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Copyright, Competition, and the First English-Language Translations of *Les Misérables* (1862)

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ARTICLES

COPYRIGHT, COMPETITION, AND THE FIRST ENGLISH-LANGUAGE TRANSLATIONS OF *LES MISÉRABLES* (1862)

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I. INTRODUCTION

After 150 years, Victor Hugo’s *Les Misérables* (1862) still ranks as one of the great hits in publishing history.¹ It has reached generations of English-

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1. The novel’s most recent translator claims it is “the biggest hit in the history of publishing.” Julie Rose, *Preface* to VICTOR HUGO, *LES MISÉRABLES* xxiii (Julie Rose trans., The Modern Library, 2008).

language readers through five separate translations² and found vast new audiences through abridgements, sequels, stage adaptations, comic books, films, and musicals. Hugo's critique of the injustice wrought by legal institutions has appealed with particular force to judges, lawyers, and members of the legal academy. Hundreds of law review articles and scores of judicial opinions quote passages from the novel or refer to familiar characters or events in it.³

This Article explores the early history of *Les Misérables* in England and the United States, focusing on English-language translations that were published from 1862 to 1882. Drawing on the emerging field of the history of the book,⁴ it pays close attention to the physical embodiments of the translated texts, considering distinguishing details of individual imprints, such as typography, printing, and binding.⁵ This printing history provides important

Thanks to Hugo's towering reputation and boosted by savvy prepublication publicity, the first French editions printed simultaneously in France and Belgium could not keep up with demand. Unauthorized imprints appeared almost immediately and sold out quickly. Due to lack of U.S. copyright protection, *see infra* part III, New York publishers freely printed unauthorized French copies: LES MISÉRABLES, (New York, Charles Lassalle, éditeur 1862) (5 vols.); LES MISÉRABLES (New York, F.W. Christern, libraire-éditeur 1862) (5 vols.). Christern was printing a third edition by 1863. WorldCat also catalogues Victor Hugo, LES MISÉRABLES, 1ÈRE PARTIE, FANTINE (New York: J.F. Mas 1862) (2 vols.).

The publisher of the American translation also published a Spanish-language translation. VICTOR HUGO, LOS MISERABLES: NOVELA (D. José Segundo Flores [sic] trans. and C. Villaverde ed., New York, Librería de Carleton 1863) (2 vols.). This copies one of the Florez-Villaverde editions that appeared earlier in Paris. (Paris, F. Brachet 1862–63); (2d ed., Paris, F. Brachet 1863).

2. As of September 10, 2012, OCLC libraries catalogued 1077 English-language books under Victor Hugo (author) and *Les Misérables* (title). The listings include duplicate entries, abridgments, adaptations and sequels, but omit works catalogued solely by the title of a volume ("Fantine"). For a discussion of the five complete translations, see Michael H. Hoffheimer, *Translations of Les Misérables for Law Libraries*, 31 LEGAL REFERENCE SERVICES Q. 270–85 (2012).

3. A Lexis search Sept. 10, 2012 of the terms "Les Misérables" or "Jean Valjean" in federal and state opinions yielded 94 citations, of which 69 contained references to characters or narratives in the novel. *E.g.*, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 447 (1968) (Douglas, J., dissenting) ("[T]he colored man is the Jean Valjean of American society."); *Becker v. State*, 298 Ark., 438, 768 S.W.2d 527, 530 (Ark. 1989) (Purtle, J., dissenting) (protesting harsh sentence and observing "over one hundred twenty-five years ago, Victor Hugo, in *Les Misérables*, attacked the injustice of a system that sentenced a man to imprisonment for stealing a loaf of bread."). Hundreds of law review articles refer to or discuss the novel. For sustained treatments, see Michael H. Hoffheimer, *Jean Valjean's Nightmare: Rehabilitation and Redemption in Les Misérables*, 42 MCGEORGE L. REV. 168–98 (2011), and Daniel H. Lowenstein, *The Failure of the Act: Conceptions of Law in The Merchant of Venice, Bleak House, Les Misérables, and Richard Weisberg's Poethics*, 15 CARDOZO L. REV. 1139–1243, 1221 (1994).

4. *E.g.*, Robert Darnton, *What is the History of Books?*, 111 DAEDALUS 65–83 (1982); Marcus Walsh, *History of the Book*, in 2 THE OXFORD COMPANION TO THE BOOK 794 (Michael F. Suarez & H. R. Woudhuysen eds., 2010) [hereinafter OXFORD COMPANION TO THE BOOK].

5. Because scholars have neglected the physical form of books and undervalued the creative contributions of literary translators, it is not surprising that prior studies and bibliographies include

evidence of how *Les Misérables* was actually purchased and read by readers and reveals how publishers responded to the legal restrictions imposed by the different copyright regimes in Britain and the United States.

This Article has two aims. First, it seeks to reconstruct a seminal event in nineteenth-century culture by focusing attention on the legal conditions that confronted commercial publishers. This historical research yields some modest new discoveries in print history and results in the first sustained legal historical discussion of the impact of copyright law on a specific literary translation. Second, this Article deviates from the descriptive work of academic history in considering possible lessons to be drawn from publishing history that are relevant to contemporary debates about the scope of copyright law.

Part II provides essential background for understanding the challenges facing translators and publishers of *Les Misérables*. It summarizes the history of Hugo's composition of the novel and his intentions regarding the format of its publication. This Part's description of the physical form and internal organization of the work provides the foundation for subsequent discussions of the manner in which particular translations departed from the original novel.

Part III examines the scope of copyright protection for literary translations during the nineteenth century. It examines how British and U.S. law in the 1860s accorded foreign authors significantly different rights to control the translation of their writings.

Part IV describes the translation, publishing, and marketing of the first two English-language translations of *Les Misérables*. This Part shows how the different copyright regimes in Britain and the United States decisively affected the translations that were available, the physical form of the books, and their cost.

Part V surveys the print history of translations of *Les Misérables* from 1862 to 1882 and shows how the American translation in various forms came to dominate the market both in the U.S. and in Britain. The Epilogue considers the fate of translations as a test case for evaluating the impact of

significant factual errors. Rather than identify all such errors, the Article appends an accurate bibliography of English translations (1862–1882).

Serious errors include the failure to recognize a corrected second edition of the American reprint of the British translation (1863wp). (Citations in this form refer to titles in the appendix.) See *infra* note 85. Similarly, comparative scholarship on the translations is marred by the failure to recognize still further changes made to the British translation in the late nineteenth century. See, e.g., *infra* note 74. More generally, bibliographers and scholars have both undercounted the number of imprints of various translations and mistaken abridged forms of the text for complete translations.

copyright laws on the publication and marketing of books.⁶

This Article argues that the exclusive right to translate literary works in Britain encouraged the production of expensive multi-volume books that contained a demonstrably inferior “authorized” translation. When the London publisher exhausted demand for high-priced multi-volume sets of its translation, even before the copyright term expired, it simply ceased publishing the complete translation and turned to publishing abridgments. In contrast, the lack of exclusive copyright for translations in the United States created an open market where each translator’s work was protected, but not at the cost of prohibiting other translations. This legal environment encouraged two New York publishers to offer English translations. One publisher commissioned an original American translation by Charles E. Wilbour that proved to be superior to the British translation. A second publisher rushed into print with an inexpensive one-volume format of the British translation.

In fierce competition for volume sales, U.S. publishers’ advertisements alerted readers to defects in the British translation. This forced the New York publisher of the British translation to make substantial corrections to the British translation published in the U.S. Consequently, two good translations became widely available in the U.S. by 1863, and the American reprint of the British translation disappeared from the market within a few years.

American readers could readily buy affordable, complete translations. In contrast, readers in British territory initially had access only to the defective, uncorrected British translation that was printed in an expensive multi-volume format, unaffordable to most readers,⁷ and soon out of print. With the expiration of the copyright term, British readers were still limited to choosing between abridgments of the British translation and reprints of incomplete forms of the American translation.

This Article’s analysis of the influence of legal regimes on the

6. Scholars have observed that infringing works were rarely imported. *See infra* note 33. The effective enforcement of copyright laws is demonstrated indirectly by the scarcity of holdings by British and Commonwealth libraries of American imprints of *Les Misérables* that infringed the exclusive British copyright. Apparently no OCLC libraries in the UK hold editions published by Carleton or Pooley. (The Oxfordshire County Council on-line catalogue does not confirm a ghost holding recorded by OCLC.) Libraries in Ottawa, Victoria (Australia) and Wellington catalogue holdings of the Carleton edition.

The sole instance of a holding of the Pooley edition in British territory, which would have doubly violated the exclusive British right to translate and the copyright in the Wraxall translation, is in the collection of McGill University in Montréal. McGill’s internal records indicate that its copy was acquired in 1971. Email from Sharon Rankin, McGill Univ. Liaison Librarian, to author (Apr. 25, 2012) (on file with author). If large numbers of the books were physically present in British territory, then there should be more examples appearing in catalogues over time as gifts if not original acquisitions.

7. Most would have read it as members of private libraries. *See infra* note 57.

dissemination of one classic work of law and literature supports broader conclusions about the effects of copyright on the production and marketing of translations during a formative period in American intellectual history. It confirms Meredith McGill's observation that "copyright law's uneven disposition of property rights in texts did much to shape the distinctive character of American publishing."⁸ And it presents a compelling case that a legally informed history of publishing provides important context for understanding the history of literature.

