

William Billings and the Colonial Music *Patent*

By DAVID P. MCKAY

THE subject of early American music has long been controversial, particularly concerning the vocal music of the late eighteenth century. The excesses, first of praise and later of abuse, heaped upon William Billings (1746-1800), the most gifted composer of his day, have reflected the shifting evaluation given this period: an ecstatic eighteenth-century writer noted "[Billings] is the rival of Handel," but a century later another author countered that "the American Cyclops [Billings was blind in one eye] . . . was very far from being an inspired musician."¹ Despite the considerable attention this Boston tanner-turned-composer received from critics, it is surprising that almost no one seemed aware of one problem that vexed Billings throughout his early career—the attempt of the composer to obtain legal assistance from the state to prohibit anyone else from profiting by the publication and sale of his music.² And, although Billings failed to receive the specific protection that he sought in the 1770's, credit should be given his pioneer efforts in the field of music copyright, which came a full decade ahead of those by his contemporaries.

When Billings's first book, *The New England Psalm Singer*,³ appeared in the fall of 1770, he had little cause to expect any special interest from the general public. Boston, after all, had been accustomed to having vocal music collections published for almost half a century, the most recent (in the mid-1760's) be-

ing two volumes issued by Josiah Flagg. Other enterprising American music publishers included Daniel Bayley of nearby Newburyport and James Lyon of Philadelphia, not to speak of the musical imports available from England. Billings's work, at best, could hope to be just one more publication in a highly competitive field. The unique fact about this book, however, was that the music had been written entirely by Billings himself. By contrast, previous publications, particularly those available in New England, had been essentially collections of European music—usually by inferior English composers—with the American publisher reaping the profits. Billings, anxious to protect his music from such pirating, turned to the state for assistance.

Thus, on November 7, 1770, the Great and General Court of Massachusetts received Billings's petition, "praying that he may have the exclusive Privelege of selling a Book of Church-Musick, compos'd by himself, for a certain Term of Years." On November 13 he was given "Leave to bring in a Bill," but on the sixteenth the "Bill for granting to William Billings the sole Privelege of Printing and Vending a Work of his own Composition consisting of Tunes and Anthems suitable to be used in Religious Assemblies" was "referred to the next Session"⁴—a legal euphemism usually indicating that a bill has been killed.

Billings actually had little reason to expect the Commonwealth to deem him

worthy of copyright protection. He had been known in Boston for a decade as the operator of a tanning shop on Frogg Lane, but his musical qualifications as of 1770 were singularly unimpressive: his training apparently went no further than what he had learned from a local choir-master (John Barry at New South Church); and, although by 1769 he had directed one Boston singing school “near the Old South Meeting-House,”⁵ his significant teaching appointments at the larger Boston churches were all to materialize in a later period. In the field of composition, the area of chief concern to the General Court, although Billings entertained few doubts about his own competence,⁶ in actual fact he was so little known that one member of the legislature seriously questioned whether or not he “was the real Author of the Book [*NEPS*].”⁷ But without either the recommendation of a distinguished teacher (and Billings was essentially self-taught) or wide public acclaim (which did not come until later) the unfavorable action by the General Court should have been received with little surprise.

Billings’s interest in copywriting *NEPS* remained undiminished, however, even after this first rejection by the legislature. Consequently a second petition was submitted on May 27, 1772; and by this time his reputation as a composer was impressive enough to forestall any possible criticism (a fact he carefully noted in his petition):

Province of ye Masstts: Bay

To his Excellency Thomas Hutchinson Esq: Capt. Gen: &c. the Honorable his Majesty: Council & ye honble House of Representatives of said Province in Gen. Court assembled.—

May ye 27th, 1772

THE MEMORIAL OF WILLm. BILLINGS, &c.—

Whereas your Memorialist in the year 1770 prefer’d this Petition to this Honble. Court, therein praying for the Reasons therein mentioned, that he might have a Patent granted him for the sole Liberty of printing a Book, by him composed, consisting of Psalm Tunes, Anthems & Canons, which has been found upon Experience, to be to general Acceptance; & which Composition is made much use of in many of our Churches, & is more & more used every Day.

