THE ENGLISH BOOK TRADE AND THE LAW 1695-1799

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Publishers are always aware of the need to operate within the law, however liberal it may be, and the law is, therefore, important to the historian of publishing. A good deal of work has been done on this, but there is no systematic account of the legislation which applied to the English trade in the eighteenth century, or of the relationship between that and the applicable areas of common law. This paper aims to fill that gap. The method is descriptive rather than analytical, and I must emphasise that my present purpose is to clarify the provisions of the law, not to discuss its application or effectiveness. Such a study is highly desirable, but would be a major undertaking beyond the scope of a periodical article; for the same reason, I have not dealt with the related, but highly specialised, matter of parliamentary reporting.

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INTRODUCTION

The first law relating to the trade was passed in 1483 (1 Richard III c.9) for the purpose of encouraging foreign printers and bookbinders

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to settle in England to help in the development of these two trades. From the reign of Henry VIII onwards, however, the law was increasingly restrictive, especially in controlling the production, contents, and distribution of printed matter, and in imposing restraints on foreign workmen. After 1557, wide-ranging powers were vested in the Stationers' Company, and, by associating the control of the press with the rapidly growing corpus of administrative law, the trade was removed from the sphere of parliamentary legislation for over a century. After the Restoration in 1660, however, the prerogative courts were not revived, and control of the press did indeed pass into the hands of parliament. The Printing, or Licensing, Act of 1662 (13 & 14 Charles II c. 33) supplemented the partially restored powers of the Stationers' Company by granting new powers to the Secretary of State. This was a significant development, for it gave statutory powers to a crown official in this field for the first time. The Act was renewed in 1664 (16 Charles II c. 8), and again in 1665 (16 & 17 Charles II c. 4), but was allowed to lapse in 1679.[1] It was revived in 1685 (1 James II c. 17), and renewed again, for the last time, in 1693 (4 William & Mary c. 24), and was allowed to lapse in 1695.[2] Despite various efforts which were made over the next fifteen years, no such law ever again reached the statute book.[3] After 1695, there was no mechanism for the pre-publication censorship of printed matter.

The year 1695 is a crucial date in the history of the English book trade. Although it is nonsense to suppose that England suddenly acquired a free press in anything like the sense in which the concept was to be understood in the liberal democracies of the nineteenth and twentieth centuries, there was nevertheless a degree of freedom unique in a major country in eighteenth-century Europe. Even so, the trade was hedged about with restrictions of various kinds. It is these which this paper investigates.

A. STATUTE LAW

A1. Stamp duties

The stamp duties are by far the most complex area of statute law relating to the trade. Indeed the whole history of the duties was so complicated that the authors of the standard nineteenth-century textbook on the subject did no more than attempt to explain the then-current position.[4] Historians have also tended to avoid the subject, deterred no doubt in roughly equal measure by its complexity and

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tediousness.[5] It would be inappropriate to attempt here a general history, but the subject has to be treated in some detail, because the duties affected the trade in so many ways. Firstly, and most obviously, there were duties on certain classes of printed matter: newspapers, almanacs, and pamphlets. Secondly, there were duties on home-produced and imported paper. Thirdly, there were duties on vellum and parchment. Finally, there were duties on a wide range of commodities of all kinds. Each of these affected the book trade to some degree, even the commodity duties, for the record of payment of duty was a label or other printed document on which the stamp was impressed. I shall, however, ignore the commodity duties, and confine myself to the three classes which were directly relevant to the trade.[6]

A1.a *Duties on printed matter*

The first duties on printed matter came into effect on 1 August 1711 (9 Anne c. 23); the Act dealt with a wide range of paper and vellum duties, but also introduced a new tax on almanacs. For sheet almanacs printed on one side only, the duty was to be 1*d.* per copy per sheet; for other almanacs, 2*d.* per copy; and for almanacs which applied to two or more years, *pro rata* their size and validity. The Stamp Commissioners immediately confronted the first of the problems of definition which were to bedevil them throughout the century. The duty had barely been introduced when new legislation was necessary to specify that it applied to all books 'chiefly to the purpose of an almanac' (10 Anne c. 19). The duty was established for an initial period of 32 years, but in 1743 it was renewed until 1760 (16 George II c. 26). Before this Act expired, however, the duty was made permanent and increased. In 1757, the duties were doubled, and no time limit set on their validity (30 George II c. 19).

One year after the introduction of the almanac duty, the first duties were imposed on newspapers (10 Anne c. 19). Throughout the century they were then steadily increased, until they reached indisputably penal levels by 1799. This is not the place to discuss the motives which underlay the introduction and extension of the newspaper duties;[7] the facts about them are presented in Table I. There was a major loophole in the original Act, for a one-and-a-half sheet newspaper could be charged a pamphlet, which paid only 2*s.* 0*d.* per sheet *pro rata* for the whole edition (see below). This loophole was closed partially in 1724 (11 George I c. 8), and completely in 1773 (13 George III c. 65).

