

Henry C. Carey, Publisher and Economist, on International Copyright

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Henry Carey's *Letters on International Copyright* was an influential pamphlet which opposed the establishment of the international copyright treaty in the United States. This work was published twice in 1853 and 1868, when there were substantial movements towards an Anglo-American copyright treaty. As a protectionist, Carey argued against extending copyright privileges to foreigners, pointing to several unfavorable effects which would result from the international copyright treaty between the US and the UK. His strong opposition to the treaty seems odd when we recall the fact that he was once a proprietor of a leading publishing firm in Philadelphia, one of the first American publishers to pay for the advance sheets of works by English authors such as Walter Scott and Charles Dickens. This paper aims to grasp the reasons for this change. According to Carey, international copyright would be injurious to American publishing business, which had plural centers and thus retaining its vitality.

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Henry Carey's *Letters on International Copyright* was an influential pamphlet which opposed the establishment of the international copyright treaty in the United States. As a protectionist, Carey argued against extending copyright privileges to foreigners, pointing to several unfavorable effects which would result from the international copyright treaty between the US and the UK. His strong opposition to the treaty seems odd when we recall the fact that he was once a proprietor of a leading publishing firm in Philadelphia, one of the first American publishers to pay for the advance sheets of works by English authors such as Walter Scott and Charles Dickens. When he was in the publishing business, it seemed that he was sympathetic to the idea of international copyright. His conduct as a publisher might seem to contradict the claims he made in the *Letters on International Copyright*. The purpose of this paper is to understand the reasons why Carey was against international copyright and suggest some reasons for this change.

The pamphlet, *Letters on International Copyright*, was published twice, in 1853 and again 1868. Both were crucial years when there was substantial movement towards an Anglo-American copyright treaty. When the first edition was published in 1853, a draft of an Anglo-American copyright treaty was discussed in the Senate, and actually a signed draft was prepared. The US government avoided a discussion in the House of Representatives where opposition to international copyright had been strong. However, a number of petitions against the treaty were presented to the Senate from the end of 1853 to the early months of 1854, and eventually, the treaty was not ratified.

In the “Advertisement” of the first edition, Carey stated: “The following letters were written in reply to an application for information from the Hon. Mr. Cooper, one of the Senators from Pennsylvania. The subject being one of general interest, and the views being different from those generally entertained, the author deems it expedient, with a view to invite discussion, to place them before the public in their present shape.” As the latter part of this advertisement indicates, Carey wished to provoke a discussion on the subject, because he was critical of the secrecy with which the U.S. government tried to enter into a treaty with the UK. This situation is summarized in the 6th letter of the *Letters on International Copyright*.

... when they [writers] had failed to accomplish their object by means of legislation, they had induced the Executive to interpose and make a law in their favor, in defiance of the well-known will of the House of Representatives.¹

The second edition, with a newly added preface, was issued fifteen years later, in 1868. Immediately after the Civil War, the discussion over the international copyright was resumed. James Parton’s famous article on how American authors such as Harriet Beecher Stowe, were deprived financially, due to the absence of international copyright, was published in the *Atlantic Monthly* in 1867. Charles Dickens visited the US for the second time for a reading tour from November 1867 to April 1868, and Anthony Trollope was involved in negotiating an international copyright treaty during his visit to the US in 1868.

Carey’s *Letters on International Copyright* takes the form of a reply to the Senator, James Cooper, and consists of six letters. The first two emphasize the reasons why he does not think further copyright protection—that is, longer in term, and wider in geographical dimension—is necessary. Carey draws readers’ attention to the fact that the discoverer of scientific truths and philosophical ideas which are now common property, such as Copernicus, Kepler, Newton, or Bacon, Locke, Descartes, Franklin and Adam Smith, for instance, were not rewarded financially. Once their discoveries were made public, the discoveries become public property, and the scientists and philosophers could not claim any personal property rights over them. On the other hand, according to Carey, there are novelists and historians who simply arrange facts which are already common knowledge, and thereby produce their writings. Carey points out that the labor of writers is much less arduous than that of the discoverers, and they earn much more money through their writings than discoverers of scientific truths. He stated: “The whole tendency of the existing system is to give the largest reward to those whose labors are lightest, and the smallest to those whose labors are most severe; and every extension of it must necessarily look in that direction.”² Considering these facts, the further extension of copyright privileges is not justified, according to Carey. He maintains that the limited copyright period of 42 years which was already granted by US copyright law of 1831 was sufficient for writers.

