Piracy

THE INTELLECTUAL PROPERTY
WARS FROM GUTENBERG TO GATES

Adrian Johns

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A General History of the Pirates

In mid-2004, executives at the Tokyo headquarters of the huge electronics multinational NEC began to hear reports that its products were being counterfeited and sold in Chinese stores. Nobody was at all surprised. Reports of this kind were routine for any corporation of NEC's size and reach, and in this case they initially seemed to concern small stuff—blank DVDs and the like. The company nevertheless moved swiftly to put into action its standard response in such cases, hiring a firm called International Risk to look into the matter. There was no reason to suspect that this would prove to be anything more than yet another incident like all the others—irritating, no doubt, but impossible to suppress entirely. Piracy of this kind was the unavoidable price of doing business on a global scale.

Two years, half a dozen countries, and several continents later, what International Risk had unveiled shocked even the most jaded experts in today's industrial shenanigans. They revealed not just a few streetwise DVD pirates, but an entire parallel NEC organization. As the real company's senior vice president ruefully remarked, the pirates had "attempted to completely assume the NEC brand." Their version, like the original, was multinational and highly professional. Its agents carried business cards. They were even recruited publicly by what looked like legitimate advertising.[1] The piratical firm had not only replicated existing NEC

goods, but actively invested in research and development to devise its own. Over time, it had produced an entire range of consumer products, from MP3 players to lavish home theater systems. These goods were of high quality, with warranties emulating NEC's own (in fact, the conspiracy came to light only when users tried to exercise their warranty rights by contacting NEC). To manufacture them the impostor multinational had signed royalty arrangements with more than fifty businesses scattered through China, Hong Kong, and Taiwan, at least some of which seemed to believe they were working for the real NEC. And it had developed its own sophisticated distribution networks, allowing its products to reach a global market extending at least as far as Africa and Europe. If this was indeed, as the international press called it, the "next step in pirating," then it was a very dramatic and impressive step indeed.[2]

When news of the pirate NEC broke in mid-2006, the story quickly winged its way across the Internet. Readers and commentators in the blogosphere reproduced the original press reports many times over. They expressed dismay at the implications. But their dismay was often accompanied by a drop of schadenfreude. Now, they realized, none of them could really be confident that the "NEC" disk drives, chips, screens, or keyboards on which they were doing their blogging were what they claimed to be. Some found this ominous, because of what it implied about knowledge in general in the networked world. Others acknowledged those implications but were only too happy to profess that they found them appealing: here was a gigantic corporation coming a cropper at the hands of unbranded outlaws who had proved themselves faster, nimbler, *smarter*. The Net's echo-chamber amplified the incident into a symbol of every cultural fear, epistemic doubt, and libertarian dream suggested by the digital age. Here, it seemed, was a glimpse of where everyday menaces like phishing and identity theft were inexorably leading.

This case of a doppelgänger multinational does indeed seem to mark some kind of culmination. It is hard to imagine a more spectacular act of piracy, unless perhaps one could conjure up a fake World Intellectual Property Organization. And in fact the venture came to light almost exactly on cue, just as impersonation of this kind had been identified as a growing piratical trend, set to succeed hacking and pharming as the mode of digital banditry du jour. "Brandjacking," it was called. It had even been singled out as a looming problem by the CEO of International Risk— who, not coincidentally, was a longtime veteran of the Hong Kong police

experienced in tackling human kidnappings. Such piracy, he had cautioned in public speeches, was fast becoming a fact of life for the electronics and pharmaceuticals industries, with a recognizable modus operandi. An episode generally began when a legitimate company licensed a factory to manufacture its goods; the brandjackers who stood behind the factory would then take the documentation involved in the license, duplicate it, and redeploy it in order to recruit other plants. These other operations often remained blissfully unaware that they were dealing with impostors. After all, the outlaws helped themselves to the very devices — affidavits, bills, forms, contracts — that are supposed to guarantee legitimacy in modern capitalism. Especially hard to fight were brandjackers who operated across national boundaries, particularly the strait separating Taiwan from mainland China. The authorities in the People's Republic might well prove reluctant to prosecute local businesses that could plausibly claim to be acting in innocence. All of these vulnerabilities were exploited to the full by NEC's evil twin.[3]

NEC's discomfiting experience throws into sharp relief the sheer range of phenomena that fall under the term "piracy" as it is nowadays used. They extend far beyond the piecemeal purloining of intellectual property. They reach, in fact, to the defining elements of modern culture itself: to science and technology; to authorship, authenticity, and credibility; to policing and politics; to the premises on which economic activity and social order rest. That is why the topic of piracy causes the anxiety that it so evidently does. Ours is supposed to be an age of information — even of an information revolution. Yet it suddenly seems as though enemies of intellectual property are swarming everywhere, and the ground rules for an information economy are nowhere secure. Universities find themselves havens for countless devotees of file-sharing software, making blithe use of services that the recording industry condemns flatly as piracy. Biotechnology companies, testing genetically modified organisms in Indian cotton fields, accuse local farmers of being "seed pirates" when they use part of one year's crop as seed for the next. And Hollywood executives make front-page headlines when their companies join forces to sell movies online, having been spurred into rare cooperation by their mutual fear of losing control of their intellectual property. So serious has the prospect of piracy become for them that in the United States the Digital Millennium Copyright Act has even outlawed the promulgation of algorithms that *might* be used to disable or circumvent copy-protection devices. A graduate

student coming to Nevada to present a technical paper can be arrested, not for pirating anything himself, but for divulging principles that might allow others to do so. In today's global economy, there are not just pirate books, CDs, and videos, but pirate jeans, pirate motorcycles, pirate pharmaceuticals, pirate aircraft parts, and, of course, pirate Pokemon. One recent novel mischievously imagines the ruin of the entire U.S. economy after the source code of major proprietary software is released en masse onto the Net. "The Chinese never liked 'intellectual property,'" explains a Nobel laureate scientist in 2044, and they eventually "called our bluff." "So now, thanks to the Chinese, basic science has lost its economic underpinnings. We have to live on pure prestige now, and that's a very thin way to live."[4]

Implicit in that resigned lament is a recognition that information has indeed become a principal foundation of modern social, economic, and cultural order. As it has become the key commodity in the globalized economy, so control and management of information have vastly increased in overt importance. In the nineteenth century, manufacturing held the key to economic power; for much of the twentieth, energy occupied that position. Now knowledge and imaginative creativity seem to be challenging for primacy. Piracy is the biggest threat *in* this emerging economic order, and it is commonly represented as the biggest threat *to* it. A specter is haunting Europe, as a latter-day Engels might have written. Only it is not just Europe that is spooked, but the entire economic world; and the ghost looming before us is not a communist, but a pirate.[5]

Yet the problem is even thornier than that may imply, because it is not reducible to any kind of informational class war. The pirates, in all too many cases, are not alienated proles. Nor do they represent some comfortingly distinct outsider. They are us. Biotechnology companies certainly complain about seed piracy, for example—but also find themselves confronted by protests at their own alleged "biopiracy." The same charge is liberally hurled at high-tech "pharmers" in the West—the word here referring not to unscrupulous forgers of Web sites but to highly credentialed bioscientists and ethnobotanists traversing the tropics in their search for new medicines. In such cases, the institutions of scientific and medical research on which we depend are being denounced as pirates not for destroying intellectual property, but precisely for introducing it to places where it did not previously exist. It sometimes seems that there is only one charge that all players in the globalization game, from radical

environmentalists to officials of the World Trade Organization, level at their respective foes, and that charge is piracy. Marking the repudiation of information capitalism at one extreme and its consummation at the other, it has become the definitive transgression of the information age.

This makes piracy a compelling subject as well as an attractive one. Its consequences extend beyond particular cases, and beyond even the law itself, to impinge on the basic ways in which ideas and technologies are created, distributed, and used. Conflicts over piracy involve strongly held ideals of authorship, creativity, and reception. Society can therefore find itself forced to articulate and defend those ideals, and sometimes to adjust or abandon them. That is the common thread that ties together all our most important piracy debates, whether the specific allegations relate to gene patents, software, proprietary drugs, books, ballet steps, or digital downloading. What is at stake, in the end, is the nature of the relationship we want to uphold between creativity, communication, and commerce. And the history of piracy constitutes a centuries-long series of conflicts — extending back by some criteria to the origins of recorded civilization itself — that have shaped this relationship. Those conflicts challenged assumptions of authenticity and required active measures to secure it. They provoked reappraisals of creative authorship and its prerogatives. They demanded that customs of reception be stipulated and enforced. Above all, they forced contemporaries to articulate the properties and powers of communications technologies themselves — the printing press, the steam press, radio, television, and, now, the Internet.

Yet setting out to rescue the history of piracy from obscurity may still seem a quixotic quest. While its present and future receive daily attention in the mass media, its past remains almost completely veiled. To be sure, a few isolated episodes are cited repeatedly: Charles Dickens haranguing American publishers for reprinting his novels; Hamlet answering his own question, "To be or not to be," with the phrase "Aye, there's the point" in an unauthorized quarto of Shakespeare's play; Alexander Pope assailing the Grub Street bookseller Edmund Curll for helping himself to Pope's letters. But these tend to be offered up as whimsical anticipations of our current predicament, or else as reassuring evidence that there is nothing new under the sun. The big questions — where piracy came from, how it developed and changed over time, what its consequences have been — have never been properly asked, let alone answered.