The provisions of subsequent statutes (see Table II) seems to imply that there was some evasion, and perhaps rather more

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misunderstanding, of the law. From 1 May 1743, the selling of unstamped newspapers was made punishable by imprisonment for three months (16 George II c. 26), a provision extended to the sale of unstamped almanacs in 1757 (30 George II c. 19). In 1765, new regulations were introduced about the means of payment, which required the monthly settlement of accounts with the Stamp Office. In 1772, any fraudulent transaction in relation to the stamp duties was made a transportable offence (12 George III c. 48), and the death penalty was introduced for counterfeiting stamps in 1782 (29 George III c. 50). The same Act forbade hawkers to hire out newspapers, although this provision apparently did not apply to the owners of inns, coffee-houses, shops, or circulating libraries. Finally, in 1794, parliament regulated the maximum size of the sheet for the minimum half-sheet duty (34 George III c. 72), although this had to be partially modified in the following year (35 George III c. 72) to cope with another of those awkward problems of definition.

The duties on the newspapers themselves was only one aspect of taxation on newspapers; the other was the advertisement duty. This was introduced in 1712 for 32 years (10 Anne c. 19) at the rate of 1*s.* 0*d.* per advertisement. Like the newspaper duty, it was renewed in 1743 to the end of the Session sitting on 24 June 1760 (16 George II c. 26). In 1757, the duty was raised to 2*s.* 0*d.*, and its application extended to periodicals published at longer than weekly intervals, which had greatly multiplied in number since 1712 (30 George II c. 19). It seems that this duty was always difficult to collect, and in 1765 payment of the advertisement duty was made the precondition for obtaining stamped paper, which, it was hoped, would have the effect of forcing the newspaper printers to pay the duty regularly (5 George III c. 46). From 5 July 1765, no stamped paper was to be supplied to any printer or publisher (proprietors were not considered responsible until 1789 (29 George III c. 50)) who had outstanding debts for advertisement duty. The fine of £20 for non-payment, introduced in 1765, was raised in 1789 to £500.

The third class of printed matter subject to tax was pamphlets. This duty was also introduced in 1712 (10 Anne c. 19) at the rate of 2*s.* 0*d.* per sheet for the whole edition. A pamphlet was defined as containing between 1 and 6 sheets in octavo, 1 and 12 sheets in quarto, and 1 and 20 sheets in folio. A copy was to be sent to the Stamp Office within six days of publication, and all pamphlets, on pain of a fine of £20, were to carry the name of the printer or publisher. This duty was

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renewed in 1743 (16 George II c. 26), but apparently lapsed in 1760 when that Act expired.

Finally, the 1712 Act (10 Anne c. 19), and that of 1743 (16 George II c. 26), imposed a duty of 30% *ad valorem* on imported books, prints, and maps. This duty also apparently lapsed in 1760. By that time, however, it had been overtaken by other legislation on the import of printed matter (Section **A6.**).

A1.b *Duties on paper*

The earliest duties on paper were confined to sheets intended for use as legal documents, and are dealt with in Section **A1.c.** The duty on all paper was introduced on 24 June 1712 (10 Anne c. 19) at rates which varied according to size and quality; home-produced paper was charged at substantially lower rates than imported paper as an encouragement to the still small domestic industry. The duties were increased for the first time on 2 August 1714 (12 Anne c. 9). The 1711 and 1713 legislation is summarised in Table III. In 1714 (13 Anne c. 18) the duties were increased by a further 50%, and additional categories of paper were specified in 1725 (12 George I c. 7). Thereafter, the duties on imported paper were raised consistently even higher than those on the domestic product. Import duty was raised by 5% in 1747 (21 George II c. 2), and again by the same percentage in 1759 (32 George II c. 10), in 1779(19 George III c. 25), and 1782 (22 George III c.66). The paper duties were greatly simplified, and slightly reduced, in 1787 (27 George III c. 13), but not until 1794 was there a major reform in what was by now a very complex tax; in that year, the basis of assessment was changed from measurement by ream to measurement by weight (34 George III c. 20).[8]

A1.c *Duties on vellum and parchment*

Strictly speaking, there were no duties on vellum and parchment as such, but only on those skins and sheets which were used for certain classes of legal documents. Since, however, these materials were used for little else, the effect was much the same; moreover, a sheet had to be stamped before the document was written on it, so that the duty was, in practice, a duty on the materials. In commercial terms, the supply of stationery for legal documents was the cornerstone of the retail stationery trade; it sustained the bookshops which gave the London publishers their outlets to the potentially huge provincial market.[9] Even so, it is of peripheral interest to the present paper, and can be dealt with very briefly.

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The stamp duties on legal documents were introduced on 28 June 1694 for five years (5 William & Mary c. 21). The requirement of stamping before writing was introduced in this Act, and was never changed. The Act was clarified in the following year (6 & 7 William & Mary c. 12), and, on its expiry, renewed until 1 August 1706 (8 & 9 William & Mary c. 20). The duties were increased and made permanent in 1698 (9 William III c. 25), and increased again in 1711 (9 Anne c. 21). By then, however, the long process of extension of applications had begun (8 Anne c. 9), and during the rest of the century a succession of Acts regulated the rates and applicability of the duties and the means of collecting it, while also imposing penalties for fraud and evasion.

A2. Blasphemy

Blasphemy was originally an ecclesiastical offence, and even after secularisation it remained essentially a concern of the common law (section **B1.**). An Act of 1698 (9 William III c. 35), however, provided statutory confirmation of the law, and brought it firmly into the aegis of the criminal courts. This Act[10] defined blasphemy as publishing or maintaining unitarianism or polytheism, or denying the truth of the scriptures, by a person educated in the Christian religion. For the first offence the penalty was disqualification from holding public office, but for second and subsequent offences there was an additional penalty of up to three years imprisonment.

