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Public Records, Private Texts: Richard Carlile's Publication of
The Age of Reason and the Birth of Public Domain

Andrew S. Doub

A thesis submitted to the faculty of
Brigham Young University
in partial fulfillment of the requirements for the degree of
Master of Arts

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ABSTRACT

Public Records, Private Texts: Richard Carlile's Publication of *The Age of Reason* and the Birth of Public Domain

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Between 1818 and 1824, radical printer and publisher Richard Carlile made a determined effort to disseminate copies of Thomas Paine's banned text *The Age of Reason* in England. Despite strict censorship laws and harsh legal penalties used to curtail previous publishers of this title, Carlile employed a number of creative techniques that kept Paine's deistic writings in print and in circulation during the Regency period. These included republishing public domain court documents when he was charged with seditious libel and reading *The Age of Reason* in its entirety into testimony during his trial, making it part of the public record. Copied from trial transcripts and reprinted in cheap pamphlet form, Carlile's editions of *The Age of Reason* would sell an impressive 20,000 copies in these formats. He managed to provide wide-scale access to a work that had been suppressed by the British government since its original publication in 1794. My paper argues that Carlile's approach to subverting Regency-era censorship of *The Age of Reason* provided an early test for the recognition of the public domain in British law. Instead of continuing to suppress this text, the British government acknowledged the public's right to read the text in this format, allowing Carlile to use his own court documents to continue its publication. This event paved the way for recognition of the public ownership of texts and access to public records in nineteenth-century British print culture.

Keywords: public domain, print culture, publishing, romanticism, radicalism, Thomas Paine, deism, public documents, public records, copyright, intellectual property, The Age of Reason

ACKNOWLEDGEMENTS

I would like to thank my committee for their direction, patience, and support over the course of this project. In my time in the graduate program, Nick Mason, Ed Cutler, and Paul Westover proved to be outstanding teachers and mentors, and I am grateful for the kindness and encouragement they showed to me. I would also like to thank professors Leslie Thorne-Murphy, Emron Esplin, and Jamie Horrocks for being model scholars and instructors. I am grateful for the experiences I had with all who I was fortunate enough to study under during my time in the program. Finally, I would like to offer special thanks to my wife, Laurel, my sister Allison, my parents John and Ellen, and my grandfather John Beard for their unending love and support.

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Public Records, Private Texts:

Richard Carlile's Publication of Paine's *Age of Reason* and the Birth of the Public Domain

Although scholars of eighteenth- nineteenth-century British print culture have long emphasized the evolution of copyright, the corollary development of the public domain has received much less attention. One of the most active threads of copyright scholarship has come from literary historians who have persuasively shown how the legal regulation of the print marketplace and the protection of individual copyright proved key to the explosive growth of Romantic print culture. For instance, Mark Rose, in his influential monograph *Authors and Owners: The Invention of Copyright* (1993), points to the “emergent ideology of possessive individualism” as being the impetus behind the recognition of authorial identity (15). In Rose's view, when copyright law granted individual authors the ability to earn a living from their works and receive credit for their intellectual labor, it fostered the massive proliferation of periodical publishing during the early Romantic period (15).

A year after Rose's book appeared, John Feather released *Publishing, Piracy and Politics: An Historical Study of Copyright in Britain*, a study that meticulously charts 250 years of court decisions and Parliamentary legislation that led to the late-eighteenth-century moment when authors gained increasing control over their works and revolutionized periodical print culture. Of all the recent major works to examine publishing law during this era, however, William St. Clair's *The Reading Nation in the Romantic Period* (2004) places the greatest emphasis on copyright's impact in driving the print and reading cultures of the early nineteenth century. Along with Feather, he stresses the significance of the 1774 *Donaldson v Beckett* copyright decision, calling it “the most decisive event in the history of reading in England since the arrival of printing 300 years before” (109). St. Clair credits the increased regulation of

publishing rights as the main catalyst in shaping the literary landscape of the period, making possible what Paul Keen has termed “the age of authors.”

These three landmark works, as well as dozens of important books and essays that have come in their wake, have caused literary historians to be much more attuned to copyright law’s crucial impact on what authors wrote and the public read. At the same time, however, by treating copyright as the paramount legal innovation of early-nineteenth-century print culture, recent scholarship has overlooked how the rise of copyright protections was just one facet of the larger and more significant development of what we now call the public domain. As a first step to redress this scholarly gap, this essay will bring to light an important but overlooked event which propelled the formation of the modern public domain, the 1819 publication of Thomas Paine’s *The Age of Reason* (1794) by the radical British printer, publisher, and journalist Richard Carlile.

