

# Text as Property/Property as Text

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**C O N N E X I O N S**

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# Chapter 1

## General Info

### 1.1 An Introduction to the Class (Text as Property/Property as Text)<sup>1</sup>

#### 1.1.1 Text as Property/Property as Text: Intellectual Property Across the Ages (Anth 321/Clas 311)

This class is an experiment in comparison. It stretches over millennia and includes a pretty outrageous diversity of material, but it is collected together under the assumption that it can be compared and contrasted by thinking about the concepts of authorship, ownership, circulation, property, control, imitation, re-use, appropriation, forgery, plagiarism etc.

NOTE: For details see the Syllabus<sup>2</sup>

Such comparison needs a baseline, of course, and that is what the first seven weeks of the class is meant to provide. By halfway through the class, you should have a pretty extensive grasp of the following things: modern intellectual property, ancient Roman and Greek manuscript traditions, modern definitions of "information", and both ancient and modern conceptions of "author", "genius", and "owner". From this baseline, we will proceed to compare a wide variety of artistic, scientific, literary and real-life things.

The second half of the class, however, is meant to introduce you to a number of different **alternative** conceptions of authorship and ownership, both in the modern world and in the ancient world. So you can think of this class as not only a comparison between ancient and modern, but a comparison of modern with modern and ancient with ancient. Every era has its own dominant and lesser known traditions. In the end, we hope to leave you with a much richer sense of just how narrowly most dominant versions of authorship and ownership are, and how many other traditions, experiments, movements, communities, and practices there have been in the past and continue to be in the present.

##### 1.1.1.1 Anthropology and Cultural Comparison

One way of understanding how this class is structured is to think about how anthropology views its object. When anthropologists study the Bororo, for example, they treat them as a separate **culture**— even if this is just a fiction since these days the Bororo are wearing Nikes and want their MTV. Nonetheless, the Bororo culture is assumed to include a set of practices, institutions, laws, political organizations, economic systems and religion that are presumed to be relatively stable—and more importantly different from an equally stable "us" (which usually means the Euro-American traditions of democracy and capitalism and Judeo-Christianity). Occasionally, this kind of comparison is enlightening and leads to a better understanding not

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<sup>1</sup>This content is available online at <<http://cnx.org/content/m11790/1.2/>>.

<sup>2</sup><http://smatter.rice.edu/321/>

just of another culture, but of both cultures being compared. Such comparison could be conducted between any two "cultures" so long as one is willing to get to know each of them in sufficient detail, and to keep an open mind about them.

In this class, the two "cultures" are 1) the modern global economic and legal "culture" (stretching from about the 17th century to now) and 2) the Ancient Greek and Roman Empires (stretching from c. 500B.C.E to about 200A.C.E. Within these two enormous stretches of time, we will the study the particular practices of reading, writing, interpreting, authorizing, owning, buying, borrowing, sharing, stealing and selling texts (poetry and literature), works of science and art, or other important documents. We will also consider how the modern notion of "information" can be compared to things like writing, reading and understanding.

It is always important to remember that we can also compare **within** these different traditions. Even if the "culture" of the Bororo is relatively stable over hundreds of years, that doesn't mean there are alternatives within it. Alternative, underground, oppositional, criminal and critical traditions exist in every culture. It is only on CNN and at the White House where everyone is said to believe the same thing.

### 1.1.1.2 Law Custom and Convention

The class will focus primarily on the diverse meanings of authorship and ownership. In the modern period, all forms of information and entertainment, as well as much of our lives are deeply dependent on formal law (i.e. that made by national legislatures and courts), especially intellectual property law. In the ancient world, formal written law was not quite so pervasive—however, that does not mean there were not strong customs or conventions for how life and literature were governed. Similarly, the function and role of literature and art in the modern period can be contrasted with that in the ancient period. Sometimes what we read will seem arcane and impenetrable (whether it is legal jargon, scholarly jargon or difficult poetry), but remember that we are interested in understanding not just the texts themselves, but the contexts as well (see the module Tips for Reading). Over the course of the semester, we will consider the following questions in more detail. Consider how you would answer them now.

What are some functions of formal law?

- Constraint, repression, regulation, domination?
- A prediction of how the courts, sovereigns or police will respond to some action?
- A way to actively change the attitudes and goals of people?
- A means of control and security?

What's the difference between formal law and informal customs or conventions? Can you think of examples in modern life where there are laws but no customs, customs but no laws, or where both coexist?

Why does law or custom govern literature or information at all? Why isn't there absolute freedom to say or write anything?

Why is intellectual property different from regular property? Why does it require different laws?

What's the difference between plagiarism and theft of intellectual property?

How are law, custom, convention, sovereignty, power and control related?

What's the difference between private and public censorship?

### 1.1.1.3 Literature, Media, Information, Text, Manuscript

In addition to the issues of law and custom, we will also be considering a wide variety of created objects: poetry, prose, plays, commentary, philosophy, scientific texts and scholarship. We will also consider music, performed poetry and theatre, film and television etc. The variety of different **media** is very large, but we will consider both what they say, and how they say it at the same time. Intellectual property law is concerned with the relationship between ideas, expressions and the manner in which they are made tangible, but is possible to ask similar questions about all kinds of objects and media.

## 1.2 Tips for Reading<sup>3</sup>

### 1.2.1 Some tips for reading...

**Rule 1.1:** Leave yourself time.

The most important rule for actually getting something out of the reading is to leave yourself time not only to read the text, but to think about it, and to ask questions about it. Plan ahead, budget a couple of hours, and if only takes 30 minutes to read, use the rest of the time to consider the text, to reread parts, to pose questions, or to compare it with other texts.

**Rule 1.2:** Take Notes.

There are many styles of taking notes. Some people copy down quotations in order to remember them, some people make maps or hierarchies, some people write their own thoughts about what they've read. Notes should serve two purposes: they should allow you to remember what you read without having to re-read the whole thing, and they should serve as a basis for discussion in class and for your own writing. Figure out for yourself how to achieve this. Bring your notes and the text to class for discussion, so that you can add to them or annotate them during discussion.

**Rule 1.3:** Know what you are reading.

Do not just start. In this class (Anth 321/Clas 311) there are a lot of different kinds of texts, and we will read them both for what they say and examples of forms of authorship and ownership. This requires a zen-like attitude in which you read a text and think about it at the same time. Do not simply pass your eyes over the text and pronounce it read, but sit down before the text and answer some preliminary questions; figure out what it is, why we're reading it, then read it. Always familiarize yourself with the text before you begin. If it's not clear what it is, ask one of the instructors or use a trusty friend: the library. Try to answer these questions before you begin:

- What era is it from? What year?
- Does it have an author? multiple authors? An institution as the author? An editor? A translator? A commentator? Is it a letter, is it written for a particular person? A particular audience?
- Where was it written? Where was it published? If it's online, where did it come from? Who put it online and why?
- Are you reading an "original" version? Is it abridged, collected, adumbrated, interpolated, translated, edited? Are there other texts by the other? Other versions?
- What kind of work is it? Poetry, law, commentary on something else? scholarly study? History? Legal document? Official document?
- How long is the work? Are you reading a section of it? Do you know which section and why?

**Rule 1.4:** Make a time-line.

Go back to the question, "when was it written?" In this class we will read works that span some 2500 years. That's a lot of time. You won't be tested on dates and times, but if you make a mistake, it's likely you will be ridiculed, or at least publically corrected. These details are important—not in themselves— but so that you can keep track of other more general discussions.

- Make a time line for yourself. In fact, make several. Some issues will cluster around small time periods, others will be empty. Some issues might need to be on separate time lines (i.e. legal changes vs. technical ones).
- Use the timeline as an aid to memory, not as a way of making arguments. Chronology is important, but it isn't that important

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<sup>3</sup>This content is available online at <<http://cnx.org/content/m11788/1.2/>>.