II. GENESIS AND FORM OF HUGO'S NOVEL

Hugo was already a celebrated poet and playwright when he began composing the novel in 1845. He ceased working on it in 1848, carried the manuscript into exile in 1851, resumed work in 1860, and completed the novel on June 30, 1861. Between 1845 and 1861, Hugo evolved from a conservative loyal to the Restoration monarchy into a republican committed to progressive and egalitarian social reform. For over a century, scholars have explored the impact of the author's ideological transformation on the changing form of his novel.

The work's origins lie in the heyday of the French serial novel and reveal the influence of Eugène Sue's *Les Mystères de Paris* (1842–43), an immensely popular work that spawned a host of imitators. Sue's noble protagonist dons a series of disguises and pseudonyms to live in the midst of the lowest classes in Paris, and Sue graphically presents *misère*—the misery associated with abject poverty, crime, and abuse. While Hugo had previously treated crime and poverty in short works like *CLAUDE GUEUX* (1834), Sue inspired him to undertake a sustained treatment of social dystopia. Vargas Llosa observes that Hugo "cannibalize[d]" Sue's novel. Traces of Sue's work in *Les Misérables* include Hugo's title, use of underworld slang, and even street names. From Fantine's tooth-extraction to Jean Valjean's dream of a lost brother, Hugo borrowed details of character and plot from Sue that would have been familiar to contemporaries.¹⁰

Nevertheless, when Hugo resumed work on *Les Misérables* in 1860, he was committed for both artistic and marketing reasons to publishing the novel as an integral text. As published, the work comprised five separate parts composed of numbered, titled "books." Books were subdivided into numbered

8. Meredith L. McGill, *Copyright*, in 2 *A HISTORY OF THE BOOK IN AMERICA* 198, 199 (Robert A. Gross & Mary Kelley eds., 2010).

9. MARIO VARGAS LLOSA, *THE TEMPTATION OF THE IMPOSSIBLE: VICTOR HUGO AND LES MISÉRABLES* 90 (John King trans. 2007).

10. See, e.g., Hoffheimer, *supra* note 3, at 175 n.24.

and titled chapters.¹¹ Large single-volume editions with double columns, evocative of family bibles, appeared within a couple of years.

Hugo later made only minor changes to the text. The most visible were his substitution after 1881¹² of full names for place names designated by initial letters in earlier editions. Thus, “D” became “Digne” after 1881.¹³

III. COPYRIGHT PROTECTION OF LITERARY TRANSLATION IN ENGLAND AND THE UNITED STATES

A. *Domestic Protection*

Through An Act for the Encouragement of Learning, also called the Statute of Anne or Copyright Act of 1710,¹⁴ Parliament extended to authors the exclusive privilege to print their works for fourteen years.¹⁵ The drafters of the Constitution had this model in mind when they authorized Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹⁶

11. The chapters are not called “chapters” but are simply numbered and titled. The novel’s structure lends itself to a distinct citation method: (II, III, 11) indicates a passage appearing in part 2, book 3, chapter 11. The original French editions appeared in ten volumes, released over a nine-month period. See Rose, *supra* note 1, at xxiii.

12. LES MISÉRABLES, ÉDITION NE VARIETUR (Paris, Hetzel-Quantin 1881).

13. French scholars post reliable transcriptions of the 1844–48 manuscripts and a text that synthesizes variant authorized editions. See VICTOR HUGO, LES MISÉRABLES, <http://eduscol.education.fr/numerique/dossier/archives/francais-tice/bibliotheques-numeriques/romans-nouvelles/victor-hugo-les-miserables> (last visited Mar. 13, 2013).

14. The Statute of Anne, 8 Anne c. 19 (effective 1710). See generally CATHERINE SEVILLE, LITERARY COPYRIGHT REFORM IN EARLY VICTORIAN ENGLAND: THE FRAMING OF THE 1842 COPYRIGHT ACT 3–4 (Cambridge University Press 1999); OXFORD COMPANION TO THE BOOK, *supra* note 4, at 448. For details of the Statute of Anne and its modification by subsequent legislation, see JAMES FRASER, A HANDY-BOOK OF PATENT AND COPYRIGHT LAW ENGLISH AND FOREIGN 181–83 (London, Sampson Low, Son, and Co. 1860); 13 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 408–09 (A.L. Goodhart and H.G. Hanbury ed. 1952).

15. The term was fourteen years, renewable for fourteen years if the author was living at the end of the first term. SEVILLE, *supra* note 14, at 3–4. It was extended by the Copyright Act of 1814 to twenty-eight years or life. *Id.* at 4. In 1842, the term was extended to the author’s life plus seven years or a minimum of 42 years. *Id.* at 6.

After decades of uncertainty, *Donaldson v. Beckett*, (1774) 2 Bro PC 129, established that the statute was the sole source of rights and did not confirm or supplement preexisting common law rights of authors. See generally SEVILLE, *supra* note 14, at 14–15 (discussing *Donaldson*).

16. U.S. Const. art. I § 8. The first federal legislation, An Act for the Encouragement of Learning (May 31, 1790), drew on the British statute. See McGill, *supra* note 8, at 202. Cases later characterized the English statute as “declaratory of the common law.” *E.g.*, *Stowe v. Thomas*, 23 F. Cas. 201, 208 (C.C. E.D. Penn. 1853) (No. 13,514). Earlier state laws were ineffective due to the proliferation of requirements and limited territorial coverage. McGill, *supra* note 8, at 201. For subsequent Congressional legislation in 1801, 1814, and 1831, see McGill, *supra* note 8, at 203–04.

The Act of 1710 was modeled on patent laws and expressed the eighteenth-century theory that authors' rights arose from the process of original creation.¹⁷ The U.S. Constitution similarly amalgamated copyright and patent rights. Translation posed a particular challenge to the original-creation theory. First, to the extent translation was considered an original literary process, it raised the question of whether an author should be able to control the translation of his or her own work. Second, to the extent translation was derivative and not original, it raised the question of whether a translation itself could be copyrighted.

The British statute did not address translation, but Lord Chancellor Eldon found in *Wyatt v. Barnard*¹⁸ that a translated work was protected on the ground that every new translation is an original work.¹⁹ Leading treatises disseminated the more general doctrine that translations were copyrightable to the extent they were original.²⁰ Authorities in the United States later reached the same conclusion: in 1859 a federal court enjoined a party from selling unauthorized copies of an original translation of Hebrew scriptures that had

17. For essays exploring originality as a root of authors' rights, see REGINALD MCGINNIS ED., *ORIGINALITY AND INTELLECTUAL PROPERTY IN THE FRENCH AND ENGLISH ENLIGHTENMENT* (2009).

18. *Wyatt v. Barnard*, [1814] 3 Ves & B. 77. The Lord Chancellor rejected evidence that trade usage sanctioned the piracy of translations and enjoined others from reprinting material translated in the plaintiff's periodical. *See generally* WALTER ARTHUR COPINGER, *THE LAW OF COPYRIGHT IN WORKS OF LITERATURE AND ART* 47 (London, Stevens & Haynes 1870). To deter clever evasions of copyright law, courts prohibited the retranslation into English of copyrighted English works translated into foreign languages. *See Murray v. Bogue* (1853) 1 Drew 353 (holding that translation of original German work based on copyrighted English work was not infringement but opining that retranslation of literal translation would constitute infringement). SEVILLE, *supra* note 14, at 246 n.71.

Scholars have traced the view that translations and abridgments are new, copyrightable writings to the late eighteenth century. *See* Simon Stern, *Copyright, Originality, and the Public Domain in Eighteenth-Century England*, in MCGINNIS, *supra* note 17, at 97 n.66 (discussing sources).

Drafts for revisions of the English statutes proposed that "the Copyright in every translation shall be deemed to be the property of the Translator thereof and his assignees as though it were an original work." SEVILLE, *supra* note 14, at 247 (quoting an early draft). This language was "deleted in the House of Lords, leaving . . . translations subject to existing precedents." *Id.*

19. *Wyatt* became the lead case in treatises. Another decision, holding that British subjects could copyright a Latin translation, reasoned that "a translation was not similar to reprinting the original, because the translator had bestowed his care upon it." RICHARD GODSON, *A PRACTICAL TREATISE ON THE LAW OF PATENTS FOR INVENTIONS AND OF COPYRIGHT* 241 (London, Saunders & Benning 1832) (citing *Burnett v. Chetwood*, (1721) 2 Meriv. 441 (Gr. Brit.)).