In another place, Carey explains that intellectual properties are different from properties such as houses, because “The man who builds a house quarries the stone and makes the bricks of which it is composed, or he pays another for doing it for him. When finished, his house

1 Carey, *Letters*, 1st ed., 67.

2 Carey, *Letters*, 1st ed., 23.

is all, materials and workmanship, his own. The man who makes a book uses the common property of mankind, and all he furnished is the workmanship.”³ He continues: “Society permits him to use its property, but it is on condition that, after a certain time, the whole shall become a part of the common stock.” This is the reason why he thought a limited term of monopolistic ownership was appropriate. For Carey, international copyright is nothing but an unjustifiable extension of monopoly. This is a fundamental claim which his argument in these letters presupposes.

In the third letter, Carey analyses how the present system operates in regard to English and American authors, and offers conjectures regarding the cause of the poverty of English authors. He claims that the small market for books, created as a consequence of the market’s centralization, is the cause of their destitution. He further argues, that the Scottish character of Scotland had been lost as a consequence of the union of Scotland and England.⁴ In other politico-economical works such as *The Past, the Present, and the Future* (1843), and *Principles of Social Science* (1858–9), Carey speculates on the various effects caused by the union of the UK and Ireland. Carey attributes the cause of the decline of the publishing business in Ireland after the union to the extension of copyright law to Ireland. By sharing the same copyright laws and coming under the effect of the centralization of the UK, the publishing business in Ireland, which flourished in the eighteenth century, was forced into decline. This seems to be one of the major reasons why Carey opposed the Anglo-American treaty.

Carey analyzes the reason why English authors turned their attention to the American market for their works in the fourth letter. He says it is because British authors are poorly paid in their own country. According to Carey, this was a consequence of the “cheapening of labor” generally observed in the UK—like the works of other laborers, authors’ labor is inadequately paid there. This, too, is a result of the market’s centralization, he argues.

In the fifth letter, Carey defends the decentralized American system which is the opposite of the centralization of the UK. Carey argues that America’s decentralization enables the growth of newspapers, magazines, and book publishing, and this makes possible liberal payments to writers in general. While the British system allows a few popular authors to prosper and leaves numerous others destitute, in the US, budding writers can earn reasonable sums by contributing to newspapers and magazines issued in various towns and cities. Unlike the centralized market in the UK, America has several publishing centers such as “Boston, New York, Philadelphia, and even Auburn and Cincinnati.”⁵ By granting exclusive legal right to publish a certain work by a foreign author, Carey fears that this decentralization of the US, the vitality of the US publishing business, would be lost.

In the concluding letter, Carey put forward three important arguments. Firstly, as is stated in the following quotation, he considered the ratification to the international copyright treaty to be one of “entering on the path of centralization,” which would undermine the vitality of the American system of decentralization:

3 Carey, *Letters*, 1st ed., 20.

4 Carey, *Letters*, 1st ed., 30.

5 Carey, *Letters*, 1st ed., 54.

If it be ratified, we shall be only entering on the path of centralization; and it may not be amiss that, before ratification, we should endeavor to determine to what point it will probably carry us in the end.⁶

Secondly, as is quoted here, under the system of international copyright, publishing business would decline in due course because of the rise of book prices:

Under the system of international copy-right, one of two things must be done—either the people *must* be taxed in the whole of this amount for the benefit of the various persons, abroad and at home, who are now to be invested with the monopoly power, or they *must* largely diminish their purchases of literary food.⁷

