighted be printed and published simultaneously in the United States and in the country of origin, or at least within thirty days of registration in this country.[39] The so-called "manufacturing clause" is still a feature of American copyright law.[40]

While Clay's support of the bill for international copyright stimulated action to secure its passage, particularly among such New York writers as Matthews, Halleck, Bryant, Paulding, and Evart Duyckinck, all of whom desired to create a distinctively American literature in spite of the

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[39] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 13, pp. 5-6, 9. This essay mentions only four bills introduced by Clay, all between the years 1837 and 1840. However, elsewhere Solberg lists a fifth, in 1842. See his "Bibliography of Copyright. I. Bills," Copyright in Congress, 1789-1904, p. 35.

[40] Copyright Office, "Mechanical Work to be Done in the United States," Copyright Law of the United States of America, Bulletin No. 14 (Washington: Library of Congress, 1949), p. 8.

handicaps imposed by the existing system,[41] technological developments were tipping the scales in the opposite direction. The first crossing of the Atlantic completely under steam power, in 1838, which rendered sea passage more certain, coupled with mechanical improvements in the printing process, inspired some publishers to combine literature with journalism. Continuing their practice of obtaining printed unbound pages, obtained before publication of the books in England, they now began to bring out reprinted novels in the form of mammoth weekly issues which sometimes sold for as little as six cents each.[42] And in 1842, Harper and Brothers introduced a series of paper-backed novels which eventually ran to 615 volumes, largely by foreign authors, some of whom were contemporary. Not only were American authors discouraged by this competition, but also they were forced to accept a lower income from the sale of their works at home. Whereas the standard edition of American novels such as Cooper's had generally sold for $2, similarly bound reprints of English works had retailed for $1.50.[43] Increased competitive production and the necessarily lowered cost of manufacture cut the price of novels published in the United States from $1.50 to $1, and eventually, in the paper-backed series, to twenty-five cents per volume.[44] Under

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[41] Eaton, "The American Movement for International Copyright, 1837-1860," Library Quarterly, XV (April, 1945), 103.

[42] Bradsher, "Book Publishers and Publishing," CHAL, IV, 546-547.

[43] Ibid., pp. 550-551.

[44] Spiller, Shepard, Mansfield and Wade, "Art in the Market Place," Literary History of the U. S., I, 235.

these circumstances, it is obvious that publishers who profited by this system would oppose international copyright.[45]

Foiled in their efforts by this turn of events, publishers who favored international copyright nevertheless attempted to compensate in part the authors whose works they reprinted. Both English and American firms began to pay for unbound pages or copies of works they wished to bring out. When two or more publishers issued competing editions of the same books, some of the reputable companies could afford to undersell their competitors. The survivors of this battle tried to continue, not always successfully, this system of respecting each other's foreign commitments.[46]

Because petitions, Congressional committee hearings and bills could not produce the desired legislation, and voluntary methods proved unsatisfactory, the attempt was made to secure a workable arrangement by means of a treaty between the United States and Great Britain. As early as 1839 Lord Palmerston, British Secretary of State for Foreign Affairs, had communicated with the American Minister in London to ascertain whether the United States was interested in arranging for copyright reciprocity through treaty. Aside from a request made in the House of Representatives in 1842 for transmittal of the correspondence to that body, nothing much seems to have come of the affair. President Tyler sent

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[45] Bradsher, "Book Publishers and Publishing," JHAL, IV, 547.

[46] Ibid.

the papers to the House, and they were printed by order of the select committee on international copyright.[47]

The second proposal to settle the question by treaty came from the United States in 1853, after five New York publishing houses, D. Appleton and Company, Robert Carter and Brothers, G. P. Putnam and Company, Charles Scribner, and Stanford and Swords, had announced in a letter to Edward Everett, Secretary of State, the terms under which international copyright would be acceptable to them. These points were: prior registration in the United States, a written statement from the British author granting rights of publication to the American publisher, complete manufacture in this country of the book to be copyrighted, and unrestricted republication rights if no authorized American edition should appear within thirty days of publication of the book abroad. Secretary Everett, through the United States Minister in London, began negotiations, but the resulting treaty was tabled in the Senate. Opponents of international copyright, aroused by this new threat, presented a flurry of petitions against ratification. More important than the treaty itself, in so far as the question of international copyright is concerned, was the issuing of Henry C. Carey's Letters on International Copyright, which also proved useful to the opponents of the measure in the struggle of 1866-1891.[48] During this

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[47] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 13, pp. 9-10.

[48] Ibid., p. 13.

phase of the movement, Harper and Brothers apparently were not interested in the treaty as a means of securing international copyright, but seemed to prefer the existing state of affairs.[49]

The final effort to obtain international copyright before the Civil War was the bill introduced by Representative Edward Joy Morris of Pennsylvania in 1858 and again in 1860, but it was never reported out of the committee to which it was referred. Morris's bill contained a reciprocity clause by which copyright would have been granted to foreign authors of books, or to their immediate heirs, if the same privileges were extended to Americans in the foreign author's country; it also required American manufacture of the book by an American citizen, and in cases of importation by the citizen-manufacturer, or failure on his part to keep the American edition in print, penalized him by permitting importation or reprinting by any one who cared to do so.[50]

By the 1850's publishing had become big business, made so by advances in transportation which opened previously untapped areas of the country, and by expanded educational and cultural facilities which created markets hitherto

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[49] Harper & Brothers to President Millard Fillmore, August 23, 1852, in J. Henry Harper, The House of Harper (New York: Harper & Bros., 1912), pp. 107-108. This letter was written in answer to a Presidential inquiry (August 9, 1852) as to the firm's attitude on the pending treaty negotiations.

[50] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 13, pp. 13-14.

undreamed of. To meet the demand for books, improved techniques of production were employed, and higher royalties (whenever royalties replaced outright sale of manuscripts) were paid to authors. Increased costs were met by new promotional methods - publishers' agents, national newspaper and magazine advertising, adjusted discounts to booksellers, subscription bookselling in regions where there were few bookstores, book prices geared to various income levels. The problem caused by the lack of international copyright was temporarily solved by the devices of authors' short-term residence in Canada, or of simultaneous publication in America and in England as arranged by cooperating publishers. Cooperation and fair play were, for a time at least, operating satisfactorily in this country, so that publishers could bring out editions of English books with assurance of a fair return. The resulting temporary abatement of unauthorized reprinting and underselling maintained book prices at a level which enabled American as well as British authors to find profitable markets for their books, and a well-paid professional class of writers came into being in the United States. During the Civil War conditions changed to a certain extent, but the situation was not radically altered.[51]

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[51] Charvat, "The People's Patronage," Literary History of the U. S., I, 521-523.

CHAPTER II

LITERARY PIRACY ON BOTH SIDES OF THE ATLANTIC

A Definition of Literary Piracy

Throughout the period 1866-1891, American copyright, as it had been since 1790, was explicitly denied to non-resident aliens, and the unauthorized publication of their books in this country was permitted by law.[1] After 1868, British copyright, valid throughout the Empire, became available to foreigners of certain nations, including the United States, on the basis of prior publication in Great Britain; registry and deposit of copies of [illegible] right holder the right to [illegible] porary residence in some [illegible] prior publication in the United Kingdom was deemed advisable. In 1875, Canadian copyright was made to depend upon prior publication in the Dominion rather than upon possession of British copyright.[2] British authors therefore had no property

[illegible] Copyright Office, Copyright Enactments, 1783-[illegible]ev., Copyright Office Bulletin No. 5 (Wash-

[1] U. S. Copyright Office, Copyright Enactments, 1783-1900, 2d ed., rev., Copyright Office Bulletin No. 5 (Washington: Government Printing Office, 1906), pp. 46, 50, 57.

[2] Augustine Birrell, Seven Lectures on the Law and History of Copyright in Books (London: Cassell & Co., 1899), pp. 149-152, 218; [A. P. Bowker], "Copyright. VIII.: Statutory Copyright in Other Countries," Publishers' Weekly, XXVIII (October 3, 1885), 435. Hereafter, Publishers' Weekly is designated by the initials P. W.

rights in their books that were legally recognized in the United States; American authors might obtain such recognition in Great Britain and Canada only with inconvenience.

Thus many books of English origin came to be reprinted in the United States by American publishers acting without permission of the authors; a somewhat smaller number of works of American origin were reissued, also without authorization, in Great Britain and Canada by publishers in those countries. The volume of reprints from American presses would obviously be larger than that produced in Great Britain because (1) the mass of English literature was greater than the body of American writing, (2) the United States remained to a certain extent culturally dependent upon England, and (3) foreign authors were completely unprotected in this country.

What distinguished these reprints, American, British, and Canadian, from other books published in the three countries was that their authors, in fact or through circumstance, were unable to obtain copyright in the country where republication occurred, and that the reprinting was done without the permission of the writers of the books thus appropriated. The combination of these factors constituted literary piracy.[3]

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[3] A distinction should be made between marine piracy and literary piracy; the former term describes violent appropriation of another's property on the high seas, whereas the latter signifies merely the unauthorized reprinting of previously published works of writers whose property right in their books is not recognized in the country where reprinting occurs. Literary piracy does not necessarily mean unauthorized reprinting without payment to the unprotected authors; many so-called "pirates" paid royalties to authors whose works they reprinted. The connotation of marine piracy

Literary piracy was at the root of the international copyright problem; to escape the effects of unauthorized reprinting of their books in Great Britain and Canada, American authors tried to protect themselves under the British and Canadian copyright laws, and American publishers devised systems of payment for unbound printed pages of foreign works not yet published, and of recognition of each other's priority in publication of such matter. At the same time, increasing competition among unauthorized reprinters in the United States led to "cheap book production." This device for maintaining profits by selling very large editions at low prices with small unit gain cut deeply into the sale of books by native authors, to whom copyright royalties had to be paid. When the stratagems of authors and publishers failed to undermine literary piracy and the effects of cheap book production, the two groups attempted, at first separately and then jointly, to change the copyright statutes of the United States in order to gain protection and financial security.[4]

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was applied to unauthorized reprinting by those who wished to redress by law what could only be regarded as a moral wrong. Furthermore, literary piracy should not be confused with plagiarism, although there are instances of unauthorized reprinting of unprotected literary material which also involved the passing off of one author's book as the work of a national of the country where the reprinting occurred.

As a matter of fact, the "pirates" insisted that their activities were within the law, and objected to the use of the term. Henry Holt, "The Recoil of Piracy," Forum, V (March, 1888), 27.

[4]Two books, particularly, make a valuable contribution to the history of international publishing, authorized

Literary Piracy as Practiced by American Reprinters

In the United States literary piracy flourished throughout the period 1860-1891. Not only were English books readily available for unauthorized reprinting,[5] but also cheaply and hastily made translations of contemporary European literature were produced. The issue of competitive reprints of the same books by rival publishers led to the deterioration of quality in book manufacture and to price cutting,[6] with the result that the American public came to regard a book as simply another marketable commodity, regardless of its contents, to be bought at the cheapest price. While English and foreign authors lost the royalties which might conceivably have been paid to them by the unauthorized

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and unauthorized. They are I. R. Brussel, Anglo-American First Editions, 1826-1900: East to West (New York: R. R. Bowker Co., 1935) and Brussel, Anglo-American First Editions: Part Two: West to East: 1786-1930 (New York: R. R. Bowker Co., 1936). Graham Pollard's introduction to the first of these companion volumes is especially interesting. Useful, too, is Clarence Cohdes, American Literature in Nineteenth Century England (New York: Columbia University Press, 1944), passim. A good brief account from the British point of view may be found in P. H. Muir, "Ignoring the Flag," New Paths in Book Collecting: Essays by Various Hands, ed. John Carter (New York: Charles Scribner's Sons, 1934), pp. 67-92. Carl J. Weber, "American Editions of English Authors," Nineteenth-Century English Books: Some Problems in Bibliography, Third Annual Windsor Lectures in Librarianship (Urbana: University of Illinois Press, 1952), pp. 28-45, is also stimulating.

[5]Appleton Morgan, Anglo-American International Copyright, being an Open Letter to Hon. Wm. M. Evarts, Secretary of State (New York: Brentano's Literary Emporium, 1879), p. 14.

[6]James Parton, "International Copyright," Atlantic Monthly, XX (October, 1867), 438.

reprinters, American writers lost the market for their copyright books which perforce sold for more than the reprints.[7]

Normally, the business of acquiring British books for American reprinting was a routine procedure. Harper and Brothers, for example, had an agent in London who sent them copies of English books as soon as they were published.[8] However, there were certain tricks of competition by which American reprinters obtained possession of foreign books in order to issue editions before their rivals could do so. Among these devices were: bribery of English compositors to obtain early proofs, typesetting aboard ship en route from England to America, and one instance, in 1884, of cabling the text of a book and getting it printed, bound, and on sale within thirty-six hours of its London publication. Sometimes the more legitimate transaction, the purchase of unpublished and unbound printed pages, carried with it the stipulation that publication of a book in the United States was not to precede issue in England, but American publishers often failed to keep the agreement because of the fear of competition from unauthorized reprinters.[9]

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[7] Morgan, Anglo-American International Copyright, p. 23.

[8] George Cary Eggleston, Recollections of a Varied Life (New York: Henry Holt & Co., 1910), p. 154.

[9] Brussel, Anglo-American First Editions, 1826-1900: East to West, p. 12. The listing of "typesetting aboard ship" as a means of competition is perhaps based upon an apocryphal story first printed in a German-language journal, Amerika, published in Vienna to purvey American news exclusively. The story was told of D. Appleton & Company, who were supposed to have sent compositors, cases of type, and material for making stereotype plates to England in the spring of 1881,

Outright theft of proof sheets as an alleged technique of literary piracy is described in the following passage:

> The Pall Mall Gazette notes the arrest at Edinburgh recently of a printer's machineman named Monro, charged with stealing valuable proof sheets. 'From the evidence it appeared that in a very short time after the publication of the "Encyclopedia Britannica" was commenced in this country [Great Britain], the first volume was reproduced without the publishers' knowledge or consent by an American firm, who also issued the subsequent volumes as regularly as they were published here. Messrs. Black instituted inquiries in America, and discovered that early sheets of the work were sent direct from the printing office

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when the Revised New Testament was about to be published. Appleton planned to take advantage, it was said, of the time lag involved in sending unbound printed pages to the English and American authorized publishers for simultaneous publication. These pages were obtained surreptitiously by Appleton, the account continued, and the type and other materials placed on board a chartered steamer bound for America; during the voyage the compositors set the type from the unbound pages and made stereotype plates. When other American publishers were just receiving their advance sheets, Appleton was ready to go to press. See "A Publishing 'Yarn,'" P. W., XX (August 20, 1881), 183. However, the story depends too much on fortuitous coincidence to be true, and furthermore, it contradicts facts which are a matter of record. Publication of the Revised New Testament, according to the tale, was proceeding in secret; examination of P. W., XIX (January-June, 1881), shows that the Testament was newsworthy enough to be mentioned frequently, there being delays, but no secrecy involved, in its publication. The story also displayed ignorance of the fact that the issue of piracy was not raised in this case, the translation being made readily available to a number of American firms. At least ten publishers advertised reprintings of the Revised Testament in P. W. during the second quarter of 1881, but Appleton, who announced in that journal a considerable list of books to be issued, did not mention the Revised New Testament.

It might well be asked why American reprinters of English books should not, as a matter of course, have relied on British magazines as a source for novels. Since the object of the reprinter was to get the complete text as quickly as possible, waiting for serials to be completed would have cut the advantage of prior publication unless the novel was not available in any other form: manuscript, unbound pages, or book. See Chapter III for data concerning purchase of pages and plates from English periodicals. There were, of course, unauthorized American reprints of English periodicals.

> in Edinburgh. Messrs. Neill, the printers, on being informed of this, remembered that shortly after the work was commenced the prisoner Monro, who came from America, applied for work in their pressroom. He was therefore watched, and last Wednesday he was observed taking sheets, and was arrested, the sheets being found in his pocket.' Messrs. J. M. Stoddard and Co. state, in a card to the Philadelphia papers, that they have no knowledge of such a person, and do not benefit by such a practice. They purchase abroad two copies of each volume as soon as issued, and reset from these.[10]

Because the Britannica was unprotected in the United States, the Stoddard firm was entirely within its rights in producing an edition by resetting copy from purchased volumes, but in doing so, they were eventually ruined. The "Encyclopedia Britannica case" illustrates the vicissitudes of the unauthorized reprinter who had to compete simultaneously with "authorized" publishers and with other "pirates."

The original publishers, A. and C. Black, of Edinburgh, authorized Little, Brown and Company, of Boston, to issue a trade edition for sale in book stores at nine dollars a volume; these books, save for the title page, which bore the Little, Brown and Company imprint, were identical with the Edinburgh edition. Another American firm, Scribner, Armstrong and Company, of New York, was authorized to sell a subscription edition through agents. These less expensive volumes, which bore the imprint of Samuel L. Hall instead of that of Scribner, Armstrong and Company, were also printed in Edinburgh from the original plates, but on narrow-margined lightweight paper. J. M. Stoddard and Company must have planned

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[10] "Techniques of literary piracy", P. W., XIII (April 20, 1878), 410.

to publish an unauthorized reprint to be sold on the subscription basis, before the Scribner, Armstrong issue began to appear, for it was alleged in a suit brought by Stoddard against Scribner, Armstrong and Company that one H. H. Kay, who had solicited subscriptions for Stoddard, had unlawfully conveyed the list of subscribers to Scribner, Armstrong and Company.[11]

When Stoddard had issued seven or eight volumes of the unauthorized edition, A. and C. Black contracted with Charles Scribner's Sons to publish, from duplicate plates shipped from Edinburgh, an even cheaper American edition to undersell J. M. Stoddard and Company's reprint. Beginning with the tenth volume, articles by American writers were included in the encyclopedia, and these articles were also printed in pamphlet form in the United States in order to have them copyrighted here. In 1879 an injunction was sought by A. and C. Black, through their American agents, in the United States Circuit Court for the Eastern District of Pennsylvania, to restrain J. M. Stoddard and Company from using this copyrighted material in their reprinted encyclopedia. Although A. and C. Black dropped the matter after the court denied the injunction on the grounds that it would constitute interference with an American business by aliens, the Stoddard firm, unable to sustain the expenses of such competition, failed even though it managed to print the entire

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[11] "The Encyclopedia Britannica," Ibid., (May 11, 1878), 470-471. This was the ninth edition of the encyclopedia.

Encyclopedia Britannica. At least two other cheap American reprints, one of which was produced by a new photographic process, had entered the field in the meantime and cut prices still further.[12] Perhaps the pressman Monro who was caught stealing the proof sheets in Edinburgh was acting for the third unauthorized reprinter who, having no new photographic process at his disposal, was forced, like Stoddard, to reset the type from copy.

Cheap Book Production in the United States as a Result of Unauthorized Reprinting

It should be noted that the chief feature in the process just described was the steady cutting of book prices during the years between the Civil War and the passage of the Act of March 3, 1891. What was true for expensive reference works was even more typical in the case of popular books. Various reasons have been given for the rise of cheap book production. A commonly held opinion was that democratic, universal education created the immense demand for cheap books,[13] and one of the arguments used against international copyright was that the reform, by introducing British methods of book manufacture and distribution, would deprive the American people of the inexpensive literature that was rightfully

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[12] George Haven Putnam, "Cases and Decisions Since the Act of 1891, the Issues of which Have Involved Questions of International Copyright: The Britannica Cases, 1879-1893," The Question of Copyright, 3rd ed., rev. (New York: G. P. Putnam's Sons, 1904), pp. 177-178.

[13] John H. Thomas, "On Bookselling and Bookmaking," P. W., IV (September 6, 1873), 241.

theirs.[14] Undoubtedly the popular demand for cheap books had been stimulated by the activities of Erastus Beadle, whose paper-backed books had been shipped by the bale to the Union armies during the Civil War.[15] Henry Holt asserted that the effect of the protective tariff in the years after the Civil War was to stimulate all sorts of manufacturing. Increased production of machinery and materials used in the making of books, with a concomitant easing of credit restrictions, led to the "tempting" of newcomers into the field of publishing, particularly of the unauthorized cheap reprinting of foreign books which had previously been regarded as reserved to the established publishers.[16]

One group of opponents of international copyright saw the cheap book as entirely the product of chaotic business conditions. The "Philadelphia Publishers" perhaps overstated their case in accusing the large publishing houses of "endeavoring to monopolize not only the publishing business, but the retail trade as well as the jobbing wholesale trade," so that book prices were cut by eliminating the middleman and selling at a discount. However, there is something to be said for the argument that rival reprints were brought out

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[14] S. S. Conant, "International Copyright. I. An American View," Macmillan's Magazine, XL (June, 1879), 153.

[15] Frank Luther Mott, Golden Multitudes: The Story of Best Sellers in the United States (New York: The Macmillan Co., 1947), p. 149.

[16] Holt, "The Recoil of Piracy," Forum, V (March, 1888), 31.

in huge quantities to garner the little profit remaining in a diminishing market.[17] Certainly business conditions played their part; for example, after the financial crisis of 1873, Dodd, Mead and Company began to issue cheap reprints of copyrighted material. One hundred thousand copies of their authorized Phoenix Edition of J. P. Roe's Barriers Burned Away were sold to the trade at twenty-one cents per copy, and were retailed by the booksellers at prices ranging from twenty-seven to fifty cents. The same firm met increased competition by employing traveling salesmen to promote their books instead of relying solely on the Semi-Annual Trade Book Sale, the auction at which publishers traditionally disposed of their offerings.[18]

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[17] Views of the Philadelphia Publishers and Others Against the Passage of an International Copyright Law [Philadelphia, 1872 (?)], p. 5. Elsewhere, publishing was described as having degenerated into a "system of reprisals," in which "the value. . . .of books is determined by the ragman's standard - the pound weight." "International Copyright," American Booksellers' Guide, I (June 1, 1869), 11.

[18] Edward H. Dodd, Jr., The First Hundred Years: A History of the House of Dodd, Mead, 1839-1939 (New York: Dodd, Mead & Co., 1939), p. 18.

A publisher of standard editions during these years might issue 2000 copies of a copyrighted novel to sell at $1; 300 of these would be sent to editors for reviewing; 1700 would be sold to dealers at the current trade discount, which would net the publisher about $1000. Of this sum, $300 went for typesetting and sterotyping; $500 for paper, presswork and binding; $100 to the author for his 10% royalty on copies sold; the remaining $100 was set aside for advertising and overhead (time, rent, insurance, debts, etc.). "If he sells the whole edition he will not make a penny unless he compels the author to forgo royalties on the first thousand copies; even then he will not clear five per cent on his investment." "Cheap Books," The Hour, X (April 21, 1883), 245. This estimate of payment to the author may be too high, unless the $1

It is sometimes assumed that technological improvements brought about changes in book manufacturing and made cheap book production possible, but there seems to have been no single invention or development which may be considered accountable. Inventions and improved techniques in printing, stereotyping, and paper-making did mean, however, a constant diminution of production costs.[19] Indeed, an eminent American printer said that the greatest advances were made in news, job, and specialty printing, and that book manufacturers were reluctant to adopt new techniques. It was not until 1860 that they began to utilize the cylinder press in place of the traditional flat plate; electrotyping was substituted for plaster or papier-mache stereotyping only because the latter process was inadequate for reproducing wood engravings.[20] Edward N. Dodd, Jr., has described book manufacture in the seventies.

> [It] was a very different matter from today's high speed, mechanized production. Printing had, of course, been pretty well developed. Presses were small and slow, but 24 pages could be run in a form and as many as 1500 impressions gotten off in a day. Binding machinery was, however, almost non-existent. Folding, gathering and sewing were

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sales price quoted was the trade rather than the retail price. According to P. M., royalties were based on trade prices, but "the author. . . .is certain of his royalty, however inadequate. . . . ." "Literary Property," P. M., XXIX (February 28, 1891), 332-333.

[19] Edward N. Dyrr, The Progress of Inventions in the Nineteenth Century (New York: Munn & Co., 1900), pp. 154-170 passim.

[20] Theodore L. DeVinne, "American Printing," One Hundred Years of American Commerce, ed. by Chauncey M. Depew (New York: D. O. Haynes & Co., 1895), I, 318.

> all done by hand. Stamping and cutting were the only machine operations. . . . . Then three months was probably the minimum [time for producing an edition]. . . . .[21]

Editions manufactured in this fashion were necessarily small. In 1869, when D. Appleton and Company cabled the novelist Disraeli to secure the American rights to Lothair, the publisher's reader, accustomed to regard the sale of a thousand copies as excellent, recommended an edition of no more than 1500 copies; the eventual sale of more than 30,000 presaged changes to come in the field of publishing.[22]

The cheap book, which was in reality a pamphlet rather than a bound volume, replaced in favor the "pretentious-looking, but worthless" subscription book, which sold at the close of the Civil War for prices ranging from five to eight dollars a volume, two dollars of that amount being the canvasser's commission.[23] It is doubtful if the book-buying public received full value for its money at five dollars or at fifteen cents per volume, for the reasonably well made subscription book often contained "literature" not worth preserving, while the better content of the inexpensive "libraries" was printed in pamphlets not worth keeping. Putnam wrote of the latter,

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[21] Dodd, The First Hundred Years, p. 19.

[22] Grant Overton, Portrait of a Publisher (New York: D. Appleton & Co., 1925), pp. 55-56. It might be remarked that communication between publisher and author by cable was an innovation at that time.

[23] "Minutes and Seconds," The Hour, VII (February 11, 1862), 90.

"The price charged was not high, but the books gave very little for the money. Being produced under the pressure of competition, they were not only badly printed, but the text was usually inaccurate and incomplete."[24] Parton feared that the prevalence of the "thin double-columned pamphlet" was a threat to literature, for the cheap books, not worth saving, were driving durably bound and well printed new books off the market.[25] Holt described one so-called library as a series of "cheap pamphlets like the weekly papers."[26] Some of these were "in quarto shape, with three columns to the page, ... [varying] from twenty to seventy-five pages. . . .of flimsy paper and execrable type. . . . ," priced at ten or twenty cents depending upon thickness.[27] These "broadsheet libraries,"[28] "meanly printed, from small type,"[29] were "almost impossible either to read or to keep because of the shabbiness of the type, the press-work, and the paper."[30] Such books

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[24]George Haven Putnam, George Palmer Putnam: A Memoir (New York: G. P. Putnam's Sons, 1912), p. 104.

[25]Parton, "International Copyright," Atlantic, XX (October, 1867), 445.

[26]Henry Holt, Garrulities of an Octogenarian Editor, with Other Essays Somewhat Biographical and Autobiographical (Boston: Houghton Mifflin Co., 1923), p. 93.

[27]"Contributors' Club," Atlantic, XLII (September, 1878), 619-620.

[28]Morgan, Anglo-American International Copyright, p. 25.

[29]Harper, House of Harper, p. 446.

[30]Brander Matthews, "Cheap Books and Good Books," in Putnam, The Question of Copyright, p. 422. Matthews also insisted that not enough good novels were published annually

were bound to be textually inaccurate; comparison of one cheap reprint with the standard edition of the book "disclosed. . . .660 errors, some of them very bad and annoying. No person of literary or scholarly tastes would care to have such a book in his library, even were it a gift."[31]

"Libraries" like the Lakeside and the Seaside were created to sell, however, and not to satisfy the literati. Harper asserted that their success was largely dependent upon the promotional activities of the American News Company.[32] For a time, the postal regulations favored the wide circulation of paper-backed books in series which could be

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in Great Britain to supply the reprinters with matter worth reproducing. American taste would thus gradually deteriorate under a barrage of trash. Ibid., p. 420. Furthermore, good non-fiction, even in unauthorized reprints, was being driven off the American market in favor of light literature. Holt, "The Recoil of Piracy," Forum, V (March, 1888), 33.

[31]"On Cheap Books," P. W., XXI (March 25, 1882), 311, quoting Present Age, February 9, 1882. Weber discusses the bibliographical chaos resulting in the various American editions of Thomas Hardy's novels because of the perpetuation of such inaccuracies in successive issues. "American Editions of English Authors," Nineteenth-Century English Books, pp. 37-45.

About all that could be said in favor of the American reprinter, aside from his own argument that he provided the public with inexpensive reading matter, was that he did not intentionally mutilate the books he reprinted, as the British pirates were accused of doing. Matthews reasoned that the American reprinters refrained from doing so because of the "greater chance of detection and exposure here in the United States than in. . . .Great Britain." See Matthews, American Authors and British Pirates (New York: American Copyright League, 1889), pp. 25-26. He was referring to the fact that the pirates duplicated each other's reprints. Considering the reputation of much of this literature, it is doubtful whether many readers cared about textual correctness as long as they received "their money's worth."

[32]Harper, House of Harper, p. 446.

mailed to regular subscribers at the low second-class rate of two cents a pound and later at one cent a pound. Series which cost their readers no more than five dollars a year sold largely in this way; those with higher subscription rates were distributed principally by the copy through book stores and news stands.[33] Mott is authority for the statement that the news companies became the chief distributors of the cheap series after the Post Office Department rescinded their second class mailing privileges.[34] A letter signed "Traveller," dated Atlantic City, May 14, 1879, to the editor of Publishers' Weekly, contained a description of obviously well-to-do train passengers and hotel guests assiduously reading the cheap library editions obtained from railroad news stands along the route to their destination. The writer commented that the easily obtainable books were inculcating "the idea that the costliest of all things in this wide world is the printed book, and that the most profitable business [is] the making

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[33] Raymond Howard Shove, Cheap Book Production in the United States, 1870-1891 (Urbana: University of Illinois Library, 1937), p. 130. It is unfortunate that this excellent basic study is not readily available; easily obtainable, however, is Mott's Golden Multitudes, cited above. In his chapter entitled "The Cheap 'Libraries' of 1875-1893," which covers much the same ground in less detail, Mott acknowledges his debt to Shove's book.

[34] Mott, Golden Multitudes, p. 152. An interesting sidelight is furnished by the account of the unauthorized reprinting of Robert Browning's poetry in the timetables of the Chicago and Alton Railroad "to help travelers in Illinois occupy their minds." This series of twenty-three poetic timetables was commenced in December, 1872. Weber, "American Editions of English Authors," Nineteenth-Century English Books, p. 28.

and selling of books," as distinct from the "library" pamphlets.[35]

In 1877 there were fourteen "libraries" in existence, which published among them 287 titles. Inspection of a complete list presented in Publishers' Weekly shows that most of the recognizable authors were English, with a sprinkling of French, and that the various series frequently duplicated each other in issues. The list, minus titles, is reproduced below.

The Cheap Libraries
For Sale Generally by News Companies

Fireside Library, Nos. 1-29. Sm. fo., pap. [small folio, paper], per No. 10¢ - Beadle & Adams. . . .
Fergus Popular Library, Nos. 1-7. Roy. 8°, pap. [royal octavo, paper], per No. 10¢, double No. 20¢ - Fergus Printing Co. . . . . .
Frank Leslie's Home Library, Nos. 1-18. Sm. fo., pap., ea. 10¢, double No. 20¢ - Frank Leslie. . . . .
Globe Library, No. 1. . . . . Imp. 8°, pap. [imperial octavo, paper], 25¢. Globe Pub. Co.; Amer. News Co.
Hillside Library, Nos. 1-4. Sm. fo., pap., per No. 10¢ - Myers, Oakley & Co. . . . . .
Lakeside Library, Nos. 1-108. Sm. fo., pap., per No. 10¢ - Donnelly, Lloyd & Co. . . . . .
New York Boys' Library. Imp. 8°, pap., ea. 10¢ - Munro. . . . .
New York Library, Nos. 1-11. Sm. fo., pap., ea. 10¢, double No. 20¢ - Frank Starr & Co. . . . . .
People's Library, The. Imp. 8°, pap., ea. 20¢. Myers, Oakley & Co. . . . . .
The Riverside Library, Nos. 1-34. Sm. fo., pap., per No. 10¢, double No. 20¢ - Munro. . . . .
Seaside Library, Nos. 1-70. Sm. fo., pap., per No. 10¢, double No. 20¢ - Munro. . . . .
Sunnyside Library. Imp. 8°, pap., per No. 10¢, double No. 20¢ - Adams, Victor & Co. . . . . .
Standard Library, No. 1. . . . Imp. 8°, pap., 10¢ - Jesse Haney & Co.

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[35] "Communications. The Mission of 'Cheap' Libraries," P. W., XV (May 17, 1879), 564.

Tribune Novels. Vol. and 8°, pap., ea. 10¢, double No. 20¢ - [New York] Tribune. . . . .[36]

One "cheap library," the Franklin Square, published by Harper and Brothers to sell at prices comparable to the rest, originated in a slightly different fashion from the others. The purpose of the series was to retaliate against the publishers of the Lakeside and Seaside Libraries, who had reprinted books which Harper and Brothers had purchased from English authors. "Only when [these books] cease to be profitable," Harpers said of the other reprints, "will they cease to be issued." The Harpers suggested that if other publishers would join them in the endeavor, they could crush the unauthorized reprinters. To avoid the taint of piracy themselves, regular publishers who engaged in this activity should continue to pay the authors at standard rates for works published in the competitive reprints.[37]

In the summer of 1880, the editor of Publishers' Weekly commented upon a recently advertised line of books which were to sell "at retail prices ranging from three to six cents"; he wondered if the publisher would explain how he proposed to carry out such a reprinting program.[38] A

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[36]"The Cheap Libraries," P. W., XII (September 29, 1877), 363-364. Weber says that the Lakeside Library, first in the American field, was inspired by the success of the London reprinters of unauthorized editions of American books. "American Editions of English Authors," Nineteenth-Century English Books, p. 37.

[37]Harper and Brothers to A. L. F. Randolph, ca. February, 1879, in Harper, House of Harper, pp. 446-447.

[38]"What Next?" P. W., XVIII (July 10, 1880), 30.

reply came from the publisher referred to, John B. Alden, manager of the American Book Exchange. Mass production, Alden wrote, was the secret. For example, the Book Exchange had completed 4151 volumes on August 4, and 3909 on the following day. Furthermore, 10,000 "pamphlets" were produced daily for the Exchange by outside jobbers. Machinery to the value of $10,000 had been ordered to maintain production at current levels or higher. The article which contained Alden's reply also cited several booksellers' reasons for "pushing" the Book Exchange editions. One argued that nothing else would sell in competition with the new low-priced reprints; another claimed that the pamphlets brought a greater unit profit to the retailer than standard hard-cover books did; a third pled that a bookseller must carry them to keep his regular customers who would otherwise order the Book Exchange productions by mail; a fourth was of the opinion that the cutthroat policies of regular publishers and booksellers were responsible for the phenomenon of such cheap reprints. The editor of Publishers' Weekly concluded that his original question was as yet unanswered: volume of production, no matter how great, could not reduce publishing costs below a certain minimum.[39]

The "Literary Revolution," as Alden sometimes called his unauthorized reprinting venture, eliminated one cost entirely, that of payment to authors. Publishers' Weekly had assumed that the American Book Exchange, like some other

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[39]"A Lesson from the 'Revolution,'" ibid., (August 14, 1880), 185-186.

reprinting firms, favored the royalty system, which would have paid about "3 mills per copy to Mr. Hughes for his 'Manliness of Christ'. . . . ." However, as Alden asserted on September 22, 1880, the "Revolutionists" objected to the royalty system. Alden wrote: "'We are very positively in favor of a law which will give the author the absolute control of whatever he produces; and we are still of the opinion formerly expressed, that the work we are doing in enforcing a bad law in existence, or rather in producing the natural and just results of the want of a copyright law, is just the work which will induce the ultimate enactment of such a law.'"[40]

Such publishers as Alden were called "new pirates" by the New York Evening Post, which, in common with other opponents of the practice, used the epithet "piracy" to describe unauthorized reprinting, especially when it involved nonpayment of the authors concerned. Said the Post:

> The interest which always opposed international copyright down to within a very few years, was that of the respectable publishers, and it was evident that until it could in some way be proved to them that piracy in the long run would injure, not improve, their business, no international copyright law could ever be passed. Now, what half a century of argument and entreaty never accomplished, the agency of cheap piracy is rapidly and thoroughly effecting all over the world.
>
> The new race of pirates are /sic/ actually doing what the respectable publisher always promised to do in supplying the world with really cheap literature, and in doing it they are ruining the once profitable business of respectable piracy. A publisher who reprints in this country a popular

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[40] "'The End Justifies the Means,'" Ibid., (October 2, 1880), 435.

English book, which he secures by paying the author for the sheets, has now, we believe, only about a week's sales from which to derive his profit. At the end of that time the pirate has caught up with him, published the book in a cheap form, and made the authorized edition unprofitable. The pirate carries on his business in perfect security and without the slightest risk. He waits for the appearance of a popular book, and the moment he sees that it is likely to be profitable to the regular publisher, he takes it away from him and pockets whatever it brings. The week's start which the publisher has is, in fact, a distinct advantage to the pirate, for it furnishes a test as to the popularity of the book.

[Unlike the marine pirate] a literary pirate is not only not an outlaw; he is protected by the law. He is the product of law. After two generations of discussion of protection of literary property, the cheap pirate is what we have to show as our contribution to the progress of the world; and the curious part of the matter is that we know him to be a pirate, and call him a pirate, and denounce him as a pirate, and yet do nothing to suppress him.[41]

The Effect of Unauthorized Reprinting and Cheap Book Production in the United States upon British and American Authors

The result of the "new piracy," as it was practiced in the United States in the late 1870's and in the 1880's, is illustrated in this letter from "Two English Novelists" to the editor of the London Times.

To the Editor of the Times:

Sir: Will you permit us through the Times to call the attention of persons on both sides of the Atlantic who are interested in securing an international copyright between the two great English-speaking nations to the existing state of affairs? Owing to a class of men who are, I believe, known

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[41] New York Evening Post, September 1, 1882. When no page number is given for a newspaper reference, it should be understood that the edition cited consists of not more than four pages.

in their own country and by their brethren of the trade as Chicago pirates, it is almost impossible for the British author to derive any pecuniary advantage from the publication of his works in the United States. Up to about a year ago, by the system of sending advance sheets /i.e. unbound, unpublished but printed pages/, so that a book could be published simultaneously in London and New York, the English author received a considerable sum from his American publishers. We have received in past years from Messrs. Osgood, of Boston, Messrs. Harper and Brothers, Messrs. Appleton, and other New York publishers, substantial sums for advance sheets of our novels. We received a sum of money from the serial rights - i.e., the appearance of the story from week to week in some American publication - and we further received a handsome sum of money upon the publication of the complete work in volume form. In these good times for English authors of repute every respectable American publishing firm had a due regard for the rights of every other firm in the States, so that if Messrs. Harper purchased advance sheets of the work the book became theirs. . . . , and no other house published an edition of it. They could fix the price per copy themselves, and they did fix it at such a rate as allowed them to pay an English author for his work. An English work of fiction. . . .was then sold in its American form in one volume, admirably printed, for a dollar; but a number of firms have recently sprung up in Chicago and other American cities who seize upon the book as soon as it appears in the States, and having the resources of great printing establishments at their command, in three or four days flood the market with cheap editions at 15¢ and even less. Within a few days after its completion in England, every prominent work of fiction is sold all over the United States, in a well printed edition, for 7½d. of our money; this, we take it, means a sale to the trade at about 5d. per copy. This system of piracy has completely ruined the chance of the English author, as it is plain that out of 5d. per copy there is nothing left for him; and the respectable firms are deterred from producing editions more expensive than those piratically issued.

The Canadian market is also ruined by this last straw of injustice which has broken the British author's back. The managing partner of the first publishing house in Canada writes me, under date of the 24th ult.:

'I am afraid, should you be pleased to send advance-sheets, I shall not be able to do anything with them in Canada. The book trade has been

completely demoralized here, and the plan now adopted by the United States publishers of issuing at 10¢, 15¢, 20¢, and 25¢ works formerly published at $1 and $1.50 has ruined the little market we had. Although we have a copyright protection the republication of British authors, it is virtually a dead letter so far as protecting us. The cheap American editions come in, in spite of everything. The story you sent us last December is a case in point. Failing to get a publisher for serial form, I thought it next best to publish it ourselves in a volume, but no sooner was it issued than it was met by the English periodical and a Harper's 10¢ edition, and, with the exception of about 50 copies, the edition is now high and dry upon our shelves.'

In these depressing circumstances, will you take up your powerful pen in the cause of the long-suffering and much-injured British author, and help us to secure that international copyright law which we have so long desired?

Two English Novelists.

August 12 [1880].[42]

The dominant theme of this letter is the effect of unauthorized reprinting in the United States upon British authors, but the inexpensive paper-backed "libraries" come in for their share of criticism as the vehicles for piracy.

What a "new pirate" thought about the situation is revealed in this letter from Alden to an English author who had protested the appropriation of his work by the American Book Exchange. The letter was first reprinted in the London Publishers' Circular.

'New York, April 30, 1881.

'Dear Sir: In reply to your communication of April 16, we consider it our duty to give the

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[42] The Times (London), August 13, 1880, p. 12. It should be noted that the American "pirates" were not violating the rights of British authors, who had none under American copyright laws. The publishers complained of in this letter merely denied any obligation to pay for unprotected material.

American public the best of good literature, and we could not well afford to omit anything so interesting and valuable, and so especially appropriate, on account of the subject, as your articles on James Russell Lowell. We consider it very unfortunate for readers, authors, and publishers alike, that the laws are in the abominable condition we now find them [in], and we think you will find that this sharp work we are doing in bringing home to all of them the natural results of the existing laws is the most effectual possible influence to have them made right, so that a little later you will be able to dictate, as you ought to be able to do, your own terms upon whatever literary work you may do, without trusting to the "courtesy" of publishers, who, under this, to my thought, contemptible pretense of right, offer to authors a pittance instead of their rights. In the meantime, we are cultivating a taste and awakening an interest in good literature that is becoming recognized as a real "literary revolution," and you will find when the laws are made right that your readers have been greatly multiplied in number, so that you will be amply compensated for a temporary loss.

'Regretting sincerely that we cannot comply with such requests as yours, which we receive from able and conscientious authors,

I am, very truly yours,
'J. B. Alden, Manager.

'Rev. H. R. Haweis, The Amber House (Lord's),
'Regent's Park, London, England.'[43]

But the unauthorized "cheap book" did more than deprive the foreign author of income that might have been his from the sale of his works in America; it destroyed the means by which the American author found his readers. The English writer might complain of the "Chicago pirates" or of Alden's

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[43]"Our 'Moral Pirates,'" P. W., XIX (June 25, 1881), 693, reprinting letter from London Publishers' Circular, June 1, 1881. Alden's letter is perhaps not as hypocritical as it sounds. Along with other publishers, he and the reprinter Munro joined in public statements of support for copyright reform. This matter will be discussed in subsequent chapters. Alden's point of view and Mark Twain's concerning the public benefit from extensive distribution of good literature at low prices were similar. See note 66, below.

American Book Exchange, but he still had his market at home. Although the American author was protected by the domestic copyright law, its benefits amounted to little if the market for American books was ruined by an influx of cheap reprints of unprotected English and foreign literature which undersold books by American writers. Little recourse was left for Americans like Charles Barnard, who, in 1884, cried out in desperation:

> I would like to ask these good people who buy cheap, because stolen, books, if they have no moral sense? Do they not see that every dime thrown down for these unauthorized reprints is a deadly weapon against me personally, my wife and family? How dare these people look me, or any American writer, in the face, and uphold our American system of copyright? . . . . I have no rights in my native country that any man is bound to respect. My only right to live is to accept such pay as the natural laws of business permit me to have in an unequal contest. . . . .[44]

Unauthorized Reprinting as Practiced in Great Britain

As in the United States, unauthorized reprinting flourished in Great Britain. Certain English publishers regularly reprinted American books without the permission of the authors, and frequently without payment to them. Like their American counterparts, English reprinters resorted to cheap book production as a means of distributing their editions. A practice more galling to American writers than English failure to obtain authorization or to pay for work so appropriated was the intentional mutilation or revision of the texts of reprinted books.

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[44]Charles Barnard, "An Author's Plea for Copyright," Critic and Good Literature, IV (n.s. I) (February 2, 1884), 53-54.

In 1867 thirteen books were allegedly advertised in an English periodical to be sold in editions costing one shilling or one shilling sixpence each. Twelve of the thirteen books were by American authors, among them being Harriet Beecher Stowe, Oliver Wendell Holmes, and James Russell Lowell. Cheap book stores in England, it was further declared, were "heaped" with such books, many of them lacking even the courtesy of the true authors' names. Henry W. Longfellow was said to be the sole American to receive regular income from a British publisher, and that only in the form of payment for unbound printed pages of his new works rather than as a percentage of total receipts from sales.[45]

Year after year, unauthorized reprinting of American books went on in England. It was asserted that in 1878 ten per cent of all books published in that country were reprints of American works, but that acknowledgments of American origin and payments to American authors were scant, perhaps because

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[45]Parton, "International Copyright," Atlantic, XX (October, 1867), 436-437. But Clarence Gohdes, in "Longfellow and His Authorized British Publishers," PMLA, LV (December, 1940), 1178-1179, concludes that Longfellow's great popularity in England was based in part upon the freedom with which reprinters could seize his works and broadcast them over Britain. Incomplete records show that Routledge, his authorized publisher, probably published and sold 716,000 copies of the poet's works before 1900, yet one reprinter alone, between 1865 and 1900, disposed of 410,919 copies.

In November, 1876, the poet wrote to an English woman who had complained to him of American piracy that he had had twenty-two publishers in England and Scotland, only four of whom ever did him the courtesy of sending him copies of their editions, to say nothing of paying him. He concluded gently, "'Shall we call this "chivalry" - or the other word?'" Matthews, American Authors and British Pirates, p. 6.

British publishers were unable to cooperate among themselves in respecting each other's commitments as effectively as were American publishers. When an English publisher paid an American author for a book, cheaper rival editions cut or eliminated payments for later books by the same author. Longfellow, Lowell, Holmes, Mark Twain, Elizabeth Stuart Phelps, Louisa May Alcott, Harriet Beecher Stowe, Bayard Taylor, and other popular American writers were treated in this fashion.[46]

Matthews, in analyzing entries in the British Whitaker's Reference Catalogue of Current Literature for 1885, disclosed some interesting facts concerning the reprinting of American books in inexpensive serial form. Some of his findings are tabulated below.

Frederick Warne and Company
- Warne's Star Series: 91 numbers, 36 of them by American authors
- Warne's Select Series: 19 numbers, 17 of them by American authors

Ward, Lock and Tyler
- Home Treasure Library: 38 numbers, 30 of them by American authors
- Good Tone Library: 20 numbers, 17 of them by American authors
- Select Library of Fiction: 400 numbers, 30 of them by American authors
- People's Standard Library: 100 numbers, 20 of them by American authors
- Lily Series: 79 numbers, 60 of them by American authors

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[46] George Haven Putnam, International Copyright Considered in Some of Its Relations to Ethics and Political Economy: An Address Delivered January 29th, 1879, before the New York Free Trade Club (New York: G. P. Putnam's Sons, 1879), p. 46. J. Henry Harper, confirming Putnam's doubts of effective cooperation among British publishers, related with some astonishment that in London one did not invite rival publishers to dinner without first ascertaining whether the guest list would be acceptable to everyone invited. Harper, House of Harper, p. 112.

Friendly Counsel Series: over half of series by American authors

Beeton's Humorous Books: 80 numbers, 65 of them by American authors

J. & G. Maxwell

Illustrated Merry Folks' Library: 52, nearly all of them by Americans

Britannia Series: in spite of the name, virtually all books in the series were by American authors.[47]

The British reprint houses also combined "simple piracy" with other practices which Matthews classified under six heads.

1. Title changes.

Beeton's Humorous Books presented three books by Mark Twain under the titles Eye Openers, Practical Jokes, and Screamers.

Maxwell's Illustrated Merry Folks' Library brought out Tid Bits, by Bret Harte, and Yankee Ticklers, by Oliver Wendell Holmes.

Charles Dudley Warner's My Summers in a Garden became Pusley.

Books by John Habberton and Louisa May Alcott were similarly treated.

2. Substitution of British terminology for American.

In Noah Brooks' Boy Emigrants, dollars and cents were changed to pounds, shillings, and pence. In The Fairport Nine,

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[47] Matthews, American Authors and British Pirates, pp. 7-14. As in the United States, competitive reprinting may have had much to do with the rise of cheap book production in Great Britain. Undoubtedly, many of the English reprinters turned to American literature for material simply because they were unable to compete with other English publishers for copyrightable work of native authors.

a baseball story by the same author, the game was changed to cricket.

In a novel by Dr. Josiah G. Holland, the Fourth of July was changed to the Queen's Birthday; London replaced New York as a scene of action, except as the reprint editor nodded, so that a character setting out for London sometimes found himself in New York.

3. Mutilations, omissions, garbling of texts.

T. W. Higginson's Common Sense about Women was attacked by British reviewers who criticized the omission of certain considerations. The author, however, had taken especial pains to include these very items in his book, but the reprinter had cut them out.

Books by Charles Dudley Warner and William Matthews suffered in the same manner.

Probably the retitled humorous books also contained mutilated texts, Maxwell's Illustrated Merry Folks' Library, for example, consisting of uniform numbers of thirty-two pages for a penny.

4. Revision or paraphrasing of the original text.

Dr. Holland's Arthur Bonnicastle was published serially in Scribner's Magazine; the issue containing the last installment was copyrighted in England to prevent unauthorized reprinting of the novel. A British reprint by Ward, Lock and Tyler substituted a paraphrase of the protected final chapters.

5. Misrepresentation.

Humorous Masterpieces from American Literature, an anthology edited by E. T. Mason, and first published in the

United States by G. P. Putnam's Sons, contained a preface by the editor acknowledging the courtesy of the authors in permitting him to use copyrighted material. The London firm of George Routledge and Sons reprinted the book as Humorous Gems of American Literature, with Mason's preface intact, so that it appeared that American authors had graciously permitted Routledge to use their material.

6. Gratuitous insults and aggravations.

Noah Brooks was asked to write a preface for the English reprint, by the London Religious Publications Society (which incidentally paid him nothing for the book and boasted of its sales), of The Fairport Nine, in which they had changed baseball to cricket.

An eleven-page preface, by S. O. Beeton, to the reprint of Arthur Bonnicastle, by J. G. Holland, not only praised John Camden Hotten ("Blackbeard among the pirates," to Matthews), but intimated that the House of Lords ruling on first publication should be superseded as too favorable to American authors. The action of the reprinter in paraphrasing Dr. Holland's concluding portion of the book, in view of the author's stratagem to prevent piracy, was defended.

Mrs. Barrow ("Aunt Fannie"), calling upon Frederick Warne and Company while on a visit to London, was courteously treated until she asked if she might have copies of her "Nightcap Stories," which they had printed without permission or

payment. The publisher agreed to let her have the books, at the regular retail price.[48]

Furthermore, American books were "adapted" by English publishers to an extent never practiced in America - that is, appropriated, perhaps with minor changes, as the work of British authors, it was alleged. For example, A. D. F. Randolph, of New York, reprinted some "fresh and original" English essays, only to discover that they had been taken verbatim from a book by Henry Ward Beecher. Charlton T. Lewis's translation of Bengel's Gnomon of the New Testament was published in England as the work of two Anglican clergymen. "Dr. S. Irenaeus Prime had sent to him a volume bearing the name of an English author, with the inquiry as to whether, in his judgment, it was likely to prove of interest to American readers. He found he was hardly in a position to give an impartial answer to the inquiry, as the book was one of his own, for several editions of which the American public already shown a hearty appreciation."[49]

Eggleston told how he reviewed a new English translation of a German novel, which had previously been translated

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[48] Ibid., pp. 10-23. Matthews did not represent all of these offenses as taking place in 1885; most of them occurred somewhat earlier. In the light of Sydney Smith's famous question, "Who reads an American book?" one is tempted to suppose that the old prejudice lingered on. Current English literature being unavailable to many British publishers, and too expensive, in original editions, for general circulation, what could be more natural than to reprint in convenient form for popular distribution books hardly worthy, from the British point of view, to be called literature?

[49] Putnam, International Copyright Considered, pp. 47-50

by Mrs. Mistar, an American, and published in this country. He discovered that the English work, ostensibly translated by an English clergyman, was, "with the exception of a few initiatory chapters," Mrs. Mistar's book, which the reverend gentleman admitted he had used because it was better than anything he might have done. "That was at a time when English complaints of 'American piracy' were loudest."[50] The clergyman, according to Matthews, was the Reverend Sabine Baring-Gould, author of the hymns "Now the Day Is Over" and "Onward, Christian Soldiers." Such plagiarism was a direct result of the system of unauthorized reprinting.[51]

A letter from Mark Twain, written early in the period under discussion, nevertheless sums up the bitter feeling of American authors concerning their treatment at the hands of British reprinters. The letter was originally printed in the London Spectator.

> 'To the Editor of the London Spectator.
>
> 'Sir: I only venture to intrude upon you because I come, in some sense, in the interest of public morality, and this makes my mission respectable. Mr. John Camden Hotten, of London, has, of his own individual motion, republished several of my books in England. I do not protest against this, for there is no law that could give effect to the protest; and besides, publishers are not accountable to the laws of heaven or earth in any country, as I understand it. But my little grievance is this: My books are bad enough just as they are written; then what must they be after Mr. John Camden Hotten has composed half a dozen chapters and added the same to them? I feel that all true hearts will bleed

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[50] Eggleston, Recollections of a Varied Life, p. 142.

[51] Matthews, American Authors and British Pirates, pp. 4-5.

for an author whose volumes have fallen under such a dispensation as this. If a friend of yours, or even if you yourself were to write a book and set it adrift among the people, with the gravest apprehension that it was not up to what it ought to be intellectually, how would you like to have John Camden Hotten sit down and stimulate his powers, and drool two or three original chapters on to the end of that book? Would not the world seem cold and hollow to you? Would you not feel that you wanted to die and be at rest? Little the world knows of true suffering. And suppose he should entitle those chapters "Holiday Literature," "True Story of Chicago," "On Children," "Train Up a Child, and Away He Goes," and "Vengeance," and then, on the strength of having evolved these marvels from his own consciousness, go and copyright the entire book, and put on the title page the picture of a man with his hand in another man's pocket, and the legend "All Rights Reserved." (I only suppose the picture; still it would be a rather neat thing.) And further, suppose that in the kindness of his heart and the exuberance of his untaught fancy, this thoroughly well-meaning innocent should expunge the modest title which you had given your book, and replace it with so foul an invention as this, "Screamers and Eye Openers," and went and got that copyrighted too. And suppose that on top of all this he continually and persistently forgot to offer you a single penny or even send you a copy of your mutilated book to burn. Let one suppose all this. Let him suppose it with strength enough, and then he will know something about woe. Sometimes when I read one of those additional chapters constructed by John Camden Hotten, I feel as if I wanted to take a broom straw and go and knock that man's brains out. Not in anger, for I feel none! Oh! not in anger; but only to see, that is all. Mere idle curiosity.

'And Mr. Hotten says that one nom de plume of mine is "Carl Byng." I hold that there is no affliction in this world that makes a man feel so downtrodden and abused as giving him a name that does not belong to him. How would this sinful aborigine feel if I were to call him John Camden Hottentot, and come out in the papers and say that he was entitled to it by divine right? I do earnestly believe that it would throw him into a brain fever, if there were not an insuperable obstacle in the way.

'Yes - to come back to the original subject, which is the sorrow that is slowly but surely undermining my health - Mr. Hotten prints unrevised, uncorrected, and in some cases spurious books, with

> my name to them as author, and thus embitters his customers against one of the most innocent of men. Messrs. George Routledge and Sons are the only English publishers who pay me any copyright, and therefore, if my books are to disseminate either suffering or crime among readers of our language, I would ever so much rather they did it through that house, and then I could contemplate the spectacle calmly as the dividends came in.
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> 'I am, sir, etc.
> 'Samuel L. Clemens ("Mark Twain")
> 'London, September 20, 1872.' [52]

A few year later the American writer John Habberton also protested against British reprinting without authorization, without payment, and without respect for the integrity of his work. He claimed to have received less than two hundred dollars in all for the twenty foreign editions known to him of his popular Helen's Babies. The book appeared in Great Britain in nine different shilling editions issued by as many publishers, who sold among them over 250,000 copies. Five of these reprint houses gave Habberton nothing for his book; one, having sold 20,000 copies in a six-week period and being temporarily unable to fill current orders because of the great demand for the reprint, wrote the author that remuneration was a financial impossibility; three gave him ten pounds each, but only after he had protested their action in reprinting Helen's Babies without authorization. Habberton managed to copyright a revised edition of the book in England

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[52] Mark Twain to the editor of the London Spectator, September 20, 1872, in "Mark Twain in Protest," Publishers' and Stationers' Weekly Trade Circular, II (October 17, 1872), 388-389. He was in error about there being "no law that could give effect to the protest." See the section entitled "American Authors in Search of British Copyright," below.

under the title Other People's Children; this was issued by his authorized London publisher, Routledge. Almost immediately Ward, Lock and Company reissued the original, unrevised Helen's Babies under the new title. And then, the exasperated author reported, Ward, Lock and Company had the effrontery to invite him to contribute to an annual they were preparing. Another publisher inserted a death scene in Helen's Babies, and outraged readers wrote to the author in American to protest the "murder" of Toddie, the central figure. Habberton concluded by remarking that his own neglect in failing to register the original Helen's Babies in England caused his difficulties.[53]

American Authors in Search of British Copyright

In airing their grievances, both Mark Twain and Habberton alluded to the possession of British copyright, although the former may have been referring only to payment in return for his authorization to reprint. Early in the nineteenth century Irving and Cooper had secured protection in England;[54] two decisions handed down by the House of Lords later confirmed that right. In 1854, in the case of Jeffries vs. Boosey, it was asserted that an American who had arranged for first publication of his book in London, and was temporarily

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[53]John Habberton to editor, February 17, 1879, in "The International Experiences of 'Helen's Babies,'" P. W. XV (March 1, 1879), 262-263.

[54]See Chapter I of this study.

in Canada at the time of publication in England, was entitled to the same protection as a British subject. In 1868, in the case of Routledge vs. Low, the Chancellor, Lord Cairns, was of the opinion that any author, regardless of his citizenship or residence, received copyright protection upon publication of his book in the United Kingdom. Lord Cranworth dissented from Lord Cairns' opinion, but thought that residence in any of the dominions, under existing acts, was sufficient to grant copyright as long as first publication occurred in the United Kingdom. Lord Chelmsford agreed essentially with Lord Cranworth, and Lord Westbury with Lord Cairns. Lord Colonsay, the fifth member of the court, did not concern himself with the necessity of residence.[55]

The point to keep in mind is that British copyright depended upon first publication rather than upon citizenship. Registration and deposit, required in the United States, were necessary in England only if one wished to forestall infringement suits. The reason for visiting Canada at the time of publication in London was that, in the case of Routledge vs. Low, Lord Chelmsford dissented from the judgment of Lords

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[55]Matthews, "American Authors and British Pirates: II. An Open Letter to Close a Correspondence," New Princeton Review, V (n.s.) (January, 1888), 60-61. Maria Cummins, of New York, after taking up temporary residence in Montreal, sent the manuscript of Haunted Hearts, and assigned the copyright, to Sampson Low and Company. Shortly after the appearance of the authorized edition in two volumes at sixteen shillings, the house of Routledge issued Haunted Hearts in one volume for two shillings. The decision was an outgrowth of Sampson Low's suit against Routledge for damages. Birrell, Seven Lectures on the Law and History of Copyright in Books, pp. 151-152.

Cairns and Westbury that residence did not strengthen copyright granted through prior publication; in other words, there was some doubt as to the exact status of Americans. Furthermore, only those portions of a work first published in the United Kingdom could be copyrighted there, but such copyright was valid throughout the British Empire. British copyright was not vitiated by simultaneous publication elsewhere if, it would seem, the initial steps were taken in the British Isles.[56]

It was this state of affairs which prompted Mark Twain, in 1888, to contradict his 1872 letter to the Spectator:

> English pirates have hurt me somewhat; how much, I do not know. But, on the other hand, English law has helped me vastly. Can any foreign author of books say that about American law? You know he can't.
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> . . . . [Y]our complaint is, that American authors are pirated in England. Well, whose fault is that? It is nobody's but the author's. England furnishes him a perfect remedy; if he does not choose to take advantage of it, let him have self-respect enough to retire to the privacy of his cradle, not sit out on the public curbstone and cry. Today the American author can go to Canada, spend three days there, and come home with an English and Canadian copyright which is as strong as if it had been built of railroad iron. If he does not make this trip and do this thing, it is a confession that he does not think his foreign market valuable enough to justify the expense of securing it by the above process. Now it may turn out that the book is presently pirated in London. What then? Why, simply this: the pirate has paid that man a compliment; he has thought more of the book than the man thought of it himself. And doubtless the man is not pecuniarily injured, since the pirate would probably not have

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[56] [R. R. Bowker], "Copyright. VIII.: Statutory Copyright in Other Countries," P. W., XXVIII (October 3, 1885), 485.