A3. Treason

The law of treason was largely customary (section **B3.**), or derived from a number of medieval statutes. In 1707, however, an Act was passed which applied specifically to the trade (6 Anne c. 7). This Act made it treasonable to maintain by writing or printing that James Stuart or his heirs had any claim to the thrones of England or Scotland. The only penalty was death. The Act was invoked only once, against the printer John Mathews in 1719. He was found guilty and hanged.[11]

A4. Copyright and legal deposit

In 1695, the concept of ownership of copies existed in law only as part of the general law of the ownership of real property; the idea of an intellectual property was unknown to English law. Specific legislation on the registration of copy ownership had lapsed with the Licensing Act. It was not until 1710 that there was statutory protection of copy

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ownership (8 Anne c. 21).[12] The 1710 Act gave the owner of a new copy (be he the author or someone else) protection for 14 years, and then for the same period again if he were still alive at the end of the fourteenth year. Copies already in print when the Act came into force were protected to their present owners for 21 years only, with no renewal. Thereafter, the copy was in public domain, although some booksellers pressed a claim that there were perpetual copyrights in common law, and that the 1710 Act had merely confirmed them for a limited period of time (section **B4.**). Copies had to be registered at Stationers' Hall to claim protection under the Act; after registration there were penalties for breach of copyright. The Act specifically protected the perpetual copyrights of the Queen's Printer, and the English universities. It also required that 9 copies of each new book be deposited with the Warehouse Keeper of the Stationers' Company for despatch to the two English and four Scottish universities, and to the Royal Library, Sion College in London, and the Faculty of Advocates in Edinburgh.

There was no further copyright legislation in the eighteenth century, and the next Act, that of 1801 (41 George III c. 107), merely extended the 1710 Act to Ireland, following the union of the two kingdoms in 1800.

A5. Book prices

The Copyright Act of 1710 (8 Anne c. 21) attempted to regulate book prices, by requiring that they should not be set at a 'High or Unreasonable' level. Various notables were to decide this thorny issue.[13] There is no evidence that they ever attempted to do so, and the price controls were repealed in 1739 (12 George II c. 36).

A6. Import of books

The Copyright Act of 1710 (8 Anne c. 21) implied, but did not state, that it was illegal to import any English-language books into England and Wales if they had been previously printed there, since, until 1732 at the earliest, copyright in them could be assumed to subsist under the new law. The Act was, however, specific in permitting the import of books in classical or modern foreign languages. The distinction is significant, for the implication was that books which, in the absence of international copyright law, could be legally printed outside England and Wales (for example, in Dublin, or at The Hague) could not be imported if they were copyright in England and Wales. The implicit

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distinction was made explicit in 1739 (12 George II c. 36). The 1739 Act forbade the import into England and Wales of any reprint of a book first written, composed, printed, or reprinted there, unless it had not been printed in England and Wales for twenty years before the date of the imported reprint. The Act was to apply initially for a period of seven years, and it was duly renewed in 1747 (20 George II c. 47). After 1739, therefore, it was illegal, for example, to import Scottish reprints into England, except under the 20-year clause. The legislation in relation to Scotland seems to have lapsed in 1754-55, when the 1747 Act was due for renewal but was not renewed, but the 1710 Act still applied to books printed outside Great Britain. The position after 1754-55 was obscure, and it was only by litigation that it was finally determined (section **B4.**). Irish books could not be legally imported into Great Britain (unless never published in Great Britain, or, until 1754-55 under the 20-year clause) until Ireland became a part of the United Kingdom in 1800, and her copyright legislation was brought into line with that of Great Britain (41 George III c. 107). Even then, of course, Irish books could be legally imported only if the Irish publisher had the legal right to issue the book under the 1710 and 1801 Acts.

A7. Libel

Libel, like treason, was largely a matter of common law (section **B3.**). One Act, however, was of great importance to the trade. The courts had ruled since the first half of the seventeenth century that juries were empowered to decide only whether defendants were or were not guilty of publishing the passage quoted in the indictment. In 1792, an Act devised by Charles James Fox, and hence known as Fox's Libel Act (32 George III c. 60)[14], gave to juries the crucial additional power of deciding whether the passage cited was in fact a libel. The implications of the Act were broad, for it was now necessary for the crown to prove complicated points of law, rather than comparatively simple matters of fact about the resposibility for publication.

A8. Registration of presses and compulsory imprints

The most draconian legislation of the eighteenth century came in 1799 at the height of the reaction to the French Revolution. Schemes for registration of presses and compulsory imprints had been proposed from time to time ever since 1695, but none had ever reached the statute book save in the attenuated form of the requirement to have

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imprints on taxable pamphlets (section **A1.a**). The Seditious Societies Act (30 George III c. 79) was, as its title suggests, primarily aimed at the Jacobin Clubs, Corresponding Societies, and similar organisations, which had proliferated among the innocent (and very occasionally not quite so innocent) English supporters of the French revolutionaries. The writing and publishing of newspapers and pamphlets was essential to these societies, and hence controlling them involved the government in a more general exercise of controlling the press.

