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Locke's 1694 Memorandum (and more incomplete copyright historiographies)

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Locke's 1694 memorandum
(and more incomplete copyright historiographies)[*]

introductory notes by Justin Hughes

In 1694 (or possible 1695), John Locke wrote a "memorandum" concerning renewal of the Licensing Act, the parliamentary act which had given the Stationer's Company exclusive control of publishing in Britain since the abolition of the Star Chamber. This introduction gives some background on the memorandum and responds to ways the memorandum has been interpreted by those writing about intellectual property. Readers may want to skip immediately to the memorandum.

The copy here of the memorandum comes from Peter King's 1830 THE LIFE OF JOHN LOCKE.[1] The memorandum also appears in King's 1884 THE LIFE AND LETTERS OF JOHN LOCKE. Peter King was John Locke's cousin and heir, receiving express instructions from the philosopher regarding his unpublished works. The text of the memorandum as well as Lord King's explanatory introduction are the same in both volumes (with the exception of one paragraph break).

Lord King says that the memorandum was "probably written at the time when the Printing Act was last under consideration in Parliament in 1694,"[2] although others say the memorandum may date from 1695.[3] The King volume does not identify to whom the memorandum was written, but scholars agree that the addressee was Edward Clarke, a member of Parliament with whom Locke was closely allied.[4] Locke had already initiated

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[*] This introductory essay and this .pdf version of Locke's 1694 memorandum are intended as an accompanying piece to Justin Hughes, *Copyright and Incomplete Historiographies: Of Piracy, Propertization, and Thomas Jefferson*, 79 SO. CAL. L. REV. 993 (2006). My thanks to Michael Carroll, Arthur Jacobson, Rob Merges, and Adam Mossoff for their comments. Permission is hereby granted for noncommercial reproduction of this introductory essay in whole or in part for educational or research purposes, including the making of multiple copies for classroom use, subject only to the condition that the name of the author and appropriate citation be provided. Of course, the Locke memorandum is public domain.

[1] 1 LORD PETER KING, THE LIFE OF JOHN LOCKE 375, 387 (London, Henry Colburn, 1830). A third place that the memorandum can be found is JOHN LOCKE, POLITICAL ESSAYS 330 - 337 (Mark Goldie, ed. 1997) [hereinafter "Goldie"] The pages here from the 1830 edition of Lord King's THE LIFE OF JOHN LOCKE are also available from Google Books at: http://books.google.com/books?vid=OCLC00686706&id=X0uHijB7sQoC&pg=PA1&lpg=PA1&ots=FkrwlAssOL&dq=life+of+john+locke+peter+king

[2] *Id.* at 375.

[3] *See* II H.R.F. BOURNE, THE LIFE OF JOHN LOCKE 314 (1876) ("we have a very important paper which he drew up some time after, probably in the spring of 1694-5"); Mark Goldie places the memorandum as "probably January 1695 or earlier." *See* Goldie, *supra* note 1 at 329.

[4] My thanks to Mark Rose for pointing me to Raymond Astbury, *The Renewal of the Licensing Act in 1693 and its Lapse in 1695*, 33 THE LIBRARY 296, 305 (1978). *See also* II H.R.F. BOURNE, THE LIFE OF JOHN LOCKE 315-316 (1876) (describing how the memorandum was received by Edward Clarke who used it

a discussion of the Licensing Act in a January 2, 1693 letter to Clarke (hereinafter "January 2 Letter") that is consistent in its tenor and arguments.[5] Clarke apparently shared the memorandum with other members of Parliament[6] and Locke is credited by at least one scholar as being "directly responsible for . . . the expiry of the licensing of the press."[7]

In the face of continued efforts to renew the Licensing Act, in March 1695 Clarke introduced in Parliament a much less onerous counter-proposal for regulating the press. Locke was sent the proposal on March 14, 1695 and quickly responded with his own suggestions for amendments; Locke's suggestions further instruct us – as discussed below -- on Locke's views of authorial rights.

Although the memorandum begins with censorship issues [at 375-377] and occasionally returns to them [e.g. at 384], Locke focuses a great deal of his prose on the economics of the issue: the high cost of classic works and the shoddy quality of printing in England compared to printing in Holland because of the exclusive rights held by the Company of Stationers. Locke describes them as being the "lazy, ignorant Company of Stationers, to say no worse of them" [at 381], a description repeated in his January 2 Letter to Clarke.

Locke commentators predominantly understand the memorandum in the context of censorship,[8] but it is its focus on the monopoly held by the Stationers – as well as Locke's near silence on authorial rights -- which has brought the memorandum into discussions in intellectual property circles.[9] The different ways scholars approach the memorandum does point to an important interpretative question: how much was Locke

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in parliamentary arguments to defeat renewal of the Licensing Act).