Like St. Clair, Feather, and Rose, I find that major changes in law are best understood through the events which helped to establish them. Carlile’s example is especially relevant as it created an important early test for the idea of public ownership of texts. When Carlile attempted to place a banned text in the public domain, the British government had a choice to make as to whether or not it would uphold the recent precedent of greater public records access it had established in the years before this event. Even though the early nineteenth century offered more opportunities for restrictions on publishing through libel prosecutions and political censorship, in the end the government decided to honor the inviolable boundaries of the public domain, setting in motion a precedent for public ownership of texts in the British legal system. Carlile’s publication shows that the public domain is much more than a repository for old literary works, but that this moment in Romantic-era print culture also helped to secure provisions for the freedom of public access to state documents in Western publishing law.

In what follows, I will offer a close examination of Carlile's publishing strategy during this period, demonstrating his use of emergent public domain protections to successfully thwart two decades of censorship against Paine's theological writings. The first part of this essay will trace the legal development of the public domain in British print culture. I will follow this by looking at the measures taken to keep *The Age of Reason* from entering into the print marketplace and I will show what made Carlile's use of the public domain exceptional considering the prohibitive conditions of the time. Then I will discuss how the basic right of the public domain coalesced as a result of the various legal battles over copyright law, and, most importantly, from the expectations of the new Romantic-era reading public. In essence, Carlile's publication demonstrated that if a text fell into the public domain, the government could not place further restrictions on it, provided that it met the conditions established by the law. Once private texts became public, it forced the British government to acknowledge the transfer of ownership.

Creating a Right to Copy

The first law to attempt to regulate the ownership of written texts was the 1710 Statute of Anne, more frequently referred to as the Act of Anne. The text of this act gave "copy owners" (individuals or publishers who physically owned a text) "the sole right and liberty of printing such book and books for the term of one and twenty years" (*Statute of Anne*). The act also recognized individual authors who had not published their writing; they were given 14 years of complete control over the contents of their manuscripts (*Statute of Anne*). But individual authors were not the instigators of this legislation. An elite group of London printers associated with the Stationers' Guild asked the British government to provide them with better protections against book pirates who were cutting into their profits by copying and reselling their most popular texts.

From this point forward, texts became a matter of property which could be legally possessed and defended in the courts, like other forms of property.

A number of important court cases took place in ensuing generations that helped to clear up the ambiguities of the Act of Anne. While the text of the law remained essentially unchanged for years, publishers and authors continually battled each other over what types of publications it covered and for how long. Publishers and copy owners sought and received more specified protections from their competitors in the print marketplace, some of whom created altered or abridged versions of their books in order to work around more general interpretations of the law. However, along with these legal protections also came clearer determinations of when texts could no longer be controlled by those who created or originally distributed them. Even though Feather only makes one reference to the public domain in his monograph, his description of its early-Romantic interpretation is an important one. Recounting the House of Lords' Donaldson v Beckett decision, which held that copyright was not perpetual and that certain limits on its duration were necessary, Feather writes that the most significant effect of this verdict was to "open the market to unlimited reprinting of any copy" not covered by copyright law (93). Once texts lost the protection of copyright, the House concluded that they would be "thrown onto the open market" where any publisher could reproduce and sell them as it pleased (Feather 93). This was the essential definition of the public domain during the eighteenth and early-nineteenth centuries.

In discussing the panic of copyright-holding London booksellers following this decision, Rose writes that "The works of Shakespeare, Bacon, Milton, Bunyan, and others, all the perennials of the book trade that the booksellers had been accustomed to treat as if they were private landed estates, were suddenly declared open commons" (53). It was this "open

commons” which formed the basis of the public domain in nineteenth-century Britain. Ironically, in the key moment when writers and copyright owners secured unprecedented protections for their works, British law also recognized the public’s right to own literary property that fell outside of the scope of these protections. Anything not specifically covered by copyright was in the public domain and freely available for unrestricted publication. While authors and individual publishers advanced in status as the owners, so too did the general public. It became clear that individuals could not possess the rights to a text without condition.

In his article on the origins of the public domain, literary legal historian Simon Stern traces this concept back to a 1735 proposal before Parliament that added a “reader-oriented provision” to copyright law (*Oxford Handbook*). This provision “ensur[ed] ongoing access to older books that ‘become scarce and out of print’” (*Oxford Handbook*). Stern paraphrases the language of the proposal as follows:

If the copy-owner should “neglect or refuse to reprint and publish” the text, then various officials might summon the owner and demand that the book be reprinted. If the demand were refused, the person who brought the issue to the officials’ attention could be “authorized and empowered” to print the book. The system of compulsory licensing contemplated by this provision reflects the view that, in exchange for the legal protection offered by the statute, the owner had an obligation to make the text permanently available. (*Oxford Handbook*)

Once a copy-owner agreed to publish a text, this provision essentially forced them to keep it in print or they would lose the rights to it and others could print it without penalty. Stern links this concept to the idea of a “working clause” in British patent law at the time, where the rights of

patent owners are terminated if they fail to “work the patent” (*Oxford Handbook*). This provision required any rights holder to make the texts they owned available.

