

The Copyrights

INTELLECTUAL PROPERTY AND
THE LITERARY IMAGINATION

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Introduction: Intellectual Property and Critique

How does newness enter the world?

Once new expressions, ideas, and inventions appear, how are they best bestowed upon the public? With what rewards and protections should their creators be induced to share their creations? What varieties of creator and creation should warrant these rewards and protections? Which aspects of a new work should be protected, to what degree, and for how long? And how should these inducements for creative individuals be balanced with concerns such as free speech and expression, intellectual freedom, and future innovation?

These are the crucial questions to which intellectual property law addresses itself. Its statutes and case law together tell a story about the function, nature, origins, itinerary, and destination of innovation. Given the highly technical ways in which it gets encoded and debated, that story is, at its heart, almost improbably colorful. In the midst of all the privatizing energies of capitalism, it posits the existence of a "public domain," a common lode of ideas and expressions that can be mined freely by all, and which intellectual property law exists to enrich. The law undertakes this enrichment of the public domain, fascinatingly, by charting a detour through private property: in order to provide creators with an incentive to create and to share their creations with society, it assigns them a temporary monopoly, akin to a property right, in particular uses of the creation—its reproduction, distribution, adaptation, and, in some cases, its public performance and display. This monopoly privilege, or intellectual property right, is alienable in the sense that its original holder may sell it, mortgage it, bequeath it, or divide it equitably in divorce; it circulates, then, like most tangible property, rather than being an inalienable right. Unlike tangible property, however, it is not perpetual but strictly temporary, expiring at the end of a set term as if it were an organic form reaching the end of its life span.¹ Patents, which protect inventions, expire after the relatively short term of 20 years in most countries.

Copyrights, which protect most other forms of intellectual property, last much longer—currently, in most developed nations, for the length of the author's life plus 70 years, or 95 years from publication in the case of anonymous works, pseudonymous works, and works made for hire.

When the copyright in a work expires, the work joins the public domain. More precisely, the end of copyright releases the *protected* aspects of the work into the public domain, as some unprotected, communal property aspects have resided there since its publication. Though patents protect ideas, copyright law applies only to original expression—not to ideas, procedures, processes, systems, methods of operation, concepts, principles, facts, discoveries, or preexistent expression incorporated in the new work. So what actually happens when a copyrighted work lapses into the public domain is the reunion of its temporarily privatized elements with the elements that have been public property all along. In addition, “fair use” or “fair dealing” provisions in many countries make even copyrighted expression reproducible for purposes such as commentary, criticism, teaching, research, scholarship, reporting, and parody. These exemptions, along with the partial and temporary nature of copyright protection, demonstrate copyright's ultimate subordination of private property to both the public domain and the public discourse it exists to fecundate, and on whose behalf it creates the incentive of monopoly privilege.

One could hardly daydream a stranger and more imaginative narrative than the one traced by intellectual property law, replete as it is with post-mortem estates, hybrid and organic property forms, cultural recycling, loopholes, first Sunderings, and final reunions. Nor, in many ways, could one hope for a more elegant and seemingly just balance between personal incentive and public weal, individual and collective legacy, privacy and publication. So long as it remains undisclosed, the fruit of the creative act—the text or image or composition or contraption—possesses the status of a secret: confected in private, it remains the absolute and exclusive property of its creator. Yet the society at large cannot benefit from the work of creative people unless that work is published. In the long-term interests of the public, copyrights and patents create a temporary bubble of exclusivity around published artifacts and public inventions: the physical text or object can be bought, owned, borrowed, lent, sold, or destroyed, but never copied, at least not beyond the allowances of fair use, without the creator's permission. This monopoly privilege should not be so extensive that it chills public discourse through the privatization of ideas. Nor should it be perpetual, lest it prevent future creators from building on past creations and thereby injure the public good. But it cannot be so perfunctory or so brief that creators are better off guarding their innovations in secret or ceasing to innovate altogether. Embodying these delicate balances, intellectual property is a frail gondola that ferries innovation from the private to the public sphere, from the genius to the commons. Yet for all that this narrative seems to posit individual genius

as the mystified source of innovation, it also recognizes and defends the collective as both the destination *and* source of creation. Patent and copyright regimes demand that new works exhibit a certain degree of “originality” in order to qualify for the monopoly privilege. But by creating a terminal property form, they also acknowledge that prior inventions and expressions are at least part of the raw material for future innovation, that creation *ex nihilo*, if it exists at all, is always compounded with reuse and recombination. Intellectual property law recognizes, in other words, that creation is social rather than solipsistic.

Since its inception in the early eighteenth century, monopoly copyright has been a crucial element in the legal and economic infrastructures that undergird cultural production. By creating a temporary monopoly in the reproduction of new work within its jurisdiction, copyright established spatial and temporal horizons within which new works could be published without the threat of competing editions. This guarantee protected publishers' investments in new works and gave them legal recourse against pirated editions, at least within the boundaries of national and colonial copyright regimes and international accords. By granting creators limited property rights in their creations, copyright also helped emancipate writers from their dependence on aristocratic patrons, eventually giving them financial leverage in their relationships with publishers; in this respect, copyright was indispensable to the development of the “author” as a propertied, professional, and financially self-sufficient figure. But copyright has done more than simply stabilize a legal and commercial environment hospitable to the modern author. By establishing the criteria that make a work eligible for protection, along with the nature and duration of the protection, copyright has shaped not only the field on which the figure of the author moves but the identity of that figure as well. Authors, according to the law, win the laurel of intellectual property through the creation of *original expression*. Though it may seem counterintuitive, this consecration of originality actually reflects copyright's recognition of the social nature of creation: the law makes original expression the sole category of intellectual property protection because, in order to maintain a rich public domain, it refuses to grant property rights in ideas, or in expressions whose copyright has already lapsed. In the eyes of the law, then, an author is a person who wins an intangible, temporary, and predominantly alienable property through a highly specific kind of creation, one that society deems sufficiently valuable to warrant the incentive and reward of exclusive rights.²

Copyright law, as I have described it here, seems nothing but admirable. It helps sustain creative professions by giving creative laborers a property right in what they produce; it balances that right against the needs of both the public and future innovation by making it temporary; it creates a private property in the replication and dissemination of expression but not ideas, and thus stops short of chilling public discourse; it provides fair use ease-

ments in intellectual property rights for a range of purposes; and it rewards creative individuals without, apparently, overtaxing the collective. However, as this book will demonstrate, the above description of copyright is a highly idealized one, positing an ideally stable set of balances among the law's interested parties and principles. In reality, copyright's constitutive balances are highly precarious and extremely susceptible to change through legislative reform, judicial practice, and rightsholder lobbying. Having imagined copyright in an ideal state, one must ask what changes would result in cultural production, public discourse, free speech, and the public domain if the law were to achieve different equilibria. What would happen, say, if the monopoly privileges the law awards were to become considerably less temporary through repeated term extensions? What if the conceptual space of "expression" were to expand its boundaries, encroaching on the space of "idea"? What if creators could only obtain intellectual property rights in a new work once it had been approved by a regime of state censorship? Or if fair use provisions for critical, pedagogical, scholarly, reportorial, or parodic deployments of copyrighted work were to wither and thus license a private censorship by rightsholders? What would happen if the public domain were no longer the authorizing power that copyright served? What if the public domain were instead subordinated to the perceived sovereignty of private intellectual property and its overconsecrated sponsor, original genius? Or what if the law's historical orientation toward the creative individual were to result in a blindness toward the collective sources of even "original" expression, or in a failure to recognize noncorporate communities—communities that gradually, collectively, and publicly create a text, artifact, or practice—as legitimate authors and proprietors?

For many scholars and critics of intellectual property law, the foregoing questions are not hypothetical but rhetorical, describing conditions that have intensified during the last 150 years and, in most cases, persist today. During that period, perhaps the most striking trend across a number of national and international copyright regimes has been "copyright creep," a tendency toward frequent and increasingly substantial term extensions. In the U.S., the last 40 years have seen a massive transition away from domestic industrial manufacturing and toward intellectual-property-reliant sectors such as pharmaceuticals, biotechnology, computer platforms and software, and the culture industry. As a key guarantor of the nation's postindustrial, informational economy, copyright has flourished in tandem with it: during the same 40 years, the U.S. copyright term has been extended 11 times.³ Most recently, the 1998 Sonny Bono Copyright Term Extension Act lengthened the U.S. copyright term from 50 to 70 years after an individual author's death, or from 75 to 95 years from publication for "work-for-hire," thus guaranteeing that virtually nothing will enter the public domain for the next 20 years.⁴ The results of this "maximalist" tendency in U.S. intellectual property legislation are complex. As copyright protection expands in both extent and du-

ration, the public domain of materials freely available to artists, teachers, scholars, and the general public diminishes. Longer copyright terms do, of course, benefit individual innovators and their heirs; but creative individuals also suffer from the impoverishment of the public domain, from which the raw materials of future innovation have been withheld in favor of longer terms. Meanwhile, the hyperextension of intellectual property rights carried out in the name of individual authors and artists works less equivocally to secure lucrative corporate holdings. As a result of the Bono Act, for instance, the Disney character Mickey Mouse, who first appeared in the 1928 film *Steamboat Willie*, will enter the public domain in 2024 instead of 2004. The example may appear frivolous, but if we consider the character's global recognition and appeal and the vast financial resources an organization like the Walt Disney Company can devote to legislative lobbying, the Bono Act can be seen for what it is: less an incentive to creative individuals, or even a consolation to their heirs, than a corporate special interest giveaway. Disney would no doubt respond that it deserves to reap continued rewards for the continuing risks it takes in marketing Mickey and its other intellectual properties. But such an argument reduces the production of meaning in mass culture to a unidirectional, monologic process that begins and ends with the Walt Disney Company. If instead we understand the meaning of Mickey and other mass-cultural characters as a dialogic, reciprocal, even agonistic effect—as the sum total of fantasies and transactions by consumers, producers, parodists, collectors, detractors, scholars, appropriationists—then the superprivatization of such collaboratively produced figures begins to seem bizarrely inappropriate.

It is also lamentably so, in that trademarks and copyrighted characters like Mickey Mouse (and Joe Camel, and the Marlboro Man) are increasingly seen by courts as legally immune to parody, despite a recent Supreme Court case affirming that parody may qualify for fair use exemptions as a variety of "comment or criticism," so long as the parody criticizes the same work it mimics.⁵ Such immunity impoverishes not only the public domain but the syntactical range of criticism-through-reproduction; in effect, free speech and the possibilities of critical retort are infringed on so that intellectual property will not be. As a result, a legal canon initially conceived as a wary concession by the public domain to individual creators "for the advancement of learning" has been inverted into a grudging concession by corporate owners to a shrinking public domain.⁶ Rosemary Coombe has made such an argument at greater length:

For subjects in contemporary consumer societies . . . political action must involve a critical engagement with commodified cultural forms. In the current climate, intellectual property laws often operate to stifle dialogic practice in the public sphere, preventing us from using the most powerful, prevalent, and accessible cultural forms to express alternative visions of social worlds. . . . If, as

human selves, in human communities, we are constituted by and constitute ourselves with shared cultural vehicles (as many of us are weary of having to assert), then it is important that legal theorists consider the nature of the cultural forms that “we” “share” in consumer societies, and the recognition that the law affords them.⁷

As a growing number of scholars have argued, a law grounded in the figure of the individual genius-creator is ill equipped to recognize a dynamic and intersubjective model of meaning or value, much less a notion of the subject as constituted by and with other subjects in relation to “shared cultural vehicles.” Yet if copyright law seems inflexibly wed to an eighteenth-century metaphysics of authorship, it has remained flexible enough in adapting that metaphysics to serve special interests, advancing corporate holdings and private censorship beneath the standard of individual genius.

The phenomenon of “copyright creep,” however much one might regret its reapportioning of public and private domains, appears to have resulted from the influence of the private sector on the legislative climate, rather than from some privatizing drive inherent in copyright’s metaphysics. If anything, the rash of term extensions in the twentieth century indicates a legislative drift away from stipulations in the law’s inaugural statutes that copyright create a property strictly limited in its duration. But in large part, these term extensions have been rationalized by invoking the figure of the individual creator, whose original creations can only be induced, it is argued, through stronger, more extensive intellectual property rights that will persist long enough to benefit many generations of heirs. Insofar as copyright’s initial statutes are premised on an individual model of creation, on the criterion of originality, and on the assumption that innovation depends on the private incentives of property and profit, the recent maximalism might be seen as latent in copyright’s genome from the start, awaiting a complex of environmental conditions to activate its expression. I suggested above that the limitation of copyright to “original expression” actually indicates the law’s commitment to a social model of innovation. But although it may have been established as a category of circumscription, original expression was consecrated by the Romantic cult of the individual genius, and that legacy of Romanticism, at least, has proven both durable and adaptable. So much so that a scholarly critique of the concept of original genius as a historically contingent ideological formation faces a peculiar problem of reflexivity: the originality cult thrives in the very institutional contexts where such scholarship is produced and evaluated. As a result, academics whose work interrogates hegemonic models of authorship tend nevertheless to deploy that same dominant rhetoric of original genius within the competitive circuits of the profession, particularly in hard-sell hyperbolic genres such as the letter of recommendation and the jacket-copy blurb.

The relationship between copyright law and the Romantic figure of the

original genius, however, is not a simple or straightforward one. Martha Woodmansee has shown that copyright and the Romantic model of genius were interdependent formations during the late eighteenth century; yet copyright law has never limited its protection to works of the radical, visionary originality celebrated by the likes of Edward Young and William Wordsworth. The “original expression” a work must exhibit in order to win copyright is not a transcendent iconoclasm or singularity but something more modest: the absence of verbatim copying and the demonstrable presence of a modicum of creativity. That copyright law does not reward labor *tout court* is obvious in the kind of textual production it prohibits—namely, infringement—which may involve work, but clearly not the right kind of work. Along less transgressive lines, the U.S. Supreme Court decided in 1991 that alphabetical listings (e.g., in telephone books) are not copyright because the work of compiling and alphabetizing names, numbers, and addresses is not an “original” or “creative” enough transformation of public domain information.⁸ Still, the threshold of innovation is set well below Wordsworthian notions of originality: the changes made to an existing text in new “derivative” works (translations, dramatizations, editorial revisions, abridgments, condensations, and annotations) are eligible for their own copyright status as “original works of authorship.” Copyright does not even stipulate that “original” works be different from preexisting ones, only that they be the products of creative exertion rather than outright copying. Judge Learned Hand imagined an extreme case of “independent creation” to illustrate copyright’s emphasis on the work of original expression rather than on radical originality:

Borrowed the work must indeed not be, for a plagiarist is not himself *pro tanto* an “author”; but if by some magic a man who had never known it were to compose anew Keats’s “Ode on a Grecian Urn,” he would be an “author;” and, if he copyrighted it, others may not copy that poem, though they might of course copy Keats’s.⁹

If the hypothetical is a little hard to accept, it owes partly to the burden of proof Learned Hand’s imaginary poet would have in demonstrating his or her lack of familiarity with Keats’s ode, particularly now that charges of “subconscious infringement” have been successfully prosecuted in copyright suits.¹⁰ But we balk at the idea of an identical yet noninfringing ode for another reason as well: Western culture still largely imagines authorship, particularly of “imaginative” works such as poems, novels, and musical compositions, to be a unique expression of a unique self. If we laugh at Learned Hand’s imaginary scenario, we do so both to affirm our belief that such a thing could never actually happen and to ward off its insinuation that the self and its expressions might not be unique. Though the scenario asserts copyright’s indifference to the uniqueness of persons or their works, intel-

lectual property law is frequently employed to assert just the opposite: that the self and its expressions are singular, inimitable, authentic, and utterly original; that each of us is a Keats. And when the relatively thin requirements of originality native to copyright are hitched to the Romantic notion of radical originality, copyright no longer functions simply to reward modest creative labor; instead, it has been enlisted in the protection and consecration of a model of the self as original genius.