That your Memorialist has composed a 2^d. Vol: in Addition, to make his Performance more compleat, tho he is not insensible, that further Additions may be made. He would also inform this Honble Court that he is apprehensive that an unfair Advantage is about to be taken against him, & that others are endeavoring to reap the Fruits of his great labor & Cost—That this honbl. Court so far countenance & sustain his Petition, as to commit the same, & that your Committee reported in favor of your Petitioners; but it being suggested by a worthy Member of this Honble Court, that they should be certain that your Petitioner was the real Author of the Book, where upon the Consideration thereof was refer’d to the next Session. In answer to which your Memorialist avers that he is the sole Author, & should have been asham’d, to have exposed himself, by publishing any Tunes, Anthems, or Canons, composed by Another, however fully to satisfy this honbl Court, your Memorialist stands very ready to be examined by any Committee, or the whole General Assembly, if they think proper, tho he doubts not, that at this Time of Day there are sundre Members of this honble Court upon that Head fully satisfy’d; but so it is may it please your Excellency & Honors, that your Memorialist’s former Petition is (as he is inform’d) either lost or misplac’d; he therefore prays that the same may be revw’d, & that he may, by the Indulgence of this Honbl Court, be favor’d with the alone Privilege, of printing his own Composition for a number of years, as to this Honble Court shall seem meet, & your Memorialist, as in Duty Bound, shall ever pray.

Wm. Billings

Wm. Billings Petr

June 9, 1772—Read & the prayer granted & the petr. has leave to bring in a Bill.⁸

In reply to the legislator who had questioned his authorship of the music in

1770, he could now point to members of the General Court who could vouch for his competence from firsthand knowledge—"at this Time of Day [1772] there are sundre Members of this honble Court upon that Head fully satisfy'd"—and furthermore he could now claim a wide popular interest in the book—" [NEPS] has been found upon Experience, to be general Acceptance; & which Compositions is made much use of in many of our Churches, & is more & more used every Day."

To further establish his need for protection he sounded a note of urgency: "he is apprehensive that an unfair Advantage is about to be taken against him, & that others are endeavoring to reap the Fruits of his great labor & Cost." There might have been some basis in fact here, for in 1774 Daniel Bayley of Newburyport published John Stickney's *The Gentleman and Lady's Musical Companion*, a collection which did include three Billings selections—"America," "Brookfield," and "Sapphick Ode." This was precisely the type of situation he was seeking protection against, and Bayley would certainly have had no scruples about such an action.⁹ But whether or not Bayley's publication was the work specifically anticipated by Billings when he wrote of the "unfair advantage" is still a matter of conjecture.

Once again Billings received favorable action on his petition (June 9, 1772), and this time (on July 14, 1772) the "William Billings Copyright Act" received the approval of both branches of the legislature—an historic occasion in the development of the Colonial music copyright.

Anno Regni Regis Georgii tertii duo decimi

An Act for Granting to William Billings of Boston the Sole privilege of printing and

vending a Book by him Composed consisting of a Great variety of psalm-tunes Anthems, & Canons in two Vols.—

Whereas the sd. Wm. Billings has compos'd a Great number of psalm-tunes Anthems and Canons to which are much us'd in and esteemed by many of our Churches, and which are daily more and more us'd and adopted by a Great number of people—which Composition has cost him much pains and application and has also been very expensive to him;—and whereas the said William Billings has supplicated the aid of this Court in this his undertaking—in Order therefore to promote such a laudable performance

Be it enacted by the Governour Council & House of Representatives that the said William Billings be and hereby is impower'd solely to print and vend his said Compositions consisting of Psalm-tunes Anthems and Canons &c. and have and recieve the whole and only benefit and emolument arising therefrom for and during the full term of [seven] years from the first Day of August next during which term all persons are hereby strickly prohibited either in whole or in part, and that if any person or persons during sd. terms shall presume to print vend or barter the same either in whole or in part as aforesd. he she or they so printing vending or bartering shall forfeit and pay the sum of Ten pounds 0:0 for each and every offence and so ? ; to be recover'd by the said Wm. Billings to and for his use in any Court of Record proper to try the same *unless* the person or persons so printing vending or bartering his said Composition shall be first impower'd by the said William Billings in writing under his hand Seal