Another legal precedent established during this time was that once a text entered the public domain, the government could not use copyright law to repossess it. Copyright scholar Catherine Seville notes several nineteenth-century legal cases which concluded that “copyright should not be used to sequester information that was in the public domain” once it became public property (224). In *Matthewson v. Stockdale* (1806), the court determined that once a text was recognized as being free from the protections of copyright, publishers could not use the statutes to retroactively remove it or make additional claims (Seville 224). This precedent set a clear boundary between what rights copy-owners could maintain over their works. Like other types of property, the law considered the transfer of ownership as being absolute once it occurred, even in the case of an intellectual work.

In considering the formation of a public domain, theorist Jürgen Habermas and his conception of the “public sphere” offers an important insight into how a mass group could claim to own texts or information. In his *Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (1962), a groundbreaking study on the democratization of media and society, Habermas noted that the literary sphere of the late-eighteenth century “spread beyond the pages of the printed press and beyond the restricted strata of the pedagogues and philosophies. ‘Critical reasoning’ occupied the proliferating coffee houses, the salons, and the literary societies” (Goode 7). The printed word gave life to the mass public by connecting them together through the uniting force of knowledge and information about politics, social issues, and the trends of governance.

Still, Luke Goode finds that Habermas “assigns a precursory role to the literary public sphere [that] suffers a certain ambiguity” (7). Habermas suggests that the political movements that came after the establishment of a free press in Britain played a bigger part in helping the public recognize the force they were as a united group. But the formation of the public domain offers evidence that print culture was a crucial element in cementing the idea of a mass public. Habermas actually validates this idea in his claim that the “literary public sphere prefigures its political counterpart” in its ability to connect the mass public and give it a presence in Britain’s body politic. The expectation that the public has an unalienable “right” to possess information in a certain domain is an eminently political statement. Habermas explains the formation of public spaces like this in *Structural Transformation*:

The bourgeois public’s critical public debate took place in principle without regard to all preexisting social and political rank and in accord with universal rules. These rules . . . secured space for the development of these individuals’ interiority by literary means.

These rules, because universally valid, secured a space for the individuated person. (54)

While the individual came to understand his or her own set of rules governing their understanding of the public sphere, the expectations of the mass public developed commonly shared expectations about their right to access knowledge through the literary sphere. In other words, the public domain is the result of a truly coherent public sphere that seeks to possess certain texts.

The most important aspect of the public domain to fall into place during the early nineteenth century was the recognition of what Habermas terms “the public of property owners” (56). This applied the “characteristic attributes of ownership” to an abstract concept of the public sphere. This includes the concept that the public could actually own something as a group,

separate from the individual. Habermas argues that this characteristic developed out of the “emancipation of civil society from mercantilist rule and from absolutistic regimentation in general” (56). This created a new category of owners who, like individuals, could also expect to control property that came into their possession. Once they became aware of the power of their position, the public used it to “influence the decisions of state authority” and “legitimate demands” of their rights as a group (Habermas 57). Habermas calls the formation of the British public sphere as a “model case” of the development of a public identity (57).

The British public became an active participant in the political and legal decisions of the autocratic state in the eighteenth and nineteenth centuries, including in matters of copyright regulation. During the various copyright debates that took place in the years leading up to Carlile’s publication, readers pushed back against new restrictions by forming their own set of expectations. Anything that would affect their access to information and literature came under harsh scrutiny. According to an article the August 1774 issue of the *Edinburgh Advertiser*, the hearings on Donaldson v. Becket before the House of Lords were standing room only in the public gallery, and more than 300 people had to be turned away for lack of space (“Hearings” 1). Franta’s reading public wanted to do more than just read; the public pressed to maintain the right to know.

When St. Clair mentions the loss of textual ownership in *Reading Nation*, he refers to P.B. Shelley’s *Queen Mab* (1813) as an example. The British government considered the radical poem politically dangerous and banned from future publication at the time of its release. In the case of *Queen Mab*, in 1821, a worker in William Clark’s London bookshop discovered an old set of unbound signatures from Shelley’s first private publication and produced a new edition from it (St. Clair 319). Shelley, by this point in his political development, considered *Queen Mab*

to be an unwisely-conceived piece of juvenilia, and he was worried about the legal repercussions he would face for authoring such a “blasphemous” poem. Much to his dismay, he found that Clark’s bookstore had found a large readership for its pirated edition on the black market (St. Clair 319). Shelley quickly attempted to put a stop to this by taking out an injunction against Clark, but the judge ruled that, since the government considered *Queen Mab* to be a work of seditious libel, it was not entitled to the protections of copyright law. Following this decision, Richard Carlile brought out his own pirated edition of the text in 1821, which expurgated the title page and a few of the statements that the government considered especially offensive (St. Clair 320). Using his acumen in black market print distribution, he ensured that this altered edition reached an even larger audience.