There are two reasons for this. The first derives from received opinions

about the digital and biomedical advances that are taking place all around us. Ours is routinely invoked as a moment of radical transformation—an information revolution that constitutes a clean break from all that has gone before. Therefore, if piracy is the definitive transgression of this moment, it too should be a phenomenon without a past. It could have a prehistory, but not a history. The most that one could expect to find in earlier periods would be episodes resembling modern practices in some charming but in the end inconsequential way. And so this is indeed all that we have found. The second reason bolsters this by supplying a rationale: that piracy is not really a subject at all. To jurists and policymakers in particular—but the impression is widely shared—it has a derivative status. It simply reflects the rise of intellectual property. To look for its history would be, on this assumption, futile in principle. The real subject would be intellectual property itself, and more specifically intellectual property *law.* That alone could have a real history to excavate.

To be blunt, these assumptions are false in fact and iniquitous in their consequences. Piracy is not peculiar to the digital revolution—a revolution that is in any case pervaded by historical inheritances. Nor is it a mere accessory to the development of legal doctrine. Yet neither is it an offense of timeless character, universally definable by a priori criteria. It is far richer and trickier than that. It has its own historical continuities and discontinuities, and its own historical consequences. The relation of piracy to doctrines of intellectual property, in particular, must clearly be a close one; but piracy cannot be adequately described, let alone explained, as a mere byproduct of such doctrines. It is empirically true that the law of what we now call intellectual property has often lagged behind piratical practices, and indeed that virtually all its central principles, such as copyright, were developed in response to piracy. To assume that piracy merely derives from legal doctrine is to get the history—and therefore the politics, and much else besides—back to front.

Granted that the subject exists, a problem of definition still dogs it. What is piracy? It is not entirely clear that we agree on the answer. An official study for the European Union once defined it rather impishly as whatever the knowledge industries said they needed protection from.[6] There is a certain logic to that, as will become clear, and in the end it may even be the most adequate definition we can get; but it will scarcely do as a starting point. Nor, however, will the standard definition of piracy as the commercial violation of legally sanctioned intellectual property. This too

falls short, because (unless we embrace a very wide notion of intellectual property indeed) it would exclude many instances in which piracy has been recognized to be going on, but where intellectual property per se is not at issue. The very concept of intellectual property did not really exist until the mid-nineteenth century, by which point there had been over 150 years of denunciations of "piracy."[7] Even after that, there are many cases where too strict a definition in these terms would be prejudicial. One example concerns buses. In London, independent bus operators date back at least to the tourism boom that accompanied the Great Exhibition of 1851. Their vehicles were soon popularly termed "pirate" buses; a music-hall song called *The pirate bus* was popular for a while in the late Victorian era. They remained a presence on the city's streets beyond World War II.[8] Only by stretching the term "intellectual property" to breaking point could a pirate bus fit the orthodox definition. To exclude such usages, however, would rob us of the opportunity to consider what pirate buses had in common with pirate radio, pirate publishing, and pirate listening —three other kinds of piracy that were also popularly recognized in the period, and which we shall encounter later. By the same token, a doctrinaire definition might actually force us to count as piratical certain instances of expropriation that contemporaries did not identify in this way. An obvious example would be America's wholesale redistribution of foreign companies' patents (those of allies as well as the defeated Germans) after World War I. The legality of this hugely important move was unclear, but few in the United States, at least, would have called it piracy.

This is an apparent problem that can be turned to real advantage. It is certainly true that the nature of piracy has changed over time. For that reason, we need to respect its historical meanings rather than imposing its current one on our ancestors. Accordingly, some person, thing, or act has to have been characterized as piratical by contemporaries themselves in order for it to count as such in this book. But at the same time, we cannot simply take such characterizations at face value. Those who were called pirates almost never did: they always repudiated the label as inaccurate and unjust. The point is that when they did so, they often triggered debates that threw light on major structural issues and had major consequences as a result. We can profit by focusing on precisely these contests —and the more prolonged, variegated, and ferocious they were, the better. They strained relations between creativity and commercial life, and at critical moments caused them to be reconstituted. The history of piracy

is the history of those transformations. Every time we ourselves buy a book, download a file, or listen to a radio show, our actions rest on it.

PIRACY AND THE PRINTING REVOLUTION

The period of time that we need to traverse is a long one, but it is not indefinitely long. For although appropriators of ideas may always have existed, societies have not always recognized a specific concept of intellectual piracy. Far from being timeless, that concept is in fact not even ancient. It arose in the context of Western Europe in the early modern period—the years of religious and political upheaval surrounding the Reformation and the scientific revolution. In particular, it owed its origin to the cultural transformations set in train by Johann Gutenberg's invention of the printing press. At the origin of the history of piracy thus lies one of the defining events of Western civilization.

Printing posed serious problems of politics and authority for the generations following Gutenberg. It was in the process of grappling with those problems that they came up with the notion of piracy. At their heart was the question of how to conform the new enterprise to their existing societies. For, following Gutenberg's first trials in Mainz in the mid-fifteenth century, printing had spread rapidly to the major European cities. It was a rapidly expanding and potentially revolutionary activity, and it would eventually inaugurate a transformation in practices of authorship, communication, and reading. But in the shorter term, in the fifteenth and sixteenth centuries, contemporaries could and did find ways to apprehend the press in terms relatively familiar to them. At the heart of printing, as they saw it, was a practical activity—a craft. It was a fast-growing and in some ways extraordinary one, to be sure, but it was still a craft nonetheless. And that suggested how it could be accommodated.

Early modern people knew how crafts should be organized, conducted, and regulated so as to take their place in an orderly commonwealth. The practitioners of the press, therefore—ranging from the great scholar-printers of Renaissance Italy to the first denizens of Grub Street—organized themselves into communities large and small, along lines familiar from existing crafts. They established "chapels" of journeymen in their houses, and formed guilds or companies to handle the affairs of the book trades as a whole in particular cities. At the same time, ecclesiastical, academic, and royal authorities devised their own systems to render these

communities safe and responsible. To an extent, these too tended to be built on prior experiences. A 1547 French law decreeing that the author and printer be named on the title page of every religious book, for example, was modeled on the long-standing tradition of craftsmen's marks in such trades as silversmithing.[9] Other measures were more original—there was little precedent for the practice of licensing books before they could legitimately be published, and none for the Vatican's Index of Prohibited Books. At each level, and at places ranging from the printing house and bookshop to the bishop's palace and scholar's study, skills came into being and accreted into customs. They took on moral force. In those first generations, as printers, booksellers, writers, and readers jockeyed for position and developed conventions of proper conduct, so the character of printing itself—what printing *was*—emerged.[10]

Uncertainty and the need to make choices dogged this process, to an extent that has tended to be forgotten. To many people of the early modern period the press looked like it *should be* an engine of progress and providence, certainly, and Protestants of the later sixteenth century largely came to believe that it *had been* one in the days of the Reformation. But when it came to their own time and place, they had reason to be less sanguine. There was no guarantee that printers and booksellers, left to themselves, would let the printed book realize what others took to be its potential. Unauthorized reprinting was only one of the problems. There is ample evidence that laypeople's experience of printing included, alongside wonder at its virtues, exasperation at the proliferation of spurious claims to authorship, authenticity, and authority to which it gave rise. The realm of print was one in which the bogus could easily crowd out the genuine, and in which credibility vied with credulousness. Telling the authorized and authentic from the unauthorized and spurious was only one necessary art for thriving in the world of print, but necessary it was. Being a good reader demanded this kind of critical expertise. Writ large, the possibility that print itself might uphold some kind of rational public depended on it too.

The first and greatest of all novels provides powerful testimony to this effect. The entire second volume of *Don Quixote* amounts to a sharp satire on the nature of print a century and a half after Gutenberg. It delights in a recursive humor based on the conditions of life as an author, editor, reader, and even character in a realm of print riddled with such problems. Produced after a spurious sequel had been published in Tarragona, Cervantes'

volume has its hero repeatedly encounter readers of the spurious volume and characters from it. Indeed, the plot itself turns on this. Don Quixote alters his course, heading to Barcelona rather than Zaragoza, solely in order to depart from the story of the unauthorized book and therefore prove it inauthentic. Once in Barcelona, he enters a printing house and finds the workers engaged in correcting the impostor book itself. And at the end of the tale Don Quixote dies, just (or so Cervantes says) to make certain that no more bogus sequels can be foisted on the public.

The premise of Cervantes' novel, of course, is that Don Quixote is a naively literal reader of popular print, in the form of chivalric romances. So it is all the more important to acknowledge that the knight-errant is not quite straightforwardly credulous. When challenged, he can uphold his faith. The point is that he does so by appealing to exactly the mechanisms that in the Europe of 1600 were supposed to guarantee a certain veracity in printed books. When told that romances are "false, untrue, harmful, and of no value to the nation," and that they should certainly not be imitated in one's life, Quixote thus has a ready answer. "Books that are printed with a royal license and with the approval of those officials to whom they are submitted, and read to widespread delight, and celebrated by great and small, poor and rich, educated and ignorant, lowborn and gentry, in short, by all persons of every rank and station; can they possibly be a lie"?[11] Licenser and public, elite and people, all concurred. What greater authority could there be?