20. *E.g.*, GEORGE TICKNOR CURTIS, *A TREATISE ON THE LAW OF COPYRIGHT IN BOOKS . . . AS ENACTED AND ADMINISTERED IN ENGLAND AND AMERICA* 186 (London, A. Maxwell & Son, and Boston, Charles C. Little & James Brown 1847). Curtis's reliance on the creation-theory for copyright led him to argue that the translation of a new, copyrighted work into a dead language should not be copyrighted. His concern was to prevent valuable scientific or other original ideas from being recast in another language. *Id.* at 293 (citing no authority).

been copyrighted by a prominent Philadelphia rabbi.²¹

Early English decisions, emphasizing the original effort required for translation, held that translation was not comparable to reprinting or copying the protected original.²² Under such reasoning, everyone was free to make his or her own (copyrightable) translation without infringing the copyright of the work being translated.²³ This principle was restated in the Victorian consolidation of international copyright laws:

The protection granted to original works is extended to translation; it being, however, clearly understood, that the intention of the present article is simply to protect a translator in respect of his own translation and that it is not intended to convey upon the first translator of any work the exclusive right of translating that work.²⁴

British law departed from this position after 1838 when the International Copyright Act²⁵ authorized the government to enter into copyright agreements with other countries. Pursuant to this authority, Great Britain entered into a treaty with France in 1851 that granted British and French authors the exclusive right to publish copyrighted, original translations of their own writings for five years.²⁶

In contrast, United States authorities adhered to the position that an author's copyright did not extend to the right to exclude others from translating. In *Stowe v. Thomas*,²⁷ Justice Grier refused to grant Harriet Beecher Stowe an injunction against an unauthorized translation of *Uncle*

21. *Lesser v. Sklarz*, 15 F. Cas. 396 U.S. App. LEXIS 707 (C.C. S.D.N.Y. 1859) (No. 8276a).

22. GODSON, *supra* note 19, at 241 (citing *Burnett v. Chetwood*, 2 Meriv. 441).

23. COPINGER, *supra* note 18, at 47 (discussing settlement of law in favor of translation of copyrighted work and citing cases).

24. Convention of Nov. 3, 1851, art. 2, *quoted in* PETER BURKE, *THE LAW OF INTERNATIONAL COPYRIGHT BETWEEN ENGLAND AND FRANCE IN LITERATURE, THE DRAMA, MUSIC, AND THE FINE ARTS* 84 (London, Sampson, Low & Son 1852).

25. International Copyright Act 1838, 1 & 2 Vict. c. 59. *See generally* SEVILLE, *supra* note 14, at 238.

26. International Copyright Act of 1852, 7 & 8 Vict. c. 12, *quoted in* FRASER, *supra* note 14, at 339-43; Convention of Nov. 3, 1851, art. 3, *quoted in* BURKE, *supra* note 24, at 84-86, and *cited in* FRASER, *supra* note 14, at 197-98. To establish the right, the author was required to register and deposit the original work within three months of publication, provide notice of the intent to reserve the right to translate on the title page or prominent part of the book, and publish part of the translation within one year and the entire translation within three years. Convention of Nov. 3, 1851, art. 3 §§ 1-3.

27. *Stowe*, 23 F. Cas. 201 (C.C. E.D. Penn. 1853) (No. 13,514). The court, citing the Statute of Anne and Lord Mansfield's opinions, was evidently unaware that British law by 1853 protected the exclusive right to translate.

Tom's Cabin. Emphasizing the creative effort of translation, he observed that “[t]o make a good translation of a work, often requires more learning, talent and judgment, than was required to write the original False”²⁸ He insisted that copyright protected an author’s form of expression, not original ideas. Accordingly, a translation, being a “transcript or copy of her thoughts or conceptions,” did not infringe the literary expression that constituted “her book.”²⁹

B. *International Protection*

Though originally restricted to British subjects, British law extended protection to a growing number of copyright holders under foreign law as long as the foreign countries reciprocally protected British copyright owners. In contrast, from its first copyright act, Congress restricted copyright protection to citizens and residents of the United States.³⁰ Moreover, Congress expressly provided:

[N]othing in this act shall be construed to extend to prohibit the importation or vending, reprinting, or publishing within the United States, of any map, chart, book or books, written, printed, or published by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States.³¹

Major New York publishers thrived by reprinting popular English works with impunity.³² Britain prohibited the importation of American publications that infringed British copyrights, but it also refused to recognize U.S. copyrights,³³ so British publishers freely copied copyrighted American works.

28. *Id.* at 207.

29. *Id.* at 208. Justice Grier’s position was anticipated by treatises relying on English authorities, *e.g.*, CURTIS, *supra* note 20, at 293, and repeated nearly verbatim in later treatises, *e.g.*, STEPHEN D. LAW, *COPYRIGHT AND PATENT LAWS OF THE UNITED STATES 1790 TO 1866* 35 (2d ed., New York, [published] by the author and Baker, Voorhis & Company (186)).

30. McGill, *supra* note 8, at 202.

31. An Act for the Encouragement of Learning § 5 (May 31. 1790), 1 Stat. 124. There is some debate over whether this provision arose from a misreading of the Statute of Anne. *See* McGill, *supra* note 8, at 202.

32. 1 OXFORD COMPANION TO THE BOOK, *supra* note 4, at 642; 2 OXFORD COMPANION TO THE BOOK, *supra* note 4, at 781, 1071.

33. The order recognizing copyright under foreign laws took effect only if the foreign state accorded comparable protection to works copyrighted under British law. 7 & 8 Vict. c. 12, *cited in* FRASER, *supra* note 14, at 197–98. Importing writings that infringed the exclusive right to translate was prohibited. Convention of Nov. 3, 1851, art. 6, *quoted in* BURKE, *supra* note 24, at 88. Seville remarks that importing infringing works from the U.S. was “rare.” SEVILLE, *supra* note 14, at 237. *See supra* note 6.

In 1836, British publishers and authors petitioned Congress to enact international copyright protection, provoking opposition from American publishing and trades interests. The Senate rejected the proposal in 1838,³⁴ and the United States did not recognize British copyrights until the Chace Act (1891).³⁵

Under the copyright laws in effect in from 1862 to 1882, an author could copyright his or her work in Britain or France and reserve the right to translate exclusively for five years. This exclusive right would be recognized in France or Britain, but not in the U.S. In contrast, authors and translators who copyrighted their work under British or U.S. law could do nothing to prevent either the copying or translating of their works in the other country. And copyrighting works in the U.S. did not prevent their translation anywhere, not even in the U.S.

IV. ENGLISH-LANGUAGE TRANSLATIONS

Despite its daunting length, two English-language translations of *Les Misérables* were published in 1862. The New York publisher George Carleton published Charles E. Wilbour's translation in five volumes (1862gc in appendix), and the London firm of Hurst and Blackett published Lascelles Wraxall's translation in three volumes (1862hb1).³⁶ The Wilbour (American) and Wraxall (British) translations have been reprinted many times, amended, plagiarized and abridged—often without attribution—down to the present.³⁷

34. McGill, *supra* note 8, at 209.

35. International Copyright Act, 26 Stat. 1106–10 (1891) (more commonly referred to as the “Chace Act”).

36. *See generally* JEANNE ROSSELET, *First Reactions to Les Misérables*, in 67 MODERN LANGUAGE NOTES 39–43 (1952); Olin H. Moore, *Some Translations of Les Misérables*, in 74 MODERN LANGUAGE NOTES 240–46 (1959) (comparing merits of Wilbour, Wraxall, and the West & Johnston translations with emphasis on puns and humorous word play).

37. Wraxall died June 11, 1865. *See* 63 DICTIONARY OF NATIONAL BIOGRAPHY 69–70 (Sidney Lee ed., London, Smith, Elder & Co. 1900). Wraxall's English publisher omitted the translator's name beginning with the 4th edition (1864hb), which drastically abridged the novel. *See infra* note 81.

Wilbour is copied verbatim without attribution (e.g., 1863wj, 1874cw) as is Wraxall (1879ac). Wraxall's incomplete translation is supplemented (1862wp). *See also infra* note 83. Like Wraxall (1864hb), Wilbour suffers extensive abridgment, e.g., VICTOR HUGO, *LES MISÉRABLES*, ([Charles Wilbour trans.], New York, Dodd, Mead and Company n.d. [1925]). Wilbour is paraphrased by editors who claim to provide a new translation. 1 VICTOR HUGO, *LES MISÉRABLES: FANTINE* (William Walton trans., Philadelphia, George Barrie & Son 1893). Wraxall's words are adopted without attribution in an adaptation of an episode from the novel where Monsieur LeBlanc rescues Gavroche and carries him, not Marius, through the sewers. M.C. PYLE, *GAVROCHE: THE GAMIN OF PARIS 177* (Philadelphia, Proter & Coates 1872). *See generally* Hoffheimer, *supra* note 2, at 271 (discussing problems with abridgments).

A. Charles E. Wilbour

Born in Rhode Island, Charles Edwin Wilbour (1833–1896) attended Brown University, where he studied classics and received a prize in Greek. He left without completing a degree and settled in New York City by 1854, where he worked as a reporter for the *New York Tribune*, studied law, and was admitted to the bar in 1859.³⁸ Wilbour undertook the translation of *Les Misérables* in his late twenties during a period of intensive literary activity. In 1856, he had co-translated Léon Beauvallet’s entertaining account of the North American tour of the French Jewish actress Rachel Felix.³⁹ In early 1862, he published a book-length transcript of a sensational murder trial.⁴⁰

Les Misérables was Wilbour’s first translation for the New York publisher George W. Carleton (1832–1901).⁴¹ Carleton had originally entered publishing in partnership, but in 1861, with the death of one partner and the retirement of the other, he had become sole proprietor and adopted the imprint “Carleton, Publisher.” Carleton’s decision to publish Hugo’s novel as five parts was a bold move that allowed him to enter the market early, preempting competition. At the same time, it linked the publisher’s fate to the translator’s timely delivery of publishable copy.