Still, what could possibly be so objectionable about a legal, aesthetic, or even academic regime that celebrates original genius? Nothing at all, one might respond, so long as that celebration does not take place at the expense of other sources, sites, and models of creation. Historically, though, the concept of original genius has been impatient of valorization *among*, and has insisted rather on valorization *over*. In his Preface to the second edition of *Lyrical Ballads*, Wordsworth defined the poet as "a man . . . endowed with more lively sensibility, more enthusiasm and tenderness, who has a greater knowledge of human nature, and a more comprehensive soul, than are supposed to be common among mankind."¹¹ Though the description only admits of a difference of degree between the genius and the average person, the refrain of "more" and "greater" sings cumulatively of a difference in kind. That fundamental difference, in academic as well as legal and aesthetic discourse, has more often been invoked to justify an exemption from, or even a dominion over, the common and the commons than to bind genius to their defense; the rights and entitlements of genius tend to claim an inverse, rather than a proportional, relation to those of the masses, the public domain, and the public sphere. This narrative of election and exemption repeats itself, furthermore, at the level of designation: the claim that a work is "original" bestows on it a magical, mystified aura that acquits the claimant of any further burden of proof. Such a claim implies an epistemological depth by appeal to a mythological surface. To be designated radically original, a work must break detectably with its antecedents, and in order to make such a claim, the claimant purports to know not just the *best* that has been known and thought but *all* that has been known and thought. Thus, while the laurel of originality is supposedly reserved for "incomparable" works, it can only credibly be awarded after the most thoroughgoing global comparison—a comparison no claimant is in much of a position to undertake. In more general terms, originality is a property licensed by its vaunted self-sufficiency and heterodoxy but only really attainable by the most external, contingent, and generally orthodox means possible. Once it is denominated original, however, the work puts on the near-invulnerable glamour of the self-generating, self-legislating Romantic artifact. Dissevered not only from the more collective sources and modes of its own production but from the hypothetical nature of its originality, it attains the theological rank of a "classic," a "masterpiece," a work of "genius." What ought to have been a rhizomatic process of evaluation has become an indwelling, monolithic *value*.

The self-replicating power of the concepts of originality and original genius has given them the status of fact in Western culture. This seeming facticity of the concepts is the veil behind which they hide their own factitiousness—their status as artifact, artifice, ideological formation. In this sense, the concept of radical originality duplicates the same commodity form it helps underwrite, sustaining the illusion of its autochthony and autonomy by concealing the social and economic conditions of its production and proliferation. This concealment, moreover, can work effectively to naturalize dominant powers and power structures so that they may both legitimate and replicate themselves. Where art forks into "highbrow" and "lowbrow," elite and proletarian, originality acts as a kind of gatekeeper to the high road, remaining *the* indispensable criterion for the formation of high aesthetic canons and the ruling-class ideologies they tend to ratify. But to link originality with hegemony in such a way must be the starting point, not the ending point, of any study like the present one. That germinal connection opens out into a bouquet of difficulties: how does one confront literature's implicit beautiful lies—and culture's perhaps more explicit ones—about the spontaneous self-generation of "original" art without falling back on some notion of a privileged origin? Can source-hunting, for instance, or unmasking "sole authorship" as collaboration do more than bolster those lies by exfoliating "false" claims of originality back to "true" claims? Does a deprivileging of origins thwart the indispensable projects of validating labor and detecting historical causalities? How does one account for the appearance of new ideas and expressions in the world, if not through genius and originality? And more strategically, does even a partial assault on the notion of original genius deprive the Left of a potent, imaginative means to solidarity-building, as Richard Rorty has argued?¹² Can individual agency and moral autonomy survive a critique of original genius, or does such a critique fatally impoverish its own lexicon for galvanizing transformative energies?

I will not attempt to answer these questions here, as it is the work of the following chapters to address them in a more site-specific manner. In response to the foregoing skepticisms about the ideological constitution and deployment of originality as a sign, however, one might always object that originality nonetheless "happens." We are schooled, at least, to experience the originality of important works as an enduring strangeness, a calcified power to shock—like the signature of a sudden climatological change encoded in a fossil record or embedded in sediment. Even if we reject the notion that originality can be discerned in an individual work or person, a ghostly version of the idea survives in many historical methods. Cultural critics continue to record the ventilation of the familiar by the unfamiliar through the transom of newness—new events and inventions, epistemic shifts and seachanges in ideas, attitudes, styles, movements, modes of production and consumption, lifeworlds, dominant paradigms, regimes of knowledge. This book itself supposes that we can distinguish the stirrings, if

not the precise geneses, of emerging intellectual currents such as Romanticism, marginalist economics, and intellectual property maximalism and metadiscourse from the chop and swell of contemporary circumstances and ideas. Imprecision does not obviate newness: that we can seldom pinpoint the moment when the mast first breaks the horizon is no argument against the arrival of the ship. I would respond: just so. Creation, invention, originality do happen, and a good thing too. But the sources and channels of those originary "happenings" are more radically unknowable than we like to admit. By the time we experience an idea or expression as original—really, in order for us to experience it that way—it has passed through the sieves and screens of institution and ideology: critical, educational, legal, economic, and political structures of selection and valorization. I am not suggesting that originality is some noumenon that exists beyond the reach of human apperception, but that it is only ever meaningfully a dialogical cultural phenomenon—a complexly intersubjective, intertextual product of social processes of consensus, contestation, distortion, and occlusion. The gesture by which this social process misrecognizes itself as noumenal or theological is the ideological gesture par excellence, and thus the central domain of critique. To return to the nautical figure, the gaze of culture is not restricted to first sightings of newness; it also chooses which vessels to track. Those it rejects, it forgets; those it selects, it exaggerates, whether by consecration or execration, and makes dreadnoughts of them. The originality effect, a hypermnnesia that fetishizes an elite pantheon of "originals," can only occur alongside an amnesia about the precursors and contemporaries of those same originals: the great individuals loom largely because others are blotted out, forgotten. Yes, originality happens as an effect, but, viewed up close, it dissolves into its constituent pixels; like the televisual image, it is a composite to which we habitually impute a naive and spontaneous holism. This study examines the historical uses of that holism, its strategies of self-constitution and consecration, its durable allure, its embarrassing internal discontinuities, and its proliferating metadiscourses and counterdiscourses. It attempts to provide a sense of why the idea of "original genius" and the legal, economic, and cultural structures that sustain it and depend on it have been at once the pride and scandal of modernity.

Although copyright has long been understood as an important force in the modern literary marketplace, its cultural role in shaping models of authorship, literary value, and literary crime has emerged much more recently. One early attempt to relate literary property law and the cultural construction of authorship was Benjamin Kaplan's *An Unhurried View of Copyright* (1967), which adduced an intimate symbiosis between copyright and the Romantic "cult of originality." Kaplan went on to predict, or hope for, a waning of that cult along with its legal symbiont, copyright maximalism. Noting the rise of collaborative authorship, aleatory musical composition, computer-gener-

tion, and global communications networks, he observed that "not only is the relationship between author and audience radically changed but the author's pretensions to individual ownership and achievement are at a discount: his dependence on the past is better appreciated; he is seen somewhat as a tradition-bearing 'singer of tales,' as a kind of teacher peculiarly indebted to his teachers before him." Such a discounting of the originality cult, Kaplan concluded, would probably "abate feelings of proprietorship and modify conceptions of copyright, especially those bearing on plagiarism"—a possibility he welcomed, given his stated "low-protectionist bias."¹³ Even more inaugural for later scholars of copyright and its cultural correlates was another late-sixties text, Michel Foucault's "Qu'est-ce qu'un auteur?" (1969), which calls in its famous opening *praeteritio* for a "sociohistorical analysis of the author's persona":

Certainly it would be worth examining how the author became individualized in a culture like ours, what status he has been given, at what moment studies of authenticity and attribution began, in what kind of system of valorization the author was involved, at what point we began to recount the lives of authors rather than of heroes, and how this fundamental category of "the-man-and-his-work criticism" began.¹⁴

However brief, Foucault's suggestion has enjoyed a long critical afterlife, prompting work on the history of the writerly profession, literary property law, the publishing industry, and mythologies of authorship.¹⁵ Building on both Foucault's and Kaplan's work, Martha Woodmansee's "The Genius and the Copyright: Economic and Legal Conditions of the 'Author'" (1984) demonstrated the interpenetration of eighteenth-century copyright law and nascent Romantic notions of original genius as well as the dependence of both on the changing economics of the book trade.¹⁶ Mark Rose's *Authors and Owners: The Invention of Copyright* (1993) took a sustained look at decisive eighteenth-century British copyright cases to illustrate the socioeconomic contingencies of the law's founding decisions and to argue that copyright is, finally, "an archaic and cumbersome system of cultural regulation" and "an institution built on intellectual quicksand: the essentially religious concept of originality, the notion that certain extraordinary beings called authors conjure works out of thin air."¹⁷ By demonstrating how copyright law and literary culture interdependently construct the author as original genius and as possessive individual, these studies have, in turn, helped draw attention within legal scholarship to the biases the Romantic author-figure builds into intellectual property law. In recent work, Peter Jaszi, James Boyle, Rosemary Coombe, and other legal scholars have criticized the law's infrastructural inability, given its reliance on individualist models of authorship, to comprehend and reward collaborative invention and creation.¹⁸

Although they are both literary critics, Woodmansee and Rose foregrounded legal over literary discourse, in their above-mentioned work, in order to see how the laws pertaining to the literary marketplace underwrote aesthetic categories and criteria conventionally held to be disjunct from the market. The result has been a growing body of literary historical scholarship that attends to the conceptual bases and gradual elaboration of copyright—its landmark cases, domestic reforms, international accords, economic rationales, and legal metaphysics—as they affected not only the economics but the evaluative paradigms of the literary marketplace. In attending to copyright as an infrastructural force in cultural production, however, such work tends to treat literary texts as largely incidental to copyright—as passive counters circulating on a field constituted and delimited by intellectual property law and other market forces. This is not to say that the roles literary figures played in promoting copyright have been neglected. The activities of Wordsworth, Thomas Carlyle, Robert Southey, Thomas Arnold, Thomas Noon Talfourd, and others in supporting the Copyright Act of 1842, for instance, are well known. So is the fact that Charles Dickens, on a tour of the U.S. that same year, publicly denounced the widespread American piracy of works by foreign authors and pleaded for the U.S. to participate in international copyright accords.¹⁹ But the literary texts that get discussed in relation to copyright tend to be confined to overtly polemical or occasional texts—Wordsworth's pro-copyright-extension sonnets, "A Plea for Authors, May 1838" and "A Poet to His Grandchild," say, or Mark Twain's unpublished dialogue "The Great Republic's Peanut Stand"—that directly address literary property debates.²⁰ The present study argues that copyright's presence *within* literary texts is far more pervasive than has previously been recognized. As the property form most "proper" to literary texts, copyright has incontestably shaped the commercial and evaluative circulation of literature. But it has done more: as its spatial, temporal, and economic domains have expanded, copyright's presence in the late-modern literary imaginary has also intensified. Yet this is not to suggest that the previously secure and autonomous space of the literary has been passively "invaded" by copyright. The literary texts I discuss in this book are not occupied by copyright so much as preoccupied with it: rather than accepting the fiction that copyright law is utterly external to literariness and literary culture, they recognize copyright as mutually constitutive with the literary, as forming one horizon, at least, of literary possibility. They recognize, too, that copyright law need not be accorded a naturalized, nonnegotiable facticity over and against literary contingency, but that it is a crucial subject of literary meditation and, if need be, contestation. Neither recognition is quiescent; these are textual spaces where lettered discourse wrestles, or is made to wrestle, with its vexed status as property.

The focal literary texts of the ensuing chapters may seem a motley assemblage, consisting of several anonymous patchwork poems, or "centos," writ-

ten between 1850 and 1900; a series of Victorian essays defending plagiarism; lecture notes, a tale, and a letter by Oscar Wilde; George Sylvester Viereck's 1907 thriller *The House of the Vampire*; and James Joyce's *Ulysses* (1922). Most of them deliberate in some way on the question of value in relation to originality. But what really unites these texts is more specific: they are intimately conversant with their own embattled status as literary property. One critical truism has it that modernist literary texts, in particular, tend to turn away from the sociopolitical world and toward the aesthetic realm of style, form, allusion, and so on in a gesture of tightening self-contemplation—that they are Hubbles trained on their own literary navels. Without either accepting or disputing this narrative, the present book makes the more sharply focused claim that since copyright law's inception, a growing number and range of texts (both "literary" and "nonliterary") register a self-awareness about their status as literary property. I would hardly insist that this self-awareness is historically coextensive with *modernism*, though one of this book's focal texts—Joyce's *Ulysses*—sits at the core of the current modernist canon, and partly, I will argue, as a result of its proprietary self-consciousness. But to the extent that intellectual property law and the economic and cultural views that legitimate it are central formations of modernity, I suggest that this copyright metadiscourse—a discourse whose subject is its own literary property status—is one feature of the *modern* text, and one that remains undertheorized. Unlike more ingrown kinds of formal self-consciousness or metafiction, it is directed both inward, at the text's patterns and principles of construction, and outward, at the legal, economic, and ideological operations that protect and commodify the text. In that sense, we might think of copyright metadiscourse as a literary energy whose vector is always socioeconomic.

The notion that an imaginative work might be internally engaged with its legal status as property, and therefore with its economic status as commodity, is hardly daring in the present era of appropriationist artists such as Hans Haacke, Kathy Acker, Raymond Federman, Dan O'Neill, Bonnie Vierthaler, Sherrie Levine, Jeff Koons, Negativland, @TMARK, Plunderphonics, Illegal Art, the Copyright Liberation Front, The Evolution Control Committee—individuals and groups whose work parades and often theorizes its redeployments of source material as well as its legal and economic status, joking at the expense of intellectual property orthodoxy and Romantic models of authorship, and in some cases deliberately courting infringement suits. But in looking at Anglo-American letters in the late nineteenth and early twentieth centuries, we are looking, arguably, at the halcyon days of the autonomous aesthetic, a period during which the legal and economic institutions circumscribing art tended to be viewed as incidental, rather than instrumental, to the production of aesthetic value. To find intellectual property law firmly ensconced in the period's literary imaginary, whether in overt or covert deployments, is to trace a fissure in the apparently flawless surface of the

self-governing, self-delighting aesthetic, a place where the aesthetic demonstrably fails to be at one with itself by admitting its contingency on the property and commodity status of the literary artifact. This phenomenon helps explain why I have chosen to focus this study on the second half of the nineteenth century and the first few decades of the twentieth. Scholarly investigations of intellectual property have tended, understandably, to dwell on two periods: the eighteenth century, which was the birth-century of modern copyright law and the Romantic concept of original genius to which it remains closely knit; and the late twentieth century, when "information" grew more dematerialized, monopolized, anonymous, accelerated, and increasingly central to first-world economies, thereby precipitating a variety of crises in concepts of originality and authenticity and in their legal safeguards. (These ongoing crises, one could add, partly constitute the condition of postmodernity.) By comparison, critical studies of copyright in the nineteenth and early twentieth centuries are scarce.²¹ But if the eighteenth century witnessed the birth of copyright in Britain, the nineteenth saw its adolescence, replete with growth spurts and growing pains in the form of term extensions and prolonged debates about the desirability of monopoly copyright versus a royalty system. By the early years of the twentieth century, both domestic and international copyright regimes had been standardized, centralized, and bureaucratized in Britain and the U.S.: the state-granted temporary monopoly had survived generations of skepticism and dissent and would go on, later in the century, to achieve global hegemony through the Berne Convention, the World Intellectual Property Organization, GATT, and the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS). The consolidation, consecration, and extension of intellectual property regimes in late modernity are legible, I will argue, in a number of the contemporary works of imaginative literature those regimes protected.