Don Quixote appeals here to a mechanism that was widely adopted to bring the craft of print into harmony with political order: the license. A license was a statement of approval issued by a state or ecclesiastical officer, and in most countries one was required before any book could be published. In practice the rule was often ignored, and the very fact that Cervantes puts these words in Quixote's mouth demonstrates the difficulty that any licensing system faced if it really meant to impress readers. How effective it was, either in suppressing dangerous or false books or bolstering orthodox ones, is doubtful. But the mechanism operated in close conjunction with two other devices that were to prove critically important for our story: patents and registers. Patents were open letters from a ruler that had been used in the Middle Ages for many different purposes. Within a generation or two of the invention of the press they were being sought to protect titles from unauthorized reprinting; the first is thought to be that issued in Venice in 1486 to Marcus Sabellicus for his

history of the city.[12] In every respect, this kind of "privilege" was equivalent to one granted for a mechanical invention, for a newly imported craft, or for a monopoly in a trade. It would continue to be applied to books for centuries. A register, meanwhile, was a book in which printers and booksellers of a particular city entered the titles of works they intended to publish. Its purpose was to maintain communal order, and at the same time to uphold the reputation of the craft community. Contests over particular editions could be resolved by booksellers and printers by reference to these registers, leaving the impression that the trade was inherently orderly. In some cities, entries in registers became secure enough to act as de facto properties, enduring for generations.

All later literary property regimes can be traced back to these two mechanisms. In tandem with licensing, they acted to shape the identity of print and the nature of the book in early modern European commonwealths. But at a fundamental level they were hard to reconcile: one appealed for its authority to the prerogatives of a state, the other to the autonomy of a craft. One aimed at securing interests within the commonwealth, the other at securing interests within the trade. Implicit in the tensions between them was therefore a major unresolved problem of political authority. That problem plagued sixteenth- and seventeenth-century regimes as the first recognizably modern states came into being. It set craft and economic interest against monarchy and conventional morality. In the realm of print, when the clash happened, the invention of piracy would be the result.

PIRATE PRINCIPLES

Piracy and literary property both originated as phenomena of the press. And both would remain deeply entwined with the fortunes of print until new media began to proliferate around 1900. We cannot even ask the right questions of our own culture, let alone answer them, without grasping how they took shape in that earlier age. In particular, the history of piracy is a matter of not just precepts but practices—artisanal crafts, policing strategies, ways of reading, and the like. As we trace these practices through the generations, we often find ourselves in the province of conventions and customs rather than laws, and those conventions and customs sometimes originated long ago. Their impact has been great and lasting even though they long remained largely unwritten. The most

important case in point is that of the so-called courtesies that arose in the early modern book trade to govern what was then called "propriety." All civilized book-trade members were supposed to honor these customary principles. They pervaded the realm of print, and shaped that realm along with the more formal practices of licensing, patenting, and registration. Although they had little, if any, legal weight, there is ample evidence that they were respected by printers and booksellers and seen as a basis for harmony in their community. To breach them was not just to violate a particular rule but to dishonor print itself. When contentions over patenting and registration led to the invention of piracy, therefore, the book trade attempted repeatedly to counter the new offense by appealing to its courtesies and updating them. Piracy and propriety evolved together as they did so. The effects of courtesies would persist long after they themselves had retreated from prominence, either by being abandoned or by becoming second nature. Early broadcasting, recording, and digital media all inherited elements from them, and defenders of digital piracy today sometimes unwittingly adopt arguments that descend from the courtesies of Milton's age.

It is fascinating to consider in this light what it takes to become an expert reader (or viewer, or listener) in a piratical environment. What skills equip someone for that role? In some circumstances, the most disturbing thing for authors and owners is that it requires no special skills at all. Reading a piracy may be exactly the same as reading an authorized work. The implications of piracy in such cases are huge precisely because for the user, at least, the fact of a work's being pirated *makes no difference.* This sometimes (but not always) seems to have been taken as true in the eighteenth century, for example, when unauthorized reprints spread enlightenment across Europe. That is interesting because the reprints could in fact differ quite markedly from their originals, and occassionally readers exhibited quite sophisticated forensic skills in appraising degress of authenticity. The same goes for today's global economy. I know from experience that one watches a DVD of *Fanny and Alexander* bought from a street vendor in Beijing without fearing that one may be missing something aesthetically essential, even though the next disk in the pile may turn out to be a completely spurious imposter. In other instances, however, the practices of reception been very different. Think of what it meant in the 1960s for Londoners to tune their transistor radios to pirate radio—casual, commercial, and pop-focused—rather than to the offical,

safe, and staid Light Programme of the BBC.[13] Fidelity of reproduction—
the ability to replicate an original to a given degree of accuracy—is clearly
not all-important. Piracy in practice is a matter of the history of reception
as well as production.

It is a matter of the geography of those practices too. Piracy has always
been a matter of place—of territory and geopolitics—as well as time.
Early modern English law, for example, came close to defining an illicit
book by the location of its manufacture. Legitimate volumes were printed
in the worker's own home; any printed outside the home were suspect. On
a larger scale, until the nineteenth century reprinting a book outside the
jurisdiction of its initial publication was perfectly legitimate, as long as
the reprint remained outside. The flourishing reprint industries that grew
up in eighteenth-century Ireland, Switzerland, and Austria—and that
provided for that extensive distribution on which the Enlightenment
depended—were entirely aboveboard. As soon as it was reimported,
however, the same book became a piracy. That is, piracy was a property
not of objects alone, but of objects in space. A given book might well be
authentic in one place, piratical in another. Of course, this made piracy a
participant in the development of a system of interacting nation-states:
where a city in the Low Countries could reprint French books freely in the
early modern era, the new country of Belgium found itself a pariah for
doing the same in the mid-nineteenth century.[14] The practice itself there-
fore became a vehicle for national, and nationalist, passions. The Irish
reprint trade saw itself as a bulwark of that nation against English depre-
dations, and the American reprinters of the nineteenth century married
their practices to an entire political economy on this basis. Indeed, the
invention of copyright itself 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 in the first generation
when both lived in a "united kingdom." Today we again see these terri-
torial concerns loom large in our own debates about patenting and bio-
piracy, in which they are denounced as forms of "neocolonialism."

Extrapolation from such examples has given us the nearest thing we
have to a hypothesis about the development of piracy itself. It sees piracy
as essentially a phenomenon of geopolitical thresholds. Piracy's location,
on this view, always lies just beyond the sway of the civilizing process. So,
for instance, it was reputedly rife in the main thoroughfares of Shake-
speare's London, and in the backstreets of Milton's. In the eighteenth

century it moved successively to the suburbs, to the provinces, and then to neighboring countries. In the nineteenth its home became America (and Belgium), and in the twentieth it lodged in Japan, followed by China, and now Vietnam. In each case, as it moved further from its original point, laws and norms of intellectual property took hold in the newly un-piratized territories. Piracy emerges, apparently, when developing economic agents live in proximity to great commercial centers. It is therefore identified with the barbarians at the gates, and with what Russians call the "near abroad." It is accordingly destined to be superseded through the civilizing process that leads to a neoclassical, globally integrated economy.[15]

This is all a myth, of course. Piracy has not been superseded in the developed world—indeed, its impact there remains comparable to that in developing nations—and the globe has seen more than one trajectory to more than one way of being modern. Yet the myth matters. The notion of a dissolving frontier between us and them creates real consequences—but consequences that we need to confront, not assume. My hope in devising this history is to suggest ways to do that. In particular, showing that piratical practices have depended on how people understood such things as borders, domestic thresholds, and the nation challenges the axioms on which the geopolitical hypothesis rests. But at the same time it also offers a way of comprehending the appeal of that hypothesis itself. What it cannot do—no one book could—is detail what should supplant it in locally specific terms. It would be fascinating to have a detailed account of the Chinese case, for example, or of Japan, Vietnam, or the ex-Soviet bloc. I cannot supply these. But I can hope to exemplify an approach that we will need to adopt to create those accounts.

The same goes for attempts to address the current crisis of intellectual property itself. Here, perhaps, is where a historical approach to piracy has its most significant consequences. It tells us that piracy is deeply enmeshed in the world we inhabit—and that the same goes for responses to piracy too. Their history is in a sense the history of modernity itself, viewed not quite from below, but from askance. I hope that readers who make it to the end of this book will come to feel that efforts to combat piracy which do not acknowledge this need to be treated with informed skepticism. Being ill conceived, they are generally ineffective. Worse still, they can neglect some historically constituted relationships and damage others. At an extreme, they can even threaten some of the elements of

modernity that we most prize, because we take them to be central to life in a decent society. Examples are not lacking of antipiracy practices that pose questions of this order, potentially as serious as those suggested by the fake NEC. When a California company sets up a spurious bit-torrent site in a bid to snare the unwary downloader, the lay observer can be forgiven for failing to see at first which is the real pirate. When a multi-national media corporation quietly installs digital-rights software into its customers' computers that may render them vulnerable to Trojan horse attacks, what has happened to the customer's own property rights—not to mention privacy? When a biotechnology company employs officers who turn agents provocateurs in order to catch unwary farmers in the act of "seed piracy," one may wonder where the authenticity and accountability lie.[16] It is not new for problems of privacy, accountability, autonomy, and responsibility—problems at the core of traditional politics—to be enmeshed in those of intellectual property. But to account for that fact demands a specifically historical kind of insight.

