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Alfred W. Pollard

Excerpt

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## THE REGULATION OF THE BOOK TRADE IN THE SIXTEENTH CENTURY

**L**EGAL writers on English copyright have not shown much interest in the steps by which the conception of literary property was gradually built up, nor are any data easily accessible for comparing the course of its development in England and foreign countries. The accident by which our first English printer was also an exceptionally prolific literary producer and possessed of considerable influence at Court might well have led to a very early recognition of an author's rights to the fruits of his brain, had there been any competitor possessed of sufficient capital to be a really formidable pirate. In Germany, Italy, and France literary work of a kind for which copyright could now be claimed accounted for only quite a small proportion of the output of the earliest presses. The demand in Germany was mainly for printed editions of the ponderous text books of the previous three centuries. Italy added to these an even greater appetite for the Latin classics. In France, more especially at Lyons, there was a healthy demand for works, both imaginative and didactic, in the vernacular. But Caxton's fertility as a translator can hardly be paralleled in the fifteenth century, and this despite the fact that he came to the task late in life and burdened himself almost simultaneously with the cares of a printing-

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house. A single book from his press, the *Chronicles of England*, which happens also to contain a long piece of original, or semi-original, writing probably from his pen, was reprinted by both Machlinia and (with additions) by the St Albans printer. His other works may have had a natural protection in the fact that, with so small a market as England then offered, to reprint one of them, with no hope of any help such as Caxton himself received from patrons, might have been but a risky adventure. In any case there was no general piratical attack on Caxton's publications, and thus the one English printer and man of letters who possessed the advantage of powerful friends at Court was never driven into a course of self-defence, which could hardly have failed to be helpful to all other honest men pursuing the same callings.

About the time of Caxton's death we begin to hear, first at Venice, afterwards in other Italian cities, and then, in the course of the next twenty years or so, in all the chief printing centres of Europe, of Privileges, by which on the petition usually of a printer, sometimes of an author or editor, other printers were forbidden to reprint the privileged work for a period of years, mostly ten, but sometimes not more than two. Of course, the prohibition was only effective within the dominion of the issuing authority; but the importation and sale of reprints were also forbidden, and there was a fine for every copy contumaciously produced, imported, or sold. Privileges were granted most frequently for works on the production of which it could be shown that a good deal of money had been spent, whether original or not: A striking instance of this is the privilege granted

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by the Emperor for the Greek Testament edited by Erasmus and printed by Froben, a privilege which probably caused the otherwise unaccountable delay in publishing the New Testament in the Complutensian Polyglot for some years after it was printed, and this despite the fact that the Polyglot was produced by a Cardinal and approved by the Pope.

Grants of Privileges seem to entitle us to argue on the one hand that there was some practical danger of piracy, and on the other that there was no legal recognition of literary rights by appeal to which piracy could be defeated. The first appearance known to me of a privilege for an English printed book is on the Latin sermon preached by Richard Pace at St Paul's Cathedral on the Peace between England and France. This was printed by Pynson, who finished it on 13th November, 1518, and stated at the end of the colophon that it was issued 'cum priuilegio à rege indulto ne quis hanc orationem intra biennium in regno Angliæ imprimat aut alibi impressam et importatam in eodem regno Angliæ vendat.' For a sermon preached on a special occasion a privilege for two years was probably as good as one in perpetuity. In those attached to Horman's *Vulgaria* of 1519, and several later works from Pynson's press, no term is mentioned, the phrases used being simply 'cum priuilegio regis Henrici,' or 'cum priuilegio a rege indulto,' or in English, 'with priuilege to him granted by our souerayne lorde the king.'

The security bestowed on a book by the grant of a privilege was entirely reasonable, but the method of granting it was entirely bad. Every notice on a book that it was protected against piracy carried with it an implication that a book which possessed no

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privilege might be pirated with impunity. If Caxton had been inspired to appeal to a Court of Equity when Machlinia reprinted the *Chronicles of England*, on the principle that for every wrong there is a remedy he might have won his case, or rather, if we allow for the law's delays in Tudor times, it might have been decided in his favour many years after he and Machlinia were both dead and their estates had been swallowed up by the costs of the litigation. It is not certain that he would have won it, because before printing made it possible to put several hundred copies of a book on the market at the same time, an author's 'rights' had no pecuniary value apart from the gifts which he might receive in return for presentation copies. The gifts, being gifts, might very probably have been ignored by the Courts as uncertain and indeterminate, while the profits from a printed edition might have been looked on askance as something too new to be recognized. Legal decisions in the second half of the eighteenth century established the doctrine that authors had always possessed a natural right to the fruits of their labour, but accompanied this declaration with the corollary that as soon as Parliament legislated on the subject by the Copyright Act passed in 1709, the limited statutory rights then conferred took the place of the natural rights, and left them unenforceable<sup>1</sup>. It might well have been

<sup>1</sup> This was finally laid down by the House of Lords in the case of *Millar v. Taylor* in 1774. That the author had an exclusive right of first printing his own work was decided by the opinions of eight judges to one, two other judges so qualifying their agreement as to make it worthless. The exclusive right of reprinting was decided by seven judges to four, the same majority declaring that the right was in perpetuity. That, on the other hand, the right was 'impeached,

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argued, that the Privileges granted to particular books from 1518 onwards had the same effect.