In the House of Representatives July 14, 1772

Read a first second & third time & pas'd to be Engrossed

Sent up for Concurrence

T. Cushing Spkr

In Council, July 14, 1772

Read a first & second time & passed a Concurrence, to be Engrossed

M. Cotton D. Secry.¹⁰

One final hurdle, the approval of the governor, remained before the 1772

enactment could be considered a law. But what should have been a routine formality unfortunately became an insurmountable obstacle, for on July 14, 1772 Governor Thomas Hutchinson refused to give his assent to three engrossed bills, and the copyright act of William Billings was the third on the list. No explanation was given by the governor for his refusal, but he had been engaged in a bitter controversy with the legislature in the period from 1770 to 1772, and Samuel Adams, the influential Speaker of the House, had been his severest opponent.¹¹ Adams's close friendship with Billings might well account for the 1772 approval by the legislature of the copyright enactment;¹² but it also might explain why the governor refused to place his signature on the same document.

These two unsuccessful requests seem to have settled the matter for Billings, and he made no further attempts to secure a copyright for *NEPS*. But as it turned out there was little need for such protection, for the Stickney *Musical Companion* (1774) was the only Massachusetts publication previous to 1779 (apart from his own) that borrowed his music. However in 1778 Billings issued a new work, *The Singing Master's Assistant*, and the composer once again (on June 12, 1778) submitted a petition to the General Court in hopes of legal protection:

To the Honourable, the general Assembly of the State of Massachusetts Bay: in New England.

The Petition of William Billings humbly sheweth;

That whereas your petitioner having been at great Labour & Expence, in composing, & printing a Book of Church Music; intitled the Singing Master's Assistant &c: and your Petitioner is apprehensive that some avaricious Person, or Persons, will, in a Piratical manner, intercept & copy said Composition to the

great Prejudice of your Petitioner: Therefore your Petitioner begs your Honours would secure him in his property by patronizing s^d. Composition, granting him the sole power of printing & vending s^d. Composition, for the space of ten years, next ensuing.

Your Petitioner also begs your Honours permission to teach said Music in any Town or Parish of this State; where they may be disposed to imploy him, & your Petitioner as in Duty bound shall ever pray &c.

House of Representatives, June 12th 1778¹³

The petition was rejected, and this third failure to receive legislative assistance seems to have been taken as an indication that further attempts to obtain a private copyright enactment were hopeless. At any rate there is no evidence that Billings sought legal protection for either of his next two books, *Music in Miniature* (1779) or *Psalm-Singer's Amusement* (1781). There was little cause for disappointment, however, for in the next five years he published a number of editions of his *SMA*,¹⁴ a clear indication that the composer was reaping the profits of his own work. Furthermore, during the next ten years (the period of protection requested in his 1778 petition), five of the eight collections that included "piratical" editions of Billings's music were Connecticut publications and hence beyond the jurisdiction of any Massachusetts statute.¹⁵

The Commonwealth's failure to pass specific copyright legislation concerning a particular volume should not be interpreted as official indifference to the plight of the author. Indeed, it may seem remarkable that Billings received serious consideration from the legislature, and, when the entire copyright matter was reviewed soon after, "An Act for the Purpose of securing to Authors the exclusive Right and Benefit of publishing their Literary Production, for Twenty-one Years" was passed. On March 17,

1783,¹⁶ the protection became official and was much broader than Billings had ever envisioned. Not only lengthy protection (twenty-one years) and a heavy fine for violators (“a Sum not exceeding Three Thousand Pounds, nor less than Five Pounds”) were stipulated, but also mutual copyright assurances were offered citizens of any other state which professed similar protection to Massachusetts citizens. The sole requirement was that the author present two copies of his work to the Harvard College Library, which was precisely what Billings did when his next volume, *The Suffolk Harmony*, appeared in the summer of 1786. During the brief seven years’ existence of the Massachusetts law (until a Federal copyright act was passed in 1790), the *SH* was duly protected and none of its music appeared elsewhere in print.