Carleton’s confidence was rewarded. The first volume was in print in June,⁴² the second in July,⁴³ the third and fourth volumes by October,⁴⁴ and

38. For biographical details, see 6 APPLETON’S CYCLOPEDIA OF AMERICAN BIOGRAPHY 502–03 (James Grant Wilson and John Fiske eds., New York, D. Appleton and Company 1900). This source contains some notoriously unreliable material, but there is no reason to question the accuracy of the entry on Wilbour.

39. LÉON BEAUVALLET, RACHEL AND THE NEW WORLD: A TRIP TO THE UNITED STATES AND CUBA (New York, Dix Edwards & Co. 1856). Beauvallet traveled with Felix’s company, providing biting commentary with memorable descriptions of the insect life in New York hotels. Wilbour and John W. Palmer are identified as translators in 6 APPLETON’S CYCLOPEDIA OF AMERICAN BIOGRAPHY, *supra* note 38, at 502–03.

40. TRIAL OF CHARLES M. JEFFERDS FOR MURDER AT NEW YORK, DECEMBER 1861 (Charles E. Wilbour reporter, New York: Ross & Tousey, Publishers 1862). After being previously tried and acquitted for the murder of his stepfather, Jefferds was prosecuted and convicted of first degree murder for the death of a bystander who pursued him from the first murder scene. *Id.* at 3–4. Evidence included Jefferds’ admissions to the first murder, which were made after his acquittal. *Id.* at 9.

Wilbour’s transcript provides valuable information about mid-century jury selection and trial process, including the prosecution’s closing argument, offered without objection, that the death penalty was not legally available. *Id.* at 221. Despite this argument, the convict was sentenced to death. *Id.* at 234.

41. Biographical facts are from the death notice for George W. Carleton. N. Y. NEW YORK TIMES, Oct. 12, 1901, at 9. Another article, comprising recollections of a literary agent, emphasized business opportunities that Carleton had missed but failed to mention the publisher’s extraordinary success with Hugo. See Morris Phillips, *The Late George W. Carleton*, N. Y. TIMES SATURDAY REVIEW OF BOOKS, Oct. 19, 1901, at BR11.

42. *List of New Works*, 8 AM. PUBLISHERS’ CIRCULAR & LITERARY GAZETTE, no. 6, June

the fifth by December.⁴⁵ To justify selling the parts separately, Carleton subtitled each part “a novel.” The publishing establishment took note of “the immense numbers” being sold of Carleton’s first volumes.⁴⁶ Sales mounted into the hundreds of thousands. One retail order for 25,000 copies was reported to have been the largest such order ever placed.⁴⁷

Over the next four years, Wilbour translated three more books for Carleton: Hugo’s wife’s memoirs,⁴⁸ Ernest Renan’s controversial bestseller *The Life of Jesus*,⁴⁹ and Hugo’s early historical romance *Bug-Jargal* about a slave revolt in Haiti.⁵⁰ Wilbour later pursued a second career in archaeology. In 1874, he left the United States to study at leading European museums and participate in field research in Egypt.⁵¹ He and Carleton remained lifelong friends.⁵²

1862, at 67.

43. *New Publications*, 8 AM. PUBLISHERS’ CIRCULAR & LITERARY GAZETTE, no. 4, July 1862, at 74 (containing a short review of the first two parts).

44. *New Publications Received*, NORTH AM. REV., no. 197, Oct. 1862, at 378 (listing all volumes except *Jean Valjean*).

45. 10 ATLANTIC MONTHLY, no. 62, Dec. 1862, at 772; *New Publications Received*, NORTH AM. REV., Jan. 1863, at 286 [no. 198]. The Library of Congress catalogued Carleton’s edition before the Pooley. See ADDITIONS MADE TO THE LIBRARY OF CONGRESS SINCE THE FIRST DAY OF NOVEMBER 1860, at 68 (Washington: Government Printing Office 1862).

46. “Wonderful Success of Victor Hugo’s ‘Les Miserables,’” *Literary Intelligence*, 8 AM. PUBLISHERS’ CIRCULAR & LITERARY GAZETTE, no. 7, July 1862, at 73.

47. The publication history is discussed in an article about the successor firm’s bankruptcy. *G.W. Dillingham Co. Bankrupt*, 90 PUBLISHERS’ WEEKLY, no. 10, Sept. 2, 1916, at 677. Dillingham, Carleton’s chief clerk since 1864, became a partner in 1871, and the firm changed its name to G.W. Carleton & Co. Carleton retired in 1886, and Dillingham incorporated the firm in 1906.

48. MADAME HUGO [ADELE HUGO], VICTOR HUGO BY A WITNESS OF HIS LIFE (Charles Edwin Wilbour trans., New York, Carleton Publisher 1863).

49. ERNEST RENAN, THE LIFE OF JESUS (Charles Edwin Wilbour trans., New-York, Carleton 1864).

50. VICTOR HUGO, JARGAL: A NOVEL (Charles Edwin Wilbour trans., New York, Carleton Publisher 1866).

51. Wilbour was president of a paper manufacturing concern patronized by the corrupt Tammany Hall political machine. The fall of the machine may have motivated his departure for Europe. See generally JOHN A. WILSON, SIGNS AND WONDERS UPON PHAROAH: A HISTORY OF AMERICAN EGYPTOLOGY 101–09 (U. Chicago Press 1964). For his study of Egyptology, see 6 APPLETON’S CYCLOPEDIA OF AMERICAN BIOGRAPHY, *supra* note 38, at 502–03. Collaborating with preeminent Egyptologists, he made five expeditions to Egypt that yielded significant finds, including the “Wilbour papyrus” now at the British Museum. Posthumous donations established the Wilbour Library and Wilbour Memorial Hall at the Brooklyn Museum. See Jean Capart, Foreword, TRAVELS IN EGYPT (DECEMBER 1880 TO MAY 1891): LETTERS OF CHARLES EDWIN WILBOUR x-xi (Jean Capart ed., Brooklyn, Brooklyn Museum 1936) [hereinafter TRAVELS IN EGYPT].

52. Wilbour and Carleton were still corresponding decades later, and Carleton visited Wilbour in Egypt. TRAVELS IN EGYPT, *supra* note 51, at 10, 434–35, 464, 575, 592.

B. *Lascelles Wraxall and the “Authorized English Translation”*

Hugo sold the English translation rights to the established London firm of Hurst and Blackett,⁵³ which released *Les Misérables* as a complete three-volume set in November 1862 (1862hb1).⁵⁴ The complete set appeared just prior to the publication of Wilbour’s fifth and final volume. Hurst and Blackett published a second edition by December,⁵⁵ and a third in 1863. As required by British copyright law, each title page proclaimed: “authorized English translation (copyright).”

Hurst and Blackett’s marketing conformed to the established English commercial practice of releasing literary works in limited press runs of expensive three-volume sets.⁵⁶ Such “triple deckers” were acquired by wealthy collectors and by commercial circulating libraries that could lend a single title to three readers at once.⁵⁷

The British edition never identified the translator on its title page. The responsibility of Sir Frederick Charles Lascelles Wraxall (1828–1865) appears in a signed Preface.⁵⁸ Hugo neither chose Wraxall nor reviewed his translation prior to publication. Wraxall was selected through the influence of Hugo’s friend Alphonse Esquiros, a French writer who like Hugo had gone into exile in 1851 for his republican convictions.⁵⁹ After learning of Wraxall’s selection, Hugo wrote Wraxall a letter quoted in the translator’s Preface: “Permit me to ask you to adhere to the utmost fidelity to your

53. Established in 1812, Hurst and Blackett had published over 100 titles before 1862 that are catalogued in OCLC.

54. VICTOR HUGO, *LES MISÉRABLES AUTHORIZED ENGLISH TRANSLATION* (London, Hurst and Blackett 1862) (3 vols.) [hereinafter HUGO, *LES MISÉRABLES AUTHORIZED ENGLISH TRANS.*]. Press notices in September announced Hurst and Blackett would “shortly publish” its edition. Q. LITERARY ADVERTISER, July 1862, at 8; BOOKSELLER, no. 56, July 31, 1862, at 505; 8 AM. PUBLISHERS’ CIRCULAR & LITERARY GAZETTE, no. 8, Sept. 1, 1862, at 82. At the end of September, the publisher announced it would publish “in a few days.” BOOKSELLER, no. 58, Sept. 30, 1862, at 638. It was “at last” published soon after. AM. MONTHLY, Dec. 1862, at 555.

55. Publisher’s ad for second edition, BOOKSELLER, Dec. 6, 1862, at 815.

56. Seville identifies taxes, high production costs, and a conservative business attitude as factors behind British publishing practices. SEVILLE, *supra* note 14, at 109–10.

57. For a higher subscription fee, readers could borrow up to three volumes at the same time. For the prevalence of the three-decker in the British book market, see Seville, *supra* note 14, at 110 n.28; 1 OXFORD COMPANION TO THE BOOK, *supra* note 4, at 181–82; 2 OXFORD COMPANION TO THE BOOK, *supra* note 4, at 1204.

58. Hurst and Blackett’s later abridged editions omitted Wraxall’s Preface and, consequently, eliminated any identification of the translator. See *infra* note 81. Wraxall was dead by mid 1865. See *supra* note 37.