In short, the nexus of creativity and commerce that has prevailed in modern times is nowadays in a predicament. Its implications begin with intellectual property, but extend far beyond intellectual property alone. They may well foment a crisis of democratic culture itself. It is hard to see how the situation can be resolved satisfactorily without changing the very terms in which society understands intellectual property and its policing. That is, history suggests that a radical reconfiguration of what we now call intellectual property may be approaching, driven on by antipiracy measures as much as by piracy itself. Such an outcome is not inconceivable. Equally profound changes in the relation between creativity and commerce have certainly taken place before. In the eighteenth century, for example, copyright was invented, and in the nineteenth century intellectual property came into existence. A few decades from now, our successors may well look back and see a similar transformation as looming in our own day. If we wish to delay or even forestall such an outcome—or if we hope to steer the process as it happens—then we will be wise to change the approach we take to piracy. Even to pose that possibility calls for a historical vision. A response will require us to put that vision to use.

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The Invention of Piracy

To find the origins of intellectual piracy, the place to start is at the heart of London. Stand at the main door of St. Paul's Cathedral. Facing west, walk away from the Cathedral, heading down Ludgate and toward Fleet Street. After about a hundred yards you come upon a narrow alley leading off the street to the right. It is nondescript and easy to miss. Entering the alley, the din of the traffic quickly fades, and you find yourself in a small court-yard. A doorway at the far corner leads into a building of indeterminate age with a stone façade. You pass along a brief, twisting entranceway and into an elegant antechamber. But then the passage suddenly and dramatically opens out, leading into a vast, formal hall. It is richly decorated with seventeenth-century paneling and arrayed flags, all illuminated by stained-glass windows portraying Caxton, Shakespeare, Cranmer, and Tyndale. You are in Stationers' Hall, the center of London's old book trade. And here, beyond all the elegant joinery and ceremonial paraphernalia, lies the key to the emergence of piracy. It sits quietly in a modest muniments room. It is a book.

The Stationers' register is a heavy manuscript tome of some 650 pages, bound in vellum. In fact, several volumes of what was a long series of such registers have survived, dating from the sixteenth to the nineteenth centuries; but the one that matters here was made in the mid-seventeenth.[1] At that time, long before copyright existed, this book was the central

element in a practical system for upholding order in London's commerce of print. Someone—typically a bookseller—who wanted to publish a book and was worried about the possibility of a rival trying to print the same work would come to Stationers' Hall and make an entry in the register. This act affirmed a claim to the work, such that nobody else should publish another edition of it. A court of fellow booksellers and printers met regularly in the formal part of the Hall to uphold its authority, which therefore extended, in principle at least, across the literary landscape of the metropolis. In time, entries in the register, dated, guarded, and securely preserved, became tantamount to records of properties. Their importance explains why this volume and its fellows have survived cataclysms like the Fire of London. When copyright eventually came into existence, it did so from a desire to continue this practice and provide it with legal confirmation.

But in the seventeenth century the practice itself was intensely controversial. Some believed it represented an ambition by this community of traders in knowledge to establish its own code of conduct, independent and in defiance of the state itself. Claiming a prerogative to create and defend property in works of culture required denying that prerogative to the king. In a time of deep and well-warranted anxiety about the bloody effects of printed politics, that implication could not go unchallenged. The keystone of order in the realm of publishing therefore came under attack, in what became a profound and far-reaching debate about the very nature of print and its cultural powers.

The contest came at a turning point in European history. It was a time in which medieval forms of politics and culture were being confronted by newer, potentially revolutionary alternatives. A public sphere was coming into existence, based in the proliferation of print. Experimental philosophy was inaugurating what would become modern science, and a mercantile expansion was under way that would trigger the emergence of capitalist economies and commercial empires. Not least—and not coincidentally—the golden age of Caribbean buccaneering was about to begin: the era of Blackbeard and Mary Bonney, of William Dampier and Captain Kidd. Major historical currents, critical to the development of modernity, converged on the book that still sits quietly in its chamber just down the road from St. Paul's. When they did, they ignited a furious and fundamental conflict about politics, property, and print. Its consequences are still with us. The concept of piracy was one of them.

ARTISANS AND INTELLECTUAL AUTHORITY

In declaring that piracy was an invention of the seventeenth century, I do not mean to imply that the misappropriation of intellectual creations itself was anything new in that period, nor that it was regarded with indifference before then. It is easy enough to find complaints of intellectual misappropriation as far back as the ancient world. Galen inveighed against supposititious books attributed to him, and Quintilian bemoaned the unauthorized circulation of his rhetorical works. Vitruvius likewise assailed would-be authors who would "steal" the writings of others in order to pass them off as their own, and recommended that they "should even be prosecuted as criminals." But these acts never seem to have been called piracies, and, Vitruvius notwithstanding, they were not legal offenses. Moreover, the contexts in which they occurred lent them very different connotations from the practices that, beginning in the seventeenth century, *would* be grouped together as piratical. Not only was there no conception of copyright or anything resembling it; when authors expressed distaste for misappropriation, it was sometimes on other grounds entirely. They certainly might object that it misrepresented their opinions, but they also might say that it encroached on the freedom of a citizen, or that it robbed earlier, perhaps heroic or mythical, authors of the appreciation due to them from pious readers. The combination of commercial and cultural ingredients that would produce a concept of piracy did not yet exist.[2]

That concept owes its creation to a moment when major transformations in the social place of knowledge, in politics, and in economic practice converged. They met at just the point when the new craft of printing was giving rise to the first powerful claims on behalf of a literate public to judge issues of common interest. Precisely when authorship took on a mantle of public authority, through the crafts of the printed book, its violation came to be seen as a paramount transgression—as an offense against the common good akin to the crime of the brigand, bandit, or pirate.

The problem that the concept of piracy was designed to address originated in part in the changing culture of knowledge in the Renaissance, and in particular in the challenge to the liberal arts mounted by craft expertise. The Latin Middle Ages had inherited from Rome a categorical distinction between liberal and mechanical arts, such that only the former encompassed the skills appropriate to a free citizen. Artists and craftsmen

now challenged this distinction. They saw opportunities to advance them-
selves in the new civic ferment of the towns by stressing their unique
abilities. They announced that they alone could contribute to military
success (by building siege engines, for example), economic prosperity (by
overseeing mines), courtly splendor (by creating new and remarkable art),
and the health of the citizenry (by supplying medical cures). A good al-
chemist, if one could be identified, might solve the budgetary problems of
a prince at a stroke. Guilds, originally associated in antiquity with esoteric
"mysteries," now became the guardians of mysteries of a rather different
kind: customs, duties, and prerogatives appropriate to each craft. They
issued rules to their members decreeing proper conduct and upheld com-
munal courtesies. And they embraced an increasingly proprietary attitude
to craft knowledge and skill. The best-known example was that of the
glassmakers of Venice, who developed an elaborate series of conventions
and bylaws covering everything from the kinds of wood to be used in fur-
naces to arrangements for electing officials. The Venetian state cooper-
ated by banning glassworkers from emigrating, and it was long rumored
that anyone breaking the rule risked death.[3]

From the thirteenth century, with Venice in the lead, this kind of coop-
eration between state and craft communities began to take more formal
shape. One way was by the issuing of *privileges* or *patents*. These were not
generally given for inventive originality as such, but, quite calculatedly, for
initiatives of all kinds that promised to benefit the local commonwealth.
By the fifteenth century, most European regimes were granting them for
new devices or enterprises, and for trades merely new to the locality.[4] An
inventor had no *right* to a patent, moreover. It was a gift, arising from the
voluntary beneficence of the ruler, and its recipient was a beneficiary of
state prerogative. Patents continued to be issued, and at increasing rates,
for all kinds of things, often having nothing to do with new inventions
or trades, simply as a convenient way to reward courtiers or to garner
payments. There was thus no patents system as such. But accumulation
carried its own weight, and in 1447 Venice passed the first general statute
providing for patents covering inventions. It allowed that inventors or
introducers of devices new to the Venetian territory would be protected
against imitators for ten years; at the same time it formally compelled all
inventors to reveal their inventions to the state, which was exempt from
the patent restriction and could freely appropriate them.[5] Some quid pro
quo of this kind was typical: early modern regimes offered patents as a

temptation to skilled artisans to immigrate with processes that were lo-
cally new, on condition that they teach their skills to locals. The deal was
the ancestor of the rather different bargain of protection for revelation
that patents would be reckoned to seal between inventor and public in
modern times. Its purpose was to facilitate the introduction of crafts,
new or not. And when it worked, it stood both to benefit the community
concerned and to deprive its rivals of their own skilled artisans. The fact
that a patent involved no court investment and yet rested prominently on
the benevolence and paternalism of the ruler only made it more appealing
to monarchs who not infrequently skirted insolvency.[6]

As these customs were being worked out, the sciences were in turmoil.
At the beginning of the fifteenth century, natural philosophy (loosely, the
predecessor to science) was still distinct from the world of mechanical
arts. It was a university enterprise, devoted to explaining routine natural
processes by means of an Aristotelian causal analysis. It was qualitative
(the mathematical sciences occupied a lower disciplinary level), discur-
sive, and disputational. Between the discovery of the New World in the
late fifteenth century and the publication of Isaac Newton's *Principia* in
1687, every aspect of this enterprise came under challenge, and most were
overthrown. The claims of astronomers, mathematical practitioners,
physicians, and natural magicians cast doubt not only on existing knowl-
edge but also on the processes, personnel, and institutions that should be
granted intellectual authority. And outside the walls of the universities,
itinerant practitioners laid claim to knowledge of nature that yielded not
just talk, but power. Paracelsian and alchemical practitioners in particular
advanced this remarkably ambitious notion of creativity. They repre-
sented the craftsman—not just the artist, but the humble miner, farmer, or
baker—as almost godlike in his power to transform and renew. They made
such peasant figures into agents of universal redemption, critical to the
realization of Providence. More even than the great Italian Renaissance
philosophers, they voiced a real transformation in the status of the labor-
ing artisan who knew nature's powers by hard experience. This figure they
made into an author of an extraordinarily ambitious kind—one who could
transfigure, transmute, *create.*[7]

This was an extraordinarily radical challenge. It extended to basic
notions of what knowledge was, who produced it, how it circulated, and
why. Artisans produced a practical, powerful understanding that might
not be written down but was nevertheless vital. It is only now that we are

coming to appreciate once again the subtlety and richness of what Pamela Smith justifiably calls "artisanal epistemology." It may well be that we owe to this epistemology central elements in the concepts of invention and discovery that we have inherited from that period. These include accounts of where new ideas come from, how they are distributed, and their relation to commerce, power, and personal virtue. For example, artisanal traditions posed the question of whether knowledge came as an infusion from God into an individual justified knower, or was capable of being produced by anyone of sufficient skill by cleaving to rules of method. This distinction implied radically opposed conceptions of the nature of discovery, of the transmission of knowledge, and of the very possibility that knowledge could be "stolen." And it was widely circulated in the vernacular, not in the Latin of the schools.