But the Massachusetts law seems not to have been understood as clearly as it should have been by all the parties involved. Obviously the composers felt it useful, for five of the eleven volumes deposited with the Harvard College Librarian for protection were books of music.¹⁷ But one important matter, apparently never made clear, grew out of the confusion concerning works published previous to 1783. Were these works included under the copyright law? Billings seems to have believed they were not, for he did not register either his *NEPS* (1770) or the popular *SMA* (1778), both of which were heavily plundered by anthologizers in the 1780’s. What is more, the publishers of music collections appear to have been just as uncertain as were the composers. How else can one explain Isaiah Thomas’s remarks about Billings in his *Worcester Collection* (1786), wherein he cited Billings for praise—“the Publick are in a great mea-

sure indebted to the musical abilities of Mr. William Billings”—but at the same time carefully and deceptively indicated that he had used a Connecticut edition of Billings’s music (and hopefully one beyond the jurisdiction of any Massachusetts copyright statute)?¹⁸

By 1790 the Massachusetts bill was superseded by a much more comprehensive Federal law insuring copyright protection for all American authors. It is hard to imagine that Billings would have had much interest in the matter at this time, however, for the once immense popularity of his music (in the 1770’s and 1780’s) was rapidly diminishing as the public gradually shifted its attention elsewhere. In Boston, performances of instrumental music and opera were reflecting a broadening public taste, and even choral organizations, long the special preserve of Billings, were looking to Europe and toward the music of Haydn and Handel in particular rather than to the local composers for material.

Billings did produce one final volume, *The Continental Harmony* (1794), which was duly copyrighted, but the protection given was ironically meaningless to the composer by this time. The real problem Billings faced was not in protecting his music from being pirated, but in convincing a publisher that he would not lose money on the venture. Indeed, at one point in the humiliating struggle that preceded *CH*’s publication a mortgage on the composer’s house was suggested (by Billings’s friends) as security for the reluctant publishers.¹⁹ The publishers’ lack of interest in printing the music doubtless reflected the indifference of the public at large.

Before concluding this discussion of Billings and the early music copyright in America, some comment should be made

indicating the relationship between his efforts and the ultimately successful copyright legislation at state and national levels. There are elements in the Massachusetts bill, in particular the severe penalty stipulated for violators, that suggest his earlier attempts might have alerted the legislators to the awareness of an author's desperate need for strong legal protection. But the actual wording of the Massachusetts bill and the later Federal act of 1790 does not indicate the direct influence of Billings's enactments. His

influence was thus of a general rather than a specific nature.²⁰

The author closes with the suggestion that Billings, in spite of his failures with the Massachusetts Legislature, still deserves recognition as the father of the music copyright in America; and, if this title seems a little presumptuous, then at least he should be credited as the first musician in this country to focus state legal consideration on an issue that remains of vital interest.

NOTES

¹ Charles C. Perkins, *History of the Handel and Haydn Society* (Boston: Alfred Mudge & Son, 1883-1893), p. 22. [John Dwight, who actually wrote chapters iv-xv, is occasionally cited as joint author of the volume.]

"An account of two Americans of extraordinary genius in Poetry and Music," *The Columbian Magazine or Monthly Miscellany* (Philadelphia) (April, 1788), p. 212.

² Joseph Felt's *Annals of Salem* (Boston: Jas. Munroe, 1843), Vol. 1, p. 499 indicates at least a partial understanding of Billings's attempt to obtain a copyright, but apparently Felt did not understand that Billings was ultimately unsuccessful (nor did he know the central details involved in this failure).

³ Reference will be made to all six of the music volumes written by William Billings:

William Billings, *The New-England Psalm-Singer* (Boston: Edes & Gill, [1770]), hereafter referred to as *NEPS*.