The project's primary texts share a second feature: they all participate, though ambivalently in some cases, in a critique of copyright. Some engage in a simultaneous critique of the Romantic figure of original genius that sponsors intellectual property law. One, G. S. Viereck's *The House of the Vampire*, rejects the notion that unpublished works belong absolutely to their creators, but does this explicitly in the service of the Romantic genius: the "overmen," for Viereck, must be free to appropriate the innovations of lesser people if the race is to thrive. It is tempting to join all these texts in a single tradition of dissent against private intellectual property, but for a number of reasons I have resisted doing so. For one thing, the intertextual connections would not sustain it: though both Viereck and James Joyce overtly donned the Wildean mantle, the other direct links that would suggest something deliberate enough to be deemed a "tradition" are not to be found. For another, the political affinities of the people in question ranged from socialism to free trade liberalism to fascism and are simply too divergent to clus-

ter believably under the rubric of a single tradition or countertradition. During the nineteenth century, monopoly-copyright law and its model of individual creation transcended the status of an argument and became consecrated and codified as a dominant discourse—that is, as an argument that needed to be made less and less because it had attained the apparent status of self-evident truth, had fossilized into an indispensable precondition of life as we know it. Richard Terdiman offers this concise description of the dominant or hegemonic discourse:

The inherent tendency of a dominant discourse is to "go without saying." The dominant is the discourse whose presence is defined by *the social impossibility of its absence*. Because of that implicit potential toward automatism, the dominant is the discourse which, being everywhere, comes from nowhere: to it is granted the structural privilege of appearing to be unaware of the very question of its own legitimacy. Bourdieu calls this self-assured divorce from consciousness of its own contingency "genesis amnesia." And it is one of the conditions of possibility of that assumption of (false) totalization by which the dominant tends to efface anything which does not fall within its own orbit or appear consonant with its own interests.²²

If hegemonic discourse naturalizes its dominance by forgetting its origins and refusing to recognize even the possibility of dissent, a counterdiscourse works to revive supposedly settled arguments, to remember the forgotten origins of the dominant on its behalf, and to assail its self-evidence by suggesting what contingencies, contradictions, and occultations are involved in "going without saying." Given that hegemonic signs and practices function as shibboleths—passwords that construct membership in a social formation—a counterdiscourse might be imagined as a complex of signs and practices that construct exclusion or dissent from that membership, even a refusal of it. This book's primary texts, we could say, participate in a counterdiscourse to the hegemony of private literary property discourse, united only in what they variously refuse or contest. However, opposition entails its own kinds of contingencies; Terdiman reminds us that, "like all subversive thought, the counterdiscourse is intensely—if surreptitiously—parasitic upon its antagonist."²³ We will want to be attentive, then, not only to the different modes of refusal, contestation, and exclusion exhibited by these texts, but also to their dependence on the dominant, and to the reciprocal dependence of the orthodox on the heterodox. And we will want to ask whether the counterdiscourse—always by definition a minority discourse, we should remember—wants nothing more than to become a new hegemony, and wonder what the perils of such an ambition might be.

The chapters that follow are, in essence, case studies in literary property metadiscourse and counterdiscourse. The first, "Neoclassicisms: The Tectonics of Literary Value," builds on Howard Caygill's and John Guillory's contention that the discourses of aesthetics and political economy were "sep-

arated at birth" and continued to exhibit certain rhetorical and logical congruences during the nineteenth century despite having parted disciplinary ways in the late eighteenth. "Neoclassicisms" makes the case that the mid-Victorian rise of a copyright counterdiscourse in imaginative literature should be understood dialectically with the period's economic value theory. Around 1870, the so-called neoclassical revolution in economics shifted theoretical emphasis from the scene of production to the scene of consumption, from abundance to scarcity, from labor to desire. Its proponents said that the value of a commodity inheres not in the quantity or even quality of labor that creates it but in the amount and nature of consumer desire for that commodity. Precisely this argument structures the defense-of-plagiarism essay that flourished between 1840 and 1900: its writers justified plagiarism on the grounds that literary value arises not in the scene of writing so much as the scene of reading, and that any mode of literary production is legitimate so long as the text edifies an audience that demands it. Though in its extreme form this argument underwrote a lamentable kind of consumer sovereignty, it also prompted crucial meditations about the collective nature of cultural production. The writers of both plagiarism defenses and poetic centos insisted that literary value arises not only from individual genius but also from the collective sources and destinations of literary creation—from the precursor texts that writers reproduce and modify, from a rich public domain that makes such texts available, and from the readerly communities that interpret and evaluate new works. Chapter 2, "Committing Copyright," traces the rhetoric of both marginal economics and free trade doctrine through the 1876–78 Royal Commission on Copyright, the last concerted attempt from within the British government to abolish monopoly copyright, and the public debates it sparked. In the subsequent rewriting of the Commission's highly conflicted report as consensual and incontrovertible, I read the production of an ideological closure about monopoly copyright at the turn of the century, a closure that later critics of monopoly-copyright maximalism have had hard work to contest.

In the work of Oscar Wilde, the nineteenth-century counterdiscourse to private literary property found its most spectacular expressions. My chapter on Wilde treats his celebration and commission of plagiarism in light of both his professed socialism and his disposition toward talk over writing, while also understanding Wilde's resuscitated "orality," at least in part, as a strategic hallucination by lettered culture of a pure and wholly alien origin. I demonstrate that Wilde's 1886 lecture on Chatterton, which he heavily plagiarized from two biographies of the poet, thematizes its own transgressive mode of composition in its discussion of the poet, writing itself into a glorified and implicitly collective Romantic genealogy. The chapter then turns to Wilde's "The Portrait of Mr. W. H." (1889), a tale about a literary theory that only one person can believe at a time. I read the tale as a critical parable about literary property, one that deplores copyright's transformation of

expression into an alienable property form that circulates like a material object, from one sole owner to the next. Both "Mr. W. H." and the Chatterton lecture, I suggest, reject private literary property in favor of the public property of discourse in oral cultures and in the public domain obliquely canonized by Wilde's 1897 prison letter and intellectual testament, *De Profundis*.

Although my discussions of Wilde, the centonists, the plagiarism apologists, and the anti-copyright Commissioners reanimate a minority discourse opposed to the culture of monopoly copyright, I elsewhere address less straightforwardly antagonistic relations between copyright and the cultural imaginary. In "The Reign of the Dead," I argue that limited postmortem copyright can participate in the cultural work of mourning, establishing a fixed period of time during which an author's estate remains in a commemorative stasis, watched over by the legatees whom it benefits. The overextension of copyright terms, however, unduly prolongs this mourning period, granting the estates and intentions of long-deceased authors a legal afterlife at the expense of what Thomas Jefferson called "the usufruct of the living."²⁴ Developing this connection between copyright and undeath, the chapter takes as its primary text Viereck's *The House of the Vampire*, which appeared just as European copyright regimes were adopting postmortem terms. The vampire of the title drains his victims of ideas rather than blood, stealing their unwritten plays and poems from their minds while they sleep and publishing them under his own name. By likening plagiarism to vampirism, ideas to blood, the novel echoes Wilde's "The Portrait of Mr. W. H." in lamenting the reification and commodification of expression under intellectual property law. It also engages in certain of what Derrida has called "hauntological" operations, using the spectrality and liminality of its central figure to question and contaminate the ontological distinctions—idea versus expression, writer versus reader, origination versus appropriation—that copyright takes to be fundamentally stable.

Chapter 5, "James Joyce, Copyright: Modernist Literary Property Metadiscourse," focuses on *Ulysses*, a cardinal text of interwar modernism and a key work of metafiction, or fiction that dwells on its own fictiveness. My discussion of *Ulysses* projects its metafictional geometries into the dimension of literary property, arguing that the novel thinks exhaustively about its identity as property and commodity as well as about its replications and breaches of literary formal convention. This analysis takes its cue in part from the complex publishing history of Joyce's novel: *Ulysses* was effectively denied U.S. copyright status from 1921 to 1934 on the grounds of its putative obscenity, and the text itself is rife with oblique references to its conflicted designations as both obscenity and literary property. The novel's "Oxen of the Sun" episode, in particular, reproduces several of copyright's central narratives and categories, but with critical and parodic differences. In my discussion of "Oxen," I show how the terminal narratives of gestation, parturition, and literary tradition that structure the episode are paired with the equally

terminal narrative of copyright, observing that "Oxen" concludes with a celebratory portrait of public domain discourse after performing an encyclopedic range of fair use borrowings from its many source texts. The episode, I maintain, is concerned to parody not only its literary sources but copyright law itself, while simultaneously performing appropriative parody as a potent form of critical discourse and thus as an arguably fair use of sources. The chapter ends with a thought experiment that imagines how *Ulysses* might have been different had it been published under a millennial copyright regime rather than under 1922 conditions, suggesting how the state censorship still in place in the interwar period has given way to a less visible, but no less repressive, private censorship. In the book's conclusion, I consider two more recent texts—Spider Robinson's "Melancholy Elephants" (1982) and Alice Randall's *The Wind Done Gone* (2001)—that illustrate the high stakes of private censorship licensed by stronger and stronger copyright regimes. Both Robinson's story and the legal action surrounding Randall's novel illustrate, in quite distinct ways, copyright's role in facilitating or obstructing the personal and communal working-through of historical trauma. More obliquely, they suggest that maximalist copyright regimes might not only obstruct or facilitate the working-through of extant trauma, but also precipitate new traumas by making catastrophic incursions on the public domain, the public sphere, and the therapeutic and political potential of transformative re-deployments that rely on the openness of those spaces.

To the extent this book formulates a critique of dominant intellectual property regimes, their consecration of original genius and possessive individualism, and their threat to public discourse and the public domain, it may appear to nominate the majority of its primary texts as its own precursors, assembling a loose genealogy of circumspection and dissent in order to install itself at the contemporary end. I want to acknowledge that so hermetic and teleological an approach would be an intellectually dangerous one and to insist that it is not my intention simply to present a self-aggrandizing prehistory of my own critique. My aim in undertaking this project has been to illustrate an ongoing recognition, since the messy inception of copyright, that the ascendant concepts and conventions of literary property are neither inevitable nor unassailable but, rather, that they result from isolated material conditions, historically contingent mythologies of authorship, and tendentious economic and political motives on the parts of legislators and lobbyists. An important corollary must follow such a statement: any genealogy of dissent is itself site-specific, contingent, tendentious. I will end this introduction, then, by attempting to situate this book within several contexts—critical, disciplinary, historical—while acknowledging my own necessarily partial view of its influences and presuppositions.

Because the critique I am undertaking strives to locate intellectual property law at the crossroads of jurisprudence, economics, aesthetics, and poli-

tics, the work with which it is in dialogue also tends to be interdisciplinary. Where both Woodmansee and Rose (and others, including Margareta de Grazia, N. N. Feltes, and Chris Vanden Bossche) have routed literary scholarship through legal and economic inquiries, a number of legal scholars of copyright have adopted cultural studies approaches in pointing up the occlusions and blindnesses of the law.²⁵ James Boyle is similarly interested in forms of innovations the law fails to recognize, but he approaches the problem specifically from the vantage of a Critical Legal Studies (CLS) critique of liberal categories of self and property and the intractable dualisms on which these categories are founded.²⁶ Rosemary Coombe, in her powerful study *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (1998), calls for a new interdisciplinary approach she calls a "Critical Cultural Legal Studies": a synthesis that brings the socially, politically, and ethically contextualizing energies of cultural studies to bear on legal discourse, while at the same time insisting on both the inescapably political and contingent nature of the law (à la CLS) and legal theory's responsibility to the actual social relations and lifeworlds of those whom the law governs. In framing a Critical Cultural Legal Studies, Coombe warns of the immanent Romanticism of a certain vocabulary of power and the difficulties of finding an adequate lexicon of transgression when intellectual property is involved:

Practices of authorial power and appropriation, authorized meanings and alternative renderings, owners' interest and others' needs cannot be addressed simply in terms of dichotomies like domination and resistance, however. Romantic celebrations of insurrectionary alterity, long popular in cultural studies, cannot capture the dangerous nuances of cultural appropriation in circumstances where the very resources with which people express difference are the properties of others. Acts of transgression, though multiply motivated, are also shaped by the juridical fields of power in which they intervene.²⁷

Outside extremely narrow parameters, intellectual property law has a low tolerance for practices that criticize or parody its basic tenets—practices it recodes, belittles, and criminalizes as piracy and infringement. (Plagiarism, as we will see, is an ethical rather than a legal transgression, not being necessarily a violation of copyright; however, because plagiarism and infringement overlap in cases where the plagiarist copies and disseminates copyrighted material, the two are often conflated.) In a sense, this is just a fancy way of saying that you can seldom criticize the law by breaking it and yet expect the law to forgive your infraction as criticism. Law is not an argument so much as an instrument of self-enforcement; thus, even breaking the law confirms the logic and categories of the law, which work to criminalize any transgressive act of dissent. In the case of property law, this circularity tightens further: criticizing standards of ownership can lapse into a near-absurdity when some of the most effective critical pathways—counterappropriation or

parody, for example—are by definition *already owned* by someone else. My sympathies with CLS become apparent here: if we see law as the unassailable embodiment of self-evident truths, rather than as an ideologically fraught, idiosyncratic, and highly contingent apparatus, then intellectual property law—all law, in fact—is invulnerable to critique, susceptible only to confirmation, consecration, and occasional reverent modification.