> offered anything for the book if it had been copyrighted, but would merely have left it in oblivion and unpublished.

And he added,

> All the books which I have published in the last fifteen years are protected by British copyright. In that time I have suffered pretty heavily in temper and pocket from imperfect copyright laws; but they were American, not English. I have no quarrel over there.[57]

Matthews, to whom Mark Twain had directed his remarks, replied that the criticism of American authors for failing to secure prior publication in England was no answer to the question; the fact that one American author was able to secure British copyright was no reason for condoning the existing situation. What was needed was clearcut English legislation which would guarantee protection to all American authors.[58]

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[57] Mark Twain, "American Authors and British Pirates: I. A Private Letter and a Public Postscript," New Princeton Review, V (n.s.)(January, 1888), 47-48. There is a flaw in this reasonsing when Mark Twain says "the pirate would probably not have offered anything for the book if it had been copyrighted, but would. . . .have left it. . . .unpublished." Unpublished, it could not have been copyrighted in Great Britain; published by another house, it would have been forbidden to the reprinter.

Mark Twain also seems to have forgotten his earlier complaint of 1872, that John Camden Hotten was reprinting his books. Apparently he had not then discovered that he might have qualified for British copyright and thus stopped Hotten. The reference to the fifteen-year period in which Mark Twain had enjoyed British copyright would indicate that the 1872 letter was written the year before he learned that he could be protected under British law.

[58] Matthews, "American Authors and British Pirates: II. An Open Letter to Close a Correspondence," New Princeton Review, V (n.s.)(January, 1888), 60.

However, as Gohdes has pointed out in his study of Longfellow's relations with British publishers, it was not always advisable during these years to secure British copyright by prior publication in England, even though first returns from London publishers might seem to have warranted it. "First publication" in England also meant "first opportunity" for British reprinters to issue cheap editions which could be exported to American to undersell the legitimate American production.[59] The race was to the swiftest publisher in getting books to the shelves of the bookseller, but in the long run, it was the cheapest book which captured the market. But, more important than giving reprinters a possible advantage, there were real difficulties in securing prior or simultaneous publication in Britain, even when the inconvenience and expense of travelling to Canada or some other portion of the Empire are ignored. First publication meant much more than the comparatively simple registration and deposit of copies required by United States copyright law. It involved acceptance of the book by an English publisher across the

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[59] Gohdes, "Longfellow and His Authorized British Publishers," PMLA, LV (December, 1940), 1175. Dozer also states that unauthorized British reprints of books by American authors were imported into the United States. In particular, he cites the introduction of a British reprint to sell at twenty-five cents of a novel by W. D. Howells. The American edition, published the year before, in 1881, sold for $2.50. See "The Tariff on Books," MVHR, XXXVI (June, 1949), 75. It is curious that there is little mention of this importation, aside from rather vague allusions, in any of the primary sources consulted for this study. There were instances of Canadian reprints of American books being sold in this country. See the section entitled "Canadian Reprints" in this chapter.

Atlantic who might never have heard of the American writer. Once the book was accepted, it had to be advertised, offered, and sold in England. The conditions were the same whether the work was in book or serial form, and many American authors found their best market in monthly and weekly periodicals, and even in daily newspapers, published in the United States. The impossibility of conforming to British requirements when sale to a domestic publication brought guaranteed returns thus further discouraged American authors from trying to obtain British copyright.[60]

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[60] Matthews, American Authors and British Pirates, pp. 31-33. In one of the two articles upon which this pamphlet is based, Matthews asked Mark Twain how many American authors were as popular in England as the humorist was himself, so that they too might find British publishers willing to risk first publication. He reminded Mark, also, that Innocents Abroad, which had established the writers's reputation, had first appeared serially, in a form that could not very conveniently have been copyrighted in England. Matthews, "American Authors and British Pirates: II. An Open Letter to Close a Correspondence," New Princeton Review, V (n.s.)(January, 1888), 62-64.

Brussel has discovered that many of the 136 works of American authorship which made their first appearance as books in England rather than in the United States during the period 1866-1891 were appropriated by British reprinters from American periodicals. Anglo-American First Editions, Part II: West to East, 1786-1930, passim.

After passage of the British International Copyright Act of June 25, 1886, foreign authors whose governments did not grant copyright to British subjects were no longer granted the privilege in the United Kingdom, although their British publishers might obtain copyright for such works, financial arrangements between the foreign authors and the British publishers being permissible. Library of Congress, Copyright Office, Copyright in England, Copyright Office Bulletin No. 5 (Washington: Government Printing Office, 1902), p. 17. American authors' difficulties in England were thus increased.

Canadian Reprints

American authors protested that their interests were harmed by the production of inexpensive reprints of foreign literature in this country, and by the unauthorized appropriation of their books in England; on the other hand, American publishers were injured by the competition resulting from their own unrestricted reprinting of foreign books.[61] That is, the forces affecting writers were American and British; those working against publishers were primarily American. However, Canadian publishers threatened both American authors and publishers, although reprinting in Canada was never so extensive as in Great Britain or in this country.

"Certain Toronto publishers," reported the New York Sun in 1878, ". . . .have seized upon the newest American copyrighted books by popular authors, reproduced them in the cheapest possible form, and advertised in American newspapers to send them through the mail, postpaid, to American readers from one fifth to one tenth of the price charged for them by the American publishers." The books were described as being "printed with small, battered type, upon thin and dirty paper. . . .but readable" and complete. Prices ranged from fifteen to forty cents, three cents of which was used for postage. One Canadian list consisted of forty-two titles of American books, sixteen of which were originally published

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[61] Conditions of publishing in the United States after 1866 will be discussed in Chapters IV and V.

by a single American firm, three each by two other companies, and the remainder by various American publishers.[62]

Although these Canadian mail-order publishers could not be prosecuted for violating the American law, and although the American Post Office authorities constantly ran the risk of intercepting genuinely private correspondence, such was the manner of mailing the reprints, suspicious packages were examined and books sent in violation of the postal treaty between the two nations were confiscated and destroyed. Nevertheless, it is curious that the Sun did not suggest prosecution of the American advertisers of these Canadian editions.[63] The action of Harper and Brothers in another case involving American sale of unauthorized Canadian reprints, as discussed in a subsequent section of this chapter, demonstrates that legal redress was possible.

American Authors in Search of Canadian Copyright

In 1875, Canadian copyright was made to depend upon prior publication in the Dominion rather than upon possession

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[62] New York Sun, November 22, 1878.

[63] Ibid. Suits for damages instituted in civil action by copyright proprietors "in any court of competent jurisdiction" were permissible under the 1870 revision of the American copyright law. The Copyright laws of the United States as Revised, Consolidated, and Amended by Act of Congress. Approved July 8th, 1870 (Washington: Government Printing Office, 1870), p. 6. Advertisers of such books, like booksellers, would doubtless be liable to suit. Nevertheless, importation of Canadian reprints by mail must have continued, for on March 3, 1879, a postal law was passed which forbade "the transmission through the mails of any publication which violates any copyright granted by the United States." Copyright Enactments, 1783-1900, Copyright Office Bulletin No. 3, pp. 54-55. This law must not have been stringently enforced; see note 67, below, and the material cited therein.

of British copyright.[64] As a result, American authors hoped that they might obtain Canadian copyright, as distinct from British, in order to protect their books from unauthorized Canadian reprinters, but they seemed uncertain as to whether the law was applicable to them. For example, William Dean Howells wrote to his father on May 11, 1879: ". . . .By the way, I wish you would kindly ask some lawyer in Toronto whether I can copyright my books in Canada by residing a certain length of time - two weeks, I've heard - in the Dominion."[65] Less than a year earlier, Mark Twain had written to Howells to say that he could not afford to write for the Atlantic unless the publisher could find some way of obtaining a Canadian copyright in order to prosecute infringements there.[66] Some time during the period 1879-1881 he wrote once more to Howells to ask if a proposed copyright treaty would end Canadian reprinting. If not, he concluded, he saw little need for the treaty.[67]

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[64] Birrell, Seven Lectures on the Law and History of Copyright in Books, p. 218; /A. P. Bowker/, "Copyright. VIII.: Statutory Copyright in Other Countries," P. W., XXVIII (October 3, 1885), 485.

[65] Mildred Howells (ed.), The Life in Letters of William Dean Howells (Garden City, N. Y.: Doubleday, Doran & Co., 1928), p. 268.

[66] Mark Twain to William Dean Howells, June 27, 1879, in Bernard DeVoto, (ed.), The Portable Mark Twain (New York: The Viking Press, 1946), p. 753. Concerning Canadian publishers, Mark said, ". . . .I suppose they are all born pirates. . . . ."

[67] Albert Bigelow Paine, Mark Twain, A Biography; the Personal and Literary Life of Samuel Langhorne Clemens (New York: Harper & Bros., 1921), II, 686-687. Here again he exhibited the same attitude that he had manifested in the debate with Matthews: he seemed to be concerned solely with the

Nevertheless, Mark Twain continued his battle with the Canadian reprinters. In 1881, he complained to the Postmaster-General of the United States that certain Canadian publishers had been reprinting one of his book and selling it in the United States at a lower price than that charged for the American edition. These reprinters had delivered their copies to American purchasers through the United States mail. As a result, the Postmaster-General amended Section 214 of the Postal Laws and Regulations to permit holders of American copyrights to file complaints whenever similar foreign reprints of their books were known to be transmitted through the mails to this country. Such matter was declared unmailable.[68]

On November 25, 1881, Mark left for Canada to secure copyright in that country for The Prince and the Pauper, a step which he hoped to accomplish during a ten-day stay in the Dominion.[69] Late in December it was reported that his

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personal benefit to be derived from an international copyright law or treaty. In writing to Howells he made it quite clear that he favored the general benefit to be derived from cheap reprinting in this country of English "classics." Actually, he was opposed to the treaty because it would benefit "a few English authors and a lot of American publishers." Ibid.

[68]"Postal Matters. Infringement of Copyright," P. C., XIX (April 23, 1881), 461.

[69]Mark Twain to Charles Webster, November 19, 1881, in Samuel Charles Webster (ed.), Mark Twain, Business Man (Boston: Little, Brown & Co., 1946), 176. Opposite page 176 there is reproduced "A Thomas Nast cartoon of 1881," entitled "Innocence Abroad (in Search of a Copyright)," which illustrates this trip to Canada. It shows Mark Twain in tights, in an Oscar Wilde-ish pose, holding a spray of syringa [Genus Philadelphus] in his right hand. Under his left arm is a

application for a Canadian copyright had been refused on the grounds that a visit to Montreal for that purpose alone could not be honored as a legal Canadian domicile.[70] In defending himself against the allegation of the Springfield (Mass.) Republican that he was "defeated" in his attempt to obtain a Canadian copyright, the author insisted that he had obtained imperial copyright effective in Canada, through registration and first publication of The Prince and the Pauper in London. What he had been trying to do, he said, was to get, under legal advice, both imperial and Canadian domestic copyright, but he had not wished to carry the matter to the Canadian courts in order to ascertain the true meaning of a somewhat ambiguously interpreted law.[71]

A dispatch from Ottawa, dated December 28, 1881, to the New York Times, asserted that Mark Twain had blundered in assuming that his London copyright was fully operative in Canada. Imperial copyright merely protected him there from unauthorized reprints produced in that country, but imprints

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copy of The Prince and the Pauper. The scene is outside a greengrocer's shop (Department of Agriculture). On the wall hangs a sign: "Copy-rights granted here because authors are so green." Another reads: "Are you Domiciled Here?" There is a basket of ("dead") beets at the right; beside it is a basket of "small potatoes"; immediately above that sign is another, partly covered; it reads: "Authors are." A pirate flag sticks out of a cabbage, etc.

[70] "International Copyright. The Rule That Did Not Work Both Ways," P. M., XX (December 24, 1881), 368.

[71] Mark Twain to editor, Springfield Republican, December 18, 1881, as reprinted in "International Copyright. Mark Twain explains," P. M., XX (December 31, 1881), 384-385.

might be imported into Canada from other countries under certain conditions. Mark Twain could not qualify for domestic Canadian copyright on the basis of "elective domicile"; furthermore, the Canadian law required that a copyright book be manufactured in Canada.[72] Three years later, he had taken the logical step in having his work published in Canada. In arranging for a lecture tour he asked to be routed into the Dominion on December 18, 19, and 20, 1884, or possibly for another three-day period four or five weeks later, whichever would coincide with the American publication date of Huckleberry Finn, so that the book might be copyrighted and published in Canada at the same time.[73]

The Impact of Canadian Reprinting upon American Publishers

Canadian "piracy" was somewhat more complex than was unauthorized reprinting in either Great Britain or the United States since it involved the violation of authors' actual rights in this country, as well as the more tenuous claims of publishers. When a Canadian mail order house smuggled reprints of books by Habberton or Mark Twain into the United States, both author and American publisher suffered.[74] On

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[72] New York Times, December 29, 1881, p. 1.

[73] Mark Twain to Charles Webster, July 15, 1884, in Webster, Mark Twain, Business Man, p. 269. Evidently the question of domicile in Canada had been cleared up since 1881, or made subordinate to prior or simultaneous publication in the Dominion.

[74] "Imported Copyright Books," P. W., XIV (November 2, 1878), 534.

the other hand, no real rights were affected when the smuggled books were of English authorship. However, American firms customarily assumed that they were obtaining authorization for both American and Canadian publication when they made their arrangements with British authors.[75]

As example of Canadian reprinting as it affected American publishers is found in the case of Henry M. Stanley's Through the Dark Continent, which was published in the United States by Harper and Brothers in 1878. In October of that year the firm issued a circular in which American booksellers who had been stocking and selling the "Toronto edition" of the book were warned that they were liable for damages under the infringement clause of the copyright law.[76] (Harper and Brothers believed that Stanley was an American citizen and therefore eligible for American copyright. Because he had been issued an American passport, the explorer-author had also erroneously assumed that there was no question as to his status. Actually, according to J. Henry Harper, Stanley did not become an American citizen until May 15, 1885.)[77]

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[75]Harper & Bros. to W. E. Tunis, December 29, 1871; to Wilkie Collins, July, 1873; to Hunter, Rose & Co., August 14, 1873; to Charles Reade, August 22, 1873; Reade to Harper & Bros., September 14, 1873; Harper & Bros. to Dinah Mulock Craik, no date, in Harper, House of Harper, pp. 339-347 passim.

[76]"The Stanley Book," P. W., XVI (November 2, 1878), 536.

[77]Correspondence between Harper & Bros. and Henry M. Stanley, September 5, 1878, December 17, 1878, January 4, 1879, February 16, 1879, in Harper, House of Harper, pp. 438-444. Perhaps the publishers had rushed the book into print on the basis of "rights" acquired through purchase of plates or unbound pages, on the assumption that Stanley was obtaining copyright. There was certainly some excuse for haste on their

The "Toronto edition" of Through the Dark Continent was reprinted in Canada by the English publishers Sampson and Low from the plates of their London edition of the book, without reference to any other claims to rights in the work.[78] Although the plates were said to be identical with those used by Harper, the printing was described as poorly done on narrow-margined paper. The book was offered at a lower price than that asked for the Harper edition.[79]

Harper and Brothers could not prevent publication of the Canadian reprint, but they thought they could stop its sale in this country.

> The suit for damages, brought by Messrs. Harper and Brothers against several bookselling firms, for the sale of a foreign edition of Stanley's copyright work, is intended as a remedy for an evil which has recently begun to assume serious proportions. The allegation that a house of such undoubted character as that against which one of the suits is brought should be selling books contrary to law is in itself suggestive of the extent of the evil. Several

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part, for in August, 1878, they learned that an unauthorized imitation, entitled The Achievements of Stanley, was about to be published by Hubbard Brothers of Philadelphia. Harper & Bros. to editor, September 12, 1878, New York Herald, September 13, 1878, p. 6; also, Harper, House of Harper, pp. 437-439.

[78] Harper, House of Harper, p. 439.

[79] "The Stanley Book," P. W., XIV (November 2, 1878), 536. The Canadian law of 1876 permitted the publication of cheap reprints of English books which could not be exported to England where they would interfere with the sale of more expensive editions. [F. H. Bowker], "Copyright. VIII.: Statutory Copyright in Other Countries," ibid., XXVIII (October 3, 1885), 486. The whole affair becomes even more confusing if Harper was printing the book from English plates. If that was the case, then the American firm must have made its arrangements for publication with the British publisher rather than with the author.

> publishers have suffered in the past few years from the extensive sale through the West of Canadian editions of copyright books of American authors, editions of which it is claimed were made with especial view for sale on this side of the border. . . . .[30]

Another example of Canadian competition for the American market was that of Busch's Bismarck, for which advance orders were being sought among American booksellers by a Canadian publisher, at $1.50 for the single-volume work. The New York house of Scribner had previously issued the same book in two volumes "at a reasonable price." When the American publishers learned of the rival edition they acted immediately. They decided at four o'clock in the afternoon to bring out a competitive one-volume edition of their own, and such was their determination, the new issue was ready for distribution to booksellers within forty-eight hours.[31]

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[30] "Imported Copyright Books," P. W., XIV (November 2, 1878), 534. Note that P. W., like Harper & Brothers, took for granted the copyright status of Stanley's book.

[31] "The Canadian Incursion," Ibid., XV (April 12, 1879), 439. In this case, no question of copyright was involved, nor was the importation of the Canadian edition of the foreign book necessarily illegal. By 1876, according to Bozer, Americans were lawfully importing ten times as many books as they were exporting. "The Tariff on Books," NYHR, XXXVI (June, 1949), 75. Two factors diminished the effect of the existing twenty-five per cent tariff on books: the thirty-five per cent tariff on materials used in the manufacture of books, which operated to encourage importation of the less heavily taxed item at the expense of the higher, and the lower manufacturing costs of the English publisher. "Copyright, Home and International," P. W., XV (January 25, 1879), 72. When the Seelye bill to abolish the import duty on books was under consideration, "publishers, printers, binders, and all connected with the manufacture of books [were]. . . .arrayed against it, regarding it as a vital blow to their trade, as it undoubtedly [was] to that important branch of it, reprints." [Abolition of import duties on books], P. W., XI (January 27, 1877), 87-88.

Summary and Conclusion

The reprinting of unprotected works in the United States and Great Britain, without the authorization of, and frequently without payment to writers, worked no legal inequity upon anyone but American authors, who were forced under the system to compete in their own country with foreign authors whose reprinted books undersold their own copyrighted work. Because the American copyright law excluded non-resident aliens from protection in this country, such writers could not be robbed of what they did not lawfully possess; on the other hand, some American authors were able to obtain British copyright and so gain relief from unauthorized reprinting of their books in the United Kingdom; eventually, it also became possible to acquire Canadian copyright. American authors and publishers alike were injured by the importation of foreign reprints into this country, the former when such books were unlawfully admitted editions of their own copyrighted books, and the latter when British and Canadian reprinters attempted to undersell the American editions of English books in the United States.

The response of American publishers to the situation, as it will be shown in subsequent chapters, was to establish at first a <u>modus operandi</u> under the existing laws; only when their voluntary system of control failed, with the increase of unauthorized reprinting and cheap book production, did the majority of publishers turn to reform of the American copyright law as a means of ending the blight on the publishing

business. American authors turned increasingly to the magazines as outlets for their work; nevertheless, they continued their agitation for an "international" copyright law to end what they termed "literary piracy." Finally, when the two groups realized the mutuality of their interests, their united efforts to secure a change in the copyright statutes were successful.

CHAPTER III

COURTESY OF THE TRADE VS. LITERARY PIRACY

Definition of Terms

Literary piracy on both sides of the Atlantic resulted from the lack of copyright agreements between the United States and other nations. Just as an American author might seek advantageous terms in arrangements with his British publisher, so the American publisher (the authorized issuer of books as distinguished from the unauthorized reprinter) attempted to obtain the maximum security for himself by instituting techniques to outwit the literary pirates. The problem constantly facing the American publisher of foreign works was that of priority of publication. In order to profit from the issuing of a foreign author's unprotected book, it was necessary for a publisher to distribute his edition before the market was flooded with reprints of the work. As book prices, and hence profits, declined with the increase of cheap book production, priority became more important to the publisher than ever before.

To insure priority in bringing out the work of a British author,[1] the American publisher sought the writer's

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[1] The process would be the same whether the author was British, French, German, etc. However, in the latter cases it would be complicated by the necessity of translating the book.

cooperation by purchasing from him, or from his British publisher, unbound printed pages of the desired book before its publication in England, with the understanding that the sale of these "advance sheets" entailed a monopoly of publication in the United States for the purchaser until the book appeared in Great Britain. Once copies of the English or Canadian editions became available to American reprinters, the monopoly acquired through possession of advance sheets would be lost. Conversely, the American editions were barred from Great Britain.

To sustain these temporary monopolies, cooperating publishers practiced "courtesy of the trade"; that is, they refrained from publishing books which their competitors had acquired by purchasing advance sheets. To advise those observing the code that such purchases had been made, publishers advertised their intention to issue books so acquired; these notices were called "publishers' first announcements" or "publishers' priority claims." This voluntary system was established to protect investments in advance sheets, to eliminate costly duplication of editions among cooperating publishers, and to stabilize an industry threatened by the chaos of unauthorized reprinting.

Purchase of advance sheets and practice of courtesy of the trade were only partially effective in producing the desired results. Advance sheets were sometimes procured by two or more publishers; the system of publishers' first announcements was abused by publishers who gave notice of their intention to issue promising books whether or not they had

obtained advance sheets; disputes over priorities occurred between publishers; and finally, reprinting of foreign books in inexpensive form by houses which did not subscribe to the code of trade courtesy destroyed the financial advantage accruing from the priority system.

Purchase of Advance Sheets as a Means of Obtaining Priority in the Publication of Foreign Works

The publisher of books by foreign authors, like any other entrepreneur, could remain in business only as long as he was able to recoup his original investment and secure an additional return large enough to make future ventures financially attractive. To attain this end, control of the property he helped create - the finished book - was essential, the more so because of the absence of copyright protection for that property made his tenure uncertain. Therefore, until the system virtually collapsed in the mid-eighties, priority in publishing the foreign author's book, in conjunction with a temporarily held monopoly of production in the United States, was the best means of insuring an adequate return on his investment. Purchase of the book from the foreign author, which carried with it the writer's sanction to publish, gave the American publisher the time advantage he needed over unauthorized reprinters who were forced to await the publication of the work here or abroad before issuing competing editions.[2] In these transactions with English authors or their British publishers, the American publisher paid for advance sheets of

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[2] Putnam, George Palmer Putnam, p. 164.

forthcoming books which he judged might also succeed in the United States. Payment was made in order to limit the profit-consuming duplication of rival American editions.[3]

Publishers in this country acquired advance sheets for the authorized American editions of English books in four ways: (1) by purchase arranged through agents in London, (2) by negotiation with British publishers, (3) by direct negotiation with the authors, and (4) by offers from the writers themselves. A single transaction might involve two or more of these methods.

The London agent, in addition to sending his American principal advance sheets with option to purchase,[4] was also a public relations man. For example, when the writer Hepworth Dixon, dissatisfied with the treatment he had received from an American publisher, asked Sampson Low, agent for Harper and Brothers, for information concerning publishing conditions in the United States, Low worked out an arrangement between the author and Harper which Dixon never regretted.[5]

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[3]Holt, "The Recoil of Piracy," Forum, V (March, 1888), 28. Whereas Putnam stated that purchase of advance sheets was the means by which publishing priorities were established, Holt asserted that their purchase was an outgrowth of the system of publishers' first announcements. In disputed cases, said Holt, "It was natural to give the preference to the house that had bought advance sheets, or that by some contract had secured the sanction of the author." Ibid., p. 29.

[4]Eggleston, Recollections of a Varied Life, p. 153.

[5]Harper, House of Harper, pp. 355-356. This arrangement may have taken the form of a contract between Harper and Brothers and Dixon to purchase the latter's work as it was completed, in place of the less certain examination of advance sheets. See Holt, "The Recoil of Piracy," Forum, V (March, 1888), 29.

The following letter from Harper and Brothers to Sir Samuel Baker, dated August 23, 1873, illustrates the operation of the first three of the four methods of purchasing advance sheets, as well as that of another method of paying authors - the royalty system.

> We have already indicated to your London publishers, Messrs. Macmillan and Co., our desire to publish the American edition of /Ismailia, Baker's account of an expedition to Central Africa/ - but we deem the matter of so much importance that we now write directly to you to say, that if you will furnish us with the early proof-sheets of the text, electrotypes of the illustrations, and transfers of the maps, so that we can publish here and in Canada simultaneously with the London issue, we will pay you ten per cent. on our trade-list (retail) price for all copies sold by us. That is, if our retail price were five dollars, your royalty would be fifty cents per copy. And we would pay you in advance, on account of such a contract, one thousand pounds on the publication of our edition.
>
> The understanding would be that our edition should be published simultaneously with the London edition, and that we should have the exclusive market for the United States and Canada, to secure which we ought to receive the proof-sheets, electrotypes, and transfers well in advance.
>
> We. . . .should be pleased to hear from you in reply to this through our London agent, Mr. Sampson Low, 183 Fleet Street, who is authorized to act for us in the matter.

Apparently the proposition was satisfactory to Sir Samuel, for the book was published by Harper and Brothers in December, 1874.[6]

Negotiations with British publishers may have been attended with greater difficulties than were other arrangements

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[6] Harper and Brothers to Sir Samuel Baker, August 23, 1873, in Harper, House of Harper, p. 373. See "Breakdowns in the System of Purchasing Advance Sheets," in this chapter, for a discussion of the royalty system.

for the purchase of advance sheets. Of course, when a British firm was acting as agent or trustee for an author's estate, there was no alternative method of purchase. That was the case in 1876, when Harper and Brothers paid John Murray, publisher of Livingston's last Journals, who also represented Dr. Livingston's heirs, one thousand pounds "in advance, and on account, of the sales of our edition of /the Journals/, in accordance with your agreement with us through our Mr. Fletcher Harper, a memorandum of which accompanies this note."[7]

The necessity for a definite understanding between American publishers and British copyright holders, in the matter of purchasing advance sheets, is illustrated by the experience of Roberts Brothers, of Boston, who asked the advice of Harper concerning a predicament they found themselves in. The had arranged to publish the American edition of an English juvenile book, through the purchase of advance sheets, but they made their agreement with the publisher rather than with the author, and failed to obtain a stipulation that the English firm should forgo exporting the British edition to the United States. As a result, Roberts Brothers were undersold by the "authorizers." Had they purchased the sheets from the writer, they probably would have received the sole American rights. Harper and Brothers pointed out to their colleagues that they themselves disliked to be treated in that fashion,

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[7] Ibid., p. 381.

but that the competition of foreign books was "technically allowable unless specifically prohibited in the preliminary negotiation. . . . ."[8]

Sometimes the fourth method, that of the offer of advance sheets to the American publisher by the writer, was complicated by the attempts of the English author to get a better price for his work from another publisher. For instance, in 1872, Charles Reade offered A Simpleton to Harper and Brothers, one of his two "authorized" American publishers (the other was J. R. Osgood and Company, of Boston), but fearing that they would not meet his terms, he also offered the advance sheets to Sheldon and Company and to D. Appleton and Company before receiving a reply from Harper. Although Sheldon and Company were told that the offer was contingent upon Harper's response, nevertheless they ignored the other publishers' priority, and made two offers, one to Reade, and one, out of deference to trade courtesy, to Harper and Brothers, granting them the privilege of partial publication. In the meantime, Harper and Brothers had cabled and written their acceptance of terms to Charles Reade. Harper and Brothers then wrote an admonitory letter to Sheldon and Company, reminding them of their obligations under courtesy of the trade; they also sent a conciliatory note to Reade, thanking him for the novel and enclosing copies of their correspondence with Sheldon. Reade's parting shot was another letter to Sheldon absolving Harper of any

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[8]Harper and Brothers to Roberts Brothers, October 23, 1873, Ibid., p. 374.

blame but claiming for himself the right to offer to any publisher he chose. The concluding sentence of his letter left the door open to future negotiations with Sheldon on the assumption that neither Harper nor Osgood would reprint works accredited to a third publisher. The firm of Appleton seems not to have become further involved in the affair.[9]

On one occasion, an English author also attempted the role of agent. Wilkie Collins negotiated with Harper and Brothers for their acceptance of the serial rights to a novel by Trollope. The Harpers turned down the offer, and countered with a proposal of their own.

> . . . .But we should like to add the /rejected serial/ story to our list of Mr. Trollope's novels - and for the early sheets and electrotypes of the illustrations we should be happy to pay him Two Hundred Pounds. . . . .Or we would pay Mr. Trollope . . . .Two Hundred and Fifty Pounds if he will give us also the Canadian market in book form. Either of these offers would leave Mr. Trollope free to dispose of the serial publication of the story to any magazine in the United States or Canada.[10]

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[9]Harper and Brothers to Sheldon and Company, March 12, 1872; Harper and Brothers to Charles Reade, March 14, 1872; Reade to Sheldon and Company, March 25, 1872, ibid., pp. 336-338.

[10]Harper and Brothers to Collins, July, 1873, ibid., pp. 346-347. An estimate of Trollope's worth in the eyes of Harper and Brothers may be obtained by comparing the amounts mentioned in this letter with sums paid by the firm to British writers during an unspecified period.

To Dickens, for Great Expectations, 1250 pounds sterling.
To Thackeray, for The Virginians, 480 pounds sterling.
To Trollope, for Harry Hotspur, 700 pounds sterling. /Compare with the later offer./
To Wilkie Collins, for The Woman in White, Man and Wife, and The Moonstone, 750 pounds sterling each.
To Charles Reade, for A Woman Hater, 1000 pounds sterling.
To Macaulay, for The History of England, 650 pounds sterling

Such transactions as those described above frequently involved more than simply exchanging a draft on a London banker for advance sheets or manuscript. The necessity of outwitting the unauthorized reprinters required close cooperation between British author and American publisher, if the writer wished for a continuation of preferential treatment. Graham Pollard has recorded how Collins wrote to Harper and Brothers on July 29, 1867, arranging to send the manuscript of The Moonstone serially, so that the first half of the novel would be in the publisher's hands one month before serial publication began in England; the second half would likewise arrive in New York a month before the second portion appeared in England. However, the agreement stipulated that Harper was to print the story from proof sheets rather than from manuscript, the latter being used for the engraving of illustrations and for emergencies - i.e., to enable Harper and Brothers to rush the novel into print should an unauthorized edition be

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(the entire edition being sold at cost because of unauthorized rival reprints).
To Trevelyan, for The Life and Letters of Macaulay, 1000 pounds sterling. Ibid., p. 115.

In 1871 George Eliot was paid 1200 pounds sterling for Middlemarch, which was published serially in Harper's Weekly and in book form; in 1876, 1700 pounds sterling for Daniel Deronda, published serially in Harper's Magazine as well as in book form. Ibid., pp. 334, 388.

Harper credited rival firms - Appleton, Scribner, Houghton and Mifflin, Lippincott, Putnam, Holt, and Dodd, Mead - with similar payments to English authors. Ibid., p. 115. Parton, outspoken in his attack on publishing conditions, granted that Harper, Appleton, Scribner, and Ticknor and Fields were generous in their treatment of foreign writers, and ascribed to them an ethical as well as a superior business sense. See his "International Copyright," Atlantic, XX (October, 1867), 443-447.

issued. The publishers were able to keep their side of the bargain,[11] and the first installment of The Moonstone was published in Harper's Weekly in January, 1868.[12]

The relationship between Collins and Harper and Brothers was plagued by difficulties with unauthorized American editions of the writer's work. The Moonstone, in book form, was published simultaneously in America and in England by Harper and the British publisher, but Collins himself suggested that Harper "pirate" a later novel, I Say No, by bringing it out before the English publication date to forestall unauthorized American reprints.[13] And in a letter to Collins, written some time in November, 1872, Harper hoped that "publication /of The New Magdalen/ in book form /might/ not anticipate its serial issue, so as to subject us to rival editions in advance of ours, as in the case of Poor Miss Finch, a copy of the rival edition of which we send you by this mail." The rate of payment for The New Magdalen was five guineas per printed page in Harper's Magazine. "Of course," the letter went on, "we do not give this price to authors of stories not so interesting as yours - out of regard to their feelings and for our convenience, therefore, we desire that our pecuniary arrangements should be strictly between us."[14]

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[11] Pollard, "Introduction," in Brussel, Anglo-American First Editions, 1826-1900: East to West, pp. 13-14.

[12] Harper, House of Harper, p. 270.

[13] Pollard, in Brussel, Anglo-American First Editions, 1826-1900: East to West, p. 15.

[14] Harper and Brothers to Collins, November, 1872, in Harper, House of Harper, p. 346.

Harper's letter to Collins concerning the purchase of Trollope's novel, previously quoted, illustrates another aspect of the system of purchasing advance sheets, that of authorized dual publication in separate media by different publishers. Harper and Brothers, seeking to publish Trollope's novel in book form, were willing to relinquish the serial rights to another magazine publisher. In another case, unable to publish one of William Black's novels serially, they had no objection to its being printed in Lippincott's Magazine, but asked for advance sheets in time to publish simultaneously with the London edition, arrangements to be made as usual through their London agent, Sampson Low.[15]

Relations between American Publishers and English Authors under the System of Purchasing Advance Sheets

Payment for advance sheets did not always mean that the author benefited. An English novelist, Mrs. M. O. W. Oliphant, complained to Harper and Brothers in 1873 that the firm was publishing her work without authorization. They replied that they were not aware that she had an authorized publisher in the United States, her books having been issued here by Charles Scribner's Sons, D. Appleton and Company, an unidentified Boston publisher, and having been imported also in the Tachnitz edition (a series of books in English, published in Germany). Furthermore, Harper and Brothers told Mrs. Oliphant, they had received advance sheets of her Ombra

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[15]Harper and Brothers to William Black, December, 1871, ibid., p. 335.

accompanied by an invoice for twenty pounds, which they had paid; they had purchased advance sheets of another novel from Blackwood's Magazine, and stereotype plates from the American periodical, Littell's Living Age. Recently their London agent had obtained advance sheets for Innocence from the London Graphic for one hundred pounds. They were willing, however, to relinquish that novel and a second that had come into their possession, provided that another publisher would repay them for the sheets. After instructing Mrs. Oliphant in the facts of trade courtesy, Harper and Brothers asked her who had been getting the money paid for her novels: the novelist herself, the magazine publishers, or her London book publishers?[16]

Apparently it was necessary, at least in the first decade after the Civil War, for American publishers to instruct British writers in the matter of the author's personal responsibility for making arrangements for authorized publication in the United States unless a reputable American house had acquired advance sheets of its own volition through an agent, through a British publisher acting for the author, or by direct request made to the writer. Otherwise, no book that had been offered to an American publisher was safe from unauthorized reprinting; such publication brought no remuneration to the author. So E. E. Palmer was informed by Harper

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[16]Harper and Brothers to Mrs. M. O. W. Oliphant, February 11, 1873, Ibid., pp. 357-359.

and Brothers after he had written a letter to the London Athenaeum charging the American firm with piracy of his Desert of the Exodus, mutilation of the book, and damage to his scholarly reputation. Harper and Brothers claimed that their edition was an exact reprint of the English edition, a fact which the author might have learned had he taken the trouble to compare the two books; they asserted, too, that Palmer had not offered advance sheets to American publishers, but had, in collusion with his British publishers, attempted "to make American readers pay six dollars for a work of which a handsome reprint could be sold for three with a fair remuneration to the author. . . . ." Harper and Brothers also called upon Palmer for a public retraction of his charges, and explaining the intricacies of trade courtesy to him, promised a courtesy payment in return for his apology.[17] What Harper did not say was that the American publisher lost his priority of publication when no arrangement for the purchase of advance sheets was made. Palmer's letter, dated November 5, 1872, as reprinted in Publishers' Weekly, acknowledged the fact that his book had been exported to the United States, so could not escape the fate of immediate reprinting, and concluded with a retraction of his charges and an apology to Harper and Brothers.[18]

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[17] Ibid., pp. 353-354.

[18] "International Copyright," Publishers' and Stationers' Weekly Trade Circular, II (December 12, 1872), 653.

Two classes of foreign authors complained of the system worked out by American publishers: those who thought that they should have been more highly appreciated than they were, and those "fatuous enough to sell to their European publishers their rights for the whole world, and then, after the publisher had sub-sold the rights for America, to abuse them for not giving the money to the authors, or to abuse the American publisher for not paying the money a second time to them." Most English authors, however, were satisfied in their relationships with American publishers.[19] A cooperative author enjoyed the confidence of his American publisher; sometimes real cordiality existed between them, as the following examples show.

In February, 1877, Collins, alarmed at the inroads of unauthorized reprints of his novels on sales of the Harper editions, again wrote to the publisher to suggest, as he had done previously in the case of I Say No, a device for outwitting the pirates. His proposal seems to have been (unfortunately only Harper and Brothers' reply to Collins' letter remains) that Harper begin to issue his books in very cheap form. The publisher agreed that the method was sound enough to achieve the end of defeating reprinters, but said that it meant decreased returns to the author. To Collins' alternative of international copyright as the only other means of solving the problem, Harper replied that such a

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[19] Holt, "The Recoil of Piracy," Forum, V (March, 1888), 30.

step would undoubtedly place English works under the absolute control of English publishers, with the result that the authors would lose the market furnished by American periodicals. In most cases, Harper and Brothers added, the law of trade courtesy was the best means at hand for treating the British author fairly, meting out reprisals to reprinters, and supplying the American people with literature they demanded. The clincher to their argument dealt with their ability to sustain a loss from piracy, as in the case of Trevelyan's Life and Letters of Macaulay, which they had published at $5.00; when it was reprinted by another firm to sell at $2.50, they met the competition by issuing a cheaper edition at $1.75. "Mr. Trevelyan got his thousand pounds, the American public got a very cheap book." The letter concluded, ". . . .and pray do not forget to send us the sheets of your stories well in advance (at the usual price, of course.)"[20]

Another letter from Harper and Brothers to Collins, written a few years earlier, illustrates the good feeling existing between author and publisher.

> We gratefully avail ourselves of your kind and confidential intimation that no slight difference between the proposals you may receive from us and from others will prevent your personal preferences in our favor. We heartily reciprocate your desire for a continuance of our relation, and should the offer we make. . . .not seem to you enough, and should you receive a greater one from a responsible house, from whom you are sure of getting your money, we would increase this

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[20]Harper and Brothers to Collins, February, 1877, in Harper, House of Harper, pp. 392-394.

> amount which would correspond with the offer of the other responsible party. We make the proposition of part advance to relieve you of any feeling of embarrassment you may feel in receiving offers nearly alike and accepting ours.[21]

Harper described the pleasant relationship existing between his firm and William Black by telling of a newspaper clipping in which the author was quoted as saying that even if the much-to-be-desired international copyright law were passed, he could not be better treated than he had been by his American publishers. In a letter to Harper Black wrote, "Do whatever your think best; make any arrangement you please; and fix such terms as you think right." Again, when one of the Harpers was visiting Black, the author received a letter from another American publisher offering better terms than Harper's, no matter what they were. Black's reaction was to tear up the letter.[22]

The Code of Trade Courtesy: Recognition of Publishers' Priority Claims

To the belief that publishing is by nature an uncertain business at best, add the conviction that the instability of unrestricted competition cannot or should not be corrected by legislation, and the result, among reasonable men who desire standards which will guarantee survival, is a code to which all, or nearly all, subscribe voluntarily. At the close of the Civil War, courtesy of the trade anticipated the reign

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[21] Harper and Brothers to Collins, August 24, 1869, Ibid., p. 230.

[22] Ibid., p. 417.

of law over the international relations of American publishers. In its most rigorous form this system consisted of five rules:

1. The publisher who first issued the American edition of a foreign work established an exclusive right to that work for an indefinite period.

2. The publisher who first announced his intention of issuing the American edition of a foreign work established the exclusive right to publish that work.

3. The publisher who had previously issued the work of a foreign author thereby established the exclusive right to publish later works by that author.

4. The publisher who purchased advance sheets of a foreign work for publication in a periodical thereby acquired exclusive rights to publish that work in any other form.

5. The publisher who wished to buy or sell rights acquired by any of these means was free to do so.[23]

The basic premise of these rules was, as Parton gloomily pointed out in 1867, that the foreign author had no property rights in the United States in his literary production; courtesy of the trade was, therefore, the only means of preventing publishing in American from becoming "a game of unmitigated grab," and the phrase, Parton thought, came close to describing the actual situation.[24] But publishers had a better opinion of the workings of the system. Holt argued

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[23] Parton, "International Copyright," Atlantic, XX (October, 1867), 441.

[24] Ibid.

that "trade courtesy. . . .not only prevented ruinous competition between American publishers, but secured to foreign authors most of their rights," although it operated to the disadvantage of "untried authors" whose work was unknown. However, the primary purpose was not to benefit English writers but to protect American publishers' priorities by preventing the typesetting of the same foreign book by two or more publishing houses.[25] Both Putnam and Holt also asserted that the leading houses generally respected their competitors' financial arrangements with foreign authors. "First issues" were thus further qualified by purchase and authorization.[26]

The following paragraphs describe the operation of the rules of trade courtesy, as they were generally observed during the 1870's and 1880's.

> Even when no arrangement had been made for a forthcoming English book, the modus operandi under the courtesy of the trade was to announce it as 'in press' if the book seemed promising to the publisher. Under this provision the first announcement stood good as against another publisher's subsequent announcement, it being assumed in every case that payment would be made for advance sheets. If a publisher had the advance sheets in his possession, such right or claim overrode a simple announcement. Publishers sometimes differed as to their claim to a certain book, which at times resulted in acrimonious controversy or even retaliation. But, with rare exceptions, one another's arrangements were respected. An offer received by a publisher from an author already identified with

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[25] Holt, "The Recoil of Piracy," Forum, V (March, 1888), 28-29.

[26] Putnam, International Copyright Considered, p. 45; Holt, Garrulities of an Octogenarian Editor, p. 97.

> another house was by courtesy first submitted to the house which had already published the author's works, and publishers abstained from entering into competition for books which were recognized as the special province of another house.
>
> Occasionally, through inadvertence or misunderstanding, two publishers might have the same work in hand and partly manufactured before realizing the fact; but in such cases a friendly adjustment would generally be reached, either by one house reimbursing the other for its outlay and taking the book, or the dispute would be determined by arbitration, the contention being commonly left to a fellow publisher for arbitrament. The houses controlled by trade courtesy invariably endeavored to meet all cases of trade friction on the highest plane of equity. If a publisher declined to comply with the requirements of trade courtesy some method would be adopted to discipline the offender - generally by the printing of low-priced editions of his foreign reprints by his aggrieved competitor.[27]

As long as the system lasted, said Holt, "there was as high a tone in the relations of publishers to each other as in those of lawyers, doctors, and parsons, and the publishers and some other began to speak of their trade as a profession."[28]

Courtesy of the Trade: Publishers' First Announcements

At first, the New York Commercial Advertiser was recognized as the "official" medium for publishers' first announcements which reserved the prior "right" of publishing a book "to the house first announcing its intention to print it."[29] The notices in the Commercial Advertiser consisted of simple "cards," under the classified heading "New Publications." An example follows:

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[27]Harper, House of Harper, pp. 111-112.

[28]Holt, Garrulities of an Octogenarian Editor, p. 97.

[29]Holt, "The Recoil of Piracy," Forum, V (March, 1888), 29.

In Press:- The Mortimers - The Sword of Damocles - The Adventures of Walter Raleigh Sinjohn - Marrying for Beauty - Not While She Lives - A Dangerous Guest - Out of the Middle Ages.
Harper & Brothers.[30]

An examination of Publishers' Weekly reveals that this feature was first adapted from the Commercial Advertiser in the issue of February 22, 1872, under the caption:

Publishers' Announcements.
In the New York Commercial Advertiser for the week ending Feb. 19.

There followed, under various dates, the names of American publishers and the titles of books, chiefly English and continental, to be published by them.

February 12.
Roberts Bros.: - The Culture of Pleasure. - Three Centuries of English Literature, by C. M. Yonge. - Twenty-five Years of My Life, by Lamartine.
Charles Scribner & Co.: - Introduction to the Story of Biology, by Prof. H. Alleyne Nicholson. (By special arrangement of the English publishers.)
[Etc., to February 19.][31]

The announcement of books by English and European authors to be published by American houses was continued in

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[30] New York Commercial Advertiser, March 16, 1870.

[31] "Publishers' Announcements," Publishers' and Stationers' Weekly Trade Circular, I (February 22, 1872), 155. Beginning with Volume III, the periodical was called Publishers' Weekly.
It should be noted that these lists differed from other trade announcements in the magazine: "Announcements of Forthcoming Books," and "Alphabetical List of Books Just Published," both of which included more complete bibliographical data than did "Publishers' Announcements." Although indexed as a "Regular Department" the latter did not appear in every number. Ibid., I, passim.

Volume II under the heading "Publishers' First Announcements." Other than the insertion of the word first, the lists were like those found in Volume I.[32]

As long as courtesy of the trade operated successfully, these "Publishers' First Announcements" were probably effective, especially after Publishers' Weekly acquired an official status. Beginning with the issue of September 5, 1874, there appeared in each number the following notice:

> Resolved, That this Convention recognize the Publishers' Weekly as the established organ of the entire Trade, and recommend it to publishers as the medium through which they should make their 'first announcement' of books they propose to publish, and the full title of all books immediately on publication. - American Book-Trade Association.[33]

The Collapse of Trade Courtesy: Breakdowns in the System of Purchasing Advance Sheets; the Royalty System

Preoccupation with the alternatives of international copyright or outright piracy characterized the thinking of publishers during the period 1866-1891, for the delicate balance of economic survival was constantly threatened. Successful publishers who customarily paid foreign authors for their work and who respected each other's priorities were accused of creating a monopoly and maintaining it against their poorer competitors.[34] However, the monopoly, if it

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[32] "Publishers' First Announcements," Publishers' and Stationers' Weekly Trade Circular, II (July 4, 1874), 7, and II, passim.

[33] "Announcement of Forthcoming Publications," P. W., VI (September 5, 1874), 233 and seriatim.

[34] "The Examiner," Old and New, VII (June, 1873), 735.

ever existed, was short-lived. The "authorized" American editions of books of foreign origin were challenged by unauthorized reprints in the form of inexpensive paper-bound "libraries." By 1877 courtesy of the trade scarcely sufficed to protect the purchaser of advance sheets for more than forty-eight hours from the competition of unauthorized reprinters who recognized neither payments for advance sheets nor publishers' priorities. Consequently, payments made by American publishers for advance sheets became smaller than they had been heretofore.[35]

Since the best way to discourage a competitor was to undersell him,[36] it eventually became financially disastrous for publishers to continue paying foreign authors for advance sheets. Few could risk that outlay on an edition which might be driven off the market by an inexpensively produced unauthorized reprint. "The money returns on the greater part of all books published only pay the expenses of printing, advertising, and so on, and a small percentage on the investment," said John F. Thomas in 1873. He went on to describe the rise of the royalty system.

> It is only occasionally, when a very successful book is published and has a large sale that the publishers make money. The profits of the business of publishing and bookselling are not large, for the income of seventy-five or a hundred thousand dollars, received by a few of the princes of the trade, are small in comparison with the profits of equally successful men in other mercantile pursuits;

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[35]"The Cheap Libraries," P. W., XII (October 6, 1877), 396.

[36]Harper, House of Harper, p. 113.

> and whoever heard of a retail bookseller becoming wealthy? The almost universal practice of publishers with authors now is to pay them a percentage on the sales of their books, usually ten per cent. on the retail price; and in this way the advantage of success, as well as the risk of failure, is divided. The stigma of fleecing needy authors has been laid at the door of publishers ever since the publisher of Milton paid him a paltry five pounds for the grandest epic ever written,. . . . but of late the custom of buying an absolute copyright by a single payment has been very much modified.[37]

Thomas was probably referring simply to the method of paying American authors, who customarily received royalties of ten, twelve and a half, or even fifteen per cent.[38] When payments to foreign authors for advance sheets were no longer practicable, the royalty system was proposed as a means of compensation. One publisher suggested an industry-wide compact by which publishers would pledge to pay foreign writers a nominal sum, say about one hundred dollars, for advance sheets, to be followed by royalty payments at a rate to be arranged with the author and based upon sales of the book in this country.[39] Publishers like John W. Lovell, who regarded courtesy of the trade as monopolistic, argued that the royalty

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[37] Thomas, "On Bookselling and Bookmaking," P. W., IV (September 6, 1873), 241-242. Note that Harper and Brothers' offer to Sir Samuel Baker, quoted earlier in this chapter, combined the methods of purchase of advance sheets and royalty payments.

[38] Harper, House of Harper, p. 398.

[39] "Communications. The Protection of American Publishers on [sic] Foreign Books," P. W., XV (January 25, 1879), 80.

system would actually operate in lieu of international copyright and expedite the business of publishing cheap editions.[40] But it was feared that this innovation would be ruinous to the trade since the plan would permit publication of any given book by as many publishers as cared to take the risk, as long as royalties were paid; there might be a dozen profitless editions, none paying the author more than a cent a copy, all competing simultaneously, with the result that the author's next book would be ignored by any publisher. The scheme offered neither unofficial and informal international copyright nor a substitute for it; it proposed instead the cheap library system with a vengeance.[41]

It was no easier to make royalty payments than it had been to purchase advance sheets. "Notwithstanding the great variety in contracts between authors and publishers," wrote Holt, "the average result of all such contracts must inevitably be that publishers, if they maintain their solvency, do not pay authors any money unless the authors' books earn it. . . . /A/mong the many sound arguments in favor of international copyright, we have never been able to recognize that it will enable publishers to pay royalty on books that earn none."[42] And Publishers' Weekly echoed Holt: ". . . /A/s

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[40] Lovell to editor, April 17, 1879, in "Communications. 'The Canadian Incursion,'" ibid., (April 19, 1879), 470-471.

[41] "Copyright, Home and International," ibid., (January 25, 1879), 73.

[42] Henry Holt and Company to editor, July 21, 1878, in New York Tribune, July 22, 1878, p. 5.

soon as returns from a foreign author justify payment, our publishers commonly make payment."[43] That was the best that could be said for American publishers when they were no longer able to afford the purchase of advance sheets from foreign authors.

The Collapse of Trade Courtesy: Breakdowns in the System of Honoring Publishers' First Announcements

An early historian of the movement for copyright reform noted that the "indefinable and unsatisfactory code known as 'trade courtesy' was. . . .apt to fail when any real occasion for it came."[44] Certainly confusion could not have been much worse than it was in 1868 and 1869, when there occurred at least eight violations of trade courtesy caused by the inability of various publishers to keep track of their competitors' announcements.

1. Lippincott and Company vs. Harper and Brothers concerning Wentworth Dilke's Greater Britain. Lippincott asserted that announcement of intention to publish had appeared in May, 1868, in the Philadelphia Publishers' Circular. Harper claimed that Lippincott should have announced their intention in the New York Commercial Advertiser; the New York firm's first knowledge of the Lippincott plan to publish was received in a letter from Philadelphia on December 3, 1868.

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[43]"American Publishers and Foreign Authors," P. M., XIV (July 27, 1878), 115.

[44][R. R. Bowker], "Copyright. XI.: Copyright Reform in This Country," ibid., XXVIII (October 31, 1885), 600.

Lippincott countered with the statement that the Commercial Advertiser was not widely read by publishers outside New York.

2. Lippincott and Company vs. Harper and Brothers: rival editions of Bulwer's Works.

3. The same firms: Sir Samuel Baker's Cast Up by the Sea.

4. The same firms: Hepworth Dixon's Her Majesty's Tower.

5. Harper and Brothers vs. Fields, Osgood and Company concerning works of Charles Reade.

6. Harper vs. Fields, Osgood: works of Anthony Trollope.

7. Leypoldt and Holt vs. Roberts Brothers concerning Berthold Auerbach's The Villa on the Rhine. Leypoldt and Holt were having a translation made; Roberts Brothers had secured rights to publish another translation from the Viennese Die Presse, at the time when this translation was appearing serially in Littell's Living Age. Part I had already been published by Roberts Brothers.

8. Charles Scribner and Company vs. D. Appleton and Company vs. Lippincott and Company vs. Harper and Brothers vs. Jesse Haney and Company, over The Illustrated Library of Wonders. Scribner had purchased the plates; Appleton already possessed some plates; Lippincott imported the sheets; both Harper and Haney were using the material extensively in their monthly magazines. These actions gave each publisher a "legitimate" claim to priority under the rules of trade courtesy. Apparently the conflicting claims were straightened out amicably to the satisfaction of all the concerns.[45]

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[45] "Reprints," American Booksellers' Guide, I (April 1, 1869), 10.

In urging stricter adherence to the observation of trade courtesy the Booksellers' Guide, as early as 1869, offered itself to publishers as a clearing house for first announcements, a step later taken by Publishers' Weekly.[46] In the latter periodical "Publishers' First Announcements" continued as a feature from 1872 until 1875. Examination of Volume VII (January to July, 1875) reveals only four appearances of the item in the periodical, three times in January, and once in February.[47] On January 16 of that year, the system was called "a merely superstitious observance." Publishers were said to scan the foreign literary weeklies as they arrived in this country, and to announce every promising title. "In this way, any book of importance [was] announced by nearly all the publishers, while, of the books announced, not one half [were] ever published at all on this side." Possession of advance sheets became the criterion of priority.[48] At the same time, because of the activities of unauthorized reprinters, the value of advance sheets declined, as has already been demonstrated, to such an extent that the advantage of possession was minimized. Thus it was natural for publishers to fear that priority announcements merely alerted the reprinters rather than serving their intended

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[46] Ibid.

[47] "Publishers' First Announcements," P. W., VII (January 2, 1875), 6; (January 9, 1875), 22-23; (January 30, 1875), 105-106; (February 6, 1875), 147.

[48] [Courtesy of the trade], Ibid. (January 16, 1875), 56.

purpose of reserving books to the houses cooperating in trade courtesy. Less than a month after its fourth appearance in 1875, the feature was dropped, "objections having been raised to our reprinting the 'Publishers' First Announcements' from the Commercial Advertiser. . . . ."[49] However, the feature was reinstated under a slightly different caption - "Publishers' Priority Claims" - late in 1878.[50]

The weakness of the device was once again demonstrated by the simultaneous publication of two publishers in 1880 of Gautier's aptly named Captain Fracasse. The firm of Henry Holt and Company had announced its intention to publish the book as early as 1877, in the "First Announcements" section of the American Bookseller; G. P. Putnam's Sons, in 1880, claimed that courtesy of the trade was never meant to cover so great a span of time, and that they had not searched announcements as far back as 1877. Since both publishers had kept their activities secret aside from first announcements, the duplication was unavoidable. To put an end to contretemps of this nature, the Bookseller proposed to establish a registration bureau at its office, "where First Announcements [would] be recorded. . . . ; the day and the hour of the reception of a title to be a part of the record, and the [registration] books to be always open for the inspection of the

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[49] [Publishers' First Announcements], Ibid. (February 13, 1875), 177.

[50] "Publishers' Priority Claims," Ibid., XIV (October 12, 1878), 443-444.

trade." The editors of the periodical further agreed to "keep the record in convenient form for reference; answer . . . .all inquiries pertaining to the record; give thirty days' notice of the expiration of the year's entry; and notify at once the sender of a title, if any prior entry of the title [had] been made. . . . ." A fee of twenty cents per title would be charged for each entry.[51]

Publishers' Weekly, although sympathetic to the aim of the American Bookseller, offered several objections to the plan. The same remedy, previously essayed in their own office, had not been adequately supported by publishers; the keeping of the record in New York would make it less useful for publishers in other cities; the registering of titles would merely eliminate duplications, but would hardly stop the practice of many publishers in announcing their intention to reprint every seemingly profitable English or European book. The abandonment of "Publishers' Priority Claims," which, in 1878, had replaced the earlier "Publishers' Announcements" and "Publishers' First Announcements," was the result of protests that the feature merely called out advance orders from booksellers for works not yet in production. On the other hand, the New York Commercial Advertiser notices, read

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[51] "First Announcements," American Bookseller, IX (April 1, 1880), 265. It is curious that Holt did not see Putnam's announcement, unless the latter firm, not finding any recent announcement of Captain Fracasse, proceeded with their plans without announcing their intent. It is possible, of course, that each firm listed the book in a different periodical, one in the American Bookseller and the other in [illegible], for example, and failed to see the rival entry.

chiefly by New York publishers, created no such problem. "The whole system," said the editor of Publishers' Weekly, "needs revising, and indeed it is difficult to see that anything short of copyright will prove an adequate remedy."[52]

More willing to temporize, the Bookseller responded to the somewhat pessimistic conclusion of Publishers' Weekly:

> . . . .The present system is altogether ineffective, and if a record of first announcements is to be recognized at all, something fairer and better must be substituted. In spite of the growing necessity for an international copyright, we seem to be no nearer to it than we were ten years ago. Indeed, those who agitated the question then, and have the greatest interests at stake, are the most apathetic. In the absence of such a copyright, some system of record of intention to publish is indispensable. We have suggested the best we can devise, and we shall be glad to see it adopted.

Furthermore, to overcome the objections of those who did not want the record made public, the Bookseller agreed to publish announcements only when directed to do so by the registrants. Also, the periodical would gladly relinquish the project to Publishers' Weekly.[53]

Mollified into a receptive frame of mind by this cooperative spirit, Publishers' Weekly indicated that the details of registration should properly be worked out by the publishers themselves. "It would be more of a labor of love than of remuneration in either event, and our only desire for undertaking such a plan would be its identification with the

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[52] "Inadequacy of system of first announcements," P. W., XVII (April 10, 1880), 391.

[53] "First Announcements," American Bookseller, IX (April 15, 1880), 333.

general system of trade service built up by Mr. Leypoldt" [founder and first editor of Publishers' Weekly].[54]

Had conditions in the publishing business, particularly in the number of entrepreneurs engaged in the field, remainded stable, the announcement registry might have worked. A realistic appraisal of the situation may be found in the following passage from a Publishers' Weekly editorial printed only a week before that periodical had deferred to its rival's suggestion.

> Announcements now mean even less than ever before because the new houses publish in their own way and recognize no rights except as settled by law. The regular trade cannot indeed claim that these houses, in the matter of announcements, can be bound by a law of courtesy to arrangements which they had no part in making. What they can and do claim is that such [new] houses should take their own risks and not appropriate for nothing a market which others have spent thousands in making. Announcements are in fact not now, if they ever were, a protection. They should be useful, however, as a convenience to prevent translators spending their brains and publishers their money in doing doubly what can be done with profit by only one. This convenience is set off, however, by the natural secretiveness of translators, who never want anyone else to be prospecting their gold mine, and now among publishers by the fear that their new rivals will make ready to appropriate their projects as soon as there is any proof of money in them.[55]

Cases Illustrating the Collapse of the Publishers' Priority System

Illustrations of a few early clashes over first announcements have already been cited. However, the history of

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[54] [Announcement registry], P. W., XVII (April 24, 1880), 426.

[55] "The Theory of First Announcements," ibid. (April 17, 1880), 405.

two books by Jules Verne, first published in America in 1872, as culled from announcements, advertisements, letters to editors and to rival publishers, and editorials commenting upon the cases, will serve to illustrate not only the breakdown in the practice of first announcements, but to show the relationship of that breakdown to other phenomena of publishing before enactment of the international copyright law. The announcements and advertisements presented below in the order of their appearance are almost self-explanatory.

The first announcement contains a mistake which might have resulted from too great haste on the part of the publisher to establish his priority. Even if it was only a typographical error, it was corrected in a second announcement.

> Publishers' First Announcements.
> In the New York Commercial Advertiser for the week ending Oct. 5.
> Oct. 2.
> Scribner, Armstrong & Co.: - Meridians [sic], by Jules Verne. . . . .[56]

The correction read:

> Oct. 30.
> Scribner, Armstrong & Co.: - Meridiana, by Jules Verne.[57]

The first advertisement of the book was not that of Scribner, Armstrong and Company, as might be expected, but that of Henry L. Shepard and Company. The discrepancy between titles is explained in the second advertisement quoted

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[56] "Publishers' First Announcements," Publishers' and Stationers' Weekly Trade Circular, II (October 10, 1872), 362.