It was a time when learning itself lost its place. Not just artisans, but historians and surgeons, navigators and astronomers—all seemed newly mobile. Mathematical practitioners circulated from town to town, posting problems as challenges to all and sundry. A question of authority in knowledge thus arose and rapidly became acute. Whom should one regard as credible, and on what basis? Contemporaries of Paracelsus and Servetus liked to lament that learning had once resided in the universities, but that self-appointed authorities were now springing up everywhere, generating a dangerous profusion of rival claims leveled at disparate constituencies.

Aspirants to such authority drew upon one craft in particular to advance their claims: that of the printer. The press facilitated appeals beyond the cloister, at first to patrons in the church and at court, and later to a more dispersed and shadowy "public." Printed books became tools with which the enterprising could, if they were lucky and resourceful, lever themselves into positions of prestige. The mathematician Galileo Galilei achieved remarkable success in a series of such moves. John Dee tried less successfully to do the same in Elizabethan London. Paracelsianism itself was a veritable phenomenon of the international book trade, being made up of dozens of tracts, some genuine, many spurious. In artists' and sculptors' studios, in the marketplaces of cities where traveling empirics touted their medical remedies, in the workshops of instrument makers, and above all in the bookshops and printing houses of Venice, Paris, and Amsterdam, artisans and others increasingly laid claim to authority through the means of printed authorship. Their claims came before new audiences,

too: audiences that were essentially unknowable, but that stretched far beyond court, church, and university. At a time of Reformation, when religious war loomed across the continent, addressing this confusion was a matter of millennial importance. With the nature, authorship, reception, and use of knowledge all in doubt, the vital need for new ways to articulate the creation and appropriation of ideas—and to distinguish the authentic from the spurious—was evident to all.

LAW, POLITICS, AND PRINT

When and where exactly did people begin to refer to intellectual purloining as piracy? The answer is clearer than one might suppose. It is easy to establish that the usage emerged in English before it did in other European languages. It is more difficult to establish the exact moment the term was coined, but it seems clear that it occurred some time in the mid-seventeenth century. In around 1600 piracy seems not to have carried this meaning at all, except on a few isolated occasions as a metaphor. It appears nowhere in Shakespeare, Ben Jonson, Spenser, Marlowe, or Dekker—or, for that matter, in Francis Bacon, Hobbes, or Milton. This was the first age to see the sustained production of printed dictionaries of English, but the connotation was not mentioned in any of them, whether by Cawdrey (1604), Bullokar (1616), Cockeram (1623), Blount (1656), or Coles (1676). John Donne did once refer to poetic and antiquarian plagiarists as "wit-pyrats" in 1611, and in the early Restoration Samuel Butler likewise called a plagiarist a "wit-caper," a caper being a Dutch privateer.[8] But although these hinted at the later usage, they seem to have been one-off instances. Besides, they addressed not commercial practice, but personal plagiary—a term that itself started to be widely used only around 1600.[9]

At the other end of the century, however, piracy suddenly appears everywhere. It is prominent in the writings of Defoe, Swift, Addison, Gay, Congreve, Ward, and Pope, and *pirate* suddenly starts to be defined in dictionaries as "one who unjustly prints another person's copy."[10] Very soon after that, it can be seen invoked in learned or medical contentions. In a briefly scandalous case of the 1730s, for example, a physician named Peter Kennedy made the provenance of the term clear when he accused a rival of an attempt to plagiarize his discoveries—or rather, Kennedy wrote, "to *downright pyrate him* (as Booksellers call it)."[11] It was a concept that had

started as a term of art in the seventeenth-century London book trade, apparently, and was now being appropriated for contests of authorship in other domains. Overall, the evidence for this is unambiguous. And in fact a closer examination indicates that the innovation can be more precisely dated to around 1660–80. At any rate, Donne's seems to be virtually the only example predating the middle of the century, while on the other hand citations start to multiply rapidly in the Restoration. And dictionaries of other European languages published in the late seventeenth and eighteenth centuries then show the term spreading—first to France, then to Italy, and at length to Germany too. Piracy is therefore a legacy of the place and period of the English Revolution, and in particular of the commerce of the book there and then.

Since William Caxton introduced the press to England in about 1471, an institution had arisen in London to oversee printing and bookselling. It was called the Company of Stationers. Although some such fraternity had existed since long before Caxton, the Stationers' Company received its royal charter only in 1557 from Queen Mary. The company was to embrace all participants in the trade, binders, booksellers, and printers alike (such distinctions were in any case rather inchoate at first). It had a remit to police its members to forestall seditious printing. To that end it adopted all of the mechanisms typical of early modern guilds or corporations. In essence, the company created and maintained conventions that together defined what it was to act properly as a member of the book trade. These conventions were many and various—they included, for example, notions of proper dress, deportment, and speech for particular occasions. But the ones that proved especially controversial related to a practice known as *registration*. And that brings us to the book still sitting in Stationers' Hall.

Stationers' Hall was an old castle just to the west of St. Paul's Cathedral. Members were expected to go there and enter into the register the titles of works they were publishing. At first, it seems to have been intended merely to record the fact that each book had been properly licensed. But it soon came to act as the lynchpin of a much more valued system of so-called propriety. That is, titles entered in this volume came to be regarded as restricted to their enterers. By company custom, no other Stationer could subsequently print such a title without the authorization of the original enterer. In the late sixteenth century this became the principal element in Stationers' common notions of right and wrong conduct in the trade. The idea of registering a title would survive to be enshrined in legal

notions of copyright for hundreds of years after this, long after the original purpose had been forgotten.

Here is how the system worked. Suppose you were a bookseller and intended to publish a certain book. In principle, your first step would be to get the manuscript licensed, perhaps by a chaplain to the Archbishop of Canterbury. You would then go to Stationers' Hall to register it, paying the clerk a nominal fee to enter its details (title, author, maybe formal characteristics) into the book. Then you would have to invest a substantial amount in manufacturing it. You might finance its printing yourself, although you could ask the author to pay for the paper. You would probably see to its subsequent sale through your own bookshop, but also try to distribute it through a network of other booksellers in London and perhaps beyond. Meanwhile, a lot of capital would be tied up in type, warehousing, and stored copies. More would be exposed in the form of credit extended to other Stationers, and copies exchanged with distant Continental booksellers. So if you found a rival Stationer selling copies of the same work, perhaps even before your own arrived in your shop, you would be dismayed. There were various ways in which a rival might manage to do this. But one was simply to obtain sheets from the printing house itself. Increasingly, booksellers and printers had grown apart, forming distinct groups that lived and worked in different places. This created jealousies and opportunities. Your own printer might well have printed some "supernumerary" copies to make a profit on the side. Or perhaps some journeymen, acting on a long-honored artisanal custom, had gone home with extra sheets, in much the same way that butchers' apprentices were permitted to take home scrap cuttings. Both these practices, and more like them, were to be central to charges of piracy for centuries.

But perhaps no such straightforward appropriation had occurred. It might be that the other work was not *exactly* the same as yours. It might have a different title, for example, or it might be a translation. It could even be a different work entirely, but dealing with the same subject in a way sufficiently similar that it would impinge on your sales. These too might—or might not—be deemed to offend. Deciding what constituted infringement of a register entry was often not straightforward. To resolve the matter, you would go to the experts at the Stationers' court. This court met every month at the Hall. Two senior members of the company would be assigned to investigate. They would examine the register, visit the rival premises, seek out the books, and compare them. They would try to decide

whether any impropriety had occurred, and determine an appropriate recompense. Their criteria were two: whether the "substance" of the texts coincided (they need not be literally identical); and whether either infringed on a prior entry in the register. With their report in hand, the court would then decide on a resolution. The offending member would probably lose his impression and pay a small fine. But the aim was not to punish in any overt sense. The court sought to preserve the public character of an intrinsically harmonious craft, the virtues of which were seen to be virtues of print itself. The entire process was thus to be kept confidential. Any Stationer who revealed it could be expelled from the trade—the most drastic sanction that the company could impose.

