

2. GENIUS AND THE COPYRIGHT

Book, is either numerous sheets of white paper that have been stitched together in such a way that they can be filled with writing; or, a highly useful and convenient instrument constructed of printed sheets variously bound in cardboard, paper, vellum, leather, etc. for presenting the truth to another in such a way that it can be conveniently read and recognized. Many people work on this ware before it is complete and becomes an actual book in this sense. The scholar and the writer, the papermaker, the type founder, the typesetter and the printer, the proofreader, the publisher, the book binder, sometimes even the gilder and the brassworker, etc. Thus many mouths are fed by this branch of manufacture.

—Allgemeines
Oeconomisches Lexicon
(1753)

In contemporary usage an “author” is an individual who is solely responsible—and thus exclusively deserving of credit—for the production of a unique, original work. Although this notion has been put in question by structuralists and poststructuralists who regard it as no more than a socially convenient fiction for linguistic codes and conventions that make a text possible, its genesis has received relatively little attention. This neglect is the more surprising in the light of Michel Foucault’s observation that “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 funda-



mental category of 'the-man-and-his-work criticism' began."¹ Foucault's questions go to the heart of the problem to which I now wish to turn.

The "author" in the modern sense is a relatively recent invention, a product of the development we have been exploring—the emergence in the eighteenth century of writers who sought to earn their livelihood from the sale of their writings to the new and rapidly expanding reading public. In Germany especially these new, professional writers found themselves without the kinds of safeguards of their labors that today are codified in copyright laws. In response to this problem, and in an effort to establish the economic viability of living by the pen, these writers set about redefining the nature of writing. Their reflections on this subject played a critical role in shaping the modern concept of authorship its modern form.

In the Renaissance and in the heritage of the Renaissance in the first half of the eighteenth century the "author" was an unstable marriage of two distinct concepts. He² was first and foremost a craftsman; that is, he was master of a body of rules, or techniques, preserved and handed down in rhetoric and poetics, for manipulating traditional materials in order to achieve the effects prescribed by the cultivated audience of the court to which he owed both his livelihood and social status. However, there were those rare moments in literature to which this concept did not seem to do justice. When a writer managed to rise above the requirements of the occasion to achieve something higher, much more than craftsmanship seemed to be involved. To explain such moments a new concept was introduced: the writer was said to be inspired—by some muse, or even by God. These two conceptions of the writer—as craftsman and as inspired—would seem to be incompatible with each other; yet they coexisted, often between the covers of a single treatise, until well into the eighteenth century.

It is noteworthy that in neither of these conceptions is the writer regarded as distinctly and personally responsible for his creation. Whether as a craftsman or as inspired, the writer of the Renaissance and neoclassical period is always a vehicle or instrument: regarded as a craftsman, he is a skilled manipulator of predefined strategies for achieving goals dictated by his audience; understood as inspired, he is equally the subject of independent forces, for the inspired moments of his work—that which is novel and most excellent in it—are not any more the writer's sole doing than are its more routine aspects, but are

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instead attributable to a higher, external agency—if not to a muse, then to divine dictation.³

Eighteenth-century theorists departed from this compound model of writing in two significant ways. They minimized the element of craftsmanship (in some instances they simply discarded it) in favor of the element of inspiration, and they internalized the source of that inspiration. That is, the inspiration for a work came to be regarded as emanating not from outside or above, but from within the writer himself. "Inspiration" came to be explicated in terms of *original genius*, with the consequence that the inspired work was made peculiarly and distinctively the product—and the property—of the writer.⁴

This sketch of the development of the concept of a writer since the Renaissance (which, to be sure, I have oversimplified) may be illustrated by two statements, one made by Alexander Pope (1688–1744) at the very beginning of this development and another by William Wordsworth (1770–1850) speaking from the other side of it. As the first major English poet to achieve wealth and status without the aid of patronage but entirely from the sale of his writings to the reading public, Pope still professes the Renaissance view of the writer as primarily a craftsman whose task is to utilize the tools of his craft for their culturally determined ends. In a familiar passage from his *Essay on Criticism* (1711) Pope states that the function of the poet is not to invent novelties but to express afresh truths hallowed by tradition:

True wit is nature to advantage dressed;
What oft' was thought, but ne'er so well expressed;
Something, whose truth convinced at sight we find,
That gives us back the image of our mind. (ll. 297–300)⁵

However, Pope also incorporates in the *Essay* the other seemingly anomalous view of the writer as subject to a "happiness as well as care," as capable, that is, of achieving something that has never been achieved before. This the poet can accomplish only by violating the rules of his craft:

Some beauties yet no precept can declare,
For there's a happiness as well as care.
Music resembles poetry; in each
Are nameless graces which no methods teach,

And which a master hand alone can reach.
 If, where the rules not far enough extend,
 (Since rules were made but to promote their end)
 Some lucky license answer to the full
 Th'intent proposed, that license is a rule.
 Thus Pegasus, a nearer way to take,
 May boldly deviate from the common track.
 Great wits sometimes may gloriously offend,
 And rise to faults true critics dare not mend;
 From vulgar bounds with brave disorder part,
 And snatch a grace beyond the reach of art.