[57] "Publishers' First Announcements," ibid. (November 7, 1872), 484.

below, which also announced publication of another book by Verne.

> Ready May 23d.
> Jules Verne's Summer Book
> Adventures in the Land of the Behemoth.
> Small 8vo. Fully Illustrated _____ $1.50.
> The first presentation of an illustrated Jules Verne Book at a low price.[58]

The Scribner, Armstrong and Company advertisement appeared the following week.

> Will Be Published Saturday, May 30.
> Jules Verne's
> Meridiana; or, Adventures in South Africa.
> By Jules Verne.
> One vol., 12mo, cloth. Forty-eight full-page illustrations.
> Seventy-five Cents.
> An unauthorized edition of this work has just appeared under the title of 'The Land of the Behemoth.' It contains less than half the number of illustrations in the original edition, although published at a high price.
> N. B. - The works of Jules Verne published by us are issued under a direct arrangement with his French and English publishers, and are the only editions complete in illustration and authorized in text in this market.
> Now ready, a new edition of
> From the Earth to the Moon Direct, in 97 Hours and 20 Minutes, and a Trip Around It.
> By Jules Verne.
> With eighty full-page illustrations ____ Three dollars.[59]

The necessity of cutting prices to maintain sales under the stress of competition is further illustrated in another advertisement. However, the refusal of Henry L. Shepard

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[58] "We Contribute to No Trade Sales" [Advertisement of Henry L. Shepard and Company], P. W., V (May 23, 1874), 500.

[59] "Will Be Published Saturday, May 30" [Advertisement of Scribner, Armstrong and Company], ibid. (May 30, 1874), 502.

and Company to lower the price of their "original" edition perhaps indicated an attempt to hold the market by "snob appeal."

> The Cheapest Book Ever Published.
> The price of Jules Verne's Summer Book, Adventures in the Land of the Behemoth, copyrighted edition, Square 8vo. tinted paper, fully Illustrated and elegantly bound, has been reduced to $1.00, at which price it will be kept; but we have in press the uncopyrighted and inferior edition of the above work, entitled Meridiana. The price of this edition will be kept the same as that of the rival edition, published in contravention of the courtesies of the trade, which is now $1.00. . . . . See Correspondence in the Reading Columns of the Daily Papers.[60]

Scribner, Armstrong and Company returned to the fray with a more specific bill of particulars against their rivals.

> Caution!! Caution!!
> The Trade are cautioned against ordering editions of either of the Books named below /Jules Verne's A Journey to the Center of the Earth, and his Meridiana: The Adventures of Three Englishmen and Three Russians in South Africa, each in single volumes, 12mo, cloth, illustrated, 75 cents/ without our imprint. Spurious editions, with fewer illustrations and unauthorized in text, published in contravention of the usages of the trade and in violation of our rights, have been placed in the market. All of Jules Verne's works, bearing our imprint, are issued under a direct arrangement with the French and English publishers of that author, and in beauty and number of illustrations, as well as in price, are absolutely beyond competition.

Further down the page, the advertisement continues:

> N. B. - An unauthorized edition of /Meridiana/ is published under another title in direct contravention of the trade courtesy and in violation of our rights. Of this unauthorized edition 57 pages

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[60]"The Cheapest Book Ever Published" /Advertisement of Henry L. Shepard and Company/, ibid. (May 30, 1874), 517.

are an abridged translation of the original. The remaining 133 pages are taken bodily from this authorized edition. The unauthorized edition contains 20 illustrations; our edition has 43 illustrations, and is issued under a direct arrangement with the French and English publishers of Jules Verne's works.[61]

Scribner's success, or merely the determination of Henry L. Shepard to outsell them, is demonstrated by another price cut.

Ready This Week.
Jules Verne's
A Journey to the Center of the Earth.
Cloth, illustrated, $1.00.
Just Published.
Adventures in the Land of the Behemoth.
An elegant $3.00 book for $1.
Meridiana. Paper, 25 cents.
Orders filled in the order received.
Henry L. Shepard & Co., Successors to Shepard & Gill. . . . .[62]

The entry of a third publisher into the contest, with what might seem at first glance to be a third book, found Scribner, Armstrong and Company still willing to fight.

Important Announcement.
Original American Edition of
Jules Verne's Works.
This edition, new in every respect, infringes on no rights, violates no courtesies, borrows not one word from the English translations already in the market, but claims to be an original attempt, whether successful or not, to tell Jules Verne's wonderful stories to the American public in the way he would have told them himself had he been addressing an English-speaking audience.

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[61] "Caution!! Caution!!" [Advertisement of Scribner, Armstrong and Company], ibid. (June 6, 1874), 524. It was probably the "abridged translation" that Shepard had copyrighted, as described in "The Cheapest Book Ever Published," cited above.

[62] "Ready This Week" [Advertisement of Henry L. Shepard and Company], ibid. (June 6, 1874), 538.

> Such an enterprise must stand on its own merits exclusively, and therefore it cannot be affected, except for a period more or less limited, by the English reprints (many of them more hasty verbatim translations got up to forestall the market) at present flooding the country, and sure to kill each other in the long run.
>
> The Baltimore Gun Club (De la Terre a la Lune) is the first installment, to be followed at intervals of 3 or 4 months by volumes of similar size and style, until a series comprising Jules Verne's best work is completed.
>
> It is a neat 12mo volume, containing 242 pages, 12 illustrations (no caricatures) and one map, expressly engraved to vivify the scene of the operations.
>
> Price, $1.50: With Liberal Discount to the Trade. Apply to King and Baird, Publishers; or, Edward Roth, 730 Sansom Street, Philadelphia.[63]

To this, Scribner, Armstrong and Company replied:

> The Only Authorized and Complete Edition.
> The American Gun Club, by Jules Verne, Author of 'A Journey to the Centre of the Earth.' Translated from the French by Louis Mercier, B. A. (Oxon.) and Eleanor E. King.
>
> With Twenty-four full-page illustrations. Cloth; gilt sides and back. Price One dollar.
>
> 'The American Gun Club' is simply a reprint of a fragment of Jules Verne's popular work 'From the Earth to the Moon and a Trip Around It.' It is issued in this form and under this title to meet an unauthorizied reprint, under a very similar name, of this precise section of the work mentioned. 'The American Gun Club' contains all the letter-press, and double the number of illustrations of the unauthorized edition, and is published at one-third less. In the regular edition of 'From the Earth to the Moon and a Trip Around It' this section has 40 illustrations, of which but 24 are given in 'The American Gun Club.' The illustrations in 'The American Gun Club' are printed from electrotypes taken from the original wood-cuts in Paris.[64]

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[63] "Important Announcement" [Advertisement of King and Baird], ibid. (June 13, 1874), 564.

[64] "The Only Authorized and Complete Edition" [Advertisement of Scribner, Armstrong and Company], ibid. (June 27, 1874), 596.

At least one of these controversial advertisements appeared in a journal of more popular appeal than Publishers' Weekly: the Shepard notice of a reduction in price of Adventures in the Land of the Behemoth from $1.50 to $1.00 ("The Cheapest Book Ever Published") was also printed in the Boston Globe.[65] Perhaps more valuable than advertisements in calling general attention to the merits claimed for the rival editions were the letters written by the two chief participants to the newspapers and to each other. The first, written by Henry L. Shepard and Company to Scribner, Armstrong and Company, and also printed in the Globe, protested the latter firm's failure to announce their intention to issue the Jules Verne book, and asserted their own priority through earlier publication.[66]

Scribner, Armstrong and Company replied at some length, not to this letter, but to a brief news item concerning the "war" which the New York Tribune had printed. The gist of their reply was that they had announced Meridiana "through the regular and authorized channels, at intervals from October, 1872, to January, 1873." Their next step, they claimed, was to purchase and sell in this country copies of the English edition of the book, after which they obtained plates for the entire work, text and illustrations, from the British publisher whose edition they had been distributing here. The unwarranted action of Henry L. Shepard and Company

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[65] Boston Daily Globe, May 23, 1874, p. 2.

[66] Ibid., p. 3.

had forced them to publish sooner than they had intended to. Scribner, Armstrong and Company asserted that the book was thus rightfully theirs by courtesy of the trade. On the other hand, the Boston concern changed the title with intent to deceive, it was alleged, so that any announcement they might have made previously would have been invalid. But they never announced it under any title until the day of publication, Saturday, May 23, and then, it was charged, in the New York Tribune rather than in one of the more commonly used organs. Scribner, Armstrong and Company at once telegraphed an inquiry to Henry L. Shepard and Company, but receiving no immediate reply, managed to obtain a copy of the Boston edition for examination, and to publicize their own edition in the Boston papers on Monday, May 25. To Scribner, the failure of Shepard to announce was not so great an offense as the fact that 133 pages of the Boston issue were transcribed directly from their own previously circulated English edition, while the illustrations used were direct transfers, re-engraved in this country. Fifty-seven pages only were newly translated, and it appeared that Henry L. Shepard and Company had obtained an American copyright on the basis of that portion of the book.[67] Scribner followed up this letter with another directly to Shepard, in which it was asserted that Meridiana was the authorized English title, under which they had announced the book.[68] Most of the same charges

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[67] New York Tribune, June 1, 1874, p. 3.

[68] Scribner to Shepard, June 1, 1874, reprinted in "Letters to the Editor. The Jules Verne Controversy," N. A. V (June 6, 1874), 533.

were repeated in a letter from Scribner to the Boston Globe.[69]

A letter from Henry L. Shepard and Company, originally published in the Globe, accused Scribner, Armstrong and Company of never replying directly to their remonstrance concerning failure to announce properly the intention to publish the Jules Verne book, the correct title of which was not Meridiana, but Adventures de Trois Husses et de Trois Anglais dans L'Afrique Australe. Scribner, Armstrong and Company had, perhaps, announced the book, but had delayed publishing for seventeen months. "'Must publishers be compelled to search ancient archives to fortify their already unsettled positions?'" Shepard asked concerning this unreasonable delay.[70] Another letter from Shepard to the Globe once more charged Scribner with the first offense against trade courtesy, this time on the basis of prior publication by the Boston firm of the edition copyrighted in the United States.[71]

In reporting the controversy between the two houses, Publishers' Weekly noted especially that each firm was engaging in underselling the other, and that a Philadelphia concern was planning to enter the contest, an action "which we presume will rain another tempest in the trade. O for

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[69]Boston Daily Globe, June 2, 1874, p. 2.

[70]Henry L. Shepard and Company to Boston Globe, date not given, reprinted in "Letters to the Editor. The Jules Verne Controversy," P. W., V (June 6, 1874), 532.

[71]Boston Daily Globe, June 3, 1874, p. 3.

international copyright!"[72] The Boston Globe, after printing much correspondence from the two publishers involved, seconded that sentiment in its editorial columns.[73] After consideration, Publishers' Weekly proposed something more practical than wishing for international copyright. "A system of trade arbitration" handled by a board selected from publishers generally, which would serve not only to settle disputes but to inform the public dispassionately, was suggested,[74] but nothing seems to have come of the proposal, perhaps because such quarrels as that between Scribner and Shepard were impossible of solution. Indeed, the book trade convention held that summer (1874) was marked by an atmosphere of cooperation, and the chief topics of discussion were the matters of trade discounts and relations between publishers and booksellers.[75] Perhaps the publishers were only "whistling aloud to bear their courage up."

Another misunderstanding over priority claims, seven years later, also made a travesty of priorities based on arrangements with authors or their representatives, and demonstrates how easily reputable publishers could adopt the practices of the unauthorized reprinters. "It is our

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[72]"Notes in Season," P. W., V (May 30, 1874), 509.

[73]Boston Daily Globe, June 2, 1874, p. 2.

[74]/International copyright, trade courtesy, arbitration/, P. W., V (June 13, 1874), 555.

[75]"The American Book Trade Convention," P. W., VI (Supplement to August 8, 1874, number), 16 pages inserted between pp. 158 and 159.

painful duty," said Publishers' Weekly, "to take cognizance of a controversy between two of our most prominent houses - The Messrs. Harper & Bros. and the Messrs. Charles Scribner's Sons - which cannot but have a depressing effect at home and abroad."[76]

The subject of the dispute was a posthumously published book by Thomas Carlyle. Early in March, 1881, Charles Scribner's Sons made the following announcement in an advertisement printed in Publishers' Weekly:

> Before Mr. Carlyle's death, it was announced that he had placed in the hands of Mr. James Anthony Froude, all his correspondence, papers, and other material for the Life which he had authorized Mr. Froude to write; but especially that he had given over to him a series of memoirs in his own hand, and with his own revision, to be published immediately after his death. Since this announcement the work has been awaited with a curiosity and expectation which no similar book has aroused in recent years.
>
> The volume will be published immediately and simultaneously here and in England. Though, by Mr. Carlyle's wish, it bears the less pretentious title of Reminiscences, and appears in the form of recollections of his relatives and associates, it will be found to be little less than an autobiography, with the especially valuable element that its different parts were written at different times, in Carlyle's life, and show its different phases.
>
> It is hardly possible to exaggerate the importance of the book, either as a piece of literature, or as a personal revelation. The posthumous publication of any work by Carlyle would be an event needing no comment to enforce it; that this work should be one of autobiographical nature raises its interest to the highest point for the widest circle of readers.[77]

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[76] [Harper-Scribner controversy], ibid., XIX (March 19, 1881), 304.

[77] "Charles Scribner's Sons Will Publish March 8th, the Authorized Edition of The Reminiscences of Thomas Carlyle [advertisement], ibid. (March 5, 1881), 254.

The same number of the periodical which carried the advertisement also contained an informal announcement of publication of the book "by special arrangement with Mr. Froude, Thomas Carlyle's literary executor, and the Messrs. Longmans, the English publishers."[78] The issue of the book on schedule was recorded by Publishers' Weekly on March 12.

> Carlyle, T: Reminiscences; ed. by Ja. Anthony Froude. (Authorized ed.) N. Y., C: Scribner's Sons, 1881. 12 + 536 p. silhouettes, O. [octavo], cl. [cloth binding], $2.50.
> These sketches, written at different periods of Carlyle's life, of his beloved wife and father, of Edward Irving, Lord Jeffrey, Southey and Wordsworth, though appearing through his own desire, expressed previous to his death to Mr. F., under the title of 'reminiscences,' are so woven in with his own life as to be autobiographical; they reveal a side of his singular nature hitherto unsuspected, a tenderness and devotion almost unknown; the American publishers, through an arrangement with Mr. Froude, his literary executor, are enabled to present the work simultaneously with its appearance in England.[79]

Then, almost casually, Harper and Brothers announced the same book, paper bound, at fifteen cents. The title was second in a list of new books published by the firm, and was not set off especially from the other books named.[80] The "Weekly Record of New Publications," in the next number of the magazine, noted two Harper editions of the Reminiscences, one cloth-bound duodecimo volume of 345 pages, at sixty cents, in addition to the cheaper book previously advertised. The

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[78] "Notes in Season," Ibid. (March 5, 1881), 255.

[79] "Weekly Record of New Publications," Ibid. (March 12, 1881), 282.

[80] "Harper and Brothers' List of New Books" [Advertisement], Ibid., 296.

latter was No. 166 in the Franklin Square Library, and consisted of eighty-four quarto pages.[81] This book was obviously intended to undersell a fourth edition, for the very next entry in the "Weekly Record" read:

> Carlyle, T: Reminiscences; ed. by Ja. Anthony Froude. N. Y., G: Munro, 1880 [sic: 1881]. 63 p. Q. (Seaside lib., no. 957.) pap., 20 c.
> See notice, Weekly Record, P. W., Mar. 12, '81, (478).[82]

As in previously cited cases of rival publications of the same book, the battle was fought out in advertisements by the two major companies involved. Heading a list of six of Carlyle's works published by Harper and Brothers is the entry, "Reminiscences. Edited by J. A. Froude. With 13 Portraits. 12mo, cloth, 50 cents." [Note that the sixty-cent edition has been reduced in price.] Below the list there followed Harpers' explanation of their action.

> This work is by Mr. Carlyle, and not by Mr. Froude. According to Mr. Frounde's statement in the London Times of February 25, it is the property of Mrs. Alexander Carlyle, the niece of the author, to whom we pay a royalty. Mr. Frounde's explanation on this point confirms the statement made to us by Mr. [Moncure D.] Conway, November 4, 1879, which appears in our late correspondence with Messrs. Charles Scribner's Sons as to the status of the book in this country. As the Messrs. Scribner have threatened to make public this correspondence, it is proper for us to say that copies of it will be furnished by us to any one who may desire to see it. It shows clearly, we think, that we are entitled to republish the work, and that its republication by the Messrs. Scribner is a violation of our claim, which rests -

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[81] "Weekly Record of New Publications," Ibid. (March 19, 1881), 300.

[82] Ibid.; "(478)" refers to the weekly number of the periodical.

I. On the courtesy of the trade. II. On arrangement with the author.

The remainder of the advertisement dealt with Harpers' claim to priority in publication of Carlyle's works, as recognized by other American publishers as well as by Carlyle himself, a state of affairs which Froude chose to ignore by releasing the Reminiscences to his own American publisher, Scribner. "But before his death, Mr. Carlyle, in 1879, made an express agreement with us through Mr. Conway, acting on our behalf, for the republication of this work."[33]

The next week Scribners, not to be outdone, announced their own sixty-cent edition along with the $2.50 volume. Their reply, which resembled Harpers' advertisement typographically, read in part:

> Within the last week Messrs. Harper & Brothers have issued two reprints of Thomas Carlyle's 'Reminiscences,' edited by James Anthony Froude - a book which we have purchased the right to publish in this country, and which we duly published on March 8, under an agreement of long standing with Mr. Froude, and from advance sheets sent to us by him. The 'Reminiscences' formed part of the biographical material left by Mr. Carlyle, without reservation or restriction, in the hands of Mr. Froude as his executor and authorized biographer. Some time before Mr. Carlyle's death we, as Mr. Froude's publishers, had made a definite and well-understood arrangement with Mr. Froude for the publication of all this material in America under a copyright agreement satisfactory to him and to Mr. Carlyle's niece; and when he directed us that this portion was to be published first and immediately after Mr. Carlyle's death, we duly made public announcement that we had the work in press (February 15) and proceeded as rapidly as possible to print it

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[33] "Works by Thomas Carlyle Published by Harper and Brothers" [advertisement], ibid., 316.

> and issue it under Mr. Froude's direction and simultaneously with his English publishers.
>
> Nearly two weeks after our announcement we received from Messrs. Harper our first notice of a claim which they proposed to make to the book. A correspondence followed, which we, as well as they, are prepared to furnish in full to all inquirers. We did not, as Messrs. Harper declared in a second advertisement, 'threaten' to make it public, but as an act of courtesy to them we warned them that in case of any necessity for establishing our right 'we should consider ourselves released from any obligation to treat it as confidential.'
>
> Messrs. Harper have based the claim which they allege -
>
> I. On the courtesy of the trade. II. On an arrangement with the author.

Following this portion of the advertisement there was a contradiction of Harpers' assertion that they were the authorized American publishers of Carlyle's works, a number of other firms also having issued editions of various books of his. Froude, as literary executor with sole authorization to decide such questions, found no evidence of arrangements between Carlyle and Harper, and therefore entrusted the work to Scribner. "The public will choose between this edition, put forth by the clearly expressed authority of Mr. Carlyle's executor, and a reprint from our sheets under a claim to which he has distinctly refused his acknowledgement."[84]

Deprecating this turn of events, Publishers' Weekly protested in its editorial columns against the action of "the champions of 'trade courtesy,'. . . .who have placed themselves at the head and front of the legitimate publishing interests. . . .

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[84]"Charles Scribner's Sons Publish the Authorized Edition of Reminiscences, by Thomas Carlyle" [advertisement], Ibid. (March 26, 1881), 322.

/yet/ deliberately take the law into their own hands. . . . ." Refusing to take sides further than this in the quarrel, the editor pointed out that, whatever justification may have existed originally for either publisher's action, the testimony of each party was incomplete and inconclusive. "The most essential evidence, unfortunately, seems to be missing - the signature of Carlyle." But even if the truth could be discovered, why should the piracy have continued, it was asked, with competing editions of another book, this one by Dean Stanley?[35]

After Charles Scribner's Sons advertised and Publishers' Weekly announced Christian Institutions: Essays on Ecclesiastical Subjects, by Arthur Penrhyn Stanley, Dean of Westminster Cathedral, at $2.50,[36] the publisher, as if to anticipate a move by Harper and Brothers, brought out an "authorized edition" at seventy-five cents.[37] Nor did Harper and Brothers disappoint their rivals. On April 9 their fifty-cent edition of Dean Stanley's book was both advertised and announced, but this time there seems not to have been any acrimonious squabbling, at least not in the pages of Publishers' Weekly.

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[35] /Harper-Scribner controversy/, ibid. (April 9, 1881), 407.

[36] "Charles Scribner's Sons Will Publish, March 19 . . . ." /advertisement/, ibid. (March 12, 1881), 321; "Weekly Record of New Publications," ibid. (March 26, 1881), 526.

[37] "Charles Scribner's Sons Will Publish, April 12 . . . ." /advertisement/, ibid. (April 3, 1881), 400.

[38] "Harper and Brothers' List of New Books" /advertisement/, ibid., 421; "Weekly Record of New Publications," ibid., 404.

Although the Carlyle controversy continued to be agitated, the emphasis turned to Froude's part in releasing the Reminiscences for publication, a phase of the question not pertinent to this study.[89] It is perhaps noteworthy that Harper and Brothers ceased to advertise regularly in Publishers' Weekly after that periodical's criticism of their behavior.[90]

A year later, in 1882, when a similar agitation with respect to certain of Longfellow's works seemed imminent, the editor of Publishers' Weekly, remembering the Carlyle controversy, wrote: "When our leading houses, too, begin, without a blush, to make the interests of our greatest authors subservient to their own, and to render 'trade courtesy' a sham and a byword, what shall we expect from the professional reprinter, or the publishing adventurer without a past and without. . . . prestige?"[91]

Unauthorized Reprinting and the End of Courtesy of the Trade

Trade courtesy among American publishers consisted of the mutual honoring of priorities in the issue of foreign books

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[89] New York Herald, May 8, 1881, p. 13; "The Carlyle Controversy," P. W., XIX (May 14, 1881), 532.

[90] P. W., XXI-XXII (1882), passim. Examination shows only four pages of Harper advertisements, of a type that might have been previously contracted for. Early in 1882 there appeared a two-page listing of their 1881 publications; the Christmas announcement number late in the fall contained another two pages of Harper advertisements. Before 1882, the firm had advertised in nearly every number of P. W.

[91] /Harper's Carlyle again/, ibid., XXI (April 22, 1882), 429.

which were usually obtained by purchasing advance sheets, an arrangement which conveyed with it the authorization of the foreign writers or copyright proprietors to publish such works in the United States. Through these transactions both American publishers and foreign authors hoped to forestall unauthorized reprinting in the United States long enough to profit from their investments of money and time before cheap reprints destroyed the market entirely. The necessity for increased expedition in purchase and publication vitiated both processes to a point where they nearly became inoperative; the finishing stroke was supplied by American reprinters whose unauthorized cheap editions made it virtually impossible for anyone to obtain a fair return on books of foreign origin.

It was apparent to Parton as early as 1867 that the system of trade courtesy was doomed.

> . . . .It is only under the reign of law that the rights of the weak have any security. In the most exquisitely organized system of piracy, no man can rely upon the enjoyment of a right which he is not strong enough personally to defend. It is not every house that can crush a rival edition by selling thousands of expensive books at half their cost. Between the giant houses that tower above him, and the yellow-covered gentry that prowl about his feet, an American publisher of only ordinary resources has a game to play which is really too difficult for the limited capacities of man. Who can wonder that most of them lose it?[92]

By 1876, it was generally recognized that the clause in the domestic copyright law which permitted the unrestricted publishing, importing and selling of books written by persons

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[92]Parton, "International Copyright," Atlantic, XX (October, 1867), 441.

who were not citizens of or residents in the United States invalidated the theory of extralegal protection from reprinting.[93] Furthermore, the so-called "literary pirates" were well aware of that fact, and made so much of the situation that even the strongest firms were forced to abandon their earlier standards. However, the friction of trade courtesy remained; sometimes new publishers who began by attacking the "monopoly" later assumed the mantle of respectability by accusing their rivals of violating courtesy of the trade.

The citation of a few cases of unauthorized reprinting by publishers of cheap books, in addition to those described under the heading "Cases Illustrating the Collapse of the Publishers' Priority System" above, will demonstrate the effect of such activities upon the American book market.

On July 31, 1873, Harper and Brothers began negotiations to publish a translation of Victor Hugo's Ninety-three, proposing the name of an American translator then residing in Paris, and offering the French publisher seven hundred and fifty pounds sterling for the American rights.[94] On March 31, 1874, the firm advertised the translation, in cloth binding, twelvemo, at $1.75,[95] and it was duly announced in Publishers'

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[93] Invalidation of the theory of extralegal protection, P. W., IX (February 18, 1876), 229.

[94] Harper and Brothers to Theodore Michaelis, July 31, 1873, in Harper, House of Harper, pp. 371-373. Translation by an American citizen would make the book eligible for American copyright.

[95] "Harper and Brothers' Spring Book List" [advertisement], P. W., V (March 21, 1874), 319.

Weekly.[96] A little over a month later Harper brought out a cheap edition, bound in paper, octavo, at seventy-five cents.[97] The reason is not hard to find. The Philadelphia Evening Telegraph, having begun to publish serially in its columns its own translation of Ninety-three, now proposed to reprint the work in book form to compete with the Harper edition. The same newspaper was also reprinting a novel "legitimately" published by Charles Scribner's Sons; that firm also planned a cheap edition of their own should the Telegraph issue a reprint in book form.[98]

Another case was that of Arnold's Light of Asia. On March 6, 1880, Roberts Brothers of Boston advertised their edition of the book at $1.50, and appealed to "the trade" to refrain from handling, on moral and ethical grounds, unauthorized

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[96]"Classified List of Recent and Forthcoming Books: Novels," ibid. (April 4, 1874), 353.

[97]"Books Received," ibid. (May 23, 1874), 495. The reader is referred to Harper and Brothers' statement concerning the origin of their Franklin Square Library. See "Cheap Book Production in the United States as a Result of [illegible] reprinting respectable. See Randolph to Harper and Brothers, February 8, 1879, in Harper, House of Harper, p. 445. A year later, under competition, Randolph lost some of his scruples and issued a fifteen-cent edition, "with a liberal discount to the trade," of a book which he had previously published in standard format. "To Meet a Demand. . . ." /advertisement of Anson D. F. Randolph and Company/, ibid., XVII (March 13, 1880), 269.

[98]"Amateur Publishers," ibid., V (May 23, 1874), 495. Three years later, the New York Tribune was reprinting "novel extras" in the form of ten-cent sheets, among them being Black Spirits and White, which was also published under courtesy of the trade by D. Appleton and Company. /New York Tribune "novel extras"/, ibid., XI (April 14, 1877), 426.

American reprints from which the author received nothing.[99] A week later they announced: "An unauthorized edition of this work compels us to reduce the price of our Library Edition to $1. We have published a cheap Paper Edition, printed from the large type of our plates, with additional matter; price, 25 cents." Once more, buyers who believed in courtesy of the trade were appealed to.[100] The futility of such appeals was pointed out by a bookseller of Easton, Pennsylvania, who wrote that dealers were finding that they could not sell regular editions when rival bookstores were offering the reprints. Because sooner or later almost any book would be reprinted at a new low price, booksellers were stocking fewer books; furthermore, publishers were beginning to sell direct to customers for less than the retail prices charged by the bookstores.[101]

The unauthorized edition of Light of Asia against which Roberts Brothers fulminated was printed by I. K. Funk and Company in the Standard Series. Funk disclaimed the role of pirate because his firm paid royalties to the author and commissions to the booksellers, and he asserted that the firm was fighting the "'Dime Novel' class of literature" by creating a demand for good books at popular prices. Furthermore, Funk

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[99] "Special Notice to the Trade" [advertisement of Roberts Brothers], ibid., XVII (March 6, 1880), 245.

[100] "Arnold's Light of Asia," [advertisement of Roberts Brothers], ibid. (March 13, 1880), 267.

[101] M. J. Riegel to editor, March 24, 1880, in "Communications. The Trade and Authors' Editions," ibid. (April 24, 1880), 427-428.

charged that trade courtesy had been instigated by the older publishers in their own interests, that it prevented younger publishers who had had no part in creating the system from competing with them, and that it was merely a device to circumvent international copyright.[102] Publishers' Weekly retorted that it had never been opposed to cheap books as long as they did not infringe upon someone else's rights, but that it could not agree with Funk that trade courtesy did not apply to the newer publishing houses. Publishers who currently practiced the system, the periodical argued, had not always done so. Payment for advance sheets and observation of trade courtesy were steps toward international copyright.[103] Earlier, the magazine had said, in the same connection: "The free royalty system is no basis for publishing. It simply makes publisher No. 2. . . .wait till publisher No. 1 has taken all the risk, spent all the money and made the market, and then. . . . take all this for nothing." By inference, I. K. Funk and Company was publisher No. 2.[104]

The author of Light of Asia, Edwin Arnold, did not help the situation by his letters to Funk. On March 24, 1880, he wrote that his previous letter of thanks for the compliment

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[102]"Communications. 'The Light of Asia' and the 'Standard Series,'" ibid. (April 17, 1880), 407.

[103]"The 'Standard Series' Controversy," ibid. (May 15, 1880), 495.

[104]"Canon Farrar's Royalties; A Case in Point," ibid. (April 3, 1880), 356. Funk was also issuing Farrar's Life of Christ in the Standard Series, in competition with the authorized publisher, E. P. Dutton and Company. Ibid.

of publishing his book had not been intended to interfere with his authorization of Roberts Brothers as his publishers.[105] On April 14, 1880, he returned Funk's royalty check because he felt it necessary to support his authorized publisher, but he repeated his thanks for Funk's compliment to him.[106]

I. K. Funk and Company contended that justice to authors was so much talk on the part of publishers whose sole interest was to protect themselves. In issuing the Standard Series, Funk paid royalties to authors, but did not pretend to publish authorized editions, leaving that claim to practitioners of "the principle of first grab," as they described courtesy of the trade.[107] Curiously enough, the firm was soon to become involved in another dispute in which it championed the system it had so vehemently condemned.

Funk entered the scene again with an advertisement for the revised edition of Young's Analytical Bible Concordance, for which they were the American agents. Prices for the work varied according to the binding from $3.65 to $4.65. It was announced that this edition was being sold without profit to the author for the sake of his scholarly reputation, in order

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[105] "Edwin Arnold and American Publishers," Ibid. (April 10, 1880), 382.

[106] "English Authors and American Publishers," Ibid. (May 1, 1880), 457. In the meantime, Canon Farrar, who had been complaining about the small size of his royalties, apologized to E. P. Dutton and Company, saying that his complaint had been directed not at them but at Funk. Ibid.

[107] I. K. Funk to editor, May 7, 1880, in "Communications. Foreign Authors and the 'Standard Series,'" Ibid. (May 15, 1880), 499.

to combat the claims of unauthorized American reprinters of the Concordance that the revision was a "'trick'" and a "'fraud'" to prejudice buyers against the "American editions."[108] A second Funk advertisement continued the battle against the unnamed "pirate." The unauthorized American reprinter had accused the author of selling the book in this country for $15 before the reprint was issued; not so, said Funk - $5.40 had been the highest price. The reprinter was represented as having offered Young $10,000 for American rights; acceptance of such an offer, Funk asserted, would have entailed a loss on paper and presswork. [Just whose loss was not made clear; sale of rights to an American publisher would have eliminated the British edition from the American market. Perhaps sales in both countries were necessary to finance original publication costs for the Concordance.] The reprinter next offered $100 to Dr. Young to prove that he had corrected any errors in the first edition of the work when revising it; Young, according to Funk, had issued a counter-proposal: he would point out twenty discrepancies between the unauthorized American reprint of the first edition and the revised edition for $1000; fifty, for $2500; one hundred, for $10,000.[109] Funk's third advertisement identified for the first time the unauthorized American reprinter of the Concordance. It was John B. Alden,

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[108] "Young's Analytical Concordance. Authorized Edition" [advertisement of I. K. Funk and Company], ibid., XIX (January 8, 1881), 40. The "Funk edition" actually consisted of imported sheets bound in this country. See below, footnote 113.

[109] "Young's Great Concordance" [advertisement of I. K. Funk and Company], ibid. (February 26, 1881), 215.

manager of the American Book Exchange, who was now informed that there were many other differences between the two editions of the book. Next, Young, speaking through Funk's advertisement, offered to let three prominent New York clergymen, to be chosen by Funk as American agent for the work, see the author's own copy in order to certify to the fact that it contained two thousand revisions not found in the American reprint. This arrangement was to be carried out on condition that Alden pay the $10,000 originally "offered." Failing that, the American public would understand exactly what kind of book the "Revolution" reprint was.[110]

What some of Alden's contemporaries thought of the affair is reflected in this passage from the Chicago Bookseller for April, 1881.

> 'The last and greatest feat of piracy of "The Literary Revolution" is the re-publication of "Young's Great Bible Concordance" at the retail price of $2. This work is the production of the learned Dr. Robert Young, of Edinburgh, and the fruit of forty years' study of the Hebrew and Greek Scriptures. It is pronounced the most complete Bible Concordance ever published. To pirate this book and deprive its venerable author of the legitimate results of his life-labor, is little less than sacrilege. This act cannot be classed among the ordinary crimes of robbery, and it is certain that no man with a spark of upright humanity in his composition could perpetrate such an outrage. Yet the manager of the "Literary Revolution" admits that he laid in wait for early copies of the great work, and issued a cheap edition for the American market. Not only this, but he sneers at and insults the author and owner of the work because the latter has issued an appeal to the "honorable-minded Christian men and women in the United States" in behalf of his

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110"Two Thousand Omissions and Imperfections" [advertisement of I. K. Funk and Company], Ibid. (March 26, 1881), 321.

> own property rights and against the pirates who have attempted to rob him. The Messrs. Young /Edinburgh publishers, whose American agent Funk was/ have brought out a finely executed edition of the work that retails for $4.
>
> 'The pirates claim to make a profit of $1 a copy on their inferior edition. The book is a quarto of 1100 pages, non-pareil type, but the question is not so much as to the cost of the work or its price, as it is, whether the clergy and biblical scholars generally can sustain the fraudulent methods which the piratical house has resorted to for selfish purposes, under the guise of conferring a public benefit. The next feat proposed by this "Literary Revolution" is a pirated edition of the Revised New Testament, as soon as a copy of the English edition can be obtained. . . . .'[111]

One year later Dodd, Mead and Company announced that they had purchased the plates of the American edition /i.e., Alden's reprint/ of Young's Analytical Concordance to the Bible, and would shortly publish a newly collated and corrected edition of the work.[112] Almost immediately Funk and Wagnalls (formerly I. K. Funk and Company) wrote to Publishers'

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[111] Chicago Bookseller, April, 1881, as quoted in "The Roar of the Revolution," P. W. (April 16, 1881), 431-432. Although the weight of evidence and opinion seems to have been against Alden, it is worth noting that he was consistent. In 1884, in answer to a query by P. W., he, as well as the reprinters Lovell and Munro, claimed to be in favor of international copyright - specifically, the Dorsheimer bill then before Congress. None of the three insisted upon American manufacture as did a number of other publishers. Alden and Munro asserted that authors should be given complete control over their work. See "Publishers' Opinions on International Copyright," ibid., XXV (March 29, 1884), 381-383. The possibility that these so-called pirates were sincere in their contention that they were striving for copyright reform must not be overlooked. It is not unlikely, however, that they were opportunists who, seeing the handwriting on the wall, assumed the garb of respectability. See also "The Effect of Unauthorized Reprinting and Cheap Book Production in the United States upon British and American Authors," Chapter II of this study.

[112] "Dodd, Mead and Company Announce. . . ." /advertisement/, ibid., XXI (April 15, 182), 399.

Weekly concerning this step. Their letter accused Dodd, Mead and Company of violating the courtesy of the trade hitherto observed between the two firms [this from the reprinter who had called the system "the principle of first grab"], of using the controversial American Book Exchange plates, of attempting to evade responsibility by charging the wrong to the Book Exchange, of insulting Dr. Young and his American agents by offering to pay royalty on condition that the British edition be withdrawn from the American market, of making unauthorized revisions in the text of the Concordance, and of producing a typographically inferior edition to that printed in Edinburgh [and bound and sold in the United States by Funk and Wagnalls]. Dodd, Mead and Company, given an opportunity to see and reply to this letter before it was printed in Publishers' Weekly, replied that Young's work had affected the sale of their own concordance by Cruden, and that trade courtesy was not involved in a question of a purchased edition versus imported sheets. Furthermore, they had offered to pay the author, Dr. Young, if his English publishers and American importers would allow him to accept; Dr. Young, who was for the first time in a position to receive returns from the American sale of his book, should realize that Funk and Wagnalls had not created the market for it, but had actually absorbed the profits themselves.[113]

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[113] "Communications. Young's Concordance," ibid. (May 1882), 476-477. Note that purchase of sheets, as commonly understood in trade courtesy practice did not involve the importation of large quantities for binding, but only the

Summary and Conclusion

The want of a copyright agreement between the United States and Great Britain led to extensive unauthorized reprinting in both countries. In America, where there was no copyright protection for foreign authors before 1891, the effects of unauthorized reprinting or literary piracy, as it was called by those interested in copyright reform, were mitigated for a time by the purchase of advance sheets and the practice of trade courtesy. The first of these devices remunerated British authors or proprietors under any of several arrangements and granted authorization to reprint to American publishers; the second proposed to protect investments in advance sheets and to insure adequate income to American firms which honored each other's announcements of intention to publish British and foreign works acquired through the purchase of advance sheets. However, as long as American copyright law permitted unauthorized reprinting, there could be no satisfactory solution to the problems arising from the situation. Indeed, the rise of new publishing houses which would not or could not subscribe to the code of trade courtesy, coupled with greatly increased production of inexpensive reprints, made the extralegal systems of purchase and priority virtually inoperative and brought the business of publishing foreign books in the United States perilously close to ruin.

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acquisition of proofs from which type for an authorized reprint might be set. Thus Todd, Mead was correct in asserting that Funk and Wagnalls had no case in so far as this point was concerned. On the other hand, they were in no position to adopt a superior attitude toward Funk and Wagnalls.

The collapse of trade courtesy left one alternative, the passage of an "international" copyright law which would correct the existing inequities, and to that end American authors and publishers bent their efforts, at first separately and later in cooperation with each other.

CHAPTER IV

CONFLICTING ATTEMPTS TO CHANGE THE COPYRIGHT STATUTES

The United States Copyright Law in 1868

The fact that American copyright law, during the period 1866-1891, actually encouraged the reprinting of foreign books in this country gave rise to the practice of literary piracy and to the efforts of American publishers to establish a voluntary system for protecting their interests by means of the purchase of advance sheets and observation of the code of trade courtesy. American authors were protected in the domestic market by the United States copyright law, but they found it increasingly difficult, as cheap book production expanded, to compete with foreign authors whose reprinted works undersold American books.

The original copyright law of the United States, approved in 1790 and slightly amended in 1802, was generally revised in 1831. Between that year and 1867, four supplementary acts were passed, but in spite of the agitation for international copyright, the law remained unchanged in its restriction of copyright to American citizens or to persons residing in the United States.[1] The restriction of the privilege to citizens and residents of the United States is

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[1] Solberg, "Bibliography. V. Laws," Copyright in Congress, 1789-1904, pp. 84-89.

specifically mentioned in the following sections of the law, as published in 1868.

> Sec. 63. Any citizen of the United States, or resident therein, who shall be the author. . . .of any book,. . . .and his executors, administrators, or assigns, shall have the sole liberty of printing, publishing and vending the same. . . . .
>
> Sec. 67. The author,. . . .if he be still living and a citizen of the United States or resident therein, or his widow, or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years [in addition to the original term of twenty-eight years granted by a previous section], upon recording the title of the work so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. . . . .
>
> Sec. 82. Any person who shall print or publish any manuscript whatever, without consent of the author or proprietor first obtained, (if such author or proprietor be a citizen of the United States or resident therein,) shall be liable to such author or proprietor for all damages occasioned by such injury . . . . .
>
> Sec. 83. Nothing herein contained shall be construed to prohibit the printing, publishing, importation or sale of any book. . . .written. . . . by any person not a citizen of the United States or resident therein.[2]

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[2]"Of Copyright," The Law of Patents and Copyrights, as Revised, Simplified, Arranged, and Consolidated, by the Commission Appointed for that Purpose, from the Various Acts of Congress, now in Force, in Whole or in Part (Washington: Government Printing Office, 1868), pp.20-21,24. The deleted portions of this quotation deal with copyright material other than books, or with aspects of the law not pertinent to this study.

"A resident, under the American decisions, is a person who intends to reside permanently in this country. It is decided by the intention of the resident. A person who is residing here without intention of permanent residence cannot get copyright. For English copyright, on the contrary, a person residing temporarily in Her Majesty's dominions is considered a resident." [R. R. Bowker], "Copyright. VI.: The Ownership and Duration of Copyright," P. W., XXVIII (September 12, 1885), 293.

The Plight of American Authors under the Existing Situation

Something of the difficulties under which American authors worked has been described in the preceding chapter on literary piracy. Even American publishers conceded that writers were exploited to an alarming degree.

> The injustice arising from the absence of international copyright fell with a greater force upon an American author than upon a foreign author, for his books were not only unprotected abroad, but the low prices obligatory on all foreign books republished in this country, resulted in a disastrous discrimination against him. A novel, say by Dickens or Thackeray, would retail at ten cents to a dollar, whereas the price of a [copyrighted] romance by Hawthorne or Irving would be at least a dollar and a half. This state of affairs did not tend to encourage literary production in the United States, and was one of the main reasons for the strenuous efforts made by American authors and publishers to secure international copyright.[3]

Parton offered some illuminating data on the financial losses suffered by American authors. Harriet Beecher Stowe, for example, "received from 'Uncle Tom's Cabin' the usual percentage upon the sale of the American edition, which may have consisted of some three hundred thousand copies. This percentage, with some other trifling sums, may have amounted to forty thousand dollars." He concluded that Mrs. Stowe had been defrauded of two hundred thousand dollars rightfully her share of money received from unauthorized use and sale of her book. But more serious than the hardship of the novelist was that of the scholar. Without an adequate

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[3]Harper, House of Harper, p. 115.

return assured, research was barred to all but the wealthy, for no publisher could afford to underwrite the costs of extensive study. Motley's histories of the Dutch Republic and the United Netherlands formed a case in point. Assume, said Parton, that a conservative estimate of the historian's expense was $24,000. Assume also a possible maximum sale of the books in this country as ten thousand copies at a retail sales price of $15. A liberal royalty of 13 1/3 %, higher than the usual 10%, would have netted Motley $20,000, causing the author to lose $4,000. Of Bancroft, more successful than Motley because of the subject of his history, Parton wrote that he had received for his work "about as much as his material cost, and perhaps half a dollar a day for his labor." The tragedy, for Parton, lay in the fact that English piracy eliminated the additional income that would have made such outstanding books financially successful. "A dull book protects itself; no foreigner wants it." Here in America, a quickly "manufactured piece of merchandise" on a popular subject might sell a hundred thousand copies in six months under the subscription plan and bring the "manufacturer" $30,000, or more than twice the total sum paid Emerson for forty years of study, meditation, and writing.[4]

"'The simple reason why we have no great authors, or. . . .next to none,'" Holland was reported as saying in 1876, "'is that authorship does not pay, and cannot be made

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[4]Parton, "International Copyright," Atlantic, XX (October, 1867), 433-438.

to pay. . . . . Just so long as the American author is compelled to compete in the market with books that pay no copyright, or next to none, he can not live by his work; and just as long as he can not live by his work, England will hold her present position as the producer of the greatest and best books that America reads. . . . .'"[5]

Although American authors were usually paid royalties of ten per cent of the retail price of their books, the relatively high cost of standard first editions (in 1876, about $1.75 for a clothbound duodecimo volume) kept sales of all but a few best sellers below five thousand copies. An author who wrote but one book in a single year might find that only a thousand copies had been sold; his income for that year would then have been only $1750 unless he had been able to augment it by writing for the magazines. English authors, on the other hand, paid by American publishers for advance sheets of their books were also remunerated by the sales of their work at high prices in Great Britain. "In England, therefore, a successful book [meant] a prosperous author; in the United States a book [might] be successful and the author . . . .poor and underpaid."[6] The response of the American writer was to produce more fiction than other types of literature, for it alone offered a prospect of extensive distribution

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[5]"Gleanings from the Press," P. M., X (September 23, 1876), 537-538.

[6][O. B. Bunce], "Editor's Table," Appleton's Journal, I (n.s.) (December, 1876), 570-571.

at maximum prices.[7] Authors must sometimes have wondered if they could trust their publishers in the matter of royalties, for Appleton Morgan suggested a method of pasting numbered registration stamps supplied by the copyright owner in every copy sold, to ensure full royalty payments.[8] In a discussion of the economic aspects of publishing, this same writer, although deploring a system in which authors were paid for the sale of their works rather than for their time and labor, partially blamed writers themselves for their predicament. Eager to break into print, they competed with each other, some even paying the costs of publication, he alleged, while publishers, who expected a return on their capital expenditures before paying authors, tended to fall back on Lord Camden's assertion that publication was its own reward and to regard the work of authorship as "mere rearrangement" of available materials.[9]

Dr. Holland saw some hope for authors by 1880, when the American publishing business was in a fair way of being wrecked on the shoals of piracy and underselling. American authors, of course, would also sink with the ship, but Holland assumed that some swift action would be taken at the last

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[7]"The Pay of Authors and the Price of Books," P. M., X (November 25, 1876), 918.

[8]Appleton Morgan, International Copyright. An Address Delivered before the Manhattan Liberal Club (New York, August 13, 1878) (New York: Cockcroft and Company, 1878), pp. 12-13. Morgan apparently overlooked the possibility that pirates might engage in wholesale counterfeiting of the stamps.

[9]Morgan, Anglo-American Copyright, pp. 6-13.

moment to avert disaster. He thought that past schisms between authors and publishers would be healed. The fear of American publishers that international copyright would permit their English rivals to compete freely with them had been subordinated in the struggle for survival.[10] Authors and publishers could unite at last, the former desirous of driving out competition of all but "the best and most popular" English writers, and the latter wanting a law that would keep control of domestic literature out of the hands of the British, to whom, they feared, it would fall with the collapse of publishing in America.[11] However, Albion W. Tourgée was not so optimistic about the chances of jointly sponsored copyright reform. His thesis was that "the author is a mere attachment of the publisher so far as securing compensation for his labor is concerned. The protection which is granted him seems only incidental to the advantage afforded the manufacturer. The publishing trade, rather than the work of authorship is the subject of encouragement and protection now." He argued that this condition was the authors' fault. Publishers stood together, but every author was an individualist.[12]

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[10] /Josiah G. Holland/, "Topics of the Time: International Copyright," Scribner's Monthly Illustrated Magazine, XX (May, 1880), 146-147.

[11] "International Copyright," P. M., XVIII (October 16, 1880), 489.

[12] Albion W. Tourgée, "The Law of Copyright," Our Continent, I (March 29, 1882), 104. For the extent and results of authors' individualism, see "Authors' Endorsement of Proposed Copyright Legislation," below.

As book prices went lower and lower, authors' incomes from royalties decreased to such "contemptibly small" sums that doubling the amounts would not suffice to give writers a decent living. The trouble was, Holland remarked, that publishers insisted on authors sharing both the losses and gains of publishing.[13] The editor of the Nation pointed out the flaw in publishers' reasoning. In commenting on a letter from Putnam concerning profits from the book business, he reminded his readers that the ten per cent customarily received by authors was not profit at all, but merely income in lieu of wages or salary out of which all expenses had to be paid, whereas the publishers' profits were free and clear of all encumbrances.[14]

Furthermore, authors were injured by the fact that discounts and underselling had so demoralized the book business that too few genuine booksellers remained. In the past, the bookstore had been the publishers' best outlet, and the new author's means of reaching his public. Yet more and more authors of established reputation were turning once again to subscription publishers "whose sales /depended/ less upon the character of a book than upon the glibness of the agent's tongue. This /was/ all bad for American literature and for American authors, and the two movements for a better system of

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[13] J. G. Holland, "The Rewards of Literary Labor," Every-Day Topics: A Book of Briefs (New York: Charles Scribner's Sons, 1882), pp. 30-31.

[14] "Publishers' Profits," Nation, XXXVI (May 24, 1883), 443.

domestic bookselling and for the promotion of international copyright [were] equally, therefore, in the interest of the American book trade and of American authors."[15]

The majority of successful authors now were gaining their livelihoods from the magazines which published their novels, short stories, and essays, and from other forms of literary work.[16] George Cary Eggleston thus described a career satisfying enough to the writer though auguring ill for the production of books in America.

> Accordingly, I again quitted the newspaper life, fully intending to enter it no more. Literary work of many kinds was open to me, and it was my purpose to devote myself exclusively to it, maintaining a literary workshop in my own home. I became an adviser of the Harper publishing house, with no office attendance required of me, no working time fixed, and no interference of any kind with my entire liberty. I was writing now and then for the editorial pages of the great newspapers, regularly for a number of magazines, and occasionally writing a book, though that was infrequent for the reason that in the absence of international copyright, there was no encouragement to American authors to write

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[15] "Authors' Incomes," P. C., XXVII (June 27, 1885), 732.

[16] Ibid. H. H. Boyesen argued that the magazines generally catered to a deplorably low level of public taste; since authors wrote for the market which would take their manuscripts, American literature suffered accordingly, he claimed. Hjalmar Hjorth Boyesen, "Why We have No Great Novelists," Forum, II (February, 1887), 615-622.

Holt advised authors to sell first to periodicals, and then only for royalties. Prior magazine publication, he said, created a prospective demand for the work in book form, thus bringing the author a double royalty. Furthermore, royalties might serve as insurance to cover the author's non-productive periods. Henry Holt, "Some Practical Aspects of the Literary Life in the United States, and Especially as It Is at Present Injuriously Affected by the Absence of an International Copyright," New Englander and Yale Review, XLVIII (n.s. XII) (March, 1888), 167-172.

> books in competition with reprints that cost their publishers nothing.[17]

Authors' Endorsement of Proposed Copyright Legislation

During the first session of the thirty-ninth Congress, in 1866, twelve "petitions of citizens of the United States, praying the enactment of an international copyright law" were presented in the Senate, all but one being introduced by Senator Charles Sumner.[18] In a letter to the Secretary of the organizing committee of a group consisting largely of authors, the Copyright Association for the Protection and Advancement of Literature and Art, also called the International Copyright Association, the senator expressed his hope that such legislation would, in fairness to authors and as "a new step in the unity of nations," eventually be enacted. Nevertheless, he was aware that obstacles prevented passage of a law or acceptance of a treaty.[19] That realization may explain his request in 1867 that the Senate Committee on Foreign Relations, of which he was a member, be excused from further consideration of the twelve petitions, on which no report was made. Failure

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[17] Eggleston, Recollections of a Varied Life, p. 231.

[18] Solberg, "Chronological Record of All Proceedings in Congress in Relation to Copyright, from April 15, 1789, to April 28, 1904," Copyright in Congress, 1789-1904, pp. 189-190. Among the signers were Bryant and Longfellow.

[19] Senator Charles Sumner to James Parton, February 17, 1868, in Copyright Association for the Protection and Advancement of Literature and Art, International Copyright (New York: International Copyright Association), 1868), p. 16. The organization was commonly referred to by the shorter name, International Copyright Association.

in the Senate did not, however, end the agitation, which was perhaps encouraged by Charles Dickens' visit to the United States in that same year.[20]

On January 16, 1868, the Joint Committee on the Library was instructed "to inquire into the subject of international copyright and the best means for the encouragement and advancement of cheap literature and the better protection of authors, and to report to this house by bill or otherwise."[21] The result of this action was the reporting out of committee of H. R. 779, followed by two readings, its recommittal to the committee, and the printing of a report.[22] This so-called "Baldwin bill" was written with the help of the International Copyright Association.[23] A minority report was to have been printed also, but because the majority report was not acted upon, the former was never presented.[24]

The opening paragraph of the Joint Committee report read:

> We are fully persuaded that it is not only expedient, but in a high degree important to the United

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[20] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 18, p. 14.

[21] U. S. Congress, House of Representatives, "Resolution on International Copyright," Thursday, January 16, 1868, Journal of the House of Representatives, 40th Congress, 2d Session (Washington: Government Printing Office, 1868), p. 197.

[22] U. S. Congress, House of Representatives, "Report on H. R. Bill 779," February 21, 1868, ibid., p. 379.

[23] Putnam, International Copyright Considered, p. 28.

[24] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 18, p. 14.

> States, to establish such international copyright laws as will protect the rights of American authors in foreign countries, and give similar protection to foreign authors in this country. It would be an act of national justice and honor, in which we should find that justice is the wisest policy for nations and brings the richest rewards.[25]

Next, the constitutionality of such legislation was asserted, and there followed a statement of the author's property rights in his work as it was generally understood in civilized nations. The United States was censured as "the only great nation" that had not so protected writers, with the result that American authors suffered in other countries.[26]

The Baldwin report further noted that American literature could not flourish under existing conditions, that the publishing business was becoming "speculative and uncertain," and that "worthless English books," which ought to have been excluded, circulated here. After reviewing earlier attempts to secure such legislation, the report went on to propose an American policy. It recommended:

1. Passage of an international copyright law to protect authors' property rights.

2. Development of a national literature which should extend American culture throughout the world.

3. Improvement of the conditions of manufacturing, publishing, and selling books in this country.

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[25] U. S. Congress, Joint Committee on the Library, International Copyright, House of Representatives Report No. 16, to Accompany Bill No. 779, 40th Congress, 2d Session [Washington: Government Printing Office], February 21, 1863, p. 1.

[26] Ibid.

4. Promotion of the interests of American book-buyers.[27]

Next, the report considered the following objections to international copyright.

1. Financial loss to American publishers and book manufacturers.

2. Establishment of a British publishers' monopoly in America.

3. Prevention of the adapting of English books to the American market.

4. Disruption of the American book trade by extending copyright to foreign books already being published in this country.

The first objection was parried by the assertion that American publishers were already losing money because of domestic literary piracy and the breakdown of trade courtesy, and that increased foreign republication of books of American origin would create further losses. The slight additional cost of copyright payments should be regarded as a tax on benefits received, and should, in the long run, be productive of better books. If publishers were forced to pay for the privilege of issuing books, they would not waste their money, so the argument ran, but would bring out good books for which the demand would be steady.

There could be no monopoly of the American trade by British publishers, nor any influence on their part, because copyright was to be granted to authors only, thus ending the

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[27] Ibid., pp. 2-5.

practice, in so far as the American market was concerned, of assignment of copyright by English writers to their British publishers. The proposed law stipulated that all copyrighted books must be wholly manufactured in the United States; it was thought that this provision would protect the interests of American publishing houses.

To the objection that international copyright would prevent the adaptation of English books to the American market, the report responded by asking, in effect, "Why would that be desirable? We want a native, not an adopted literature, and we also want to stop similar mutilation of American books in England."

Finally, to the objection that such legislation would seriously upset the American book trade by copyrighting books already published in this country, it was answered that the bill specifically prohibited application of the proposed law to any books except those published after its passage. At first, copyrighted books would be few as compared to the large number already in print.[28]

Various reasons have been given for the failure to pass an international copyright law in 1868. For example, an American writing for an English magazine eleven years later said that the bill had been put aside because of "the excitement attending the impeachment trial of President Johnson, which at that time absorbed the attention of Congress and the

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[28] Ibid., pp. 4-6.

public."[29] Senator Sumner listed "the alienation from England," an aftermath of the Civil war, as an obstacle to international copyright.[30] The principal reason, according to Putnam, for the rejection of the Baldwin bill was the opposition of the three Senate members of the Joint Committee to international copyright. Although the three House members, supported by Representative Kerr on the floor, favored the bill,[31] they must not have been in entire agreement, for there is a note appended to the text of the report which said that Representative Pruyn of New York, a member of the Joint Committee, requested permission, which was granted, to submit a second report on the grounds that insufficient time had been allotted for consideration of so important a bill.[32]

Baldwin himself later confirmed the statements about the trial of President Johnson and the opposition of his colleagues to international copyright legislation, but added that they had nevertheless permitted him to make his report. "I did not expect to pass the bill," he continued, "for the opposition to it was general; but I did intend to get a vote on

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[29]Conant, "International Copyright. I. An American View," Macmillan's Magazine, XL (June, 1879), 155.

[30]Sumner to Parton, in Copyright Association, International Copyright, p. 14.

[31]Putnam, International Copyright Considered, p. 28. But see Baldwin's own statement, below.

[32]U. S. Congress, Joint Committee on the Library, International Copyright, House of Representative Report No. 16, ...40th Congress, 2d Session, p. 6. This may have been the minority report mentioned by Solberg. If so, Pruyn must have opposed the measure also.

[It]. . . . ." He implied that later attempts failed for the same reasons that his bill had been dropped: apathy on the part of most members of Congress; influence on Congress of those opposed to such legislation; and the widely held belief that international copyright was incompatible with "'cheap literature.'" Baldwin's final reason is perhaps the most interesting of all. Though he had arranged for support on the floor of the House, he could not get the assistance of his own party. "Leading Republican politicians said to me, 'If we pass your bill, we shall injure the party, for the Democrats will be sure to make political capital out of it.'"[33]

In March, 1868, a group of eighty-seven authors, twenty-three editors, eighteen booksellers and publishers, and more than twenty-five others "concerned in the production, manufacture, and sale of Books, Periodicals, Designs, and Objects of Art," sent a petition to the Senate and House of Representatives soliciting "the passage of a Bill such as, in the judgment of Congress, may best secure the rights of Authors, Artists, and Designers to control and derive profit from the multiplication of copies of their works in countries other than their own." Among the signers were Louis Agassiz,

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[33] J. D. Baldwin to G. H. Putnam, January 13, 1879, in "The Last Attempt at International Copyright," P. W., XV (January 25, 1879), 79. When the position of the respective parties on the tariff is recalled, the significance of this remark is obvious. By 1890, the situation had reversed itself. See the letter of Representative H. C. Lodge to R. W. Gilder, December 4, 1890, in Robert Underwood Johnson, Remembered Yesterdays (Boston: Little, Brown and Company, 1923), p. 244.

A. S. Barnes and Company, Beadle and Company, Henry Ward Beecher, George H. Boker, William Cullen Bryant, F. O. C. Darley, E. A. Duyckinck, Ralph Waldo Emerson, Augusta J. Evans, Jessie Benton Fremont, W. P. Garrison, Asa Gray, Horace Greeley, T. W. Higginson, Oliver Wendell Holmes, Francis Lieber, Sarah J. Lippincott ("Grace Greenwood"), Henry Wadsworth Longfellow, James Russell Lowell, Thomas Mast, Frederick Law Olmsted, John G. Palfrey, Francis Parkman, Noah Porter, G. P. Putnam and Son, Charles Scribner and Company, Benjamin Silliman, William Gilmore Simms, E. C. Stedman, R. H. Stoddard, Ticknor and Fields, and Thurlow Weed.[34]

This petition had originated at a meeting held in New York in February, 1868, at which plans were also made for an organizational meeting of the Copyright Association for the Protection and Advancement of Literature and Art (the International Copyright Association), to be held on April 9, 1868. A circular dated March 12 and signed by G. P. Putnam, S. Irenaeus Prime, Henry Ivison, Parton, and Egbert Hazard was distributed to publicize the association. On the evening of April 9, Bryant was elected chairman, with a slate of temporary officers,[35] and resolutions supporting the Baldwin bill were adopted and signed by those present.[36]

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[34] Copyright Association, International Copyright, pp. 42-46.

[35] Ibid., pp. 3-6

[36] Ibid., pp. 16-17, 28.

