“FOR THE GENERAL DIFFUSION OF KNOWLEDGE”:
FOUNDATIONS OF AMERICAN COPYRIGHT IDEOLOGY, 1783-1790

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"FOR THE GENERAL DIFFUSION OF KNOWLEDGE":
FOUNDATIONS OF AMERICAN COPYRIGHT IDEOLOGY, 1783-1790

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. DECLARATIONS OF CULTURAL INDEPENDENCE: THE NATIONAL IMPERATIVE OF</td>
<td>8</td>
</tr>
<tr>
<td>AMERICAN COPYRIGHT LAWS</td>
<td></td>
</tr>
<tr>
<td>Trumbull</td>
<td>17</td>
</tr>
<tr>
<td>Barlow</td>
<td>23</td>
</tr>
<tr>
<td>Webster</td>
<td>32</td>
</tr>
<tr>
<td>Conclusion</td>
<td>41</td>
</tr>
<tr>
<td>III. “FOR THE GENERAL DIFFUSION OF KNOWLEDGE”: THE COPYRIGHT</td>
<td>43</td>
</tr>
<tr>
<td>QUID PRO QUO</td>
<td></td>
</tr>
<tr>
<td>American Republicanism</td>
<td>53</td>
</tr>
<tr>
<td>Learned Culture</td>
<td>61</td>
</tr>
<tr>
<td>Conclusion</td>
<td>65</td>
</tr>
<tr>
<td>IV. EPILOGUE</td>
<td>69</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>72</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

But none of the means of information are more sacred, or have been cherished with more tenderness and care by the settlers of America, than the press. Care has been taken that the art of printing should be encouraged, and that it should be easy and cheap and safe for any person to communicate his thoughts to the public.1

–John Adams, 1765

American copyright holders often assume that copyrights are nothing more than legal protection over their apparent natural right to the exclusive publication of their creative productions, be they literary, musical, or electronic. Yet the purposes and intents of American copyright law have repeatedly occasioned contentious academic and legislative scrutiny since the first such laws were established in the 1780s; the technological dynamics of the digital era have only opened numerous new fronts in the battle over copyright. While corporate media conglomerates such as Disney, the Recording Industry Association of America, the Motion Picture Association of America, and the American Society of Composers, Authors and Publishers insist that copyright is a protection designed exclusively for producers, public interest advocates and organizations such as Public Knowledge and the Center for Democracy and Technology argue that copyright is a protection designed both for

producers and consumers of copyrighted works. Whereas the former groups claim there to be no distinction between the intended constitutional protections of intellectual and physical property, the latter argue there are explicit differences between the two defined by the Constitution itself. Both sides posit compelling arguments about copyright, but the contours of the debate are often clouded by the proprietary issues of two distinctly separate debates: what copyright in fact is, and what copyright should be. The following study offers some insight into the question over what the American concept of copyright is, or at least how it was originally conceived, by historicizing its initial development in the post-revolutionary era.

The development of American copyright laws was contingent upon circumstances specific to the historical moment of the eighteenth century and the revolutionary period; in other words, copyright did not develop in an ideological vacuum devoid of contemporary cultural, social, and political influences. This is not to suggest that American copyright legislation could not have developed in any prior or subsequent time, but rather to counter any notion that the tenets of American copyright ideology are in any way static, natural, timeless, or common sensical. Copyright in the United States was, of course, directly influenced by British precedent; in fact, the legislative wording of the first federal copyright statute in 1790 nearly mirrors that of the British Statute of Anne Licencing Act passed in 1710. Yet, to assert that the former simply presaged the latter’s passage in republican America all-too-easily accepts the questionable doctrine of inevitability and ignores the drastic evolution in the textuality of print that occurred over the eight decades between 1710
and 1790, as well as the significant cultural processes particular to the revolutionary and early national periods.

American copyright scholars have largely ignored the cultural context and hence influences on copyright’s legislative development in the United States. Lyman Ray Patterson’s seminal work *Copyright in Historical Perspective*, as well as much of his subsequent scholarship, traces the evolution of the legal underpinnings of Anglo-American copyright from their inception in sixteenth-century England to the middle of the twentieth century in the United States. His research provides an especially insightful narrative of how copyright developed politically, juridically, and to a certain extent, philosophically. He also provides valuable analyses on the modern cultural ramifications of copyright laws. However, his analysis depends almost exclusively on legislative and constitutional verbiage and “the framers’ intent,” and never explores how contemporary print-culture influenced the development of such legislation or how seekers of copyright expressed their desires for it. Bruce Bugbee’s *The Genesis of American Patent and Copyright Law* similarly traces copyright’s legislative origins and development; he does provide a glimpse of the contemporary cultural processes and the movers and shakers who influenced copyright—but only a glimpse. Legal scholar Lawrence Lessig’s more recently published popular volumes *The Future of Ideas* and *Free Culture* draw attention to the deleterious affects of modern copyright law on the public sphere and marshal a powerful defense of copyright against its modern corporate utilization by arguing that unharnessed legal protection of intellectual property lies in stark contrast to the cultural ideology of its eighteenth-century progenitor.
Yet Lessig never examines that ideology within its specific historical context. Such is the goal of the present study.

Cultural theorists Jürgen Habermas, Benedict Anderson, and Michael Warner have forwarded valuable theses on the diachronic role print played in the eighteenth century, and their analyses are essential in understanding the historical context of the 1780s in which American authors advocated for copyright laws and legislators passed them. Habermas’s *Structural Transformation of the Public Sphere* argues that the eighteenth century witnessed a decisive transformation in the public sphere through the increasingly commodified accessibility to the world of letters. He asserts that the mass availability of printed commodities enabled people, for the first time in history, to envision their collectivity as a public in direct relationship to one another as opposed to ecclesiastical or royal authority; the political pamphlet and other published literature of the American Revolutionary period exemplifies this process. Michael Warner’s *Letters of the Republic* furthers our understanding of print media in colonial America by historicizing the very printedness of words and by incorporating the Habermasian theory of print’s gradual shift from the operational sphere of personal discourse to one of public discourse in the specific American

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context. His study clarifies the contemporary discursive context in which print culture was produced, consumed, and understood, which is critical in understanding how contemporaries perceived copyright to function as a regulation of the printing industry. Benedict Anderson’s *Imagined Communities* demonstrates broadly the relationship between what he calls “print-capitalism” and the emergence of the modern phenomenon of nationalism in the eighteenth century. Critical to his examination is how the structure of modern print literature and its mass production and dissemination enabled its readers to imagine themselves as members of a larger, yet anonymous, political community. Anderson’s study is of obvious utility in interpreting the nationalist discourse pervasive both within indigenously produced American literature and the calls for copyright laws during the early national period.³

The first chapter of the following study demonstrates that the earliest calls for copyright legislation in the United States immediately after the Revolution were inextricably intertwined with the efforts to construct a distinctly American national identity. As the dictates of print-capitalism were quickly becoming institutionalized, prominent copyright advocates, such as Connecticans John Trumbull, Joel Barlow, and Noah Webster, argued that copyright was necessary both to protect the indigenous American authorial class and their labors from the widespread practice of literary piracy and to encourage others to participate in the craft of authorship. They argued provocatively – and successfully – that copyright

laws would indeed serve as declarations of cultural independence from Britain, and would help establish America’s cultural parity with the greatest powers in the world. Whereas colonial printmen played the most critical role in shaping American identity throughout the 1760s and 1770s by producing a deluge of literature in opposition to parliamentary imperial policies, I argue that the calls for copyright laws in the post-revolutionary period were an attempt by American intellectual writers to establish their own measure of cultural control over what was a largely unregulated printing industry.

The second chapter demonstrates how eighteenth-century Enlightenment ideals and republican ideology significantly influenced how contemporaries expected the explicit limitedness of copyright terms to function. Through an examination of the concurrent development of learned societies, such as the American Philosophical Society, and proposals for publicly funded education systems proposed by statesmen such as Benjamin Rush and Thomas Jefferson, I argue that a significant aspect of American political culture was a passion for the “diffusion of knowledge.” As contemporaries understood printed literature to be integral in the production and consumption of knowledge, such understandings strongly influenced the expectations and design of copyright. Additionally, the prevailing ideology of republicanism established a delicate balance between personal and public interests, which ultimately expected the republican citizen to act first and foremost for the benefit of society as a whole. Hence, copyright’s explicit limitedness exhibited the tension inherent in republican ideology: it granted authors only temporary monopolistic control over the publication of their creations so that they could sustain themselves in their labors, so that when the copyright term on a work expired it entered the public domain, from which anyone
could freely access, manipulate, or republish it. Explicitly limited terms were not some arbitrary legislative decision, but rather a byproduct of the contemporary fixation on diffusing knowledge through print as extensively as possible among the American populace.

Thus, this study attempts to fill a gap in the historiography on American copyright by exploring the specific historical nature of print culture in the late eighteenth century which directly influenced its development. Those who campaigned for copyright protection espoused its broad nationalistic implications in the wake of a socially and politically disruptive revolution, and its eventual legislative design recognized a distinct tension between private interests and the public sphere as it embodied the pervasive republican values of the early national period. This examination seeks to clarify how the conceptual architecture of copyright was initially framed in the United States in order to more insightfully and constructively address the question of the continued utility of its function established by historical precedent.
CHAPTER II

DECLARATIONS OF CULTURAL INDEPENDENCE:

THE NATIONAL IMPERATIVE OF EARLY AMERICAN COPYRIGHT LAWS

While the Americans stand astonished at their former delusion and enjoy the pleasure of a final separation from their insolvent sovereigns, it becomes their duty to attend to the arts of peace, and particularly to the interests of literature; to see if there be not some errours to be corrected, some defects to be supplied, and some improvements to be introduced into our system of education, as well as into those of civil policy. We find Englishmen practicing upon very erroneous maxims in politics and religion; and possibly we shall find, upon careful examinations, that their methods of education are equally erroneous and defective.¹

-Noah Webster, 1783

“The state of literature in America must one day become a subject of legislative consideration. Hitherto it hath been a disinterested volunteer in the service of the Revolution, and no man thought of profits; but when peace shall give time and opportunity for study, the country will deprive itself of the honour and service of letters, and the improvement of science, unless sufficient laws are made to prevent depredation of literary property,” wrote Thomas Paine in 1782.² For the famed patriot penman, the national

¹ Noah Webster, A Grammatical Institute, of the English Language, Comprising, An Easy, Concise, and Systematic Method of Education, Designed for the Use of English Schools in America. In Three Parts. Part I (Hartford: Hudson and Goodwin, 1783), 4.

necessity of copyright was simply another matter of common sense. As historian Bernard Bailyn has demonstrated, the explosion of printed political pamphlets in the 1760s and 1770s had a profound effect on shaping revolutionary ideology and perceptions of American distinctiveness. As part of the surviving historical record, the pamphlets that Bailyn studied for their ideological content also document the newfound discursive power of printed letters and through them the ongoing structural transformation of the Anglo-American public sphere during the eighteenth century. The emergent bourgeois public was a reading public, as Habermas has argued, and the pamphletry of the Revolutionary period is demonstrative of the transformation in the contemporary discourse of print which provided the public a new medium through which to read and debate about itself, continually reifying the abstraction of its collectiveness.