At its most basic level, the law of copyrights, patents, and trademarks creates economic incentives, which have been criticized exclusive even of their ethical, political, and cultural effects. In the nineteenth century, the most vocal economic criticisms of British intellectual property law came from the radical free trade quarter and reached a crescendo during the 1876–78 Royal Commission on Copyright, which I discuss in chapter 2. Though unsuccessful at the time, arguments launched against monopoly copyright during that Commission have remained influential during the twentieth century. In 1934, economist Arnold Plant cited Commissioner Louis Mallet's objection that, whereas tangible property "exists in order to provide against the evils of natural scarcity," copyright artificially "creates scarcity in order to create property."²⁸ Plant went on to propose a version of Mallet's alternative to extensive monopoly copyright: a five-year period of exclusive protection followed by a compulsory license or royalty system. He even speculated that the Anglo-American patent system might be partly responsible for the Great Depression during which he wrote.²⁹ Stephen Breyer's 1970 article, "The Uneasy Case for Copyright," stopped short of recommending the abolition of copyright but did find that "none of the noneconomic goals served by copyright law [e.g., the author's moral rights, Lockean natural rights in property] seems an adequate justification for a copyright system." Written during Congressional debates that resulted in the extension of copyright from a 56-year maximum (28-year term plus 28-year renewal) to the length of the author's life plus 50 years, the article deployed a social cost-benefit analysis of copyright's effect on the publishing industry and concluded that even the 56-year period was too long, that educational fair use provisions should be broadened, and that software should not be patentable.³⁰ (Since 1970, U.S. law has gone counter to all three suggestions; Breyer, meanwhile, became the 108th Justice of the Supreme Court.) More recent economic critiques of copyright range from radical free market or "anarcho-capitalist" approaches to Marxist historical materialism.³¹ However, rather than deploying strictly economic or econometric methods, I have investigated the political economic assumptions immanent within copyright law and its aesthetic correlates, particularly in my discussion of nineteenth-century economics and literary value. In doing so, I partly take my cue from work by cultural critics (Regenia Gagnier, Mark Osteen, Marc Shell, Martha Woodmansee, and others) working under the rubric of "the New Economic Criticism."³² I join these writers in viewing aesthetics and economics as dialectically susceptible to one another's suppositions and terminologies, and the conventional firewall be-

tween the two discourses as a deterrent mythology. This view entails not only attending to material conditions and economic worldviews as hypostases of aesthetics but, perhaps less obviously, thinking about how realms of feeling, bias, projection, and imagination can inflect economic thought for good and ill.

Feminist legal scholar Drucilla Cornell has made a similar point about the interdependence of ethics and aesthetics, arguing that "The moment of [ethical] commitment is aesthetic in its orientation. It demands not only the capacity for judgment but also the ability to dream of what-is-not-yet. The ethical cannot be reduced to an aesthetic, but neither can it do without the aesthetic."³³ The ability to dream of what-is-not-yet is never more crucial than during periods of catastrophic change, particularly when the law has yet to digest that change. Imaginative acts of prediction, projection, extrapolation, admonition should inform any ethically motivated assault on present orthodoxies. In the final pages of his critical short history of copyright law, Benjamin Kaplan presciently imagined coming technological changes that would alter conceptions and conventions of authorship and intellectual ownership. The technological and social context of much recent copyright critique, including my own study, is contained in his forecast:

You must imagine, at the eventual heart of things to come, linked or integrated systems or networks of computers capable of storing faithful simulacra of the entire treasure of the accumulated knowledge and artistic production of past ages, and of taking into the store new intelligence of all sorts as produced. The systems will have a prodigious capacity for manipulating the store in useful ways, for selecting portions of it upon call and transmitting them to any distance, where they will be converted as desired forms directly or indirectly cognizable, whether as printed pages, phonorecords, tapes, transient displays of sights or sounds, or hieroglyphs for further machine uses. Lasers, microwave channels, satellites improving on Comsat's Early Bird, and, no doubt, many devices now unnamable, will operate as ganglions to extend the reach of the systems to the ultimate users as well as to provide a copious array of additional services.

Conceived as conduits or highways for the transmission of signals, the systems will have intense responsibilities of a "public utility" type enforced by law—if indeed the systems (or some of them) will not come under direct government ownership and control. . . . Meanwhile we have to observe that the electronic systems need not, and probably will not, remain national; they will be linked, possibly with the aid of automatic translation, in world-wide networks.³⁴

Kaplan's prophecy, with its attendant warnings about the ethical dangers of copyright maximalism, appeared in 1967. In 1969—also the year of Foucault's "Qu'est-ce qu'un auteur?"—the ARPANET military communications network would come online, developing over successive decades into the present Internet. The "communications age" Kaplan saw himself inhabiting

would become the vaunted "information age" during which my own book, like many of its immediate antecedents, was written. Unlike many contemporary intellectual property critics, however, I am wary of accepting the so-called digital revolution as the end toward which history tends, or as in itself sufficiently "revolutionary." Raw technology, however sophisticated and accessible, is not identical with emancipation; it provides nothing more than an imaginative prompt, and perhaps one tool among many, for the societies that use it to emancipate themselves by more thoughtful and systematic means. The Internet is not an argument, and to mistake it for an ethical or political articulation is to accept the widespread fetishization of "information" as a magical, sourceless, costless panacea. (Though appealing at a visceral level, *Wired*-generation slogans like "Information wants to be free" simply beg the question of who is misattributing his or her own desires to the fetish-category of "information.") Rather than become infatuated with what is, I want to recur to Cornell's idea of dreaming through aesthetic projection toward ethical commitment. Those dreams of what-is-not-yet will include both utopian ideals and cautionary dystopias—places we do and do not wish to inhabit—along with a sense of how we might arrive there by holding or altering our present course. Investigating the aesthetic musings, forecasts, and protests of the past is one way of quickening our own meditations about what-is-not-yet; this book hopes to aid that quickening.

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Neoclassicisms: The Tectonics of Literary Value

Whether a diamond was found accidentally or was obtained from a diamond pit with the employment of a thousand days of labor is completely irrelevant for its value. In general, no one in practical life asks for the history of the origin of a good in estimating its value, but considers solely the services that the good will render him and which he would have to forgo if he did not have it at his command.

—CARL Menger, *Principles of Economics* (1871)

Uncut diamonds, artistically speaking, may be legitimately taken away from their idiot-possessor, provided the thief will well and truly cut them, thus giving them a new brilliance. This is not a theft, properly speaking; rather it is a duty. It is good that diamonds should be stolen, be they yours, ours, or another's, provided only—this is essential—that the new possessor exhibits them to better advantage. They may already have been pebbles in some barbarous toilet; it is the artist's business to steal them thence, and make of them a *parure* for a queen.

—E. F. BENSON, "Plagiarism" (1899)

Diamonds are a value theorist's best friend. Fruitlessly beautiful, they provide an extreme case among commodities whose value is out of all proportion to their usefulness. In his *Wealth of Nations* (1776), the classical political economist Adam Smith famously used the diamond to illustrate just this point: "Nothing is more useful than water: but it will purchase scarce any thing; scarce any thing can be had in exchange for it. A diamond, on the contrary, has scarce any value in use; but a very great quantity of other goods

may frequently be had in exchange for it."¹ While the invention of the diamond-tipped drill and the diamond anvil cell may have blunted Smith's point slightly, the value of the diamond still resides far more in exchange than in use. But locating the diamond's value in exchange raises a further question: what is the source and measure of exchange value? Are diamonds valuable in exchange because they are costly to mine, cut, set, and market? Because they are scarce? Because they have come to signal the purchaser's disposable income and thus, according to a familiarly circular logic, must remain expensive to perpetuate that symbolic function? However they account for its particular exchange value, economists invoke the diamond not as an exception to general patterns of valuation but as an extreme case that illuminates the general one. Thinking through examples like diamonds and water, value theorists like Smith have attempted to fathom the fundamental principles—the origin and nature of value itself—that undergird phenomena like price, exchange, demand, and distribution. Robert Heilbroner sums it up attractively: value is the "deep structure" that imparts "orderly configurations to the empirical world, akin to the arcs created in iron filings under the influence of a magnet."²

Though Adam Smith eventually argued for a cost-of-production theory, he was at heart a proponent of the labor theory of value, which identified labor as "alone the ultimate and real standard by which the value of all commodities can at all times and places be estimated and compared. It is their real price; money is their nominal price only."³ Thus the value of diamonds inhered in the laborious process of wresting them from the earth and fluctuated according to the fertility or barrenness of the mines. The classical political economists writing after Smith tried to account for additional factors like scarcity, demand, and abstinence, revising the labor theory of value without rejecting it. But by the 1870s, Carl Menger, William Stanley Jevons, and other economists of the emerging "neoclassical" or "marginalist" school had completely discarded the labor theory of value in favor of a subjectivist, utility-based calculus that located value in consumer pleasure. The diamond, they said, named its price in proportion neither to its usefulness nor to the amount of labor spent finding, mining, or refining it, but according to the pleasure ("utility") it gave its purchaser. Consumers were, they argued, oblivious to an object's origin and conditions of production; as Menger put it, they considered solely the services and pleasures that the good would render them and that they would forgo if they did not have it at their disposal. This extreme late-Victorian shift in value theory—away from labor and the scene of production, toward desire and the scene of consumption—responded to equally dramatic changes in industrial European economies. No longer living amid the late mercantilism and early industrialism that informed Smith's *Wealth of Nations*, the neoclassical economists observed both staple and luxury goods being produced with growing quality and efficiency and a burgeoning advertising culture stimulating consumer demand

for these abundant goods. Although its object of scrutiny was supposedly "deep structural," value theory had shown itself spectacularly responsive to the changing conditions of the marketplace; new patterns of iron filings had seemed, at least, to necessitate a new magnet.

Political economy is not the only discourse to assume that an arc of iron filings implies the presence of a magnet. Western aesthetics, too, has meditated on the organizing principles that bestow value and patterns of valuation on art objects, aesthetic experiences and conventions, art institutions, and artists themselves. Radiating outward from this central preoccupation with value, aesthetics and economics share a number of contiguities. Both discourses address labor and desire in their attempts to define and assess value. Both respond to conditions of paucity and plenitude in the markets that circumscribe them. And both must choose whether or not to emphasize the social and material relations that underlie the various productions, exchanges, and consumptions they survey. Just as the political economists did with the commodity, modern writers on aesthetics have inquired into the source of the art object's value. How much of it comes from the raw materials of art, how much from the artist's labor (or from the artist's genius, if genius is taken to be distinct from labor), and how much from consumer demand? Are there different kinds of artistic labor, producing different kinds or amounts of artistic value? Can we distinguish between use value and exchange value in art as we do in commerce?

This chapter begins by investigating the twin discourses of economic and aesthetic value—their proximate origins, homologies, divergences, and reunions—with a specific emphasis on problems of and at the origin, reading the cardinal literary value of originality in the light of extraliterary debates on the origin of value in both the artwork and the commodity. Because economics and aesthetics borrow terminology from one another, their metaphors often appear to mix: artists incur debts of language, while economists descant on the harmony and genius fostered by the distribution of labor. Brushing aside these crossings as "merely" figural neglects the fact that metaphor is always an economic function in at least one sense: as Kurt Heinzelman points out in *The Economics of the Imagination*, the etymology of "metaphor"—to transfer or bear across—signals its identity as a form of exchange.⁴ This is not, however, to make metaphor the tenant farmer of economics; exchange may be central to economics, but it is hardly endemic to it. Nor does metaphor operate exclusively within the bounds of imaginative literature. As writers in the Critical Economics movement have lately reminded their fellow economists, the dismal science relies crucially (and often all too unselfconsciously) on putatively "aesthetic" modes and rhetorical devices—trope, narrative, allegory, exemplum—that not only ornament but help constitute economic discursive practices.⁵ My aim in what follows is to treat neither economics nor aesthetics as ontologically prior to the other, but to address their conceptual and rhetorical interpenetrations in order to il-

lustrate how changing ideas of value have been applied not only to material commodities such as diamonds and iron and water but also to “intangible” ones such as imaginative literature.

Just such an interpenetration or crossing is legible in this chapter’s second epigraph, an excerpt from the novelist E. F. Benson’s article “Plagiarism,” which appeared in *The Nineteenth Century* in 1899. Likening rough-hewn literary ideas to uncut diamonds, Benson claims that such raw gems “may be legitimately taken away from their idiot-possessor” so long as better writers rework them to advantage. Theft becomes a “duty” provided that the thieves add value to the art object, exhibiting it to better advantage and thus making it more pleasurable to consume.⁶ The passage enacts what it urges by stealing the example of the diamond from its better-known setting in political-economic value theory and exhibiting it anew in a defense of plagiarism. But even more strikingly, Benson’s rant resonates with the core argument of neoclassical economics, removing value from the scene of production and relocating it in the scene of exhibition, appreciation, and consumption. The diamond’s itinerary—from the “barbarous toilet” of its “idiot-possessor” to “a *parure* [ornamental headdress] for a queen” by way of licensed, even duty-bound, appropriation—resonates, too, with the more sinister late-nineteenth-century uses of neoclassical economics to rationalize aristocratic privilege and sanction imperial seizure. As the marginalist economist Francis Edgeworth wrote in 1881, the means of pleasure tend to (and, by implication, should) go to those with the greatest and most highly evolved capacity for enjoyment: “In the general advance, the most advanced should advance most . . . the happiness of some of the lower classes may be sacrificed to that of the higher classes.”⁷ In the decades before and after the so-called neoclassical revolution of the 1870s, Benson and dozens of other writers were introducing homologous paradigms into literary discourse through their explicitly consumerist defenses of plagiarism.

This chapter understands two kinds of late-nineteenth-century neoclassicism—quantitative, consumerist economics and appropriative, consumerist literary aesthetics—as coeval phenomena. After discussing the mingled origins of aesthetics and economics in Britain in eighteenth-century moral philosophy, I trace productivist theories of value—theories that root value in the scene of an object’s production—through political economy, aesthetics, and early copyright debates and the rise of consumerist value theory concurrently in economics and literary aesthetics. The economic critique of productivism launched by the likes of Menger and Jevons finds its aesthetic correlate in two increasingly popular antiproduktivist literary forms: the aforementioned defense of plagiarism and a radically intertextual poetic form called the “cento,” both of which endorsed a recombinant rather than a radically originary view of literary creation. The growing counterdiscourse to both originality and literary property law embodied in these two forms is catalyzed by the demise of the labor theory of value, and in turn catalyzes

more extravagant appropriations and recombinations in work by Wilde and, after him, a number of prominent modernist writers. Theirs was not the neoclassicism of Horace or Pope, which cherished formal imitation and generic convention, but a latter-day neoclassicism that celebrated profligate literary borrowing. The chapter concludes with a consideration of the ethical benefits and damages bound up in a consumerist critique of originality and literary property law.

Theories of Value

Despite the frequent blurring of artwork and commodity in both art markets and numerous postmodern installations, Western culture has consecrated certain distinctions between art and the market: art supposedly occupies an “outside” to the economic realm, a space that fosters beauty, generosity, and spontaneity against the tabulations and drab parsimonies of the market. Adopting this view, the literary anthropologist Lewis Hyde ascribes art’s social value to its independence from the marketplace. Though he admits that works of art can behave like commodities, he finds that the essence of art is the gift, a principle of free circulation rather than private accumulation: “a work of art can survive without the market, but where there is no gift there is no art.”⁸ But where Hyde rather dubiously maintains that art can do without the market, Howard Caygill and John Guillory have recently pointed out that the eighteenth-century market could *not* do without art in imagining itself—that aesthetics and political economy were in effect “separated at birth,” insofar as early political economists used aesthetic criteria such as beauty and harmony both to judge social organizations and to explain people’s willingness to forgo such considerations as simple utility or immediate gratification.⁹ Following Caygill’s lead, Guillory locates the shared genesis of modern aesthetics and economics in the moral philosophy of Adam Smith, whose *Theory of Moral Sentiments* (1759) made the aesthetic disposition (a “love of system” and “regard to the beauty of order, of art and contrivance”) nothing less than “the secret motive of the most serious and important pursuits of both private and public life.”¹⁰ Hume, in his *Treatise of Human Nature*, had observed that an object pleases its owner by suggesting “the pleasure or conveniency which it is fitted to promote.” But Smith noted that we often value the object’s fitness for its end—its beauty—more than the end itself. This tendency to value means over ends, beauty over utility, leads us to desire more means (beautiful objects) than we have ends (needs met by usefulness), and in turn begets jealousy, ambition, commerce, industry, technology, progress, society itself. In making this argument, Smith was careful, too, to lodge a claim of originality, saying that the means-over-ends phenomenon “has not, so far as I know, been yet taken notice of by any body.”¹¹

But while Smith's "original" revision of Hume offered an explanation for *why* people value objects, it did not provide a *measure* of value, either economic or aesthetic. Though he had touched on the subject in earlier works, Smith did not quantify value until his *Wealth of Nations* articulated the labor theory of value in 1776. The theory—not "original" this time, since he inherited it from William Petty, John Locke, Richard Cantillon, and more remotely from Aristotle's *Politics*—made labor the sole measure of value, as it was ultimately the source of everything that possessed value.