This regime formed the lynchpin to a largely unwritten code of conduct that extended across the trade in books. A principal task of the companies overseeing trades in early modern cities was to uphold such codes. They monitored the conduct of their members to ensure that they upheld the good reputation of the craft community as a whole. To that end, company wardens enjoyed certain powers, in particular the power to enter members' homes and conduct searches. In London, such a power was greater than any accorded the representatives of the state itself: Crown messengers were debarred by the Magna Carta, or so Londoners commonly believed, from entering properties without a specific warrant. In the case of the Stationers, the wardens—practicing printers or booksellers themselves—could and did conduct routine searches of printing houses, bookshops, and warehouses. They did so to exercise something like what we ourselves might call quality control. What they were searching for were not poorly made clocks, stale beer, or rotten meat, however, as might be the case with other companies, but (as it were) rotten books. A book might fall foul of them in three ways. Two related to the trade's relations with the commonwealth at large: it might have bad type, browned paper, or clumsy proofing, thus impugning the community's craftsmanship; or it might have seditious or blasphemous (or, from the late seventeenth century, obscene) content, thus impugning its citizenship. The third offended against the trade's internal order: it might intrude on the livelihood of a fellow Stationer by violating a register entry. Since it affected the trade community directly, it was the last of these offenses that became in practice the main occasion for routine searches.

The registration system and its attendant customs of policing were central to the practice of press regulation. All books were subject to the

searching regime, although most were never licensed. Many were never entered in the register either: it was really a system of insurance as much as of property, providing some recourse in the event of a transgression, and things like pamphlets often did not warrant the expense and trouble of registration. Still, the moral associations of reprinting ran deep partly by virtue of this alliance between state and craft interests. For example, the trade developed a strong association between moral conduct and the carrying on of work in the home. A printing house was to be a printing *house*. At one point the law actually stipulated expressly that presswork could only be done at home. The idea was that activities carried out in a patriarchal household partook of the moral order implicit in that place. By contrast, reprinting, like seditious printing, was said to take place at "private" presses, in "holes" or "corners," free of family bonds and out of sight of polite guests. In such ways did the associations of reprinting track and define the sinews of the book trade as a living craft community within a civic realm.

Until the mid-seventeenth century this system worked well enough. It was flexible, subtle, confidential, and for the most part consensual. The problem was that the community itself was fracturing. The company—and the trade at large—became oligarchic, as booksellers increasingly became a group apart from and above printers. Retailing and, especially, speculation on publishing projects—projects protected by the register—became the loci of wealth, and threatened to relegate "mechanick" skill to the role of a tool. This made reprinting and its countermeasures into fraught political topics. Insinuations grew that the company's leaders had attained their positions by systematically exploiting the system to reprint the books of vulnerable newcomers while securing their own monopoly titles. In one of the most remarkable portraits of the bookseller in this period, one "Meriton Latroon" published a veritable pirate's progress that traced a naive and initially principled newcomer's rise to the top by adopting his seniors' practice of reprinting and appropriation. Its real author, a reprinter of drama named Francis Kirkman, knew very well indeed whereof he spoke.[12] Yet although figures like Kirkman decried its manipulation, and master printers complained of their subjugation, there was as yet no appetite for abandoning the register regime wholesale.

Elsewhere in society, however, such an appetite did grow. The register regime served the booksellers well, but it largely ignored authors and readers. It was deaf to their voices and hidden from their gaze. From quite

early in the century authors recorded their own impatience with it. It was therefore fortunate for them that an alternative existed. This alternative rested on the only power strong enough to confront trade custom: the Crown. Royal prerogative could supervene the register by means of a so-called patent, or privilege. The practice of acquiring a privilege giving a monopoly on a certain work actually predated the creation of the Stationers' Company, and it carried on alongside the register. Indeed, it expanded. By the later sixteenth century patents were being used to assign not just individual titles but whole classes of book to lucky recipients. For example, one patentee held the right to all schoolbooks, and another to all works printed on only one side of a sheet of paper. These could be extremely lucrative. The company itself held patents too. Its "English Stock" was essentially an early joint-stock company whose capital lay in privileged books. The original intent was to help bind the trade together by sharing work among poorer printers, thus forestalling seditious work or reprinting. But the Stock grew into a hugely profitable enterprise, and one the management of which many Stationers by the 1640s felt had been hijacked by the oligarchy.

It was perhaps inevitable that the systems of register and patent should come into conflict. The clash could have happened in several European cities, for these practices were common to many; and later generations would see similar contests in France, the German nations, and elsewhere. But it happened first in England. And there, in the wake of civil war and regicide, it immediately became politically explosive. The point was that the issuing of a patent was a moment when the monarch intervened in the life of the nation, slicing through statutory and common law to realize some specific desire. Patents had long been controversial, because before the civil war James I and Charles I had used them to reward courtiers and raise funds by creating monopolies. In 1624 Parliament had passed the so-called Monopolies Act to curtail them. It allowed the issuing of patents only on activities acknowledged to pertain to the Crown (like weights and measures, or gunpowder) or where no trade already existed in the realm to be damaged by the imposition of a monopoly. That meant inventions, or enterprises newly introduced from abroad. As a result, this statute is often reckoned to mark the origin of all Anglo-American intellectual property law. In context, its real target was this proliferation of Crown intervention in the realm's everyday commercial conduct.

On one view, patenting books was a classic instance of the Crown

intruding on subjects' liberties. Printers and booksellers had long resented patents. And in practice the Monopolies Act left this resentment unresolved, because Charles I continued to issue them regardless of the act. Long before the civil war, the language on both sides had become that of sedition, usurpation, and rebellion. Under Elizabeth, the Queen's Printer denounced John Wolfe, a notorious reprinter of patented titles, as a sectary and seditionist, while Wolfe proclaimed himself the Luther of the trade. And later the poet and patentee George Wither charged that "mere" Stationers, by elevating their customs above the will of the monarch as expressed in a patent, wanted to "usurpe larger Prerogatives then they will allow the King."[13] Yet something remained missing from such denunciations. It was not vitriol: they were slathered in that. Wither called his Stationer opponents "fylthy," "excrements," and "vermine"; he accused them of "usurpations, Insinuations, Insolencyes, Avarice, & abuses," "fraudulent & insufferable abusing of the people," slander, and in general "abus[ing] the King, the State, and the whole Hierarchy; Yea God, and religion [too]." He charged booksellers with suppressing works, subverting royal power, issuing unauthorized editions while concealing their true authorship, and "usurp[ing] upon the labours of all writers." But he never called them pirates.[14] The same was true of John Heminges and Henry Condell, undertakers of the first folio of Shakespeare, who denounced the previous issuing of "divers stolen and surreptitious copies, maimed and deformed by the frauds and stealths of injurious impostors." Theft, subterfuge, misrepresentation, the corruption of texts—but not piracy. It is striking that until mid-century that accusation of piracy remained unmade.[15] By the end of the century, however, things would be very different. Piracy had become the central accusation in such conflicts. The reason for this lies in the civil wars that wracked Britain in the 1640s and 1650s.

HISTORY, CIVILITY, AND THE NATURE OF PRINT

Between 1642 and 1660, the kingdoms of England, Scotland, and Ireland descended into in a series of bloody internecine wars. The monarch, Charles I, was put on trial and beheaded, and for eleven years Britain was ruled by a sequence of republican systems. For much of this period the old legal and administrative structures that had regulated the book trade were in abeyance. Patents became a dead letter; licensing effectively lapsed with the eclipse of the episcopal hierarchy; and restrictions on the numbers of

printers allowed to operate were ignored. The book trade expanded its ranks enormously, feeding on the political and religious controversies of the time. The Stationers' Company struggled to keep order in a trade increasingly composed of men and women who either ignored its rules or were not members at all. The production of popular pamphlets soared, but "propriety" lost its protections. This was the age of Milton's *Areopagitica,* in which the poet hailed the advent of a heroic London citizenry dedicated to the hard work of reading and reasoning through print. It was their right and duty to read, they were told, in order to play their part in Providence. The "True Leveller" Gerrard Winstanley urged that, having freed themselves from "slavery," Britons must now follow the apostle's advice "to try all things, and to hold fast that which is best."[16] Here surely were assertions of what would later become a public sphere.[17] But not all its elements were yet present, and those that were remained insecure. The polite journals and coffeehouse conversation of Addison's London had not yet been dreamed of. There was precious little precedent for ceding political or intellectual authority to a numinous "public" linked by pamphlets and newsletters, except for the most local and transient of purposes. Most of all, perhaps, the very idea that the popular press of the 1640s and 1650s—viciously partisan, violently sectarian, ruthlessly plagiaristic, and often wildly credulous—might be the foundation of *reason* could plausibly have been dismissed as absurd. Booksellers themselves— or rather, a presbyterian group among them—were at the forefront of attempts in the 1650s to reintroduce a licensing system to reduce this anarchy to order.[18] Experience seemed to prove the dangers of unregulated print and undisciplined reading.