Reflecting on the consequences of this affair, St. Clair stresses that “the contradictions between the criminal law and the intellectual property law had brought about the very effects they were intended to prevent” (319). By taking away Shelley’s right to control the publication of *Queen Mab*, Carlile and other publishers were free to print their own editions. St. Clair emphasizes the end result for *Queen Mab*:

By the 1830s the poem was stereotyped, available at one shilling, soon to be reduced to sixpence, affordable by the very groups from whom the authorities wished to keep it. The book was never again out of print, being reprinted separately in cheap editions right through the nineteenth century. *Queen Mab* was, by far, Shelley’s most easily available, most frequently printed, cheapest, and most widely read book. (319-20)

Without the constraint of copyright, Richard Carlile and other pirates took a text that Shelley had hoped would remain private and made it into his signature recognizable work. This event highlights the transformative power of the proto-public domain, a legal tool which, by 1821,

Carlile had become quite adept in using. It was Carlile's initial foray into exploiting the aforementioned legal contradictions that would have the most lasting effect on Western print culture. Two years before his publication of *Queen Mab*, Carlile set the stage for state recognition of the public domain.

Public Records and the Trial of Richard Carlile

In October 1819, the libel trial of Richard Carlile commenced with the defendant himself offering to testify as part of the first day's exhibit. The Crown had recently taken Carlile into custody for his illegal publication of Thomas Paine's deist manifesto, *The Age of Reason*; but this had only been his most recent provocation, however, as for several years prior to his arrest, Carlile antagonized the government as a publisher of a variety of unapproved texts.

Paine's scathing critique of institutionalized religion and the legitimacy of the Bible were enough to make *The Age of Reason* a target for censorship, but the British government was even more concerned with preventing his influence on radical politics in the years following the French Revolution (Walters 13). Oxford professor, socialist, and radical historian G.D.H. Cole offered the authoritative account of Carlile's proceedings in his 1943 biography of the publisher.¹ After receiving permission from Chief Justice Abbott (who, according to Cole's research, was rumored to be an unbeliever in private life) to make the jury fully aware of its contents, Carlile stood before the bench, took hold of a copy of his edition of *The Age of Reason*, and began to read. Over the course of twelve hours, Carlile recited the entirety of Paine's treatise to the fatigued court, carefully enunciating every word to make certain that the court's recorder could hear him clearly (Cole 10-11).

¹ Cole was Carlile's earliest biographer. He was a member of the socialist Fabian Society and worked on a number of historical projects for them on radical print culture in the 1930s and 40s. He drew up the summary of these events from period news articles and Carlile's own publications.

The purpose of this unorthodox testimony was simple: by reading the censored text into the record of his trial, Carlile ensured that it would become part of what we would now call the public domain. As I will show, the state had long considered criminal court records a matter of public interest. Carlile knew that if he could get the contents of *The Age of Reason* into his court documents, he could transfer its status from a private to a public text. Although the Crown had successfully suppressed Paine's theological writings for the previous two decades, Carlile saw his prosecution as a loophole that he could exploit to keep *The Age of Reason* in print.

While the trial ended with Carlile's conviction for "seditious blasphemy" under the new Blasphemous and Seditious Libels Act (1819), the contents of *The Age of Reason*, as transcribed from Carlile's testimony, became a matter of public record (Cole 12). This tradition of making court records freely available to the British public dates to 1674, when the Central Court of England and Wales began issuing *The Old Bailey Proceedings*. The introduction to the digital archive of the *Proceedings* states that it was an inexpensive periodical, "targeted initially at a popular audience," which contained an account of every case to come before the King's bench ("Publishing History"). *The Proceedings* offered a mix of trial testimony, statements, verdicts, and other court documents. Legal historian Richard M. Ward finds that, far from being secretive about the business of its legal system, London authorities were eager to "create an impression of public justice" and "discourage criticism" through this open-records policy when they launched *The Proceedings* (11). Of course, Ward notes that there was a "highly selective nature" in the editing of these early, state-published trial reports, with most being biased against the defendant (11). Between 1674 and 1695, the government awarded publishing contracts for court proceedings to a number of elite Stationers' Guild printers ("Publishing History"). However, after the expiration of the Licensing Act in 1695, which granted a publishing monopoly to the

Stationers' Company, independent publishers began issuing their own trial reports. Over the ensuing decades, this led to a flood of popular titles featuring statements given by prisoners before their executions and observer reports from high-profile trials.