The Act made explicit a general principle of great importance which is still integral to English law: 'All Persons printing or publishing any Papers or Writings are by Law answerable for the contents thereof'. There were also four specific provisions:

i) Within 40 days after 12 July 1799, all owners or presses and/or printing types were required to register both the existence and location of their property with the Clerk of the Peace for the area in which it was situated, on pain of a £20 fine for each unregistered item or location. Only the King's Printer and the English universities were exempt from this requirement.

ii) Within the same period, all pressmakers and typefounders had to register in the same way, subject to the same penalties.

iii) From 12 July 1799, all printed matter had to include the name and registered address of the printer, on pain of a fine of £20 for each offence. Only the printers of the official parliamentary papers were exempt from this requirement.

iv) From the same date, printers were required to keep a copy of every item which they printed, except catalogues and trade cards, and to produce it to the Justices on demand, on pain of £20 fine for each offence.

To enforce the law, the Justices were given wide powers of search and seizure.

B. COMMON LAW

The uniquely English concept of common law presented many problems to the book trade, as it does to the trade's historian. The common law, sometimes derived from statutes, and sometimes from immemorial custom, was refined by further statues, by judicial interpretations, and by precedent and custom. Offences were often

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broadly defined in theory, but in practice closely confined by decisions and traditions, so that their real existence was limited to a comparatively small area of their notional applicability. Some offences had their origin in common law, or in those parts of the canon law which had been subsumed into it at the Reformation, and were subsequently confirmed, defined, or even restricted, by statute. This was true, for example, of the laws of treason and libel. The latter was crucially important to the book trade, for its various manifestations represented the principle means of censoring the contents of printed matter after 1695. Libel was an offence because it could lead to a breach of the peace, or could of itself be a breach of the peace if it were directed against the monarch or, by some interpretations, his ministers. Breach of the peace could also, it was argued, be committed by a subversion of religion or morals as well as the state. The whole field is a morass of ill-defined concepts, but fortunately the practice, with which we are concerned, is not quite so obscure. In particular three kinds of libel were relevant to the trade in the eighteenth century: blasphemy, obscenity, and sedition.

B1. Blasphemous libel

The Blasphemy Act (9 William III c. 35; section **A2**.) was essentially confirmatory legislation. Denial of the Trinity, or of the truth of the Christian religion and its scriptures, and the espousal of polytheism, were all common law offences before 1698. In origin, blasphemy had been an ecclesiastical offence, but it had been secularised *de facto* in the second half of the seventeenth century as the ecclesiastical courts lost their power to deal with criminal offences committed by laymen. The classic definition of the law was that made by Lord Chief Justice Hale in 1676, when he ruled that 'Christianity is a parcel of the Laws of England and therefore to reproach the Christian religion is to speak in subversion of the law' (1 Vent. 293). In short, blasphemy was a breach of the peace. In theory, Christianity was equated with the Church of England, but the Toleration Act of 1689, by giving freedom of worship to all Protestants, had also, by presumption, given them freedom of expression. The limits of this freedom, and of theological speculation, were established in 1729, when Thomas Woolston, a former Fellow of Sidney Sussex College, Cambridge (and hence, at least at the time of his admission to his Fellowship, a subscriber to the Thirty-Nine Articles), was prosecuted for certain passages in his *Discourse of the Miracles of Our Saviour.*

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Woolston argued that the Gospel account of the miracles, far from being literally true, 'does imply Absurditys, Improbabilitys and Incredibilitys', but Woolston was no aetheist. In fact, he went out of his way to make it clear that he was a Christian, and that he therefore accepted that Christ was the Messiah, but he interpreted the Gospels as spiritual allegory rather than factual history. He even contrived to quote the Fathers in support of his views, although it was only by a good deal of ingenious interpretation that he made St Augustine opine that to accept the literal truth of the miracle narratives was to make Christ no more than a magician. Woolston was tried and found guilty, and in 1746 when the bookseller Thomas Astley reprinted the book he too suffered the same fate.[14] Woolston's case was crucial in establishing the definition of the law, although it was rarely used thereafter. For most of the century, neither dissenters nor Roman Catholics were prosecuted, and even Unitarians, who were committing a statutory offence, usually escaped. Nevertheless, blasphemous libel remained (and remains) an offence, useful by its very nebulousness, and has occasionally been revived for political purposes. In the case of William Hone in 1817, as in that of *Gay News* in 1977, it has proved a useful peg on which to hang a prosecution which arose from other causes.

B2. Obscene libel

Not until 1857 was the law of obscenity defined by statute, and even then it was ten years before Mr Justice Cockburn produced his classic definition of pornography as 'the tendency of the matter charged ... to deprave or corrupt' (3 Q.B.D., 1867-68, 371). Like blasphemy, obscenity was originally a religious offence, but its secularisation, in the absence of statute law, was less easily achieved. The first prosecution in King's Bench seems to have been that of Henry Hills in 1698 for publishing Rochester's *Poems on Several Occasions;* the prosecution failed on technical grounds for lack of precedent (2 Str. 790). The earlier history of such prosecutions is of cases at the Guildhall Sessions dating back to at least 1660. In 1707 all outstanding cases were transferred to King's Bench, but it was not until 1727 that a prosecution succeeded, and the law was, at last, defined. In that year, Edmund Curll was prosecuted for publishing a translation of Jean Barrin's *Vénus dans la cloître.* Curll's judges finally accepted that 'it is an offence at common law ... to corrupt the morals of the king's subjects', as an extension of Holt's dictum that Christianity was a part of the

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English law. This decision was the basis of the law until 1857.[16]

The law of obscene libel was still obscure and difficult after 1727, and prosecutions often had political overtones. This was certainly true in the most famous of all eighteenth-century obscenity cases, the prosecution of John Wilkes for his *Essay on Woman* in 1768, although apparently not so in another *cause celèbre*, the prosecution of John Cleland for *Memoirs of a Woman of Pleasure* in 1749. There were in fact comparatively few uses of the law in the eighteenth century, and it was not until the increase in the amount of pornography in circulation coincided with the greater emphasis on public morality that it was thought desirable to evolve the more accessible definition embodied in the 1857 Act.