Fifteen letters from persons unable to attend the meeting were read, among them two unsympathetic to the purposes of the association. J. W. Harper, writing for James Harper, sent a non-committal but polite refusal to participate (it should be noted in this connection that Harper and Brothers had not signed the March petition to Congress); Henry C. Carey asked for more literature to distribute among his friends to enable them to see "what is the most that can be said on the opposite side [of the international copyright question.]"[37]

In his address from the chair, Bryant compared the status of the foreign traveller in America, his property protected by law, with that of the foreign author, whose work, unlike that of the American author at home, was unprotected and subjected to unauthorized reprinting. To the argument that ideas are common property, Bryant reponded:

> 'It is the form in which the ideas are put that is the author's property. . . . . The author of a book comes to the great ocean of human thought which belongs to all; he dips up a portion of the brine, evaporates it, causes it to crystallize, purifies the crystals from unpleasant ingredients, and presents it in a new form, a form by which it is made his own. He enters the great forest of ideas, which is common ground, hews down trees, shapes them into articles of furniture, or builds a house with them, and he who takes from him that furniture is a thief, and he who breaks into that house is a burglar. The author clothes ideas in words of his own selection, forms the words into sentences of his own construction, gives the ideas his own arrangement, combines and illustrates them in his own manner, and in this state they are his

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[37] Harper to Copyright Association, April 17, 1868; Carey to Copyright Association, April 2, 1868, ibid., pp. 11-12.

own, made so by his labor, skill and invention, and they belong as properly to him as the product of salt works on the edge of the sea belongs to the manufacturer.

'. . . .The right of literary property being thus clearly established, and shown to rest on the same principle as all other property, it remains that we give it such equitable scope and application as shall vindicate our laws from the imputation of unjust partiality and a short-sighted devotion to self-interest. We must so recognize the rights of those by whom this species of property is produced that neither shall the stranger be robbed here because he is a stranger, nor the American robbed in foreign lands for the same reason. I hope to see the time when it will be held as disgraceful to counterfeit a man's book as to counterfeit his bill of exchange. . . . .'[38]

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[38] Ibid., pp. 13-15. Bryant's speech should be compared to the following passage from Locke's Of Civil Government:

"He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the woods, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask, then, when did they begin to be his? when he digested? or when he ate? or when he boiled? or when he brought them home? or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common. That added something to them more than Nature, the common mother of all, had done, and so they became his private right. And will any one say he had no right to those acorns or apples he thus appropriated because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state Nature leaves it in, which begins the property, without which the common is of no use. And the taking of this or that part does not depend on the expressed consent of all the commons. Thus, the grass my horse has bit, the turfs my servant has cut, and the ore I have digged in any place, where I have a right to them in common with others, become my property without the assignation or consent of anybody. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them." John Locke, "Of Property," Two Treatises of Civil Government, edited by Ernest Rhys (New York: E. P. Dutton and Company, Inc., 1947), p. 130.

A number of speakers then addressed the meeting. Dr. Prime, asserting the justice of the demand for international copyright based upon the rights of authors in the face of literary piracy, particularly opposed Carey's argument that authors had no rights once their books were published. It was time, he said, for an aroused and enlightened morality to overthrow such dishonest doctrines. Lieber attacked the opponents of international copyright as favoring literary piracy in the interests of expediency, and in doing so, defying the constantly growing notion of international morality. The author, as creator rather than mere producer, had an even greater basis in "the primordial consciousness of mine and thine" for his assertion of rights in his literary property. The Reverend Samuel Osgood, speaking on the topic "The Unity of Nations and Its Bearing upon Letters," said that piracy should be driven from the sphere of literature under the slogan "Fair Trade and Authors' Rights." Next, Horace Greeley "made a most effective and characteristic speech, in which he reviewed the right and wrong of the question, and with good-humored satire exposed the fallacies and the selfishness of the various pleas set forth by the opponents of International Copyright." The final speaker, the Reverend Philip Schaff, presented three arguments in favor of international copyright: material (the authors' interests), legal (justice to authors), and moral (national honor in protecting the good name of America).[39]

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[39]Copyright Association, International Copyright, pp. 18-28. One of these speakers, Francis Lieber, had been

At a third meeting, held on May 4, 1868, a constitution was adopted, and a panel of officers elected to serve until the following October. Two sections of the constitution are of especial interest. Article I provided that the organization should be named "The Copyright Association for the Protection and Advancement of Literature and Art." Article IV stated that the object of the association should be "to promote, by all legitimate means, the enactment of a just and suitable International Copyright Law, for the benefit of authors and artists in all parts of the world." The officers chosen were: president, Bryant; vice-presidents, Longfellow, Baker, Simms, Lieber, G. W. Curtis, Greeley, F. A. P. Barnard; treasurer, Henry Ivison; recording secretaries, C. A. Spencer, A. D. F. Randolph; corresponding secretary, Parton; executive committee, Prime, S. S. Cox, G. P. Putnam, Charles Scribner, E. G. Squier, Stedman, and R. G. White.[40]

Although Conant later wrote that the Copyright Association recommended to Congress "no specific measure and suggested no practical scheme on which Congress could take action,"[41] the organization drafted "A Bill for securing to authors in certain cases the benefit of international copyright,

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active in the international copyright movement as early as 1840, when he presented the same arguments he was to use again in 1868. See Frank Friedel, "Lieber's Contribution to the International Copyright Movement," Huntington Library Quarterly, VIII (February, 1945), 206.

[40] Copyright Association, International Copyright, p. 41.

[41] Conant, "International Copyright. I. An American View," Macmillan's Magazine, XL (June, 1879), 155.

advancing the development of American literature, and promoting the interests of publishers and book-buyers in the United States," which was a modification of the Baldwin bill of 1868. The first section provided for the granting of American copyright to foreign authors whose books were first published abroad, if the copyright privilege of their respective countries was extended reciprocally to American authors; the second section provided that copyright for books republished here should be extended only to works wholly manufactured in the United States; the third section dealt with translation rights; the fourth, with registration, which involved arrangements made in good faith with an American publisher for immediate publication of the book after its registry; the fifth, with the matter of Presidential proclamations that copyright agreements existed between the United States and foreign nations.[42]

Reasons for the Congressional rejection of the Baldwin proposals in 1868 have been discussed above; an examination of the provisions of this legislation sponsored by the International Copyright Association will reveal striking similarities with later bills and with the copyright law of 1891. Had Congress been less apathetic in 1868, a workable international copyright law might have been passed at that time.

The failure of Congress to pass the Baldwin bill did not entirely end the activities of the Copyright Association.

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[42] "International Copyright," American Booksellers' Guide, I (June 1, 1869), 13-14.

A manifesto, written by Charles A. Bristed "at the request of the Executive Committee of the International Copyright Association, and. . . .adopted and set forth by them as an expression of the views and purposes of the Association," appeared in The Galaxy for December, 1870. Part I discussed "popular delusions on the subject" of international copyright under seven heads that anticipated most of the arguments of later opponents of the reform; Part II dealt with the existing status of the question and concluded with a proposal for "a treaty framed on the principle of Mr. Baldwin's bill as amended by the Association."[43]

It will be shown in this chapter that the Carey group did its best to prevent passage of an international copyright law; however, the inability of those favoring the reform to agree among themselves had quite as much to do with the ultimate decision of the Joint Committee to drop the entire matter. At least six rival measures were proposed by interested groups before the Committee made its final report in 1873. The first of these, and the simplest, was that of the (International) Copyright Association, which was drafted on February 2, 1872, by the executive committee of that authors' organization. It consisted of two sections: the first would have granted domestic copyright protection to citizens of all countries reciprocating that protection; the second section

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[43]Charles Astor Bristed, "International Copyright," Galaxy, X (December, 1870), 811-818.

provided that the law should go into effect two years after its enactment.[44]

R. G. White, who was a Copyright Association delegate to the hearing on this bill, reported the events of the session of the Congressional committee:

> . . . .A quarter of an hour had not passed before I saw that the whole proceeding was merely formal in so far as any consideration of the subject on its merits was concerned. . . . . But when the gentlemen from Philadelphia spoke, which they did early and often, there was not a word as to the question of justice, right and truth involved, but simply the setting forth, in effect, of the fact that the speakers represented a business in which a certain number of dollars were invested, which employed a certain number of men, and which had certain connections, and (by implication) controlled so many votes, and that they were opposed to any change in the law. The committee were all plainly with these speakers. After submitting to this for a while, Mr. Bristed rose and poured out his indignation in a speech which, as it was equally true and intemperate, harmed his cause at every sentence . . . . . It is needless to say that nothing was done that was really to the professed point of the sitting. But there was a consultation and an attempt at compromise. . . . .[45]

American authors' endorsement of copyright reform was vulnerable to attack because of the inability of writers to agree among themselves concerning the nature of the legislation they desired. One point of view was that the granting of copyright to foreign authors without qualification or restriction was sufficient, as the following excerpt from a

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[44] "The Copyright Question," Publishers' and Stationers' Weekly Trade Circular, I (February 8, 1872), 96.

[45] Richard Grant White, The American View of the Copyright Question, with a Postscript (London and New York: George Routledge and Sons, 1880), pp. 37-38.

petition enclosed by Mark Twain in a letter to Howells shows.

> Therefore, We, your petitioners, American authors and artists, do pray your honorable body [both Houses of Congress] to grant unto all foreign authors and artists full and free copyright in the United States (upon the same terms which we ourselves enjoy); and that you do this not as an act of grace or charity, but as their right; and furthermore, that you do this without hampering the deed with any provision requiring a like justice at the hands of foreign governments toward American authors and artists. We petition thus, as being the only craftsmen in our country legitimately concerned in the matter.[46]

Another suggestion was that efforts be made to obtain copyright throughout the English-speaking nations for American authors.[47]

The solution of the question could never be quite so simple, said Howells, for it ignored the interests of publishers, who might agree (1) to the extending of American copyright to English authors whose books were issued in this country by American publishers, and (2) to the granting of English copyright to American authors whose books were issued in Great Britain by British publishers. Such an arrangement might well be secured by treaty.[48] It was thought by others,

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[46] Mark Twain to Howells, March 24, 1880, in Howells (ed.), Life in Letters of William Dean Howells, pp. 284-285.

[47] N. S. Shaler, "International Property in Patents and Copyright," Thoughts on the Nature of Intellectual Property and Its Importance to the State (Boston: James R. Osgood and Company, 1878), pp. 72-73.

[48] Howells to S. L. Clemens, May 28, 1880, in Howells (ed.), Life in Letters of William Dean Howells, p. 287.

however, that the "manufacturing clause," stipulating printing of the book in the country where copyright was granted, and necessary to carry out the agreement as outlined by Howells, would curtail the author's freedom by forcing him "to sell . . . .to parties whom the law selects for him, instead of those whom he selects for himself."[49] Yet as long as American publishers paid taxes, argued Morgan, they deserved the protection of the manufacturing clause, even though the copyright statute might be changed simply by substituting the word person for citizen in the existing law.[50] However desirable protection for publishers might be, the fact remained that authors' interests should come first and should never be forgotten.[51]

The varying points of view of American authors are illustrated by the answers to a questionnaire circularized among thirty-four authors, eleven publishers, and a number of others during 1879 and 1880 by Publishers' Weekly. At least nine different responses were received to queries as to the best method of securing international copyright. Some writers were undecided; others called for more conferences

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[49] White, The American View of the Copyright Question, p. 55. For a similar viewpoint, see Edmund C. Stedman to editor, June 5, 1880, New York Tribune, June 7, 1880, p. 5

[50] Appleton Morgan to Harper and Brothers, date not given, in "International Copyright: Letters to Messrs. Harper," P. W., XVI (August 30, 1879), 221.

[51] [Holland], "Topics of the Time: International Copyright," Scribner's Monthly Illustrated Magazine, XX (May, 1880), 147.

and petitions; a few suggested the formation of an international copyright commission; the majority favored a treaty between the United States and Great Britain; those who believed that Congressional legislation would suffice proposed several plans, among them being perpetual copyright for all authors, copyright grants to foreign authors for a limited period of time; a "manufacturing clause" for the protection of publishers, a reciprocity clause, and mandatory royalties for authors with publication open to all.[52]

Perhaps these authors were not so much disagreeing with each other as they were casting about for a workable means of bettering their economic condition. In 1879 Parton wrote, "Indeed, almost any legal arrangement would be better than the state of things existing during the last two or three

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[52]"The Copyright Question - Opinions of Publishers and Authors" [title varies], P. W., XV (January-June, 1879), 197, 239, 262, 306-307, 352-353, 396-398, 468-469, 511; XVI (July-December, 1879), 358, 881; XVII (January 31, 1880), 82-83. It is obvious that certain of the above proposals, such as the royalty scheme, would be favored more by publishers than by authors; on the whole, however, author's replies covered a wide range of recommendations. Of particular interest is the writers' vagueness in answering the question, "Can you estimate sales of your works abroad, and your loss for want of International Copyright?" Replies included statements that the author's books had no overseas sale, reminiscences of trips abroad, relatively valueless estimates in round numbers of the total of books reprinted abroad, losses stated in the form of annual figures, or as a flat $10,000, and as "'Millions!'" Among the authors polled were Longfellow, G. W. Green, E. E. Hale, Howells, David A. Wells, Holland, Stedman, C. E. Norton, Parton, "Marion Harland," E. P. Roe, Susan D. Warner, Edward Eggleston, Elizabeth Stuart Phelps, Donald G. Mitchell, G. C. Eggleston, Moses Coit Tyler, Frances H. Burnett, Holmes, Justin Winsor, Charles Dudley Warner, T. W. Higginson, Mrs. A. D. T. Whitney, J. W. De Forest, Moncure D. Conway.

years."[53] The general acceptance of this statement is illustrated by the report that many of the authors who had endorsed other schemes for copyright reform signed, in the summer of 1880, a petition to the Secretary of State approving an international copyright treaty between the United States and Great Britain which had been proposed by Harper and Brothers. (It was said that publishers did not submit their petition supporting the treaty plan until November of that year.)[54] Certainly it was anticipated that authors would again organize to lead the fight for international copyright;[55] even beginning writers were indoctrinated to that end.[56] In spite of their efforts, it was pointed out by the New York Times that not until American authors secured the support of public opinion and the help of American publishers could they hope to succeed.[57]

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[53]Parton to Harper and Brothers, no date given, in "International Copyright: Letters to Messrs. Harper," ibid., XVI (August 30, 1879), 221.

[54]"International Copyright. S. S. Conant in Reply to G. W. Smalley," ibid., XX (December 10, 1881), 825-826.

[55]Edward Eggleston, "The Blessings of Piracy," Century Magazine, XXIII (n.s. I) (April, 1882), 945.

[56]G. H. Putnam and John Bishop Putnam, Authors and Publishers: A Manual of Suggestions for Beginners in Literature (New York: G. P. Putnam's Sons, 1883), pp. 36-43. This ninety-six page book deals with such topics as "Authors and Publishers," "Publishing Arrangements," "Securing Copyright," "Editors and the Periodical Press," "Advertising," "The Making of Books," etc.

[57]New York Times, September 23, 1880.

Resistance of the "Carey School" to Changes in the Copyright Law

The difficulty of securing either treaty or legislation, Putnam was quoted as saying, lay in the fact that those interested in international copyright had no full-time lobbyist at work in Washington while Congress was in session. He suggested that a well-known lawyer or writer ought to be retained for that purpose.[58] According to Parton, such activity might have discredited the movement. "As a rule, the more objectionable the measure the more numerous its lobby," he declared. ". . . .A revision of the tariff, for example, crowds the hotels and committee-rooms; but there is no lobby for international copyright." Moreover, one man, a Philadelphian, had been the chief agent in thwarting the passage of the 1868 copyright bill.[59] That man, by his own admission, was Henry C. Carey. The 1872 edition of his pamphlet, The International Copyright Question Considered, contains this awkardly phrased sentence, in which Carey wrote of himself in the third person. "Most glad has he since then [i.e., 1868] learned that he had not labored in vain, the Secretary of the Association [Parton] that had been formed for the purpose of engineering through Congress this scheme for compelling our people to pay double or triple prices for their

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[58] "Notices to Correspondents," American Booksellers' Guide, I (September 1, 1869), 21.

[59] James Parton, "Log-Rolling at Washington," Topics of the Time (Boston: James R. Osgood and Company, 1871), pp. 260-261.

supplies of intellectual food, having assured his constituents, and his readers at large, that to him [Carey] must be mainly attributed their then recent disastrous failure."[60]

As an economist, Carey exercised great influence on the businessmen of Philadelphia, and from publishers, printers, paper makers, and bookbinders among his disciples came the greatest opposition to international copyright. Indeed, eventual passage of a law in 1891 represented a compromise between the idealism of American authors and the protectionism of moderates of the Philadelphia group. Carey, who had been a believer in free trade until the financial crisis of 1837-1840, became convinced that the protective tariff was the only means by which the United States could maintain national solvency; because the British favored free trade, he developed a suspicion of their motives in international affairs. "Growing out of this dominant principle [protectionism], which pervades his policy of national government," a friend said of him, "his passionate hostility to the British system of foreign trade, and to the subsidiary British science of political economy, takes something of the temper and tone of a national prejudice."[61]

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[60] H. C. Carey, The International Copyright Question Considered, with Special Reference to the Interests of American Authors, ...Printers and. . . .Publishers, and. . . . Readers (Philadelphia: Henry Carey Baird, 1872), pp. 13-14.

[61] William Elder, A Memoir of Henry C. Carey, Read before the Historical Society of Pennsylvania, January 25, 1880 (Philadelphia: Henry Carey Baird and Company, 1880), pp. 26-31.

Carey's first attack on copyright was inspired in 1853 by British proposals for an international copyright treaty with America. In 1868, he reissued the six Letters on International Copyright in the form of an eighty-seven page pamphlet as a reply to Parton's plea for copyright reform which had appeared in the Atlantic for October, 1867. The thesis of the Letters may be summarized briefly.

1. Authors were granted copy-privilege for a limited time to encourage their contributions to the general welfare. They were not entitled to copy-right because they had merely drawn upon the store of ideas held in common by all mankind for material which they rearranged.

2. "Decentralization" of the American political and economic system, as opposed to the decadent "centralization" found in Great Britain, produced an expanding economy and an educated citizenry. American authors have been amply paid for their contributions to the system.

3. Extension of copy-privilege would only further the monopoly enjoyed by authors and publishers. Granting such privilege to British authors would place American book-buyers at the mercy of foreign monopolists, for no requirement that books copyrighted in the United States be manufactured here could be long enforced. To satisfy their newly created demand, Americans would then have to buy the more expensive British books.[62]

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[62] H. C. Carey, Letters on International Copyright, 2d ed. (New York: Hurd and Houghton, 1868), passim.

Subsequent to the publication of the Baldwin report and the introduction into Congress of a new international copyright bill, Carey brought out his International Copyright Considered. In this pamphlet he asserted that the provisions of copyright agreements between nations might be evaded by the refusal of publishers to issue foreign books until after expiration of their copyrights. Since English books already cost more than American, international copyright legislation could not be expected to lower prices even if it increased distribution. American authors, already supported by an enlightened people, needed no additional protection; European writers who desired American copyright could settle in the United States where the greater market existed. The improperly enforced American tariff laws could not exclude the production of monopolistic British publishers from this country. Only authors who wrote for gain clamored for international copyright; truly great writers asked no more than the satisfaction of benefiting their fellow men. The solution for such temporary inequities as existed, Carey said, was not international copyright, but the appropriation of money by interested governments from which to reimburse "authors whose books /might/ happen to be reproduced abroad . . . . ."[63] If Alder is to be believed, Carey was at least consistent in his attitude toward the payment of authors. He neither asked nor received money for the more than 9000

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[63] Carey, International Copyright Question Considered, pp. 14-28.

pages of his material which appeared in the form of pamphlets and articles, and he spent thousands of dollars more than he received in issuing his thirteen octavo volumes of writings.[64] Of course, his theory may have resulted in part from sour grapes.

Sentiments like Carey's naturally provoked extended responses, of which only a few can be mentioned here. The consensus seems to have been that his doctrines, carried to their logical extreme, would utterly do away with property.[65] It remained for Horace Greeley to ask the obvious question. In defending the right of the author to his own intellectual property, he inquired how one who believed in protection for American workmen could deny that protection to American authors through the means of international copyright.[66]

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[64] Elder, Memoir of Henry C. Carey, p. 25.

[65] "Authors Versus Readers," Nation, VI (February 20, 1868), 147-148. This article was a refutation of Carey's second Letter, which contained the attempt to demonstrate that authors merely rearrange other men's ideas.

S. Irenaeus Prime, "The Right of Copyright. A Concise Statement of the Question," Putnam's Monthly Magazine, XI (n.s. I) (May, 1868), 635-637. Carey's theory of copyright was held to be substantially the same as Proudhon's on property, that it was robbery.

[F. Leypoldt], "A Dream about Copyright. Act by a Millionaire Publisher," Publishers' and Stationers' Weekly Trade Circular, I (March 21, 1872), 247. The writer described a dream in which New York had declined in importance while Philadelphia became the New World metropolis, all because the Philadelphians listened to Carey and denied any one the right to any kind of property.

[66] Horace Greeley, "Capital - Skill - Invention - Intellectual Property," Essays Designed to Elucidate the Science of Political Economy, While Serving to Explain and Defend the Policy of Protection to Home Industry, as a System of National Cooperation for the Elevation of Labor (Boston: Fields, Osgood and Company, 1870), p. 51.

Nevertheless, Carey's ideas could not be squelched. His nephew and disciple, Henry Carey Baird, took up the quarrel. He argued that England was promoting the international copyright movement in this country to further her own nefarious ends, when what was really needed was a reform of the domestic economy of that country to place emphasis on home development rather than extension of the world market for British goods. Baird repeated his uncle's claim that there could be no true copy-right, but that statutory law merely gave authors certain benefits for a limited period of time. Just as such grants restricted the duration of benefits, so also they were incapable of enlarging the scope of privilege - that is, copyright could be national but never international. Thus the publisher who appropriated what could not be protected was not a pirate. Furthermore, it was wrong to brand the American people as confederates in piracy when they bought books not illegally reprinted. And it is the people, not small groups of authors or publishers, who must finally decide the question of international copyright.[67]

Such thinking led to a rejection of the moral and ethical aspects of copyright. The "Philadelphia publishers" repeated the Carey-Baird arguments, but went on to admit the possibility that English writers might one day be eligible for American copyright. When that happened, if justice were to be done, American writers would have to be given perpetual

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[67]H. C. Baird, "International Copyright," American Literary Gazette, XVIII (January 1, 1872), 68-70.

rather than limited copyright. Enlargement of copyright scope would logically demand increase of copyright duration.[68] At the same time, however, Baird was demanding a stiffening of the requirements for domestic copyright. His suggested amendments to the law were:

1. The author or proprietor of a book should be forced to prove its absolute originality, "in whole or in part," and to indicate which parts were original.

2. A "simple" means for testing the validity of copyright should be devised.

3. Penalties should be inflicted on anyone obtaining copyright for works later demonstrated, through lack of originality, to be ineligible for copyright.

4. Registry fees should be increased to defray the added expense of the proposed copyright reform.[69]

The activity of the "Carey school" had been stimulated by renewed agitation for a solution, on both sides of the Atlantic, to the baffling problems of literary piracy and only partially operative courtesy of the trade. Increased desire of both Americans and British to cooperate in the matter had come with the resumption of friendly relations between the two countries after ratification of the Treaty of Washington,

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[68] Views of the Philadelphia Publishers, pp. 1-5.

[69] H. C. Baird to editor, March 4, 1872, in "Copyright National and International," Publishers' and Stationers' Weekly Trade Circular, I (March 14, 1872), 223. One can only conclude that Baird wished to do away with all copyright.

which settled Civil War claims of both nations.[70] However, even those American publishers who favored international copyright feared, like the Philadelphians, the effect of British free trade practices on publishing in this country, and insisted that English authors, in order to receive American copyright, must have their books published and manufactured here.[71] Nevertheless, it was pointed out by certain proponents of international copyright that in the welter of proposals and counter-proposals, the movement was threatened with "a grave danger" - while publishers and manufacturers of books wrangled among themselves, authors' rights might be entirely forgotten. Two simple solutions were offered: (1) "legalization of the author's property in his work, with absolute liberty of disposal" to several publishers in the United States and the British Empire, with each publisher being restricted as to the area in which he might distribute his edition of the book; (2) reciprocal copyright privileges in American and England for authors of the two nations, with copyright vested absolutely in the author and not assignable to any publisher.[72]

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[70] "International Copyright," Nation, XIII (November 9, 1871), 301.

[71] William H. Appleton, "International Copyright. A Second Letter from Mr. W. H. Appleton" [to the New York Times], Letters on International Copyright (New York: D. Appleton and Company, 1872), p. 20.

[72] "Politics," Atlantic, XXIX (March, 1872), 388.

The Cox bill, identical with the Baldwin bill of 1868,[73] was introduced into the House of Representatives on December 6, 1871. Although it proposed to grant American copyright privileges to foreign authors on a reciprocal basis, it also contained a clause which provided for complete American manufacture of their books, with distribution restricted to publishers who were American citizens. Arrangements for reciprocity were to be made by the President, who would proclaim the fact whenever negotiations with any country had been completed. Other sections of the bill dealt with translation rights and the method of filing copyright entries.[74] It was hoped that the new spirit of forbearance among English and American authors and publishers and the growing respect for literary property would aid in the speedy passage of the Cox bill, yet it was also recognized that legislators and educators were fearful that the measure might increase the price of books. Certainly the resolution offered by Representative Cox on December 18, 1871, which directed the Joint Committee on the Library to investigate the question of

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[73] Solberg, "Bibliography. I. Bills," Copyright in Congress, 1789-1904, p. 42.

[74] "International Copyright," Publishers' and Stationers' Weekly Trade Circular, I (January 25, 1872), 39-40. Concerning the Cox bill, Solberg says: "The text of this bill is printed in 'The Publishers' and Stationers' weekly trade circular,' v. 1. . . .January 25, 1872, pp. 39-40. A second (corrected) print of this bill (500 copies) was ordered January 23, 1872, but I do not know of any copies now in existence . . . . . No report made by the committee [on the Library], to whom it was referred." "Bibliography. I. Bills," Copyright in Congress, 1789-1904, pp. 42-43.

international copyright, and to recommend, according to their judgment, a bill or treaty for effecting the desired end, presaged success.[75]

A committee hearing was scheduled for Monday, January 29, but after the appearance of a group from Philadelphia, further consideration of the Cox bill was postponed until Monday, February 12.[76] The objections advanced were these: (1) there was nothing in the provisions of the Cox bill to stop foreign publishers from establishing American branches; (2) the three-month period after first foreign publication, during which the foreign author must have completed arrangements for American copyright and publication, would permit foreign publishers to flood this country with their own editions, so that subsequent American editions would not sell; (3) the size of the American issue might be limited by the foreign copyright-holder in order to force importation of the foreign edition of a copyrighted book.[77]

Not all Philadelphia publishers, however, subscribed to these views. William B. Evans charged that his firm and others were allowed to believe that the meeting of January 27 had been called to support the Cox resolutions; later meetings represented not the publishers of Philadelphia so much as the printers, bookbinders, and paper manufacturers. For his part,

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[75]"International Copyright," Publishers' and Stationers' Weekly Trade Circular, I (January 25, 1872), 36-39.

[76]"Literary and Trade Gossip," ibid. (February 1, 1872), 71.

[77]Views of the Philadelphia Publishers, p. 10.

Evans announced that he favored the Cox bill.[78] It was later reported that few publishers attended these Philadelphia meetings which were dominated by Baird and Willis P. Hazard. In addition to the antipathy toward international copyright, jealousy that the current movement had started in New York seemed to motivate the activity of those in attendance.[79] The firm of J. B. Lippincott and Company of Philadelphia, to remove any doubt as to their stand, wrote to Senator Lot Morrill, chairman of the Joint Committee, to explain that they believed in payment to authors, just as if "poems were potatoes"; they also supported protection of American publishers and book manufacturers by means of the requirement that all copyrighted books be produced in this country; and they called for expiration of copyright after a limited period of time.[80] Notwithstanding this schism, the Philadelphia

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[78] Wm. B. Evans to editor, February 9, 1872, in "International Copyright," Publishers' and Stationers' Weekly Trade Circular, I (February 15, 1872), 131. The meeting was conducted in an atmosphere of hostility to international copyright, and before adjournment, an eight-point memorial expressing this opposition was drawn up for presentation to the Congressional Joint Committee. "The International Copyright Treaty. Meeting of Publishers and Others in Philadelphia," ibid. (February 1, 1872), 69-70.

[79] "J. V. N." to editor, February 24, 1872, in "Correspondence," ibid. (February 29, 1872), 182. From these early meetings developed the Philadelphia Book Trade Association, led by Baird and Hazard, which concerned itself more and more with the tariff on books and on materials used in the manufacture of books. See "Correspondence," ibid. (March 14, 1872), 229-230; (March 21, 1872), 250-251; (March 28, 1872), 268-269; (May 30, 1872), 489; "Correspondence. From Philadelphia," ibid., II (October 10, 1872), 364; (December 24, 1872), 643; "Letters to the Editor. The Philadelphia Board and Mr. Lovell," P. W., III (March 8, 1873), 247.

[80] J. B. Lippincott to Senator Lot Morrill, reprinted in New York Evening Post, February 20, 1872.

group must have done its work well, for on March 23, 1872, Representative Stevenson Archer of Maryland, speaking before the House on international copyright, rebuked Carey, whose fallacious arguments, he alleged, had defeated the international copyright bill.[81]

The "Carey School" Alternative to International Copyright; Agreement of Certain Other Publishers

It was at this time that the "Carey school," which regarded the tariff and international copyright question as closely related, decided to organize in order to protect their interests and to present their views. In March, 1872, there was announced the first meeting of a group to be known as "The Booksellers' Board of Trade of the City of Philadelphia." Membership was to be open to all mercantile and manufacturing interests connected however remotely with book publishing and selling. It was the intention of the Board to deal with "international copyright, the tariff, regulation of prices, arbitration of disputes on accounts."[82] A delay in organizing the group was announced, but the difficulties were soon disposed of.

> . . . . /T/he contending parties have agreed to disagree on the international copyright question, and have apparently buried the hatchet; but what looks. . . .very much like a flank movement is being made by the anti-copyrightists, in the shape of a quiet but strong pressure for a specific duty of 'not less than twenty-five cents a pound on all imported books, either bound, unbound, or in sheets.'

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[81] Stevenson Archer, International Copyright. Speech of Hon. Stevenson Archer, of Maryland, Delivered in the House of Representatives, March 23, 1872 (Washington: F. & J. Rives and Geo. A. Bailey, 1872), passim.

[82] "H. C. S." to editor, March 2, 1872, in "Correspondence," Publishers' and Stationers' Weekly Trade Circular, I (March 14, 1872), 229.

> . . . . It is a significant fact, at least, that the strongest opponents of an international copyright are among the warmest supporters of a specific tariff.[83]

The first meeting of this group heard "remarks on the subject of a protective tariff on books and printers' materials" by Baird and Hazard.[84] Late in May, the Philadelphia Book Trade Association, as the organization was finally named, petitioned Congress to retain the existing tariff on paper, type, stereotype plates, and other materials used in the manufacture of books.[85]

These efforts were renewed at the October 6, 1872, meeting of the Association, when it was decided to propagandize the entire American book trade to fight "against the common enemy - a low tariff." Baird spoke in favor of the twenty-five per cent tariff which had been suggested the

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[83] "H. C. S." to editor, March 15, 1872, in "Correspondence," ibid. (March 21, 1872), 250-251.

[84] "H. C. S." to editor, March 22, 1872, in "Correspondence," ibid. (March 23, 1872), 268.

[85] "Correspondence," ibid. (May 30, 1872), 439. It is interesting to note in this connection how the public attitude toward Congress varies with the sanguineness of the petitioners' hope for favorable action. Five years later, when a downward revision of the tariff seemed imminently successful, a spokesman for the Philadelphia group viewed the bill then under consideration as "part of a concerted movement. . . . . The object of this hostility to the trade is not manifest. It cannot claim to be in the interest of culture and the diffusion of knowledge. . . .for [Mr. Willis, author of the bill] has omitted the existing provisions which admit free of duty books more than twenty years old and books imported for public institutions. Probably, therefore, it is merely a crude and aimless experiment - a specimen of the ignorance and want of thought with which important industries are habitually treated by our legislators." "H. C. L." to editor, November 13, 1877, in "Communications. The Tariff on Books and Paper," P. W., XII (November 17, 1877), 580.

previous spring, and Hazard reported that the English publishers were anxiously awaiting the outcome of the American issue, and hoping for a low tariff.[86] Two months later, it was decided to bring pressure to bear on Congress once more on the matters of tariff and international copyright. Furthermore, plans were laid to stop the activity of John Lovell, whose publishing and printing plant at Rouse's Point, New York, almost on the line between the United States and Canada, was in an excellent location, it was thought, to violate both American and Canadian tariff and copyright laws.[87]

Concerning all this activity in Philadelphia, an observer somewhat less than impartial wrote:

> So far as the writer is informed and can judge from being present at every meeting of the Association, its actions have been confined to an opposition to any international copyright and in favor of a heavy duty on imported literature, on printing materials, or paper. Now it is readily seen that this only tends to increase the cost to the publisher of his paper and printing. So far the booksellers and publishers have taken a back seat and said nothing, it being a notable fact that, as a class, they are very modest and seldom open their mouths on such occasions unless a 'feed' is included.[88]

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[86] "Correspondence. From Philadelphia," Publishers' and Stationers' Weekly Trade Circular, II (October 10, 1872), 364.

[87] "H. C. S." to editor, December 6, 1872, in "Correspondence. From Philadelphia," ibid. (December 24, 1872), 643. At this same meeting the sum of $150 was voted to aid in the carrying out of "a resolution urging the preparation of such text-books for schools [particularly in the South and West] as shall inculcate the cardinal virtue of protection to American manufacturers, and train up children in the way they should go to make them respected by all who work for them."

[88] "S. B. M." to editor, March 1, 1873, in "Letters to the Editor. The Philadelphia Board and Mr. Lovell," P. W.,

The fear that abolition of the duty on books would destroy the American book trade was voiced again at the meeting of the Philadelphia organization on January 22, 1877. The higher cost of wages and materials in this country would make unhampered competition with England impossible. Baird even argued for an additional special duty in view of the continuing business depression. Committees of the various interests represented at the meeting were formed to continue the agitation.[89]

The opposition of the supporters of a high tariff on books to international copyright has already been mentioned. What seems surprising at first glance is the advocacy of the tariff on books by publishers who favored international copyright. For example, the periodical Publishers' Weekly, although generally impartial in presenting all aspects of trade news, again and again, in its editorials, urged the need for international copyright as the only way out of the difficulties besetting the publishing business. Yet it described the Seelye bill to abolish the import duty on books as favoring the scholar and perhaps the general public as well at the expense

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III (March 8, 1873), 247. "The interests of the manufacturing publishers and of the manufacturers of paper and other materials for books are by no means identical, as the Philadelphia Book Trade Association, comprised largely of the latter class, is always ready to suggest," it was stated in "Pending Legislation Affecting the Trade," ibid., XII (November 17, 1877), 579.

[89]"Import Duty on Books," ibid., XI (January 27, 1877), 88-89. The Philadelphia Book Trade Association was aroused over the tariff question again in 1882, when it was proposed that Congress reduce the tariff on books. See P. W., XXII-XXIII (October, 1882- March, 1883), passim.

of American publishers and reprinters. Those opposed to the bill, then under consideration by a Congressional committee, were urged to "follow the prompt lead of the Philadelphia Association. . . . ."[90] In reporting the apparent death of the bill in committee, the journal labelled the defeated proposal as unjust.[91] Later, the British interest in international copyright was characterized as a free trade maneuver, designed not as an attempt to flood this country with cheap books, but as an attempt to impose, by means of control of copyright, high-priced editions of English works as well as the English lending library system upon a people accustomed to buying their own books at moderate prices. This article concluded, "We cannot discuss international copyright without discussing the tariff also."[92]

The same idea was presented, at a meeting of the New York Free Trade Club to discuss international copyright, by R. R. Bowker, who was associated with F. Leypoldt in editing Publishers' Weekly. Bowker said that settlement of the copyright question depended upon the tariff and manufacturing conditions.[93] At that meeting the publisher Putnam declared

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[90] [Abolition of import duties on books], ibid., XI (January 27, 1877), 37-38.

[91] [Abolition of import duties on books; lack of international copyright], ibid. (March 24, 1877), 323.

[92] "The International Commercial Relations of Books," ibid., XIII (June 1, 1878), 526-527.

[93] "A Discussion on International Copyright," ibid., XV (February 1, 1879), 151.

himself in favor of international copyright, but argued for domestic manufacture of books so copyrighted.[94] Nevertheless, he resented being called a protectionist, and asserted vehemently that he was still a free-trader, and that his firm, long active in the international copyright movement, was the authorized publisher for the New York Free Trade Club.[95] Putnam wrote that while it was consistent for the Philadelphia group to oppose abolition of import duties on books, publishers like himself, who had always been free-traders, were "generally justified in protesting against the repeal of the present duty" on the grounds that the intended legislation was discriminatory. The essential differences between Putnam's position and that of Baird or Hazard was that the tariff on books was necessary as long as there was any tariff on the materials used in the manufacture of books. (It should by recalled that the Philadelphians wished to retain both types of tariff.) When all such tariffs were removed, according to Putnam, books would become really inexpensive.[96]

As a free trader, Putnam thought that legislatures should not attempt to modify the laws of trade, but should be governed by the law of supply and demand. Authors, as laborers in the literary vineyard, were entitled "to sell their

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[94] Ibid.

[95] Putnam, "Messrs. Putnam and International Copyright," Academy, XV (May 17, 1879), 437.

[96] Putnam to editor, February 5, 1877, in "Communications. Import Duty on Books," P. W., XI (February 10, 1877), 165.

productions in the open market" without restraint.[97] The protectionist, for his part, should have sympathized with the American author as a fellow manufacturer, who asked only that he not be undersold in the home market by pirated goods, and that the government do what it could by means of legislation or treaties to secure a legitimate sale for him abroad. However, the protectionist feared that extension of copyright to English authors would flood this country with books published and printed in Great Britain to the disadvantage of American book manufacturers and their employees. "He is . . . .much more concerned for the protection of the makers of the material casing of the book than for that of the author who creates the essential substance." Furthermore, the consumer obviously wanted his books to be as cheap as possible. Why not, then, asked Putnam, permit the initial cost of typesetting, stereotyping, engraving, etc., to be divided among the British, Canadian, and American editions of the same work, under a common copyright, rather than duplicate the expensive initial processes here? Such duplication increased the cost of the book for the American consumer, and decreased the share which the British author ought to have received, because the returns to the publisher who must so duplicate were accordingly cut.[98]

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[97] Putnam, International Copyright Considered, pp. 1-3.

[98] Ibid., pp. 33-34.

An analysis of Putnam's views will reveal that he was opposed both to giving English publishers advantages over Americans, and to hampering American publishers by discrimination against native industry. Remove all such advantages and restrictions, and, in addition, protect authors by means of international copyright, and the publishing business would flourish. Free-traders like Putnam and protectionists like Baird and Hazard did agree on one point, that the British publisher should not be favored at the expense of the American.

Earlier objections to international copyright seem to have arisen from this concert of opinion. Negotiations in 1870, it was alleged, had failed because the British government had insisted upon copyright for publishers, to whom English authors customarily assigned their copyrights, rather than for writers. Furthermore,

> To permit the English publisher to acquire an artificial control over the publication of books for the American market would have been to drive our whole publishing trade into bankruptcy. . . . . At that time the greater cheapness of labour and paper permitted books to be brought out cheaper in London than in New York. The almost inevitable consequence appears to everyone.
> . . . .Our trade policy with regard to books is part of a system which, rightly or wrongly, we have been led into. . . .and so long as it is maintained as a general policy it is idle to suppose that sentimental deference to literature will induce the American legislature to make exceptions in favour of the book trade of England. . . . .[99]

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[99] W. J. Stillman, "Messrs. Harper and the Copyright Question," Academy, XV (April 26, 1879), 371.

It is not surprising, therefore, to find Putnam joining with other publishers, some of whom represented themselves as protectionists while others claimed to believe in tariff for revenue only, in sending a letter, on May 5, 1880, to the chairman of the House Committee on Ways and Means, to protest "the measure placing books upon the free list unless with such measure is included one for the removal of duties upon the materials for their manufacture," e.g., book paper, stereotype plates, type metal, ink, glue, binders' boards, binders' cloth, binders' thread, and the like, in order to equalize the costs of book production in England and America. The publishers expressed sympathy for students and scholars adversely affected by the existing tax on educational materials, and affirmed that they had no objection to the removal of duties on books published in foreign languages since no American manufacturing interests would be concerned in such a step.[100]

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[100] G. P. Putnam's Sons and others to Hon. Fernando Wood, May 5, 1880, in "A Tariff Protest," P. W., XVII (May 15, 1880), 495-496. The other publishers were D. Appleton and Company, Charles Scribner's Sons, William Wood and Company, Ivison, Blakeman, Taylor and Company, Sheldon and Company, A. S. Barnes and Company, and Dodd, Mead and Company. Lack of time prevented further solicitation of signatures in New York and elsewhere. "The absence of the signature of Harper and Brothers is not understood to be significant of their position on one side or the other of this matter. Mr. J. W. Harper, Jr., has been visiting in Washington for several days."

As a matter of fact, three years earlier, Harper's Weekly, which certainly should have reflected the views of its publishers, agreed with Putnam on the removal of the import duty on books, but went on to say that even though the bill proposed at that time had little chance of passing, the principles of opposition to it should be remembered against future similar attempts. See "Foreign Books and the Tariff," Harper's Weekly, XXXI (March 10, 1877), 183.

It is particularly interesting that Senator Orville H. Platt, who was most instrumental in getting the international

The more ardent advocates of international copyright naturally regarded as completely wrong the emphasis upon the struggle between American manufacturers and British publishers rather than upon justice to British authors. One of these proponents of copyright revision went so far as to say that truly cheap British publications would undersell and be an improvement upon cheap American books.[101] In view of the temper of the times, such an attitude would hardly win friends for international copyright among American publishers.

Two protectionist publishers, Henry O. Houghton and Henry Charles Lea, further illustrates the compromise that was made between the seemingly incongruous doctrines of tariff and international copyright. Houghton's desire for a tariff on books was partly nationalistic in origin, for he objected to the wide circulation of English juvenile books among American children who would receive erroneous notions from such literature. He believed that the tariff should be used to keep out English books so that American books for American

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copyright law through Congress in 1891, was characterized by his biographer as "a staunch protectionist." "Protection to American industries was one of the cardinal tenets of Mr. Platt's political creed, and this must constantly be borne in mind when considering his course in legislation. No measure which even remotely threatened to weaken the protective system received his support unless on careful consideration he concluded that some greater end could be advanced by its enactment. . . . ." Louis A. Coolidge, An Old-Fashioned Senator, Orville H. Platt of Connecticut (New York: G. P. Putnam's Sons, 1910), p. 212.

[101] White, The American View of the Copyright Question, pp. 52-55. It is perhaps significant that White's publisher, Routledge, was British.

children might succeed.[102] When it was proposed to do away with the tariff on books altogether, he opposed the measure as "fatal to the publishing interest" and made frequent visits to Washington to confer with members of Congress, among whom was his close friend, Senator Justin Morrill, the protectionist.[103] When the time came to support the Chace Bill, in 1890, he soon became aware of the value of the manufacturing clause in gaining the support of the printers and in maintaining the principle of protection, and so threw his weight wholeheartedly behind the international copyright bill.[104]

Lea, who was author, publisher, and bookseller, but not, like Houghton, a manufacturer of books, was able to reconcile his own conflicting interests and to fight against extremists of either persuasion. He advised Houghton and Senator Chace, and was perhaps the most influential of all the protectionists in the struggle to secure an acceptable international copyright law -- one which contained the essentially protectionist manufacturing clause.[105]

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[102] Horace E. Scudder, Henry Oscar Houghton; a Biographical Outline (Cambridge: Houghton, Mifflin Company, 1897), pp. 89-90.

[103] Ibid., p. 124.

[104] Ibid., pp. 127-128.

[105] Edward Scully Bradley, Henry Charles Lea: A Biography (Philadelphia: University of Pennsylvania Press, 1931), 226-231.

Publishers' Support of Proposed Copyright Legislation

Although certain publishers had joined with authors in agitating for copyright reform in the years immediately after the Civil War, it was not until 1872 that a concerted attempt was made by a group of New York publishers to obtain passage of an international copyright law. Their efforts, like those of the authors, were unsuccessful. Not only did the publishers fail to agree among themselves as to the details of the proposed legislation and the method of adopting it, but also they found themselves unable to secure the cooperation of the authors and of the Philadelphia group.

The "New York Publishers and Booksellers," meeting on Tuesday, January 23, 1872, approved the appointment of a committee of five to consider proposals for an international copyright bill to be presented to Congress. On Tuesday afternoon, February 6, this committee, headed by W. H. Appleton, who had originally moved its formation, met with representatives of publishing houses and presented the draft of an international copyright law. This "Act to Grant Copyright to Foreign Authors," frequently called the "Appleton bill," provided for (1) granting United States copyright to the foreign author who contracted with an American citizen-publisher for the manufacture of his book in this country, registry and publication to be completed within three months of original foreign publication; (2) copyright protection to the American publisher, as under domestic law, as long as he continued to offer the book for sale; failing that, the book might be

imported or printed at will by any other publisher; (3) American copyright for serials published in foreign newspapers and periodicals when contracted for with an American publisher on the same terms as for books; (4) unrestricted importing or reprinting of books not so copyrighted. Despite the objection of Edward Seymour, a committee member representing Charles Scribner and Company, that the bill contained restrictions more suitable for a tariff measure even though it actually set up no safeguards against the establishment of branches of English houses under the management of American partners, it was accepted after discussion by the meeting.[106]

Nevertheless, the Appleton bill was not well received. Seymour, author of the minority report, questioned the validity of the vote of acceptance. Of 101 publishers invited to send representatives to the meeting, only nineteen did so, and of these, only fourteen voted, nine favoring the majority (Appleton) report, and four, the minority (Seymour) report.[107] Public opinion as expressed in the newspapers, before presentation of the draft at the February 6 meeting as well as later, was generally hostile. For example, it was said that the Appleton proposal was not a copyright bill at all, but only a means of benefiting publishers at the expense of foreign authors and American readers;[108] and that the bill, by

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[106] "International Copyright," Publishers' and Stationers' Weekly Trade Circular, I (February 8, 1872), 91-94.

[107] New York Evening Post, February 9, 1872.

[108] Ibid., January 30, 1872; New York World, February 2, 1872.

failing to distinguish between publishers' protection and authors' rights, would create a monopoly controlled by the larger publishing houses.[109] However, it was conceded that the Appleton bill, bad as it seemed to be, was better than no bill at all.[110] And finally, as it had happened before and was to happen again during the struggle for international copyright, the discussion elicited a variant of the royalty plan. John Elderkin suggested paying all authors five per cent of the selling price of their published books, the question of copyright, domestic or international, being ignored.[111]

A joint Congressional committee hearing on the Appleton bill was scheduled for the afternoon of February 12, 1872. The opening maneuver was an anti-copyright resolution submitted that morning, by unanimous consent of the House, by Representative W. D. Kelley, and referred to the Committee on the Library for consideration. The resolution read as follows:

> Whereas it is expedient to facilitate the reproduction here of foreign works of a higher character than that of those now generally reprinted in this country; and whereas it is in like manner desirable to facilitate the reproduction abroad of the works of our own authors; and whereas the grant of monopoly privileges, in case of reproduction here or elsewhere, must tend greatly to increase the cost of books, to limit their circulation, and

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[109] New York Evening Mail, February 7, 1872; G. P. Putnam to editor, New York Evening Post, February 8, 1872; New York Tribune, February 8, 1872, p. 6.

[110] New York World, February 8, 1872.

[111] Elderkin to editor, New York Evening Post, February 10, 1972.

> to increase the already existing obstacles to the dissemination of knowledge: Therefore,
>
> Resolved, That the joint Committee on the Library be, and it hereby is, instructed to inquire into the practicability of arrangement by means of which such reproduction, both here and abroad, may be facilitated, freed from the great disadvantages that must inevitably result from the grant and monopoly privileges such as are now claimed in behalf of foreign authors and domestic publishers.[112]

More valuable than the official committee report of the hearing are the accounts of the New York and Philadelphia groups represented there, because of the animosity each revealed for the other. The first speaker was Appleton, who argued for the protection of foreign authors and American publishers by means of a manufacturing clause which would allow American works to undersell imported books;[113] actually, said his opponents, he merely read a statement favoring authors and opposing foreign publishers.[114] Next, E. A. Andrews surveyed the history of the copyright idea and demonstrated that an international copyright law was mandatory according

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[112] U. S. Congress, House of Representatives, "International Copyright," Resolution Presented by Mr. Kelley, Monday, February 12, 1872, The Congressional Globe: Containing the Debates and Proceedings of the Second Session Forty-Second Congress; with an Appendix, Embracing the Laws Passed at that Session [Washington: Office of the Congressional Globe (F. & J. Rives and George A. Bailey), 1872], Part II, p. 972.

[113] "The International Copyright Hearing before the Joint Committee of Congress," Publishers' and Stationers' Weekly Trade Circular, I (March 14, 1872), 232. This report was signed by "One of the [New York] Committee."

[114] "International Copyright Movement: Report of W. P. Hazard, Chairman of the Philadelphia Committee," ibid., (March 7, 1872), 208.

to the Constitution. "It was simply for us to do right, and let consequences take care of themselves."[115] Andrews really spoke for authors' rights as paramount to all others, said the Philadelphia report, and as for Bristed (who was not mentioned as a speaker in the New York account), his statement was "a very weak argument."[116] The third witness was W. P. Hazard, of whom the anonymous New York committeeman wrote that "it is difficult to find out whom Mr. Hazard really did represent, unless it be some of the paper dealers and type setters of his city. . . . ; if ever a disagreeable task was set before a man, it was to appear before an intelligent Committee of Congress and openly advocate stealing; and after claiming to represent the entire publishing interest of his city to have the real truth come out. . . .": J. B. Lippincott and Company, Claxton, Remsen and Heffelfinger, Lea, Evans, and others were found to favor some form of international copyright. Hazard's contribution to the hearing was to read "a printed document, which was supposed to give Baird's best argument in favor of stealing, because it paid best; such a thing as right or wrong, or any high moral view of the question, was not once suggested."[117] Hazard modestly denied representing more than

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[115]"The International Copyright Hearing before the Joint Committee of Congress," ibid., (March 14, 1872), 232.

[116]"International Copyright Movement: Report of W. P. Hazard, Chairman of the Philadelphia Committee," ibid., (March 7, 1872), 208.

[117]"The International Copyright Hearing before the Joint Committee of Congress," ibid., (March 14, 1872), 232.

the Philadelphia committee, who opposed international copyright "at the time." As for the pamphlet, "it was listened to with marked respect, and copies were asked for. . . . ." Later, he read statements from a number of authors who were opposed to an international copyright law.[118]

The fourth speaker of the afternoon was Professor E. L. Youmans, whose recent return from Europe, where he had had the opportunity to learn the views of European authors while arranging for publication of a series of scientific texts, qualified him to defend international copyright. "During /his/ speech, he was constantly annoyed by vexatious and even impertinent questions from Mr. Hazard. . . . . /Youmans gave him/. . . .as severe a castigation. . . .as a truly honest and eloquent man pleading a great cause could possibly administer to one who had come to appeal to the lowest and most sordid traits of human nature."[119] According to Hazard, however, Youman's address was marked by ill temper and confused thinking.[120] The publisher Isaac Sheldon, in the last extended discourse of the day, argued that American publishers demanded a manufacturing clause similar to that of the English copyright law. When he protested to Senator /Lot/

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[118]"International Copyright Movement: Report of W. P. Hazard, Chairman of the Philadelphia Committee," ibid., (March 7, 1872), 208.

[119]"The International Copyright Hearing before the Joint Committee of Congress," ibid., (March 14, 1872), 232.

[120]"International Copyright Movement: Report of W. P. Hazard, Chairman of the Philadelphia Committee," ibid., (March 7, 1872), 208.

Morrill that "he was not willing to submit to [Hazard's] system of vexatious annoyance, which was resorted to from no good motive, ...the Chairman at once requested Mr. Hazard to keep silence."[121] What Sheldon was really doing was to speak in rebuttal to Hazard from notes which he had taken, "but not holding to the strict line of veracity, and assailing Philadelphia as not reprinting any foreign books, but having only an importing interest in this question," his arguments were ably parried by the astute Hazard.[122]

The next day, after further discussion, the hearing was adjourned until February 19, but each side anticipated victory for itself. "It is safe to predict that no further direct opposition to International Copyright will be made by parties of any intelligence, however much their interest may be opposed to it. It must be killed, if killed at all, by indirection, and proposing impracticable schemes, which, while appearing to grant the author his just rights, yet are really formed to meet selfish interests, and defraud the author of his just demand."[123] Hazard reported that the New Yorkers, under the onslaught of attacks upon them, actually realized that their plight would be hopeless until authors and publishers

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[121]"The International Copyright Hearing before the Joint Committee of Congress," ibid., (March 14, 1872), 232.

[122]"International Copyright Movement: Report of W. P. Hazard, Chairman of the Philadelphia Committee," ibid., (March 7, 1872), 209.

[123]"The International Copyright Hearing before the Joint Committee of Congress," ibid., (March 14, 1872), 233.

could agree. It was to be hoped that their mutual antagonism would prevent presentation of another bill for international copyright, or that the pressure of other Congressional business would defer action for several years.[124] Meanwhile, in Boston, the third American publishing center, the publishers held themselves aloof from the international copyright question "for the two reasons that it /was/ not thought that much would be gained by such a law, and that it /was/ impossible to form one that /should/ bear equably upon all."[125]

In connection with the publishers' attempts to obtain international copyright legislation, it will be noted that there is no mention of Harper and Brothers. Although Joseph W. Harper was reported to have been "very active in the endeavor made by American publishers, such as W. H. Appleton, Henry C. Lea, George Haven Putnam, and Charles Scribner, to secure a suitable international copyright,"[126] Harper and Brothers were represented at the hearings, it was said, by a lawyer retained by them to oppose the bill, though the understanding of the other New York publishers was that the firm, if it was not with them, was at least not against them.[127] Putnam accused the house of Harper of never being eager for international copyright. ". . . .[T]hey were usually able by

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[124]"International Copyright Movement: Report of W. P. Hazard, Chairman of the Philadelphia Committee," ibid., (March 7, 1872), 209.

[125]"Letter from Boston,"" ibid., (February 15, 1872), 138.

[126]Harper, House of Harper, p. 433.

[127]Putnam, George Palmer Putnam, p. 169.

some difference of opinion at the critical moment to emphasize that, however desirable in itself international copyright might be, 'the particular measure' that had at that time been put into shape was not going to be satisfactory."[128] Elsewhere, Putnam stated that the opposition of Harper and Brothers in 1872 took the form of a letter submitted by their counsel to the Joint Library Committee.[129] What purports to be a transcription of the letter appears in C. E. Appleton's "American Efforts after International Copyright."

> 'The question now before the Joint Committee of Congress upon the Library, however it may be confused or complicated by the conflicting claims and interests of various classes, has always appeared to us under a very simple light.
>
> 'In considering the propriety of International Copyright legislation we deem it entirely inappropriate to urge upon you the claims of authors, publishers, booksellers, printers, binders, press-makers, or any other body of tradesmen, to be especially and exclusively recognized in such legislation. The interests of the people at large are to be regarded, and those interests alone.
>
> 'It seems to us that the whole question before your honourable committee really is whether the intelligence of the whole people, or, as the Constitution calls it, "the promotion of sciences and the useful arts," will be advanced by granting a copyright to foreign authors.
>
> 'There are men who believe, for plausible reasons, that a protected monopoly of publishing the books of such British authors as now arrange with us for the issue of their works would be of immense value to a large publishing house like ours, and that we should therefore gain much by the adoption of one of those Bills now before your

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[128] George Haven Putnam, Memories of a Publisher, 1865-1915 (New York: G. P. Putnam's Sons, 1915), p. 3cd. The quoted sentence refers to the Harpers' attitude in 1880, but Putnam asserts that what was true then had also been true in 1872.

[129] Putnam, International Copyright Considered, pp. 30-31.

committee. But while a law enabling us to obtain several prices for our books would secure to us enormous profits for a time, it would certainly within a generation diminish our business, as publishers for the people, by narrowing the popular intelligence.

'Publishers who aim at a permanent business, which shall continue to prosper under successive generations, will desire above all else that general diffusion of knowledge, and consequent general demand for literature, which can only result from the circulation of books cheap enough to be within the reach of all. This consideration, it seems to us, must govern the consideration of the question before your committee. Whatever of useful work in the world has been done by the publishers as well as the authors of this country, has been done by contributing to the progress and diffusion of knowledge and culture. It has been our aim and boast to furnish in an acceptable form the best reading for the people at low prices; and we point with natural satisfaction to our own lists, out of which a good and handsome library of standard and recent English works can be selected, at a price less than one-fifth of that which the same or similar books would cost in British editions or under an International Copyright law. But the reduction of the price of a good book to one-fifth means, on the average, an increase of its circulation about twenty-fold; and it is our conviction that, had an international copyright existed for the last quarter of a century, the works of Macaulay, Tennyson, Bulwer, Dickens, Thackeray, Lecky, Darwin, Wallace, Kingsley, Robertson, Reade, Collins, George Eliot, Mrs. Gaskell, Miss Mulock, and the like, would today be known by less than one-twentieth of the citizens of the United States who are now familiar with them.

'In view of the great results which have grown out of the freedom of literary exchange which we now enjoy, of the general education of our people, of the extent and efficiency of our common schools, the number and circulation of village and country libraries, and the liberalizing, broadening, elevating influence upon the national mind of the choicest thoughts of another great and cultivated people now so freely opened to it, it is our belief that the adoption of any serious restriction upon this freedom would be a very hazardous experiment, and possibly an irrevocable calamity to the nation.

'We have the honour to be, very respectfully,
'Your obedient servants,
'Harper and Brothers.'[130]

A year later, in 1873, the issuing of a Joint Committee report ended, for a time, further agitation of the international copyright question. "There is a good deal doing, here and there about the world, in the matter of copyright," said Publishers' Weekly, commenting upon the effect of the report, "although the American movement for international copyright is at present quite asleep."[131] But between the hearing of February 12, 1872, and the submittal of the Morrill Report on February 7, 1873, the battle over copyright reform continued along the lines drawn at the hearing. Proposals and counter-proposals, charges and counter-charges, abortive schemes for compromise, bills providing for the royalty system in lieu of international copyright, Congressional hearings and debates, all provided a voluminous literature dedicated to a futile quest.

A concise analysis of the varying points of view concerning international copyright, by O. B. Bunce, appeared in Appleton's Journal for April 20, 1872. American authors wished to grant copyright to foreign writers without restrictions, as a matter of simple justice. In so doing, they disregarded other American interests, particularly those of paper

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[130]Charles Edward Appleton, "American Efforts after International Copyright," Dr. Appleton: His Life and Literary Relics. Edited by John H. Appleton and A. H. Sayce. (London: Trubner and Company, 1881), pp. 270-272.

[131]"Notes on Copyright," P. W., V (January 10, 1874), 30.

makers, printers, and bookbinders, who feared that import duties alone would not suffice to bar cheap English editions specially manufactured for the American market. American publishers also favored an international copyright law as long as it did not injure their business, the voluntary copyright system being cited as proof of this point. However, the bills heretofore proposed had failed to provide adequate safeguards against loss of printing and book manufacture to English competitors. The Appleton plan to extend copyright protection to foreign authors who arranged for publication by American firms, or as the scheme was later amended, merely for reprinting in the United States, was opposed by (1) those in favor of copyright unrestricted by any manufacturing qualification, i.e., the authors; (2) those against any international copyright law; (3) those with proposals of their own to offer. The second of these three classes was subdivided into (a) those fearing danger to their own interests; (b) those fearing a rise in the price of books; (c) those objecting to all copyright law as inexpedient and needlessly restrictive. Bunce pointed out that publishers in group (a) did not circularize their viewpoint for obvious reasons; that group (b), perhaps the largest of the three, was comprised of protectionists who ignored the fact that high duties on paper, type, and binding materials also interfered with "the ordinary laws of trade"; that group (c) consisted of those who argued that an idea once published became common property, and that foreign authors, having already been paid for their work in

their own countries, should not expect double payment for their labor. Members of class (3) most commonly proposed variations of the royalty plan in place of copyright for foreign writers. However, their position could be attacked on the grounds that (a) the suggested royalty payment of five per cent was less than the author's share commonly paid under voluntary copyright; (b) foreign authors would have difficulty in collecting royalties due them; (c) publishers were not prevented from combining to depress book prices to lower royalty totals.[132] Indeed, supporters of international copyright regarded the royalty plan simply as a device to kill "just and equitable legislation."[133]

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[132] O. B. Bunce, "International Copyright," Appleton's Journal, VII (April 20, 1872), 441-442.