59. Wraxall had translated two of Esquiros’s multi-volume works. ALPHONSE ESQUIROS, *THE ENGLISH AT HOME* (Lascelles Wraxall trans., London, Chapman and Hall 1861) (2 vols.); ALPHONSE ESQUIROS, *THE DUTCH AT HOME* (Lascelles Wraxall trans., London, Chapman and Hall 1861) (2 vols.).

task. . . . However, from the moment when M. Esquiros is your friend, as he is mine, you cannot fail to produce an excellent work, having for guide and counselor that great and noble mind.”⁶⁰ The letter suggests Hugo believed Esquiros would contribute to the translation, and Wraxall’s Preface acknowledges Esquiros’s “very great assistance” and remarks that “together we have produced” the translation. Based on these statements, one publisher’s notice identified Esquiros as a co-translator.⁶¹ Nevertheless, Esquiros exercised no control over the translation, had little opportunity to review it prior to publication,⁶² and, on one substantive matter, disagreed with Wraxall’s decision.⁶³

C. Pooley’s American copy of Wraxall

In late 1862, the New York publisher W.I. Pooley & Co.⁶⁴ published a one-volume copy of Wraxall’s British translation (1862wp).⁶⁵ Pooley’s compositors completely reset the text in double columns, British spelling intact. Composition, proofing, printing, and binding were all completed

60. Lascelles Wraxall, Preface, 1 HUGO, LES MISÉRABLES AUTHORIZED ENGLISH TRANS., *supra* note 54, at iv [hereinafter Wraxall, Preface].

61. Full page publisher’s notice, AM. PUBLISHERS’ CIRCULAR & LITERARY GAZETTE, May 1, 1863, at 81 (“This edition [was] translated by Wraxall and Esquiros. . .”).

62. In a letter to Hugo dated December 30, 1862, Esquiros acknowledges that he had read Wraxall’s translation but had little opportunity to participate in any editing because of the speed of publication. He emphasized, “I thus deserve in no way to be named in his [Wraxall’s] preface, and the part of the assistance that should be attributed to me is extremely slight.” ALPHONSE ESQUIROS, CHOIX DE LETTRES 87 (Anthony Zielonka ed., Champion-Slatkine 1990) (my translation).

63. Wraxall referred to the disagreement, his religious motives, and Esquiros’s disagreement. *See infra* note 71 and accompanying text (quoting Wraxall’s Preface).

64. There is no evidence that Pooley was authorized by Hurst and Blackett, though Pooley’s title page listed the (authorized) British and French publishers in smaller type face. Pooley would have been a curious choice for a North American partner. Its limited publishing experience had included few novels and no translations. Its most successful titles were readers published jointly with a Boston publisher.

Harper & Brothers may have suggested the translation project to Pooley. Pooley’s offices were in the Harper building, and Pooley had collaborated with Harper & Brothers in publishing the American edition of GEORGE ELIOT, THE MILL ON THE FLOSS (New York, Harper and Pooley 1860). Harper & Brothers was the leading North American publisher, notorious for its unauthorized imprints of European authors. Organized as a family partnership, Harper’s might have referred the project to Pooley to reduce its risks. The speed with which Pooley printed its edition may indicate it relied on Harper’s advanced composing and stereotyping facilities. *See generally* 2 THE OXFORD COMPANION TO THE BOOK, *supra* note 4, at 781 (discussing history of Harper & Brothers). Collaboration is further evident in Harper’s subsequent use of Pooley’s frontispiece. *See* VICTOR HUGO, TOILERS OF THE SEA (New York, Harper & Brothers 1866).

65. VICTOR HUGO, LES MISERABLES [sic]; FIVE PARTS COMPLETE IN ONE VOLUME (Lascelles Wraxall trans., New-York, W.I. Pooley & Co. n.d. [1862]). This was the first edition to identify Wraxall as translator on its title page. It did not contain a U.S. copyright notice, since the original had been published and copyrighted in England.

within weeks of the first appearance of the British edition.⁶⁶ Though authorized by neither Hugo nor his French or British publishers, Pooley's marketing claimed its edition was authorized and that Hugo approved of its translation.⁶⁷ Such doubly false claims appear to be the source for later statements that Wraxall's translation "was made with the sanction and advice of the author."⁶⁸ Pooley's aggressive marketing may also help explain the misguided preference of reputable publishers for Wraxall's translation even long after Wilbour's translation entered the public domain.⁶⁹

D. Defects of the "Authorized Translation"

Pooley's timing was bad. Just as the publisher began to boast about its "only authorized" translation, serious defects in the British translation became widely known, and Carleton was soon gloating in print that the American translation he published contained "[t]he only unabridged English translation of 'the grandest and best Novel ever written.'"⁷⁰

Wraxall made no secret of two cuts. His Preface to the British translation explained:⁷¹

In the whole ten volumes of the original, only two omissions have been made, to which I have called attention in the body of the work. In the first case I left out two or three pages, because the French is a bolder language than the English, and I could not find the proper equivalents in which to convey Cambronne's extraordinary reply, and the conclusions which Victor Hugo draws from it. In the second instance, I was led by purely religious considerations to omit a few pages referring to the monastic system, which I believed (though M.

66. The work was listed as printed by January 1863. 1 AM. PUBLISHERS' CIRCULAR & LITERARY GAZETTE, no. 1, (n.s.) Jan. 15, 1863 at 4. The same issue contained the publisher's full page ad for the "authorized edition," offered for \$1.00 (paper) and \$1.50 (cloth).

67. Pooley's ad in Harper's Magazine warned readers to "look out for the catch-penny edition, bound up in green paper covers" and insisted that its "edition is the only authorized English translation published in this country." It also quoted part of Hugo's letter to Wraxall. Wraxall, Preface, *supra* note 60, at iv.

68. See 1 VICTOR HUGO, LES MISÉRABLES n.p. ([Lascelles Wraxall et al., trans.], Boston, Little, Brown and Co., 1887) (publisher's preface).

69. Editions based on Wraxall's translation were later produced by Little Brown (1887), Routledge (1887), and others. See generally Hoffheimer, *supra* note 2, at 273.

70. Notice for New Books appended to RENAN, *supra* note 49. In Carleton's book list for 1885, the publisher still claimed that it offered "[t]he only complete edition." See book list for 1885 appended to VICTOR HUGO, LES MISÉRABLES (Charles E. Wilbour trans., New York, Carleton 1886).

71. 1 HUGO, LES MISÉRABLES: AUTHORIZED ENGLISH TRANS., *supra* note 54, at iii, 287*; 2 HUGO, LES MISÉRABLES: AUTHORIZED ENGLISH TRANS., *supra* note 54, at 26*.

Esquiros differed from me) might have led to a misapprehension of the author's purpose in England. With these two very slight omissions the work is perfect.⁷²

Though Wraxall endeavored to minimize his "very slight" omissions, a quick comparison with the French text revealed that he had eliminated more than one chapter (Hugo's meditation on the word "shit" uttered by Cambronne at the Battle of Waterloo) and one entire book (Hugo's "Parenthesis" discussing the convent system). In Wraxall's defense, cutting some of this material may have been a commercial necessity to prevent boycott by the private circulating libraries that were major customers for multivolume sets.⁷³

But substantial defects in the British translation were not limited to the two omissions Wraxall acknowledged. The British translation made other alterations, cutting material at a total of nine places. Cuts included Hugo's Preface, two entire chapters—one of them the allegorical chapter with the opening line "Man Overboard" (I, II, 8)—and parts of other chapters.⁷⁴ Even when it did not eliminate material, the British translation was problematic in that it tended to correct Hugo's expressions for the sake of improving or clarifying the author's meaning.⁷⁵

Moreover, in squeezing five parts into three volumes, either Wraxall or his editors⁷⁶ deleted titles that provide important content,⁷⁷ destroyed Hugo's

72. Wraxall, Preface, *supra* note 60, at i–ii. Wraxall was not alone in his reluctance to translate these passages. Isabel F. Hapgood omitted the offending discussion of the word "shit" from her 1887 translation, and Norman Denny moved the digression on convents to an appendix in his 1976 translation. See Hoffheimer, *supra* note 2, at 275.

73. For a sobering example of de facto censorship wielded by the private circulating libraries, see JOSEPH HONE, *THE LIFE OF GEORGE MOORE* 95, 110 (Victor Gollancz Ltd. 1936).

74. For Wraxall's alterations, see A.R.W. James, "Waterloo sans 'Cambronne' ou les méfaits de Lascelles Wraxall," in *VICTOR HUGO ET LA GRANDE-BRETAGNE 183–99* (A.R.W. James ed., Francis Cairns (Publications) Ltd. 1986). James describes a number of inaccurate renderings, attributes all alterations to Wraxall, and contends that omissions were motivated by Wraxall's reluctance to associate the name of Jesus with criminals and prostitutes. *Id.* at 193–94.

Because Olin Moore relied on an emended version of Wraxall's translation, he was not aware of substantial defects of the original. See Moore, *supra* note 36, at 240n.2.

75. For example, Wraxall renders one chapter's title (IV, VI, 2) as "Gavroche to the Rescue," which Wilbour translates more accurately as "In which Little Gavroche Takes Advantage of Napoleon the Great."

76. Though scholars universally attribute all the translation's flaws to Wraxall, it is unclear whether Wraxall or an editor was responsible for those alterations that are not mentioned in his Preface. It is similarly unclear whether some cuts were deliberate. Sheer blunder seems the best explanation for the omission of most of the chapter (II, III, 11) where the narrator explains how Jean Valjean made his escape from the galleys.