**Rule 1.5:** Think about authorship and ownership

As we progress in the class, you will learn more about these issues, and will be presented with more and more texts meant to demonstrate different issues. Begin to ask yourself:

- What is the legal status of this text? Does it have an owner— is the owner different than the author(s)? What kind of property laws govern it?
- Is it an anomalous text? Does it stand out for some reason other than what it says?
- Is the author aware of the first two issues? Does the text refer to its own status as an object?
- Is the text "valuable" (whatever that might mean)? What makes it so?

**Rule 1.6:** Coordinate with other texts.

Do not read each text in isolation. Go back and forth between texts. The readings for this class have been carefully selected in order to produce surprising comparisons and connections. If you read each text in isolation and expect enlightenment, you will be disappointed, alone and confused. Do not lose faith, however, because there is always a party in your text, you just need to find it.

- Do the texts explicitly refer to each other? How?
- Do they implicitly refer? Is it assumed that you have read something else?
- Are there "intertextual" references? (remember your timeline, generally texts only refer in one temporal direction!) What is the nature of this reference?
- What are the "common" texts referred to? Are there things the author assumes "everyone knows"? What are they and do you know them? How can you find out what is "commonly known" vs. what is an obscure reference or inside joke?

NOTE: Paul Edward's *How to Read a Book*<sup>4</sup>

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<sup>4</sup><http://www.si.umich.edu/~pne/PDF/howtoread.pdf>

# Chapter 2

## Part 1: Ownership

### 2.1 A Primer in Modern Intellectual Property Law<sup>1</sup>

#### 2.1.1 The Role of Law in Modern Society

The importance of law in modern societies is hard to overestimate. The systems are complex, the institutions are diverse and range from small to mammoth, and the number of people involved, from para-legal to federal judge, can only be proof of its central role in society. And yet, for the most part, law and legal issues are left to lawyers, legal theorists and the occasional sociologist. For most people, the law is only reluctantly confronted during those signature events in life: marriage, paying taxes, immigrating, or suing the buttwipe in the SUV who smashed up your right-hand rear-view mirror. And so it should be.

Intellectual Property (IP) Law, however, seems to have broken this mold. For about twenty years, IP law has slowly become something more and more people confront. It is not only becoming easier to violate the law, due to changing technology, but it is also becoming much easier and more common for people to use the law to police their own intellectual property. In order to understand what this body of law consists of, where it came from, and what its original justification and current uses were and are, it's necessary to look more carefully at both the law, and the reasons for its existence.

#### 2.1.2 The origin of American Intellectual Property Law

Intellectual Property law stretches back at least to the 17th century, and depending on the definition, further. However, as with many modern government institutions, it was given a special place in the American constitution. It is interesting to note that the US constitution does not specify anywhere that humans have a right to tangible property such as land (though the 5th amendment guarantees that there shall be no government taking of property without just compensation), but it does insist that the Congress of the United States be given a special right concerning "Authors and Inventors":

*To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;*

This statement, in Section 8 of the US constitution, is the sole legal justification for the creation of the immense body of law and diverse institutions that we now live with. Implied by this phrase are both economic and social justifications.

The inclusion of this phrase in the constitution is by no means arbitrary. It was, like the rest of the constitution, extensively debated by the framers. Perhaps one of the most famous statements about intellectual property comes from Thomas Jefferson. Jefferson's 1813 letter to Isaac McPherson has been very widely quoted in the context of debates about the role of intellectual property. In it, he explains why he considers it unreasonable to consider ideas to be property.

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<sup>1</sup>This content is available online at <<http://cnx.org/content/m11795/1.3/>>.

*It has been pretended by some, (and in England especially,) that inventors have a natural and exclusive right to their inventions, and not merely for their own lives, but inheritable to their heirs. But while it is a moot question whether the origin of any kind of property is derived from nature at all, it would be singular to admit a natural and even an hereditary right to inventors. It is agreed by those who have seriously considered the subject, that no individual has, of natural right, a separate property in an acre of land, for instance. By an universal law, indeed, whatever, whether fixed or movable, belongs to all men equally and in common, is the property for the moment of him who occupies it; but when he relinquishes the occupation, the property goes with it. Stable ownership is the gift of social law, and is given late in the progress of society. It would be curious then, if an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property. If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property.*

The passage does not end there (indeed, the whole of the letter, as with most of Jefferson's writings, is incredibly erudite, and goes on at length about the particular invention—a grain elevator—which McPherson had sought his advice for. See the supplementary links for more information.). Jefferson recognized the subtle balance that must exist between the need to reimburse inventors for their hard work, and the "embarrassment" of giving them sole monopoly rights to an idea, something Jefferson clearly considered unnatural, he continues:

*Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility, but this may or may not be done, according to the will and convenience of the society, without claim or complaint from any body. Accordingly, it is a fact, as far as I am informed, that England was, until we copied her, the only country on earth which ever, by a general law, gave a legal right to the exclusive use of an idea. In some other countries it is sometimes done, in a great case, and by a special and personal act, but, generally speaking, other nations have thought that these monopolies produce more embarrassment than advantage to society; and it may be observed that the nations which refuse monopolies of invention, are as fruitful as England in new and useful devices.*

*Considering the exclusive right to invention as given not of natural right, but for the benefit of society, I know well the difficulty of drawing a line between the things which are worth to the public the embarrassment of an exclusive patent, and those which are not.*

Jefferson's explanation references both issues of economics, the so-called utilitarian justification for granting monopolies, as well as a social one: that the granting monopolies for ideas is an inherently difficult and dangerous thing to do.

By creating a system of IP law, the US government not only headed down a new, somewhat hairy, bureaucratic path, but it gave voice to a sense that there is a balance to be struck between the impossibility of restricting the circulation of ideas, and the need to find some way to reward individuals who spend their lives inventing, authoring, or otherwise creating and improvig ideas.

### 2.1.3 Institutions of US IP Law.

From this constitutional mandate, Congress has passed a number of federal laws, which both govern the legal and illegal aspects of IP and actually create institutions to manage and oversee the resulting issues. These three federal areas are copyright, patent and trademark (trademark actually derives from the constitution in Section 8, clause 3, the power to regulate interstate commerce). In addition to these three main areas, there is also law relating to "trade secrets" which is not federal, but state (in the US) and generally functions only to protect commercial enterprises from the unfair appropriation of information it has taken steps to protect. (Compare this with the notion of **personal** privacy; is there a version of a "trade secret" for individuals?)

In the case of copyright, the Library of Congress was designated as the body which would house copyrighted works, maintain a registry, and publish circulars concerning the rules and regulations (Title 17). In the case of patents the congress created a new office, the Patent and Trademark Office. The USPTO oversees patent law (title 35) and trademark law (Section 22 of Title 15). In addition, this institution also publishes its own elaborate Code of Federal Regulations that govern how the office will grant and review patents and trademarks—that is, how it will carry out the federal law.

#### 2.1.3.1 Copyright

##### US Federal Copyright Law. Points for discussion

- what's explicitly protected?
  - literary, musical works (+lyrics), dramatic works (+music), pantomime, dance, choreographic works, pictorial, graphic and sculptural works, motion pictures, audiovisual recordings, sound recordings, architectural works software, "mask works" of semiconductors, music videos, designs
- What's explicitly not covered?
  - US Government works.
- How long are works covered for?
  - Currently, an author gets life + 70 years. A "work for hire" (where the author is different from the owner) gets 95 years from publication (or 120 years from creation). The original duration was 14 years, renewable for another 14.

##### **Exercise 2.1: Math Problem.**

*(Solution on p. 19.)*

I write this module today, and I live to the year 2066 (hallelujah!). When can you make use of it?