[133] "The Elderkin or Sherman Bill to Secure International Copyright," Publishers' and Stationers' Weekly Trade Circular, I (April 4, 1872), 295.

The royalty plan was to be proposed again as a modus operandi in lieu of international copyright. See Putnam, International Copyright Considered, pp. 35-38; "The Elderkin-Sherman, or royalty plan again", P. W., XV (April 12, 1879), 440; "The 'Monopoly' of Copyright," Ibid., (May 3, 1879), 508-509; J. W. Lovell, "The Royalty vs. the Monopoly Scheme of Copyright," ibid., (May 24, 1879), 580-582; and especially R. Pearsall Smith, "An Olive Branch from America," Nineteenth Century, XXII (November, 1887), 610-624; "The Cheap Libraries and Royalty Copyright," Nation, XLVI (January 26, 1888), 71-72; "'Royalty' Copyright Again," ibid., (February 2, 1888), 84-85; Putnam, "An Analysis of a Scheme for International Copyright, Suggested by Mr. R. Pearsall Smith," The Question of Copyright, pp. 65-76.

Chief advocates of the system were American reprint houses and British authors. Legalized royalty payments as a substitute for international copyright should not be confused with royalties paid in place of purchase of advance sheets. See Chapter II, above, the section entitled "The Collapse of Trade Courtesy; Breakdowns in the System of Purchasing Advance Sheets; the Royalty System."

On February 7, 1873, the unanimous report of the Joint Committee on the Library was submitted by Senator Lot M. Morrill, of Maine, chairman of the hearings at which these various plans had been presented. The committee's findings were summed up in eighteen points:

1. Settlement of the problem involved "grave practical difficulties. . . . , doubtful expediency. . . . , questionable authority."

2. Divergent opinions of those demanding justice to authors and those defending the interests of the book trades seemed likely to override the constitutional aim of the progress of science and the arts.

3. Failure to extend the privileges of copyright to foreign authors was a dereliction of Congressional duty, according to the proponents of simple copyright.

4. Publishers' support of international copyright was contingent upon protection of their interests as well as those of authors. The latter group, however, was divided, some demanding legislation without restriction, others conceding certain rights to publishers.

5. The majority of publishers opposed any form of international copyright as being of little benefit to anyone.

6. Those engaged in the actual manufacture of books protested that the measure would diminish book sales and distribution by raising prices.

7. Little interest in the problem was evinced by the general public.

8. Authors demanded "absolute and exclusive right of property" rather than the special limited privilege provided by the Constitution.

9. Constitutional tests clearly defined in that document were to be applied to all considerations in the matter of international copyright.

10. The problem was to be studied solely in the light of its constitutionality, without reference to questions of abstract rights or domestic copyright legislation.

11. Account had to be taken of the circumstances of composition of the Constitution, which was intended to protect American citizens rather than aliens, and which antedated the concept of international copyright.

12. The Constitution, whether regarded as a mandatory or a permissive document, was said to direct legislation for the general welfare rather than for the special interests of limited classes.

13. Rising commercialism of authors had produced books of inferior literary quality for which equal protection with works of genius was demanded; such a claim violated the spirit of the Constitution.

14. Extension of the existing authors' monopoly to foreign writers already protected in their own countries would end the competition necessary for general economic health.

15. The effect of international copyright would be, as demonstrated by data cited in the report, to increase the prices of books by American as well as foreign authors.

16. Extension of copyright protection to English authors would not be in the best interests of progress in science and the useful arts in America, both English and American authors being amply protected by national domestic laws.

17. The variety of laws and languages among European nations would render administration of an equitable international copyright law impossible.

18. For the reasons cited above, international copyright was inexpedient.[134]

One last attempt, in the form of a simple reciprocal copyright bill, was made before the agitation died, not to be resumed until 1878. This was the Banning bill, introduced into the House on February 9, 1874, a year after the Morrill report had discouraged further legislation consideration of the reform. It provided that foreign authors whose books were published abroad might obtain the privileges of copyright granted to citizens or residents of the United States as long as their respective governments granted equal privileges to American writers. Only those books published after passage of the bill were to be affected.[135] "This bill," wrote

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[134] U. S. Congress, Joint Committee on the Library, "International Copyright," Senate Report No. 409, Reports of Committees of the Senate of the United States, 3d Session, 42d Congress, 1872-1873 (Washington: Government Printing Office, 1872), Vol. I, Report No. 409.

[135] U. S. Congress, House of Representatives, "A Bill Extending to Authors in Certain Cases the Rights, Privileges, and Protection Given Inventors by the Laws of the United States," H.R. 1825 (February 9, 1874), House of Representatives Bills, 43d Congress, 1st Session, 1873-1874 (Washington: Government Printing Office, 1874), n. p.

Thorvald Solberg, "unhappily, received no further attention either in the committee or in the House."[136]

Rejection of the "Harper Treaty" Proposal

During the years 1873 to 1882 an attempt was made to overcome the refusal of Congress to legislate in the face of disagreement among advocates of international copyright and opposition from certain elements of the book trade. On November 25, 1873, the firm of Harper and Brothers, which seems to have undergone a change of heart after 1872, wrote to William M. Evarts, the Secretary of State:

> It does not seem to us. . . .that any action originated exclusively in our own country or in any foreign country would ever be likely to result in the establishment of international copyright. The various bills to accomplish the object which have been proposed from time to time in Congress have conspicuously and, we think, deservedly failed . . . . . The various treaties that have been proposed between our country and England have likewise failed. The failure of all attempts of the kind . . . .is due, we think, to the fact that all such propositions have originated from one side only, and without the prior joint consultation and intelligent discussion of parties from both countries competent to consider the question. . . . . /I/f a treaty could be formed to foster and protect the interests of authors and their representatives in all countries, we might very well dispense with the consideration of any abstract question of original and inherent rights of property. . . . . /A/ commission or conference of eighteen American citizens and British subjects, in which the United States and Great Britain shall be equally represented, /should/ be appointed respectively by our Secretary of State and by the British Secretary of State for Foreign Affairs, /and should/ be invited jointly to consider and present the details of a treaty to be proposed by the United States to Great Britain.

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[136] Solberg, "International Copyright in Congress, 1837-1886," Copyright Miscellany, No. 18, p. 20.

> We further suggest that in each country the commission should be composed of three authors, three publishers, and three publicists.[137]

This proposal was simply a modification of the British "Clarendon treaty" of 1870, as the following comparison shows.

Article I of the Clarendon Convention had provided for complete reciprocity in matters of copyright benefits and protection to the extent that the condition of reciprocity existed in the copyright laws of the participating nations; the Harper amendment to this article inserted a manufacturing clause in the provision, thus restricting copyright to books manufactured in the country granting the right.

Article II, in each case, dealt with dramatic and musical works.

Article III differed only slightly in wording in the two proposals. The Clarendon Convention had prohibited importation of "piratical" copies; the Harper treaty forbade importation of "'unauthorized copies of any work which [was] protected from piracy.'"

Article IV, in both document, provided for penalties for unauthorized reprinting under the law of the nation where such reprinting occurred.

Article V stipulated that books by American authors be registered in England, and that books by British authors be registered in America. The Clarendon Convention and the Harper treaty differed only in details of this provision.

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[137]Harper, House of Harper, pp. 424-426.

Article VI dealt with material "'other than books, prints, maps, and musical publications.'"

Article VII, in each proposal, provided for mutual communication between the two contracting nations of any revision in their respective copyright laws.

Article VIII permitted either nation to prohibit sale, circulation, exhibition, etc., of any work when it should be regarded expedient to do so.

Article IX allowed either nation to prohibit importation of books declared to be unauthorized or published in infringement of copyright according to domestic law or to treaty with a third nation.

Article X dealt with the determination of the day when the convention was to have been established, for its continuance for a five-year period and for the method of subsequent renewal from year to year, and with the right of either party to modify, by mutual consent, the terms of the convention if such modification should not seriously violate the original provision. The Harper treaty added that after the convention should expire, "'any rights. . . .conferred by it or acquired under it /should/ continue, subject to the laws of the respective countries.'"

Article XI, in each document, dealt with ratification and signature.[138]

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[139]"Memorandums in Regard to International Copyright Treaty between Great Britain and America. Convention Proposed (1870) by Lord Clarendon, with Amendments Proposed in America," P. M., XV (March 15, 1879), Supplement), 317-321.

At first, the chances of the Harper treaty seemed auspicious, there being considerable agreement with its aims, but as discussion continued during the years 1878 to 1882, more and more dissension developed along the lines formulated under earlier proposals.

Harper and Brothers simply meant to make legal the practices of trade courtesy and payment to British authors for advance sheets or by means of royalties.[139] The treaty was intended, through its provision that copyrighted books be manufactured in this country, to bar foreign publishers from the American market.[140] Quite naturally, then, the British author favored it, while the British publisher grumbled against the proposed treaty: "'I don't see what I am going to make by this arrangement. If I can't put my fingers in this international copyright pie, I would rather "things should be left as they are."'"[141]

In this country, those who advocated international copyright pinned their hopes on the Harper plan rather than on legislation because they believed that the Senate would be more willing to ratify a treaty than the House would be to pass a law.[142] However, they felt that Secretary of State

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[139]Harper, House of Harper, p. 428.

[140]S. S. Conant, "International Copyright. I. The American View," Macmillan's Magazine, XL (June, 1879), 150.

[141]Conant, "International Copyright and 'Macmillan's Magazine,'" Academy, XVI (August 16, 1879), 126.

[142]Putnam, International Copyright Considered, p. 44.

Evarts needed prodding. G. W. Curtis, who was his friend, wrote to him to set forth the advantage of the treaty as an American author saw it. Evarts replied, but did not commit himself to specific action.

> 'I agree with you as to the value and importance of the preliminary reconnaissance period proposed /for the commission of eighteen/. An agreement between the three interests, "publishers, authors, and publicists," on one side would go far to assuring a treaty that might be accepted. But if you could have the fortunate concurrence of these three interests of the two nations, you might consider the treaty already made.
>
> 'I shall be glad to discuss the subject with you and the Messrs. Harper here or in New York as may be convenient.
>
> 'I cannot, in advance, profess either principles or zeal enlisted on the side of International Copyright, but this will make me a more creditable convert.
>
> 'I agree with you that a successful treaty that worked satisfactorily to authors would redound to the credit of the administration, but woe to the diplomatist that made a treaty that the irritabile genus should take offense at after the fact.
>
> 'But you and some or one of the gentlemen of the great firm whom I have the pleasure of knowing had better talk with me on the whole subject.'[143]

Although American authors, publishers, and publicists generally regarded the Harper treaty as the embodiment of principles on which they could agree, there were two minorities to whom the scheme was unacceptable. One group, led by Baird, wished to restrict copyright to absolutely original work, in compliance with Carey's doctrines. The other favored the royalty plan; prominent among this group was the author Edward Everett Hale and the publisher and reprinter, Lovell.

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[143] Secretary of State Wm. M. Evarts to G. W. Curtis, December 8, 1878, in Harper, House of Harper, p. 427.

Support of and opposition to the treaty, as in previous efforts, conformed generally to belief in free trade or in protection. Unfortunately, the public was not greatly interested in the copyright question.[144]

Speaking before the New York Free Trade Club on January 30, 1879, Putnam tried to find a middle ground between "the plan of giving protection only to books of which the type had been set and the printing done in this country, and the authors' proposition to extend the right of copyright without limitation or restriction. . . . ." Accordingly, he suggested a compromise between the original British plan upon which the Harper treaty was based and other American proposals. He called for (1) registry of foreign works in the United States at the time of publication abroad; (2) republication in the United States within six months of foreign publication; (3) republication rights restricted to American citizens for a period of, say, ten years; (4) copyright protection to be granted for a similar period to books printed and bound here, this provision, however, permitting the importation of foreign stereotypes and electrotypes of plates; (5) foreign authors and their assigns to be granted, subject to the foregoing requirements, copyright privileges identical to those given to American authors.[145]

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[144] "Present Status of Copyright Movement," P. W., XV (May 24, 1879), 579.

[145] "A Discussion on International Copyright," ibid. (February 1, 1879), 151.

In an editorial comment upon these suggestions, Publishers' Weekly asserted that they would be acceptable to British and American authors alike because the first group would be protected from unauthorized reprinting of their work while the second would no longer be forced to compete with "'stolen goods.'" Among American publishers, no group would have an advantage over others. The article also praised the six-months interval between registration and publication, as proposed by Putnam, as conducive to the completion of arrangements between smaller American houses and English authors, and as proper for the seasonal nature of publishing in the United States. The importation of stereotype plates would eliminate the needlessly increased cost of typesetting twice, once overseas and again in this country; however, American printers and type-founders would object to this provision. Only the requirement that a "citizen" should manufacture the copyrighted books was objected to as too easy to evade. Otherwise, the treaty, with Putnam's emendations, should prove generally acceptable.[146]

In his history of the copyright movement, Bowker recorded the approval of the draft of the Harper treaty, in August, 1880, by fifty-two American authors, among them Longfellow, Holmes, Emerson, and Whittier.[147] To the New York

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[146] "The New Outlook on Copyright," ibid. (March 22, 1879), 339-340.

[147] [R. R. Bowker], "Copyright. X.: International Copyright in This Country," ibid., XXVIII (October 24, 1885), 573.

Herald, which advocated "just and advantageous" international copyright, i.e., mutual recognition of each other's copyrights by Britain and the United States, without any manufacturing or republishing requirements, this signing of a memorial favoring the Harper treaty was sheer expediency and an abandonment of principles by the authors concerned.[148]

In spite of the fact that American publishers continued to press for some sort of satisfactory governmental action which would ameliorate the conditions of publishing,[149] the Secretary of State apparently failed to exploit the willingness of the British government to discuss international copyright further. "Is it possible that Mr. Evarts is treating such 'suggestions' as curiosities that might be preserved for the archives of the government?" asked Publishers' Weekly.[150]

At last action was reported, in the form of a dispatch from Washington.

> 'Washington, Sept. 4 [1880]. - Some weeks ago the Department of State instructed Minister Lowell to ascertain the condition of public opinion in England regarding Anglo-American international copyright, its advisability and feasibility. The views of eminent authors, critics, lawyers, and publishers on the subject were especially to be sought, and in every way possible the status of the question in Great Britain was to be ascertained. The Department has not heard officially what action Minister Lowell has taken in execution of these instructions, but it is informed by today's cable

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[148] New York Herald, October 4, 1880.

[149] "The Condition of the Copyright Movement," P. W., XVII (March 20, 1880), 287.

[150] "'Mentioned' - Once More," ibid., XVIII (August 28, 1880), 233.

> dispatches from London that he has transmitted a circular letter to a number of English authors, inviting communication of their views as to the advisability of an international copyright treaty granting protection to books published in a country having copyright by a citizen thereof. The State Department desires this information as a basis for further action.'[151]

This was a call to arms for the Philadelphia Book Trade Association. On October 25, 1880, that body resolved that the Harper treaty, "by permitting importation of stereotype plates for the manufacture of copyright books, was inconsistent in principle, giving protection to the paper-makers, printing presses, and book-binders of America, but leaving out of account compositors, engravers, electro-typers, stereotypers, and type-founders." The secret nature of treaty negotiations as opposed to the representative principle of American government was also objected to: the treaty, if ratified, would be binding for five years, whereas a law passed by Congress might be repealed almost at will. Furthermore, American copyright should be reserved to Americans, not granted to foreigners. The provision that one edition only need be copyrighted would operate to withhold revised editions from the American market; the exemption of engravings from the requirement of American manufacture would produce a monopoly of illustrated books for British publishers; the provision for deposit of serials for American registration was so loosely drawn that such matter might be withheld from publication in book form for years. In keeping with these

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[151] "International Copyright," ibid., (September 11, 1880), 323

resolutions, the Philadelphia Book Trade Association submitted its own proposals, in the form of a bill written by H. C. Lea. Schedule A of the bill stated that (1) the United States is interested in its own affairs and not in England's; conversely, that nation should have no voice in determining our actions; (2) settlement by treaty is undemocratic; (3) for political reasons, the proposed treaty cannot be ratified; (4) the treaty period may suffice to destroy American publishing, because there is no redress possible during its life; (5) legislation may secure copyright through reciprocal action of a number of nations at once, whereas a treaty requires separate negotiations with each nation. Schedule B (the bill proper) provided that (1) copyright might be assigned to United States citizens by foreigners if the work were manufactured in this country and if American citizens were granted equal rights in reciprocating countries; (2) lists of foreign works so copyrighted were to be distributed to customs officers in order to bar unauthorized editions from the United States; (3) copyright inadvertently granted under other than the preceding stipulations should be voided; (4) reciprocity, when granted by another nation, should be proclaimed by the President of the United States; (5) copyright statutes inconsistent with the intent of the proposed bill should be repealed.[152]

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[152] "International Copyright. Action of the Book Trade Association of Philadelphia," ibid., (October 30, 1880), 547-549.

Of the Philadelphia proposal the New York Tribune said that it was an improvement over the "bunkum resolutions of 1872," but that fear of foreign "control" of the reprinting business in this country produced shortcomings in the copyright programs heretofore suggested. For example, the insistence on American manufacture of a copyrighted book within a limited period of time put the foreign authors entirely at the mercy of American publishers, and the writer would have been forced to take the first American offer to publish in order to prevent the unauthorized reprinting of his book. Also, an unscrupulous publisher might postpone publication until after any deadline established by a manufacturing clause and thus void the copyright. The Tribune concluded that the Harper plan for an international conference should be carried out to create a basis for whatever arrangements might be made.[153]

The prospects of a treaty rather than a bill were better, said the Literary World, for two reasons: (1) Lowell, known to favor international copyright, was personally popular in England, where he was United States Minister; (2) Congress, in "short session" with much business before it, was in no mood to vote on a copyright bill.[154]

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[153] New York Tribune, November 7, 1880.

[154] "International Copyright," Literary World, XI (December 4, 1880), 438.

The battle lines were now clearly drawn. On the one hand were those who supported the Harper treaty proposal. Their memorial of November 9, 1880, to the Secretary of State contained the signatures of sixty-two American authors, twenty publishers in New York, fourteen in Boston, six in Philadelphia, one in Cincinnati, two in Chicago, and one in San Francisco. The names comprised a catalogue of the most prominent authors and publishers in the country. On the other hand, proponents of the "Philadelphia bill" presented a petition to Congress on December 6, 1880, signed by seventy-three persons. Heading the list was Theodore D. Woolsey, followed by Edward Everett Hale, J. G. Holland, Mary Mapes Dodge, four others from New York and five from St. Louis. "The remainder of the names, with one exception, /were/ from Philadelphia, and among the signers from that city /were/. . . .H. C. Lea's Sons and Co.,. . . .Henry C. Baird and Co., J. M. Stoddart and Co. . . . . ."[155] There is no record of Congressional action being taken on the petition of the supporters of the Philadelphia bill.[156]

For more than a year the question of the Harper treaty continued to be discussed in the public press, every shade of opinion being represented.[157] In May, 1881, when Lord Granville,

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[155]"The Present Status of International Copyright," P. W., XVII (December 18, 1880), 835-836.

[156]Solberg, "Bibliography. I. Bills," Copyright in Congress, 1789-1904, pp. 46-47; "Chronological Record, 1880," Ibid., pp. 218-219.

[157]See, for example, "International Copyright," Harper's Weekly, XXV (January 1, 1881), 3-4; Boston Traveller,

the British Secretary of State for Foreign Affairs, informed Lowell, the American Minister, that Her Majesty's government would consider a copyright treaty as proposed by the United States, a successful outcome was anticipated. Not only were the two governments in agreement on the matter, but a large number of American and English authors and publishers now approved of the terms of the treaty.[158] When the new English Minister, Sackville-West, accompanied by the British publisher, Daldy, arrived in the United States with instructions from his government concerning international copyright, it was thought that success was assured.[159] President Arthur was optimistic, also, although he devoted only one sentence of his first annual message to Congress to the subject of copyright: "Negotiations for an international copyright are in hopeful progress."[160]

February 12, 1881, Supplement; "America on the Offensive," P. W., XIX (April 23, 1881), 457; "Editor's Easy Chair," Harper's New Monthly Magazine, LXII (May, 1881), 946-947; New York Tribune, October 14, October 22, October 31, 1881; Arthur C. Sedgwick, "The Copyright Negotiations," Century Magazine, XXIII (n.s. I) (March, 1882), 667-671; "The International Copyright Negotiation," Harper's Weekly, XXVI (March 25, 1882), 178.

[158] Harper, House of Harper, pp. 430-431.

[159] "Literary Notes," Critic, I (July 20, 1881), 207. Daldy was not assisting Sackville West, it was later asserted, but represented the British publishers' Copyright Association. "Literary and Trade Notes," P. W., XX (December 3, 1881), 301.

[160] President Chester A. Arthur to the 47th Congress, 1st Session, December 6, 1881, in James D. Richardson (comp.), A Compilation of the Messages and Papers of the Presidents (New York: Bureau of National Literature, Inc. 1897), X, 4625.

When no results were announced, rumors began to circulate that there would be no treaty after all, so that the Department of State issued, on March 13, 1882, through the Associated Press, a public statement to correct the impression that negotiations had been suspended by the President and the Secretary of State.

> '. . . .The state of the negotiations in this: A projet for a convention, which had been approved by leading publishers and authors, was submitted to Great Britain, and a counter projet has been submitted by Great Britain to the United States. Both projets are now in the hands of the public printer, and as soon as copies can be obtained they will be submitted with a view to continuing the negotiations.'[161]

Even as this announcement appeared, it was nevertheless generally conceded that the treaty was dead, "killed, not by the natural and reasonable opposition to that plan of procedure from American publishers and printers," said a protectionist organ, "but by the resistance with which it met in the publishing and literary circles of England." British publishers, it was alleged, demanded "the exclusive right to supply American readers with foreign books, and less than this they regarded as an outrage."[162] The London correspondent of the New York Tribune cabled that the British Foreign Office regarded further negotiation as futile because of the opposing points of view of English and American

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[161] "International Copyright," P. W., XXI (March 18, 1882), 275.

[162] "International Copyright," American, III (March 18, 1882), 357.

publishers.[163] The trouble was that the treaty negotiations proposed "a trade agreement between the publishers in the United States, England and Canada to prevent the manufacturers of books in each country from being injured in their business by the recognition of international copyright" rather than the establishment of "an international guarantee for literary property."[164]

By August, 1882, according to Publishers' Weekly, Lowell had "abandoned all hope of the international copyright /treaty/ coming to anything."[165] American publishers were puzzled by reports that Lowell believed them to be opposed to the movement they had been sponsoring.[166] However, two facts, placed in juxtaposition, may explain Lowell's position. First, it should be recalled that he had been active in the authors' copyright movement,[167] which emphasized the rights of authors rather than those of publishers. Second, while the treaty negotiations were in progress, Harper and Brothers, who had initiated the proposal, became involved with Charles Scribner's Sons in the controversy over Carlyle's Reminiscences; although the quarrel was largely concerned with the

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[163] New York Tribune, March 19, 1882, p. 1.

[164] "The International Copyright Negotiations," P. W., XXI (March 25, 1882), 303.

[165] "The Moral of Piracy," ibid., XXII (August 26, 1882), 230.

[166] "The Copyright Negotiations," Critic, II (September 9, 1882), 240.

[167] See "Authors' Endorsement of Proposed Copyright Legislation," above, this chapter; also, see Chapter V, below.

activities of the two American publishers, the part played by Harper and Brothers was the antithesis of all that international copyright stood for, particularly from the veiwpoint of men like Lowell.[168] "Nothing more unfortunate could happen to give new strength to the foes of the proffered 'treaty' . . . . . It must. . . .be a matter of universal regret that, at so significant a time, the house which had so great an opportunity, should have missed it."[169] Thus ended a chapter in the attempt to establish international copyright by treaty.

Summary and Conclusion

Throughout the period 1866-1891, American copyright law permitted the reprinting of books by foreign authors. Cheap book production and competitive trade practices forced American publishers to cut costs so that payment to foreign writers for their work ceased or continued, often in the form of royalties, at reduced rates. American authors, entitled under the copyright law to a share of the publishers' returns on their books, could not compete with writers whose works undersold their own. Although American literary men were able to find new markets among the magazines, they intensified their efforts to obtain copyright reform by endorsing legislation drawn up for that purpose.

The writers' activities aroused opposition on the part of certain protectionist publishers and printers, who regarded

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[168] See "Cases Illustrating the Collapse of the Publishers' Priority System," above, Chapter III.

[169] [Harper-Scribner controversy], P. W., XIX (March 19, 1881), 304.

international copyright as a free trade device which would actually grant the control of the American book trade to foreign publishers. To these opponents of change in the copyright law, a high tariff on books provided ample protection against the importation of foreign books; publishers' returns rather than authors' rewards became the principal issue. American publishers, agreeing to a certain extent with the Carey protectionists, tempered their own demands for international copyright as a means of restoring order to a chaotic situation by insisting upon the manufacture in the United States of all books copyrighted here. Unfortunately, the divergent points of view of these three groups invalidated, in the eyes of Congress, the necessity for an international copyright law.

The reconciling of interests being seemingly impossible, the struggle for international copyright, never unified, degenerated into a series of ineffectual quarrels: author against author, publisher against publisher, author against publisher, and publisher against author. The suggestion that the matter be settled by treaty brought temporary hope for the revision of copyright practices, but this solution was abandoned when it became apparent that the opposition of British and American publishers to any threat to their interests would postpone indefinitely attempts to reach mutual agreement as to the nature of the reform.

Only when the differences of the various groups in the United States could be eliminated through cooperative action would it be possible to establish international copyright.

CHAPTER V

THE CONFLICT CONTINUED: FAILURE OF THE DONSHEIMER AND HAWLEY BILLS

Organization of the American (Authors') Copyright League

Previous failures to effect a satisfactory solution to the problem of international copyright did not deter proponents of reform from trying again. This time the impetus for the movement came from authors who, having had no success in cooperative ventures with publishers, were determined to proceed alone. For this purpose the American (Authors') Copyright League was organized in 1883 by Edward Eggleston,[1] Richard Watson Gilder,[2] and George Parsons Lathrop,[3] with the assistance of Brander Matthews.[4] The league came into being as the result of discussions by members of the Authors' Club,[5] although

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[1]William Peirce Randel, Edward Eggleston: Author of the Hoosier Schoolmaster (New York: King's Crown Press, 1946), p. 167.

[2]Rosamund Gilder (ed.), Letters of Richard Watson Gilder (Boston: Houghton Mifflin Co., 1916), p. 112.

[3]George Parsons Lathrop, "The American Copyright League: Its Origin and Early Days," P. W., XXXIII (January 21, 1888), 59.

[4]Brander Matthews, These Many Years: Recollections of a New Yorker (New York: Charles Scribner's Sons, 1917), p. 225.

[5]Ibid., p. 224.

Eggleston and Gilder had already, in 1882, drawn up a platform as a basis for authors' action in the matter of international copyright. However, Lathrop claimed for himself the credit of issuing a call to authors for a meeting to form a new international copyright organization, which was held at the New York home of Brander Matthews on April 13, 1883. Eggleston and Gilder presented their plan to the others in attendance: E. L. Youmans, Henry James, G. W. Cable, Laurence Hutton, H. C. Bunner, Matthews, and Lathrop, who acted as secretary.

> . . . .This brought on a long discussion, in which Mr. James declared that he could take no part in a movement concerning itself with the wrongs of the American author, since he considered that the wrongs of English authors were the only ones needing redress; and he thereupon withdrew from the movement. There was little unity apparent in this first meeting; not because any of us were opposed to international copyright, but because it was difficult, in the first stages, to agree upon a simple statement of the case and the policy to pursue in effecting a reform.

On April 16, Eggleston, Julian Hawthorne, and Lathrop were asked to draw up a new platform, which was accepted by the group at a meeting late in May.[6]

What distinguished the American (Authors') Copyright

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[6]Lathrop, "The American Copyright League: Its Origin and Early Days," P. W., XXXIII (January 21, 1888), 59. There are minor discrepancies, in the foregoing accounts, in assigning the date of the founding of the American Copyright League. Since Lathrop acted as secretary of the first meeting, and wrote his recollections first, it is reasonable to assume that April 13, 1883, is correct.

The organization is referred to above as the American (Authors') Copyright League to distinguish it from the American (Publishers') Copyright League, founded somewhat later.

League from earlier groups was that it was intended solely as a writers' organization, independent of publishers, which proposed to publicize the copyright question "especially in its moral aspect and to try and educate public opinion in the direction of honesty and fair dealing."[7] The New York Times suggested that the league might "experiment with Congress," a body in need of education, as part of its program.[8] Although there was some discussion at a meeting held on January 10, 1884, as to the advisability of getting the cooperation of manufacturers of books, whose interest in the question could not be overlooked, a point of view espoused by Lathrop, through inadvertence the minority argument of Charles Dudley Warner was the only opinion published at that time as emanating from the league. It was, unfortunately, accepted as the official stand of the authors' group, and aroused much opposition.[9]

At the invitation of a sub-committee of the league, Warner set forth his views in a letter to Lathrop, secretary of the executive committee of the organization. His main

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[7]Gilder to James Bryce, May 8, 1883, in Gilder (ed.), Letters of R. W. Gilder, p. 117.

[8]New York Times, January 12, 1884, p. 4.

[9]Lathrop, "The American Copyright League: Its Origins and Early Days," P. W., XXXIII (January 21, 1888), 59. Lathrop was to abandon this position, but only temporarily, during the discussion of the Dorsheimer bill.

points were:

1. International copyright legislation, being proposed solely to protect the authors' right of property in his literary work, was the concern of authors alone. "Any attempt of a publisher to assert. . . .an interest. . . .would be impertinent. It would be an effort of a mercantile class to obtain by law a perpetual grant of control over a producing class."

2. The question was simply one of protecting authors' property rights. Values created by the printing press were outside the question. Publishers were merely purchasers or lessors of authors' property.

3. Since authors' and publishers' concerns were not inimical but entirely distinct, the question of protection of manufacturing interests should be eliminated from copyright proposals.

4. America should be "the first to do a noble and just act."[10]

In spite of Lathrop's efforts, as a member of the executive committee of the league, to enlist corresponding members in cities other than New York, little was accomplished (perhaps because of Warner's activities) until after the Dorsheimer bill was introduced into Congress, and for the

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[10]Warner to Lathrop, date not given, in New York Times, January 13, 1884, p. 5.

drafting and presentation of that bill the American (Authors') Copyright League could claim no credit.[11]

Introduction of the Dorsheimer Bill

The Dorsheimer bill (H. R. 2418, 48th Congress, 1st Session), first presented by Representative William Dorsheimer of New York on January 8, 1884,[12] was amended and referred to the House Calendar by the House Committee on the Judiciary on February 5, 1884.[13] The bill provided for the reciprocal grant of United States copyright to citizens of such countries as might grant "similar and equal" copyright to American citizens, the existence of such conditions to be proclaimed by the President. The provisions of the bill were not to apply to works already published. Application for American copyright was to be made by foreign authors within a year of the publication of their books abroad, and all requirements for American copyright were to be met. The legislation was represented as a simple bill which eliminated the difficulties encountered by other nations in arranging for international copyright.[14]

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[11]Lathrop, "The American Copyright League: Its Origin and Early Days, P. W., XXXIII (January 21, 1888), 59.

[12]Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, p. 48.

[13]Ibid., p. 49.

[14]U. S. Congress, House of Representatives, Committee on the Judiciary, "Copyright to Citizens of Foreign Countries," House of Representatives Report No. 189, to Accompany H. R.

Activities of Authors with Reference to the Dorsheimer Bill

The American (Authors') Copyright League, although it had not been consulted in the drafting of the Dorsheimer bill, supported it, and was probably responsible for the amendments granting full copyright privileges in this country to foreign authors, for the suggestions made in a letter from Lathrop, secretary of the league, to Dorsheimer were incorporated in the bill as reported out of committee on February 5, 1884.[15] Yet the probability of achieving copyright reciprocity through legislation was perhaps regarded by the authors as too remote to be counted upon, for on January 11, 1884, three days after the Dorsheimer bill was first introduced, the executive committee voted to urge upon the Department of State the need for a treaty with Great Britain which would "secure to English and Canadian authors mutual privileges" with American writers, without the imposition of time limitations or manufacturing conditions.[16] In reply,

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2418, Reports of Committees of the House of Representatives of the United States, 48th Congress, 1st Session, 1883-1884 (Washington: Government Printing Office, 1884), Vol. 1, Report No. 189.

[15]Lathrop to Dorsheimer, January 16, 1884, in /The Lathrop letter to Representative William Dorsheimer/, P. R., XXV (January 26, 1884), 91-92.

[16]Executive Committee, American (Authors') Copyright League, to Secretary of State Frederick T. Frelinghuysen, January 18, 1884, in "International Copyright: Correspondence between the Secretary of State and the American Copyright League," P. R., XXV (February 9, 1884), 169-170.

the Secretary of State reminded the committee of past difficulties in attempting to negotiate such a treaty, and suggested that although negotiations with Great Britain were continuing, the desired conditions "might be obtained by a simple amendment to our present copyright law, admitting foreigners to the privilege of copyright when the privilege is made reciprocal by treaty or law. . . . ," and leaving the matter of manufacturers' protection to the tariff laws.[17] Since these principles were already incorporated in the Dorsheimer bill, the Frelinghuysen letter was taken as a quasi-official endorsement of that legislation.[18]

But American authors were not yet ready to unite in support of the Dorsheimer bill. For example, E. C. Stedman,

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[17] Frelinghuysen to Lathrop, January 25, 1884, ibid., 170.

[18] "Mr. Frelinghuysen on Copyright," Nation, XXXVIII (February 7, 1884), 113.

Both the treaty and the law were regarded as will-o'-the-wisps by Mark Twain, who was reported as asserting: "I am forty-seven years old, and therefore shall not live long enough to see international copyright established; neither will my children live long enough; yet for the sake of my (possible) remote descendants, I feel a languid interest in the subject. Yes - to answer your question squarely - I am in favor of an international copyright law. So was my great-grandfather - it was in 1847 that he made his struggle in his great work - and it is my hope and prayer that as long as my stock shall last the transmitted voice of that old man will still go ringing down the centuries, stirring the international heart in the interest of the eternal cause for which he struggled and died. I favor the treaty which was proposed four or five years ago, and is still being considered by our State department. I also favor engraving it on brass. It is on paper now. There is no lasting quality about paper.'" Mark Twain in Boston Musical Record, as quoted in "International Copyright: Mark Twain on Copyright Law," P. M., XXV (February 16, 1884), 207.

believing that the bill had the unanimous backing of the publishers, objected to the clause which provided that no book published in a foreign country more than a year before application was made for American copyright could be so protected. He feared that the provision would be used by American publishers to prevent issuing of American copyright to foreign authors; negotiations between the two for publication in this country could be delayed until the time had run out. In a letter to the New York Tribune he labelled that section as a "peculiar restriction. . . .dear to the hearts of American publishers" which should be expunged from the bill.[19] In an editorial comment on Stedman's letter to the Tribune, the New York Times accused the writer of being "cranky" in his views, and of representing no one but himself. Nevertheless, the debate thus started should publicize the little known subject of copyright.[20] S. S. Conant thought that Stedman attached undue importance to the provision, and asserted that foreign authors, or their publishers acting for them, would not delay, but would make immediate application for American copyright. He foresaw simultaneous publication here and abroad as the regular course of action.[21] Lathrop,

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[19]E. C. Stedman to editor, February 16, 1884, New York Tribune, February 16, 1884.

[20]New York Times, February 19, 1884, p. 4. The Times favored the Dorsheimer bill as a substantial advance worthy of support, with or without the controversial clause.

[21]Conant to editor, February 16, 1884, New York Tribune, February 18, 1884, p. 5.

in his capacity as secretary to the American (Authors') Copyright League, accused Stedman of misconstruing section 8 of the Dorsheimer bill. Actually, he wrote, the clause is to the advantage of the foreign author, for if no American publisher would take his book, the author could have a small edition of his work printed in his own country and exported to the United States to meet the publishing deadline. As a matter of fact, he continued, domestic copyright law required that American authors must apply for copyright before publishing, and the courts had held that publication in such cases must occur within a reasonable time if the copyright were to remain valid.[22] Stedman responded by charging Conant and Lathrop with writing at cross-purposes in discussing, respectively, the making of arrangements with American publishers and the exporting of editions to this country. The two explanations thus demonstrated the impossibility of interpreting clearly the meaning of section 8.[23]

Attacking the defects of the Dorsheimer bill more comprehensively and from a point of view almost diametrically opposed to that of Stedman's, A. W. Tourgée, in a letter to

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[22]Lathrop to editor, February 16, 1884, ibid.

[23]Stedman to editor, February 18, 1884, ibid., February 19, 1884. Another correspondent pointed out that less well-known American authors would be similarly discriminated against by a matching clause in the British copyright law. See Markinfield Addey to editor, February 16, 1884, ibid., February 25, 1884, p. 5.

the New York Tribune, argued that (1) it would permit the importation of sheets from abroad, to be bound in this country, because the bill required only American publication rather than American manufacture; (2) section 8 covered only the intent of foreign authors, there being no specific prohibition of piracy of their books before application for American copyright was made; (3) the bill did not offer "protection against importation from another country;" (4) phraseology concerning rights of translation and dramatization was ambiguous; (5) the bill settled nothing: authors whose works were infringed upon would be forced to appeal for redress to the courts.[24] In a second letter, Tourgée clarified his stand by calling for a simple copyright law uncomplicated by "concessions and proclamations and all the cumbrous machinery of international barter. . . . . To put the foreign author on an exact level with ourselves it is only needful to adopt. . . .three. . . . provisions:" (1) the author's domicile should have no pertinence in copyright matters; (2) all provisions, rights and remedies should be granted to any copyright holder; (3) sole rights of translation and dramatization should be granted to the author for the life of the copyright.[25] The seeming incongruity between the opinions expressed in these two letters by Tourgée actually demonstrates his belief that the Dorsheimer bill,

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[24]Tourgée to editor, February 18, 1884, ibid., February 20, 1884.

[25]Tourgée to editor, February 23, 1884, ibid., February 24, 1884.

because of its numerous flaws, could not accomplish what was really needed: extension of American copyright privileges to foreign authors by a simple amendment of the domestic law.[26]

In this he was in essential agreement with the official position of the American (Authors') Copyright League, that publishers, as authors' agents, have interests in published works, but not rights, which should be reserved to the authors. The fear that publishers might attempt to insert a manufacturing clause in the Dorsheimer bill, thus complicating it further, led Lathrop to write: "Any enactment looking to international copyright which should specify the place of manufacture would clearly be contrary to the whole course of the law with regard to all forms of property-right. . . . ." Books in the public domain, foreign works whose authors would prefer American publication, the increase of books by Americans once unauthorized reprinting of foreign books ceased - these would give American publishers all the business they could handle, without the necessity of a "protective" clause.[27]

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[26]Tourgée to editor, February 18, 1884, ibid., February 20, 1884.

[27]Lathrop to editor, February 19, 1884, New York Evening Post, February 21, 1884. Eleven clergymen, some of them writers, publicly announced their support of international copyright, only one of them, the Reverend Edward Everett Hale, of Boston, favoring protection to publishers in the form of a manufacturing clause. He wrote, "A nation must be able to print its own books, else it ceases to be a nation." The others were the Right Reverends Thomas M. Clark, Bishop of Rhode Island, and Henry C. Potter, Assistant Bishop of New York; the Reverends Henry Ward Beecher, of Brooklyn, Robert Collyer, John D. Hall, William M. Taylor, William R. Williams, all of

The American (Authors') Copyright League engaged in more positive action than merely publicizing its viewpoint concerning the Dorsheimer bill, as the following news item shows.

> We are requested by the Copyright League to state that, until the Dorsheimer bill is either passed or defeated, it will be represented at Washington by Mr. James Lowndes, of that city. Mr. Lowndes's standing as a lawyer in Washington is well-known, and his instructions are that the League, which now has the support of five hundred names, desires the passage of a simple authors' copyright bill, which will give English and American authors exactly the same rights everywhere that they now have at home, free from any limitation or restriction as to the place of manufacture, whether proposed in the interest of publishers, paper manufacturers, or pirates. The Dorsheimer bill was framed with exactly this intention, but as critics, friendly or hostile, have found flaws in its phraseology, the League is especially desirous that every one who thinks it worth while should forward to Mr. Lowndes, or to it, any suggestions with regard to the form of the measure, and promises that they shall receive due consideration. . . . .[28]

New York City; Washington Gladden, Columbus, Ohio, T. T. Munger, North Adams, Mass., and President William F. Warren of Boston University. "An Act of Simple Justice," Christian Union, (March 6, 1884), 218-219.

[28] New York Evening Post, February 25, 1884. By actual count, the membership of the American Copyright League in 1884 was 534, the great majority being writers, educators, and clergymen. Although there was considerable geographical distribution of members throughout the United States (there also being a few members in England), the center of membership was in the northeastern United States (Washington, D. C., west to Ohio, and north through New York and New England). Was there a special significance in the fact that very few Philadelphians were listed among the members? See American Copyright League, List of Members (New York: Trow's Printing and Bookbinding Company, 1884), pp. 1-29.

The next move of the league was to prepare a memorial to Congress asking support for the Dorsheimer bill for seven reasons,[29] which are summarized as follows:

1. Copyright protection for American authors was only nominal, because they were forced to compete with foreign writers whose books were appropriated without payment by American publishers.

2. Copyright protection for American authors in foreign countries would become possible through reciprocal arrangements with other governments, and would end the unauthorized use of American books by foreign publishers.

3. American literature would be fostered, as intended by the Constitution, if American authors as a class were guaranteed their rights.

4. Book prices would not be increased because the proposed law, which was not retroactive, would not affect books published before its passage; popular demand for moderately priced books in this country would serve to keep book prices down.

5. Inclusion of a manufacturing clause in the proposed legislation would grant double protection to American book manufacturing interests, which already were benefited by the tariff; no other American industry was so treated. Furthermore,

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[29] There is no mention of such a petition or memorial in Solberg, "Bibliography, V. Petitions, Memorials, Messages and Miscellaneous Printed Documents," Copyright in Congress, 1789-1904, p. 103, nor in his "Chronological Record, 1884," Ibid., pp. 224-230. Either the document was never presented to Congress, or it was sent to individual Congressmen.

reciprocal arrangements would force American authors to seek foreign manufacture for the overseas market, to their disadvantage.

6. Continued existence of literary piracy would incur further encouragement of "immoral and communistic tendencies."

7. American patents were granted to foreigners; why not grant copyright as well?[30]

Having petitioned the Department of State for action on an international copyright treaty, having carried the question of international copyright to the newspapers, having retained counsel in Washington to look after its interests, and having petitioned members of Congress, the copyright league logically took another step, as illustrated by a letter from Gilder to Secretary of State Frelinghuysen.

> I have been asked by other members of the executive committee of the American Copyright League to write to you informally to suggest that you call the attention of the President to the subject of international copyright, in order that he might take into consideration a recommendation to Congress on the subject, - in the line of your note in the opening message.
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> I dare say the new Administration will be interested in the subject, through Mr. Dorsheimer (whose

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[30] "International Copyright: The American Copyright League Memorial," P. W., XXV (March 22, 1884), 348. Signers were John Bigelow, H. H. Boyesen, Noah Brooks, Robert Collyer, Howard Crosby, E. Eggleston, Sidney H. Gay, Gilder, Parke Godwin, G. W. Green, Laurence Hutton, Lathrop, Matthews, Bishop Potter, A. Thorndike Rice, H. H. Stoddard, Bayard Tuckerman, Warner, and Youmans, all of whom had signed the letter of January 18, 1884, to the Secretary of State. The memorial also contained the additional signatures of Robert U. Johnson, Jonas M. Libbey, and Stedman.

> intimate acquaintance with Mr. Cleveland is well known), but no harm would be done if the present Administration laid still more stress than it already has done upon so important a reform.
>
> Authors and respectable publishers are almost unanimous in asking for international copyright now. The points at issue are mere matters of detail into which it would not be necessary for the President to enter.[31]

Unfortunately, these "mere matters of detail" were endangering the unanimity of which Gilder wrote. In December, 1884, Lathrop declared that Publishers' Weekly had compromised itself in supporting a printing or manufacturing provision in an international copyright law; any such clause could be added only to the disadvantage of authors.[32] But, insisted Publishers' Weekly, in the face of existing opposition to the Dorsheimer bill an amendment requiring American manfacture of books copyrighted in this country offered the only chance of getting the bill passed. Unless the authors receded from their position that international copyright was their concern, and their concern alone, there was no hope for the measure.[33]

Opinions of Publishers Favorable to the Dorsheimer Bill

". . . .[T]he general favor with which the international

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[31]Gilder to Frelinghuysen, November 21, 1884, in Gilder (ed.), Letters of R. W. Gilder, p. 193.

[32]Lathrop to editor, December 15, 1884, in "Communication. Mr. G. P. Lathrop on Copyright," P. W., XXVI (December 20, 1884), 964-965.

[33][Lathrop's objection to the Dorsheimer bill], P. W., XXV (December 20, 1884), 963.

copyright project is now regarded seems to be the consequence not only of an improved moral sense but of changed conditions of trade." Thus the New York Tribune hailed the prospects of the Dorsheimer bill, which had the support of publishers, booksellers, printers, and paper-makers, who saw for the first time that their welfare was a common problem. But their agreement was based on the belief that international copyright should protect publishers' interests as well as authors',[34] a concept that the membership of the American (Authors') Copyright League, as expressed through its official utterances, was as yet unwilling to admit.

Nevertheless, this concern for the protection of publishers did not ignore the rights of authors. For example, an unidentified New York publisher was reported to have suggested the following plan to Representative Dorsheimer:

> Amend the present Copyright Law so as to give to the foreign author the same privilege and protection that the American author enjoys, requiring only that his work shall be wholly manufactured in this country and that it shall be published here, if not simultaneously, certainly within thirty or sixty days after its first publication; allowing for translation a reasonably longer period, say from three to six months.

This publisher further supported his proposal by pointing out (1) that it ended discrimination between the American and the foreign author by exacting the same requirements of each; (2) that it benefited the American author by removing from competition the cheap reprints of foreign books; (3) that

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[34] New York Tribune, February 12, 1884, p. 4.

the manufacturing requirement eliminated the objections of persons engaged in book manufacturing as distinct from publishers; (4) that the foreign author might arrange for American publication before releasing his book for home issue, thus eliminating the danger of unauthorized reprinting here; (5) that the plan rendered unnecessary an international treaty or negotiations with foreign governments; and (6) that the proposal offered a workable solution that might well be adopted by other nations.[35]

Another publisher, Putnam, feared that so short a period for making arrangements for American publication as thirty or sixty days might prove disadvantageous to the foreign author; he suggested six months to a year as necessary to give the author the opportunity of negotiating for a fair contract, while at the same time being assured of protection from unauthorized American appropriation of his work. Like the American (Authors') Copyright League and the unidentified publisher with whom he partially disagreed, Putnam argued for the extension of the same privileges to the foreign author as the law granted to Americans. But the requirement that works be "wholly manufactured" in the United States would work a hardship on both authors and the book-buying public because of the added expense of resetting type and redesigning and re-engraving illustrations. Increased costs would simultaneously cut profits and reduce the authors' returns while

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[35]"International Copyright," P. W., XXV (January 26, 1884), 93.

raising book prices. Furthermore, the additional expense of duplicating these processes, which could be obviated by permitting the importation of plates, might eliminate a number of valuable books of restricted appeal from the American market. However, Putnam warned that certain concessions - printing and binding, for example - would have to be made to the protectionists who would otherwise oppose legislation for international copyright.[36]

Although Putnam took a moderate position, perhaps calculated to achieve maximum benefits for authors, publishers, and book manufacturers alike, and thus to ensure passage of the Dorsheimer bill, some of his contemporaries disagreed with him and sided more or less with the authors. A. D. F. Randolph, to name one, announced that he had concluded that a so-called "publishers' bill" would be misunderstood. "Moreover," he said, "we now doubt the wisdom and fairness of compelling a foreign author to accept the conditions of a negotiation with an American publisher in order to secure his inalienable rights to his own property." Since foreign authors generally understood the conditions of the book market, they would readily see that American publishers served the American market best.[37] Another publisher, Holt, favored

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[36]Putnam to Representative Dorsheimer, January 23, 1884, as reprinted in New York Evening Post, February 12, 1884.

[37]A. D. F. Randolph to editor, February 1, 1884, New York Tribune, February 9, 1884, p. 6.

the Dorsheimer bill because it did the one thing necessary: substituted the word person for the phrase citizen of the United States in the clauses of the existing copyright law which dealt with the granting of American copyright.[38]

Under the caption "Views of the New York Publishers," the Tribune published statements by a number of publishers, all of whom claimed to support the Dorsheimer bill. Joseph W. Harper, Jr., of Harper and Brothers, the first to be interviewed, said that publishers had no wish to interfere with the activities of authors toward securing an equitable law. Public opinion, according to Harper, was ready for some copyright reform. His firm would "see with pleasure the common object obtained in any way which respects all just interests involved;" the only questionable aspect of the proposed law was that dealing with the length of the period in which foreign authors should arrange for American publication of their work, six months being preferable to a year in this connection. Roswell Smith, president of the Century Company, favored the Dorsheimer bill as most beneficial to the only class needing protection, the authors. Charles A. Clapp of E. P. Dutton and Company expressed a similar view, and added that the Dorsheimer bill, by providing for the end of unauthorized reprinting, would benefit authors and publishers alike. John Bishop Putnam of G. P. Putnam's Sons thought that American publishers, whose

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[38]Henry Holt and Company to editor, February 9, 1884, ibid., February 14, 1884, p. 2.

methods were superior to those of the British, he argued, needed to fear nothing from that quarter if the Dorsheimer bill were passed. Charles Scribner agreed with the American (Authors') Copyright League that the law should be unhampered by manufacturing or tariff clauses. Holt, elaborating on the opinion expressed in his letter to the Tribune, revealed that he, too, concurred in the sentiments expressed by the authors' league; he added that once an international copyright law was passed, the law of supply and demand would ensure adequate returns to American publishers, whose present support of the Dorsheimer bill, he feared, was "a death-bed repentance." Even the "pirate" Munro was quoted as viewing the bill as the means to an end he had long been working for, the destruction of the publishers' monopoly - "the Chinese or rather American wall of trade courtesy and privilege."[39]

Elsewhere, D. Appleton and Company were quoted as saying that they would rejoice along with other publishers to see the Dorsheimer bill passed, if only a Congressional majority were sure to approve it. But Harper's Weekly, in publishing the sentiments of Appleton in the matter, and obviously referring to the method of a treaty once proposed by Harper and Brothers, asked if "promiscuous debate in Congress" was more judicious than "the conference of a few persons selected for the purpose."[40] A similar fear was expressed by I. K. Funk

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[39] Ibid., February 14, 1884, p. 2.

[40] "The Copyright Discussion," Harper's Weekly, XXVIII (March 1, 1884), 134.

of Funk and Magnalls, who thought that the Dorsheimer bill, being non-political, could not pass in the current session of Congress without "systematic, persistent pushing." Funk also believed that the introduction of a manufacturing clause was a ruse to delay the anticipated passage of an international copyright law by the British parliament, and that such a clause was needless because American publishers, already protected by the tariff, could keep control of their own market and even expand abroad. Cheap books, he added, never benefited the authors of any country.[41]

In March, 1884, Publishers' Weekly released its findings concerning the attitudes of publishers toward international copyright from a poll conducted among all firms listed in the Publishers' Trade List Annual for 1883, which afforded "the best practical criterion of the real extent of the publishing trade." Replies were represented as coming from nine-tenths of the book producers in the United States.[42] The questions asked were:

> 1. Do you favor international copyright?
> 2. Do you believe that manufacture in America should be an essential part of an international copyright grant?
> 3. Do you favor the Dorsheimer bill as it stands amended? [i.e., as it was reported out of committee on February 5, 1884]?

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[41] Funk to editor, April 15, 1884, in "International Copyright: I. K. Funk on the 'Manufacturing Clause,'" P. W., XXV (April 19, 1884), 488.

[42] [R. R. Bowker], "The Publishers on International Copyright," ibid., (March 29, 1884), 378.

4. If not, would you favor the Dorsheimer bill should a manufacturing clause be added?[43]

A total of fifty-five publishers replied, fifty-two reporting that they favored international copyright. Of these, twenty-eight did not look upon a manufacturing clause as essential, while fourteen regarded it as a necessary condition to international copyright legislation. Thirty-one houses supported the Dorsheimer bill as it stood amended; nine opposed it. The answers revealed that Philadelphia was the center of both the opposition to international copyright and to the proposed bill without the manufacturing clause, while the majority of New York and Boston houses generally approved the Dorsheimer bill as amended.[44]

The validity of such data depended upon the interpretation placed upon it. Genuine or even willful misunderstanding of stated opinion occurred. For example, Roberts Brothers of Boston wrote to the editor of the New York Tribune that they preferred "authors' copyright," to be granted not by means of the Dorsheimer bill but by merely inserting a clause in the existing copyright law to provide the benefits of copyright to any foreigner or non-resident who should comply with the requirements of the law and also arrange for first

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[43] "Publishers' Opinions on International Copyright," Ibid. (March 29, 1884), 380.

[44] /Bowker/, "The Publishers on International Copyright," Ibid. (March 29, 1884), 378; "Publishers' Opinions on International Copyright," Ibid., 380-386.

or simultaneous publication in the United States.[45] The New York Evening Post had this to say of the suggestion as printed in the Tribune: "Messrs. Roberts Brothers' proposal is therefore practically to get a publishers' copyright through at the expense of the American author. . . . ."[46] When Roberts Brothers protested that the Post had misinterpreted their meaning, the newspaper commented that the publisher's plan was even worse than they had feared. "What they propose to do is to convert a movement to prevent robbery of authors, American and English, with a scheme to compel foreign authors to employ American publishers; and this they ask American authors to support as a settlement."[47] And Lathrop, secretary of the American Copyright League, classed Roberts Brothers with those "opponents of international copyright who, while professing to favor it, have so untiringly labored to throw the whole question into confusion."[48] Nevertheless, Publishers' Weekly praised Roberts Brothers for their stand, and expecially for their letterheads, which contained a quotation from Charles Dickens calling for an international copyright agreement between England and America.[49] The

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[45]Roberts Brothers to editor, February 26, 1884, New York Tribune, February 28, 1884, p. 5.

[46]New York Evening Post, March 5, 1884.

[47]Ibid., March 7, 1884.

[48]Lathrop to editor, March 24, 1884, New York Tribune, March 29, 1884.

[49]/Roberts Brothers' letterhead/, P. W., XXVI (December 20, 1884), 963.

problem lay in the choice between eliminating unauthorized reprints of foreign books by granting American copyright under stipulated conditions of manufacture, and the granting of copyright without restriction, both of which should in the long run, according to a correspondent of Publishers' Weekly's, achieve the same ends. Neither side was as yet willing to unite with the other and forget the differences between them. The result was that authors, by refusing to cooperate with publishers, were, it was alleged, selfishly preventing any law from being passed, when concerted action on the part of all parties involved in the book trade was essential.[50]

Opposition to the Dorsheimer Bill by "Pirates" and Protectionists

The American (Authors') Copyright League and its partisans branded all who did not advocate copyright protection for authors alone as enemies of international copyright, but in so doing they failed to distinguish between those who sought additional protection for publishers and those who used the doctrine of protectionism to cloak their hostility to any copyright reform.

The Nation, for instance, expressed the viewpoint of the supporters of "authors' copyright" when it asserted that opposition to the Dorsheimer bill was rising in the form of the protectionist demand for an additional clause to require

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[50] "H. O. H." [Henry O. Houghton?] to editor, May, 1884, in "International Copyright: In Re the Dorsheimer Bill," ibid., XXV (May 17, 1884), 572.

American manufacture of all books copyrighted in this country. Such a proposal would confuse the issues of protection and copyright to produce a sort of legalized piracy, because foreign authors would be placed entirely at the mercy of American publishers. Compromise in such matters would be impossible, for those publishers who advocated international copyright only so long as it benefited them were not much better than the pirates who used the argument of protection merely as a ruse to quash the international copyright movement. If every publisher, printer and bookbinder were to push his own interests before Congress in a matter concerning authors alone, what was to stop English and Canadian publishers from obtaining hearings also? What was needed was simple authors' copyright without compromise.[51]

According to the New York Evening Post, another proponent of authors' copyright, the attempt to outlaw books printed abroad by amending the Dorsheimer bill to provide for American manufacture of books copyrighted here was actually intended to kill the bill rather than to modify it. The Post further alleged that a German-language publisher of Philadelphia engaged in the "patent-outside" business (the issue of newspapers in which the inner sheets were left blank for the printing of local news by the purchasers of the "patent-outsides"), objecting to the prospect of having to pay for

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[51]"The Publishers and Copyright," Nation, XXXVIII (February 14, 1884), 136-137.

material abstracted from German periodicals and books, had prevailed upon a Congressman to aid him.[52] The member of Congress was identified as Representative P. V. Deuster, of Wisconsin, many of whose constituents were subscribers to the Philadelphia German-language paper.[53]

A correspondent writing to the periodical Critic and Good Literature described three chief types of opponents to the Dorsheimer bill: (1) Philadelphia publishers who opposed the bill unless the stipulation was added compelling English authors to sell their rights to American publishers; (2) theorists who denied the existence of abstract rights in intellectual property; and (3) those who argued that international copyright would increase the price of books in the American market.[54] It remained for Baird, however, to state the true objections of certain protectionists to international copyright. In an address to the Philadelphia Book Trade Association he not only utilized the reasons mentioned by "G. B. D." in the Critic, but added two more for good measure: the defense of unauthorized reprinting and the condemnation of authors as would-be monopolists. He continued:

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[52]New York Evening Post, February 21, 1884.

[53]"International Copyright: Further Comments on the Bill," P. M., XXV (March 1, 1884), 263-265.

[54]"G. B. D." to editor, February 25, 1884, in "The Opponents of Good Literature," Critic and Good Literature, IV (n.s. I) (March 1, 1884), 101-102.

The raison d'être of /the Book Trade Association of Philadelphia/ was never more manifest than at present, when we have in Congress diligently at work. . . .international copyright-cobblers - men who lack either the ability or the industry to originate new measures, but who would engraft their laws upon already existing, imperfect and even absurd ones. The. . . .copyright bill, a mere extension of the old laws, would allow all foreign authors and publishers under it to prohibit the publication of their books in this country, would grant a monopoly to authors whose books are written in foreign languages, and who could prohibit the translation into English of all such books or any portion of such books; when the monopoly would really be of no advantage to them, and would simply seal these books to ninety-nine out of one hundred of the people of the United States, who do not understand the original language in which they were printed. . . . .

. . . .Scarcely any portion of the rich contemporary literatures of France and Germany is now translated and published in England. How different it is in this country, where these two great mines are now beginning to be worked and with such great advantage, as well as in the enjoyment as in the enlightenment of the American people; and not in the least to the detriment of the French and German authors, whose books are thereby being made known to the many American readers of French and German. It will not pay a publisher to give a royalty to the author of a book in a foreign language, and compensation to a translator in addition, and these books will under the reign of monopoly simply not be translated. . . . .

But the American Copyright League of authors claim that 'Americans have no chance of competition on equal terms with the production of foreign authors,' and they 'ask that in offering their wares they may not be confronted by wares that have not been paid for.' But these foreign 'wares' have now no copyright monopoly, and for this reason do not themselves 'compete on equal terms' with American ones which have. . . . . As a necessary protection to American authors in their own market, the day for international copyright has gone, never to return; and I affirm without fear of successful contradiction that the real end and aim of international copyright agitation by American authors is not for home protection, but that they may obtain complete copyright monopoly with or without publication, and a royalty in Great Britain and perhaps in Germany.