(ll. 141-55)⁶

Such moments of inspiration, in which the poet snatches a grace beyond the reach of the rules and poetic strategies that he commands as the master of a craft, are still the exception for Pope. However, from the margins of theory, where they reside in the *Essay* at the beginning of the century, these moments of inspiration move, in the course of time, to the center of reflection on the nature of writing. And as they are increasingly credited to the writer's own genius, they transform the writer into a unique individual uniquely responsible for a unique product. That is, from a (mere) vehicle of preordained truths—truths as ordained either by universal human agreement or by some higher agency—the *writer* becomes an *author* (Lat. *auctor*, originator, founder, creator).

It is as such a writer that Wordsworth perceives himself. Complaining of the "unremitting hostility" with which the *Lyrical Ballads* were received by the critics, Wordsworth observes that "if there be one conclusion" that is "forcibly pressed upon us" by their disappointing reception, it is "that every Author, as far as he is great and at the same time *original*, has had the task of *creating* the taste by which he is to be enjoyed."⁷ Inasmuch as his immediate audience is inevitably attuned to the products of the past, the great writer who produces something original is doomed to be misunderstood. Thus it is, according to Wordsworth, that "if every great Poet, . . . in the highest exercise of his genius, before he can be thoroughly enjoyed, has to call forth and to communicate *power*," that is, empower his readers to understand his new work, "this service, in a still greater degree, falls upon an original Writer, at his first appearance in the world."

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 the sphere of human sensibility, for the delight, honor, and benefit of human 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.⁸

For Wordsworth, writing in 1815, the genius is someone who does something utterly new, unprecedented, or in the radical formulation that he prefers, produces something that never existed before.

The conception of writing to which Wordsworth gives expression had been adumbrated a half-century earlier in an essay by Edward Young, *Conjectures on Original Composition*. Young preached originality in place of the reigning emphasis on the mastery of rules extrapolated from classical literature, and he located the source of this essential quality in the poet's own genius. Initially his essay attracted relatively little attention in England; but in Germany, where it appeared in two separate translations within two years of its publication in 1759, it had a profound impact.⁹ German theorists from Herder and Goethe to Kant and Fichte elaborated the ideas sketched out by Young, shifting them from the periphery to the very center of the theory of the arts.

One of the reasons for this development, I would suggest, is that Young's ideas answered the pressing need of writers in Germany to establish ownership of the products of their labor so as to justify legal recognition of that ownership in the form of a copyright law.¹⁰ The relevance of his ideas to this enterprise had already been suggested by Young himself when he enjoined the writer to

Let not great examples, or authorities, browbeat thy reason into too great a diffidence of thyself: thyself so reverence, as to prefer the native growth of thy own mind to the richest import from abroad; such borrowed riches make us poor. The man who thus reverences himself, will soon find the world's reverence to follow his own. His works will stand distinguished; his the sole property of them; which property alone can confer the noble title of an author; that is, of one who (to speak accurately) thinks and composes; while other invaders of the press, how voluminous and learned soever, (with due respect be it spoken) only read and write.¹¹

Here, amid the organic analogues for genial creativity that have made this essay a monument in the history of criticism, Young raises issues

of property: he makes a writer's ownership of his work the necessary, and even sufficient condition for earning the honorific title of "author," and he makes such ownership contingent upon a work's originality.

I

The professional writer emerged considerably later in Germany than in England and France. Pope had long since written his way to fame and fortune in England by the time that writers were even beginning to attempt to live from the sale of their writings alone in Germany.¹² The generation of Lessing (1729–1781) was the first to try to do this, but it had little success. After ten years of struggle Lessing wrote his brother in 1768:

Take my brotherly advice and give up your plan to live by the pen. . . . See that you become a secretary or get on the faculty somewhere. It's the only way to avoid starving sooner or later. For me it's too late to take another path. In so advising, I'm not suggesting that you give up completely everything to which inclination and genius drive you.¹³

From the point of view of the development of a profession of letters, what Lessing recommends is a step backward to writing as a part-time occupation, an activity pursued by the writer as an official of the court to the degree allowed by the social and ideological as well as contractual obligations of his office.¹⁴ In 1770 Lessing himself would be forced to take such a step and to accept a position as court librarian in Wolfenbüttel. The other two giants of the period, Friedrich Gottlob Klopstock (1724–1803) and Christoph Martin Wieland (1733–1813), met with similar fates.

