

John Willinsky, [The Intellectual Properties of Learning: A Prehistory from Saint Jerome to John Locke](#) (Chicago: University of Chicago Press, 2018).

OPEN ACCESS FINAL DRAFT

Chapter Twelve An Act for the Encouragement of Learning

The “final draft” of this chapter has been made open access through a special arrangement with the University of Chicago Press, reflecting their interest in exploring the access themes raised in the book.

Note that the final draft, which has benefited from rounds of peer review and revision before being accepted for publication by the press, differs at a great many points from the published text of the book. The book benefited from the press’ excellent copyediting, as well as my revisions and proofreading (with the help of colleagues) in that process. Those who are unable to obtain a copy of the published book from which to cite may wish to quote from and reference the final draft of this chapter as follows:

John Willinsky, *The Intellectual Properties of Learning: A Prehistory from Saint Jerome to John Locke* (Chicago: University of Chicago Press, 2018), open access final draft, chapter 12, available from <https://intellectualproperties.stanford.edu>.

Chapter 12

An Act for the Encouragement of Learning

The two major philosophical statements of Locke's career, the one touching on the intellect and knowledge (*Essay*) and the other on property (*Two Treatises*), contain little that bears directly on what we now think of as intellectual property. That may not be surprising, given the concept did not yet have a name nor legislation to back it up when Locke published these works in 1689. What is remarkable is that within a few years of publishing these two books, Locke threw himself headlong into a legislative fray over the regulation of printing that had a great deal to say about intellectual property (if still not yet by that name), thanks to his efforts.

During the seventeenth century, the exclusive right to print a copy of a book in Britain had been a topic of pressing interest to London's Stationers' Company, the king, the Church of England, the Royal Society of London, and the fledgling university presses at Oxford and Cambridge (as reviewed in Chapters 9 and 10). The property of a book that was most at issue during this period was that it had been licensed by the crown and registered with the Company of Stationers in what amounted to a perpetual monopoly. This censorship-monopoly combination increasingly troubled scholars, such as Locke, who were unable to obtain needed books at a fair price, if at all.

On January 2, 1693, Locke decided to do something about it. The story begins, as much did in that time, with a letter. On that day, Locke wrote to his friend Edward Clarke, then Whig member of Parliament from Taunton (and married to a relative of Locke's) on the state of the book trade. Parliament was considering the renewal, once

again, of the thirty-year-old Licensing of the Press Act of 1662. It had last been approved in 1685, under James II, for seven years. In his letter, Locke asked Clarke to consider the damage done by the Stationers' Company monopolies granted by this Act:

I wish you would have some care of Book buyers as well as all of Book sellers, and the Company of Stationers who haveing got a Patent for all or most of the Ancient Latin Authors (by what right or pretence I know not) claime the text to be their and soe will not suffer fairer and more correct Editions than any thing they print here or with new Comments to be imported... whereby these most usefull books are excessively dear to schollers.¹

The awarding of these patents could keep, he protests, a new edition of *Aesop's Fables* from being printed. The edition of *Aesop* he likely has in mind, he fails to mention, is the English-Latin edition of the *Fables* that he had begun preparing some years before for educational purposes, which faced just such patent hurdles.² Locke's letter, however, was too little too late. The Licensing of the Press Act was renewed in March of 1693.³ It was

¹ John Locke, "1586. Locke to Edward Clarke, 2 January 1693," in *Correspondence of John Locke*, ed. E. S. de Beer, vol. 4 (Oxford: Oxford University Press, 1989), 614-15.

² Locke's printer, Awnsham Churchill, requested the right from the Stationers' Company to print what became Locke's *Aesop's Fables, in English & Latin, Interlineary, for the Benefit of Those Who Not Having a Master; Would Learn Either of these Tongues* (London: A. & J. Churchill, 1703), which was granted on December 12, 1695, enabling him to print 1,000 copies without having to pay the Company for this privilege, although the book was only published 8 years later; Donald F. McKenzie and Maureen Bell, *A Chronology and Calendar of Documents relating to the London Book Trade, 1641-1700* (Oxford: Oxford University Press, 2005), 199, 207. On the other hand, Roger L'Estrange, who had earlier served Charles II as Licensor of the Press, published a "registered" edition of the fables in 1692 with Awnsham Churchill and a number of other printers; *Fables, of Aesop and other Eminent Mythologists: with Morals and Reflection* (London: R. Sare, A. & J. Churchill, et al., 1692).

³ In the House of Lords, eleven dissenting Peers issued a statement of protest against the Act, as it "subjects all Learning and true Information to the arbitrary Will and Pleasure of a mercenary, and, perhaps ignorant, Licensor, destroys the Properties of Authors in their Copies; and sets up many Monopolies"; *A Complete*

renewed this time, however, for only a two-year term, making it clear that the members of Parliament had lost their enthusiasm for book licensing. Locke must have understood it as such. He began to campaign in earnest against any further renewal of the Act. As part of that effort, Locke worked with Edward Clarke, as well as John Freke, as its lawyer and further Whig lobbyist and John Somers, who held the Parliamentary post of lord keeper of the great seal and member of the privy council.⁴ In his letters, Locke refers to this group as his “Colledg” (college).

The original passing of the Licensing of the Press Act in 1662 had been the latest measure of English press regulation, dating back to actions taken by Henry VIII in the 1530s.⁵ The Star Chamber required that books be licensed before being printed, while restricting the number of master printers, as well as the importing of books from abroad.⁶ During the Civil War, which saw the Star Chamber abolished, Parliament passed a similar Licensing Order of 1643. Enter John Milton, otherwise a supporter of the Parliamentarians’ struggle against the Royalists. The poet Milton found his compatriot’s Licensing Order objectionable in the extreme. In an unlicensed 1644 pamphlet entitled *Areopagitica*, he offered a defense of the learning threatened by licensing. The pamphlet

Collection of the Lords’ Protests, from the First upon Record in the Reign of Henry the Third, to the Present Time, vol. 1 (London, 1768), 163.

⁴ Locke was, during his period of exile (1683-89), part of a similarly informal group known as “Collegium privatum medicum” in Amsterdam; Locke also reports that Lady Masham “gives her service to the Colledg”; “1845. Locke to John Freke and Edward Clarke, 8 February [1695],” *Correspondence*, vol. 5, 265.

⁵ Ronan Deazley, “Commentary on Henrician Proclamation 1538,” in *Primary Sources on Copyright (1450-1900)*, eds. L. Bently and M. Kretschmer, University of Cambridge, Cambridge, online.