[5] John Locke, Letter from John Locke to Edward Clarke, 2nd January 1692 [3] in BENJAMIN RAND, ED., THE CORRESPONDENCE OF JOHN LOCKE AND EDWARD CLARKE 366 - 67 (Harvard University Press, 1927).

[6] Astbury, *supra* note 4 at 309.

[7] Peter Laslett, *Introduction*, in JOHN LOCKE, TWO TREATISES OF GOVERNMENT – A CRITICAL EDITION WITH AN INTRODUCTION AND APPARTUS CRITICUS 52 (Laslett, ed. 1960) (hereinafter TWO TREATISES); See also Peter Laslett, *John Locke, the Great Recoinage, and the Board of Trade, 1695-1698*, XIV WILLIAM AND MARY QUARTERLY (3rd series) (1957). Raymond Astbury places both the memorandum and Locke's previous letter to Clarke in the context of "Locke's campaign to try to ensure that the Commons would not renew the [Licensing] Act again." Astbury, *supra* note 4 at 304.

[8] In his introductory remarks, King describes the memorandum as Locke's reaction against censorship; in the 1884 volume, the memorandum carries a header "HIS OBSERVATIONS ON THE CENSORSHIP" [sic]. (I do not know whether this header was King's editorial choice.) Fox Bourne's 19th century biography of Locke similarly describes the memorandum as presenting "arguments for liberty of the press." Bourne, *supra* note 2 at 315. Professor Goldie entitles the memorandum and related documents under "Liberty of the Press," but recognizes that "[l]iberty of the press was not the only, perhaps not even the main, rallying cry of opponents of the Act, but rather the lucrative monopoly powers of the Stationer's Company." Goldie., *supra* note 1 at 329.

[9] The three commentators I am thinking of are MARK ROSE, AUTHORS AND OWNERS (1993); Seana Valentine Shiffrin, *Lockean Arguments for Private Intellectual Property*, in NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY 138 (Stephen R. Munzer, ed. 2001), available at http://www.law.ucla.edu/home/index.asp?page=701; Lewis Hyde, *Frames from the Framers: How America's Revolutionaries Imagined Intellectual Property*, The Berkman Center for Internet and Society Research Paper 2005-08 (October 2005), available at http://cyber.law.harvard.edu/home/2005-08.

making an economic argument (against the Stationers) only to achieve more obliquely a political end (the end of censorship)?

No express connection between Locke's property theory and rights in books

Neither the memorandum nor, apparently, any other now published writing of Locke makes any express connection between rights (or their absence) in expressive works and Locke's property theory.[10] On the other hand, there are at least two good reasons not to infer too much from this silence. First, as Seana Shiffrin points out, we should not "make too much of the[se] brief, political remarks"[11] – and they indeed seem to have very politically-oriented remarks.[12] Second, the memorandum does hint that Locke would not have been opposed to the application of his labor theory of property to expressive works -- with one exception.

Locke's opposition to perpetual rights in books

The exception is that Locke was quite consciously opposed to the idea of perpetual exclusive rights in expressive works.[13] Halfway through the memorandum, he objects to exclusive rights "in any book which has been in print fifty years."[at 379 – 380][14] He

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10 There are also at least a couple places in the *Two Treatises* (Locke scholars may identify others) where Locke deals with a subject where one thinks he might have seen a connection -- but does not -- between his theory of ownership and the generation of new ideas and expression. For example in Section 44 of the Second Treatise, he writes:

> From all which it is evident, that though the things of nature are given in common, yet man, by being master of himself, and proprietor of his own person, and the actions or labour of it, had still in himself the great foundation of property; and that, which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniencies of life, was perfectly his own, and did not belong in common to others. TWO TREATISES, *supra* note 7 at 340-341.

The ambiguity in this passage is that that which a person creates through labor *after* "invention and arts ha[ve] improved the conveniences of life" belongs to the person as property, but there is no thought on who might own the "invention and arts." As one Locke scholar has commented, in this passage it seems that "[t]he 'Inventions and Arts,' however, are not perfectly his own and do belong in common with others." RUTH W. GRANT, JOHN LOCKE'S LIBERALISM 113 (1987). In Section 101 of the *Two Treatises* Locke also talks about the rise of "records, and letters" coming in civil society after "other more necessary arts" which provide for people's "safety, esae, and plenty" without commenting about rights in these "necessary arts" or "letters." See TWO TREATISES, *supra* note 7 at 378.