In the 1660s, the restored monarchy of Charles II therefore viewed popular print with a queasy mixture of respect, unease, and fear. The Crown was happy to make use of print when it could, but it remained very suspicious of the book trade, and was prone to blame pamphleteering and newsmongering for the great rebellion. Revanchist cavaliers like Sir Roger L'Estrange and Sir John Birkenhead asserted that the exchange of paper bullets in the 1640s had escalated into fusillades of real ones—yet they did so, tellingly, in their own popular newsbooks and pamphlets. The question facing England's rulers was in truth that of all European monarchs: how to accommodate and exploit what was becoming a perpetual sphere of printed argument, in which the rules of knowledge were no longer those of university, court, or palace.[19]

It was in this sphere that the clash between register and patent occurred. It did so at the hands of an impoverished old Cavalier named Richard Atkyns. Atkyns sought to revive one of the most profitable patents of all: a privilege granted by Elizabeth I a century earlier on all books of the common law. This patent had been renewed several times, descending through various inheritors until the civil war had rendered it moot. When the monarchy returned, Atkyns came forward claiming to be the rightful heir to the privilege, and demanded that it be revived. But in the 1640s, with royal power in abeyance, some of the most lucrative legal works had come to be entered in the register at Stationers' Hall.[20] The company had subsequently taken control of these, and now decided to oppose Atkyns's bid in the name of the register system and the trade community as a whole. The resulting struggle rapidly escalated, drawing in the entire regime of the printed book in England. All aspects of contemporary print proved to be at stake: its regulation, its personnel, its social structure and economics, its place in the commonwealth, its past and its future.[21]

The law patent was worth fighting for. The Restoration authorities had resolved to consign the previous decade to "oblivion," such that legal memory would begin again as though Charles I had only just died.[22] New volumes of law were therefore badly needed to replace those that had been printed during the intervening eleven years. Whoever got to produce the new volumes would have to make substantial investments, but the risks would be low and the rewards great. But he would also have to be trustworthy, and there lay a problem. Booksellers and printers were notoriously capable not just of sloppiness but of active intervention in the works they produced—something that in its innocent form was merely one of the duties of a responsible craftsman. In this case the issue was especially delicate, for *accurate* reproduction might now be tantamount to sedition. A printer named Samuel Speed found this out to his detriment, when he was hauled before the authorities for including statutes passed under Cromwell in one of the new law books.[23] Atkyns's fortunes would come to rest on his claim to meet this need for responsible supervision. And that claim was founded on his assertion of what *kind of person* he was.

Atkyns was no printer. He had never touched a press, and showed no inclination to start now. But in his view this was an advantage. Like many in post–civil war England, Atkyns was convinced that the horrifying events of the previous generation had been fomented by the book trade. As

Thomas Hobbes put it in his own history of the early 1640s, at first "there was no blood shed; they shot at one another nothing but paper"—yet it soon became a real war.[24] Atkyns maintained that the explanation for this lay in a shift in the basic nature of the book trade itself—one that the register system had brought about. He proposed to undo that shift and once more make print safe for the commonwealth.

The change Atkyns identified was real enough. It had been gathering pace since before 1600, and would persist for another 150 years after his death. It formed the essential foundation for all the conflicts over piracy that would rage from the Restoration to the early nineteenth century, not just in London but in Europe, and at length in America too. It took the form of a relative decline in the status of mechanical craft with respect to that of financial craft—the craft of speculation and accumulation. The printers in whose name the company had originally been formed were losing influence to a new breed, the booksellers. And the booksellers' prosperity rested not on the exercise of any skill peculiar to print, nor even on retailing, but on the "undertaking"—the publishing, we would say —of editions. That is, they made a livelihood out of entries in the register. These proprietors of "copies," as entries were by now known, had become an elite that dominated the top ranks of the company. According to Atkyns that was a serious political problem, because they were creatures of untrammeled interest. They were prone to the mercenary corruptions that gentlemen routinely attributed to commercial life, without the leavening influence of a craft fraternity to impose some moral limit. And their mercenary interest led them to generate as much public discord as possible, because discord sold books. So social and cultural collapse had been a consequence of the establishment of a property regime in print.

Atkyns proclaimed a solution to this problem. It lay in the figure most trusted in early modern England to uphold truth and act for the common good: the gentleman. The great benefit of patents, in his view, was that they were granted largely to gentlemen, and therefore gave gentlemen powers over booksellers. Patentees must thus be made the lynchpin of a new order of print. They could come to know the trade as well as booksellers, Atkyns insisted, but their knowledge would lead in "different wayes" because it would be guided by the virtuous conventions of polite civility. The relation between undertaker and printer would then be morally renewed. The printer would not be a mere "mechanick," but a servant, incorporated into a civil enterprise.

This amounted to a call for a drastic restructuring of the entire culture of the book, in which the central customs of the trade would be radically degraded. Atkyns recognized this, but argued that the sweeping transformation could be achieved if only the king would agree to cast *the medium itself* as property. Charles II should proclaim that the art of printing belonged to the Crown. In effect, the myriad claims made by booksellers and authors would then become subordinate to this overarching property right, on the basis of which the king could create a new class of gentlemen overseers.

The trouble with this claim was that it was distinctly implausible in the face of received historical knowledge. As Atkyns's antagonists pointed out, everyone knew that printing had been introduced by Caxton, a private subject, and had been pursued for generations as a real, autonomous craft. So Atkyns responded as he had to: by audaciously bidding to reshape history itself. He rediscovered an old book apparently printed in Oxford several years before Caxton's first press, and from it concocted a rival tale. He claimed that in fact King Henry VI had employed Caxton to lure a journeyman from Gutenberg's workshop to England. This worker, whose name was Frederick Corsellis, had then given rise to a community of printers as Crown servants, producing books to royal command. In short, printing was originally an appendage of royal power. But as the numbers of printers had grown, Atkyns related, they had sought to cast off the Crown. At this point "the Body forgot the Head," and, becoming "free," the trade had begun to print whatever generated a profit. The result had been an era of "virtiginous" political upheavals only now coming to a close. And at the same time the trade had coalesced to form its own institution, the Stationers' Company, with the duty of policing print. This, in the new political language of his time, Atkyns denounced as a fundamental conflict of "interests."[25] "Executive Power" had been given to the very people who could offend, "and whose Interest it is to do so." Stationers, in short, became at once plaintiffs, defendants, constables, and judges. A corporation like this, Atkyns concluded, had taken upon itself the role of a "Petit-*State*." As such, it was fundamentally incompatible with a national monarchy. And that was ultimately why the "paper-pellets" that the trade had issued had grown ever more numerous and poisoned—and profitable— while the policing of them had become ever less stringent, until they became "as dangerous as Bullets." By the eve of the civil war, the grandees of the trade had become impresarios of sedition.

Atkyns consequently saw licensing as a relatively futile exercise, because it did not attend to the real problem. He urged Charles II to take a different course. The true history of the book demonstrated the need for a renewed alliance between royalty, gentility, and craft. The king must create a class of patentees with oversight of major cultural fields. They would then ally themselves with the printers against the booksellers.[26] It would be in these men's interest to suppress books that might rival theirs. The case was analogous, he said, to the contemporary practice of assigning royal land to patentees. Such men did not *own* the land they oversaw. They therefore continued to act to prevent locals poaching royal deer. "Just so is it by inclosing *Printing*," Atkyns explained: patentees in this field too would prevent poaching, in this case of knowledge, precisely because they were *not* owners. Interest would harmonize with honor to underwrite sound conduct.[27] This pioneered an analogy between literary and literal fields that would reverberate for centuries—usually to very different effect. And all that stood in the way of this system, as Atkyns saw it, was the register. So it was the register that attracted his bitterest assaults. He complained to the Privy Council that in its entries "a private propertie is pretended to be gained," and pointed out that that pretence expressly defied royal power. If permitted to remain in being, he insinuated, the register would allow the booksellers to alter the laws themselves, "and cast them into a new Modell of their own Invention." Before long, "the good old Lawes by which Men hold their Lives and Estates, should utterly be lost and forgotten, and new Laws fram'd to fit the Humours of a new Invented *Government*."

It is notable that Atkyns's argument was in principle a very general one. Its ambit was by no means restricted to the book trade. He himself claimed that if it failed then patents for inventions as well as patents for books would fall to the ground. Less speculatively, his complaints applied equally to many other kinds of commercial life, since crafts were generally organized into corporations similar to the Stationers' Company. And indeed, one can readily find parallel contentions being made in different crafts at this time—a moment when old guilds were declining and the future constitutions of trades were in the balance. Atkyns himself drew a parallel with a brewers' company. Such a company, he pointed out, might well insist on its own internal regime, and this too would be illegitimate in principle. But in practice it would be far less damaging than a Stationers' regime. The implications of a mundane craft corporation's autonomy

extended only to revenue; but the Stationers dealt in belief. That was what made their assertions of autonomy, epitomized by the register, so dangerous. As he was writing, moreover, Parliament was agonizing precisely over petitions from brewers' companies against royal prerogative in the form of excise duties.[28] "If the Brewers, who at most can but steal away a Flegmatick part of the King's Revenue, deserve the serious Consideration of the Supreme Council of *England,*" Atkyns reasoned, "how much more these, that do not onely bereave the King of his Good-Name, but of the very Hearts of His People"? In short, between a brewer and a Stationer "there is as much oddes, as between a Pyrate that robs a Ship or two, and *Alexander* that robs the whole World."

That line marked the culmination of Atkyns's long argument—the crux of his bid to restructure the culture of print in genteel, Tory, absolutist terms. It also marked the beginning of the long history of intellectual piracy.