Labour was the first price, the original purchase-money that was paid for all things. It was not by gold or by silver, but by labour, that all the wealth of the world was originally purchased; and its value, to those who possess it, and who want to exchange it for some new productions, is precisely equal to the quantity of labour which it can enable them to purchase or command. . . . Labour, therefore, it appears evidently, is the only universal, as well as the only accurate measure of value, or the only standard by which we can compare the values of different commodities at all times and at all places.¹²

The *Theory of Moral Sentiments*, for all its emphasis on beauty, had rooted value in utility: more than anything, it said, we value beauty, which is a fetishization of a thing's usefulness or fitness for a purpose. By grounding value in the quantum of labor required to produce a commodity, *Wealth of Nations* left the vague domain of use value in favor of a precise theory of exchange value, bracketing the question of aesthetics altogether. After this abandonment of beauty, Guillory writes, the labor theory of value "can never find its way back to, or include within its formula for price, the 'beauty' of the commodity" described by the *Theory*.¹³ Though Smith let the earlier book's meditation on utility and beauty stand in new editions as late as 1790, the aesthetic disposition never reappeared in his political-economic work after *Wealth of Nations*. Offered in the *Theory of Moral Sentiments* as exemplary of all commodities, the work of art had become an exceptional case and was almost entirely set aside by later political economists. The long dissociation of commodity and artwork, political economy and aesthetics, had begun.

If pre-Smithian political economists regarded all labor as artful, their contemporaries in legal circles were arguing about whether art was laborious, and specifically about what kinds of art were sufficiently laborious to merit protection by nascent intellectual property laws. Even before Smith fully endorsed the labor theory of value, a version of the theory was being adduced in support of the developing copyright canon. Though the statute that codified British copyright law in 1710 was entitled "An Act for the Encouragement of Learning," the law was more often defended and interpreted as an incentive to intellectual *labor*. As Smith himself wrote in his *Lectures on Jurisprudence* (1762–63), copyright provided "an encouragement to the la-

bours of learned men"; though he regarded it, as he did all monopolies, with suspicion, Smith conceded that the law was "perhaps as well adapted to the real value of the work as any other."¹⁴ Though Smith never tied copyright explicitly to a labor theory of value, other writers of the period—both judges and journalists—did make such a connection in debates over the nature and extent of copyright. Like Smith's labor theory of value, these arguments drew heavily on Locke's famous defense of private property in *Two Treatises of Government* (1690):

Though the Earth, and all the inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. . . . 'tis *Labour* indeed that *puts the difference of value* on every thing; and let any one consider, what the difference is between an Acre of Land planted with Tobacco, or Sugar, sown with Wheat or Barley; and an Acre of the same Land lying in common, without any Husbandry upon it, and he will find, that the improvement of *labour* makes the far greater part of the *value*.¹⁵

Whereas political economists like Cantillon and Smith used Locke's rationale of private property to advance the labor theory of value, copyright theorists deployed it in defense of private literary property. In two key eighteenth-century copyright cases, *Tonson v. Collins* (1761) and *Millar v. Taylor* (1769), advocates of perpetual copyright invoked Locke's theory in claiming that legitimate appropriations from the commons by intellectual labor should result in an intangible property no less private, and no less permanent, than tangible property.¹⁶ Again echoing Locke, William Enfield wrote in his *Observations on Literary Property* (1774), "Labour gives a man a natural right of property in that which he produces: literary compositions are the effect of labour; authors have therefore a natural right of property in their works."¹⁷ By articulating and protecting that "natural right of property," copyright would simply ensure the value of what authors had wrought by their labor.

Earlier copyright cases, too, had borne the mark of this literary labor theory of value. In 1720, defendants in the infringement case *Burnet v. Tonson* argued that translations were new works and thus free from copyrights protecting works in their original languages. Though Lord Chancellor Macclesfield ruled for the plaintiff in order to prevent the text in question (Burnet's infamous *Archaeologia Philosophica*) from appearing in English, his decision conceded that "a translation might not be the same with the reprinting of the original, on account that the translator has bestowed his care and pains upon it."¹⁸ The care and pains of "original labor"—that is, intellec-

tual labor beyond the simple reprinting of a pirated edition—soon became the criterion separating “new works” from infringements of old ones. In later debates, copyright would be enlisted by Wordsworth and others to protect a much more extreme and mystified originality; but during the eighteenth century, landmark copyright cases relied on a much more modest definition of originality to decide which kinds of literary labor garnered the “natural right of property.” The decision for *Gyles v. Wilcox* (1740) established abridgements as new works on the grounds that they required a skilled labor of the abridger, whose “invention, learning, and judgment” earned him the title of “author.”¹⁹ And in 1785, Lord Mansfield made a similar ruling regarding maps in *Sayre v. Moore*, granting maps “new work” status even if they were mostly collations of previous maps. His introductory words to *Sayre* explicitly tied copyright to the work of authorship; copyright, said Mansfield, ensured “that men of ability, who have employed their time for the service of the community, may not be deprived of their just merits, and the reward for their ingenuity and labour.”²⁰

But while some debaters and legislators were advancing an aesthetic labor theory of value that dovetailed with the logic of the copyright debates, others of the new professional class created by copyright—the authors themselves—were developing a competing theory of value. Though they put the same premium on originality that copyright theorists did, these proto-Romantics celebrated the inspired, spontaneous creations of original genius rather than the hard-won products of original labor. Their emerging doctrine found an early exponent in the poet Edward Young, whose *Conjectures on Original Composition* (1759) appeared the same year as Smith’s *Theory of Moral Sentiments*.²¹ In his tract, Young paid lip service to labor-based theories of literary value, likening genius to a “master-workman” and averring that “moderns, by the longevity of their labors, might one day become ancients themselves.” In his youth, Young had avowed himself a neoclassicist and had labored to become imitable (or “ancient”) by imitating prior poets. In most of his *Conjectures*, though, he allied labor with the classicism he now denounced, maligning the study of classical texts as imitative, toilsome, and invention-killing. Worthy literature, he insisted, could not be manufactured from raw materials taken from the ancients through study and imitation but must spring into bloom ex nihilo and sui generis:

An original may be said to be of a vegetable nature: it rises spontaneously from the vital root of genius; it grows, it is not made; imitations are often a sort of manufacture wrought up by those mechanics, art and labor, out of pre-existent materials not their own. . . . Nor is it strange; for what, for the most part, mean we by genius but the power of accomplishing great things without the means generally reputed necessary to that end? A genius differs from a good understanding, as a magician from a good architect; that raises his structure by means invisible, this by the skillful use of common tools. Hence genius has ever been supposed to partake of something of the Divine.²²

While Adam Smith was equating beauty with “the order, the regular and harmonious movement of the system, the machine or economy by means of which [satisfaction] is produced,” Young gave beauty’s origins as anti-industrial, antimechanical, antisystemic—as organic, vegetable, magical, divine.²³ Rather than dwelling on means to the exclusion of ends, the creator in Young’s vision leapt to glorious ends through insufficient means, much as Young’s idol, Shakespeare, had miraculously written his plays with little Latin and less Greek. Imitation, translation, and writing by ancient rules were impoverished, belated activities best left to workman-like classicists of Pope’s ilk; genius had “untrodden ground” to break, yet it would blaze its trails by inspiration, the divine effortlessness.²⁴

Having rejected literary classicism, classical economics, and the labor theory of value both discourses shared, Young and like-minded writers founded a Romantic countertradition to all three, one that emphasized not only inspiration over labor but individual heterodoxy over convention, continuity, and social relations. In other words, the Romantic conception of authorship revolted against the very market conditions—mechanical reproduction, textual commodification, logics of equivalency, labor-based copyright laws—that had made authorship professionally viable in the first place. In this sense, the nascent Romantic strain of British aesthetics had begun to reject political economy before political economy could reject it. That strain, incubated by Young and others, would prove contagious. Though the reasons for it are unclear, *Conjectures* did not make immediate waves in England. But Young’s text had appeared in two German translations by 1761 and, as Martha Woodmansee has shown, helped spark the *Genieperiode* of German Romanticism by influencing the likes of Herder, Goethe, Fichte.²⁵ Kant’s *Critique of Judgment* (1790) echoed Young in its contention that beautiful art was only possible through genius, “a *talent* for producing that for which no definite rule can be given; it is not a mere aptitude for what can be learned by a rule. Hence *originality* must be its first property. . . . Everyone is agreed that genius is entirely opposed to the *spirit of imitation*.”²⁶ Elaborating on the distinction between imitative and original art, Kant suggested that the two differed not only in degree but in kind or “spirit”: the labor of original creation was a different order of labor from that of imitation, producing a kind of value beyond imitation’s reach. Twenty-five years after this “Critique of the Aesthetical Judgment,” Wordsworth in turn echoed Kant (probably through Coleridge) by prefacing the first collected edition of his *Poems* with a paean to genius, originality, and aesthetic value:

[E]very author, as far as he is great and at the same time *original*, has had the task of *creating* the taste by which he will be enjoyed Of genius the only proof is, the act of doing well what is worthy to be done, and what was never done before: Of genius, in the fine arts, the only infallible sign is the widening of the sphere of human sensibility, for the delight, honour, and benefit of hu-

man nature. Genius is the introduction of a new element into the intellectual universe: or, if that be not allowed, it is the application of powers to objects on which they had not before been exercised, or the employment of them in such a manner as to produce effects hitherto unknown.²⁷

For both Kant and Wordsworth, geniuses were the rule-breakers who fashioned new rules—were so original that they had to invent their public's capacity to enjoy their work. Genius, then, was earliness personified: not only did geniuses do things before anyone else, they antedated even their own comprehensibility and consumability. Genius was more than a property of originals; it was the mystified origin itself—of ideas, taste, rules, value, the future—and of intellectual property.

In the mid-nineteenth century, the Romantics, whose precursors had departed from the labor-based logic of copyright during the previous century, returned to that territory to secure their literary winnings. In 1814, the copyright term had been extended from its original term (14 years, plus an additional 14 if the author were still alive) to a firm 28 years from publication, or the duration of the author's lifetime, whichever was longer. Sponsored by the Whig M.P. Thomas Noon Talfourd, an 1837 Copyright Bill sought to extend copyright again, this time to the term of the author's life plus 60 years. After being struck down repeatedly, the bill finally passed in revised form in 1842, granting authors a copyright of either 42 years from publication or life plus 7 years, whichever was longer. Chris Vanden Bossche's analysis of the 1837–1842 debates suggests they were, at heart, a standoff between productivist and consumerist theories of literary value. The proponents of the bill were primarily publishers and authors, including such prominent names as Wordsworth, Carlyle, Southey, Dickens, Robert Browning, and Thomas Arnold; as famous “producers” of literature, they emphasized the productivist Romantic values of original genius, authenticity, organicism, and durability. Consumer desires should not influence the copyright term, they argued, because the average reader chose works that satisfied only “an accidental passing taste or want.” But since original, enduring literature would not appeal to readers in search of immediate gratification, it needed time for its value to be recognized. Such a time lapse would require longer copyright terms to encourage authors who, in Talfourd's words, “create the taste which should appreciate and reward them” (the echo of Wordsworth seems calculated; Talfourd, himself a literary man, proved a powerful and allusive rhetorician).²⁸ But while the Talfourd Bill's proponents fought for copyright extension from a productivist standpoint, they sustained Young's rewriting of production as creation, continuing to invoke an imaginative labor that was neither manual nor mechanical. An extended copyright term, they argued, would turn literary property into a hereditary estate, making it the exceptional laurel won by the exceptional labor of original literary creation.

The bill's opponents, by contrast, were less interested in fostering a scarce canon of immortal texts than in disseminating knowledge to a working-class readership. Borrowing much of their rhetoric from the radical Society for the Diffusion of Useful Knowledge, they grounded literary value not in an author's original genius but in the text's consumer utility—its availability, cheapness, and capacity to give instruction, comfort, and happiness to its readers. Monopoly copyright, they insisted, diminished consumer utility by impairing the free market dynamics that kept prices low. In the words of Thomas Babington Macaulay, who opposed Talfourd, copyright was “a tax on readers for the purpose of giving a bounty to writers,” and ought therefore to be pruned rather than unbound.²⁹ According to Macaulay's fellow critics, copyright also set authors above other literary workers (editors, bookbinders, printers, illustrators) by granting them literary property rights instead of wages.³⁰ So long as it garnered different rewards, authorial labor would be held to differ in kind from manual labor; inflated with this false difference, the lone figure of the author-proprietor would always blot out the collaborative scenes of literary production. Though the consumer “utility” advocated by the Talfourd Bill's opponents was not yet the hedonic calculus later postulated by the maginalist economists and the plagiarism apologists, it anticipated those neoclassicisms in an important way. By looking to the conditions of consumption—cheapness, availability, convenience, usefulness—as the primary source of literary value, the anti-Talfourdians helped shift the proving ground of value in general from production to consumption. Of course, their attack on the disproportionate rewards won by literary labor doubled as a defense of manual labor, whose importance and dignity they saw belittled by authorial property incentives. But rather than assail copyright's Romantic constructions of authorship from the diminished promontory of the labor theory of value, they dug into the newer turf of consumer utility. As a result, they contributed to a series of demand-side critiques of private intellectual property that unwittingly helped pave the way for the consumer hedonics of neoclassical economics.³¹

Though labor-based theories of value had begun eroding in mid-eighteenth-century aesthetics thanks to proto-Romantics like Young, they remained integral to political-economic debates for another hundred years. Smith's most prominent disciple, David Ricardo, kept labor at the center of his own meditations on value. By finessing Smith's theory, Ricardo was able to describe the “equipment” owned by the capitalist—the valuable “means of production”—as a repository of past labor, arguing that a commodity's value was the sum of the present and stored-up labor used to make it. Yet even in Ricardo's work, the labor theory was on the defensive, often against art in particular. In order to preserve a general labor theory of value, Ricardo quarantined it from exceptional cases such as unique artworks and other scarce or unreproducible objects:

There are some commodities, the value of which is determined by their scarcity alone. No labour can increase the quantity of such goods, and therefore their value cannot be lowered by an increased supply. Some rare statues and pictures, scarce books and coins, wines of a peculiar quality, which can be made only from grapes grown on particular soil, of which there is a very limited quantity, are of this description. Their value is wholly independent of the quantity of labour originally necessary to produce them, and varies with the varying wealth and inclinations of those who are desirous to possess them.³²

By dividing rarities from commodities that were limitlessly reproducible by labor, Ricardo made a point not only about quantities of labor but about the nature of labor involved in producing unique artworks. Because the scarcity of such works gave them a value unrelated to the amount of labor exerted by the artist, that artistic labor became different in *kind*—became, in a way that would have gratified Young and Talfourd, the mystified labor of creation rather than the rationalized and quantifiable labor of production.³³ But although Ricardo's exemption of unique artworks from a baser commodity status appeared to ratify the Romantic doctrine of inspiration-over-labor, it also rejected the artist-centered aspect of that doctrine: art, Ricardo said, was not valuable because an original genius created it but because of the conditions of scarcity that circumscribed it. Thus the source of the artwork's value shifted—as it had threatened to do in the Talfourd Bill debates—from the divinely gifted Romantic author to the art consumers, whose “varying wealth and inclinations” gave art a value disconnected from the artist's labor. In attempting to rescue the labor theory of value, Ricardo was completing the schism between political economy and aesthetics begun by Smith.