11 Shiffrin, *supra* note 9 at 155.

12 Astbury believes that although Locke was familiar with Milton's argument for press freedom in *Aeropagitica*, "Locke's *Memorandum* owed more directly to the pamphleteers of the 1692/3 [parliamentary] session than to Milton," Astbury, *supra* note 4 at 307, suggesting, likewise, that the memorandum was written in a more pragmatic frame of mind. As one of the reader of this introduction noted, the memorandum is "an interesting piece of lobbying" but "is not that deeply theorized."

13 2 January Letter, *supra* note 5 at 367. Discussing the Stationers' Company's exclusive printing rights, Locke wrote "[f]or it is a great oppresion upon scholars, and what right can anyone pretend to have to the writings of one who lived a thousand years ago." In that passage, we see Locke conscious of the idea of perpetual protection and making absolutely no connection to his own theory of property.

14 In this passage, Locke poses the question "I demand whether, if another act for printing should be made, it be reasonable that nobody have any peculiar right in any book which has been in printed fifty years, but any one as well as another might have the liberty to print it."

similarly closes the memorandum telling us that perpetual exclusive rights in the works of ancient authors is absurb:

> This I am sure, it is very absurd and ridiculous that any now living should pretend to have a propriety in, or a power to dispose of, the propriety of any copy or writings of authors who lived before printing was known or used in Europe. [at 387]

Professor Mark Rose and I have written separately to describe reasons why the use of "propriety" and "property" seem to have been alloyed during this time.[15] Locke's use of "propriety" here comports with that premise and James Tully has also traced how Locke use of "propriety" is connected to Aquinas' use of *proprietas* for any form of individual and exclusive possession.[16] But this is a point on which Locke scholars should guide us.

Locke expressly proposes a property right
*in language that **suggests** pre-existing rights*

In contrast to his opposition to perpetual exclusive control, Locke ***supported*** limited property rights covering books and hints flirtatiously that these might be pre-existing rights. At almost the end of the memorandum Locke writes that he is not opposed to publishers being able to purchase exclusive publishing rights from authors. He proposes that when a publisher purchases rights

> "from authors that now live and write, it may be reasonable to limit their property to a certain number of years after the death of the author, or the first printing of the book, as, suppose, fifty or seventy years." [at 387]

Professor Shiffrin may have overlooked this passage in her own analysis of the memorandum because [a] she believed that Locke's "proposal specifies a term of years, not a life term" and [b] she writes that Locke's proposal was for a term of protection that would be "significantly shorter" than "current legal protection."[17] Of course, for the intellectual property community the remarkable thing about Locke's words here -- good or bad -- is just the opposite: that Locke proposed a ***life term*** as one possibility and that, at its extreme, he proposed a life term that ***equals*** current legal protection. It would be

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15 Rose, *supra* note 9 at 32 and 81; Hughes, *supra* note * at 1011-1012.

16 JAMES TULLY, A DISCOURSE ON PROPERTY: JOHN LOCKE AND HIS ADVERSARIES 65 (1980). For full disclosure, I should point to a passage of the *Two Treatises* in which the philosopher uses "property" and "propriety" in sufficient proximity to suggest slightly different meanings, but Locke's use in this section seems consistent with the formula Tully uses to describe Grotius' views: "Property (*dominium*) is identified with exclusive possession (*proprietas*)." *Id.* at 70. Writing just a few years before Locke, Pufendorf also equated property and proprietas. *Id.* at 72. Richard Ashcraft also seems to interpret Locke as using "property" and "propriety" interchangeably. See Richard Ashcraft, *Locke's political philosophy* in THE CAMBRIDGE COMPANION TO LOCKE, 226, 237 (Vere Chappell, ed. 1994).

17 Shiffrin writes in a footnote: "Locke's proposal -- a term of years followed by a lapse into the public domain -- does not differ in kind from current legal protections, although it is significantly shorter. I question whether the stock story of Lockean appropriation can easily explain the endorsement of a reversion, especially since his proposal specifies a term of years, not a life term. Locke's concerns about lack of access to individual works also do not fit the stock story, given that other works may be available or created." Shiffrin, *supra* note 9 at 155, fn. 48. It is true, however, that Locke's own March 1695 proposal was framed as a "term of years, not a life term," so Professor Shiffrin's point that that appears to be Locke's preferred mode of protection is valid.

unreasonable to foreclose "**a certain number of years after the death of the author, . . . as suppose, fifty or seventy years**." as a legitimate reading of this passage. In other words, it is very difficult to avoid the conclusion that Locke was expressly putting forward a life+50 or life+70 term on the table.[18]