ENEMIES OF ALL MANKIND

Atkyns himself did not say where his reference to Alexander and the pirate came from. But in fact it had a specific source, and it evoked fears with ancient origins. The word *piracy* derives from a distant Indo-European root meaning a trial or attempt, or (presumably by extension) an experience or experiment. It is an irony of history that in the distant past it meant something so close to the creativity to which it is now reckoned antithetical. By Thucydides' time *peiratos* was being used to refer to seagoing coastal warlords. The great historian began his work on the Peloponnesian war by explaining how the need to limit the havoc caused by pirates had been the key stimulus to the development of the Greek city-state, and hence to that of civilization itself. Before the rise of Athens, Thucydides related, piracy had been seen as honorable. It was in opposing pirates that "the *Athenians* were the first that laid by their Armour, and growing civill, passed into a more tender kind of life." Civilization was the antithesis to piracy.[29]

Ancient writers bequeathed two principal associations of the word *pirate.* Pirates were seagoing thieves, certainly. But there was more to them than that. They were irritants to the civilized order itself. Their very existence amounted to a test of that order. Cicero, for example, invoked the pirate as his *ur*-criminal—he who declined even the honor that supposedly

obtained among thieves. The thing about pirates, for Cicero, was that they lay beyond all society. They had no set place, and owed no customary allegiance to legitimate authority. Their existence required that society distinguish itself and its conduct from all that they did. One did not have to honor promises made to pirates, he remarked, since "a pirate is not counted as an enemy proper, but is the common foe of all." This was a telling measure of their outlawry, since Cicero generally held truthful conversation to be the essential foundation for society itself. Indeed, it was their sheer unsociability that for him seemed the defining characteristic of pirates. He routinely identified land-based brigands with seagoing ones on this basis.[30] And that idea came to be formalized into Roman law. As rendered in Justinian's reign, the law accounted pirates *humani generis hostes*—enemies to humankind in general.[31] In this sense, ships were incidental: they simply made excellent instruments with which to achieve this status.

The story Atkyns referred to seems to have been something of a commonplace in the ancient world. It was spoken of by Cicero, and repeated in detail by Augustine.[32] It was Augustine's version that survived beyond antiquity, and undoubtedly this was what Atkyns had in mind. The tale occupied a pivotal point at the heart of the *City of God*. Augustine had finished defending Christianity from accusations of responsibility for Rome's fall, and was moving on to address those pagans who attributed the earlier prowess of the empire to piety for the old gods. He wanted to argue that dominion of the kind attained by the Roman Empire had in any case been no blessing. Life under its sway, he argued, had been characterized by fear, war, bloodshed, instability, and the stress of constant ambition. Joy had been but fleeting, with what Augustine memorably called "the fragile brilliance of a glass." The free had been even more harmed than the enslaved, since the old empire had rendered the powerful Roman a slave to vices. And then Augustine remarked that kingdoms without justice were merely criminal gangs writ large. For "what are criminal gangs," he asked—in words that Atkyns echoed—but "petty kingdoms?" Spartacus's gladiators had flourished as a pseudo-kingdom of precisely this kind, fomenting "acts of brigandage at the beginning, and wars of piracy later."[33] Then came Cicero's anecdote: "For it was a witty and truthful rejoinder which was given by a captured pirate to Alexander the Great. The king asked the fellow, 'What is your idea, in infesting the sea? And the pirate answered, with uninhibited insolence, 'The same as yours, in infesting the

earth! But because I do it with a tiny craft, I'm called a pirate: because you have a mighty navy, you're called an emperor.'"[34]

Both Atkyns himself and his intended readers (the MPs of the Cavalier Parliament) must have recognized this reference and understood its significance. It had been much quoted—often, as in Atkyns's case, without attribution—by all sides in the civil war. Indeed, once one is aware of it, one begins to see it everywhere in the politics of the period. The Levellers, for example, had demanded to know whether Alexander and his like were not simply "great and lawless thieves."[35] Milton invoked it. In the 1650s John Dryden, too, described Rome as "That old unquestion'd Pirate of the Land," protected by an Alexander (Pope Alexander VII) but now taught to tremble by Cromwell.[36] And it is even possible that Atkyns got the story from his own printer, a remarkable soldier, political theorist, and pamphleteer named John Streater. It had appeared at the conclusion of James Harrington's *Oceana,* the founding manifesto of English civic republicanism, which Streater had printed in 1656, where it was once again made the occasion for a distinction between virtuous and vicious empire, the latter being "but a great Robbery."[37] And that this was Streater's own view could be seen in his own pamphlets of the 1650s. Indeed, Streater went further and linked the old tale to modern concerns about internal enemies. He maintained a distinction between what he called "Companies" and "*Pyrates,*" on the basis that the former maintained the public good, the latter only a private. "And indeed," he added, "when those that are in *Government* mind but their private good only, they are no better then Thieves."[38]

Too much should not be made of this, but one can occasionally find Streater's notion of piracy in seventeenth-century legal or political writings. On this account, pirates were essentially members of any social institution the civility of which was not integrated with the broader commonwealth's. The point was that most collective groups, such as guilds, companies, or universities, maintained customary practices that both bound them together and secured them as harmonious elements in the commonwealth. A brewers' company supposedly would; so, in its own eyes at least, did the Stationers'. Pirates were then the exception to this rule. A pirate crew was a collective, all right, but it honored no propriety recognizable to the commonwealth at large, and it owed no allegiance to the common good. By these lights highwaymen were as much pirates as Blackbeard or Henry Morgan—and Milton, for one, translated Augustine's

story so as to liken kings, not to seagoing pirates, but to "highway robbers." It was perhaps for this reason that unauthorized reprinters too were sometimes called "highwaymen," for example by Defoe, who added that their existence was "a Reproach to a well-govern'd Nation."[39]

Atkyns was drawing on this idea, yet his own argument nevertheless had a unique aspect to it. He was associating the very leaders of the book trade, not with the small-time pirate encountered by Alexander, but with Alexander himself. Like him, they were apparently brigands on the grandest scale: men whose ambition had broken free of the bounds of civility and the commonwealth, and were intent on subjecting "the whole World" —which is to say, culture in general—to their interests. This was the real difference between press pirates and brewer pirates. Because of the nature of what they stole—potentially, any and all culture—printing pirates robbed the world itself. No brewer's community could do that. And that was why he wanted to see the outright eradication of the Stationer from the social world. The realm of print that the Stationer had created was, Atkyns declared, *intrinsically* piratical. He wanted a war on the pirates to be launched on London's own streets.

In opposing Atkyns, the copy-owning booksellers had to develop a similarly sweeping counterargument. They soon did so, and in a way that had lasting consequences. In brief, the booksellers responded to his call for their destruction by inventing a central role for authorial property. They announced that they were essential intermediaries between civility and commerce, vital if polite gentility were to disperse itself without corruption. Gentlemen could achieve authorship with minimal compromise to their freedom only with some such mediating figure to help. The lynchpin of this, they declared, was the principle of property. The author of any "*Manuscript* or *copy*" had, they said, "as good right thereunto, as any Man hath to the Estate wherein he has the most absolute property." This right was then sold to the bookseller, who registered it at Stationers' Hall. There it would be preserved in perpetuity—thanks to the booksellers' policing. This may be the earliest explicit articulation of the idea of literary property—of an absolute right generated by authorship, which could serve as the cornerstone of an entire moral and economic system of print. Certainly, the idea had no clear precedent behind it. It was nowhere referred to in the company's own founding documents, nor in the century-long record of negotiations at its court, nor in the broader legal arena. Only with a lot of interpretive work could it be said to exist *implicitly* in

the practice of registration, not least because authors were rarely the beneficiaries of that practice. Our own familiarity with the notion of authorial property notwithstanding, it was just as inventive at the time as anything Atkyns was proposing. And in fact there is precious little evidence that it enjoyed any great appeal.[40] Authorial property and piracy were thus being forged in contest with each other. Each rested on highly contentious grounds, and neither was intrinsically credible. It was the concept of piracy that sparked the articulation of a principle of literary property, moreover, and not vice versa.

In the short term, Atkyns won. The government revoked the company's charter. And this was a key part of a much greater policy: a programmatic campaign to remodel England's political and commercial institutions. Across the country, town and trade corporations of all kinds were soon being reconstituted. On an altogether grander scale, James II at the same time pursued a quite deliberate policy overseas in alliance with grandees in the East India Company, aimed at making international trade a branch of the same absolutist political economy. James's notion was that monopolist trade carried out on the basis of royal privileges by the East India Company, the Royal African Company, and other corporations, would create a caste of merchants whose interests would lie with a strong monarchy. The merchant patentees would create a tributary empire and fund the monarchy sufficiently that it would become independent of parliamentary taxation. This endeavor meant that Atkyns's arguments fitted rather neatly into a grand strategy for creating a new, absolutist English state with global ambitions. It was well supported by contemporary but controversial arguments in the new discipline of political economy itself, and there was nothing intrinsically impossible about any part of it.[41] In the Stationers' case, it resulted in the patenting power of the Crown being expressly written into a new charter offered to a reconstituted company. There would still be a register, but its status must now be explicitly subordinated to, and dependent on, royal "bounty"—not craft custom, let alone authorial property. All talk of an authorial right disappeared. To a man, the booksellers who had opposed Atkyns were purged from the company's offices. At the height of James II's reign in the mid-1680s, a reconstituted commerce and culture of print was in the offing—and this was part and parcel of a bid to transform a commonwealth and found an empire.

Yet the victory was short and pyrrhic. Atkyns himself was dead when it came. With James now on the throne, moreover, the beneficiaries were

not the Tories, but the dissenters and Catholics whom James wanted to recruit as allies. And when James was supplanted as king in 1688 this new political economy of print was rudely demolished. The new government of William and Mary restored the old regime in the Stationers' commonwealth. With it returned the conviction that that regime enshrined a natural right of authors. Suddenly, with the political legitimacy of the new regime resting on a sacrosanct principle of property, this conviction was more useful than ever to the trade. What destroyed the absolutist culture of print in London—replacing it with a culture of authorial property that would last far longer—was not refutation, but revolution.[42]