B3. Seditious libel

By far the most important and most complex of common law offences of interest to the trade was that of seditious libel. It had been defined by statute in 1275, but neither the original statute nor its several subsequent re-enactments between the fourteenth and sixteenth centuries entirely clarified the nature of the offence. The primary, and originally the sole, intention was to protect the monarch and his advisers from false rumour (*Scandalum Magnatum*); that the matter complained of had to be false was confirmed by Lord Chief Justice Coke as late as 1606 (5 Coke Reports, 25a, 3 Jac. 1). From shortly after that time, however, it came to be accepted that juries or the Prerogative Courts were required (or, in a slightly later, but ultimately dominant, interpretation, empowered) only to decide whether the accused had actually written or published the libel. This was the situation dealt with by Fox's Libel Act (32 George III c. 60) in 1792 (Section **A7.**).

Seditious libel was thus a very broadly defined office; the widest interpretation of it was that any verbal, written, or printed criticism of the monarch (and, possibly after the Revolution, and certainly by about 1710, his ministers) was *ipso facto* seditious. This interpretation was sustainable in the early seventeeth century, but it barely survived the abolition of the Prerogative Courts in 1641-42, and, although the argument is heard in the eighteenth century, in practice it proved untenable in the less authoritarian climate which followed the Revolution of 1688. The problem became in fact a more delicate one: to define the limits of acceptable political comment. In the first thirty years of the eighteenth century a series of cases established that that

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limit was the security of the state, and that when security was not threatened unfavourable comment was permissible. Specifically, the unacceptable areas were: to deny the right of parliament to regulate the succession to the throne; to make a political attack on the position of the Church of England within the state; to comment on foreign or military policy in time of war; and to make personal attacks on the monarch or the immediate members of the Royal Family. Sufficient prosecutions along these lines were successful to establish that these were the limits of legitimate comment, and they formed the basis of Mansfield's famous dictum about freedom of the press.[17] In the 1790s, however, the courts began to adopt less liberal interpretations of the law as they pursued the English supporters of the French Revolution, and seditious libel remains a potentially awesome weapon for a repressive government. The law was last invoked in 1911, to prosecute the publishers of a libel against George V.[18]

B4. Copyright

Some of the issues discussed in this paper were controversial in the eighteenth century. The stamp duties were initially resisted, and there was always a groundswell of complaint from newspaper printers and proprietors, and later from radical politicians, until the 'taxes on knowledge' were finally abolished in 1856. Some of the trials for blasphemous, obscene, and seditious libel were matters of public interest; and Fox's Libel Act was hotly debated in the House of Commons. For most of those in the trade, however, only the stamp duties really impinged on their daily activities, and for the most part they paid them with neither greater nor lesser reluctance than people everywhere have always paid their taxes. The copyright question, however, was different. The historian of the book trade in eighteenth-century England meets it at every turn in one guise or another, and the most controversial issue of all was what rights, if any, were protected by common law. The standard history of these matters is now over fifty years old, and, for all its undoubted merits, was perhaps too heavily dependent upon some necessarily biased contemporary sources.[19] A much more recent paper has dealt excellently with one aspect of the subject,[20] but a new study of copyright from 1710 to the end of the century remains a major desideratum. In the context of this paper, we can do little more than attempt a clarification of the main themes of the problem. There are three, and they have not always been adequately distinguished.

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Firstly, there is the question of imported books. After 1739, there was no doubt that it was illegal to import certain classes of English books (section **A6.**). In practice, this was a blanket prohibition for it was unlikely that there would be a commercially significant market for a book not printed at home for twenty years. In the 1730s, when the pre-1710 copyrights had expired, and the first batch of 28-year copyrights were about to come into public domain, this was a matter of real concern to the leading members of the London trade, with their extensive investments in copies and shares. Their concern is reflected in the evidence they gave to the House of Commons in the years before the 1739 Act was passed.[21] That Act largely settled the issue, except, arguably, for Scottish books after the legislation lapsed in 1754-55. By then, however, this minor point had become part of a larger controversy.