However, the British-American public was composed of disparate peoples who resided all along the length of the Atlantic coast and were anything but unified. As the war came to a close in the early 1780s, American nationalist intellectuals sought to unify the diverse inhabitants of their freshly conceived nation through a shared culture of print. This is the historical context in which copyright scholars have largely ignored. The development of American state and federal copyright laws – intended to be proprietary regulatory

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Sherwin, 1817), iv-vn.


measures for both the printing and authorship industries – during the early national period, must be examined in light of both the contemporary discourse of print and the cultural project undertaken by a new class of American literati to construct a unified, if not national identity through printed literature for what was a kaleidoscopic populace in the wake of a socially disruptive revolution.⁵

By the time the thirteen former colonies had become the United States of America in 1781, every state had at least one operational printing press. The industry thrived throughout the 1770s, printing more books, newspapers, almanacs, broadsides, chapbooks, and pamphlets than ever before. The revolutionary struggle encouraged American printers to expand their trade, both because of the increased demand for literary propaganda, and because of the suspension of trade with England during the war.⁶ No copyright laws had been established anywhere in the country until 1783, and the piracy of literature from abroad had become an accepted practice by nearly every printer in the trade,⁷ making inexpensive

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⁵ Eve Kornfeld, Creating an American Culture (Boston and New York: Bedford/St. Martin’s, 2001), 8.


⁷ John Tebbel, A History of Book Publishing in the United States: Volume I: The Creation of an Industry 1630-1865 (New York and London: R.R. Bowker, 1972), 95-96. Tebbel’s work remains the most exhaustive and detailed dissertation on the early American printing industry available. His examination is particularly valuable for its breadth, yet his conclusions that American copyright has been “anti-intellectual” in nature, and that “Congress has perennially been dominated by politicians from rural constituencies, who by and large have had little or no interest in literature and the arts, and so have had little sympathy for legislation which might encourage them (134),” lie in stark contrast to the historical record, and are contested by most scholarship, including this study.
editions of English and other foreign publications readily accessible. Because the book and newspaper markets in eighteenth-century America were highly localized and largely unregulated, unauthorized reprints of foreign works kept small printmen in business and prices comparatively low, allowing such literature to be cheaply sold and disseminated throughout communities. As such, it was the creole printers who played a definitive role in shaping early American culture, as well as politics, serving as the unavoidable intermediaries between authors (sometimes themselves) and the reading public. They determined what to print, the cost of publication, the cost of consumption, and the quantity of any particular work that would ultimately be made available.  

This dynamic is important toward understanding the political and cultural ideologies of the early national period, because as Benedict Anderson asserts, printers, rather than the actual authors of what was printed, were in fact the most integral developers of the initial national imagineries. The following study argues that the campaign for copyright legislation in the immediate post-Revolutionary period was an attempt by leading American intellectuals to wrest a significant measure of control over that cultural process away from the largely unregulated printers.

As Americans established their new governing body in the spring of 1781 with the ratification of the Articles of Confederation, patriotic literati turned toward the project of constructing a national identity through the cultivation of indigenous literary productions. The campaign for copyright was explicitly connected to this pursuit. Between 1783 and

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8 Davidson, *The Revolution and the Word*, 79.

1786, twelve of the thirteen states passed varying versions of copyright statutes, and the eventual adoption of the Constitution in the fall of 1787 established federal authority to grant authors and inventors legal protection over their intellectual property. Legal and narrative analyses of the passage of those laws have been thoroughly conducted elsewhere in several academic studies. Although the timeline of the passage of those acts serves as the backbone of this study, I am most concerned with what was said by those who pursued legal protection for their works in regard to the national imperative of passing such legislation, and how they expected it to function. Many enterprising individuals sought copyright legislation prior to, and during this time period; however, I have chosen to focus on the arguments made on behalf of the need for copyright by three of perhaps the most influential pursuers of it: John Trumbull, Joel Barlow, and Noah Webster. These men were classically educated, patriot revolutionaries, and republican ideologues who authored distinctively American literature, and in addition to their public appeals for the protection of their own personal labors, were actively concerned with the construction of American national identity through a shared culture of print. Their efforts to secure copyrights for their own works and others exhibit the concurrent rapid transformation in the discursive context of commodified print, and demonstrate a crucial aspect of the collective project of creating a unified national imaginary.

10 The most thorough historical examination of the passage of individual state copyright laws throughout the 1780s, and the influential lobbyists and statesmen that were involved, is provided in Bruce Bugbee, *The Genesis of American Patent and Copyright Law* (Washington: Public Affairs Press, 1967), 57-124. A detailed legal analysis and comparison of the stipulations and requirements of the twelve individual state copyright laws is provided in Francine Crawford, “Pre- Constitutional Copyright Statutes,” *Bulletin, Copyright Society of the U.S.A.*, no. 23 (1975): 11-37.
Nothing was inevitable about the passage of copyright legislation. It took an aggressive campaign by many interested persons to convince American legislators, who were ever fearful of monopolistic control, of the public benefit that would ultimately stem from what essentially amounted to granting authors monopolies to over the publication of knowledge. Books had been produced in the absence of author-based legal protection for millennia. Even with the invention of the printing press in the fifteenth century, and its subsequent potential for mass-production and profit, British authors did not enjoy legal rights to their creations until the passage of the Statute of Anne in 1710. There is little doubt that a wealth of literature would have continued to be produced without the author-based copyrights so fervently sought by American intellectuals in the 1780s. The discussion over copyright involved the quality, rather than quantity, of what would be produced and who would be producing (writing) it.

Because print itself acquired new cultural meaning over the course of the eighteenth century, in order to adequately understand copyright’s contemporary relationship to print we must first acknowledge print’s contemporary relationship to American society and culture. Michael Warner has demonstrated that the changes in the political culture of the era – republicanism, the Enlightenment, nationalism – refashioned the textuality of print in important ways. No longer was it a technology of privacy controlled by divine and royal authorities, as it had exclusively been up until the early decades of the eighteenth century, but rather it had evolved into a technology of publicity whose meaning was civic and emancipatory. Critical toward understanding the historical context in which American copyright developed is that those who organized the revolutionary struggle and were
subsequently placed in power by it were writers, whose “paper war[s] articulated and helped to mobilize an intercolonial and protonational public.”\textsuperscript{11} As such, Anglo-Americans acquired a distinct national identity through the transmission of print, an identity they were able to collectively construct and imagine through the modern institution of print-capitalism described so intricately by Benedict Anderson.\textsuperscript{12} Thus, the concurrent technological capabilities and social and cultural processes in America must be studied in tandem, rather than as isolated historical events, in order to understand adequately the development of copyright policies.

The prominent appeals for copyright laws demonstrate an important facet of the conscious project of constructing a distinctive American national identity in the wake of the Revolution: contemporaries perceived the cultivation of native-produced literature and print to be a national imperative. American nationalists envisioned copyright to function both as a regulatory device for the printing industry, and as a stimulant for native literary authorship. By granting exclusive printing rights to potential authors, they expected copyright to support a new class of indigenous literati who would help define both a unifying ideology of Americanism through their work and bolster the fledgling nation’s international reputation for the arts. And, as will be addressed in the following chapter, copyright was designed first and foremost as a legislative quid pro quo that reflected a mediation between private interests


\textsuperscript{12} Ibid., 61.; Anderson, \textit{Imagined Communities}, 37-65.
and the public sphere; it was not designed as a passive recognition of an author’s perpetual right to the exclusive publication of his or her creative labors, as authors themselves might have liked to believe. Rather, the republican design of the American copyright framework acknowledged the existence of the public sphere, asserted its importance in a free society, anticipated its growth, and incorporated important protective measures over it by only granting copyright protection for explicitly limited terms.

Appeals for American copyright laws made by patriot penmen, such as Paine, were inextricably intertwined with the construction of a national identity. However, the public entreaties for copyright made by three Connecticans in the early 1780s, all friends, Yale graduates, and all with ambitious literary goals, offer considerable insight into what contemporaries expected from the passage of copyright legislation. John Trumbull, Joel Barlow, and Noah Webster attended Yale in the 1770s and became intellectual companions through their mutual membership in the college’s literary society, the Brothers in Unity. Each was a patriot in his own right: Trumbull served as a soldier; Barlow was an army

13 As there was no copyright law in America prior to 1783, the widespread popularity of Paine’s *Common Sense* made it an object of mass piracy. Paine became increasingly upset as his pamphlet was reprinted endlessly throughout the American colonies, with at least twenty-one unauthorized editions of his initial volume printed in eleven different cities within the year of 1776 alone. James Green, “Part One. English Books and Printing in the Age of Franklin,” in Hugh Amory and David D. Hall, eds., *The Colonial Book in the Atlantic World*, Vol. 1, *History of the Book in America* (Chapel Hill: University of North Carolina Press, 2007), 248.

chaplain; and Webster wrote assiduously on the topic of American independence and the need for a unified national culture. As Yalesians they were captivated by the study of belles lettres, and after graduation they went on to reside in Connecticut and to compose highly popular works throughout the first decade of the early republic. Although Trumbull and Barlow both published a series of celebrated poems, neither enjoyed the height of literary success and national fame that Webster eventually attained through his spelling books. Their careers, however, exemplify some of the earliest attempts at producing an indigenous national literary culture; their struggle for copyright laws to protect their works from piracy express how contemporary authors and legislators expected such laws to function.

The copyright campaign waged by these three men, in particular, is important for at least two reasons: they each formed influential relationships and maintained correspondences with some of the most notable political leaders of their time; and two, they articulated the merits of their cause through the language of a strong nationalist discourse. Their deliberate attempts to construct a unified national culture through the emergent public sphere of letters and during a time of such political uncertainty and social volatility make their parallel pursuits of regulation that supported individual authors over the dictates of the printing industry that much more intriguing.

These early American nationalists perceived the unregulated press to be a threat to national unity, but not in the way we might initially expect. They designed copyright not as a form of censorship, but as a form of encouragement. By securing to authors the exclusive right of publication of their own works, and thus a certain degree of control over the industry – rather than allowing printers their continued free reign over the content and distribution of
print – copyright was intended to give American intellectuals an incentive to produce reputable literature. The kind of literature that Trumbull, Barlow, and Webster envisioned copyright would cultivate was that which would celebrate American ideals and provide enjoyment to their fellow countrymen. Through the widespread consumption of such works, they hoped to consummate an overarching national consciousness among the disparate American public, and to establish the fledgling country’s cultural parity with those of the imperial powers of Europe.

**Trumbull**

John Trumbull belonged to the lineage of two Connecticut governors, his father Jonathan Trumbull having held the office during the entirety of the Revolutionary War.\(^{15}\) As a child prodigy, Trumbull passed Yale College’s entrance exam at age seven in 1757, yet did not enroll until six years afterward and graduated with his bachelor’s degree in 1767. Through his diligent studies he mastered the Greek and Latin languages and became a popular tutor at the college for several years after graduation, during which he sought to reform Yale’s curriculum by broadening the meager availability of instruction in the fine arts and belles lettres, while he himself cultivated his own literary talents.\(^{16}\) Full of many interests and ambitions, he was admitted as a practicing attorney to the bar in Connecticut in 1773, and thereafter moved to Boston to hone his legal skills under the tutelage of John


Adams, where he was placed in the center of American politics during the tumultuous 1770s. Trumbull’s intellectual skills, his political involvement in the revolutionary cause, and his connections with the some of the most influential people of his time added considerable weight to his eventual calls for copyright laws.

“The encouragement of works of literature and genius has in all great and civilized nations been esteemed an object worthy of the public attention,” wrote Trumbull in a lengthy unsigned letter that appeared on the front page of the Connecticut Courant on January 7, 1783 arguing for the necessity of copyright laws. He had been in the midst of a protracted dispute over the widespread piracy of his highly popular satirical epic poem M’Fingal, originally published as two cantos in 1775, and completed with two additional cantos in 1782. The poem, reminiscent of classical epic prose, celebrated republican themes and, as historian Christopher Grasso explains, triumphed the newly established republic of print culture by describing how its main character Squire M’Fingal flounders in the politics of public speaking. M’Fingal was an entertaining piece of Revolutionary propaganda which pitted the Scottish Tory loyalist M’Fingal against the Whig Honorius in the public arena of a New England town meeting during the earliest stages of the war. In his memoir, Trumbull

17 Ibid., 15.

18 [John Trumbull], “For the Connecticut Courant,” Connecticut Courant, 7 January 1783, 1. Although this article was published anonymously, Christopher Grasso has identified Trumbull as the author in A Speaking Aristocracy, 319.