Relying on this tradition of public court documents, Carlile's wife, Jane, and his pressmen busied themselves with preparing the type to produce copies of the court documents regarding his case in 1819. While he languished in a cell at Dorchester Gaol, Carlile's presses churned out reams of official-looking "court proceedings" and "trial reports," all of which contained some part of his *Age of Reason* testimony. These reports struck an indignant tone toward Carlile's prosecutors, but also maintained an air of journalistic objectivity. Jane also issued a reproduction of her husband's original indictment, published as *Vice versus Reason: A Copy of the Bill of Indictment, found at the Old Bailey Sessions* (1819). Rather cleverly, this book consisted only of those passages from *The Age of Reason* which the prosecution found the vilest. Readers eager to peruse these scandalous selections from Paine's notorious work flocked to book stalls to acquire this pamphlet, much to the chagrin of those who put Carlile in the docket.

Carlile's shop would go on to sell an impressive 20,000 copies of Paine's theological writings in these legally-protected formats over a six-month period (Bald 8). Each pamphlet went through multiple print runs, and Carlile's well-established network of distributors and booksellers guaranteed heavy saturation in the market (Weiner 123). Even though the Society for the Suppression of Vice attempted to disrupt these publications by periodically sending agents into his shop and jailing Carlile's family members and pressmen on libel charges, Carlile set up a system in which replacement workers, equally dedicated to the cause, would take on the

responsibilities of those detained (Keane 21).² He wrote in *The Republican* from his cell: “If one web be destroyed, a few hours work will spin another, stronger and better than before” (Carlile 144).

With each new trial of his workers, Carlile’s bookshop would issue more publications containing parts of *The Age of Reason*. The defendants would find an excuse to enter the it into evidence or read selections from it in court, and then the shop would use this testimony to issue additional pamphlets copied from their trial records.³ Cole notes that after her arrest and imprisonment in 1821, Jane Carlile began “selling only works which had not yet been explicitly condemned”—including the series of trial reports—to keep the shop from being raided and having its presses seized (12). This left the Vice Society without a target for their investigations while she continued to sell *The Age of Reason* in some form.

Despite numerous legal and financial setbacks, the shop finally managed to issue a complete edition of *The Age of Reason* in 1822, using Richard Carlile’s full testimony from the first day of his trial as the source text (Cole 11). After more than twenty years of official prohibition, Paine’s three-part treatise on deism could finally remain in print without interference from the Vice Society. In tracing Carlile’s role in establishing a foothold for the reading of Paine in Great Britain, the publisher’s most recent biographer, Joel H. Weiner, notes that by 1824 these trial-related publications made *The Age of Reason* so ubiquitous that the government abandoned its attempts to suppress the text once and for all (123). Carlile’s three years in jail had made him

² The charges levied against Carlile’s wife, sister, and other shop managers did not include citations for their continued publication of *The Age of Reason* using Carlile’s trial testimony. Mary Anne Carlile was arrested for selling “An Appendix to Thomas Paine’s *The Age of Reason*.” Owing to the public records status of the main text, Vice Society agents instead charged them with blasphemy for printing Elihu Palmer’s deist tracts or issues of Carlile’s radical newspaper *The Republican* (*Defense* 1).

³ *The Defence [sic] of Mary-Anne Carlile to the Vice Society’s Indictment* (1821) offers a typical example of this type of pamphlet. It begins with a summary of the first part of her trial followed by a lengthy section of *The Age of Reason*. The shop was able to reprint this part thanks to James Rignall, a Vice Society agent, who purchased an early Carlile pamphlet from Mary Anne to entrap her and then had it entered into evidence on behalf of the prosecution.

infirm, and his family and his business had endured constant legal harassment; but by the time of this publication, Carlile's personal writings suggest that he "reveled in his situation and became ever more convinced of the rightness of Paine's ideas" (Weiner 110). Instead of preventing the British public from reading *The Age of Reason*, his trial ensured the widespread promulgation of its most "dangerous" ideas.

The Rights of the Reading Public

While scholars of early nineteenth-century radical print culture often reference Carlile as a free-speech advocate or purveyor of radical political tracts, his manipulation of the new emergent public domain has gone mostly unexplored. St. Clair lists Carlile among the many pirates, pornographers, and book copiers who emerged in the early Romantic era, but he is mostly interested in Carlile's tangle with P.B. Shelley. Furthermore, St. Clair wrongly suggests that Carlile's numerous legal battles were mainly stunts to attract "publicity and money," and he omits mentioning the various publications that came out of these prosecutions (314). Two earlier studies, Don Herzog's *Poisoning the Minds of the Lower Orders* (1998) and Marcus Wood's *Radical Satire and Print Culture: 1790-1822* (1994), reference Carlile's initial publication of *The Age of Reason* in passing, but both view his contributions to the radical news press via the *Republican* as his greatest legacy. Certainly, Carlile's free-speech activism and other publications are not insignificant, but the connection between Carlile's trial reports and the eventual unbanning of *The Age of Reason* offers key insight into the security of information in the public sphere, even during times of extreme censorship.