A careful reader might say that [a] in this passage Locke only indicates his willingness to have such property, not necessarily his support, and [b] "property" in the passage refers only to what the publisher holds, not what the author had originally. (Of course, either the publisher gets the property from the author OR whatever non-property rights the author has get converted to property when transferred to the publisher.) Both these points are clarified by Locke's March 18, 1695 suggested amendments of the minimimalist press regulation bill that Clarke had put forward in Parliament earlier that month.[19] Locke proposed three amendments. The first was that printers could not use an author's name without permission; the third concerned deposit of books in libraries.[20] For the second, Locke wrote the following:

> "To secure the author's property in his copy, or his to whom he has transferred it, I suppose such a clause as this [following] will do, subjoined to the clause above written:
> "And be it further enacted that no book, pamphlet, portraiture or paper printed with the name of the author or publisher upon it shall within [blank] years after its first edition be reprinted with or without the name of the author to it without authority given in writing by the author or somebody entitled by him . . . . ."[21]

In short, Locke's simple proposal was that a wide variety of writings – perhaps including etchings – would, whenever first published with the name of the author, require the author's permission for any further reprinting. Assuming that the prudent author would withhold her work until she had struck a contractual deal for first publication, this was an elegant way to secure the right of reproduction to authors – and Locke proposed it "[t]o secure the author's property."

Locke's choice of "secure[ing]" the "author's property" may intimate a pre-existing right and Locke also makes a comment in the memorandum that *may* hint at some natural rights-based property interest being trampled by the then Licensing Act. In the beginning of the final paragraph of the memorandum, Locke says that the Licensing Act "was so manifest an invasion of the trade, liberty, and property of the subject, that it was made to be in force only for two years." [at 386] Locke clearly puts liberty and property interests in the publishing trade on a par – both being suppressed by and, therefore, pre-existing the Licensing Act. Whether Locke meant here "property" in a general or narrow sense is not clear, but the passage is intriguing nonetheless.

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18 *See also* Astbury, *supra* note 4 at 309 (same interpretation). Locke was 60 years old when he wrote this memorandum – well past the average life expectancy of his time and just 11-12 years before his own death. He has just published *An Essay Concerning Human Understanding* (1690) and his *Two Treatises of Government* had been written in the 1680-1690 period. Given all this, one might speculate that Locke did not see any great difference between a term measured by publication and a term measured by the death of the author.

19 Reprinted in Goldie, *supra* note 1 at 338.

20 *Id.* at 338 – 339.

21 *Id.* at 338.

Understanding how Locke uses 'monopoly' in the memorandum

Locke's memorandum is also discussed at length in a 2005 essay by Lewis Hyde posted at the Berkman Center's site.[22] Professor Hyde writes as follows (the page references in this quotation are from Hyde and relate to the 1884 edition of Locke's works mentioned above):

> "In 1694, John Locke – a strong supporter of property rights in other respects – had objected to copyrights given by government license as a form of monopoly 'injurious to learning' [Locke 208]. Locke was partly concerned with religious liberty, . . .but mostly he was distressed that works by classic authors were not readily available to the public in cheap, well-made editions . . . . 'It is very ridiculous and absurb,' he wrote to a friend in parliament, 'that anyone now living should pretend to have a propriety in . . . writings of authors who lived before printing was known or used in Europe.' [Locke 208 –209] Regarding authors yet living, Locke thought that they should have control of their own work, but for a limited time only. **As with Macaulay, his framing issue was monopoly rights, not property rights**." (emphasis added)

Let us look closely at this commentary on the memorandum. First, a small, but meaningful point: Hyde refers to "copyright" as the printing privileges that Locke was criticizing, but those printing licenses/privileges were *not* "copyright" at all.[23] As Professor Hyde recognizes, Locke was attacking the publishers' privileges, but also believed that authors "should have control of their own work . . . for a limited time" – an acorn of the idea that eventually became copyright. As we will see, Locke was drawing the same sort of distinction that eleven members of the House of Lords had made just the year before.

More importantly, Professor Hyde's conclusion that Locke's "framing issue was monopoly rights, not property rights" is belied by the very passage to which Hyde refers: in that passage of the memorandum Locke says "property." Hyde's conclusion is also disproved by Locke's March 18, 1695 suggested amendments to Clarke's bill discussed above.

As for the monopoly concept "framing" Locke's thinking about control of expressive works, it may be important to see that Locke uses "monopoly" principally to refer to the entire set of privileges held by the Stationer's Company. For example, Locke's first use of "monopoly" in the memorandum is as follows:

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[22] Hyde, *supra* note 9.