19 Ibid., 312.
asserted that he wrote the poem at the solicitation of some of his friends from Congress, as part of an effort to “prepare the public mind for the declaration of independence.”

After introducing the dialectically opposed characters, the first canto begins with Honorius’s long diatribe defending the American colonies against the crimes of “Mother Britain,” in which he declares:

She first, without pretence of reason,
Claimed right what’er we had to seize on;
And, with determined resolution,
To put her claims in execution,
Sent fire and sword, and call’d it, Lenity,
Starv’d us, and christen’d it, Humanity.

For she, her case grown desperater,
Mistook the plainest things in nature;
Had lost all use of eyes or wits;
Took slav’ry for the bill of rights;
Trembled at Whigs and deem’d them foes,
And stopped at loyalty her nose;
Stiled her own children, brats and caitiffs,
And knew us not from th’ Indian natives.

A boisterous dialogue ensues as Squire M’Fingal takes the stage zealously defending the king and cursing the several states’ “new cast legislative engines / Of county-musters and conventions.” The Whigs ultimately prevail, and M’Fingal is eventually strung up on the town’s liberty pole as his Tory allies flee the scene.


21 John Trumbull, M’Fingal: A Modern Epic Poem, in Four Cantos (Hartford: Hudson and Goodwin, 1782), 10-11.

22 Ibid., 55.
Trumbull’s poem became an instant American classic that remained in print for the next half-century, and was ingrained in the minds of thousands of school children as notable passages were included in the third volume of Webster’s popular school primer published in 1785.23 Years later, Trumbull wrote that when he first published his poem, as no authors at the time were entitled to the copyright of their works, it consequently “became the prey of every bookseller and printer, who chose to appropriate it for his own benefit. Among more than thirty different impressions, one only, at any subsequent time, was published with the permission, or even knowledge of the writer; [it] remained the property of newsmongers, hawkers, pedlars and petty chapmen.”24

Appearing in the Connecticut Courant, the American newspaper that had the highest circulation in America throughout the Revolutionary War,25 and only weeks prior to the Connecticut legislature’s consideration of the first copyright statute proposed in any of the confederated states, Trumbull’s public letter put forth what would be the standard argument made by many of his colleagues: securing for authors the sole right of publishing for their works was absolutely necessary to encourage intellectual endeavors and cultivate “works of genius.” He detailed several reasons as to why such legislation was needed, and it is probable that none were more convincing to his audience than those which compared the


infant nation of the United States with the great imperial powers of Europe. Drawing a causal relationship between the cultivation of literature and social unity, which was indeed most desirable during the tumultuous period after the war, he stated that intellectual and scholarly works were “the principal means of diffusing useful knowledge and instruction,” which served to “[regulate] the manners of mankind.” He asserted that such works were the object of great labor, study and application, and that “we have in this country no gentlemen of fortune sufficient to maintain them in the sole pursuit of literary studies.” Thus, it was “certainly necessary for the encouragement of genius, to secure to every author the profits that may arise from the sale of his writings.”

Trumbull went on to cite the personal plight experienced by authors who were slighted by the lack of legal regulation over the printing trade:

It is certainly a principle of natural justice, that the writer, who has spent a great part of his life in study, and wasted his time, his fortune and perhaps his health in improving his knowledge and correcting his tastes, when he risks both his money and reputation in the publication of works, which cost him much labor in the production, should be entitled to the profits arising from their sale, as a just compensation for his trouble. Nor can anything be a greater discouragement to a writer of genius, than on the first publication of a work, to see some mean and ungenerous printer, who so far from having any just right to the sale of his piece...immediately [seize] his work out of his hands...defrauding him of the whole profits of his labors.

He clearly spoke from his own personal experience. However, if this segment of his argument about the “natural justice” of providing copyright to authors was not compelling enough, his assertion of the national and international implications due to a lack of copyright


27 Ibid.
likely was. Republican Americans, such as Trumbull and the audience to which he appealed, understood print and the nation to be intimately related.28

“Foreign nations form their opinions of the character of a people in a great measure from the merit of their literary productions, and ever brand those countries as stupid and illiterate, in which the works of genius are not cultivated and encouraged,” Trumbull proclaimed. He assured his readers that “America is known and celebrated throughout Europe for her martial spirit, her military genius, and that ardor of liberty, which has so long and so successfully enabled us to oppose the power...of Britain,” but that, although American writers were in no way inferior to those of foreign nations, they did not enjoy the legislative encouragement that their European progenitors did. He argued that copyright’s potential to encourage even a single writer to display his refined literary talents, whether relative to America or not, and which might not even be appreciated by some of his fellow countrymen, may nevertheless be admired and praised by foreign nations, “and some part of that honor will redound to the state and country in which he is born for having produced a writer of such literary endowments.”29 Hence, Trumbull argued that the reputable literature that might be produced in the United States as a result of the encouragement that copyright would provide, regardless of subject, would help construct and solidify a much-needed national character and reputation.

Speaking directly to the people of Connecticut and their legislators about the copyright bill that would be presented in the assembly’s upcoming session, he closed his


letter by stating “whoever wishes to see this new-born empire improve in literature and arts, must wish to see this property secured by law...It is secured by statutes in all foreign nations who have been celebrated for their genius and improvements.” In regard the prospect of the proposal’s passage, he confidently stated, “I can hardly doubt its success.”

Trumbull’s optimism bade well, and on January 29, 1783, Connecticut passed the first state copyright statute in the United States, aptly titled “An Act for the Encouragement of Literature and Genius.” The language of the statute clearly reflected the arguments made by Trumbull and others, as it secured for every author “the profits that may arise from the sale of his works,” which “may encourage men of learning and genius to publish their writings,” and thus “do honor to their country, and service to mankind.” As the first American law of its kind, Connecticut’s legislative initiative exerted national influence as it was reviewed months later by Congress before they recommended that all the other states pass similar legislation. Trumbull’s printed plea was certainly important, however, it was only one of several fronts in the copyright campaign waged by the Connecticut trio during the winter of 1783.

BARLOW

Soon after graduating from Yale in 1778, the young and penniless Joel Barlow, determined to win distinction among his countrymen by writing poetry on American themes,

30 Ibid.

embarked on what would become his popular epic poem titled *The Vision of Columbus.*\(^{32}\) He worked diligently through the spring of 1779 drafting an outline for his poem, and shared his ideas and notes with his close friends such as Noah Webster, who gave him great encouragement and helped him secure financial assistance from generous patrons so he could pursue and complete his project.\(^{33}\) The proposal he eventually circulated among the public to garner subscribers in order to sustain his efforts outlined “A plan for a poem on the subject of America at large, designed to exhibit the importance of this country in every point of view as the noblest and most elevated part of the earth, and reserved to be the last and greatest theatre for the improvement of mankind.”\(^{34}\) Despite his desire to work full time on his national epic, Barlow struggled to make ends meet, and in the summer of 1780 accepted a salaried chaplaincy in the Continental Army where he became personally acquainted with the likes of George Washington and several other prominent men. As he remained focused on his poetry, he deemed such friendships especially valuable and hoped that they would aid him in the future production and sales of his patriotic masterpiece.\(^{35}\)

During the remainder of the war Barlow spent every spare moment he had while serving in his regiment working on *The Vision of Columbus* and corresponding with potential


\(^{33}\) Ibid., 86-92.


\(^{35}\) Zunder, *The Early Days of Joel Barlow*, 113-117.
subscribers throughout the states. Yet he only finalized and published the poem in the spring of 1787, having waited until copyright laws had finally been passed in all but one state. Throughout the eight long years that had elapsed since he initiated his project, Barlow actively lobbied his influential friends and acquaintances about the necessity of copyright legislation in America so that he, and others like himself, could afford to risk the time and labor required to craft reputable nationalistic literary designs.

Barlow intended his Vision of Columbus to be a grand narrative of American history that began with Columbus’ discovery in 1492 and traversed on into the glorious future of the newly independent United States. In the introduction he explained to his readers that,

> Every circumstance relating to the discovery and settlement of America, is an interesting object of enquiry. Yet it is presumed, from the present state of literature in this country, that many persons, who might be entertained with an American production of this kind, are but slightly acquainted with the life and character of that great man, whose extraordinary genius led him to the discovery of the continent, and whose singular sufferings ought to excite the indignation of the world.  

Although Columbus is the objectified hero of Barlow’s text, the central theme is the eminence of American culture and geography. He tells his readers that when he initially began working on the project his goal was to compose an epic poem simply on the discovery of America, “but on examining the nature of that event, he found that the most brilliant subjects incident to such a plan would arise from the consequences of the discovery.”

Straying slightly from the standard formulation of classical epic poetry he himself was influenced by, the events of the poem are conveyed through a visionary revelation presented

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37 Ibid., xxi. Emphasis in italics added.
to Columbus by an angel which, avowedly patriotic on the author’s own admission, extends his “subject to the settlement and revolutions of North America and their probable effect upon the future progress of society at large.”

In *The Vision of Columbus* Barlow constructs a unifying historical narrative identity for the United States by linking a sympathetic protagonist and a mystical past to the culmination of hope espoused by the signers of the Declaration of Independence. He intended for it to be first and foremost a national literary treasure which would instill national pride among his readers. The poem celebrates the uniqueness of the American continent, naming geographic places throughout, acquainting his localized, but nevertheless national, reading audience with the territorial features and boundaries of their new country. Additionally, the poem builds a pantheon of virtuous national leaders by heroicizing the most prominent military men of the Revolutionary War such as generals Washington, Greene, and Lincoln.

The final twelve pages of the first edition of *The Vision of Columbus* are particularly interesting as they list over seven hundred advance subscribers to the book – almost all fellow Americans, except for the dedicatee King Louis XVI of France and General Marquis de Lafayette. With the most prominent dignitaries listed first, among them “His Excellency, George Washington, Esq. 20 copies,” the rest, such as Benjamin Franklin, Thomas Paine, 

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38 Ibid. Emphasis in italics added.
39 Kornfeld, *Creating an American Culture*, 16-17; Zunder, *The Early Days of Joel Barlow*, 212. These authors comment on these themes within *The Vision of Columbus*, in this particular case referring to passages in Barlow, *The Vision of Columbus*, 30-34, 185. Books V and VI deal specifically with the American Revolution.
Henry Knox, and Timothy Pickering, are listed categorically by state of residence (eight states in all). The inclusion of such subscription lists was common for most eighteenth-century scholarly and formal publications, however, Barlow’s was one of the most formative and successful of the period. Conforming to Benedict Anderson’s theory of the causal role played by print-capitalism and the structure of literature in the rise of nationalism, the inclusion of Barlow’s hearty subscription list served a dual role: one, it indicated the mass consumption of innumerable replicas of what was specifically a nationalistic text; and two, it reassured readers of the boundaries and simultaneously anonymous membership of their freshly imagined national community.