The suppression of Thomas Paine's writings on deism and Christianity serves as a valuable case study of the repressive conditions that publishers and booksellers endured at the turn of the nineteenth century. The prior history of the government's subjugation of print culture

shows just how remarkable their seemingly contradictory acknowledgement of Carlile's right to republish his court documents was. Politicized enforcement of copyright laws and the addition of strict libel laws in the late-eighteenth century expanded the definitions of treasonous and blasphemous libel. This made publishing a newspaper or political text extremely dangerous for anyone whose views did not align with the Tory establishment. The aftermath of the French Revolution coincided with the explosion of print culture, sparking a censorious climate of repression against the print market. British officials directly linked the growth of radical politics to book and periodical publication. St. Clair notes that "many in authority feared the growth of reading as such, irrespective of textual content" (308).

A literate, informed, and intellectually diverse citizenry was undesirable to those seeking to maintain the power of the aristocracy. In his book *Romanticism and the Rise of the Mass Public* (2007), Andrew Franta identifies what he calls the "emergence of a mass reading public" in the uncertain years after Napoleon's defeat at Waterloo. Franta goes into detail on the reaction of a British government gravely concerned with the impact of press freedoms in a new era of broad political interest. He also asserts that the laws restricting certain texts were not necessarily passed due to their content alone, but "in reaction to the emergence of a mass society" that could more easily access alternative political and ideological ideas (Franta 1-12). In short, the problem was not only with the blasphemous nature of Paine's theological positions, but the potential reach that they would have in a mass-print society. In reaction to this, a series of libel laws gave the government a new legislative tool it could use to stem the tide of dangerous reading material that publishers unleashed. Crucially, prosecutors linked the effects of libelous speech to sedition. Franta explains that "[b]ecause the law of criminal libel defined politically dangerous expression in terms of a text's potential for inciting a breach of peace, libel trials focused on a publication's

consequences” (12). Prosecutors only had to prove the possibility that some type of treasonous behavior could be inspired by an interpretation of the language in a text, whether it was explicit or not. This ensured that even the most mundane or veiled political and religious statements could be construed as criminally treasonous.

Carlile and members of his profession, especially those who shared his ideological persuasions, came under attack from Tory supporters of the Prince Regent. In the years leading up to Carlile’s trial, prosecutors dispatched agents of the notorious Society for the Suppression of Vice (founded in 1802) to spy on bookstalls and print shops. They posed as customers, digging through shelves and book carts to find offending publications that they could use as evidence against their sellers. The Vice Society saw the publishing community a serious threat that needed to be neutralized or brought into the party line. Anything that was even remotely considered controversial was officially banned or prohibitively taxed to prevent it from, as Herzog paraphrases conservative rhetoric of the day, “poisoning the minds of the lower orders” (100). And if some books were poison, the government considered Tom Paine intellectual strychnine. The authorities worried that the reading of radical or anti-religious material “would cause a resurgence of the political philosophies and egalitarian ideals that had inspired the revolution in France” (St Clair 308).

The fate of Carlile’s predecessors in the business of pirating Paine shows the government’s strict publishing policies in action. Ever since the first copies of *The Age of Reason* came off the presses, the establishment denounced the pamphlet as blasphemy against the Church of England and an affront to His anointed monarchy. Prosecutors worked hard to make printing or selling Paine completely untenable. In 1797, government agents discovered that Thomas Williams printed 2,000 copies of what was supposed to be the first British edition of the

The Age of Reason. He was interested in profiting from the massive amount of interest it had garnered since its debut in the United States. The state confiscated the copies that remained in his possession, and the King's Bench indicted Williams for producing blasphemous material.

The prosecuting attorney, Thomas Erskine—a Whig MP who defended Paine when he was tried in absentia for his publication of *The Rights of Man*—vigorously condemned Paine's work in his statement to the court, and made excuses for suspending the liberties of the press in order to protect the British public from the dangers of deism. He declared that *The Age of Reason*

treats the faith and opinions of the wisest with the most shocking contempt, and stirs up men, without the advantages of learning, or sober thinking, to a total disbelief of every thing hitherto held sacred; and consequently to a rejection of all the laws and ordinances of the state, which stand only upon the assumption of their truth. (*Erskine Speeches* 7)

In this case, because of the especially abrasive nature of Paine's deist positions, Erskine was willing to suspend the "fixed principles" of the free press in order to "administer laws for the preservation of the Government itself . . . so that decorum is observed" (*Erskine Speeches* 5).

Williams was convicted, fined a hefty £1,000, and sentenced to one year of hard labor (Bald 8).