Despite the rapid expansion of the market for books that began in the 1770s, the prospects of the next generation of writers did not improve substantially, as the biographies of writers like Bürger, Moritz, and Schiller attest. Having made a reputation for himself with his play, *The Robbers*, which he published at his own expense in 1781, the twenty-two-year-old Schiller resolved to break his connections with the Duke of Württemberg and try his luck as a professional writer. He would later describe the decision as precipitate, but at the time Schiller appears to have had little idea of the manifold vicissitudes of casting

one's lot with the new reading public. "The public is now everything to me," he writes,

my school, my sovereign, my trusted friend. I now belong to it alone: I shall place myself before this and no other tribunal. It alone do I fear and respect. Something grand comes over me at the prospect of wearing no other fetters than the decision of the world—of appealing to no other throne than the human spirit.¹⁵

These high expectations are expressed in the "Announcement" of *Die rheinische Thalie*, a periodical conceived by Schiller in 1784 when he failed to make it as resident dramatist to the Mannheim National Theater. The periodical was just the first of a series of such editorial projects that the poet took on in an effort to earn his living as a writer. Despite his productivity, however, Schiller just barely succeeded in making ends meet; and when his health broke down from overwork in 1791, he followed in Lessing's footsteps and accepted a pension from his Danish admirer, Prince Friedrich Christian von Schleswig-Holstein-Sonderburg-Augustenburg. It is in the form of letters addressed to this benefactor that he conceived *On the Aesthetic Education of Man* in 1793-94. Schiller embraced the patronage of the prince with as much enthusiasm as he had displayed in commending himself to the public less than a decade before. In a letter to a fellow poet who had been instrumental in securing the pension, he welcomed it as the "freedom of thought" for which he had so long yearned; and reflecting back on his struggles, he concluded that it was "impossible in the German world of letters to satisfy the strict demands of art and simultaneously procure the minimum of support for one's industry."¹⁶

What made it so difficult to live by the pen in eighteenth-century Germany? In chapter 1 I suggested that the "serious" writers like Schiller and Moritz who gave us our modern concept of art found it difficult to compete with the lighter literature that began flooding the market in the last quarter of the century, and we will pursue this problem in greater depth in chapter 3. Here I want to explore an even more fundamental obstacle to succeeding as a writer—one that affected all writers, if not all equally.

As my sketch of writers' struggles suggests, eighteenth-century Germany found itself in a transitional phase between the limited patronage of an aristocratic age and the democratic patronage of the marketplace. With the growth of a middle class, demand for reading material increased steadily, enticing writers to try to earn a livelihood

from the sale of their writings to a buying public. But most were doomed to be disappointed, for the requisite legal, economic, and political arrangements and institutions were not yet in place to support the large number of writers who came forward.¹⁷ What they encountered were the remnants of an earlier social order. They expected, as professional writers, to trade in ideas in a country that did not yet have a fully developed concept of intellectual property.¹⁸

The notion that property can be ideal as well as real, that under certain circumstances a person's ideas are no less his property than his hogs and horses, is a modern one. In the country in which Martin Luther had preached that knowledge is God-given and has therefore to be given freely, however, this notion was especially slow to take hold.¹⁹ At the outset of the eighteenth century it was not generally thought that the author of a poem or any other piece of writing possessed rights with regard to these products of his intellectual labor. Writing was considered a mere vehicle of received ideas that were already in the public domain, and, as such a vehicle, it too, by extension or by analogy, was considered part of the public domain. In short, the relationship between the writer and his work reflected the Renaissance view described earlier. This view found expression in the institutions of the *honorarium*, the form in which writers were remunerated, and the *privilege*, the only legal arrangement that served to regulate the book trade until the last decade of the century when, one by one, the German states began to enact copyright laws.

By the middle of the seventeenth century it had become customary for publishers to offer honoraria to the writers whose works they agreed to print. It would be a mistake, however, to conclude that modest sums of money paid out in this way represented direct compensation for those works. To the contrary, as the definition given by Zedler's *Universal-Lexikon* in 1735 shows, the honorarium was simply a token of esteem:

Honorarium, means acknowledgment or reward, recognition, favor, stipend; it is not in proportion to or equivalent to the services performed; differs from pay or wages, which are specifically determined by contracting parties and which express a relationship of equivalence between work and payment.²⁰

The honorarium a writer might expect to receive for his work bore no relationship to the exchange value of that work but was rather an acknowledgment of the writer's achievements—the sum of which be-

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gan, with time, to vary in proportion to the magnitude of those achievements. As such the honorarium resembled the gifts made to poets by aristocratic patrons. Indeed, as Goethe observes in the twelfth book of *Dichtung und Wahrheit* [*Poetry and Truth*], the relationship between writers and publishers in the first half of the eighteenth century still bore a striking resemblance to that which had existed between the poet and his patron. At that time, Goethe writes, the book trade

was chiefly concerned with important scientific works, stock works which commanded modest honoraria. The production of poetical works, however, was regarded as something sacred, and it was considered close to simony to accept or bargain for an honorarium. Authors and publishers enjoyed a most amazing reciprocity. They appeared, as it were, as patron and client. The authors, who in addition to their talent were usually considered by the public to be highly moral people and were honored accordingly, possessed intellectual status and felt themselves rewarded by the joy of their work. The book dealers contented themselves with the second rank and enjoyed a considerable advantage: affluence placed the rich book dealer above the poor poet, so everything remained in the most beautiful equilibrium. Reciprocal magnanimity and gratitude were not uncommon: Breitkopf and Gottsched remained intimate friends throughout their lives. Stinginess and meanness, particularly on the part of the literary pirates, were not yet in full swing.²¹