While diligently working to complete his epic, in January of 1783, only a few days after Trumbull’s letter appeared in the Connecticut Courant, Barlow wrote an exhaustive and significantly influential letter to Elias Boudinot, the president of the Congress of the United States, on the national necessity of copyright laws. “I take the liberty of addressing you on

40 Barlow, The Vision of Columbus, 259-270.

41 Tebbel, A History of Book Publishing, 158-159. Subscription books were an important factor in eighteenth-century American book marketing, which sought to underwrite the cost of a work before publication, and could be initiated by anyone—author, printer, or publisher. Tebbel asserts that most of the best printers of the eighteenth century were in the subscription book business, among them: Ben Franklin, William Bradford, and Matthew Carey. Lists such as the one appearing in Barlow’s volume were often printed in books as a means of attracting more subscribers. A proposal or abstract of a work, such as Barlow’s “Draft of The Vision of Columbus” listed in Todd, Life and Letters of Joel Barlow, 15, often would be printed into sheets and circulated among the public, often advertised in newspapers, and a patron who signed one became a subscriber. Sometimes subscribers were asked to forward money in advance, but payment was usually expected on receipt of publication. See also: Davidson, Revolution and the Word, 86.

42 Anderson, Imagined Communities, 35.
a subject on which I conceive the interests and honor of the Public is very much concerned...

I mean the embarrassment which lie upon the interests of literature and works of genius in the United States.” He asserted that such an embarrassment was “natural to every free government,” referring to the freedom from state control of the printing press, but nonetheless could be “removed by positive statutes securing the copy-rights of authors, and in that way protecting a species of property which is otherwise open to every invader.”

Barlow stated that he was contacting Boudinot, who was listed as a subscriber to The Vision of Columbus, because he observed that the individual state legislatures were too busy addressing “the more important affairs of the present revolution,” but that the perceived need for copyright was understood by many individuals such as himself, and that it was a matter which “can not be too early professed to the attention of the Congress and the Several States.”

Barlow made clear why establishing copyright law was of especial national importance for the newly independent United States:

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43 Joel Barlow to Elias Boudinot, President of Congress, 10 January 1783 National Archives, 4 Papers of the Continental Congress, 1774-1789, No. 78, folio 369 (1971).

44 Barlow, The Vision of Columbus, 269. It is likely undeterminable when exactly over the course of the eight-year project Boudinot subscribed to Barlow’s book, although it was probably earlier rather than later since he signed such a contract in time to be listed alphabetically and by his current state of residence and not in the addendum of late subscribers. It is possible that he had contracted to purchase a copy of The Vision of Columbus prior to Barlow’s letter of January 10, 1783, as Barlow acknowledges he had spoken with him before, although only briefly. Thus, if Boudinot had, he would have at least been aware of Barlow’s genre of nationalistic literature and therefore understood the national implications that Barlow asserted copyright could have on authorship.

45 Joel Barlow to Elias Boudinot, President of Congress, folio 369.
It won’t be needless to recall to your Excellency’s mind the encouragement that has been *universally given in other countries* to the exertions of genius, in every way which might serve to elevate the sentiments and *signify the manners of a nation*. The Historians, the Philosophers, the Poets and the Orator have not only been considered among the first ornaments of the age *and country which produces them*; but have been secured in the profits arising from their labors, and in that way received encouragement in some proportion to their merit in advancing the happiness of mankind.\textsuperscript{46}

Similar to what Trumbull argued in the *Courant*, Barlow asserted that copyright was necessary in order to foster the creation of an indigenous intellectual class of authors who would represent the United States in the international arena of scholarship and literature, and consequently establish American parity with the most reputable literary creations of Europe. Domestically produced literature was clearly understood to be an important legitimizing agent in the construction of nationhood, evidenced by Barlow’s assertion that “A literary separation [from Britain] is necessary in order to complete [America’s] national character; and she ought to encourage that variety and independence of genius, in which she is not excelled by any nation in Europe.”\textsuperscript{47} Without protection of copyright, he and others feared that qualified American authorial ambassadors could not be sufficiently sustained.

As a member of a prominent circle of Yale-educated literati, and in the midst of composing his own epic literary production, Barlow was uniquely aware of the intensive labor required by professional authorship. He referred Boudinot to the widespread piracy of Trumbull’s popular poem *M’Fingal*, and referenced the current literary project undertaken by his friend and future president of Yale, Timothy Dwight, who had finished his patriotic

\textsuperscript{46} Ibid., folio 369-370. Emphasis in italics added.

\textsuperscript{47} Ibid., folio 370.
epic poem *The Conquest of Canaan* six years prior, but had left it unpublished “because [he] [could not] risk the expenses of publication, sensible that some ungenerous printer will immediately seize upon his labors...and defraud him of his property.” He pled that when an author “has spent great part of his life in study, drafted his time, his fortune and perhaps his health in improving his knowledge and correcting his taste it is a principle of natural justice that he should be entitled to the profits arising from the sale of his works, as compensation for his labor in producing them.” And of course, from such obvious considerations “it is, that most of the civilized nations have removed the natural obstructions [i.e. printers’ freedom to print unauthorized copies] which lie in the way of literary emulation.” Barlow indignantly reminded Boudinot that England secured copyrights to authors for a period of fourteen years upon publication of books or pamphlets, which were renewable for an additional fourteen years if the author was still alive when the first term was set to expire. He suggested that if Congress would recommend the passage of similar statutes to the several states, that “the measure would be undoubtedly adopted, and the consequences would be extensively happy upon the spirit of the nation, by giving a laudable

48 Ibid., folio 371. Dwight eventually published his poem in Connecticut two years after of his state’s passage the first copyright statute. It is likely he waited until copyright was secured in the surrounding states before he pursued publication of his epic, which he asserted was “the first of the kind, which has been published in this country,” and to which he endeavored to write “for the advancement of arts, on this side of the Atlantic.” Timothy Dwight, *The Conquest of Canaan: A Poem, in Eleven Books* (Hartford: Elisha Babcock, 1785), 3-4.

49 Joel Barlow to Elias Boudinot, President of Congress, folio 370. Emphasis in italics added.
direction to that enterprising ardor of genius which is natural to our stage of society, and for which the Americans are remarkable."  

Although it was only one of several letters that had been submitted to Congress on the subject of literary property, Barlow’s was exceptionally influential. On March 10, 1783, Congress passed a resolution to appoint a committee “to consider the most proper means of cherishing genius and useful arts through the United States by securing to authors or publishers of new books their property in such works.”  

Representatives Hugh Williamson, Ralph Izard, and James Madison were the three men selected to serve on the committee, to whom Boudinot referred both Barlow’s letter of January 10 and a printed copy of the state of Connecticut’s copyright statute passed two months prior. Because the federal government under the Articles of Confederation did not have the power to pass national copyright legislation, the committee drafted a resolution, which was quickly passed by the Continental Congress on May 2, 1783, thus “recommending the Several States to secure to the authors or publishers of new books the copyright of such books,” for a period of no less than fourteen years, renewable if the author survived the first term. Although the resolution was not a mandate, it carried the weight of the federal government, and in less than a year

50 Ibid., folio 371.


52 Ibid., 211n.

53 “Resolution Passed by the Continental Congress, Recommending the Several States to Secure to the Authors or Publishers of New Books the Copyright of Such Books, May 2, 1783,” in *Copyright Laws of the United States of America*, 1. Also cited in Hunt, *XXIV Journals of the Continental Congress*, 211n, 326-327.
five states had passed copyright statutes to bring the total to eight states with copyright laws by the summer of 1784. Madison’s involvement on this congressional committee proved important as he drafted the Constitution in 1787, which explicitly gave Congress the federal authority to legislate protection of intellectual property.

It is important to note that in these pleas for copyright, such laws were rarely expressed to be a factor in the overall quantity of literature produced; these authors understood that, regardless of copyright laws, a wealth of books would have still been written and published. Rather, authors such as the men discussed here sought copyright in order to secure for themselves some control over the publication process and the rewards of their own personal labors. Trumbull, Barlow, and as will be shown next, Webster, articulated the justice in securing to authors those things alongside a genuine desire to shift the role of primary developers of nationhood away from creole printmen, as Anderson calls them, to a new nationalist authorial class. Led by leading patriot intellectuals, such as themselves, they envisioned an emergent domestic authorial class buttressed by sufficient copyright laws who would utilize the genre of polite literature and other distinctly American texts as media through which to articulate their new American nation to their fellow countrymen and to the world.

**Webster**

Perhaps no individual espoused the necessity of American copyright laws or so aggressively sought their passage than Noah Webster. Although not as singularly responsible in the process as he gave himself credit for – as well as the modern historians who continue to refer to him as the sole agent in its development despite the vast amount of evidence
which shows otherwise—Webster’s early career and efforts to secure copyright throughout the United States in the 1780s nonetheless exemplifies the contemporary understanding of its nationalistic potential and imperative. Raised in a modest Connecticut family, Webster’s father mortgaged the family farm to send his sixteen-year-old son to Yale in 1774. After having flourished academically in college, Webster nevertheless graduated from Yale in 1778 nearly penniless and without a footing on a clear career path. As a result of the depressed New England economy due to the ongoing war, his family suffered from serious financial hardship, compelling him to immediately seek work to support himself. Although desiring to study law and enter the legal profession, he simply did not have the money required to do so, and instead took a position as a schoolmaster in Glastonbury, Connecticut. By the spring of 1779 he was hired as an instructor at the elite Brick School House in Hartford where he both became enamored with teaching and startled by the conditions of American schools. He deeply enjoyed the time spent with his students, yet found the facilities, the mode of instruction, and the available classroom materials surprisingly

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54 Copyright scholar Bruce Bugbee and Webster biographer David Micklethwait, as well as others, have demonstrated clearly that although Webster was likely the most diligent and well-known spokesperson for copyright in the 1780s, and was certainly influential in articulating the need for copyright, he played less of a direct causal role in the passage of the various state copyright laws than he later claimed in his writings, which has often been taken at face value by historians. See: Bugbee, *The Genesis of American Patent and Copyright Law* (1967), 115, 118, 123; and David Micklethwait, *Noah Webster and the American Dictionary* (Jefferson: McFarland & Company, Inc., 2000), 74-80. Historians Joseph Ellis, Thomas Bender, David Sampliner, Hugh Amory, and David D. Hall are among many who have all-too-easily accepted the notion of Webster’s sole responsibility for the development of American copyright laws. See: Joseph Ellis, *After the Revolution: Profiles of Early American Culture* (New York: W. W. Norton & Company, 1979), 163, 172; Bender and Sampliner, “Poets, Pirates, and the Creation of American Literature” *New York University Journal of International Law and Politics* 29 (1997) 255-270; Amory and Hall, *The Colonial Book in the Atlantic World*, 477-478.
deficient. This experience set the stage for his eventual comprehensive and enterprising plan for national educational reform, for which the attainment of copyright security served as a lynchpin.

As a schoolmaster, Webster assessed that the outdated teaching manual and primer most widely used in the United States, *A New Guide to the English Tongue* authored by Englishman Thomas Dilworth, inadequately taught the English language and was especially ill-suited for the needs of American students. While devising a new method for the instruction of English to correct what he perceived were serious errors in Dilworth’s spelling and pronunciation, Webster sought advice and encouragement from his friends in regard to his proposals. Barlow enthusiastically gave his approval in the fall of 1782, yet warned Webster that if he was to pursue such an arduous undertaking and seek publication of his work that he make sure to “contract with [his] printers upon good terms, or take some other cautious plan” so that he be compensated for his labors. Heeding his friend’s advice, Webster opted for “some other cautious plan” that eventually made his name synonymous with the national campaign for copyright. From 1782 to 1787 he campaigned vigorously throughout the country for the passage of copyright laws, while simultaneously marketing the nationalistic merits of his linguistic reforms, and asserting the American imperative of establishing literary independence from Britain.