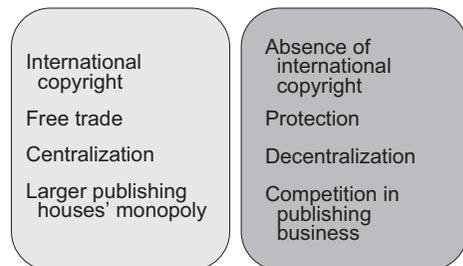
Thirdly, Carey concludes that the real cause of difficulty lies in the fact that “The monopoly of copy-right can be preserved only by connecting it with the monopoly of publication.”⁸ That is, under copyright law, only one publisher would hold exclusive right to publish a certain work. As he made clear in the preface to the second edition of this pamphlet, this would further enhance the power of established publishing firms in the Eastern cities, and emerging publishers in the South and West would not be able to compete with them.⁹ However, this monopoly of publication is requisite for the maintenance of the system of international copyright, because authors cannot collect what is due to them in foreign countries without it.

If we summarize Carey’s view, international copyright meant what is equivalent to free trade doctrine and centralization, while an absence of international copyright meant protection and decentralization.

Thus Carey was a powerful opponent of international copyright by 1853, but, when he was a proprietor of a leading publishing firm in Philadelphia, he was a publisher who respected foreign authors’ rights by making voluntary payments to them, although this was restricted to popular authors such as Walter Scott, Charles Dickens and Thomas Carlyle.

For instance, Carey’s firm remained on friendly terms with Dickens for about five years until 1842, when Dickens decided not to make any contract about advance sheets with American publishers in order to show his protest against the deadlock over Anglo-American

Henry Carey’ s View of International Copyright



⁶ Carey, *Letters*, 1st ed., 57.

⁷ Carey, *Letters*, 1st ed., 60.

⁸ Carey, *Letters*, 1st ed., 62.

⁹ Carey, *Letters*, 2nd ed., 9.

treaty.¹⁰ In June 1837, Carey's company wrote a letter to Dickens and offered him 25 pounds for his *Pickwick Papers*, which they had already reprinted in the US. According to Measuring Worth website (<http://www.measuringworth.com>), 25 pounds in 1837 was equivalent to 127.50 dollars. When we compare it with the 750 dollars paid to James Fenimore Cooper for his relatively minor work, *Gleanings in Europe* in the same year, it was a small amount, but Carey's firm seemed to have paid an additional 50 pounds in 1838 for *The Pickwick Papers*, and published *The Old Curiosity Shop* and *Barnaby Rudge* with payments of more than 100 pounds each. These payments show that he was sympathetic to the idea of international copyright protection. In fact, in 1828, to Cooper who claimed: "You will never have a National Literature until you put the Native writers on a level with the English by giving some rights to the latter", Carey replied that his publishing firm was in favor of protecting foreign authors' rights, although he had to add that he believed it to be impracticable.¹¹

Thanks to the "courtesy of the trade," there was a tacit understanding that publishers refrained from reprinting British works which were first published by another American publisher. By publishing a certain work by Dickens, for instance, for the first time in the US, Carey's company could secure a position as the, so to speak, "legitimate" American publisher of Dickens. Therefore, by securing the advance sheets from UK publishers or authors, he could forestall other American publishers. Obviously, there was commercial merit for paying for advance sheets, but, for Carey, as he was then a proponent of free-trade, international copyright protection was not incongruous with his view.

Carey's change is connected with his shift from free trade doctrine to protectionism, which occurred in the early 1840s. His first published work, *Essay on the Rate of Wages* (1835) showed Carey's acceptance of free trade doctrine. However, in the course of the 1840s his view changed, and by the time he wrote *Commercial Associations in France and England* in 1845 and *The Past, the Present and the Future* published in 1848, he had discarded his previous support of the free trade system, and turned to protectionism. According to William Elder, a friend of Carey, a sign of his conversion to protectionism had been observed in 1844. There are several reasons for this change, and some conjecture that the ruin of a paper manufacture in New Jersey in which Carey had invested heavily between 1837 and 1840 was a crucial factor, and others reasonably suggest that his observation on the economic condition of the United States—the financial panic of 1837, the prolonged depression that followed, and the economic growth after the adaptation of the protective tariff of 1842—was the cause of this change. His shift from free trade to protectionism was reflected in his stance over international copyright.