The "beautiful equilibrium" described by Goethe collapsed, however, as the market for literature expanded sufficiently to induce writers to try to make an occupation of it. They began to compare "their own very modest, if not downright meager condition with the wealth of the affluent book dealers," Goethe continues,

they considered how great was the fame of a Gellert or a Rabener, and with what domestic straits a universally loved German writer must content himself if he does not lighten his burden through some other employment. Even the average and the lesser luminaries felt an intense desire to better their circumstances, to make themselves independent of the publishers.²²

Eventually writers would demand fluctuating honoraria based on sales (i.e., royalties); in the eighteenth century, however, a flat sum re-

mained customary—upon receipt of which the writer forfeited his rights to any profits his work might bring. That is, his work became the property of the publisher to realize as much profit from as he could. It is the injustices to which this arrangement could lead that Goethe alludes to above, injustices that made it difficult to keep up the pretense that writers were content not to be paid for their work.

Christian Fürchtegott Gellert (1715–1769) was one of the most widely read writers of the period. Yet he had received only 20 Thaler 16 Groschen for his popular *Fabeln*; and while he lived out his final years in only modest comfort, thanks primarily to his patrons and the good will of the Dresden court, his publisher Wendler became a wealthy man. In 1786 the remaindered copies alone of Gellert's works fetched Wendler 10,000 thalers.²³ Some measure of this imbalance must be attributed to Gellert's unwillingness to accept money for his writing. Like other writers of his generation, he viewed writing in the terms Goethe describes above. "At first, on account of the public, I didn't want to take anything from the publisher for the *Geistliche Oden und Lieder*," Gellert wrote his sister toward the end of his life; "however, as my pension has now stopped, and as my kin are dearer to me than the public, I asked 125 thalers and received 150."²⁴ Gellert was reluctant, even ashamed to take money for his poetry because he did not conceive of writing as an occupation. Writers of the next generation no longer shared Gellert's attitudes, as we have seen. Indeed, Lessing takes direct issue with them in "Leben und leben lassen" ["Live and Let Live"], a proposal for reorganizing the book trade that he drafted in 1772:

What? The writer is to be blamed for trying to make the offspring of his imagination as profitable as he can? Just because he works with his noblest faculties he isn't supposed to enjoy the satisfaction that the roughest handyman is able to procure—that of owing his livelihood to his own industry? . . .

But wisdom, they say, for sale for cash! Shameful! Freely hast thou received, freely thou must give! Thus thought the noble Luther in translating the Bible.

Luther, I answer, is an exception in many things. Furthermore, it is for the most part not true that the writer received for nothing what he does not want to give away for nothing. Often an entire fortune may have been spent preparing to teach and please the world.²⁵

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Lessing, who views writing as an occupation, asserts his professional identity in economic terms, raising the issue of fair compensation for his work. Although his position was echoed by other writers intent upon living by the pen, the older conception of writing as a "priceless" part-time activity lived on in the institution of the honorarium.

If I have given the impression so far of casting publishers in the role of villains in the economic exploitation of the writer, let me hasten to correct this impression. Although they were faring much better than writers, publishers by this time were experiencing their own tribulations in the form of unauthorized reprints. The practice of reprinting books without the permission of their original publishers—a practice that would eventually be impugned as "piracy"—had existed since the late fifteenth century. In the eighteenth century, however, as reading became more common and the book trade became a profitable business, it grew to epidemic proportions, for the development of legal institutions had not kept pace with the dramatic growth of the book trade. The only legal institution available to publishers in eighteenth-century Germany was the privilege. An invention of the feudal princes to protect branches of trade they deemed essential to their court economies, privileges had first been extended to printers in the sixteenth century to enable them to realize a profit on their investment in the production of a book before that book could be reprinted. Thus, the book privilege had as its intent not the recognition of the rights of authors, but the protection of printers. In this it resembled the English copyright act that was passed by Parliament in 1709 on the petition of the booksellers.²⁶ However, unlike the Statute of Anne, as it is known, the privilege was not really a law at all but, as the word itself suggests, a special concession or dispensation conditionally granted to printers or publishers who enjoyed the favor of the court. Thus, in the entry for *Privilegium* in Zedler's *Universal-Lexikon* of 1741 we read:

Among the consequences of the law is the obligation under which a person is placed to do or to refrain from doing something according to the law. Now just as a law can be waived in its entirety or in part, so too can a lawmaker exempt or grant a person a privilege. This is a special freedom which a lawmaker permits the subject and exempts him from obligation to the law.