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56 Joel Barlow to Noah Webster, 31 August 1782, *Life and Letters of Joel Barlow*, 41-42.
Three months prior to Connecticut’s consideration and passage of the first state copyright law, Webster petitioned the state’s General Assembly to grant him the sole right of publication for his soon to be compiled spelling book. In his petition he detailed his plan to correct the linguistic and instructional deficiencies of Dilworth’s speller, and his innovative replacement of the latter’s Eurocentric lessons with American-specific historical and geographical information. He told the legislature that he was “ever ambitious to promote the interest of literature and the honor and dignity of the American empire,” and that he was designing his work specifically “for the general benefit of youth in the United States.” Yet he requested the legislature’s aid in providing for him the copyright for his nationalistic endeavor in order to “prevent spurious editions” and secure him “the pecuniary advantages of his own production.”

Impatient with the Connecticut Assembly’s laggardly response, in early January 1783, within a week of both Trumbull’s and Barlow’s letters, Webster wrote a personal missive to a prominent Connecticut assemblyman, John Canfield, who also happened to be the father of one of his students, appealing for his support in securing copyright legislation. He asked that his appeal be presented to the legislature before they voted on the copyright statute. In his letter he claimed to have garnered universal approval for his proposal to reform the American vernacular, and detailed that his linguistic reforms would contribute significantly to the nation’s future cultural and political state of affairs. But because of the exhaustive


58 Ibid.
efforts required to complete his work in published form, Webster asserted that he “shall not pursue the plan any further, unless it shall meet with public approbation, encouragement, and security.”59 Placing the onus on the statesmen of Connecticut, he contended that the final prosecution of his design depended entirely upon the legislature’s decision whether or not to pass the upcoming copyright statute. Further emphasizing the gravity of that decision, he articulated that legislative attention to literature “must be the principal bulwark against the encroachment of civil and ecclesiastical tyrants,” and intertwined the republican rhetoric of freedom with that of domestic literary production by declaring, “American Liberty can die only with her Maecenases.”60 Concluding his appeal for copyright security, he stated “America must be as independent in literature as she is in politics, as famous for arts as for arms.”61

After Connecticut passed its copyright statute at the end of January 1783, Webster worked feverishly to finalize his new spelling book, the first part of his proposed three volume Grammatical Institute of the English Language. By the end of the summer, it was ready to be sent to the press, and he registered it for copyright at Hartford in August.62 On October 14th he published a lengthy advertisement for what eventually became famously known as his “blue-backed speller” in the Connecticut Courant and the Weekly Intelligencer.

59 Noah Webster to John Canfield, 6 January 1783, Letters of Noah Webster, 3-4.

60 Ibid., 4.

61 Ibid.

Prefaced with a strong endorsement of his efforts signed by nine prominent Connecticans, including his friends Joel Barlow and John Trumbull, the ad presented a detailed abstract of his grand design to correct the pervasive defects and mistakes of Dilworth’s popular speller.63 “It is surprising to consider how much the English language has been neglected, and how little [it is] understood by those who have undertaken to compile dictionaries, grammars, and spelling-books,” wrote Webster. And “after having found so much fault with others, the public will expect me to attempt some amendment.” Thus, the goals he outlined for his forthcoming Institute were to standardize pronunciation and grammar throughout the United States with rules so easy and a plan so complete that “every peasant, who will take the pains to understand them, may acquire as just a pronunciation as the most accurate scholar.”64

The first edition of Webster’s Speller, printed by Hudson and Goodwin in Hartford, ran five-thousand copies, all of which were quickly sold.65 Once published, this initial volume of his Grammatical Institute enjoyed immense popularity and praise, and became instrumental in his subsequent efforts to secure copyright legislation in other states so he could safely pursue publication and sales across a national market. In the introduction of his Speller, Webster articulated his strongest argument for the pressing national necessity of properly encouraging indigenous American literary endeavors:

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63 Noah Webster, “Just Published, and to be Sold by the Printers in Hartford, the First Part of a Grammatical Instituted of the English Language,” The Connecticut Courant, 14 October 1783, 1.

64 Ibid.

65 Skeel, Emily Ellsworth Ford, A Bibliography of the Writings of Noah Webster, 7.
Previously to the late war, America preferred the most unshaken attachment to Great Britain: The king, the constitution, the laws, the commerce, the fashions, the books, and even the sentiments of Englishmen were implicitly supposed to be the best on earth: not only their virtues and improvements, but their prejudices, their errors, their vices and their follies were adopted by us with avidity. But by a concurrence of those powerful causes that effect almost instantaneous revolutions in states, the political views of America have suffered a total change. She now sees a mixture of profound wisdom and consummate folly in the British constitution; a ridiculous compound of freedom and tyranny in their laws; and a few struggles of patriotism, overpowered by the corruptions of a wicked administration. She views the vices of that nation with abhorrence, their errors with pity, and their follies with contempt.  

Thus, he continued that “while the Americans stand astonished at their former delusion and enjoy the pleasure of final separation from their insolvent sovereigns, it becomes their duty to attend to the arts of peace, and particularly the interests of literature.” 66 According to Webster, the linguistic standardization he proposed in the Institute, ultimately enabled by his success in securing copyright, was the necessary foundational step in achieving national unity and cultural independence through the refinement of a distinctly American shared culture of print.

By early 1784, several northern states had passed copyright laws similar to Connecticut’s in response to the Congressional recommendation to do so made in the spring of 1783. 68 In the months following the publication of his speller, Webster worked diligently


67 Ibid., 4

68 The first eight state statutes listed in chronological order of passage, contained in: United States Copyright Office, *Copyright Laws of the United States of America*, 1-11: Connecticut, January 1783; Massachusetts, March 1783; Maryland, April 1783; New Jersey, May 1783; New Hampshire, November 1783; Rhode Island, December 1783; Pennsylvania, March 1784; South Carolina, March 1784.
to complete the second and third parts of the *Institute*, a grammar and a reader, published in 1784 and 1785 respectively. In the spring of 1785, the twenty-seven year old schoolmaster-turned-orthographer embarked on a national tour with the dual purposes of promoting his spelling books through public lectures and personal meetings, and lobbying for the passage of copyright laws in those states that had yet to establish them. He introduced his *Institute* to as many school instructors, churchmen, and political leaders as he could, with the hope of securing its usage in every school throughout the country.\(^69\) Biographer Richard Rollins asserts that “virtually every important figure in the new nation’s public life appeared in the pages of Noah Webster’s diary” during the time of his travels, among them George Washington, James Madison, Ben Franklin, Tom Paine, Benjamin Rush, and John Adams.\(^70\) These influential acquaintances praised his patriotism and work toward the creation of a national language and were instrumental in his efforts to encourage the southern states to pass copyright laws. Among a wealth of letters addressed to his new political allies, Webster wrote to Washington in December of 1785 to thank him for his help in securing copyright in Virginia.\(^71\) By the time his southern tour concluded in the spring of 1786, all but the state of Delaware had established some form of copyright laws.\(^72\)

\(^69\) Unger, *Noah Webster*, 81-82, 90.


\(^72\) The last four states to enact state copyright legislation under the Articles of Confederation, reprinted in: United States Copyright Office, *Copyright Laws of the*
Webster’s extensive campaign for national linguistic reform was inextricable from his calls for copyright. Those whom he met and corresponded with about his textbook and copyright laws were made well aware of the implications he claimed both would have for the future maintenance of the country. In his Speller, which he distributed widely among those he petitioned for literary security, Webster stated that he wished for it to “promote the honor and prosperity of the confederated republics of America,” asserting that “It is the business of Americans to...diffuse an uniformity and purity of language, [and] to add superior dignity to this infant empire.” As his design drew particular attention to the linguistic disparities among the national populace, he explained further to Timothy Pickering the unifying advantages of his plan to standardize American English pronunciation, spelling, and dialect, claiming “a national language is a national tie, and what country wants it more than America?”

As such, the potential for copyright to help construct a strong national imaginary was obvious to all who gave even token notice to Webster’s plan, as he promised that his Institute, which would only be disseminated upon receiving grants of literary security, would additionally instill a sense of national history in school children and acquaint them with the geography of the American states through the introduction of domestic place names, which was particularly important because the predominantly used speller authored by Dilworth only

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United States of America, 14-21: Virginia, October 1785; North Carolina, November 1785; Georgia, February 1786; and New York, April 1786.

73 Webster, A Grammatical Institute Part I, 14-15.

74 Noah Webster to Timothy Pickering, 25 May 1786, Letters of Noah Webster, 52.
outlined the geography of Europe. He further intended for the third volume of his *Institute*, a reader, to “diffuse the principles of virtue and patriotism” among “the rising generation” through extensive passages from celebratory American literature such as Trumbull’s *M’Fingal*, and Barlow’s yet-to-be published *The Vision of Columbus*. As he conveyed to his esteemed friend and academic ally Ben Franklin, the incorporation of indigenously produced literature on the history and politics of America was intended “to call the minds of our youth from ancient fables and modern foreign events, and fix them upon objects immediately interesting in this country.”

From 1782 to 1786, throughout his travels, lectures, and correspondences, Noah Webster put forth a tangible plan to foster national unity that hinged on his success in securing copyright. He echoed the central tenets of the appeals for literary security made by his Yale colleagues, and offered political leaders of the new republic a concrete demonstration of why legislative encouragement for the production of American literature in the form of copyright was a national imperative.

**Conclusion**

Americans who lived through the revolutionary period understood the need for copyright not merely as a means of protecting the property rights of indigenous authors from literary piracy, but explicitly understood the establishment of the earliest copyright laws to function as declarations of cultural independence from Britain, inextricably intertwined with

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77 Noah Webster to Benjamin Franklin, 1786, *Letters of Noah Webster*, 45.
the construction of a distinct national identity. As the powerful emancipatory and nationalist discourses of print evolved in Anglo-America in the early 1760s, the most influential people in its production and dissemination were those who actually set the type and ran the presses, not those who authored it. Indigenous printmen thus played an integral role in the development of American culture and nationalism prior to and during the Revolutionary War. But in the early national period, between the conclusion of the war and the eventual adoption of the Constitution, public appeals for state copyright laws under the governing framework of the Articles of Confederation marked an attempt by patriot literati to wrest a large measure of cultural control away from the unregulated printers and publishers. Early nationalist authors sought literary encouragement and protection upon the broad canvas of their collective desire both to bridge the vast social and cultural disparities among the freshly conceived American populace and to assert their new nation’s cultural parity with the powerful nations of Europe. Prominent American intellectuals, such as John Trumbull, Joel Barlow, and Noah Webster, succeeded in their campaign for copyright by articulating their pleas through a compelling nationalist discourse that argued literature was the most effective medium through which to define and unify the nation.
Those institutions are the most effectual guards to public liberty, which diffuse the rudiments of literature among a people.¹

- The New York Magazine, 1790

In a 1785 proclamation regarding the importance of public education, Massachusetts Governor James Bowdoin echoed the tenets of a pervasive political discourse in republican America that placed the highest value on the dissemination of knowledge through print media, as he declared that “The preservation of the rights and liberties of the people, depends greatly upon a due care to diffuse wisdom and knowledge.”² As early American authors conveyed their calls for legislative protection from literary piracy through a persuasive nationalist discourse, political and legislative leaders responded by granting such protection for avowedly nationalist purposes, yet only on a carefully constructed quid pro quo basis which was directly influenced by the contemporary cultural value of print that developed


during the revolutionary period. Rather than designed to be a mere passive recognition of some inherent right to perpetual exclusive publication, copyright was granted to authors as a temporary privilege in return for eventually making that work freely available to the public. A historical examination of the intents and purposes of that conditional basis reflects important aspects of early American culture and clarifies why contemporaries designed copyright to provide protection only for a specified period of time and not indefinitely.