[23] I say this is a small point because respected historians are prone to call the exclusive printing rights of the 16th and 17th century "copyright." *See, e.g.* Anthony Grafton, *Johannes Petreius (c. 1497-1550): A Study in the History of Learned Publishing*, THE HAROLD JANTZ MEMORIAL LECTURE 8 (1997) (describing a 1530 Milanese printing privilege, Grafton writes "[t]he sixteenth-century form of copyright took the form of a legal document, granted by the political authority, which gave an author or publisher sole right, for a term of years, to bring out editions of a given book or books."); David Hunter, *Music Copyright in Britain to 1800*, 67 MUSIC AND LETTERS 269, 271 (1986) (describing booksellers' trade in exclusive printing rights at the end of the seventeenth century as "copyright sales" and "copyright shares")

> "By this clause, the Company of Stationers have a monopoly of all the classical authors . . ." [at 378]

Locke's discussion here comes immediately after he has reproduced sections 5 and 6 of the Licensing Act. Section 5 prohibited any book to be "printed that are not first entered in the Register of the Company of Stationers, and licensed"; section 6 imposed a penalty on anyone who printed or imported a book when someone else "by force of virtue of any letters patent" held the exclusive "right, privilege, authority, or allowance" to print the book. Locke's reference to "this clause" is to section 6, so it is clear that he is objecting to the overall monopoly on printing classic works. This is confirmed when he says, on the same page, "*For the Company of Stationers have obtained from the Crown a patent to print all, or at least the greatest part, of the classic authors* . . ." [at 378]. Locke also writes:

> "Whilst our Company of Stationers, having the monopoly here by this act" [at 380]

Again, this a reference to the letters patent granted by the Crown to the Company of Stationers for "*all, or at least the greatest part, of the classic authors.*" From these and the other three uses of "monopoly" in the memorandum, it appears that when Locke focused on the idea of monopoly power he was concerned with aggregated control over "*all, or at least the greatest part, of the classic authors* . . ." by a well-coordinated oligopoly.[24] This is consistent with his January 2 Letter to Clarke in which Locke complains of "a monopoly [being] put into the hands of ignorant and lazy stationers"[25] and "this monopoly also of those ancient authors"[26] -- in both cases, he was also referring to overall control of the trade in new editions of ancient authors.

This is not to deny that Locke might have considered exclusive control over a single ancient author to be a "monopoly"; his discussion of the Company's exclusive control of Tully's works [at 378-379] suggests that he might have. But generally speaking, Locke apparently drew a distinction between "property" belonging to authors (which he advocated and may have thought pre-existed) versus his strong opposition to the "monopoly" of the Stationers' Company. This distinction was part of a broader intellectual context in which "monopoly" was paradigmatically understood as a central government (royal) grant that interfered with otherwise existing rights to property and commerce.[27] A year before Locke's memorandum, eleven members of the House of

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[24] The other three points are: "[t]his clause serves only to confirm and enlarge the Stationers' monopoly," [at 381] referring to section 9 of the Licensing Act which banned [a] foreigners from importing books in any language and [b] all imports of English-language books. Discussing section 10 of the Licensing Act, Locke notes "In this §, a great many other clauses here to secure the Stationers' monopoly of printing" [at 381]. The final reference to monopoly comes when Locke notes that the Stationers regularly ignore their Licensing Act obligation to send free copies of books to designated universities because of their attitude: ". . . the Company of Stationers' minding nothing in it but what makes for their monopoly . . . "

[25] 2 January Letter, *supra* note 3 at 366.

[26] *Id.* at 367.

[27] My thanks to Adam Mossoff for emphasizing that all this occurring after "the dust had settled" on Queen Elizabeth's and King James's abuse of their royal prerogative to grant letters patent over pre-existing areas of commerce. *See, e.g.* 3 EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND 181 (1797) (1644) (Lord

Lords had similarly protested any renewal of the Licensing Act on the grounds that the Licensing Act subjected "all learning and true information to the arbitrary will and Pleasure of a mercenary, and perhaps ignorant Licenser; destroys the Properties of Authors in their Copies; and sets up many monopolies."[28] In this distinction between (what would become) copyright and monopoly power, both the Lords and John Locke's views should seem familiar and unmysterious.

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Coke's famous statement that "a mans trade is accounted his life, because it maintaineth his life; and therefore the monopolist that taketh away a mans trade, taketh away his life, and therefore is so much the more odious.")