- What's the test for copyrightability?
  - It must be original (a modicum of originality) and it must exist in a "tangible medium of expression."
- What about registration and notice?
  - Works prior to 1989 needed to be marked with a little c in a circle or "Copyright 1988". Works after this date do not need to be marked to be considered copyrighted. No registration is necessary, until you want to sue someone, then you need to deposit a copy somewhere (such as the Library of Congress) in order to formally assert your ownership.
- Note that much of the law, as it has been extended incorporates the specifics of existing technologies—rules about phonorecords, broadcasting, cable, and now digital transmission. Even Jukeboxes (17.1.116) have been covered at some point.

Other questions:

- Copyright is a "strict liability" statute. What does this mean?
- What constitutes infringement?

- What constitutes damages?
- What kinds of remedies can you pursue (injunction, impounding, damages, criminal penalties)?

### Some specific aspects of copyright law

The idea/expression dichotomy:

- From 17.1 concerning the subject matter:

*tangible expression 102(b): In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.*

Explicit exclusive rights: see section 106.

Fair Use and explicit limitations on rights: see section 107 on fair use (see also section 110, what kind of limitations does this create on the notion of creativity/originality in the classroom)?

Rights in intangible vs. tangible objects, implications of ownership.

- 17.2 Ownership in copyright is not ownership in the object.

### The 1998 Digital Millennium Copyright Act.

17.12. DMCA, Anti-circumvention, criminal penalties, extensive rules and exceptions.

#### 2.1.3.2 Patent

##### US Federal Patent Law, points for discussion.

- Patents vs trade secrets? What kind of justification? general availability of patents.
- What's patentable?
- What duration?
- 20 years + 5 years renewal for drugs, devices. 14 years on designs.
- What are the standards for patentability?
- What if a patent isn't original?
- are plants patentable? organisms and genes? What does this mean?

#### 2.1.3.3 Trademark

##### Trademark, points for discussion

- What can be a trademark?
  - symbols, logos, sounds, designs, or even distinctive nonfunctional product configurations.
- Trademark's ostensible justification is not to reward inventors, but, believe it or not, to protect consumers from snake-oil salesmen and other unscrupulous dealers.
- The function of trademark is to: indicate the source of goods avoiding confusion, encouraging competition.
- Trademarks must be granted, and they do not expire, but they can become unprotectable (Xerox, kleenex, etc.)
- Since 1996, trademarks have been susceptible to "dilution."

## 2.2 The Story of a Manuscript<sup>2</sup>

### 2.2.1 The Story

Around 200 BC, Quintus Septimius Calamus wrote an epic poem in dactylic hexameters on Romulus, the **Romuleid**. (In fact, Calamus works within a long tradition of oral composition in southern Italy. His is but one version of many still in circulation ca. 200, though it becomes the standard one. Themes in the poem resemble those found in Homer; some modern French theorists would insist that Celtic and Vedic themes are also present. Glib American grad students, I should add, claim to find remnants of the **Romuleid** tradition in Italian pop music.) This is the story of that poem.

Calamus actually writes two versions of the poem, as he corrects various things in it after it was already in circulation. Both versions remain in circulation throughout antiquity; moreover, copyists sometimes combine readings from them.

The poem becomes a favorite of P. Cornelius Scipio Africanus Aemilianus, or the "Younger Scipio," and his circle. Copies circulate among that circle, as well as outside of Rome, including in the Greek East.

Around 110, the grammarian Pedanticus does a critical edition of the poem, incorporating the critical signs developed in the Hellenistic period, in association with the Library of Alexandria. (In the early Augustan period, Pedanticus' great-grandson will write a treatise on unusual words in Calamus.)

In 56, Cicero writes to Lucullus, knowing that Lucullus' father had a very good edition of the **Romuleid** in his vast and excellent library. Cicero asks for a copy, because he has been unable to find a good edition of Calamus' poem among the booksellers at Rome. Cicero had earlier (ca. 67) written to Atticus, asking for a copy of the same poem; perhaps Atticus had failed to deliver, or perhaps Cicero had lost that copy (during his exile?). In 46, Cicero's slave Dionysius steals the copy of the poem Cicero had procured from Lucullus.

In 45, Varro prepares to include a copy of Calamus' poem in the first public library at Rome. The assassination of Caesar halted that project, and Antony made off with Varro's copy. It ends up in the hands of Octavian in 29 BC, after he defeated Antony and Cleopatra in 31 at the Battle of Actium, and after the lovers had committed suicide in Egypt in 30.

In 39, another fine copy of the **Romuleid** finds its way into Asinius Pollio's library, now the first public library in Rome.

In 22 BC, Augustus (having shed the name Octavian in 27), opens his Palatine Library and includes the copy that he had taken from Antony's estate. A copy can also be found in the library at the Porticus Octaviae around that time.

Meanwhile, a good many copies of Calamus' poem circulate among the booksellers in Rome. Most are of very poor quality-filled with mistakes made by weary and marginally educated copyists, as well as their "corrections," which are in fact simplifications.

Copies also circulate in the provinces, of varying quality.

Julius Hyginus, a man of great learning, translates the **Romuleid** into Greek, and he makes some observations on the text of Calamus, stating that he consulted an autographed copy. Marcus Valerius Probus also claims to consult that copy in the first century AD.

In the age of Tiberius (14-37 AD), another copy of the **Romuleid** appears in a new state library, in the Templum Novum. Tiberius also had a copy he kept at Sperlonga for dinner parties, where those in attendance would play trivia games about the poem. Calamus' poem also becomes a school text throughout the west. This means that many cheap editions are made for students; these are riddled with errors.

Life remains good for the **Romuleid** throughout the first century AD and into the second century, despite the vagaries of taste. Copies of the poem appear in private libraries, in public baths, as well as in Trajan's new library (dedicated ca. 112/113). Martial even finds a copy of the poem in codex-form rather than a roll! Calamus then enjoys an even greater vogue in the age of Hadrian and later in the second century, when archaizers read and studied the poem with great enthusiasm. (In Hadrian's circle, a game develops in which one opens the **Romuleid** at random and determine one's fortune from the line upon which the eye lands. History books record the lines.) Aulus Gellius even claims to have seen not one but two copies of the

<sup>2</sup>This content is available online at <<http://cnx.org/content/m11802/1.2/>>.

**Romuleid** written in Calamus' hand; at least one was a forgery, however. Gellius also hears of an original edition that a friend of a friend saw in Athens.

In the third century, several abridgements of the poem appear. In the fourth, fifth, and sixth centuries, meanwhile, several grammarians quote lines of the **Romuleid**, as do Church Fathers, particularly Augustine. The poet Ausonius writes about grammarians who cherish their texts of Calamus in Gaul; it is a poignant tableau, since those figures, as teachers, could afford only school editions. (The grammarians have an inkling that something is amiss when they compare their texts and find several variant readings; each thinks his version is the correct one.)

Sometime around 384, a de luxe edition of Calamus' poem appears in codex form, according to Macrobius. This does not survive.

At Vivarium ca. 560, Cassiodorus saw to it that the **Romuleid** was copied and preserved at the monastery. Isidore of Seville, meanwhile, notes that his library contains Calamus' poem ca. 615. Around 700, an Irish monk collects (writes?) scholia on the poem; these find some popularity in the Middle Ages and survive.

Scribes copy and keep the **Romuleid** in many monasteries for the next several hundred years. Most are ultimately lost forever. In fact, it is only through one copy, found in the monastery of Monte Cassino, that the poem survives. This edition is one step removed from the fourth-century de luxe edition. From that archetype, many copies are made, with mistakes inevitably resulting for several reasons: haplography and dittography; substitution of one word for another; a tired or inattentive eye that skips a few lines; the repetition of a line or word; misunderstanding of an abbreviation; and simple misreading of a word. Other changes also occur: Christian bowdlerization; glosses; interpolation; "correction"; and the incorporation of marginalia.

Printed editions begin to appear in the Renaissance. Textual critics try to secure what the poet actually wrote—ideally, the goal of all textual criticism. This involves comparing the manuscripts that can be found and assessing their relative quality.