The labor theory of value started to lose favor among political economists during the first half of the nineteenth century, when writers like Samuel Bailey and J. R. McCulloch attacked Ricardo's work, and Nassau William Senior revised it past recognition. The “neoclassical” or “marginalist” school that arose out of these critiques and revisions began its full-scale makeover of political economy during the 1870s, with the work of William Stanley Jevons in England, Carl Menger in Austria, and Léon Walras in France. Though differing in some specifics, the work of these writers helped precipitate a fundamental shift in economic notions of both value and social relations. This shift began with a focus on the scene of individual consumption rather than on the social scene of production. Using the mathematical approaches that became their hallmark, the marginalists posited a “law of diminishing marginal utility” that traced the consumer's falling desire for increasing numbers of a particular commodity. In their focus on the scene of consumption, they regarded the commodity not as a repository of labor but as “any object, substance, action, or service which can afford pleasure or ward off pain.” The value of a commodity, consequently, was a function not

of the labor required to produce it but of its “utility”—its power to please or palliate; as Jevons wrote, “[labour's] value must be determined by the value of the produce, not the value of the produce by that of the labour.”³⁴ According to the marginalist view, individuals sought to maximize their utility, or pleasure, by fulfilling first their basic needs and desires and then their more esoteric, idiosyncratic ones. Because utility, then, was ultimately a subjective matter, no standard of “intersubjectivity” was deemed possible or even desirable. The best economics could do was to extrapolate roughly from individual utility to aggregate valuations, declining any more specific provisions for the collective good. Embracing a quantitative science of individual consumer choices and desires, the marginalists forbore to make social or ethical judgments; at Jevons's behest, they retired the “political” side of political economy in both name and practice.

Yet if the marginalist revolution of the 1870s divorced economics from ethics, it also renewed the long-dormant tie between economics and aesthetics by grounding value in individual sensations (the Greek *aisthesis*, whence *aesthetics*) and by generalizing the artwork's condition of scarcity for all commodities. Where political economists such as Ricardo had increasingly exiled scarce or unreplicable objects from their labor-based theories of value, the marginalists readmitted such objects to the center of their calculus: the value of *all* objects, they said, was determined not by the quantum of labor required to produce them, but by what Ricardo had sidelined as the “inclination of those who are desirous to possess them”—the idiosyncratic desires of consumers. Because consumers' desires for a particular commodity varied according to its availability, value was a function primarily of scarcity. And since consumers' desires, once sated, were always succeeded by new, unsatisfied ones—the supply of new desires being the only inexhaustible supply—insatiable consumers were held to exist in a permanent field of scarcity, their limitless desires contending with a limited supply of desirable commodities. The marginalists shook the commodity loose from its scene of production by locating its value in its powers of pleasure-giving. Like the work of art, the commodity acquired a glamour of autonomy—what Marx called “commodity fetishism”—insofar as its power to afford pleasure or ward off pain flowed from a forgotten, occulted, or mystified origin. As I argue in the following section, this new affinity, or even identity, in conceptions of commodity and artwork can also be discerned in a series of nineteenth-century meditations on the nature of literary originality and literary value. Some of the texts belonging to this minority counterdiscourse deployed the pleasure-centered, consumerist logic of marginalism to decriminalize and ultimately valorize plagiarism as well as other, less taboo forms of literary appropriation. Others contributed to a critique of the law and ideology of private literary property underwritten by classical economics during the eighteenth century. Both of these gestures—the hedonic assault on plagiarism's moral stigma and the critique of private literary property

law—eventually converged in certain fin-de-siècle literatures and helped underwrite later acts of recirculation, appropriation, and critique.

Literary Hedonics

Jevons's preface to the second edition (1879) of *The Theory of Political Economy* provides a microcosmic example of the shift his economic work helped license in the realm of aesthetics—the shift from a Romantic emphasis on originality to a demand-side emphasis on readerly consumer satisfaction. Whereas the preface to the 1871 edition had announced the heterodoxy of Jevons's theory, “sketched out, almost irrespective of previous opinions,” the second preface is deflated, almost apologetic: “the question is not so much whether the theory given in this volume is true, but whether there is really any novelty in it.” The answer—an implicit *no*—is followed by a roster of precursors. Disappointed to learn that “Gossen has completely anticipated me as regards the general principles and method of the theory of Economics,” Jevons must find solace in having promulgated ideas he didn't pioneer but that might have remained obscure without him.

I have carefully pointed out, both in the first edition and in this, certain passages of Bentham, Senior, Jennings, and other authors, from which my system was, more or less consciously, developed. I cannot claim to be totally indifferent to the rights of priority; and from the year 1862, when my theory was first published in outline, I have often pleased myself with the thought that it was at once a novel and an important theory. From what I have now stated in this preface it is evident that novelty can no longer be attributed to the leading features of the theory. Much is clearly due to Dupuit, and of the rest a great share must be assigned to Gossen. Regret may easily be swallowed up in satisfaction if I succeed eventually in making that understood and valued which has been so sadly neglected.

Echoing the very arguments advanced by his book, Jevons shifts the value of his work from the Romantic-productivist claim of “priority” to the consumerist claim of utility—the work's capacity to bring the value of “satisfaction” both to its author and to its readers. Rather than denigrate his own contribution as belated or borrowed, Jevons attempted to draw strength from his precursors. From the second edition onward, he appended a list of “Mathematico-Economic Writings” by like-minded economists, as if to legitimate his own approach by creating a tradition for himself to inherit—as he called it, a “filiation of ideas.”³⁵ The “rights of priority” became a matter of indifference compared with the validating power of an intellectual genealogy. In Jevons's own preface, neoclassical economics had sponsored literary neoclassicism.

While the forerunners of Jevonsian economics were writing around mid-

century, a previously unseen kind of article had begun to appear in British and American literary journals: the defense of plagiarism. These articles used a language and logic strikingly similar to those of the nascent neoclassical economics to transfer literary value from priority to utility—in this case, a *readerly* hedonics—claiming that the origins of ideas and expressions mattered less than their capacity to satisfy and edify the reader. Like the marginalists' writings, they discarded the labor theory of value in favor of idiosyncratic consumer desire, putting a new emphasis on taste and choice. They also posited a reading public with an insatiable appetite for novelty, at the same time broadening the category of novelty to include any forgotten ideas and expressions restored to readers through rediscovery, renovation, or plagiarism. The writers of these articles—some of them prominent figures such as the novelist E. F. Benson and the folklorist Andrew Lang—attempted to destigmatize plagiarism on the grounds that new ideas and expressions were increasingly scarce in their belated epoch and that even the great minds of earlier periods had alluded, imitated, and stolen. As F. J. Hudleston wrote for *Tinsleys' Magazine* in 1889, “[literary appropriation] is perfectly justifiable, for if there was nothing new under the sun in the time of Solomon, the same may very well hold good in the present day.”³⁶ The broad project of the defenses of plagiarism was to overhaul the Romantic mythology of original genius, remaking genius as a function of assimilation and recombination rather than a fountainhead of fresh invention.³⁷ One of these writers, W. H. Davenport Adams, summed up the transformation in a phrase that would have seemed both perverse and paradoxical to Edward Young and Romantics of his stripe: “a good imitation is the most perfect originality.”³⁸

The arguments advanced by these plagiarism apologists locate even late-twentieth-century critiques of originality squarely within a nineteenth-century “filiation of ideas.” One apologist, A. Mitchell, wrote that “What is often termed originality, is more a manufactured article than a natural product. . . . An original thinker may be considered as one who has grown mentally fat upon the food great minds in all ages of the world have afforded him.”³⁹ Mitchell's stance, at least, may seem poststructuralist, but the sentences appeared in *The Knickerbocker* in 1854, the year Gossen published the *Entwicklung der Gesetze des menschlichen Verkehrs* that so dismayingly anticipated Jevons's work. According to Mitchell, literary originality was not some organic embodiment of pure innovation but a commodity—a “manufactured article”—proceeding from an unspecified source and destined for consumption. To that end, the primary work of writers, as the neoclassical economists were to say of all individuals, was no longer production but consumption—in this case, growing “mentally fat” on tradition. The obsessive peristaltic language in this and other plagiarism defenses registers the emerging idea that literary production was simply a function of literary consumption. Poor readers were necessarily poor thinkers and writers, since “The mind grows by what it feeds upon, and no man can be an original thinker

without a good deal of knowledge. . . . knowledge is of little value unless it is well digested Minds, like stomachs, have little relish for food they cannot digest."⁴⁰ In 1888, Fred Ford attributed critics' persistent charges of plagiarism to "literary indigestion,"⁴¹ and in 1899, E. F. Benson's extended meditation on writing as eating appeared in *The Nineteenth Century*:

Indigestion is the mother of remorse; shellfish bring near to us the sense of sin. . . . the same phenomenon is incontrovertibly shown in the case of literary and artistic digestion, and the sense of sin consequent thereon. There exist in this world great masses of admirable literary food, the inherited treasury of the race. On these we feed . . . and without them we starve. But it is necessary that we should assimilate what we take, the food must be digested. That done, it becomes a part of us, it enters into our muscles, our bones, our brains, it has caused and is causing to make us grow in our own small manner, and the words we use, and the things we write, and the songs we sing, are the inevitable outcome of the nourishment we have received. . . . if we [digest tradition], we shall get, by assimilation of our food, not a plagiarised imitation of our original, but a manner which, but for it, could never have been ours. . . . No amount of dissimulation will conceal from ourselves the fact that we have stolen unintelligently, that we have not digested properly.⁴²

Contra Edward Young, writers were told not to avoid the debased and "borrowed knowledge" of others' works, but to feast well on tradition and digest it properly—to bite off all that Young would eschew. Though literary super-consumption was endorsed as the shortest route to originality—a "manner" that was finally "our own"—consumption, not creation, occupied the discursive foreground. At the hands of Mitchell, Ford, Benson, and other apologists of plagiarism, readers and writers received a message that defied Young's proto-Romanticism: at the eatery of literature, you are what you read. According to their evolving consumerist aesthetic, invention had become a by-product of feasting on the public domain—on those "great masses of admirable literary food" that constituted "the inherited treasury of the race."

By imagining writing as a pleasurable deglutition, the Victorian plagiarism apologists effectively remade production in the image of consumption, conferring the sumptuary pleasures of reading on the act of writing. In fact, pleasure itself—Jevonsian "utility"—became the key term in the new aesthetic calculus, replacing original genius as the source and standard of literary value. Because plagiarized ideas and expressions lost none of their power to please readers in the moment of their consumption, the more extreme of the apologists regarded plagiarism as no less valuable than original literature. As a result, they decriminalized plagiarism in their writings, retooling it as a kind of benefaction that required its own variety of genius. The most aggressive and protracted of these rewritings is the long entry under "plagiarism" in William S. Walsh's *Handy-Book of Literary Curiosities* (1892):

Is plagiarism a crime? For ourselves we confess that we hold it only a venial offense—unless, of course, it is found out. If a man thrills us with the joy and gladness of a great thought, what matter where he got it? We might have passed our lives in ignorance thereof. The discoverer is as great a benefactor as the originator. And then, to be Irish, the originator may not have originated it. . . . But now mark what far-reaching benefits accrued from Disraeli's plagiarism. In the first place, he gave a great deal of pleasure to his hearers which he could not have given otherwise. The review article was better than anything he could have offered himself, otherwise he would not have filched it. Now, the pleasure was an actual pleasure; when the moment had fled, it could not be retracted or embittered by any subsequent development. Then he gave his critics the pleasure of detecting him—a great delight accorded to a worthy and deserving and very hard-worked class. The whole of England was aroused, amused, and interested. In fact, Disraeli proved himself an all-round benefactor.⁴³

The episode Walsh cheekily describes had occurred in 1852 when Benjamin Disraeli, then Chancellor of the Exchequer, was found to have cribbed his funeral oration over Wellington from Thiers's 1829 encomium for Marshal Gouvion de Saint-Cyr. Disraeli's plagiarism, which became a staple in the apologists' articles, had raised a predictable howl from the anti-Disraeli *Globe*: "We have seen him snatch a wreath of faded French artificial flowers for the pall of Wellington, with an audacity of larceny unsurpassed in Grub Street."⁴⁴ Walsh's defense of the plagiarism, even forty years after the fact, went against the prevailing public view of plagiarism as a "larceny." But most interesting is Walsh's enumeration of the various "pleasures" the incident had afforded the British public. Far from being less valuable than Thiers's original composition, Disraeli's plagiarism had not only pleased its hearers but added the pleasures of detection and public spectacle to the mix. As a result of his larcenous benefaction, the British public was that much more "aroused, amused, and interested" than Thiers's initial readers.

This hedonic line of argument neither began nor ended with Walsh's *Handy-Book*. In 1874, an anonymous writer for *The Leisure Hour* defended Ossian, MacPherson's forged and partly plagiarized Scots epic, for the unabated pleasure it continued to give him: "I now, although convinced of the imposture, find pleasure in reading MacPherson."⁴⁵ In the U.S., Ralph Waldo Emerson anticipated Walsh in 1876, writing that "If an author give us just distinctions, inspiring lessons, or imaginative poetry, it is not so important to us whose they are. If we are fired and guided by these, we know him as a benefactor, and shall return to him as long as he serves us well."⁴⁶ Cut adrift from the substrate of its source, the text became a pleasure-parcel; the author, in Emerson's formulation, was more a private postman than an originator, earning customers' loyalty through years of reliable service. In 1887 Andrew Lang argued that even the most hackneyed plot devices could still, in the right hands, become "a novel that would soothe pain and charm

exile"—that is, a perfect example of the Jevonsian commodity, "any object, substance, action, or service which can afford pleasure or ward off pain."⁴⁷ And in a 1904 article pointedly entitled "The Art of Plagiarism," Edward Wright made the following claims: "the men who first conceive an idea, a situation, a melody, a colour scheme, an effect in sculpture, are insignificant. The men who best conceive these things are great. . . . A poet is not essentially an inventor. . . . He is a singer. So long as he sings with sincerity and clearness, with charm or grandeur, it matters nothing to his fame where he finds the subject-matter of his song."⁴⁸ Literary labor theories of value, which evaluated the conditions of literary production and esteemed the labor of original composition most highly, had been challenged by a readerly hedonics that countenanced plagiarism for the sake of pleasure.