[28] XV House of Lords' Journal 280 (8 March 1693), available at http://www.british-history.ac.uk/report.asp?compid=11930. A century later, two upstart British music publishers would make the same complaint about "[m]usic Sellers in general who . . . have long enjoyed a most shameful Monopoly with little or no advantage to Men of Genius or their families." *See* Nancy A. Mace, *Litigating the Musical Magazine: The Definition of British Music Copyright in the 1780s*, in 4 BOOK HISTORY 122 (Ezra Greenspan and Jonathan Rose, eds. 2001)

THE LIFE

OF

JOHN LOCKE,

WITH EXTRACTS FROM

HIS CORRESPONDENCE, JOURNALS,

AND

COMMON-PLACE BOOKS.

BY LORD KING.

LITERIS INNUTRITUS, EOUSQUE TANTUM PROFECI UT VERITATI UNICÈ LITAREM.

NEW EDITION.

WITH CONSIDERABLE ADDITIONS.

IN TWO VOLUMES.

VOL. I.

LONDON:
HENRY COLBURN AND RICHARD BENTLEY,
NEW BURLINGTON STREET.
1830.

ries by the love of truth, and directing them to the improvement and benefit of his country and of mankind.

His literary employments at this period were the Treatises on Government, written in defence of the Revolution against the Tory enemy. And in the following year, 1690, he published a Second Letter for Toleration, (without the name of its author,) in vindication of the principles of religious liberty, which had as naturally been attacked by a Churchman.

Perhaps the most deadly blow which the Court and Church had ever directed against the liberty of the country, was the act of 1662, for preventing abuses in Printing. It established a censorship in England, and under the specious pretence of prohibiting the printing of books contrary to the Christian faith, or of seditious works, the number of printing-presses was limited by law within the narrowest bounds, and all works were subjected to the previous licence of the governors of the Church and State.

This act was at first passed for two years in 1662, and was afterwards continued in force by several re-enactments till 1679, when it expired, and the country was exempt from that tyranny (though from no other) for six years, till 1685, when it was again revived for seven years more,

and at the expiration of these seven years was continued for a year longer, when at last by the refusal of the House of Commons it was suffered finally to expire. The following copy of the objectionable clauses of the act, with Locke's observations upon each separate clause, will be found very interesting, as a record of the existence of a censorship in England, accompanied by the comments of so competent a judge, who had witnessed both the beginning and the end of that most arbitrary measure. These notes were probably written at the time when the Printing Act was last under consideration in Parliament, in 1694. If the unanswerable objections which Locke stated against every part of that act contributed in any degree to prevent its farther re-enactment, his exertions may be regarded as no small service rendered to the cause of liberty and truth.

"ANNO 14° CAR. 2. CAP. XXXIII.

"An Act for preventing abuses in printing seditious, treasonable, and unlicensed Books and Pamphlets, and for regulating Printing and Printing-presses."

"§ 2. Heretical, seditious, schismatical, or offensive books, wherein any thing contrary to Christian faith, or the doctrine or discipline of

the Church of England, is asserted; or which may tend to the scandal of religion, or the church, or the government, or governors of the church, state, or of any corporation, or particular person, are prohibited to be printed, imported, published, or sold."

Some of these terms are so general and comprehensive, or at least so submitted to the sense and interpretation of the governors of Church and State for the time being, that it is impossible any book should pass but just what suits their humours. And who knows but that the motion of the earth may be found to be heretical, as asserting Antipodes once was?

I know not why a man should not have liberty to print whatever he would speak; and to be answerable for the one, just as he is for the other, if he transgresses the law in either. But gagging a man, for fear he should talk heresy or sedition, has no other ground than such as will make gyves necessary, for fear a man should use violence if his hands were free, and must at last end in the imprisonment of all who you will suspect may be guilty of treason or misdemeanour. To prevent men being undiscovered for what they print, you may prohibit any book to be printed, published, or sold,

without the printer's or bookseller's name, under great penalties, whatever be in it. And then let the printer or bookseller, whose name is to it, be answerable* for whatever is against law in it, as if he were the author, unless he can produce the person he had it from, which is all the restraint ought to be upon printing.

"§ 3. All books prohibited to be printed that are not first entered in the register of the Company of Stationers, and licensed."

Whereby it comes to pass, that sometimes, when a book is brought to be entered in the register of the Company of Stationers, if they think it may turn to account, they enter it there as theirs, whereby the other person is hindered from printing and publishing it; an example whereof can be given by Mr. Awnsham Churchill.

"§ 6. No books to be printed or imported, which any person or persons by force or virtue of any letters patent, have the right, privilege, authority, or allowance, solely to print, upon pain of forfeiture, and being proceeded against as an offender against this present act, and upon the further penalty and forfeiture of six shillings

* This is now the law.

and eight-pence for every such book or books, or part of such book or books imported, bound, stitched, or put to sale, a moiety to the King, and a moiety to the informer."