Thus his view over international copyright had changed drastically, in *Letters on*

10 On return from his first American tour in 1842, Charles Dickens published a letter declaring his intention to cease negotiations with any American publisher. This letter was sent to writers and publishers such as Thackeray, John Murray and William Pickering, and was printed in several journals including the *Morning Chronicle*, *Athenaeum* and *Literary Gazette*. In this letter, Dickens stated as follows:

For myself, I have resolved that I will never from this time enter into any negotiation [sic] with any person for the transmission, across the Atlantic, of early proofs of any thing I may write; and that I will forego all profit derivable from such a source. I do not venture to urge this line of proceeding upon you, but I would beg to suggest, and to lay great stress upon the necessity of observing, one other course of action: to which I cannot too emphatically call your attention. (Dickens, *Letters*, vol. 3, 256)

11 Cooper, *Letters*, vol. 1, 259.

International Copyright, it seems that he avoided mentioning the change in his own views. In the fourth letter, Carey questions: “But is it really true that foreign authors derive no pecuniary advantage from the republication of their books in this country?”¹² Here, it is reasonable to expect that there would be some references to the payments that American publishers were making to British authors; however, his answers as follows:

It is not. Mr. Macaulay has admitted that much of his reputation, and of the sale of his books at home, has been a consequence of his reputation here, where his Essays were first reprinted.¹³

He only suggested that the reputation of some writers like Macaulay, Lamb, De Quincey and Thackeray in the United States had stimulated the sales of their works in their own country. And there is no reference to customary payments to British writers made by American publishers. In such a detailed discussion as he developed in the pamphlet, it is strange that he did not mention the fact that American publishers, including his own firm, were making payments to British authors.

Although there was no reference to this custom in the first edition, in the preface newly added to the second edition, he referred to the custom critically. He maintained that because of such payments, the price of British works came near to that of American, and it was a “dangerous” tendency:

In common with many heretofore competing railroad companies they have found that, however competition among themselves might benefit the public, it would tend rather to their own injury, and therefore have they, by means of most stringent rules, established a “courtesy” copyright, the effect of which exhibits itself in the fact, that the prices of reprinted books are now rapidly approaching those of domestic production. Further advances in that direction might, however, prove dangerous.¹⁴

He retired from the publishing business on 1st October, 1838. By the time he published the second edition, nearly thirty years had passed since he left the publishing business and, probably, he could safely criticize the custom which his company initially adopted in the US. It is ironical that he had to criticize the custom later, denouncing international copyright protection.

As we have seen, Carey’s view of international copyright thoroughly changed, as his stance on economics changes. If he were a proprietor of the Philadelphia publishing firm in the 1850s and 1860s, he might have supported international copyright. When he was a publisher, his primary concern was naturally for the profit and development of his company. But by the time he wrote *Letters on International Copyright* he did not have any need to protect his own interest as a publisher, and he did not have any need to earn his living through his writings as an author. As he stated in the preface to the second edition, he believed that “the right is on the

¹² Carey, *Letters*, 1st ed., 43.

¹³ Carey, *Letters*, 1st ed., 43.

¹⁴ Carey, *Letters*, 2nd ed., 8–9.

side of the consumer of books, and not with their producers, whether authors or publishers.”¹⁵ It is undeniable that, at a first glance, his stance is rather that of a lack of sympathy for authors than just disinterestedness; however, the first two letters are persuasive enough to convince readers that they should reflect on whether it is appropriate or not before extending copyright further. His position liberated him from personal interests and gave him a wider perspective. Thus he could take up the international copyright question relating it to the larger issue of free-trade and protectionism and could offer a unique view on the issue of international copyright.

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15 Carey, *Letters*, 2nd ed., 14.