Having identified both reading and writing as explicitly pleasurable acts of individual consumption, the apologists now schooled readers in how to enjoy the consumerist talents of authors, talents legible in such textual qualities as deftness of selection, rightness of taste, elegance of integration. As W. H. Adams wrote in an 1892 number of *The Gentleman's Magazine*, "The scholar will hardly impute [extensive literary borrowing] as a reproach; he feels a rare and genuine pleasure in following the poet in his researches in many fields; in observing with what care he selects the finest growths—in admiring the taste and elegance with which he weaves them in his own garlands."⁴⁹ Where the Edward Young strain of Romanticism had celebrated the poet's ex nihilo "invention," the apologists restored the original meaning of *invenire*: to come upon. No longer poets in the literal sense of "makers," writers were just more "tasteful" shoppers and arrangers than their readers were—or, to return to the peristaltic metaphor, better digesters and incorporators of literary nourishment. What they bestowed on their readerly fellow consumers was the "rare and genuine pleasure" of a mimetic consumption, an act of reading whose primary aim was to appreciate the writer's anterior acts of reading and recombination. Writing was a record of reading, and the new literary product nothing more than an agglomeration of prior consumptions.

This emerging view of authorship as a primarily consumptive act belonged, as I have indicated, to a minority discourse during the nineteenth century, a century during which the Romantic figure of the author as original genius continued to dominate both aesthetics and literary property law. Nonetheless, the counterdiscourse I have described was both more vital and more varied than is generally recognized, manifesting itself not only in legislative movements and defenses of plagiarism but in the flux of popular literary form as well. The counterdiscourse to Romantic authorship can be discerned, for example, in the growing popularity of the "cento" or "mosaic" or "patchwork" form of poetry over the course of the nineteenth century. Charles Bombaugh's *Gleanings from the Harvest-fields of Literature, Science and Art* (1860) defines the cento as "a work wholly composed of verses, or passages promiscuously taken from other authors and disposed in

a new form or order, so as to compose a new work and a new meaning."⁵⁰ Its rigid rules of composition, set down in the fourth century C.E. by the Roman poet Ausonius, gave the cento classical constraints: its constituent parts could be taken from one author or many; single lines or even full couplets could be mined from a particular source, but consecutive couplets must come from different source texts.⁵¹ In a sense, the cento represents the ultimate neoclassical form: it not only pushes imitation to the point of verbatim (if piecemeal) copying, it also reinforces traditional poetic forms by quarrying its component lines from metrically identical source poems.⁵² The famous centos Bombaugh cites were largely religious—classical recuperations, such as lives of Christ assembled from lines of Homer and Virgil, or devotional verse cobbled together from disparate lines of scripture. The classical tradition had thrived during the eighteenth century and continued in the early nineteenth, with examples like the 1806 *Brontes: A Cento, to the Memory of the Late Viscount Nelson, Duke of Bronté*, which remobilized some 300 lines of extant Latin verse to recount Nelson's naval victories, death, and funeral. But in addition to such offerings, Bombaugh's *Gleanings* contains a cento with more recent source texts, one that displays its compiler's encounters with contemporary rather than classical poetry:

MOSAIC POETRY

- | | |
|--|---|
| I only knew she came and went
Like troutlets in a pool;
She was a phantom of delight,
And I was like a fool. | Lowell.
Hood.
Wordsworth.
Eastman. |
| "One kiss, dear maid," I said and sighed,
"Out of those lips unshorn."
She shook her ringlets round her head,
And laughed in merry scorn. | Coleridge.
Longfellow.
Stoddard.
Tennyson. |
| Ring out, wild bells, to the wild sky
You hear them, oh my heart?
'Tis twelve at night by the castle clock,
Beloved, we must part! | Tennyson.
Alice Carey.
Coleridge.
Alice Carey. |
| "Come back! come back!" she cried in grief,
"My eyes are dim with tears—
How shall I live through all the days,
All through a hundred years?" | Campbell.
Bayard Taylor.
Mrs. Osgood.
T. S. Perry. |
| 'Twas in the prime of summer time,
She blessed me with her hand;
We strayed together, deeply blest,
Into the Dreaming Land. | Hood.
Hoyt.
Mrs. Edwards.
Cornwall. |
| The laughing bridal roses blow,
To dress her dark brown hair; | Patmore.
Bayard Taylor. |

No maiden may with her compare,
Most beautiful, most rare!

I clasped it on her sweet cold hand,
The precious golden link;
I calmed her fears, and she was calm,
"Drink, pretty creature, drink!"

And so I won my Genevieve,
And walked in Paradise;
The fairest thing that ever grew
Atween me and the skies.

Brailsford.
Read.

Browning.
Smith.
Coleridge.
Wordsworth.

Coleridge.
Hervey.
Wordsworth.
Osgood.⁵³

This cento's amiable puzzle-effects—its bizarre marriage of lines by unkindred poets, its thematic wink at the nuptial nature of its form, its lapses into incoherence or bathos ("I only knew she came and went / Like troutlets in a pool")—belie its complex construction of authorship. Unsigned and generically titled, the poem declines a discreet identity of its own, suggesting instead that the literary object is the sum of its maker's readerly acts of consumption, just as the maker's identity is at once constituted and eclipsed by those acts of reading. Those readings are memorialized by the column of source authors provided by the cento's anonymous writer (or rather, redactor), a column that acts as both a parody of the parallel columns used in plagiarism allegations and a rather miscellaneous poetic mini-canon. But while the list of authors glorifies them as near-scriptural sources, it also deconsecrates the canonized writers by demonstrating that even "immortal" poetic lines depend partly on context for their effects and can be altered beyond recognition when grafted onto less exalted lines. Even more heretically, the source column insinuates that poetic titans like Wordsworth and Coleridge might themselves be nothing more than gifted centonists—an allegation partly true, at least, in the case of Coleridge, whose extensive plagiarisms had been publicly exposed during the 1830s. If the cento paid a lavish tribute to its sources, it also levied a tax on their claims of originality.

By naming its multiple "authors," the cento printed in *Gleanings* also identified the kind of pleasure its readers were meant to enjoy—what W. H. Adams would call the "rare and genuine pleasure in following the poet in his researches in many fields"—the pleasure of a recursive or mimetic consumption. By supplying a partial answer key to the *poème à clef*, the redactor challenged the reader to retrace his or her steps through the garden of poetic history, admiring the "taste and elegance" with which the found blossoms had been woven into new garlands. Insofar as it records its maker's gleanings from the harvest fields of literature, the cento also reproduces Bombaugh's book in miniature: *Gleanings* (subtitled *A Melange of Excerpta*) is nothing if not a monument to its "collator's" literary super-consumption, his ability to digest and redact language into categories as diverse as "Para-

nomasia," "Churchyard Verse," "Moslem Wisdom," and "Nothing New Under the Sun." In fact, the epigraphs of *Gleanings* make the whole book out to be a kind of cento—"A fountain set round with a rim of old, mossy stones, and paved in its bed with a sort of mosaic-work of variously colored pebbles (HOUSE OF SEVEN GABLES)." And like the cento it includes, Bombaugh's collection specifies not only its source authors but the kind of pleasure it intends for its readers. Another epigraph portrays the book as an inexhaustible smorgasbord to suit literary consumers' idiosyncratic desires: "It is a regular omnibus: there is something in it to everybody's taste. Those who like fat can have it; so can they who like lean; as well as those who prefer sugar, and those who choose pepper (MYSTERIES OF PARIS)." ⁵⁴

Over the course of the century, both the cento and the prefabricated scrapbook or "digest" continued to proliferate in Britain and the U.S. As the amount and variety of printed matter increased to the point of perceived excess, a demand arose for collections of literary gems rescued from the oblivion of superfluity by keen-eyed collators and gathered under headings like "The Witchery of Wit," "The Bright Side," "Youth and Age," "Pastimes of the Pen." As a result, archives of Victorian publications teem with "gleanings" from various fields: *Pisgah Sights & Gospel Gleanings*; *Churchyard Gleanings*; *Gleanings on Gardens*; *Science Gleanings in Many Fields*; *Geology Gleanings*; *Gleanings for Leisure Hours: A Set of Conversational Cards in Prose & Verse*; *Gleanings from the Poets, for Cottage Homes*. Predictably, the activities of collation and creation mingled in both the digest's principles of construction and its internal meditations about the nature of authorship. Frederick Saunders, who compiled a best-selling literary miscellany called *Salad for the Solitary: by an Epicure* (1853; rpt. 1872, 1886), named a second after the cento form, his *Mosaics* (1859). The book's opening chapter, "Author-Craft," is typical of mid- and late-century popular literary digests in the way it embraces seemingly incompatible views of authorship:

An author is a kind of anomaly in the human family—living apart from his race, and inhabiting an ideal world with feelings and impulses peculiarly his own. With the commonplace things of every day life he has generally but little sympathy—anti-social, isolate, and indulging in ascetic exclusiveness that at once induces our mingled pity and admiration. . . . Whatever their social peculiarities or defects, yet, if authors are, in a certain sense, the inspired among men, ought we not to reverence and love them? . . . Genius is a ray from heaven; its very name indicates its connection with all that is *genial* upon earth, and its celestial mission is to foster and perpetuate a love of the beautiful and to multiply the gentle amenities of life.

Authors, again, have been styled lamps, exhausting themselves to give light to others: to bees, industriously collecting honey from the flowers, which they treasure up in the hive of books to sweeten and solace life. Author-craft is an imitative as well as a creative art; an original thinker is one who portrays the

works of the great Author of the universe—the compiler, one who ingeniously adapts or rearranges the thoughts and illustrations of others; both in their degree may be said to exhibit creative power.⁵⁵

The first passage is standard Romantic author worship and might have been excerpted from Edward Young's *Conjectures* in its construction of the author as an exceptional, visionary genius. The second, while it retains the category of original creation, makes it an effect of collection, imitation, compilation, adaptation, rearrangement—the activities, say, of a Frederick Saunders. Ultimately the second model, in its inclusiveness and radical heterogeneity, overwhelms the first by absorbing it: Young's organic, autochthonous model of genius can make no allowances for craft, influence, learning, or gathering, whereas Saunders's description of the author as honeybee can still accommodate original creation as one among many modes of authorial production. Despite their genuflections to original genius through homage and quotation, *Mosaics* and its genre-mates sought to reconfigure authorship in the image not of the writers they quoted but of their compilers: the author as miscellanist, the author as miscellany.

1890 saw an expanded edition of Bombaugh's *Gleanings*, whose introduction quantitatively boasted that "while [the volume] has been nearly doubled in size, it has been more than doubled in literary value," and served up a whole banquet of self-descriptors: "miscellanea," "collectanea," "scrip-scrapologia," "olla podrida," "hotch-potch," "omnium-gatherum."⁵⁶ True to its ostentatious plenitude, the 1890 edition doubles its offerings of centos, among them "Life," whose first line is, a little wickedly, taken from Edward Young:

LIFE

- 1.—Why all this toil for triumphs of an hour?
- 2.—Life's a short summer, man a flower.
- 3.—By turns we catch the vital breath and die—
- 4.—The cradle and the tomb, alas! so nigh.
- 5.—To be is better far than not to be,
- 6.—Though all man's life may seem a tragedy.
- 7.—But light cares speak when mighty griefs are dumb;
- 8.—The bottom is but shallow whence they come.
- 9.—Your fate is but the common fate of all,
- 10.—Unmingled joys, here, to no man befall.
- 11.—Nature to each allots his proper sphere,
- 12.—Fortune makes folly her peculiar care.
- 13.—Custom does not often reason overrule
- 14.—And throw a cruel sunshine on a fool.
- 15.—Live well, how long or short permit, to heaven;
- 16.—They who forgive most, shall be most forgiven.
- 17.—Sin may be clasped so close we cannot see its face—

- 18.—Vile intercourse where virtue has not place.
- 19.—Then keep each passion down, however dear,
- 20.—Thou pendulum, betwixt a smile and tear;
- 21.—Her sensual snares let faithless pleasure lay,
- 22.—With craft and skill, to ruin and betray.
- 23.—Soar not too high to fall, but stop to rise;
- 24.—We masters grow of all that we despise.
- 25.—Oh then renounce that impious self-esteem;
- 26.—Riches have wings and grandeur is a dream.
- 27.—Think not ambition wise, because 'tis brave,
- 28.—The paths of glory lead but to the grave.
- 29.—What is ambition? 'Tis a glorious cheat,
- 30.—Only destructive to the brave and great.
- 31.—What's all the gaudy glitter of a crown?
- 32.—The way to bliss lies not on beds of down.
- 33.—How long we live, not years but actions tell;
- 34.—That man lives twice who lives the first life well.
- 35.—Make then, while yet ye may, your God your friend,
- 36.—Whom Christians worship, yet not comprehend.
- 37.—The trust that's given guard, and to yourself be just;
- 38.—For, live we how we can, yet die we must.

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1. Young. 2. Dr. Johnson. 3. Pope. 4. Prior. 5. Sewell. 6. Spenser. 7. Daniel.
8. Sir Walter Raleigh. 9. Longfellow. 10. Southwell. 11. Congreve. 12. Churchill. 13. Rochester. 14. Armstrong. 15. Milton. 16. Bailey. 17. Trench. 18. Somerville. 19. Thomson. 20. Byron. 21. Smollett. 22. Crabbe. 23. Massinger. 24. Cowley. 25. Beattie. 26. Cowper. 27. Sir Walter Davenant. 28. Gray. 29. Willis. 30. Addison. 31. Dryden. 32. Francis Quarles. 33. Watkins. 34. Herrick. 35. William Mason. 36. Hill. 37. Dana. 38. Shakespeare.

Still another volume of miscellanea, William T. Dobson's *Literary Frivolities, Fancies, Follies, and Frolics* (1880), includes "Life" in its extensive collection of "Centones or Mosaics." Unlike Bombaugh's *Gleanings*, however, Dobson's book provides details of the cento's provenance: "'Life' is said to have occupied a year's laborious search among the voluminous writings of thirty-eight leading poets of the past and present times. The compilation first appeared in the *San Francisco Times* and was the work of Mrs. H. A. Deming." Though Dobson's note foregrounds the laboriousness of the poem's birth, it is the labor of "searching" and "compiling" rather than "writing" or "composing"—the labor of the reader or scholar rather than that of the original genius. (In similar terms, he both belittles and lauds another cento that appeared in the *People's Friend* of May 1871 as "laborious trifling . . . evincing great patience and research.")⁵⁷ Dobson's remarks make the finished 38-line cento seem lavishly, even laughably out of proportion to the year-long labor of its compilation, and insinuate that cento-making is necessarily an activity for the leisured classes. In its nineteenth-century resur-

gence, the cento enabled the members of this prime readerly demographic to write back through the activity of reading, to produce a literature of extravagant consumption.⁵⁸ The resulting poems rewrite consumption as authorship without erasing or subordinating the fact of consumption; as such, they are portraits of a model of identity just emerging in the late nineteenth century, one for which the act of production is secondary to that of consumption, the act of writing a function of reading. The centonist's mode of authorial attribution diverges, too, from productivist Romantic orthodoxy: though some centos are attached to the proper names of their supposed collators (Mrs. H. A. Deming, Sir Fretful Plagiary), that attribution is a "soft" attribution, seldom verifiable, often overwhelmed by the identities of the source authors and immune to the temptations of the "man-and-his-work-criticism" decried by Foucault.