By this clause, the Company of Stationers have a monopoly of all the classical authors; and scholars cannot, but at excessive rates, have the fair and correct edition of those books printed beyond seas. For the Company of Stationers have obtained from the Crown a patent to print all, or at least the greatest part, of the classic authors, upon pretence, as I hear, that they should be well and truly printed; whereas they are by them scandalously ill printed, both for letter, paper, and correctness, and scarce one tolerable edition is made by them of any one of them. Whenever any of these books of better editions are imported from beyond seas, the Company seizes them, and makes the importers pay 6s. 8d. for each book so imported, or else they confiscate them, unless they are so bountiful as to let the importer compound with them at a lower rate. There are daily examples of this; I shall mention one, which I had from the sufferer's own mouth. Mr. Samuel Smith, two or three years since, imported from Holland Tully's Works, of a very fine edition, with

new corrections made by Gronovius, who had taken the pains to compare that which was thought the best edition before with several ancient MSS., and to correct his by them. These Tully's Works, upon pretence of their patent for their alone printing Tully's Works, or any part thereof, and by virtue of this clause of this act, the Company of Stationers seized and kept a good while in their custody, demanding 6s. 8d. per book: how at last he compounded with them I know not, but by this act scholars are subjected to the power of these dull wretches, who do not so much as understand Latin, whether they shall have any true or good copies of the best ancient Latin authors, unless they pay them 6s. 8d. a book for that leave.

Another thing observable is, that whatever money, by virtue of this clause, they have levied upon the subject, either as forfeiture or composition, I am apt to believe not one farthing of it has ever been accounted for to the King, and it is probable considerable sums have been raised.

Upon occasion of this instance of the classic authors, I demand whether, if another act for printing should be made, it be not reasonable that nobody should have any peculiar right in

any book which has been in print fifty years, but any one as well as another might have the liberty to print it; for by such titles as these, which lie dormant, and hinder others, many good books come quite to be lost. But be that determined as it will, in regard of those authors who now write and sell their copies to booksellers, this certainly is very absurd at first sight, that any person or company should now have a title to the printing of the works of Tully, Cæsar, or Livy, who lived so many ages since, in exclusion of any other; nor can there be any reason in nature why I might not print them as well as the Company of Stationers, if I thought fit. This liberty, to any one, of printing them, is certainly the way to have them the cheaper and the better; and it is this which, in Holland, has produced so many fair and excellent editions of them, whilst the printers all strive to out-do one another, which has also brought in great sums to the trade of Holland. Whilst our Company of Stationers, having the monopoly here by this act, and their patents, slobber them over as they can cheapest, so that there is not a book of them vended beyond seas, both for their badness and dearness; nor will the scholars beyond seas look upon a book of

them now printed at London, so ill and false are they; besides, it would be hard to find how a restraint of printing the classic authors does any way prevent printing seditious and treasonable pamphlets, which is the title and pretence of this act.

"§ 9. No English book may be imprinted or imported from beyond the sea. No foreigner, or other, unless a stationer of London, may import or sell any books of any language whatsoever."

This clause serves only to confirm and enlarge the Stationers' monopoly.

"§ 10. In this §, besides a great many other clauses to secure the Stationers' monopoly of printing, which are very hard upon the subject, the Stationers' interest is so far preferred to all others, that a landlord, who lets a house, forfeits five pounds if he know that his tenant has a printing-press in it, and does not give notice of it to the masters and wardens of the Stationers' Company. Nor must a joiner, carpenter, or smith, &c. work about a printing-press, without giving the like notice, under the like penalty."

Which is greater caution than I think is used about the presses for coinage to secure the people from false money.

"By § 11. the number of master-printers were reduced from a greater number to twenty, and the number of master-founders of letters reduced to fewer; and upon vacancy, the number to be filled by the Archbishop of Canterbury and the Bishop of London, and to give security not to print any unlicensed books."

This hinders a man who has served out his time the benefit of setting up his trade, which, whether it be not against the right of the subject, as well as contrary to common equity, deserves to be considered.

"§ 12. The number of presses that every one of the twenty master-printers shall have are reduced to two. Only those who have been masters, or upper-wardens of the Company may have three, and as many more as the Archbishop of Canterbury or Bishop of London will allow.

"§ 13. Every one who has been master, or upper-warden of the Company, may have three; every one of the livery two; and every master-printer of the yeomanry but one apprentice at a time."