It may naturally occur to us to ask by what power an English king, without consulting Parliament, could interfere by the advice of his Council, with such haphazard and essentially destructive benevolence, with literary property. A full answer to this question would take us far beyond the widest limits of bibliography. A practical view of the matter is that what a King of France or an Emperor could do a Tudor King of England would naturally assume that he could do also. In 1518, moreover, Luther had already started on his career as a Reformer, and this soon rendered almost inevitable the claim, which was gradually made all over Europe, that everything which concerned Printing must necessarily be under Government control. In a proclamation, probably issued early in 1529 (Pynson's bill for printing it was passed for payment on 6th March), we find a list of prohibited books. Another appeared in June, 1530; another on 1st January, 1536. On 16th November, 1538, there came yet another proclamation which, after a preamble beginning: 'The Kynges moste royall maiestie beinge enfourmed, that sondry contentious and sinyster opinyone[s], haue by wronge teachynge and naughtye printed bokes, encreaced and growen within this his realme of Englande,' forbids the importation, sale, or publication, 'without his

restrained or taken away by the statute of 8 Anne' (the Act of 1709) and the author precluded from any remedy except on the foundation of that statute was decided in two sets of judgments by six judges to five. See the admirable account of the case in Mr Augustine Birrell's *Seven Lectures on the Law and History of Copyright in Books* (Cassell and Co., 1899), especially pp. 124 *sqq.*

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maiesties special licence,' of any English books printed abroad, and then proceeds:

Item that no persone or persons in this realme, shall from hensforth print any boke in the englyshe tonge, onles vpon examination made by some of his gracis priuie counsayle, or other suche as his highnes shall appoynte, they shall haue lycence so to do, and yet so hauynge, not to put these wordes *Cum priuilegio regali*, without addyng *ad imprimendum solum*, and that the hole copie, or els at the least theeffect of his licence and priuilege be therwith printed, and playnely declared and expressed in the Englyshe tonge vnderneath them.

After this come special regulations as to printing the Scriptures, which need not here be rehearsed. The important point for us is that here we have the first of several enactments which forbade the printing of any book in English except after it had been examined by *some* (which implies two or more) of the Privy Council, 'or other suche as his highnes shall appoynte.'

Incidentally we may note that while a licence to print and a privilege carrying with it protection against piratical competition ought to have been kept clearly distinct, the one word 'priuilegium' seems to have been used as a Latin equivalent for both, the reason being, I believe, that King Henry VIII, who re-wrote this clause with his own hand, was not in the least concerned at the moment with the commercial effect of the proclamation, but only with maintaining his own right of censorship. Every book, as I understand the proclamation, required a licence; but this licence was not to be paraded by the use of the words 'Cum priuilegio regali,' without these words being limited and restricted by the addition

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'ad imprimendum solum.' These must therefore be construed 'only for printing,' i.e. they did not, unless this was expressly stated, confer the royal approbation and they did not in themselves prohibit piracy, though the 'whole copy' or 'effect' of the privilege, when it is printed as the Proclamation directs, probably always contains this prohibition. There is sufficient evidence that by the reign of Elizabeth the words 'ad imprimendum solum' had come to be generally interpreted as equivalent to 'for sole, or exclusive, printing.' Whether or no they can legitimately bear this meaning in Tudor Latin, it seems quite clear from this Proclamation that this is not the meaning they were originally intended to bear.

On 8th July, 1546, there was issued another proclamation 'to auoide and abolish suche englishe bookes as conteine pernicious and detestable errours and heresies' which, while it suggests, as we can gather from other evidence, that the stringent regulations of its predecessor had been inoperative, is itself, as far as it relates to printing, framed on more reasonable lines. The clause concerning this reads:

Moreouer the kynges maiesty strayghtly chargeth and commaundeth, vpon the peine aforesayde [i.e. imprisonment and fine], that from henceforth no printer do print any maner of englishe boke, balet or playe, but he put in his name to the same, with the name of thautour, and daye of the printe, and shall presente the fyrst cotype to the mayre of the towne where he dwelleth, and not to suffer any of the copies to go out of his handes within two dayes next following.