There followed the Carey-Baird argument that authors have themselves appropriated ideas which are public property, and which cannot be copyrighted; it is only the form which may be. Present domestic copyright laws are absurd because they grant protection to the claimant, who does not thereby have to prove that a book is his own. The publisher, who must expend the money on producing the book, must go to the trouble of proving that the book should not be copyrighted, and it is not worth the effort. Not only is copyright for twenty-eight years bad enough, but under the renewal clause, copyright reverts to the author, so the publisher's expense is all for nothing. Such laws, and the Dorsheimer proposal as well, are a nuisance and an outrage. In their place should be substituted two simple tests: that of originality of the author's work, and that of validity of the copyright.[55]

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[55]Henry Carey Baird, Copyright, National and International. An Address Delivered before the Book Trade Association of Philadelphia, on the Occasion of the Annual Dinner, February 23, 1884 (Philadelphia: Henry Carey Baird and Company, 1884), pp. 3-7. Just as authors might have willfully misinterpreted the attitude of certain publishers toward international copyright, so might the same be suspected of Baird. Inconsistencies in his speech show that it was perhaps an argument ad hominem, rather than a reasoned presentation of genuine opposition to international copyright. For example, granting copyright to authors of books in foreign languages is absurd since few Americans can read the books in the original edition, yet these same books are currently "being made known to the many American readers of French and German." Publishers, Baird claimed, could not afford to pay royalties to foreign authors and additional fees for translation; this statement completely ignores the purpose of international copyright legislation - to stabilize the economy of book production, which literary piracy was wrecking, by placing a

An equally illogical but franker argument against international copyright appeared in the form of a pamphlet issued as an open letter to Representative William Dorsheimer by the Philadelphia printer, Roger Sherman. In it he listed six objections to the Dorsheimer bill from the point of view of the "operative" rather than that of the publisher.

1. International copyright would permit inundation of the American market by all sorts of books published in England, whose material and labor costs were less than in the United States. The existing tariff on books would be no deterrent, since it was based only upon valuation of the cost of paper and press work; typesetting, payments to authors, etc. were not included. Furthermore, Sherman alleged, the United States Customs Office was party to a gigantic fraud against artisans in the publishing and related trades, and had passed special rulings to allow entry of foreign books without payment of duties. In support of these charges, reference was made to secret reports submitted in 1880 to the Secretary of the Treasury.

2. Publication of books by foreign authors, after passage

"floor" under book prices. See Chapter IV, above, for statements by American authors which disagreed with Baird's argument that authors are not adversely affected by the sale of foreign authors' books; the curious case which he makes of the fact that such books can not now be copyrighted should be noted. See Chapter III, above, for evidence which controverts Baird's statement that American publishers had ceased to issue foreign reprints. The arguments against the domestic copyright laws reveal Baird's refusal to admit that authors had any property rights in their published works.

of the Dorsheimer bill, would become the monopoly of a few large houses, all of whom favored the bill for exactly that reason. Newer firms would have no opportunity to publish these copyrighted books by foreign authors. Furthermore, the monopolists would then be enabled to raise the price of books and enlarge their profits which were obtained, according to Sherman, by having their work done in the penitentiaries rather than by "hardworking, humble, but honest American artisans."

3. Payment of royalties to foreign authors necessitated by international copyright would add to reprinting costs in this country, and would deprive Americans of their cheap books.

4. American reprinters need never have been ashamed of being called pirates by the English, whose history abounded in piracy such as the seizure of India.

5. Domestic copyright was intended to stimulate American literature; why should American citizens be taxed for foreign literature which might be had for the taking? International copyright would also deprive American workmen of the wages earned in making reprints.

6. The large firms supporting international copyright did so simply because they could no longer compete with the reprinters. For example, Sherman asserted that Harper and Brothers interested themselves in international copyright only after they had failed with their Franklin Square Library in the contest against Munro, the Lakeside Publishing Company,

the American News Company, and others.[56]

The opposition of H. C. Lea, who was later to reconcile the aims of American authorship with the interests of the American book business, and to draft the original Chace bill,[57] was much more temperate than that of either Baird or Sherman. In an open letter to Representative Samuel J. Randell, dated February 18, 1884, he set forth the following propositions.

1. No reasonable man objected to guaranteeing the fruits of their labor to authors.

2. Limitations on the duration of copyright as provided in the Constitution, the copyright statutes, and the Dorsheimer bill itself demonstrated agreement that "'the public has rights as well as the author.'"

3. International copyright involved more than simply providing for payment to the foreign author for his work.

4. Copyright was actually a monopoly granted to authors,

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[56]Roger Sherman, International Copyright: An Open Letter to Hon. William Dorsheimer, M. C. /Philadelphia: Sherman and Co. (?)/, 1884. Sherman's mixing of truths and half-truths and his resorting to name-calling should be noted.

Certain publishers of "cheap books" attempted to show that international copyright would raise the price of books by citing the comparable prices of the "cheapest English editions" of a number of standard histories, biographies, and religious books, with those of the "cheapest American reprints" of the same works. The average selling price for the English books was $9.073, they claimed; for the American reprints, $.968. Prices for novels would show an even greater discrepancy. New York Evening Post, March 1, 1884.

[57]Bradley, Henry Charles Lea: A Biography, pp. 226-228.

a fact recognized in existing legislation by virtue of the time limits on its duration; Congress should therefore weigh the effects of the proposed Dorsheimer bill on American and foreign authors, on book manufacturers, and on the public. That bill, restricting only the duration of copyright, would permit monopoly by English publishers, to whom English authors generally sold their copyrights; it would thus be possible to withhold editions from the American market.

5. The Dorsheimer bill ignored the fact that American authors might now obtain British copyright by first publication of their work in England; thus it could not improve their situation in that country. On the other hand, since the actual effect of the bill would be to bar foreign literature from the United States, its passage would bring about increased prices for such work in this country.

6. English authors, whose books were controlled by their publishers, would not benefit by the Dorsheimer bill because it failed to provide a means for establishing relations between foreign writers and American publishers.

7. Congress could not afford to ignore the livelihood of the great numbers of Americans employed in the book trade; the failure of the Dorsheimer bill to provide against the transfer of a part of that trade to England would be economically disastrous, for American tariff laws would be useless in the face of the British monopoly in books by English authors demanded by the American public.

8. The British monopoly of a portion of the American trade

would increase the cost of books for Americans, for English publishers would not produce books at prices comparable to those made possible by American methods of production.

9. The Dorsheimer bill provided no copyright for artists, who were as deserving as authors. Furthermore, the one-year period between foreign and American publication permitted foreign authors for making application for copyright gave them an advantage which American law did not grant to citizens of the United States. Actually, in spite of comments to the contrary, filing for American copyright was not difficult.

10. The Dorsheimer bill should have been amended to prohibit the importation of books copyrighted here but published abroad. Since copyright was a monopoly, it should have been made a complete one.[58]

In a letter to the New York Post Lea expressed his opinion of the American (Authors') Copyright League and its attitude toward copyright.

> . . . .The spectacle of four hundred American writers forming a league or trades-union, for the purpose of obtaining certain legislation, retaining a professional gentleman as lobbyist in Washington, and refusing to regard any proposition in favor of the public, save as an infringement on the unprescriptable rights of property, is by no means reassuring to the thoughtful and impartial observer, and when you broadly declare, as you do, that 'there is no way of reconciling the demand for making the price of books conform to the "wants and pocket" of the public with copyright,' you take a position

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[58] Lea to Randall, February 18, 1884, in "International Copyright: H. C. Lea's Open Letter," L. J., XXV (February 23, 1884), 238-241.

> which justifies the liveliest alarm on the part of the judicious friends of copyright. It is the public which in the long run will settle the matter to suit its own wants and pocket; and if copyright is incompatible with them, so much the worse for copyright.[59]

Representative Dorsheimer attempted to clarify his aims in a letter to Lea, the opening sentences of which summarized his point of view. "My object has been, and is, to secure for American authors a right of property in all other countries, and in exchange therefor to grant a right of property in the United States to foreign authors. I desire that the measure. . . .should be unembarrassed by any irrelevant or extraneous matter." Printing requirements were properly a subject for tariff legislation, as was the matter of importing. The one-year time limitation might be adjusted or dropped by Congress, and foreign artists might well be admitted to the privileges of American copyright. In conclusion, Dorsheimer offered to confer with Lea concerning the bill.[60]

In reply, Lea repeated many of his earlier arguments, and also pointed out that the reciprocity proposed by Dorsheimer would lead only to litigation, for the reason that the United States had no control over other nations. A duty on books would not prohibit importation because British publishers

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[59]Lea to editor, February 26, 1884, New York Evening Post, March 1, 1884.

[60]Dorsheimer to Lea, March 15, 1884, in "International Copyright: The Dorsheimer Copyright Bill: Mr. Dorsheimer's Reply to H. C. Lea," P. M., XXV (March 22, 1884), 347.

could establish American branches to circumvent the law. He suggested an amendment to the bill which, among other things, provided for the voiding of American copyright whenever publication of foreign books should be abandoned by American publishers, and prohibited importation of foreign editions of books copyrighted in this country, the Treasury and Post Office Departments being directed to enforce this provision. To these proposals, Dorsheimer answered that the voiding of copyright through lapse of publication was no copyright at all; the matter of importation was already covered by Section 4964 of the United States Revised Statutes. Americans should be free to buy where they wished, if consent was not obtainable from copyright holders. Lea then responded that Dorsheimer failed to understand the purpose of the "lapse of publication" clause. It was to prevent publishers who refused to issue successive editions from depriving the American market of books demanded by the public. Importation would be permitted once domestic publication ceased. Restriction of importation to the fortunate few who could obtain permission from copyright holders might suppress inexpensive American editions to the disadvantage of the bookbuying public.[61] Finally, Lea proposed a substitute for the Dorsheimer

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[61]Lea to Dorsheimer, March 15, 1884; Dorsheimer to Lea, March 18, 1884; Lea to Dorsheimer, March 20, 1884, in "International Copyright: The Dorsheimer Copyright Bill: The Correspondence between H. C. Lea and the Hon. W. Dorsheimer," ibid., XXV (March 29, 1884), 386-389.

bill.[62]

Within two months, (that is, by May, 1884) Publishers' Weekly was advising authors, in the interest of passage of the Dorsheimer bill, to accept an amendment confining international copyright to books printed in the United States (importation of stereotype and electrotypes plates at regular tariff rates being permitted) and registered simultaneously in this country and England. Importation should depend upon consent of the author or his assigns. The compromise would benefit American book manufacturing and thus help American authors as well, neither group as it was, being helped by cheap reprinting.[63] The New York Tribune, still holding out for authors' rights and the original Dorsheimer bill, branded this suggestion as "a trick of the piratical party."[64]

Failure of the Dorsheimer Bill

It was anticipated that passage of the Dorsheimer bill would immediately create a state of international copyright between the United States and Great Britain because of the reciprocity called for therein.[65] "It will be a lasting

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[62] "International Copyright: Mr. Henry C. Lea's Present Plan," ibid., (March 29, 1884), 389-390.

[63] "A Practicable Step in Copyright," ibid. (May 10, 1884), 549.

[64] New York Tribune, May 18, 1884, p. 6.

[65] "A New Copyright Scheme," Nation, XXXVIII (January 10, 1884), 27; New York Herald, January 12, 1884, p. 4.

honor to the Congress that has the courage to make it a law, and by such act redeem our national credit," said Publishers' Weekly, in commenting upon the timeliness of the bill, proposed just when the British government was considering similar action.[66]

When the time came, however, to deal with the bill after its amendment in Committee, the House of Representatives voted down Dorsheimer's resolution to suspend the rules in order to fix February 27 (1884) and successive days for consideration of the bill. In the debate on the question, Representative Chace, although favoring international copyright, objected to the bill in the form proposed; Representative Kelley called for further testimony from authors, publishers, and book manufacturers; Representative Deuster argued that the bill would increase the cost of books, and in effect tax the American people for the benefit of foreign authors.[67] These speakers might be said to represent three types of opposition to the Dorsheimer bill as an authors' copyright bill: publishers, protectionists, and "pirates."

The failure of Congress to take further action on the Dorsheimer bill was ascribed in part to the lack of cooperation

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[66] /Dorsheimer bill/, P. W., XXV (January 12, 1884), 37.

[67] U. S. Congress, House of Representatives, "Discussion on Resolution concerning HR 2418," Monday, February 18, 1884, Journal of the House of Representatives, 48th Congress, 1st Session (Washington: Government Printing Office, 1884), pp. 609-611.

among the supporters of the bill, and in particular to the executive committee of the American (Authors') Copyright League, which was directly responsible, it was charged, for driving a wedge between authors and publishers.[68] It was hoped that Representative Dorsheimer, who had not been renominated for election to the succeeding Congress, would reintroduce a modified bill attractive to all interests during the remaining second session of his term of office.[69]

No further action was forthcoming, although President Arthur, in his annual message to Congress, urged the necessity of passing a law granting copyright to foreigners so that the United States might commence negotiations with other nations.[70] Representative Dorsheimer said no more about reintroducing his bill, although it now seemed obvious to Publishers' Weekly that a successful attempt could be effected because of the lessons learned from previous failure, if only authors and publishers would cooperate with each other.[71] However, Congress seemed little disposed to attempt legislation on copyright

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[68] "Another Copyright Failure," P. W., XXVI (July 12, 1884), 32.

[69] /Dorsheimer's last chance/, ibid. (October 18, 1884), 564.

[70] Annual Message of President Chester A. Arthur to the 48th Congress, 2d Session, December 1, 1884, in Richardson, Messages and Papers of the Presidents, X, 4828.

[71] "International Copyright Again," P. W., XXVI (December 6, 1884), 904-905.

during the second session,[72] and there is no record of further effort on the part of Representative Dorsheimer.[73]

The First of the Authors' Readings; and a Literary Curiosity

Subsequent to the failure of the Dorsheimer bill, the American (Authors') Copyright League embarked upon a new project intended to aid the organization in its fight for international copyright. This was a series of authors' readings, the first of which was scheduled to occur at the Madison Square Theatre, New York, at 4 P. M. on April 28 and 29, 1885, five or six different authors, it was announced, to read from their works each day. Program arrangements and ticket sales were in charge of Mrs. Burton Harrison, Mrs. John Jay, Mrs. Abram S. Hewitt, and Mrs. Frederick Jones.[74]

The readings, "attended by unusually large and brilliant audiences," were opened with a plea for an international copyright law by G. W. Curtis, who believed, he said, that the American people, once they were aroused, would rally to support the authors' copyright league. But he could not regard publishers as enemies in the struggle, for in the past they had cooperated with authors in their efforts to secure an

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[72]"Copyright in Congress," ibid. (December 20, 1884), 963.

[73]Solberg, "Chronological Record, 1884," Copyright in Congress, 1789-1904, pp. 230-231.

[74]"Notes," Critic, VI (n.s. III) (April 4, 1885), 167.

effective law. Charles Carroll read "a characteristic letter" from Holmes, and F. Hopkinson Smith read from the Uncle Remus stories. Julian Hawthorne, Will Carleton, Howells, Stoddard, Boyesen, and Bunner gave selections from their own works.

> On the second afternoon Bishop H. C. Potter took the chair, with a brief but pointed speech, in which he presented the need and justice of an international copyright law, and asked those who heard him to use their influence, whenever and wherever possible, to secure it. John Boyle O'Reilly and W. D. Howells read selections from their works; F. Hopkinson Smith gave some recitations; Professor Charles Carroll read a new and unpublished story by Frank R. Stockton; Rev. Henry Ward Beecher read two selections from his 'Star Papers;' Mark Twain recited a characteristic humorous sketch entitled 'A Trying Situation;' George Parsons Lathrop read 'Keenan's Charge,' a poem describing an incident of the battle of Chancellorsville; and Dr. Edward Eggleston read a story prepared for the occasion entitled 'Sister Tabea.'
>
> The programme contained. . . .striking mottoes and extracts [concerning international copyright, culled from the writings of eminent authors, speeches of statesmen, leading editorials, etc.][75]

About this time there was published a curious 440-line poem, in iambic pentameter couplets, supporting copyright reform, entitled "An Essay on International Copyright," by Jamin Millsbro (probably a pseudonym, according to the Library of Congress catalogue). Two passages are quoted.

> And what the gain of theft in foreign land,
> To flood the mart where our own authors stand?
> "'Twill cheapen books,' is the excuse we hear
> From those whose wishes are to sell them dear.
> 'Twill truly cheapen books, and them the most
> Which least of worth to wanting men can boast.

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[75] "Authors' Readings in Aid of International Copyright," *C. M.*, XXVII (May 2, 1885), 519.

These will be multiplied on every hand,
And spread abroad throughout a cursed land.
That even he who begs may beg and read
A book that talks but answers not his need.
A pity 'tis to tempt, by lower rate,
To books that harm, from them that educate.
'Tis not as if access were hard to gain,
To books that teach, as well as entertain;
For were they read, the books that teach and please
Would cheapest be of all commodities.
Though true it is that, 'mid the books that harm,
Are cheapest some that bless as well as charm;
Allowance made, this still must be the tale, -
To such the price remains, but not the sale.
Yet were the gain as great as pirates state,
There'd somewhere be a loss to compensate;
For whoso questions Justice, this will hear, -
The right is cheap, the wrong is ever dear!

And is it not a grievous loss to lose
A class that for us all their talents use?
The wage for writing, never more than small,
Pays them alone who ne'er should write at all:
While their light works will slender profits pay,
The gains of toil will not its cost defray.
The end is then, that writer, to succeed,
Must starve his wants and pass his days in need;
And since but few so hard a lot will seek,
The day is near when genius will not speak.
(Lines 219-252)

The pirate and the publisher contend
In bitter strife, that nears a novel end.
The publisher, to save himself from wreck,
And hold the pirates' sway in decent check,
Must sadly do as pirates gladly do, -
Give up his trade, and be a pirate, too.
He longs and tries to pay for what he takes:
The more he pays, the less the gain he makes;
The less he meets the foe with able hand;
The less his power against the wrong to stand.
An author looking sadly at the fight,
And wishing well to him who wishes right,
Desires his work to him to fall a prey,
Who for the work in fact desires to pay.
But piracy must be the trader's fate;
For he is doomed who tries to carry freight.
Success to him, whate'er his motives be,
Who slays the rest, and rules alone the sea!
(Lines 337-355)[76]

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[76]Jamin Willsbro, "An Essay on International Copyright," Poems (Philadelphia: Benjamin F. Lacy, 1885), pp. 52-70. No

Introduction of the Hawley Bill

Senator Joseph R. Hawley first presented his "bill to establish an international copyright" on January 6, 1885 (S. 2498), during the second session of the Forty-eighth Congress, and again on December 8, 1885 (S. 191), during the first session of the Forty-ninth Congress.[77] It provided that (1) citizens of foreign countries should be eligible for United States copyright whenever Americans should be granted equal rights by the same foreign countries; (2) the law should not apply to books published before its enactment; (3) existing copyright laws should remain in force except as repealed by the present bill; (4) phraseology of existing laws restricting copyright to American citizens or to persons resident in the United States should be eliminated; (5) the existence of equality of rights in other countries should be proclaimed by the President. There was no stipulation as to the time of application for American copyright, as in the Dorsheimer bill.[78]

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notice seems to have been taken of this effort by organized proponents of International copyright.

[77]Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, pp. 50-51. The same bill was introduced into the House of Representatives by Congressman John Randolph Tucker on January 6, 1886. Ibid.

[78]U. S. Congress, Senate, Committee on Patents, "International Copyright. Statements Made before the Committee on Patents. . . .Relating to the Bill (S. 191). . . .and the Bill (S. 1178. . . . ," Senate Report No. 1199, to Accompany Bill S. 2496, Reports of Committees of the Senate of the United

The American (Authors') Copyright League and the Hawley Bill

Critics of the authors' league asserted that certain individuals within the organization had forced the adoption of a policy antagonistic to publishers. Nevertheless, it was believed that the league, recognizing its past shortcomings, would now come to terms with publishers to accomplish a common aim.[79] Instead, authors who refused to compromise their principles were given a new rallying cry by Lowell, who wrote:

> In vain we call old notions fudge,
> And bend our conscience to our dealing;
> The Ten Commandments will not budge,
> And stealing still continues stealing.[80]

This policy of no compromise was the result of the debate at the meeting of the American (Authors') Copyright League on November 7, 1885, attended by twenty-two persons of the reputed membership of over seven hundred. The report

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States, 49th Congress, 1st Session, 1885-1886 (Washington: Government Printing Office, 1886), Vol. 7, Report No. 1188, p. 1.

[79] New York Commercial Advertiser, May 23, 1885.

[80] Johnson, Remembered Yesterdays, p. 266. Lowell wrote the quatrain on a letterhead of the Editorial Department of the Century Magazine on November 20, 1885. A photostatic plate of the holograph, on the letterhead, appears in Johnson, opposite p. 266. Gilder, in a letter to H. E. Scudder, August 9, 1899, said, "We sent out for opinions from authors and others which were published in the /Century/ magazine, and in response to this request. . . .he (Lowell) came into my office one day (with Mr. Norton, I think), said he had something in his head, and wanted a pen to write it out; whereupon he sat down and wrote what is now that little scorcher. . . . ." Gilder (ed.), Letters of R. W. Gilder, p. 194.

of the secretary, G. H. Green, described the earlier meetings of 1883 and 1884 as informal conferences to plan action. Although the group had failed in 1884, in spite of the indefatigable efforts of the former secretary, Lathrop, to get a favorable report from the House Judiciary Committee on the Dorsheimer bill because it had started to work too late, the prospects for success on a non-partisan basis were now better. College presidents, authors, editors, and correspondents all backed the League, as did magazines and newspapers. Senator Hawley had promised to introduce a bill for international copyright and had asked to be reminded of his pledge late in November. Unfortunately, some former supporters of copyright had "already lost heart and fallen by the way, discouraged because the wrong which we organized to redress has not yet been righted." But a long hard fight was to be expected. Lathrop then asked for discussion of the American Copyright League policy with regard to the Hawley bill. Warner moved that the executive committee should "present and push" it in Congress. The bill was read. Warner went on to say that it dealt solely with reciprocity to foreign authors and ignored tariff and manufacturing questions. Senator Hawley's advice to avoid compromise in favor of a clear-cut issue was mentioned. Lathrop cited the publishers' determination to insert a printing clause, if not the requirement of complete American manufacture, in any bill passed; failing that, to oppose it. He pointed out that British law required, in effect, domestic manufacture, and asked how American legislation

could succeed if it was more advanced than that of other countries, whose copyright practice was already in advance of ours. The league should determine on a policy of compromise and should poll its membership for that purpose. Warner replied that there was not time before the introduction of the bill and asked why opponents should be given an opportunity by anticipating printing clauses and the like. Amendments should be offered in the Senate, not in the league meetings. Opponents did not want the bill under any circumstances. Johnson reviewed past league action, pointing out that failure to get the question before the House when a tariff bill was scheduled, and lateness in presenting it to a friendly Senate committee were the reasons for previous failures. He recommended strong support of a simple bill by the executive committee. Lathrop reiterated his argument that a printing clause was not compromise with the opponents of international copyright, but with publishers who would support it were such a clause incorporated in the bill. He repeated his desire to question the league membership. His amendment was lost after Johnson convinced those present that such a proposal would "let people know on the other side of the question what they /could/ depend on as a compromise."[81]

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[81]American Copyright League, First Annual Meeting of the American Copyright League, Held at the Rooms of the Authors' Club. . . .New York City, November 7, 1885 (New York: American Copyright League, 1885), pp. 1-12. Article II of the league constitution reads: "The object of the American Copyright

Thus the league put itself on record as favoring the Hawley bill over any proposal which would also benefit publishers and printers. "'The recent meeting seems to have been dominated by the same small group of impracticables that have mismanaged affairs hitherto, and so a mess is likely to be made of the enterprise before the year's work is begun,'" said the New York Commercial Advertiser, as quoted in Publishers' Weekly. "'A small group of idealists'" had forced their opinion upon the entire membership which was given no opportunity to record its sentiments in the matter.[82] Even so, of

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League shall be, to procure the abolition, so far as possible, of all discrimination between the American and the foreign author, and to obtain reform of American Copyright law." Ibid., p. 13. A handbill attached to the pamphlet reads: "The Chairman of the Senate Committee on Patents has named Thursday, January 28, 1886, at 10 A. M., for the Copyright Hearing. Mr. Lowell, Mr. Clemens, Mr. Stedman, Mr. Warner, Dr. Crosby, and other members of the League will attend. Every effort will be made by the Council to push the work. . . . .' An appeal for more members is appended.

One result of this meeting was Lathrop's withdrawal from the league, which he claimed, did not represent the body of American writers. The majority of authors favored "a law that shall compel foreign books to be published here, if copyrighted." Lathrop, "Should Foreign Authors Be Protected?" Forum, I (July, 1886), 498 n. This action demonstrated a complete reversal of Lathrop's attitude two years earlier, during the controversy over the Dorsheimer bill. See above, "Activities of Authors with Reference to the Dorsheimer Bill."

[82] New York Commercial Advertiser, no date given, quoted in "Blundering in the Copyright League," P. W., XXVIII (November 15, 1885), 670-671. "We regret very much what seems to be the temper of the League, because it is in our judgment likely to prove an obstruction to real reform," said the editor of P. W., in /Copyright League support for the Hawley bill/, ibid., p. 668.

forty-eight authors whose remarks were reportedly "appended to a memorial to Congress," only seven said that they were unalterably opposed to a manufacturing clause or other condition in the proposed copyright law; thirteen were willing to accept such modification as a means of securing passage of an international copyright act. However, these were offset by twenty-eight who failed to mention a manufacturing clause or other amendment, some of whom conceivably belonged with the seven in the first group.[83] Certainly this was true of five of the third group: Louisa May Alcott, Eggleston, T. W. Higginson, Howells, and Parton, who joined with forty others in advocating international copyright without qualifications of any kind.[84] The attitude of these people is reflected in a conversation which took place between Gilder and President Cleveland. The President asked Gilder why he was so much interested in international copyright. Gilder stated that the question was a moral one, and that "piracy of the works of foreign authors was a national disgrace." The President, added Gilder, "convinced of the moral bearings of the question, by every means in his power promoted the cause," with so much

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83"International Copyright: Remarks of American Authors, Appended to a Memorial to Congress," Ibid. (November 7, 1885), 638-641. There is no record of an authors' memorial in 1885 in Solberg's Copyright in Congress, 1789-1904.

84"Open Letters: International Copyright: Plain Speech from American Authors," Century Magazine, XXXI (February, 1886), 627-634.

force that the law was enacted under the subsequent Republican administration.[85]

In December, 1886, Publishers' Weekly urged the American (Authors') Copyright League to support a bill that had some chance of passing,[86] and there is evidence of a modification of the conviction that nothing would do but "authors' copyright" in the report of Green that opposition to the Hawley bill had come from the typographers, but that their demand for American manufacture of books copyrighted here was reasonable.[87] The statement was made at the annual meeting of the league for 1886, attended by nineteen persons. Plans were made for the extension and strengthening of the organization and the executive committee was instructed to work for full Congressional discussion of international copyright during the next session.[88] On December 27 there was issued by the executive committee to the members of the league a circular which demonstrated that Green's statement concerning the reasonableness of the typographers must have been a temporary aberration, for the pamphlet, after discussing the Hawley bill, accused the Senate Committee on Patents, to

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[85]Richard Watson Gilder, Grover Cleveland: A Record of Friendship (New York: The Century Company, 1910), pp. 15-16.

[86]/Copyright League/, P. W., XXX (December 11, 1886), 938.

[87]"The American Copyright League - Annual Meeting /December 2, 1886/," ibid. (December 11, 1886), 938-939.

[88]Ibid.

which the bill had been referred, of concerning itself chiefly with the manufacturing interests involved. A substitute bill, introduced at about the same time, was criticized as "the ingenious measure of Mr. Chace for the purpose of aiding the manufacturer of books at the expense of the author. . . . . This bill, although it was asked for by nobody at the hearing, has been reported by the Senate Committee."[89]

At best, this address of the league represented only a compromise between its idealists and its moderates, who succeeded together in producing an "absolutely harmless and entirely academic proposition" which could never have hoped to influence an apathetic Congress which, it was alleged, feared the paper-makers and similar interests. "The American Copyright League was organized for the promotion of international copyright. But for its existence, it is not improbable that some kind of copyright-act would by this time have been procured."[90]

Opinions of Publishers Favorable to an International Copyright Bill

A news item, reprinted from the New York Commercial

89"American Copyright League," ibid., XXXI (January 8, 1887), 44-45. The circular was signed by J. R. Lowell, President; C. D. Warner, A. C. Sedgwick, Howard Crosby, R. U. Johnson, C. H. Green, Executive Committee.

90"The Copyright Status," ibid., (February 26, 1887), 312.

Advertiser for January 8, 1885, revealed the opinions of four leading New York publishers favorable to international copyright, concerning the Hawley bill. Scribner, Holt and Putnam gave their unqualified approval to the bill, but "one of the Messrs. Harper," although he praised its simplicity, "doubted, however, whether with the present prevailing sentiment for protection, any bill could be passed which did not provide for the printing of books in this country. . . . ."[91]

W. H. Appleton, of D. Appleton and Company, long a sponsor of the international copyright movement, expressed his views in a letter to the President of the United States, Grover Cleveland. He urged him to discuss, in his forthcoming message to Congress, the subject of legislation to grant American copyright protection to foreign writers, and pointed out that the government's policy "has been a reproach to the American name." He further suggested that any proposed law should grant to foreign authors the same rights now given Americans, with "the least disturbance in the course of the American publishing business."[92]

Another letter, from Joseph W. Harper to Henry C. Lea,

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[91] New York Commercial Advertiser, January 8, 1885, as reprinted in "International Copyright: Views of Some New York Publishers," P. W., XXVII (January 17, 1885), 52.

[92] W. H. Appleton to President Cleveland, November 14, 1885, in "Mr. W. H. Appleton on Copyright," ibid., XXVIII (December 19, 1885), 943. The article begins: "Previous to the preparation of the Message, Mr. Wm. H. Appleton sent the following communication to the President which we are permitted by the courtesy of the writer to give in full."

dated January 26, 1886, contained two revealing paragraphs:

> 'I infer from Senator Mitchell's letter (returned herewith) that neither he nor the chairman of the committee desire the attendance simultaneously of publishers with authors. In his intimation that "the hearing will be extended from day to day to give fair opportunity for all to be heard" there is possibly the suggestion that it might not be regarded as altogether delicate for the author's hired man to appear with his employer.
>
> 'However this may be, I should be averse to incurring any risk of apparent antagonism to the Hawley bill, and I certainly have no desire to oppose it. Both of us, I suspect, are personally in strong sympathy with its purpose, but recognize, from long experience, the insurmountable difficulties in the way of its passage. We see that Mr. Dorsheimer's bill, with its magnificent send-off, failed by reason of the opposition of the protectionist element in Congress, while Mr. Chace's bill seems practicable by reason of its conciliation of that important (and at present controlling) element.[93]

And a letter from Harper to James R. Osgood, the Boston publisher, written three days before, concluded a discussion of the problem in this way: "'Avoid friction; sand is a poor lubricator.'"[94] Even Senator Hawley was reported to be willing to modify his bill, according to Osgood, who had "had a talk with" him.[95]

It may be seen that certain publishers were in complete agreement with the authors who desired "pure and simple copyright," while others, although sympathetic to the purposes

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[93]Harper to Lea, January 26, 1886, in Harper, House of Harper, p. 434.

[94]Harper to Osgood, January 23, 1886, ibid., p. 433.

[95]Osgood to Lea, January 26, 1886, ibid., pp. 433-434.

of the Hawley bill, were aware of the need for compromise. But the intransigence of the American (Authors') Copyright League, in rebuffing friendly publishers and true opponents alike, only strengthened the position of those against international copyright, and made eventual success all the harder to achieve.

Opposition to the Hawley Bill

Opposition to international copyright centered around three objections to the reform. (1) Foreign manufacture of copyrighted books, unless specifically prohibited by international copyright legislation, would take work away from a large number of American manufacturers and workmen. This was the position of certain typographical unions, who overlooked the fact that any such loss incurred through international copyright would be partially compensated for by the increased production of books by American authors. (2) Copyright payments to foreign authors would increase the prices paid for books by the American people. This was one of the arguments of the reprinters who issued the inexpensive "libraries."[96] (3) Greater profits for reprinters would be assured if unauthorized and uncompensated appropriation of foreign books was permitted to continue. This was the real reason for opposition by certain of the reprinters, who cloaked it with the arguments cited above and with the assertion that

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[96] [Bowker], "Copyright. XI.: Copyright Reform in This Country," P. W., XXVIII (October 31, 1885), 600-601.

proponents of international copyright were actually supporting a monopoly which would work to the disadvantage of the American people.[97]

When the Hawley bill was introduced into the Senate, the opposition of the typographical and other unions was expressed chiefly by petitions and memorials sent to the two Houses of Congress. Solberg lists sixteen separate presentations of such documents between January 22 and March 29, 1886.[98] The chief publicizing by spokesmen for the opposition came from Roger Sherman, P. V. Deuster, and Gardiner G. Hubbard. The continued moderation of Lea's position is apparent from the correspondence just cited, and will be discussed below. In the final period of the struggle for international copyright, he appeared as the originator of the only program of reform that could succeed.

Of the three publicists of the opposition, Sherman was the most prolific. In his twenty-four page pamphlet, Open Letter to the Members of the American Copyright League, he wrote forty-three numbered paragraphs to illustrate his reasons against passage of an international copyright act. There were also included two "extracts" from the Galveston News

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[97] Putnam, Memories of a Publisher, pp. 376-377.

[98] Solberg, "Chronological Record, 1886," Copyright in Congress, 1789-1904, pp. 233-237. After introduction of the Chace bill in the first session of the Fiftieth Congress, 1887-1888, forty petitions of unions praying for passage were presented in a comparable period (March 21 to May 9, 1888). Ibid., pp. 253-261. Record of the petitions may be found in the appropriate House and Senate Journals.

and from Labouchère's Truth which purported to show the falseness of the international copyright "notion." In discussing the aims of the American (Authors') Copyright League, Sherman accused American authors (Matthews and Mark Twain, in particular) of agitating for international copyright not out of love for fair play, as they had professed, but to keep British authors out of the American market. Publishers who supported international copyright were leagued with British firms because American reprinters, having ignored courtesy of the trade, were successful in spite of attempts to outwit them by the purchase of advance sheets and the establishment of priorities.[99]

Another of Sherman's pamphlets listed twelve reasons why an international copyright bill should not be passed:

> I. Because it is the clamor of 200 authors against the interest of 55,000,000 people.
>
> II. Because cheap literature is a large factor in cheap education, and the unparalleled intellectual development in the United States is due to cheap education.
>
> III. Because it is but another step towards yielding our market to the English manufacturers; a market which they took no part in creating, and whose creation they would have prevented if they could.
>
> IV. Because it would grant to foreigners a privilege which the Founders of our government intended should only be granted to its citizens for the purpose of encouraging a national literature, and not for the pecuniary benefit of individuals.
>
> V. Because it would be the foreign publisher and not the foreign author who would benefit.
>
> VI. Because of the difficulty of carrying

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[99]Roger Sherman, Open Letter to the Members of the American Copyright League (Philadelphia, 1886), passim.

out the law in accordance with its spirit and of its opening a wide door for frauds against the interests of our working-classes.

VII. Because it is against the spirit of the Constitution that the minority shall dictate to the majority, and that 'monopolies' shall be created for raising the prices of a necessity.

VIII. Because it is a pretense that native authors cannot live in competition with free literature. The American market is ready and waiting to take more good literature than native talent can offer, and is compelled to seek foreign productions.

IX. Because if a sufficiency of good American literature were offered, it would drive out the worst of the foreign, which would never become acclimatized, and create a healthy demand for better books.

X. Because the works of the best foreign authors stimulate our own to greater efforts, and afford that healthful competition so necessary for success.

XI. Because the experience of the past foreshadows the future, and owing to the cheapness of the educational advantages offered to the masses we can show more intellectual development in the United States than can be shown in any other country in the world.

XII. Because it would be wrong to force the people to pay for what they can now have free, and create difficulties where none now exist.

February, 1886.

R. S.

N. B. - Criticism of the above is invited, but I respectfully suggest to the members of the Copyright League that <u>invective</u> is not <u>criticism</u>, and only serves to weaken their statements.

Roger Sherman.[100]

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[100]Sherman, <u>Reasons Why an International Copyright Bill Should Not Be Passed by the Congress of the United States. Common Sense versus International Copyright</u> (Philadelphia, 1886), pp. 1-2. The dialogue between "Common Sense" and an author makes the author out to be a hypocrite who admitted everything which the opponents of international copyright claimed, but who asked for copyright for his own selfish purposes. There followed a definition of piracy which concluded by asking publishers who supported international copyright if their new interest was not based on the fact that lately established firms were endangering the means by which the older houses had become wealthy. Last, there was a piece of

Sherman's challenge was not ignored. The publisher Holt felt that it was necessary to answer the twelve arguments against international copyright. A summary of his point-by-point response follows.

I. American inventors are protected. Why should American authors be robbed by failure to obtain for them protection abroad and protection from competition with cheap goods at home?

II. "'Cheap literature is not as essential as cheap food and clothing.'" Why then should the farmer and the cloth manufacturer be protected?

III. Entry of British manufactures into the American market has nothing to do with the case; international copyright would probably expand American book manufacturing rather than increase imports.

IV. Why should not foreign authors be protected if it would help our authors elsewhere? Furthermore, extension of American copyright to foreign authors should end the system of unauthorized reprinting which has closed the domestic market to American writers.

V. It is untrue that foreign publishers rather than foreign authors would benefit. Foreign authors currently receive less from American firms than under the former system

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"Correspondence" which took phrases from the Century Magazine editorials supporting international copyright and "remarked" on each of the seven reasons given there for passing the law. It was signed "Truth." Ibid., pp. 3-18.

of trade courtesy.

VI. Patent laws are also difficult to administer. Is that an argument against them or international copyright?

VII. Potato raisers are also a minority, yet the law protects potato patches from theft. Thus a minority "dictates" to the majority.

VIII. It is Sherman's statement, not the authors', that is pretense; he also ignored the fact that much of the reprinted literature is not paid for, so that competing home goods cannot demand decent prices.

IX. For the reasons previously cited, there never can be "'a sufficiency of good American literature'" paid for at prices authors can afford to accept.

X. Sherman is saying that American authors are stimulated only when they read pirated editions of great works, "'and that the days of Hawthorne, Emerson, Longfellow and Bryant were /the/ evil days'" of American literature.

XI. Our school books are American; what is reprinted is trash.

XII. Any rule against theft would create difficulties "'in a community of robbers.'"[101]

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[101]Holt, quoted in "Plain Talk to a Professed Pirate /Documents of the American Copyright League, No. 2/," Critic, VIII (n.s. V) (April 10, 1886), 185-186. In the light of past antagonism of the Copyright League to any interest but those of authors, this use of material by a publisher is significant. In the next phase of the struggle for international copyright, the American (Authors') Copyright League was to combine its efforts with those of the American (Publishers') Copyright League.

Deuster's pamphlet on international copyright combined all of the arguments heretofore used against the reform, and showed all their inconsistencies. It may be summed up under nine headings.

1. Literature, being imitative rather than creative, should be granted no rights; the Constitution upholds rights of reproduction only.

2. International copyright would impede the word-wide transmission of ideas so necessary for progress; domestic copyright, while protecting American authors, does not interfere with this flow of knowledge.

3. The monopoly granted by international copyright would increase the cost of books; conversely, it would flood the American market with foreign books.

4. Because authors merely use other men's ideas, they exert no control over their productions. Since literature

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Sherman was also effectively refuted in "The Objections to International Copyright," P. M., XXIX (March 6, 1886), 334-335.

In July, 1886, the Forum published an article significant for two statements contained therein. One was Sherman's contention that authors have no natural right to the literature they produce; the other, by Lathrop (cited above; see note 81) was indicative of the failure of the line previously taken by the American (Authors') Copyright League. "I founded the American Copyright League and directed it for two years, but left the Committee because it refused to take a vote of the League members as to printing foreign books. The majority of American authors favor a law that shall compel foreign books to be printed here, if copyrighted. The League Committee does not represent them." Lathrop and Sherman, "Should Foreign Authors Be Protected?" Forum, I (July, 1886), 495-505.

fails to meet this essential test of property, it can be protected only by a statutory grant of privilege.

5. Sentiment rather than public policy and justice to the American people constitutes the only argument for international copyright.

6. Reciprocity, as proposed by the Hawley bill, would only subject American authors to more competition.

7. "Far greater, however, would be the injury which, through a diminution of the American manufacture of books, an international copyright would inflict upon our printers, paper-makers, book-binders, folders, type-founders, stereotypers, designers and artists of every kind. Tens of thousands of men and women. . . .would lose their employment."

8. The vast increase in book prices under international copyright would create such opposition that all copyright, national as well as international, would be swept away.

9. The Constitution intended copyright as a measure for the promotion of science and art in the United States, not in England. Such promotion would end when international copyright cut off the flow of reprints of European books.[102]

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[102] P. V. Deuster, International Copyright. An Old Question Which Has Haunted the Halls of Congress Nearly Half a Century. Why Senate Bill 191, Entitled "A Bill to Establish an International Copyright" Should Again Meet the Fate of Those Gone Before (Milwaukee, 1886), pp. 4-8. Deuster conveniently ignored the fact that unauthorized reprinting was flooding the country with foreign books (see items 3 and 6) while he argued that such reprinting was beneficial (see item 9). Note the threat embodied in item 8.

The third opponent of international copyright, Hubbard, confined himself to the arguments that the United States, like other nations, could grant only limited rights, not monopolies. Authors, however, claimed not only the right to hold, lease, or sell their work, but also to publish and sell, to multiply copies in every language, perpetually, without the imposition of any reservation. But copyright of any kind should be granted only when expedient; since cheap reprints of foreign works actually created more readers while international copyright would tax knowledge, the proposed legislation was therefore not expedient.[103]

In a letter to Senator Platt, Lea, still opposed to the idea of absolute copyright for authors, nevertheless admitted that both English and American writers were unjustly treated. His advice to the senator was that Congress, in legislating for international copyright, must consider all the interests involved in such a step: the reading public should not be deprived of relatively inexpensive books by the establishment of monopolies on the part of authors, publishers, or manufacturers of books. Legislators should keep in mind, as Senator Hawley had not done, the welfare of those engaged in book manufacturing; true protection for this phase of book production would be invalidated, however, if the tariff laws permitted importation of British materials for use in the

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[103]Gardiner G. Hubbard, "International Copyright," Science, VII (February 12, 1886), 135-137.

making of books. Reciprocity, as provided for in the Hawley bill, would not obtain greater protection for American authors in Britain than they already had under that nation's "first publication requirement," but might simply expose American writers unable to secure such arrangements to further unauthorized reprinting by British firms. On the other hand, the Chace bill protected authors, manufacturers, labor and readers, and also prohibited importation of foreign editions of works copyrighted in this country, a condition essential to proper functioning of an international copyright law. The clause in the Chace bill concerning abandonment of publication as cause for voiding copyright should keep books in the American market, Lea thought, since few publishers would be willing to relinquish sales of published editions to their rivals.[104]

Lea's role as a compromiser between the proponents of "pure and simple copyright" and the opponents of the reform becomes increasingly clear. From a position of antagonism toward international copyright he moved to the advocacy of a law which, although not entirely satisfactory, succeeded in

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104"International Copyright" [Open letter to the Hon. O. H. Platt, Chairman of the Senate Committee on Patents, Privately Printed, Philadelphia, 1883 (?)], in Henry Charles Lea, Minor Historical Writings and Other Essays, edited by Arthur C. Howland (Philadelphia: University of Pennsylvania Press, 1942), 345-351. Howland errs in assigning 1883 as the date of the letter; the Hawley bill to which Lea referred was not introduced into the Senate until 1885.

fulfilling the demands of the various interested parties to such an extent that enactment finally became possible. His part in that phase of the struggle for international copyright will be described in the sixth chapter of this study.

The Berne Convention

American interest in international copyright was stimulated by the conference on the subject held in Switzerland in 1885, and it was hoped that a law might be passed to permit the participation, or at least the cooperation, of the United States. In his first annual message to Congress, President Cleveland said:

> An international copyright conference was held at Berne in September, on the invitation of the Swiss Government. The envoy of the United States attended as a delegate, but refrained from committing this Government to the results, even by signing the recommendatory protocol adopted. The interesting and important subject of international copyright has been before you for several years. Action is certainly desirable to effect the object in view; and while there may be question as to the relative matured views of the Berne conference can not fail to aid your consideration of the subject.[105]

Eight articles of the convention as signed by members of the International Copyright Union at Berne on September 9, 1886, and ratified on September 5, 1887, are particularly pertinent to the problem of international copyright as it was

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[105] Annual Message of President Cleveland to the 49th Congress, 1st Session, December 8, 1885, in Richardson, Messages and Papers of the Presidents, X, 4919-4920. In his Annual Message to the 49th Congress, 2d Session, December 6, 1886, President Cleveland reiterated the substance of the above passage. Ibid., XI, 5090-5091.

debated in the United States. Article II stipulated that authors of the signatory nations, having met all necessary conditions, were to enjoy the same rights granted to natives in each of the countries participating, the country of first publication being considered the country of origin. Article V provided for the same protection for authorized translations as for original works. Article VII permitted republication of newspaper and periodical matter in the original language or in translation, in all member nations of the Union unless expressly prohibited in each number of the periodical. (In 1896, the meaning of this article was clarified to include serial novels.) Article X stated that adaptations were to be regarded as infringements; in all such cases, however, court decisions were to be based on the laws of the nation where the alleged infringement took place. Article XI provided for the statement of authorship, although publishers of anonymous or pseudonymous material might represent the author. In any case, courts of member nations might require a certificate of validation of copyright. Article XII established the right of seizure of pirated works administering international copyright upon the member nations.[106]

The signing of the Berne convention occurred too late to be of much aid to the Hawley bill, which had been superseded

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[106]Library of Congress, International Copyright, Copyright Office Bulletin No. 13 (Washington: Government Printing Office, 1908), 33-44 (Appendix).

by the Chace bill. It was hoped, however, that the latter would be passed as a result of this action of "most of the great powers, the United States excepted."[107]

Failure of the Hawley Bill

The fate of the Hawley bill was determined on the basis of testimony given before the Senate Committee on Patents on January 28 and 29, February 12 and March 11, 1886, by representatives of the various interested groups. Both it and the Chace bill were under consideration at the hearings. The first scheduled speaker was Dr. Howard Crosby, who formally presented the American (Authors') Copyright League case for the Hawley bill; he was followed by Senator Hawley, who explained his bill, and to the surprise of the league members present, declared his willingness to insert a printing clause in justice to the typographical unions. A. C. Sedgewick, the third to speak, was apparently a difficult witness, for he not only interrupted other speakers but also, in supporting the Hawley bill in its original form, confused the issue by his misunderstanding of certain aspects of the copyright program. Although most of those testifying on the first day of the hearing were authors, the publisher Holt was there at the request of the Copyright League; his contribution was a statement concerning authors' and publishers' difficulties

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107 "The International Copyright Union," P. L., XXX (October 16, 1886), 551. The Chace bill is discussed in Chapter VI, below.

after the breakdown of trade courtesy and the flooding of the country with worthless reading matter by the "libraries," which had been forced to reprint voluminously to retain their status as periodical publishers under the postal regulations. After reasserting the league's support of the original Hawley bill, Green, secretary of the organization, called upon S. L. Clemens to speak. Like Senator Hawley, Clemens took the line that a clause requiring printing of copyrighted material in this country was essential, and stated that his publishing arrangements in England rewarded him satisfactorily. George Ticknor Curtis then advocated reciprocity and the appointment of a commission to obtain data on foreign copyright. An eighth witness, W. H. Browne, drew a comparison between the proposed Hawley bill and the existing law of trade marks. Scudder, the Cambridge publisher, concluded that day's testimony by pleading for the requirement of simultaneous publication here and abroad, foreign authors to meet the conditions required of Americans, including title entry with the Librarian of Congress, notice of copyright in every copy of a book, and deposit of two copies of copyrighted books in the Library of Congress within ten days of publication, as essential in granting American copyright to foreign authors. Because Lowell could not attend until the next day, Green asked for and received an adjournment until that time.[108] Gilder wrote

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[108] U. S. Congress, Senate, Committee on Patents, "International Copyright. Statements Made before the Committee on Patents. . . .Relating to the [Hawley] Bill (S. 191)

his wife that the January 28 hearing "did not go very well" because of Lowell's absence. On the next day, however, Lowell "did a giant's work for the cause."[109]

On January 29, Lowndes, counsel for the American (Authors') Copyright League, presented a petition of the fifteen hundred members of the Music Teachers' Association of Rhode Island, many of whom were composers, in favor of the Hawley bill. Hubbard, speaking only as a private person interested in the question, presented the initial attack on international copyright. Prefacing his remarks by asserting that authors' ideas became common property once their manuscripts were published, he built his principal argument around the fear of increased book prices should international copyright be established.

Called upon by Senator Platt, the chairman, Lowell opened his remarks by stating the Hubbard's objections to international copyright were "purely hypothetical," and that his assertion that such legislation would make books more expensive was based upon a misconception of the true nature of the book business. The anachronistic British system, dictated

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. . . .and the [Chace] Bill (S. 1178). . . . ," Senate Report No. 1188: to Accompany Bill S. 2496, Reports of Committees of the Senate of the United States, 49th Congress, 1st Session, 1885-1886, Vol. 7, pp. 3-27. For a useful interpretation, see also R. R. Bowker's "Washington Notes: The Copyright Hearings," P. W., XXIX (January 30, 1886), 138-139.

[109]Gilder to his wife, January 28 and 29, 1886, in Gilder (ed.), Letters of R. W. Gilder, pp. 194-195.

by the owners of circulating libraries, was dying out, and many British publishers were able to issue well-printed small books at a shilling and still pay copyright. But Lowell himself preferred to take the moral rather than the business view of the question. "There is one book better than a cheap book, and that is a book honestly come by." Copyright was the child of the printing press, for the question assumed importance only as book production increased. And what was wrong with an author's wanting more money for his book? In all fairness, he should be allowed to dictate the terms of sale to the publisher. Concerning the effect of international copyright on literary taste and on the number of books published, Lowell had no data to defend his assertion that both would be improved. To the question of whether the United States was morally obliged to protect American authors overseas, Lowell replied that "'the comity of nations protects all kinds of transportable property except that in books.'" Americans would receive British copyright upon the establishment of reciprocity for English writers in this country. International copyright would benefit the American book trade because the United States offered the largest market in the world for books in English. Serial publication in magazines, with double sale to the periodicals and to the book publishers, was resorted to by American authors to make the most they could out of a bad situation. Private libraries were diminishing in America because of the prevalence of cheap books of foreign authorship which undersold American works as a result of the lack of international copyright. Such legislation would tend

to drive British and American trash off the market. As to the question of the manufacture of books, Lowell thought that American ingenuity should be able to develop cheap mechanical means of production to offset the low labor costs of English book production so that that threat would be removed.

At the conclusion of Lowell's speech, James Welsh, president of the Philadelphia Typographical Union No. 2, and representative of the International Typographical Union, presented twenty-six memorials and petitions to the effect that the five or six million members of the associated unions would support the Hawley bill only if it was amended by a clause requiring that books copyrighted in the United States be printed here. The Boston publisher, Dana Estes, of Estes and Lauriat, said that although he preferred any international copyright bill to none, one with a manufacturing clause was preferable. His firm, he added, had discontinued acceptance of the manuscripts of unknown American authors as unfeasible under existing conditions. R. R. Bowker then confirmed the picture drawn by previous witnesses by describing the general publishing situation. The hearing concluded with the submittal of a facsimile memorial in support of the Hawley bill, which bore the signatures of one hundred authors, and of Lea's printed argument for the Chace bill.[110] "The result of the

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[110]U. S. Congress, Senate, Committee on Patents, "International Copyright. Statements Made before the Committee

second day's hearing was to give the Chace bill a decided impetus, and to make the passage of such a bill fairly probable."[111]

The third hearing, on February 13, 1886, opened with the comments of the reprinter Sherman, who repeated much of what he had previously written in his pamphlets against international copyright. Once more he alleged that imported tariff rates, with the knowledge and collusion of customs officials, and he cited the "suppressed" report of special Treasury agents Dutton and Williams to that effect. Specifically, he charged that the Encyclopedia Britannica, which he was engaged in reprinting, was also being imported in this fashion. The second speaker, Estes, before stating more explicitly his previous comment that international copyright would encourage American authors by re-opening the domestic market to them, refuted Sherman's argument by demonstrating that the reprinter really wished to delay passage of an international copyright act until he could bring out the remaining volumes of the pirated Britannica. A Philadelphia copyright lawyer, Josiah R. Sypher, suggested the royalty-open

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on Patents. . . .Relating to the Bill (S. 191). . . .and the Bill (S. 1178). . . . ," Senate Report No. 1188: to Accompany Bill S. 2496, Reports of Committees of the Senate of the United States, 49th Congress, 1st Session, 1885-1886, Vol. 7, pp. 27-60.

111 [Bowker], "Washington Notes: The Second Copyright Hearing," P. W., XXIX (February 6, 1886), 231.

publishing system as the fairest plan. Also admitted by the committee were statements from Bowker on the interests of authors, publishers, printers and public, and from Baird attacking copyright as a monopoly against the best interests of the American people. The fourth hearing, on March 11, 1886, consisted of an analysis of the various proposals by Ainsworth R. Spofford, Librarian of Congress, and the placing in the record of printed statements and letters from Putnam, supporting any type of international copyright bill; from Harper and Brothers, for either the Hawley or Chace bills; from Lovell, the reprinter, for the royalty plan; and from Munro, "library" publisher, for any "equitable" law.[112]

The Hawley bill proving inadequate to legislative needs in the view of the Senate Committee on Patents after it had heard the statements of authors, publishers, and printers, the proposed legislation was abandoned in favor of the Chace bill, which after amendment represented a compromise somewhat more acceptable to the various interests involved. The report on the Hawley bill and on the original Chace bill, including the transcript of the hearings of January 28, 29, February 12, and March 11, was presented to the Senate on May 21, 1886, by Senator Chace, when his bill (S. 2496) was

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[112]U. S. Congress, Senate, Committee on Patents, "International Copyright. Statements Made before the Committee on Patents. . . .Relating to the Bill (S. 191). . . .and the Bill (S. 1178). . . . ," Senate Report No. 1188: to Accompany Bill S. 2496, Reports of Committees of the Senate of the United States, 49th Congress, 1st Session, 1885-1886, Vol. 7, pp. 74-133.

reported from the committee as a substitute for his earlier bill (S. 1178).[113]

Summary

Disagreement among authors, publishers, printers, and others as to the best method of achieving international copyright legislation marked the struggle over the Dorsheimer and Hawley bills. The authors, with their newly organized American Copyright League, and their newly instituted propaganda device of "authors' readings," failed to gain Congressional support for legislation which confined itself to the simple question of granting copyright to foreign authors in return for equal treatment abroad for Americans. Their failure resulted in part from the opposition of other interests to such a narrow interpretation of international copyright, in part from a growing schism in favor of compromise within the ranks of the league itself, and in part from the realization of all other groups save for a few die-hard protectionists and pirates that such compromise was essential if ever the United States was to have an international copyright law. The Dorsheimer and Hawley bills failed, but the amended Chace bill arose Phoenix-like from the ashes of defeated hopes and became the basis for the law that was finally enacted.

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[113]Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, p. 51. The Chace bill, as amended, will be discussed in the next chapter.

CHAPTER VI

COOPERATION AND PARTIAL VICTORY

Propaganda for International Copyright

After the failure of the Hawley bill in 1886 there was an intensification of efforts to arouse interest in the passage of an international copyright law. Not only did authors' readings continue to be held to arouse moral and financial support for the reform movement, but also various types of propaganda were issued by groups and individuals to influence the general public. Even the pulpit was used with good effect.

Writing in Harper's Magazine in October, 1887, Howells concluded a portion of an essay on the moral issues involved in the international copyright question with a practical suggestion.

> . . . /We venture to suggest to our good friends of the International Copyright League /he was probably referring to the American (Authors') Copyright League; the International Copyright Association of Boston had not yet been organized/ that they prepare a very brief and very plain statement of the facts, such as the wayfaring man, though a fool, might not err in, to be printed in all the newspapers, and to be read in the churches throughout the country. We trust that few editors or ministers would refuse their aid to so good a cause, or would object to submit for signatures in their offices or vestries a petition to Congress for the passage of an international copyright law. The editor could easily illustrate the case by reference to some sketch or story reprinted from

> an English magazine without compensation to the author; and the minister could instance pirated reprints in the Sunday-school library in proof of the shameful wrong involved by the absence of such a law.[1]

As if in direct response to Howells' proposition, such material shortly began to appear, although not always directed to "the wayfaring man, though a fool." For example, Matthews wrote an article based on the tabulation of book sales in America for the years 1882 to 1886 to prove that international copyright would increase the price of only one class of inexpensive books - fiction - because it constituted the only group of foreign books widely reprinted and read in the United States.[2] Expanded into pamphlet form under the title "Cheap Books and Good Books," the article was later distributed gratuitously by the American (Authors') Copyright League. It was obtainable "in single numbers or in quantities on application to the Treasurer of the League, Mr. R. U. Johnson, 33 East Seventeenth Street [New York], or to the

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[1][W. D. Howells], "Editor's Study: International Copyright," Harper's Magazine, LXXV (October, 1887), 804. P. L. seconded the suggestion by agreeing with Howells that, given the opportunity, the American people would eventually support the moral point of view concerning the question. However, compromise and concessions on the part of advocates of international copyright would be much more quickly effective. "The Campaign for International Copyright," P. L., XXXII (October 8, 1887), 515.

[2]Brander Matthews, "Cheap Books," Century Magazine, XXXV (n.s. XIII) (December, 1887), 328-329.

Secretary, Mr. George Walton Green, 11 Pine Street [New York]."[3] In a different vein, somewhat moralistic, Boyesen castigated the American fault of justifying unauthorized reprinting on the grounds that it had become customary. He went on to discuss the probability that international copyright would doubtless not increase the price of books, so that no obstacle remained any longer in the way of affording adequate protection to authors.[4]

The league also issued a number of direct appeals to the public to support the international copyright movement. "An Open Letter to Readers of Books" concluded:

> Every American citizen has a practical interest in this reform. We desire to impress upon Congress the fact that the public opinion of intelligent readers is in its favor. We ask each reader to do his part, either by joining the League, which welcomes readers as well as writers of books, or by signifying to its Secretary his willingness to sign the memorial for international copyright, or still better by writing at once to his Senator and Representative in Congress urging them to vote for such a measure. The League appeals to the honor, the patriotism, and the business common-sense of American readers in behalf of international copyright, and it believes that such an appeal will not be heard in vain by the American people.

The document was signed by Lowell, Stedman, Green, and

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[3]"Copyright Notes," P. W., XXXIII (April 14, 1888), 637. In 1889, the league reprinted a revised issue, which incorporated another magazine article by Matthews, under the title American Authors and British Pirates; this work has been cited in Chapter II of this study.

[4]Hjalmar Hjorth Boyesen, "A Defense of the Eighth Commandment," Cosmopolitan, IV (February, 1888), 485-489.

Johnson, respectively president, vice-president, secretary, and treasurer of the league, and by Eggleston, chairman of the executive committee, T. W. Knox, and Bowker.[5]

A second "Open Letter" stated the need for international copyright in the following terms: (1) to raise the moral level of the United States to that of nations in the International Copyright Union; (2) to develop American literature and to help American authors by eliminating competition with foreign writers whose work was not paid for; (3) to help foreign authors, who deserved to be paid by Americans as well as by their own countrymen; (4) to lower the cost of "the best new literature" to conform to public demand. The appeal closed by urging readers to sign petitions and to write to their Congressmen and Senators.[6] A later "address" urged its readers to request their representatives to take action on the Chace bill while time remained in the current session of Congress.[7]

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[5]"An Open Letter to Readers of Books: Address of the American Copyright League," P. W., XXXIII (January 21, 1888), 64-65. Though he could ill afford the time, Eggleston had accepted the chairmanship of the executive committee in order to push through the reform. His greatest contribution was as "a politician" and as "a lobbyist," although he was out of the country when the bill was finally enacted. He also wrote a number of "copyright fables" in which he satirized the pirates. See Randel, Edward Eggleston, pp. 182-183, and Johnson, Remembered Yesterdays, p. 242, for estimates of his contribution.

[6]"American Opinions on International Copyright: An Open Letter to the Readers of Books," Our Day, I (March, 1888), 217-220.

[7]"Address of the American Copyright League," P. W., XXXIII (June 2, 1888), 870.

An entirely different approach was used by Eggleston to publicize the international copyright question. His first article, entitled "A Prospective Retrospect," purported to have been written in the twenty-first century or even later, and was largely a criticism of the shortcomings of the nineteenth century. One paragraph dealt with the gradual Anglicizing of America because of the lack of international copyright in the United States well into the twentieth century.[8] More directly concerned with international copyright were two anecdotes, one a dialect story and the other a fable, composed by Eggleston and printed in the Washington Post in May, 1888. They are reproduced herewith.