The privilege, in short, was not a positive law, but rather, as Fichte would later put it sardonically, an "exception to a natural law" accord-

ing to which "everybody has the right to reprint every book."²⁷ In this sense the privilege, like the honorarium, harks back to an earlier conception of writing as a vehicle of something which by its very nature is public—that is, knowledge—and is therefore free to be reproduced at will.

The limited protection afforded a publisher by the privilege was unlike that afforded under the English copyright in another important respect. The privilege extended only to the borders of the territory or municipality that granted it. This system, whereby each separate state and large town could grant a book protection against reprinting, had worked well enough as long as the demand for books was limited. But as demand increased and book trading became lucrative it proved totally inadequate. For eighteenth-century Germany consisted of some three hundred independent states. To safeguard their respective investments against piracy, writers and their publishers would have had to obtain a privilege in every one of them. To make matters worse, mercantilist economic policies caused some states not only to tolerate piracy but actively to encourage it as a legitimate source of revenue.²⁸

Book piracy affected serious writers and conscientious publishers most of all, exposing problems that have become highly familiar to us in today's conditions of mass-market publishing. The publishers had adopted the practice of using profits from popular books to finance publication of works that, because of the serious or specialized nature of their subject matter, were not likely to succeed in the marketplace. With the growth of piracy, however, this became increasingly more difficult to do. Pirates were naturally attracted to the most popular books. These they would quickly reprint at a lower price than the legitimate publisher had charged. The pirates could easily afford to do this, according to the bookseller Perthes, because they had no previous losses to cover and no authors to pay. The consequence for the legitimate publisher, Perthes goes on to explain, was that he was left with half an edition of the popular item on his shelves.²⁹ With their profits cut in this way, publishers became hesitant to accept anything that they did not feel confident of turning over quickly. As the bookseller Ganz put it, "Whatever is easiest to write, whatever will enjoy the quickest sales, whatever involves the smallest loss—these are the things that authors must write and dealers must publish as long as the plague of piracy persists."³⁰ Piracy not only threatened the publishers of the period, then, it also added to the insecurity of serious

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writers by increasing the difficulties they already had getting their works into print.

Legitimate publishers' resentment of the book pirates and authors' resentment of both triggered an intense debate in which all manner of questions concerning the "Book" were disputed. And here we find another instance of the kind of interplay between discourses to which historians of aesthetics and criticism need to become more sensitive, for it is precisely in this interplay between legal, economic, and social questions on the one hand and philosophical and aesthetic ones on the other that critical concepts and principles as fundamental as that of authorship achieved their modern form.

II

It would be hard to find a more patent example of such interplay than the debate over the book that spanned the two decades between 1773 and 1794. In addition to publishers and legal experts such as Philipp Erasmus Reich, Joachim Heinrich Campe, Johann Stephan Pütter, and Johann Jakob Cella, many of the best-known poets and philosophers of the period contributed: Rudolf Zacharias Becker, Gottfried August Bürger, J.G. Müller von Itzehoe, Adolf Freiherr von Knigge, Kant, Johann Georg Feder, Martin Ehlers, and Fichte, to name just a few.³¹ The debate generated so much commentary that it produced an instantaneous *Forschungsbericht*, or survey: Ernst Martin Gräff's *Versuch einer einleuchtenden Darstellung des Eigenthums und der Eigenthumsrechte des Schriftstellers und Verlegers und ihrer gegenseitigen Rechte und Verbindlichkeiten. Mit vier Beylagen. Nebst einem kritischen Verzeichnisse aller deutschen besonderen Schriften und in periodischen und andern Werken stehenden Aufsätze über das Bücherwesen überhaupt und den Büchernachdruck insbesondere* [Toward a Clarification of the Property and Property Rights of Writers and Publishers and Their Mutual Rights and Obligations. With Four Appendices. Including a Critical Inventory of All Separate Publications and Essays in Periodical and Other Works in German Which Concern Matters of the Book As Such and Especially Reprinting].³² The treatise makes good on its promise by reviewing no less than twenty-five of the separate publications and thirty-five of the essays written over the twenty-year period leading up to its appearance in 1794.

The debate was precipitated by the announcement in 1772 of the *Deutsche Gelehrtenrepublik* [German Republic of Letters]. In this an-

nouncement the poet Friedrich Gottlob Klopstock unveiled a scheme to enable writers to circumvent publishers altogether and bring their works directly to the public by subscription. His aim, he wrote, was

to ascertain whether it might be possible by arranging such subscriptions for scholars to become the owners of their writings. For at present they are so only in appearance; book dealers are the real proprietors, because scholars must turn their writings over to them if they want to have these writings printed. This occasion will show whether or not one might hope that the public, and the scholars among themselves, . . . will be instrumental in helping scholars achieve actual ownership of their property.³³