Although Victorian centos share certain consumerist affinities with the defenses of plagiarism, they commit neither the moral transgression of plagiarism nor the legal one of copyright infringement. Those centos that do not identify their source authors in attribution columns tend to alert readers to their recombinative nature through their titles ("Cento from Pope"), or through the inclusions of giveaway lines such as "His was a grief too deep for tears" and "The proper study of mankind is man" (see examples in appendix). By exonerating itself of plagiarism, the cento seems to open itself to the charge of infringement—that is, of having reprinted the protected expression of another author without consulting or remunerating that author. Obviously, the cento's reuse of a single line from a source poem is unlikely to cannibalize the market for authorized editions of that poem, the primary violation against which copyright protects a work. But in the more severe copyright climate of our own day, we are used to acknowledgments pages bearing copyright permissions to quote equally brief excerpts from protected works. The absence of such permissions in nineteenth-century centos testifies not to their legal transgressiveness, but to the fact that they were written under a more open copyright regime than the present one. In quoting from both protected and public domains, these centos exemplify the kind of technically "fresh" creation from prior works that is possible under a thinner copyright regime than our own, and perhaps constitute a sort of embodied plea, in the wake of the 1842 Copyright Act, that literary property laws not thicken further.⁵⁹ Finally, by demonstrating the uses of recirculated expression, Victorian centos anticipated the doctrine of "fair dealing" or "fair use"—the exemption of certain kinds of textual reproduction from infringement—which had yet to be formalized in Anglo-American copyright law. But in a sense, they already went beyond the eventual provisions of that doctrine. Where fair use now permits the quotation of protected works for such purposes as teaching, scholarship, criticism, and parody, the cento's quotations do not fall clearly under any of these rubrics; nor do they constitute the sort of "political" speech that might mitigate intellectual property

rights. Rather, the cento asserts the intrinsic value of textual *appropriation*—in the nonstigmatized sense of "making something one's own"—as a mode of fresh creation, legitimating the very sort of noncritical, nonparodic appropriation that would be prohibited by millennial copyright regimes.

The centonists, the gleaners and collators, and the plagiarism apologists hinted that all texts were to some extent centos of prior texts and all writers conduits for anterior ideas and expression. Emerson wrote that "there is no pure originality. All minds quote," adding that "We expect a great man to be a good reader; or in proportion to the spontaneous power should be the assimilating power."⁶⁰ Accordingly, many late-nineteenth-century critics began to focus less on writers' powers of generation and more on their powers of consumption, redaction, and recontextualization. To demonstrate his own "assimilating power," Lang confessed to plagiarizing a passage from Zulu and suggested that the word *plagiarist* could be defined as "any successful author."⁶¹ In 1888, the American Fred Ford concurred, writing that "Our plagiarisms cease only with life," while Oscar Wilde announced, around the same time, that plagiarism was "the privilege of the appreciative man"—a privilege he claimed in his works.⁶² Remarkably, the neoclassical disposition of the Victorian apologists and centonists did not perish with their generation but persisted in a number of Anglo-American modernist writers. In works by Joyce, Eliot, Pound, Moore, and others, certain traits of an obscure Victorian counterdiscourse—the apologists' and centonists' bent toward imitation, quotation, appropriation, and recombination—found more celebrated expressions. The critic Edmund Wilson recognized the link between modernism (which he called Symbolism) and cento-making in *Axel's Castle* (1931): "in reading Eliot and Pound, we are sometimes visited by uneasy recollections of Ausonius, in the fourth century, composing Greek-and-Latin macaronics and piecing together poetic mosaics out of verses from Virgil."⁶³ As we will see in chapter 5, Joyce's *Ulysses* is, if not strictly a cento, radically intertextual, and its infrastructural deployment of the *Odyssey* is a broadly neoclassical gesture. And as innumerable poststructuralist writings and postmodern works attest, the notion that there is no radical originality—that all minds always quote—retains its currency for a wide range of critics, theorists, and artists. Paradoxically, the apologists' marginal and counterdiscursive demotion of originality helped lay the conceptual groundwork for several generations-worth of more highly visible critical and creative innovation.

Literary Property

So far I have been discussing the neoclassicisms of the marginalist economists, the Victorian centonists, and the plagiarism apologists as crucial counterdiscourses to the increasingly hegemonic status of intellectual prop-

erty law during the nineteenth century. But what of the ethical costs of a sumptuary aesthetic that, say, condones plagiarism in the name of pleasure and individual choice, or one that subordinates the scene of production to the scene of consumption? Recently, several critics and intellectual historians have excoriated Jevonsian marginalism for washing its hands of ethics, adding that this same gesture of "normative evisceration" was duplicated in contemporary writings on aesthetics.⁶⁴ Whereas political economists from Smith to J. S. Mill had appraised and theorized both the quantitative laws and the social relations involved in labor, capital, rents, and exchange, Jevons and other neoclassical economists focused on the scene of individual consumer desire, extrapolating from it to a mathematics of aggregate demand. This shift toward "mathematico-economics" entailed a shift away from ethics and social relations, now set aside as belonging to a separate intellectual sphere. Jevons was careful to circumscribe his interests, showing how a "calculus of utility" led people to supply their basic wants with the least amount of labor possible and to devote their excess energy to the accumulation of wealth. Although he conceded that "A higher calculus of moral right and wrong would be needed to show how [the laborer] may best employ that wealth for the good of others as well as himself," he made no attempt to develop this higher calculus. For Jevons, ethics was what occupied the contemplative few while the rest of humanity (economists included) were busy producing and consuming according to their internal calculus of utility: "we may certainly say, with Francis Bacon, 'while philosophers are disputing whether virtue or pleasure be the proper aim of life, do you provide yourself with the instruments of either.'"⁶⁵ Regenia Gagnier has argued that neoclassical economists and Paterian aesthetics "converge in their promotion of subjectivism, individualism, passive consumption, and ultimately formalism."⁶⁶ Instead of scrutinizing the art object's conditions of production as John Ruskin, William Morris, and others had done, Walter Pater turned his attention to the nuances of art consumption—the fleeting sensations and ruminations of the private reader, viewer, and listener. According to this reading, Pater was the Jevons of aesthetics, forsaking the social for the solipsistic, the ethical for the pleasurable.

The nineteenth-century writers who exonerated plagiarists on the basis of a pleasure-calculus are certainly vulnerable to such a critique. By evaluating literature on purely consumerist grounds, they appeared to shelve any concern for how literary works were produced and by whom. As long as the text delivered its cargo of readerly pleasure, the conditions of the writer's or printer's or binder's or papermaker's lives, whether posh or impoverished, remained behind the veil of a seemingly autonomous product. The apologists also chose to ignore plagiarism's real financial effects in a market society—its capacity to infringe not just on copyrights but on writers' livelihoods by sapping the market for their work, although this effect resulted more often from large-scale piracy than from plagiarism. At a broader level, plagiarists

failed or refused to honor other writers' labor through conventional channels of acknowledgment and financial reward. Profiting in revenue and reputation from purloined literary work, the plagiarist alienated fellow writers from the fruits of their own labor. And as we have seen in the example of E. F. Benson's diamond metaphor, the apologists sometimes followed the marginalist economists in perpetuating an imperialist rhetoric that justified expropriation by an often racist hierarchy of pleasure capacities.

Yet at the same time that they participated in a certain "normative evisceration" of literary value, the plagiarism apologists were building a critique of their own, one that embraced ethical considerations as much as their plagiarism endorsements often shunted them aside. In defending or redefining plagiarism, the apologists concurrently attacked the conventions and metaphysics of private literary property law during a period when that law was becoming more extensive, more widely accepted, and more thoroughly integrated into the commercial and ideological matrices of industrial capitalism and British colonialism. The logic of this assault may be difficult to follow, given the distinction between plagiarism and copyright infringement: whereas the infringer transgresses copyright law by making unauthorized copies of a protected work, the plagiarist is guilty of misattribution regardless of whether the copied work is under copyright or in the public domain. Infringers break the law, whereas plagiarists commit moral transgressions even in cases where their copying is, strictly speaking, permitted by the law. But though the term *plagiarius* had denoted literary theft (literally, "kidnapping") since Martial used it in the first century C.E., the powerful moral stigma that had attached to plagiarism by the nineteenth century depended on a relatively recent idea: that writers could own, profit by, and control the disposal of their language as if it were real property. Although copyright law did not forbid plagiarism per se, the rise of copyright was a central prop to the economic and cultural developments that had turned plagiarism into a cardinal literary sin. To destigmatize plagiarism, as the apologists attempted to do, was implicitly to criticize the regime of intellectual property laws that had fixed and darkened the stigma of plagiarism by making originality the cardinal virtue of letters. Defending plagiarism could signify in broader, more overtly political ways as well: by the late nineteenth century, monopoly copyright had become such an important buttress to the social hierarchies cherished by industrial capitalism that to attack the law, even obliquely, was to invite charges that one was "communistical"—that one stood in a dissenting relation to the possessive individualism of the age.

As critics of private literary ownership, the plagiarism apologists had a common cause with the opponents of the Talfourd Copyright Bill. But the two critiques did not run entirely in tandem. The anti-Talfouradians had attacked copyright primarily from a consumerist angle, arguing that authorial monopolies in texts robbed readers of cheap, edifying books. The apologists, however, were themselves professional writers and apt to fold literary pro-

duction into their critique. Though they used a consumerist logic to condone plagiarism, their most outlandish gesture was to collapse the distinction between literary consumption and production. Writing, they implied, was a belated form of reading; individuals were not divisible into readers and writers, consumers and producers, but instead were nodes in an unceasing circulation of ideas and language. Since originality was an effect, not a fact, of such circulation (a "manufactured article" rather than a "natural product"), the traditional conception of literary property was indefensible. Here is the anonymous *Leisure Hour* writer—the one who exonerated Macpherson's *Ossian* for its pleasure-giving power—delivering a prescient attack on private literary ownership by describing a kind of intellectual fluid dynamics:

In the republic of letters may not a good thing once uttered be considered the property of all? At the feast of reason and the flow of soul, who is to be blamed for helping himself first? . . . [Coleridge] helped himself to the thoughts of others without scruple, but he also gave away, it must be added, in the same open-handed, generous way. He was, it must be admitted, a plagiarist, but he could plead the excuse of the Yankee who was charged with walking off with another man's umbrella—that he bought a new one once a year, put it into circulation, and then considered himself free of the umbrella-stands of his friends for the rest of the twelvemonth.⁶⁷

Imagining a "republic of letters" (against copyright's petty principalities, perhaps), the writer constructs a communal system of literary property based on circulation rather than accumulation. Participants in such a system would be, like the essayist, anonymous points of reciprocity and "flow" rather than titled proprietors of private literary hoards. Published in 1874, the article looks forward to late-century critiques like Wilde's, which defy the logic of private literary accumulation not only by guiltless appropriation but by donation: depositing an idea or expression (troped here by an umbrella) in the communal account licenses one to make eventual withdrawals without penalty. The common-fund model of intellectual property recurs in several essays by other plagiarism apologists—Ford's "That 'Bugbear,' Plagiarism" (1888) and Adams's "Imitators and Plagiarists" (1892):

If in perusing the work of others we find an idea which is agreeable to us, then that idea immediately becomes our property; not merely by the right of eminent domain, but by the same right that was exercised by the person from whose work we took the idea—that of helping ourselves out of the common store of knowledge—the accumulation of the ages—which is our birthright.⁶⁸

All those great men whom we see at various epochs dominating over their age are bound to their generation and to the preceding generations, not by threads invisible, but by powerful ties which become perceptible as soon as we care to look for them. A great idea is of slow growth, nor does it attain to its full de-

velopment until it has passed through many minds. Then, at last, it finds the necessary expression, and is made over to the ages as the general possession of mankind.⁶⁹

This notion of a continuum of shared exchange—a writerly joint checking account or gift economy or public domain—becomes a point of resemblance among otherwise divergent modernists. Such accounting recognizes only one form of criminal expropriation: that of seizing an idea or expression out of the public domain and calling it one's own. This private seizure of avowedly communal property may just be the modernist gesture par excellence. Still, however bizarrely they were replicated, marginal counter gestures like the ones we have been tracing went on to influence more prominent literary movements and forms. With Wilde, and later Pound, Eliot, Joyce, and other appropriative modernists, literary antiproperty began to take root in new elite literatures—and, arguably, to accrue a cultural capital of its own.

In seeking to recover several late-Victorian counterdiscourses to private literary property law, this chapter left the legislative terrain of copyright with the passage of the 1842 Copyright Act. In later chapters on Wilde, Viereck, and Joyce, I will consider in greater depth the literary critique of copyright and the increasing familiarity of literary works with their intellectual property status. First, however, we need to return to copyright law itself in order to learn what debates were going on in legislative circles, as well as in the public sphere, about intellectual property during the second half of the nineteenth century. For although most accounts of modern British copyright law pass quickly over the period between the 1842 and 1911 Acts as one of unruffled consolidation and unchallenged hegemony, this is manifestly not the case. Though copyright did achieve a form of ideological closure during the late nineteenth century, it did so despite, rather than in the absence of, organized resistance. Remarkably, this resistance did not come principally from the far Left, from a subcultural fringe, or from a consortium of academics, librarians, and free speech advocates, as would be the case today. Instead, it came from a bloc of powerful free trade radicals affiliated with the Board of Trade—men who were knights, factory owners, and administrators of empire, and whose antimonopoly doctrine was diametrically opposed to intellectual property laws that created even temporary monopolies in the reproduction and dissemination of expression. The flat royalty system with which these men proposed to replace monopoly copyright seems, in retrospect, cumbersome and potentially inequitable. Far more interesting is the simple fact that intellectual property law was assaulted by members of the same well-educated governing and industrial classes whom it is generally thought to have benefited most. That such a politically and commercially powerful group could be so trenchantly opposed to a property form already

over 150 years old illustrates the extent to which postmortem monopoly copyright was still an open question even among the ruling elite, and attests to the degree of ideological closure copyright has achieved *since* it was attacked by the free trade radicals. Their efforts to contest and overturn monopoly copyright coalesced around the 1876–78 Royal Commission on Copyright, to which we now turn.

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Committing Copyright: The Royal Copyright Commission of 1876–78

I am quite sure that the selfish principle, or I will say the self-regardful principle, is enshrined and glorified by means of copyright, in a way which is most dangerous; and I should be most thankful if we could get quit of it, or get it curtailed by means of the royalty system.

—R. A. MACFIE, TESTIMONY TO THE COMMISSION

I take it that the proposal really amounts to this . . . that people with smaller amounts of money shall have no disadvantages from their smaller amounts of money. It is communistic practically: it is simply equalising the advantages of wealth and poverty.

—HERBERT SPENCER, TESTIMONY TO THE COMMISSION

Matthew Arnold, poet of ignorant armies, called it “a great battle.”¹ On the face of things, though, the Royal Copyright Commission hearings of 1876–78 were a civil-enough business: only the murmur of learned men in well-appointed chambers, the scratching of a secretary’s stylus. Certainly the witness roll could boast some titanic figures: a quorum of major names in British and American publishing appeared (John Blackwood, John Boosey, R. W. Routledge, John Murray, William Longman, G. H. Putnam, Alexander Macmillan), as did several prominent men of letters (Herbert Spencer, T. H. Huxley, John Tyndall, and Arnold himself). The composer Arthur Sullivan made a statement; a minister from the French Embassy testified once, and the Permanent Secretary of the Board of Trade appeared eight times. But there is little in the main text of the Commission’s Report to suggest a titanic clash of opinions. Finally submitted on May 24, 1878, the Report stated