⁶ Licensing can be traced back to Henry VIII’s November 16, 1538 proclamation requiring, in light of “wronge teachynge and naughtye printed bokes,” that books receive “his maiesties special licence”; cited by Alfred W. Pollard, “The Regulation of the Book Trade in the Sixteenth Century,” *Library* (1916) S3 7, no. 25 (1916), 22-3. See Adrian Johns’ helpful table of “Measures Regulating the Press, 1586-1710”; *The Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998), 232. Johns cautions that “evasion, at least, was extensive; just as a large proportion of published books were never entered [in the Stationer’s Register] so a large proportion lacked licenses”; *ibid.* 234. When licensing “lapsed pamphlets and piracies seemed to flourish”; *ibid.*

was boldly identified as “A SPEECH of Mr. JOHN MILTON For the Liberty of Unlicenc’d PRINTING, to the PARLAMENT OF ENGLAND.”⁷ It followed on the heels of his much contested and anonymous tract in favor of divorce. The Stationers’ Company cited this earlier tract as reason enough to have book regulation.

In *Areopagitica*, Milton argues that restrictions on press freedom “will be primely to the discouragement of all learning and the stop of Truth.”⁸ It will be to the detriment of “the purest efficacy and extraction of the living intellect [i.e., the author] that bred” the books, in the first place.⁹ He tied his fight to the interests of learning and writing, as such licensing constitutes a “dishonor and derogation to the author, to the book, to the privilege and dignity of learning.”¹⁰ Milton asks, “how can a man teach with authority, which is the life of teaching, how can he be a doctor in his own book... under the correction of his patriarchal licenser?”¹¹ If Milton’s pamphlet did little to bring about the revoking of the Licensing Order, his impassioned, eloquent defense of press freedom, learning, and the author’s intellectual property rights were likely influences on both Locke (who had a copy of Milton’s political works among his books), and Daniel Defoe in the years leading up to the Statute of Anne 1710. In particular, Milton’s theme that learning is something to be encouraged in any regulation of the press – given that book licensing is “the greatest discouragement and affront, that can be offer’d to learning and to

⁷ John Milton, “Areopagitica,” in *Prose Writings*, ed. K. M. Burton (London: Dent, 1958), 149.

⁸ Ibid.

⁹ Ibid., 149. Milton refers to “learning” twenty-eight times in the course of his essay, treating it as a source of non-commercial property: “Truth and understanding are not such wares as to be monopolized and trade in by tickets and statutes and standards. We must not think to make a staple commodity of all knowledge in the land, to mark and license like our broadcloths and our woolpacks”; *ibid.*, 168-69. Mark Rose argues that Milton’s essay is “a key document in the emergence of the bourgeois public sphere,” in which Milton “portraying himself as a private man addressing the public at large through parliament, participates in the discourse of the public sphere”; “The Public Sphere and the Emergence of Copyright: Areopagitica, the Stationers’ Company, and the Statute of Anne,” *Tulsa Journal of Technology and Intellectual Property* 12 (2009), 132.

¹⁰ Ibid., 167.

¹¹ Ibid.

learned men” – was a theme to be directly reflected in the 1710 statute.¹²

Press regulation continued during the English Civil War (1642-51) and into the Commonwealth and Protectorate under Cromwell that lasted until the Restoration in 1660. The growing political influence of newsbooks made them a favorite target among the censors. The press faced further restrictive measures from Parliament in 1647 and 1649 (with Milton serving Cromwell at this point as Latin Secretary, placing him in the very role of book licensor).¹³ Then, with the Restoration of the crown, a chastened Parliament instituted a new round of book licensing measures in 1662. This was in the form of “An Act for Preventing the Frequent Abuses in Printing Seditious Treasonable and Unlicensed Books and Pamphlets and for Regulating of Printing and Printing Presses.” The Press Act of 1662, as it was known, restricted printing to London, York, and, in recognition of the universities’ historic rights, Oxford and Cambridge.¹⁴

The Act continued the close censorious and monopolistic association of crown, church, and Stationers’ Company. It was regarded by the Whig opposition to Charles II as a perfect example of Restoration excess. Parliament allowed the Act to lapse in 1679 amid the hostilities that Charles II was facing during the Exclusion Crisis from Lord Shaftesbury and others. It was probably clear that the ensuing Whig-Tory pamphlet war was unlikely to be contained by any licensing regime. The Licensing of the Press Act of

¹² Milton, “Areopagitica,” 166. In 1667, the book licensor Rev. Thomas Tomkyns is said to have reluctantly granted a license to *Paradise Lost*, given the light it accorded Satan; David Masson, “Introduction: Biographical and Expository,” in *Poetical Works of John Milton*, vol. 2, ed. David Masson (London: Macmillan, 1890), 6.

¹³ Referring to Milton’s licensing of *Mercurius Politicus*, a weekly semi-official Commonwealth newsbook, and on Milton’s continuing influence on debates over press regulation, at least up to 1707, see Ernest Sirluck, “Areopagitica and a Forgotten Licensing Controversy,” *Review of English Studies* 11, no. 43 (1960), 260-274.

¹⁴ Astbury reports that during the 1690s, the universities entered into an agreement with the Stationers’ Company not to compete on the sales of English Stock-books, which included cheap editions of school-books, psalm-books and almanacs, further reflecting the universities’ struggle to find the right trade off of privileges to make a go of scholarly publishing; “The Renewal of the Licensing Act in 1693 and Its Lapse in 1695,” *The Library* s5, 33, no. 4 (1978), 297, n2.

1662 was renewed again in 1685, when the not-to-be-excluded James II took the throne. It also initially survived the Glorious Revolution of 1688 when James finally was excluded from the throne, much as a similar act had survived the Civil War earlier in the century. Yet, book licensing must have struck some as not entirely consistent with the Bill of Rights of 1689, which limited the power of the monarchy. There was pressure, particularly from the Whigs, to put an end to press regulation once and for all.

Locke's Memo

The times were ripe by the 1690s for Locke's "college" to weigh in on book licensing. In 1694, Edward Clarke was appointed to the Commons committee reviewing laws about to expire, with the 1662 Licensing Act among them. To assist Clarke in preventing this Act from being renewed yet again, Locke prepared a memorandum. He begins by sounding the familiar trumpet, after Milton, in favor of a free press: "I know not why a man should not have liberty to print what ever he would speake."¹⁵ To have to obtain a license to print a work in advance was like "gagging a man for fear he should talk heresy or sedition."¹⁶ Yet it was not that anything goes. He allows that printer or author has to be clearly identified in the book to ensure that someone will "be answerable for" any transgressions of the law they have committed with the book.¹⁷ But the risk of that transgression is little enough for Locke, compared to the misuse that continues to follow from the Licensing of the Press Act: "By this act England loses in general," as he puts it

¹⁵ John Locke, "Liberty of the Press (1694-5)," in *Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 331. Geoff Kemp notes that Spinoza, as well as Milton, precede Locke in this fight; "The 'End of Censorship' and the Politics of Toleration, from Locke to Sacheverell," *Parliamentary History* 31 (2012), 52-3. Astbury observes that Locke's critique resembles that of other contemporary pamphlets in his collection on many points; "Renewal of the Licensing Act," 307.

¹⁶ Ibid.