This experiment in collective patronage did not have the direct impact on the structure of the book trade that Klopstock had hoped it might. Subscription was simply too demanding of the time and resources of writers for many other writers to follow his example. And readers had already become accustomed to purchasing their reading matter from the booksellers. This arrangement had the advantage of enabling them to browse before buying and to await the reaction of other readers and the reviews. Furthermore, publishers' names had become an index of quality, a means of orientation for the reader in the sea of published matter.³⁴ In short, cooperation with the growing distribution apparatus had by this time become virtually unavoidable. It was only on the morale of writers, therefore, that Klopstock's experiment had a direct impact. But here his service was considerable, for Klopstock was the most revered poet of the period. Just by speaking out as he did he helped to create among writers the authority requisite to advancing their interests with the publishers. Thus, the *Gelehrtenrepublik* must be regarded as an important milestone in the development of the concept of authorship—as Goethe seems to suggest in the tenth book of *Dichtung und Wahrheit* when he remarks that in the person of Klopstock the time had arrived “for poetic genius to become self-conscious, create for itself its own conditions, and understand how to lay the foundation of an independent dignity.”³⁵

If Klopstock's affirmation of the rights of authors seems self-evident to us today, that is because it eventually prevailed. It was anything but self-evident to the author of the entry “Book” in the *Allgemeines Oeconomisches Lexicon* of 1753, which stands as the motto of this chapter. There, where the book is still perceived as a “convenient instrument for conveying the truth,” none of the many craftsmen

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who collaborated in its production is privileged. Listed in the order of their appearance in the production, "the scholar and the writer, the papermaker, the type founder, the typesetter and the printer, the proofreader, the publisher, the book binder" are all presented as deserving equal credit for the finished product and as having an equal claim to the profits it brings: "Thus many mouths are fed by this branch of manufacture." This definition of the book, which now reads like the taxonomy of animals in the Chinese encyclopedia "cited" by Borges, suggests how differently the debate launched by Klopstock might have turned out (indeed, how *reasonable* some other resolution of it would have been).³⁶ It makes tangible just how much had to change before consensus could build around his bold assertion of the priority of the writer as peculiarly responsible—and therefore uniquely deserving of credit—for the finished product, "Book," which he helped to make. The nature of writing would have to be completely rethought. And that, as I suggested at the outset of the discussion, is exactly what eighteenth-century theorists did.

The debate in which a good deal of this reflection was carried on focused on the question of whether or not the unauthorized reproduction of books [*Büchermachdruck*] should be prohibited by law. As incomprehensible as it may seem to us today, the weight of opinion was for a long time with the book pirates. For the reading public as a whole considered itself well served by a practice that not only made inexpensive reprints available but could also be plausibly credited with holding down the price of books in general through the competition it created. And given the taste of a majority of the public for light reading matter, it could hardly be expected to have been swayed by Perthes' objection that piracy was so cutting into the profits of legitimate publishers that they could no longer afford to take risks on "serious" literature.

A variety of defenses was offered for book piracy, but the most pertinent to the genesis of the modern concept of authorship are those that sought to rationalize the practice philosophically. Here, as illustration, are two such defenses. The first is by a zealous mercantilist who seeks to advance his interests by emphasizing a book's physical foundation:

The book is not an ideal object. . . . It is a fabrication made of paper upon which thought symbols are printed. It does not contain thoughts; these must arise in the mind of the comprehending reader. It is a commodity produced for hard cash. Every

government has the duty to restrict, where possible, the outflow of its wealth, hence to encourage domestic reproduction of foreign art objects and not to hinder the industry of its own citizens to the enrichment of foreign manufacturers.³⁷

This writer's conclusion would be hard to deny were we to accept his premises. If a book could be reduced to its physical foundation, as he suggests, then of course it would be impossible for its author to lay claim to peculiar ownership of it, for it is precisely the book qua physical object that he turns over to the publisher when he delivers his manuscript and that, in another format, is eventually purchased by his readers.

To ground the author's claim to ownership of his work, then, it would first be necessary to show that this work transcends its physical foundation. It would be necessary to show that it is an emanation of his intellect—an intentional, as opposed to a merely physical object. Once this has been acknowledged, however, it will still remain to be shown how such an object can constitute property—as the following statement by Christian Sigmund Krause demonstrates:

“But the ideas, the content! that which actually constitutes a book! which only the author can sell or communicate!”—Once expressed, it is impossible for it to remain the author's property. . . . It is precisely for the purpose of using the ideas that most people buy books—pepper dealers, fishwives, and the like, and literary pirates excepted. . . . Over and over again it comes back to the same question: I can read the contents of a book, learn, abridge, expand, teach, and translate it, write about it, laugh over it, find fault with it, deride it, use it poorly or well—in short, do with it whatever I will. But the one thing I should be prohibited from doing is copying or reprinting it? . . . A published book is a secret divulged. With what justification does a person expect to have more property in the ideas he expresses in writing than in those he expresses orally? With what justification does a preacher forbid the printing of his homilies, since he cannot prevent any of his listeners from transcribing his sermons? Would it not be just as ludicrous for a professor to demand that his students refrain from using some new proposition he has taught them as for him to demand the same of book dealers . . . with regard to a new book? No, no, it is too obvious that the concept of intellectual property is useless. My property must be exclusively mine; I must be able to dispose of it and retrieve it unconditionally. Let

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someone explain to me how that is possible in the present case. Just let someone try taking back the ideas he has originated once they have been communicated so that they are, as before, nowhere to be found. All the money in the world could not make that possible.³⁸

Krause acknowledges that a book is a vehicle of ideas; however, this does not advance the interests of the author an iota; for, as Krause points out, it is precisely for the sake of appropriating these ideas that readers purchase a book in the first place.