> Uncle Joe is one of the most ingenious darkies in Washington. The other day he contrived to make a rude wheelbarrow for himself. The morning after it was completed he went to try it, but was dismayed to find it gone.
>
> 'I 'clah to gracious!' he exclaimed. 'I knowed dat wah a mighty nice wheelbarrow, but I didn't 'spec' it gwine run off by its own se'f.'
>
> He presently found it in use in Jake Turner's garden.
>
> 'Jake, what you doin' wid my new wheelbarrow, I'd like to know?'
>
> 'W'y, Uncle Joe, 'taint none uv yo'rn. Hit belongs to the community. Fer you to keep it

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[8]Edward Eggleston, "A Prospective Retrospect," Harper's Weekly, XXXI (December 31, 1887), 958. Eggleston's biographer, Randel, asserts that the article was supposed to have been written in 1987, but internal evidence shows that date to be entirely too early. Furthermore, Eggleston did not, it seems to me, place as much emphasis on copyright as Randel claims for the article. Unfortunately there is no evidence presented in the biography to substantiate Randel's statement that "A Prospective Retrospect" inspired Edward Bellamy's Looking Backward. Randel, Edward Eggleston, pp. 181-182.

would be a monopoly.'

'Haint I done made it?' cried Uncle Joe. 'An' haint it mine?'

'No, it haint,' said Jake. 'Twuz yo'rn afo' the wheel wuz put on to it, but when you put the wheel on it you done los' it.'

'What's the wheel got to do wid it?'

'W'y you see, I done hear Cun'l Beck, the Kaintucky Senator, say dat when a man writ a book 'twuz his'n, but ef he print it 'twuzn't his'n. An' printin' makes a book go, an' a wheel makes a wheelbarrow go. Cun'l Beck said that it wuz a monopoly to give a man the book he writ arter it wuz printed. So I sez it's monopoly for Uncle Joe to have his wheelbarrow when the wheel's on.'

'You g'lung,' said Uncle Joe, going off with the wheelbarrow. 'I done made it, and it's mine, wheel ur no wheel. What good's a wheelbarrow 'thout a wheel?'

'Well, what good's a book that you can't print? An' Cun'l Beck he said — '

'Oh, you shet up, Jake. Some niggahs get so smart it makes 'em fools. An' as for Cun'l Beck, I don't want to be dis'spectful, but ef he ever said any sech stuff I don't reckon he meant it. Any way, this ain't Kaintucky, an' ef you go off with my wheelbarrow agin I'll have you tuk up. You heah, now?'[9]

The second anecdote concerned an Oriental judge known more for his shrewdness than for his righteousness. Yet when a poor scribe appeared before him to seek judgment against the magistrate's own nephew, the case was decided for the plaintiff. Asked by a courtier why he had dealt in such fashion with a mere scribe, the judge replied, "'If I failed to right his wrongs he could revenge himself on me by telling his complaint in the annals of the land.'"[10]

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[9]Eggleston, "Uncle Joe's Monopoly: - Respectfully dedicated to Senator Beck [opponent of international copyright legislation]," Washington Post, May 1, 1888, p. 4.

[10]Eggleston, "An Oriental Story: with a Bearing on the

Anecdotes were also used to influence publishers as well as the general public and members of Congress. The

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International Copyright Bill," ibid., May 2, 1888, p. 4. Another phase of Eggleston's activity on behalf of international copyright was his speaking on the subject. During the New York convention of the Typothetae (master printers) on September 18-20, 1888, he addressed the group. Although he was able to appease the printers' fears concerning international copyright, the question was tabled, in an atmosphere of doubt, as too complex for a policy to be settled upon in the brief time at the group's disposal. "The Convention of the Typothetae," P. W., XXXIV (September 29, 1888), 487-488.

Lowell, similarly active, delivered a speech probably more valuable for its propaganda value than for any direct influence. At the dinner of the Society of Authors, London, July 25, 1888, he called for fraternity between English and American writers, defended the concept of world-wide authors' rights in literary property, and stated that American authors were willing to accept almost any American legislation that would recognise "the principle of international copyright." James Russell Lowell, "At the Dinner to American Authors," American Ideas for English Readers (Boston: J. G. Cupples Company, 1892), pp. 68-73. The speech was quoted earlier in "The Dinner of the Authors - Mr. Lowell on Literature," P. W., XXXIV (August 11, 1888), 185-186.

In connection with Lowell's activities the following letter is of interest. "'Will you permit a confused Philistine to ask why it is that the scholarly President of the American Copyright League is found combatting, in a political address, the principle of protection to American labor in general, and simultaneously discovered urging, in his official capacity, protection to one particular kind of that labor? Is it true, as it has been suspected, that the "literary feller" holds himself to be outside the rule that binds most men to consistency? and does the League imagine that its cause is strengthened by the fact that three-fourths of its members would deny to others what they ask for themselves?'" Charles W. Thomas, of Belleville, Illinois, to editor, date not given, in "International Copyright," Critic, XII (n.s. IX) (March 17, 1888), 129.

Another letter to the Critic attacked a different kind of inconsistency. "Why should not journals that advocate the passing of an International Copyright law refuse to notice pirated books? At present one finds a column devoted to ardent appeals for copyright side by side with enthusiastic notices and reviews of stolen books, telling the public where these books can be bought cheap of publishers who have taken the authors' work without paying for it, and declined American work which would have to be paid for." "R" to editor, February 20, 1888, in "International Copyright," ibid., (March 3, 1888), 106.

following unsigned story, "dedicated to publishers on both sides of the Atlantic," demonstrates the sad fate of authors whose publishers engaged in "reprinting wars."

> Once upon a time two rival coachmen met upon the road, each with a passenger in his coach. After a few unpleasant words, Smith called Jones a thief. Whereupon Jones declared that if he were called that again he would whip Smith's customer. To this Jones replied, 'If you do, I'll whip yours,' and called him a thief again. Thereupon Jones laid on his whip and made Smith's customer howl, and Smith retaliated by lashing Jones' fare. After thrashing each other's passengers to their hearts' content, they drove off in opposite directions. After a while Smith's passenger recovered, and asked, 'Why did you let him beat me so?' To which Smith replied, 'Ah! but did you see how I "broke up" his customer?'[11]

Several clergymen made use of the international copyright theme in their writing and speaking. Putnam reported that Archdeacon A. Mackay Smith supported the reform in the columns of The Churchman.[12] A Mr. Spurgeon, of New York, at a meeting of his parishioners to celebrate the publication of his two-thousandth sermon, said that he had never received payment "beyond an occasional newspaper containing a portion of the stolen property," and hoped that authors would obtain the desired international copyright law.[13] But the minister

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[11]"A Little Fable In Re Copyright," P. C., XXXIII (January 21, 1888), 47.

[12]Putnam, "The Contest for International Copyright," The Question of Copyright, p. 50.

[13]"The Clergy and International Copyright," American Bookseller, XXIII (January 15, 1888), 22.

who perhaps outdid anything Howells might have had in mind when he made his proposal was Dr. Henry Van Dyke, who preached on the topic at the Sunday morning service of the Brick Presbyterian Church, New York, on January 8, 1888;[14] in the congregation on that occasion were many authors, publishers, and lawyers.[15] The sermon, entitled "The National Sin of Literary Piracy," was reprinted and distributed to newspaper editors, the clergy, Congressmen, and educators throughout the United States.[16] In keeping with the policy of agitating the question before denominational conventions and ministerial associations, on one occasion Van Dyke's sermon was repeated in a novel fashion. At an annual dinner of the Congregational Church Club of New York, the first speaker, Putnam, delivered "The National Sin of Literary Piracy," while Dr. Van Dyke, when it was his turn to speak, presented the publishers' arguments, each speaker apologizing that he had heard the other often enough to "steal the words out of his mouth."[17]

The text for the sermon, from which excerpts are given

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[14] Ibid.

[15] "International Copyright in the Pulpit," P. W., XXXIII (January 28, 1888), 183.

[16] Johnson, Remembered Yesterdays, p. 266.

[17] Putnam, Memories of a Publisher, pp. 380-381. Putnam said that "hundreds of sermons" dealt with the topic; on one occasion Van Dyke delivered his famous sermon in the /New York Avenue?/ Presbyterian Church, Washington, at a service to which members of Congress had been individually invited. Ibid.

below, was Proverbs xiv, 34:

> Righteousness exalteth a nation; but sin is a reproach to any people.

The central idea of this text is the moral accountability of nations.

. . . .The ultimate question in regard to them is not, what is actual, nor what is expedient, but what is right?

This is the doctrine of the Bible. It has little to say about political economy; but it has much to say about public ethics. Indeed, the one lesson which stands out most clearly. . . .is that God judges nations, as well as individuals, by their moral qualities, and deals with them along the inflexible lines of righteousness. . . . .

This is also the doctrine of reason and philosophy. It matters not what theory of the origin of Government you adopt, if you follow it out to its legitimate conclusions, it will bring you face to face with the moral law. . . . .

This is also the doctrine of history. . . . . The story of the progress of man in modern times is nothing else than a record of the application of ethical ideas to the affairs of nations, the conflict of moral law with blind custom and brute force, the victory of essential right over ancient prejudices and legalized iniquities. . . . .

That which is unjust and cruel and wicked for men to do when they are acting singly, is unjust and cruel and wicked for them to do when they are acting collectively. . . . .

The refusal of our country to protect all men equally in the use and enjoyment of the product of their mental labor, the absence of an equitable and universal law of copyright, and the consequent practice of reprinting and selling the books of foreigners without either asking their consent or offering them any payment has been generally regarded as a question of politics, of economy, of national courtesy. But at bottom, as Mr. Lowell has said, it is a question of right and wrong; and therefore needs to be separated from the confusion of partisanship and the considerations of self-interest, and brought into contact with the Ten Commandments.

It is altogether idle and irrelevant to talk of 'the lonely rancher in Dakota and the humble freedman in the South,' and their consuming desire to obtain cheap literature. The question is, how do they propose to gratify that desire, fairly or feloniously? . . . .

> . . . .We shall be able to see that what has been euphoniously called 'the present method of uncompensated republication of books' brings us squarely up against the moral law; and that therefore, the Christian Church, as a 'guardian of private and public morals,' is not only entitled, but also bound, to take it up, and deal with it soberly and honestly. . . . .

After establishing the propriety of the church's interest in the question, Van Dyke went on to deal with the Biblical injunction to observe "the right of every man to enjoy the fruit of his own toil;" with the national sin of theft of the property of aliens; and with the punishments for that sin which, he said, were already being visited upon the American people:". . . .the perversion of national taste and manners by the vast circulation of foreign books that are both cheap and bad. . . . ; . . . .the partial atrophy of our native literature. . . . ; the weakening and degeneration of the popular conscience."[18]

Meanwhile, the "authors' readings" instituted in 1885 having proved successful, they were resumed in 1887, the first series being given in Chickering Hall, New York, on Monday and Tuesday afternoons, November 28 and 29. Large audiences contributed about four thousand dollars to the cause. The program, as arranged by Johnson, presented a distinguished group of authors and publishers seated on the stage, among the latter being Appleton, Randolph, Harper,

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[18]Henry Van Dyke, The National Sin of Literary Piracy (New York: Charles Scribner's Sons, 1888), pp. 1-21.

Scribner, Houghton, Estes, and Putnam. After an introduction by Bishop Potter, Lowell, as president of the American (Authors') Copyright League, addressed the audience on the development of American literature, with particular reference to the effect of the copyright situation upon it, and concluded by asking for an honest and fair-dealing plan of some sort. The authors and their selections were as follows: November 28: Mark Twain, "The Fatal Anecdote;" Eggleston, "A Prophetic Retrospect" (his "Prospective Retrospect"?); R. H. Stoddard, "The Heart of Love Lies Bleeding" and "The Follower;" H. C. Bunner, a selection from "The Zadoc Pine Labor Union;" G. W. Cable, a selection from "Grande Pointe;" James Whitcomb Riley, "When the Frost Is on the Punkin'" and "The Educator."; November 29: Lowell, "The Finding of the Lyre," "Aladdin," "After the Burial" and "The Courtin';" R. M. Johnston, "The Early Majority of Mr. Thomas Watts;" Warner, "The Hunting of the Bear;" T. N. Page, Christmas scene from "Unc' Edinburgh's Drowndin';" Howells, scene from "April Hopes;" F. R. Stockton, "Prince Hassak's March;" G. W. Curtis, "The New Livery," from the Potiphar Papers; Riley, "Nothin' to Say." The receipt of letters of encouragement from authors unable to be present was announced; these were from Bancroft, Whittier, Boker, Holmes, Hay, James, Stedman, General Lew Wallace, and Robert Louis Stevenson. The audience received copies of the "Memorial of American Authors," which contained facsimile signatures of

authors who had signed the appeal.[19]

The success of the New York meetings led to the sponsoring of a similar series in Washington. It was thought that the interest of Mrs. Grover Cleveland and "several other prominent Washington ladies," and attendance of "prominent members of the legislative and judicial branches of the Government" (at two to three dollars for reserved seats) would make the program doubly rewarding - both in receipt of funds and in furthering the influence of the American (Authors') Copyright League.[20] Accordingly, two programs were presented in the Congregational Church, the first on Saturday, March 17, 1888, and the second on Monday, March 19. Stedman presided over the Saturday afternoon program and delivered an introductory address; with him on the platform was Bancroft. Eggleston presented a selection from "The Graysons," and Howells a scene from "The Minister's Charge;" Gilder read two of his

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[19]"The Copyright Readings," P. W., XXXII (December 3, 1887), 884-885. "With all the variety in the programme, and even among so many distinguished men, the hit of the readings was James Whitcomb Riley," said Johnson, in Remembered Yesterdays, p. 263.

Henry James wrote, in his letter to the league, "Americans may have English copyright by prior publication there; not so the foreign writer in America. This injustice stains our bright national honor. England has not suffered by admitting foreigners to copyright benefits; why should America? By our present practice we eliminate ourselves from the cultural fellowship of the rest of the world." Quoted in "International Copyright," Critic, XI (n.s. VIII) (December 10, 1887), 301.

[20]"Authors' Readings in Washington," P. W., XXXIII (March 17, 1888), 496-497.

poems; Mark Twin, in Warner's absence, substituted with an account of an experience in a duel; T. W. Knox, in Bunner's place, read "A Fight with a Grizzly." Riley concluded the program with a recital of some of his dialect poems.[21]

On Monday evening Eggleston presided. In his opening remarks, he expressed appreciation for encouragement from members of Congress concerning the copyright bill. The program presented Johnston reading "The Various Languages of Mr. Billy Moon;" Mark Twain, "An Encounter with an Interviewer;" Boyesen, "Hail to the King" (unpublished fragment of a Scandinavian epic); Warner, "A Fight with a Trout;" Stockton, selections from Rudder Grange; Bunner, "The Dead Emperor" and "The Reformed Exhorter;" Page, "Unc' Gabe's White Folks" and "Meh Lady;" Riley, "The Educator." After the program, President Cleveland received the authors informally at the White House. "No formal presentations were made, as the President knew the gentlemen of the Copyright League well enough to need no introduction."[22] Receipts from the Washington readings were about

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[21]"Authors' Readings in Washington," ibid. (March 24, 1888), 517. Johnson recollected that the train from New York carrying the authors was the first to reach Washington after the great blizzard of 1888. That fact may account for the substitutions on the first program. See his Remembered Yesterdays, p. 263. Gilder, on March 17, 1888, wrote to his wife that following the afternoon reading, he "took by appointment a small party to 'tea' at the White House with Mrs. Cleveland and Mrs. Lamont. /He/ introduced Mark Twain, Riley and the /Laurence/ Huttons to the President." Gilder (ed.), Letters of R. W. Gilder, p. 196.

[22]"Authors' Readings in Washington," P. W., XXXIII (March 24, 1888), 517. Compare the quoted sentence with the

three thousand dollars, with a net payment to the league of about nine hundred dollars, according to one report.[23] The remainder was perhaps used to defray the travelling expenses of the authors participating, although critics might have questioned their taste in accepting such payment under the circumstances. The New York readings had netted the league four thousand dollars; the authors had received resolutions of thanks.[24]

Reorientation of the American (Authors') Copyright League and Its Results

For the first three years of its existence (1884-1887) the American (Authors') Copyright League supported "pure and simple copyright." At length the hopelessness of that position was recognized, and the need for concessions was realized.

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citation from Gilder (footnote 21, above). According to Johnson, Stedman also read three of his poems on the Monday evening program. Remembered Yesterdays, p. 263.

In contrast to the literary nature of the New York and Washington events as sponsored by the American (Authors') Copyright League, it is interesting to read the following account of a Boston program held under the auspices of the International Copyright Association of that city. "The floor and balcony of the Hollis Street Theater. . . .were filled on the afternoon of the 21st [of March, 1888]. . . . . Mr. Dana Estes presided. Mr. John Trowbridge. . . .read one of his poems. Singing by the Lotus Club followed. A performance of 'The Jilt,' by the Dion Boucicault Company, was next given. Between the acts of the play Ernst Perabo, the pianist, played some of his [authorized?] transcriptions from Cullivan's 'Iolanthe,' and Miss Sadie Holmes, of New York, gave some readings." "International Copyright League of Boston," P. M., XXXIII (March 24, 1888), 517.

23"Authors' Readings in Washington," P. M., XXXIII (March 31, 1888), 563.

24"Meeting of the Copyright League Council," Ibid., XXXII (December 3, 1887), 885.

". . . .[I]t became evident that we had reached an impasse," Johnson wrote, "and that nothing further could be done in Congress without a compromise with our opponents, the labor men represented by the International Typographical Union."[25] This new point of view involved two other steps not recorded by Johnson: the defeat of the "old guard" of the league, and cooperation with publishers. The summary of the secretary's annual report presented at the meeting of the league on November 12, 1888, told the story. On November 3, 1887, the council had recommended a resolution supporting the Hawley bill, with the executive committee at the same time being given plenary powers. Members of the league, however, had preferred a liberalizing of policy. While still adhering to the ideal of "pure and simple copyright" they had felt that concessions might be made by the council and executive committee to secure passage of an international copyright bill. A new executive council had been formed, with the powers requested for it; its chairman was Eggleston, its secretary, Green; other members were Johnson, Knox, and Bowker. Each member of the executive committee had also been assigned a particular task: Eggleston, to work with representatives of typographical unions to secure their approval of some form of international copyright; Knox and Johnson, to keep in touch with Congressmen, editors, and newspapermen; Bowker, to get the cooperation of

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[25]Johnson, Remembered Yesterdays, p. 242.

all publishers in supporting the movement, and to harmonize their views. Two visits had been made by committee members to H. C. Lea, drafter of the Chace bill, to explore the possibility of amending his bill specifically to meet the objections of the typographical unions. Failing in this, the committee, after conference with a committee of publishers, had called upon Senator Chace "to see if it would not be possible to agree upon a bill which, while involving concessions on the part of all interested, should yet recognize the principle of literary property, and be of such a character as to give reasonable hope of its passage." Further conferences between the two committees and Senator Chace had produced a revised bill which the senator had introduced into the upper House. The secretary's report, embodying this information, was accepted, and the policy described therein was approved; the new council and executive committee were directed to continue efforts along the same lines. In the election of officers which followed, Matthews and Titus M. Coan were named members of a newly constituted publications committee, and the executive committee of 1887, headed by Eggleston, was reappointed.[26]

The text of the letter to publishers mentioned in the secretary's report read simply: "We beg to suggest respectfully

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[26] "American Copyright League," P. W., XXXIV (December 1, 1888), 882-884. Cooperation between the authors and publishers will be more fully discussed in the next section of this chapter. Mention of joint activities is made at this point to demonstrate the league's change of policy.

that at the present juncture it would be a great advantage to have an organization of the publishers at as early a day as possible, in order that we may have a conference regarding an International Copyright Bill and cooperate regarding its passage.'" It was sent out on December 17, 1887. The first response was a meeting of publishers and other interested persons in Boston on December 27,[27] called by Dana Estes, of the firm of Estes and Lauriat. About sixty authors and publishers attended. After discussion of the problems of copyright reform by Estes, Lowell, and Congressman John D. Long, the following officers were elected: president, Charles W. Eliot; vice-presidents, John Lowell, Francis Parkman, H. O. Houghton; treasurer, T. B. Aldrich; secretary, Estes; assistant secretary, H. F. Kellogg; directors, A. H. Rice, J. F. Andrew, F. A. Walker, L. E. Bishop, E. H. Clement, J. D. Long, B. H. Hicknor. The constitution established the organization as the International Copyright Association, and stated that its object was the promotion of "'the progress of science and the useful arts'" by securing to authors, both American and foreign, "'the exclusive right to their writings'" by means of legislation or treaty. Membership was open to "'any persons. . . . Interested in the subject, and willing to aid in creating a

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27 "The American Publishers' Copyright League: Origin and Organization," Ibid., XXXIII (January 21, 1888), 66.

public sentiment in favor of legislation upon it.'"[28]

A second meeting of the International Copyright Association was held on January 24, 1888, when it was decided to support the Chace bill with the amendments proposed by the American (Authors') Copyright League and a newly formed publishers' league. A committee was appointed to consult with Senator Chace.[29] This committee succeeded in getting its suggestions accepted by the senator and by the executive committees of both the other leagues. At a third meeting on February 6, 1888, other committees were appointed to confer with representatives of the Boston and Cambridge typographical unions concerning the amendments proposed by the Philadelphia union, and to draw up petitions to Congress as well as to appear at House and Senate hearings to present the organization's views.[30] Putnam credited the association with effective publicizing of the copyright question among the people of New England and with influencing the Congressmen from that region. Houghton and Estes also participated as its representatives in the work of the conference committee of the

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[28]"Copyright Meeting in Boston," American Bookseller, XXIII (January 2, 1888), 7. This group should not be confused with an earlier organization the official name of which was also the International Copyright Association.

[29]"International Copyright Association of New England," P. W., XXXIII (January 28, 1888), 182.

[30]"International Copyright Association (of New England): Third Meeting of the Association - an Address to Congress," ibid., (March 3, 1888), 448-449.

two other leagues. Its counsel, Samuel J. Elder, an authority on copyright law, assisted this committee, and consulted with Senator Chace. Elder's services, like those of the league secretaries and committee members, were donated to the cause.[31]

In New York, the response to the December 17 letter from the authors' league was a meeting of twenty publishers' representatives, from New York, Boston, and Philadelphia, at Delmonico's on December 29, 1887, J. W. Harper, Jr., presiding. A committee of organization comprised of Putnam, Randolph, and Craig Lippincott was appointed and drew up a plan of organization which included the following articles:

> I. - The name of this organization shall be 'The American Publishers' Copyright League'.
> II. - The object of this Association shall be to cooperate with American authors in securing international copyright. . . . .
> IV. - Membership shall be limited to American publishers /i.e., publishing firms, each to have one vote/ who favor international copyright.

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[31] Putnam, "The Contest for International Copyright," The Question of Copyright, p. 49. "A Copyright League was also organized in Chicago, with General McClurg as President, the influence of which throughout the northwest proved very valuable." Ibid.

The International Copyright Association of the District of Columbia was formed on March 16, 1888. Thorvald Solberg, later to be first Register of Copyrights, was its recording secretary. See International Copyright Association of the District of Columbia: Officers, Honorary Members, Constitution (Washington: International Copyright Association of the District of Columbia, no date), pp. 1-4. Other than publishing International Copyright: A Letter from George Ticknor Curtis, Esq., to the Corresponding Secretary of the International Copyright Association of the District of Columbia (Washington: International Copyright Association of the District of Columbia, 1888), 2 pp., the organization seems not to have been particularly active. However, its president, J. C. Welling, and Solberg were appointed to fill vacancies on the council of the American (Authors') Copyright League at its meeting of November 12, 1888. See "American Copyright League," P. W., XXXIV (December 1, 1888), 884.

The following officers were elected: president, A. H. Appleton; secretary, Putnam; treasurer, Charles Scribner. An executive committee, autonomous except in the matter of supporting a particular copyright measure, in which case it must have had the support of the league as granted in a meeting called expressly for that purpose, was appointed: Harper, Houghton, Lippincott, Randolph, and Estes. A general discussion following the order of business "made it apparent that, while there was some diversity of opinion as to the best provisions for an ideal measure there was a very general readiness to waive personal preferences in order to bring about concerted action in behalf of any bill through which might be secured the essential principles of the desired reform."[32]

In reporting its satisfaction with these developments, the American Bookseller said, a little too optimistically, in the light of future events:

> We have no doubt that the fierce competition among the publishers of Libraries, which has cut the wholesale price of twenty-five cent books to eight cents, has contributed to this result somewhat. It is now tolerably clear to the meanest capacity that the book trade is not analogous to the trade in hams and sugar, and that an effort to make it so is simply destructive to the trade altogether.

32"The American Publishers' Copyright League: Origin and Organization," P. W., XXXIII (January 21, 1888), 66-67. Putnam asserted that he had called the meeting of publishers. According to his account, the vice-president was A. C. McClurg of Chicago. See Putnam, Memories of a Publisher, pp. 371-372.

> If now the statesmen, to whom this question will be relegated, will see, or can be made to see, that even for nations it is better to pay an author, whoever he may be, for his work in proportion to the public's appreciation of its value than it is to appropriate it in highwayman fashion, and if we can persuade a few cranks that the copyright of the foreigners ought in its details to assimilate with that of the native author, we shall all - publishers, booksellers, and readers - be better off by next Christmas.[33]

Activities of the American Publishers' Copyright League; Response of the Typographical Unions

Cooperation with authors being one of the objects of the publishers' league, the executive committee was instructed to work toward that end. A conference group composed of the executive committees of both authors' and publishers' leagues was established, "and every subsequent step in the campaign, until the passage of the bill in 1891, was taken by the conference committee."[34] On January 7, 1888, the joint committee decided upon two amendments to the existing Chace bill, and a deputation consisting of Putnam, Eggleston, Green, and A. T. Gurlitz, counsel for the publishers' league, was sent to

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[33]"International Copyright," American Bookseller, XXIII (January 2, 1888), 6.

[34]Putnam, Memories of a Publisher, p. 372. Putnam, secretary of the publishers' league, also served as secretary of the joint committee until forced to relinquish the post for reasons of health in November, 1889. Ibid. It is curious that Johnson, who succeeded him, made no mention of having had any predecessor. Instead, he gave a circumstantial account of his assumption of those duties in 1888. See his Remembered Yesterdays, p. 242. Was this omission the result of forgetfulness, or evidence of continuing jealousy between authors and publishers?

Washington to propose the changes to Senator Chace. The amendments were: (1) substitution of the requirement of simultaneous publication in the United States and foreign countries for books copyrighted here (in spite of obvious disadvantages to unknown writers and to reprinters), in place of permissible importation of the original edition of a foreign work to make it available during a three-month period within which American copyright was to be obtained, on the grounds that the latter clause would ruin the market for American publishers; (2) substitution of written, witnessed permission from copyright holders for importation of original foreign editions, in place of absolute prohibition of importation, which would work a hardship on scientists and scholars who might prefer the original edition. The executive committee of the publishers' league convened a second meeting of the entire membership on January 21, 1888, to report this action and to request permission to arrange with Senator Chace for whatever further compromises might be necessary. A resolution granting the request was passed.[35]

It was also reported at the same meeting that fifty-five publishers had joined the league, although a few Boston houses, members of the International Copyright League, felt that their membership in that group was sufficient. Music publishers,

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35"The American Publishers' Copyright League: Second Meeting," P. W., XXXIII (January 21, 1888), 67-70.

subscription publishers, and reprinters were among those enrolled. One firm had refused to participate and had expressed its desire to "'subscribe quite a little sum to prevent the consummation of /the league's/ devilish plot.'" The secretary also reported that he had written to forty-four leading Western booksellers urging them to form local associations for the purpose of swaying public opinion on behalf of international copyright. Some favorable responses had been received, he said, but the consensus seemed to be that it would be necessary for the league to commit itself to support of a specific bill before much could be accomplished. The secretary further reported that an "Address to the Booksellers" would shortly be issued to gain their support, on the grounds that their business interests, like those of the publishers, were related to the proposed legislation. This "Address" was distinct from a similar production of the authors' league, prepared for circulation in the form of leaflets or bookmarks in the books distributed by various publishing houses.[36]

"The Address of the Publishers' Copyright League to American Bookbuyers and Booksellers" discussed five reasons for the passage of an international copyright law: (1) to eliminate competition between foreign books not paid for and American books; (2) to secure remuneration for foreign authors;

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[36]Ibid., pp. 67-69. These authors' league leaflets, it was reported, contained brief petitions to be signed and sent to bookbuyers' Congressmen.

(3) to benefit American readers by making available better foreign works of the sort not now being reprinted in this country; (4) to end conditions productive of the eventual bankruptcy of the book trade; (5) to secure justice and wise governmental policy. The address, signed by the officers and executive committee of the league, concluded as follows:

> We appeal, therefore, to all members of the book-trade and to all readers of books, to cooperate in the efforts now being made to secure from Congress an International Copyright law. We invite them to associate themselves with one or the other of the Copyright Leagues, and we urge them also to write in behalf of the measure to their respective Senators and Representatives.
>
> We ask, further, that they will aid in securing signatures to the memorials in behalf of international copyright which will shortly be placed in the book-stores for the purpose, and that they will do what may be in their power to develop and to bring to bear an enlightened public opinion on the subject.[37]

A second appeal to booksellers was written by the publisher Randolph, who pointed out that too often the distributor's "vital interest" in the matter of international copyright was overlooked. Randolph's letter went on to describe the bookseller's plight under existing conditions, and to suggest steps for him to take in order to secure the benefits of an international copyright law. The American bookseller, he said, could create public opinion by advocating international copyright as essential to healthy American literature and book-production, by demonstrating that such a

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[37] "Address of the Publishers' Copyright League," Ibid., (January 21, 1888), 76.

a law would not increase the price of books, and by impressing upon his neighbors the necessity for continuing to maintain bookstores as valuable institutions in American town life. In short, support of international copyright was good business.[38] Booksellers may have wondered whether such advice was intended primarily for their good or for the publishers'. For example, "Retailer" inquired of Publishers' Weekly to inquire what the publisher was doing for the bookseller in return for the latter's support of international copyright. The practice of direct selling to bookbuyers at prices lower than those charged by the bookstore, the granting of discount differentials, and inequities in distribution, he charged, would soon drive the remaining American bookstores out of business.[39]

The American Publishers' Copyright League also attempted to influence the typographical unions, whose support of international copyright was regarded as essential. On February 9, 1888, Putnam, secretary of the league, conferred with Theodore C. Wildman and Sherman Cummins of New York Typographical Union

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[38] A. D. F. Randolph, "A Word to American Booksellers on International Copyright," Ibid., (March 10, 1888), 472-473.

[39] "Some Pertinent Questions," Ibid., XXXV (January 12, 1889), 24. "Retailer's" complaint was not an isolated one. Examination of P. W. from its beginnings until 1891 will show frequent reference to such topics. See also Donald Sheehan's This Was Publishing: A Chronicle of the Book Trade in the Gilded Age (Bloomington: Indiana University Press, 1952), particularly Chapters 7-9, "The Machinery of Wholesale Distribution," "The Assault on the Consumer," and "Self-Regulation of the Book Trade," pp. 144-237.

No. 6. The next day he sent them a letter summarizing the arguments he had used in the conference.

1. Authors and publishers were supporting international copyright not merely as a matter of justice but as a means of restoring the entire book trade to economic health.

2. The publishers' league, which supported the Chace bill, consisted of nearly all American publishers; the largest employers of compositors and pressmen in the country were represented on the executive committee of the league.

3. These publishers, who naturally desired to increase both printing and typesetting in their own plants so as to get the greatest return on their invested capital, believed that the Chace bill would increase book publication in America.

4. Evidence to support these conclusions, in the form of business records, was in the hands of the publishers.

5. Cooperation among all groups interested in book production was essential.

6. The Chace bill, as it then stood, represented concessions on the part of both authors and publishers, brought about with much effort.

7. A "total manufacture clause" would alienate authors because of its injustice to foreign writers; it would alienate reprinters because it would prohibit the importation of plates.

8. A "total manufacture clause" would also alienate publishers because it would double their production costs.

9. The decision to support the Chace bill or to delay the reform indefinitely lay with the typographers' unions.

10. American book production was decreasing steadily because books by American authors were being shut out of the market by reprinted foreign works; the increase of cheap reprints in forms other than bound volumes was also destroying booksellers' business.

11. "Cut-throat" competition forced American publishers to reject many books worth publishing.

12. International copyright legislation would make available many "international series" in science and other specialties, published in America not at all or only on a very limited scale.

13. Although typesetting in England cost less than in the United States, electrotyping in this country was less expensive than elsewhere and produced superior books.

14. In the long run, books produced from American electrotypes would cost less than English books, yet increased production in this country would provide American workmen with additional compensation.

15. Importation of English works in small editions benefited American workmen not at all; international copyright would provide for American manufacture, thus giving work to American pressmen.

16. Increased translation of books from foreign languages would expand American book production; little was being done in that field because of the lack of an American copyright law.

17. Cheap reprint production had increased the amount of typesetting done in the United States, but it was the least

satisfactory kind of work in nature and in pay for American compositors.

18. "Total manufacture" would bring about reciprocal English legislation, and would thus cut off the expanding British market for exported American plates.

19. English branch houses established in the United States would do more of their work here if the proposed international copyright bill were passed because it would then be to their advantage to do so.

20. An international market, as provided by international copyright, would give mechanically skillful Americans increased opportunities.

21. The legal controls of an international copyright law would guarantee freedom from foreign competition.

22. Therefore New York Typographical Union No. 6 should notify Senator Chace of its support of his bill, and should send a representative to the Senate committee copyright hearings.[40]

The union was extremely cautious in its response to these arguments, perhaps because there were so many of them. The resolution which it adopted in June, 1888, and ordered

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[40]Putnam to Wildman and Cummins, February 10, 1888, in "The Business Basis for International Copyright," P. M., XXXIII (February 18, 1888), 393-394. Eggleston, of the authors' league, also "met with Typographical Union representatives and demonstrated to them the benefits to be obtained from the new [Chace] bill." See "American Copyright League," ibid., XXXIV (December 1, 1888), 883. The form which the Chace bill took will be discussed in the section entitled "The Chace Bill in Congress, 1886-1888," below.

published in trade journals such as the Union Printer was very nearly a good example of hindsight and looked suspiciously like a last-minute rush for the bandwagon. The resolution read:

> 'Whereas, A bill (Senate 554) granting a copyright on books, plays, etc., and providing that all books copyrighted in the United States must be printed from type set in the United States, has passed the Senate of the United States, and is now on the calendar of the House of Representatives; and
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> 'Whereas, English publishers and printers, professing apprehension that if the bill shall become a law they will be thereby deprived of a large amount of work, have held meetings in London to devise ways and means to encompass the defeat of the bill in the House of Representatives, and have employed American counsel to create a sentiment against the bill and to lobby for its defeat; therefore be it
>
> 'Resolved, That Typographical Union No. 6, believing that the American Congress, the American printer, the American publisher, and the American author are thoroughly competent to determine what is for the best interests of all concerned; and believing, also, that this foreign interference in a matter of vital importance to a large and most intelligent class of American artisans, and a matter preeminently the right of the American Congress to determine under paragraphs 3 and 8, Section 8, Article 1, of the Constitution of the United States, should be rebuked, requests the Representatives in Congress from this State to urge the immediate passage of said bill.'41

41"Copyright Matters: Resolutions of Typographical Union No. 6 in Favor of the Chace Bill," ibid., XXXIII (June 16, 1888), 939. It would seem that Putnam had better luck with New York printing firms than with their employees. On February 11, 1889, J. J. Little and Company answered his previous inquiry by stating that the amended Chace bill, with its "printing clause," was "fair and equitable;" on February 14, Trow's Printing and Bookbinding Company responded in much the same vein. "Printers in Favor of International Copyright," ibid., (February 25, 1888), 421-422.

In contrast to this dilatory action of the New York union, Typographical Union No. 2 of Philadelphia, as early as February 19, 1888, adopted resolutions in favor of the Chace bill, to urge other typographical unions to do likewise, and to appoint from its own ranks a committee of three to act upon the foregoing resolutions. The Philadelphia group, according to Publishers' Weekly, assumed that a "typesetting clause" would be included in the Chace bill, but Typographical Union No. 61, of Cambridge, Massachusetts, consisting of employees of the University and Riverside Presses, was reported to be ready to support the bill without such amendments.[42] Solberg lists a total of forty-one petitions of typographical and pressmen's unions in favor of the Chace bill which were submitted to Congress between April 2 and August 21, 1888, but one from Union No. 6 is not among them.[43]

Concerning the attitude of the typographical unions, Publishers' Weekly, after analyzing the problem much as Putnam had done in his letter to Wildman and Cummins of the New York Union, concluded that it would be unfortunate if typographers

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[42]"The Typographical Unions on the Chace Bill," ibid., (March 3, 1888), 449. The Cambridge union was acting in response to pressure from the International Copyright Association. See the previous section of this chapter.

[43]Solberg, "Chronological Record, 1889," Copyright in Congress, 1789-1904, pp. 255-266.

opposed a law so generally beneficial.[44]

Opposition to the Chace Bill of 1888

Although the typographical unions has opposed the Chace bill until concessions were made in their interest, they may be numbered among the advocates of the law, if only on the basis of their petitions for its passage. There were, however, two movements which were regarded as serious threats to enactment of international copyright legislation. The first was the royalty-stamp plan, which was simply an old scheme refurbished; the second consisted of well-organized opposition sponsored by unknown persons who were represented by a firm of New York lawyers.

Of the royalty-stamp scheme and its originator, R. Pearsall Smith, Johnson had this to say:

> There was one well-known writer, — a courageous man for whom I still have a good deal of respect, — who lost his head in a flank movement against the copyright law, and aggressively supported a heresy known as the 'stamp copyright' proposition, though he afterward vainly tried to allay the opposition he had aroused to the bill in a certain Southern Senator. The originator of this impracticable notion was an estimable gentleman of Philadelphia who believed it feasible that permission should be given to any one to publish any volume on condition of obtaining and affixing to it a royalty stamp to be issued by the author, of the amount of ten per cent of the retail price. In some quarters this made considerable headway, even Doctor Oliver Wendell Holmes being inclined to favor it. . . . .

44"The Importation of Plates," P. W., XXXIII (March 3, 1888), 447-448. Note that the union petitions cited earlier in this section were submitted to Congress between April and August, 1888.

And he quoted Holmes' letter of November 29, 1887, to Lowell.

> '. . . .If we cannot have the absolute and satisfactory security which a mutual copyright between England and America would give I am prepared to welcome a practical measure like that proposed by Mr. Pearsall Smith in the Nineteenth Century Review. If after thorough discussion this plan, or one embodying its essential character, shall prove acceptable to our law makers, I shall feel rejoiced, far more for others than for myself, that such measure of justice has been awarded to the writers of the two countries. . . . .'[45]

A refutation of the royalty-stamp plan as it was advocated by Pearsall Smith and Moncure D. Conway, which appeared in Publishers' Weekly, offered at the same time an excellent summary of the proposal. It was harmful because (1) the requirement that individual authors supply "distinctive" stamps would prove expensive to the writers; (2) such stamps could be easily counterfeited; (3) the "preparation, deposit, and sale of such stamps" would be troublesome; (4) the proposal that the Librarian of Congress act as agent for English authors in the distribution of their stamps was unfair to that official; (5) publishers would not wish to buy stamps for intended editions and risk having unsold books left in stock; (6) enforcement of a contract permitting "return of stamps for books not sold" would be impossible; (7) like all other royalty plans, this ignored the matter of book costs, which included advertising and "launching" the book; (8) though under Conway's amendment, the first publisher to purchase royalty stamps

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[45]Johnson, Remembered Yesterdays, pp. 273-274.

would have forty days of monopoly in publication, even that brief period would merely create a market for later competition; (9) "it regulate/d/ by law the amount of an author's compensation, which /was/ a principle of sumptuary legislation never yet attempted in the statutes of the United States or Great Britain in modern times." The one argument in its favor was that the plan would compensate foreign authors, the editorial concluded, but on the other hand, it was opposed by the majority of authors in the United States, even though they stood to benefit as "stolen" books disappeared from the American market.[46]

In criticizing the Pearsall Smith plan, Publishers' Weekly omitted from its summary five of the points made by its originator. These were: (1) the term of copyright was to exist for forty-two years; (2) the stamp design was to include the price of the book and a facsimile of the author's signature; (3) convicted counterfeiters of stamps were to be punished as forgers; (4) the period during which rights of publication were to be reserved to the first publisher to purchase stamps was sixty, rather than forty days; (5) unstamped copies of books were to be forfeited, and fines levied on the possessors.[47]

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[46]"The Royalty-Stamp Plan of Copyright," P. W., XXXII (December 10, 1887), 919.

[47]Smith, "An Olive Branch from America," Nineteenth Century, XXII (November, 1887), 606-607. The title of the

Smith, in a letter to the editor of the Nation, dated January 12, 1888, defended "royalty copyright" on the grounds that it would have increased authors' incomes through royalties by providing for large sales of their books at such low cost that the public could afford to buy more books; furthermore, as book prices rose, it was the publishers rather than the authors who benefited. To this, the Nation replied that the passage of a royalty-payment law would discriminate against authors as a class, that royalties on "cheap books" might be too low to assure authors a fair return, and that a cheap book was not a valued or respected book. The relative worthlessness of the mass of inexpensive reprints showed that their production should not be needlessly encouraged.[48] However, in a symposium published in the North American Review, Smith declared that an international copyright law would simply foist the British system of high-priced books upon American bookbuyers, a contingency that his plan would eliminate.[49]

Fourteen authors and educators took part in this

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article, published in a British periodical, was significant: the proposal was a peace offering which would have legalized the formerly effective systems of payment to British authors, trade courtesy, and publishers' priorities.

[48]"The Cheap Libraries and Royalty Copyright," Nation, XLVI (January 26, 1888), 71-72.

[49]"Anglo-American Copyright," North American Review, CXLVI (January, 1888), 70-74.

symposium. Seven (Holmes, Whittier, Julian Hawthorne, Howells, Lloyd S. Bryce, Robert E. Thompson, and Conway) were willing to accept the royalty-stamp plan either as a substitute for international copyright or as a means to achieving a satisfactory copyright law. Seven (Warner, Eggleston, John Bigelow, Lathrop, Gilder, Charles Eliot Norton, and Daniel C. Gilman) were opposed to the scheme, either as an unsound and temporary expedient or as a complete negation of the principle of copyright.[50] In the next issue of the North American Review, the editor expressed his opinion of the Pearsall Smith plan. ". . . /P/ermit me to record my regret that when we seemed on the eve of at last winning a victory for honest copyright, Mr. Pearsall Smith should have started in to make what I trust will prove to be an ineffectual diversion in favor of the enemy."[51] To that sentiment Gilder might have said "Amen!;" he had previously called the royalty-stamp proposal a "sideshow. . . .our principal stumbling block - that and the immorality of certain sorts of statesmen."[52]

The threat of the royalty-stamp plan seems to have been short-lived, for on March 3, 1888, a month after the

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[50]Ibid., pp. 77-85.

[51]"Notes and Comments: Remarks on Balloting and Copyright," North American Review, CXLVI (February, 1888), 221.

[52]Gilder to C. S. Fairchild, December 23, 1887, in Gilder (ed.), Letters of R. W. Gilder, p. 197.

North American Review's valediction, Publishers' Weekly announced that the American News Company would not support international copyright. "This seems to be the only important interest heard so far in opposition."[53] That fact should not have been surprising, for the company was engaged in the sale of cheap reprints.[54] However, the editor of Publishers' Weekly had not yet seen the petition against the Chace bill which was soon to be circulated among booksellers and newsdealers, a copy of which Putnam sent him on May 22, and which he promptly reprinted with Putnam's refutation of its arguments.

> Messrs. — & —:
>
> Dear Sirs: The petitions to Congress inclosed herewith, which will explain themselves, are in the interest of newsdealers, booksellers, and others for whom we are acting. We wish that you would sign them, and get as many other booksellers and newsdealers in your city as can be gotten in one or two days after the receipt by you. After the same has /sic/ been signed please mail back petitions to C. N. Bovee, Jr., Esq., of our firm, at the Arlington Hotel, Washington, D. C., for which purpose a stamped envelope is enclosed herewith.
>
> Please do not detain these petitions longer than one or two days after their receipt, as the time is limited.
>
> Very truly yours,
> Arnoux, Ritch & Woodford.

> To the Honorable the Senate and House of Representatives of the United States, in Congress assembled:
>
> Your petitioners, booksellers and newsdealers in the United States, respectfully object to the passage of the bill known as the International

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[53] /American News Company opposition to international copyright/, P. W., XXXIII (March 3, 1888), 448.

[54] See above, Chapter II.

Copyright Bill, now under consideration in the Senate and House of Representatives, for the following among other reasons:

First - That the price of books in the English language by foreign authors would be increased from 100 to 500 per cent.

Second - That the practical effect of said bill would be to give to a few publishers a monopoly in the publication of the work of foreign authors, thereby creating a trust, through which the book market in this country would be controlled and its high prices of books maintained.

Third - That this bill would discriminate against the American people in favor of foreigners in this country by allowing copyright on translations into English of works in foreign languages. The original works in foreign languages not copyrighted would continue to be circulated at the present low prices, while the translation into the English language would be increased from 100 to 500 per cent.

Fourth - That said bill would discriminate against American booksellers and newsdealers and book manufacturers in favor of foreigners by allowing two copies of a copyrighted work printed and published abroad to be sent direct to consumers in this country, thus taking the business out of the hands of Americans.

Fifth - That the foreign publishers and not the American authors would be chiefly benefited by the unnecessary and unjust increase in the price of books.

Sixth - That the bill would operate against the interest of American authors by bringing them into direct competition with the great mass of foreign authors in the copyright of their works and in making contracts with publishers.

Putnam's rejoinder contradicted these statements point by point; he concluded by doubting that any American could have formulated such an ignorantly framed document. It reminded him of the petition of certain British publishers who had recently asked Sir Michael Hicks-Beach to get the British government to bring influence to bear on the American House of Representatives. The fact that respectable lawyers would

sponsor such a set of erroneous statements surprised him.[55]

The identity of Arnoux, Ritch and Woodford's clients remained a subject for speculation, notwithstanding the fact that their petition contained most of the arguments of such opponents of international copyright as Roger Sherman of Philadelphia. Were they, asked Publishers' Weekly, English publishers or American "news" companies?[56] Or were they actually "certain Northern publishers, [who] while pretending to be in favor of international copyright, were opposing it tooth and toenail in the lobby?" This was the suggestion of the Atlanta Constitution, one of whose editors with "some small interest in the success of the Chace Bill" (Joel Chandler Harris?) claimed to possess "a number of original documents" which would support that assertion. Unfortunately, the documents were of a confidential nature, and could not then be released.[57] It might be argued that the Constitution was merely attempting to discredit the Chace bill; however, only a few days before this statement was made the newspaper

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[55]"The Petition Against International Copyright," P. W., XXXIII (June 2, 1888), 868-869. See the resolution of the New York Typographical Union No. 6, in "Activities of the American Publishers' Copyright League; Response of the Typographical Unions," above, for the expression of sentiments like those of Putnam's concerning the origin of such opposition.

[56]"The Opposition to the International Copyright Bill," ibid. (June 2, 1888), 867.

[57]Atlanta Constitution, May 27, 1888, p. 14.

had attacked those Southern senators who were opposed to the bill.[58] The mysterious documents seem to have remained confidential. Various publishers - Harper, Appleton, Bowker, Putnam, and Munro - professed their ignorance of such a plot, and Arnoux, Hitch and Woodford refused to divulge the identity of their clients.[59] Therefore, a "roll call" of all signers of the American Publishers' Copyright League petition was necessary, according to Publishers' Weekly.[60] The reaction of the American (Authors') Copyright League and the American Publishers' Copyright League to this situation was to issue, on June 1, 1888, a circular letter in which evidence was offered to show that the unknown opponents of the Chace bill were really British printers and stationers.[61]

Athough the identity of these opponents of international copyright seems to have remained undiscovered, their activity continued. On December 13, 1888, James M. Duncan, president of New York Typographical Union No. 6, wrote to the editor of Publishers' Weekly to report that "an unauthorized circular seeking signatures in protest against the passage of the Chace

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[58] Ibid., May 23, 1888, p. 4.

[59] "Opposing Copyright," P. W., XXXIII (June 2, 1888), 869-870, quoting New York Commercial Advertiser, May 23, 1888.

[60] "The Opposition to International Copyright," ibid., (June 2, 1888), 867.

[61] "The American Publishers' Copyright League: Memorial in Favor of the Chace Bill," ibid., (June 9, 1888), 913.

Copyright Bill [was] being circulated in the printing offices of this city," although New York printers supported the bill.[62] Publishers' Weekly also mentioned the existence of two anonymous pamphlets, one of which attacked the Chace bill as prejudicial to the best interest of reprinters, and the other on the grounds that it would not only force American readers to buy expensive English books but would increase the price of American books because the manufacturing clause required double typesetting, here and in England.[63] Finally, even though the New York stereotyping firms which supplied newspapers with reprinted English material had come out in favor of international copyright because salable American writing would then replace English work,[64] it was asserted at the December 31, 1888, meeting of the International Copyright Association "that the American Press Association [was] circulating a petition among the newspaper offices to the effect that such a law [would] injure their business" by cutting off the supply of reading matter from England.[65]

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[62]Duncan to editor, December 13, 1888, in "Communications: Bogus Copyright Petition," ibid., XXXIV (December 22, 1888), 977.

[63]"The Opposition to International Copyright," ibid., (December 15, 1888), 950-951.

[64]"The 'Ready-Set' Men in Favor of International Copyright," ibid., XXXIII (February 1, 1888), 395-396.

[65]"International Copyright Association of Boston," ibid., XXV (January 5, 1889), 8. H. C. Lea, in a letter to the historian Lecky, January 7, 1890, described the opposition in these words: ". . . .English publishers had become alarmed;

The Chace Bill in Congress, 1886-1888

The Chace bill, so often referred to in the discussions of international copyright cited above, and eventually to be enacted in amended form on March 3, 1891, as the "International Copyright Law," was originally introduced into the Senate on January 21, 1886. Under consideration by the Committee on Patents simultaneously with the Hawley bill, it was reported upon adversely.[66] The bill had been drafted for Senator Chace by the protectionist H. C. Lea, who engaged to formulate a measure which would be generally acceptable while affording the maximum protection to all the interests involved.[67] The same bill was reintroduced by Senator Chace on December 12, 1887, in the first session of the Fiftieth Congress.[68]

In the hearing held on the bill as amended by Senator Chace after his meeting with the representatives of the two

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they had meetings and organized to oppose [an American law], for though it gave English authors an American copyright, it cut out English publishers, which was exactly what I intended it to do. Counsel were retained, and a lobby formed to defeat it, which found a very powerful ally in the associated newspapers. . . . which supply to the country press what are called 'patent outsides'. . . . ." Quoted in Bradley, Henry Charles Lea: A Biography, p. 229.

[66]U. S. Congress, Senate, Committee on Patents, "International Copyright," Report No. 1188, to Accompany Bill S. 2496, Reports of Committees of the Senate of the United States, 49th Congress, 1st Session, 1885-1886 (Washington: Government Printing Office, 1886), Vol. 7, Report No. 1178, p. 1.

[67]Bradley, H. C. Lea: A Biography, pp. 228-229.

[68]Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, p. 51.

copyright leagues, authors, publishers, booksellers, typographers, and pressmen all agreed in supporting the proposed legislation; one witness only appeared against it. The bill provided for elimination of the words any citizen of the United States or resident therein wherever such phraseology restricted eligibility for American copyright; for American registration not later than the date of publication abroad for books in English, and for American registration within three months for translations into English; for restriction of imports to two copies only, for use and not for sale, with the written and witnessed consent of the American copyright holder or assignee; for granting of copyright to foreigners whose governments granted similar privileges to Americans; for the restriction of American copyright to books printed in the United States from type set here; for extension of copyright to volumes in series, periodical numbers, and revised editions issued subsequently to passage of the act; and for the furnishing of lists of copyright books by the Librarian of Congress to customs agents to forestall importation of books which would infringe upon American copyright. The following witnesses testified on behalf of the bill: for the American (Authors') Copyright League: Stedman, Green, and Eggleston; for the American Publishers' Copyright League: Putnam; for the International Copyright Association: Estes; for Typographical Union No. 6, New York: Cummins; for Typographical Union No. 2, Philadelphia: J. Welsh and G. G. Chance; for the Pressmen's Unions, Michael Corcoran; for booksellers and Western readers:

D. D. Merrill; for the public: Nathan Appleton. Only Hubbard, a witness in previous hearings, spoke against the bill. The committee reported out the bill on March 19, 1888.[69]

The same amended bill (S. 554) was then introduced into the House as H. R. 8715 by Representative W. C. P. Breckinridge, also on March 19,[70] and after a committee hearing much like that of the Senate Committee on Patents, was reported out on April 21, 1888, by the House Committee on the Judiciary, with some reservations on the part of three members of the committee who were undecided as to the propriety of the bill.[71] Another report was submitted by the same committee on May 24, 1888, to accompany Senate bill 554, which was presented as a substitute for H. R. 8715 (the Breckinridge bill, amended)[72] in order to eliminate the need for conference between the two Houses of Congress, and to expedite signature by the President should the bill pass in

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[69]U. S. Congress, Senate Committee on Patents, "International Copyright. Hearings before the Committee on Patents," Report No. 622, to Accompany Bill S. 554, Reports of Committees of the Senate of the United States, 50th Congress, 1st Session, 1887-1888 (Washington: Government Printing Office, 1888), Vol. 2, Report No. 622, pp. 4-52.

[70]Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, p. 52.

[71]U. S. Congress, House of Representatives, Committee on Patents, "Amendment of Revised Statutes," Report No. 1875, to Accompany Bill H. R. 8715, Reports of Committees of the House of Representatives of the United States, 50th Congress, 1st Session, 1887-1888 (Washington: Government Printing Office, 1888), Vol. 6, Report No. 1875, pp. 1-2.

[72]Ibid., Vol. 7, Report No. 2311 to Accompany Bill S. 554, p. 1.

both Houses. However, no other action on the bill occurred in the House of Representatives during this session. Putnam asserted that there were two reasons for this failure to deal further with the bill: (1) the progress of all other business had been blocked by discussion of a tariff bill; (2) the copyright bill had originated in a Republican Senate, while the House was controlled by the Democrats.[73] Neither Putnam nor Solberg mention any influence of the petitions sent out by Arnoux, Hitch and Woodford on April 26, 1888, and the favorable report of the House Committee on the Judiciary made on May 24 would indicate that the petitions were largely ineffective, in so far as the House was concerned.

In the Senate, the Chace bill was considered by that body sitting as a Committee of the Whole, beginning on April 23, 1888. Senator Chace commenced the proceedings with a speech in favor of the amended bill, in which he countered objections, gave the legislative history of international copyright, cited the copyright schedules of other nations, appealed to the Senate for action, and read into the record the earlier memorials of 1837, 1838, 1843, and 1848. Senator Morrill of Vermont then submitted an amendment which would have permitted importation of newspapers and periodicals by American publishers for purposes of reprinting articles published therein in American newspapers and periodicals. Senator Vance

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[73]Putnam, "The Contest for International Copyright," The Question of Copyright, p. 54.

of North Carolina was opposed to the granting of any American copyright to foreign newspapers and magazines. Senators Chace and Beck, the latter from Kentucky, debated the question of free trade versus protection with relation to copyright, with Senator Hiscock of New York supporting Senator Chace.[74]

The debate was resumed on April 24. Senator Chace, after once more setting forth his objections to the Morrill and Vance amendments, defended the bill against attacks from Senators Vance, Beck, Jones of Arkansas, and George of Mississippi. An attempt was made by Senator Beck to have the bill thrown out because, he alleged, it virtually prohibited the importation of any foreign printed book, thereby constituting a modification of the tariff law and diminishing the revenue which should rightfully accrue to the federal government; the Chace bill, he claimed, was thus an original revenue bill and therefore outside the province of the Senate. Finally, after stating that he had further views which he desired to present later, he succeeded in preventing a vote on that day.[75] On April 30, Senator Morrill's amendment was withdrawn, but there not being a quorum present, no further action was taken on the bill.[76]

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[74]U. S. Congress, Congressional Record, U. S. 50th Congress, 1st Session (Washington: Government Printing Office, 1888), Vol. 19, pp. 3230-3245.

[75]Ibid., pp. 3269-3274.

[76]Ibid., p. 3505.

On May 9, 1888, Senator Jones withdrew his amendment to eliminate the prohibition of importation clause, since his proposal was obviously doomed to defeat; Senator Vance proposed to exempt newspapers and periodicals from the provisions of the bill which he attacked as a protectionist conspiracy of publishers, printers, and authors against the people, but his amendment was voted down. Senator Teller, of Colorado, wished to limit the duration of international copyright to five years, but no vote was taken on his proposal. After further discussion the bill was finally voted upon and passed, thirty-five to ten. The affirmative votes came from both Republicans and Democrats, but all save one of the negative votes came from Southern Democrats: Senators Berry of Arkansas, Call of Florida, Eustis of Louisiana, Jones of Arkansas, Pugh of Alabama, Ransom of North Carolina, Reagan of Texas, Vance of North Carolina, Walthall of Mississippi, to whose votes was joined that of Saulsbury, Democrat, from Delaware.[77] The voting would seem to have been determined by the issue of protection versus free trade, with the former winning the victory.

Conclusion

It is difficult to estimate the effect of lobbying and

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[77] Ibid., pp. 3878-3882.

propaganda for and against the Chace bill on members of the House and Senate; the question seems to have been decided along free trade and protectionist lines, with some corresponding political party alignment. The arguments set forth against the bill were suspiciously like those of the earlier protectionists and cheap book reprinters against international copyright, except that in 1888 the principle of protection, now mobilized to support the Chace bill, carried the day. The House of Representatives was not yet ready to vote upon the question, but after various interested groups had united to support a measure acceptable to all, an international copyright bill was passed by the Senate for the first time in the history of the struggle. Although the Chace bill did not become law during the first session of the Fiftieth Congress, at least a precedent had been established. Little was to be accomplished in the first session of the Fifty-first Congress, but in the second session of the Congress, the bill was to be passed by the House on December 3, 1890, and after overcoming last-minute resistance in the Senate, was to be signed by the President and thus become law only a few hours before Congress adjourned on March 3, 1891.

CHAPTER VII

THE PASSAGE OF THE INTERNATIONAL COPYRIGHT LAW

Continuation of Publicity for International Copyright

The success in the Senate during the first session of the Fiftieth Congress led supporters of the international copyright movement to assume that personnel changes in that body due to the election of 1888 worked to their advantage, and that greater emphasis should be placed on securing favorable action in the House. Although authors' readings were continued as a method of obtaining popular support for the international copyright measure, more attention was paid to influencing members of the House of Representatives by means of publicity of various kinds, as well as by the winning over of influential trade groups which might have opposed the passage of an international copyright law.

Throughout the years 1889 and 1890, the question of international copyright continued to be agitated to create public opinion in its favor. "Whatever may be the fate of the copyright bill in Congress," wrote the editor of Harper's Magazine in 1890, "it is plain that the copyright cause has gained greatly by the discussion of the last year. The essential question was never so generally and so well understood

as now, and in its recent discussion there has been a refreshing persistence."[1]

Authors' readings were still regarded as useful. A program of that sort was held in Boston on March 7, 1889, at 3:15 P.M., in Museum Hall, with the stage set to represent a drawing-room with the guests (authors and prominent persons) assembled as the curtain rose. Most of the writers who participated were New Englanders or residents of the region; the readings were given a Yankee flavor by the opening selections: Holmes, giving the "The Last Leaf" and "Brother Jonathan's Lament;" Mark Twain, "Speech on the New England Weather;" Warner, "The Yankee Philosopher." Although Julia Ward Howe recited "The Battle Hymn of the Republic" and two more poems, other "lady authors" were restricted to the proscenium boxes, and "in the evening the gentlemen readers were entertained at supper by the St. Botolph's Club."[2] In Brooklyn, New York, in 1889, the public library sponsored a popular course entitled "Lectures by Authors." The last of these, under the auspices of the American (Authors') Copyright League, consisted of authors' readings and was held as a

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[1]"Editor's Easy Chair," Harper's Magazine, LXXXI (September, 1890), 637. The article concluded; ". . . .Good sir, do you justify the King of the Cannibal Islands for dining upon your lamented grandfather because there was no law of the Islands that forbade it?" Ibid., p. 638.