———, *The Singing-Master's Assistant* (Boston: Draper & Folsom, 1778), hereafter referred to as *SMA*.

———, *Music in Miniature* (Boston: the author, 1779), hereafter referred to as *MM*.

———, *The Psalm-Singer's Amusement* (Boston: the author, 1781).

———, *The Suffolk Harmony* (Boston: the author, 1786), hereafter referred to as *SH*.

———, *The Continental Harmony* (Boston: Thomas & Andrews, 1794), hereafter referred to as *CH*.

⁴ *Journal of the Massachusetts House of Representatives* (1770): [November 7 entry], p. 143; [November 13 entry], p. 155; [November 16 entry], p. 165.

I wish to express my appreciation for the invaluable assistance of two men in connection with the research and writing of this article: Mr. Francis O'Conner, a prominent Worcester attorney, who patiently answered my numerous questions regarding legal problems that arose in the course of Billings's long struggle with the General Court; and Mr. Leo Flaherty, Curator of the Massachusetts Archives, who helped me locate much of the manuscript data used in this article and who also made helpful suggestions of interpretation.

⁵ *Boston Gazette*, October 2, 1769.

⁶ Billings dismissed his meager formal training in music with the dictum: "Nature is the best Dictator"—adding, "For my own Part, as I don't think myself confin'd to any Rules for Composition laid down by any who went before me. . . . So in fact, I think it is best for every *Composer* to be his own carver." (*NEPS*, pp. 19-20.) This blustering self-confidence is best deflated, however, by Billings's own comments eight years later: "After impartial examination, I have discovered that many of the pieces in that Book [*NEPS*] were never worth my printing, or your inspection." (*SMA*, "Preface.")

⁷ *Massachusetts Archives*, Vol. 58, pp. 598-599.

⁸ *Ibid.*

⁹ In the next decade Bayley was guilty of an even more blatant act of musical piracy, against Andrew Law—see Irving Lowens's "Andrew Law and the Pirates," *Journal of the American Musicological Society*, Vol. XIII, Nos. 1-3 (1960), pp. 210-213.

Billings's understandable anger with Bay-

ley's 1774 publication might also explain the curious fact that the frontispiece of a later Billings book, MM (1779), was an almost direct copy of one used earlier by Bayley—his *Essex Harmony* (Newbury Port: the author, 1770). Perhaps this was vindictive piracy!

¹⁰ *Massachusetts Archives*, Vol. 58, p. 600. See *Journal of the Massachusetts House* . . . (1772), p. 35 re June 9 "Memorial of W. Billings."

¹¹ For a summary of the Adams-Hutchinson conflict during the 1770-1772 period see the article on Thomas Hutchinson in the *Dictionary of American Biography*, p. 441.

¹² One of the earliest references to Adams's musical interests is contained in the *Boston Chronical* of October 23, 1769: "The Experiences of Samuel [Adams] the Publican, alias The Psalm-signer [sic], with the gifted face." There is the possibility that Adams and Billings both studied under the same teacher, John Barry; but details of Adams's musical abilities are lacking. Most of the nineteenth-century biographical references to Billings are careful to point out the close connection between the patriot and the composer. Nathaniel Gould's *History of Church Music in America* (Boston: A. N. Johnson, 1853), one of the fullest accounts of Billings, writes of Adams and Billings:

Not only this tune ["Chester," which dates from 1770] and these words, but many others of like character, were used, that breathed the spirit of the day, some of which S. Adams probably had, to say the least, *seen* before they were published. (p. 44)

He [Billings] was a zealous patriot, much attached to the *great* patriot, Gov. Samuel Adams, who was also an ardent lover of music. Adams and the late Dr. Pierce, of Brookline, [who probably never knew Billings until the 1790's] used to stand side by side with Billings to perform in the church choir and concert. (p. 43)

¹³ *Massachusetts Archives*, Vol. 184, p. 181.