Over time, more and more critics undertake this task, developing stemmata along the way, which for a time have to be changed as more manuscripts are discovered. The abridgements, grammatical treatises, and scholia are also looked at more carefully (and some are rediscovered), with variants between their quoted lines and those in the manuscripts considered. Quotation by ancient sources undergoes the same scrutiny. Finally, the emendations and conjectures by earlier scholars becomes a body of material through which to sift.

In early 2004, an undergraduate at Rice University, having learned some first principles of textual criticism from a somewhat obtuse but well-intentioned professor, decides that someday he/she will produce a critical edition of the **Romuleid**. This work appears in 2020. While he/she cannot know it, the text reproduces exactly what Calamus wrote in his second edition of his poem.

### 2.2.2 Questions and Discussion

A broad question, but not so broad, I hope, as to be meaningless:

How does textual criticism relate to the issue of authorship and ownership?

Possible talking points:

The quest for the original text, or as near to it as possible.

The two perspectives on authorship and ownership that emendation offers.

Copying without copyright.

The ways that copying can become composing.

## 2.3 "The Application of Thought to Textual Criticism" by A.E. Housman<sup>3</sup>

NOTE: The following text is taken from the *Proceedings of the Classical Association*, August 1921, Vol XVIII. The meetings were held from August 2nd to August 6th. On the Morning of Thursday, August 4th, Alfred Edward (A.E.) Housman presented this paper. The session was chaired by the President of the Association. Numbers in square brackets, [xx], represent the beginning of a page, using the original page numbers. Editors' notes appear in brackets. Greek characters and accents may not display properly in all platforms; transliterations are provided in curly brackets {}.

In beginning to speak about the application of thought to textual criticism, I do not intend to define the term **thought**, because I hope that the sense which I attach to the word will emerge from what I say. But it is necessary at the outset to define **textual criticism**, because many people, and even some people who profess to teach it to others, do not know what it is. One sees books calling themselves introductions to textual criticism which contain nothing about textual criticism from beginning to end; which are all about palaeography and manuscripts and collation, and have no more to do with textual criticism than if they were all about accident and syntax. Palaeography is one of the things with which a textual critic needs to [68] acquaint himself, but grammar is another, and equally indispensable; and no amount either of grammar or of palaeography will teach a man one scrap of textual criticism.

Textual criticism is a science, and, since it comprises recension and emendation, it is also an art. It is the science of discovering error in texts and the art of removing it. That is its definition, that is what the name **denotes**. But I must also say something about what it does and does not **connote**, what attributes it does and does not imply; because here also there are false impressions abroad.

First, then, it is not a sacred mystery. It is purely a matter of reason and of common sense. We exercise textual criticism whenever we notice and correct a misprint. A man who possesses common sense and the use of reason must not expect to learn from treatises or lectures on textual criticism anything that he could not, with leisure and industry, find out for himself. What the lectures and treatises can do for him is to save him time and trouble by presenting to him immediately considerations which would in any case occur to him sooner or later. And whatever he reads about textual criticism in books, or hears at lectures, he should test by reason and common sense, and reject everything which conflicts with either as mere hocus-pocus.

Secondly, textual criticism is not a branch of mathematics, nor indeed an exact science at all. It deals with a matter not rigid and constant, like lines and numbers, but fluid and variable; namely the frailties and aberrations of the human mind, and of its insubordinate servants, the human fingers. It therefore is not susceptible of hard-and-fast rules. It would be much easier if it were; and that is why people try to pretend that it is, or at least behave as if they thought so. Of course you can have hard-and-fast rules if you like, but then you will have false rules, and they will lead you wrong; because their simplicity will render them inapplicable to problems which are not simple, but complicated by the play of personality. A textual critic [69] engaged upon his business is not at all like Newton investigating the motions of the planets: he is much more like a dog hunting for fleas. If a dog hunted for fleas on mathematical principles, basing his researches on statistics of area and population, he would never catch a flea except by accident. They require to be treated as individuals; and every problem which presents itself to the textual critic must be regarded as possibly unique.

Textual criticism therefore is neither mystery nor mathematics: it cannot be learnt either like the catechism or like the multiplication table. This science and this art require more in the learner than a simply receptive mind; and indeed the truth is that they cannot be taught at all: *criticus nascitur, non fit*. If a dog is to hunt for fleas successfully he must be quick and he must be sensitive. It is no good for a rhinoceros to hunt for fleas: he does not know where they are, and could not catch them if he did. It has sometimes been said that textual criticism is the crown and summit of all scholarship. This is not evidently or necessarily true; but it is true that the qualities which make a critic, whether they are thus transcendent or no, are rare, and that a good critic is a much less common thing than for instance a good grammarian. I have in my mind

<sup>3</sup>This content is available online at <<http://cnx.org/content/m11803/1.2/>>.

a paper by a well-known scholar on a certain Latin writer, half of which was concerned with grammar and half with criticism. The grammatical part was excellent; it showed wide reading and accurate observation, and contributed matter which was both new and valuable. In the textual part the author was like nothing so much as an ill-bred child interrupting the conversation of grown men. If it was possible to mistake the question at issue, he mistook it. If an opponent's arguments were contained in some book which was not at hand, he did not try to find the book, but he tried to guess the arguments; and he never succeeded. If the book was at hand, and he had read the arguments, he did not understand them; and represented his opponents as saying the opposite of what they had said. If another scholar had already removed a corrup-[70]tion by slightly altering the text, he proposed to remove it by altering the text violently. So possible is it to be a learned man, and admirable in other departments, and yet to have in you not even the makings of a critic.

But the application of thought to textual criticism is an action which ought to be within the power of anyone who can apply thought to anything. It is not, like the talent for textual criticism, a gift of nature, but it is a habit; and, like other habits, it can be formed. And, when formed, although it cannot fill the place of an absent talent, it can modify and minimise the ill effects of the talent's absence. Because a man is not a born critic, he need not therefore act like a born fool; but when he engages in textual criticism he often does. There are reasons for everything, and there are reasons for this; and I will now set forth the chief of them. The **fact** that thought is not sufficiently applied to the subject I shall show hereafter by examples; but at present I consider the causes which bring that result about.

First, then, not only is a natural aptitude for the study rare, but so also is a genuine interest in it. Most people, and many scholars among them, find it rather dry and rather dull. Now if a subject bores us, we are apt to avoid the trouble of thinking about it; but if we do that, we had better go further and avoid also the trouble of writing about it. And that is what English scholars often did in the middle of the nineteenth century, when nobody in England wanted to hear about textual criticism. This was not an ideal condition of affairs, but it had its compensation. The less one says about a subject which one does not understand, the less one will say about it which is foolish; and on this subject editors were allowed by public opinion to be silent if they chose. But public opinion is now aware that textual criticism, however repulsive, is nevertheless indispensable, and editors find that some presence of dealing with the subject is obligatory; and in these circumstances they apply, not thought, but words, to textual criticism. They get rules by rote without grasping the realities of which those [71] rules are merely emblems, and recite them on inappropriate occasions instead of seriously thinking out each problem it arises.

Secondly, it is only a minority of those who engage in this study who are sincerely bent upon the discovery of truth. We all know that the discovery of truth is seldom the sole object of political writers; and the world believes, justly or unjustly, that it is not always the sole object of theologians: but the amount of sub-conscious dishonesty which pervades the textual criticism of the Greek and Latin classics is little suspected except by those who have had occasion to analyse it. People come upon this field bringing with them prepossessions and preferences; they are not willing to look all facts in the face, nor to draw the most probable conclusion unless it is also the most agreeable conclusion. Most men are rather stupid, and most of those who are not stupid are, consequently, rather vain; and it hardly possible to step aside from the pursuit of truth without falling a victim either to your stupidity or else to your vanity. Stupidity will then attach you to received opinions, and you will stick in the mud; or vanity will set you hunting for novelty, and you will find mare's-nests. Added to these snares and hindrances there are the various forms of partisanship: sectarianism, which handcuffs you to your own school and teachers and associates, and patriotism, which handcuffs you to your own country. Patriotism has a great name as a virtue, and in civic matters, at the present stage of the world's history, it possibly still does more good than harm; but in the sphere of intellect it is an unmitigated nuisance. I do not know which cuts the worse figure: a German scholar encouraging his countrymen to believe that "wir Deutsche" have nothing to learn from foreigners, or an Englishman demonstrating the unity of Homer by sneers at "Teutonic professors," who are supposed by his audience to have goggle eyes behind large spectacles, and ragged moustaches saturated in lager beer, and consequently to be incapable of forming literary judgments.