The development of early American copyright law is significant because it not only recognized the emergence of a public sphere through the transmission of print, but incorporated explicit conditional measures for the expansion of it; those measures balanced the public interest against the private interests of authors. It is important to note that legislators were initially reluctant to regulate the book trade, and only did after the combined efforts of authors such as Webster and Barlow prompted them to do so. The laws that were eventually passed were designed to serve two constituencies: creators and consumers of literature. Contemporary designers of copyright legislation intended for it primarily to be a tool for diffusing knowledge and promoting learning widely among the public by providing authors encouragement to produce by granting them exclusive publication rights of their own works, and in turn by distinctly limiting the extent of those rights.

All twelve individual state copyright acts, and the first federal act of 1790 had term limits; none granted perpetual publication rights. As a significant aspect of the current debate over copyright focuses on the necessity and justness of term limits, the question over

\[3 \text{ Davidson, } Revolution and the Word, 96.\]

\[4 \text{ See: Copyright Office, } Copyright Laws of the United States of America, 1-24.\]
the initial purpose of limits is critical. Why did the initial design of copyright not simply grant authors perpetually exclusive publication rights to their work? Answered most clearly by copyright scholar Lyman Patterson, “the two policies of promoting learning and limiting the copyright term function[ed] to promote public access.”5 The following study seeks to demonstrate the pervasive cultural ideologies in the early American republic which influenced both the passage of copyright legislation and its designated limitedness.

As copyright in the digital era has enabled vast encroachments on the freedom of the public domain, public interest advocates such as Patterson, Stanley Lindberg, and Lawrence Lessig argue that modern conceptions of copyright ignore the design of its initial dual purposes: to protect the rights of both producers and consumers of copyrighted material, not solely the producers. While their central theses are sound, they would be bolstered substantially by an exploration into the contemporary cultural elements that influenced the early design of copyright. Patterson and Lindberg analyze only the verbiage of the intellectual property clause in the Constitution to argue that a more balanced modern view of copyright law is needed which understands that on principle it was designed as an “infrastructure supporting the progress of learning in our free society.”6 Elsewhere, Patterson asserts that “there is little direct evidence concerning the drafting of the copyright clause of the U.S. Constitution or the passage of the Copyright Act of 1790,” yet claims that “the loss is not great, however, because the story of copyright in England before 1789 provides the


source material as to what copyright meant to the Founding Fathers.” While making a provocative argument about the “Founders’ intent” and the cultural ramifications of modern copyright policy, Lessig similarly analyzes only the verbiage of the Constitution and the earliest piece of federal copyright legislation, and asserts that early American contemporaries simply “copied English copyright law,” and added minor adjustments. In contrast to the strict examinations of legal history and diction, Bruce Bugbee gives due consideration to the successful efforts of intellectuals such as Joel Barlow and Noah Webster in securing passage of the state copyright statutes and the eventual federal copyright policy, yet does not examine the contemporary discourse through which discussions about print were articulated.

The design of American copyright policy cannot simply be explained away as mimicking its British predecessor which was legislated nearly eighty years prior and under substantially different cultural and political circumstances. Nor should a historical examination of print culture and the development of American copyright laws stop short of examining how those laws were designed to function. Although the aforementioned scholars posit strong conclusions about the disparities between eighteenth-century and

7 Patterson, “Understanding Fair Use,” 253-4.

8 Lessig, Free Culture, 130.


10 Scholars of early American print culture often give at least brief mention to the passage of copyright legislation. However, they rarely explore the significance of the limited terms on which it was granted. See: Amory and Hall, The History of the Book in America, 477-485; Davidson, Revolution and the Word, 94-97; Warner, Letters of the Republic, 127. Eve Kornfeld surprisingly traces the literary careers of Trumbull, Barlow, and Webster without ever mentioning their campaigns for copyright which were so integral to their work, in Creating an American Culture, 11-26.
modern conceptions of copyright, none adequately explore the specific cultural contingencies of the early national period that directly influenced the development and design of American copyright policies, contingencies which are certainly determinable from American source material.

As demonstrated by the appeals made by Trumbull, Barlow, and Webster in the 1780s, early American conceptions of copyright’s value were premised on the expectation that once copyright laws were established a wealth of literature – from belles lettres to political pamphlets to school primers to academic treatises – would be produced and reproduced for mass dissemination. The ingenuity of printers and the evolving capabilities of their industry and marketing of their consumables made such dissemination not only possible but expected. Yet the perceived utility of granting authors exclusive printing rights with copyright was conjoined with explicit legislative limitedness and conditional, which indicate that a more complex ideology of rights and expectations was at work in copyright’s creation.

“Why would the framers, whose political genius has not been exceeded, have countenanced such an unfair exception?” pondered distinguished author Mark Helprin in an article printed in *The New York Times* in 2007 regarding the constitutionally mandated limitedness of copyright terms. The present study’s examination of the early copyright acts, the historical moment in which they were created, and those who led the United States government through the early national period will answer that question and counter both the

notion of the purported “unfairness” of limited terms, and the outrageous explanations for them tabled by John Tebbel, which have been taken for granted by many other authors and artists, that “Congress has perenni ally been dominated by politicians...who by and large have had little or no interest in literature and the arts,” and that the nation’s first Congress under the Constitution rejected the idea of perpetual copyrights because “many of its members...had the anti-intellectual politician’s contempt for writers and writings.”¹² As Michael Warner has so succinctly and correctly stated quite to the contrary, “those who organized the revolutionary struggle and were placed in power by it were men of letters.”¹³

The preambles of the state copyright statutes of the 1780s all distinctively stated the national and cultural purposes that contemporaries thought would be served by the passage of such legislation. Connecticut’s act of 1783 provided copyright to prospective authors as it “may encourage men of learning and genius to publish their writings; which may do honor to their country, and service to mankind.”¹⁴ The legislature of Massachusetts granted literary protection on the premise that “the improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness, greatly depend on the efforts of learned and ingenious persons in the various arts and sciences.”¹⁵ And New


¹⁵ “Massachusetts: An Act for the Purpose of Securing to Authors the Exclusive Right and Benefit of Publishing their Literary Productions, for Twenty-one Years,” in Copyright Office, Copyright Laws of the United States of America, 4.
Jersey’s statute granted security to authors of published works because “learning tends to the embellishment of human nature, the honour of the nation, and the general good of mankind.”\(^{16}\) These are hardly words of contempt for writers and their writings.

In 1787, members of the Constitutional Convention unanimously agreed to redress the federal weakness of the Articles of Confederation in regulating the book trade by granting Congress the explicit power “To promote the progress of science and useful arts by securing for *limited times* to authors and inventors the exclusive right to their respective writings and discoveries.”\(^{17}\) Under the authority granted by that provision, Congress passed the first federal copyright act in 1790 which aptly expressed its intended purpose in its title, “An Act for the Encouragement of Learning.”\(^{18}\) Yet, the publication rights that were granted on these educational bases both in state and federal laws were unambiguously limited; the purpose of such limits stemmed from tenets of the very same reasoning, not from some pandemic anti-intellectual ailment among the American political elite.

The copyright terms and conditions in the early national period exhibited a distinct tension between private interests and the public sphere. The relationship between print culture and the public sphere in the Western world had only begun to develop at the turn of

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the eighteenth century as politics and political economy were increasingly debated in pamphlets and books which were widely consumed by the emergent bourgeois public.\textsuperscript{19}

Under the framework of individual state copyright laws passed between 1783 and 1786, American authors could apply for exclusive publication rights of their works – and only works that had not been published prior to the passage of such laws – in each state for terms that ranged anywhere from fourteen to twenty-one years. The term under the federal law of 1790 was set at fourteen years. If they were still alive at the conclusion of that term, authors could register their work for a second term. After a copyright expired, the work essentially entered the imaginary realm of the public domain, from where it could be reprinted or manipulated by any printer or publisher royalty-free without permission from the author. Thus, works which were deemed to still have particular educational or cultural value which outlasted the extent of their copyright term were then freely available for printers to competitively reproduce and sell, allowing such works to be widely disseminated among the public at low prices. This was the crux on which copyright legislation hinged; it was

\textsuperscript{19} The public sphere generally refers to the realm of free debate and interaction imagined in the public consciousness through a predominance of texts that are impersonal in nature and mass-produced, such as newspapers or novels. As such texts are consumed generally by an audience largely anonymous to one another, they are nevertheless made aware of each other’s existence through the mutual ritual of consuming identical textual artifacts. Habermas’ \textit{Structural Transformation of the Public Sphere} is the classic treatise on the development of the public sphere in the eighteenth-century. Michael Warner adapts Habermasian theory to the specific eighteenth-century American context in \textit{Letters of the Republic}, and Benedict Anderson’s examination of the rise of nationalism in \textit{Imagined Communities} also demonstrates the role of print culture in cultivating the public sphere.
designed not only to protect authors, but more importantly to protect and grow the public sphere of free access to letters.\(^{20}\)

In addition to limited terms, it is notable that five out of the twelve state statutes had provisions which made grants of copyright security conditional upon the amount of copies of a work an author made available to the public, again demonstrating a tension between the rights of the individual author and the public at large in the early national period. Connecticut’s statute provided that:

> Whenever any such author or proprietor of such a book, pamphlet, map or chart, shall neglect to furnish the public with sufficient editions thereof, or shall sell the same at a price unreasonable, and beyond what may be adjudged a sufficient compensation for his labour, time, expence, and risque of sale, the judge of the superior court in this state, on complaint thereof made to him in writing, is hereby authorized and

\(^{20}\) Patterson and Lindberg, *The Nature of Copyright*, 49-50. Lessig refers to the public domain as the “commons,” a resource to which anyone within the relevant community has a right to access or use without obtaining permission from anyone else, such as public streets or parks. Such resources are held in common by a community and are freely accessible. As such, the commons created by copyright was designed to enable access to letters. Lessig, *Future of Ideas*, 19-20. Lessig further demonstrates that there was no guaranteed public domain of literature in the United States until passage of the first federal copyright law of 1790. Prior to that act, there was no easy way to know whether a published American work was regulated by copyright, and thus in or out of the public domain. Lessig, *Free Culture*, 133.

Since copyright could only be registered to works created by American authors and only after the passage of these copyright laws, all foreign works and all works created prior to the passage of copyright legislation were thus automatically relegated to the public domain. In “Poets, Pirates, and the Creation of American Literature,” Bender and Sampliner argue that this provision likely stemmed from a nativist impulse to favor American authors over Europeans, yet that it ultimately had the unexpected adverse effect of making European works cheaper to produce and purchase and thus more widely disseminated by legalizing piracy of them. They demonstrate that this unintentionally undermined the efforts by American authors such as Webster and Barlow to create a distinctly American culture through the cultivation of indigenous literature.
impowered to summon such authors or proprietor to appear before the next superior court.\textsuperscript{21}

In such situations, the courts were granted the power to order the author or proprietor of the copyright to make sufficient copies of their work available to the public at a price determined by judicial consideration. Furthermore, if the author failed to comply with the court’s order, the statute authorized the presiding judge in such cases to give the complainant “full and ample licence to re-print and publish such book, pamphlet, map or chart” in such numbers and for such a term deemed reasonable by the court.\textsuperscript{22} South Carolina, North Carolina, Georgia, and New York all implemented similar provisions in their copyright statutes.