¹⁴ The problem of establishing the number of editions (Dr. Shipton suggests calling them "issues") Billings printed of his *SMA* is beyond the concern of the present article. Suffice it to note in passing the following brief comments:

Evans 15744 notes an edition of *SMA* which has on its title page "Boston: (New-England.) Printed by Draper and Folsom

[1778]." The Mass. Hist. Soc. has a copy similar to Evans 15744 but with the date 1778 appearing after "Draper and Folsom."

Evans 16206 is labeled "Second Edition" and is dated 1779.

Evans 16716 notes a "Third Edition" dated 1780. The Amer. Antiq. Soc. has a "Third Edition" dated 1781. And several libraries contain a "Fourth Edition," probably dating from 1783. Additional "issues" are also extant.

The one indisputable fact is that *SMA* went through a number of "issues" quite soon after its appearance in print, and Billings undoubtedly profited from these printings.

¹⁵ The five were:

Andrew Law, *Select Harmony* (Farrington: J. Allen, Sculp., 1779). Six Billings selections.

Amos Doolittle and Simeon Jocelin, *The Chorister's Companion or Church Music Revised* (New Haven: the authors, 1782). Twenty-five Billings selections.

Oliver Brownson, *Select Harmony* (New Haven: Thomas and Samuel Green, 1783). One Billings selection.

[Chauncey Langdon], *Beauties of Psalmody* (New Haven: By a member of the Musical Society of Yale College, [1786]). Five Billings selections.

Daniel Read, *The American Singing Book* (New Haven: the author, 1785). No Billings music, but on p. 41 appears "Words by W. Billings L.M. 'Let tyrants . . .'" set to Read's tune "New-England."

The situation could have been altered in 1783, had Billings registered his volumes under the new Massachusetts copyright statute, but for reasons discussed later in this article he did not choose to do so.

¹⁶ *Acts and Laws of the Commonwealth of Massachusetts* (1783), Chap. XXVI, p. 36.

¹⁷ See Earle Coleman's "Copyright Deposit at Harvard," *Harvard Library Bulletin*, Vol. X, No. 1, pp. 134-141. The music items deposited at Harvard under the 1783 law are included in his list of deposits on pp. 140-141.

¹⁸ The "Advertisement" in Thomas's *Laus Deo! The Worcester Collection* (Worcester: Isaiah Thomas, 1786) contains the following statement:

Many tunes of his [Billings's] composing are inserted in this work, and are extracted from the *Chorister's Companion*, printed in Connecticut, from Copper-plates.

The Chorister's Companion (referred to in note 14, above) does contain some tunes in common with *Worcester Collection*, but their harmonies are not identical, and Thomas seems obviously to have been using another source. Furthermore, "Lebanon" and "Suffolk," which appear in Thomas's collection, are not found in *Chorister's Companion*.

¹⁹ On October 2, 1792 Ebenezer Andrews wrote Isaiah Thomas, his Worcester partner, the following:

They [singers in Boston who were agitating to have Thomas and Andrews publish *CH*] want us to go on with Billings Musick and to take a mortgage on his house for security of what money is not subscribed—in addition to which they are willing we should keep the books in our hands. They have not yet ascertained how much is subscribed—but they suppose there is 500 or 600 subscribed for.

The manuscript letter is in the American Antiquarian Society.

²⁰ The Massachusetts act does aim at the central concern of Billings—to give the author absolute protection, as far as is possible, for his literary productions. The Connecticut bill, by contrast, includes a section concerning "Proprietor neglecting to furnish the public with sufficient editions, &c" which stresses the author's obligation to the public—a concept not found in either the Billings's petitions or the Massachusetts enactment.

For further information [on the Connecticut situation] see Irving Lowens's "Copyright and Andrew Law," *Papers of the Bibliographical Society of America*, Vol. 53, 2nd Quarter, 1959, pp. 150-159, and [on the general problem of Colonial copyright] see Karl Fenning's, "Copyright Before the Constitution," *Journal of the Patent Office Society*, XVII, pp. 379-385 (May, 1935).