¹⁷ Ibid., 331.

at one point: “Scholars in particular are ground [down] and nobody gets [anything] but a lazy ignorant Company of Stationers. To say no worse of them. But anything rather than let mother church be disturbed in her opinion or impositions, by any bold voice from the press.”¹⁸

Locke then moves into what matters at least as much to him as press freedom. This is the current “restraint of printing the classic authors.”¹⁹ He sarcastically asks after the value of such restraint: “Does [it] any way prevent the printing of seditious and treasonable pamphlets, which is the title and pretense of this act.”²⁰ He is not objecting to the prosecution of sedition, though he might well have, having been a candidate for such prosecution when he fled to Holland in 1683. Rather, what bothers him is how badly learning is served by the Stationers’ Company: “Scholars cannot but at excessive rates have the fair and correct editions of these books and the comments [commentaries] on them printed beyond [the] seas”; they are left with “scandalously illprinted” local editions, given the lack of competition.²¹ To bring the point home, Locke refers to an imported edition of “Tully’s Works” (Marcus Tullius Cicero) which he found to be “a very fine edition, with new corrections made by Gronovius, who takes the pains to compare that which was thought the best edition”; the work was “seized and kept a good while in [the Company’s] custody,” before it was sold with the booksellers “demanding 6s. 8d. per book.”²² The problem is the overly broad and exclusive patents issued to the Stationers’ Company without end or limit on Cicero’s works.

Locke’s overarching concern with scholars’ access rights leads him, finally, to a

¹⁸ Ibid., 335.

¹⁹ Ibid., 334.

²⁰ Ibid.

²¹ Ibid., 332.

²² Ibid., 332-333.

backhanded commendation of at least one of the Act's clauses. The Act requires that a copy of every book printed be sent to, as he puts it, "the public libraries of both universities." This was what, you may recall, Thomas Bodley managed to secure from the Stationers' Company for the university library at Oxford. Locke complains that the sending of books to the libraries "will be found to be mightily if not wholly neglected" by the Stationers' Company, however keenly it otherwise supported the Act.²³ The public libraries' book deposit policy at Oxford and Cambridge represents a recognition of learning's distinct economic and political position, which has long been sustained by such compacts, with this book reviewing many instances of that position being renewed and reformed.

In the face of the perpetual monopolies of the Stationers' Company, Locke calls for term limits on intellectual property rights, much as he qualified property rights in the *Second Treatise* with his sufficiency and spoilage provisos. "Those [printers and booksellers] who purchase copies from authors that live now and write," he states in his Licensing Act memo, "it may be reasonable to limit their property to a certain number of years after the death of the author or the first printing of the book as suppose 50 or 70 years."²⁴ This would allow for new editions of older works, compared to current difficulties, he pointed out, when "the Company of Stationers have a monopoly of all the classic authors."²⁵

Locke also objected to restrictions on importing books. This opposition aligns

²³ Ibid., 336.

²⁴ Locke, "Liberty of the Press," 337. Joseph Lowenstein judges that Locke's "opposition to perpetual copyright is one of the most consequential aspects of Locke's critique of the licensing bill," while pointing out that it was inspired by the "limited-term privilege" of "the old institution of the patent"; *The Author's Due: Printing and the Prehistory of Copyright* (Chicago: University of Chicago Press, 2002), 230. In 1998, the U.S. Copyright Act extended the length of copyright from 50 to 70 years after the author's death.

²⁵ Locke, "Liberty of the Press," 332.

with his spoilage proviso with regard to property rights. To keep foreign books out of English hands effectively wasted some portion of the potential learning these books represented. His friend, Edward Clarke, takes up this theme of waste in his report to the House of Lords by suggesting that the delays for book importers caused by the Act meant that, as he vividly put it, “part of his Stock lie dead; or the Books, if wet, may rot and perish.”²⁶

When Locke bemoans in his memo that the Act is “so manifest an invasion on the trade, liberty, and property of the subject,” I take it that what is under siege are the intellectual property rights of the learned and learning.²⁷ As Locke sees it, access to this literature must be facilitated, rather than impeded by such unfair trade practices as perpetual monopolies and book blockades: “That any person or company should have patents for the sole printing of ancient authors,” he writes in the memo, “is very unreasonable and injurious to learning.”²⁸ This is, of course, Milton’s theme, in objecting to a licensing of the press that inevitably discourages learning.

Locke’s Further Reflections on the Press

Not long after Locke’s memo, in 1695, Clarke began to work with his fellow legislator, Robert Harley, on a “Bill for the better Regulating of Printing and Printing Presses.” Their proposed bill had the virtue of exempting from state licensing those books dealing with heraldry, science, and the arts. It offered no protection of Stationers’ Company

²⁶ “Commons Reasons for disagreeing to the Clause for reviving the Printing Act,” *Journal of the House of Lords* 15 (18 April 1695), 546.

²⁷ Ibid. 336.

²⁸ Ibid., 337. Locke continues: “Tis very absurd and ridiculous that anyone now living should pretend to have a property in or a power to dispose of the property of any copies or writings of authors who lived before printing was known and used in Europe”; *ibid.*

monopolies or the universities' printing privileges.²⁹ Locke was not involved in the drafting of Clarke and Harley's first go at the new bill, but he jumped in soon enough by proposing amendments to it.³⁰ Although a number of Locke's suggestions have since been lost, what is clear is that he was now prepared to make far more of the author's intellectual property rights than he had in his earlier memo. He proposed to Clarke that the new bill "secure the author's property in his copy" for a limited time.³¹ He tied this securing of the author's property in the work to a registration process that, in the first instance, protected the rights of learning. The printed book was initially to be deposited "*for the use of the publique librarys of the said Universities.*" After this deposit, the bill "shall vest a privileg in the Author... for ___ years from the first edition."³² The exact number of years he left up to Parliament to set, although he had earlier advocated 50 to 70 years after the death of the author.

Consider how Locke frames his case. Books are for the *use* of others through, for example, the public libraries of the universities, while authors are vested with a limited privilege in their books. There is no sense of outright or absolute ownership. He is treating intellectual property as something one has an interest in or some claim on, much as in the *Two Treatises* he writes of the "great difficulty, how one should ever come to have a *Property* in any thing."³³ In the case of books, the author has a property in a book

²⁹ Cited by Astbury, "Renewal of the Licensing Act," 321. Among those calling for a renewal of the Licensing Act was John Wallis, Professor of Geometry at Oxford, and book licenser, who warned that the university's loss of privileges in printing profitable books would leave it unable to subsidize costly scholarly works (a refrain still heard from university presses today); Astbury, "Renewal of the Licensing Act," 322.

³⁰ *Ibid.*, 312.

³¹ Locke, "Appendix, Documents relating to the termination of the Licensing Act, 1695," *Correspondence*, vol. 5, 795.

³² *Ibid.*, 796.