Secondly, there is the question of piracy. This needs careful definition. It was undoubtedly illegal for anyone other than the copyright owner to print in England and Wales a book whose copyright was specifically protected by the 1710 Act.[22] It was also probably illegal between 1710 and 1739, and certainly so between 1739 and 1754-55, to import a foreign reprint of such a book and offer it for sale in England and Wales. Books which infringed either of these provisions were piracies. This may seem self-evident, but it is crucial to understand that other categories of books were consequently not piracies, although both contemporary booksellers and some bibliographers and historians sometimes suggest that they were. Two such categories are particularly worth mentioning. Firstly, because Ireland was not subject to English copyright law until 1801, an English book reprinted without permission in Ireland was not *ipso facto* a piracy, and was subject to the provisions of English law only if, between 1739 and 1754-55 (and probably between 1710 and 1739[23] it was imported into England and Wales for sale.[24] The second category of 'non-piracies', at least under statute law, was the reprints of books whose copyrights were in public domain under the 1710 Act. Indeed a good deal of such reprinting was undertaken, but apart from one unsuccessful attempt which may never even have reached a court of law, there seem to have been no prosecutions.[25]

The third and final issue, however, was vastly more complicated, for it involved the whole concept of copyright itself. The 1710 Act, as I have argued elsewhere, was essentially an Act designed by a group of leading members of the trade for their own benefit and protection.[26] They may have thought, as their successors were later to argue, that the

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Act merely confirmed existing rights, but, whatever the intention, that is not the language of the Act. In fact, the 1710 Act unwittingly created a new kind of property, formerly unknown to English law, for while a copyright was clearly a piece of freehold property whose owner had total control over it, his ownership of that freehold was apparently subject to a temporal limitation. This was the problem which the common law had to solve, for the booksellers in the middle of the eighteenth century claimed that such temporally limited property rights could not exist in law, and that, while there was a temporal limitation on specific statutory penalties for infringements of the property, there could be no such limitations on the property itself or on the common law penalties, if any, for infringements of it. As if to emphasise their belief in the existence of perpetual copyrights in common law, the booksellers continued to buy and sell shares in copies which were, by virtue of the temporal limitation, apparently in public domain.[27]

In 1759, the leading members of the London trade tried to impose their views on the provincial booksellers, and they were partially successful. The significant point, however, may lie in the timing rather than the details of the operation,[28] for it occurred very shortly after the 1739 Act had finally lapsed. At this time there was no recourse to the courts, but a decade later matters became more serious. In 1774, the Edinburgh bookseller Alexander Donaldson proposed to reprint a work whose copyright was 'owned' by a bookseller in London, although in fact it was in public domain under the 1710 Act.[29] He sought and obtained a Chancery injunction to prevent publication on the grounds that the copyright was perpetually his property, but after an appeal to the House of Lords the case was decided in favour of Donaldson. The Lords of Appeal in Ordinary ruled that the 1710 Act overrode any common law rights, and unambiguously established the 28-year limitation on copyright ownership. In the following parliamentary session a desultory attempt was made to reverse this decision by legislation, but the Bill failed to complete its passage.

The final settlement of the great copyright question in1774 is one of the major turning-points in the history of the English book trade. It forced the trade to concentrate its efforts on issuing new books rather than reprints, and was thus a major factor in the development of publishing as it is now understood.[30] Although shares in old copies continued to be bought and sold well into the nineteenth century, the Lords' decision had sealed the ultimate fate of the share-book system.[31]

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The copyright controversy is an appropriate point at which to end this survey of the book trade's involvement with the law in eighteenth-century England. Copyright had its distant origin in the register of licenses to print kept by the Stationers' Company as a part of its bargain with Mary I and Elizabeth I to maintain order in the trade in return for a collective monopoly of printing and publishing. In the eighteenth-century, England had a relatively free press, and as the limits of freedom were defined by parliament and the courts it became clear that almost anything could be published which was not openly seditious, outrageously blasphemous, or blatantly obscene. While ministers concerned themselves with taxation, the trade was able to exert sufficient influence to ban the import of books, to resist until 1799 all but the most peripheral law requiring compulsory imprints, and to persuade parliament to pass the world's first Copyright Act for the protection of their investments. Therein lay their greatest mistake. The 1710 Act, designed as statutory protection for the investments of the leading members of the London trade, was ultimately used against them, and the booksellers learned to their cost that the traditions of English law did not always support the mighty and the powerful.

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APPENDIX

Table of Statutes

The Table is in chronological order, with reference to the section of this paper in which the statute is discussed, or the table in which it is listed.

1483	1 Richard III c.9	Introduction
1662	13 & 14 Charles II c. 33	Introduction
1664	16 Charles II c. 8	Introduction
1665	16 & 17 Charles II c. 4	Introduction
1685	1 James II c.17	Introduction
1693	4 William & Mary c.24	Introduction
1695	5 William & Mary c. 21	Al.c
1696	6 & 7 William & Mary c. 12	Al.c
1697	8 & 9 William & Mary c. 20	Al.c
1698	9 William III c. 25	Al.c
	9 William III c. 35	A2, B1
1707	6 Anne c. 7	A3
1710	8 Anne c. 9	Al.c
	8 Anne c. 21	A4, A5, A6, B4
1711	9 Anne c. 21	Al.c.
	9 Anne c. 23	A1.a
1712	10 Anne c. 19	A1.a, A1.b, Tables I, II, III
1713	12 Anne c. 9	A1.b, Table III
1714	13 Anne c. 8	A1.b
1724	11 George I c.8	A1.a, Tables I, II
1725	12 George I c. 7	A1.b
1739	12 George II c. 36	A5, A6, B4
1743	16 George II c.26	A1.a, Tables, I, II
1747	20 George II c. 47	A6, B4
	21 George II c. 2	A1.b
1757	30 George II c. 19	A1.a, Tables I, II
1759	32 George II c. 10	A1.b
1765	5 George III c. 46	A1.a, Table II
1772	12 George III c. 48	A1.a, Table II
1773	13 George III c. 65	A1.a, Table II
1776	16 George III c. 34	Tables I, II
1779	19 George III c. 25	A1.b
1782	22 George III c. 66	A1.b
1787	27 George III c.13	A1.b