Krause's challenge to explain to him how ideas, once communicated, could remain the property of their originator is taken up by Fichte in the essay *Beweis der Unrechtmässigkeit des Büchernachdrucks. Ein Raisonement und eine Parabel* [Proof of the Illegality of Reprinting: A Rationale and a Parable] (1793). Fichte meets the challenge by arguing that a book, in addition to being an emanation of the writer's intellect, is also a verbal embodiment or imprint of that intellect at work. He proceeds by distinguishing between the physical [*körperlich*] and ideal [*geistig*] aspects of a book—that is, between the printed paper and content. Repeating the operation, he then divides the ideal aspects of the book into

the *material* [*materiell*] aspect, the content of the book, the ideas it presents; and . . . the *form* of these ideas, the way in which, the combination in which, the phrasing and wording in which they are presented.³⁹

Then, on the presupposition that we are "the rightful owners of a thing, the appropriation of which by another is physically impossible,"⁴⁰ Fichte goes on to distinguish three distinct shares of property in the book. When the book is sold, ownership of the *physical* object passes to the buyer to do with as he pleases. The *material* aspect, the content of the book, the thoughts it presents also pass to the buyer. To the extent that he is able, through intellectual effort, to appropriate them, these ideas cease to be the exclusive property of the author, becoming instead the common property of both author and reader. The *form* in which these ideas are presented, however, remains the property of the author eternally, for

each individual has his own thought processes, his own way of forming concepts and connecting them. . . . All that we think we must think according to the analogy of our other habits of thought; and solely through reworking new thoughts after the analogy of

our habitual thought processes do we make them our own. Without this they remain something foreign in our minds which connects with nothing and affects nothing. . . . Now, since pure ideas without sensible images cannot be thought, even less are they capable of presentation to others. Hence, each writer must give his thoughts a certain form, and he can give them no other form than his own because he has no other. But neither can he be willing to hand over this *form* in making his thoughts public, for no one can *appropriate* his thoughts without thereby *altering their form*. This latter thus remains forever his exclusive property.⁴¹

In his central concept of the "form" taken by a thought—that which it is impossible for another person to appropriate—Fichte solves the philosophical puzzles to which the defenders of piracy had recurred, and establishes the grounds upon which the writer could lay claim to ownership of his work—could lay claim, that is, to *authorship*. The copyright laws [*Urheberrecht*] enacted in the succeeding decades turn upon Fichte's key concept, recognizing the legitimacy of this claim by vesting exclusive rights to a work in the author insofar as he is an *Urheber* [originator, creator]—that is, insofar as his work is unique or original [*eigentümlich*], an intellectual creation that owes its individuality solely and exclusively to him.⁴² The publisher, formerly proprietor of the work, henceforth functioned as his agent.

The first important legislation designed to regulate publishing rights and contracts was enacted in 1794 in Prussia. Having defined the right to publish as "the authority to reproduce a text in print and to take it to the fairs, to booksellers, and otherwise exclusively to dispose of it," Prussian state law asserts at §998: "As a rule, the bookseller acquires the right to publish only through a written contract with the author."⁴³ Although the right to publish a text appears to be derived from the proprietary right of its author,⁴⁴ nowhere do the Prussian statutes contain an explicit and unambiguous statement to this effect, and they make the bookseller rather than the author the subject of legal protection.

Not until 1810 was the priority of the author's claims explicitly recognized in legislation. This occurred in Baden when the Napoleonic Code was adopted as state law. Laws covering literary property were added to the *Code civile* because, as Johann Nikolaus Friedrich Brauer (1754–1813), the jurist chiefly responsible for adapting the

Code, notes in his commentary, while French legislation deserves the credit for being first to introduce the idea of literary property, it did not "pursue the idea to its conclusion." The French legislation of 1793 "more closely resembles an insurance policy against reprinting than a civil law covering literary property."⁴⁵ Accordingly, the chapter "On Literary Property" that the Baden jurists inserted in the section of the *Code civile* devoted to property begins:

§577. da. Every written transaction is originally the property of the person who composed it, as long as he did not write it on the commission of another and for the advantage of another, in which case it would be the property of the person who commissioned it.⁴⁶

Three years later in 1813 the state of Bavaria would define the object of the author's proprietary rights in the very terms that had been made available by Fichte. According to Article 397 of its Penal Code, which was authored by Ludwig Feuerbach,