³³ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 2.27.

that earns the author, as an incentive, a limited-term privilege in the book (as well as a longer-term accreditation for having written it, which is not part of the proposed legislation). He also proposes that authors have a further right to control any subsequent editions of their work. The author could exercise these rights were “within [blank] years after its first edition be reprinted with or without the name of the author to it without authority given in writing by the author or somebody entitled by him.”³⁴ When he wrote this, he was likely engaged in revising the third editions of both the *Essay Concerning Human Understanding* and the *Two Treatises*.³⁵ In giving authors control of subsequent editions, he is recognizing the authors’ interests and responsibilities in correcting and improving their work with each new edition.

The Stationers’ Company lobbied vigorously against Clarke and Harley’s “Better Regulating of Printing” bill and it stalled and died on the floor of the Commons in 1695. The Company, which sought a straightforward renewal of the Licensing Act of 1662, protested that the reforms proposed by Clarke and Harley were “wanting as to the Security of [our] Property,” which was a fair enough estimation of their intent.³⁶ Clarke retaliated by circulating objections to the Company’s unfair and illogical trade practices, drawing on the loss to learning that was in Locke’s memo. Yet even with their bill failing,

³⁴ Locke, “Liberty of the Press,” 338. The “[blank]” is Locke’s. An earlier anonymous pamphlet complained of how, despite how “the Property of English Authors hath been always owned as Sacred among the Traders,” those who wrote commentaries on books “have been compelled to pay [licensors] their extravagant Demands, for using the Bible Text to Comment upon”; as well, “many learned Authors have been defrauded of their Rights thereby, who, after many years Pain and Study, and afterwards by a bare Delivery of their Books to be Licensed or Transcribed, have been barred by surreptitious Entries made in the said Register”; *Reasons Humbly Offered To Be Considered Before the Act of Printing Be Renewed* (1692), 3.

³⁵ The *Essay*’s “Epistle to the Reader” contains Locke’s reflections on revisions made across five editions (1689-1706) up to the final year, with provisions in his will for the final edition; a remarkably detailed publishing history of Locke’s works is available in Jean S. Yolton, *John Locke: A Descriptive Bibliography* (Bristol: Thoemmes, 1998).

³⁶ Cited by Raymond Astbury, “The Renewal of the Licensing Act in 1693 and Its Lapse in 1695,” *The Library* s5, 33, no. 4 (1978), 312.

the House of Commons and the House of Lords still went ahead and voted that year not to renew the Licensing of the Press Act of 1662. The Act expired on May 3, 1695, putting an end to well over a century of oppressive and easily corrupted press regulation. The great nineteenth-century historian and politician, Thomas Babington Macaulay, declared the Act's expiry a historic moment: "English literature was emancipated, and emancipated for ever, from the control of the government."³⁷ Closer to the ground, Sir William Trumbull wrote in a letter at the time, of how "since the Act for Printing Expired London swarms with seditious Pamphlets."³⁸

Locke's part in the defeat of the Licensing Act was enough to make one biographer, Maurice Cranston, political science professor at the London School of Economics, praise his subject's political realism, for "unlike Milton, who called for liberty in the name of liberty, Locke was content to ask for liberty in the name of trade, and unlike Milton, he achieved his end."³⁹ It does suggest that philosophers might join with poets as "the unacknowledged legislators of the world," as Shelley proposed in his defense of poetry.⁴⁰ What mattered to Locke "in the name of trade" was the trade in learning, and it came up briefly that same year of 1695 with the publication of what proved to be Locke's last substantial publication, *The Reasonableness of Christianity as Delivered in Scriptures*.

In this book, Locke sets out the various ways in which reason serves revelation (as he does at points in the *Two Treatises*). In this late work, he seeks to correct another

³⁷ Thomas Babington Macaulay, *The History of England, from the Accession of James II*, vol. 4 (Philadelphia: Butler, 1856), 377.

³⁸ Cited by Astbury, "Renewal of the Licensing Act," 317.

³⁹ Maurice Cranston, *John Locke: A Biography* (Oxford: Oxford University Press, 1957), 387. Astbury: "Clearly, the Commons' objections owed much to Locke's Memorandum of 1694, even though his expressions of animosity towards Court and Church as the leading champions of preprinting censorship were expunged"; "The Renewal of the Licensing Act," 315.

⁴⁰ Percy Shelley, *A Defense of Poetry*, ed. Mary Shelley (Indianapolis: Bobbs-Merrill, 1904), 90.

common misconception about knowledge, and in particular the knowledge of such vital matters as morality and ethics. Such knowledge has for too long, he notes, been treated as a “private Possession” alone, when it is always already something more than that:

Thus the whole stock of Human Knowledge is claimed by every one, as his private Possession, as soon as he (profiting by others Discoveries) has got it into his own mind; And so it is: But not properly by his own single Industry, nor of his own Acquisition. He studies, ‘tis true, and takes pains to make a progress in what others have delivered; But their pains were of another sort, who first brought those Truths to light, which he afterwards derives from them. He that Travels the Roads now, applauds his own strength and legs that have carried him so far in such a scantling of time. And ascribes all to his own Vigor, little considering how much he owes to their pains, who cleared the Woods, drained the Bogs, built the Bridges, and made the Ways passable; without which he might have toiled much with little progress.⁴¹

There may be little original in Locke pointing out that we stand on the shoulders of giants or at least owe a debt to those who came before us. However, this is also a comment on the common nature of the “whole stock of Human Knowledge.” It is the very business of learning to make the intricate, collective origins of knowledge part of the public record, which scholars help to do by crediting those “who first brought those

⁴¹ John Locke, “The Reasonableness of Christianity as Delivered in Scriptures,” in *Writings on Religion*, ed. Victor Nuovo (Oxford: Oxford University Press, 2002), 199-200. With thanks to Joanna Picciotto, who “made the Ways passable” for me by pointing out this passage in Locke; *Labors of Innocence in Early Modern England* (Cambridge: Harvard University Press, 2010), 265.

Truths to light,” as he puts it here. As learning has grown since his day, so have the credit-conscious demands of referencing those to whom we are indebted. The intellectual properties of learning are about enabling scholars “to make a progress in what others have delivered,” just as this history of ideas keeps them from claiming any of it as a “private Possession.”

At his death in 1704, Locke provided in his will for the distribution of a number of his titles to “the publick Library of the University of Oxford,” as if to recognize the public claim on these works, with part of that claim an identification of his authorship. In the will, he refers to how the Reverend Dr. Hudson, Library Keeper of the Bodleian Library, had written to him “desireing of me for the said Library the books whereof I was the Author.”⁴² Locke explains in the will that he had sent those works “publishd under my name,” only to receive back a note indicating that these books “were not understood fully to answer the request.”⁴³ With this last will and testament, Locke states that “I do hereby further give to the publick Library of the University of Oxford these following books...[including] two Treatises of Government whereof Mr. Churchill has published severall editions but all very uncorrect.”⁴⁴ As such, he settled his debt to learning’s claims (always, the corrections) and property rights. Although he did not live to see the passing of the Statute of Anne of 1710, it was to reflect a good part of his advocacy for learning.