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1789	29 George III c. 50	A1.a, Tables I, II
1792	32 George III c. 60	A7, B3
1794	34 George III c. 20	A1.b
	34 George III c. 72	Al.a, Table II
1795	35 George III c.72	A1.a, Table II
1799	39 George III c.79	A8
1801	41 George III c.107	A4, A6

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NOTES

1 Timothy Crist, 'Government Control of the Press after the Expiration of the Printing Act in 1679', *Publishing History*, 5, (1979), pp.49-77.
2 Raymond Astbury, 'The Renewal of the Licensing Act in 1693, and its Lapse in 1695', *The Library*, 5th ser., 33 (1978), pp. 298-322.
3 John Feather, 'The Book Trade in Politics: the Making of the Copyright Act of 1710', *Publishing History*, 8 (1980), pp.19-44.
4 S. Atkinson, *Chitty's Stamp Law*, 3rd. ed., London 1850.
5 An exception is Edward Hughes, 'The English Stamp Duties, 1664-1764', *English Historical Review*, 56 (1941), pp.234-64.
6 It ought to be mentioned in passing that there was another important link between the book trade and the stamp duties. Many of the leading provincial booksellers were Stamp Distributors, for reasons which I have discussed in *The Provincial Book Trade in Eighteenth-Century England*, forthcoming.
7 The problem is whether they were designed purely as a revenue measure, or whether they were partly motivated by a desire to control the newspaper press. *See* J.A. Downie, *Robert Harley and the Press*, Cambridge 1979. The subject was discussed by D.F. Foxon in his still unpublished Sandars Lectures delivered at Cambridge in 1978.
8 For a detailed account of the paper duties, see D.C. Coleman, *The British Paper Industry 1495-1860*, Oxford 1958, pp.122-45.
9 I have discussed this elsewhere; see note 6
10 Printed in full in Donald Thomas, *A Long Time Burning*, London 1969.
11 See R.J. Goulden, '*Vox Populi, Vox Dei.* Charles Delafaye's paperchase', *The Book Collector*, 28 (1979), pp.368-90.
12 For details, see Feather, 'The Book Trade in Politics'.
13 *Ibid.*
14 Printed in Thomas, *op. cit.*.
15 *Ibid.*, pp.72-3, 123.
16 David Foxon, *Libertine Literature in England 1660-1745*, London 1964, pp.8-15.
17 John Feather, 'From Censorship to Copyright: Aspects of the Government's Role in the English Book Trade 1695-1775'. This paper, delivered at the ACRL Rare Books and Manuscripts Preconference on *Books in Society and History*, held at Boston, Mass., on 24-28 June 1980, will be published, with the other

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papers delivered there, under the same title as the conference, by R.R. Bowker of New York in Spring 1983.

18 Thomas, *op. cit.*.

19 A.S. Collins, *Authorship in the Days of Johnson*, London 1927, pp.53-113.

20 Gwyn Walters, 'The Booksellers in 1759 and 1774: the Battle for Literary Property', *The Library*, 5th ser., 29 (1974), pp.287-311.

21 Collins, *op. cit.*, pp.68-82.

22 By 'specifically' I mean for 14 or 28 years for books first registered on or after 1 April 1710, or for 21 years for a properly registered book first published before that date. This precision is not mere pedantry; it was the very point which was to prove so controversial in the 1760s and 1770s.

23 The uncertainty arises from the fact that, despite the discussions of the matter in the 1730s, no case ever seems to have reached a court of law.

24 A related, if minor, matter which I have discussed in passing in *The Provincial Book Trade*, is whether or not Berwick-upon-Tweed was subject to the 1710 Act, and hence, if it were not (as seems to have been the case), the legal status of books reprinted there. It was probably identical with of Irish reprints, but, again, no case ever seems to have come to court.

25 The alleged offender was a Coventry printer, Thomas Luckman; the instance was cited to a Commons committee in the mid-1730s. I have discussed it in *The Provincial Book Trade*.

26 Feather, 'The Book Trade in Politics', *passim*.

27 Terry Belanger, 'Booksellers' Sales of Copyrights: Aspects of the London Book Trade 1718-1768', Columbia University Ph.D. thesis, 1970, chapter 6.

28 For which see Walters, *loc. cit.*

29 *Ibid.*, for details of these events

30 Terry Belanger, 'From Bookseller to Publisher: Changes in the London Book Trade 1750-1850'. In Richard G. Landon (ed.). *Book Selling and Book Buying. Aspects of the Nineteenth-Century British and North American Book Trade*. Chicago, I11. 1978, pp.7-16.