The court concluded that "by subverting the truths of Christianity, [Paine's writings] undermined the government and the Constitution," both of which rested on the authority of the Anglican Church (Bald 8). After the judge's verdict, "[n]o edition of either part of the work was sold openly in England after 1797" (Weiner 108).

The next major attempt to create a pirated edition of *The Age of Reason* also ended in complete failure, both in publication and distribution. In 1812, the journalist Daniel Isaac Eaton patched together "some minor theological writings by Paine, which he described as 'Part Three' of *The Age of Reason*" and began selling them to book stalls (Weiner 108). The authorities once

again responded quickly. In the prosecuting attorney's statement to the court, he, like Erskine, also defended the suspending of any press freedoms necessary to uphold British values and shield the public from the poison of Paine's writing. He reasoned, "The effect of such doctrines on society at large, on every individual who composes part of it—the evil consequences which must inevitably be produced by them, if they were generally disseminated . . . would be dreadful to the extreme" (*Trial of Daniel Isaac Eaton* 6). Publishing *The Age of Reason* was "an offence as serious to the well-being of society, as any that can possibly be imagined" (*Trial of Daniel Isaac Eaton* 10). The jury convicted Eaton of printing blasphemies, sentenced him to stand in the pillory, and gave him 18 months in Newgate Prison for what was essentially a phony bootleg of the text (*Trial of Daniel Isaac Eaton* 1). Right after his release, he was discovered to have yet another edition in the works and was swiftly convicted again. Eaton's trial and news about Paine's continued suppression was, as Kelly Walters puts it, "all very good for publicity" and created a "surge in demand for the book" (Walters 19-20). However, Eaton was simply unable to meet it.

After these publications, the government expanded its ability to suppress print culture even further. Following the Peterloo Massacre on August 16, 1819, Lord Sidmouth introduced The Six Acts of 1819 in order to quell further disturbances. Sidmouth aimed the prohibitions listed in these acts squarely at the radical press. On November 30, 1819, Sidmouth stated that "any person having been tried, convicted and punished for a blasphemous or seditious libel, should on conviction of a second offence, be liable . . . to fine, imprisonment, banishment, or transportation [banishment from Britain] . . . [and] that all publications, consisting of less than a given number of sheets, should be subjected to a duty equal to that paid by newspapers" ("The Six Acts"). Publishers could be thrown out of the country if the government saw them as using

their presses to promote reformist ideas or radical political change. Furthermore, the Blasphemous and Seditious Libels portion of the Six Acts “fixed the penalties for these activities to fourteen years’ transportation, [and] magistrates were empowered to seek, seize, and confiscate all libelous materials in the possession of the accused” (Bloy). These acts established firm legal precedents for dealing with radical publishers.

As this review of legal developments and the previous publication attempts have shown, government censors were particularly effective at convincing courts that the publication of *The Age of Reason* merited the suspense of the “free” press and imprisonment of those accused of printing it. Both Williams and Eaton produced substandard, incomplete, and limited editions of Paine’s work, and many of the copies of what they did produce were confiscated and burned. Paine’s deistic writings failed to reach the British reading public on a significant scale. It would not be until Carlile’s publications that *The Age of Reason* would be published in a way that would both meet widespread demand and secure a permanent place for the text in the print market. His success relied on a number of factors, but the most important one was getting *The Age of Reason* entered into the record of his trial and then relying on the British government to honor its own tradition of releasing these records to the public. Without the agreement of the government that the text of Carlile’s testimony, even though it contained the contents of a censored work, was public knowledge and, as such, it could be reprinted by any who wished to publish it. Based on these previous examples, and on the government’s willingness to limit civil liberties to secure the political status quo, this outcome seemed highly unlikely.

However, the public domain strategy that Carlile employed would ensure that his editions of *The Age of Reason* could not be suppressed in the way that the others had been. Carlile and his workers churned out Paine’s theological works in a variety of forms and in large print runs. Cole

writes that “[h]e sold these works both in expensive bound volumes and in cheap parts, at prices which poor people could afford to pay” (3). Carlile secured the necessary materials needed for physical production of the text, and he used his specialized business acumen as a book seller to ensure maximum distribution.

The first 1,000 copies of his edition of *The Age of Reason* sold out within a month. The event was “[a]ccompanied by a wave of excitement” from the reading public (Weiner 109). A second edition of 3,000 copies was quickly ordered and sold at an even faster rate. Carlile then published an anthology entitled *Theological Works* (1818) that contained, among other writings, the highly controversial and extremely hard to find Part 3 of *The Age of Reason*. Carlile organized a complex and secretive network of booksellers and intermediaries who moved the copies. By the time the authorities had enough evidence to bring him to trial in the autumn of 1819, the damage was already done. His editions of *The Age of Reason* were thoroughly in circulation and were causing what Weiner describes as a true “revival” of interest in Thomas Paine’s writings (Weiner 106). The forbidden nature of reading a censored work added to the allure of acquiring the text. So, in a sense, Carlile managed to build up a much stronger position for himself in making his prosecutors feel that further attempts to rid the streets of Paine’s writings were futile. There were just too many copies to fit into one bonfire.