Piracy’s Interlude

Immediately following on the expiry of print licensing in 1695, the streets of London were awash in the hawking of newspapers, cheap pirated editions of books and

⁴² Locke, “Will,” *Correspondence*, vol. 8, 425.

⁴³ Ibid.

⁴⁴ Ibid., 426.

magazines, scandalous and obscene pamphlets from upstart printers and booksellers. As Locke had held, the existing libel and blasphemy laws were brought to bear against these print criminals who faced search warrants and arrests, as well as new laws such as the 1698 Act for the More Effectual Suppressing of Blasphemy and Prophaneness.⁴⁵ The Stationers' Company denounced, with increasing rancor and outrage, a market flooded with cheap reprints of its titles. Its members cast such acts as *piracy*. The term started to be used in the 1680s for those who "stole" titles assigned to others in their Register.⁴⁶ It was, in fact, a free market for almost the first time in print materials. The monopolies were gone that the Stationers' Company's well-established printers and booksellers had enjoyed over the past century and more. The so-called pirates were not above citing lofty principles, to borrow a vivid instance from London bookseller Benjamin Motte, a couple of decades later: "The World has an absolute and indisputable power over all that appear in print." Motte was defending his printing of an abridged edition of the *Philosophical Transactions* in 1722 (although he was as ready to sue when his copyright on Jonathan Swift was infringed by a Dublin printer).⁴⁷

The Stationers' Company was having none of the world-has-a-right bunk. It turned to Parliament for remedy. But reintroducing regulation was an uphill battle. In the years following the Licensing Act's expiry, the Company promoted one unsuccessful

⁴⁵ Kemp, "The 'End of Censorship,'" 55. This Act in 1698 made it a crime to deny the Holy Trinity in speaking, writing, or teaching, which Locke had done, in effect, a few years earlier by not mentioning it in *The Reasonableness of Christianity*. Locke was not prosecuted nor the book suppressed, although he engaged in an exchange of published letters with Bishop Stillingfleet, who attacked his *Essay* as a threat to the faith, beginning in 1696.

⁴⁶ Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates*, (Chicago: University of Chicago Press, 2009), 41. On the origins of the term, John Fell refers, in a 1674 letter, to the Stationers' Company as "land-pirats," for treading on the university's "propertie in Printing"; cited by Johns, *Nature of the Book*, 344. The Oxford English Dictionary credits J. Mennes' *Recreation for Ingenious Head-peece* in 1654 with first use of piracy in this sense.

⁴⁷ Cited by *ibid.*, 353.

Parliamentary bill after another. In 1704, the year of Locke's death, a *Bill to Restrain the Licentiousness of the Press* was introduced into Parliament. As the force behind the Bill, the Stationer's Company hid its economic interests behind the shield of the community's moral safety. The members of the House of Commons readily saw through it and were not inclined to return to Company monopolies. Across Europe, and especially in that haven for learning that was Holland, unlicensed printing and reprinting appeared to have a certain intellectual excitement going for it, amid the blustering, nose-thumbing piracy.⁴⁸

There were some prepared to speak out in support of authors' rights in book publishing, which had not played a part in the seventeenth-century licensed press. Among them was Daniel Defoe. This was well before he found his legs as a novelist, when he was still a pamphleteer and journalist. In 1703, Defoe published an anonymous defense of press liberty, *Essay on the Regulation of the Press*, which began: "All Men pretend the Licentiousness of the Press to be a publick Grievance, but it is much easier to say it is so, than to prove, or prescribe a proper Remedy."⁴⁹ Defoe had already, a year earlier in 1703, proven Locke's point about the sufficiency of post-publication prosecution. Defoe was charged with libel, after releasing an anonymous satirical pamphlet taking on the Church of England's regard for Dissenters. He was sentenced to be publicly pilloried on three occasions. He was not one to let an opportunity go to waste. He composed a *Hymn to the Pillory* – "HAIL! *Hi'roglyphick State Machin*" – which he had distributed during his time in the stocks, while arranging for his hymn to be sold nearby. Flowers were thrown at his

⁴⁸ Among the reprint examples that Johns introduces is that of Locke's works in "Dublin, Glasgow, Amsterdam, The Hague, Rotterdam, Geneva, Brussels, Paris, Leipzig, Uppsala, Jena, Mannheim, Milan, Naples, Stockholm (by order of the Swedish Riksdag, no less), and, ultimately, Boston"; *ibid.*, 50. Johns refers to "chain reactions of reappropriation, generally unauthorized, and often denounced," before concluding that "no piracy, we might say, no Enlightenment"; *ibid.*

⁴⁹ Daniel Defoe, *An Essay on the Regulation of the Press* (London, 1704), 3.

feet, rather than rotten fruit and eggs.⁵⁰ Still, he ended up doing prison time for libel.⁵¹

In his *Essay on the Regulation of the Press*, Defoe follows Milton and Locke in pressing the point that the “*License of the Press*” was not likely to be consistent with “the Encouragement due to Learning” or “the Liberty of this Nation.”⁵² The encouragement of learning comes up more than once in Defoe’s tract as the very thing about the press that needs to be protected. Defoe bemoaned how the “pirating Books in smaller Print, and meaner Paper” was, among other things and concurring with Milton, “a Discouragement to Learning.”⁵³

As it goes with the freedom of ideas, this encouragement of learning theme was picked up by the printers and booksellers as a promising line of attack on an unregulated press and print piracy. The Stationers’ Company was likely behind three anonymous petitions to Parliament, beginning with the 1706 one-page *Reasons Humbly Offer’d for a Bill for the Encouragement of Learning, and the Improvement of Printing*.⁵⁴ This petition opens with a concern for the “Many Learned Men [who] have been at great Pains and Expence in Composing and Writing of Books.” It takes a Lockean stance on the author’s “undoubted Right to the Copy of his own Book, as being a Product of his own Labor.” It reflects the Miltonic worry that “Learned Men will be wholly Discouraged from

⁵⁰ Paula R. Backscheider, *Daniel Defoe: His Life* (Baltimore: Johns Hopkins, 1989), 118. Daniel Defoe, *Hymn to the Pillory: An Online Edition*, ed. Jess McCarthy (2013).

⁵¹ Defoe was not alone in facing charges, as John Feather lists 36 works prosecuted, for blasphemy, breach of Parliamentary privilege, and like offences, between the end of licensing in 1695 and the Statute of Anne, 1710; “The Book Trade in Politics: The Making of the Copyright Act of 1710,” *Publishing History*, 8 (1980), 26.

⁵² *Ibid.*, 15. Defoe continued to protest, in his *Review*, the lack of an author’s right in his copy, disrupted by “Piracies, and Invasions of Property”; cited by Ronan Deazley, “Commentary on Defoe’s Essay on the Regulation of the Press (1704)” in *Primary Sources on Copyright (1450-1900)*, eds. L. Bently and M. Kretschmer, University of Cambridge, Cambridge, online.