[72] Thirdly, these internal causes of error and folly are subject to very little counteraction or correction from outside. The average reader knows hardly anything about textual criticism, and therefore cannot

exercise a vigilant control over the writer: the addle-pate is at liberty to maunder and the impostor is at liberty to lie. And, what is worse, the reader often shares the writer's prejudices, and is far too well pleased with his conclusions to examine either his premises or his reasoning. Stand on a barrel in the streets of Bagdad, and say in a loud voice, "Twice two is four, and ginger is hot in the mouth, therefore Mohammed is the prophet of God," and your logic will probably escape criticism; or, if anyone by chance should criticise it, you could easily silence him by calling him a Christian dog.

Fourthly, the things which the textual critic has to talk about are not things which present themselves clearly and sharply to the mind; and it is easy to say, and to fancy that you think, what you really do not think, and even what, if you seriously tried to think it, you would find to be unthinkable. Mistakes are therefore made which could not be made if the matter under discussion were any corporeal object, having qualities perceptible to the senses. The human senses have had a much longer history than the human intellect, and have been brought much nearer to perfection: they are far more acute, far less easy to deceive. The difference between an icicle and a red-hot poker is really much slighter than the difference between truth and falsehood or sense and nonsense; yet it is much more immediately noticeable and much more universally noticed, because the body is more sensitive than the mind. I find therefore that a good way of exposing the falsehood of a statement or the absurdity of an argument in textual criticism is to transpose it into sensuous terms and see what it looks like then. If the nouns which we use are the names of things which can be handled or tasted, differing from one another in being hot or cold, sweet or sour, then we realise what we are saying and take care what we say. But [73] the terms of textual criticism are deplorably intellectual; and probably in no other field do men tell so many falsehoods in the idle hope that they are telling the truth, or talk so much nonsense in the vague belief that they are talking sense.

This is particularly unfortunate and particularly reprehensible, because there is no science in which it is more necessary to take precautions against error arising from internal causes. Those who follow the physical sciences enjoy the great advantage that they can constantly bring their opinions to the test of fact, and verify or falsify their theories by experiment. When a chemist has mixed sulphur and saltpetre and charcoal in certain proportions and wishes to ascertain if the mixture is explosive, he need only apply a match. When a doctor has compounded a new drug and desires to find out what diseases, if any, it is good for, he has only to give it to his patients all round and notice which die and which recover. Our conclusions regarding the truth or falsehood of a MS. reading can never be confirmed or corrected by an equally decisive test; for the only equally decisive test would be the production of the author's autograph. The discovery merely of better and older MSS. than were previously known to us is **not** equally decisive; and even this inadequate verification is not to be expected often, or on a large scale. It is therefore a matter of common prudence and common decency that we should neglect no safeguard lying within our reach; that we should look sharp after ourselves; that we should narrowly scrutinise our own proceedings and rigorously analyse our springs of action. How far these elementary requirements are satisfied, we will now learn from examples.

At the very beginning, to see what pure irrelevancy, what almost incredible foolishness, finds its way into print, take this instance. It had been supposed for several centuries that Plautus' name was *M. Accius Plautus*, when Ritschl in 1845 pointed out that in the Ambrosian palimpsest discovered by Mai in 1815, written in the [74] fourth or fifth century, and much the oldest of Plautus' MSS., the name appears in the genitive as *T. Macci Plauti*, so that he was really called *Titus Maccius* (or *Maccus*) *Plautus*. An Italian scholar, one Vallauri, objected to this innovation on the ground that in all printed editions from the sixteenth to the nineteenth century the name was *M. Accius*. He went to Milan to look at the palimpsest, and there, to be sure, he found *T. Macci* quite legibly written. But he observed that many other pages of the MS. were quite illegible, and that the whole book was very much tattered and battered; whereupon he said that he could not sufficiently wonder at anyone attaching any weight to a MS. which was in such a condition. Is there any other science, anything calling itself a science, into which such intellects intrude and conduct such operations in public? But you may think that Mr. Vallauri is a unique phenomenon. No: if you engage in textual criticism you may come upon a second Mr. Vallauri any turn. The MSS. of Catullus, none of them older than the fourteenth century, present at 64. 23 the verse:

*heroes saluete, deum genus! o bona mater!*

The Veronese scholia on Vergil, a palimpsest of the fifth or sixth century, at *Aen.* v. 80, "salve sancte

parens," have the note: "Catullus: saluete, deum **gens**, o bona matrum | progenies, saluete iter[um]"—giving *gens* for *genus*, *matrum* for *mater*, and adding a half-verse absent from Catullus' MSS.; and scholars have naturally preferred an authority so much more ancient. But one editor is found to object: "the weight of the Veronese scholia, imperfect and full of lacunae as they are, is not to be set against our MSS." There is Mr. Vallauri over again: because the palimpsest has large holes elsewhere and because much of it has perished, therefore what remains, though written as early as the sixth century, has less authority than MSS. written in the fourteenth. If however anyone gets hold of these fourteenth-century MSS., destroys pages of them and tears holes in the pages he [75] does not destroy, the authority of those parts which he allows to survive will presumably deteriorate, and may even sink as low as that of the palimpsest.

Again. There are two MSS. of a certain author, which we will call A and B. Of these two it is recognised that A is the more correct but the less sincere, and that B is the more corrupt but the less interpolated. It is desired to know which MS., if either, is better than the other, or whether both are equal. One scholar tries to determine this question by the collection and comparison of examples. But another thinks that he knows a shorter way than that; and it consists in saying "the more sincere MS. is and must be for any critic who understands his business the better MS."

This I cite as a specimen of the things which people may say if they do not think about the meaning of what they are saying, and especially as an example of the danger of dealing in generalisations. The best way to treat such pretentious inanities is to transfer them from the sphere of textual criticism, where the difference between truth and falsehood or between sense and nonsense is little regarded and seldom even perceived, into some sphere where men are obliged to use concrete and sensuous terms, which force them, however reluctantly, to think.

I ask this scholar, this critic who knows his business, and who says that the more sincere of two MSS. is and must be the better—I ask him to tell me which weighs most, a tall man or a fat man. He cannot answer; nobody can; everybody sees in a moment that the question is absurd. **Tall** and **fat** are adjectives which transport even a textual critic from the world of humbug into the world of reality, a world inhabited by comparatively thoughtful people, such as butchers and grocers, who depend on their brains for their bread. There he begins to understand that to such general questions any answer must be false; that judgment can only be pronounced on individual specimens; that everything depends on the degree of tallness and the degree of fatness. It may well be that an inch of girth [76] adds more weight than an inch of height, or vice versa; but that altitude is incomparably more ponderous than obesity, or obesity than altitude, and that an inch of one depresses the scale more than a yard of the other, has never been maintained. The way to find out whether this tall man weighs more or less than that fat man is to weigh them; and the way to find out whether this corrupt MS. is better or worse than that interpolated MS. is to collect and compare their readings; not to ride easily off on the false and ridiculous generalisation that the more sincere MS. is and must be the better.