While the previous prosecutions of Williams and Eaton ended their publication of *The Age of Reason*, Carlile used his own trial, and the trials of his wife and shopmen, as an excuse to continue his. The practice of publishing documents related to one’s own legal proceedings has been traced back to Daniel Defoe whose *Hymn to the Pillory* (1703) was circulated among the crowd during his time in the stocks for publishing reformist writings (Wood 26). But Carlile’s many different reproductions, in whole and in part, of testimony containing the very text that the

state sought his imprisonment for stands out as unique. The size of the printings and the scale of distribution put the text into a more permanently accessible form. This exploitation of public domain laws left the hands of government censors tied behind their backs.

Recognizing the Public Domain

Richard Carlile's publication of *The Age of Reason* created the most important test of the validity of the public domain during its formative stages. Carlile demonstrated that he could exploit the legal protections that the public domain offered in order to secure the availability of a censored text. At the same time, the state recognized the transfer of *The Age of Reason* from the private to the public spheres in its decision to not prosecute those who published it as a part of the public record of a trial. While the content might have been inconvenient, the integrity of the public domain superseded the state's desire to restrict the publication of this specific text. Remarkably, the state acknowledged the public's ownership Carlile's trial record, even at the height of post-French-Revolutionary legislation against press freedoms. Carlile's case is a snapshot moment in which one determined publisher used a controversial text to expose a gaping hole in the new copyright regime of nineteenth century, one that future publishers, newspapers, and anti-secrecy groups rely on to subvert censorship to this day. The publisher took advantage of a tradition of public documents availability in a way that the legal regime did not anticipate, but in the end, accepted.

The public domain does not have a specific date of origin. Although the term fell into regular use in the mid-1800s, print culture recognized its legal precedent dating back to the first discussions on the restrictions of copying written texts. However, Simon Stern cautions that the public domain did not spring into being . . . after the 1710 Act of Anne nor does its existence date from the establishment of doctrines such as fair use in the mid-nineteenth

century; rather, the public domain developed slowly and intermittently out of practices and assumptions already in place in the seventeenth century and has been further bolstered (and hindered) by various legal and statutory developments over the past three hundred years. (*Oxford Handbook*)

When the state issued publications like *Old Bailey Proceeding*, it created an assumption that at least common court business and other public affairs became a part of the public sphere after these events had taken place. From this, Stern notes that publishers also developed “assumptions about the need for access to the materials of literary production” (*Oxford Handbook*). In essence, if a work or document entered into the public domain, publishers expected to be able to access it and republish it. Just as manuscripts, plotlines, and characters in the public domain could be reused or altered in new works, copies of Parliament speeches and trial testimony were also available.

While it is true that literary authors and their publishers played an important role in the formation of the public domain, other genres of printed material were also greatly impacted by evolving notions of which works were and were not part of the public domain. As copyright laws sought to end the abusive practices of scurrilous publishers and pirates in an unrestricted market, the democratization of the British press and the proliferation of print in the early nineteenth century expanded public access to texts containing parliamentary testimony, court orders, court testimony, high court rulings, and royal decrees. As this type of information became ever more popular, many publishers began to push the boundaries of these new laws to determine what materials they had the right to reprint. The state also had to deal with looking for ways to curb these expectations by embracing the publication of some documents while maintain restrictions

detering the publication of “certain kinds of books” which it sought to keep a tighter lid on (Feather 104).

Feather, St. Clair, and Mark Rose all tend to refer to the public domain in association with the copyright cases that defined what publishers could and could not print following the various court cases which established the copyright regime. In response to this trend in scholarship, Stern emphasizes that “the public domain focuses not on the residue of the uncopyrightable and out-of-copyright, but on the question of what writers need in order to be able to create new work. From this perspective, the public domain is an engine of literary production, characterized more by its generative potential than its role as a home for leftovers” (Stern). It is this “engine of production” which Richard Carlile used to reissue *The Age of Reason* in its public domain form.

In the end, Carlile’s great accomplishment was getting the government to acknowledge that it too was bound by the inviolable legal and ethical traditions of the public domain, the same as any other publisher or rights holder. But among these traditions, Carlile relied on a legal precedent that would become a key feature of the modern public domain: the statutory availability of a text in the public domain. Of all the complexities of the public domain, this aspect, which Carlile’s case exemplified, is the most important to securing the availability of information in the public sphere. Once a text is considered to belong to the public domain, it is free from further restrictions and must be available for access.

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