77. Eliminating Hugo's titles removes information that is not communicated within the

organizational plan, and conflated distinct narrative lines. For example, Fantine's burial closes the first part of Hugo's novel, just as Jean Valjean's burial closes the novel. In the London edition, Fantine's burial falls in the middle of a volume where it is followed without break by the description of the topography at Waterloo.

Critics protested that Wraxall's cuts exceeded the translator's authority.⁷⁸ When Hugo became aware of the omissions, he expressly prohibited Wraxall from translating any future works.⁷⁹ Admitting he did not know English, Hugo cited the "unanimous judgment" that Wraxall's translation of *Les Misérables* "is awful and needs to be redone [détestable et à refaire]."⁸⁰

E. Supplementing Wraxall

In British territory, Hurst and Blackett's copyright excluded competing translations. Facing no competition from the superior Wilbour translation, the London publisher never corrected or supplemented the text of the British translation. It printed second and third editions from the plates of the first edition. To reach purchasers who could not afford the three-volume set, Hurst and Blackett released a hastily abridged one-volume version in 1864 (1864hb).⁸¹ When its exclusive copyright expired after five years, Hurst and Blackett simply ceased publishing the complete translation and made no effort to compete with inexpensive (and faulty) editions of Wilbour's American translation that became available in England in 1874 (1874cw).

chapters. For example, one title (II, III) explains that Jean Valjean makes a deathbed promise to Fantine to care for Cosette, yet the promise is absent from the text because the narrator does not hear it.

James describes the important caesurae provided by Hugo's structure and concludes that "[t]he rhythm is thus changed in a very profound way and its social and political import is reduced." James, *supra* note 74, at 186 (my translation). He also objects that "suppressing the titles deprives the reader of an element essential for his or her orientation with respect to the content of the text...." *Id.* at 187 (my translation).

78. See *Our Survey of Literature and Science*, 6 CORNHILL MAGAZINE 706 (November, 1862), cited and quoted in James, *supra* note 74, at 194; see also KENNETH WARD HOOKER, THE FORTUNES OF VICTOR HUGO IN ENGLAND 145 (Columbia University Press 1938). According to Hooker, the press's reception in England was almost entirely negative, but he does not attribute the hostility to the translation. On the contrary, some critics protested that the novel remained too offensive even after the omissions. *Id.* at 146–47.

79. Letter to Albert Lacroix of December 6, 1863, in 12 VICTOR HUGO, OEUVRES COMPLETES, EDITION CHRONOLOGIQUE 1237 (Paris 1967–1970), quoted in James, *supra* note 74, at 197–98 n.43.

80. 2 VICTOR HUGO, L'HOMME QUI RIT, 2: 407, quoted in James, *supra* note 74, at 195, also quoted in 3 VICTOR HUGO, CORRESPONDANCE 187 (Albin Michel 1952).

81. Abridgments began with the 4th edition, but the fact of abridgment was not indicated on the title page or elsewhere. The fourth edition appeared in May 1864, priced at 5s., as contrasted with the 31s. 6d. cost of the three-volume editions. See HOOKER, *supra* note 78, at 144n*.

In contrast, the New York publisher of the British translation faced stiff competition from the American translation. Pooley had rushed into print with a large initial press run of its one-volume edition of the British translation. This prevented it from making revisions for six months.⁸² Meanwhile, Carleton was alerting the public to defects in the British translation and undercutting Pooley's sole market advantage by releasing its own one-volume version of the Wilbour translation (1863gc) that met Pooley's price.

In May 1863, Pooley responded with a new edition (1863wp). While continuing to claim it offered the only authorized translation, Pooley silently remedied Wraxall's most notorious defects. Retaining the same title page and without resetting type, Pooley inserted Hugo's Preface on the blank verso of the translator's Preface and inserted asterisks in the text block where Wraxall had omitted material. Corresponding footnotes outside the text block referred to pages in an appendix that translated the omitted text.⁸³ Pooley's notices for its new edition blamed the previous omissions (falsely) on French censors and claimed (falsely) that the passages were omitted in all other editions.⁸⁴ Because the title pages of Pooley's two impressions are indistinguishable, its second edition has caused bibliographic confusion down to the present.⁸⁵

The second Pooley edition supplied serviceable translations for the omitted material but did not correct defects relating to the reformatting of the books and elimination of titles. Curiously, Pooley's supplements did not provide the copy text for later reprints of Wraxall's translation. Later publishers either copied the original defective Wraxall text verbatim or supplemented it with Wilbour or newly commissioned translations.⁸⁶

82. Pooley's ads claimed to have printed 30,000 copies, and its notice dated May 1, 1863 claimed to have sold 30,000 copies in six months.

83. The appendix (pages at 468–76) appears only in 1863hb. Though translated by someone other than Wraxall, the appended passages employed British spelling.

84. "New edition just ready. Containing all the suppressed chapters and parts of chapters left out by order of the French government, and not to be found in any other edition published in this country, making the book complete. Ask for Pooley & Co.'s Authorized Unabridged Edition. See that these names are on the book, in connection with those of Hunt [sic] and Blackett [sic], the London publishers. . ." AM. PUBLISHERS' CIRCULAR & LITERARY GAZETTE, May 1, 1863, at 81.

85. The existence of a revised second edition has gone unnoted by cataloguers and dealers, who no doubt assumed any difference in recorded pagination was due to a transcription error reversing the last digits (467, 476).

86. Albert Cogswell (1879ac) reprinted the original, defective text verbatim, omitting Wraxall's name from the title page and sequentially numbering chapters as did Hurst and Company, a New York publisher unrelated to Hurst and Blackett. VICTOR HUGO, LES MISERABLES AUTHORIZED TRANSLATION COMPLETE IN ONE VOLUME (New York, Hurst and Company, 122 Nassau Street, n.d. [1890–1910]). The latter imprint differs from an abridged edition by the same publisher that does not follow Wraxall. Cf. VICTOR HUGO, LES MISERABLES (THE OUTCASTS): COMPLETE IN ONE VOLUME (trans. from the author's latest revised definitive edition by Henry L. Williams, New York, Hurst & Company, n.d. [1890–1910]).

F. The Confederate Piracy

A discussion of English-language translations of *Les Misérables* would be incomplete without a consideration of the defective, plagiarized form of the Wilbour translation that circulated widely in the American South during the Civil War.⁸⁷ Published in Richmond in five parts in 1863 and 1864 (1863wj1-4, 1864wj), the editor's cuts, especially in later parts, prevent the result from being classed as an unabridged edition.⁸⁸

The Editor's Introduction signed "A.F." explains that the goal was to prepare a revised form of an existing translation that would be both more accurate and compatible with pro-slavery values. Wilbour is nowhere identified as the original translator. Instead, the editor writes:

The work of revising and correcting it for republication was commenced by that accomplished scholar, Professor A. Dimitry; but the pressure of other engagements having compelled that gentleman to give up the undertaking after he had progressed as far as page 49 of this edition, the task of revision was entrusted by the publishers to the present editor.⁸⁹

One scholar found merit in Dimitry's revised translation,⁹⁰ but the examples offered for its superiority consist most of annotations in footnotes that explain double meanings in the original French. After the first forty-nine pages, Wilbour's words are reprinted verbatim with extensive omissions, and the notable elimination of passages that praise John Brown and criticize slavery.⁹¹ Outside the effective reach of U.S. copyright law, the publisher in Virginia abandoned any effort at originality and made politically motivated alterations. Yet, even without the need to compensate translators or editors,⁹²

87. The University of Virginia library website claims this was the most widely distributed foreign title in the South during the Civil War—possibly inferred from the letter reported in Rosselet, *supra* note 36, at 43 (quoting letter by former secretary of Virginia Historical Association, recalling survival of few complete copies after 1863 and concluding that "[t]hey were read to pieces by the soldiers.").

88. Moore speculates that paper shortages required increasing cuts, including the elimination of part V, book I, chapters 1, 5 and 16. *Id.* at 246 n.15.

89. Vol. 1 at iv. The translator has been identified as Alexander Dimitry (1805–1883), a New Orleans native who served as assistant postmaster-general under the confederate government. Moore, *supra* note 36, at 246n.15.

90. Moore, *supra* note 36, at 244 ("Whatever defects it may have, the first volume of the Richmond translation is distinctly superior to Wilbour's rendering so far as the handling of 'peculiar French idioms' is concerned."). *Id.* at 244–45.

91. Michael H. Hoffheimer, *Copying Constitutional Text: Natural Law, Constitutionalism, Authority*, 4 S. CAL. INTERDISC. L.J. 653 663–69 (1995).

92. West & Johnston's printing mimics elements of Carleton's idiosyncratic typography,

in the absence of competition from New York publishers due to the wartime embargo, and under the deteriorating economic conditions in the South, the Richmond publisher charged eight times the market price of superior editions in the North.⁹³

V. BATTLE OF THE BOOKS

The history of English-language translations of *Les Misérables* published from 1862 to 1882 reveals some unmistakable trends. First, it is striking that all original translation work was completed in 1862—or by the first months of 1863, if we include the anonymous American corrections to the British translation included in the second Pooley edition. Second, no American editions matched the high production values and quality of the three-volume British translation, though that edition was unaffordable for most readers and was soon out of print. Third, only in the U.S.—more specifically the North during the Civil War—did readers have access to complete, unexpurgated translations of the novel.