By which restraint of presses, and taking of apprentices, and the prohibition in § 14, of taking or using any journeymen except Englishmen and freemen of the trade, is the reason why

our printing is so very bad, and yet so very dear in England: they who are hereby privileged to the exclusion of others, working and setting the price as they please, whereby any advantage that might be made to the realm by this manufacture is wholly lost to England, and thrown into the hands of our neighbours; the sole manufacture of printing bringing into the Low Countries great sums every year. But our Ecclesiastical laws seldom favour trade, and he that reads this act with attention will find it upse * ecclesiastical. The nation loses by this act, for our books are so dear, and ill printed, that they have very little vent among foreigners, unless now and then by truck for theirs, which yet shows how much those who buy the books printed here are imposed on, since a book printed at London may be bought cheaper at Amsterdam than in Paul's Church-yard, notwithstanding all the charge and hazard of transportation: for their printing being free and unrestrained, they sell their books at so much a cheaper rate than our booksellers do ours, that in truck, valuing ours proportionably to their own, or their own equally to ours, which is the

* A low word, derived from the Dutch *upzee*, signifying highly.

same thing, they can afford books received from London upon such exchanges cheaper in Holland than our stationers sell them in England. By this act England loses in general, scholars in particular are ground, and nobody gets, but a lazy, ignorant Company of Stationers, to say no worse of them; *but any thing, rather than let Mother Church be disturbed in her opinions or impositions by any bold inquirer from the press.*

"§ 15. One or more of the messengers of his Majesty's chamber, by warrant under his Majesty's sign-manual, or under the hand of one of his Majesty's principal secretaries of state, or the master and wardens of the Company of Stationers, taking with them a constable and such assistance as they shall think needful, has an unlimited power to search *all houses*, and to seize upon all books which they shall but think fit to suspect."

How the gentry, much more how the peers of England came thus to prostitute their houses to the suspicion of any body, much less a messenger upon pretence of searching for books, I cannot imagine. Indeed, the House of Peers, and others not of the trades mentioned in this act, are pretended to be exempted from this search, § 18, where it is provided they shall not

be searched but by special warrant under the King's sign-manual, or under the hands of one of the Secretaries of State. But this is but the shadow of an exemption, for they are still subject to be searched, every corner and coffer in them, under pretence of unlicensed books, a mark of slavery which, I think, their ancestors would never have submitted to. They so lay their houses, which are their castles, open, not to the pursuit of the law against a malefactor convicted of misdemeanour, or accused upon oath, but to the suspicion of having unlicensed books, which is, whenever it is thought fit to search his house to see what is in it.

"§ 16. All printers offending any way against this act are incapacitated to exercise their trade for three years. And for the second offence, perpetual incapacity, with any other punishment not reaching to life or limb."

And thus a man is to be undone and starved for printing Dr. Bury's Case, or the History of Tom Thumb, unlicensed.

"§ 17. Three copies of every book printed are to be reserved, whereof two to be sent to the two Universities by the master of the Stationers' Company."

This clause, upon examination, I suppose,

will be found to be mightily, if not wholly neglected, as all things that are good in this act, the Company of Stationers minding nothing in it but what makes for their monopoly. I believe that if the public libraries of both Universities be looked into, (which this will give a fit occasion to do,) there will not be found in them half, perhaps not one in ten of the copies of books printed since this act.

§ Last. This act, though made in a time when every one strove to be forwardest to make court to the Church and Court, by giving whatever was asked, yet this was so manifest an invasion of the trade, liberty, and property of the subject, that it was made to be in force only for two years. From which, 14 Car. 2, it has, by the *joint endeavour of Church and Court*, been, from time to time, received, and so continued to this day. Every one being answerable for books he publishes, prints, or sells, containing any thing seditious or against law, makes this or any other act for the restraint of printing very needless in that part, and so it may be left free in that part as it was before 14 Car. 2. That any person or company should have patents for the sole printing of ancient authors is very unreasonable and injurious to learning; and for those who purchase copies from authors

that now live and write, it may be reasonable to limit their property to a certain number of years after the death of the author, or the first printing of the book, as, suppose, fifty or seventy years. This I am sure, it is very absurd and ridiculous that any one now living should pretend to have a propriety in, or a power to dispose of the propriety of any copy or writings of authors who lived before printing was known or used in Europe.

This act, which had been renewed once since the Revolution, was suffered finally to expire in 1694. It may appear extraordinary that the same Parliament which passed the Act of Settlement, and embodied the Declaration of Rights in our statutes, should also have subjected the press to the fetters imposed upon it by the former printing acts of Charles and James II. But as the Revolution was effected by the assistance of the Church, the new government might perhaps wish to avoid giving offence to that powerful party by too sudden a repeal of this their favourite act.

It was probably at this period, during Locke's residence in London, which continued about two years after the Revolution of 1688, that he