[2]"Authors' Readings in Boston," P. W., XXXV (March 16, 1889), 405-407. The program netted its sponsors $2000.

benefit for the copyright fund. A number of New York writers and personages, including Theodore Roosevelt, took part. One number on the program consisted of the reading of a letter from Mark Twain "satirically protesting against authors' readings in general."[3]

The American (Authors') Copyright League, at its annual meeting on November 7, 1889, determined to continue its

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3"Authors' Readings in Brooklyn," ibid., XXXVI (December 21, 1889), 959. Roosevelt and Andrew Carnegie were elected to places on the council of the league at its meeting of November 11, 1890. See /Annual meeting of the American Copyright League/, ibid., XXXVIII (November 15, 1890), 701.

The preceding chapters have presented evidence to show that Mark Twain, as in this case, was always outspoken and unpredictable in copyright matters. Johnson tells of the time when the humorist was one of a party of writers called to Washington to testify at a Congressional committee hearing. Asked by Green, the league secretary, to avoid mentioning a certain phase of the topic which another witness was prepared to discuss, Mark opened his remarks to the Congressmen "by saying that he had been warned by Mr. Green that it would be well not to touch upon — that very topic! I am not sure that he did not get all the greater sympathy for his argument by this appearance of outspokenness and independence, but he certainly gave the friends of the cause a very bad quarter of an hour." Remembered Yesterdays, p. 267. On another occasion, when the Chace-Breckinridge Bill of 1889 was pending, he was supposed to have made "the unfortunate remark that he had rather lost interest in the measure because there was no hope of getting a bill passed by a Republican Congress." See "Copyright in the New Year," P. W., XXXVIII (January 4, 1890), 7. Putnam told the story of another of Mark Twain's appearances before a Congressional committee, in which he utilized the entire hour allotted to him in telling stories, "which had of course no direct connection with our bill." The chairman having adjourned the hearing, the other witnesses, unable to present their testimony, had to wait for a second meeting on the next day. Putnam concluded: "I never again used Mark Twain as a witness in Washington." The story is printed in Cyril Clemens (ed.), Mark Twain Anecdotes (Webster Groves, Missouri: Mark Twain Society, 1929), p. 21. Perhaps he regarded his appearance as futile,

support of the amended version of the Chace bill, which had not been voted upon in the House of Representatives after its passage by the Senate because, it was alleged by Stedman, of the filibustering activities of one Congressman, Louis E. Payson of Illinois.[4] Johnson, who called Payson "our most relentless opponent in the House," wrote a parody entitled "The Illinois Farmer on Copyright: After Tennyson's 'Northern Farmer: New Style,'" to vent his feelings about the Illinois member, and to expose the fallacy of some of the arguments still being used against international copyright. The last eleven stanzas are quoted below.

> 'Pay' is a powerful talker, voice hez a <u>moral roar</u>;
> Pleads pretty well for the soldier, though he
> wuzn't in the war;
> Friend o' the farmer, too, as that Washin'ton
> letter said,
> Writin' about that Copyright bill that 'Pay'
> knocked over dead.
>
> George! What a speech that wuz! Full of figures
> and lists
> Lookin' so big and important, and fuller of pretty
> twists
> Of lawyer argyment. Well, <u>takes</u> a mighty smart
> man to show
> How happy us farmers ought to be with British
> books so low!

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for later, on November 24, 1906, he wrote that Congressmen, being ignorant of copyright and publishing matters, were incapable of legislating intelligently on the subject. Nor were authors much more capable of understanding copyright or of making intelligible speeches on the matter to Congressional committees. See Bernard DeVoto (ed.), <u>Mark Twain in Eruption</u> (New York: Harper and Brothers, 1940), pp. 372-374.

[4]"The American Copyright League," <u>P. H.</u>, XXXVI (November 9, 1889), 664.

I don't read 'em, of course, 'cept once after Ma
wuz dead
I tuck up a book to console me jus' 'cause its
title read
'Called Back.' I thought it was sump'n soothin'
and tender and calm,
But it tuck me a week to git back my peace with
the Twenty-third Psalm.

The girls they read 'em and read 'em - all the
best British books:
Zoler's and Weeder's /Ouida's/ and Clifford's -
though they ain't very much for looks;
And every pillar's a nest of 'em 'n' every drawer
in the house,
And Sue hez give the herowine's names to all the
mares and cows.

But Jim he laughs at their nonsense and sez this
sort of knowledge
O' furrin ways and doin's ain't what they teach
at college
Up to Michigan (he's a Softmore), and he quizzes
the girls like mad
'Bout Hathorne and Lovell /sic/ and Irwin /sic/ -
books they ain't never had.

And he sez that 'Pay' is 'all off' in opposin'
the Copyright,
And he's goin' to give the reasons at Goose
Creek Monday night.
I skipped the follerin' speeches, 'Pay's' seemed
so reasoned out,
But Jim said they wuz as refreshin' as a freshet
after drought.

Jim sez that the's no use talkin' - you've no more
right to take
A Britisher's book than his wallet, and often the's
more at stake;
Says morals don't know no geogerphy; that 'Pay'
ought to blush for shame!
And stealin' a Bank of England note and a green-
back's just the same.

But the meanest thing, Jim sez, is the way 'Pay'
compliments
The whole o' the Illinois farmers and all his
constituwents
By makin' it out to the country we've j'ined the
dead-beat crowd,
O' folks as wants somp'n for nothin'. Well, he
needn't said it so loud.

Jim sez he's been readin' o' late 'bout another
Illinois man
That didn't taffy the people, but made a full
harvest han'
And stuck to the Ten Commandments ez fur ez his
eyes could see,
And got a statute in Lincoln Park, where 'Pay'
won't never be.

Think o' Old Abe in Congress in a similar circum-
stance,
Inventin' reasons for puttin' his hands into his
neighbor's pants,
Sayin', 'Yes, you may have the swag if you'll give
the people shares.'
Pshaw! sez Jim, Old Lincoln wuz a splitter o' rails,
not hairs.

Git up there, Jonas! Gallop along! — whee-ew!
7:43.
'Pay' sez a book don't belong to no man from over
the sea;
But the ring o' the hoss's footsteps and the shake
of his head sez nay, -
Property, property, property, that's what I hears
'em say.[5]

In the secretary's yearly report which was read at the American (Authors') Copyright League meeting of November 7, 1889, reference was made to the action of the joint committee of the two leagues in attempting to influence members of the book trades to support the international copyright legislation; especially commended were the efforts of Eggleston, "who convinced the leading members of the Typothetae that the

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[5]Johnson, Remembered Yesterdays, pp. 269-271. During the first session of the Fiftieth Congress (1887-1888), 107 petitions of college faculties advocating international copyright were presented to Congress, but the University of Michigan, Jim's college, was not represented among them. Solberg, "Chronological Record, 1887-1888," Copyright in Congress, 1789-1904, pp. 240-267.

bill, in the event of its passage, instead of injuring their trade would in all probability add to the volume of printing and publishing business in the United States."[6] The group was represented on the joint committee of the two leagues.[7] Although Randolph had pleaded for their support at the fifteenth annual dinner of the New York Typothetae, on January 17, 1889,[8] the national organization of manufacturing printers did not resolve to send a delegate to the conference of the two league committees until October 8, 1889. This resolution, passed at the third annual national convention of the Typothetae, qualified its approval of the measure by insisting that copyrighted books should be printed in the United States.[9] The nearly unanimous vote followed a speech by Theodore C. DeVinne, the eminent master printer of New York, in favor of International copyright.[10] However, the question of support

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[6] "The American Copyright League Meeting," P. W., XXXVI (November 9, 1889), 664.

[7] "American Copyright League," ibid. (November 16, 1889), 692.

[8] "New York Typothetae Dinner," ibid., XXXV (January 26, 1889), 70-71.

[9] "National Typothetae, and International Copyright," ibid., XXXVI (October 12, 1889), 538-539.

[10] "Meeting of Typothetae," American Bookseller, XXVI (November 1, 1889), 519. The convention was held in St. Louis. It is possible that DeVinne's efforts were aided by the fact that late in September "an association in connection with the Authors' Copyright League [had] been formed in St. Louis with so well-known a publicist as Henry Hitchcock at its head, and with Charles Claflin Allen as its Secretary." [DeVinne's speech], P. W., XXXVI (October 12, 1889), 537.

for international copyright was not yet entirely settled, for at the next annual meeting of the Typothetae, held in Boston in September, 1890, delegates from St. Louis objected to the Chace bill as not providing the sort of copyright law they wanted. Upon DeVinne's assurance that the current bill had been amended to conform to the wishes of the printers, he was re-elected delegate to the copyright league conference.[11]

Gradually, sentiment for the law was created among other influential groups and in various sections of the country. On February 13, 1890, Johnson explained to the American Newspaper Publishers' Association that the Chace bill would permit the importation of two copies of any foreign work, a provision that might benefit newspaper editors. As a result, the association passed a resolution supporting the proposed legislation.[12] The efforts of Congressman George E. Adams, of Chicago, toward securing the enactment of the Chace-Breckinridge or a similar bill led to endorsement of his work by a newly organized "Western branch of the American Copyright League." Among the sponsors of the first meeting, held on February 25, 1890, were Colonel A. C. McClurg, Mrs. Potter Palmer, Marshall Field, George A. Armour, Reginald DeKoven,

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[11]"Printers Favor Copyright," ibid., XXXVIII (September 13, 1890), 296.

[12]"Newspaper Publishers Endorse the Copyright Bill," ibid., XXXVII (February 15, 1890), 275.

and other prominent Chicagoans.[13]

Meanwhile, the American Publishers' Copyright League remained active, its officers for 1890 being drawn from the leading publishing houses. The treasurer's report, presented at the annual meeting on February 20, 1890, by Charles Scribner, stressed the need for prompt payment of yearly dues (twenty-five dollars for active members: i.e., publishers; ten dollars for associate members: i.e., booksellers) to fill the depleted treasury in order to carry on the work of influencing Congressmen in Washington and of organizing local groups throughout the country, and to continue the distribution of documents. "The Treasurer explained that outlays were being carefully and economically made and that the plan adopted during the past year of consolidating into one treasury the funds of the Authors' and Publishers' Leagues, and of the Boston Association /the International Copyright Association/ had materially increased the effectiveness of the work and of the expenditure." The secretary, Putnam, reported that a general conference committee, consisting of the executive committees of the two leagues, and of delegates from the authors' and publishers' leagues, the Boston and Chicago associations, and the national organizations of both typographers and typothetae, with ex-Senator Chace to represent

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[13]"Copyright Matters: A Western Branch of the American Copyright League," ibid. (March 1, 1890), 275.

the public at large, had been functioning successfully for the past year. Secretary of this joint committee was R. U. Johnson of the Century Company, who was responsible for planning and directing its correspondence.[14]

Putnam's Memories of a Publisher contains two interesting accounts of the methods used to carry on the work in the field, the first being his personal contribution during the winter he spent in Colorado for his health, and the second, a device of the joint committee to publicize the copyright question throughout the country.

> I had the opportunity during my winter [1889-1890] in Colorado of doing a little 'missionary'

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[14] "American Publishers' Copyright League - Annual Meeting," ibid., XXXVIII (March 8, 1890), 354-355. Annual dues of the American (Authors') Copyright League were two dollars. See "The American Copyright League," ibid. (October 25, 1890), 597. A specific example of expenses paid by the joint committee was the sending of G. P. Lathrop to Chicago to assist in organizing the branch of the copyright league begun in that city. Among the pamphlets distributed by the American Copyright League in 1890 (and undoubtedly financed by the combined treasuries) were The Advocates of International Copyright: Overwhelming Consensus of Opinion in Favor of the Proposed Legislation (New York: American Copyright League, 1890), a twenty-four page pamphlet containing, under twenty-two headings, "A large and varied collection of [contemporary] opinions and resolutions in favor of the principle of International Copyright and of the proposed legislation with relation thereto"; American Copyright League, Why the Copyright Bill Should Pass [New York, no date (1890, by internal evidence)], an eight-page pamphlet containing material similar to that in The Advocates of International Copyright, and interesting for the fourteen marginal glosses for the corresponding international copyright, signed by George Bancroft; Robert Underwood Johnson, Objections to the Copyright Bill Refuted . An Appeal to Sober Second Thought (New York: American Copyright League, no date), a ten-page defense of the Simonds bill (first introduced into the House on May 16, 1890), with particular reference to the amendment proposed by Representative payson.

work for the cause. I had, when 'drumming' up in Washington possible supporters for the copyright bill, called upon Mr. Townsend who was at the time the single Representative for Colorado; but I had found him not very much interested in the matter, and as far as he was interested, he was opposed to the bill. He had the impression, which was shared by not a few of the Representatives of the South and South-West, that the 'interests of his constituents demanded cheap books' and that any payments made to foreign authors must, of necessity, increase the cost of books and stand in the way of their wide distribution. While in Colorado, I had the opportunity of organizing some public opinion in support of our measure. I got up meetings in Colorado Springs and Denver and had petitions circulated in other towns that I could not reach for meetings. The governor of the State was a Connecticut man and a Yale graduate and a number of the judges and lawyers were New Englanders, and these men were ready to understand the purpose and character of our measure. The petitions and the reports of the meetings were forwarded to Washington and, of necessity, came into the hands of the single Representative of the State, Mr. Townsend. I took pains that my name should in no way be connected with these papers, and Mr. Townsend must have been not a little puzzled to know what it was that had stirred up his constituents in a manner so contrary to his own expectation. On my way back to New York from Colorado in the spring of 1890, I repeated my call upon Mr. Townsend. He thought that I had just come from New York. He greeted me with some effusion. 'Mr. Putnam,' he said, 'I have a very intelligent constituency. I find that they are much interested in this measure of copyright. You have no idea of the extent of this interest. Why,' he continued, 'I have during the past week received dozens of petitions and reports of addresses in favour of international copyright. I am going to vote for your bill.' I naturally expressed my cordial appreciation both of the intelligence of the great State of Colorado and of the open-mindedness of its representative who was prepared to be influenced by suggestions coming from such a constituency.[15]

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[15]Putnam, Memories of a Publisher, pp. 373-374.

Although many Southern and Western members of Congress were opposed, as Townsend had been, to international copyright on the grounds that it was against the interests of their constituents, it was impossible to canvass every state as Putnam had done in Colorado. Accordingly, arrangements were made by the joint committee of the copyright leagues with the syndicates which published "patent insides" - stereotyped or electrotyped plates sold to small town newspapers to furnish them with material for their inside pages - to supply a monthly column by well-known writers such as Eggleston, Gilder and Van Dyke. These "sermons," as Putnam called them, preached the doctrine of international copyright "in thousands of journals, and while the Congressmen from the districts in which these papers were published must have heard of the 'patent inside' system, they could not get over their impression that an article printed in the home paper must represent, to some extent at least, the opinion of their constituents."[16]

It was, apparently, not difficult for writers to "dash off" sketches and verses of this sort with a certain facility; a number of them have been quoted in previous sections of this study. The following was printed in the New York Tribune on December 7, 1890, four days after the passage of the Simonds bill (H.R. 10681) by the House of Representatives.

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[16]Ibid., pp. 374-376.

That 'Certain Profession'

Mr. Peters, of Kansas, expressed his opposition to the character of legislation involved in the bill. . . . . It was demanded only by a few representatives of a certain profession. - (Extract from the report of the Congressional debate on the Copyright Bill.)

Peters, you ought to have called the roll
Of that 'certain profession' - 'pon my soul;
You'd have killed the bill and done yourself
proud
Had you called the roll and called it loud!

O, Peters, it must have occurred to you
That 'certain profession' to up and review;
Your judgment, Peters, was certainly erring,
You'd have certainly killed it dead as a
herring!

O, Peters, why didn't you call the roll?
The deed would have echoed from pole to pole;
Ah, never again, there's reason to fear,
Will you have such a chance to boom your
career!

O, Peters, of Kansas, your fame is stalled,
Just think of the names you might have called;
Pray just allow us to mention a few,
As quite at random they rise to view.

There's Moses and Dickens and Burns and Paul,
And Caesar - who carried wormwood to Gaul -
And Homer and Horace and Mrs. Stowe,
And Fielding and Milton and Edgar Poe.

[The next sixteen stanzas, omitted here, which include the names of 123 authors, continue in the same vein.]

And the poet who's written of 'Hiawatha' -
A highly respectable Cambridge author -
His name shall abide to the end of time,
But, O, such a difficult name to rhyme!

This list, O, Peters, of Kansas, aims
Just to give you some random sample names,
Just to sort o' teach you the standing, you
know,
Of a 'certain profession' here below.

O, Peters, your lusty, promising state
Is surely a prey to untoward fate.
She used to be bleeding and, O, so ill
You treat her - she's certainly bleeding still!

O, Peters, 'tis such an unfilial deed
To give your mother occasion to bleed.
When down on a 'certain profession' you bore
She must have been simply bathed in gore!

O, Peters, Peters, forbear! forbear!
Such views of a 'certain profession' to air;
The profession don't care a marqué sou,
But, Peters, they're awfully rough on you![17]

Passage of the Simonds Bill by the House of Representatives

Although it was reported that Speaker of the House John G. Carlisle had, on January 21, 1889, assured a committee from New York Typographical Union No. 6 that he would recognize either of two Congressional proponents of international copyright on the next suspension day, February 4, so that they might move for a suspension of rules to permit passage of an international copyright bill,[18] nothing was accomplished at that time. Instead, the day was spent on other business. The failure to obtain suspension of the rules and the consequent fixing of a day for consideration of the Chace-Breckinridge bill was engineered, it was charged, by filibusters, one of whom was Representative Payson, opponent of international

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[17]W. H. McElroy, "That 'Certain Profession,'" New York Tribune, December 7, 1890, p. 14.

[18]"International Copyright: Hopes of Securing a Vote in the House," P. N., XXXV (January 26, 1889), 73.

copyright.[19] Thus nothing was accomplished during the second session of the Fiftieth Congress.

On December 3, 1889, President Benjamin Harrison, in his annual message to the first session of the Fifty-first Congress, said: "The subject of an international copyright has been frequently commended to the attention of Congress by my predecessors. The enactment of such a law would be eminently wise and just."[20] On the next day, Senator O. H. Platt introduced a bill (S. 232) which was referred to the Committee on Patents.[21] This bill, "submitted, by request, by Thorvald Solberg to the Conference Committee of the Authors' and Publishers' Copyright Leagues and the Typothetae and passed upon on October 24, 1889,"[22] was nevertheless reported back adversely on January 21, 1890, by the Senate Committee on Patents and indefinitely postponed.[23] A total of nine bills, seven in the House and two in the Senate, were introduced into

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[19]"The Blocking of the Copyright Measure," ibid. (February 16, 1889), 284.

[20]Message of President Harrison to 51st Congress, 1st Session, December 3, 1889, in Richardson, Messages and Papers of the Presidents, XI, 5478.

[21]U. S. Congress, Senate, Congressional Record, 51st Congress, 1st Session (Washington: Government Printing Office, 1889), Vol. 21, p. 101.

[22]Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, pp. 53-54.

[23]Congressional Record, 51st Congress, 1st Session (1889), Vol. 21, p. 730.

Congress between January 6 and May 16, 1890; of these, only three House bills were reported out of committees which had held hearings on them.[24] Although the passage of a bill by the House was anticipated during the winter and spring months,[25] the only surviving bill (H.R. 6941, introduced by C. F. Adams) was extensively discussed and amended, but was defeated on May 2, 1890, by a vote of 125 to 99 (103 members not voting) against engrossment and reading of the bill a third time. The nature of the proceedings may be judged from the fact that four of the nine amendments agreed to by the House were proposed by Representative Payson, who was among those afterwards voting against engrossment and a third reading of the bill. Representative Henry Cabot Lodge's speech in defense of international copyright, in which the fallacies in Payson's reasoning on the value of unauthorized reprints were pointed out, was fruitless.[26]

In the "post-mortem" which followed, Publishers' Weekly attacked the methods used by the opponents of international

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[24]These bills and reports are listed in Solberg, "Bibliography, I. Bills," Copyright in Congress, 1789-1904, pp. 54-56; "Bibliography, II. Reports," ibid., p. 80; "Chronological Record, 1890," ibid., pp. 268-288.

[25]See, for example, the following editorials: "The Status of the Copyright Bill before Congress," P. W., XXXVII (February 8, 1890), 252-253; "International Copyright: Progress of the Copyright Bill," ibid. (February 22, 1890), 300; "Copyright Matters: The Present Status of the Copyright Bill," ibid. (April 26, 1890), 560.

[26]Congressional Record, 51st Congress, 1st Session (1890), Vol. 21, pp. 4134-4157.

copyright, particularly Payson's voting in the negative after securing approval for his amendments. The misuse of data concerning publication, importation, and copyright registration was cited, as were the misleading quotations of comparative British and American book prices: English first editions rather than the later inexpensive issues were contrasted with American "library" reprints.[27] C. C. Febiger, of Lea Brothers and Company, Philadelphia, alleged that the bill failed to pass for two reasons: dominance of the campaign for international copyright by New Yorkers who undervalued the potential strength of the labor unions and others assisting the joint committee, and the influence of the "boiler-plate" (stereotype) manufacturers on Congressman Payson. Frank Wood, business manager of J. B. Lippincott Company, said: "The defeat was undoubtedly due to the Farmer's Alliances and Granges throughout the country, and the power they /had/ over their local Congressmen. As soon as the cry of 'Trust' was raised against the bill these associations took up arms against it with the result we have seen." Another Philadelphia publisher, J. W. Morton, Jr., general manager of the Keystone Publishing Company, thought that the bill had been defeated because of a "feeling of super-Americanism and antagonism to anything that could possibly be of benefit to foreign countries, especially England." H. C. Baird quite naturally rejoiced in

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[27] "The Copyright Defeat," P. W., XXXVII (May 10, 1890), 612-613.

the outcome, and other Philadelphians who had favored the bill were at a loss to understand what had happened.[28]

In New York, Harper and Appleton agreed that bad management of the bill had led to its defeat, the latter publisher stating that it had been brought to a vote without sufficient warning to the parties interested in its passage. Dodd, Mead and Company ascribed the failure to "want of education on the part of some members [of Congress], and the demoralization which had been produced in many regions of the country by the piratical system which had so long prevailed." Putnam asserted that Congressmen from Southern and Western states, ignorant of the true nature of the measure, had defeated it, and that Payson's amendments had been intended only to confuse the issue. E. J. Belford, a publisher who had been cited by Payson as opposed to the bill, flatly contradicted the representative from Illinois. If it were true, as Payson had claimed, that authors have no property in ideas, Belford asked, would not the same statement apply to Congressmen's speeches? In that case, why should Payson lay claim to a salary for his services in Washington?[29] Every disappointed advocate of international copyright had his own opinion as to reasons for failure of the House bill, but the real opponents

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[28] "Philadelphia on the International Copyright Bill," American Bookseller, XXVII (May 25, 1890), 261-263.

[29] "Defeat of the Copyright Bill: Opinions of Publishers," ibid., 259-261.

were still unknown, according to Publishers' Weekly, for Arnoux, Fitch and Woodford persistently refused to identify their clients.[30]

In spite of the general air of defeatism over the setback to international copyright in the House of Representatives, on June 10, 1890, Congressman Simonds and the Committee on Patents reported out another bill (H.R. 10881), with the recommendation that it be passed in place of H.R. 10254. The greater part of the text of the twenty-five page report was obviously derived from material originally issued by the American Copyright League. (For example, there is a list of twenty-two individuals and groups supporting international copyright which is virtually identical with that found in The Advocates of International Copyright, a pamphlet previously cited in this chapter.) The new bill proposed "to permit foreigners to take American copyright on the same basis as American citizens, in three cases: first, when the nation of the foreigner permits copyright to American citizens on substantially the same basis as its own citizens; second, when the nation of the foreigner gives to American citizens copyright privileges similar to those provided for in this bill; third, when the nation of the foreigner is a party to an international agreement providing for reciprocity in

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30"The Copyright Campaign," P. W., XXXVII (May 17, 1890), 641.

copyright, by the terms of which agreement the United States can become a party thereto at its pleasure." The bill further stipulated that "all books copyrighted under the proposed act shall be printed from type set within the United States, or from plates made therefrom. . . . ." The duration of copyright was the same as that established by the existing law: "twenty-eight years, with the right of extension for fourteen more; in all, forty-two years. . . . ."[31] Throughout the summer, it was reported, Simonds was unable to get the bill called up because of the press of other business which was introduced each day. Nevertheless, he was determined to persevere even if forced to wait until the second session in December.[32]

The November election produced a Democratic majority in the House, the result, according to Johnson, of reaction against the McKinley Tariff Act. He therefore wrote to urge upon Representative Lodge increased pressure for passage of the international copyright bill by the Republican "lame-duck" Congress.[33] And President Harrison, in his message to

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[31]U. S. Congress, House, Committee on Patents, "International Copyright. Report to Accompany H.R. 10881," House of Representatives Report No. 2401, Reports of Committees of the House of Representatives, 1st Session, 51st Congress, 1889-1890 (Washington: Government Printing Office, 1891), Vol. 7, pp. 1-25.

[32]"The Copyright Bill in the House," P. W., XXXVIII (August 2, 1890), 164.

[33]Johnson to Lodge, date not given, in Johnson, Remembered Yesterdays, pp. 243-244.

the second session of the Fifty-first Congress, December 1, 1890, repeated his recommendation that a law be passed "affording just copyright protection to foreign authors on a footing of reciprocal advantage for our authors abroad."[34]

The next day, December 2, Representative Simonds called up the bill (H.R. 10881); immediately, Representative Payson raised the question of its consideration. The question being voted upon, the affirmative carried, 132 to 74. Representative James H. Blount of Georgia then called for reconsideration, but his proposal was voted down, 119 to 71. Representative Albert Hopkins of Illinois next moved that the House adjourn before Simonds, who had been recognized by the Speaker, could submit an amendment to the bill that it go into effect on July 1, 1891, but the Speaker ruled that Hopkins' motion was out of order. While Simonds was speaking, Representative Daniel Kerr of Iowa raised a point of order concerning the presentation of the amendment, following which he moved that the House adjourn. His motion was defeated, 124 to 82. When Simonds called for the previous question, Hopkins moved to lay the bill and the amendment on the table; once more, the motion was defeated, 128 to 90. The delaying tactics continued with Blount's motion to reconsider the vote on tabling the bill. Again, the motion was defeated, 123 to 83.

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[34]Message of President Benjamin Harrison to Fifty-first Congress, Second Session, December 1, 1890, in Richardson, Messages and Papers of the Presidents, XI, 5561.

The previous question being called for, Representative James D. Richardson of Tennessee moved for adjournment, but that motion was also voted down, 110 to 81. Finally the previous question was ordered and passed by a vote of 106 to 73, following which the House adjourned upon Simonds' motion to do so.[35] An examination of the voting will demonstrate the wisdom of his strategy in calling for adjournment: on every vote the opposition had whittled down the lead of the proponents of the bill, and the number not voting increased from 184 on the first roll call to 151 on the last.[36]

On December 3, 1890, the Speaker announced further consideration of the bill to be the regular order of business. In the debate on the bill and amendment which followed, four speakers argued for the bill and four against it. (It was then that Representative Samuel R. Peters of Kansas, opponent of international copyright, made his remark about the "certain profession" demanding passage of the bill.) Following the debate, under the House rules the amendment was agreed to and the bill, as amended, was engrossed and read for the third time. Before a vote could be taken, Peters and Representative Clifton R. Breckinridge of Arkansas submitted further amendments, the first to resubmit the bill to the Committee on

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[35] Congressional Record, 51st Congress, 2d Session (1891), Vol. 22, pp. 32-38.

[36] Ibid.

Patents with instructions to limit the term of copyright to fourteen years, and the second to stipulate that existing tariff rates on imported books be continued under provisions of the bill. These two motions, being voted on, were rejected. The question of passage of the bill as amended was put; the vote was 139 to 95 in favor of passage; and the Clerk of the House was ordered to request the concurrence of the Senate in the bill.[37]

However, the problem of getting the bill through the Senate a second time would involve more than the request from one chamber to the other, as the following excerpt from Representative Lodge's letter to Gilder shows:

> . . . .There will be absolutely no chance for the bill in the next Congress [i.e., the Fifty-second]. Everything depends on passing it now, and I would urge upon you and all the members of the League to put forth every effort at once to get action by the Senate. No time is to be lost. We have not only passed the bill in the House but we have passed it without the loss of a moment. This is, however, the short session. Measures of great importance are struggling for a hearing. Copyright has got a good start, but you must get the Senate to take it up, if possible before the recess. You know, of course, that every effort I can make will be made, but I really feel that the object of the League is now so near accomplishment that they ought to strain every nerve to get the bill through the Senate without delay.[38]

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[37] Ibid. The text of the bill will be discussed in a subsequent section.

[38] Lodge to Gilder, December 4, 1890, in Johnson, Remembered Yesterdays, p. 244. Lodge also said in this letter that he had had several conversations with Speaker of the House Thomas B. Reed prior to the opening session, and that

Early in December, Publishers' Weekly looked for passage of the bill by the Senate as "the best of Christmas gifts" for the following reasons: that body had previously passed similar legislation; Senator Beck of Kentucky, foe of the measure, had been succeeded by Senator John G. Carlisle, former Speaker of the House and "an earnest advocate of copyright;" Senator Platt of Connecticut would "give the bill the necessary generalship."[39] Such hopes, however, as in years past, proved to be too optimistic, and passage of the bill in the Senate was not easy.

Passage of the Simonds Bill by the Senate

In his account of the final legislative struggle to secure enactment of the international copyright bill, Johnson listed some of the difficulties which had to be overcome.

> **. . . .[T]here were. . . .considerations** that operated against us: the indifference of many **Senators to copyright reform; their confusion as to the character of literary property, expecially on the part of Senator Sherman, who to the last could not see that there was nothing objectionable in the necessary monopoly of such ownership; the**

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as a result, he "felt sure that [Reed] would give Mr. Simonds a day and allow him to call the bill up at the earliest moment."

39"The Copyright Victory," P. W., XXXVIII (December 6, 1890), 919. Immediately after passage of the bill by the House, "Mr. Platt assumed active management of the campaign," Coolidge, An Old-Fashioned Senator, p. 94. It is worthy of note that Senator Carlisle voted against the bill. Congressional Record, 51st Congress, 2d Session (1890), Vol. 22, p. 2498.

> noticeable lack of acquaintance with the workings and conditions of the book trade, and an equally violent prejudice on the Republican side against certain authors who had been active political opponents. Another obstacle was the difficulty on the part of several Democratic Senators in discriminating between the protection of a tariff and the protection (security was the word I always employed of a copyright act. . . . . We lost more votes by this confusion on the Democratic side than we gained on the Republican. Moreover at a time when every moment was precious there was a considerable loss of time to us by eulogies or adjournments on the occasion of the death of Secretary [of the Treasury] Windom, Admiral Porter, or General Sherman. In brief, Senator Platt was confronted on every side and continually with obstacles of a difficult and delicate sort.[40]

Furthermore, the Democratic victory in the election of the previous November had brought about great pressure during the Republican-controlled short session to secure enactment of certain meausres such as the Federal Election law before the other party should take over. Therefore, in order to secure discussion of his bill, Senator Platt was forced to act quickly yet circumspectly.[41] Accordingly, he advised Johnson to call upon the members of the Senate Steering Committee as early as possible. The day being a Sunday, Johnson immediately set out by carriage to interview each of the committee members at his home. Senator George F. Hoar of Massachusetts assured him that the bill would have second place on the agenda, and Senator William M. Evarts of New York promised his support. "Determined to

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[40]Johnson, Remembered Yesterdays, p. 252.

[41]Coolidge, An Old-Fashioned Senator, pp. 94-95.

lose no chance for the success of the bill on its merits," Johnson later wrote, "I at once organized a systematic appeal to every doubtful Senator, through the newspapers of his State or through constituents or others who we discovered were likely to be influential with him. A meticulous study of each man was made from various points of view, and his classmates, clergymen, former business associates and others were enlisted in the good cause."[42]

For his part, Senator Platt, on February 9, 1891, moved that the Senate, acting as a Committee of the Whole, consider the bill H.R. 10881, which he represented as practically identical with the Chace bill passed in 1888. The motion being passed, Senator William P. Frye of Maine moved to amend the bill to include copyright protection for maps, charts, dramatic and musical compositions, engravings, cuts, prints, photographs, chromos and lithographs printed or manufactured within the United States. This amendment was accepted by a vote of twenty-seven to twenty-four. Senator Sherman then proposed another amendment, but it was not acted upon that day.[43] Because of its scope, the Frye amendment endangered

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[42]Johnson, Remembered Yesterdays, pp. 245-246.

[43]Congressional Record, 51st Congress, 2d Session (1891), Vol. 22, pp. 2378-2396. The Frye amendment was introduced at the request of the National Lithographers Association, which belatedly discovered that the proposed bill did not protect its interests. Johnson gives an interesting account of his meetings with the representative of this union in order to work out a compromise satisfactory to them and to the supporters of copyright for books. Remembered Yesterdays, pp. 246-250.

passage of the bill.[44] The Sherman amendment to permit importation of foreign editions of books copyrighted in this country, "subject to the duties provided by law," was not introduced again until February 13, 1891, when it was passed by a vote of twenty-five to twenty-four.[45] It was opposed by supporters of the bill on the grounds that it would nullify the manufacturing clause, which was regarded as essential to the bill.[46]

The bill was further amended between February 13 and February 18;[47] to all of these amendments Publishers' Weekly expressed the following objections:

> The bill is amended in three important points: (1) It requires manufacture of art-works as well as books within the United States as a condition of their copyright. This is wrong, because art-works cannot be duplicated mechanically, as books can; the amendment should be modified to cover only processes which are essentially duplicative, as lithography and photography. (2) It permits importation of copyrighted foreign books /i.e., foreign editions of books copyrighted in the United States/, on payment of tariff duties. While the retention of the typesetting clause preserves the most essential feature of the manufacturing provision, which is the essence of the compromise on which the bill is founded, the amendment is out of line with the principles of copyright, which give an author the property-right to dispose of his book as he will, and would also make all sorts of practical difficulties. (3) It

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[44]Coolidge, An Old-Fashioned Senator, p. 101.

[45]Congressional Record, 51st Congress, 2d Session (1891), Vol. 22, pp. 2601-2618.

[46]Putnam, "The Contest for International Copyright," Question of Copyright, p. 58.

[47]Congressional Record, Vol. 22 (1891), pp. 2664-2668; 2670-2677; 2790-2797; 2836-2842.

> permits the importation of periodicals without restriction. This might admit 'periodicals' like our own 'cheap libraries' consisting chiefly or solely of copyright material /i.e., reprints of work copyrighted both here and abroad./[48]

Finally, on February 18, 1891, it was ordered in the Senate that the bill as amended be read for the third time. In the passage of the bill, the affirmative vote was thirty-six; the negative, fourteen. It was then resolved that a conference on the bill as amended be requested of the House of Representatives, and Senators Platt, Hiscock and Gray were appointed to confer with a committee from the House, which was so informed.[49]

In spite of the fact that the Fifty-first Congress was to terminate its existence in two weeks' time, the House did not take up the Senate request for conference until February 28, and then, on motion of Congressman Payson, opponent of the bill, the request was at first set aside. Congressman Simonds moved that the House refuse to concur in the Senate amendments, which motion Payson attempted to block by a counter-proposal that the House do concur in the Senate amendments. Upon a vote, the House rejected the Senate version of H.R. 10881, 128 to 64; not voting, 137. Next, it

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[48]"The Passage of the Copyright Bill," P. M., XXXIX (February 21, 1891), 313.

[49]Congressional Record, 51st Congress, 2d Session (1891), Vol. 22, p. 2849. Among the senators who had proposed amendments to the bill, the following voted for its passage: Edmunds, Frye, Pasco; against passage, Carlisle, Daniel, Reagan; not voting, Ingalls, Power, Sherman, Vance. Ibid.

was agreed to confer with the Senate committee, upon which Payson proposed instructions to the House committee which, as Simonds alleged, would have destroyed the bill as originally passed by both Houses; furthermore, it was against the practice of the House of Representatives to instruct conferees before the meeting of the conference committee. The Speaker upheld Simonds' point of order, and appointed Representatives Simonds, Buchanan of New Jersey, and Cowles as "managers on the part of the House" to meet with the Senate committee.[50]

Conference, Compromise, and Enactment into Law

The joint Committee of Conference having met, its recommendations were reported on March 2, 1891, to the House of Representatives, which accepted the conclusion of the House managers to agree to certain modified Senate amendments to the bill concerning extension of copyright to lithographers, etc., and concerning declaration by the President of the existence of reciprocal copyright relations with other countries. However, the committee had been unable to work out a satisfactory compromise on the Sherman amendment, which permitted importation of foreign editions of books copyrighted in the United States, subject only to the payment of such

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[50] Ibid., pp. 3606-3611. The Payson resolution substituted the Teller bill (S. 4751), which was essentially a renewal of the royalty plan, for H.R. 10881. See Solberg, "Chronological Record, 1891," Copyright in Congress, 1789-1904, p. 314 n.

duties as the tariff laws prescribed. The House accepted the report by a vote of 139 to 90, and the managers were instructed to seek a further conference with the Senate on the bill and its amendments.[51]

When the same report was made, on March 3, 1891, to the Senate by its conference managers, that body refused, by a vote of thirty-three to twenty-eight, to recede from its support of the Sherman amendment, but, like the House, ordered its managers to resume their conference with the other committee members.[52] The second conference, held that night, brought about a recession from the Senate managers' support of the Sherman amendment; Senator Hiscock decided that retention of the amendment would prevent passage of the bill, and he therefore changed his previous stand to conform to that of Senator Platt and the House managers.[53]

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[51] Congressional Record, 51st Congress, 2d Session (1891), Vol. 22, pp. 3709-3711, 3788-3791.

[52] Ibid., pp. 3847-3854.

[53] Putnam, "The Contest for International Copyright," Question of Copyright, p. 61. Hiscock may have been influenced by telegrams from members of the typographical unions who protested his previous action in "obstructing the Copyright Bill." However, when Kennedy, the union representative in Washington, learned that the conference committee had agreed upon a "permissive non-importation clause" (i.e., provision that two copies of any foreign edition of a copyrighted book might be imported for use and not for sale without the written consent of the copyright proprietor or publisher) he threatened to request Representative Amos Cummings of New York, also a member of the typographical union, to oppose the bill as against the interests of labor. Johnson assured Kennedy that the revision had been made without the advice or consent of the

As soon as the Senate managers reported agreement with the House, the Senate voted, twenty-seven to nineteen, to accept the report. The amendment in question had been modified to permit importation "for use and not for sale . . . .subject to the duty thereon /of/ not more than two copies of /foreign editions of books copyrighted in the United States/ at any one time; and except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation: Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply to the translations of the same, and the importation of the books in the original language shall be permitted." Among those voting in the affirmative was Senator Samuel Pasco of Florida, who had hitherto worked against the bill.[54] Johnson, in his account of the passage of the bill, asserted that Pasco did so in order that he might be eligible, in keeping with Senate procedure, to move to reconsider the vote

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Joint Copyright League committee, and reminded him that he was expected by the unions to support, not kill, international copyright. If the permissive clause proved harmful to the printers, Johnson promised Kennedy to conduct personally a campaign for its repeal. As a result, both Kennedy and Cummings supported the bill. Johnson, Remembered Yesterdays, pp. 253-256.

[54] Congressional Record, 51st Congress, 2d Session (1891), pp. 3882-3888.

of agreement, a step which he took a few hours later. As soon as the bill had been signed by the Vice-President of the United States, Levi P. Morton, and the bill had been held for the time stipulated by the rules of the Senate to permit possible motions to reconsider, Representative Lodge, who had been waiting for that purpose, himself took the bill to the Speaker's desk in the House. It was then some time after two o'clock in the morning. Fortunately, all during the House debate on the question of agreement to the measure as approved by the Senate, the opponent of international copyright, Representative Payson, was "asleep on a bench at the back of the chamber, his face covered by a newspaper which rose and fell with his stentorian breathing. When at last the roll call came we [Johnson, Appleton, and Scribner, watching from the House gallery] had an unpleasant quarter of an hour for fear he might awake and rush into the fray."[55] The bill was passed, 127 to 77, and signed by Speaker Reed,[56] after which Congressman Lodge took it, to avoid loss of time, to the engrossing room to have it prepared for the President's

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[55]Johnson, Remembered Yesterdays, pp. 256-257. "The successful steering of the bill through the house in the several votes required during the night of the 3d of March was largely the work of Henry Cabot Lodge, and was not a little furthered by the friendly cooperation of Speaker Reed." Putnam, "The Contest for International Copyright," Question of Copyright, pp. 62-63.

[56]Congressional Record, 51st Congress, 2d Session (1891), p. 3900.

signature.[57]

When the action of the House was reported to the Senate, Senator Pasco moved that the Senate should reconsider its vote of agreement to the report of the conference committee, on the grounds that the bill had been "railroaded" to the House. The vote on the motion that the House be requested to return the measure to the Senate was defeated, twenty-two to thirteen, but the number voting did not constitute a quorum. A roll call produced a quorum, but on a second vote, only twenty-eight Senators voted, although thirty-nine were present. On the motion of Senator Edmunds, it was ordered that the Sergeant-at-Arms request absent Senators to attend.[58]

It was then about five in the morning, said Johnson, and the Senate recessed until nine. (Although, by clock and by calendar, it was already March 4, the meeting of March 3 had not yet been adjourned.) He continued:

> A conference of [the joint copyright league committee] was immediately held in Senator Platt's committee room and a plan of campaign was laid out by him. . . . . [He] now dictated a 'whip' to all the Senators who were known to favor the bill, and it was agreed that these typed notes should be delivered to them at their residences by the three members of the Joint Committee then in Washington. Mr. Appleton undertook to reach the Senators who were living on Capitol Hill; to Mr. Scribner was

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[57]Johnson, Remembered Yesterdays, p. 257.

[58]Congressional Record, 51st Congress, 2d Session (1891), pp. 3894-3896, 3905-3908, 3910-3911.

> assigned the notification of those living at hotels in other portions of the city, while the remainder were entrusted to me. This whip announced the parliamentary position of the bill, and urgently requested the presence at nine o'clock of those to whom it was addressed, so that on the reassembling of the Senate the motion to reconsider might be promptly defeated, which would be equivalent to the passage of the bill.
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> No one of us will ever forget the experience of that sleepless night. Outside was raging one of the bitterest storms I have ever known. Rain was falling and blowing in gales and freezing as it fell. It was about half-past six o'clock and no conveyances were to be had, and even if we had been able to secure cabs, the horses would not have been able to keep their feet upon the frozen and sleety streets. Nevertheless, every message entrusted to us was delivered, and I believe every friend of the Copyright Bill in the Senate was present at the reassembling at nine o'clock. Me of the committee were in the galleries holding our breath for fear of another contretemps as a malevolent climax to those I have recounted. Every minute was precious to us. After what seemed an interminable prayer and a useless reading of voluminous minutes, the motion to reconsider was voted down at about ten o'clock, by 21-29, and the situation was saved! Less than two hours of the session remained.[59]

In this dramatic finale, there is even a note of comic relief. Anticipating the signature of the bill the summer before, Johnson had obtained a feather of an American eagle, from which a quill pen had been made for the President's use in signing the bill. On the morning of March 4, President Harrison having come to the Capitol to sign the legislation passed in the closing hours of the Fifty-first Congress, the pen was nowhere to be found. One of the President's staff

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[59]Johnson, Remembered Yesterdays, pp. 258-259. See also Congressional Record, 51st Congress, 2d Session (1891), Vol. 22, pp. 3911-3912.

recollected that it was at the White House, and a Negro coachman was dispatched to get the pen, the bill meanwhile being withheld from the President. The international copyright act was signed with the quill pen at a quarter to eleven, one hour and fifteen minutes before the closing of the session. "The President gave me back the pen and I rushed to the telegraph office to announce the good news . . . . : . . . .'The bill has been signed by the President. Sound the loud timbrel! . . . . .'"[60]

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[60]Johnson, Remembered Yesterdays, p. 259. Johnson made much of what he called "spiritual lobbying" in Washington. "The bill, when it finally passed, had upon it no taint of the improper use of funds and the experience convinced me that any good nonpartisan cause persistently and tactfully urged in Congress is in the long run sure of success." Ibid., pp. 265-266.

The treasurer's annual report submitted to the 1891 meeting of the American Publishers' Copyright League showed the following receipts and disbursements for 1890:

Balance brought forward to 1890. .	$ 110.41	
Dues received, 1890.	965.00	
Special subscriptions, including contributions of the International Copyright Association of Boston	5,425.00	
		$6,500.41
Printing, postage, telegrams, distribution of documents, travelling expenses of league representatives.	6,123.32	
Fee to Washington counsel. . . .	250.00	
Balance on hand.	127.09	
		$6,500.41

It was emphasized that no payment had been made for personal services except as noted in the case of the counsel. See "American Publishers' Copyright League - Annual Meeting," P. W., XXXIX (March 21, 1891), 440-441.

In a letter to the editor of the New York Evening Post, March 10, 1891, Johnson and Putnam joined in stating that the bill had been ably supported by Republicans and Democrats,

The Act of March 3, 1891

The law enacted on March 3, 1891, as *Publishers' Weekly* pointed out a few weeks later, was not an international copyright act at all, but merely legislation providing for the granting of American copyright under certain conditions to foreigners.[61] Ten of the thirteen sections of the new law were actually amendments to the existing copyright statutes.[62] These amendments provided that an author, without reference to his citizenship or place of residence, might obtain American copyright simply by complying with the other provisions of the law. In return, he received all rights of publishing, reprinting, and translating his book for a period of twenty-eight years, which term might be renewed for an additional fourteen years by the author, his widow, or his children upon a second recording of the title of the book "within six months before the expiration of the first term," subject to publication in the newspapers of the record of second entry for a period of four weeks "within two months from the date of said

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protectionists and free traders alike. In proof of their statement they listed the party affiliation of those members of Congress most influential in getting the law passed. *New York Evening Post*, March 11, 1891, p. 5.

[61] "The Provisions of the New Copyright Act," *P. W.*, XXXIX (April 18, 1891), 561.

[62] In keeping with the scope of the discussion throughout this study, reference will be made in the following analysis only to authors and to books, although the law actually extended protection to authors, inventors, designers, and proprietors (or to their executors, administrators, or assigns) of books, maps, charts, dramatic and musical compositions, engravings, cuts, prints, photographs and photographic negatives, paintings, drawings, chromos, statues, etc.

renewal." Entry of the title of the book and deposit of two copies in the office of the Librarian of Congress not later than the day of publication were required; the copies so deposited were to "be printed from type set within the limits of the United States, or from /plates/ made therefrom." While such copyright was in effect, the importation into the United States of editions not printed from type set in this country was prohibited, except that individuals might import "for use and not for sale" two such copies at one time, subject to the duty on their purchases. There was no restriction on the importation of foreign newspapers and magazines which contained material originally copyrighted in this country, if the reprinting of such material had been authorized by the copyright holder. If only the English translations of books in foreign languages were copyrighted in the United States, "the importation of the books in the foreign language /was/ permitted." Registration fees were to finance the publication of lists of copyrighted books by the Librarian of Congress for distribution through the Secretary of the Treasury to customs officers and postmasters in order to prevent unlawful importation of copyrighted books. Revised editions of books by foreign authors first published prior to passage of the Act of March 3 were eligible for copyright unless they formed part of a series in the process of being published before July 1, 1891; a copy of every revised edition of books previously copyrighted was to be delivered to the office of the Librarian of Congress. False insertion of copyright notice, unauthorized publication and

importation of books already copyrighted in the United States, and unauthorized printing or publication of an author's manuscript were forbidden. The final amendment repealed Section 4971 of the copyright statutes which had read, "Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book. . . .written . . . .by any person not a citizen of the United States or resident therein."[63]

The last three sections of the 1891 law comprised new legislation. The first of these provided that each volume of multi-volume works, when the first was published after July 1, 1891, as well as each successive number of periodicals, should be considered as a separate publication "subject to the form of copyrighting as above." The second section established July 1, 1891, as the effective date of the international copyright act. The third limited the extension of American copyright to citizens of two classes of foreign nations: (1) those granting to Americans substantially the same privileges as were conferred on their own citizens, and (2) those already participating in an international reciprocal copyright agreement to which the United States might adhere at its pleasure. The President was empowered to proclaim the existence of either condition under which the Act of March 3, 1891, might grant American copyright

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[63]"IV. Public Acts Relating to Copyright Passed by the Congress of the United States, from 1790 to 1897, Inclusive," Copyright Enactments, 1783-1900, Copyright Office Bulletin No. 3, pp. 53, 55-59.

to foreign authors.[64]

The first Presidential proclamation was issued on July 1, 1891, by President Benjamin Harrison and extended the privilege of American copyright "to the citizens or subjects of Belgium, France, Great Britain [and her possessions], and Switzerland," for the reason that those nations permitted American citizens to obtain copyright under essentially the same conditions stipulated for their own nationals.[65] On April 15, 1892, the President proclaimed the ratification of a treaty between the United States and the German Empire which mutually extended copyright to the citizens of either nation. Between October 31, 1892, and November 20, 1899, the existence of reciprocity in eight more countries was noted and proclaimed by Presidents Grover Cleveland and William McKinley.[66]

Passage of the international copyright act and issuance of the first Presidential proclamation "required conjoint

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[64] Ibid., p. 59.

[65] Richardson, Messages and Papers of the Presidents, XII, 5582-5583. It was reported that Great Britain was included because previously existing legal doubt as to the validity of first publication as the sole requisite for British copyright had been cleared away by the unanimous opinion of the leading jurists, the Attorney-General, and the Solicitor-General of that country. See "International Copyright," P. W., XL (July 4, 1891), 8.

[66] "VI. Proclamations Issued by the President Extending Copyright to Citizens of Certain Foreign Countries, 1891-1899," Copyright Enactments, 1783-1900, Copyright Office Bulletin No. 3, pp. 67-76.

arrangements on the part of the President, the State, Treasury, and Post Office Departments and the Librarian of Congress to get the law into working operation and to devise and start the machinery necessary for the purpose."[67] For example, it was necessary for the Librarian of Congress to issue circulars describing the means by which American citizens might secure copyright in Belgium, Canada, France, Great Britain, and Switzerland, and containing statements of information required of applicants for American copyright; e.g., citizenship or residence of applicant to determine his eligibility, evidence of printing from type set or from plates made from type set in the United States.[68] To enforce the provisions of the law it was necessary for the Treasury Department to issue the "Catalogue of Title Entries," furnished by the Librarian of Congress, to collectors of customs and postmasters of post offices receiving foreign mail.[69]

The Immediate Effect of the International Copyright Law

Although the international copyright law was a compromise measure, it was hoped that attempts to amend it would

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[67]"International Copyright in Practice," P. W., XL (July 25, 1891), 139.

[68]"International Copyright: Circulars of Information from the Librarian of Congress," ibid., 140.

[69]"International Copyright: U. S. Government 'Catalogue of Title-Entries,'" ibid., 141.

be held in abeyance until experience had shown the best course to follow. Nevertheless, continued an editorial in Publishers' Weekly, "It is our conviction that when the time comes, the effects of this bill upon American literature and American interests generally, as well as its relation to justice in a large sense, will have borne such fruit that those who have stood most staunchly for the manufacturing clause and other restrictions in the bill will join heartily in bringing American copyright law into more full harmony with the copyright law of other nations."[70] Equally sanguine, the Literary World likewise characterized the manufacturing clause as "the chief defect" of the law.[71] Johnson claimed that the requirement actually kept copyrighted translations of books in foreign languages off the market, only "eighteen or nineteen" being published in the seventeen years following passage of the act, although many more applications for American copyright than that were made by foreign authors.[72] The root of the problem, as Putnam saw it, was the difficulty European writers and less well known English authors had in arranging for simultaneous American publication of their books.[73] Senator Platt discovered

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[70] "At Last - International Copyright," P. W., XXXIX (March 7, 1891), 364.

[71] "Justice at Last," Literary World, XXII (March 14, 1891), 92.

[72] Johnson, Remembered Yesterdays, p. 275.

[73] Putnam, "Results of the Copyright Law of 1891," Question of Copyright, p. 171.

that the existence of the manufacturing and non-importation clauses created a widespread fear in America that the law had been enacted for the benefit of publishers and not for that of the public,[74] and he warned publishers that they must issue widely circulated copyrighted editions of foreign works, particularly those of British origin, at low prices in order to avoid the charges of monopoly and profiteering.[75]

Apparently American publishers were willing to take such advice, or the conditions of the publishing trade demanded that books be issued originally for the widest possible market at the lowest prices compatible with sound business practice. Only one class of books increased in price - the cheapest editions of current new fiction now cost forty or fifty cents instead of fifteen or twenty-five cents as in the days of unauthorized reprinting - but carefully edited, attractively and satisfactorily printed and bound works of history, biography, science, etc., of international appeal were sold at moderate prices, the costs of authorship and illustration (but not of manufacture) being divided between the two markets, American and English.[76] The reprinters were unable to continue the publication of cheap libraries under the new copyright law,

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[74]Senator O. H. Platt to R. U. Johnson, date not given, in Coolidge, An Old-Fashioned Senator, pp. 104-105.

[75]Platt to Dana Estes, date not given, ibid., pp. 104-105.

[76]Putnam, "Results of the Copyright Law," Question of Copyright, pp. 167-170.

for they could not bid competitively for foreign authors' books and sell at the old low prices. As such firms failed, their unsold stocks of cheap paper or cloth-bound twelvemos were sold at prices low enough to depress even further the market for non-copyright books. By 1900 most of the reprinters had gone out of business.[77] It was not the international copyright law, however, that crushed the cheap reprint houses so much as the effect of extensive cut-throat competition in the last days of literary piracy. Many newcomers had entered the field with the expectation of making profits because the material reprinted was "free" for the taking. But the margin of profit was so very small that added competition and its attendant price-cutting ruined many of the reprinters before the passage of the international copyright law. Also, the dearth of available material necessary to maintain weekly issues so that favorable periodical postage rates could be kept created another hazard, and the weekly "libraries" were often filled with "rubbish" that few would buy.[78] But business enterprise, like nature, "abhors a vacuum," and the experiment was tried, after 1891, of issuing inexpensive paper-covered reprints of copyrighted novels which had sold well in the original cloth-bound editions. "These were

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[77]Shove, Cheap Book Production in the United States, p. 51.

[78]Putnam, "Results of the Copyright Law," Question of Copyright, p. 168.

manufactured for the American News Company in printings of 100,000 copies, retailed at twenty-five cents, and included such titles as Paul Leicester Ford's The Honorable Peter Stirling and James Lane Allen's The Choir Invisible." Then came the fifty-cent cloth-covered reprints of Grosset and Dunlap, and later, the rental of plates on a royalty basis from publishers two years after issue of the first editions. A. L. Burt and Company and other publishers who brought out these well-made cloth-bound reprints discovered that the books were popular because of their low price and lasting quality.[79]

Although the publisher Dodd, in writing of the effect of the international copyright act, reported that "soon every American publisher with any enterprise hustled over to Europe to establish relations with outstanding English authors,"[80] he also admitted that "no sooner had English authors gained a wide vogue here than with its usual fickleness, the reading public began to demand American fare."[81] In his study of American literary taste, James D. Hart comes to much the same

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[79]Frederick A. Stokes, A Publisher's Random Notes, 1880-1935. R. R. Bowker Memorial Lecture No. 1 (New York: The New York Public Library, 1935), pp. 26-27.

[80]Dodd, The First Hundred Years, p. 23. Dodd, Mead and Company, for example, became publishers of the American edition of The Bookman, a monthly literary magazine, and of the authors John Watson (Ian Maclaran), Austin Dobson, Edmund Gosse, Walter Besant, Jerome K. Jerome, Marie Corelli, Maurice Meaterlinck, and others. Ibid., pp. 23-25.

[81]Ibid., p. 25. The firm published Ford's The Honorable Peter Stirling and Janice Meredith.

conclusion. He mentions particularly three English authors, Marie Corelli, Stevenson, and Kipling, as being popular in America;[82] however, it was American authors who benefited by the passage of the international copyright law. The abolition of literary piracy made it possible for them to compete on equal terms with foreign authors, so that by 1895 more novels by American writers than by European were being published in this country.[83] An analysis of the lists of "best sellers" and "better sellers" in Mott's Golden Multitudes confirms this statement. A total of 154 books belonged to these classes during the years 1866 through 1891. Of these, 82, or 53.24%, were of English or European origin, while 72, or 46.75%, were by American authors; in 1891 no American book was a "best seller" or even a "better seller." Between 1892 and 1901, inclusive, of the total of 54 books on Mott's lists, only 20, or 37.03%, were foreign, while 34, or 62.96%, were American; in 1901 no foreign book was a "best seller" or even a "better seller."[84]

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[82]James D. Hart, The Popular Book: A History of America's Literary Taste (New York: Oxford University Press, 1950), pp. 189-196.

[83]Ibid., p. 185. In addition to the improved home market, American authors enjoyed increased sales of their books abroad, many American books being published by leading English houses or by branches of American firms established in London. Putnam, "Results of the Copyright Law," Question of Copyright, p. 164.

[84]Mott, Golden Multitudes, pp. 309-312, 321-324. Mott's formula for determining that a book was a "best seller" is the "total sale equal to one per cent of the population of continental United States. . . .for the decade in which it was published." Ibid., p. 303.

During the years before enactment of the international copyright law, the production of new books, including different editions issued by competing publishers, gradually climbed. For example, in 1881, there were 2,991 new books published; in 1891, 4,665, a gain of 1,674. However, the annual increase was not steady: in some years the number of books published was less than the total for the previous year; the greatest gain, 746, occurred in 1886, when 4,776 new books were produced, as compared to 4,030 in 1885.[85] Examination of Woodward's Graphic Survey of Book Publication, 1890-1916, reveals no remarkable increase in the production of books, of all classes or of fiction alone, between 1891 and 1909. The great upsurge came in 1910, but Woodward does not mention further revision of the copyright statutes in 1909 as a cause for this increase in book production.[86] Three factors may have contributed to this static condition of the American book trade after passage of the Act of March 3, 1891: (1) the difficulty experienced by European and little known English writers in securing American publishers; (2) the influx of reprinters' remainders into the market, and (3) the competition, particularly in the

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[85]John W. Harper, "American Publishing," in Depew (ed.), One Hundred Years of American Commerce, I, 311-312.

[86]Fred E. Woodward, A Graphic Survey of Book Publication, 1890-1916. U. S. Department of the Interior, Bureau of Education, Bulletin No. 14 (Washington: Government Printing Office, 1917), passim.

publication of novels, furnished by new five and ten cent magazines.[87] On the basis of the available evidence, therefore, it must be concluded that the international copyright law of 1891, although it granted the privilege of American copyright to foreign authors, operated chiefly to benefit American publishers, to whom it gave a relatively stable market, and American authors, who were for the first time enabled to compete on more nearly equal terms with foreign writers.

Conclusion

Throughout the history of the international copyright movement in America, the truly effective attempts to correct deficiencies in the business of book production have come from those concerned primarily with printing and publishing. To deal with the danger of literary piracy to the stability of the book trade, American publishers developed the concept of trade courtesy. When that voluntary system failed, they supported, without too much enthusiasm, various proposals for international copyright formulated to benefit publishers primarily and authors incidentally. Opposition to international copyright, successful until the last year of the struggle, also came largely from publishing and printing interests and from those

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[87] Putnam, "Results of the Copyright Law," Question of Copyright, pp. 164-166, 171. English writers profited by the protection granted to them in America after 1891, but their gains were not as great as they had perhaps anticipated. Ibid.

whose prejudices the opponents were able to stir up. Even though individual authors succeeded in obtaining satisfactory publishing arrangements in countries other than their own, their status was precarious, for it was subject to the publisher's pleasure or to the vicissitudes of the book trade. Therefore, writers and those who sympathized with their plight agitated, fruitlessly, for international copyright. Success came only when they deferred to the demands of industry and commerce.

The American struggle for truly international copyright has not yet ended, for the copyright law of the United States, although amended several times since 1891, still contains the manufacturing and non-importation clauses in essentially their original form.[88]

Long ago, Sydney Smith asked, "In the four quarters of the globe, who reads an American book, or goes to an American play, or looks at an American picture or statue?" In recent times, another Englishman has asked, "Can anyone explain why British books are denied copyright in America unless they are produced in the United States, although American books and films are granted copyright in Great Britain even when not produced in Great Britain?"[89]

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[88]Copyright Office, Copyright Law of the United States of America, Bulletin No. 14, pp. 8, 16.

[89]Stanley Unwin to editor, date not given, The Times (London), Literary Supplement, October 23, 1948, p. 597.

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