31 For its partial survival, see Joseph Shaylor, *The Fascination of Books*. London 1912, pp.247-68.

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TABLE I: The Newspaper Duties 1712-1789

Date	24.6.1712	25.4.1724	1.5.1743	1757	1.7.1776	1.8.1789
Act	10 Anne c.19	11 Geo I c. 8	16 Geo II c. 26	30 Geo II c. 19	16 Geo III c. 34	29 Geo III c. 50
Duty: ½ sheet	½*d.*	½*d.*	½*d.*	1*d.*	1 ½*d.*	2*d.*
whole sheet	1*d.*	1*d.*	1*d.*	1 ½*d.*	2 ½*d.*	2 ½*d.*

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TABLE II Newspaper Stamp Legislation 1711-1800

Act	*Date of enactment*	*Date of validity*	*Summary of provisions*
10 Anne c.19	1711	24.6.1712	Rates of duty
11 Geo I c. 8	1724	25.4.1724	1. Rates of duty 2. Definition of newspapers
16 Geo II c. 26	1743	1.5.1743	1. Rates of duty 2. Hawkers of unstamped newspaper subject to 3 months imprisonment
30 Geo II c. 19	1757	1757	As 16 Geo II c. 26
5 Geo III c. 46	1765	5.7.1765	1. Printers and publishers only (not proprietors) responsible for paying duty 2. Accounts to be settled monthly 3. *£20* fine for infringements of this Act
12 Geo III c. 48	1772	1772	Transportation for fraud in stamp duties

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13 Geo III c. 65	1773	1773	Definition of newspapers
16 Geo III c. 34	1776	1.7.1776	Rates of duty
29 Geo III c. 50	1789	1.8.1789	1. Rates of duty 2. 4% discount for buying stamps to a value of more than £10 in one transaction 3. Hawkers not to hire out newspapers subject to £5 fine 4. Proprietors to share with printers and publishers the responsibility for payment 5. Death penalty for counterfeiting stamps
34 Geo III c. 72	1794	1794	Single Demy for newspapers not to exceed 28″ x 30″ if to be stamped at 2*d*. per ½ sheet
35 Geo III c. 72	1800	1800	Single Demy not to exceed 30½″ x 20″

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TABLE III Paper Duties 1711 and 1713

Note: Duty was charged per ream, except as otherwise indicated

Act	10 Anne c. 19		12 Anne c.9	
Validity	24 June 1712		2 August 1714	
Quality/Size	**Imported**	**Domestic**	**Imported**	**Domestic**
Atlas fine	16*s*. 0*d*.	—	£1. 4*s*. 0*d*.	—
Atlas ordinary	8*s*. 0*d*.	—	12*s*. 0*d*.	—
Imperial fine	16*s*. 0*d*.	—	£1. 4*s*. 0*d*.	—
Superfine royal	12*s*. 0*d*.	—	18*s*. 0*d*.	—
Royal fine	8*s*. 0*d*.	—	12*s*. 0*d*.	—
Medium fine	6*s*. 0*d*.	—	9*s*. 0*d*.	—
Demy fine	4*s*. 0*d*.	1*s*. 6*d*.	6*s*. 0*d*.	2*s*. 3*d*.
Demy second	2*s*. 6*d*.	1*s*. 0*d*.	3*s*. 9*d*.	1*s*. 6*d*.
Demy printing	1*s*. 8*d*.	—	2*s*. 6*d*.	—
Fine Holland royal	3*s*. 3*d*.	—	4*s*. 10½*d*.	—
Fine Holland second	2*s*. 0*d*.	—	3*s*. 0*d*.	—
Blue royal	2*s*. 0*d*.	—	3*s*. 0*d*.	—
Painted paper	8*s*. 0*d*.	1*s*. 0*d*./yd^2	12*s*. 0*d*.	1*s*. 0*d*./yd^2
Cartridge paper	1*s*. 6*d*.	—	2*s*. 3*d*.	—
Elephant fine	8*s*. 0*d*.	—	12*s*. 0*d*.	—
Elephant ordinary	3*s*. 3*d*.	—	4*s*. 10½*d*.	—

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Fine large post	2s. 6d.	—	3s. 9d.	—
Fine foolscap	2s. 6d.	1s. 0d.	3s. 9d.	1s. 6d.
Second foolscap	2s. 0d.	9d.	3s. 0d.	1s. 1½d.
Bastard or double copy	2s. 0d.	—	3s. 0d.	—
Chancery double	2s. 0d.	—	3s. 0d.	—
Superfine pot	2s. 0d.	1s. 0d.	3s. 0d.	1s. 6d.
Second fine pot	1s. 6d.	6d.	2s. 3d.	1s. 0d.
Genoa royal	3s. 3d.	—	4s. 10½d.	—
Genoa medium	2s. 6d.	—	3s. 9d.	—
Genoa demy fine	2s. 0d.	—	3s. 0d.	—
Geonoa demy second	1s. 6d.	—	2s. 3d.	—
Genoa crown fine	1s. 6d.	—	2s. 3d.	—
Genoa crown second	1s. 0d.	—	1s. 6d.	—
Genoa foolscap fine	1s. 6d.	—	2s. 3d.	—
Genoa foolscap second	1s. 0d.	—	1s. 6d.	—
German lombard	1s. 0d.	—	1s. 6d.	—
German demy	1s. 6d.	—	2s. 3d.	—
German crown	1s. 0d.	—	1s. 6d.	—
German foolscap	1s. 0d.	—	1s. 6d.	—
Pasteboards, etc.	5s. 0d./cwt	3s. 0d./cwt	7s. 6d./cwt	4s. 6d./cwt
Crown fine	—	1s. 0d.	—	1s. 6d.
Crown second	—	9d.	—	1s. 1½d.
Brown large cap	—	6d.	—	9d.
Small ordinary brown	—	4d.	—	8d.
White brown	—	6d./40 quires	—	9d./bundle
All other papers	20% *ad val*	12% *ad val*	30% *ad val*	18% *ad val*

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