When you call a MS. **sincere** you instantly engage on its behalf the moral sympathy of the thoughtless: moral sympathy is a line in which they are very strong. I do not desire to exclude morality from textual criticism; I wish indeed that some moral qualities were commoner in textual criticism than they are; but let us not indulge our moral emotions out of season. It may be that a scribe who interpolates, who makes changes deliberately, is guilty of wickedness, while a scribe who makes changes accidentally, because he is sleepy or illiterate or drunk, is guilty of none; but that is a question which will be determined by a competent authority at the Day of Judgment, and is no concern of ours. Our concern is not with the eternal destiny of the scribe, but with the temporal utility of the MS.; and a MS. is useful or the reverse in proportion to the amount of truth which it discloses or conceals, no matter what may be the causes of the disclosure or concealment. It is a mistake to suppose that deliberate change is always or necessarily more destructive of truth than accidental change; and even if it were, the main question, as I have said already, is one of degree. A MS. in which 1 per cent. of the words have been viciously and intentionally altered and 99 per cent. are right is not so bad as a MS. in which only 1 per cent. are right and 99 per cent. have been altered virtuously and unintentionally; and if you go to a critic with any such vague inquiry as the question whether the "more sincere" or the "more [77] correct" of two MSS. is the better, he will reply, "If I am to answer that question, you must show me the two MSS. first; for aught that I know at present, from the terms of

your query, either may be better than the other, or both may be equal." But that is what the incompetent intruders into criticism can never admit. They **must** have a better MS., whether it exists or no; because they could never get along without one. If Providence permitted two MSS. to be equal, the editor would have to choose between their readings by considerations of intrinsic merit, and in order to do that he would need to acquire intelligence and impartiality and willingness to take pains, and all sorts of things which he neither has nor wishes for; and he feels sure that God, who tempers the wind to the shorn lamb, can never have meant to lay upon his shoulders such a burden as this.

This is thoughtlessness in the sphere of recension: come now to the sphere of emendation. There is one foolish sort of conjecture which seems to be commoner in the British Isles than anywhere else, though it is also practiced abroad, and of late years especially at Munich. The practice is, if you have persuaded yourself that a text is corrupt, to alter a letter or two and see what happens. If what happens is anything which the warmest good-will can mistake for sense and grammar, you call it an emendation; and you call this silly game the palaeographical method.

The palaeographical method has always been the delight of tiros and the scorn of critics. Haupt, for example, used to warn his pupils against mistaking this sort of thing for emendation. "The prime requisite of a good emendation," said he, "is that it should start from the thought; it is only afterwards that other considerations, such as those of metre or possibilities, such as the interchange of letters, are taken into account." And again: "If the sense requires it, I am prepared to write **Constantinopolitanus** where the MSS. have the monosyllabic interjection **o**." And again: "From the requirement that one should [78] always begin with the thought, there results, as is self-evident, the negative aspect of the case, that one should not, at the outset, consider what exchange of letters may possibly have brought about the corruption of the passage one is dealing with." And further, in his oration on Lachmann as a critic: "Some people, if they see that anything in an ancient text wants correcting, immediately betake themselves to the art of palaeography, investigate the shapes of letters and the forms of abbreviation, and try one dodge after another, as if it were a game, until they hit upon something which they think they can substitute for the corruption; as if forsooth truth were generally discovered by shots of that sort, or as if emendation could take its rise from anything but a careful consideration of the thought."

But even when palaeography is kept in her proper place, as handmaid, and not allowed to give herself the airs of mistress, she is apt to be overworked. There is a preference for conjectures which call in the aid of palaeography, and which assume, as the cause of error, the accidental interchange of similar letters or similar words, although other causes of error are known to exist. One is presented, for instance, with the following maxim: "Interpolation is, speaking generally, comparatively an uncommon source of alteration, and we should therefore be loth to assume it in a given case."

Every case is a given case; so what this maxim really means is that we should always be loth to assume interpolation as a source of alteration. But it is certain, and admitted by this writer when he uses the phrase "comparatively uncommon," that interpolation does occur; so he is telling us that we should be loth to assume interpolation even when that assumption is true. And the reason why we are to behave in this ridiculous manner is that interpolation is, speaking generally, comparatively an uncommon source of alteration.

Now to detect a **non sequitur**, unless it leads to an unwelcome conclusion, is as much beyond the power of [79] the average reader as it is beyond the power of the average writer to attach ideas to his own words when those words are terms of textual criticism. I will therefore substitute other terms, terms to which ideas must be attached; and I invite consideration of this maxim and this ratiocination:

*"A bullet-wound is, speaking generally, comparatively an uncommon cause of death, and we should therefore be loth to assume it in a given case."*

Should we? Should we be loth to assume a bullet-wound as the cause of death if the given case were death on a battlefield? and should we be loth to do so for the reason alleged, that a bullet-wound is, speaking generally, comparatively an uncommon cause of death? Ought we to assume instead the commonest cause of death, and assign death on a battlefield to tuberculosis? What would be thought of a counsellor who enjoined that method of procedure? Well, it would probably be thought that he was a textual critic strayed from home.

**Why** is interpolation comparatively uncommon? For the same reason that bullet-wounds are: because the opportunity for it is comparatively uncommon. Interpolation is provoked by real or supposed difficulties, and is not frequently volunteered where all is plain sailing; whereas accidental alteration may happen anywhere. Every letter of every word lies exposed to it, and that is the sole reason why accidental alteration is more common. In a given case where either assumption is possible, the assumption of interpolation is equally probable, nay more probable; because action with a motive is more probable than action without a motive. The truth therefore is that in such a case we should be loth to assume accident and should rather assume interpolation; and the circumstance that such cases are comparatively uncommon is no reason for behaving irrationally when they occur.

There is one special province of textual criticism, a large and important province, which is concerned with [80] the establishment of rules of grammar and of metre. Those rules are in part traditional, and given us by the ancient grammarians; but in part they are formed by our own induction from what we find in the MSS. of Greek and Latin authors; and even the traditional rules must of course be tested by comparison with the witness of the MSS. But every rule, whether traditional or framed from induction, is sometimes broken by the MSS.; it may be by few, it may be by many; it may be seldom, it may be often; and critics may then say that the MSS. are wrong and may correct them in accordance with the rule. The state of affairs is apparently, nay evidently, paradoxical. The MSS. are the material upon which we base our rule, and then, when we have got our rule, we turn round upon the MSS. and say that the rule, based upon them, convicts them of error. We are thus working in a circle, that is a fact which there is no denying; but, as Lachmann says, the task of the critic is just this, to tread that circle deftly and warily; and that is precisely what elevates the critic's business above mere mechanical labour. The difficulty is one which lies in the nature of the case, and is inevitable; and the only way to surmount it is just to be a critic.

The paradox is more formidable in appearance than in reality, and has plenty of analogies in daily life. In a trial or lawsuit the jury's verdict is mainly based upon the evidence of the witnesses; but that does not prevent the jury from making up its mind, from the evidence in general, that one or more witnesses have been guilty of perjury and that their evidence is to be disregarded. It is quite possible to elicit from the general testimony of MSS. a rule of sufficient certainty to convict of falsehood their exceptional testimony, or of sufficient probability to throw doubt upon it. But that exceptional testimony must in each case be considered. It must be recognised that there are two hypotheses between which we have to decide: the question is whether the exceptions come from the author, and so break down the rule, or whether they come from the scribe, and are to be corrected by it: [81] and in order to decide this we must keep our eyes open for any peculiarity which may happen to characterise them.