Mayors being usually busy persons, with their own trades or crafts to attend to, it was distinctly hard on them to be saddled with the task of reading any book

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printed in their town within eight and forty hours of the deposit of a copy. But as far as the printer was concerned, nothing could be more reasonable, and bibliographers and librarians might have blessed Henry VIII if he could have ensured that 'every englishe boke, balet, or playe' should bear the name of the author, the name of the printer, and the day on which it was completed. Unfortunately the proclamation came towards the very close of Henry VIII's reign and had very little effect.

Edward VI took up the subject, at the end of a querulous proclamation of 28th April, 1551, on the worst possible lines.

And forbicause diuers Printers, Bokeselers, and Plaiers of Enterludes, without consideracion or regarde to the quiet of the realme, do print, sel, and play whatsoever any light and phantastical hed listeth to inuent and deuise, whereby many inconueniences hath, and dayly doth arise and follow, amonge the kinges maiesties louyng and faithful subiectes: His highnes therfore straightly chargeth and commaundeth that from hencefurth, no printer or other person do print nor sel, within this Realme or any other his maiestis dominions, any matter in thenglish tong, nor they nor any other person, do sel, or otherwise dispose abrode any matter, printed in any forreyne dominion in thenglishe tongue, onles thesame be firste allowed by his maiestie, or his priuie counsayl in writing signed with his maiesties most gratious hand or the handes of sixe of his sayd priuie counsayl, vpon payne of Imprisonment, without bayle or mayneprice, and further fine at his maiesties pleasor.

In the same way Queen Mary, in a proclamation of 18th August, 1553, soon after she came to the throne, after condemning the 'pryntyng of false fonde bookes,



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ballettes, rymes, and other lewde treatises in the englyshe tonge, concernyng doctryne in matters now in question and controuersye, touchyng the hyghe poyntes and misteries of christen religion, whiche bokes, ballettes, rymes and treatises are chiefly by the Prynters and Stacioners sette out to sale to her graces subiectes, of an euyll zeale, for lucre and couetous of vyle gayne,' charged and commanded her subjects, not 'to prynte any bookes, matter, ballet, ryme, interlude, processe or treatyse nor to playe any interlude, except they haue her graces speciall licence in wrytyng for the same, vpon payne to incurre her highnesse indignation and displeasure.'

Probably, though it is not so stated, this 'speciall licence in wrytyng' was only required for books dealing with religious controversies. In two subsequent proclamations, of 13th June, 1555, and 6th June, 1558, heretical books were again condemned the second proclamation going so far as to declare that any one 'founde to haue any of the sayde wycked and seditious bokes. . . shall be reputed and taken for a rebell, and shall without delay be executed for that offence accordyng to thordre of marshall lawe.'

The importance of Mary's reign for our purpose lies not in these proclamations, but in the grant of a Charter to the Stationers' Company, which speedily raised it to great importance. But for understanding the motives which dictated the grant of a Charter, the ferocious threat which we have just quoted is not without relevance. In normal times a Tudor monarch, desiring to increase his control over any trade, would have wrapped up his real purpose with professions of love and care for his subjects, or complimentary

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remarks on the efficiency of English craftsmen, such as form the preamble of the Act of 1534, restricting, for ecclesiastical and political reasons, the importation of books from abroad. Hence, when we find the whole charter dominated by the idea of suppressing prohibited books, we might suspect that the initiative had come from the Stationers, who put forward the need for such an absolute control of the trade in order to persuade Philip and Mary to give them a monopoly. Dr Arber, though he did not advance this particular argument, was quite sure that the initiative came from the Stationers. Thus he wrote (*Transcript*, vol. 1. xxvi.):

The origin and occasion of the Company of Stationers has been much misunderstood. It has been usually thought that King Philip and Queen Mary grouped the hitherto scattered Printers and Stationers into one Company and in London in order to exercise a more effectual control over all English printed books: whereas it was the printing and publishing trade which had long been organized as a City Craft that sought the royal incorporation and the civic livery for its own greater honour and importance.

Dr Arber based this view on a statement by Christopher Barker in 1582, in which he makes him say that 'the Company *procured* a charter,' and italicizes the word 'procured.' But the statement, as he quotes it on his next page, does not use the word 'procured.' What Barker said is: 'Moreover the printer and Stationers of the same *obtained* a ch[art]re for a Corporacōn by reason of the disorder in pryntyngē did so greatlie encrease, to the ende we might restrayne many euilles which would haue happened in the saide profession.' Dr Arber contended that the disorders and evils were trade dis-