These distinct limits and conditions placed on copyright were not anomalous ideas in late eighteenth-century America. Nor were they anti-intellectual measures intended to spite the educated authorial class. They were measures intended to serve the overall public good by increasing the public’s accessibility to literature, and were characteristic of the pervasive republican ideology of the revolutionary and early national periods. Throughout that time, passionate political rhetoric often intertwined “the diffusion of knowledge” with liberty and representative government and resonated powerfully among the American elite. Such rhetoric rested upon specific conceptions of print and print culture,\textsuperscript{23} and strongly influenced the discussion over copyright, subsequently resulting in legislation designed as a utilitarian compromise. An examination of how early American contemporaries articulated


\textsuperscript{22} Ibid.

\textsuperscript{23} Warner, \textit{Letters of the Republic}, 124.
their republicanism, as well as the concurrent establishment of and prominent participation in learned societies helps explain why the design of initial American copyright laws explicitly limited the availability and functionality of publication rights.

**AMERICAN REPUBLICANISM**

“Liberty cannot be preserved without a general knowledge among the people, who have a right from the frame of their nature, to knowledge, as their great Creator, who does nothing in vain, has given them understandings, and a desire to know,” wrote John Adams in 1765. Writing in the wake of the Stamp Act crisis, he maintained that “the preservation of the means of knowledge among the lowest ranks, is of more importance to the public than all the property of all the rich men in the country.” Thus, he continued “let us tenderly and kindly cherish, therefore, the means of knowledge. Let us dare to read, think, speak and write.” Whereas it is often assumed that print has inherent values and characteristics which have naturally triggered changes in political culture through history, Michael Warner has demonstrated that discursive changes in the political culture of the eighteenth-century, particularly the Enlightenment and the emergence of republicanism, actually changed the textuality of printedness and constructed its social and political value. He argues that the republican ideology of the revolutionary period essentially developed as an ideology of print

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25 Ibid.

26 Ibid., 18.
which articulated its central categories through the symbolic practices of publication.\textsuperscript{27} Thus, when Adams and his contemporaries spoke about print and the diffusion of knowledge, or especially when they legislated regulations over the print industry, it was conveyed through a highly charged cultural and political discourse that carried very specific assumptions about the value of print.

Of course, print was able to acquire such value in republican America because of the unusually high literacy rates, which have been estimated to have been over ninety percent for the white adult population by mid-century.\textsuperscript{28} For republican Americans, print was synonymous with education, knowledge, and science, all of which were inextricably intertwined with the concepts of liberty and freedom. John Gardiner confidently delineated those connections within American republicanism as he stated to his Boston audience during their Fourth of July celebration in 1785: “The introduction and progress of freedom have generally attended the introduction and progress of letters and science,” and further proclaimed “in no part of the habitable globe is learning and true useful knowledge so universally disseminated as in our native country.”\textsuperscript{29}

Ascribing causal agency to print for the success of the revolutionary struggle, an article entitled “On the Means of Preserving Liberty,” which appeared in \textit{The New York Magazine} in 1790, declared that “A general diffusion of science, in every class of people, is

\textsuperscript{27} Warner, \textit{Letters of the Republic}, xii-xiii, 64.

\textsuperscript{28} David Saunders, \textit{Authorship and Copyright} (New York: Routledge, 1992), 156.

\textsuperscript{29} John Gardiner, \textit{An Oration, Delivered July 4, 1785, at the Request of the Inhabitants of the Town of Boston, in Celebration of the Anniversary of American Independence} (Boston: Peter Edes, 1785), 10, 21.
the true cause of that new series of events which have taken place in the United States.”

It went on to argue that:

The late war was a war of the people—general information convinced them of its justice, and that their all was endangered; hence sprang their unanimity, exertion and patience...A few enlightened citizens may be dangerous; let all be enlightened, and oppression must cease...Those institutions are the most effectual guards to public liberty, which diffuse the rudiments of literature among a people. Let the most perfect constitution finite wisdom can devise be adopted; if succeeding generations become ignorant—if a large part of the people are destitute of letters, their pious patrimony will be cheated from their hands; not, perhaps, by violence, but by a course of artful measures, against which ignorant men have no defence.

In a message to Congress only months before they considered passage of the first federal copyright law in 1790, President Washington conveyed to America’s legislative body that, “there is nothing which can better deserve your patronage than the promotion of science and literature. Knowledge is, in every country, the surest basis of public happiness.” Six years later, he closed his career in public life by further advising Congress, among other things, to “Promote...as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.”


31 Ibid., 2.


33 George Washington, Washington’s Farewell Address to the People of the United States, prepared by the United States Senate Historical Office (Washington, D.C.:
Proposals for educational reform in the American states by some of the most influential men of the time espoused similar tenets of republican ideology. Revolutionary era thinkers and founders of the new nation believed making education available to all was the key to creating a contented and prosperous republican citizenry, and education was of course linked directly to the products of the printing industry. Throughout the early national period several prominent men forwarded proposals for the establishment of publicly funded school systems in the United States. Thomas Jefferson authored an ambitiously extensive bill for a public school system in Virginia, Dr. Benjamin Rush made a similar proposal for his home state of Pennsylvania while publishing overtures on the proper method of education in a republic, and Noah Webster himself, by the late 1780s the veritable national schoolmaster due to the widespread use of his grammar books, argued for the necessity of educational reform tailored specifically to the new republican government.\textsuperscript{34} According to historian Eve Kornfeld, these reformers were dedicated to creating a large body of citizens capable of guarding their liberties jealously against the ever-encroaching powers of government, and sought to spread literacy and basic knowledge as widely as possible among

\textsuperscript{34} According to Emily Ellsworth Ford Skeel, Webster had sold the entire initial 5,000 copies of the first edition of his speller by 1784, and had printed twenty-one subsequent editions of it by January 1791. Skeel, \textit{A Bibliography of the Writings of Noah Webster}, 7-17. John Tebbel records that after the first federal copyright act was established in 1790, Webster contracted with publishers Thomas and Andrews who sold 300,000 copies of the speller under its initial fourteen year copyright. Five million copies had been sold by 1818, and twenty-four million by 1847. At the time Tebbel’s study was conducted in 1972, only the Bible had surpassed the sales of Webster’s spellers. Tebbel, \textit{A History of Book Publishing in the United States}, 68, 198.
American citizens. Their arguments for establishing publicly funded educational systems are especially insightful toward understanding how contemporaries likely understood the concept of copyright to function, as they were laced with the republican rhetoric of the apparent value of the general diffusion of knowledge and the overwhelming priority of the public good over that of individual interests.

Jefferson argued that the very survival of ideal republican citizenship depended upon the spread of knowledge among the people, and he frequently argued for the importance of public education throughout his lifetime. In 1778, he presented a piece of legislation aptly titled “A Bill for the More General Diffusion of Knowledge” to the Virginia legislature that would have established an intricate statewide system of public schools from the primary to the college level. The bill’s preamble expressed that “It is believed that the most effectual means of preventing [tyranny] would be, to illuminate, as far as practicable, the minds of the people at large, and more especially to give them knowledge.” Jefferson’s legislation unequivocally espoused his republican belief in the value of having a wholly educated public, rather than only an educated elite minority. And from his proposal we can discern an integral part of Jefferson’s ideology which ultimately favored the public good over private interests in regard to the dissemination of knowledge, as it was designed to make education available

35 Kornfeld, Creating an American Culture, 28.


to all free men at the “common expense of all,” rather than maintain the status quo of availability for the traditional gentry elite who could privately afford it. The enormity of Jefferson’s bill caused it to be delayed and amended several times in the legislature until the House of Delegates eventually passed it in 1785, only to be subsequently rejected by the Senate due to objections to the overall expense of its undertaking.\(^\text{38}\) Despite its failure, the bill nevertheless reflected the powerful political discourse of promoting an educated public and removing restrictions on the dissemination of knowledge that was characteristic of the early national period.

In a similar vein, Benjamin Rush, a physician, professor of medicine in Philadelphia, and a signer of the Declaration of Independence, sought to create a universal system of education in his home state of Pennsylvania that he believed would help fulfill the promise of the Revolution.\(^\text{39}\) In 1786 he penned two essays addressed to the legislature and his fellow Pennsylvanians entitled, “A Plan for the Establishment of Public Schools and the Diffusion of Knowledge in Pennsylvania,” and “Thoughts Upon the Mode of Education Proper in a Republic.” His essays laid the groundwork for reforming the state’s school system in accordance to his republican vision of the value of education and literature. Rush declared that “Every member of the community is interested in the propagation of virtue and knowledge in the state,” and his republicanism further compelled him to assert that the American public good superseded that of private individual interests to the extent that he insisted “Let our pupil be taught that he does not belong to himself, but that he is public

\(^{38}\) Wagoner, *Jefferson and Education*, 41.

\(^{39}\) Kornfeld, *Creating an American Culture*, 27.
property."^{40} His ambitious proposal entailed the establishment of free schools in every township, a college preparatory academy in each county, four state colleges, and a university located in the capital. Rush flatly justified the expense of such an undertaking on the premise that “A free government can only exist in an equal diffusion of literature.”^{41}

Unlike Jefferson or Rush, Webster never pursued a career as a statesman. However, as his Grammatical Institute became the most widely used textbook in America, he wielded significant influence over the method of education throughout the 1780s and 1790s. Webster is a unique case in that he was integral in the lobbying efforts to secure passage of copyright laws, despite the terms of which he never felt were fair, yet nevertheless articulated a powerful republican rhetoric that seemingly reinforced the perceived necessity of copyright’s conditional and limited terms. Through several essays on reforming the contemporary system of American education, Webster argued that the diffusion of knowledge among the citizenry of the new nation was vital to the maintenance of the new republican state because “information is fatal to despotism.”^{42}

As a patriot author and educator Webster sought to create a distinct American culture unharnessed from European influence. Ever desirous to promote the implementation of his

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^{41} Ibid., 3.

national linguistic reforms through the collective use of his textbooks, he claimed “nothing but the establishment of schools and some uniformity in the use of books can annihilate differences in speaking and preserve the purity of the American tongue.” He asserted that a major problem with the American school system was the lack of available indigenous literature, noting that most collections of texts used in schools were imported and conveyed knowledge of foreign and ancient nations rather than the new American nation. He argued that it would be much better to fix the minds of children on the interests of their own country, adding that “it is very little to the reputation of America to have it said abroad that after the heroic achievements of the late war these independent people are obliged to send to Europe for men and books to teach their children A B C.”

Such was the ideological and cultural environment in which copyright laws both were sought and established. The shortage of books in the United States that Webster acknowledged was not unnoticed by his contemporaries, and was a significant factor in why they designed those laws the way that they did. Copyright was designed to provide encouragement to would-be authors by providing them exclusive publishing rights for a sufficient period of time in which they could profit from their labors. Although authors might have disagreed with the limited and conditional terms and believed they were entitled to perpetual publication rights of their works, it was clear to contemporaries that expressly

43 Noah Webster, *Dissertations on the English Language: with Notes, Historical and Critical, to which is added, by way of Appendix, an Essay on a Reformed Mode of Spelling, with Dr. Franklin’s Arguments on that Subject* (Boston: Isaiah Thomas and Company, 1789), 19.

limited terms were intended to make literature more accessible to the public at large, thus espousing the ubiquitous republican virtue of broadly diffusing knowledge.

**Learned Culture**

By the time that distinctly American educational currents began to emerge in the 1780s, learned societies had established themselves as prominent fora for the production, dissemination, and consumption of knowledge among American lay-men and professionals. The function of those societies, their stated goals, and the membership of distinguished political and intellectual leaders of the early Republic provide additionally valuable insight into the contemporary ideologies and cultural values that strongly influenced the discussion over copyright at the legislative level. Although learned societies were distinct from educational institutions in their design, function, and participants, they pursued the similar goal of disseminating knowledge among the American public, and held that books and the printing trade were of central cultural and national value.