One of the forms which lack of thought has assumed in textual criticism is the tendency now prevailing, especially among some Continental scholars, to try to break down accepted rules of grammar or metre by the mere collection and enumeration of exceptions presented by the MSS. Now that can never break down a rule: the mere number of exceptions is nothing; what matters is their weight, and that can only be ascertained by classification and scrutiny. If I had noted down every example which I have met, I should now have a large collection of places in Latin MSS. where the substantive *orbis*, which our grammars and dictionaries declare to be masculine, has a feminine adjective attached to it. But I do not therefore propose to revise that rule of syntax, for examination would show that these examples, though numerous, have no force. Most of them are places where the sense and context show that *orbis*, in whatever case or number it may be, is merely a corruption of the corresponding case and number of *urbs*; and in the remaining places it is natural to suppose that the scribe has been influenced and confused by the great likeness of the one word to the other. Or again, read Madvig, *Adu. Crit.*, vol. I, book i, chap. iv, where he sifts the evidence for the opinion that the aorist infinitive can be used in Greek after verbs of saying and thinking in the sense of the future infinitive or of the aorist infinitive with  $\acute{[U+0315]}\nu$  {*an*}. The list of examples in the MSS. is very long indeed; but the moment you begin to sort them and examine them you are less struck by their number than by the restriction of their extent. Almost all of them are such as  $\delta$   $\acute{\xi}\alpha\sigma\theta\alpha\iota$  {*dexasthai*} used for  $\delta$   $\acute{\xi}\epsilon\sigma\theta\alpha\iota$  {*dexesthai*} where the two forms differ by one letter only; a smaller number are such as  $\pi\omicron\iota\eta\sigma\alpha\iota$  {*poiesai*} for  $\pi\omicron\iota\acute{\sigma}\epsilon\iota\nu$  {*poiesein*} where the difference, though greater, is still slight; others are examples like  $\acute{[U+0314]}\kappa\iota\sigma\tau\alpha$   $\alpha$  {*U+0313*}  $\nu\alpha\gamma\kappa\alpha\alpha\sigma\theta\eta\nu\alpha\iota$  {*ekist' anagkasthanai*} for  $\acute{[U+0314]}\kappa\iota\sigma\tau\tau$   $\acute{[U+0315]}\nu$

$\alpha$  [U+0313]  $\nu\alpha\gamma\kappa\alpha\sigma\theta\eta\nu\alpha\iota$  {*ekist' an anagkasthanai*}, where again the difference is next to nothing. Now if the MSS. are right in these cases, and the Greek authors did use this [82] construction, how are we to explain this extraordinary limitation of the use? There is no syntactical difference between the first and second aorist: why then did they use the 1st aorist so often for the future and the 2nd aorist so seldom? why did they say  $\delta$   $\xi\alpha\sigma\theta\alpha\iota$  {*dexasthai*} for  $\delta$   $\xi\epsilon\sigma\theta\alpha\iota$  {*dexesthai*} dozens of times and  $\lambda\alpha\beta\epsilon\iota\nu$  {*labein*} for  $\lambda$   $\psi\epsilon\sigma\theta\alpha\iota$  {*lepsesthai*} never? The mere asking of that question is enough to show the true state of the case. The bare fact that the aorists thus used in the MSS. are aorists of similar **form** to the future, while aorists of dissimilar form are not thus used, proves that the phenomenon has its cause in the copyist's eye and not in the author's mind, that it is not a variation in grammatical usage but an error in transcription. The number of examples is nothing; all depends upon their character; and a single example of  $\lambda\alpha\beta\epsilon\iota\nu$  {*labein*} in a future sense would have more weight than a hundred of  $\delta$   $\xi\alpha\sigma\theta\alpha\iota$  {*dexasthai*}

In particular, scribes will alter a less familiar form to a more familiar, if they see nothing to prevent them. If metre allows, or if they do not know that metre forbids, they will alter  $\epsilon$  [U+0313]  $\lambda\epsilon\iota\nu$   $\zeta$  {*eleinos*} to  $\epsilon$  [U+0313]  $\lambda\epsilon\epsilon\iota\nu$   $\zeta$  {*eleinos*},  $\omicron\iota$  [U+0313]  $\sigma\tau$   $\zeta$  {*oistos*} to  $\omicron$  [U+0313]  $\sigma\tau$   $\zeta$  {*oiistos*}, *nil* to *nihil*, *deprendo* to *deprehendo*. Since metre convicts them of infidelity in some places, they forfeit the right to be trusted in any place; if we choose to trust them we are credulous, and if we build structures on our trust we are no critics. Even if metre does not convict them, reason sometimes can. Take the statement, repeatedly made in grammars and editions, that the Latins sometimes used the pluperfect for the imperfect and the perfect. They did use it for the imperfect; they used it also for the preterite or past aorist; but for the perfect they did not use it; and that is proved by the very examples of its use as perfect which are found in MSS. All those examples are of the 3rd person plural. Why? We must choose between the two following hypotheses:

- (a) That the Latins used the pluperfect for the perfect in the 3rd person plural only.
- (b) That they did not use the pluperfect for the perfect, and that these examples are corrupt.

[83] If anyone adopted the former, he would have to explain what syntactical property, inviting the author to use pluperfect for perfect, is possessed by the 3rd person plural and not by the two other plural or the three singular persons: and I should like to see some one set about it.

If we adopt the latter, we must show what **external** feature, inviting the **scribe** to write pluperfect for perfect, is possessed by the 3rd person plural exclusively: and that is quite easy. The 3rd person plural is the only person in which the perfect and the pluperfect differ merely by one letter. Moreover in verse the perfect termination *-erunt*, being comparatively unfamiliar to scribes, is altered by them to the nearest familiar form with the same scansion, sometimes *-erint*, sometimes *-erant*: in Ovid's *Heroides* there are four places where the best MS. gives *praebu'erunt*, *stet'erunt*, *excid'erunt*, *expul'erunt*, and the other MSS. give *-erant* or *-erint* or both. Accordingly, when the much inferior MSS. of Propertius present pluperfect for perfect in four places, *fuerant* once, *steterant* once, *exciderant* twice, Scaliger corrects to *fu'erunt*, *stet'erunt*, *excid'erunt*. Thereupon an editor of this enlightened age takes up his pen and writes as follows: "It is quite erroneous to remove the pluperfects where it can be done without great expenditure of conjectural sagacity (*steterunt* for *steterant* and the like), and not to trouble oneself about the phenomenon elsewhere." I ask, how is it possible to trouble oneself about the phenomenon elsewhere? It does not exist elsewhere. There is no place where the MSS. give *steteram* in the sense of the perfect *steti*, nor *steteras* in the sense of the perfect *stetisti*. Wherever they give examples of the pluperfect which cannot be removed by the change of one letter—such as *pararat* in i. 8. 36 or *fueram* in i. 12. 11—those are examples where it has sometimes the sense of the imperfect, sometimes the preterite, but never of the perfect. And the inference is plain: the Latins did not use the pluperfect for the perfect.

Scaliger knew that in the sixteenth century: Mr. [84] Rothstein, in the nineteenth and twentieth, does not know it; he has found a form of words to prevent him from knowing it, and he thinks himself in advance of Scaliger. It is supposed that there has been progress in the science of textual criticism, and the most frivolous pretender has learnt to talk superciliously about "the old unscientific days." The old unscientific days are everlasting, they are here and now; they are renewed perennially by the ear which takes formulas in, and the tongue which gives them out again, and the mind which meanwhile is empty of reflexion and stuffed with self-complacency. Progress there has been, but where? In superior intellects: the rabble do not share it. Such a man as Scaliger, living in our time, would be a better critic than Scaliger was; but we shall not

be better critics than Scaliger by the simple act of living in our own time. Textual criticism, like most other sciences, is an aristocratic affair, not communicable to all men, nor to most men. Not to be a textual critic is no reproach to anyone, unless he pretends to be what he is not. To **be** a textual critic requires aptitude for thinking and willingness to think; and though it also requires other things, those things are supplements and cannot be substitutes. Knowledge is good, method is good, but one thing beyond all others is necessary; and that is to have a head, not a pumpkin, on your shoulders and brains, not pudding, in your head.

## Solutions to Exercises in Chapter 2

### Solution to Exercise 2.1 (p. 7)

It's a trick question, this text is available under a license that allows you to use it now. Nonetheless, the copyright on this text will last until Jan 20. 2136. That's 132 years from now.