In broader terms, Wilbour's American translation soon dominated the U.S. market. Its publisher responded quickly to demand for an inexpensive one-volume edition and met continuing demand for a complete translation, reprinting the American translation in affordable formats in 1863, 1864, 1865, 1867, 1869, 1870, 1874, 1877, 1878, and 1880. In contrast, the British edition did not prove to be commercially viable in the U.S. market, notwithstanding the improvements to the translation made in 1863. No American publisher reprinted the British translation until 1879.

Paradoxically, the American translation would also eventually become the most complete text available in British territory. After exhausting the limited market for expensive editions, the original British publisher ceased printing its complete British translation. After 1863, it employed its proprietary label “authorized translation” to market a radical and defective one-volume abridgment. It published this abridgment at least four times (1864, 1865, 1870 and 1879).⁹⁴ With the expiration of the copyright term, the original publisher offered no resistance to new publishers who printed popular and

suggesting that Carleton's book (with deletions) was delivered directly to compositors for typesetting.

93. Carleton's original price was fifty cents for each part in paper covers. By 1863, Carleton and Pooley offered hardbound copies of the entire novel for \$1.50, and Carleton listed a one-volume format in paper covers at \$1.00. West & Johnston sold individual unbound volumes for \$2.00. Of course, the comparison of prices is speculative as there was no exchange rate between U.S. and Confederate dollars, and the value of Confederate currency declined sharply during the war.

94. The dates are estimates as indicated in the corresponding entries in the Appendix. While faulty with respect to the treatment of text, these editions offered books that contained fresh typography, legible single-column text and a handsome engraved frontispiece.

affordable forms of a more complete translation (1874 and 1876). Though these later British editions did not identify their source, they were copied from Wilbour's American translation.⁹⁵ Insofar as they also omitted some text, a complete translation of the novel remained unavailable in British territory as a practical matter until the end of the century.

EPILOGUE

The history of the first English-language translations of *Les Misérables* can provide evidence for both those who support and those who oppose expansive copyright protection. On the one hand, the exclusive right to translate in Britain did nothing to prevent the production of an inferior text—"authorized" yet incomplete and unacceptable to the author himself. Shielded from competition, the British publisher had no incentive to correct its translation or to make the complete novel available in less expensive formats.

On the other hand, the open market for translation in the United States encouraged the rapid production of a superior, if "unauthorized," translation and also facilitated the wide dissemination of unauthorized copies of the British translation. Competition within the U.S. promoted public awareness of defects of the British translation, forcing its New York publisher to issue a corrected edition, while competition for volume sales led to the production of inexpensive one-volume editions before they appeared in France or England.

The worst case scenario visible in the American South during the Civil War was a legal state of nature devoid of copyright but also devoid of commercial competition. The Richmond publisher copied Wilbour without attribution, cutting parts to save costs, and making ideologically motivated changes to eliminate Hugo's veneration of John Brown and criticism of

95. Records of inexpensive British imprints are incomplete. Academic and public libraries did not acquire such popular editions when they were printed, and relatively few copies survived to be donated in later years. Moreover, the British editions of *Les Misérables* after 1864 do not include publication dates. Dates are established by external evidence (library acquisition dates) and internal evidence (dates on appended book lists or advertisements).

These popular books provide important evidence that British book production and marketing was gender specific. For example, volumes published as parts of "railway" series (1874cw, 1879gr) were oriented to male commuters. In contrast, the ad for Judson's Dyes on the back cover of the Favorite Authors series (1876wl) indicates that the book (from the same plates as 1874cw) was designed to be marketed to women.

I am at a loss to explain why publishers waited so long after the expiration of the five-year copyright term to reprint the American translation in England. Hurst and Blackett's refusal to reprint their own translation after 1863 reveals that publisher's perception of the lack of a strong market, but it may also reflect the publisher's anticipation of impending competition. The delay of competitors may reflect similar concerns about the market (which was being served by abridgments) and, perhaps, confusion about the applicable term. It is notable that remarkably few American imprints were imported even after the expiration of the term. *See supra* note 6.

slavery.

Only in the American North, where copyright protection was limited in scope to the work of specific, copyrighted translations, did readers have access to complete translations at affordable prices. Only there did a young lawyer-translator and young publisher collaborate on producing a work of such enduring value that has been in print continually for 150 years.⁹⁶

In the end, the history of *Les Misérables* reveals the interplay of individual efforts with market forces and legal regimes. The creative work of author and translators, the enterprising activity of publishers, the desires of consumers—all converged within specific legal environments that engendered rights, profits, and costs that left their mark on physical aspects of the book and shaped the form and content of its text. Hugo ends the novel with an image that emphasizes the ephemeral character of the physical form in which language becomes embodied. Rain and dust slowly erase four lines of poetry—from a source unknown, scratched in chalk, on an unmarked grave.⁹⁷

96. For the respective merits of translations, see Hoffheimer, *supra* note 2, at 274.

97. HUGO, *supra* note 1, at 1194.

APPENDIX

BIBLIOGRAPHY OF ENGLISH TRANSLATIONS 1862–1882

- 1862gc1. Hugo, Victor. *Les Misérables: Fantine: A Novel*. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1862 [roman numerals].
 [vi]+171 pp., 4 pp. ads at rear. Page numberings in 1862gc1-5 begin from pages preceding t.p.s with first page numbers (p. 8) printed on second page of text. Books (24cm.) sold separately (\$1.00) in brown, blue, and green cloth (with variations in details of color and fabric in surviving copies) and (50 cents) in blue paper wraps. Stickers inside back covers of some bound volumes indicate, "Geo. W. Alexander, Binder, New-York."
- 1862gc2. _____. *Les Misérables: Cosette: A Novel*. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1862 [roman numerals].
 164 pp., 4 pp. ads at rear.
- 1862gc3. *Les Misérables: Marius: A Novel*. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1862 [roman numerals].
 150 pp., 2 pp. ads at rear.
- 1862gc4. *Les Misérables: Saint Denis: A Novel*. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1862 [roman numerals].
 184 pp., no ads at rear.
- 1862gc5. *Les Misérables: Jean Valjean: A Novel*. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1862 [roman numerals].
 165 pp., 2 pp. ads at rear.
- 1862hb1. *Les Misérables: Authorized English Translation (Copyright)*. 3 vols. [Translated by Lascelles Wraxall.] London: Hurst and Blackett, Publishers, 1862.
 Vol. 1 (19.25 cm), viii+395pp. Reverse of title page: "John Childs and Son, Printers." Translator signs Preface (pp. iii-iv).
- 1862hb2. *Les Misérables: Authorized English Translation (Copyright)*. 2d ed. 3 vols. [Translated by Lascelles Wraxall.] London: Hurst and Blackett, Publishers, 1862.
 Appears identical to 1862hb1 except for title page designation of second edition.
- 1862wp. *Les Miserables: Authorized English Translation by Lascelles*

Wraxall, Five Parts Complete in One Volume. New-York: W.I. Pooley & Co., [in smaller print:] London: Hurst & [sic] Blackett; Paris: Pagnerre, Libraire Editeur, n.d. [1862]).

467pp., brown cloth (24cm.). Published in late 1862 or early 1863.⁹⁸

Frontispiece is full page, unsigned wood engraved portrait of Hugo. Leaf following t.p. contains Preface signed by Wraxall on front, blank on reverse. Biographical sketch (2pp.), second p. numbered vi, followed by Contents (2pp.). Follows text and internal three-part organization of 1862hb, i.e., omitting Hugo's Preface and other text.

1863gc. *Les Misérables: A Novel: Complete in One Volume.* Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1863 [roman numerals].

Copies typography (including original pagination) of 1862gc1-5. 814pp. total (counting table of contents repeated for each volume), 818pp. (counting advertisement and title page). Brown or green cloth.

Ad for individual volumes, appearing on page preceding title page in some examples, may be sign of earliest printings.

Text printed from reset sixteen-page chases preserving the original form enumerations (in Arabic numerals) from 1862 and adding alphabetical sequence designations of new forms.

Copied from worn plates evident, e.g., in "4" for "49" (*Marius*, p. 49).

1863gc2. *Les Misérables: Cosette: A Novel.* Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1863 [roman numerals].

164 pp., 4 pp. ads at rear. Green cloth. Images posted by an eBay vendor confirm the existence of an 1863 reprint of this individual volume. Carleton was still advertising individual titles in 1863, and the existence of 1863gc2 naturally suggests the possibility that 1862gc1, 1862gc3, 1862gc4, and 1862gc5 were also reprinted with 1863 dates to satisfy continuing demand. Nevertheless, the lack of any catalog records for any of these titles, including 1863gc2, may instead indicate that Carleton released a very small number of 1863gc2 in order to complete sets with remaining stock of other titles from 1862.

1863hb. *Les Misérables: Authorized English Translation (Copyright).* 3d ed. 3 vols. [Translated by Lascelles Wraxall.] London: Hurst and Blackett, Publishers, 1863.

Appears identical to 1862hb2 except for title page designation of third edition.

1863wj1. *Les Misérables (The Wretched): A Novel.* Part I, *Fantine.* [Translated by Charles E. Wilbour and A. Dimitry.] Richmond: West &

98. Pooley announced "10,000 copies ready" in an ad. *Harper's Weekly*, Dec. 6, 1862, at 783.

Johnston, 1863.

21 cm. iv+204pp. Paper wraps. On reverse of title page: C.H. Wynne, Printer.