Learned societies provided an essential institutional structure for the pursuit of science and scholarship. Several such societies developed in America over the course of the eighteenth century, but none acquired the prominence or permanence of the American Philosophical Society Held at Philadelphia for Promoting Useful Knowledge, founded in 1769 by Ben Franklin, who served as its president until his death in 1790, and the American

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Academy of Arts and Sciences, founded in Boston by John Adams in 1780. These organizations were broadly oriented in their intellectual interests – ranging from agronomy to history to commerce to astronomy – and reflected the desire of late eighteenth-century American intellectuals to join in formal and generalized correspondence with one another in order to share local discoveries, inventions, and scholarship. While Franklin’s society held meetings in Philadelphia every two weeks, Adams’s met on a quarter-annual basis; both organizations published and circulated the proceedings of their meetings and activities, and the scholarly material submitted by their members.

Both societies were organized on a national level and overlapped in membership. Many of the eventual framers of the Constitution and political leaders of the United States were active members in these organizations. The American Philosophical Society boasted the membership of fifteen signers of the Declaration of Independence, eighteen members of the Constitutional Convention, fifteen of the thirty-nine signers of the Constitution, and thirteen members were eventually elected president of the United States. A list of some of the most prominent members includes George Washington, John Adams, Thomas Jefferson, Alexander Hamilton, Thomas Paine, Benjamin Rush, and James Madison. Similarly, members of American Academy of Arts and Sciences included Adams, Washington,

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Franklin, Jefferson, Hamilton, Madison, Robert T. Paine, John Hancock, and Samuel Adams. Whether formally educated or not, these men placed a significant value on learning and the production and dissemination of knowledge through literature among the free citizenry of the new nation. The learned societies provided them with an arena to gather and associate with one another and made available a means of publication that would serve those ends which was otherwise unavailable on such a comprehensive scale.

The American Academy of Arts and Sciences declared that its primary purpose was to “promote most branches of knowledge advantageous to a community.” Reflecting goals similar to those of the American Philosophical Society, the Academy’s charter of incorporation passed by the Massachusetts legislature on May 4, 1780 stated that the end design of the organization was:

To promote and encourage the knowledge of the antiquities of America, and the natural history of the country, and to determine the uses to which the various natural productions of the country may be applied; to promote and encourage medical discoveries, mathematical disquisitions, philosophical enquiries and experiments; astronomical, meteorological and geographical observations; and improvements in agriculture, arts, manufactures and commerce; and in fine, to cultivate every art and science, which may tend to advance the interest, honor, dignity, and happiness of a free, independent, and virtuous people.

Under this broadly conceived rubric of goals, James Bowdoin, the first president of the Academy declared, “Here is opened a wide and extensive field, which the sons of literature

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50 Memoirs of the American Academy of Arts and Sciences: To the End of the Year M,DCC,LXXXIII. Volume I (Boston: Adams and Nourse, 1785), iv.

51 Ibid., vii.
are invited to cultivate and improve: a field...so varied in its soils as to be adapted to every mode of cultivation."\textsuperscript{52}

The preface of the Academy’s initial \textit{Memoirs}, published in 1785 eloquently intertwines the rhetoric of freedom and republicanism with that of the values of producing and diffusing knowledge. Elucidating the ideological intellectualism of the early national period, it asserts that “it is the part of a patriot-philosopher to pursue every hint – to cultivate every enquiry, which may eventually tend to the security and welfare of his fellow citizens, the extension of their commerce, and the improvement of those arts, which adorn and embellish life.”\textsuperscript{53}

In 1789 members of the American Philosophical Society promised to “confine their disquisitions, principally, to such subjects [that] tend to the improvement of their country, and [the] advancement of its interest and prosperity.”\textsuperscript{54} Expressing clearly the inherent connection between their pursuit of disseminating information and the production of literature, they announced that “the means of conveying knowledge are now become easy,” as “printing houses are erected in all the principle towns on the continent,” and that “in this

\textsuperscript{52} James Bowdoin, \textit{A Philosophical Discourse, Addressed to the American Academy of Arts and Sciences, in the Presence of a Respectable Audience, Assembled at the Meeting-House on Brattle-Street, in Boston, On the Eight of November M,DCC,LXXX, After the Inauguration of the President into Office} (Boston: Benjamin Edes and Sons, 1780), 9.

\textsuperscript{53} \textit{Memoirs of the American Academy of Arts and Sciences}, viii.

\textsuperscript{54} \textit{Transactions of the American Philosophical Society Held at Philadelphia, for Promoting Useful Knowledge Volume I} (Philadelphia: R. Aitken & Son, 1789), xvii.
country, almost every man is fond of reading, and seems to have a thirst for knowledge.”

The Academy of Arts and Sciences maintained simply that it was “their indispensable duty to publish.” Thus, facets of the book publishing and printing industries were hardly peripheral or unimportant issues to the political elite who were active participants in the learned culture of the late eighteenth century. Rather, they attentively crafted policies to regulate the book trade that were saturated with the utilitarianism of their predominant republican national ideology.

**CONCLUSION**

The desire to disseminate literature broadly among the American populace infused the political, intellectual, and cultural climates in the United States during the 1780s. The early American nationalists who were so diligently involved in projects and organizations designed to promote a general diffusion of knowledge were some of the same men who designed and passed copyright legislation at the state and eventually the federal level. Their political rhetoric made explicit, and frequent, connections between the diffusion of knowledge and the protection of individual liberty and freedom. Thus, early in 1788 when James Madison defended the Constitution’s intellectual property clause in *The Federalist* by arguing that “the utility of this power will scarcely be questioned,” he invoked a host of

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55 Ibid., xxiii.

56 *Memoirs of the American Academy of Arts and Sciences*, ix.
several contemporary cultural conceptions of print, conceptions that were deemed to be so important to the public good that they were cemented into the nation’s founding document.\textsuperscript{57}

In addition to the encouragement copyright was expected to provide to prospective indigenous authors, its constitutionally mandated limits – which were predicated on the historical nature of the printing industry – were central to its perceived utility. Although Americans patterned the limits of their initial federal copyright policy after those established by the British copyright statute of 1710, arguing that American copyright ideology developed merely as an imitation of the earlier English policy ignores the historical contingencies of the early national period and the cultural transformation of print that took place over the course of the eighteenth century. British copyright limits were devised under significantly different political and cultural circumstances and were intended to curb the monopolistic control in the printing industry that had been formerly instituted under the Crown as a means of royal control and censorship.\textsuperscript{58} Nothing of that sort preconditioned the need for limited authorial-based copyright terms in the United States. Rather, the limited and conditional basis of early American copyright policy was designed and understood to be a republican quid pro quo measure that bridged the private interests of authors and the public good by providing authors the temporary privilege of exclusive publication rights and by legally ensuring both the existence and growth of a freely accessible public domain of print in the United States. By regulating the period of time in which authors could hold exclusive publication rights over


\textsuperscript{58} Patterson, \textit{Copyright in Historical Perspective}, 143-150.
their works, legislators believed they were promoting the general diffusion of knowledge and useful information among the reading public in two ways. First, they anticipated that sufficiently long copyright protection would cultivate an indigenous authorial class that would produce a wealth of useful and nationally reputable literature. Second, they believed that limited copyright would enable free access to the reproduction of works that were still deemed to be culturally valuable after the period of exclusive publication rights expired.

In response to scholars who believe copyright terms to be unfair, a brief comparison with patent law, derived from the same constitutional provision with essentially the same purpose in mind, might provide a clearer understanding of the utility in such limits. Patent rights encourage inventors to invent by providing security of profits from their creations. However, the limits on patents eventually enable generic variants of their inventions to be competitively reproduced and sold at lower costs by other manufacturers. Just as limited patents allow generic versions of brand-name pharmaceutical drugs to be made widely accessible for the overall public benefit, expressly limited copyrights were intended to enable culture and knowledge to be made widely accessible for the overall public benefit.

While Congress has held firm on maintaining limited patents because of the obvious benefits to society, corporate copyright holders have continually succeeded in lobbying Congress to lengthen the terms of their existing copyrights indefinitely, preventing their intellectual property from ever entering the public domain. Taking advantage of the constitutional ambiguity pertaining to copyrights that says only that they must be “limited,” legislators have extended copyright terms to egregious lengths. In 1790, the longest period of time a single copyright could last was twenty-eight years. In 2008, copyrighted works
remain under the exclusive control of copyright holders and their heirs for the entirety of their lifetime plus an additional seventy years. No works created after 1923 have automatically entered the public domain under the current copyright regime in the United States.\textsuperscript{59} Contrary to how copyright was initially intended to function, it now serves primarily the interests of producers and severely limits public access. In this context it seems that creators can hardly refer to lifetime copyright terms that extend three quarters of a century beyond their death as being in any way unfair.

\textsuperscript{59} See: Lessig, \textit{Free Culture}, 24-25, 135, 214.
CHAPTER IV
EPILOGUE

This is not a picture of copyrights imperfectly protected; this is a picture of copyright control out of control. As millions move their life to cyberspace, the power of copyright owners to monitor and police the use of “their” content only increases. 1
- Stanford University Law Professor Lawrence Lessig, 2002

“The bizarre and unhealthy state of copyright law is indeed a situation overdue for scrutiny,” wrote the Washington Post editorial board in 2002, referring to a series of legal disputes over the 1998 federal law that lengthened copyright terms by an additional twenty years, just in time to prevent Disney’s Mickey Mouse from entering the public domain. 2 As continuously extended copyright terms and extensively increased copyright privileges threaten the preservation and growth of the public domain in the United States, several important issues lie at stake. Publishers of academic journals and other literature are using digital technology to wield tighter control over and restrict access to their copyrighted material. The motion picture and recording industries and corporate copyright-holders are doing the same, resulting in tight-fisted conglomerated control over access to media and

1 Lessig, The Future of Ideas, 183.
materials useful in education and the creative arts.\textsuperscript{3} It is hard to imagine that eighteenth-century Americans could have anticipated these modern innovations in copyrightable artifacts and industries, yet the central foundations of their copyright ideology are not obsolescent. The successful lobbying efforts of corporate America have simply eclipsed the eighteenth-century concept of copyright, and it is now up to our Congressional representatives and judicial magistrates to decide where to go from here. Although the preceding study does not attempt to address the minutia of the modern copyright debate, it does contribute to it by providing historical insight into what copyright was intended to be by exploring the cultural climate in which it was conceived, and how contemporaries expected it to function as a regulatory device that ultimately served the public interest.

Early American intellectuals articulated their calls for literary security through a compelling nationalist discourse that highlighted the social and cultural circumstances of the revolutionary period. Prominent literati such as John Trumbull, Joel Barlow, and Noah Webster played a significant role in framing the national necessity of establishing sufficient copyright laws as a means both of declaring cultural independence from Britain and cultivating a distinct sense of national character and unity. American legislators responded to such pleas by crafting copyright policies influenced by the pervasive social and political currents of emancipatory republicanism and learnedness. Those currents led contemporaries to place a premium on public accessibility to literature and the widespread diffusion of

knowledge. As such, they expected the expressly limited and conditional facets of copyright to serve those ends. They granted temporary exclusive publishing rights both as a privilege and as a form of encouragement to prospective creators, in return for eventually making their “works of genius” freely accessible to the public at-large.

American copyright policy developed with society designed to be its primary beneficiary. Of course, laws are subject to historical change just as everything else, and just because the public was initially intended to be the beneficiary of copyright does not mean it must continue to be so. While scholars have demonstrated that its intents and purposes have indeed shifted significantly, the question thus becomes whether or not we as a society are best served by the copyright concept established by past precedent, or by the monopolistic corporate concept that prevails today.
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