Anyone who publicizes a work of science or art without the permission of its creator, his heirs, or others who have obtained the rights of the creator, by reproducing it in print or in some other way without having reworked it into an original form [*eigentümlicher Form*] will be punished.⁴⁷

Although similar legislation was enacted in one after another of the German states, the situation of serious writers and their legitimate publishers did not immediately improve because the new laws did not reach any farther than the privileges they superseded. Special interstate treaties, or accords, continued to be required until the Prussian state law of 1837 "for the protection of property in works of science and art against reprinting and reproduction" was adopted by the Federation of German States in 1845.⁴⁸

It remains to retrace the path by which Fichte arrived at this concept of the "form" taken by a thought and the radically new conception of writing it implies. In advocating originality, Edward Young had made what proved to be enormously fecund suggestions about the process by which this quality is brought about. An original work, he had conjectured,

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.⁴⁹

Young derogates the craftsman's manipulation of inherited techniques and materials as capable of producing nothing but imitations, "duplicates of what we had, possibly much better, before."⁵⁰ Original works are the product of a more organic process: they are *vital, grow spontaneously from a root*, and by implication, unfold their original form from within.⁵¹ German theorists of the *Genie* period spelled out the implications of these ideas.⁵² That is, they expanded Young's metaphor for the process of genial creativity in such a way as to effect the new conception of composition that enabled Fichte, in the final stage of the piracy debate, to "prove" the author's peculiar ownership of his work.

The direction in which their work took them is illustrated by Herder's ruminations on the processes of nature in *Vom Erkennen und Empfinden der menschlichen Seele* [*On Knowing and Feeling*] (1778). What most inspires Herder is the "marvelous diligence" with which living organisms take in and process alien matter, transforming it in such a way as to make it part of themselves:

Behold yon plant, that lovely structure of organic fibers! . . . With what marvelous diligence it refines alien liquors into parts of its own finer self, grows, loves, gives and receives pollen on the wing of Zypher, stimulates living imprints of itself, leaves, seed, blossoms, fruit; then it ages, gradually loses its impulse to receive and its energy to give anew, dies. . . . The herb draws in water and earth and refines them into its own element; the animal makes the lower herbs into nobler animal sap; man transforms herbs and animals into organic elements of his life, brings them into the processing of higher, finer stimuli.⁵³

The ease with which these ideas about the nature of nature could be adapted to rethinking the nature of composition is suggested by the young Goethe's description of writing as "the reproduction of the world around me by means of the internal world which takes hold of, combines, creates anew, kneads everything and puts it down again in its own form, manner."⁵⁴ Goethe departs sharply from the older, Renaissance and neoclassical conception of the writer as essentially a vehicle of ideas to describe him not only as transforming those ideas, but as transforming them in such a way as to make them an expression of his own—unique—mind. Herder sums up this new line of thought

when he observes that "one ought to be able to regard every book as the imprint [*Abdruck*] of a living human soul":

Every poem, even a long poem—a life's (and soul's) work—is a tremendous betrayer of its creator, often where the latter was least conscious of betraying himself. Not only does one see in it the man's poetic talents, as the crowd would put it; one also sees which senses and inclinations governed him, how he received images, how he ordered and disposed them and the chaos of his impressions; one sees the favorite places in his heart as well as sometimes his life's destinies: his manly or childish understanding, the stays of his thought and his memory.⁵⁵

This radically new conception of the book as an imprint or record of the intellection of a unique individual—hence a "tremendous betrayer" of that individual—entails new reading strategies. In neoclassical doctrine the pleasure of reading had derived from the reader's recognition of himself in a poet's representations (a pleasure guaranteed by the supposed essential similarity of all men). Thus Pope's charge to the poet to present "something, whose truth convinced at sight we find, / That gives us back the image of our mind." With Herder the pleasure of reading lies instead in the exploration of an Other, in penetrating to the deepest reaches of the foreign, because absolutely unique consciousness of which the work is a verbalized embodiment. Herder describes this new and, to his way of thinking, "active" [*lebendig*] mode of reading as "divination into the soul of the creator [*Urheber*]." ⁵⁶ Not every writer merits reading in this way, he avers, but with writers who are "worth the trouble"—our "favorite writers"—it is "the only kind of reading and the most profound means of education."

Herder's redefinition of the goals of reading brings us back to the questions with which this discussion began. For his recommendation that we treat a book as a revelation of the personality of its author sets the stage for the entire spectrum of the "man-and-his-work criticism" to which Foucault alluded, as well as for the theoretical tradition that undergirds it: hermeneutic theory from Schleiermacher and Dilthey to a contemporary theoretician like E. D. Hirsch. Despite their many differences, all of these critics share the belief that criticism has essentially to do with the recovery of a writer's meaning, and all take for granted the concept of the author that evolved in the eighteenth century. What we tend to overlook is the degree to which that concept was shaped by the specific circumstances of writers during that period.