⁵³ *Regulation of the Press*, 27.

⁵⁴ “Reasons Humbly Offer’d for a Bill for the Encouragement of Learning, and Improvement of Printing” (London, 1706), *Primary Sources on Copyright (1450-1900)*, eds. L. Bently and M. Kretschmer, University of Cambridge, Cambridge, online.

Propagating the most useful Parts of Knowledge.” It introduces, in closing, the requisite image of a bereft widow-of-the-author, in this case “of the late Arch-Bishop Tillotson,” who was generously provided for by “Booksellers,” although this support was threatened by print piracy.

In 1709, a further petition to Parliament presented “REASONS Humbly Offer’d,” yet again, for a “BILL for the Encouragement of Learning.”⁵⁵ This time the title additionally called for “the Securing of Property of Copies of Books to the Rightful Owners thereof.” Learning became the focus of this battle over print regulation to a degree that far exceeded its slight and tenuous market share in the book trade.⁵⁶ The Stationers’ Company’s piracy complaints were being exacerbated by a flood of recent reprints from Scottish printers taking advantage of the 1707 Act of Union to forge a Great Britain of enterprising booksellers.⁵⁷ The 1709 petition was one of the last of perhaps a dozen attempts on the part of the Stationers’ Company, the Church of England, and even the University of Oxford to reinstate the Licensing Act or something very much like it.⁵⁸ In 1710, this brief interlude of unregulated printing came to an end in Great Britain.

The Statute of Anne 1710

If print piracy drove this legislation, the Statute of Anne still amounts to more than a legal

⁵⁵ “Reasons Humbly Offer’d for a Bill for the Encouragement of Learning, and for the Securing of Property of Copies of Books to the Rightful Owners thereof” (London, 1709), *Primary Sources on Copyright (1450-1900)*, eds. L. Bently and M. Kretschmer, University of Cambridge, Cambridge, online.

⁵⁶ John Feather, *A History of British Publishing* (London: Routledge, 1988), 57-60.

⁵⁷ Johns: “The invention of copyright was largely a response to a piracy feud overflowing with national resentments, namely the attempt of Scottish reprinters to compete with London’s book trade”; *Piracy*, 13.

⁵⁸ 8 Anne, c.19. See *The Statute of Anne*, April 10, 1710, Avalon Project, Lillian Goldman Law Library, Yale University, 2008, online. Feather lists eleven unsuccessful bills relating to the book trade brought before Parliament between 1695 and 1710; “Book Trade in Politics,” 22. Johns calculates that the Stationers’ Company called on Parliament fifteen times for some form of legislative protection; *Nature of the Book*, 353.

remedy for a highly disrupted and vibrant marketplace. It was not a return to the seventeenth-century compact among crown, church, and guild. In this new legislation Parliament combined the author's natural rights in a text with the public good of learning. In an initial draft, the Statute of Anne refers to "Books and Writings" as "the undoubted Property" of authors, as such property was (in a Lockean phrase) "the Product of their Learning and Labor."⁵⁹ In the final version, the earning of this right is left implicit. The author's property claim to a text is not being legislated; that is left to natural and common law. On the other hand, learning's role in motivating this legislation is made explicit in the statute's subtitle which begins "An Act for the Encouragement of Learning."

The Statute opens with the Stationers' Company's complaint that "printers, booksellers, and other persons have of late frequently taken the liberty of printing... books and other writings, without the consent of the authors or proprietors of such books and writings," which leads "too often to the ruin of them and their families."⁶⁰ Authors are portrayed as the natural owners of their compositions. They have a right to profit from this labor, as "learned men" who strive to "compose and write useful books."⁶¹ Thus, the author (or assignee) "shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years."⁶² The author may be credited forever for having written the book – again, this natural right was not being legislated – but the exclusive

⁵⁹ Cited by R. Deazley, "Commentary on the *Statute of Anne* 1710," in *Primary Sources on Copyright (1450-1900)*, eds. L. Bently and M. Kretschmer, University of Cambridge, Cambridge, online. As well, Milton and Defoe used the phrase "Discouragement to Learning" which was in the original draft of the Statute; *ibid*.

⁶⁰ Feather establishes the degree to which the Stationers' Company influenced the final wording of the Statute – it did bear expenses associated with seeing the Statute through – with the exception of a term-limit on copyright; "Book Trade in Politics," 36.

⁶¹ This language dates back to the Company's 1706 petition, which begins, "Whereas many Learned Men have been at great Pains and Expense..."; "Reasons Humbly Offer'd for a Bill for the Encouragement of Learning, London (1706)," in *Primary Sources*. While any author was to a degree learned, in early eighteenth-century Britain, the Company had in this earlier petition referred to "a Gentleman [who] has spent the greatest Part of his Time and Fortune in a Liberal Education"; *ibid*.

⁶² 8 Anne, c.19.

right to make copies of the work was restricted to an initial fourteen years, with the prospect of renewing it for another fourteen years (while works registered prior to the Statute are granted a continuing exclusive right to copy for twenty-one years). The Statute requires that books “before such publication, be entered in the register book of the Company of Stationers, in such manner as hath been usual.” This use of term limits with monopoly rights had been used with patents granted for inventions for some time. In both cases, such rights were regarded as an “encouragement” or incentive, intended to ward off “ruin” while author and inventor prepared further masterpieces.

These limits also reflect the troubled politics of monopolies in this emerging liberal democracy. Allow me a slight digression on this theme, going back to the Statute of Monopolies of 1624. This Statute was an early Parliamentary victory against King Charles I in curbing the widely abused royal prerogative of granting trade monopolies to favored subjects of the realm. The Statute dared to declare that such privileges bore the “untrue pretences of publique good” and were nothing less than “mischievous to the State by raising prices of commodities.”⁶³ The 1624 Statute pronounced these monopolies null and void. Only legitimate inventions – “anie manner of New manufacture” – warranted a patent and for a restricted period of fourteen years (or twenty-one if prior to the Statute). This is the term-limit model followed by the Statute of Anne covering the author’s exclusive right to copy.

The 1624 Statute did not actually put an end to the crown’s habit of granting monopoly privileges. Charles I’s continued use and abuse of the monopoly patents was

⁶³ The complaint in the *Statute* was that the patents were granted “uppon misinformacions and untrue pretences of publique good many such grauntes have bene unduly obteyned and unlawfully putt in execucion to the great grievance and inconveniencence of your Majesties subjects”; “Statute of Monopolies, Westminster (1624),” in *Primary Sources on Copyright (1450-1900)*, eds. L. Bently and M. Kretschmer, University of Cambridge, Cambridge, online.

among the factors contributing to the English Civil War. In revoking and limiting patents, the 1624 Statute made an exception of print (as well as gunpowder), allowing perpetual monopolies to continue for reasons that we might identify today as national security. Thus, Charles II had no problem with the Press Act of 1662. The Statute of Anne represented a break with that past. It was a further Parliamentary assertion of elected authority against the remnants of royal prerogative, with Parliament's endorsement of learning in the emerging spirit of the Enlightenment bringing this point home.