Parts 1-4 appeared in 1863, 5 in 1864.

1863wj2. *Les Misérables (The Wretched): A Novel. Part II, Cosette.*

[Translated by Charles E. Wilbour.] Richmond: West & Johnston, 1863.

21 cm. viii [sic]+172pp. On reverse of title page: C.H. Wynne, Printer.

Note to Public on reverse of title page announces plan, providing paper is available, of publishing the remaining three parts in one volume by August, 1863.

1863wj3. *Les Misérables (The Wretched): A Novel. Part III, Marius.*

[Translated by Charles E. Wilbour.] Richmond: West & Johnston, 1863.

21 cm. viii [sic] +151pp.

1863wj4. *Les Misérables (The Wretched): A Novel. Part IV, St. Denis.*

[Translated by Charles E. Wilbour.] Richmond: West & Johnston, 1863.

21 cm. viii [sic] +173pp. Confusing pagination: second page of the table of contents (vii), second page of the text (10); pp. viii & 10 are the sixth and eighth pages of the book (including wraps).

1863wp. *Les Miserables, Authorized English Translation by Lascelles Wraxall, Five Parts Complete in One Volume.* New-York: W.I. Pooley & Co., [in smaller print:] London: Hurst & [sic] Blackett; Paris: Pagnerre, Libraire Editeur, n.d. [1863]).

476 pp. Published May 1863. Binding, title page and frontispiece are indistinguishable from 1862wp. Uses plates of 1862wp but inserts Hugo's Preface on blank verso of page of Wraxall's Preface; inserts asterisks in text where Wraxall omitted material and corresponding footnotes that refer to Appendix (pp. 468-76) with translations of material omitted by Wraxall.

1864gc. *Les Misérables: A Novel: Complete in One Volume.* Translated by Chas. E. Wilbour. New York: Carleton, 1864 [roman numerals].

1864hb. *Les Misérables: Authorized Copyright English Translation.* 4th ed. revised. [Translated by Lascelles Wraxall.] London, Hurst and Blackett, Publishers n.d. [1864].

Radical and faulty abridgment, much reprinted. John Childs and Son, printer.

1864hb-x. *Les Misérables: Authorized Copyright English Translation.* 5th ed. revised. [Translated by Lascelles Wraxall.] London, Hurst and Blackett, Publishers n.d.

Existence of 5th edition, contents, and date inferred from 1865hb.

1864wj5. *Les Misérables (The Wretched): A Novel. Part V, Jean Valjean.* [Translated by Charles E. Wilbour.] Richmond: West & Johnston, 1864.
21 cm. viii [sic] +173pp. See 1863wj.

1865gc. *Les Misérables: A Novel. Library Edition Complete in Two Volumes.* Translated by Chas. E. Wilbour. New York: Carleton, 1865 [roman numerals].

“Complete in one Volume” on spine. In 1864 Carleton was producing two different forms of Wilbour’s translation, the original set of five volumes (still sold separately) and the one-volume edition.⁹⁹ By 1865 the stock of five-volume sets was depleted, and Carleton announced two different two-volume sets to appeal to the high-end market and a one-volume edition.¹⁰⁰ It is uncertain whether it ever marketed the book in a form after 1863 other than one-volume, notwithstanding title page designations that the work comprised two volumes.¹⁰¹

1865hb. *Les Misérables: Authorized Copyright English Translation.* 6th ed. revised. [Translated by Lascelles Wraxall.] London, Hurst and Blackett, Publishers n.d. [1865].

Contents identical to 1864hb and same printer. Publication date from British Library catalogue is consistent with ad for 1864 edition of Lodge’s Peerage in appended book list.

1867gc. *Les Misérables: A Novel. Library Edition Complete in Two Volumes.* Translated by Chas. E. Wilbour. New York: Carleton, 1867 [roman numerals].

1869gc. *Les Misérables: A Novel.* Translated by Chas. E. Wilbour. New York: Carleton, 1869.

1870gc. *Les Misérables: A Novel. Library Edition.* 2 vols. Translated by Chas. E. Wilbour. New York: Carleton, 1870.

99. See list of New Books appended to RENAN, *supra* note 49.

100. See ad printed in HUGO, JARGAL, *supra* note 50 (announcing four different two-volume editions: “The best edition, in two large octavo volumes” (beautifully bound in cloth at \$5.50, or half-calf at \$10.00) and “The Spanish edition” in two handsome [but not “large”] octavo volumes (in cloth at \$5.00 and paper \$4.00)). This ad also reveals an increase in the price for the one volume edition, now offered cloth bound at \$2.50 or paper at \$2.00. The price increase for the one-volume edition reflects the disappearance of Pooley’s competing one-volume book from the market, whose low price Carleton had originally matched.

101. All examples of the “Library Edition Complete in Two Volumes” that I have seen are bound in a single volume with “Two Vols. In One/complete” embossed on the spine.

1870hb. *Les Misérables: Authorized Copyright English Translation*. 7th ed. revised. [Translated by Lascelles Wraxall.] London: Hurst and Blackett, Publisher, n.d. [1870].

See 1864hb. Publication date from Rostock University Library catalogue is probably an estimate derived from the date ascribed to 1865hb.

1874cw1. *Les Misérables: Fantine*. [Translated by Charles E. Wilbour.] London: Chatto & Windus, Publishers successors to John Camden Hotten), n.d. [1874].

379 pp. + ads. Book list at rear is dated April 1874.¹⁰²

Yellowback with three-color wood engraving on cover depicting man drowning as ship recedes in distance. After some paraphrasing in the first paragraph, the text follows Wilbour's translation verbatim. The chapter title "Double Qautor" is omitted, and the chapter's text is added to the preceding chapter.

1874cw2. *Les Misérables: Cosette and Marius*. [Translated by Charles E. Wilbour.] London: Chatto & Windus, Publishers, [1874].

444pp. plus ads. Based on Wilbour's translation, omitting some books, cutting and consolidating others.

1874cw3. *Les Misérables: St. Denis and Jean Valjean*. [Translated by Charles E. Wilbour.] London: Chatto & Windus, Publishers, [1874].

538pp. Based on Wilbour's translation, omitting some books, cutting and consolidating others.

1874gc. *Les Misérables: A Novel*. Library Edition. 2 vols. Translated by Chas. E. Wilbour. New York: Carleton, 1874.

Two volumes in one.

1876wl1. *Les Misérables: Fantine a Romance*. [Translated by Charles E. Wilbour.] London: Ward, Lock, & Tyler, Warwick House, Paternoster Row, E.C., n.d.

379pp plus ads (17.5cm). Printed from plates for 1874cw1.¹⁰³ Yellowback with same wood-engraving on cover as 1874cw1. Favorite authors series at front lists no. 26 Jean Valjean, no. 27 Cosette & Marius, and no. 28 Fantine at 2s. each—a doubling of

102. The complete novel was published in three volumes at 1s. each—the latter volumes extensively abridged. See *Athenaeum Journal of Literature, Science, the Fine Arts, Music and the Drama*, no. 2438, July 18, 1874, at 68.

103. This imprint is distinguishable from Ward, Lock's later one-volume *Les Misérables* (London, New York, Melbourne, Ward, Lock, n.d.). The pagination of the latter (486pp.) indicates it is copied from 1864hb.

the price from 1874cw1.

OCLC libraries catalogue 1876w11, 1876w12 and 1876w13 from 1876 to 1884. Copy of 1876w13 at Cambridge University Library bears acquisition date stamp of Aug. 30, 1876.

1876w12. *Les Misérables: Cosette and Marius*. [Translated by Charles E. Wilbour.] London: Ward, Lock, & Tyler, n.d.

444pp. copied from plates for 1874cw2.

1876w13. *Les Misérables: Jean Valjean*. [Translated by Charles E. Wilbour.] London: Ward, Lock, & Tyler, Warwick House, Paternoster Row, n.d.

538pp. Despite subtitle, this volume copies plates from 1874cw3, i.e., comprises an abridgment of both parts IV and V.

1877gc. *Les Misérables: A Novel*. Library Edition. Translated by Chas. E. Wilbour. New York: Carleton, 1877.

1878gc. *Les Misérables: A Novel*. Library Edition. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1878.

1879ac. *Les Misérables*. Authorized translation. Complete in One Volume. [Translated By Lascelles Wraxall.] New York: Albert Cogswell, Publisher, 1879.

Based on the original (incomplete) Wraxall translation but renumbering chapters sequentially.

1879gr. *Les Misérables Authorized Copyright English Translation*. [Translated by Lascelles Wraxall.] London and New York, George Routledge and Sons n.d. [1879].

Reissue of 1864hb as 2s. "yellowback," part of Routledge's Railway Library. Publication date is based on acquisition date stamp (Sept. 1879) on Cambridge University Library holding. Routledge continued to reissue this title through the end of the century, dropping the reference to "copyright" in later imprints. E.g., *Les Misérables Authorized English Translation* (London, George Routledge and Sons and New York, E.P. Dutton, n.d. [ca. 1905]).

1880gc. *Les Misérables: A Novel*. Library Edition. Translated by Chas. E. Wilbour. New York: Carleton, Publisher, 1880.¹⁰⁴

104. Carleton issued further editions in 1884, 1885, 1886 and 1887. G.W. Dillingham (Carleton's successor) also published it under its own imprint in 1887, adding the curious heading to the title page: "Carleton's Royal Copyright Edition."