# Chapter 3

## Part 2: Authorship

### 3.1 Plagiarism and Moralism<sup>1</sup>

Can you answer this question: is plagiarism a moral or a legal issue? What's the difference?

For the purposes of answering this question, we have bookended the glorious spectrum of human experience with two works: Christopher Ricks' article "Plagiarism" in *Allusion to the Poets* (Oxford: Oxford University Press, 2002) and an Interview with the late Novelist Kathy Acker from *Hannibal Lecter, My Father* (New York: Semiotext(e), 1991) in which she discusses her techniques of authorship and plagiarism.

#### 3.1.1 First Provocation.

Ricks suggests that the definition of plagiarism is not in question— that it is only the truth of an accusation of plagiarism that can be questioned. Ricks, being English, chooses the OED:

*The wrongful appropriation, or purloining, and publication as one's own, of the ideas, or the expression of the ideas (literary, artistic, musical, mechanical) of another.*

The OED also defines it as simply "literary theft" and lists "kidnapping" or "Manstealing" as the origin. Ricks relies heavily on Martial's use of this word as evidence that the concept is at least that old.

Interestingly, the American definition from Webster's 3rd Int'l adds:

*to commit literary theft: to present as new and original an idea or product derived from an existing source.*

A definition that may be more familiar to college students is:

*quoting, paraphrasing, or otherwise using another's words or ideas as one's own without properly crediting the source. Rice Honor Council<sup>2</sup>*

Ricks stresses the notion that plagiarism is plagiarism when it is conducted "with an intent to deceive." Given what we've discussed about the vagaries of authorial intention, is such deception clear cut? What distinctions might we make?

**"Using another's words with an intent to deceive."**

- that I said this. (deceive with respect to author)
- that this is true. (deceive with respect to truth)
- that I own this. (deceive with respect to right)
- that I experienced this

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<sup>1</sup>This content is available online at <<http://cnx.org/content/m11819/1.2/>>.

<sup>2</sup><http://www.ruf.rice.edu/~honor/>

- that I discovered this
- that I researched this
- that this was told to me
- that I have it on good authority
- that I found this
- that this is obvious

If we disagree with Ricks, what are we risking? Why is Ricks so sure that plagiarism is both obvious and morally reprehensible? Who are the targets of his ire? Why does he insist the following:

*That no moral position is natural does not itself entail that moral positions are nothing but the insinuations of power...the extirpation of ethical or moral considerations by such political history is a sad loss...(Ricks p. 223)*

Why do "moral positions" demand different treatment than "political" ones?

### 3.1.2 Second Provocation.

Is plagiarism theft?

**What exactly is stolen?**

- words?
- ideas?
- style?
- form?
- look and feel?
- hard work?
- originality?
- identity?
- credit?
- right?
- fame?

Ricks, again:

*Far from lumbering, intellectual property law is limber, well aware of the complications. But, to moral considerations the law must always offer a handshake at arm's length. For although the law is a moral matter, being distinguishable form but not distinct from justice, the law acknowledges that there is a moral world elsewhere. (Ricks, p.224)*

Where, and what is this moral world? Is it the same everywhere... how do we reconcile this moral world with our laws? Once again, Rice Honor Council has something to say:

*Cultures differ in their views about the ownership of ideas. In some cultures people believe that ideas, like air and sunshine, cannot be owned, and they do not acknowledge those who first publish ideas. Some countries are only now developing laws for ownership of patents and copyrights. Rice University is not part of such traditions: it follows Western conventions for dealing with intellectual properties. Its Code of Conduct acknowledges the unique intellectual contributions of individuals at the same time it recognizes that all individuals rely on the concepts, creations, and inventions of others. Although some students come from countries and cultures that do not recognize individual contributions to knowledge, Rice University expects these students and all other students and faculty to participate in an academic community that honors the intellectual work of others and acknowledges their influences. This community's commitment is formally recorded in a system of rules called The Honor Code. Rice Honor Council<sup>3</sup>*

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<sup>3</sup><http://www.ruf.rice.edu/~honor/>

### 3.1.3 Third Provocation.

*If I had to be totally honest I would say that what I'm doing is breach of copyright—it's not because I change the words—but so what? We're always playing a game. We earn our money out of the stupid law but we hate it because we know it's a jive. What else can we do? That's one of the basic contradictions of living in capitalism. I sell copyright that's how I make my money... The work isn't the property, it's the copyright. (Acker, p.12)*

Question: Is Kathy Acker more or less moralistic than Ricks?

Question: Is Kathy Acker's "method of plagiarism" original? Consider what she says about it:

*What a writer does, in 19th century terms, is that he takes a certain amount of experience and he "represents" that material. What I'm doing is simply taking text to be the same as the world, to be equal to non-text, in fact to be more real than non-text, and start **representing text**. So it's quite clear, I took the Harold Robbins and represented it. I didn't copy it. I didn't say it was mine.*

Here's an example, from "Great Expectations" of Acker's more direct form of plagiarism.

*Mr Jaggers had duly sent me his address; it was, Little Britain, and he had written after it on his card, 'just out of Smithfield, and close by the coach-office.' Nevertheless, a hackney-coachman, who seemed to have as many capes to his greasy great-coat as he was years old, packed me up in his coach and hemmed me in with a folding and jingling barrier of steps, as if he were going to take me fifty miles. His getting on his box, which I remember to have been decorated with an old weather-stained pea-green hammercloth moth-eaten into rags, was quite a work of time. It was a wonderful equipage... (Great Expectations, Chapter 20).*

*My lawyer Mr. Gordon duly sent me his address; and he wrote after it on the card "just outside Alexandria, and close by the taxi stand." Nevertheless, a taxi-driver, who seems to have as many jackets over his greasy winter coat as he is years old, packs me up in his taxi, hems me in by shutting the taxi doors and closing the taxi windows and locking the taxi doors, as if he's going to take me fifty miles. His getting into his driver's seat which is decorated by an old weather-stained pea-green hammercloth, moth-eaten into rags, is a work of time. It's a wonderful taxi... (Great Expectations, part 1, chapter 2)*

It should be said that these passages are rare, and generally followed by violent or pornographic descriptions it is not meet to reprint here. These passages represent the most explicit plagiarism, Acker's novel very quickly veers into the present, into North Africa and into repeated ruminations on suicide, rape, S/M and poverty, only the last of which seems to play a central role in Dickens novel.

Question: What kind of moralism does willful plagiarism represent, and is it different from the moralism of Ricks?

What is the implication of accusing Acker of plagiarism? Is it a moral denunciation or a political one? Is Acker's plagiarism moral or political? What would it mean to accuse her of copyright infringement and how is, or should it be distinguished?



## Chapter 4

### Part 3: Alternatives

## Index of Keywords and Terms

**Keywords** are listed by the section with that keyword (page numbers are in parentheses). Keywords do not necessarily appear in the text of the page. They are merely associated with that section. *Ex.* apples, § 1.1 (1) **Terms** are referenced by the page they appear on. *Ex.* apples, 1

- A** aesthetics, § 1.1(1)  
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 anthropology, § 1.1(1), § 1.2(3)
- C** classical scholarship, § 2.3(11)  
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- D** dishonesty, § 3.1(21)  
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- H** Housman, A.E., § 2.3(11)
- I** innovation, § 2.1(5)  
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- L** law, § 1.1(1)  
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- P** Patent, § 2.1(5)  
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- R** reading practices, § 1.2(3)  
 recension, § 2.2(9)
- S** slippery history, § 3.1(21)
- T** textual criticism, § 2.2(9), § 2.3(11)  
 the disingenuous discourse through which  
 plagiarism steals., § 3.1(21)  
 Tips, § 1.2(3)  
 trademark, § 2.1(5)
- W** wrongful purloining, § 3.1(21)

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