The Statute directs four of its roughly ten provisions toward the encouragement of learning. It grants learning distinct property rights (with two of the measures continuing rights that had been granted in the Licensing Act of 1662). Among the new rights, the Statute first of all offers a remarkably direct remedy to Locke's concerns over the price of learned books: "The Vice-Chancellors of the Two Universities... the Rector of the College of *Edinburgh*... have hereby full Power and Authority... to Limit and Settle the Price of every such Printed Book... as to them shall seem Just and Reasonable."⁶⁴ Now, to be fair, this right is also extended to the archbishop and lord chief justice, and thus applies outside of the university.

Other privileges are granted to the universities on behalf of learning. The Statute continues the requirement of the earlier Act that printers and booksellers provide a copy of each new book printed to university and state libraries, as if to acknowledge the value of a well-stocked intellectual commons set apart from the book-selling market: "Copies of each Book... upon the best Paper... be Delivered... for the Use of the Libraries of the Universities of *Oxford* and *Cambridge*, the Libraries of the Four Universities in *Scotland*, the Library of *Sion College* in *London*, and the Library commonly called the

⁶⁴ 8 Anne, c.19.

Library belonging to the Faculty of Advocates at *Edinburgh*.”⁶⁵ If the book-price-setting powers of vice-chancellors have withered away and disappeared, the *legal deposit* of published works in libraries has become a common legislative requirement throughout the world.⁶⁶

The Statute also disallowed any restrictions on importing “any books in Greek, Latin, or any other foreign language printed beyond the seas,” as if to address another of Locke’s concerns with the earlier Act.⁶⁷ And finally, in a fourth measure, the Statute declares that nothing herein is to “prejudice or confirm any right that the said universities” had “to the printing or reprinting any book or copy already printed, or hereafter to be printed.”⁶⁸

The Statute certainly refers, more generally and more often, to “the author of any book” and “any such book” rather than focusing exclusively on learned men. It ensures the rights of the “proprieters of such books and writings,” which are the booksellers and printers to whom authors commonly sold the rights to their work. Yet along with authors and proprietors, learning is very much present in Britain’s initiation of the age of copyright in 1710, when Parliament passed legislation “vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned.”⁶⁹

⁶⁵ Ibid.

⁶⁶ Richard Bell, “Legal Deposit in Britain (Part 1),” *Law Librarian* 8, no. 1 (1977), 5.

⁶⁷ 8 Anne, c.19.

⁶⁸ Ibid. The universities’ printing activities were called to account on occasion. John Twigg discusses how during the Civil War, Parliament was given to regulating printing, with John Pym complaining in 1640 that the presses “published and maintained in the Universities” were spreading Royalist works, while Cambridge’s licensing of Royalist books led to the arrest of a college master; Richard Holdsworth; *The University of Cambridge and the English Revolution, 1625-1688* (Cambridge: Boydell Press, 1990), 84-86.

⁶⁹ 8 Anne, c.19, 2. In 1486, the city of Venice issued a patent to Marcus Sabellicus for his *Historiae rerum venetarum ab urbe condita*, which recognized his right in this property without creating a legal category of ownership for authors, as the Statute does. See Pamela O. Long, who notes that such patents “rarely prevented piracy” and were a “commercial privilege,” and not connected to “the originality of the author’s expression”; *Openness, Secrecy, and Authorship: Technical Arts and the Culture of Knowledge from Antiquity to the Renaissance* (Baltimore: John Hopkins University Press, 2001), 11.

The Statute of Anne grants or affirms privileges for the learned that are perpetual and without limit. The learned could expect books to be priced fairly through the powers of the university's vice-chancellor; they could import cheaper and better editions from abroad; they could prepare such editions themselves and have them printed at the university press; or they could simply go to the university library and find the works on the shelves. These legislated privileges are acts of good faith, anticipating that increases in learning will provide return enough to the society as a whole. This was how the store of learning had been supported by the larger world in the past through the libraries of abbey, convent, school, and university.

A similar appreciation for how learning forms a clear and worthy goal of intellectual property law was to appear in the U.S. Constitution nearly eight decades later in 1787. The Constitution gives Congress the power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”⁷⁰ Both the Statute of Anne and this constitutional clause have learning as their stated purpose, and subsequent United States legislation was to provide exceptions and privileges for learning, as discussed in this book's first chapter.⁷¹

In 1710, the British legislation bound authors, booksellers, and printers, as well as the universities and their libraries, within a legal structure that forms the cornerstone of today's intellectual property regime (involving copyrights, patents, trademarks, and trade

⁷⁰ U.S.C. 1, 8.

⁷¹ Oren Bracha: “When, in the late eighteenth century, Americans created their first copyright regime – first through state enactments and then by the federal 1790 Copyright Act – they used the British Statute of Anne as their doctrinal blueprint. Despite a few changes and omissions, the degree of similarity on the level of basic concepts, structure, and text between the 1790 Copyright Act and the 1710 British statute is remarkable”; “The Statute of Anne: An American Mythology,” *Houston Law Review* 47 (2010-11), 877-78.

secrets). The Statute recognizes learning as the source of a valued class of properties. This class of properties has been instrumental, I have tried to demonstrate, in the historical formation and appreciation of intellectual property as a concept, even as this class stands apart from other types of what are recognized as intellectual property. This class consists of the properties by which learning is distinguished, properties that I have identified in terms of access, accreditation, autonomy, communality, sponsorship, and use. These properties take both material and intangible forms, operate as rights and cultural practices, apply to texts and institutions, and change by period and place. In some basic way, they have also persisted across this history in cloister, school, college, library, and academy. The properties tend to distinguish learning from other human activities, not least of all for how the properties produced by the human intellect in the case of learning are intended to be used to develop others' intellectual capacity. Allow me to briefly recap the history of these six properties, in light of their continuing relevance.

Access: To begin with the right that initiated this book, this history has been full of the provisions that people made to facilitate learned access, including Jerome's network of friends from Bethlehem to Rome; the Benedictine annual handing out of books from the monastic library chest; the Islamic libraries with fellowships for travelling scholars; and the stocking of the Bodleian Library in Early Modern Oxford by benefactors and printers. This assumed right and responsibility of access is what motivated the translation movements of Arabic texts into Latin during the twelfth and thirteenth centuries and the humanist recovery of Latin and Greek manuscripts beginning in the fourteenth. Nothing was more intellectually stimulating than prospects of access, which inspired sharing and copying. Yet the learned excluded and occluded access at

historic points. Recall Margaret Cavendish's appeal to the universities against banishing women (not to mention other religions and cultures). Or, how Erasmus encountered a sheer lack of trust and generosity among colleagues. Still, it was the ongoing institutional efforts to improve, restore, and expand access that were encoded in the Statute of Anne clauses bearing on library book deposit, unrestricted book importing, and reasonable book pricing.

Accreditation: The work of the scholar is also marked by tendencies to credit (and crab about) others' work. A scholar's handling of credits becomes an intellectual property of the work produced, and an identity mark much as a silversmith's hallmark. Jerome and Augustine credit Cicero and Virgil to demonstrate antiquity's value for Christian arguments, while Cassiodorus built a model library to that end. Bede is clear about his following in the footsteps of the church fathers, enabling him to break new ground in his claims for learning. At the medieval universities, scholars readily acknowledge Avicenna and Averroes for easing their way into Aristotle, natural history, and medicine. Crediting is repayment for use in a credit economy based on reputation. One polishes another's star to shine brighter oneself, and a set of references form their own identifiable constellation within that great firmament held in common.

Autonomy: Learning's tendency to pull away from the flow of life has long been a part of what it requires. In the Middle Ages, the abbey was self-governing (if class-reproducing) in ways that popes enabled. Still, standing apart often proved a vulnerability, as Abelard found with Bernard of Clairvaux, and as Aquinas could attest to, given his part in the condemnation of the university. Unhappy kings could subject monasteries to dissolution, only to have their endowment give rise to colleges with still

greater autonomy in their learning (if still susceptible to overzealous royal visits).

Universities gained autonomous printing rights in Britain, but stumbled for some time before the brute economic force of London's commercial monopolies. Negotiating this necessary autonomy became an intellectual property of learned work, with this theme often taken up in prefatory remarks, whether by Anselm, Hildegard, Locke or, in an apologia, by Abelard.

Communality: Christian monasticism gave learning in the West its communal beginnings, with book, table, and pen as things held in common by the Rule of Benedict. The great libraries of Islam were open to travelling scholars, such as Avicenna, for which they provided support. This communal spirit informs Erasmus' tireless improvements to the common stock of adages, which then circulated, cheaply and pirated, throughout the print market. This bookish commons was a thing of humanist patrons' private libraries and the public libraries of the ancient universities. It operated as a great collective right of access and use among the learned to be endlessly acted upon over the course of a lifetime. It inspired much copying, translation, editing and, above all, commentary, which further opened the intellectual properties of these shared works.

Sponsorship: Among these properties, sponsorship was undoubtedly the prime mover of learning's incorporation in the West. The abbeys, convents, priories, schools, colleges, and academies, all of which provided a chartered home for learning, depended on the kindness of strangers, family, nobility, and court. Benefactors founded and funded these institutions, enabling them to stand apart from the world and that much closer to heaven. While the course of this patronage was neither steady nor certain across the long Middle Ages covered in this book, such beneficence continued to be renewed and found

afresh, with women of a certain standing often playing a key role. It was later cut with commercial concerns among the universities, following the introduction of tuition and then print, with all its privileges and monopolies, in the age of commerce. Among others, Boethius, Averroes, Petrarch, and Locke provide lessons on the personal whims and favors of patrons, against the steadier grip of learning's institutional endowments.

Use: Learning's final property in this set, as I have it, is the right of use. It was known in Roman law as *usufruct*, and allowed for use that did not alter the property. It has long held a special place within the commonwealth of learning. One scholar judges (uses) another on their use of yet a third scholar's work, with that third scholar as likely Aristotle as anyone, after the Latin Translation Movement. On the other hand, the church was prepared to pronounce Abelard's interest in biblical contradictions a decided misuse of Scripture, while Aquinas was condemned for over-use of Aristotelian reasoning in theological matters. Hernández assumed that his ample use of Aztec medical practices called for repayment through a Nahuatl translation of his findings. Oldenburg defended his use of the Royal Society's papers as "necessary for promoting the improvement of Philosophical Matters." Access, autonomy, and communality all serve this property right of use, as does the sponsorship of institution and library.

The history of learning's properties in the West, as presented in this book, spans some 1,400 years. It has been selective and illustrative, often drawing on familiar figures among nuns and monks, humanists and printers, masters and scholars, to bring something afresh about how their work reflects this sense of an intellectual property. The history of these properties has not been progressive or linear. Many of the ideas about learning were inherited from antiquity and present in Saint Jerome. What the West brought to this work

with learning was different iterations of an institutional framework, from monasticism to university and academy. If many of the people I have written about were already well-known to me and my readers, I found myself surprised by what the scholarly literature had to offer on what has not been told often enough about learning, involving, for example, the philosophical and scientific debt owed to Islamic scholarship; translation's cooperative contact zone; the achievement and exclusion of women; constancy and change in the library; learned publishing's struggle with privilege, monopoly, and censorship; the colonial consequences of a property theory.

The book may seem to end on an entirely triumphant note, with the passing of "An Act for the Encouragement of Learning." Yet this early eighteenth-century encouragement of learning in Britain did not yet extend to the admission of women to higher education (with Oxford first granting women degrees in 1920), or Jews (admitted in 1856 to Oxford), or "dissenters" from outside the Church of England (admitted in 1854), or Indians (admitted in 1871), and the list goes on. The learned did not always get it right, or fairly, or honestly, and if I have favored the success stories here, it has been to capture the values, as well as the cautions, in going forward. Education has always been better about the promise and potential of improving the world than about realizing the full extent of that improvement – particularly on issues of equality of opportunity – within its own dominion. I can say that having spent my life as a school teacher and academic involved in, as well as studying, our shortcomings in realizing our best hopes for education. This book represents an effort to appreciate the history of what the West has tried to make of learning through institutions and artifacts, so that we keep present the values that have guided us in the past.

My principal claim for this history is that it demonstrates how much this concept of intellectual property owes to the history of learning. Those involved in this world of learning made the intangible qualities of texts a reality, in fact, the reality of their lives. The learned valued texts as distinctive entities, works of labor and insight. This work with books led to an evolving set of rights and responsibilities, institutions and economies. Their work also managed to convince a good number of those who were not involved in this learning of its intrinsic value to the larger world, and thus to sponsor, and provide privileges and protections to, the study of Christian theology, the liberal arts, and natural philosophy.

My second claim is that the work of learning creates forms of intellectual property that stand distinctively apart from other sorts of tangible and intangible goods. It was not that other crafts and guilds lacked intellectual property claims in what they created and made. It is only that with learning, much of the energy and care, the development of technique and method, is devoted to making explicit the nature and value of the properties as intellectual. The craft of learning is in the articulation of such properties. How could this field of learning not give substance and form to this concept of intellectual property; how could it not be a distinct and separate form of human activity to create such intangible goods; how could it not require its own set of privileges and protection? As Locke felt compelled to lobby for the legislative reform of intellectual property rights on behalf of his interests as a scholar, so this is no less of a critical time for the encouragement of learning to rethink the legal structure of intellectual property. In the book's epilogue, I sketch out how a history such as this points to possible ways forward into a digital era of greater access and utilization of research and scholarship.